

**ORDINANCE NO. 2022-14**

**AN ORDINANCE PROVIDING FOR THE CONTINUED ASSESSMENT AND COLLECTION OF A HOTEL OCCUPANCY TAX WITHIN THE CITY OF CANTON AND WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF CANTON; PROVIDING CERTAIN DEFINITIONS; PROVIDING FOR THE ALLOCATION OF REVENUE DERIVED FROM THE LEVY OF THE HOTEL OCCUPANCY TAX; PROVIDING FOR A PENALTY FOR NON-PAYMENT; PROVIDING FOR A PENALTY UPON CONVICTION FOR FAILURE TO COMPLY OF NOT MORE THAN FIVE HUNDRED DOLLARS (\$500.00); PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Canton, Texas, adopted a hotel occupancy tax via Ordinance No. 2008-08 on or about September 16, 2008; and

**WHEREAS**, the City amended its hotel occupancy tax ordinance via Ordinance No. 2009-02 on or about January 27, 2009; and

**WHEREAS**, the City wishes to further amend its hotel occupancy tax ordinance by this ordinance, but wishes to provide a savings clause to explicitly states that all hotel occupancy taxes unpaid and due under the prior Ordinances remain due and payable to the City.

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

**SECTION 1. Title.**

This Ordinance shall be referred to as the "Hotel Occupancy Tax ordinance."

**SECTION 2. Definitions.**

Whenever any of the following words, terms, or definitions are used in this ordinance, they shall have the following meaning:

- (a) **City:** The City of Canton, Texas, and its extraterritorial jurisdiction (as allowed by Section 351.0025 of the Tax Code relating to Municipal Hotel Occupancy Taxes)
- (b) **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, "short-term rentals rented via Airbnb, VRBO, or other online platform or private arrangement, or other buildings where rooms are furnished for a consideration, but not including hospitals, sanitariums, convalescent centers, nursing homes, or assisted-living facilities.
- (c) **Hotel accommodations:** A room or rooms in any building or structure kept, used or maintained as or advertised or held out to the public to be an inn, motel, hotel, apartment hotel, lodging house, dormitory, short-term rental, or place, where sleeping, rooming, office, conference or exhibition accommodations are furnished for lease or rent, whether with or without meals, in which one (1) or more rooms or spaces are used or maintained

for guests, lodgers, or roomers.

- (d) **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.
- (e) **Occupancy:** The use or possession, or the right to the use or 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.
- (f) **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.
- (g) **Person:** Any individual, company, corporation or association, receiver, administrator, executor, conservator, assignee, trust in perpetuity, trust, estate, firm, co-partnership, joint venture, club, business trust, domestic or foreign corporation, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, which owns, operates, manages or controls any hotel.

Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to associations shall mean that the owners or part-owners thereof, and as applied to corporations, the officers thereof.

- (h) **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.
- (i) **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 3. Tax Levied.**

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 or 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 follows:

- (a) No tax shall be imposed upon a permanent resident.
- (b) No tax shall be imposed upon an officer or employee of a federal or state agency,

institution, board, or commission if the employee is traveling on official business for the governmental entity.

- (c) No tax shall be imposed for diplomatic personnel who present a Tax Exemption card issued by the United States Department of State.
- (d) 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 4. Collection of Tax.**

The ultimate incidence of and liability for payment of said tax shall be borne by the lessee or tenant of any such hotel accommodations. The tax herein levied shall be in addition to any and all other taxes. It shall be the duty of every owner, manager or operator of hotel accommodations to secure said tax from the lessee or tenant of said hotel accommodations and pay over to the City of Canton said tax under rules and regulations prescribed by the City Secretary and as otherwise provided by this ordinance.

#### **SECTION 5. Quarterly Reports to the City.**

On or before 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 City Secretary 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. At the time of filing said tax return, the owner, manager or operator of hotel accommodations shall pay to the City of Canton all taxes due for the period to which the tax return applies. 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.

#### **SECTION 6. Rules and Regulations of City Secretary.**

The City Secretary shall have the power to make such rules and regulations as are reasonable and necessary to effectively collect the tax levied hereby.

#### **SECTION 7. Records Required.**

Every owner, manager, or operator of hotel accommodations in the City shall keep books and records showing the prices, rents or charges made or charged, and occupancies taxable under this ordinance. The City Secretary, or the City Secretary's designee, shall, upon reasonable notice, have full access to books and records necessary to enable her/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.

#### **SECTION 8. Retention of Taxes**

Any person purchasing a hotel located in the City of Canton shall retain out of the purchase price an amount sufficient to pay any delinquent hotel occupancy taxes that are due to the City. Should the purchaser fail to remit such amount to the City or show proof that the hotel is current

in remitting its hotel occupancy taxes, the purchaser shall become liable for any delinquent hotel occupancy taxes due on the purchased hotel.

#### **SECTION 9. 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 City 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 dollar (\$1.00). 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, disobeying, omitting, neglecting, or refusing to comply with, or resisting or opposing the enforcement of 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 payments shall be guilty of a misdemeanor and shall, upon conviction, be fined in any sum not to exceed five hundred dollars (\$500.00), and each twenty-four (24) hours of any such violation shall constitute a separate offense.

#### **SECTION 10. Enforcement Actions.**

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:

- (a) Require the forfeiture of any revenue the City allowed the hotel operator to retain for its cost of collecting the tax;
- (b) Bring suit against the hotel for noncompliance; and/or
- (c) Bring suit against the hotel seeking any other remedies provided under Texas law.

#### **SECTION 11. Additional Authorization to Bring Suit.**

Additional Authorization to Bring Suit. Upon the request of the City Manager, the City Attorney is hereby authorized to bring suit in any court of competent jurisdiction 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, to enjoin such person from operating a hotel in the City until the tax is paid or the report is filed and/or the collection of attorney's fees, as applicable and as provided in the injunction.

#### **SECTION 12. Use of Revenue Derived.**

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:

- (a) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance or convention center facilities (as such is defined in V.A.T.S. Tax Code, Section 351.001);

- (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 municipality 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, radio, television, 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) 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 13. 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 function, 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 14. Gender and Number.**

In this ordinance, unless the text otherwise requires, words in the singular number include the plural and in the plural include the singular; words of the masculine gender include the feminine and the neuter; and when the sense so indicates, words in the neuter gender may refer to any gender.

#### **SECTION 15. 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 this 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 16. Savings.**

**The enactment of this Ordinance, and repeal of any prior ordinances shall not affect the validity of any hotel occupancy tax accrued but not paid prior to the date of this ordinance. Taxes accrued and owed, but not yet paid to the City on the effective date of this Ordinance remain accrued, due, and owing and the City and/or any other entity owed taxes accrued prior to the effective date of this Ordinance may take any legal steps to recover those taxes. Any duty that existed prior to the effective date of this ordinance, including but not limited to the duties to collect and pay hotel occupancy taxes and the recordkeeping requirements imposed by prior hotel occupancy orders remains in full force and effect, notwithstanding the passage of this ordinance.**

#### **SECTION 17. Repeal.**

All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed to the extent of such conflict.

**SECTION 18. Effective Date.**

This ordinance shall become effective and in full force and effect on and after 12:00 a.m. on the 16<sup>th</sup> day of August, 2022.

Passed and approved this 16<sup>th</sup> day of August, 2022.

  
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Lou Ann Everett, Mayor

**ATTEST:**

  
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Debra Johnson, City Secretary

