

**ORDINANCE NO. 13 - 02**

**AN ORDINANCE OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS LEVYING A HOTEL OCCUPANCY TAX UPON THE OCCUPANT OF A ROOM IN ANY HOTEL/MOTEL WITHIN THE CORPORATE LIMITS OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS AND THE EXTRA-TERRITORIAL JURISDICTION; DEFINING TERMS; ESTABLISHING A TAX RATE OF NINE PERCENT (9%) OF THE CONSIDERATION PAID BY SUCH OCCUPANT OF SUCH ROOM; PROVIDING FOR EXCEPTIONS; REQUIRING REPORTS TO THE TOWN; PROVIDING FOR PENALTY AND INTEREST OF DELINQUENT TAXES; PROVIDING FOR ADDITIONAL PENALTIES; PROVIDING AN EFFECTIVE DATE AND PROVIDING SEVERABILITY.**

**WHEREAS**, Chapter 351 of the Texas Tax Code authorizes municipalities to levy a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, and is ordinarily used for sleeping.

**WHEREAS**, The Town of Lakewood Village believes that the imposition of a tax consistent with Texas Tax Code Chapter 351 would provide economic benefits to the town and extra-territorial jurisdiction; and

**WHEREAS**, Section 351.002 Texas Tax Code permits a municipality to levy a tax on certain hotel occupancies costing \$2 or more; and

**WHEREAS**, Section 351.0025 Texas Tax Code permits a municipality with a population of less than 35,000 to levy a hotel occupancy tax in the extra-territorial jurisdiction; and

**WHEREAS**, Section 351.003(c) Texas Tax Code allows for a maximum tax rate of nine percent for a municipality with a population of less than 5,000 adjacent to a home-rule municipality with a population less than 80,000; and

**WHEREAS**, The Town of Lakewood Village has a population of less than 5,000 and is adjacent to the Town of Little Elm which is a home-rule municipality with a population of less than 80,000;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS:**

## **Section 1. DEFINITIONS**

The following words, terms and phrases are, for the purposes of this article, 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.

*ETJ:* The extra territorial jurisdiction of the Town of Lakewood Village

*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.

*Lodging Provider.* Any person owning operating managing or controlling a hotel in the Town, including but not limited to the owner or proprietor of such premises, lessee, sub lessee, lender in possession or any other person operating such hotel and who is subject to collecting and remitting the tax.

*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 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 Town.

*Town:* The Town of Lakewood Village, Texas

## **Section 2. LEVY OF TAX**

There is hereby imposed as authorized by and for the purposes provided in Chapter 351 Texas Tax Code a tax of **nine percent (9%)** of the price paid for a room in a hotel located within the corporate limits of the Town or the ETJ on a person who under a lease concession permit right of access license contract or agreement pays for the use or possession or for the right to the use or possession of a room that is in a hotel costs two dollars (\$2) or more each day and is ordinarily used for sleeping. This 9% tax is exclusive of other occupancy taxes imposed by other governmental agencies.

### **Section 3. PERMANENT RESIDENT EXEMPTION**

No tax shall be imposed under this ordinance upon a permanent resident of the hotel.

### **Section 4. OTHER EXEMPTIONS**

- A. No tax shall be imposed for federal or state employees traveling on official business.
- B. No tax shall be imposed for diplomatic personnel who present a Tax Exemption card issued by the United States Department of State.
- C. No tax shall be imposed for federal or state military personnel traveling on official military business.

### **Section 5. COLLECTION**

A. Every person owning, operating, managing or controlling any hotel located within the town limits or extraterritorial jurisdiction shall collect the tax imposed in Section II hereof for the Town.

B. A person who collects the tax as required by this section and pays over to the Town the tax authorized by this ordinance may retain no more than one percent of the amount collected and required to be reported as reimbursement to the person for the costs in collecting the tax.

C. The reimbursement provided by this section shall be forfeited if the person fails to file a report as required by this ordinance in addition to the other penalties set forth herein.

D. If a person 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 due until the seller provides a receipt by the chief financial officer to provide the receipt showing that the amount has been paid or a certificate showing that no tax is due.

E. 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.

F. The purchaser of a hotel may request that the chief financial officer to provide a receipt under this subsection 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 chief financial officer shall issue the

certificate or statement not later than the 60th day after the date that the person receives the request.

## **Section 6. REPORTS**

A. On the last day of the month following each quarterly period, every person required hereby to collect the tax imposed by this ordinance shall file a report with the Town Secretary showing the price paid for all room occupancies in the preceding quarter, the amount of tax collected on the Town's behalf on such occupancies, and any other information as the Town Secretary may reasonably require. Such persons shall pay over the tax due on such occupancies at the time of filing such report.

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 Town Secretary.

## **Section 7. POWERS OF THE TOWN**

The Town 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 the Town 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.

## **Section 8. USE AND ALLOCATION OF TAX REVENUE**

A. Revenue generated by the hotel occupancy tax levied by this ordinance shall be used by the Town Council for the purposes set forth under Section 351.101 of the Tax Code, as amended.

B. Allocation of the revenue generated by the tax imposed by this ordinance shall be in accordance with section 351.103 of the Tax Code, as amended.

## **Section 9. PENALTIES**

A. If any person shall fail to collect the tax imposed herein, or shall fail to file a report as required herein, or shall fail to pay the tax, as imposed herein, when said report or payment is due, or shall file a false report, then 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). In addition, such person who fails to remit the tax or violates the reporting provisions imposed by this article within the time required is liable to the Town for the amount of reasonable attorney's fees and a penalty equal to fifteen (15) per cent of the total amount of the tax owed authorized by Tax Code, Section 351.004. Delinquent taxes shall draw interest at the rate of twelve (12) per cent per annum, beginning sixty (60) days from the date due, pursuant to Tax Code, Sections 156.201 and 111.060.

B. In addition to the penalties imposed by subsection A, the Town Attorney or other attorney acting for the Town may bring suit against a person, who is required to collect the tax imposed by this ordinance and pay the collections over to the municipality 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 person from operating a hotel in the Town or ETJ until the tax is paid or the report filed as provided by the court's order. In addition to the amount of any tax owed under this chapter, the person is liable to the municipality for the Town's reasonable attorney fees and a penalty equal to fifteen (15) per cent of the total amount of the tax owed. The remedies provided by this section are in addition to other available remedies as authorized by Tax Code, Section 351.004.

C. If the person did not file a tax report under Section 156.151 of the Tax Code for that reporting period in relation to that hotel, the Town 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 of the 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.

## **Section 10. RECORDS**

Each lodging provider 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 Town 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 as provided in this ordinance.

## **Section 11. REGISTRATION**

Each lodging provider shall register as a hotel tax collector within thirty (30) days after commencing such business. Registration shall be made upon forms furnished to the operator by the Town. 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 town. Failure to update registration shall result in penalties punished under the criminal misdemeanor laws as provided in this ordinance.

## **Section 12. SEVERABILITY CLAUSE**

If any provision of this Ordinance or its application to any person or circumstances is held invalid for any reason, the invalidity does not affect any other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this extent the provisions of this Ordinance are declared to be severable.

## **Section 13. SAVINGS CLAUSE**

An offense committed before the effective date of this Ordinance is governed by the prior law in effect when the offense was committed and the former law is continued in effect for this purpose.

## **Section 14. REPEALING CLAUSE**

All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

**SECTION 15. EFFECTIVE DATE.**

That this Ordinance shall become effective immediately upon its passage and publication as provided by law

**PASSED AND APPROVED** BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS, on this the 14<sup>th</sup> day of February, 2013.

**APPROVED:**

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Mike Schnittker, Mayor

**ATTEST:**

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Linda Asbell, Town Secretary