

**CITY OF SEABROOK
ORDINANCE NO. 2016-11**

**ORDINANCE UPDATING HOTEL OCCUPANCY TAX
DELINQUENT TAX INTEREST RATE**

AN ORDINANCE AMENDING CHAPTER 85 OF THE CODE OF ORDINANCES OF THE CITY OF SEABROOK, ENTITLED "TAXATION AND FINANCE," ARTICLE II, ENTITLED "HOTEL OCCUPANCY TAX," SECTION 85-32 "FAILURE TO PAY; REMEDIES", BY AMENDING SUCH SECTION TO CLARIFY THE INTEREST RATE ON DELINQUENT TAXES, PROVIDING AN INTEREST RATE OF 15%; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$500 FOR VIOLATION OF ANY PROVISION HEREOF, TOGETHER WITH RELATED PENALTIES AND REMEDIES AS SPECIFIED HEREIN, BY INCLUSION INTO THE CODE OF ORDINANCES; PROVIDING FOR NOTICE, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City Council of the City of Seabrook is continually reviewing its programs and the provisions of the Code of Ordinances (Code) to more effectively fund the promotion of tourism, maintenance of City existing programs that promote tourism, and new programs for the attraction of out of town visitors; and

WHEREAS, the City Council of the City of Seabrook has investigated, reviewed and considered the need to clarify the specific interest rate on delinquent taxes as 15%, as provided in Texas Tax Code 351.0042 in addition to the statutory penalty provided in 351.004 and law; and

WHEREAS, Section 2.11(b) of the Seabrook City Charter provides that ordinances relating to taxes do not require two readings, as referenced therein;

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

Section 1. That the City Council of the City of Seabrook adopts the preceding preamble paragraphs as if repeated verbatim herein and find them as matters of fact.

Section 2. That Chapter 85, "Taxation and Finance", Article II, "Hotel Occupancy Tax," be amended by revising Section 85-32 to clarify the specific interest rate of 15% on delinquent taxes on the hotel occupancy tax as follows:

“Sec. 85-28. - Levy of tax; rate.

There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where such costs of occupancy is at the rate of \$2.00 or more per day. Such tax shall be equal to 7 percent of the consideration paid by the occupant of such rooms to such hotel. 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 for those services related to cleaning and readying the room for use or possession.

(Code 1976, § 10-22; Code 1996, § 66-28; Ord. No. 97-22, 1-20-1998; Ord. No. 2012-21, § 2, 11-6-2012)

Sec. 85-29. - Exceptions.

- (a) No tax shall be imposed under this article upon the consideration paid by the occupant of such room who is a permanent resident as provided in § 156.001, Texas Tax Code.
- (b) No tax shall be imposed on a governmental entity of the United States 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; however, the State of Texas or a Texas agency, institution, board, or commission must pay the tax. There is no exemption for city or county officers and employees even if traveling on official business.
- (c) 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. All individuals claiming this exemption are required to fill out a hotel occupancy exemption certificate.
- (d) The right to use or possess a room or space in a hotel is exempt from taxation under this chapter if the person required to collect the tax receives, in good faith from a guest, a properly completed exemption certificate stating that the guest is qualified for an exemption under V.T.C.A., Tax Code §§ 156.102 or 156.103. An exemption certificate must be supported by the documentation required under rules adopted by the comptroller.

(Code 1976, § 10-23; Code 1996, § 66-29; Ord. No. 2012-21, § 2, 11-6-2012)

Sec. 85-30. - Use of tax collected.

- (a) Any revenues from the tax may only be used for purposes specified in accordance with V.T.C.A., Tax Code § 351.101, including:

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- (1) The acquisition of sites for any 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 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 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:
 - a. At or in the immediate vicinity of convention center facilities or visitor information centers; or
 - b. Located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates.
 - (6) Subject to V.T.C.A., Tax Code § 351.1076, the promotion of tourism by the enhancement and upgrading of existing sports facilities or fields, including facilities or fields for baseball, softball, soccer, and flag football, if the city owns the facilities or fields and the sports facilities and fields have been used, in the preceding calendar year, a combined total of more than ten times for district, state, regional, or national sports tournaments;
 - (7) Signage directing the public to sights and attractions that are visited frequently by hotel guests in the municipality.
- (b) 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 tax authorized by this article. The City Council in writing shall approve in advance the annual budget of the person to which it delegates those functions and shall require the person to make periodic reports to the City Council at least quarterly listing the expenditures made by the person with revenue from the tax authorized by this article. The person must maintain revenue provided from the tax authorized by this article in a separate account established for that purpose and may not commingle that revenue with any other money. The City may not delegate to any person the management or supervision of its convention and visitors programs and activities funded with revenue from the tax authorized by this article other than by contract as provided by this subsection. The

approval by the City Council of the annual budget of the person to whom the City Council delegates those functions creates a fiduciary duty in the person with respect to the revenue provided by the tax authorized by this article.

(Code 1976, § 10-24; Code 1996, § 66-30; Ord. No. 2012-21, § 2, 11-6-2012)

State law reference— Use of tax revenue, power to contract for services, V.T.C.A., Tax Code § 351.101.

Sec. 85-31. - Collection of taxes.

Any person owning, operating, managing or controlling any hotel shall collect the tax imposed by this article for the city and make payment as provided in Section 85-34.

(Code 1976, § 10-25; Code 1996, § 66-31; Ord. No. 2012-21, § 2, 11-6-2012)

Sec. 85-32. - Failure to pay; remedies.

(a) 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 article 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 not paid 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 article, the person is liable to the city for the city's reasonable attorney's fees, the costs of an audit and a penalty equal to 15 percent of the total amount of the tax owed and all other remedies provided by V.T.C.A., Tax Code § 351.004.

(b) **A person who fails to pay a tax due under this chapter is liable to the City for interest on the unpaid amount at the rate of 15%, and interest under this section accrues from the first day after the date due until the tax is paid.**

(c[b]) V.T.C.A., Civil Practice and Remedies Code § 16.061, applies to the collection of a tax under this article. A limitation period provided by Title 2 of the Tax Code (V.T.C.A., Tax Code § 101.001 et seq.) relating to the time allowed to assess taxes and bring a suit to collect taxes does not apply to a tax imposed under this article or to a suit brought under this section.

(d[e]) The remedies provided for in this section are in addition to other available remedies.

(Code 1976, § 10-29(b); Code 1996, § 66-32; Ord. No. 2001-24, § 2, 10-2-2001; Ord. No. 2012-21, § 2, 11-6-2012)

State law reference— Tax collection and penalty, V.T.C.A., Tax Code § 351.004.

Sec. 85-33. - Records.

Every person who is required by the provisions of this article to collect the tax imposed in this article shall have a record of the following information:

- (1) The names and addresses of all occupants of the establishment;
- (2) The period of time for which each room is rented; and
- (3) The consideration paid for such rental.

(Code 1976, § 10-26; Code 1996, § 66-33)

Sec. 85-34. - Quarterly reports to city director of finance.

- (a) On the last day of the month following each quarterly period, every person required in this article to collect the tax imposed in this article, shall file a report with the city director of finance showing the consideration paid for all room occupancies in the preceding quarter, the amount of the tax collected on such occupancies, and any other information the city director of finance may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing such report. There shall also be furnished to the director of finance at the time of payment of such tax, a copy of the quarterly tax report filed with the state controller in connection with the state hotel occupancy tax.
- (b) The failure of any person owning, operating, managing or controlling such hotel to collect sufficient monies from the occupants to satisfy the tax shall not excuse his or her obligation to pay the tax to the city.

(Code 1976, § 10-27; Code 1996, § 66-34; Ord. No. 2012-21, § 2, 11-6-2012)

Sec. 85-35. - Rules and regulations; access to books and records.

The city director of finance shall have the authority to require an operator to provide documentation regarding information contained in a tax report filed pursuant to this article in order to verify the information provided in such tax report and to verify the amount of municipal hotel occupancy taxes due. Upon such request of the director of finance, an operator shall do one of the following:

- (1) Produce all records requested and deliver such records to the director of finance in a form acceptable to him/her; or
- (2) Make all records requested available for inspection during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

(Code 1976, § 10-28; Code 1996, § 66-35; Ord. No. 2012-21, § 2, 11-6-2012)

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Sec. 85-36. - Violation of article a misdemeanor.

If any person required by the provisions of this article to collect the tax imposed in this article, make reports as required in this article, and pay to the city director of finance the tax imposed in this article, shall fail to collect such tax, shall fail to file such report, or shall fail to pay such tax, or if such person shall file a false report, such person shall be deemed guilty of a misdemeanor.

(Code 1976, § 10-29(a); Code 1996, § 66-36; Ord. No. 2012-21, § 2, 11-6-2012)

State Law reference— Penalty, V.T.C.A., Tax Code § 351.004(c).

Sec. 85-37. - Appeal of tax.

- (a) Upon a determination by the city director of finance that an operator has not paid the full amount of the municipal hotel occupancy tax due, s/he shall notify such operator in writing of such deficiency and of the operator's right to appeal the determination. Such notice shall be sent by first class mail.
- (b) Upon receipt of written notice of a determination by the city director of finance that a balance is due for the municipal hotel occupancy tax, the operator may either pay the amount due or appeal in writing to the city manager.
- (c) An appeal must be filed within 14 days after receipt of the notice of determination from the city director or finance.
- (d) The city manager/designee shall grant or deny the appeal and shall notify the operator of his/her decision in a written notice sent by first class mail within 14 days of receiving the request.

(Ord. No. 2012-21, § 2, 11-6-2012)

Secs. 85-38—85-65. - Reserved.”

SECTION 3. INCORPORATION INTO THE CODE; PENALTY CLAUSE.

This Ordinance is hereby incorporated and made a part of the Seabrook City Code. Violation of this Ordinance is subject to the penalty section of said Code of Ordinances, Section 1-15 “General penalty; continuing violations” which provides that any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500. Each day of violation shall constitute a separate offense.

SECTION 4. REPEAL OF CONFLICTING ORDINANCES.

In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part of provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Seabrook, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 5. NOTICE.

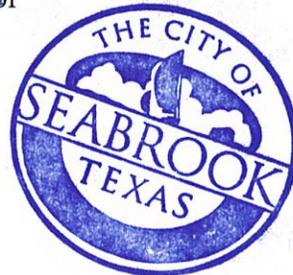
The City Secretary shall give notice of the enactment of this Ordinance by promptly publishing it or its descriptive caption and penalty after final passage in the official newspaper of the City; the Ordinance to take effect upon publication.

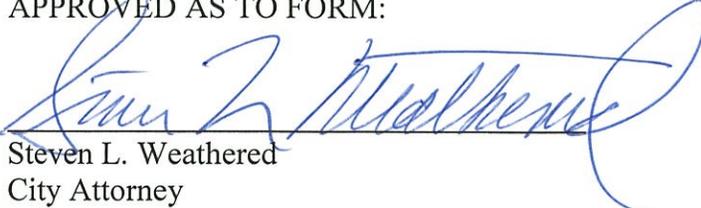
PASSED AND APPROVED on first and final reading this the 1ST day of March, 2016.

By: 
Glenn Royal
Mayor

ATTEST:

By: _____
Robin Hicks, TRMC
City Secretary



APPROVED AS TO FORM:

Steven L. Weathered
City Attorney