

ORDINANCE NO. 2099

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, AMENDING ORDINANCE NUMBER 1745; PROVIDING FOR THE MONTHLY COLLECTION AND REPORTING OF A HOTEL OCCUPANCY TAX; PROVIDING A PENALTY FOR FAILURE TO REPORT OR COLLECT THE TAX; PROVIDING CERTAIN DEFINITIONS; PROVIDING FOR CERTAIN EXEMPTIONS; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING A SEVERABILITY CLAUSE.

WHEREAS, Section 351.001, V.A.T.S., Municipal Hotel Occupancy Texas, sets forth the authority of the municipality to levy by ordinance a hotel occupancy tax upon the cost of occupancy of any room or other hotel facility used for sleeping, within the corporate limits of said city where the charge for the room is \$2.00 or more per day; and

WHEREAS, the City Council has found that it would be in the best interest of the City of Terrell for the Hotel Occupancy Taxes to be reported and paid monthly;

NOW, THEREFORE; BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS:

Ordinance Number 1745 is hereby amended to read as follows:

SECTION 1. Definitions.

The following words, terms and phrases are defined as follows:

- (1) Hotel: Any building or buildings in which the public may, for a consideration, obtain sleeping accommodations, including hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, or other buildings where rooms are furnished for a consideration, but not including hospitals, sanitariums or nursing homes.
- (2) Consideration: 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.
- (3) Occupancy: 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.
- (4) Occupant: Anyone who, for a consideration, uses, possess,

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.

(5) Person: Any individual, company, corporation or association owning, operating, managing or controlling any hotel.

(6) Monthly period: The regular calendar months of the year.

(7) Permanent resident: Any occupant who has or shall have the right to occupancy of any room or rooms in a hotel for at least thirty (30) consecutive days during the calendar year or preceding year.

SECTION 2. Tax Levied; Amount; Exemptions.

There is hereby levied a tax of seven percent (7%) 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 of 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.

Exceptions are as follows:

(1) No tax shall be imposed upon a permanent resident.

(2) Not tax shall be imposed for federal or state employees traveling on official business.

(3) No tax shall be imposed for diplomatic personnel who present a Tax Exemption card issued by the United States Department of State.

(4) No tax shall be imposed for federal or state military personnel traveling on official military business. This exemption does not cover military staff on leave or between stations.

SECTION 3. Collection of Tax

Every person owing, operating, managing or controlling any hotel shall collect the tax levied by

this ordinance for the City of Terrell.

The hotel operator shall be entitled to one percent (1%) of the hotel occupancy tax revenues collected as reimbursement for the operator's administrative costs for collecting the tax. However, as hereinbelow provided, 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 file a false report with the city.

SECTION 4. Monthly Reports to City Secretary.

On the twentieth (20th) day of the month, every person required to collect the tax imposed hereby shall file a report with the City Secretary of taxes showing the price paid for all room occupancies in the preceding month, the amount of the tax collected on such occupancies, and any other information the City Secretary 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 City Secretary. The City Secretary is hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this ordinance. The City Secretary shall have the authority to request and receive within a reasonable time documentation for information contained in the report to the city by the hotel. The hotel operator shall also furnish a copy of the quarterly tax report filed by the hotel for the State Comptroller regarding the State Hotel Occupancy Tax.

SECTION 5. Rules and Regulations of the City Secretary; Access to Books and Records.

The City Secretary 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 enable him to determine the correctness of any report filed as required by this ordinance, and the amount of taxes due under the provisions of this article.

SECTION 6. Penalties

If any person shall fail to file a tax report as required herein or shall file a false report or fail to pay to pay the tax when due to the City, said person is liable to the City for its reasonable attorney's fees and penalty equal to fifteen percent (15%) of the total amount of the tax owed. Delinquent taxes shall draw interest at the rate of ten percent (10%) per annum beginning sixty (60) days from the due date.

Any person violating any of the provisions of this article, including hotel operators who fail to collect the tax, fail to file a return, file a false return, or who are delinquent in their tax payment, shall be guilty of a misdemeanor and shall, upon conviction, be fined in any sum not to exceed Five Hundred and No/100 (\$500.00) Dollars, and each twenty-four (24) hours of any such

violation shall constitute a separate offense.

SECTION 7. Additional Penalties.

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 Texas law.

SECTION 8. Additional Authorization to bring Suit.

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 has 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.

SECTION 9. Use of Revenue Derived from Levy of Hotel Occupancy Tax.

The revenue derived from any hotel occupancy tax imposed and levied by this ordinance 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 (as such is defined in V.A.T.S. Tax Code, Section 351.001);
- (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 or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:
 - (1) which are at or in the immediate vicinity of convention center facilities; or
 - (2) which are located elsewhere in the municipality or its vicinity that would be frequented by tourists, convention delegates, or other visitors to the municipality.

Revenue derived from the hotel occupancy tax shall be expended only in a manner which directly enhances and promotes tourism and the convention and hotel industry as herein before delineated. Such revenue shall not be used for the general revenue purposes or general governmental operations of the municipality which are not directly related to promoting the hotel and convention industry or tourism in the municipality.

SECTION 10. Administrative Requirements; Accountability; Keeping of Records.

The City Council may, by contract, 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 hotel occupancy tax. The City Council shall approve in writing in advance the annual budget of the entity to which it delegates those functions, and shall require the entity to make periodic reports to the City Council at least quarterly listing the expenditures made by the entity of revenue from the tax provided by the municipality.

The entity must maintain the revenue provided by the municipality from the tax 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.

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.

The approval by the City Council of the annual budget of the entity to which these functions are delegated creates a fiduciary duty in the person or entity with respect to the revenue provided by the municipality to the person or entity under the contract.

A person or entity with whom the municipality contracts to conduct authorized activities shall maintain complete and accurate financial records of each expenditure of hotel occupancy tax revenue made by the person or entity and, on request of the City Council or other person, shall make the records available for inspection and review.

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 the promotion and servicing of expenditures hereinbefore authorized. The portion of the total administrative costs for activities for which hotel occupancy tax revenue may be used may not exceed the administrative costs actually incurred in conducting the authorized activities.

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 the person's job in an efficient and professional manner.

SECTION 11. Effective Date.

The hotel occupancy tax authorized herein shall become effective commencing on the first day of the month following the date upon which this ordinance, or any amended form thereof, has been adopted and enacted by the City of Terrell.

SECTION 12. Severability.

In the event that any one or more of the provisions, clauses, or words of this ordinance or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provisions, clauses, or words of this ordinance or the application thereof to any other situations or circumstance and it is intended that this ordinance shall be severable and that it shall be construed and applied as if such invalid or unconstitutional clause, section, provision, or word had not been included herein.

PASSED AND APPROVED this 20th day of November, 2001.

PASSED AND ADOPTED this 18th day of December, 2001.

HENRY C. MADGWICK, SR., Mayor

ATTEST:

JOHN ROUNSAVALL, City Secretary

APPROVED AS TO FORM:

MARY GAYLE RAMSEY, City Attorney