

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS, REGARDING THE COLLECTION OF HOTEL OCCUPANCY TAXES WITHIN THE CITY; 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 City of Pflugerville, Texas, (herein the “City”), desires to collect hotel occupancy taxes (“HOT”) within the City under the provisions provided in this Ordinance;

Whereas, section 351.002 of the Texas Tax Code authorizes the HOT for collection by the City and it is in the best interest of the citizens the tax be collected and used as allowed by law.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

Section 1. Finding of Fact.

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

Section 2. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Consideration means 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, electricity, 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 article.

Director means the director of finance or the director's designated representative.

Hotel has the meaning assigned by § 156.001 of the Tax Code, as may be amended.

Institution of higher education has the meaning assigned by § 61.003 Education Code, V.T.C.A.

Occupancy means the use or possession, or the right to the use or possession of any room or rooms, sleeping space, bed or other facility in a hotel for any purpose.

Occupant means anyone who, for a consideration, uses, possesses, or has a right to use or possess any room in a hotel under any lease, concession, permit, right of access, license, contract or agreement, other than a permanent resident as hereinafter defined.

Permanent resident means any occupant who has or shall have the right to occupancy of any room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for the period.

Person means any individual, company, corporation, or association owning, operating, managing, or controlling any hotel.

Quarter means the regular calendar quarters of the year, the first quarter being composed of the months of January, February and March; the second quarter being the months of April, May and June; the third quarter being the months of July, August and September; and the fourth quarter being the months of October, November and December. The municipal fiscal quarters are composed of the same months, but the first quarter is composed of the months of October, November and December.

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

- (a) There is hereby levied a tax upon the price of occupancy of any room or space furnished by any hotel located within the city limits of the city, where such cost of occupancy is at the rate of two dollars (\$2.00) or more per day, such tax to be equal to seven (7) percent of the price for occupancy.
- (b) No tax shall be imposed hereunder upon a permanent resident.
- (c) No tax shall be imposed under this article upon foreign diplomatic personnel.
- (d) This article does not impose a tax on the United States, this state, or an agency, institution, board, or commission of this state other than an institution of higher education.

(e) This article does not impose a tax on an officer or employee of a governmental entity described by subsection (d) of this section when traveling on or otherwise engaged in the course of official duties for the governmental entity.

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 city shall immediately register with the Director 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 finance director. 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 Director 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 city; fee for collection.

- (a) Every person owning, operating, managing or controlling any hotel located within the city limits shall collect the tax imposed under this Ordinance and pay same to the Director 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 city any amount of tax collected in excess of that which should have been collected.

Section 6. Payments and Reports.

On the last day of the month following each quarterly period, every person required hereby to collect the tax imposed by this article shall file a report with the Director showing the consideration paid for all room occupancies in the preceding quarter, the amount of tax collected on the City's behalf on such occupancies, and any other information as the Director may reasonably require. Such persons shall pay over the tax due on such occupancies at the time of filing such report. There shall also be furnished to the Director of the City at the time of payment of such tax, a copy of the quarterly tax report filed with the state comptroller in connection with the state hotel occupancy tax.

Section 7. Rules and regulations; access to books and records.

The Director shall adopt such procedures, rules and regulations as are reasonably necessary to effectively collect the tax levied herein, and shall, upon request of any person owning, operating, managing or controlling any hotel, furnish a copy of such procedures, rules and regulations for the guidance of such person and facilitate the collection of such tax as such collection is required herein. The Director shall be permitted to have access to books and records during reasonable business hours as shall be necessary to enable the Director to determine the correctness of the amount due under the provisions of this article, or to determine whether or not a report should have been filed and the amount, if necessary, of taxes due.

Section 8. Use of proceeds.

The proceeds of the hotel occupancy tax levied by this article shall be used by the city council for the purpose of advertising and encouraging the growth of tourist and convention activity in the City, including the finance support of the civic center, and those purposes set forth in Texas Tax Code section 351.101, as amended; provided, however, that the City shall use a minimum of fifteen (15) percent of the total hotel occupancy tax revenue for advertising and promoting the City to directly impact tourism and the hotel and convention industry. The enhancement of the arts and cultural organizations and programs. Additionally, the city shall use a minimum of fifteen (15) percent of the total hotel occupancy tax revenue for the maintenance and improvement of the currently operating civic center and/or funding of historical restoration and/or preservation projects and/or programs which enhance the arts and/or preservation of the historic downtown area and other buildings with historic significance and/or solely city operated and controlled promotional programs that are allowed by state law. The remaining seventy (70) percent of the proceeds of the hotel occupancy tax shall be allocated by contract in accordance with the provisions of the city charter and the Texas Tax Code, as amended which limits the revenue allocation for the promotion of the arts to fifteen (15) percent of the total hotel occupancy tax revenue. Any future contract or contracts may be for a period of time not to exceed five (5) years in duration.

No later than sixty (60) days after the end of each calendar year, all recipients of any hotel occupancy tax receipts under this article, other than the amounts authorized by city council and used by the city departments, shall submit an audited report to the city council, showing in detail the disbursement and use of all such amounts paid to each and the services or goods and/or merchandise received for the same.

Thirty (30) days prior to the end of the contract period, each recipient shall forward the city manager evidence of justification for the granting of a new contract by the city council for the future contract period. The receipt of any funds by any recipient shall not imply any right of automatic renewal of such contract for the ensuing years; such option under the charter of the city and the laws of the state shall rest exclusively with the city council.

Section 9. Penalty for violation of provisions of this article.

If any person required by the provisions of this article to collect the tax, make reports as required herein, and pay to the tax collector the tax imposed herein shall fail to collect such tax, shall fail to file such reports, or shall fail to pay such tax, or if any such person shall file a false report, such person shall be deemed guilty of a misdemeanor and upon conviction be punished by fine not to exceed two hundred dollars (\$200.00). basis of exemption, or such other information as the finance director may prescribe.

Section 10. Penalty for failure to file reports or pay taxes when due; interest on delinquent taxes.

If any person shall fail to file a report as required herein or shall fail to pay to the tax collector the tax as imposed herein when such report or payment is due, he shall forfeit five (5) percent of the amount due as a penalty, and after the first thirty (30) days he shall forfeit an additional five (5) percent of such tax. Provided, however, that the penalty shall never be less than one dollar (\$1.00). Delinquent taxes shall draw interest at the rate of six (6) percent per annum beginning sixty (60) days from the date due.

Section 11. Suit to enjoin hotel operations.

The Director shall refer any hotel occupancy tax account that has a delinquent balance older than sixty (60) days to the city 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 City of Pflugerville 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 12. Surety bond in lieu of injunction suit.

The Director shall not refer a delinquent account to the city attorney for the purpose of enjoining the hotel operators from doing business in Pflugerville if the owner, manager, operator, or other persons in control provides an acceptable surety bond in an amount equal to the city 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 Director annually if said hotel operators desire to continue such protection from business-closing during a period of delinquency.

Section 13. Conflicting Ordinances.

All prior ordinances of the City 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 City, the terms and provisions of this Ordinance shall govern.

Section 14. 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 15. Effective Date.

This Ordinance will take effect upon its passage and adoption by the City Council in accordance with the provisions of Section 3.15(d) of the City Charter.

PASSED AND APPROVED on first reading the 13th day of May, 2014.

PASSED, APPROVED, AND ADOPTED on second and final reading the 27th day of May, 2014.

Jeff Coleman, Mayor

ATTEST:

Karen Thompson, City Secretary

APPROVED AS TO FORM:

George Hyde, City Attorney