

ORDINANCE NO. 2020-06

AN ORDINANCE OF THE CITY OF HEWITT, TEXAS AMENDING BY REPLACING, UPDATING, AND CLARIFYING ARTICLE III "HOTEL OCCUPANCY TAXES" OF CHAPTER 70 "TAXATION" OF THE CODE OF ORDINANCES OF THE CITY OF HEWITT, TEXAS WITH A NEW ARTICLE III ENTITLED "HOTEL OCCUPANCY TAXES" WHICH ADDRESSES, AMENDS, AND UPDATES THE REGULATIONS IMPOSING HOTEL OCCUPANCY TAXES AND ADDRESSES SHORT-TERM RENTALS; ESTABLISHING REGULATIONS IMPOSING A HOTEL OCCUPANCY TAX; PROVIDING FOR REPORTS; PROVIDING FOR THE COLLECTION OF THE TAX BY OWNERS AND PAYMENT OF THE TAX TO THE CITY; PROVIDING REMEDIES FOR FAILURE TO REPORT, COLLECT OR PAY THE TAX AND THE IMPOSITION OF PENALTIES; INTEREST, ATTORNEY'S FEES, AND ALL OTHER REMEDIES ALLOWED BY THE TEXAS TAX CODE; PROVIDING PROCEDURE FOR COLLECTION OF TAXES FROM SUCCESSOR OWNERS OF HOTEL AND THE LIABILITY OF SUCCESSOR OWNERS; ADDRESSING USE OF TAX REVENUES; EXPRESSLY INCLUDING SHORT-TERM RENTALS IN THE DEFINITION OF HOTEL; REQUIRING THE REGISTRATION OF SHORT -TERM RENTALS WITH THE CITY; MAKING FAILURE TO REGISTER OR OPERATING WITHOUT REGISTERING A CRIMINAL OFFENSE (MISDEMEANOR) PUNISHABLE BY A FINE NOT TO EXCEED \$500.00 PER DAY; MAKING EACH DAY OF VIOLATION A SEPARATE OFFENSE; PROVIDING FOR REVOCATION OF SHORT-TERM RENTAL REGISTRATION; REPEALING BY REPLACING ARTICLE III "HOTEL OCCUPANCY TAXES" OF CHAPTER 70 "TAXATION" OF THE CODE OF ORDINANCES OF THE CITY OF HEWITT, TEXAS EXCEPT AS TO ANY TAXES DUE OR OUTSTANDING OR ANY COLLECTION ACTIONS PENDING AT THE EFFECTIVE DATE OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS ADOPTED WAS NOTICED AND OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the current occupancy tax regulations of the City are in need of updating, amendment, and clarification, including to expressly address Short-Term Rentals; and

WHEREAS, it is in the best interest of the City and the public that these regulations be updated, amended and clarified;

WHEREAS, people have begun renting residential properties and other living structures as a place for persons traveling to stay or even vacation; and

WHEREAS, other than size, there is no functional difference in the businesses that these individuals are operating, and the operations of a hotel or motel; and

WHEREAS, Short-Term Rental operations should be reporting and paying occupancy taxes to the City; and

WHEREAS, the City Council finds it prudent to amend, update, and clarify these regulations, in one article of the City's Code of Ordinances entitled "Hotel Occupancy Taxes."

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEWITT, TEXAS THAT---

SECTION 1. The foregoing recitals are incorporated herein and made findings of fact.

SECTION 2. The current Article III "Hotel Occupancy Taxes" of Chapter 70 "Taxation" of the City Code of Ordinances of the City of Hewitt, Texas is AMENDED and REPLACED with the following:

ARTICLE III.-HOTEL OCCUPANCY TAXES.

Sec. 70-41- Definitions. The following words, terms and phrases are, for the purpose of this ordinance, except where the context clearly indicates a different meaning, defined as follows:

A. "Hotel" shall mean a building in which members of the public obtain sleeping accommodations for consideration. The term shall include a hotel, motel, Short-Term Rental, tourist home, tourist house, tourist court, lodging house, inn, bed and breakfast, or rooming house or any portion thereof, but does not include a hospital, sanitarium, nursing home, a dormitory or other housing facility owned or leased and operated by an institution of higher education, or an oilfield portable unit as defined in Section 152.001 of the Texas Tax Code. Under state law, a Short-Term Rental means the rental of all or part of a residential property to a person who is not a permanent resident and is expressly included in the definition of "Hotel". Section 156.001(b), Texas Tax Code, and the same is incorporated herein.

B. "Consideration" shall mean the cost of the room, sleeping space, bed or living space or other facilities in such Hotel and shall not include the cost of any food served or personal services rendered to the occupant not related to cleaning and readying such room or space for occupancy, and shall not include any tax assessed for occupancy thereof by any other governmental agency.

C. "Occupancy" shall mean the use or possession, or the right to use or possession of any room, space or sleeping facility or portion thereof in a Hotel for any purpose.

D. "Occupant" shall mean anyone, who, for a consideration, uses, possesses, or has a right to use or possess any room or rooms, or sleeping space or facility, or portion thereof in a Hotel under any lease, concession, permit, right of access, license, contract or agreement.

E. "Person" shall mean any individual, company, corporation, or association owning, operating, managing or controlling any hotel.

F. "Finance Department" shall mean the Finance Department of the City of Hewitt which is headed by the "Finance Director", who is the collector of occupancy taxes owed to the City.

G. "Quarterly Period" shall mean 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.

H. "Permanent Resident" shall mean any occupant who has or shall have the right to occupancy of any room or rooms or sleeping space or facility in a Hotel for at least thirty (30) consecutive days during the calendar year or preceding year.

I. "Short-Term Rental" shall mean a residential structure (including houses, duplexes, triplexes, condominiums, or other type of living unit), or a portion thereof rented for a tenancy of thirty (30) days or less. By state law, such is the rental of all or part of a residential property to a person who is not a permanent resident.

J. "Owner" means the owner of the Hotel, or if the space/structure is being sub-let, the lessee from the owner as lessor. In instances where the space/structure is being sub-let, the owner of title to the space or structure is jointly liable for City occupancy taxes.

Sec. 70-42- Imposition of Occupancy Tax.

There is hereby levied a tax upon the occupant of any room or space furnished by any Hotel where such costs of occupancy is at the rate of two dollars (\$2.00) or more per day, such tax to be equal to seven (7) percent of the consideration paid by the occupant of such room, space or facility to the Owner (or operator on behalf of the Owner) of such Hotel exclusive of other occupancy taxes imposed by other governmental units effective as of January 1, 2006. No tax shall be imposed hereunder upon a permanent resident. The price of the room does not include costs of food served or the cost of personal services, except for those services related to cleaning and readying the room for use or possession.

Sec. 70-43-Certain Government Employees.

No tax shall be imposed on the United States government; an agency or entity of the United States government; or an officer or employee of a governmental entity of the United States when traveling on or otherwise engaged in the course of official duties for the governmental entity. The State of Texas, or an agency, institution, board, or commission of this state other than an institution of higher education shall pay the tax but is entitled to a refund. To receive a refund of tax paid the governmental entity entitled to the refund must file a refund claim on a form provided by the City and containing the information required by the City. The State Comptroller by rule has prescribed the form that must be used and the information that must be provided. The state is entitled to the refund sought by a state official or employee. However, a state officer or employee of a state governmental entity for whom a special provision or exception to the general rate of reimbursement under the General Appropriations Act applies and who is provided with photo identification verifying the identity and exempt status of the person is not required to pay the tax and is not entitled to a refund.

Sec. 70-44-Collection, Reporting and Payment.

Every Owner or operator on behalf of the Owner shall collect the tax imposed in Section 70-42 hereof for the City of Hewitt, Texas. On the last day of the month following each quarterly period, every person required herein to collect the tax imposed in this ordinance shall file a report with the Finance Department 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 Finance Department may reasonably require. Every person required herein to collect the tax imposed in this ordinance shall pay the amount of tax collected from occupants during the period of the report at the time of filing the report as provided above.

Sec. 70-45-Audit.

On reasonable notice to the person required to collect the tax, the Finance Director or his or her designee must be allowed to review the books and records of the person responsible for collecting the tax to determine the correctness of reports provided and the amount of any taxes due. This is in addition to any audit powers or authority given by state law.

Sec. 70-46-Remedies and Enforcement.

The city attorney or other attorney acting for the City may bring suit against a person who is required to collect the tax imposed by this ordinance and pay the collections over to the City and who has failed to file a tax report or pay the tax when due to collect the tax or to enjoin the person from operating a hotel in the City until the tax is paid or the report filed, as applicable, as provided by the court's order. In addition to the amount of any tax owed under this ordinance, the person is liable to the City for:

- (1) the City's reasonable attorney's fees;
- (2) the costs of an audit conducted, as determined by the City using a reasonable rate, but only if the tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and
- (3) a penalty equal to 15 percent of the total amount of the tax owed.

If a person required to file a tax report does not file the report as required by the City, the city attorney or other attorney 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 with the state comptroller in relation to that hotel.

[If the person did not file a tax report under with the state comptroller for that reporting period in relation to that hotel, the city attorney or other attorney acting for the City may estimate the amount of tax due by using the tax reports in relation to that hotel filed during the previous calendar year for City or state occupancy taxes. 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 City shall be entitled to seek any other available remedies allowed by statute or charter.

Sec. 70-47-Procedures for Collection at Sale of Hotel.

If a person who is liable for the payment of occupancy taxes is the owner of the 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 from the Finance Department showing that the amount has been paid or a certificate stating that no amount is due. The purchaser of a hotel who fails to withhold an amount of the purchase price as required by herein is liable for the amount required to be withheld to the extent of the value of the purchase price.

The purchaser of a hotel may request that the Finance Department 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 Finance Department shall issue the certificate or statement within sixty (60) days after receiving the request. If the Finance Department fails to mail to the purchaser at the address he provides to the Finance Department, the certificate or statement within the applicable period provided herein to the purchaser at the address he provides to the Finance Department, the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

Sec. 70-48-Registration of Short-Term Rentals.

A. Registration Required. An Owner or an operator on behalf of an Owner who wishes to offer a residential unit/living structure or any portion thereof as a Short-Term Rental shall register with the City. Registration shall be in writing on a short-term rental registration form prescribed by the City Manager. The date of receipt of a registration form shall be recorded by the City in a manner sufficient to verify the date of its submission. The Owner or operator must submit the following information on the registration form:

1. The physical address of the short-term residential/living unit;
2. The Owner's name, address, email address and telephone number and, if an operator is involved, the name, address, email address and telephone number of the operator;
3. If an operator is involved, the operator's relationship to the residential/living unit;
4. The name, physical address, email address and telephone number of all owners of the residential/living unit;
5. The name, physical address, email address and twenty-four-hour telephone number of a local contact who shall be responsible and authorized to respond to complaints concerning the use of the residential/living unit;
6. Such other information as the city manager or his/her designee deems reasonably necessary to administer this Article.

B. Duration. A registration is valid from the date of the City's receipt of a completed registration form containing all the required information and shall remain valid until withdrawn by the owner or operator, or the ownership or operator of the short-term residential/living unit changes; or until revoked as set forth below.

C. Condition of Registration. It is a condition of the initial and continued validity of a Short-Term Rental registration that the owner or the operator on the Owner's behalf has paid and remains current on the payment of all hotel occupancy taxes owed to the City under this Article and the Texas Tax Code. Failure to timely file reports or pay hotel occupancy taxes owed may result in revocation of the registration and enforcement by any of the enforcement methods/remedies set forth in this Article. This can include enjoining further operation of the Short-Term Rental.

D. Offense. Operating a Short-Term Rental without it being registered with the City is an offense (misdemeanor) punishable by a fine of up to \$500. Each day of violation is a separate offense.

Sec. 70-49-Use of Revenues.

All revenue derived from the occupancy tax imposed in this Article III will only be used to promote tourism and the convention and hotel industry, and that use is limited to the following:

- A. The acquisition of sites for the construction, improvement, enlarging, equipping, repairing, operation and maintenance of convention center facilities or visitor information centers, or both;
- B. The furnishing of facilities, personnel and materials for the registration of convention delegates or registrants;
- C. Advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the city or its vicinity;
- D. 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, television, radio, tape and sound recording, and other arts related to the presentation, performance, execution and exhibition of these major art forms; and
- E. 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) at or in the immediate vicinity of convention center facilities or visitor information centers, or
 - (2) located elsewhere in the city or its vicinity that would be frequented by tourists and convention delegates.

At least that portion of the hotel occupancy tax equal to one (1%) percent of the consideration paid by an occupant of hotel rooms shall be allocated for the purposes in subsection C. The portion of the hotel occupancy tax revenue allocated by the city for the purposes provided in subsection A above may not exceed seventy-five (75%) percent of the total of such tax

revenue. No more than one (1%) percent of the consideration paid by an occupant of hotel rooms may be used for purposes specified in subsection D above. If the city does not allocate any hotel occupancy tax revenues for the purposes provided in subsection A above, then the city may not allocate more than fifty (50%) percent of the hotel occupancy tax revenues for the purposes provided by subsection E above.”

SECTION 3. Effective Date. This Ordinance takes upon publication of the caption by the City Secretary.

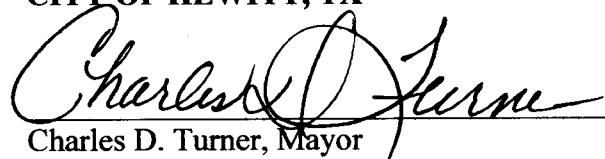
SECTION 4. Repeal. This Ordinance repeals by replacement the current Article III “Hotel Occupancy Taxes” of Chapter 70 “Taxation” of the City Code of Ordinances of the City of Hewitt, Texas; provided that repeal does not occur until the Effective Date of this Ordinance, and provided that such repeal shall have no effect on occupancy taxes owed prior to the Effective Date or on enforcement actions pending or for which judgment has been entered prior to the Effective Date of this Ordinance.

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance, that no portion hereof, or provision or regulation contained herein, shall become inoperative or fail by reasons of the unconstitutionality or invalidity of any section, subsection, sentence, clause, or phrase or provision of this Ordinance.

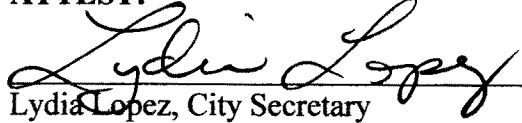
SECTION 6. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED THIS THE 20 DAY OF April, 2020.

CITY OF HEWITT, TX


Charles D. Turner, Mayor

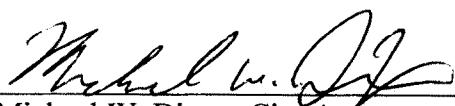
ATTEST:


Lydia Lopez

Lydia Lopez, City Secretary



APPROVED AS TO FORM & LEGALITY:


Michael W. Dixon

Michael W. Dixon, City Attorney

Waco Tribune-Herald

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**Waco, McLennan County,
Texas**
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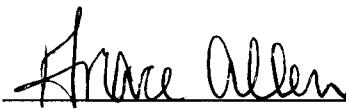
Before me, a notary public, on this day personally appeared Ana Lozano-Harper and after being duly sworn, states that she is a Multi Media Sales Manager of the Waco Tribune Herald, a newspaper published in Waco, McLennan County, Texas, and that the Notice, a copy of which is hereto attached, was published in said newspaper on the following named dates, to-wit:

04/22/2020

The First insertion being given ... 04/22/2020

Newspaper reference: 0000640239

Sworn to and subscribed before me this day: 4/23/20



Notary Public



Multi Media Sales Manager

State of Texas
Waco, McLennan County
My Commission expires

