

**Board of Commissioners
County of Potter
Commonwealth of Pennsylvania**

Ordinance No. 1 of 2017

**AMENDED AND RESTATED POTTER 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WHEREAS, the County of Potter adopted a Hotel Excise Tax by Ordinance No. 1 of 2004 on May 13, 2004 which was later superseded and replaced by a Hotel Excise Tax Ordinance No. 1 of 2014 adopted on July 24, 2014; and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.

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 shall be cited as the "**Potter County Hotel Room Rental Excise Tax Ordinance**".

Section 2. Authority and Purpose

1. This Ordinance is authorized pursuant to the Act 18 of April 20, 2016, PL. 134, No. 18, 16 PS. Section 1770.10 ("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 Potter 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.

“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 Potter.

“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 Month”. The first date through the last date of each month of the year.

“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 allocation of American Plan Packages used by the Pennsylvania Department of Revenue with respect to the Pennsylvania State Hotel Occupancy Tax.

“County.” The County of Potter.

“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 portion of a facility that is devoted to persons who have an established permanent residence.
2. A college or university student residence hall currently occupied by students enrolled in a degree program
3. 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.”
4. A hospital.
5. A nursing home.
6. 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.

“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.

“Patron.” Any person who pays the Consideration for the Occupancy of a Room or Rooms in a Hotel.

“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.” Potter County Tourist Promotion Agency.

“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 in a room or a group of rooms.

“Temporary.” Occupancy of a Room or Rooms in a Hotel for a period of less than thirty-one (31) consecutive days.

“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 Potter.

Section 4. Imposition of Hotel Room Rental Excise Tax

A. There is hereby imposed an excise tax at a rate of five (5%) percent on the Consideration received by each Operator of a Hotel from each Transaction of renting a Room or Rooms to accommodate Transients.

B. The County Hotel Room Rental Excise Tax under this Amended and Restated Ordinance shall take effect on July 1, 2017. Any written agreements in existence prior to July 1, 2017, between the 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. 2001-01.

Section 5. Collection of Tax

The Hotel Room Rental Excise Tax shall be collected by Operators from Patrons.

Section 6. Payment of the Tax

A. The Operator shall pay the Hotel Room Rental Excise Tax to the County Treasurer as follows:

1. Every Operator shall transmit to the County Treasurer, a return, consistent with their required payment to the State. The return shall report the amount of Consideration received for Transactions, the amount of the tax due from the Operator, and such other information as the County Treasurer may reasonably require.
2. Every Operator, at the time of filing such required return on forms provided by the County Treasurer office, 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 an Operator first commences the business of operating a Hotel during a Calendar Month or Calendar Quarter, the first return shall be made in accordance with their State payment schedule.

Section 7. Collection and Disposition of Revenues

A. 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.

B. 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 Month.

Section 8. Use of Revenues

A. The revenues distributed from the Hotel Room Rental Excise Tax Fund to the Recognized Tourist Promotion Agency pursuant to Section 7(B)(2) hereof 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 tourist 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.
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 following shall apply to all grants awarded under this Section 8 to a specified organization:
 - a. A “grant” is money provided to a for-profit or non-profit entity as a general request for funds, for a specific period of time, where the funds will be distributed by the Recognized Tourist Promotion Agency to the entity (rather than being paid directly by the Recognized Tourist Promotion Agency for the expenses clearly incurred as described in Section 8(A)(1), (2), (3), (4) or (5) hereof);
 - b. The monies being requested by the organization shall be limited to items listed under Section 8(A)(1), (2), (3), (4) or (5);
 - c. Grants shall require a cash or in-kind local match of at least 25%.
 - d. Grants shall 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.
 - e. Grants shall not be used by the Grantee to compete with any other private sector tourism or travel efforts in the County as determined by the Recognized Tourist Promotion Agency.

f. All Grants shall require the Grantee to provide a proposal setting forth the specific use of the requested funds, and reconciling such uses(s) with the purpose set forth in this Section 8(A)(1), (2), (3), (4) and/or (5). Within ninety (90) days after the completion date for use of the Grant, but not less than annually, the Grantee shall provide an audit of the Grant usage provided by a qualified certified public accountant. Such Grant audit shall provide an independent review of Grantee's records, verification of financial record accuracy, and confirmation of compliance with the Grant requirements as well as the uses set forth in Section 8(A)(1), (2), (3), (4) and (5) hereof. [Optional Additional Language: "In the event that the Grant is less than \$6,000.00 Dollars, in lieu of an audit, the Grantee may provide an Affidavit, to the County Visitor's Bureau, executed under the penalty of perjury setting forth the specific use of the requested funds and reconciling such for the purposes set forth in this Section 8(A)(1), (2), (3), (4) and/or (5).]

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 and the Secretary of Community and Economic Development.

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 twenty (120) 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 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 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 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 an 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, 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. Certification of Recognized Tourist Promotion Agencies

A. 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.

B. (1) The County may certify a Recognized Tourist Promotion Agency under subsection (A) by proper resolution of the governing body of the County, concurred in by resolution of the governing bodies of cities, boroughs, towns or townships within the County which have an aggregate of more than fifty per centum of the total population of the County as determined by the most recently completed Federal decennial census. In this regard, the County confirms and ratifies its Resolution No. 3 of 2017 adopted on February 2, 2017 which certifies the Tioga County Tourist Promotion Agency as the Recognized Tourist Promotion Agency for Potter County effective July 1, 2017 (which has been concurred in by more than the required boroughs and townships).

C. A Recognized Tourist Promotion Agency shall operate until that Agency has dissolved as an entity, withdrawn its certification or has been decertified by the County under subsection (D) hereafter.

D. (1) Notwithstanding any other provision of law, a County may decertify a Recognized Tourist Promotion Agency by proper resolution of the governing body of a County, concurred in by resolution of the governing bodies of cities, boroughs, towns or townships within the County which have an aggregate of more than sixty-five per centum of the total population of the County as determined by the most recently completed Federal decennial census.

(2) The County shall hold at least one public hearing on decertification no less than seven days before a meeting to adopt a resolution under this subsection.

(3) This subsection shall apply to the existing certified Recognized Tourist Promotion Agency, Potter County Tourist Promotion Agency, regardless of the date on which it was 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 subsection; i.e. Potter County Tourist Promotion Agency is currently and shall continue as the County's Certified Recognized Tourist Promotion Agency.

Section 15. 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.

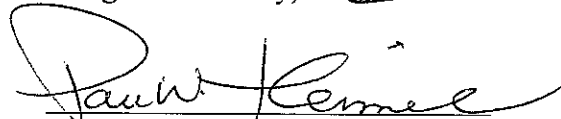
Section 16. Effective Date

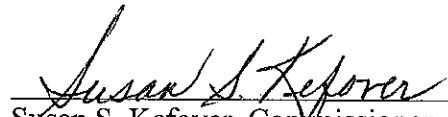
The terms of this Amended and Restated County Ordinance shall take effect on July 1, 2017, and any terms in the Prior Ordinances, which are different from this Amended and Restated Ordinance, and any provisions in other documents executed between the County and the Recognized Tourist Promotion Agency, before the Effective Date of this Amended and Restated Ordinance, which are inconsistent with this Ordinance hereafter shall be "void" and of no effect.

DULY ENACTED AND ORDAINED at a public meeting of the Board of County Commissioners of Potter County, Pennsylvania, held on the 25th day of MAY, 2017.

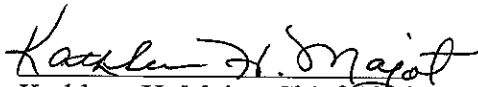
POTTER COUNTY COMMISSIONERS


Douglas C. Morley, Chairman


Paul W. Heimel, Commissioner


Susan S. Kefover, Commissioner

ATTEST:


Kathleen H. Majot, Chief Clerk