

ORDINANCE 01-33

AN ORDINANCE OF THE CITY OF COMMERCE, AMENDING SECTION 86 OF THE CODE OF ORDINANCES BY ADOPTING NEW STANDARDS CONCERNING HOTEL OCCUPANCY TAX; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; CONTAINING A SAVINGS CLAUSE; DECLARING AN EMERGENCY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF COMMERCE, TEXAS:

Amendment:

Section 86 of the Code of Ordinances is hereby amended so that said section shall hereafter read as follows:

Section 1: DEFINITIONS

1. The following words, terms and phrases are defined as follows:
 - (a) 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.
 - (b) 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.
 - (c) Occupancy: The use of possession, or the right to the use of 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.
 - (d) 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, other than a permanent resident as hereinafter defined.
 - (e) Person: Any individual, company, corporation or association owning, operating, managing or controlling any hotel.
 - (f) Tax assessor-collector: The tax assessor and collector of the City of Commerce is the Director of Administrative Services.
 - (g) Quarterly period: The regular calendar quarters of the year, the first quarter being composed of the months of October, November and December; the second quarter being the months of January, February and March; the third quarter being the months of April, May and June; and the fourth quarter being the months of July, August and September.

- (h) 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 follow:

- (1) No tax shall be imposed upon a permanent resident.
- (2) No tax shall be imposed for federal or high-level 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 owning, operating, managing or controlling any hotel shall collect the tax levied by this ordinance for the City of Commerce.

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.

Section 4: QUARTERLY REPORTS TO TAX ASSESSOR-COLLECTOR.

On the last day of the month following each quarterly period, every person required to collect the tax imposed hereby shall file a report with the assessor-collector 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 tax due on such occupancies at the time of filing such report. The report

shall be in a form prescribed by the assessor-collector. The assessor-collector is hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this ordinance. The assessor-collector shall have the authority to request and receive within reasonable time documentation for information contained in the report to the city by the hotel.

Section 5: RULES AND REGULATIONS OF TAX-ASSESSOR COLLECTOR; ACCESS TO BOOKS AND RECORDS.

The assessor-collector 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/her 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 report as required herein or shall file a false report or shall fail to pay to the tax assessor-collector the tax as imposed herein when said report or payment is due, he shall forfeit five percent (5%) of the amount due as penalty, and after the first thirty (30) days, he shall forfeit an additional five percent (5%) of such tax. However, such penalty shall never be less than One and No/100 (\$1.00) Dollar. 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 sties for an 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 related 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 hereinbefore 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 annually 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 will become effective upon its passage by the Commerce City Council.

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 the 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.

Section 13.

Ordinances or parts of ordinances inconsistent with or in conflict with the provisions of this ordinance shall be and the same are hereby expressly repealed.

Section 14.

In any section, sub-section, word, sentence, or phrase of this ordinance is declared to be invalid; it shall not affect the validity of this ordinance.

Section 15.

It is hereby found and determined that the meeting at which this ordinance was passed was open to the public as required by Texas law, and that advance public notice of the time, place and purpose of said meeting was given.

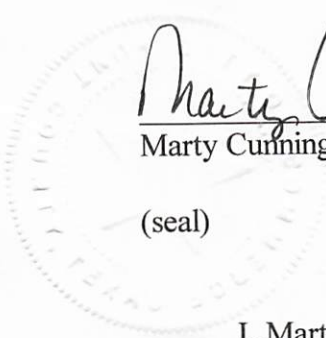
Section 16.

Whereas an emergency is apparent for the immediate preservation of order, health, safety and general welfare of the public, all rules and regulations requiring the reading of ordinance more than one time or on more than one occasion are hereby suspended.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Commerce, Texas on this the 2nd day of October 2001.

ATTEST:

CITY OF COMMERCE:


Marty Cunningham
Marty Cunningham, City Secretary

(seal)

John R. Sands
John R. Sands, Mayor

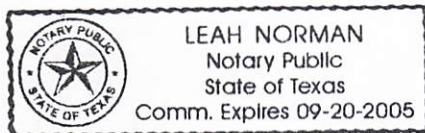
I, Marty Cunningham, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an Ordinance, and that the same has not been repealed and is in full force and effect.

(seal)

Marty Cunningham
Marty Cunningham, City Secretary
City of Commerce

Sworn to and subscribed before me, on this the 3rd - day of October, 2001, to certify which witness my hand and seal of office.

(seal)



Leah Norman
Notary Public, State of Texas

HotelTaxOrd.100201