

AN ORDINANCE IMPOSING A HOTEL OCCUPANCY TAX WITHIN THE CITY OF PEARSALL, TEXAS; DEFINING TERMS, SETTING THE TAX RATE AND PROVIDING EXCEPTIONS TO SAID TAX; AUTHORIZING COLLECTION OF TAXES; SPECIFYING DATA TO BE REPORTED TO THE CITY; REQUIRING THE AVAILABILITY OF TAX REPORTS; SETTING REGULATIONS AND RULES FOR COLLECTING THE TAX; PROVIDING FOR DISTRIBUTION OF TAX REVENUE; OUTLINING PERMITTED USES OF THE TAX; AUTHORIZING A SURETY BOND IN LIEU OF INJUNCTION TO CLOSE HOTEL; SETTING THE TAX COLLECTION PROCEDURE ON TERMINATION OF BUSINESS PROVIDING PENALTIES, AND ASSESSING A FINE NOT TO EXCEED \$500.00 FOR EACH VIOLATION; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

WHEREAS Article 16 of the Home Rule Charter of the City of Pearsall grants the City the right to collect taxes; and

WHEREAS, Chapters 156.001 et seq. and 35 i.001 et seq of the Texas Tax Code. V. T.C.A authorizes the collection of the Hotel Occupancy Tax, and

WHEREAS, the imposition of the Hotel Occupancy Tax will be used for promotion of tourism by advertising and conducting solicitations and promotional programs to attract tourists to the municipality and its vicinity thereby benefiting the economic development of the City of Pearsall and its inhabitants;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF HE, CITY OF PEARSALL, TEXAS.

SECTION 1. DEFINITIONS. In this section, the following words, terms and phrases are, (except where the context clearly indicates a different *meaning*), defined as follows

A. **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 matters, sheets, bedspreads, pillows, pillow cases, bed frames, air conditioning, electricity, lightning, water, soap, towels, wash cloths, toilet tissue, shower or bath facilities, lavatory, chairs, trash reciprocals, 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.

B. 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, 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 for a consideration. The term hotel does not include hospitals, sanitariums or nursing homes.

C. QUARTERLY PERIOD shall mean the regular calendar months 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.

D. TAX means the Hotel Occupancy Tax levied in this Article pursuant to Section 156.001 et seq. and 351.001 et seq. of Texas Tax Code, V. T.C.A.

E. OCCUPANCY shall mean the use or possession of, or the exclusive right to the use or possession of a sleeping room or sleeping facility in a hotel.

F. OCCUPANT shall mean any individual, corporation, governmental agency, partnership, or association that has paid a consideration for the exclusive right to use a sleeping facility in a hotel.

G. PERMANENT RESIDENT shall mean any occupant who has occupied or has paid for the exclusive right to occupy a particular sleeping room or rooms or sleeping facility in a hotel for at least thirty (30) consecutive days; however, one change of sleeping rooms or facility during the first thirty 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 days is not a permanent resident during the first thirty days of occupancy.

H. PERSON shall mean any individual, company, corporation or association owning, operating, managing or controlling any hotel.

I. FINANCE DIRECTOR means the Finance Director of the City of Pearsall, designated by the governing body to enforce and administer this article, or the director's designated representative.

J. TOURIST means an individual who travels from the individual's residence to a different municipality, county, state or country for pleasure, recreation, education or culture.

K. TOURISM means the guidance or management of tourists.

SECTION 2. TAX AUTHORIZED, TAX RATE, EXCEPTIONS TO TAX.

A. Authorization: There is hereby levied a tax upon the cost of occupancy of any sleeping room or sleeping facility furnished by any hotel where the cost of occupancy is at the rate of \$2 or more per *day*.

B. Tax Rate: The tax shall be equal to Seven percent (7%) of the consideration paid by the occupant of the sleeping room or sleeping facility to the hotel, exclusive of other occupancy taxes imposed by other government agencies.

C. Exceptions:

(1) There shall be no tax on the cost of or consideration paid for occupancy of a hotel sleeping room or sleeping facility priced at less than \$2.00 per day.

(2) The cost of or consideration paid for a hotel room or facility not ordinarily used for sleeping, such as a meeting room, is not subject to this tax.

(3) The cost of or consideration paid for a sleeping room or facility occupied by a permanent resident is not subject to this tax.

(4) There can be no occupancy tax on the consideration paid directly by the United States Treasury if the constitutional exemption is invoked. This exception is not extended to employees of the federal government or any local government who pay the consideration for sleeping room or sleeping facilities without the Federal Government being a party to the contract.

SECTION 3. COLLECTION, PAYMENT TO CITY, FEE FOR COLLECTION.

A. Every person owning, operating, managing or controlling any hotel shall collect the tax imposed under this article and pay same to the Finance Director with the report required hereinafter.

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B. The persons required to file a report under this article may deduct and withhold from the taxes otherwise due to the City on the monthly report, as reimbursement for the cost of collecting the tax, One (1) percent of the amount of the timely remitted tax due, as shown in timely submitted reports, provided there are no delinquencies for any prior reporting period, and provided that the report is submitted and the tax remitted on or before the 20th day following the end of each Quarterly Period.

SECTION 4. REPORTS

A. Every person required to collect the tax by Section 3 shall file a report with the Finance Director or his designated representative showing the consideration paid for all rooms or sleeping space occupancies in the preceding calendar month, the amount of tax collected on such occupancies, and any other useful and relevant information as the Finance Director may require.

B. Timely reports must be submitted so as to arrive at the Office of the Finance Director by the twentieth day of the month following the each Quarterly Period.

C. Reports shall include gross sleeping-room revenues, gross exempt sleeping room revenues, City occupancy tax collected, and net occupancy tax due the City. It shall also include the signature of the hotel's local manager or person in control of business operations at the reporting hotel, who shall sign a statement that the report is accurate to the best of his/her knowledge and belief.

D. The report and the tax remittance shall be for each Quarterly Period requested by a hotel business manager or operator and approved by the Finance Director.

E. The Finance Director shall impose a daily or weekly collection/reporting period, and shall provide for daily or weekly pick-up of reports and tax collections, whenever he has reason to believe that the tax revenues will not be remitted in the normal course of business, such as an impending bankruptcy or business closing, or the maintenance of unauditible record.

SECTION 5. AVAILABILITY OF RECORDS

A. Each person required to collect the tax must make records available for inspection by the Finance Director or his designated representative, at the hotel where the tax is collected.

SECTION 6. RULES AND REGULATIONS

A. The Finance Director is authorized to issue rules and regulations necessary to effectuate the full intent and purpose of this Article concerning the information required on reports, 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 reports 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 Article, and the acceptance of a surety bond in lieu of enjoining a hotel from doing business.

SECTION 7. USE OF TAX PROCEEDS.

A. The revenues of the Hotel Occupancy Tax levied by this article shall be used at the discretion of the governing body for the purpose of advertising and encouraging the growth of tourist and convention activity in the City of Pearsall. The funds to be dispersed at the direction of the governing body.

B. 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 enhancing and promoting tourism and the convention and hotel industry. The governing body may retain a percentage (%) of the amount, collected under this article, for administrative fees to be deposited in a separate fund of the City.

C. The governing body of a municipality, by contract, *may* 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 tax.

D. Disposition of the revenues collected from the Seven percent (7%) hotel tax shall follow the statute's uses:

I. Revenue from the municipal hotel occupancy tax may not be used for the general revenue purposes or general governmental operations of the municipality. The revenue may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following:

(a) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities;

(b) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;

(c) Advertising and conduction solicitations and promotional programs to attract tourist and convention delegates or registrants to the municipality or its vicinity.

(d) the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, painting, architecture, design and allied fields, sculpture, radio, photography, graphic and craft arts, motion pictures, tape and sound recording, television and other arts related to the presentation, performance, execution, and exhibition of these major art forms; and

(e) historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourist and convention delegates to visit preserved historic sites or museums; at or in the immediate vicinity of convention center facilities; or located elsewhere in the municipality or its vicinity that would be frequented by tourist, convention delegates, or other visitors to the municipality.

SECTION 8. SUIT TO ENJOIN HOTEL OPERATIONS:

A. The Finance 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 Pearsall until the taxes 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 Article.

SECTION 9. SURETY BOND IN LIEU OF INJUNCTION SUIT:

A. The Finance Director shall not refer a delinquent account to the City Attorney for the purpose of enjoining the hotel operators from doing business in Pearsall. 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 best net revenue months of the twelve 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 Finance Director annually if said hotel operators desire to continue such protection from business-closing during a period of delinquency.

SECTION 10. TAX COLLECTION ON TERMINATION OF BUSINESS

A. If a person who is liable for the payment of an amount under this article is the owner of the hotel and sells the hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt from the director showing that the amount has been paid or a certificated stating that no amount 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 director issue a certificate stating that no tax is due or issue statement of the amount required to be paid before a certificate may be issued. The director shall issue the certificate or statement within 60 days after receiving the request or within 60 days after the day on which the records of the former owner of the hotel are made available for audit, whichever period expires later. In either event, the director shall issue the certificate or statement within 90 days after the date of receiving the request.

D. If the director fails to mail the certificate or statement within the applicable 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.

E. The period of limitation during which the director may assess tax against the purchaser under this section is four years from the date when the former owner of the hotel sells the hotel or when a determination is made against the former owner, whichever event occurs later. At any time within three years after a deficiency determination against the purchaser has become due and payable, the city Attorney may bring an action in a District Court of Prio County or a Court of any other state of the United States in the name of the City of Pearsall to collect the delinquent amounts together with penalties and interest.

SECTION 11 PENALTIES.

A. A person commits an offense if he.

- (1) fails to collect the tax;
- (2) fails to file a report as required by this article,
- (3) fails to pay the director the tax when payment is due;
- (4) files a false report; or
- (5) fails to comply with Section 10A when purchasing a hotel.

B. A violation of any of the requirements of this Article shall constitute a Class "C" misdemeanor crime, and upon conviction, shall be punished by a fine not to exceed \$500.00.

C. Forfeit collection fee: If any person fails to timely file a full and complete report as required herein or fails to timely remit the tax required under this article when the report and payment is due, he shall forfeit his right to the One (1) percent reimbursement authorized in Sec. 3 (b) above.

D. Date of first penalty: In addition, he shall pay Five (5) percent of the unremitted delinquent tax as a late penalty if the report is not submitted or the tax is not remitted by the last day of the calendar month in which they are due, provided that the penalty shall never be less than Five dollars (\$5.00).

E. Monthly Penalty: After the first calendar month of delinquency, he shall pay an additional Five (5) percent of the unremitted tax on the first *day* of each delinquent month; provided that the penalty shall never be less than Five dollars (\$5.00).

F. Interest on delinquent balance: Delinquent taxes shall accrue interest on the first day of each month at the annual rate of Twelve (12) percent per annum.

G. The Auditor or the Finance Director shall mail a delinquency notice to the hotel manager, operator, or person in control, and in said notice, shall give a date certain for the filing of criminal complaint for failure to report or remit collected tax revenues, or for failure to do any other specified act required by this Article.

SECTION 12. TAMPERING WITH GOVERNMENT RECORDS.

A. The auditor of hotel tax records which are created and maintained at the hotel business shall report any evidence of false entry in or false alteration of said records to the Finance Director, who shall make the determination of whether or not to file a criminal charge against the person in control of said records pursuant to Texas Penal Code, Section 37.10, entitled "Tampering With Government Records", after consultation and advise of the City Attorney.

SECTION 13: SEVERABILITY

If any portion of this Ordinance is held illegal, invalid, unenforceable or unconstitutional by a Court of competent jurisdiction, the remaining provisions hereof shall nevertheless be legal, valid, enforceable or constitutional, the same as if the portion or portions held illegal, invalid, unenforceable or unconstitutional had not been adopted.

SECTION 14. PUBLICATION

The City Clerk shall cause a descriptive caption or title stating in summary the purpose of the Ordinance and the penalty for violation hereof, to be published at least twice in "The Current", a newspaper published in and of general circulation within and around said City of Pearsall

SECTION 15. EFFECTIVE DATE:

This Ordinance shall take effect at 12:01 a.m. on the 5th day of October, 1995.

PASSED AND APPROVED this 13th day of September, 1995.


VICTOR VINTON - MAYOR

ATTEST:


AMY PADILLA - CITY CLERK

Published: 09/27/95
10/04/95

AN ORDINANCE AMENDING AN ORDINANCE IMPOSING A HOTEL OCCUPANCY TAX WITHIN THE CITY OF PEARSALL, TEXAS; DEFINING TERMS; SETTING THE TAX RATE AND PROVIDING EXCEPTIONS TO SAID TAX; AUTHORIZING COLLECTION OF TAXES; SPECIFYING DATA TO BE REPORTED TO THE CITY; REQUIRING THE AVAILABILITY OF TAX REPORTS; SETTING REGULATIONS AND RULES FOR COLLECTING THE TAX; PROVIDING FOR DISTRIBUTION OF TAX REVENUE; OUTLINING PERMITTED USES OF THE TAX; AUTHORIZING A SURETY BOND IN LIEU OF INJUNCTION TO CLOSE HOTEL; SETTING THE TAX COLLECTION PROCEDURE ON TERMINATION OF BUSINESS PROVIDING PENALTIES, AND ASSESSING A FINE NOT TO EXCEED \$500.00 FOR EACH VIOLATION; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

WHEREAS, the City Council of the City of Pearsall wishes to amend the Hotel Occupancy Tax Rate to assist local businesses;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEARSALL, TEXAS, THAT.

SECTION 1. That Section 2, Subsection B Tax Rate is hereby amended to read as follows:

"B. TAX RATE: The tax should be equal to Four percent (4.00%) of the consideration paid by the occupant of the sleeping room or sleeping facility to the hotel, exclusive of other occupancy taxes imposed by other government agencies."

SECTION 2. Any provisions in conflict with the above amendments are hereby repealed.

SECTION 3. Publication.


The City Clerk shall cause a descriptive caption or title stating in summary the purpose of the ordinance and penalty for violation hereof, to be published at least twice in "The Current", a newspaper published in and of general circulation within and around said City of Pearsall.

SECTION 4. Effective Date

This ordinance shall take effect at 12:01 a.m. on the 25th day of
January, 1996.


VICTOR VINTON - MAYOR

ATTEST:


AMY PADILLA - CITY CLERK

Published: 01/17/96
01/24/96