

ORDINANCE NO. 115

AN ORDINANCE OF THE TOWN OF BAYSIDE, TEXAS, REGARDING THE COLLECTION OF HOTEL MOTEL TAXES WITHIN THE TOWN; PROVIDING FOR A FINE OR PENALTY OF THIS ORDINANCE AS A MISDEMEANOR NOT TO EXCEED \$500.00 FOR EACH OFFENSE, EXCEPT HOWEVER, WHERE A DIFFERENT PENALTY HAS BEEN ESTABLISHED BY STATE LAW FOR SUCH OFFENSE, IN WHICH EVENT THE PENALTY SHALL BE FIXED BY STATE LAW AND IF DEEMED A VIOLATION OF ANY PROVISIONAL LAW THAT GOVERNS FIRE SAFETY, ZONING, OR PUBLIC HEALTH AND SANITATION, THE PENALTY SHALL NOT EXCEED THE SUM OF \$2,000.00 FOR EACH OFFENSE; PROVIDING A SAVINGS, REPEALER, SEVERABILITY, AND EFFECTIVE DATE CLAUSES.

Whereas, the Town of Bayside, Texas, (herein the "Town"), desires to collect hotel and motel taxes within the Town and the Town Extraterritorial Jurisdiction under the provisions provided in this Ordinance;

Whereas, the hotel motel tax is authorized for collection by the Town and in the best interest of the citizens the tax be collected and used as allowed by law.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAYSIDE, TEXAS, THAT:

Section 1. Finding of Fact.

The foregoing recitals are hereby found to be true and correct and are hereby adopted by the Town Council and made a part hereof for all purposes as findings of fact.

Section 2. Definitions.

The following words, terms and phrases are, for the purposes of this Ordinance (except where the context clearly indicates a different meaning), defined as follows:

Alternate collection/reporting period shall mean a period of a day or days other than the regular calendar months. Such periods are approved by the Town Mayor upon request by the hotel manager, operator, or person in control, or imposed by the Town Mayor upon their finding that collections are at risk of loss if collections accumulated for the full calendar month are in the possession of the hotel owner, operator, manager, or person in control.

Consideration shall mean the price of, or value received for, the right to use a sleeping room, bed, or dormitory space or other sleeping facility in a hotel, and includes the price of conveniences customarily provided in connection with sleeping accommodations, including mattress, sheets, bedspreads, pillows, pillow cases, bed frames, air conditioning, electric, Town lighting, water, soap, towels, wash cloths, toilet tissue, shower or bath facilities, lavatory, chairs, trash receptacles, plus any other goods or services which are not ordinarily subject to sales tax. The consideration paid for a sleeping room or facility shall not include the price of food served, nor the price of personal services rendered to the occupant which are unrelated to cleaning and readying a room for occupancy, nor any sales tax, nor occupancy tax assessed by other governmental agencies, provided that these charges are stated separately on the folio or invoice of the occupant. Charges not stated separately shall be presumed to be part of the consideration paid for occupancy of a sleeping room or sleeping facility, and shall be taxed under this Ordinance.

Due date the last day of the month following the end of each calendar quarter for which the tax is to be computed.

Mayor shall mean the duly elected/appointed Mayor of the Town or his/her designee.

Folio shall mean a 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) occupancy, the amount of rent charged for each date together with the amounts of applicable tax, and the means of payment.

Guest shall mean 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 shall mean a room in a hotel occupied, or intended, arranged, or designed for sleeping.

Hotel shall mean any building or complex of buildings, trailer, converted railroad Pullman car, or any other facility in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses or courts, lodging houses, bed and breakfast,

inns, rooming houses, trailer houses, trailer motels, parked railroad Pullman cars used for sleeping accommodations and not involving the transportation of travelers, dormitory where bed space is rented, apartments not occupied by permanent residents, and all other facilities where rooms or sleeping facilities or space are furnished which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise. The term hotel does not include hospitals, sanitariums or nursing homes, or the dormitory facilities at an institution of higher education.

Lodging Provider shall mean any person operating a hotel in the Town, including, but not limited to, the owner or proprietor of such premises, lessee, sub lessee, lender in possession, licenses or any other person operating such hotel; and who is subject to collecting and remitting the tax imposed upon guests.

Quarterly collection/reporting period shall mean the regular calendar months of the year.

Occupancy shall mean the use or possession of, or the exclusive right to the use or possession of any guest room in a hotel.

Occupant shall mean any individual, corporation, governmental agency, partnership, or association that has paid a consideration for the exclusive right to use a guest room in a hotel.

Permanent resident shall mean any occupant who has occupied or has paid for the exclusive right to occupy a particular guest room in a hotel for at least thirty (30) consecutive days; however, one change of guest rooms or facility during the first thirty (30) days of occupancy in the hotel shall not terminate the status of the permanent resident. Any person who does not fully prepay for the first thirty (30) days is not a permanent resident during the first thirty (30) days of occupancy.

Tax shall mean that the tax on occupants imposed by this ordinance, as provided for by Chapter 351 of the Texas Tax Code.

Section 3. Tax authorized; tax rate; exceptions to tax.

(a) *Authorization.* There is hereby levied a tax upon the cost of or consideration paid for a sleeping room or sleeping facility furnished by any hotel.

(b) *Tax rate.* The tax shall be equal to **seven (7) percent** of the total price of a guest room or sleeping facility, said price to include all goods and services provided by the hotel which are not ordinarily subject to sales tax.

(c) *Exceptions.*

(1) 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 intention to occupy a guest room for longer than thirty (30) continuous days and then proceeding to actually 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 exempt from the tax. However, a guest who expresses intent and does stay is exempted from the tax as of the date he notified the lodging provider of his intention.

(2) 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.

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

(4) No tax shall be collected from the following Texas quasi-governmental entities formed under the **Texas Local Government, and Health and Safety Codes**, 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.

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

(6) No tax shall be collected from a foreign diplomat when presenting a tax exemption card issued by the United States Department of State.

Section 4. 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 Town shall immediately register with the Mayor 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 that name under which such person transacts business or intends to transact business, the location of his/her place(s) of business and such other information which would facilitate the administration of the tax as prescribed by the Mayor. 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 partner; in case of ownership by a corporation, by an officer. The Mayor 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.

Section 5. Collection; payment to Town; fee for collection.

(a) Every person owning, operating, managing or controlling any hotel shall collect the tax imposed under this Ordinance and pay same to the Town Mayor with the returns required hereinafter.

(b) 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.

(c) 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.

(d) The lodging provider shall be liable for any amount of tax that he/she fails to collect appropriately; and must remit to the Town any amount of tax collected in excess of that which should have been collected.

Last day of the next month

Section 6. Payments and Returns.

(a) Due date of taxes. All amounts of such tax shall be due and payable to the Town of Bayside **quarterly** on or before the last day of the month following each calendar quarter. The tax shall become delinquent for any monthly period after the last 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%).

(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 governing authority of the Town 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) Waving of penalty. Only the governing authority of the Town may waive the penalty prescribed.

(e) Return; remittance; time of filing; lodging providers required to file; content. On or before the last day of the month succeeding each quarterly period, a return for the preceding quarterly period together with appropriate remittance shall be filed with the Mayor. 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 Mayor.

(f) Extension of time of filing; authority; requirements; remittance; penalty. The governing authority of the Town 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 twelve (12) 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 of tax would otherwise come due without the grant of extension. No penalty shall be charged during the extension period.

Section 7. Deficiency determinations.

- a) Recomputation of tax; authority to make; basis of recomputation. If the Mayor is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the Town 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. One (1) or more deficiency determinations may be made of the amount due for one (1) or more quarterly periods.
- b) Penalty. Penalty shall be assessed upon the amount of any determination, as provided by Section 6.
- c) Notice of determination; service of. The Mayor 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 Town. 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 of deficiency determination to be mailed. Except in cases of failure to make a return of fraud, every notice of deficiency determination shall be mailed within four (four) 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 Mayor. The lodging provider shall include such documents as he/she believes may present grounds for abatement of the determination. The Mayor shall give written notice of his/her decision to the lodging provider in the same manner as provided in Section 7 (c). The decision of the Mayor shall be deemed final unless an appeal is made in writing to the governing

authority with ten (10) days of the lodging provider having been served with the Mayor's decision. The governing authority shall approve and disapprove the appeal, and notify the appellant of its decision.

Section 8. Determination if no return made.

- a) Estimated of gross receipts. If any lodging provider fails to make a return, the Mayor 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 Town 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 from the preceding calendar year. This estimate shall be considered "prima facie: correct. Written notice shall be given in the manner prescribed in Section 7(c), and the lodging provider shall enjoy the same rights of protest as prescribed in Section 7(e).

Section 9. Availability of records.

- a) Every lodging provider renting guest rooms in the Town shall preserve, for a minimum of four (4) years, all folios, receipts, certificates of exemptions and such other documents as the Mayor may prescribe, and in such form as he/she may require. Said records shall be at all times be available for examination within the Town.
- b) Examination of records, audits. The Mayor or any person authorized in writing by him/her may 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 Mayor shall authorize another place within the Town. 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.
- c) Authority to require reports; contents. In administration of the provisions of this ordinance, the Mayor 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 Mayor when required by said official, and shall set forth the rental charged for each occupancy, the date(s) of occupancy, the basis of exemption, or such other information as the Mayor may prescribe.

Section 10. Collection of tax by Town.

- a) Action of delinquent tax; time for. At any time within four (4) years after any tax or 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 Town to collect the amount delinquent together with penalty, court fees, filing fees, attorney's fees and other legal fees incident thereto. The governing authority may also seek to have the lodging provider enjoined from operating the hotel until such time as the delinquency is paid.
- 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, he/she 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 without sufficiently from purchase price to cover such amount until the former owner produces from the Mayor 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, he/she 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 Town, it may be refunded by the governing authority. If the lodging provider or person determines that he has overpaid or paid more than once, which fact has not been determined by the Mayor, such person shall have four (4) years from the date of payment to file a claim in writing 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.

Section 11. Rules and regulations.

The Town Mayor is authorized to issue rules and regulations necessary to effectuate the full intent and purpose of this Ordinance concerning the information required on returns, the collection reporting periods, audits, the retention of records at the hotel, the forcible seizure of records for auditing purposes, the imposition of a daily or weekly collection/reporting period, the referral of delinquent returns and/or collections to the legal department for purpose of enjoining continued operation of a hotel, the filing of criminal complaints for violations of this Ordinance, and the acceptance of a surety bond in lieu of enjoining a hotel from doing business.

Section 12. Violations.

Any lodging provider who fails, neglects or refuses to collect the tax as provided by Section 3(b) 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 6, to keep adequate records or to open them for inspection by the Town, or to furnish other data reasonably requested by the governing authority 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). Each and every day during any portion of which any violation is committed, continued or permitted, shall constitute

a separate offense and shall be punished accordingly. The Town shall further have all remedies provided by law and equity for any violation which shall be cumulative.

Section 13. Suit to enjoin hotel operations.

The Mayor shall refer any hotel occupancy tax account that has a delinquent balance older than sixty (60) days to the Town attorney for the purpose of filing a suit to enjoin the hotel owner, operator, manager, and other persons in control from operating any hotel in the Town of Bayside until the tax is paid and/or the report filed. This remedy shall be in addition to the remedy of a collection suit and in addition to the municipal court criminal complaint that may be filed for each violation of this Ordinance.

Section 14. Surety bond in lieu of injunction suit.

The Mayor shall not refer a delinquent account to the Town attorney for the purpose of enjoining the hotel operators from doing business in Bayside if the owner, manager, operator, or other persons in control provides an acceptable surety bond in an amount equal to the Town hotel occupancy tax collected by the subject hotel in the six (6) best net revenue months of the twelve (12) full calendar months immediately prior to the acquisition of the bond, said bond to ensure payment for a one-year period, and be updated and approved by the Mayor annually if said hotel operators desire to continue such protection from business-closing during a period of delinquency.

Section 15. Conflicting Ordinances.

All prior ordinances of the Town dealing with or applicable to this Ordinance are hereby amended to the extent of any conflict herewith, and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other ordinance of the Town, the terms and provisions of this Ordinance shall govern.

Section 16. Severability.

Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such

unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

Section 17. Effective Date.

This Ordinance shall take effect on October 1, 2022 and after its passage and publication in accordance with the provisions of the Texas Local Government Code.

Section 18. Publication.

The Town Secretary is hereby authorized and directed to publish the caption of this Ordinance, together with the penalty provision contained therein, in the manner and for the length of time prescribed by law.

In accordance with Article VIII, Section 1 of the Town Charter, this Ordinance was introduced before the Town Council of the Town of Bayside, Texas, on the 14th day of ~~MARCH~~ June, 2022.

PASSED, APPROVED and ADOPTED on this the 14th day of June 2022.

Sharon Scott, Mayor

ATTEST:

Connie Cramer, Town Secretary

APPROVED AS TO FORM:

Hal George
Hal George, Town Attorney