

**ORDINANCE NO. 0-2011-54**

**AN ORDINANCE OF THE CITY OF TYLER, TEXAS AMENDING CITY CODE CHAPTER 2, "FINANCE AND TAXATION", ARTICLE II, "TAXATION" BY REPEALING PROVISION RELATING TO THE 7% HOTEL OCCUPANCY RATE, ADOPTING NEW PROVISIONS RELATED TO THE 7% HOTEL OCCUPANCY RATE, AND ADOPTING NEW PROVISIONS TO IMPLEMENT AN ADDITIONAL TWO PERCENT (2%) HOTEL MOTEL OCCUPANCY TAX TO BE USED FOR EXPANSION OR CONSTRUCTION OF EVENT FACILITIES FOR THE COMMUNITY, AND WHICH WILL BE USED SOLELY FOR THE PURPOSE OF EXPANDING OR CONTRACTING CONVENTION OR EVENT FACILITIES; PROVIDING FOR THE ADMINISTRATION AND COLLECTION OF SUCH TAX; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to promote the general welfare of the citizens of Tyler; and

**WHEREAS**, the City Council desires to promote the creation of a proper economic and social environment in the City, to induce investment of private resources in productive business enterprises, and to encourage employment and economic activity for the benefit of all citizens;

**WHEREAS**, Texas Tax Code Section 351.003(a) authorizes a hotel occupancy tax not to exceed 7% of the price paid for a room in a hotel; and

**WHEREAS**, on January 12, 2011, the City Council adopted Resolution R-2011-1, supporting passage of legislation amending Texas Tax cod Section 351.003 to authorize a municipality that has a population of more than 95,000 and that is located in a county that borders Lake Palestine and that has a population of more than 200,000, to establish a hotel occupancy rate not to exceed 9% of the price paid for a room in a hotel; and

**WHEREAS**, on June 17, 2011, Governor Perry signed into law S.B. 349, which amends Texas Tax Code Section 351.003 to add the additional 2% hotel occupancy tax rate, to be used for the expansion or construction of a conference or event facilities for the community and which will be used solely for the purpose of expanding or constructing convention or event facilities; and

**WHEREAS**, the revenue raised from the additional 2% in the hotel occupancy tax rate shall only be used for the costs associated with and related to new or expanded conference center and/or multi-puropose arena, and any associated facilities. Such funds from the additional 2% occupancy tax shall be accounted for separately within the City of Tyler's Hotel Occupancy Tax Fund and tracked as a reserve for future commitments;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:**

**PART 1.** That Tyler City Code Chapter 2 "Finance and Taxation", Article II, "Taxation", is hereby repealed by deleting current Sections 2-15 through 2-17 in their entireties, and adopting new Sections 2-15 through 2-25 to read as follows:

**Sec. 2-15. Hotel Tax - Definitions.**

The following words, terms and phrases shall, for the purposes of Sections 2-15 through 2-25 and except where the context clearly indicates a different meaning, be defined as follows:

**City.** The City of Tyler and, variously, the incorporated territory of the City of Tyler, wherein the city government is empowered to impose this tax by Chapter 351 of the Texas Tax Code, or successor.

**Director of Finance/CFO.** The duly appointed Director of Finance/CFO for the City or designee.

**Due date.** The twentieth (20th) day after the close of the monthly period for which the tax is to be computed.

**Folio.** Primary documentation produced by a hotel that demonstrates interaction between the lodging provider and the occupant, and which, at a minimum, reflects the name and address given by the occupant, the date(s) of occupancy, the amount of rent charged for each date together with the amounts of applicable tax, and the means of payment.

**Guest.** Any person who, for a consideration, uses, possesses, or has the right to use or possess any guest room in a hotel under any lease, concession, permit, right of access, license, contract, or agreement.

**Guest room.** A room in a hotel occupied, or intended, arranged, or designed for sleeping, and rented for more than two dollars (\$2.00) per day.

**Hotel.** Any structure or any portion of a structure, including any hotel, motel, inn, tourist house, tourist court, lodging house, rooming house, or bed and breakfast, containing guest rooms and which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise. The meaning does not include any hospital, sanitarium, nursing home, or the dormitory facilities at an institution of higher education.

**Lodging Provider.** Any person operating a hotel in the city, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, licensee or any other person operating such hotel and who is subject to collecting and remitting the tax imposed upon guests.

**Monthly period.** The calendar months of any year.

**Occupancy.** The use or possession, or the right to the use or possession of any guest room in a hotel.

**Permanent resident.** Any guest who, as of a given date, has or shall have occupied or has or shall have established the right of occupancy to any guest room in a hotel for more than thirty (30) continuous days.

**Person.** Any individual, firm, partnership, joint adventure, association, social club, fraternal organization, joint stock company, corporation, cooperative, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, the plural as well as the singular number.

**Rent.** The consideration charged for the occupancy of a guest room, valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the lodging provider to the guest, without any deduction therefrom whatsoever.

**Tax.** The seven percent (7%) tax and additional two percent (2%) tax on hotel occupants imposed by Sections 2-16 and 2-17, as provided for by Chapter 351 of the Texas Tax Code, or successor. (Ord. No. 0-2011-54; 07/13/2011)

**Sec. 2-16. Hotel tax rate. Establishment of 7% hotel tax occupancy rate; and additional 2% hotel occupancy tax rate.**

a. There shall be paid by the guest for every occupancy of a guest room in the city a tax at the rate of seven percent (7%) of the amount of rent unless an exception is provided under Section 2-18.

b. Convention center facilities. In addition to the tax provided for in subsection a., there shall also be paid by the guest for every occupancy of a guest room in the city an additional tax at the rate of two percent (2%) of the amount of rent, unless an exception is provided under Section 2-18. As authorized by State law, revenue derived from the additional two percent (2%) hotel tax provided for in this subsection shall be allocated for the construction, expansion, maintenance or operation of convention center facilities. The revenue raised from the additional two percent (2%) in the hotel occupancy tax rate shall be used solely for the costs associated with and related to new or expanded conference center and/or multi-purpose arena, and any associated facilities. Said revenue derived pursuant to this subsection shall be accounted for separately within the City of Tyler's Occupancy Tax Fund, and tracked as a reserve for future commitments. (Ord. No. 0-2011-54; 07/13/2011)

## **Sec. 2-17. Collection of Tax by Lodging Provider.**

Every lodging provider renting guest rooms in the city shall collect a tax of seven percent (7%) on the amount of rent from the guest, and an additional two percent (2%) on the amount of rent from the guest, as set forth in Section 2-16, unless an exception is provided under Section 2-18. The lodging provider shall provide a receipt to each guest, which receipt shall reflect both the amount of rent and the amounts of this and other tax applicable. This tax shall be due from the guest, and shall be collected by the lodging provider at the same time that the rent is collected. The lodging provider shall be liable to the city for the full amount received or collected as tax, whether collected appropriately or inappropriately, and for any amount of tax that should have been collected, but was not.

1. Any person who receives or collects the tax or any consideration represented to be the tax from another person holds the amount so collected in trust for the benefit of the City and is liable to the City for the full amount collected, plus penalty.

2. An individual who controls or supervises the collection of the tax from another person, or an individual who controls the accounting for or remittance of the tax, and who willfully fails to remit or cause to be remitted the tax is liable as a responsible individual for an amount equal to the tax not remitted or caused to be remitted, plus penalty. The dissolution of a corporation, partnership or other business or fraternal association does not affect a responsible individual's liability under this subsection. Furthermore, the liability imposed by this subsection shall be in addition to any other penalty provided by law. (Ord. No. 0-2011-54; 07/13/2011)

## **Section 2-18. Exceptions.**

a. No tax shall be collected from a guest after becoming a permanent resident. A guest becomes a permanent resident either after thirty (30) continuous days' occupancy, or upon notifying the lodging provider in writing of his/her intention to occupy a guest room for longer than thirty (30) continuous days and then proceeding to occupy the guest room for such period. A guest who would express intent, but fails to stay thirty (30) continuous days, is not a permanent resident and is not excepted from the tax. However, a guest who expresses intent and does stay is excepted from the tax as of the date he/she notified the lodging provider of his/her intention.

b. No tax shall be collected from the federal government nor an officer or employee of said government when traveling on government business and presenting official identification. The American Red Cross, federally chartered credit unions and the regional home loan banks are recognized as instrumentalities of the federal government.

c. No tax shall be collected from the following Texas quasi-governmental entities formed under the Texas Local Government, and Health and Safety Codes, or successors, nor an officer or employee of any thereof when presenting a Hotel Occupancy Tax Exemption Certificate: public facility corporations, housing authorities, housing finance corporations, and health facilities development corporations.

d. No tax shall be collected from electric cooperatives formed under Chapter 161 of the Texas Utilities Code or successor, nor telephone cooperatives formed under Chapter 162 or successor, nor an officer or employee of either thereof when presenting a Hotel Occupancy Tax Exemption Certificate.

e. No tax shall be collected from a State of Texas officer or employee when presenting a photo identification card or other documentation that indicates that the bearer is exempt from paying hotel occupancy tax.

f. No tax shall be collected from a foreign sovereign when presenting a tax exemption card issued by the United States Department of State. (Ord. No. 0-2011-54; 07/13/2011)

#### **Sec. 2-19. Registration of Lodging Provider, Form and Contents, Execution, Certificate of Authority.**

Every person engaging or about to engage in business as a lodging provider in the city shall immediately register with the Director of Finance/CFO on a form provided by said official. Persons engaged in such business must so register not later than thirty (30) days after the date that this ordinance becomes effective. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of the place(s) of business and such other information which would facilitate the administration of the tax as prescribed by the Director of Finance/CFO. The registration shall be signed by the owner if a natural person in case of ownership by an association or partnership, by a member or partnering case of ownership by a corporation, by an officer. The Director of Finance/CFO shall, after such registration, issue without charge a certificate of authority to each lodging provider to collect the tax from the occupant. A separate registration shall be required for each place of business of a lodging provider. Each certificate shall state the name and location of the business to which it is applicable. (Ord. No. 0-2011-54; 07/13/2011)

#### **Sec. 2-20. Determination Generally, Returns, Payments.**

a. Due date of taxes. All amounts of such tax shall be due and payable to the Director of Finance/CFO monthly on or before the twentieth (20th) day of the month next succeeding the respective monthly period. The tax shall become delinquent for any monthly period after the twentieth (20th) day of the succeeding month in which it remains unpaid.

b. Penalty for failure to pay tax by due date. A lodging provider who fails to make any return or to pay the amount of tax as prescribed, shall be assessed a specific penalty to be added to the tax in the amount of fifteen percent (15%), provided that the tax has been delinquent for at least one (1) complete fiscal quarter.

c. Acceptance of delinquent return and remittance without imposing penalty, authority, requirements. If the failure to make any return or to pay the amount of tax by the due date results from providential cause shown to the satisfaction of the City Council or their designee by affidavit attached to the return, and remittance is made within ten (10) days of the due date, such return may be accepted exclusive of penalty.

d. Waiving of penalty. Only the City Council or their designee may waive the penalty prescribed.

e. Return, remittance, time of filing, lodging providers required to file, contents. On or before the twentieth (20th) day of the month succeeding each monthly period, a return for the preceding monthly period together with appropriate remittance shall be filed with the finance director. The return shall report the gross rent, taxable rent, and non-taxable rent earned, the amount of tax collected or otherwise due for the period, and such other information as may be required by the Director of Finance/CFO.

f. Extension of time of filing, authority, requirements, remittance, penalty. The Director of Finance/CFO may, for good cause, extend the time for making returns for not longer than thirty (30) days. No extension shall be valid unless granted in writing upon written application of the lodging provider. Such grant may not be applicable for longer period than three (3) consecutive months. A lodging provider granted an extension shall remit tax equaling not less than one hundred percent (100%) of the tax paid for the corresponding period of the prior fiscal year, such remittance to be made on or before the date the tax would otherwise come due without the grant of extension. No penalty shall be charged during the extension period.

g. Collection fee allowed lodging providers. Lodging providers collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be one percent (1%) of the amount due, but only if the amount due was not delinquent at the time of payment. (Ord. No. 0-2011-54; 07/13/2011)

## **Section 2-21. Deficiency Determinations.**

a. Recomputation of tax, authority to make, basis of recomputation. If the Director of Finance/CFO is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the City by any lodging provider, he/she may compute and determine the amount required to be paid upon the basis of any information within his/her possession or that may come into his/her possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly periods.

b. Penalty. Penalty shall be assessed upon the amount of any determination, as provided by Section 2-20.

c. Notice of determination, service of. The Director of Finance/CFO shall give to the lodging provider written notice of his/her determination. The notice may be served personally or by mail if by mail, such service shall be addressed to the lodging provider at his/her address as it appears in the records of the City. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee, or when made by statutory overnight delivery.

d. Time within which notice of deficiency determination to be mailed. Except in cases of failure to make a return or of fraud, every notice of deficiency determination shall be mailed within four (4) years after the twentieth (20th) day of the calendar month following the monthly period for which the amount is proposed to be determined, or within four (4) years after the return is filed, whichever period should last expire.

e. Appeal or protest of deficiency determination. Within ten (10) days of being served a notice of deficiency determination, the lodging provider may contest such in writing addressed to the Director of Finance/CFO. The lodging provider shall include such documents as he/she believes may present grounds for abatement of the determination. The Director of Finance/CFO shall give written notice of his/her decision to the lodging provider in the same manner as provided in Section 2-21(c). The decision of the Director of Finance/CFO shall be deemed final unless an appeal is made in writing to the City Manager as provided by City Code Chapter 1, Article IV. The City Manager shall approve or disapprove the appeal, and notify the appellant of the decision. An appeal of the City Manager's determination may be made as allowed by City Code Chapter 1, Article IV. (Ord. No. 0-2011-54; 07/13/2011)

## **Sec. 2-22. Determination if No Return Made.**

a. Estimate of gross receipts. If any lodging provider fails to make a return, the Director of Finance/CFO shall make an estimate of the amount of the gross receipts of the lodging provider, or as the case may be, of the amount of total rentals in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the lodging provider failed to make the return, and shall be based upon the returns filed for the State Hotel Occupancy Tax for such periods or, in their absence, from returns made to the City for the preceding calendar year. This estimate shall be considered "prima facie" correct. Written notice shall be given in the manner prescribed in Section 2-21(c), and the lodging provider shall enjoy the same rights of protest as prescribed in Section 2-21(e).

b. Penalty. Penalty shall be assessed upon the amount of any determination, as provided by Section 2-20. (Ord. No. 0-2011-54; 07/13/2011)

## **Sec. 2-23. Collection of tax by City.**

a. Action for delinquent tax, time for. At any time within four (4) years after any tax or any amount of tax required to be collected becomes due and payable, and at any time within four (4) years after the delinquency of any tax or any amount of tax required to be collected, the governing authority may bring an action in a court of competent jurisdiction in the name of the City to collect the amount delinquent together with penalty, court fees, filing fees, attorney's fees

and other legal fees incident thereto. The City Council may also seek to have the lodging provider enjoined from operating the hotel until such time as the delinquency is paid, as well as to require forfeiture of any applicable collection fee retained by the lodging provider.

b. Lodging provider selling or quitting business. If any lodging provider liable for any amount under this ordinance sells out his/her business or quits his/her business, such provider shall make a final return and remittance within fifteen (15) days after the date of selling or quitting the business.

c. Duty of successors or assignees of lodging provider to withhold tax from purchase money. If any lodging provider liable for any amount of tax, interest or penalty under this ordinance sells out his/her business or quits the business, his/her successors or assigns shall withhold sufficiently from the purchase price to cover such amount until the former owner produces from the Director of Finance/CFO either a receipt reflecting full payment or a certificate stating that no amount is due.

d. Liability for failure to withhold. If the purchaser of a business fails to withhold from the purchase price as required, such purchaser shall be personally liable for the payment of the amount required to be withheld by him/her to the extent of the purchase price.

e. Credit for tax or penalty paid more than once or erroneously or illegally collected. Whenever the amount of any tax or penalty has been paid more than once, or has been erroneously or illegally collected or received by the City, it may be refunded by the governing authority. If the lodging provider or person determines that he/she has overpaid or paid more than once, which fact has not been determined by the Director of Finance/CFO, such person shall have four (4) years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The claimant may request a hearing before the governing authority at which the claim and any other information available will be considered. The governing authority shall approve or disapprove the claim, and notify the claimant of its action. (Ord. No. 0-2011-54; 07/13/2011)

#### **Sec. 2-24. Administration of Ordinance, Recordkeeping.**

a. Authority of Director of Finance/CFO. The Director of Finance/CFO shall administer and enforce the provisions of this ordinance for the collection of the tax.

b. Records required from lodging providers, etc., form. Every lodging provider renting guest rooms in the city shall preserve, for a minimum of four (4) years, all folios, receipts, certificates of exemption and such other documents as the Director of Finance/CFO may prescribe, and in such form as he/she may require. Said records shall at all times be available for examination within the city.

c. Examination of records, audits. The Director of Finance/CFO or designee may, upon thirty (30) days' written notice, examine the books, papers, records, financial reports, equipment and other facilities of any lodging provider renting guest rooms and any lodging provider liable for the tax, in order to verify the accuracy of any return made, or if no return is

made by the lodging provider, to ascertain and determine the amount required to be paid. Such examination shall be conducted at the place of lodging provision, unless the Director of Finance/CFO shall authorize another place within the city. In the event that the tax has been delinquent for at least (2) complete fiscal quarters, the reasonable cost of the examination may be assessed against the lodging provider. Any concurrent liability determined for the tax authorized by Chapter 156 of the Texas Tax Code or successor shall be reported to the Comptroller of Public Accounts.

d. Authority to require reports, contents. In administration of the provisions of this ordinance, the finance director may require the filing of reports by any person or class of persons having in their possession or custody information relating to the rental of guest rooms which are subject to the tax. The reports shall be filed with the Director of Finance/CFO when required by said official, and shall set forth the rental charged for each occupancy, the date(s) of occupancy, the basis for exemption, or such other information as the Director of Finance/CFO may prescribe. (Ord. No. 0-2011-54; 07/13/2011)

#### **Sec. 2-25. Violations.**

Any lodging provider who fails, neglects or refuses to collect the tax as provided by Section 3 shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00). Any lodging provider who fails or refuses to make any return as provided by Section 2-20, to keep adequate records or to open them for inspection by the City, or to furnish other data reasonably requested by the City shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00). Any lodging provider who makes a false or fraudulent return with intent to evade the tax shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00). (Ord. No. 0-2011-54; 07/13/2011)

#### **Sec. 2-26 – 2-29. Reserved**

**PART 2:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 3:** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, or later. The effective date of this ordinance shall be the date of publication, which is expected to be July 26, 2011. However, the effective date of the additional 2% Tax on Hotel Occupancy in Section 2-16 shall be September 1, 2011.

PASSED AND APPROVED this 13th day of July, A. D., 2011.

*Barbara Bass*

BARBARA BASS, MAYOR OF  
THE CITY OF TYLER, TEXAS

ATTEST:

*Cassandra Brager*

CASSANDRA BRAGER, CITY CLERK

APPROVED:

*Gary C. Landers*

GARY C. LANDERS, CITY ATTORNEY

