

**ORDINANCE NO. 09-06-09A**

**AN ORDINANCE PROVIDING FOR A HOTEL OCCUPANCY TAX OF SEVEN PERCENT (7%) ON THE PRICE PAID FOR A ROOM IN A HOTEL LOCATED WITH THE CITY AND THE CITY'S EXTRATERRITORIAL JURISDICTION ("ETJ"); DEFINING TERMS; PROVIDING FOR A TAX LEVY; PROVIDING FOR EXCEPTIONS; PROVIDING FOR THE DISPOSITION OF REVENUE AND REFUNDS; PROVIDING FOR RESPONSIBILITY FOR COLLECTION, REPORTING, AND PAYMENT OF THE TAX; PROVIDING FOR REPORTS, PAYMENTS, FEES AND PENALTIES; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 351 of the Texas Tax Code, 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 and the city's extraterritorial jurisdiction ("ETJ") where the charge of the room is \$2.00 or more per day;

**WHEREAS**, the City Council of Dilley, Texas has determined that public facilities and services in general benefit and are enjoyed by visitors to the City of Dilley and the display, entertainment, meeting and other public convenience facilities are provided for the special use convenience and additional benefit of visitors; and

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

**SECTION 1.**

**DEFINITIONS:**

- (a) "City Secretary" means the City Secretary for the City of Dilley or his or her designated agent.
- (b) "Consideration" means the cost of a room in a hotel, and does not include:
  - (1) the cost of any food served or personal services rendered to the occupant not related to cleaning and preparing the room or space for occupancy; or
  - (2) any tax assessed by any other governmental agency for occupancy of the room.
- (c) "Hotel" means any building in which members of the public obtain sleeping accommodation for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast. The term does not include:
  - (1) a hospital, sanitarium, or nursing home, or

- (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 of the Texas Education Code, as amended, that is used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution.
- (d) "Occupancy" means the use or possession, or the right to the use or possession, of any room in a hotel.
- (e) "Occupant" means any person who, for a consideration, uses, possesses, or has a right to use or possess any room in a hotel under any lease, concession, permit, right of access, license, contract, or agreement.
- (f) "Tax" means the hotel occupancy tax levied in this chapter pursuant to Chapter 351 of the Texas Tax Code, as amended.
- (g) "Tourist" means an individual who travels from the individual's residence to a different municipality, county, state, or country for pleasure, recreation, education, or culture.
- (h) "Visitor Information Center" means a building or a portion of a building used to distribute or disseminate information to tourists.
- (i) "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 October, November and December.

## SECTION 2.

### LEVY AND AMOUNT OF TAX

- (a) There is hereby levied a tax upon the occupant of any room that:
  - (1) is in a hotel within the City or within the city's extra territorial jurisdiction;
  - (2) is ordinarily used for sleeping; and
  - (3) the cost of occupancy of which is \$2 or more each day.
- (b) The tax is equal to seven percent of the consideration paid by the occupant of the room to the hotel.

## SECTION 3.

### EXEMPTIONS AND REFUNDS

- (a) All persons, organizations and entities specified in Subchapter C of Chapter 156 of the Texas Tax Code, as amended, are exempt from the payment of the tax imposed under this chapter.
- (b) Any person, organization, or entity entitled to receive a refund of tax paid under this chapter, may file a refund claim as provided in Section 156.154 of the Texas Tax Code, as amended.
- (c) A person described in Section 156.103(c) of the Texas Tax Code, as amended, shall pay the tax imposed by this chapter, but the state governmental entity with whom the

- person is associated is entitled to a refund of the tax paid.
- (d) To receive a refund of tax paid under this chapter, the governmental entity entitled to the refund must file a refund claim with the City Secretary on a form prescribed by the state comptroller and provided by the City Secretary. A governmental entity may file a refund claim with the City Secretary only for each calendar quarter for all reimbursements accrued during that quarter.

#### **SECTION 4.**

#### **RESPONSIBILITY FOR COLLECTION, REPORTING, AND PAYMENT OF TAX**

Every person owning, operating, managing, or controlling any hotel shall collect the tax for the city and report and pay the tax to the city in accordance with all requirements and procedures set forth in this chapter.

#### **SECTION 5.**

#### **REPORTS; PAYMENTS; FEES**

- (a) On the last day of the month following the quarterly period, 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 quarter, 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 the 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.
- (b) 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 herein below 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.
- (c) The City Secretary shall maintain a record that accurately identifies the receipt and expenditure of all revenue derived from the tax imposed by this chapter.

#### **SECTION 6.**

#### **USE AND ALLOCATION OF REVENUES**

- (a) The revenue derived from any hotel occupancy tax imposed and levied by this chapter 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 or visitor information centers, or both;
  - (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 city 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 draft arts, motion pictures, radio, television, tape and sound recording, and other arts relating 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:
  - (A) at or in the immediate vicinity of convention center facilities or visitor information centers; or
  - (B) located elsewhere in the city or its vicinity that would be frequented by tourists and convention delegates.
- (b) Revenue from any hotel occupancy tax imposed and levied by this chapter may not be used for the general revenue purposes for general governmental operations of the city.
- (c) Allocations of the hotel occupancy tax revenue by the city for the purposes set out by subsection (a) above, must comply with the provisions of Chapter 351 of the Texas Tax Code.

## SECTION 7.

### PENALTIES

- (a) A person commits an offense if the person:
  - (1) fails to collect the tax imposed by this article;
  - (2) fails to file a report as required by this article;
  - (3) fails to pay the City Secretary the tax when payment is due; or
  - (4) files a false report.
- (b) An offense committed under subsection (a) of this section is punishable by a fine not to exceed Five Hundred Dollars (\$500).
- (c) In addition to any criminal penalties imposed under Subsection (b) of this section, a person failing to pay the tax to the City Secretary by last day of the month following the quarterly period in which the tax is required by this chapter to be collected shall pay an amount equal to five (5%) percent of the tax due as a penalty. Delinquent taxes draw interest at the rate of ten (10%) percent per year beginning 30 days from the date the tax is due to the City Secretary.
- (d) In addition, the city is authorized to file legal proceedings against the hotel for noncompliance seeking any other remedies provided by state law.
- (e) In addition to the amount of any tax owed, a person is liable to the city for all reasonable attorney's fees incurred by the city in enforcing this chapter against the person and in collecting any tax owed by the person under this chapter.

## SECTION 8.

**REPEAL**

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

**SECTION 9.**

**SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 10.**

**PUBLICATION IN OFFICIAL NEWSPAPER**

The City Secretary of the City of Dilley is hereby directed to publish this ordinance caption and penalty in the official City newspaper one time within ten days after passage of this ordinance.

**SECTION 11.**

**EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

**PASSED AND APPROVED ON THIS 9th DAY OF June 2009.**

*Mary Ann Olson*  
MAYOR

ATTEST:

*Janita Deuts*  
CITY SECRETARY