

ORDINANCE 2023-23

AN ORDINANCE OF THE BOROUGH OF SEASIDE HEIGHTS, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING THE BOROUGH CODE OF THE BOROUGH OF SEASIDE HEIGHTS, SO AS TO AMEND CHAPTER 110, ENTITLED "HOTEL AND MOTEL OCCUPANCY TAX"

BE IT ORDAINED by the Mayor and Borough Council of the Borough of Seaside Heights, County of Ocean, and State of New Jersey, as follows:

SECTION 1. The Borough Code of the Borough of Seaside Heights is hereby amended and supplemented so as to amend Chapter 110 entitled "Hotel and Motel Occupancy Tax," so in its entirety so that it shall read as follows:

§ 110-1 Purpose.

It is the purpose of this chapter to implement the provisions of P.L. 2003, c. 114, which authorizes the governing body of a municipality to adopt an ordinance imposing a tax at a uniform percentage rate not to exceed 3% on charges of rent for every occupancy of a room or rooms in a hotel or transient accommodation subject to taxation pursuant to Subsection (d) of § 3 of P.L. 1966, c. 40 (N.J.S.A. 54:32B-3) which shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon the occupancy of a hotel room.

§ 110-2 Definitions

TRANSIENT ACCOMMODATION

A room, group of rooms, or other living or sleeping space for the lodging of occupants, including but not limited to residences or buildings used as residences, that is obtained through a transient space marketplace or is a professionally managed unit.

TRANSIENT SPACE MARKETPLACE

A marketplace or travel agency through which a person may offer transient accommodations to customers and through which customers may arrange for occupancies of transient accommodations. "Transient space marketplace" does not include a marketplace or travel agency that exclusively offers transient accommodations in the State owned by the owner of the marketplace or travel agency.

PROFESSIONAL MANAGED UNIT

A room, group of rooms, or other living or sleeping space for the lodging of occupants in the State, that is offered for rent as a rental unit that does not share any living or sleeping space with any other rental unit, and that is directly or indirectly owned or controlled by a person offering for rent two or more other units during the calendar year.

OBTAINED THROUGH A TRANSIENT SPACE MARKETPLACE

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Payment for the accommodation is made through a means provided by the marketplace or travel agency, either directly or indirectly, regardless of which person or entity receives the payment, and where the contracting for the accommodation is made through the marketplace or travel agency.

§ 110-3 Establishment.

- A. There is hereby established a hotel and motel room occupancy tax in the Borough of Seaside Heights which shall be fixed at a uniform percentage rate of 3% on charges of rent for every occupancy of a hotel or motel room in the Borough of Seaside Heights of a room or rooms in a hotel subject to taxation pursuant to Subsection (d) of § 3 of P.L. 1966, c. 40, N.J.S.A. 54:32B-3 (sales tax). The hotel and motel room occupancy tax shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon the occupancy of a hotel room.
- B. Transient accommodation tax established.
 - 1. On and after January 1, 2024, rentals of transient accommodations shall be subject to the sales tax, the state occupancy fee, and other applicable taxes and fees on occupancies, if the rental is either obtained through a transient space marketplace (Air BnB, VRBO, Facebook Marketplace or similar online platform), which includes a travel agency, or is considered to be a professionally managed unit.
 - 2. The Borough of Seaside Heights shall impose a tax upon any short-term rental of a qualified dwelling in the Borough of Seaside Heights equal to 3% of the total rental fee, excluding any deposit or tax.

§ 110-4 Exempt organizations.

- A. The hotel and motel room occupancy tax authorized herein shall not be imposed on the rent for an occupancy if the purchaser, user or consumer is an entity exempt from the tax imposed on an occupancy under the Sales and Use Tax Act pursuant to Subsection (a) of § 9 of P.L. 1966, c. 30 (N.J.S.A. 54:32B-9).
- B. Transient Accommodations does not include:
 - 1. A hotel or hotel room;
 - 2. A room, group of rooms, or other living or sleeping space used as a place of assembly;
 - 3. A dormitory or other similar residential facility of an elementary or secondary school or a college or university;
 - 4. A hospital, nursing home, or other similar residential facility of a provider of services for the care, support and treatment of individuals that is licensed by the State;
 - 5. A campsite, cabin, lean-to, or other similar residential facility of a campground or an adult or youth camp;
 - 6. A furnished or unfurnished private residential property, including but not limited to condominiums, bungalows, single-family homes and similar living units, where no maid service, room service, linen changing service or other common hotel services are made available by the lessor and where the keys to the furnished or unfurnished private residential property, whether a physical key, access to a keyless locking mechanism, or other means of physical ingress to the

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- furnished or unfurnished private residential property, are provided to the lessee at the location of an offsite real estate broker licensed by the New Jersey Real Estate Commission pursuant to R.S.45:15-1 et seq.; or
7. Leases of real property with a term of at least 90 consecutive days.

§ 110-5 Collection.

A. Hotel and Motel Tax

1. All taxes imposed by this chapter shall be paid by the purchaser.
 2. A vendor shall not assume or absorb any tax imposed by this chapter.
 3. A vendor shall not in any manner advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax will be assumed or absorbed by the vendor, that the tax will not be separately charged and stated to the customer, or that the tax will be refunded to the customer.
 4. Each assumption or absorption by a vendor of the tax shall be deemed a separate offense and each representation or advertisement by a vendor for each day that the representation or advertisement continues shall be deemed a separate offense.
 5. The tax imposed by this chapter shall be collected on behalf of the Borough by the person collecting the rent from the hotel or motel customer. Each person required to collect the tax herein imposed shall be personally liable for the tax imposed, collected or required to be collected hereunder. Any such person shall have the same right in respect to collecting the tax from a customer as if the tax were a part of the rent and payable at the same time; provided that the Chief Financial Officer of the Borough shall be joined as a party in any action or proceeding brought to collect the tax.
- B. Transient Accommodation Tax. The short term rental occupancy tax shall be subject to collection by the listing agenda or online platform, if such property is listed in that manner, or by the individual/operator in conjunction with the submission of the occupancy tax collection report.

§ 110-6 Violations and penalties.

Any person violating or failing to comply with any other provision of this chapter shall, upon conviction thereof, be punishable by a minimum mandatory fine of no less than \$1,000 and no more than \$2,000, by imprisonment not to exceed 90 days or by community service of not more than 90 days or any combination of fine, imprisonment and community service, as determined in the discretion of the Municipal Court Judge. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a 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.

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SECTION 4. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Borough Council on first reading at a meeting of the Borough Council of the Borough of Seaside Heights held on the **19th day of July, 2023**, and will be considered for second reading and final passage at a regular meeting of the Borough Council to be held on the **16th day of August, 2023**, at 5:00 p.m., at the Borough Council Chambers located at 116 Sherman Avenue (above the firehouse) in Seaside Heights, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.



DIANE B. STABLEY, RMC
Borough Clerk, Borough of Seaside Heights

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