

ORDINANCE NO. 2018 - 10

AN ORDINANCE OF FLAGLER COUNTY, FLORIDA, REGARDING PUBLIC FINANCE; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FINDINGS; AMENDING ARTICLE III OF CHAPTER 19 OF THE FLAGLER COUNTY CODE OF ORDINANCES TO PROVIDE FOR THE LOCAL COLLECTION AND ADMINISTRATION OF THE TOURIST DEVELOPMENT TAX; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VII of the Constitution of the State of Florida and Section 125.0104, Florida Statutes (collectively, the “Act”) authorize Flagler County (hereafter the “County”) to levy tourist development taxes for the purpose of promoting tourism and paying the cost of construction and/or operation of certain capital facilities, and other public uses related to the promotion of tourism; and

WHEREAS, Article III of Chapter 19 of the Flagler County Code of Ordinances (the “Code”), provides for the levy of tourist development taxes for such purposes; and

WHEREAS, Subsection 125.0104(10), Florida Statutes, authorizes the County to adopt provisions for the local collection and administration of the tourist development tax.

WHEREAS, the Flagler County Tax Collector is very knowledgeable about real estate and tangible personal property used in residential and commercial operations and has great familiarity with Flagler County properties and collections of taxes owed on such properties and the manner of their collection and verification of property and its uses; and

WHEREAS, additionally through the Tax Collector’s experience in the collection of business tax receipts and ascertaining use of property subject to the business tax receipt, the Tax Collector, would be able to ascertain whether property is being used for transient rentals subject to the tourism development taxes of the County; and

WHEREAS, the Tax Collector has an exemplary record of fairly, impartially and efficiently handling tax collections and business tax receipts; and

WHEREAS, the Tax Collector has agreed to further serve the citizens of Flagler County by taking on the responsibility to collect the tourism taxes.

BE IT ORDAINED by the Board of County Commissioners of Flagler County, Florida as follows:

Section 1. Purpose and Intent. This Ordinance is enacted to carry out the purpose and

intent of, and exercise the authority set forth in, Article VII of the Florida Constitution and Section 125.0104, Florida Statutes, as amended, to provide for the local collection and administration of the tourist development tax.

Section 2. Findings. The Board of County Commissioners relies upon the following findings in the adoption of this Ordinance:

1. The findings contained in the recitals above, which are true and correct.
2. The powers conferred by this Ordinance are for public uses and purposes for which public money may be expended, and are hereby declared as a matter of legislative determination to be necessary for the public health, safety and welfare, and specifically for the promotion of tourism within the County.
3. Article III of Chapter 19 of the Code sets forth procedures for the levy and use of tourist development tax revenue.
4. It is in the interest of the public health, safety and welfare to amend Article III of Chapter 19 of the Code to establish the County's procedures for the local collection and administration of the tourist development tax in accordance with the Act and other applicable laws.

Section 3. Amendment of Article III of Chapter 19 of the Code. Article III of Chapter 19 of the Code is hereby amended as set forth in Exhibit "A" to this Ordinance.

Section 4. Codification. The publisher of the County's Code, the Municipal Code Corporation, is directed to incorporate the amendments in Section 3 of this Ordinance into the County Code of Ordinances.

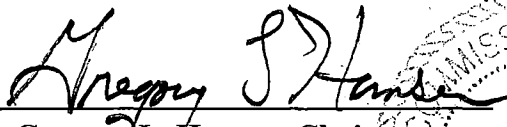
Section 5. Severability. If any section, sentence, clause, or other provision of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Ordinance.

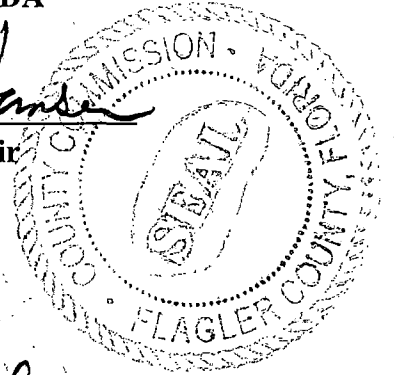
Section 6. Effective Date. This Ordinance shall become effective upon filing with the Secretary of State as provided for in Section 125.66(1)(b), Florida Statutes. Collection of Tourism Development Taxes by the Tax Collector shall begin on August 1, 2018 beginning with the July 2018 tourism tax remittances.

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ADOPTED, by the Board of County Commissioners of Flagler County, Florida, this the 21st day of May 2018.

**BOARD OF COUNTY COMMISSIONERS OF
FLAGLER COUNTY, FLORIDA**

By: 
Gregory L. Hansen, Chair



ATTEST:


Tom Bexley, Clerk of the Circuit
Court and Comptroller

Approved As To Form:


Al Hadeed, County Attorney

Exhibit "A"

**Amendment of Chapter 19, Article III, of the Flagler County Code of Ordinances,
The Tourist Development Tax**

(underlined language to be added, strike-through language to be deleted)

Sec. 19-46. – Penalty.

Any person convicted of violating any portion of this article shall be punished as provided by law, including as provided for in Section 125.0104(8), Florida Statutes, ("the Act") or its successor.

Sec. 19-47. – Levy of tourist development tax.

* * * *

~~(d) The person receiving the consideration for such rental or lease shall receive, account for, and remit the tax to the State of Florida Department of Revenue at the time and in the manner provided for person who collect and remit taxes under Ch. 212.03, Florida Statutes. The same duties and privileges imposed by Chapter 212, Florida Statutes, upon dealers in tangible property, respecting the collection and remission of tax, the making of returns, the keeping of records and accounts, and compliance with the rules of the Florida Department of Revenue in the administration of said chapter shall apply to and be binding upon all persons who are subject to the provisions of this ordinance provided, however, the said Department of Revenue may authorize a quarterly return and payment when the tax remitted by the person receiving the consideration for such rental or lease for the preceding quarter did not exceed twenty-five dollars (\$25.00).~~

~~(e) Collections received by the state department of revenue from the tax, less cost of administration of this article, shall be paid and returned on a monthly basis to the county for use by the county in accordance with the provisions of this article and shall be placed in the county tourist development trust fund, which fund shall be established by resolution of the board of county commissioners prior to the receipt of any tax revenues pursuant to this article.~~

* * * *

Section 19-53. – Local collection and administration of the tourist development tax.

(a) Pursuant to Section 125.0104(10), Florida Statutes, or its successor, the County hereby provides for the local collection and administration of the tourist development tax. The Tax Collector shall be responsible for the collection and administration of the tax.

Collection of the tax shall be made in the same manner as the taxes imposed under Chapter 212, Florida Statutes, except that the remittal of tax collections and reports shall be to the Tax Collector.

(b) The person receiving the consideration for any rental or lease within the scope of Section 125.0104(3)(a), Florida Statutes, or its successor, and acting as a dealer within the meaning set forth in Section 212.06(2)(j), Florida Statutes, or its successor, shall receive, account for, and remit the tax to the Tax Collector at the time and in the manner provided for persons who collect and remit taxes under Section 212.03, Florida Statutes, or its successor.

(1) The same duties and privileges imposed by Chapter 212, Florida Statutes, upon dealers in tangible property, respecting the collection and remission of tax, the making of returns, the keeping of records and accounts, and compliance with the rules of the Florida Department of Revenue in the administration of said chapter shall apply to and be binding upon all persons who are subject to the provisions of this ordinance provided, however, the Tax Collector may authorize a quarterly return and payment when the tax remitted by the person receiving the consideration for such rental or lease for the preceding quarter did not exceed twenty-five dollars (\$25.00).

(2) The Tax Collector shall keep records showing the amount of taxes collected as well as appropriate books and accounts associated therewith. The Tax Collector's books and records relating to collections under this article shall be available for inspection by the County's Financial Services Director and the County's Chief Financial Officer with the Clerk of the Court, at reasonable times and to the extent permitted by law.

(3) Each dealer shall keep for three (3) years a complete record of rooms or other lodging, leased or rented, together with gross receipts from such sales, and other pertinent records and papers as may be required by the Tax Collector for the reasonable administration of this article. Any dealer who maintains such books and records at a point outside Flagler County must make such books and records available for inspection by the Tax Collector at any reasonable hour in Flagler County.

(c) Each Dealer and/or Owner shall be required to have a Local Business Tax Receipt (LBTR). The LBTR business number shall be the identifier for the payment of any Tourism taxes owed. Such LBTR business number shall be included on all remittance reports, checks, and shall be required to be clearly shown as part of all marketing and advertisements for the property to include printed, electronic and other methods. To not do so shall be considered a violation of this ordinance.

(d) Collections received by the Tax Collector from the tax shall be paid and returned on a monthly basis to the county for use by the County in accordance with the provisions of this article and shall be placed in the county tourist development trust fund, which fund shall be established by resolution of the Board of County Commissioners prior to the receipt of any tax revenues pursuant to this article. The Tax Collector may retain three percent (3%) of collections for costs of administration of this article and any additional amounts as authorized between the Tax Collector and Board of County Commissioners through Interlocal Agreement or direct action of the Board.

(e) The Tax Collector may use any power granted in Section 125.0104, Florida Statutes, or its successor, and in Chapter 212, Florida Statutes, to the extent applicable, to determine the amount of tax, penalties, and interest to be paid by each dealer and to enforce payment of such tax, penalties, and interest. The Tax Collector may establish procedures for the local collection and administration of the Tax and may prescribe and publish forms necessary to implement this article consistent with the provisions of Section 125.0104 and Chapter 212, Florida Statutes. Such procedures may include guidelines for registration and reporting requirements. The Tax Collector shall be bound by all rules promulgated by the Department of Revenue pursuant to Section 125.0104(3)(k), Florida Statutes, or its successor, as well as those rules pertaining to the sales and use tax on transient rentals imposed by Section 212.03, Florida Statutes, or its successor, in the administration of this article.

(f) The Tax Collector shall perform the enforcement and audit functions associated with the collection and remission of the tax, including without limitation, the following:

(1) For enforcement purposes, the Tax Collector may examine at any reasonable hour the books, records, and other documents of any dealer or other person charged with the duty to report or pay the tax in order to determine whether or not that person is collecting the tax or otherwise complying with this article. The Tax Collector shall have the right to seek a mandatory injunction or other appropriate remedy in circuit court to enforce the right to require an examination of the books and records of that person.

(2) The Tax Collector shall require a dealer to report individually on any properties such dealer owns and/or represents. This requirement shall apply equally to individual property owners, realtors, property managers, and other persons who hold themselves out to own, manage, or represent multiple properties.

(3) Enforcement investigations by the Tax Collector shall include the examination of documents that are relevant to transient renters and rental activities, including from any person, community, condominium association, homeowners association, and property management company. Relevant documents to enforcement investigations may include licenses from the Department of Business and

Professional Regulation, Local Business Tax Receipts, association approval of guests to rent or lease, guest gate entry passes and records, guest golf and/or tennis records, and other guest amenity records.

The Tax Collector or agent of the Tax Collector may conduct audits of the records of dealers as follows:

a.) At least thirty (30) days prior to the date an audit is scheduled to begin, the Tax Collector shall send written notice informing the taxpayer of the audit. The Tax Collector is not required to give such notice of an audit in any instance in which the taxpayer requests an emergency audit.

b.) Such written notice shall contain:

i. The approximate date on which the audit is scheduled to begin;

ii. A statement of the records, receipts, invoices and related documentation of the taxpayer that must be made available to the auditor; and

iii. Any other requests or suggestions the Tax Collector deems necessary.

(4) The Tax Collector shall assess, collect, and enforce payments of delinquent taxes. In addition to the statutory criminal sanctions, the Tax Collector is obligated and empowered, when any tax becomes delinquent, to issue a warrant for the full amount of the tax due or estimated to be due, with the interest, penalties, and cost of collection, directed to all and singular sheriffs of the State, and shall record the warrant which shall become a lien on any real or personal property of the taxpayer in the same manner as a recorded judgment. The Tax Collector may obtain a tax execution to enforce the collection of taxes imposed by this article and deliver it to the Sheriff. The Sheriff shall thereupon proceed in the same manner as prescribed by law for executions and shall be entitled to the same fees for services in executing the warrant to be collected. The Tax Collector may also obtain a writ of garnishment to subject any indebtedness due to the delinquent dealer in the hands, possession, or control of the third person in the manner provided by law for the payment of the tax due. Upon payment of the execution, warrant, judgment or garnishment, the Tax Collector shall satisfy the lien of record within thirty (30) days. The Tax Collector may retain any fees, penalties, and costs paid or secured from such enforcement actions outside of the tourism tax amounts recovered.

(5) In accordance with Section 125.0105, Florida Statutes, or its successor, the Tax Collector may adopt a service fee not to exceed the service fees authorized under Section 832.08(5), Florida Statutes, or its successor, or five percent (5%) of the face amount of the check, draft, or order, whichever is greater, for the collection of a dishonored check, draft, or other order for the payment of the tax. Proceeds from

this fee shall be retained by the Tax Collector. The service fee shall be in addition to all other penalties imposed by law.

- (6) The Tax Collector shall impose a penalty to offset costs incurred by the Tax Collector for enforcement, administration and payment agreements incurred due to late payment resulting from a collection event. For purposes of this article, "collection event" shall mean when a taxpayer/dealer fails to timely file a complete return; timely pay the full amount of the tax reported on a return; or timely pay the full amount due resulting from an audit after all appeal rights have expired or the result has been finally determined. The penalty shall be equal to ten percent (10%) of the total amount of tax, penalty, and interest which remains unpaid after ninety (90) days or attorney fees and court costs, whichever is greater. The penalty shall be imposed in addition to the taxes, fees, and penalties otherwise prescribed by law. The Tax Collector shall review each assessment of the penalty individually in order to achieve compliance. The Tax Collector may retain any fees, penalties, and costs paid or secured from such enforcement actions outside of the tourism tax amounts recovered.
- (7) The Tax Collector shall have the authority to intervene in any bankruptcy, liquidation, or any other proceeding in the office's name for the benefit of the taxpayers of Flagler County for monies owed, in order to carry out the provisions of this article.
- (8) The Tax Collector may utilize a certified public accountant licensed in this state in the administration of this article as an agent in addition to any member of the Tax Collector's staff. Such certified public accountant is bound by the same confidentiality requirements and subject to the same penalties as the county under Section 213.053, Florida Statutes, or its successor.