

MONROE COUNTY TOURIST DEVELOPMENT COUNCIL'S

OPERATIONS MANUAL

SECTION VIII

MONROE COUNTY CODE

Monroe County Code
>>Continued

MONROE COUNTY CODE

ARTICLE VI. TOURIST DEVELOPMENT TAX*

***State law references:** Tourist development tax, F.S. § 125.0104.

Sec. 23-197. Levy of tourist development tax.

(a) There shall be levied throughout the incorporated and unincorporated areas of the county a tourist development tax at a rate of three percent of each whole and major fraction of each dollar of the total rental charged every person who rents, leases or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment motel, roominghouse, tourist or trailer camp or condominium for a term of six months or fewer. When receipt of consideration is by way of property other than money, the tax shall be levied on the fair market value of such nonmonetary consideration.

(b) The tourist development tax shall be in addition to any other tax levied pursuant to F.S. ch. 212 and in addition to all other taxes, fees and the consideration for rental or lease.

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

(Code 1979, § 2-297; Ord. No. 15-1988, § 1)

Sec. 23-198. Collection.

(a) Pursuant to the provisions of F.S. § 125.0104(10), the county shall collect and administer the tourist development tax locally. Initial collection of the tax shall continue to be made in the same manner as the tax imposed under F.S. ch. 212. The county tax collector shall be responsible for the collection and administration of the tax. A person receiving the consideration for rental or lease payments shall receive, account for, and remit the tax thereon to the county tax collector at the time and in the manner provided for persons who collect and remit taxes under F.S. § 212.03. The same duties and privileges imposed by F.S. ch. 212 upon dealers in tangible property respecting the remission and collection of tax, the making of returns, the keeping of books, records and accounts, and payment of a dealer's credit, and compliance with the rules of the county tax collector in the administration of such chapter shall apply to and be binding upon all persons who are subject to the provisions of this article; provided, however, the county 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 \$25.00.

(b) Pursuant to F.S. § 125.0104, the county tax collector shall keep records showing the amount of taxes collected. These records shall be open to the public during the regular office hours of the county tax collector.

(c) Collections received by the county tax collector from the tax, less costs of administration of this article, shall be paid and returned, on a monthly basis, to the county clerk, for use by the county in accordance with the provisions of this article and shall be placed in the "Monroe County Tourist Development Trust Fund."

(d) The county tax collector is authorized to employ persons and incur other expenses to administer this article.

(e) The county tax collector may promulgate such rules and may prescribe and publish such forms as may be necessary to effectuate the purposes of this article.

(f) The county clerk of the court shall perform the enforcement and audit functions associated with the collection and remission of this tax, including, without limitation, the following:

(1) For the purposes of enforcing the collection of the tax levied by this article, the clerk is hereby specifically authorized and empowered to examine at all reasonable hours the books, records and other documents of all dealers, or other persons charged with the duty to report or pay a tax under this article in order to determine whether they are collecting the tax or otherwise complying with this article. In the event such dealer refuses to permit such examination of its books, records or other documents by the clerk as aforesaid, he is guilty of an offense. The clerk shall have the right to proceed in circuit court to seek a mandatory injunction or other appropriate remedy to enforce its right against the offender, as granted by this section, to require an examination of the books and records of such dealer.

(2) Each dealer, as defined in this article, shall secure, maintain and keep for a period of three years a complete record of rooms or other lodging, leased or rented by such dealer, together with gross receipts from such sales, and other pertinent records and papers as may be required by the county tax collector for the reasonable administration of this article and all such records that are located or maintained in this state shall be open for inspection by the clerk at all reasonable hours at such dealer's place of business located in the county. Any dealer who maintains such books and records at a point outside the county must make such books and records available for inspection by the clerk in the county. Any dealer subject to the provisions of this article who violates these provisions is guilty of an offense.

(3) Notification of an audit shall be sent in accordance with the following:

a. The clerk shall send written notification, at least 60 days prior to the date an auditor is scheduled to begin an audit. The clerk is not required to give 60 days prior notification of a forthcoming audit in any instance in which the taxpayer requests an emergency audit.

b. Such written notification shall contain:

1. The approximate date on which the auditor is scheduled to begin the audit;
2. A reminder that all records, receipts, invoices, and related documentation of the taxpayer must be made available to the auditor; and
3. Any other requests or suggestions the clerk may deem necessary.

c. Only records, receipts, invoices and related documentation that are available to the auditor when such audit begins shall be deemed acceptable for the purposes of conducting such audit.

(4) All taxes collected under this article shall be remitted to the county tax collector. In addition to criminal sanctions, the city clerk is empowered, and it shall be its duty, when any tax becomes delinquent or is otherwise in jeopardy under this article 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 in the public records of the county; and thereupon the amount of the warrant shall become a lien of any real property or personal property of the taxpayer in the same manner as a recorded judgment.

(5) The clerk may issue 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 his services in executing the warrant to be collected.

(6) The clerk may also have a writ of garnishment to subject any indebtedness due to the delinquent dealer by a third person in any goods, money, chattels or effects of 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 clerk shall satisfy the lien of record within 30 days.

(g) Tax revenues may be used only in accordance with the provisions of F.S. § 125.0104.

(h) An amount not to exceed three percent of the tax collected herein shall be retained for the costs of administration. The amount deducted for costs of administration shall be used only for those costs that are solely and directly attributable to auditing, assessing and enforcing payment of delinquent taxes authorized by this section. The remainder of the tax collected shall be remitted to the county on a monthly basis.

(i) The county assumes responsibility for auditing the records and accounts of dealers and assessing, collecting and enforcing payment of delinquent tourist development taxes.

(Code 1979, § 2-298; Ord. No. 15-1988, § 1; Ord. No. 26-1990, § 1; Ord. No. 022-2004, §§ 12, 13)

Sec. 23-199. Monroe County Tourist Development Council.

(a) Pursuant to F.S. § 125.0104(4)(), the governing board of the county appointed an advisory council known as the Monroe County Tourist Development Council (tourist development council) by Resolution No. 198-1981, on June 16, 1981.

(b) The membership of the tourist development council shall be in accordance with the following provisions:

(1) The tourist development council, following the expiration of terms of its members heretofore established and appointed, shall be composed of nine members. Eight members of the board shall be appointed by the governing board of the county based on a percentage of the funds collected throughout the five tax collection districts, as set forth in subsection (g) of this section. Each tax collection district shall have no less than one representative, who is a resident of the district, on the council. The ninth member of the council shall be the chair of the governing board of the county or any other member of the governing board as designated by the chair. Two members of the council shall be elected municipal officials, at least one of whom shall be from the most populous municipality in the county. Six members of the council shall be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county or subject to the tax. All members of the council shall be electors of the county. The

governing board of the county shall allow the council to elect a chair. The chair shall be elected annually and may be reelected.

(2) The members of the council shall serve for staggered terms of four years. The council shall meet at least once each quarter and, from time to time, shall make recommendations to the county governing board for the effective operation of the special projects or for uses of the tourist development tax revenue and perform such other duties as may be prescribed by county ordinance or resolution.

(3) All district vacancies occurring on the tourist development council shall be filled by a district resident who is also qualified under the terms of F.S. § 125.0104(4)(e). In addition to the vacancies described in subsection (b)(4) of this section, a seat shall also be considered vacant when a member moves out of the district that he represents.

(4) Any member of the tourist development council other than the chair who absents himself from any three consecutive regular meetings of the tourist development council, unless excused from such attendance by consent of the council, expressed by action of record in its official minutes, or who is absent from a total of four regular meetings of the council in any fiscal year without having been excused from such attendance by consent of the council expressed by action of record in its official minutes, shall thereby automatically forfeit his position and office as a member of the tourist development council; and the name of such person shall be automatically removed from the membership of the council immediately after the adjournment of any such third consecutive meeting or any such fourth meeting in any fiscal year, as the case may be, at which such member has not appeared. The council shall thereupon promptly notify the member so removed, and the governing board of the county shall thereupon appoint a new member to serve the remainder of the unexpired term of the member so removed.

(c) The tourist development council shall review expenditures and submit an annual report in accordance with the following provisions:

(1) The council shall continuously review expenditures of revenues from the tourist development trust fund and shall submit, at least quarterly, expenditure reports to the county governing board or its designee. Expenditures that the council believes to be unauthorized shall be reported to the board of county commissioners and the department of revenue. The board of county commissioners and the department shall review the findings of the council and take appropriate administrative or judicial action to ensure compliance with this section.

(2) An annual report shall be prepared by the tourist development council and submitted to the board of county commissioners and general public and media within 120 days from the close of the fiscal year. The report shall include the following:

- a. A report of all revenue by category separation;
- b. A report of all expenditures by category separation;
- c. Reservations and carry-overs by category required by law;
- d. Reservations and carry-overs by category accumulated for specifically approved projects;
- e. A comparison of current report year with immediate past fiscal year;

- f. A listing of all events or projects funded by district; and
- g. The ratio of administrative expenses to overall expenditures.

(d) There is hereby created an executive office for the tourist development council. The governing board of the county shall employ by contract, or establish a county department and employ, an executive director and such other personnel as may be required to operate the executive office. Any contract for employment entered into by and between the executive director or other personnel authorized by this article shall provide that such director and personnel will be responsible and answerable directly to the tourist development council and indirectly to the board of county commissioners. If contracted, such persons shall serve at the pleasure of and be subject to removal by the board of county commissioners. The tourist development council may make recommendations concerning the contracts. The executive director shall carry out the policies and programs established by the council and shall be in charge of the day-to-day operations of those policies and programs. The executive director and the staff of the executive office of the tourist development council shall be compensated, and the costs and expense of the operation of the executive office shall be paid from the proceeds of the tourist development tax prior to any other use or distribution thereof. In the furtherance of the provision of this section, the amount to be expended shall not exceed seven percent of the annual two-cent budget and three percent of the annual thirdcent budget.

(e) For the purpose of rendering the services through the executive office created by subsection (d) of this section, such executive director, as is provided for therein, shall be either an individual or a corporation, that shall furnish the services required by the tourist development council for the executive office thereof. Any such contract entered into for the executive director to operate such executive office shall be executed by the board of county commissioners. The tourist development council shall make recommendations concerning contracts and/or employment for the executive director and personnel but shall have no final authority to require implementation of its recommendation.

(f) Advisory committees shall be created to make recommendations to the tourist development council.

(1) No more than one district advisory committee shall be created for any district as defined in subsection (g) of this section.

(2) The advisory committees shall be composed of nine members, whose qualifications shall be three from the lodging industry, three from tourist-related businesses, and three who represent the general public.

(3) There shall be a three-person nominating committee for each district for the purposes of making recommendations for appointments to the lodging and tourist-related seats on the advisory committee of the district. The term of office for each nominating committee member shall be three years. The nominating committee for each district shall be comprised of:

- a. One person appointed by the hotel/motel association in that district, or, in the absence of a hotel/motel association, a tourism association;
- b. One person appointed by the tourist development council; and
- c. One person appointed by the chamber of commerce for the district.

(4) Appointments to the district advisory board shall be made through the following process:

- a. Any vacancy on a district advisory committee shall be advertised by the tourist development council administrative office in at least one newspaper of general circulation in the district with a request for applications to fill the position, and a deadline for submission of applications.
- b. Application forms shall be made available by the administrative office of the tourist development council and district chambers of commerce.
- c. Applications shall be submitted to the administrative office that shall record the submission and forward the applications to the nominating committee for the district served by the district advisory committee for which applications are received.
- d. Each district nominating committee shall nominate two or more names in order of preference to the tourist development council for appointments to each vacant lodging or tourist-related position from the applications received through this process, and submit to the administrative office the nominations and a list of all candidates considered.
- e. All applications received for positions representing the general public shall be forwarded to the board of county commissioners.

(5) The tourist development council shall appoint the district advisory members representing lodging and tourist-related businesses for three-year terms from the recommendations submitted by the nominating committees or return the recommendations as rejected and request a new set of recommendations. The board of county commissioners shall appoint the members representing the general public for three-year terms.

(6) The district advisory committees shall be bound by the same policies and procedures as apply to the tourist development council.

(7) District advisory committee members filling terms that expire subsequent to the effective date of the ordinance from which this section is derived shall fulfill their terms. No member of a district advisory committee, prior to the effective date of the ordinance from which this section is derived, may be removed because he does not meet this subsection's requirement. All future appointments must be made to bring each committee into conformance with the composition requirements.

(g) The geographical boundaries of the tax collection districts referred to in subsection (b)(1) of this section and elsewhere throughout this article shall be as follows:

- (1) District I shall encompass the city limits of Key West;
- (2) District II shall be from the city limits of Key West to the west end of the Seven Mile Bridge;
- (3) District III shall be from the west end of the Seven Mile Bridge to the Long Key Bridge;
- (4) District IV shall be between the Long Key Bridge and Mile Marker 90.939; and
- (5) District V shall be from Mile Marker 90.940 to the Dade/Monroe County line and any mainland portions of Monroe County.

(Code 1979, § 2-299; Ord. No. 15-1988, § 1; Ord. No. 3-1990, § 1; Ord. No. 45-1995, § 1; Ord. No. 50-1996, § 1; Ord. No. 38-1999, §§ 1--4; Ord. No. 052-2000, § 1; Ord. No. 019-2006, § 1)

Sec. 23-200. Tourist development plan.

(a) Authorized uses of revenue.

(1) The first two cents of the three-cent tax shall be spent:

- a. To promote and advertise county tourism within domestic and international markets;
- b. To promote county festivals, tournaments, races and other tourist-related activities;
and
- c. To promote county tourist-oriented cultural events such as visual and performing arts, including, but not limited to, theater, concerts, recitals, opera, dance, and art exhibitions.

(2) The third cent of the three-cent tax shall be expended as follows:

- a. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums or auditoriums, within the boundaries of the county of sub-county special taxing district in which the tax is levied;
- b. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain or promote one or more museums, zoological parks, fishing piers or nature centers that are publicly owned and operated by not-for-profit organizations and open to the public. However, these purposes may be implemented through service contracts and leases with persons who maintain and operate adequate existing facilities;
- c. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county;
- d. To finance beach improvement, maintenance, renourishment, restoration, and erosion control;
- e. To finance fishing piers;
- f. To advertise and promote the district and/or the county within domestic and international markets;
- g. To promote county festivals, tournaments, races and other tourist-related activities;
and
- h. To promote county tourist-oriented cultural events such as visual and performing arts, including, but not limited to, theater, concerts, recitals, opera, dance, and art exhibitions.

(b) Percent allocations.

(1) Five percent of the first two cents gross revenue shall be held outside of the receipts division of the budget as per F.S. § 129.01.

(2) Up to seven percent of the first two cents net revenue of the resort tax two-penny program prior to distribution is to be used for the administrative contract, board members travel, administrative computer programming, dues and subscriptions, statistics, administrative advertising (meeting notices, budget amendments, etc.).

(3) Sixty-five percent of the first two cents net revenue is for advertising nationally and internationally, trade mail fulfillment, and trade show expenditures.

(4) The remaining 35 percent of the first two cents net revenue constitute the events budget, including public relations fees and expenses and mail fulfillment consumer expenses.

(5) Five percent of the third-cent gross revenue shall be held outside of the receipts division of the budget as per F.S. § 129.01.

(6) Up to three percent of the third-cent net revenue shall be maintained for administration of third-cent expenditures.

(7) Upon the recommendation of the advisory board for the district, the remaining balance of the thirdcent net revenue shall be expended for the district from which it is generated for the purposes authorized in subsection (a)(2) of this section, but the advisory board shall have no final authority to require implementation of its recommendation.

(8) A separate account shall be established for the administration of the third-cent gross revenues.

(9) In the event that an emergency or catastrophe occurs and a state of emergency is declared in any area of the county, the allocations listed in subsection (b) of this section shall not apply to the use of tourist development monies set aside for emergencies and catastrophes. The catastrophic/emergency fund may be spent for marketing, public relations and capital costs as the board of county commissioners, upon recommendation of the TDC, shall deem in the best interests of the county.

(c) *Advance registration costs.* Costs of advance registrations for trade shows for a fiscal year may be paid out of tourist development funds in the preceding fiscal year pursuant to resolution of the board of county commissioners.

(Code 1979, § 2-300; Ord. No. 15-1988, § 1; Ord. No. 17-1988, § 2; Ord. No. 5-1990, § 1; Ord. No. 17-1990, § 2; Ord. No. 28-1990, § 1; Ord. No. 19-1991, § 1; Ord. No. 3-1993, § 3; Ord. No. 20-1993, § 1; Ord. No. 20-1994, § 1; Ord. No. 31-1998, § 2)

Sec. 23-201. Penalties and liens.

(a) Any person who is taxable hereunder who fails or refuses to charge and collect from the person paying any rental or lease the taxes herein provided, either by himself or through his agents or employees, shall be, in addition to being personally liable for the payment of the tax, guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or 775.083.

(b) No person shall advertise or hold out to the public in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that he will relieve the person of paying the rental of the payment of all or any part of the tax, or that the tax will not be added to the rental or lease consideration, or when added, that it or any part thereof will be refunded or refused, either directly, or indirectly, by any method

whatsoever. Any person who willfully violates any provision of this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082, 775.083 or 775.084.

(Code 1979, § 2-301; Ord. No. 15-1988, § 1; Ord. No. 022-2004, § 14)

State law references: Similar provisions, F.S. § 125.0104(8).

Sec. 23-202. Repeal of the tourist development tax.

Upon petition of 15 percent of the electors in the unincorporated and incorporated areas of the county, the board of county commissioners shall cause an election to be held for the repeal of the tourist development tax.

(Code 1979, § 2-302; Ord. No. 15-1988, § 1)

State law references: Similar provisions, F.S. § 125.0104(6)(d).

Sec. 23-203. Modification of tourist development plan.

This article may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the board of county commissioners.

(Code 1979, § 2-313; Ord. No. 15-1988, § 2; Ord. No. 17-1988, § 3)

Secs. 23-204--23-229. Reserved.