

**BOARD OF COMMISSIONERS
COUNTY OF YORK
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE 2019-02

**AMENDMENT TO YORK COUNTY CODE CHAPTER 107, ARTICLE I, TO UPDATE
THE IMPOSITION AND COLLECTION OF THE HOTEL ROOM EXCISE TAX**

WHEREAS, the York County Code imposes a hotel room excise tax as set forth in Chapter 107, Article I, of the York County Code (adopted 12-31-1997 by Ordinance 1997-08, and amended on 5-11-2016 by Ordinance 2016-03); and

WHEREAS, the York County Commissioners wish to repeal the Code of York County, Chapter 107, Article I, and replace it with this Ordinance.

NOW THEREFORE, with the above matters incorporated by reference herein, it is **HEREBY ORDAINED AND ENACTED**, by the Board of Commissioners of the County of York, Pennsylvania, the attached Ordinance:

Section 1. Repealer.

This Ordinance shall supersede and repeal all ordinances, resolutions and parts thereof inconsistent or conflicting herewith. The Code of York County, Chapter 107, Article I, is specifically repealed.

Section 2. Effective Date.

This Ordinance shall become effective May 15, 2019.

Section 3. Severability Clause.

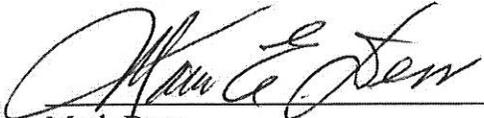
If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair the remaining provisions, sentences, clauses, section or parts of this Ordinance. It is hereby declared to be the intent of the York County Board of Commissioners that this

Ordinance would have been adopted and would be enforceable had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included herein.

Duly enacted and ordained this 15th day of MAY, 2019, by the Board of Commissioners of York County, Pennsylvania in lawful session duly assembled.

ATTEST:

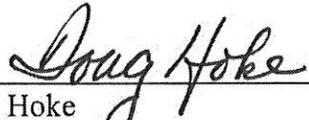
COUNTY OF YORK



Mark Derr
Chief Clerk/Administrator



Susan Byrnes
President Commissioner



Doug Hoke
Vice President Commissioner



Christopher B. Reilly
Commissioner

The above Ordinance was ordained, enacted, and adopted this 15th day of MAY, 2019, at a regular meeting of the Board of Commissioners of the County of York duly advertised and assembled upon motion of Commissioner Reilly and seconded by Commissioner Hoke and passed with a vote of 3 yes and 0 no.

Chapter 107
Taxation

ARTICLE I
Hotel Room Excise Tax

- 107-1. Title
- 107-2. Purpose
- 107-3. Definitions
- 107-4. Imposition of Tax.
- 107.5. Collection.
- 107.6. Payment.
- 107.7. Filing.
- 107.8. Recordkeeping Requirements.
- 107.9. Access to Records.
- 107.10. Late Payment Fees.
- 107.11. Enforcement.
- 107.12. Registration
- 107.13. Violations and Penalties.
- 107.14. Collection and Disposition of Revenues.
- 107.15. Use of Revenues; Report.
- 107.16. Administration; Certification of Recognized Tourist Promotion Agencies.

§ 107-1. Title.

This article shall be known and may be cited as the “York County Hotel Room Excise Tax Ordinance.”

§ 107.2. Purpose.

The Commissioners of the County of York, Pennsylvania, intend to raise revenues to directly fund County-wide tourist promotion.

§ 107-3. Definitions.

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

ACCOMMODATION FEE. The amount by which the rent or consideration exceeds the discount room charge, if any.

BED AND BREAKFAST or HOMESTEAD. An accommodation made available to the public 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.

BOOKING AGENT.

A. Any company, person or other entity that:

- (1) Is in the business of facilitating, making or processing hotel or lodging reservations or homestays on behalf of prospective occupants and/or hotels or operators and collects payments for such accommodations on behalf of or for an operator; or
- (2) Is paid a fee or otherwise derives any type of compensation through facilitating, making or booking hotel or lodging reservations or homestays by one or more. A public accommodation consisting of a private residence, which contains ten or fewer bedrooms, used for providing overnight accommodations to the public or occupants, regardless of whether such fee or compensation is paid by the hotel, operator, occupant or other entity or collects payments for hotel reservations or accommodations on behalf of or for an occupant, hotel or operator, and regardless of whether a fee or other compensation is paid for making the reservations or accommodations. Merely publishing an advertisement for accommodations does not make the publisher a booking agent; or
- (3) Has obtained a license and has registered with the Department of Revenue of Pennsylvania and the County of York.

B. The term "booking agent" shall include, but not be limited to:

- (1) Online travel booking sites which are involved in the process of listing vacant lodgings and/or homes to occupants, booking reservations on behalf of occupants, operators or any other entity, and handling any aspect of the resulting financial transaction; and/or
- (2) A hosting or other online site that provides a means through which an operator, hotel or agent for an operator or hotel may accept reservations for occupancy.

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.

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, accommodation fees, 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 or other place of lodging as contemplated herein for any temporary period.

COUNTY. The County of York, Pennsylvania.

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.

DWELLING UNIT. A residence that is a self-contained accommodation used by a family as a house, apartment, mobile home, houseboat, vehicle or other substantial structure.

HOMESTAY. A form of lodging whereby occupants sleep at the residence of a County resident for less than thirty (30) consecutive days. Such use as a homestay is considered an operator under this Act.

HOTEL. A hotel, motel, inn, guesthouse, rooming house, bed and breakfast, homestead or other structure located within the taxing district, 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 or use of facility space for consideration to persons seeking accommodation for less than thirty (30) days; 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 hostel, homestay or any cabin. The term does not include any of the following:

- (1) A charitable institution.
- (2) A portion of a facility that is devoted to persons who have an established permanent resident.
- (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.O. 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.

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.

MUNICIPALITY. A township, borough or a home rule municipality, which was formerly a township or borough.

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.

OCCUPANT. A person other than a permanent resident who for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under any lease, concession, permit, right of access, license or agreement.

OPERATOR. Any individual, partnership, nonprofit or profit-making association or corporation or booking agent 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, which includes any bed and breakfast, homestay, homestead, hotel and all other such accommodations.

PERMANENT RESIDENT. A person who has occupied or has the right to occupancy of a room or rooms in a hotel or lodging as an occupant or otherwise for a period exceeding 30 consecutive days.

PERSON. Includes any natural person, firm partnership, association, corporate, fiduciary or other entity. Whenever used in any provision of this Article, which prescribes or imposes a fine or imprisonment or both, the term person as applied to firm, partnership or association shall include the member thereof. A firm, partnership, association or cooperation may be subjected as an entity to the payment of a fine.

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 ordinance or under Section 107-16, and as that term is defined in the Act of April 28, 1961 (P.L. 111, No. 50), known as the "Tourist Promotion Law" and which particular nonprofit corporation, organization, association or agency heretofore has been recognized by the Department of Commerce, all in accordance with the terms of the said Tourist Promotion Law.

RECORDS. Includes, but is not limited to, any books, documents or papers, which are pertinent to the collection and expenditures and the proceeds of the hotel tax, which shall include, the number of daily transactions, the rate of each occupancy, the revenues received for all transactions, cash receipts and sales journals, cash disbursements and purchase journals and general ledgers.

RENT. The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature and also all accommodation fees and any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever, including any amount charged by a booking agent. The term "rent" shall not include gratuity.

ROOM. A space in a building set aside for use and occupancy by occupants or otherwise, for

- (2) Two percent of the annualized consideration received during the tax year prior to the determination, which shall be based upon the information filed by the operator or booking agent, even if such information is not for the entire prior year.

§ 107-5. Collection.

- A. The operator of every hotel within the County shall collect the tax imposed under this Article from the occupant or occupants of every room or rooms rented. The operator shall then pay over the tax collected to the County in accordance with the rules and regulations concerning the collection of the tax established by the County Treasurer.
- B. A booking agent shall collect and remit the tax on behalf of an operator. An operator shall not be responsible for collecting and remitting the Hotel Room Excise Tax on any transaction for which it has received confirmation that the booking agent has collected and remitted the tax.

§ 107.6. Payment.

- A. The operator and booking agent shall prepare a hotel room excise tax return and pay the tax due to the County Treasurer as follows:
 - (1) Operators and booking agents with annual revenue in the preceding calendar year less than \$250,000 shall pay on a calendar year quarterly basis.
 - (2) Operators and booking agents with annual revenue in the preceding calendar year equal to or greater than \$250,000 shall pay on a monthly basis.
- B. The tax return and payment shall be postmarked no later than the last day of the month following the close of the quarter or the month.

§ 107.7. Filing.

All operators and booking agents shall file with the County Treasurer a hotel room excise tax return summarizing the taxable and nontaxable consideration received. The tax return shall be filed in accordance with the provisions of §107-6.

§ 107.8. Recordkeeping Requirements.

- A. Operators and booking agents filing tax returns. Each operator in the County and booking agent filing tax returns shall maintain records for three years after the close of the tax year.
- B. Operators and booking agents not filing tax returns. Each operator in the County and booking agent who has not filed hotel tax returns timely shall maintain records for three years after a hotel tax return for a tax year has been filed.

§ 107.9. Access to Records.

The County or any duly authorized representative shall have access to any books, documents, papers and records of the operator, booking agent and recognized tourist promotion agency, which are directly pertinent to the collection and expenditure of the proceeds of the tax

consideration, having at least one bed or other sleeping accommodations provided. This includes the full consideration for the area rented by an occupant even if the area consists of multiple rooms, but only one is for sleeping accommodations.

SHORT-TERM RENTAL. A rental of a single-family dwelling or dwelling unit, like an apartment or house, for less than thirty (30) consecutive nights.

SINGLE-FAMILY DWELLING. Any building designed for use exclusively as a dwelling unit for one family.

TAX YEAR. The calendar year.

TRANSACTION. The activity involving the obtaining by a transient or occupant of the use or occupancy of a hotel room from which consideration emanates to the operator or booking agent 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.

TRANSIENT OCCUPANCY. The right to use, occupy or possess or the use, occupancy or possession of, a dwelling unit, homestay or single-family unit for a period of thirty (30) consecutive calendar days or less.

TRANSIENT RENTAL. The renting, letting, subletting, leasing or subleasing of a dwelling unit, homestay or single-family unit for transient occupancy.

§ 107-4. Imposition of Tax.

A. A tax of 5% is hereby imposed on the full amount charged to an occupant to include any accommodation fees received by each operator of a hotel within the County or booking agent within the County from each transaction of renting a room or rooms to accommodate transients. If a booking agent, acting for an operator, collects payment, or any consideration on behalf of the operator, the booking agent must also collect and remit the tax imposed under this Section for all payments received through their platforms. Such tax payments must be remitted directly to the County and not through the operator or other third party.

(1) An operator shall not be liable for tax owed regarding an accommodation fee.

(2) A booking agent shall not be required to separately disclose to an occupant the amount of the tax imposed that relates to a discount room charge versus an accommodation fee.

B. If the County or any duly authorized representative is unable to determine the tax due from operator records, the tax due for each unpaid tax year shall be determined to be the lesser of the following:

(1) Two percent of the consideration that could have been received by the operator for all hotel rooms during the tax year at occupancy rates in effect at the time of the determination.

authorized by this article, for the purpose of making audit, examination, excerpts and transcriptions. Such documents to be made available to the County auditor after receipt of a letter from the County. Such information as requested in the letter to be provided to the County agency within thirty (30) days of the date of the letter.

§ 107-10. Late payment fees.

A penalty of 1.5% per month shall be imposed upon the operator of a hotel, booking agent or individual for failure to timely collect and remit the tax authorized by the provisions of this article. In addition to other remedies available for collection of debts, the County may file a lien upon the hotel or other operator location in the name of the County and for the use of the County as provided by law.

§ 107.11. Enforcement.

Whenever any operator, booking agent or individual shall fail to pay the tax as herein provided, upon request of the County Treasurer, the County Solicitor shall bring or cause to be brought a civil action in any court having jurisdiction to enforce the payment of all taxes and late payment fees due.

§ 107.12. Registration.

Within thirty (30) days after the effective date of the hotel occupancy tax or within thirty (30) days after commencing business, which is later, each operator of a hotel shall register said hotel with the County Treasurer by completing the registration form provided by the Treasurer.

§ 107.13. Violations and Penalties.

- A. Any person who shall violate any of the provisions of this article shall, upon conviction thereof, in a summary proceeding before any District Magistrate in York County, be sentenced to pay a fine of not more than \$75 for the first offense, \$150 for the second offense, \$225 for the third offense and \$300 for the fourth and each additional offense, and cost of prosecution for each violation thereof, and, in default of payment of such fine and costs, to undergo imprisonment for not more than thirty (30) days.
- B. Each twenty-four-hour period during which a violation exists after notice shall have been given, in writing, by registered mail, return receipt requested, shall constitute a separate violation of this article.

§ 107.14. Collection and Disposition of Revenues.

- A. The County Treasurer shall collect and deposit the revenues received from the tax in a special fund established for that purpose.
- B. The County shall distribute the revenues from the special fund in the following manner:
 - (1) Deduct from the fund an administration fee in an amount established from time to time by resolution or motion, but not to exceed 4% of the taxes collected in any tax year, to defray the costs associated with the collection of the tax.

- (2) Distribute to the recognized tourist promotion agency authorized to act within the Court all remaining revenues not later than 60 days after receipt of the tax revenues.

§ 107.15. Use of Revenues; Report.

- A. The revenue from the special fund 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. The following shall apply to grants awarded under this subsection:
 - (a) Grants require a cash or in-kind local match of at least 25%.
 - (b) Grants may not be used for signage that promotes a specific private entity on the situs of that entity, except where the signage also carries the logo of a 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.
- B. The recognized tourist promotion agency receiving any revenues from the tax authorized by this article shall annually submit an audited report on the income and expenditures incurred to the County Board of Commissioners.

§ 107.16. Administration; Certification of Recognized Tourist Promotion Agency.

- A. The County Treasurer shall be responsible for administering the provisions of this article. The County Treasurer shall promulgate and submit administrative rules and regulations to the Board of Commissioners for its approval from time to time by resolution or motion.
- B. The County may certify a nonprofit corporation, organization, association or agency to serve as the County's recognized tourist promotion agency. The County may not have more than one recognized tourist promotion agency at any given time.
 - (1) The County must certify the recognized tourist promotion agency by resolution of the Board of Commissioners, concurred in by resolution of the governing bodies of cities,

boroughs, towns or townships with the County, which have an aggregate of more than 50% of the total population of the County as determined by the most recently completed federal decennial census.

(2) The recognized tourist promotion agency shall operate until that agency has dissolved as an entity, withdrawn its certification or has been decertified by the County as provided under this section.

(3) Notwithstanding any other provision of law, the County may decertify the recognized tourist promotion agency by resolution of the Board of Commissioners, concurred in by resolution of the governing bodies of cities, boroughs, towns or townships with the County which have an aggregate or more than 65% of the total population of the County as determined by the most recently completed federal decennial census. The County shall hold at least one public hearing on decertification no less than seven days before a meeting to adopt a resolution for decertification.

C. This section shall apply to recognized tourist promotion agencies, regardless of the date on which they were recognized under the Act of July 4, 2008 (P.L. 621, No. 50), known as the Tourism Promotion Act," or certified by the County under this section.