

## ORDINANCE NO. 734

AN ORDINANCE OF THE CITY OF HOWE, TEXAS, ESTABLISHING A HOTEL/MOTEL OCCUPANCY TAX; AUTHORIZING THE IMPOSITION OF ATTORNEY'S FEES UPON DELINQUENT HOTEL/MOTEL OPERATORS; PROVIDING FOR ENFORCEMENT, INCLUDING CRIMINAL FINES OF UP TO \$500 PER OFFENSE; PROVIDING FOR APPLICABILITY AND AN EFFECTIVE DATE AND PROVIDING FOR A SEVERABILITY CLAUSE

WHEREAS, the City Council of the City of Howe, Texas ("City Council") desires to develop a tourism industry for the benefit of the City of Howe, Texas ("City"); and

WHEREAS, the promotion and growth of the tourism industry will enhance the City; and

WHEREAS, there is available a Hotel Occupancy Tax of up to seven percent (7%) as provided by State Statute, the proceeds of which can be utilized by the City to promote tourism, aid development and enhance the arts and historical preservation of the City; and

WHEREAS, it is deemed in the best interest of the City to accomplish the goals as set forth above, and to enact and approve a six percent (6%) Hotel/Motel Occupancy Tax, the proceeds of which can be devoted to the foregoing purposes; and

WHEREAS, the City Council of the City of Howe, Texas, deems it in the best interest of the City of Howe, Texas, to adopt a hotel/motel occupancy tax;

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

### **1. Definitions**

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

**Consideration.** The cost of the room 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 for occupancy, and shall not include any tax assessed for occupancy thereof by any other governmental agency.

**Hotel.** A building in which members of the public may obtain sleeping accommodations for a consideration. The term shall include hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, but "hotel" shall not be defined so as to include hospitals, sanitariums or nursing homes.

**Occupancy.** The use or possession or the right to the use or possession of any room or rooms in a hotel for any purpose.

**Occupant.** 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.

**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.

**Person.** Any individual, company, corporation, entity or association owning, operating, managing or controlling any hotel.

**Quarterly period.** The regular calendar quarters of the year, the first quarter being composed 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.

Tax collector. The tax collector for the City.

## **2. Levy of tax**

There is hereby levied, enacted and approved a tax within the incorporated municipal boundaries (i.e., City Limits) of the City of Howe, Texas, and its Extraterritorial Jurisdiction (ETJ) upon the cost of occupancy of any room or space furnished by any hotel where such cost of occupancy is at the rate of two dollars (\$2.00) or more per day, such tax to be equal to six percent (6%) of the consideration paid by the occupant of such room or space to such hotel.

## **3. Permanent residents exempt**

No tax shall be imposed under this Ordinance upon a permanent resident.

## **4. Exemption for state and federal government**

A person or entity exempted from the tax imposed by V.T.C.A., Tax Code ch. 156, under V.T.C.A., Tax Code sec. 156.103 is exempt from the tax imposed by this Ordinance.

## **5. Collection**

(a) Every person owning, operating, managing or controlling any hotel shall collect the tax imposed in this Ordinance for the City. The failure of the person, firm or corporation owning, operating, managing or controlling said hotel, to collect sufficient monies from occupants to satisfy said tax shall not excuse the obligation to pay said tax to the City. Any person who receives or collects hotel tax from an occupant shall hold the amount so collected in trust for the benefit of the City and is liable to the City for the full amount collected plus any accrued penalties and interest on the amount collected.

(b) Collection procedures on purchase of hotel. A purchaser of a hotel shall withhold from the purchase price an amount sufficient to pay all of the taxes due under this Ordinance. A purchaser who fails to withhold the amount of taxes due shall be liable for the amount required to be withheld to the extent of the value of the purchase price. A purchaser may request in writing from the City the tax status, and the City shall prepare a certificate of no tax due or a statement of the amount of tax due, which shall be issued by the City within sixty (60) days of the request.

## **6. Reports**

(a) Tax collector. On or before the last day of the month following each quarterly period, every person required in 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 the 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 such report. A copy of said report shall be provided to the City Secretary.

(b) State comptroller. At the end of each quarter, each hotel shall provide a copy of the quarterly report filed with the state comptroller to the City.

## **7. Powers and authority**

(a) The tax collector shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied in this Ordinance, 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 Ordinance.

(b) Further reports may be required by the City and shall be in a form prescribed by the City Council. The City Secretary and City Administrator are hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this Ordinance.

(c) The City Secretary and City Administrator shall have the authority to request and receive, within a reasonable time, documentation for information contained in any required report by the hotel and shall, upon reasonable notice, have access to books and records necessary to enable them 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. The City Council shall have the power to make such rules and regulations as are reasonable and necessary to effectively collect the tax levied hereby.

## **8. Penalties for violation**

(a) It shall be unlawful for any person to fail to file a report in accordance with this Ordinance.

(b) It shall be unlawful for any person to fail to render payment of taxes levied by this Ordinance.

(c) If any person shall fail to collect the tax imposed in this ordinance, or shall fail to file a report as required herein, or shall fail to pay to the tax collector the tax as imposed herein when such report for payment is due, or shall file a false report, then such person shall be punished under the criminal misdemeanor laws. Each day such report shall not be filed and/or said tax not paid beyond the time as herein provided for payment shall constitute a separate and distinct violation of this code and may be punished by a fine up to the maximum amount permitted by law.

(d) Any person violating any of the provisions of this Ordinance, 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 Class C misdemeanor and shall, upon conviction, be fined in any sum not to exceed five hundred dollars (\$500.00). Each day any violation of this code or of any ordinance shall continue shall constitute a separate offense.

(e) Such person who fails to remit the tax imposed by this Ordinance within the time required shall be liable to the City as provided by law to include enjoining the person from operating the hotel while the tax remains unpaid, collecting a fifteen percent (15%) penalty of the total amount of tax owed, and reasonable attorney fees. Delinquent taxes shall draw interest at the maximum rate allowed by law. No payment for a subsequent period shall be collected until all prior delinquent taxes, penalties and interest have been paid in full.

## **9. Keeping and preserving of records**

(a) Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three (3) years, unless the taxing authority shall consent in writing to their destruction within that period or shall require that they be kept for a longer period. Such records shall be made available to the taxing authority upon demand in writing within a reasonable period of time. Failure to maintain the required records shall result in penalties punished under the criminal misdemeanor laws.

(b) Any person violating any of the provisions of this Ordinance, including hotel operators who fail to keep and maintain required records, shall be guilty of a Class C misdemeanor and shall, upon conviction, be fined in any sum not to exceed five hundred dollars (\$500.00). Each day any violation of this code or of any ordinance shall continue shall constitute a separate offense.

## **10. Registration of hotel operators**

(a) Each hotel operator shall register as a hotel tax collector within thirty (30) days after commencing such business. Registration shall be made upon forms available to the operator from the City. Information supplied on the registration form shall be updated within thirty (30) days of any change or alteration thereof upon registration forms supplied by the City. Failure to update registration shall result in penalties punished under the criminal misdemeanor laws.

(b) Any person violating any of the provisions of this Ordinance, including hotel operators who fail to register shall be guilty of a Class C misdemeanor and shall, upon conviction, be fined in any sum not to exceed five hundred dollars (\$500.00). Each day any violation of this code or of any ordinance shall continue shall constitute a separate offense.

## **11. Additional penalties and suit**

(a) In addition to the amount of any tax owed under this Ordinance and the state law, the person is liable to the City for the municipality's reasonable attorney's fees.

(b) The City is hereby authorized to bring suit against any person or entity required to collect the tax imposed hereby, required to file a report or required to pay the tax and who has failed to file a report, or filed a false report, or failed to pay tax when due. Such suit may seek to collect such tax not paid, including penalties, or to enjoin such person from operating a hotel in the City until the tax is paid or the report is filed or both, seek injunction, and seek such further relief as may be allowed by law.

## **12. Effective date**

The hotel occupancy tax authorized herein shall become effective on (December 1, 2014 / January 1, 2015), and shall thereafter be collected on all rooms under occupancy (as that term is herein defined)

from and after the effective date, regardless of the date upon which payment or reservation for the occupancy was made.

### **13. Repealer**

This Ordinance, upon its enactment and effective date, shall repeal all conflicting provisions that may be contained in other City ordinances or regulations, except to the extent they apply to obligations and violations arising prior to the enactment of this Ordinance.

### **14. 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 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 had not been included herein.

**PASSED AND APPROVED** this, the 18<sup>th</sup> day of November, 2014, by vote of the City Council of Howe, Texas.

  
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Mayor

ATTEST:

  
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City Secretary