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ORDINANCE

NUMBER 2017 -

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA, AMENDING CHARLOTTE COUNTY CODE ARTICLE IV, TOURIST DEVELOPMENT TAX, SECTIONS 1-7-46 and 1-7-48; PROVIDING THAT THE ENFORCEMENT AND AUDIT FUNCTIONS ASSOCIATED WITH THE COLLECTION AND ADMINISTRATION OF TOURIST DEVELOPMENT TAX SHALL BE WITH THE CHARLOTTE COUNTY TAX COLLECTOR; PROVIDING THAT THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OR SUCH OTHER MEMBER OF THE BOARD AS THE CHAIRMAN MAY DESIGNATE SHALL SERVE AS CHAIRMAN EX OFFICIO OF THE TOURIST DEVELOPMENT COUNCIL; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

RECITALS

WHEREAS, Section 125.0104, Florida Statutes, authorizes counties to levy and impose a tourist development tax within their boundaries; and

WHEREAS, on March 12, 1984, the Charlotte County Board of County Commissioners ("Board") adopted Ordinance No. 84-04 levying a two percent (2%) Tourist Development Tax throughout the County, adopting the Charlotte County Tourist Development Plan, establishing the Charlotte County Tourist Development Council and providing that the Chairman of the Board shall serve as Chairman, ex officio, of the Tourist Development Council; and

WHEREAS, on April 10, 1990, the Board adopted Ordinance No. 90-17, providing for local collection and administration of the Tourist Development Tax by the Charlotte County Tax Collector, and further providing for the local enforcement and audit functions associated with the Tourist Development Tax by the Charlotte County Clerk of Court; and

1 WHEREAS, on September 14, 1993, the Board adopted Ordinance No. 93-48
2 increasing the Tourist Development Tax to three percent (3%) and amending the County
3 Tourist Development Plan; and

4 WHEREAS, on August 9, 2005, the Board adopted Ordinance No. 2005-065
5 increasing the Tourist Development Tax to four percent (4%) and amending the County
6 Tourist Development Plan; and

7 WHEREAS, on September 12, 2006, the Board adopted Ordinance No. 2006-079,
8 increasing the Tourist Development Tax to five percent (5%) and amending the County
9 Tourist Development Plan; and

10 WHEREAS, the Board now desires to consolidate the local enforcement and audit
11 functions associated with the Tourist Development Tax, in addition to the local collection
12 and administration functions, with the Charlotte County Tax Collector; and

13 WHEREAS, the Board also desires to provide that the Chairman of the Board, or
14 such other member of the Board as the Chairman may designate, shall serve as chairman,
15 ex officio, of the Tourist Development Council.

16 NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of
17 Charlotte County, Florida:

18 **Section 1.** Charlotte County Code Article IV, Chapter 1-7-46, is hereby amended
19 as follows:

20 **Sec. 1-7-46. - Levied.**

- 21 (a) There is hereby levied, imposed and set a tourist development tax throughout the
22 county, at a rate of five (5) percent of each whole and major fraction of each dollar of

1 the total rental charged every person who rents, leases or lets for consideration any
2 living quarters or accommodations in any hotel, apartment hotel, motel, resort motel,
3 apartment, apartment motel, rooming house, mobile home park, recreational vehicle
4 park or condominium for a term of six (6) months or less. When receipts of
5 consideration is by way of property other than money, the tax shall be levied and
6 imposed on the fair market value of such nonmonetary consideration.

7 (b) The tourist development tax shall be in addition to any other tax imposed pursuant
8 to F.S. Chapter 212, and in addition to all other taxes, fees and considerations for the
9 rental or lease.

10 (c) The tourist development tax shall be charged by the person receiving the
11 consideration for the lease or rental; and it shall be collected from the lessee, tenant or
12 customer at the time of payment of the consideration for such lease or rental.

13 (d) *Local administration of the tax.*

14 (1) Notwithstanding any provisions hereof to the contrary, it is the intent of the
15 county to be exempted from those requirements of F.S. section 125.0104 that the
16 tax collected be remitted to the department of revenue before being returned to the
17 county. It is the intent for the county to provide for the collection and administration
18 of the tax on a local basis to begin on August 1, 1990.

19 (2) Initial collection of the tax shall continue to be made in the same manner as
20 the tax imposed under F.S. Chapter 212, Part I.

21 (3) The county tax collector shall be responsible for the collection and
22 administration of the tax. The person receiving the consideration for such rental or
23 lease shall receive, account for, and remit the tax to the county tax collector. The
24 tax collector shall keep appropriate records of said funds. The same duties and
25 privileges imposed by F.S. Chapter 212 upon dealers in tangible property,
26 respecting the collection and remission of tax, the making of returns, the keeping
27 of books, records and accounts, the payment of a dealer's credit in compliance
28 with the rules of the county tax collector in the administration of said chapter shall

1 apply to and be binding upon all persons who are subject to the provisions of this
2 article; however, the county tax collector may authorize a quarterly return and
3 payment when the tax remitted by the person receiving the consideration for such
4 rental or lease for the preceding quarter did not exceed one hundred dollars
5 (\$100.00).

6 (4) The county tax collector may promulgate rules, prescribe and publish the
7 forms necessary to effectuate this section.

8 (5) The county ~~clerk-of-court~~ tax collector shall perform the enforcement and
9 audit functions associated with the collection and remission of this tax, including
10 without limitation the following:

11 a. For the purpose of enforcing the collection of the tax levied by this chapter,
12 the ~~clerk~~ tax collector is hereby specifically authorized and empowered to
13 examine at all reasonable hours the books, records and other documents of all
14 dealers, or other persons charged with the duty to report or pay a tax under
15 this article, in order to determine whether they are collecting the tax or
16 otherwise complying with this article. In the event the dealer refuses to permit
17 such examination of its books, records or other documents by the department
18 as aforesaid, it is guilty of a misdemeanor of the second degree, punishable
19 as provided in F.S. section 775.083. The ~~clerk~~ tax collector shall have the
20 right to proceed in circuit court to seek a mandatory injunction or other
21 appropriate remedy to enforce its right against the offender, as granted by this
22 section, to require an examination of the books and records of such dealer.

23 b. Each dealer, as defined in this section, shall secure, maintain and keep for a
24 period of three (3) years a complete record of rooms or other lodging, leased
25 or rented by said dealer, together with gross receipts from such sales, and
26 other pertinent records and papers as may be required by the tax collector for
27 the reasonable administration of this article; and all such records which are
28 located or maintained in this state shall be open for inspection by the ~~clerk~~ tax

1 collector at all reasonable hours at such dealer's place of business located in
2 the county. Any dealer who maintains such books and records at a point
3 outside this county must make such books and records available for
4 inspection by the clerk tax collector in this county. Any dealer subject to the
5 provisions of this article who violates these provisions is guilty of a
6 misdemeanor of the second degree, punishable as provided in F.S. section
7 775.082 or section 775.083.

8 c. 1.

9 The clerk tax collector shall send written notification, at least thirty (30) days
10 prior to the date an auditor is scheduled to begin an audit, informing the
11 taxpayer of the audit. The clerk tax collector is not required to give thirty (30)
12 days' prior notification of a forthcoming audit in any instance in which the
13 taxpayer requests an emergency audit.

14 2. Such written notification shall contain:

15 (i) The approximate date on which the auditor is scheduled to begin the
16 audit.

17 (ii) A reminder that all of the records, receipts, invoices and related
18 documentation of the taxpayer must be made available to the auditor.

19 (iii) Any other requests or suggestions the clerk tax collector may deem
20 necessary.

21 3. Only records, receipts, invoices and related documentation which are
22 available to the auditor when such audit begins shall be deemed
23 acceptable for the purposes of conducting such audit.

24 d. All taxes collected under this section shall be remitted to the tax collector. In
25 addition to criminal sanctions, the clerk tax collector is empowered, and it shall
26 be its duty, when any tax becomes delinquent or is otherwise in jeopardy
27 under this section, to issue a warrant for the full amount of the tax due or

1 estimated to be due, with the interest, penalties and cost of collection, directed
2 to all and singular the sheriffs of the state, and shall record the warrant in the
3 public records of the county; and thereupon the amount of the warrant shall
4 become a lien of any real or personal property of the taxpayer in the same
5 manner as a recorded judgment. The ~~clerk~~ tax collector may issue a tax
6 execution to enforce the collection of taxes imposed by this section and deliver
7 it to the sheriff. The sheriff shall thereupon proceed in the same manner as
8 prescribed by law for executions and shall be entitled to the same fees for his
9 services in executing the warrant to be collected. The ~~clerk~~ tax collector may
10 also have a writ of garnishment to subject any indebtedness due to the
11 delinquent dealer by a third person in any goods, money, chattels or effects of
12 the delinquent dealer in the hands, possession or control of the third person in
13 the manner provided by law for the payment of the tax due. Upon payment of
14 the execution, warrant, judgment or garnishment, the department shall satisfy
15 the lien of record within thirty (30) days.

16 (6) Tax revenues may be used only in accordance with the provision of F.S.
17 section 125.0104.

18 (7) A total of three (3) percent of the tax collected herein shall be allocated to the
19 tax collector retained for costs of administration. ~~The three (3) percent total shall~~
20 ~~be allocated equally between the tax collector and clerk of court.~~ The remainder of
21 the tax collected shall be submitted to the county on a monthly basis.

22 **Sec. 1-7-47. - Use of funds.**

23 The tax revenues received pursuant to this article shall be used to fund the county
24 tourist development plan, which is hereby adopted as follows:

25 TOURIST DEVELOPMENT PLAN

26 "The five-percent (5%) tourist development tax will be levied throughout Charlotte
27 County beginning April 1, 2007. The tourist development tax for Charlotte County is to
28 promote Charlotte County as a destination, to strengthen our local economy and to

1 increase employment by investing the total receipts of the tourist development tax into
2 a trust fund to be used for those purposes authorized by F.S. section 125.0104, as the
3 same may be amended from time to time, or as may be otherwise authorized by
4 general law."

5 The above and foregoing tourist development plan may not be substantially amended
6 except by ordinance enacted by an affirmative vote of a majority plus one (1) additional
7 member of the board of county commissioners.

8 **Sec. 1-7-48. - Tourist development council.**

9 (a) There is hereby established, pursuant to the provisions of F.S. section 125.0104, an
10 advisory council to be known as the "Charlotte County Tourist Development Council."
11 The council shall be composed of eight (8) members who shall be appointed by and
12 serve at the pleasure of the board of county commissioners; the ninth member, the
13 chairman of the board of county commissioners or such other member of the board of
14 county commissioners as the chairman may designate, shall serve as chairman, ex-
15 officio, of the council. Two (2) members of the council shall be elected municipal
16 officials, one of whom shall be from the most populous municipality in the county.
17 Three (3) members of the council shall be owners or operators of motels, hotels,
18 recreational vehicle parks or other tourist accommodations located in the county and
19 subject to the tax levied in this article. Three (3) members of the council shall be
20 persons who are involved in the tourist industry and who have demonstrated an
21 interest in tourist development but who are not owners or operators of motels, hotels,
22 recreational vehicle parks, or other tourist accommodations in the county. All members
23 of the council shall be electors of the county. The members of the council shall serve
24 for staggered terms of four (4) years.

25 (b) The council established in this section shall, from time to time, make
26 recommendations to the board of county commissioners for the effective operation of
27 the special projects or for uses of the tourist development tax revenue raised by the tax

1 levied in this article, and such council shall perform such other duties or functions as
2 may be prescribed by ordinance or resolution.

3 (c) The council established in this section shall continuously review all expenditures of
4 revenue raised by the tax levied in this article, shall receive, at least quarterly,
5 expenditure reports from the board of county commissioners or its designee and shall
6 report to the board of county commissioners and to the state department of revenue all
7 expenditures of said revenue believed to be unauthorized by the provisions of this
8 article. The board of county commissioners, upon receiving notification of expenditures
9 believed to be unauthorized by the council, shall review the council's findings and take
10 such administrative or judicial action as it sees fit, to ensure compliance with this article
11 and the provisions of F.S. § 125.0104.

12 **Sec. 1-7-49. - Reserved.**

13 **Sec. 1-7-50. - Advertising noncollection of tax.**

14 It shall be unlawful for any person to advertise or hold out to the public in any manner,
15 directly or indirectly, that he will absorb all or any part of the tax, or that he will relieve the
16 person paying the rental of the payment of all or any part of the tax, or that the tax will not
17 be added to the rental or lease consideration, or when added, that it or any part thereof will
18 be refunded or refused, either directly, or indirectly, by any method whatsoever. Any
19 person who willfully violates any provision of this section shall be guilty and punishable as
20 provided in F.S. section 125.0104(8).

21 **Sec. 1-7-51. - Reserved.**

22 **Sec. 1-7-52. - Repeal authorized.**

23 Upon a petition of fifteen (15) percent or more of the electors of the county, the board
24 of county commissioners shall cause an election to be held for the repeal of this article and
25 the tourist development tax levied hereunder, subject only to any outstanding bonds for
26 which the tax has been pledged.

27 Section 2. Severability. If any subsection, sentence, clause, phrase, or portion of
28 this Ordinance is for any reason held invalid or unconstitutional by any court of competent

1 jurisdiction, such portion shall be deemed a separate, distinct, and independent provision
2 and such holding shall not affect the validity of the remainder of this Ordinance.

3 Section 3. Codification. It is the intention of the Board of County Commissioners
4 of Charlotte County, Florida and it is hereby ordained that the provisions of this Ordinance
5 shall become and be made a part of the Code of Laws and Ordinances of Charlotte
6 County, Florida (“Code”), and the sections of this Ordinance may be renumbered to
7 accomplish such intention. In the event this Ordinance conflicts with any provisions of the
8 Code, the provisions of this Ordinance shall control to the extent of any such conflict.

9 Section 4. Effective Date. A certified copy of this Ordinance shall be filed with the
10 Department of State of the State of Florida within 10 days of enactment and shall take
11 effect upon filing with said department.

12
13 PASSED AND DULY ADOPTED this 28th day of February 2017.

14 BOARD OF COUNTY COMMISSIONERS
15 OF CHARLOTTE COUNTY, FLORIDA
16

17
18
19 By: _____
20 William G. Truex, Chairman

21 ATTEST:
22 Roger D. Eaton, Clerk of Circuit
23 Court and Ex-Officio Clerk to the
24 Board of County Commissioners
25

26
27 By: _____
28 Deputy Clerk

29 APPROVED AS TO FORM
30 AND LEGAL SUFFICIENCY:
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33 By: _____
34 Janette S. Knowlton, County Attorney

35 LR2016-0658 _____
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