

COUNTY OF KENT

An Ordinance to Codify the Ordinance Entitled Ordinance to Provide for the Imposition and Collection of an Excise Tax on Persons Engaged in the Business of Providing Rooms for the Transient Guests

An ordinance relating to and providing for the imposition and collection of an excise tax on persons engaged in the business of providing rooms for dwelling, lodging, or sleeping purposes to transient guests; to provide the circumstances under which such tax shall be imposed and collected; to establish the rate of such tax; to authorize and establish procedures to ascertain, assess, collect, administer, and enforce said tax; to provide for the disposition of the revenues thereof; and to prescribe penalties for violations thereof.

THE PEOPLE OF THE COUNTY OF KENT, MICHIGAN, DO ORDAIN:

Article 1. Purpose

Section 1.01 Purpose

In the interest of the citizens of Kent County, and for the benefit of the general public, and with the purpose of providing to the public and to the citizens convention and entertainment facilities as described in Act 263, Public Acts of Michigan, 1974 as amended; to establish an Administrator for the administration and enforcement of this act; to replace by re-enacting the Ordinance to Provide for the Imposition and Collection of an Excise Tax on Persons Engaged in the Business of Providing Rooms for Transient Guests originally enacted in 1975 and its amendments, the County of Kent, Michigan does hereby adopt the following ordinance under Act 156 of the Public Acts of Michigan, 1851, as amended (MCL 141.861 et. seq.).

Article 2. Definitions

Section 2.01

For the purpose of this ordinance, the following terms shall have the following meanings respectively designated for each.

- (a) “ACCOMMODATIONS” means the room or other space provided for sleeping, including furnishings and other accessories therein. Accommodations do not include food and beverages.

- (b) “ADMINISTRATOR” means the official designated by the County to collect the tax and to administer and enforce this ordinance.

- (c) “CONVENTION AND ENTERTAINMENT FACILITIES” means all, or any part, or any combination of, convention halls, auditoriums, stadiums, music halls, arenas, meeting rooms, exhibit areas, and related public areas.

- (d) “PERSON” means a natural person, partnership, fiduciary, association, corporation, or other entity.

(e) “REVENUES” means the income derived from the tax, plus interest and penalties, levied and assessed under this Ordinance.

(f) “TRANSIENT GUEST” means a natural person staying less than thirty (30) consecutive days.

Article 3. Administrator

Section 3.01 Office of Administrator:

An Administrator to collect the tax and administer and enforce this ordinance shall be appointed by the Kent County Board of Commissioners for a term of one (1) year, and for such further terms as the Board deems wise, sufficient, or expedient.

Section 3.02 Compensation:

The Administrator may be compensated as determined by appropriate resolution of the Board of Commissioners in lieu of all other fees and remunerations under the statutes of this state. The Administrator’s compensation shall not be predicated upon the amount of taxes collected pursuant to this ordinance.

Section 3.03 Duties:

The Administrator shall have the following duties:

(a) The Administrator shall establish rules of procedure for the prompt and efficient application, interpretation, effectuation, administration, and enforcement of this ordinance, subject to the approval of the County Board of Commissioners. Such rules shall become effective upon being published once in a newspaper of the general circulation in the County.

(b) The Administrator shall prepare, for public use, such document forms, instructions, manuals, and other materials as are necessary for the endorsement of the tax, the auditing of tax returns, and the efficient administration of this ordinance.

(c) The Administrator shall keep such books and records as are necessary for the proper administration of this ordinance including such books and records as will adequately show the collection of all taxes, fines, fees, interest, and penalties levied and imposed pursuant to this ordinance. Such books and records shall at all times be open for public inspection.

(d) All taxes, fines, fees, interest, and penalties collected by the Administrator shall be delivered to the County Treasurer who shall take charge of the safekeeping of said monies and is authorized to invest said monies in a manner consistent with the investment of other County monies. Said monies and any interest received from the investment thereof shall be segregated and used as authorized by Act 263 and by this ordinance.

Section 3.04 Deputy Administrators and Staff:

The Administrator may have one (1) or more Deputy Administrator(s) or other personnel as are authorized from time to time by the Kent County Board of Commissioners. The compensation for such Deputy Administrator(s) or staff personnel is to be determined from time to time by the Board of Commissioners.

Section 3.05 Complaint:

It shall be the duties of the Administrator, or Deputy Administrator, to enforce the provisions of this ordinance and the state statute pertaining hereto and, when necessary, to make complaint to the Circuit Court or other courts of the County of Kent, Michigan, in regard to any violation hereof.

Section 3.06 Removal from Office:

The Administrator may be removed from office before the expiration of his term at any time by the majority vote of the Board of Commissioners.

Section 3.07 Records of Business:

It shall be the duty of the Administrator, or Deputy Administrator, to keep records of all persons engaged in the business of providing accommodations for dwelling, lodging, or sleeping purposes to transient guests within Kent County and to provide each such person with information and forms necessary to file the necessary information with said Administrator. Such persons shall not include hospitals or nursing homes.

Article 4. Tax

Section 4.01 Amount and Duration of Tax:

A tax is hereby levied and assessed on each person engaged in the business of providing accommodations for dwelling, lodging, or sleeping purposes for transient guests. The tax levied, assessed, and collected hereunder shall be at a rate of five percent (5.0%) of the total charge for the accommodations, dwelling, lodging, or sleeping purposes for transient guests subject to Act 263, Public Acts of Michigan, 1974, as amended, and this Ordinance. The assessment and levy of the tax imposed by this ordinance shall continue until December 31, 2042. The obligation to report and pay taxes imposed on each person engaged in the business of providing accommodations for dwelling, lodging, or sleeping purposes for transient guests occurring before December 31, 2042, and for all other obligations under this Ordinance and the County's ability to enforce all provisions of this Ordinance, does not terminate on December 31, 2042, but continues until all obligations established by this Ordinance are fulfilled.^{1, 2, 3}

Section 4.02 Exceptions:

No tax shall be imposed hereunder upon hospitals or nursing homes, or upon a corporation or association organized and operated exclusively for religious, charitable, or educational purposes in which no part of the net earnings inures to the benefit of any private shareholder or individual.

Section 4.03 Report and Payment:

¹ Section 4.01 amended on 4/5/89 by Resolution No. 4-89-58

² Section 4.01 amended on 7/5/90 by Resolution No. 7-90-116

³ Section 4.01 amended on 11/8/01 by Resolution No. 11-08-01-161

On or before the fifteenth (15th) day of each month, each person subject to this ordinance shall submit on forms provided by the Administrator such facts and information as are required by the Administrator pursuant to rules of procedure for the proper administration of this ordinance, and shall also file a report for the preceding month and pay to the Administrator a sum of money computed for the preceding month based on the rate of tax levied and assessed by this ordinance.

Section 4.04 Interest:

Interest at the rate of one percent (1%) per month, or a fraction thereof, shall be imposed on the unpaid tax after the due date thereof, until paid. Such interest shall continue at the rate of one percent (1%) per month, or fraction thereof, until paid. Any and all interest added shall be collected as a part of the tax.

Section 4.05 Records:

Every person engaged in the business of providing accommodations for dwelling, lodging, or sleeping purposes to transient guests, except hospitals and nursing homes, shall keep and preserve suitable and adequate records to enable such person and the Administrator, or his Deputy, to determine the correct amount of tax imposed by this ordinance. All records of a person engaged in the business of providing accommodations for dwelling, lodging, or sleeping purposes to transient guests, except hospitals and nursing homes, shall be open to the inspection of the Administrator, or his Deputy, at all reasonable times at the person's place of business within Kent County after reasonable notice for such inspection by the Administrator or his Deputy.⁴

Section 4.06 Tax Returns:

Every person subject to the operation of this ordinance shall keep and preserve legible copies of all monthly and other periodic Sales and Use Tax Returns for a period of four (4) years after filing the Returns with the State of Michigan. These Returns shall be open to the inspection of the Administrator, or his Deputy, pursuant to Section 4.05 of this Ordinance.⁵

Article 5. Penalties

Section 5.01 Penalties:

The Administrator or his Deputy, after inspection and examination of the books and records of a person subject to this ordinance, to the extent such books and records or any other evidence available to the Administrator requires a payment of a tax in excess of that paid by such person in addition to the additional tax and interest thereon, may impose a penalty of five percent (5%) of the amount of the unpaid tax per month or fraction thereof, after the due date thereof, until paid. Such penalty shall not, however, exceed twenty-five percent (25%) of the unpaid tax. Any penalty shall be collected as part of the tax.

Section 5.02 Fines or Imprisonment:

⁴ Section 4.05 amended on 11/1/90 by Resolution No. 11-90-171

⁵ Section 4.06 amended on 11/1/90 by Resolution No. 11-90-171

Any person found in violation of any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine, not to exceed Five Hundred Dollars (\$500.00); or imprisonment in the County Jail, not to exceed ninety (90) days; or both, at the discretion of the court.

Section 5.03 Enforcement of Criminal Provision:

In the event of any violation of this ordinance by a person engaged in a business of providing accommodations for dwelling, lodging, or sleeping purposes to transient guests, the Administrator, or Deputy Administrator, may proceed to make complaint before a judge of the courts of Kent County, and obtain the issuance of a summons for the arrest of such person.

Article 6. Abatements and Refunds

Section 6.01 Review:

Any aggrieved persons subject to this ordinance may, within ten (10) days after payment of the tax under protest, file with the Administrator, upon forms provided by the Administrator, an application for a hearing for an abatement or refund of taxes imposed hereunder. The applicant shall submit to the Administrator all the facts necessary for a competent determination.

Section 6.02 Notice of Hearing:

The Administrator, within ten (10) days of receipt of the application, shall notify the applicant of the date of the hearing, which shall not be more than forty-five (45) days from the date of the receipt of the application.

Section 6.03 Hearing:

At the time and place set for the hearing, the applicant, or anyone on his behalf, shall be given opportunity to be heard and submit such evidence as the applicant deems necessary to justify an abatement or refund of such taxes.

Section 6.04 Determination of Administrator:

At the time of the hearing, the Administrator shall listen to the facts and evidence as presented by the applicant and shall make a decision regarding abatement or refund of the applicant's tax, and in making such decision, shall consider, among other factors, the following:

- (a) Whether failure to file was due to reasonable cause and not due to willful neglect.
- (b) Whether the tax was inadvertently collected from a person meeting the requirements in Section 4.02.
- (c) Whether the person responsible for payment of the tax inadvertently made an overpayment.

(d) Whether charges for accommodations remain unpaid and there remains little likelihood that such charges will be collected.

Based on such factors, the Administrator may grant abatement or refund of taxes imposed hereunder. The decision of the Administrator shall be in writing.

Section 6.05 Court Appeal:

As the applicant deems himself aggrieved by the decision of the Administrator, the applicant may, within sixty (60) days of receipt of the decision of the Administrator, file an action in Kent County Circuit Court for a determination of such abatement or refund.

Article 7. Disposition of Revenues

Section 7.01 Revenue Receiving Fund

The revenue derived from the taxes imposed pursuant to this act shall be deposited in a Revenue Receiving Fund to be used by the County or by an authority that is organized pursuant to State law, together with other available funds, only for the purpose of one or more of the following:⁶

(a) To pay the cost of the administration and enforcement of this Ordinance. To pay such cost, the County shall receive from all proceeds collected under this Ordinance such amount as shall be determined from time to time by the Board of Commissioners for collection expenses incurred by the Administrator.

(b) To finance, in whole or in part, the acquisition, construction, improvement, enlargement, repair, or maintenance of convention and entertainment facilities, including, except as provided in subparagraph (d), the payment of principal and interest, when due, on bonds or other evidence of indebtedness issued by the County for convention and entertainment facilities.⁷

(c) Except as provided in subparagraph (d), to pay current or future annual rental payments by the County to an authority organized pursuant to state law for the purpose of acquiring, constructing, improving, enlarging, repairing, or maintaining the convention and entertainment facilities and leasing them to the County.⁸

(d) To pay the principal and interest, when due, on bonds or to other evidence of indebtedness issued by, or on behalf of, the County for the purpose of financing the construction of a museum or the current or future rental payable by the County, to an authority organized pursuant to state law for the purpose of constructing a museum and leasing it to the County, only if the museum is located in a city with a population of 180,000 or more.⁹

⁶ Section 7.01 amended on 7/5/90 by Resolution No. 7-90-116

⁷ Section 7.01(b) amended on 7/5/90 by Resolution No. 7-90-116

⁸ Section 7.01(c) amended on 7/5/90 by Resolution No. 7-90-116

⁹ Section 7.01(d) amended on 7/5/90 by Resolution No. 7-90-116

(e) To establish a reasonable reserve fund for future payments on, or principal and interest on, bonds pursuant to subparagraph (b) or (d) or for future payments of rent pursuant to subparagraph (c) or (d).¹⁰

(f) The promotion and encouragement of tourist and convention business in the County.

Section 7.02 Investment of Funds:

Monies in the Revenue Receiving Fund may be invested by the County Treasurer in bonds, notes, bills, and certificates of the United States of America. In the event such deposits are made, the security representing the same shall be kept on deposit with the depository of the fund from which such investments are made, and such securities and the income therefrom shall become a part of the Revenue Receiving Fund.

Section 7.03 Power to Contract:

The County of Kent may enter into a contract or contracts with the State of Michigan, a municipality within Kent County, a non-profit agency outside of the County government, or one or more of the above, to carry out the purposes of this Ordinance on such terms and conditions as shall be agreed upon by the Board of Commissioners.

Article 8. Other Taxes

Section 8.01 Other Taxes:

The taxes levied under this Ordinance shall be in addition to any other taxes, charges, or fees.

Article 9. Effective Date of Ordinance

Section 9.01 Effective Date:

This ordinance shall become effective on March 1, 2013, which is more than sixty (60) days after the adoption hereof.

Article 10. Severability

Section 10.01 Severability:

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Article 11. Repealer

Section 11.01 Repeal:

(a) Subject to remainder of this Section 11 and contingent upon this Ordinance being effective on or before March 1, 2013, this Ordinance repeals and replaces as

¹⁰ Section 7.01(e) amended on 7/5/90 by Resolution No. 7-90-116

of March 1, 2013, the Ordinance to Provide for the Imposition and Collection of an Excise Tax on Persons Engaged in the Business of Providing Rooms for Transient Guests originally enacted in 1975 and all its amendments thereto. If this Ordinance fails to become effective on March 1, 2013, or remain effective thereafter for any reason other than a duly passed and enacted amendment hereto by the Kent County Board of Commissioners, then the Ordinance to Provide for the Imposition and Collection of an Excise Tax on Persons Engaged in the Business of Providing Rooms for Transient Guests originally enacted in 1975 and all its amendments thereto shall not be considered repealed or replaced but shall remain in effect and enforceable without further action required of the Kent County Board of Commissioners.

Section 11.02 Savings Clause:

(a) Existing Tax Levies: All taxes levied under the Ordinance to Provide for the Imposition and Collection of an Excise Tax on Persons Engaged in the Business of Providing Rooms for Transient Guests originally enacted in 1975 and all its amendments thereto, including the adopting resolutions, together with all applicable interest and penalties shall not be affected by the repeal of the Ordinance to Provide for the Imposition and Collection of an Excise Tax on Persons Engaged in the Business of Providing Rooms for Transient Guests originally enacted in 1975 and all its amendments thereto including the adopting resolutions.

(b) Current Appeal Periods: All appeal periods for all taxes levied under the Ordinance to Provide for the Imposition and Collection of an Excise Tax on Persons Engaged in the Business of Providing Rooms for Transient Guests originally enacted in 1975 and all its amendments thereto, including the adopting resolutions, together with all applicable interest and penalties shall not be affected by the repeal of the Ordinance to Provide for the Imposition and Collection of an Excise Tax on Persons Engaged in the Business of Providing Rooms for Transient Guests originally enacted in 1975 and all its amendments thereto, including the adopting resolutions.

Article 12. Adoption and Certification

Section 12.01 Adoption:

This Ordinance was adopted on the 13th day of December, 2012, by the Board of Commissioners of the County of Kent, Michigan.

Adopted: 5/7/75

Amended: 4/5/89 by Resolution No: 4-89-58

Amended: 7/5/90 by Resolution No: 7-90-116

Amended: 11/1/90 by Resolution No: 11-90-171

Amended: 11/8/01 by Resolution No: 11-8-01-161

Restated: 12/13/12 by Resolution No: 12-13-12-128