

ORDINANCE NO. 12-7-2017

AN ORDINANCE OF THE CITY OF YORKTOWN, TEXAS, LEVYING AN OCCUPANCY TAX FOR THE USE AND OCCUPANCY OF CERTAIN ROOMS IN HOTELS; PROVIDING DEFINITIONS; PROVIDING FOR REPORTING OF RECEIPTS AND PAYING OF TAXES; PROVIDING FOR INTEREST; PROVIDING FOR COLLECTION, ATTORNEY FEES AND COSTS; PROVIDING PENALTIES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS.

WHEREAS, the City of Yorktown (“City”) is a Texas general-law municipality; and

WHEREAS, pursuant to Texas Local Government Code, Section 51.001, the City has the authority to adopt ordinances and regulations that are for good government, peace and order of the City; and

WHEREAS, Chapter 351 of the Texas Tax Code allows for the imposition and collection of hotel occupancy taxes by municipalities; and

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

I.
HOTEL OCCUPANCY TAX

Section 1. Definitions.

The following words, terms and phrases, for the purpose of this Ordinance, except where the context clearly indicates a different meaning, are defined as follows:

City shall mean the City of Yorktown, Texas.

City Secretary shall mean the City Secretary of the City of Yorktown, Texas.

Consideration shall mean the cost of the room, sleeping space, bed or other facility in a hotel and shall not include 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, sleeping space, bed or other facility for occupancy.

Hotel shall mean any building or buildings, structure, manufactured home, trailer or other facility, in which the public may, for consideration, obtain sleeping accommodations. The term shall include without limitation hotels, motels, tourist homes, tourist houses, tourist courts, lodging houses, inns, rooming houses, bed and breakfast facilities, or other buildings where rooms are

furnished for consideration, but hotel shall not be defined so as to include: 1) 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, Texas Tax Code.

Monthly shall mean the regular succeeding calendar months of each calendar year beginning with the month of January and ending with the month of December.

Occupancy shall mean the use or possession, or the right to the use or possession, of any room or rooms, sleeping space, bed or other facility in a hotel for any purpose.

Occupant shall mean anyone who, for a consideration, uses, possesses, or has a right to use or possess any room or rooms, sleeping space, bed or other facility in a hotel under any lease, concession, permit, right of access, license, contract or agreement.

Permanent Resident shall mean any occupant who has or shall have the right to occupancy of any room or rooms or sleeping space or other facility in a hotel for at least thirty (30) consecutive days, so long as there is no interruption of payment for the period.

Hotelier shall mean any individual, company, corporation, association or other entity owning, operating, managing or controlling any hotel.

Section 2. Levy of tax; exceptions.

There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel within the city limits of the City of Yorktown or within the City of Yorktown's extraterritorial jurisdiction where such occupancy is at the rate of two dollars (\$2.00) or more per day, and such tax shall be equal to seven percent (7%) of the consideration paid by the occupant of such room to such hotel.

No tax shall be imposed hereunder upon a Permanent Resident.

Section 3. Collection.

- (a) Every Hotelier shall collect the tax imposed in Section 2 hereof for the City of Yorktown.
- (b) The City of Yorktown may bring suit against a Hotelier who is required to collect the tax imposed by this Ordinance and who has failed to file a tax report or pay the tax when due, to collect the tax not paid or to enjoin the Hotelier from operating a hotel in the City of Yorktown until the tax is paid or the report is filed, as provided by the court's order. In addition to the amount of any tax owed under this Ordinance, the hotelier is liable to the City for:
 - (1) the City's reasonable attorney's fees;
 - (2) the costs of an audit conducted under Subsection (c)(1), as determined by the City

using a reasonable rate, but only if:

- (A) the tax has been delinquent for at least two (2) complete City fiscal quarters at the time the audit is conducted; and
 - (B) the City has not received a disbursement from the State Comptroller as provided by Section 156.2513, Texas Tax Code, related to the Hotelier's concurrent state tax delinquency described by Section 351.008, Texas Tax Code;
- (3) a penalty equal to fifteen percent (15%) of the total amount of the tax owed if the tax has been delinquent for at least one (1) complete City fiscal quarter; and
- (4) interest under Section 351.0042, Texas Tax Code.
- (c) If a Hotelier required to file a tax report under this Ordinance does not file the report as required by the City, the City may determine the amount of tax due under this Ordinance by:
- (1) conducting an audit of each hotel in relation to which the Hotelier did not file the report as required by the City; or
 - (2) using the tax report filed for the appropriate reporting period under Section 156.151, Texas Tax Code, in relation to that hotel.
- (d) If the Hotelier did not file a tax report under Section 156.151, Texas Tax Code, for that reporting period in relation to that hotel, the City may estimate the amount of tax due by using the tax reports in relation to that hotel filed during the previous calendar year under this Ordinance or Section 156.151, Texas Tax Code. An estimate made under this subsection is prima facie evidence of the amount of tax due for that period in relation to that hotel.
- (e) The authority to conduct an audit under this Section is in addition to any other audit authority provided by statute or ordinance. The City may directly perform an audit authorized by this Section or contract with another person to perform the audit on an hourly rate or fixed-fee basis. The City shall provide at least thirty (30) days' written notice to a Hotelier who is required to collect the tax imposed by this Ordinance with respect to a hotel before conducting an audit of the hotel under this Section.
- (f) The remedies provided by this Section are in addition to other available remedies.

Section 4. Reports.

Every Hotelier required hereby to collect the tax imposed by this Ordinance shall file a report with the City Secretary showing the consideration paid for all room occupancies in the preceding month, the amount of tax collected on the City's behalf for such occupancies, and any other information as the City Secretary may reasonably require.

The taxes collected by a Hotelier and payable to the City pursuant to this Ordinance must be received in full by the City Secretary's office no later than the last day of the month following

the calendar month in which the taxes were collected. If the last day of the month falls on a Saturday, Sunday, or holiday designated by the City, said tax payment must be received by the City Secretary's office no later than the close of business on the next regular business day.

Such Hoteliers shall pay to the City the tax due on such occupancies at the time of filing such report. Each Hotelier shall also furnish to the City Secretary a copy of the quarterly tax report filed with the State Comptroller in connection with the State of Texas Hotel Occupancy Tax, such report shall be furnished on or before the date the report is required to be filed with the State Comptroller.

Section 5. Rules and regulations.

The City Secretary shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied herein, and shall upon reasonable notice have access to books and records of each Hotelier necessary to enable the City Secretary to determine the correctness of any report filed as required by this Ordinance and the amount of taxes due under the provisions of this Ordinance.

If, as a result of an audit conducted under this Ordinance, the City obtains documents or other information showing a failure to collect or pay when due both the tax imposed by this Ordinance and the tax imposed by Chapter 156, Texas Tax Code, the City Secretary shall notify and submit the relevant information to the State Comptroller's Office.

Section 6. Violations; penalties.

If any Hotelier required by the provisions of this Ordinance to collect the tax imposed herein, to make reports as required herein, and to pay to the City Secretary the tax imposed herein shall fail to collect such tax, shall fail to file such report, or shall fail to pay such tax, or if such person shall file a false report, such person shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500.00).

If any Hotelier shall fail to file a report as required by this Ordinance or shall fail to pay to the City at the City Secretary's Office the tax as imposed by this Ordinance when said report or payment is due, said person shall pay to the City as an administrative penalty the greater amount of: (1) five percent (5%) of the total tax due; or (2) five dollars (\$5.00).

An additional administrative penalty of the greater amount of (1) five percent (5%) of such delinquent tax; or (2) five dollars (\$5.00), shall be paid to the City if the tax is paid more than thirty (30) days after the original due date. Any person who fails to pay the tax due as required by this Ordinance is liable to the City for interest on the unpaid amount at the greater of: (1) the rate provided by the Texas Tax Code Section 111.060(b); or (2) ten percent (10%) per annum. Interest on delinquent taxes due to the City as required by this Ordinance accrues from the first day after the date due until the tax is paid. In addition to all taxes, penalties, and interest payable to the City, a twenty-five dollar (\$25.00) administrative fee shall be imposed for taxes that remain delinquent more than thirty (30) days after the original due date.

Section 7. Collection Procedures on Purchase of Hotel.

If a Hotelier who is liable for the payment of a tax under this Ordinance is the owner of a 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 of tax due to the City until the seller provides a receipt from the City Secretary showing that the amount has been paid or a certificate showing that no tax is due.

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.

The purchaser of a hotel may request that the City Secretary 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 Secretary shall issue the certificate or statement not later than the sixtieth (60th) day after the date that the person receives the request.

If the City Secretary fails to issue the certificate or statement within the period provided by this Section, the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

II. **SAVINGS CLAUSE**

All provisions of any ordinance, resolution or other action of the City in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances, resolutions or other actions shall remain in full force and effect.

III. **SEVERABILITY**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentences and clauses and phrases remaining should any provision be declared unconstitutional or invalid.

IV. **REPEALER**

Any other ordinance or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

V.
EFFECTIVE DATE

This Ordinance shall become effective upon adoption and publication as required by law.

VI.
PROPER NOTICE AND MEETINGS

It is hereby officially found and determined that the meetings at which this Ordinance was passed were open to the public as required and that public notice of the time, place and purpose of said meetings were given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED, at the meeting of the City Council held on this the 12th day of February, 2018.



Mayor Rene Hernandez

ATTEST:



John Barth City Secretary/City Administrator