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TO: Rolland Sizemore, Jr.
Chair, Ways & Means Committee

FROM: Verna J. McDaniel
County Administrator

Curtis N. Hedger
Corporation Counsel

DATE: July 11, 2012

SUBJECT: Approval of a Second Amendment to the Washtenaw County Accommodations Ordinance which would Exempt Bed and Breakfasts of 14 or Fewer Rooms, Cottages and Individuals Periodically Leasing Rooms from Having to Pay the Accommodations Tax and to Make Other Minor Changes to the Ordinance.

BOARD ACTION REQUESTED:

Administration is requesting that the Board of Commissioners approve a Second Resolution to the Washtenaw County Accommodation Ordinance ("Ordinance") which would exempt bed and breakfasts of 14 or fewer rooms, cottages and individuals who periodically lease rooms in their homes from having to pay the accommodation tax and to make other minor changes to the Ordinance.

BACKGROUND:

Under Michigan law, counties having a population of less than 600,000 people, with a city of at least 40,000 people may enact an ordinance to levy, assess and collect an excise tax of not more than 5% from all persons engaged in the business of providing rooms for dwelling, lodging or sleeping purposes to transient guests. (MCLA 141.861 et seq, the "Act") This excise tax is commonly known as the accommodation tax and it generally applies to the operators of hotels and motels. Under the Act, the collected tax revenue is used primarily to promote and encourage tourist and convention business within the County and to pay for the cost of administering and enforcing the Ordinance requirements.

In 1975, the Washtenaw County Board of Commissioners approved an Accommodation Ordinance which provided, in part, that operators of businesses which provided rooms for dwelling, lodging or sleeping to transient guests, were to be assessed a 2% excise tax for each room rented. Historically, the Washtenaw County Ordinance has also

applied the tax to operators of bed and breakfasts, cottages and individuals who would periodically lease out rooms in their homes for one-time events. In addition, the Ordinance created the Washtenaw County Accommodations Ordinance Commission ("AOC") which is comprised of the following nine members: (a) 2 Washtenaw County Commissioners; (b) 3 members of the Board of Directors of the Greater Ann Arbor Chamber of Commerce; (c) 2 members of the Board of Directors of the Greater Ypsilanti Chamber of Commerce; and (d) 2 at-large appointments. The AOC was created to oversee the collection of the excise tax, recommend the approval of certain contracts to the Board of Commissioners which might be necessary to accomplish the purposes behind the collection of the tax and generally keep the Board of Commissioners apprised of how the collected taxes have been used to promote and encourage tourism and convention business within the County.

On December 3, 2008, the Board of Commissioners approved the first amendment to the Ordinance. (Resolution #08-0244) This amendment, raised the amount of the accommodation excise tax from 2% to 5% as permitted by Michigan law, increased the County portion of the collected taxes to be used to enforce and administer the Ordinance from 5% to 10%, and made other clean-up changes to the Ordinance.

Recently, the AOC began looking at enforcement and administrative costs associated with the Ordinance. This review revealed that all of the recent enforcement actions were being taken against bed and breakfasts, cottages and individuals who periodically leased out rooms in their home for special events. The total tax revenue from these types of businesses is very low (approximately 1% of the total collected) when compared to the traditional hotels and motels which are obligated to comply with the Ordinance. The AOC believes that it is not cost effective for the County to use its portion of the collected tax to enforce the Ordinance against these smaller enterprises. To that extent, Corporation Counsel was asked to review Michigan law to determine if such smaller enterprises could be exempted under the Ordinance.

After looking at a number of Michigan statutes dealing with hotels, motels and bed and breakfast type establishments, Corporation Counsel concluded that it would be permissible for the Board of Commissioners to remove these smaller entities from the duty to collect the accommodation excise tax. His research revealed that in the Hotels, Inns and Public Lodging Houses Act (MCLA 427.1 et seq), the term "Hotel," is defined as a "building or structure kept, used, maintained as, or held out to the public to be an inn, hotel or public lodging house. Hotel does not include a bed and breakfast as defined in section 4b of the state construction code act of 1972, Act. No. 230 of the Public Acts of 1972, being section 125.1504b of the Michigan Compiled Laws." MCLA 125.1504b, in turn, states, "a bed and breakfast is considered under the code to be a single family residential structure and shall not be treated as a hotel or other facility serving transient tenants." In MCLA 289.1105(d), the term, "bed and breakfast" is further defined as "a *private residence* of that offers sleeping accommodations to transient tenants in 14 or fewer rooms for rent, is the innkeeper's residence in which the innkeeper resides while renting the rooms to transient guests and serves breakfasts or other meals at no extra cost to its transient tenants."

On June 5, 2012 the AOC met to discuss a proposed second amendment to the Ordinance which would remove bed and breakfasts, cottages and individuals who periodically lease out rooms in their homes from the duty to pay the excise tax under the Ordinance. The AOC unanimously approved the proposed second amendment.

DISCUSSION:

As noted above, when the AOC began to review the administrative and enforcement costs in attempting to compel smaller enterprises such as bed and breakfasts, cottages and individuals leasing out rooms in their homes to comply with the Ordinance, it became apparent that such enforcement efforts were not cost-effective relative to the amount of tax revenue raised from such entities. Approval of the proposed second amendment to the Ordinance, which would remove these types of entities from having to pay the tax would not significantly affect the overall revenues generated by the tax which is approximately 1% of the total revenues collected.

It should also be noted that the respective convention and visitors bureaus (“CVB’S”) in Ann Arbor and Ypsilanti support this amendment. While the CVB’s list such smaller entities as possible places to stay in the County, they have never been marketed by the CVB’s like the hotels and motels in the County. Approval of the proposed amendment would formalize the informal arrangement which has existed for years between the smaller entities and the CVB’s.

Finally, other counties have taken similar action to remove such smaller entities from their respective accommodation ordinances. For instance, in Ingham County, the Board of Commissioners amended its Accommodation Ordinance to remove bed and breakfasts and cottages in the fall of 1991.

Approval of the proposed Second Amendment to the Ordinance would remove bed and breakfasts, as defined more fully above, cottages and individuals periodically leasing rooms in their homes from the duty to pay the accommodation excise tax. This amendment, if approved, will decrease the County’s administrative and enforcement costs and permit the County to focus its limited resources under the Ordinance on those larger entities such as hotels and motels which generate the vast majority of collected taxes under the Ordinance.

IMPACT ON HUMAN RESOURCES:

None

IMPACT ON BUDGET:

Approval of the proposed Resolution would have no impact on the County’s general fund budget.

IMPACT ON INDIRECT COSTS:

None

IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:

Approval of the proposed Resolution would mean that the County Treasurer, who enforces the Ordinance, would not have to expend time and money enforcing Ordinance requirements against bed and breakfasts, cottages or individuals who periodically lease out rooms in their homes.

CONFORMITY TO COUNTY POLICIES:

The proposed Resolution conforms to all County Policies.

ATTACHMENTS:

Revised Washtenaw County Accommodation Ordinance (attached to Resolution)

A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE WASHTENAW COUNTY ACCOMMODATION ORDINANCE TO EXEMPT BED AND BREAKFASTS, COTTAGES AND INDIVIDUALS WHO PERIODICALLY LEASE ROOMS IN THEIR HOMES FROM HAVING TO PAY THE ACCOMMODATION EXCISE TAX UNDER THE ORDINANCE

WASHTENAW COUNTY BOARD OF COMMISSIONERS

August 1, 2012

WHEREAS, under Michigan law (MCLA 141.861 et seq), counties having a population of less than 600,000 people, with a city of at least 40,000 people, may enact an ordinance to levy, assess and collect an excise tax of not more than 5% from all persons engaged in the business of providing rooms for dwelling, lodging or sleeping purposes to transient guests; and

WHEREAS, the main purpose of the collected accommodation excise taxes is to promote tourism and convention business within the county where the tax is assessed; and

WHEREAS, in 1975, the Washtenaw County Board of Commissioners approved an Accommodations Ordinance ("Ordinance") which provided, in part, that operators of businesses which provided rooms for dwelling, lodging or sleeping to transient guests were to be assessed a 2% excise tax for each room rented; and

WHEREAS, the Ordinance also created the Washtenaw County Accommodations Ordinance Commission ("AOC") as the governing board to oversee the Ordinance; and

WHEREAS, on December 3, 2008, the Washtenaw County Board of Commissioners approved a Resolution (#08-0244) amending the Ordinance as follows: increasing the amount of the excise tax from 2% to 5% as permitted by Michigan law, and increasing the County share of the collected excise tax used to administer and enforce the Ordinance from 5% to 10% of the total collected taxes; and

WHEREAS, recently, the AOC began looking at the cost to administer and enforce the Ordinance; and

WHEREAS, this review revealed that all of the current enforcement actions were being taken against bed and breakfasts, cottages and/or individuals who periodically leased rooms in their homes; and

WHEREAS, the total amount of tax collected from these smaller establishments is a very small (approximately 1%) percentage of the total excise tax collected under the Ordinance; and

WHEREAS, because Michigan law does not define bed and breakfasts and other related entities as hotels or motels, but rather as single family residences, the County's Corporation Counsel has concluded that the Board of Commissioners may exclude such entities from the duty to pay the excise tax under the Ordinance; and

WHEREAS, other similarly situated counties have exempted bed and breakfasts, cottages and other smaller type entities from their ordinances; and

WHEREAS, on June 5, 2012, the AOC unanimously passed a Resolution requesting the Board of Commissioners to amend the Ordinance to remove bed and breakfasts of 14 or fewer rooms for rent, cottages and individuals who periodically lease rooms in their homes from having to pay the excise tax under the Ordinance because it is not cost effective for the County to spend enforcement dollars on entities which Michigan law does not classify as hotels or motels; and

WHEREAS, on August 1, 2012, the Washtenaw County Board of Commissioners held a public hearing on the proposed Second Amendment to the Ordinance.

NOW THEREFORE, BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners approves the Second Amendment to the Washtenaw County Accommodation Ordinance, as attached to this Resolution, which exempts bed and breakfasts of 14 or fewer rooms for rent, cottages and individuals periodically leasing out rooms from the duty to pay the accommodation excise tax under the Ordinance.

BE IT FURTHER RESOLVED that because Michigan's Accommodation Ordinance legislation (MCLA 141.861 et seq) specifically states that any ordinance or amended ordinance does not become effective before the first day of the month following 60 days after the ordinance or amended ordinance is approved, the "Second Amended Washtenaw County Accommodations Ordinance shall not become effective until October 1, 2012.

BE IT FURTHER RESOLVED that the current version of Washtenaw County Accommodation Ordinance remains in full force and effect until October 1, 2012, at which time the "Second Amended Washtenaw County Accommodation Ordinance" shall become effective.

SECOND AMENDMENT TO WASHTENAW COUNTY ACCOMMODATION ORDINANCE

The “Ordinance providing for the assessment and collection of an excise tax on persons engaged in the business of providing room for dwelling, lodging or sleeping purposes to transient guests” (“Ordinance”) is amended as follows:

In the first paragraph of the Ordinance, replace the words, “sleeping purposes” in the second line of the paragraph with the words, “sleeping accommodations.”

Section 1—Definitions is amended to add the following language:

(b) “Bed and Breakfast” means a private residence that offers sleeping accommodations to transient tenants in fourteen (14) or fewer rooms for rent, is the innkeeper’s residence in which the innkeeper resides while renting the rooms to transient tenants, and has a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor. For purposes of this Ordinance, the term “Bed and Breakfast” is also defined to include cottages, as well as individual homes and/or rooms within individual homes which are periodically leased for one-time events such as football games or concerts.

The remainder of the subparts in the “Definitions” section of the Ordinance shall be re-lettered accordingly.

Section 3(b) is amended to read as follows:

No tax shall be imposed upon a bed and breakfast, including cottages individual homes and/or rooms within individual homes which are periodically leased for one-time events, hospital, nursing home or upon a corporation or association organized and operated exclusively for religious, charitable or educational purposes, in which no part of the net earnings inures to the benefit of any private shareholder or individual.

Section 4 is amended to read as follows:

All persons, except for those specifically exempted by Section 3(b), who are engaged in the business of providing rooms for dwelling, lodging or sleeping purposes to transient guests shall collect the tax imposed in Section 3 hereof, for the County of Washtenaw.

All other terms and conditions in the Ordinance shall remain the same.

TABLE OF CONTENTS

SECTION 1— Definitions	1
SECTION 2— Purpose	1
SECTION 3—Levy of Tax, Collection, Rate, Exceptions	1
SECTION 4—Collections	2
SECTION 5 — Reports, Remittances	2
SECTION 6— Powers and Duties of County Treasurer, Rules and Regulations, Collections Expenses	2
SECTION 7 — Power to Contract for Fund Administration	2
SECTION 8—Abatements and Refunds	2
SECTION 9—Other Taxes Notwithstanding	3
SECTION 10— Disposition of Revenues	3
SECTION 11— Penalties	3
SECTION 12— Washtenaw County Accommodation Ordinance Commission	4
SECTION 13—Separability	5
SECTION 14— Repeal of Conflicting Ordinances	5

ACCOMMODATION ORDINANCE

AN ORDINANCE providing for the assessment and collection of an excise tax on persons engaged in the business of providing rooms for dwelling, lodging or sleeping purposes accommodations to transient guests; purpose; to require reports; provide for the powers and duties of the county treasurer; power to contract for fund administration; to provide penalties; to provide for abatements and refunds; and to provide for disposition of revenues.

The Washtenaw County Board of Commissioners hereby ordains.

SECTION 1 DEFINITIONS

- (a) "Accommodations" means the room or other space provided for sleeping, including furnishings and other accessories therein; does not include food and beverages.
- (b) **"Bed and Breakfast" means a private residence that offers sleeping accommodations to transient tenants in fourteen (14) or fewer rooms for rent, is the innkeeper's residence while renting the rooms to transient tenants and has a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor. For purposes of this Ordinance, the term, "Bed and Breakfast" is also defined to include cottages, as well as individual homes and/or rooms within individual homes which are periodically leased for one-time events such as football games or concerts.**
- (c) "County Treasurer" means the elected county treasurer or his/her duly authorized representative.
- (d) "Convention and entertainment facilities" means all or any part, or any combination of convention halls, auditoriums, stadiums, music halls, arenas, meeting rooms, exhibit areas and related public areas.
- (e) "Person" means a natural person, partnership, fiduciary, association, corporation or other entity.
- (f) "Revenues" means the income derived from the excise tax levied under this Ordinance, plus interest and penalties imposed by this Ordinance.
- (g) "Transient Guest" means a natural person staying less than thirty (30) consecutive days.

SECTION 2 PURPOSE

The purpose of this Ordinance is to raise money to promote and encourage tourist and convention business in the County of Washtenaw and to finance the acquisition, construction, improvement, enlargement, repair or maintain convention and entertainment facilities.

SECTION 3
LEVY OF TAX, COLLECTION, RATE, EXCEPTIONS

- (a) There is hereby levied upon and shall be collected from all persons engaged in the business of providing rooms for dwelling, lodging or sleeping purposes to transient guests, whether or not membership is required for the use of the accommodations, an excise tax equal to 5% of the total charge for accommodations.

- (b) No tax shall be imposed **upon a bed and breakfast, including cottages or individual homes and/or rooms within individual homes which are periodically leased for one-time events, hereunder upon hospitals or** nursing homes, or upon a corporation or association organized and operated exclusively for religious, charitable or educational purposes, in which no part of the net earnings inures to the benefit of any private shareholder or individual.

SECTION 4
COLLECTIONS

All persons, **except for those specifically exempted by Section 3(b)**, who are engaged in the business of providing rooms for dwelling, lodging or sleeping purposes to transient guests shall collect the tax imposed in Section 3 hereof, for the County of Washtenaw.

SECTION 5
REPORTS, REMITTANCES

On or before the fifteenth day of each month, every person required in Section 4 thereof to collect the tax imposed herein shall file a report for the preceding month with the County Treasurer showing the total amount of consideration paid for all accommodations in the preceding month, the amount of the tax collected on such accommodations and any other information that the County treasurer may reasonably require. Such person shall pay the tax due on such accommodations at the time of filing his report with the County Treasurer. All remittances of taxes imposed by this Ordinance shall be to the County Treasurer by bank draft, check, cashier's check money order, certificate of deposit or money. The County Treasurer shall issue his/her receipt, and shall forthwith deposit all monies received in a special fund of the County; Provided, However, that no remittance other than cash shall be a final discharge of liability for the tax herein assessed and levied unless and until it has been paid in cash.

SECTION 6
POWERS AND DUTIES OF COUNTY TREASURER, RULES AND REGULATIONS,
COLLECTION EXPENSES

The County Treasurer shall collect the tax imposed in Section 3 herein and shall administer and enforce this Ordinance. The County Treasurer shall have the power to make such rules and regulations, subject to the approval of the Board of Commissioners, as are necessary to effectively collect the tax levied herein and shall upon reasonable notice have access to books and records necessary to enable him/her to determine the correctness of any report filed as required by this Ordinance and the amount of taxes due under the provisions of this Ordinance. The County Treasurer shall furnish forms, instructions, manuals and other materials necessary for endorsement of the tax and the auditing of tax returns to each taxpayer. The County will receive an amount not to exceed ten percent (10%) of all proceeds collected under this Ordinance plus all interest and penalty fees for administrative and enforcement expenses incurred by the County.

SECTION 7
POWER TO CONTRACT FOR FUND ADMINISTRATION

The County of Washtenaw may enter into a contract with a non-profit agency outside of the county government to carry out the purposes of this Ordinance.

SECTION 8
ABATEMENTS AND REFUNDS

If a return or remittance is filed after the due date set forth in Section 5 and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect, as determined by the County Treasurer, the penalty and interest prescribed in Section 11 shall not apply; Provided, However, the County Treasurer shall at no time have the power or authority to cancel or diminish any part of the tax imposed under this Ordinance unless the tax was inadvertently collected from a person meeting the requirements in Section 3 (b) or a court of competent jurisdiction orders such.

SECTION 9
OTHER TAXES NOTWITHSTANDING

The taxes levied under this ordinance shall be in addition to any other taxes, charges or fees.

SECTION 10
DISPOSITION OF REVENUES

The revenues derived from the taxes imposed pursuant to this Ordinance may be used by the County or any authority which is organized pursuant to state law for only the following purposes:

- (a) The cost of administration and enforcement of the Ordinance.
- (b) The financing of the acquisition, construction, improvement, enlargement, repair or maintenance of convention and entertainment facilities, including the payment of principal and interest, when due, on bonds or other evidence of indebtedness issued by the County for convention and entertainment facilities.
- (c) Current or future annual rental payable by the County to an authority organized pursuant to state law for the purpose of acquiring, construction, improving, enlarging, repairing or maintaining the convention and entertainment facilities and leasing them to the County.
- (d) The promotion and encouragement of tourist and convention business in the County.

SECTION 11
PENALTIES

Any person who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed One Hundred (\$100.00) Dollars or imprisoned in the County Jail for a period not to exceed ninety (90) days, or by both such fine and imprisonment. In addition, any person who fails to remit the tax or violates the reporting provision imposed by this Ordinance within the time required shall forfeit an additional five (5%) percent of the amount of the unpaid tax per month or fraction thereof after the due date until paid; provided, however, said penalty shall not exceed twenty-five (25%) percent of the unpaid tax. In addition, delinquent taxes shall draw interest at the rate of one (1%) percent per month or fraction thereof of the unpaid tax after the due date until paid. Any penalty and/or interest added thereto shall be collected as part of the tax.

SECTION 12
WASHTENAW COUNTY ACCOMMODATION ORDINANCE COMMISSION

- A The Washtenaw County Accommodation Ordinance Commission is hereby established as the official governing board for the purpose of this Ordinance.
- B The Washtenaw County Accommodation Ordinance Commission shall consist of nine (9) members. The members shall be appointed by the following organizations:

<u>Number to be Appointed</u>	<u>Appointing Agency</u>
2	Washtenaw County Board of Commissioners (appointments to be members of the Washtenaw County Board of Commissioners)
2	Washtenaw County Board of Commissioners (At-Large appointments - not Washtenaw County Board of Commissioners)
3	Ann Arbor Area Convention and Visitor Bureau
2	Ypsilanti Area Convention and Visitors Bureau

The original appointments shall run from September 1, 1975 until December 31, 1976. Subsequent appointments shall be from one (1) year expiring on December 31st of each subsequent year. The Commission may be increased by the Washtenaw County Board of Commissioners to reflect representatives of new incorporated non-profit agencies with which the County may contract with for use of the proceeds of this tax.

- C Meetings - The Commission shall meet at least quarterly every year. All meetings of the Commission shall be open to the public. Any person or representative of his/her choice shall be entitled to appear and be heard on any matter before the Commission before it reaches its decision. The Commission shall keep a record which shall be open to public view of its resolutions, proceedings and actions. The Commission shall establish by-laws and rules of procedure for its operations. These bylaws and rules of procedure shall be approved by the Washtenaw County Board of Commissioners.
- D Functions and Duties – The Washtenaw County Accommodation Ordinance Commission shall carry out the following functions and perform the following duties.
 - 1. Recommend to the Washtenaw County Board of Commissioners that it contract with local agencies to perform the functions of this Ordinance.

2. Review existing and proposed contracts with local agencies and report its recommendations to the Washtenaw County Board of Commissioners.
3. Annually review and approve the budgets of any local agency which has a contract under this Ordinance.
4. Review annual audits of any local agency which has a contract under this Ordinance and report to the Washtenaw County Board of Commissioners on its review.
5. Quarterly review financial and program reports submitted by local agencies which have contracts under this Ordinance.
6. Annually review and report to the Washtenaw County Board of Commissioners on the distribution of the proceeds of this tax to local agencies.
7. Assist the Treasurer in any collection problem that may arise.
8. Performance such other duties that are consistent with this Ordinance and are from time to time authorized by the Washtenaw County Board of Commissioners.

SECTION 13
SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 14
REPEAL OF CONFLICTING ORDINANCES

All ordinances or parts of ordinances conflicting with the provisions of this ordinance of Washtenaw County are hereby repealed.

SECTION 15
EFFECTIVE DATE

This ordinance shall become effective on the 1st day of **October, 2012**

IN WITNESS WHEREOF, this ordinance is hereby executed this ____ day of **August, 2012**

ATTESTED TO:

COUNTY OF WASHTENAW:

By: _____
Lawrence Kestenbaum
Washtenaw County Clerk/Register of Deeds
Commissioners

By: _____
Rolland Sizemore, Jr, Chair
Washtenaw County Board of

H: general/accom12memo