

ORDINANCE NO. 2012-22

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF BOERNE, TEXAS, BY REPEALING AND REPLACING CHAPTER 21 - TAXATION, ARTICLE V. – HOTEL AND MOTEL OCCUPANCY TAX; PROVIDING A PENALTY NOT TO EXCEED \$500 PER OCCURRENCE

WHEREAS, from time to time it becomes necessary for the City to update and adopt the new editions with amendments to the various codes;

WHEREAS, the City Council is authorized by Chapter 351 of the Texas Tax Code to establish by Ordinance a tax upon the cost of a sleeping room furnished by any Hotel where the cost of Occupancy is at a rate of \$2.00 or more per day;

WHEREAS, a tax is hereby levied upon the cost of Occupancy of any sleeping room, furnished by any Hotel, where the cost of Occupancy is at a rate of \$2.00 or more per day; and

WHEREAS, such tax shall be in the sum of 7% Consideration paid by the Occupant of the sleeping room in the Hotel; and

WHEREAS, the revenue derived from the Occupancy tax authorized or validated by this ordinance may be used only for the purposes as set forth in Chapter 351.101 of the Texas Tax Code.

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

That the following Sections of Chapter 21- Taxation, Article V. – Hotel and Motel Occupancy Tax, of the Code of Ordinances, City of Boerne, Texas, is hereby repealed and replaced to read as follows:

Sec. 21-101. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Consideration means the cost of the room in a Hotel only if the room is ordinarily used for sleeping. Consideration does 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 for Occupancy.

Hotel means any building or buildings in which the public may, for a Consideration, obtain sleeping accommodations. The term includes hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, bed and breakfast or other buildings where rooms are furnished for a Consideration, but not including hospitals, sanitariums or nursing homes.

ETJ means the extraterritorial jurisdiction of the City as established by state law and all extraterritorial jurisdictions as is otherwise established by the City and the landowners as authorized by state law.

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 is other than a Permanent Resident as hereinafter defined.

Occupant means anyone who, for a Consideration uses, possesses, 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, if the room is one ordinarily used for sleeping and is not used as a Permanent Resident.

Permanent Resident as defined by Texas Tax Code, Chapter 351.006, which currently reads as of the date of this Ordinance, any Occupant who has or shall have the right to occupy any room or rooms in a Hotel for at least thirty (30) consecutive days during the calendar year or preceding year.

Person means any individual or legal entity, including a company, corporation, partnership, or an incorporated or unincorporated association owning, operating, managing, or controlling any Hotel.

Quarterly or Quarterly Period means a quarter of the calendar year. The first quarter being composed of the months of January, February and March; the second quarter is composed of the months of April, May and June; the third quarter being the months of July, August and September; and the fourth quarter is composed of the months of October, November and December.

Tax Collector means the finance director of the City of Boerne or his/her designee, or in the absence thereof, the city manager of the City of Boerne, or his/her designee.

Sec. 21-102. –Imposition of Tax.

- (a) A tax is hereby levied upon the cost of Occupancy of any sleeping room furnished by any Hotel, located within the City or within the City's ETJ, for which the cost of Occupancy is at a rate of two dollars (\$2.00) or more per day.
- (b) Such Occupancy tax shall be seven percent (7%) of the Consideration paid for such room.
- (c) This section shall apply to all establishments inside the city limits of the City of Boerne. Additionally, this section shall apply to establishments located in the ETJ of the City in accordance with V.T.C.A., Tax Code § 351.0025.
- (d) The tax shall not apply to a Person who is a Permanent Resident of the room or who is otherwise exempt from paying the tax pursuant to Chapter 156, Texas Tax Code.

Sec. 21-103. –Quarterly / monthly reports to Tax Collector.

- (a) Every Person owning, operating, managing or controlling any Hotel within the City or its ETJ shall collect the tax imposed and provided in this Ordinance. The use of any agent or reservation service shall not relieve any Person from responsibility for payment of the tax.

- (b) On or before the last day of the month following each Quarterly Period, every Person required pursuant to this Ordinance to collect the tax imposed herein shall file a report with the Tax Collector, showing the Consideration paid for all room occupancies in the preceding quarter, the amount of tax collected on such occupancies, and any other information, as the Tax Collector may reasonably require. Such Person shall pay the tax due on such occupancies at the time of filing of such report with the Tax Collector. The report shall be in a form prescribed by the Tax Collector. The Tax Collector is hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this Ordinance. The Tax Collector shall have the authority to request and receive within a reasonable time documentation of information contained in the report to the City by the Hotel.
- (c) If a Person owes more than \$500 for a calendar month or \$1,500 for a calendar quarter, the Person qualifies as a monthly filer having a reporting period of a calendar month and the taxes are due and payable on the last day of the month following the end of the reporting period.

Sec. 21-104. – Exemption.

No tax shall be imposed under this article upon a corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Sec. 21-105. – Rules and Regulations, access to books and records.

The city manager or his/her designee, 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 necessary to enable him/her to determine the correctness of any reports and the amount of taxes due under the provisions of this Ordinance.

Sec. 21-106. – Audit by city.

If a Person required to file a tax report under this Ordinance does not file the tax report as required by the City, the city attorney, or other city designee acting for 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 Person 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 of the Texas Tax Code in relation to that Hotel.

If the Person did not file a tax report under Section 156.151 of the Texas Tax Code for that reporting period in relation to that Hotel, the city attorney or his/her designee 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 chapter or Section 156.151 of the 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.

The authority to conduct an audit under this section is in addition to any other audit authority provided by statute, charter or ordinance.

Sec. 21-107. – Collection of delinquent taxes and civil penalties.

- (a) If any Person shall fail to file a report as required under this Ordinance when said report is due or shall fail to pay the Tax Collector the tax as imposed herein, then, in addition to the amount of tax owed under this Ordinance, that Person, as a penalty, shall forfeit an additional five percent (5%) of the total amount of tax due. After the first thirty (30) days, if such Person has not cured the deficiency referenced above he/ she shall forfeit an additional five percent (5%) of the tax owed under this Ordinance. Such penalty shall never be less than one dollar (\$1.00). If after sixty (60) days, the taxes imposed herein remain unpaid, the delinquent taxes shall draw interest at the rate of ten percent (10%) per annum beginning the sixtieth (60th) day from the date due, and the Person who has failed to make the report as required under this Ordinance, shall be responsible for paying the tax and any delinquency and/ or penalties and interest accruing thereto.
- (b) After sixty (60) days, the city manager or his/her designee is authorized and directed to notify the city attorney of any Person who has not timely filed a report or failed to timely pay the Tax Collector the tax imposed herein. Upon the receipt of such notification from the city manager or his/her designee, the city attorney is directed to:
 - 1) Promptly give written notice to the Person that such report has not been received or taxes due have not been paid and demand that such Person cure said deficiency.
 - 2) Pursue the demand for performance and compliance with this Ordinance, including the payment and collection of all applicable penalties, interest, late charges, attorney fees, costs and charges.
- (c) In the event the report is not filed or, as applicable, all amounts due and payable are not paid, within thirty (30) days after the date of the written demand by the city attorney, the city attorney is authorized and directed to file suit to:
 - 1) Obtain the filing of any report required by this Ordinance;
 - 2) Obtain the payment of all taxes, penalties, interest, costs and fees due and payable pursuant to this Ordinance;
 - 3) Obtain an injunction prohibiting the continued operation of the Hotel for which the report has not been filed, or for which the taxes have not been paid; and
 - 4) To obtain such other and further relief that may be available at law or in equity.
- (d) In the event that any action is required to be filed in a court of competent jurisdiction in order to obtain the required reporting or to collect the delinquent taxes and upon conviction thereof, the Person(s) responsible for collecting the taxes and filing the report shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) for each offense plus reasonable attorney fees and costs, provided that such attorney fees shall in no event be less than fifteen percent (15%) of the total amount of taxes, penalties and interest due and payable.
- (e) Failure to perform the obligations required under the provisions of this Ordinance shall be deemed a misdemeanor.

Each twenty-four (24) hours of any such violation shall constitute and be punishable as a separate offense and will be considered a continuing violation of the requirements of this Ordinance.

Sec. 21-108 - Severability.

In the event that any one or more of the provisions, clauses, or words of this Ordinance or the application hereof 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 situation 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 has not been included herein.

Sec. 21-109 - Inconsistencies.

Ordinances or parts of ordinances inconsistent with any of the terms or provisions of this Ordinance are hereby repealed, provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this Ordinance shall be cumulative or other ordinances regulating and governing the subject matter covered by this Ordinance, and shall operate and be construed in conjunction with other city ordinances and Texas Statutes, particularly, Articles 23.01, et seq., Vernon's Texas Revised Civil Statutes.

Sec. 21-110 - Effective date.

This Ordinance shall take effect on October 1, 2012.

PASSED and APPROVED on first reading this the 24th day of July, 2012.

PASSED, APPROVED, and ADOPTED on second reading this the 14th day of August, 2012.

APPROVED:



Mayor

ATTEST:



City Secretary

APPROVED AS TO FORM:



City Attorney