

RESOLUTION APPROVING INTERGOVERNMENTAL AGREEMENT BETWEEN THE ASHTABULA COUNTY BOARD OF COMMISSIONERS AND THE CITY OF ASHTABULA FOR TRANSIENT LODGING TAX COLLECTION

WHEREAS, an intergovernmental agreement has been presented for the approval of the Board, to-wit:

PARTIES: Ashtabula County Board of Commissioners, 25 W. Jefferson St., Jefferson, OH 44047
Ashtabula City, 4717 Main Ave., Ashtabula, OH 44004

PURPOSE: Local transient lodging tax administration and collection of local and county lodging tax

COST: Not to exceed: 1% of total 3% collected annually

TERM: From the date it is executed by all parties and until it is terminated by operation of law or by either party, at its discretion upon at least ninety (90) days prior written notice.

WHEREAS, this Board of Commissioners concurs and finds this agreement to be reasonable and necessary;
now

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio that the agreement noted above is approved in accordance with the copy now on file in this office.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2022-235

May 03, 2022

**RESOLUTION APPROVING INTERGOVERNMENTAL AGREEMENT BETWEEN THE
ASHTABULA COUNTY BOARD OF COMMISSIONERS AND THE CITY OF
ASHTABULA FOR TRANSIENT LODGING TAX COLLECTION**

Upon the motion of Casey R. Kozlowski, seconded by Kathryn L. Whittington.

VOTE:

J.P. Ducro IV

Aye

Casey R. Kozlowski

Aye

Kathryn L. Whittington

Aye

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



Lisa Hawkins, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio

TRANSIENT LODGING TAX COLLECTION INTERGOVERNMENTAL AGREEMENT

This Transient Lodging Tax Agreement ("Agreement") is entered into between the Ashtabula County Board of Commissioners ("Board") and the City of Ashtabula.

In consideration of the conditions and promises hereinafter contained, it is mutually agreed by the parties that the Board shall supervise and administer, according to the terms and conditions set forth in this Agreement, the municipal or township excise lodging tax on transient lodging by authorized under Ohio Revised Code Chapter 5739 and approved by Local Government ordinance/resolution # 2022-55.

1. Definitions. As used in this Agreement the following terms have the meanings ascribed to them:

"Confidential Information" means all returns, documents, and payments submitted by each vendor, all records and other documents examined, and all information or knowledge of any vendor's business obtained by the Administrator shall be treated as confidential by the Administrator and shall not be released except upon order of a court of competent jurisdiction or to a duly authorized officer or agent of the Federal government, the State of Ohio, or any municipal corporation or township in the County of Ashtabula which levies a tax pursuant to ORC 5739.024(B)/5739.09.

"Local Government" means the municipality or township that has entered into this agreement with the Board for collection of Local Taxes authorized under Ohio Revised Code Chapter 5739.

"Local Tax" or "Local Taxes" means the Local Transient Lodging Tax imposed by Local Government, together with any additional interest or penalties provided for by state statute or the Board's rules;

"Local Taxpayer" means a Transient Lodging Provider, or a Transient Lodging Intermediary, with a lodging facility located in the taxing jurisdiction of Local Government.

"Ordinance" means the ordinance or resolution imposing a Local Tax adopted by the governing body of the municipality/township that is attached hereto as Exhibit A and by this reference incorporated herein.

"Taxpayer" means a Transient Lodging Provider or Transient Lodging Intermediary with a lodging facility located in a taxing jurisdiction.

"Transient Lodging" means lodging by a hotel that is or is to be furnished to guests for less than 30 days at a time.

"Transient Lodging Intermediary" means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and: a. Charges for occupancy of the transient lodging; and/or b. Collects the consideration charged for occupancy of the transient lodging.

"Transient Lodging Provider" means a person who furnishes transient lodging.

2. General Administration. The Board shall be responsible for all aspects of Local Tax administration, including, but not limited to, adopting administrative rules; auditing returns; assessing deficiencies and collecting the Local Tax and penalties and interest under applicable statutes; making refunds; holding conferences with Local Taxpayers; handling

appeals; determining the minimum amount of Local Tax collectible; and taking any other action necessary to administer and collect the Local Taxes. The Board has adopted rules related to the taxation of Transient Lodging and Local Government understands and agrees that such rules will be applied in administering the Local Tax.

3. **Level of Service.** In performing its duties, the Board may in its sole discretion determine what action shall be taken to enforce provisions of the law and to collect the Local Tax. In exercising its discretion, the Board shall provide a level of services that are comparable to the level of services it provides in the administration of the Ashtabula County Board of Commissioners transient lodging tax laws and the collection of such taxes owed to the Board. If the Board deems it necessary to vary substantially from this standard, the Board shall first notify Local Government of the need and obtain Local Government's consent. The Board shall provide all forms necessary for implementation of the Local Tax, including forms for transient lodging tax returns, exemptions and refunds.
4. **Transfer of Taxes to Local Government.** Beginning at the end of the first full quarter after execution of this Agreement, the Board shall remit to Local Government the amount of Local Taxes collected in the preceding quarter less amounts withheld to pay the Board's fees and other costs as described in this Agreement within 60 days of the return due date for the quarter. The Board shall notify Local Government if, because of inability to move funds electronically or otherwise through the banking system, a force majeure event, or other exigent circumstance, the Board is unable to transfer the Local Tax collected to Local Government as provided in this Section. In that event, the Board shall provide an estimate, if possible, of when it expects to be able to transfer the Local Taxes collected to Local Government.
5. **Withholding for Fees and Rebate.** The Board shall withhold 1% from the Local Taxes collected and transfer to Local Government an amount equal to 99 percent (99%) of the Local Taxes collected. Example: If \$100 is collected, the Board retains \$1 as fees and transfers \$99 to the Local Government. Penalties will be assessed on late payments of Local Taxes at a rate of ten percent (10%). The entire penalty will be paid to the Local Government

Example: Taxable Rent = \$1,000.00

County tax 5%= 50.00

County Penalties 10% = 5.00

Local Tax 3%= 30.00 – \$0.30 (1% admin fee) = \$29.70

Local Penalties for late payment 10% = 3.00

6. **Recovery of Overpayments.** If the amount of Local Taxes paid to Local Government under this Agreement exceeds the amount to which Local Government is entitled, the Board may, after notifying Local Government in writing, withhold from later payments due Local Government under this Agreement such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

7. **Board Quarterly Reports.** Beginning with the first full calendar quarter after the execution of this Agreement and continuing each calendar quarter thereafter, within sixty (60) days after the due date for quarterly Local Tax returns, the Board shall provide Local Government with a report indicating the amount of Local Taxes collected, the Board's fees incurred, the amount withheld under this Agreement and the cumulative amount of delinquent Local Taxes for each lodging provider in Local Government's jurisdiction. The information in this report must be treated as potentially revealing Confidential Information and shall be protected as such. Local Government shall adopt procedures to prevent Confidential Information from being disclosed, except as consistent with this Agreement. The Board and Local Government may disclose any non-confidential information from a report when required to do so by law, including the Ohio Public Records Law.
8. **Board Annual Reports.** In the first calendar quarter of each year, the Board shall provide a written annual report of the preceding calendar year to Local Government showing the total amount of Local Taxes collected, refunds paid, the expenses of administering and collecting the Local Tax, and other pertinent information. The report shall show the total amount withheld by the Board under this Agreement. In the report, the Board shall also make recommendations concerning changes in Local Tax Ordinances, procedures, policies, Local Tax administration and related matters, as the Board deems necessary and appropriate. The information in this report must be treated as potentially Confidential Information and shall be protected as such. Local Government shall adopt procedures to prevent Confidential Information from being disclosed, except as consistent with this Agreement. The Board and Local Government may disclose any non-confidential information in the report when required to do so by law, including the Ohio Public Records Law.
9. **Local Government Reports.** Within sixty (60) days of the effective date of this Agreement, Local Government shall provide the Board with a list of zip code areas that are within its jurisdiction for purposes of imposing the Local Tax. Local Government shall review all reports provided to it by the Board and shall promptly notify the Board of any perceived error or omission(s) in such reports.
10. **Records Maintenance and Access.** Each party shall maintain its records relevant to this Agreement, the Local Taxes and Local Taxpayers for the period of time specified and in the manner required under the document retention and archiving requirements applicable to it. Upon written request, each party may examine the records of the other party at a time and location that is convenient and without extra cost to the holder to the records; provided, however, any requests for records made in connection with litigation or other efforts to collect the Local Tax shall be immediately provided in the time and manner requested.
11. **Ordinance and Notification of Changes.** Contemporaneous with the execution of this Agreement, Local Government shall provide a copy of the Ordinance to Board for incorporation into this Agreement as Exhibit A. In order to insure consistency in administration of the Local Tax, each party shall notify the other of any change in applicable law, including changes to the Ordinance and any state or local regulations or rulings interpreting the Local Tax or the Ordinance, any changes in rates or changes in Local Government's boundary at least ninety (90) days prior to the effective change, unless it is not legally possible to provide ninety (90) days' notice or both parties mutually agree to effect such changes in less than

ninety (90) days. Each party shall notify the other of any change in administration of the Local Tax under this Agreement.

12. **Information.** The parties will cooperate in the exchange of information and making public announcements to facilitate effective administration of the Local Tax and maintain consistency in public announcements and information. Policy announcements, announcement of changes to the Ordinance, and all public relations related to the Local Tax will be handled by Local Government. The Board shall promptly notify Local Government of any issue arising in the administration of the Local Tax that would require any legislative change or affect Local Government's policy, including any policy that relates to the amount of Local Tax collected. Nothing in this section shall prohibit the Board from conducting its own outreach activities to increase awareness and knowledge of Local Tax obligations.

13. **Confidentiality.**

a. Confidential Information may be disclosed to Local Government by the Board, at the discretion of the Board, only for purposes of carrying out the administration of the Local Tax. Requests for Confidential Information may be made by Local Government by giving not less than ten (10) days' notice to the Board, stating the information desired, the purposes of the request, and the use to be made of such information. If the compilation of the requested information is not reasonably feasible, the Board shall so advise Local Government and may decline to provide the requested information.

b. A listing of every person employed by Local Government that is authorized to request and receive Confidential Information identified in this Agreement must be sent by Local Government to the following designated representative:

Jamie Arcaro, Transient Lodging Tax Program Administrator

Contact Email: JJArcaro@ashtabulacounty.us

c. Local Government shall comply with the requirements of the Ohio Revised Code in the event of a breach of security or disclosure of confidential information.

14. **Term.** The term of this Agreement shall be from the date it is executed by all parties and until it is terminated by operation of law or by either party, at its discretion upon at least ninety (90) days prior written notice. Prior to the termination date specified in written notice provided under this section, Local Government and the Board will continue to perform their respective duties and obligations of under this Agreement. After the termination date, the Board will cease all collection and other activities under this Agreement, unless prior to the termination date the Board and Local Government agree in writing that the Board may continue actions that are pending or are being collected after judgment or stipulation. In addition, after the termination date the Board will continue to remit to Local Government any Local Taxes received by the Board, after deduction of the Boards's actual costs, until all matters pending on the date of termination have been resolved or collected. The Board shall administer the Local Tax for Local Government beginning [DATE] May 1, 2022.

15. **Default and Remedies.** A party shall be in default under this Agreement if it fails to perform any of its duties and obligations under this Agreement, and fails to cure such nonperformance

within ninety (90) days after the other party provides written notice specifying the nature of the nonperformance. If the nonperforming party does not cure its nonperformance, or provide a satisfactory explanation to the other party of its performance under this Agreement, the other party may terminate this Agreement immediately or at a later date specified in written notice provided to the nonperforming party. In addition to termination of this Agreement, in the event of default by a nonperforming party, the other party may pursue any remedies available in law or equity.

16. Notices. All notices, documents, and information shall be sent as follows:

For Board: Jamie Arcaro, Transient Lodging Tax Program Administrator

Contact Email: JJArcaro@ashtabulacounty.us

For Local Government: Traci Welch, Finance Director / email: financedirector@cityofashtabula.com

17. Amendments. The provisions of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.
18. Successors and Assigns. This Agreement shall be binding and inure to the benefit of the parties, their successors and assigns.
19. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
20. Representations. Each party represents to the other that the making and performance of this Agreement: (a) have been duly authorized by its governing body or official, (b) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board or other administrative agency or any provision of any applicable local charter or other organizational document, and (c) does not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which the party is bound.
21. Governing Law, Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Any claim, action, suit or proceeding (collectively "Claim") between the Board and Local Government regarding the enforcement or interpretation of this Agreement shall be brought and conducted solely and exclusively within the Ashtabula County Court of Common Pleas.
22. Force Majeure. Neither party is responsible for any failure to perform or any delay in performance of an obligation under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligation under this Agreement.

23. Counterparts. This Agreement may be executed in counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed constitutes an original.

24. Merger. This Agreement and any exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or presentations, oral or written, not specified herein regarding this Agreement. Each party represents that this Agreement, when fully executed and delivered will constitute a legal, valid and binding obligation of the party in accordance with its terms, and that the person signing below is the authorized representative of the party with full power and authority to bind his/her principal to this Agreement.

Ashtabula County Board of Commissioners



Date: 5-3-22



Date: 5-3-22



Date: 5-3-22

For Local Government



Date: 9-26-2022



Date: 4-26-2022



Date: 4/26/2022

ORDINANCE NO. 2022-55

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO THE TRANSIENT LODGING TAX COLLECTION INTERGOVERNMENTAL AGREEMENT WITH THE ASHTABULA COUNTY BOARD OF COMMISSIONERS FOR THE PURPOSE OF COLLECTING TRANSIENT LODGING TAXES OWED TO THE CITY OF ASHTABULA

WHEREAS, the daily operations of the City Manager's Department and the public's peace, health and safety require the enactment of this ordinance; and

WHEREAS, the City Director of Finance has determined there is need to collect transient lodging taxes in a more efficient and effective manner; and,

WHEREAS, the Ashtabula County Board of Commissioners has arranged for the electronic collection of transient lodging taxes owed the County and has offered the City an opportunity to enter into an intergovernmental agreement to collect transient lodging taxes owed the City of Ashtabula in the same manner; and,

WHEREAS, the cost to the City will be one percent (1%) of the taxes collected for the City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Ashtabula, Ohio:

SECTION 1. That the City Manager be and is hereby authorized to enter into an agreement with the Ashtabula County Board of Commissioners for the purpose of collecting transient lodging taxes owed to the City at a cost of one percent (1%) of the taxes collected for the City under the agreement.

SECTION 2. It is found and determined that all formal actions of this Council concerning and related to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its Committees that resulted in such formal action were in meetings open to the public in compliance with the requirements of Section 10 of the Municipal Charter of the City of Ashtabula, Ohio, and of R. C. Section 121.22.

SECTION 3. For the reasons stated in the preamble, this ordinance, if approved by the votes of five (5) or more members of Council, shall take effect immediately. otherwise 30 days thereafter.

PASSED: April 18, 2022

John S. Roskovics
John S. Roskovics
President of Council

Vote:

	Yea	Nay
Roskovics:	—	✓
Speelman:	✓	—
Foglio:	✓	—
Crawford:	✓	—
Holman:	✓	—
Mills:	✓	—
Haines:	<u>absent</u>	

ATTEST: Stacy H. Benskey
Stacy H. Benskey
Clerk of Council

APPROVED: James M. Timonere
James M. Timonere
City Manager

Approved as to form and correctness this 18 day of April, 2022.
Cecilia M. Cooper
Cecilia M. Cooper, Esq.
Ashtabula City Solicitor