

ORDINANCE NO. 2019-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS AMENDING CHAPTER 11, TAXATION, SECTION 11.04, "HOTEL OCCUPANCY TAX," ATTACHED AS EXHIBIT A, IN ACCORDANCE WITH CHAPTER 351 OF THE TEXAS TAX CODE; PROVIDING FOR FINDINGS OF FACT, ENACTMENT, REPEALER, SEVERABILITY, EFFECTIVE DATE, PROPER NOTICE AND MEETING.

WHEREAS, Chapter 351 of the Texas Tax Code authorizes municipalities to impose and collect hotel occupancy taxes; and

WHEREAS, in 1995, the City of Bastrop established by ordinance a local hotel occupancy tax of 7%, establishing rules that include the collection, reporting, and auditing of the payment of such tax; and

WHEREAS, Chapter 351 of the Texas Tax Code has been amended several times since 1995; and

WHEREAS, this ordinance amends Chapter 11 of the Bastrop City Code to reflect the changes in Chapter 351 of the Texas Tax Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AS FOLLOWS:

Section 1: FINDINGS OF FACT: The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

Section 2: ENACTMENT: Chapter 11, Article 11.04, which is titled "Hotel Occupancy Tax," of the Code of Ordinances of the City of Bastrop is amended to read as described and attached hereto as Exhibit "A".

Section 3: REPEALER: In the case of any conflict between the other provisions of this Ordinance and any existing Ordinance of the City, the provisions of this Ordinance will control.

Section 4: SEVERABILITY: If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, that invalidity or the unenforceability will not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision.

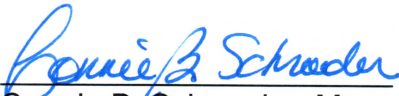
Section 5: EFFECTIVE DATE: This Ordinance shall be effective immediately upon passage and publication.

Section 6: PROPER NOTICE AND MEETING: It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

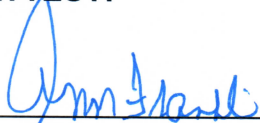
READ and ACKNOWLEDGED on First Reading on the 23rd day of April 2019.

READ and ADOPTED on the Second Reading on the 14th day of May 2019.

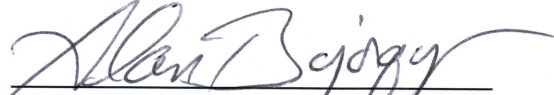
APPROVED:


Connie B. Schroeder, Mayor

ATTEST:


Ann Franklin, City Secretary

APPROVED AS TO FORM:


Alan Bojorquez, City Attorney

City of Bastrop
CODE OF ORDINANCES
CHAPTER 11: TAXATION
ARTICLE 11.04: HOTEL OCCUPANCY TAX

Sec. 11.04.001 - Definitions.

The following words, terms and phrases are defined as follows:

Consideration. The cost of the room in a hotel only if the room is ordinarily used for sleeping, and not including the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

Hotel. ~~Any A building or buildings in which members of the public may for a consideration obtain sleeping accommodations for consideration.~~ The term includes a including hotels, motels, tourist homes, houses of courts [tourist courts], lodging houses, inns, rooming houses, or bed and breakfast. other buildings where rooms are furnished for a consideration. For purposes of the imposition of a hotel occupancy tax, the term includes a short-term rental. The term "hotel" does not include:

- (1) ~~but not including a~~ hospitals, sanitariums, or nursing homes;
- (2) a dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Texas Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution; or
- (3) an oilfield portable unit, as defined by Section 152.001 of the Texas Tax Code.

Occupancy. ~~The use or possession, or the right to the use or possession, of any room or rooms in a hotel if the room is one which is ordinarily used for sleeping and if the occupant is other than a permanent resident as hereinafter defined.~~

Occupant. Anyone who, for a consideration, uses, possesses, or has a right to use

or possess any room or rooms 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. Any occupant who has or shall have the right to use or possess occupancy of any a room or rooms in a hotel for at least thirty (30) consecutive days, so long as there is no interruption of payment for the period during the calendar year or preceding year.

~~*Person.* Any individual, company, group, organization, entity (including government entities), corporation or association owning, operating, managing or controlling any hotel, as the term hotel is defined by state and local law.~~

Quarterly period. The regular calendar quarters of the year, the first quarter being composed of the months of October, November and December; the second quarter being the months of January, February and March; the third quarter being the months of April, May and June; and the fourth quarter being the months of July, August and September.

Short-term rental. The rental of all or part of a residential property to a person who is not a permanent resident.

Tax collector. The Chief Financial Officer ~~director of finance~~ of the city.

Sec. 11.04.002 - Levied; amount; exemptions.

- (a) There is hereby levied a tax of 7% of the consideration price paid by the occupant of for a room in a hotel that ~~on every person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2 or more each day, and is ordinarily used for sleeping. The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except those services related to the cleaning and readying of the room for possession.~~
- (b) Exceptions are as follows:
 - (1) No tax shall be imposed upon a permanent resident.
 - (2) No tax shall be imposed upon a person or entity described by Section 351.006 of the Texas Tax Code ~~for federal or state employees traveling on official business.~~

- (3) A person or entity who is exempt from the tax under Section 351.005 of the Texas Tax Code shall apply for a refund of the tax as provided by that section ~~No tax shall be imposed for diplomatic personnel who present a tax exemption card issued by the United States Department of State.~~
- (4) ~~No tax shall be imposed for federal or state military personnel traveling on official military business. This exemption does not cover military staff on leave or between stations.~~

Sec. 11.04.003 - Collection.

Every person owning, operating, managing or controlling any hotel shall collect the tax levied by this article for the city, and shall report the tax and pay the tax ~~and deliver same to the tax collector, the director of finance for the city.~~

Sec. 11.04.004 – Monthly or quarterly Quarterly reports to tax collector.

- (a) On the twentieth (20th) last day of each the month following ~~each quarterly period~~, every person required by this article to collect the tax imposed hereby shall file a report with the tax collector of taxes showing: (1) the price paid for all room occupancies in the preceding month quarter, (2) the amount of the tax collected on such occupancies, and (3) any other information the tax collector may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing such report. The report shall be in a form prescribed by the tax collector. Additionally, the person shall file a copy of the monthly quarterly report filed with the state hotel occupancy tax.
- (b) If a taxpayer owes less than \$500 for a calendar month or less than \$1,500 for a calendar quarter, the taxpayer qualifies as a quarterly filer. A quarterly filer shall file the report described in subsection (a) on the 20th day after the end of the quarterly period and pay the tax due at the time of filing such report.
- (c) The tax collector is hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this article. The tax collector shall have the authority to request and receive within a reasonable time documentation for information contained in the report to the city by the hotel.

Sec. 11.04.005 - Rules and regulations of tax collector; access to books and records.

The tax collector shall have the power to make such rules and regulations as are reasonable and necessary to effectively collect the tax levied hereby, and shall upon reasonable notice have access to books and records necessary to enable him/her to determine the correctness of any report filed as required by this article, and the amount of taxes due under the provisions of this article.

Sec. 11.04.006 - Penalties.

- (a) If any person shall fail to file a report as required herein or shall file a false report or shall fail to pay to the tax collector the tax as imposed herein when said report or payment is due, he shall forfeit 5% of the amount due as penalty, and after the first thirty (30) days he shall forfeit an additional 5% of such tax. However, such penalty shall never be less than \$10. Delinquent taxes shall draw interest at the rate of 10% per annum beginning sixty (60) days from the due date.
- (b) Any person violating any of the provisions of this article, including hotel operators who fail to collect the tax, fail to file a return, or file a false return, or who are delinquent in their tax payment, shall be guilty of a misdemeanor and shall, upon conviction, be fined as provided for in the general penalty provision found in section 1.01.009 of this code, and each twenty-four (24) hours of any such violation shall constitute a separate offense.

Sec. 11.04.007 - Additional remedies.

The city is hereby authorized to take the following actions against any person required to collect the tax imposed hereby and pay the collection over to the city and who has failed to file a report, or filed a false report, or failed to pay the tax when due:

- (1) Bring suit against the hotel for noncompliance; and/or
- (2) Bring suit against the hotel seeking any other remedies provided under state law.

Sec. 11.04.008 - Additional authorization to bring suit for violations.

The City Attorney or as appropriate, an appointed Assistant City Attorney, is hereby authorized to bring suit against any person required to collect the tax imposed hereby and required to pay the collection over to the city and who has failed to file a

report, or filed a false report, or failed to pay the tax when due, at the direction of the city manager and concurrence of the Council, when necessary. Such suit may seek to collect such tax not paid or to enjoin such person from operating a hotel in the city until the tax is paid or the report is filed, or both, as applicable and as provided in the injunction.

Sec. 11.04.009 - Use of revenue.

- (a) ~~The revenue derived from any hotel occupancy tax imposed and levied by this article may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following (as mandated by state law, V.T.C.A. Tax Code, ch. 351):~~
 - (1) ~~The acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities (as such is defined in V.T.C.A. Tax Code, § 351.001);~~
 - (2) ~~The furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;~~
 - (3) ~~Advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;~~
 - (4) ~~The encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms; and~~
 - (5) ~~Historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:~~
 - (A) ~~Which are at or in the immediate vicinity of convention center facilities; or~~
 - (B) ~~Which are located elsewhere in the municipality or its vicinity that would be frequented by tourists, convention delegates, or~~

~~other visitors to the municipality.~~

- (b) Revenue derived from the hotel occupancy tax shall be expended only in a manner which directly enhances and promotes tourism and the convention and hotel industry as ~~hereinbefore delineated~~. Additionally, hotel tax revenue may only be expended for any of the applicable purposes enumerated in Chapter 351 of the Texas Tax Code. Use of hotel occupancy tax revenues shall be subject to the limitations stated in that state statute. Such revenue shall not be used for the general revenue purposes or general governmental operations of the municipality which are not directly related to promoting the hotel and convention industry or tourism in the municipality.
- (b) The City Council may establish a Tourism Advisory Committee (TAC) to advise and make recommendations to the City on how hotel occupancy tax revenues shall be expended.

Sec. 11.04.010 - Authority to contract for administration of funded programs.

- (a) The City Council may, by contract, delegate to a person, including another governmental entity or a private organization, the management or supervision of programs and activities funded with revenue from the hotel occupancy tax. The City Council shall approve in writing in advance the annual budget of the entity to which its delegates those functions, and shall require the entity to make periodic reports to the City Council at least annually listing the expenditures made by the entity of revenue from the tax provided by the municipality.
- (b) The entity must maintain the revenue provided by the municipality from the tax in a separate account established for that purpose and may not commingle that revenue with any other money or maintain it in any other account.
- (c) The municipality may not delegate to any person or entity the management or supervision of its convention and visitors programs and activities funded with revenue from the hotel occupancy tax other than by contract as provided herein.
- (d) The approval by the City Council of the annual budget of the entity to which these functions are delegated creates a fiduciary duty in the person or entity with respect to the revenue provided by the municipality to the person or entity under the contract.

- (e) A person or entity with whom the municipality contracts to conduct authorized activities shall maintain complete and accurate financial records of each expenditure of hotel occupancy tax revenue made by the person or entity and, on request of the City Council or other person, shall make the records available for inspection and review.
- (f) Hotel occupancy tax revenue may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in the promotion and servicing of expenditures hereinbefore authorized. The portion of the total administrative costs for activities for which hotel occupancy tax revenue may be used may not exceed the administrative costs actually incurred in conducting the authorized activities.
- (g) Hotel occupancy tax revenue may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of the person's job in an efficient and professional manner.

Sec. 11.04.011 - Applicability in extraterritorial jurisdiction.

The provisions of this article shall apply equally to hotels within the corporate limits of the city and to hotels in the extraterritorial jurisdiction of the city pursuant to state law, V.T.C.A. Tax Code, § 351.0025.

Sec. 11.04.012 - Tax collection on purchase of a hotel.

- (a) If a person who is liable for the payment of a tax under this article is the owner of the hotel and sells that hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the tax due until the seller provides a receipt from the tax collector showing that the amount has been paid or a certificate stating that no tax is due.
- (b) The purchaser of a hotel who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.
- (c) The purchaser of a hotel may request that the City issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The City shall issue the certificate or statement not later than 60 days after receiving the request. If the City fails

to issue the certificate or statement within the period provided by Subsection (c) of this section, the purchaser is released from the obligation to withhold the purchase price or pay the amount due.