

Wayne County Hotel Occupancy Tax Ordinance

An Ordinance establishing a room occupancy tax on hotels located with the unincorporated areas of Wayne County, West Virginia; establishing procedures for the collection, distribution and administration of such tax and establishing penalties for failure to comply with the requirements or provisions of this ordinance.

Be it enacted or ordained by the Wayne County Commission of Wayne County, Wayne, West Virginia, as follows:

ARTICLE I – GENERAL PROVISIONS

Section 1.1-Authority

This ordinance is adopted by the Wayne County Commission in accordance with the provisions of Article 18, Chapter 7 of the Code of West Virginia, as amended.

Section 1.2 – Purpose

The purpose of this ordinance is to levy an occupancy tax on hotel rooms located in the unincorporated areas of Wayne County for the following purposes:

- (a) At least fifty (50%) percent of the net received during the fiscal year by the county, pursuant to requirements of the Code of the State of West Virginia shall be appropriated to a Convention and Visitor's Bureau approved by the Commission and established as required by state law.
- (b) The remaining portion of the net revenues receivable during the fiscal year by the County may be expended for one or more of the following purposes as designated in section 5.2(c) of this ordinance.

ARTICLE II – DEFINITIONS

Sections 2.1

For the purposes of this ordinance the following words, phrases and terms are defined:

- (a) "Consideration paid" or "consideration" means the amount received in money, credits, property or other consideration for or in exchange for the right to occupy a hotel room as herein defined.
- (b) "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. The term "consumer" shall not be construed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or political subdivision thereof.
- (c) "Convention center"- means a convention facility owned by state, county, municipality or other public entity of instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities, and publicly owned facilities constructed or used for the accommodation and entertainment of tourist and visitors, constructed in conjunction with the convention center or forming reasonable appurtenances thereto.
- (d) "Convention and Visitor's Bureau and Convention Bureau" shall mean the Convention and visitor's bureau and visitors and convention bureau are interchangeable and either shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitor's bureau or visitors and convention bureau is located or engaged in business within.
- (e) "County" means the County of Wayne

- (f) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the County of payment of any tax which there is a known legal duty to pay.
- (g) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intention that such representation or concealment be relied upon by the County.
- (h) "Fiscal year" means the year beginning July first and ending June thirtieth of the next calendar year.
- (i) "Historic Site" means any site listed on the United States national register of historic places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county or a nonprofit historical association and are open, from time to time, to accommodate visitors.
- (j) "Hotel" means any facility, building or buildings, publicly or privately owned (including a facility located in a state or county park), in which the public may, for a consideration, obtain sleeping accommodations. The term shall include, but not limited to, boarding houses, hotels, motels, inns, courts, lodges, cabins, and tourist homes. The term "hotel" shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home or university or college housing unit or any facility providing fewer than three (3) hotel rooms, nor any tent, trailer or camper per campsites: Provided. That where a university or college housing unit provided sleeping accommodations for the general nonstudent public for a consideration, the term "hotel" shall, if otherwise applicable, apply to such accommodations for the purpose of this tax.
- (k) "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agents of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purposes of this ordinance and shall have the same duties and liabilities as his principal or the managing agent shall, however, be considered to be compliance by both.
- (l) "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term "hotel room" does not include:
 - (1) A banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations; or
 - (2) Sleeping accommodations rented on a month-to-month basis or other rental arrangement for thirty days or longer at the inception at a boarding house, condominium, cabin, tourist home, apartment or home.
 - (3) Sleeping accommodations rented by a hotel operator to those persons directly employed by the hotel operator for the purpose of performing duties in support of the operation of the hotel or related operations.
- (m) "Net proceeds" means the gross amount of tax collections less the amount of state tax lawfully refunded.
- (n) "Person" means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or any other group or combination acting as a unit.
- (o) "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music of all types, the dramatic arts,

- dancing, painting, and the creative arts through shows, exhibits, festivals, concerts, ~~musicals~~ and plays.
- (p) "Recreational facilities" means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by the County.
 - (q) "Region" means an area consisting of one or more counties that have agreed by contract to fund a convention and visitor's bureau to promote those counties.
 - (r) "Regional Travel Council" means a nonstock, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this state served by the regional travel council.
 - (s) "Historic Site" means any site listed on the United State National Register of Historic Places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county, or a nonprofit historical association and are open, from time to time, to accommodate visitors.
 - (t) "State Park" means any state-owned facility which is part of this state's park and recreation system established pursuant to the code. For purposes of this article, any recreational facility otherwise qualifying as a "hotel" and situated within a state park is considered to be solely within the county in which the building or buildings comprising the facility are physically situated, notwithstanding the fact that the state park within which the facility is located may lie within the jurisdiction of more than one county.
 - (u) "Tax" – "taxes", or "this tax" means the hotel occupancy tax authorized by the ordinance.
 - (v) "Taxing authority" means the County of Wayne.
 - (w) "Taxpayer" means any persons liable for the tax authorized by this ordinance.
 - (x) "Willfully" means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this ordinance, in respect of which the violation occurs: Provided, that the mere failure to perform any act shall not be a willful violation under this ordinance. A willful violation of this ordinance requires that the defendant have had knowledge of or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.

ARTICLE III – INCORPORATION OF TAX

Section 3.1 – Levy of Tax

There is hereby levied a County hotel tax, as hereinafter described, upon all hotels located within the unincorporated limits of Wayne County, including any hotels owned by the state or by any political subdivision of this state. The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room. Provided, however, the tax shall not be imposed on any consumer occupying a hotel room for thirty or more consecutive days.

Section 3.2 – Rate of Tax

The rate of tax imposed shall be six (6) percent of the consideration paid for the use or occupancy of a hotel room. Such consideration shall not include the amount of tax imposed on the transaction under Article 15, Chapter 11, of the Code of West Virginia or charges for meals, valet service, room service, telephone services or other charges or consideration not paid for use or occupancy of a hotel room.

ARTICLE IV – DUTIES AND PROCEDURES FOR HOTEL OPERATORS

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Section 4.1 – Consumer to Pay Tax: Hotel Operator Not To Represent That It Will Absorb Tax:

Accounting By Hotel

- (a) The Consumer shall pay to the hotel operator the amount of tax imposed by the County of Wayne, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the County, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this ordinance on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle tax collected hereunder with the proceeds of the rental of hotel accommodations. The County's claim shall be enforceable against, and shall be superior to, all other claims against the moneys so commingled excepting only claims of the state for moneys held by the hotel pursuant to the provisions of Article 15, Chapter 11 of the Code of West Virginia. All taxes collected pursuant to the provisions of this ordinance shall be deemed to be held in trust by the hotel until the same shall have been remitted to the by the hotel until the same shall have been remitted to the taxing authority as hereinafter provided.
- (b) A hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not be considered an element in the price to be collected from the consumer.

Section 4.2 – Occupancy Billed To Government Agencies or Employees

- (a) Hotel room occupancy billed directly to the federal government shall be exempt from this tax: Provided, that rooms paid for by a federal government employee for which reimbursement is made shall be subject to this tax.
- (b) Hotel room occupancy billed directly to this state or its political subdivisions shall be exempt from this tax: Provided, that room paid for by an employee of this state or which reimbursement is made shall be subject to this tax.

Section 4.3 – Collection of Tax When Sale on Credit

A hotel operator doing business wholly or partially on a credit basis shall require the consumer to pay the full amount of tax due upon a credit sale at the time such sale is made or with thirty (30) days thereafter.

Section 4.4 – Receivership Bankruptcy: Priority of Tax

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes due and unpaid authorized under this ordinance shall be paid from first money available for distribution in propriety to all claims and liens except taxes and debts due to the United States which under federal law are given priority over the debts and liens created by municipal ordinance or order of the County Commission for this tax and taxes and debts due to the State of West Virginia. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid which are chargeable against the person whose property or estate is in administration or distribution.

Section 4.5 – Failure to Collect or Remit Tax: Liability of Hotel Operator

If any hotel operator fails to collect the tax authorized by the ordinance and levied pursuant to this ordinance or shall fail to properly remit such tax to the taxing authority, he shall be personally liable for such amount as he failed to collect or remit: Provided, that such hotel operator shall not be held

liable for failure to collect such tax if the hotel operator can by good and substantial evidence prove the refusal of the purchaser to pay this tax despite the diligent effort in good faith of the hotel operator to collect the tax.

Section 4.6 – Total Amount Collected To Be Remitted

No profit shall accrue to any person as a result of the collection of the tax authorized under this ordinance. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy of six (6) percent for the occupancy of a hotel room or rooms, the total amount of all taxed collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.

Section 4.7 – Tax Return And Payment

- (a) The tax authorized by this ordinance shall be due and payable in monthly installments on or before the fifteenth (15th) day of the calendar month next succeeding the month in which the tax accrued; Provided, that for credit sales in which the tax authorized by this ordinance is not collected by the hotel operator at the time of such sales, such tax shall not, for purposes of this ordinance, be regarded as having accrued until the date on which it is either received by the hotel operator or upon the expiration of the thirty (30) day payment period set forth in Section 4.3 of this ordinance, whichever shall first occur. The hotel operator shall, on or before the fifteenth (15th) day of each month, prepare and deliver to the Treasurer of Wayne County being the Wayne County Sheriff, a return for the preceding month, in the form prescribed by the County Commission. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax as the county may require. A remittance for the amount of the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.
- (b) For the first month that the tax is delinquent, there shall be assessed a penalty in the amount of five (5) percent of the tax due for the delinquent period. For each additional month that the tax remains delinquent, there shall be further assessed an additional one (1) percent penalty per month until the tax is paid. No payment for a subsequent period shall be collected until all prior delinquent taxes have been paid in full with all penalties assessed thereto.

Section 4.8 – Special Rule for Taxes Due in Amounts Less Than TEN DOLLARS (\$10.00) Per Month

In the event that the tax due for any reporting period is less than ten dollars (\$10.00), the reporting requirements as stated under Section 4.7 of this ordinance are hereby waived and no reporting shall be required until such time that the tax liability exceeds ten dollars (\$10.00).

Section 4.9 – Keeping and Preserving of Records

Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three (3) years; unless the taxing authority shall consent in writing to their destruction within that period or shall require that they be kept for a longer period. Such records shall be made available to the taxing authority upon demand in writing within a reasonable period of time.

Section 4.10 – Liability of Officers

If the taxpayer is an association or corporation, the officer thereof actually participating in the management or operator of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties which may be imposed by state law, city ordinance, order of the County

Commission or other authority may be enforced against such officers as against the association or corporation which they represent.

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ARTICLE V – ADMINISTRATION

Section 5.1 – General Procedure And Administration

The administrative procedure for the assessment, collection and refund of the tax authorized by this ordinance shall be established by the County to aid in the efficient administration of the tax and distribution of its proceeds.

- (a) The county assessor shall have the power and the duty to issue tax returns and to receive tax returns for this tax.
- (b) In any dispute arising among or between cities or counties or cities and counties as to jurisdiction to tax or apportionment of taxes collected, the Tax Commissioner may by ruling or regulations decide such disputes.
- (c) Notwithstanding any other provisions of this section, taxing authorities may, in accordance with the provisions of article twenty-three, chapter eight of this code, enter into agreement among and between such taxing authorities for the collection or administration of this tax.
- (d) Notwithstanding any other provisions of this section, taxing authorities may in accordance with the provisions of article twenty-three, chapter eight of this code, enter into agreements with the tax commissioner for auditing services; Provided, That the taxing authorities shall pay to the Tax Commissioner the reasonable cost of such audits.
- (e) Each year, on or before the fifteenth day of August, every convention and visitor's bureau which receives any appropriation of hotel occupancy tax from one or more counties or municipalities shall file with each such county or municipality a statement, including an income statement and balance sheet, showing all amounts of hotel occupancy tax appropriated to the convention and visitor's bureau and all expenditures of hotel occupancy tax made by the convention and visitor's bureau for the prior fiscal year

Section 5.2 – Proceeds of Tax: Application Of Proceeds

- (a) Application of Proceeds The net of the tax collected and remitted to the taxing authority pursuant to this ordinance shall be deposited into the general revenue fund of the County and after appropriation thereof shall be expended only as provided in subsection (b) and (c) of this section.
- (b) At least fifty (50%) percent of the net received during the fiscal year by the County, pursuant to requirement of the Code of the State of West Virginia shall be appropriated to a Convention and Visitor's Bureau approved by the Commission and established as required by state law.
- (c) Permissible expenditures After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenues receivable during the fiscal year by the County, pursuant to this ordinance, may be expended for one or more of the purposes set forth in the subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:
 - (1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited to, arenas, auditoriums, civic centers and convention centers;
 - (2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;
 - (3) The promotion of conventions;

- (4) The construction or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition); or
- (5) The promotion of the arts.
- (6) Historic Sites;
- (7) Beautification projects;
- (8) Passenger air service incentives and subsidies directly related to increasing passenger air service availability to tourism destinations in this state;
- (9) Medical care and emergency services, in an amount not exceeding \$200,000, in any county where:
 - (a) There is an urgent necessity to preserve the delivery of acute medical care and emergency services;
 - (b) There is an increase in need for acute medical care and emergency services directly related to tourism;
 - (c) Recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery of acute medical care and emergency services;
 - (d) There is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care and emergency services;
 - (e) There is an inadequate economic base directly related to low population in the county, specifically, a population of less than ten thousand persons according to the most recent decennial census taken under the authority of the United States;
 - (f) There is no more than one hospital within the county; and
 - (g) The County Commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist; or
- (10) Support and operation of the Hatfield-McCoy Recreation Area by the participating county commissions in the Hatfield-McCoy Regional Recreational Authority.
 - (d) Any member of a governing body who willingly and knowingly votes to or causes to be expended moneys generated by the provisions of this section for purposes other than specifically set forth in this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined out not more than one hundred dollars.

ARTICLE VI – EXCLUSIONS

Section 6.1

The following exclusions shall apply in the administration of this tax.

- (a) The term “consumer” shall not be construed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or a political subdivision thereof;
- (b) Hotel room occupancy billed directly to the federal government shall be exempt from this tax.
- (c) Hotel room occupancy billed directly to the State of West Virginia or its political subdivision shall be exempt from this tax.

ARTICLE VII – PENALTIES

Section 7.1 – Criminal Penalties

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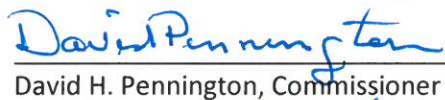
- (a) It shall be unlawful for any person to willfully refuse to collect or to pay the tax or to willfully refuse to make the return required to be made by the ordinance; or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud any taxing authority, or to willfully evade the payment of the tax, or any part thereof; or for any persons to willfully aid or abet another in any attempt to evade the payment of the tax, or any part thereof; or for any officer, partner or principal of any corporation or association to willfully make or willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this ordinance, with the intent to evade the payment of this tax.
- (b) Any person willfully violating any of the provisions of this ordinance shall for the first offense be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred (\$500.00) or imprisoned for a period of not more than thirty (30) days, or both fined and imprisoned. For each offense after the first offense, such person shall be guilty of a felony, and upon conviction thereof, shall be fined not less than one thousand (1,000.00) nor more than ten thousand (\$10,000.00), or imprisoned in the penitentiary not less than one (1) nor more than three (3) years, or in the discretion of the Court be confined in the County Jail not more than one (1) year, or both fined and imprisoned.
- (c) Every prosecution for any offense arising under this ordinance shall be commenced with three (3) years after the offense was committed, notwithstanding any provisions of this ordinance to the contrary.
- (d) Proceedings against any person under this section shall be initiated in the county of this state wherein such person resides if any element of the offense occurs in such county of residence, or if no element of the offense occurs in such county of residence, then in the county where the offense was committed.

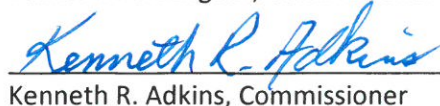
ARTICLE VIII – SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phase of this ordinance shall be declared invalid for any reason whatsoever such decision shall not affect the remaining portions of this ordinance which shall remain in force and effect, and for the this purpose the revisions of this ordinance are hereby declared to be severable.

Enacted on this 22nd day of January, 2018 by order of the County Commission of Wayne County.


Robert E. Pasley, President


David H. Pennington, Commissioner


Kenneth R. Adkins, Commissioner