

**ORDINANCE NO. 0-2011-54**

**AN ORDINANCE OF THE CITY OF TYLER, TEXAS AMENDING CITY CODE CHAPTER 2, "FINANCE AND TAXATION", ARTICLE II, "TAXATION" BY REPEALING PROVISION RELATING TO THE 7% HOTEL OCCUPANCY RATE, ADOPTING NEW PROVISIONS RELATED TO THE 7% HOTEL OCCUPANCY RATE, AND ADOPTING NEW PROVISIONS TO IMPLEMENT AN ADDITIONAL TWO PERCENT (2%) HOTEL MOTEL OCCUPANCY TAX TO BE USED FOR EXPANSION OR CONSTRUCTION OF EVENT FACILITIES FOR THE COMMUNITY, AND WHICH WILL BE USED SOLELY FOR THE PURPOSE OF EXPANDING OR CONSTRUCTING CONVENTION OR EVENT FACILITIES; PROVIDING FOR THE ADMINISTRATION AND COLLECTION OF SUCH TAX; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to promote the general welfare of the citizens of Tyler; and

**WHEREAS**, the City Council desires to promote the creation of a proper economic and social environment in the City, to induce investment of private resources in productive business enterprises, and to encourage employment and economic activity for the benefit of all citizens;

**WHEREAS**, Texas Tax Code Section 351.003(a) authorizes a hotel occupancy tax not to exceed 7% of the price paid for a room in a hotel; and

**WHEREAS**, on January 12, 2011, the City Council adopted Resolution R-2011-1, supporting passage of legislation amending Texas Tax Code Section 351.003 to authorize a municipality that has a population of more than 95,000 and that is located in a county that borders Lake Palestine and that has a population of more than 200,000, to establish a hotel occupancy rate not to exceed 9% of the price paid for a room in a hotel; and

**WHEREAS**, on June 17, 2011, Governor Perry signed into law S.B. 349, which amends Texas Tax Code Section 351.003 to add the additional 2% hotel occupancy tax rate, to be used for the expansion or construction of a conference or event facilities for the community and which will be used solely for the purpose of expanding or constructing convention or event facilities; and

**WHEREAS**, the revenue raised from the additional 2% in the hotel occupancy tax rate shall only be used for the costs associated with and related to new or expanded conference center and/or multi-purpose arena, and any associated facilities. Such funds from the additional 2% occupancy tax shall be accounted for separately within the City of Tyler's Hotel Occupancy Tax Fund and tracked as a reserve for future commitments;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:**

**PART 1.** That Tyler City Code Chapter 2 "Finance and Taxation", Article II, "Taxation", is hereby repealed by deleting current Sections 2-15 through 2-17 in their entirety, and adopting new Sections 2-15 through 2-25 to read as to follows:

**Sec. 2-15. Hotel Tax - Definitions.**

The following words, terms and phrases shall, for the purposes of Sections 2-15 through 2-25 and except where the context clearly indicates a different meaning, be defined as follows:

**City.** The City of Tyler and, variously, the incorporated territory of the City of Tyler, wherein the city government is empowered to impose this tax by Chapter 351 of the Texas Tax Code, or successor.

**Director of Finance/CFO.** The duly appointed Director of Finance/CFO for the City or designee.

**Due date.** The twentieth (20th) day after the close of the monthly period for which the tax is to be computed.

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

**Guest.** 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.** A room in a hotel occupied, or intended, arranged, or designed for sleeping, and rented for more than two dollars (\$2.00) per day.

**Hotel.** Any structure or any portion of a structure, including any hotel, motel, inn, tourist house, tourist court, lodging house, rooming house, or bed and breakfast, containing guest rooms and which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise. The meaning does not include any hospital, sanitarium, nursing home, or the dormitory facilities at an institution of higher education.

**Lodging Provider.** Any person operating a hotel in the city, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, licensee or any other person operating such hotel and who is subject to collecting and remitting the tax imposed upon guests.

**Monthly period.** The calendar months of any year.

**Occupancy.** The use or possession, or the right to the use or possession of any guest room in a hotel.

**Permanent resident.** Any guest who, as of a given date, has or shall have occupied or has or shall have established the right of occupancy to any guest room in a hotel for more than thirty (30) continuous days.

**Person.** Any individual, firm, partnership, joint adventure, association, social club, fraternal organization, joint stock company, corporation, cooperative, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, the plural as well as the singular number.

**Rent.** The consideration charged for the occupancy of a guest room, valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the lodging provider to the guest, without any deduction therefrom whatsoever.

**Tax.** The seven percent (7%) tax and additional two percent (2%) tax on hotel occupants imposed by Sections 2-16 and 2-17, as provided for by Chapter 351 of the Texas Tax Code, or successor. (Ord. No. 0-2011-54; 07/13/2011)

**Sec. 2-16. Hotel tax rate. Establishment of 7% hotel tax occupancy rate; and additional 2% hotel occupancy tax rate.**

a. There shall be paid by the guest for every occupancy of a guest room in the city a tax at the rate of seven percent (7%) of the amount of rent unless an exception is provided under Section 2-18.

b. Convention center facilities. In addition to the tax provided for in subsection a., there shall also be paid by the guest for every occupancy of a guest room in the city an additional tax at the rate of two percent (2%) of the amount of rent, unless an exception is provided under Section 2-18. As authorized by State law, revenue derived from the additional two percent (2%) hotel tax provided for in this subsection shall be allocated for the the construction, expansion, maintenance or operation of convention center facilities. The revenue raised form the additional two percent (2%) in the hotel occupancy tax rate shall be used solely for the costs associated with and related to new or expanded conference center and/or multi-purpose arena, and any associated facilities. Said revenue derived pursuant to this subsection shall be accounted for separately within the City of Tyler's Occupancy Tax Fund, and tracked as a reserve for future commitments. (Ord. No. 0-2011-54; 07/13/2011)

### **Sec. 2-17. Collection of Tax by Lodging Provider.**

Every lodging provider renting guest rooms in the city shall collect a tax of seven percent (7%) on the amount of rent from the guest, and an additional two percent (2%) on the amount of rent from the guest, as set forth in Section 2-16, unless an exception is provided under Section 2-18. 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. 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. The lodging provider shall be liable to the city for the full amount received or collected as tax, whether collected appropriately or inappropriately, and for any amount of tax that should have been collected, but was not.

1. Any person who receives or collects the tax or any consideration represented to be the tax from another person holds the amount so collected in trust for the benefit of the City and is liable to the City for the full amount collected, plus penalty.

2. An individual who controls or supervises the collection of the tax from another person, or an individual who controls the accounting for or remittance of the tax, and who willfully fails to remit or cause to be remitted the tax is liable as a responsible individual for an amount equal to the tax not remitted or caused to be remitted, plus penalty. The dissolution of a corporation, partnership or other business or fraternal association does not affect a responsible individual's liability under this subsection. Furthermore, the liability imposed by this subsection shall be in addition to any other penalty provided by law. (Ord. No. 0-2011-54; 07/13/2011)

### **Section 2-18. Exceptions.**

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

b. 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.

c. No tax shall be collected from the following Texas quasi-governmental entities formed under the Texas Local Government, and Health and Safety Codes, or successors, 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.