

ORDINANCE NO. 2025-__-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 98, "TAXATION", ARTICLE IV, "HOTEL OCCUPANCY TAX", OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS BY REQUIRING SHORT-TERM RENTAL OPERATORS AND SHORT-TERM RENTAL PLATFORMS TO COLLECT AND REMIT THE APPLICABLE HOTEL OCCUPANCY TAXES TO THE CITY, AS SET FORTH HEREIN BELOW; PROVIDING A PENALTY; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Texas Tax Code Chapter 351 permits a municipality by ordinance to impose a hotel occupancy tax within the municipality's corporate limits; and

WHEREAS, on or about October 21, 2008, the City of McKinney (the "City") previously adopted hotel occupancy tax regulations pursuant to Ordinance No. 2008-10-100, currently codified as Chapter 98, Article IV of the City's Code of Ordinances, which requires all hotels and motels within the City's corporate limits to file and pay monthly hotel occupancy taxes to the City; and

WHEREAS, the City Council seeks to amend the City's hotel occupancy tax regulations to explicitly require short-term rental operators and short-term rental platforms to collect and remit to the City the applicable hotel occupancy taxes owed thereunder; and

WHEREAS, the City Council believes it is in the best interest of the residents of the City of McKinney to revise the City's hotel occupancy tax regulations as provided for herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. FINDINGS

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. AMENDING CHAPTER 98, "TAXATION", ARTICLE IV, "HOTEL OCCUPANCY TAX", OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS BY REQUIRING SHORT-TERM RENTAL OPERATORS AND SHORT-TERM RENTAL PLATFORMS TO COLLECT AND REMIT THE APPLICABLE HOTEL OCCUPANCY TAXES TO THE CITY

From and after the effective date of this Ordinance, Chapter 98, "Taxation," Article IV, "Hotel Occupancy Tax," of the Code of Ordinances of the City of McKinney, Texas, is hereby amended to read as follows:

"ARTICLE IV. - HOTEL OCCUPANCY TAX

Sec. 98-114. - 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 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.

Finance director means the finance director of the city or their designee.

Hotel means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, corporate apartment or rooming house, but does not include a hospital, sanitarium, or nursing home. For purposes of the imposition of hotel occupancy tax, the phrase *hotel* includes a “short-term rental” as defined herein.

Occupancy means 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 means 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 means any occupant who has or shall have the right to occupancy of any room or rooms in a hotel for at least 30 consecutive days during the current calendar year or preceding year so long as there is no interruption in payment for the period.

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

Short-term rental means the rental of all or part of a residential property to a person who is not a permanent resident under Section 156.101 of the Texas Tax Code, as amended.

Short-term rental platform means a person or entity that provides a means through which a short-term rental operator offers a dwelling unit, or portion thereof, for short-term rental use, and from which short-term rental the short-term rental platform financially benefits.

Sec. 98-115. - Tax levied; amount; exceptions.

- (a) There is hereby levied a tax of seven percent of the price paid for a room in a hotel 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 \$2.00 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) A short-term rental platform shall, in lieu of the short-term rental operator, be responsible for collecting and remitting to the City the applicable Hotel Occupancy Tax owed under this ordinance, as calculated on the amount of consideration the short-term rental guest pays to the short-term rental operator. If, however, the short-term rental platform fails or refuses to timely pay the Hotel Occupancy Tax when due, the short-term rental operator shall remain responsible for the payment of the Hotel Occupancy Tax.
- (c) Exceptions to subsection (a) of this section are as follows:
 - (1) No tax shall be imposed hereunder upon a permanent resident so long as there is no interruption of payment for the period of his right to use or possess a room;

- (2) No tax shall be imposed hereunder for federal or state employees traveling on business;
- (3) No tax shall be imposed hereunder for diplomatic personnel who present a tax exemption card issued by the United States Department of State;
- (4) No tax shall be imposed hereunder for federal or state military personnel traveling on official military business. This exemption does not cover military staff on leave or between stations;
- (5) No tax shall be imposed hereunder upon the United States, this state, or an agency, institution, board, or commission of this state other than an institution of higher education. In this subsection, the term "institution of higher education" has the meaning assigned by V.T.C.A., Education Code § 61.003.

Sec. 98-116. - Collection of tax.

- (a) Every person owning, operating, managing or controlling any hotel shall collect the tax levied by this article for the city.
- (b) The hotel operator shall be entitled to one percent of the hotel occupancy tax revenues collected as reimbursement for the operator's administrative costs for collecting the tax. However, as provided in section 98-119, this reimbursement may be forfeited at the discretion of the city if the hotel operator fails to timely pay over the tax or timely file a report as required by the city or files a false report with the city.

Sec. 98-117. - Monthly reports.

On the twentieth of the month following the reporting period, every person required to collect the tax imposed hereby shall file a report with the finance director of taxes showing the monthly total receipts, taxable receipts, and any other information the finance director 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 finance director. Reports and payment must be postmarked by the twentieth or it will be considered late and subject to penalties (section 98-119). The finance director is hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this article. The finance director shall have the authority to request and receive within a reasonable time documentation of information contained in the report to the city by the hotel.

A hotel operator may request to the finance director to report quarterly if the tax owed is less than \$500.00 for a calendar month or \$1,500.00 for a calendar quarter. The tax will be due the twentieth day of the following month after the reporting quarter (Jan—Mar, Apr—Jun, Jul—Sep, and Oct—Dec).

Sec. 98-118. - Audit and access to books and records.

The finance director 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 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. 98-119. - Violations—Penalties; interest on delinquent taxes.

- (a) A penalty of five percent of the tax due shall be imposed on a hotel which fails to pay a tax imposed by this article when due. And if the hotel fails to pay the tax within 30 days after the day on which it is due, an additional five percent shall be imposed. However, such penalty shall never be less than \$1.00. Delinquent taxes shall draw interest at the rate of ten percent per annum beginning 60 days from the due date.
- (b) Any person violating any of the above provisions of this article, including hotel operators or short-term rental platforms who fail to collect the tax, fail to file a return, file a false return or are delinquent in their tax payment, shall be guilty of a misdemeanor and shall, upon conviction, be fined in any sum not to exceed \$500.00; and every 24 hours of any such violation shall constitute a separate offense.

Sec. 98-120. - Same—Additional enforcement actions.

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) Require the forfeiture of any revenue the city allowed the hotel operator to retain for its cost of collecting the tax;
- (2) Bring suit against the hotel for noncompliance; and/or
- (3) Bring suit against the hotel seeking any other remedies provided under state law.

Sec. 98-121. - Same—Suit to collect tax or enjoin operation of business.

The 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 have failed to file a report or filed a false report or failed to pay the tax when due. 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. 98-122. - Use of revenue derived from levy of tax.

- (a) Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following:
 - (1) The acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both;
 - (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 of advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:

a. At or in the immediate vicinity of convention center facilities or visitor information centers; or

b. Located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates.

(b) Revenue derived from the tax authorized by this article shall be expended in a manner directly enhancing and promoting tourism and the convention and hotel industry as permitted by subsection (a) of this section. That revenue may not be used for the general revenue purposes or general governmental operations of the city.

Sec. 98-123. - Administrative requirements; accountability; keeping of records.

(a) The city council may by contract delegate to one or more persons, including another governmental entity or a private organization ("contracting entity"), the management or supervision of programs and activities funded with revenue from hotel occupancy tax. The city council shall approve in writing in advance the annual budget of the contracting entity and shall require it to make periodic reports to the city council at least annually, listing the expenditures made by the contracting entity of the hotel occupancy tax revenue provided by the municipality.

(b) The contracting entity shall maintain hotel occupancy tax revenue 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 contracting entity creates a fiduciary duty in the contracting entity with respect to the revenue provided by the municipality to the contracting entity.

(e) The contracting entity shall maintain complete and accurate financial records of each expenditure of hotel occupancy tax revenue made by the contracting entity and, on request of the city council or other authorized person, shall make the records available for inspection and review.

(f) Hotel occupancy tax revenue spent for authorized purposes 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 expenditures authorized by V.T.C.A., Tax Code ch. 351, or any successor statute. If the municipality or other entity conducts an activity for which hotel occupancy tax revenue may be used, and such activity is a joint activity with another nonauthorized activity, then the portion of the total administrative costs of the entity for which hotel occupancy tax revenue may be used may not exceed the portion of those administrative costs actually incurred in conducting the activities for which the hotel occupancy tax revenue may be used.

- (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 tourism and the convention and hotel industry or the performance of the person's job in an efficient and professional manner.”

Section 3. PROVIDING A PENALTY

Any person, firm or corporation violating or failing to comply with any of the provisions of this Ordinance shall be subject to the penalty provisions set forth in Section 1-18 of the City’s Code of Ordinances; and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.

Section 4. REPEALER CLAUSE

All ordinances, orders, or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders, or resolutions, or parts thereof, conflict with this Ordinance.

Section 5. SAVINGS CLAUSE

All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 6. SEVERABILITY CLAUSE

If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 7. PUBLICATION OF CAPTION

The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council’s adoption hereof as provided by law.

Section 8. EFFECTIVE DATE

This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
McKINNEY, TEXAS, ON THE ____ DAY OF _____, 2025.

CITY OF McKINNEY, TEXAS

BILL COX, Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE, City Secretary
TENITRUS BEHTEL, Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER, City Attorney
ALAN LATHROM, Assistant City Attorney