

ORDINANCE NUMBER BE 2019-2

WHEREAS, the County Commission of Benton County, Missouri, adopted Ordinance Number BE 1-03-10, on March 26, 2010, titled, "TO PROVIDE STRUCTURE FOR HOW THE TRANSIENT GUEST TAX WILL BE COLLECTED, DISTRIBUTED, MANAGED AND REDISTRIBUTED ALONG WITH THE APPOINTMENTS"; and

WHEREAS, on April 6, 2010, a ballot question was submitted to the voters of Benton County, Missouri, pursuant to Section 67.1003, RSMo, as follows: "Shall Benton County, Missouri impose a tax on the charges for all sleeping rooms paid for by the transient guests of for-profit hotels, motels, and cabins situated in Benton County at a rate of 3% for the sole purpose of promoting tourism" and a majority of the votes cast on the question by the qualified voters voted in favor of the question (the "Transient Guest Tax"); and

WHEREAS, the County Commission of Benton County, Missouri, adopted Ordinance Number BE 10-24-16, on October 24, 2016, titled, "TO PROVIDE STRUCTURE FOR HOW THE TRANSIENT GUEST TAX WILL BE COLLECTED, DISTRIBUTED, MANAGED AND REDISTRIBUTED"; and

WHEREAS, the County Commission of Benton County, Missouri, desires to amend its ordinance relating to the Benton County transient guest tax;

NOW, THEREFORE, be it resolved and ORDERED by the County Commission of Benton County, Missouri, as follows:

Section 1. Repeal and Enactment. Ordinance Number BE 1-03-10 and Ordinance Number BE 10-24-16 are hereby repealed and there is hereby enacted the following Ordinance, to be known as Ordinance BE 2019-2, to read as follows:

Section 100.010. Collection of Tax. Benton County will collect the Transient Guest Tax. (County Ordinance Number BE-1-03-10; Rev. 8-26-19 County Ordinance Number BE 2019-2).

Section 100.020. Benton County Tourism and Recreation Corporation. Benton County Tourism and Recreation Corporation (BCTR) is designated as the operational manager of the monies collected from the existing Transient Guest Tax ("Transient Guest Tax") for the sole purpose of promoting and development of tourism in Benton County, Missouri. (County Ordinance Number BE 10-24-16; Rev. 8-26-19 County Ordinance Number BE 2019-2).

Section 100.030. Annual Plan. Benton County Tourism and Recreation Corporation will operate from an annual plan developed and approved by their Board of Directors. A copy of that plan will be provided to the County Commission for comment and approval on an annual basis. The County Commission shall receive updated reports on activity and results of the Transient Guest Tax and the activities and operations of the Benton County Tourism and Recreation Corporation on at least a semi-annual basis from BCTR. (County Ordinance Number BE 10-24-16; Rev. 8-26-19 County Ordinance Number BE 2019-2).

Section 100.040. Collection of Tax; Administration Fee. Benton County will collect the Transient Guest tax, receive an administration fee of 2% of the gross receipts and then provide

the remaining dollars directly to Benton County Tourism and Recreation Corporation for implementation of tourism and promotion efforts on behalf of Benton County. (County Ordinance Number BE 10-24-16; Rev. 8-26-19 County Ordinance Number BE 2019-2).

Section 100.050. Definitions. As used in this Ordinance, the following words and terms shall mean:

A. TRANSIENT RENTAL PROPERTY. Any structure or any portion of any structure that is occupied, intended or designed for occupancy by transient guests for dwelling, lodging or sleeping purposes and includes, but is not limited to, any hotel, motel, cabin, inn, bed and breakfast, tourist home or house, apartment house, public or private club, mobile home or house trailer at a fixed location, river craft or barge, or other vacation, short-term rental or nightly rental property.

B. OCCUPANCY. The use or possession or the right to the use or possession of any room or rooms or portion thereof in any Transient Rental Property for dwelling, lodging or sleeping purposes. Where the operator performs functions through a managing agent of any type other than an employee, the managing agent shall also be deemed an operator for the purposes of this definition and shall have the same duties and liabilities as the principal. Compliance with the provisions of this Ordinance by either the principal or the managing agent shall constitute compliance by both.

C. OPERATOR. A Person that owns and/or operates a Transient Rental Property in Benton County, Missouri.

D. PERSON: Any individual, firm or company, including partnerships, joint ventures, corporations, limited liability companies, limited liability partnerships, incorporated or unincorporated associations, fraternal organizations, social clubs, joint stock companies, estates, trusts, business trusts, receivers, trustees, syndicates or any other group or combination acting as a unit.

E. RENT: The consideration charged for the occupancy of space in a Transient Rental Property.

F. TENANT: Any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement.

G. TRANSIENT GUEST: A Tenant who occupies room or rooms in a Transient Rental Property for thirty-one (31) consecutive days or less, counting portions of calendar days as full days. Any Tenant occupying or entitled to the right to occupy room or rooms in a Transient Rental Property shall be deemed to be a Transient Guest until the person has occupied or is entitled to occupy room or rooms in excess of thirty-one (31) consecutive days.

H. RECORD. All electronic, typewritten or handwritten information about a Tenant or Transient Guest. (County Ordinance Number BE 2019-2).

Section 100.060. Transient Guest Tax Imposed. There is hereby levied a tax of three percent (3%) of the gross daily rent due from or paid by Transient Guests of all Transient Rental Property in addition to any and all taxes otherwise imposed by law, including the fees charged for occupation licenses required for the operation of all Transient Guest Properties. The County Collector shall be responsible for the administration and levy of this tax. (County Ordinance Number BE 2019-2).

Section 100.070. Reporting and Remitting Transient Guest Tax. Each Operator shall, on or before the twentieth (20th) day of the month following the end of a quarter, make a return to the County Collector on forms provided by the County. The forms shall require such information as is required by the County, which shall include, but not be limited to, the following information: the taxpayer identification number and/or employer identification number of the Operator of the Transient Rental Property; the social security number of the Operator of the Transient Rental Property; and the mailing address; telephone number; and e-mail address of the Operator of the Transient Rental Property. The return shall include a calculation of gross receipts from room occupancy, number of rooms, number of room nights available to rent, number of room nights rented in the reporting period, monthly occupancy rate and the amount of transient guest tax collected. At the time the return is filed, the full amount of the tax collected shall be remitted to the County Collector. The County Collector may establish shorter reporting periods for any Operator that has established a record of being delinquent in reporting and/or remitting taxes accruing hereunder. The County Collector may establish shorter or longer reporting periods for any Operator to insure the efficient and effective collection of the tax. (County Ordinance Number BE 2019-2).

Section 100.080. Penalties and Interest.

A. Any Operator that fails to remit any tax imposed by this Ordinance within the time required shall pay a penalty of one percent (1%) per month and interest of two percent (2%) per month, not to exceed an aggregate of twenty-five percent (25%) per annum, of the amount of the tax in addition to the amount of the tax.

B. Penalties and interest that accrue and are imposed under this section shall become a part of the tax required to be paid. Any penalty may for good cause be waived by the County Collector provided that a report thereof be made to the County Commission.

C. Any unpaid taxes shall be considered delinquent thirty (30) days after the last day of each quarter.

D. The County Collector may recommend to the respective City and County the revocation of the business license of the Operator of a Transient Rental Property if the Operator fails to pay the Transient Guest Tax within thirty (30) days after the Transient Guest Tax is delinquent.

E. The respective City and County shall not re-instate the business license of an Operator of a Transient Rental Property until the Operator is current with respect to the Transient Guest Tax, penalties and interest, or have signed a payment agreement with the County Collector.

F. In the event an Operator fails to remit any taxes, penalties, or interest owed to the County for a period of sixty (60) days after the tax is considered delinquent, all marketing efforts (including, but not limited to internet marketing, website promotions, social media, and promotions at trade shows) on behalf of the Operator by Benton County Tourism and Recreation Corporation shall be discontinued until all monies owed, including all past due Transient Guest Taxes, penalties, and interest, are paid in full. (County Ordinance Number BE 2019-2).

Section 100.090. Failure to Collect and Report Tax; Determination of Tax; Assessment. If any Operator shall fail or refuse to collect any tax or to submit within the time provided in this Ordinance any report and/or remittance of any tax or any portion thereof required, the County Collector shall proceed to obtain facts and information on which to base an estimate of the tax due. The County Collector may utilize the following formula for estimating tax due: number of rooms multiplied by number of days in the quarter, with the product multiplied by the average room rate, with the product multiplied by 0.50. As soon as the County Collector obtains such facts and information upon which to base an estimate or assessment of tax, interest and penalties provided in this Ordinance, the County Collector shall give notice of the amount of estimate or assessment by serving it personally or by depositing it in the United States mail, certified return receipt requested, addressed to the Operator of the Transient Guest Property at the last known address. (County Ordinance Number BE 2019-2).

Section 100.100. Right to Hearing. In the event an Operator receives notice of an estimate or assessment pursuant to Section 100.090, the Operator may within ten (10) days after receipt make application in writing to the County Commission for a hearing on the amount assessed as Transient Guest Tax. If such application for a hearing is not made within the time prescribed, the tax, interest and penalties shall become final and conclusive and immediately due and payable by the Operator. If an application is received for a hearing, the time and place of such hearing shall be fixed within five (5) business days of receipt of the request. The notice for request of a hearing should show cause why the amount of Transient Guest Tax, interest and penalties should not be fixed as specified in the notice of estimate or assessment. After such hearing, the County Commission shall determine the proper amount of tax, penalties and interest to be remitted and shall thereafter give written notice to the Operator of such determination and the amount of such tax, interest and penalties. (County Ordinance Number BE 2019-2).

Section 100.110. Actions to Collect Taxes. Any Transient Guest Tax, penalties, and interest required to be paid by any Operator under the provisions of this Ordinance shall be deemed a debt owed by the Operator to the County. Any Operator owing money to the County under the provisions of this Ordinance shall be liable in an action brought in the name of the County for the recovery of such amounts. In addition to any other remedies County may have at

law or in equity, Operator shall be responsible for all of the County's costs, charges and expenses, including attorney's fees, incurred in connection with the recovery of sums due under this Ordinance or because of the breach of any of the provisions of this Ordinance to be performed by an Operator or for any other relief against any Operator and may include the imposition of a lien against the property for the recovery of such amount. In the event an assessment of the Transient Guest Tax, interest and penalties has been imposed, the County may file for record in the Recorder's Office a notice of lien specifying the amount of the Transient Guest Tax, interest and penalties due and the name of the person liable for such amounts, which shall have the force and effect of a judgment in favor of the County against the real estate or any interest in real estate owned by the Operator named in such notice of lien for the amount specified in such notice. The Operator shall, within a reasonable time after filing the lien, be notified by first class mail, postage prepaid. (County Ordinance Number BE 2019-2).

Section 100.120. Retention of Records for Taxing Purposes. It shall be the duty of every Operator liable for the collection and payment to the County of any tax imposed by this Ordinance to keep and preserve for a period of three (3) years all records which may be necessary to determine the amount of such taxes as may have accrued to the County and for the collection or payment of which said Operator is responsible. The County shall have the right to inspect such records at all reasonable times but shall hold the same in confidence and utilize the same only for the purposes of this Ordinance. (County Ordinance Number BE 2019-2).

Section 100.130. Unlawful Acts by Operator. It shall be unlawful for any Operator to: (i) fail or refuse to register a Transient Guest Property with the County; (ii) fail to submit any tax return or other financial records to the County or to submit false tax returns or financial records to the County; (iii) to refuse to permit any necessary inspection of records by the County Collector relating to a Transient Guest Property; or (iv) to willfully or intentionally render a false or fraudulent tax return or claim as set forth in this Ordinance. (County Ordinance Number BE 2019-2).

Section 100.140. Penalty for Violation.

A. In addition to all other penalties provided for herein, any Person found guilty of a violation of this Ordinance shall be subject to a fine of up to Five Hundred Dollars (\$500) per violation.

B. Unless otherwise provided, an Operator shall be deemed guilty of a separate offense under this Ordinance for each and every day during any portion of which a violation of this Ordinance is committed, continued or permitted by the Person and shall be punishable pursuant to paragraph A of this section. (County Ordinance Number BE 2019-2).

Section 100.150. Refunds; Overpayment of Taxes.

A. Whenever the amount of any Transient Guest Tax, penalty or interest has been overpaid or paid more than once or has been erroneously collected or received by the County under this Ordinance, it may be refunded as provided in paragraphs B and C of this section. A claim shall be made in writing and presented to the County Commission stating, under penalty of perjury, the specific grounds upon which the claim is founded. The claim shall be on forms provided by the County.

B. An Operator may claim a refund or take as a credit against taxes to be remitted the amount that is determined to have been previously overpaid, paid more than once or paid after being erroneously collected or received when it is established in a manner prescribed that the tax was paid on rent charged a person who was not a Transient Guest. However, neither a refund nor a credit shall be allowed unless the amount of the tax to be refunded or credited if collected from a Tenant or other person has either been refunded to such person or credited to rent subsequently payable by such person to the Operator.

C. No refund shall be paid under the provisions of this section unless the claimant establishes a right thereto by written records showing entitlement. (County Ordinance Number BE 2019-2).

Section 2. Effective Date. This Ordinance shall become in full force and effect from and after its adoption by the County Commission.

ADOPTED THIS 26th DAY OF AUGUST, 2019.



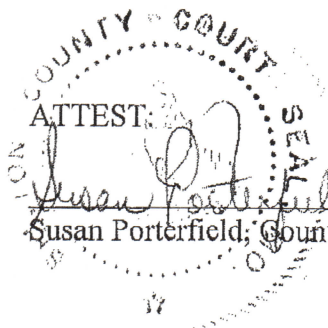
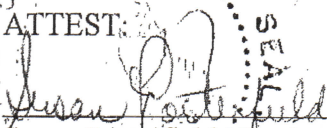
Steve Daleske, Presiding Commissioner



Glen Nelson, Associate Commissioner



David Malecki, Associate Commissioner


ATTEST:


Susan Porterfield, County Clerk