

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2002-12

AN ORDINANCE AMENDING TITLE 8 “BUSINESS REGULATIONS”, CHAPTER IX “HOTELS”, OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS BY AMENDING ARTICLE 8-IX-1 RELATING TO THE IMPOSITION OF A HOTEL OCCUPANCY TAX WITHIN THE CITY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, Chapter 351 of the Texas Tax Code authorizes a municipality to impose a tax on the occupancy of hotel rooms within the city; and

WHEREAS, the City Council of the City of Kerrville has previously enacted Title 8, Chapter IX of the Code of Ordinances of the City of Kerrville, Texas, which imposes a tax on the occupancy of hotel rooms within the City; and

WHEREAS, recent legislation adopted by the Texas Legislature revised Chapter 351 to allow municipalities to apply such a hotel occupancy tax on hotels within their extraterritorial territorial jurisdiction and it also revised the manner in which the tax was collected from certain federal and state government officials and employees; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend the City Code of Ordinances to impose its hotel occupancy tax on the rental of hotel rooms within its extraterritorial jurisdiction and to revise the method in which such tax is collected from specified federal and state government officials and employees;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. That Article 8-IX-1 of the Code of Ordinances of the City of Kerrville, Texas, titled “Hotel occupancy tax.” shall be amended to read in its entirety as follows:

Art. 8-IX-1. Hotel Occupancy Tax.

Sec. (a) Definitions.

The following words or phrases as used in this article shall have the following meanings:

- (1) *Calendar quarter* means the regular calendar quarters of the year, the first quarter being comprised 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.

- (2) *City* means the City of Kerrville, Texas.
- (3) *Consideration* means the cost of the room in a hotel only if the room is one ordinarily used for sleeping, and shall not include the cost of any food served or the cost of personal services rendered to the occupant of such room except for those services related to the cleaning and readying of such room for occupancy.
- (4) *Hotel* means any building in which members of the public obtain sleeping accommodations for consideration. The term shall include, but not be limited to, a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, bed and breakfast, and an apartment not occupied by permanent residents. The term does not include:
 - a. a hospital, sanitarium, or nursing home; or
 - b. 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 of the Texas Education Code, and used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution.
- (5) *Monthly period* means a regular calendar month of the year.
- (6) *Occupancy* means the use or possession, or the right to the use or possession of any room in a hotel if the room is one ordinarily used for sleeping and if the occupant's use, possession or right to use or possession extends for a period of less than thirty (30) consecutive days.
- (7) *Occupant* means anyone, who for consideration, uses, possesses, or has the right to use or possess, any room of sleeping space or facility in a hotel under any lease, concession, permit, right of access, license, contract or agreement.
- (8) *Permanent resident* means any occupant who has or shall have the right to occupancy of any room or rooms or sleeping space or facility in a hotel for at least thirty (30) consecutive days.
- (9) *Person* means any individual, company, corporation or association owning, operating, managing or controlling any hotel.

Sec. (b) Levy of Tax; Rate; Exceptions.

- (1) There is hereby imposed, as authorized by and for the purposes provided in Chapter 351, Texas Tax Code, a tax upon the cost of occupancy of any sleeping room or space furnished by any hotel within the City or its extraterritorial territorial jurisdiction, where the cost of occupancy is at the rate of two dollars (\$2.00) or more per day, such tax to be equal to six (6) percent of the consideration paid by the occupant of such room or space to such hotel, exclusive of other occupancy taxes imposed by any other governmental agencies.
- (2) The following shall be exempt from payment of the tax levied under this Article:
 - a. No tax shall be imposed upon a permanent resident.
 - b. No tax shall be imposed on a United States governmental entity where an officer or employee is traveling on behalf of, or otherwise engaged in the course of the official duties for, the governmental entity.
 - c. A state of Texas governmental entity or an agency, institution, board, or commission of this state, other than an institution of higher education as defined by Section 61.003 of the Texas Education Code, shall pay the tax imposed by this Article, but shall be entitled to a refund of the amount paid. To receive such refund, the entity entitled to such refund must file a refund claim on a form provided by the City. An entity may file a refund claim with the City for each calendar quarter for all reimbursements accrued during that quarter.
 - d. No tax shall be imposed on an officer or employee of a governmental entity described in Subsection c. above, where the officer or employee produces photo identification verifying his/her identity and which indicates his/her exempt status. All other state officers or employees shall pay the tax imposed by this Section and the state governmental entity with which the person is associated shall be entitled to a refund of the tax paid, as described above.

Sec. (c) Collection.

Every person owning, operating, managing, or controlling any hotel within the City or its extraterritorial territorial jurisdiction shall collect the tax imposed by this Article on behalf of the City.

Sec. (d) Reports and Payment of Tax.

On or before the fifteenth day of the month following each monthly period, every person required by Sec. (c) of this Article to collect the tax imposed herein, shall file a written report with the City Director of Finance showing the gross receipts paid for all room occupancies in the preceding monthly period, the taxable receipts for all room occupancies, the amount of tax collected on such occupancies, and any other information the Director of Finance may reasonably require. Such persons shall pay the tax due on such occupancies at the time of filing of such report. Where the fifteenth day falls on a Saturday, Sunday, or holiday observed by the City, said report and payment shall be due on the next business day. At the time of payment of such tax, a copy of the hotel's monthly tax report, as filed with the State Comptroller in connection with the State of Texas Hotel Occupancy Tax, shall also be furnished to the Director of Finance.

Sec. (e) City Audit.

The Director of Finance shall be permitted to have access to books and records of the hotel that are compiled and maintained by the person required to pay the tax as imposed herein. Such inspection may occur during reasonable business hours as shall be necessary to enable the Director of Finance to determine the correctness of any report filed under Sec. (d) of this Article and 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.

Sec. (f) Violations and Penalties.

Any person who shall fail to file a report as required herein, or who shall fail to pay to the City the tax as imposed herein, when said report or payment is due, shall be subject to a penalty equal to five percent (5%) of the total amount of tax owed, and after the first thirty (30) days, shall be penalized an additional five percent (5%) of such tax; provided, however, the penalty shall never be less than one dollar (\$1.00). Delinquent taxes shall accrue interest at the rate of twelve percent (12%) per annum beginning sixty (60) days from the date such taxes are due.

Sec. (g) Criminal Penalties.

If any person shall fail to collect the tax imposed in this Article, or shall fail to file a report as required in this Article, or shall fail to pay the City the tax as imposed in this Article when such report or payment is due, or shall file a false report, then such person shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished as provided in Article 1-I-8 of this Code.

Sec. (h) Tax Collection; Other Remedies.

The City Attorney is authorized to bring suit against a person who is required to collect the tax imposed by this Article and pay such collections to the City but who has failed to file a tax report or pay the tax when due. The purpose of such suit will be to collect the tax not paid or to enjoin the person from operating a hotel until the tax is paid or the report filed, as applicable, as provided by a court's order. In addition to the amount of tax owed under this Article, the person may be liable to the City for the City's reasonable attorney fees and a penalty equal to 15 percent of the total amount of the tax owed. The remedies provided by this Section are in addition to others available.

Sec. (i) Reimbursement for Collection Costs.

Those persons who are required to collect the tax imposed herein and who report and pay such tax to the City in a timely manner, as required herein, may deduct and withhold from the payment to the City, as reimbursement for the cost of collecting such tax, an amount equal to one percent (1%) of the amount of taxes collected and required to be reported to the City. The reimbursement provided for herein shall be forfeited for failure to pay the tax or file a report in a timely manner as required herein.

SECTION TWO. The provisions of this Ordinance shall take effect immediately upon adoption with the exception of the following stated provisions:

- a. Sec. (d) shall take effect beginning July 1, 2002, wherein the first monthly reporting and payment date shall be due on or before August 15, 2002.
- b. That part of Sec. (b) with respect to the imposition of a hotel occupancy tax within the City's extraterritorial jurisdiction shall take effect October 1, 2002.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Kerrville, Texas hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Clerk is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

PASSED AND APPROVED ON FIRST READING, this the 28th day of May, 2002.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the 11th day of June, 2002.

Stephen P. Fine, Mayor

ATTEST:

Sheila L. Brand, City Clerk

APPROVED AS TO FORM:

Michael C. Hayes, Interim City Attorney