

**BOARD OF COMMISSIONERS
COUNTY OF CARBON
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE 2019-03

**AMENDED AND RESTATED CARBON COUNTY ORDINANCE IMPOSING
AN EXCISE TAX: ON THE CONSIDERATION RECEIVED FOR
TEMPORARY RENTAL OF HOTEL ROOMS; TO FUND MARKETING
OF THE COUNTY FOR TOURISM, TRAVEL, BUSINESS CONVENTION
AND MEETING TRAVEL DEVELOPMENT; ESTABLISHING PROCEDURES
FOR THE COLLECTION OF THE TAX; AND IMPOSING PENALTIES**

WHEREAS, the County of Carbon adopted a Hotel Excise Tax by Ordinance 2006-02 ("Prior Ordinance"); and

WHEREAS, the enabling statute for such Hotel Excise Tax as it applies to the County has been amended by Act 18 of April 20, 2016; and

WHEREAS, the County wishes to amend and restate the County's Hotel excise tax ordinance to conform to the Act of April 20, 2016; and

WHEREAS, upon enactment, this Ordinance is intended to supplant and replace the prior Ordinance and amended Ordinances referenced aforesaid.

NOW, THEREFORE, with the above matters incorporated by reference herein, it is HEREBY ORDAINED AND ENACTED, that the prior Ordinance is hereby amended and restated as follows:

Section 1. Short Title.

This Ordinance may be cited as the "Carbon County Hotel Room Rental Excise Tax Ordinance".

Section 2. Authority and Purpose.

1. Pennsylvania state legislature originally adopted enabling legislation for local hotel tax imposition and collection known as Act 18 of 1997, which has been amended subsequently thereto, including Act 18 of 2016, which amended the same to expand the enabling provisions of prior law, and Act 109 of 2018, which expanded enabling provisions to add additional definitions and coverage of the tax. ("Enabling Statute").

2. The purpose of this Ordinance is to continue to raise revenues to fund the activities of the County's Recognized Tourist Promotion Agency within the County of Carbon as authorized by the Enabling Statute.

Section 3. Definitions.

The following words and phrases when used in this Ordinance shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Accommodation Fee." The amount by which the rent exceeds the discount room charge, if any.

"Bed and breakfast" or "Homestead." A public accommodation consisting of a private residence, which contains ten or fewer bedrooms, used for providing overnight accommodations to the public and in which breakfast is the only meal served and is included in the charge for the Room.

"Board". The Board of County Commissioners of the County of Carbon.

"Booking Agent." A person or entity which facilitates or collects payment for hotel accommodations on behalf of or for an operator. The term "Booking Agent" shall not include a person who merely publishes advertisements for accommodations.

"Cabin." A permanent structure with beds and running water that is located on a campground on State land or private property and is available to provide overnight lodging for Consideration to persons seeking temporary accommodations. The term does not include a yurt or walled tent.

"Calendar Quarter." January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

"Conflict of interest." Use by a board member, director, officer or employee of a Recognized Tourist Promotion Agency of the authority of his or her office or employment or any confidential information received through his or her capacity in relation to a Recognized Tourist Promotion Agency for the private pecuniary benefit of himself or herself, a member of his or her Immediate family or a business with which he or she or a member of his or her Immediate family is associated. The term does not include an action having a **de minimis** economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes a board member, director, officer or employee, a member of his or her Immediate family or business with which he or she or a member of his or her Immediate family is associated.

"Consideration." Receipts, fees, charges, rentals, leases, cash, credits, property of any kind or nature or other payment received by Operators in exchange for or in Consideration of the use or Occupancy by a Transient of a Room or Rooms in a Hotel for a Temporary period. Where a Hotel markets American Plan ("AP"), Modified American Plan ("MAP"), or any other form of packages, which include Occupancy, food and beverages, and/or other products or services, the portion of the package Plan Consideration to be allocated to Occupancy for

purposes of taxation hereunder shall equate to the lowest Consideration for Occupancy paid to the Operator for the same Room, on the same date.

"County." The County of Carbon.

"Discount Room Charge." The amount charged by an Operator to a Booking Agent in connection with the sale of an accommodation by the Booking Agent.

"Hotel." A Hotel, motel, inn, guesthouse, Rooming house, Bed and Breakfast, Homestead or other structure which holds itself out by any means, including advertising, license, registration with an innkeepers' group, convention listing association, travel publication or similar association or with a government agency, as being available to provide overnight lodging for consideration to persons seeking Temporary accommodation; any place which advertises to the public at large or any segment thereof that it will provide beds, sanitary facilities or other space for a Temporary period to members of the public at large; any place recognized as a hostelry or any Cabin. The term does not include any of the following:

(1) A charitable institution which is a "Purely Public Charity". The term "Purely Public Charity" shall be defined in Article VIII, Section 2 of the Pennsylvania Constitution, and the institutions of Purely Public Charity Act, Act 55 of 1997, 10 P.S. Section 371, et. Seq., an employee for a Purely Public Charity must present a tax exemption certificate issued by the Department of Revenue to support such exemption. The exemption shall not include college, university, education or religious institutions under exemptions (3) and (4) hereafter, other than as stated with respect to the type of facilities included in exemptions (3) and (4).

(2) A portion of a facility that is devoted to persons who have an established permanent residence.

(3) A college or university student residence hall currently occupied by students enrolled in a degree program.

(4) An educational or religious institution camp for children, including a camp registered under the act of November 10, 1959 (P.L.1400, No.497), entitled "An act providing for the annual registration of organized camps for children, youth and adults; defining the duties of the Department of Health of the Commonwealth of Pennsylvania; and prescribing penalties."

(5) A hospital.

(6) A nursing home.

(7) Part of a campground that is not a Cabin.

The term specifically does not include the initial sale, resale or licensing of timeshare units or residences, whether the Transaction conveys a timeshare unit or personal residence in fee simple, or leases or licenses same. Notwithstanding the aforesaid, the term does include: (a) single-family residences, multi-family residences, and timeshare units which are marketed as stated herein before in the definition of "Hotel" by the owner and/or his/her agent, or by Hotel Operators in the same manner as they market their Hotel Rooms, for Occupancy of a Room or Rooms in a Hotel for a period of thirty (30) consecutive days or less, unless occupied by the

owner thereof; and (b) the rental for Occupancy by private campgrounds of Rooms, Cabins, guesthouses, or any other structure to provide Temporary overnight Occupancy of a Room, for persons, other than the owner or members thereof (in the case of a private membership campground), seeking temporary accommodation, but not including the renting of lots or tracts without structures thereon.

"Immediate family." A spouse, parent, brother, sister or child.

"Marketing." An action by a Recognized Tourism Promotion Agency that includes, but is not limited to, promoting and encouraging visitors to visit a specific County, counties or geographic region.

"Occupancy." The use or possession or the right to the use or possession by any person other than a Permanent Resident of any Room in a Hotel for any purpose or the right to the use or possession of the furnishings or to the services accompanying the use and possession of the Room.

"Operator." Any individual, partnership, nonprofit or profit-making association or corporation or other person or group of persons who maintain, operate, manage, own, have custody of or otherwise possess the right to rent or lease overnight accommodations in a building to the public for Consideration, including the Agents of such individuals to the extent permitted by applicable law.

"Patron." Any person who pays the Consideration for the Occupancy of a Room or Rooms in a Hotel. The term "Patron" shall not include employees of the Commonwealth of Pennsylvania, the federal government, or Purely Public Charities while on business for their respective employer (i.e. Commonwealth of Pennsylvania, Federal Government, or Purely Public Charity).

"Permanent Resident." A person who has occupied or has the right to Occupancy of a Room or Rooms in a Hotel as a Patron or otherwise for a period exceeding thirty (30) consecutive days.

"Recognized Tourist Promotion Agency." The nonprofit corporation, organization, association or agency which is engaged in planning and promoting programs designed to stimulate and increase the volume of tourist, visitor and vacation business within the County and certified by the County as of the effective date of this subsection or under subsection 13 of this Ordinance. As may hereafter be certified pursuant to Section 13 and applicable state statutes or regulation.

"Records." Includes, but is not limited to, the number of daily transactions, rate of each occupancy, revenues received for all transactions, cash receipts and sales journals, cash disbursements and purchase journals, and general ledgers.

"Room." A space in a building set aside for use and Occupancy by Patrons or otherwise, for Consideration, having at least one bed or other sleeping accommodations provided.

"Temporary." Occupancy of a Room or Rooms in a Hotel for a period of thirty (30) consecutive days or less.

"Transaction." The activity involving the obtaining by a Transient or Patron of the Temporary use or Occupancy of a Hotel Room from which Consideration inures to the Operator under an expressed or implied contract.

"Transient." An individual who obtains accommodation in a Hotel by means of registering at the facility for the Temporary Occupancy of a Room for the personal use of the individual by paying a fee to the Operator.

"Treasurer." The Treasurer of the County of Carbon.

Section 4. Imposition of Hotel Room Rental Excise Tax.

- A. There is hereby imposed an excise tax at a rate of three (3%) percent on the Consideration received by each Booking Agent and/or Operator of a Hotel from each Transaction of renting a Room or Rooms to accommodate Transients. Including cabins as defined under the Act.
- B. The County Hotel Room Rental Excise Tax under this Amended and Restated Ordinance shall take effect on March 28, 2019 ("Effective Date"). Any written agreements in existence prior to the 28th day of March, 2019 ("Adoption Date"), between each Booking Agent and/or Operator of a Hotel and a Patron for the renting of a Room or Rooms to accommodate Transients after the Effective Date, shall not be subject to the rates stated in this Ordinance but rather the rates originally stated in Ordinance No. 2006-02 (adopted 12/28/06, amended 9/15/16, 12/01/16 and 1/11/18).

Section 5. Collection of Tax.

The Hotel Room Rental Excise Tax shall be collected by Booking Agents and/or Operators from Patrons.

Section 6. Payment of the Tax.

- A. The Booking Agent and/or Operator shall pay the Hotel Room Rental Excise Tax to the County Treasurer as follows:
 - 1. Every Booking Agent and/or Operator shall transmit to the County Treasurer, on or before the 25th day of the month (April, July, October, and January) following each calendar quarter, a return for the calendar quarter ending during the month immediately preceding the month in which the return is made. The return shall report the amount of consideration received for transactions during the calendar quarter for which the return was made, the amount of the tax due from the Booking Agent and/or Operator for such calendar quarter, and such other information as the County Treasurer may reasonably require.
 - 2. Every Booking Agent and/or Operator, at the time of filing such required return, shall compute and pay over to the County Treasurer the Hotel Room Rental Excise Tax shown as due on the return for the period for which the return is made.

3. If a Booking Agent and/or Operator first commences the business of operating a Hotel during a Calendar Quarter, the first return shall be made on the 25th day of the month following completion of such Calendar Quarter, even though the return covers less than the full Calendar Quarter.
4. The Booking Agent and/or Operator shall file a hotel room rental tax return when paying the tax summarizing the consideration received.

Section 7. Collection and Disposition of Revenues.

The County Treasurer shall collect the Tax and deposit the revenues received from the tax into a separate segregated fund, entitled the *Hotel Room Rental Excise Tax Fund*.

The County Treasurer shall distribute the revenues from the Hotel Room Rental Excise Tax Fund in the following manner:

1. The County Treasurer shall first deduct and pay over to the County General Fund an administrative fee which equals four (4%) percent of all taxes collected under this Ordinance.
2. The County Treasurer shall distribute all remaining revenues in the Hotel Room Excise Tax Fund to the Recognized Tourist Promotion Agency within sixty (60) days after the end of each Calendar Quarter.

Section 8. Use of Revenues.

A. The revenues distributed from the Hotel Room Rental Excise Tax Fund to the Recognized Tourist Promotion Agency shall be used by the Recognized Tourist Promotion Agency for any of the following purposes:

1. Marketing the area served by the agency as a leisure travel destination.
2. Marketing the area served by the agency as a business, convention or meeting travel destination.
3. Using all appropriate Marketing tools to accomplish these purposes, including, but not limited to, advertising, publicity, publications, direct Marketing, sales, technology and participation in industry trade shows that attract tourists or travelers to the area served by the agency.
4. Programs, expenditures or grants that are directly and substantially related to tourism or a business, convention or meeting travel destination within the County, augment and do not compete with private sector tourism or travel efforts and improve and expand the County as a destination market as deemed necessary by the Recognized Tourist Promotion Agency

- a. The following shall apply to grants awarded under this paragraph: i. grants require a cash or in-kind local match of at least 25%. ii. Grants may not be used

for signage that promotes a specific entity on the sites of that entity, except where the signage also carries the logo of the Recognized Tourist Promotion Agency.

5. Any other tourism or travel Marketing or promotion program, expenditure or project that does not compete with private sector tourism or travel efforts as deemed necessary by the Recognized Tourist Promotion Agency.
6. The Recognized Tourist Promotion Agency shall place 20% (20 percent) of the first \$500,000 (Five Hundred Thousand Dollars) and 10% (10 percent) of any additional gross lodging tax revenue in a special fund dedicated to programs promoting tourism and marketing in the County of Carbon.
7. At least quarterly, the recognized Tourist Promotion Agency shall make payment of the revenue set forth in paragraph 6 herein directly to the County of Carbon to be utilized for specific programs in accordance with the Act.

B. Each taxable year for any tax imposed under this section shall run concurrently with the County's financial year.

C. (1) An audited report or financial statement, as determined by the County in consultation with the Recognized Tourist Promotion Agency, on the income and expenditures incurred by a Recognized Tourist Promotion Agency receiving any revenues from the tax authorized under this section shall be submitted annually by the Recognized Tourist Promotion Agency to the County Commissioners.

(2) a. If a Recognized Tourist Promotion Agency fails to submit an annual audit report or financial statement required under subsection (f) within ninety days of the end of the Recognized Tourist Promotion Agency's fiscal year, the corresponding County may withhold tax revenues collected and deposited in a Hotel Room Rental Excise Tax Fund under this section until the required annual audit report or financial statement is submitted to the County.

b. In the event the County does not take action under paragraph (a) within one hundred eighty (180) days of the end of the Recognized Tourist Promotion Agency's fiscal year, the Secretary of Community and Economic Development may require the County to withhold tax revenues collected and deposited in a Hotel Room Rental Excise Tax Fund under this section until the required annual audit report or financial statement is submitted to the County and the Department of Community and Economic Development.

Section 9. Record Keeping Requirements for Operators.

Each Booking Agent and/or Operator shall maintain and retain all records necessary to confirm proper collection and payment of the tax imposed by this Ordinance until the expiration of seven (7) years after the Hotel Room Rental Excise Tax returns have been filed.

Section 10. Access to Records.

The County or its duly-authorized representative shall have access to all books, documents, papers and records of the Booking Agent and/or Operator and the Recognized Tourist Promotion Agency which are directly pertinent to the collection and expenditure of the proceeds of the tax authorized by this Ordinance for the purpose of making audit, examination, excerpts and transcripts. Notwithstanding the aforesaid, to the extent allowed by state law, the underlying books, documents, papers, records and tax returns of the Booking Agent and/or Operator shall not be deemed "public records" and the officers, agents and employees of the

County shall not divulge or make known whatsoever in any manner or to any person, unless provided by law or for official purposes, the amount or source of income, profits, losses, expenditures, or any particulars thereof as set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof, to be seen or examined by any person except as provided by law or as necessary for official purposes, including enforcement.

Section 11. Late Filing Fee.

A. Any payment of the Hotel Room Rental Excise Tax made after the Due Date shall be subject to late payment interest at the rate of eighteen (18%) percent per annum, or one and one-half (1.5%) percent per month, on the amount of the tax which remains unpaid.

B. Late filing fees shall be added to and paid with the filing of the return.

Section 12. Enforcement.

Whenever a Booking Agent and/or Operator shall fail to pay the taxes herein provided, upon request of the County Treasurer, the County may bring a civil action in any court having jurisdiction to enforce the payment of all taxes, fees and interest due. There shall be added to the claim reasonable attorney fees, in an amount not to exceed ten (10%) percent of the amount due. In addition to other remedies available for collection of debts, the County may file a lien upon the Hotel in the name of the County for use of the County as provided by this Ordinance.

Section 13. Administration.

A. The County, with the assistance of the County Treasurer and the County Controller, shall be responsible for administering the provisions of this Ordinance. The County Commissioners, with the assistance of the Treasurer, if requested, may promulgate and implement administrative rules and regulations relating to the imposition and collection of the Hotel Room Rental Excise Tax.

B. Any board member, director, officer or employee of a Recognized Tourist Promotion Agency shall disclose to the Recognized Tourist Promotion Agency the nature of any Conflict of Interest or financial interest and recuse himself or herself from any action taken on behalf of the

Recognized Tourist Promotion Agency which may result in a private pecuniary benefit to the individual, a member of the individual's Immediate family or a business with which the individual or a member of the individual's Immediate family is associated.

Section 14. Severability.

Each section and subsection of this Ordinance shall be deemed to be severable and not affected by any determination that any other provision of this Ordinance is enforceable.


Section 15. Effective Date.

The terms of this Amended and Restated County Ordinance shall take effect on March 28, 2019, and any terms in the Prior Ordinance, which are different from this Amended and Restated Ordinance, and any other documents executed between the County and the Recognized Tourist Promotion Agency, before the Effective Date of this Amended and Restated Ordinance, hereafter shall be "void" and of no effect.

DULY ENACTED AND ORDAINED at a public meeting of the Board of County Commissioners of Carbon, Pennsylvania, held on the 28th day of March, 2019.

CARBON COUNTY BOARD OF COMMISSIONERS


Wayne E. Nothstein, Chairman 03-28-19


Tom J. Gerhard, Vice-Chairman


William J. O'Gurek, Member

Attest:


Eloise K. Ahner, Chief Clerk/County Administrator