ORDINANCE NO. 2024-02

AN ORDINANCE AMENDING CHAPTER 35 ENTITLED "TAXATION" OF CODE OF THE BOROUGH OF FLEMINGTON TO IMPOSE A MUNICIPAL OCCUPANCY TAX OF 3% ON HOTELS, MOTELS AND OTHER TRANSIENT ACCOMMODATIONS

WHEREAS, on August 9, 2019, pursuant to N.J.S.A. 40:48F-1, the State of New Jersey enacted legislation authorizing municipalities to impose a municipal occupancy tax of not to exceed 3% for the rental of hotel and motel rooms and other transient accommodations; and

WHEREAS, the Borough Council of the Borough of Flemington has evaluated the applicable municipal occupancy tax regulations and has determined that it is appropriate, and in the best interests of the Borough, that the Borough of Flemington impose a municipal occupancy tax of 3% on all hotel, motel, and other transient accommodations rentals in accordance with the provisions of N.J.S.A. 40:48F-1 et seq.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Flemington, County of Hunterdon, State of New Jersey that Chapter 35, Taxation, of the Code of the Borough of Flemington, be and hereby is amended as follows:

Section 1. Chapter 35, Taxation, Article II, Municipal Occupancy Tax, is hereby enacted as follows:

§ 35-6 Purpose; Statutory Authority.
It is the purpose of this section to implement the provisions of P.L. 2003, c. 114, as amended by P.L. 2018, c. 49,[1], 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, motel, or transient accommodation subject to taxation pursuant to Subsection (d) of 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 or motel room or transient accommodation.

§ 35-7 Definitions.
The definitions set forth within N.J.S.A. 54:32B-2 are incorporated herein by reference.

§ 35-8 Tax imposed.
There is hereby established a hotel and motel and transient accommodation municipal occupancy tax in the Borough of Flemington which shall be fixed at a uniform percentage rate of 3% on charges of rent for every occupancy of a hotel or motel room or transient accommodation in the Borough of Flemington that is subject to taxation pursuant to Subsection (d) of Section 3 of P.L.1966, c. 30, N.J.S.A. 54:32B-3 (sales tax).

§ 35-9 Tax is in addition to other taxes and fees.
The hotel and motel room and transient accommodation occupancy tax shall be in addition to any other tax or fee imposed pursuant to state statute or local ordinance or resolution by

any governmental entity upon the occupancy of a hotel or motel room or transient accommodation.

§ 35-10 Exemptions.

The hotel and motel room and transient accommodation municipal occupancy tax authorized herein shall not be imposed on the rent collected in connection with the occupancy of a hotel, motel, or transient accommodation 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 Section 9 of P.L.1966,c. 30 (N.J.S.A. 54:32B- 9). Furthermore, a "transient accommodation" subject to this tax shall include those entities defined as "transient accommodations" and rentals which are obtained through a "transient space marketplace" as set forth within N.J.S.A.40:48E-2 and shall not include those entities which are specifically excluded by definition.

§ 35-11 Regulations pertaining to vendors; violations and penalties.

In accordance with the requirements of P.L. 2003, c. 114:

A. All taxes imposed by this article shall be paid by the purchaser.

B. A vendor shall not assume or absorb any tax imposed by this article.

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.

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.

The penalty for violation of the foregoing provisions shall be as set forth in Chapter 1, Section 1-5, Violations and Penalties, for each offense.

§ 35-12 Collection of Tax.

The tax imposed by this article shall be collected on behalf of the Borough by the person collecting the rent from the hotel or motel or transient accommodation 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.

Section 2. All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 3. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared

unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provision of this Ordinance are hereby declared to be severable.

Section 4. A copy of this Ordinance shall be transmitted upon adoption or amendment to the New Jersey Division of Taxation, Office of Legislative Analysis, P.O. Box 240, Trenton, New Jersey 08695-0240. The tax provisions of this Ordinance shall take effect on the first day of the first full month following 90 days after the Division has received the adopted Ordinance.

Introduced: March 11, 2024

Adopted: March 25, 2024

ATTEST:

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Marcia A. Karrow, Mayor

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Carla Conner, Borough Clerk