

POWELL COUNTY FISCAL COURT

AMENDING ORDINANCE NO. 20-08-11

AN AMENDING ORDINANCE OF POWELL COUNTY, KENTUCKY, CREATING THE POWELL COUNTY TOURISM COMMISSION; DEFINING THE DUTIES AND RESPONSIBILITIES OF SAID COMMISSION; PROVIDING FOR THE APPOINTMENT, TENURE, AND QUALIFICATIONS OF THE MEMBERS THEREOF; AND IMPOSING A 3% TRANSIENT ROOM TAX FOR FUNDING THE OPERATION OF SAID COMMISSION.

WHEREAS, the Legislature of the Commonwealth of Kentucky has, by ~~KRS 91A.350 through~~ KRS 91A.390, KRS 91A.345 to KRS 91A.394 made provision for the establishment of a Tourist and Convention Commission, and for the funding of same by the imposition of a transient room tax; and

WHEREAS, the Powell County Fiscal Court deems it in the public interest to establish such commission for the purpose of promoting recreational, convention, and tourist activity in Powell County, Kentucky, and to impose a transient room tax for the purpose of funding the activities of said commission.

NOW, THEREFORE, BE IT ORDAINED by the Powell County Fiscal Court that Powell County Fiscal Court Ordinance No. 20-08-11 be amended as follows.

SECTION 1

CREATION OF COMMISSION

There is hereby created a commission to be known as Powell County Tourism Commission, which commission is established for the purpose of promoting recreational, tourist, and convention activity in Powell County, Kentucky.

SECTION II

COMPOSITION OF COMMISSION; APPOINTMENT AND TERMS OF COMMISSIONERS

- (1) The Powell County Tourism Commission shall be composed of seven (7) commissioners to be appointed by the Powell County Judge Executive pursuant to subsection two (2) of KRS 91 A.350 in the following manner:
- (a) Two (2) commissioners shall be appointed from a list of three (3) or more names submitted by the local city hotel and motel association and one (1) commissioner shall be appointed from a list of three (3) or more names submitted by the local county hotel and motel association, provided that if only one (1) local hotel and motel association exists which covers both the city and county, then three (3) commissioners shall be appointed from a list of six (6) or more names submitted by it. If no formal local city or county hotel and motel association is in existence upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to this subsection, then up to three (3) commissioners shall be appointed by the Powell County Judge Executive from persons residing within the jurisdiction of the commission and representing local hotels or motels. A local city or county hotel and motel association shall not be required to be affiliated with the Kentucky Hotel and Motel Association to be recognized as the official local city or county hotel and motel association.
- (b) One (1) commissioner shall be appointed from a list of three (3) or more names submitted by the local restaurant association or associations. If no formal local restaurant association or associations exist upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to this subsection, then one (1) commissioner shall be appointed by the Powell County Judge Executive from persons residing within the jurisdiction of the commission and representing a local restaurant. A local restaurant association or associations shall not be required to be affiliated with the Kentucky Restaurant Association to be recognized as the official local restaurant association or associations.
- (c) One (1) commissioner shall be appointed from a list of three (3) or more names submitted by the

Red River Chamber of Commerce. If no local chamber of commerce is in existence upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to this subsection, then one (1) commissioner shall be appointed by the Powell County Judge Executive from persons residing within the jurisdiction of the commission and representing local businesses.

- (d) Two (2) commissioners shall be appointed by the elected Powell County Judge Executive.
- (2) A candidate submitted for appointment to the commission, shall be appointed by the Powell County Judge Executive within thirty (30) days of the receipt of the required list or lists. Vacancies shall be filled in the same manner that original appointments are made.
- (3) The commissioners shall be appointed for terms of three (3) years, provided, that in making the initial appointments, Powell County Judge Executive shall appoint two (2) commissioners for a term of three (3) years, two (2) commissioners for a term of two (2) years and three (3) commissioners for a term of one (1) year. There shall be no limitation on the number of terms to which a commissioner is reappointed. Subsequent appointments shall be for three (3) year terms.
- (4) A commissioner may be removed from office, by the Powell County Judge Executive as provided in KRS 65.007.

SECTION III

ORGANIZATION, DUTIES AND RESPONSIBILITIES OF COMMISSION

1. The commissioners shall elect from its membership a chairman and a treasurer and may employ such personnel and make such contracts as are necessary to effectively carry out the purpose of ~~KRS 91 A.350 to 91 A.390~~ KRS 91A.345 to KRS 91A.394. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services and other services and materials relating to the promotion of tourist and convention business; provided, contracts of the type enumerated shall be made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials such as advertising firms, chambers of commerce, publishers

and printers.

2. The books of the commission and its account as established in KRS 91A.390(2) shall be audited as provided in KRS 65A.030. The independent certified public accountant or Auditor of Public Accounts shall make a report to the commission, to the associations submitting lists of names from which commission members are selected, to the appropriate chief executive officer or officers, to the State Auditor of Public Accounts, and to the local governing body or bodies that established the commission that was audited. A copy of the audit report shall be made available by the commission to members of the public upon request and at no charge.
3. The Commission shall annually submit to the Powell County Fiscal Court a request for funds for the operation of the commission. The Powell County Fiscal Court or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax.

SECTION IV

TRANSIENT ROOM TAX

COLLECTION PROCEDURES; EXCEPTIONS

1. For the purpose of operating and financing the Powell County Tourism Commission there is hereby imposed and levied ~~on every person, company, corporation, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns or like business in Powell County, a~~ transient room on the rent for every occupancy of a suite, room, rooms, cabins, lodgings, campsites, or other accommodations charged by any hotel, motel, inn, tourist cabin, campgrounds, recreational vehicle parks, or any other place in which accommodations are regularly furnished to transients for consideration or by any person that facilitates the rental of the accommodations by brokering, coordinating, or in any other way arranging for the rental of the accommodations as follows: a local transient room tax of three percent (3%) of the gross rent for every occupancy of a suite, room or rooms charged and collected.
 - a. ~~Any person, firm, company, or corporation engaged in the rental of offering rental of suites, rooms or other transient accommodations, a suite, room, (or) rooms, cabins, lodging,~~ campsites, tourist cabin, campgrounds, recreational vehicle parks, or any other place in

which accommodations are regularly furnished to transients for consideration or by any person that facilitates the rental of the accommodations by brokering, coordinating, or in any other way arranging for the rental of the accommodations in Powell County must be registered with the Powell County Tourism Commission within thirty (30) days after commencing business. It shall be unlawful for any person to operate a hotel, motel, cabin, or any transient lodging facility or the like after being in business for more than thirty (30) days without registering with the commission required by this section. Registration shall include the operator's name, address or addresses of the lodging facility or facilities, date of registration, a statement that provides: *"This is to certify that the below named person, corporation, or association and its agent(s) are responsible to collect a tax at the rate of three percent (3%) on the rental rate of all transient rooms at the location/s specified and pay those collected funds to the Powell County Tourism Commission by the twentieth (20th) day of the following month"*, and a signature showing that they have read and understand the registration and statement to which they are signing.

b. Said transient room tax shall be paid monthly to the Powell County Tourism Commission by the twentieth (20th) day of the following month with a grace period often (10) days. It must be returned together with a form furnished by the Powell County Tourism Commission which is setting forth the aggregate number of gross rentals charged and collected during the occupancy to which the transient room tax applies. If an operator ceases operating their lodging business for any reason, the return and taxes are due within thirty (30) days after the operator ceased doing business. An operator who is transferring, selling, or terminating its business shall notify the Powell County Tourism Commission in writing of such sale, transfer or termination, and the name and address of the purchaser.

c. Transient room taxes shall not apply to rooms, lodgings, campsites, or accommodations supplied for a continuous period the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of 11 rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more to a person

d. All taxes collected by operators pursuant to this article shall be held in a separate trust account, apart from the rents or business revenues of the lodging business, for the benefit of the county until payment thereof is made to the tax collector.

e. Pursuant to KRS 91 A.360 through KRS 91 A.400, there are no exceptions related to transient tax.

2. The tax imposed by this ordinance shall be in addition to other general taxes, occupational or business license tax.

3. Pursuant to KRS 91 A.390 (1) (D), the tax imposed by this ordinance shall not apply to rentals paid on occupancies of thirty (30) consecutive days or longer.

4. Any person, firm, organization or other like or similar organizations or businesses required herein to file a return shall be required to retain the following records for five (5) years: rent, receipts, duplicate copies of payment, receipts given to transients, occupancy records, room logs, gross receipts, records, records to calculate the amount of occupancy tax due and any other businesses records that show when rooms in the lodging facility were occupied. Any person, firm, organization or other like or similar organizations or businesses required herein to file a return, shall be required to make all books, records, and accounts upon which information required by this ordinance is based, available to the Powell County Tourism Commission Treasurer and Executive Director, his agents or employees for the purpose of examination, audit or verification. All records of every operator are subject to annual audits by the Powell County Tourism Commission and

their agents.

- a. The Powell County Tourism Commission, or any of its agents or employees, are hereby empowered to examine the books, papers and records of any firm, organization or other like or similar accommodation businesses required herein to file a return. Said examination shall be permitted to determine the accuracy of any return made, or if no return was made, to determine the amount of room tax due and owing. Any reports, examinations or audit of books, records, accounts, or any other source, in the administration of this ordinance, shall be treated and considered as confidential and privileged except for official purposes, unless otherwise treated by judicial decree or specific provisions of law and shall not be open to inspection by the public.

If any operator shall fail or refuse to collect the tax levied by this ordinance or make within the time provided in this ordinance, any report and remittance of such tax or any portion thereof required by this article, the tax collector shall proceed in such a manner as he/she may deem best to obtain facts and information as he is able to obtain upon which to base the assessment of the tax imposed by this article and payable by any operator who has failed or refused to collect the same or to make such report or remittance, the tax collector shall give a notice of the amount so assessed by serving it personally, by way of the Powell County Sheriff's Office, or by depositing it in the United States Mail, postage prepaid, addressed to the Operator at his/her last known address.

5. All moneys collected pursuant to this section and KRS 91A.400 shall be maintained in an account separate and unique from all other funds and revenues collected, and shall be considered tax revenue for the purposes of KRS 68.100 and KRS 92.330.
6. A portion of the money collected from the imposition of this tax, as determined by the tax levying body, upon the advice and consent of the tourist and convention commission, may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business, including projects described in KRS 154.30-050(2)(a). In order to use the said collected monies of this tax, a

majority vote must be made by members of the Powell County Tourism Commission in an official board meeting and recorded in the minutes of said meeting before funding would be released to the requesting entity. The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91 A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant, except as provided in KRS 154.30-050(2)(a) 3.c. Money not expended by the commission during any fiscal year shall be used to make up a part of the commission's budget for its next fiscal year.

SECTION V

ENFORCEMENT AND PENALTY

1. The Powell County Tourism Commission is charged with the duty of collecting this tax. shall have the power and it shall be its duty to make and publish the rules, regulations as many be necessary to administer and enforce the provisions of this Ordinance and to provide such printed forms as may be required for reporting, paying, and receipting for all such funds and for all other requirements in the proper and efficient administration of this Order.
 - a. All returns received after the due date (see Section IV, 1b) shall be considered delinquent and assessed a penalty of the greater of one hundred dollars (\$100.00) or ten percent (10%) of the taxes due. Any tax not paid in full after thirty (30) days shall have added a maximum of twenty percent (20%) of the tax for each thirty (30) days or fraction thereof for failure to pay the tax by the due date. Failure to file transient tax returns and remit payment of any taxes owed within ninety (90) days of the time required for payment, shall be subject to legal action taken by the Powell County Tourism Commission.
 - b. A lien may be placed on the business property of any operator who is delinquent. The lien shall not be removed until the account is brought current and the operator has paid all administrative and other costs associated with the lien.
2. Any person, firm, company, or organization who shall fail, neglect or refuse to properly

complete and file a return as required herein, or any person, firm, company or organization who shall knowingly file a false or fraudulent return required by this Ordinance, or fail to pay the tax imposed herein or any portion thereof, or fails to perform under any specific provision herein, shall be subject to criminal and/or civil penalties.

- a. Upon a criminal conviction, a person, firm, company, or organization, shall be subject to a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00), imprisonment of not more than ninety (90) days, or both fine and imprisonment. Each day of any violation shall constitute a separate offense.
3. Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owed by the transient to the county. Powell County may bring civil action against a person who fails to pay the county an amount due under this ordinance. If any person fails to pay any taxes, penalty, or interest owed to the county under this ordinance when due, the tax collector may within three (3) years from date payment was first due, record a certificate of taxes, penalty and interest due with the Powell County Attorney's office. The certificate shall state the amount of tax, penalties, and interest due, the person's name and last known address and that the tax collector has determined the amount due at the time the certificate is recorded plus any accrued interest constitutes a lien upon all real and personal property located in Powell County owned by the person named in the certificate. The lien also attaches to any property the person acquires after the certificate is recorded until the lien expires. The lien has the force, effect, and priority of a judgement lien.
4. At any time after the tax collector has recorded a certificate, the tax collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the county under this article. The warrant shall be directed to the Powell County Sheriff and shall have the same effect as a writ of execution. In lieu of issuing a warrant, at any time within the three (3) years after the tax collector has made a determination of taxes, penalties, and interest due, or recorded a certificate under this section the tax collector may

collect the amount owed to the county by ceasing or causing to be ceased any real or personal property owned by the person liable and sell the property, or a sufficient amount and any costs incurred on account of the seizure and sell. Any seizure made to collect taxes due shall be only of property of the operator does not exempt under the provisions of the code of Civil Procedure.

5. If any operator who is liable for taxes, penalties, or interest under this chapter sells or otherwise disposes of its interests in a hotel, motel, or other like or similar businesses, the purchaser shall notify the tax collector of the date of the sale at least thirty (30) days before the sale or, if the agreement to sale the lodging facility provides for a sale date sooner than thirty (30) days, the purchaser shall notify the tax collector immediately after entering the sales agreement. The purchaser shall withhold a portion of the purchase price at the time of the sale that is sufficient to pay the tax collector showing the tax, penalty, or interest has been paid in full, or a certificate from the tax collector stating that no amount is due.
 - a. If the purchaser of a lodging facility fails to withhold from the purchase price an amount sufficient to pay an operator's liability from unpaid taxes, penalties, or interest, purchaser shall become jointly and severally liable for the amount owed to the county by the purchaser. Within thirty (30) days after the tax collector receives a written request from the purchaser for a certificate of registration, the tax collector shall either issue the certificate or send notice to the purchaser of the amount that the purchaser shall pay in order for the tax collector to issue the certificate.
6. The Powell County Tourism Commission does not permit appeal of penalties and interest for delinquent or missing transient lodging tax returns. The only exception to the policy is when the United States Postal Service will except specific responsibility for the delinquency of non- electronically filed transient lodging tax returns. In these cases, it is the responsibility of the operator to provide written documentation from the United State Postal Service to the Powell County Tourism Commission within thirty (30) days of the date of the notification of the

delinquency. The United State Postal Service documentation must clearly state that the United States Postal Service accepts specific responsibility for the untimely delivery of the return in question. The United State Postal Service letters vaguely explaining possible ways mail may be mishandled will not be accepted for penalty abatement.

SECTION VI

USE OF TRANSIENT TAX PROCEEDS

The net proceeds from the transient tax shall be used for such purposes as enumerated in KRS 91 A.390. The Powell County Fiscal Court prohibits the Powell County Tourism Commission to issue revenue bond without the expressed consent of the Powell County Fiscal Court.

SECTION VII

EFFECTIVE DATE

This Ordinance (No. 20-08-11) will be effective upon publication.

ADOPTED BY THE FISCAL COURT OF POWELL COUNTY, KENTUCKY

This ordinance was made effective 11th day of April, 2023 by agreement of the Powell County Fiscal Court.

Enacted this the 11th day of April, 2023.

Eddie Barnes
EDDIE BARNES,
Powell County Judge Executive

ATTEST:
Connie Crabtree
Connie Crabtree,
Fiscal Court Clerk

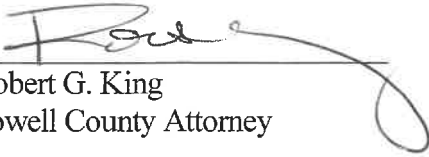
First Reading: March 14th, 2023

Second Reading: April 11th, 2023

Signed by Judge Executive: Eddie Barnes

Published: April 28th, 2023

Prepared by:

A handwritten signature in black ink, appearing to read 'R. King', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Robert G. King
Powell County Attorney

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SUMMARY

SECTION 1- Creation of Tourism Commission.

SECTION 2- Composition of Commission, Appointment and Terms of Commissioners.

SECTION 3- Organization, Duties and Responsibilities of Commission.

SECTION 4- Transient Room Tax, Collection Procedures, Exceptions

SECTION 5- Enforcement and Penalty.

SECTION 6- Use of Transient Tax Proceeds.

SECTION 7- Effective Date.

Summary Prepared By: Robert G. King, Powell County Attorney.

The full text of the above amending ordinance is available for inspection in the office of the Powell County Judge-Executive, Powell County Courthouse, Stanton, Kentucky, 40380.