

Introduced by: Mr. Smiley, Mr. Cartier,  
Mr. Sheldon  
Date of introduction: June 26, 2018

**ORDINANCE NO. 18-071**

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 14 (“FINANCE AND TAXATION”)  
TO IMPLEMENT A NEW CASTLE COUNTY ACCOMMODATION TAX FOR  
HOTEL, MOTEL, AND TOURIST HOME STAYS**

**WHEREAS**, on March 13, 2018, County Council adopted Resolution No. 18-046, which urged the Delaware General Assembly to amend the *Delaware Code* to enable New Castle County to implement an accommodation tax for hotel, motel, and tourist home stays to defray a small portion of the cost of providing county services to visitors; and

**WHEREAS**, in response, on June 7, 2018, the Delaware General Assembly enacted House Bill No. 377, “An Act to Amend Title 9 of the *Delaware Code* Relating to Taxes,” as amended by House Amendment No. 1 (“HB 377”); and

**WHEREAS**, on June 14, 2018, Governor John Carney signed HB 377 into law; and

**WHEREAS**, HB 377 authorizes any county with a population of greater than 500,000 to impose, by ordinance, a local lodging tax of up to three percent (3%) of the rent, in addition to the tax imposed by the State, for any room or rooms in a hotel, motel, or tourist home, as defined in 30 *Del. C.* § 6101, within the unincorporated sections of the county; and

**WHEREAS**, HB 377 exempts rentals by the Delaware Department of Natural Resources and Environmental Control from the lodging tax; and

**WHEREAS**, it is the intent of County Council to impose and collect the lodging tax in a manner similar to the State.

**NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

Section 1. *New Castle County Code* Chapter 14 (“Finance and Taxation”) is hereby amended by adding a new Article 14 (“Lodging Tax”), as set forth below, all of which shall be considered underscored.

**ARTICLE 14. LODGING TAX**

**Sec. 14.14.001. Definitions.**

A. *Definitions*. The definitions in 30 *Del. C.* § 6101 (Lodging Tax Definitions) are hereby incorporated by reference.

**Sec. 14.14.002. Levy of Tax; Exemption; Collection; Payment.**

A. A tax hereby is levied at the rate of three percent (3%) of the rent upon every occupancy of a room or rooms in a hotel, motel or tourist home within unincorporated sections of New Castle County. Such tax shall be in addition to the lodging tax imposed by the State

pursuant to 30 *Del. C.* § 6102.

- B. No lodging tax pursuant to this Article shall be imposed for reservations or contracts paid in full prior to August 1, 2018.
- C. No lodging tax pursuant to this Article shall be imposed upon rentals by the Delaware Department of Natural Resources and Environmental Control.
- D. The lodging tax is imposed on the occupant and shall be collected by the operator from the occupant at the time of the payment of the rent for the occupancy.
- E. The amount of the tax collected for each month shall be reported and remitted to the New Castle County Office of Finance not later than the fifteenth (15<sup>th</sup>) day of the month following the month of collection on forms to be prescribed by the New Castle County Office of Finance.

**Sec. 14.14.003. Late penalty; abatement.**

- A. A penalty at the rate of one percent (1%) per month, or fraction thereof, shall be charged on payments made after the prescribed due date.
- B. Upon written application to the New Castle County Office of Finance, along with any supporting documentation, the Chief Financial Officer hereby is authorized to abate penalty up to and including the requested amount of abatement. The Chief Financial Officer is not authorized to abate principal.

**Sec. 14.14.004. Failure to pay tax; determination; redetermination; review; additional penalty.**

- A. *Determination.* If any operator fails to pay any lodging tax for which he or she is liable, the New Castle County Office of Finance may determine the additional tax and penalty due by such person or entity, based upon any information within its possession or that shall come into its possession. All such determinations shall be made so that notice thereof shall be mailed to the person or entity against whom the determination was made within three (3) years after the date the lodging tax became due.
- B. *Copy of determination to person; petition of redetermination; duty for disposition of petitions; notice of final decision.* Promptly after the date of such determination, the New Castle County Office of Finance shall send, by certified mail to the physical address of the operator, a copy thereof to the person or entity against whom such determination was made. Within ninety (90) days thereafter, the operator may file with the New Castle County Office of Finance a petition for redetermination of such taxes. The petitioner shall state with specificity the reasons the petitioner believes justify redetermination and shall affirm under penalty of perjury that the petition for redetermination is not made for the purpose of delay and that the facts set forth therein are true. The New Castle County Office of Finance shall make a final decision within six (6) months after the date of receipt of the petition and promptly provide written notice thereof to the petitioner.

C. *Additional Penalty.* In addition to late penalty, a one-time penalty of ten percent (10%) shall be imposed on any additional tax determined to be due by the New Castle County Office of Finance.

Section 2. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed to the extent they are in conflict with the provisions of this ordinance.

Section 3. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance is found to be unconstitutional or void, all applicable former ordinances, resolutions or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 4. The effective date for the provisions in this Ordinance shall be August 1, 2018. Accordingly, operators shall remit to the New Castle County Office of Finance the lodging tax imposed herein for August 2018 no later than September 15, 2018.

Section 5. This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive, or as otherwise provided by 9 Del. C. § 1156.

Adopted by County Council of  
New Castle County on: 7/10/18

  
\_\_\_\_\_  
President of County Council  
of New Castle County

Approved on: 7/10/18

  
\_\_\_\_\_  
County Executive  
New Castle County

**SYNOPSIS:** This Ordinance implements the authority provided to New Castle County by the 149<sup>th</sup> General Assembly through adoption of House Bill No. 377, as amended by House Amendment No. 1. This Ordinance imposes a lodging tax of three percent (3%) on hotel, motel, and tourist home rooms in unincorporated sections of New Castle County. The effective date for the tax imposed by this Ordinance is August 1, 2018. Accordingly, operators of hotel, motel and tourist homes shall remit to the New Castle County Office of Finance the lodging tax imposed herein for August 2018 no later than September 15, 2018.

**FISCAL NOTE:** This Ordinance is expected to increase General Fund revenues by the following amounts:

FY 2019:	\$2.4 million (partial year)
FY 2020:	\$3.1 million
FY 2021:	\$3.2 million

A handwritten signature in black ink, appearing to read "April Greger". The signature is written in a cursive, flowing style with a large, stylized initial "A".