

## ORDINANCE NO. 2021-33

**AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, TO SET FORTH THE TAX RATE TO BE IMPOSED ON HOTEL OCCUPANCY WITHIN THE CORPORATE LIMITS AND EXTRATERRITORIAL JURISDICTION OF THE CITY; SETTING FORTH THE DUTIES OF PERSONS RESPONSIBLE FOR COLLECTION OF THE TAX; PROVIDING FOR CRIMINAL PENALTIES AND FINES; CREATING AN ADVISORY COMMITTEE; AND PROVIDING FOR FINDINGS OF FACT, SAVINGS, SEVERABILITY, REPEALER, AN EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.**

**WHEREAS**, the City is authorized by Chapter 351 of the Texas Tax Code to impose a hotel occupancy tax for the purpose of promoting tourism and the convention and hotel industry, and for further purposes as set forth in Texas Tax Code, Section 351.101, as amended; and

**WHEREAS**, as further authorized by Section 351.0025, a municipality with a population of less than 35,000, may impose a hotel occupancy tax in the municipality's extraterritorial jurisdiction; and the U.S. Census shows the population of the City of Wimberley is less than 35,000 people; and

**WHEREAS**, in order to continue and promote the growth and fulfill the purposes cited above, it is necessary to impose a hotel occupancy tax within the corporate and extraterritorial limits of the City; and

**WHEREAS**, the City recognizes its responsibility and authority to impose ordinances and controls that are necessary for the government of the City, its interest, welfare, and good order of the City as a body politic.

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

### **Section 1. Findings of Fact**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

**Section 2.** There is hereby created "Division 3. Hotel Occupancy Tax", of Article 2.10 Taxation of the Codified Ordinances of the City of Wimberley, Texas to read as follows:

### **Division 3. Hotel Occupancy Tax.**

#### **Sec. 2.10.041 Authorization.**

Under the authorization provided by the Texas Tax Code Chapter 351, the City of Wimberley, Texas levies a Hotel Occupancy Tax as described herein to be effective on April 1<sup>st</sup>, 2022.

**Sec. 2.10.042      Definitions.**

For purposes of this Ordinance, and in accordance with Chapter 351 and Chapter 156 of the Texas Tax Code, the terms used will have the meanings set forth below. Words that are not defined will have their ordinarily accepted meanings unless defined elsewhere in this Ordinance.

- (a) **Consideration.** The price of a room that is ordinarily used for sleeping in a hotel but does not include the cost of food served by the hotel or the cost of personal services performed by the hotel except those services related to cleaning and readying the room for use or possession.
- (b) **Hotel.** A building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn or rooming house, vacation rental, and bed and breakfast, but does not include (1) a hospital, sanitarium or nursing home, (2) a dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution; or (3) an oilfield portable unit, as defined by Section 152.001.
- (c) **Occupancy.** The use or possession or the right to use or possession of a room or space for less than thirty consecutive days in a hotel costing \$2 or more each day.
- (d) **Person.** Any individual, company, corporation, or association.

**Sec. 2.10.043 Tax Rate.**

A tax of seven percent (7%) of the consideration paid for a hotel room located within the corporate and extraterritorial limits of the City is levied on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays the consideration for the use or possession or for the right to the use or possession of a hotel room that costs \$2 or more each day and is ordinarily used for sleeping.

**Sec. 2.10.044      Exemptions.**

- (a) This Ordinance does not impose a tax on:
  - (1) A person who has the right to use or possess a hotel room for at least 30 consecutive days, so long as there is no interruption of payment for the period; or
  - (2) A United States governmental entity described in Section 156.103(a) of the Texas Tax Code is exempt from the payment of tax authorized by this chapter; or
  - (3) A state governmental entity described in Section 156.103(b) of the Texas Tax Code shall pay the tax imposed by this chapter but is entitled to a refund of the tax paid; or
  - (4) A person who is described by Section 156.103(d) of the Texas Tax Code is exempt from the payment of the tax authorized by this chapter or
  - (5) A person who is described by Section 156.103(c) shall pay the tax imposed by this chapter but the state governmental entity with whom the person is associated is entitled to a refund of the tax paid.
  - (6) Any other person entitled to an exemption under Chapter 156 of the Texas Tax Code.
  - (7) A person who made a hotel reservation on or before the effective date of this

Ordinance.

(b) To receive a refund of tax paid under this chapter, the governmental entity entitled to the refund must file a refund claim on a form provided by the City.

**Sec. 2.10.045      Collection by Operator.**

(a) A person who owns, operates, manages, or controls a hotel room within the corporate limits or the extraterritorial jurisdiction of the City shall collect the tax levied by this Ordinance for the City.

(b) A person who collects the tax shall keep and maintain for such hotel good, adequate and accurate records for the hotel, sufficient to show and establish the consideration paid to and received by the hotel, the true and correct amount of taxes due and payable by the hotel pursuant to this Ordinance, and the applicable exemptions if any.

(c) A person who is required to collect the tax under this section is hereby authorized to retain no more than one (1) percent of the tax amount collected to reimburse that person's costs in collecting the tax for the City. The reimbursement permitted by this paragraph shall be forfeited if the person collecting the tax fails to timely pay the tax to the City or fails to timely file the reports required by this Ordinance.

**Sec. 2.10.046      Reports and remittances.**

(a) On or before the same day that a person is required to file a report and remit hotel occupancy taxes to the State of Texas, that person shall also:

(b) File a written report with the City for the same period, with a copy of the report for state hotel occupancy taxes required by Section 156.151 (Report and Payment) of the Texas Tax Code for the same period; and

(c) Pay the tax due for that period.

(d) A report under this section shall be in the form prescribed by the City and shall include:

- (1) The total consideration paid for rooms subject to the tax in the reporting period;
- (2) The total amount of tax collected; and
- (3) The total amount of tax exemptions granted.

(e) If requested by the City, a person responsible for collecting the tax shall provide the City with:

- (1) The names, addresses, and identification relied upon to grant an exemption from the tax; and
- (2) Any other information the City may reasonably require.

(f) The City may request, and a person required to collect the tax shall provide within a reasonable time, additional documentation verifying the information contained in the report to the City.

**Sec. 2.10.047      Collection Procedure on Purchase of a Hotel.**

- (a) If a person who is liable for the payment of a tax under this chapter 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 of tax due until the seller provides a receipt issued by the City showing that the amount of tax due has been paid or a certificate issued by the City showing that no tax is due.
- (b) A purchaser of a hotel who fails to withhold the amount of the purchase price as required by this section is liable for the unpaid tax required to be withheld to the extent of the value of the purchase price.
- (c) The purchaser of a hotel may file a written request to the City Administrator to issue a certificate stating that no tax is due or to issue a statement of the amount required to be paid before a certificate may be issued. The City Administrator shall issue the certificate or statement not later than the 60th day after the date that the City receives the request.
- (d) If the City fails to issue the certificate or statement within the period provided by Subsection (c), the purchaser is released from the obligation to withhold the amount of tax from the purchase price or pay the amount of tax due.

**Sec. 2.10.048      Rules and Regulations--Record Inspection Authority.**

- (a) The City shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied herein, and shall upon reasonable notice have access to books and records necessary to enable the City to determine the correctness of any report filed as required by this subchapter and the amount of taxes due under the provisions of this subchapter.
- (b) Whenever necessary to make an inspection of books and records to enforce any of the provisions of this subchapter, the City may enter such building or premises at all reasonable times to inspect the books and records or to perform any duty imposed upon the City by this subchapter; provided, that if such building or premises be occupied, the City official shall first present proper credentials and request entry; and if such building or premises be unoccupied, the City shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises or books and records and request entry and/or production of books and records. If such entry or production is refused, the City shall have recourse to every remedy provided by law to secure entry.
- (c) When the City shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises or books and records shall fail or neglect, after proper request is made as herein provided, to promptly produce books and

records to or permit entry therein by the City for the purpose of inspection and examination pursuant to this subchapter.

**Sec. 2.10.049      Offenses.**

- (a) A person commits an offense if the person violates or fails to perform an act required by this Ordinance, or files a report containing false information. Each instance of a violation of this Ordinance is a separate offense, and each day that a person remains in violation constitutes a separate offense.
- (b) An offense under this subchapter is a Class C misdemeanor, punishable by a fine not to exceed \$500.00 for each offense.

**Sec. 2.10.050      Penalty and Interest on Unpaid Tax.**

- (a) In addition to the amount of any tax owed under this chapter, the person required to collect the tax is liable to the City for:
  - (1) the City's reasonable attorney's fees;
  - (2) the costs of an audit conducted under Subsection (b), as determined by the City using a reasonable rate, but only if:
    - (A) the tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and
    - (B) the City has not received a disbursement from the comptroller as provided by Section 156.2513 of the Texas Tax Code related to the person's concurrent state tax delinquency described by Section 351.008 of the Texas Tax Code;
  - (3) a penalty equal to 15 percent of the total amount of the tax owed if the tax has been delinquent for at least one complete municipal fiscal quarter; and
  - (4) interest on the amount of tax owed under Section 351.0042 of the Texas Tax Code.
- (b) If a person required to file a tax report under this chapter does not file the report as required by the City, the City may determine the amount of tax due under this chapter 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 under Section 156.151 of the Texas Tax Code in relation to that hotel.
- (c) If the person did not file a tax report under Section 156.151 of the Texas Tax Code for that reporting period in relation to that hotel, the municipality 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 chapter or Section 156.151 of the Texas 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.

- (d) The authority to conduct an audit under this section is in addition to any other audit authority provided by statute, charter, or ordinance. The City may directly perform an audit authorized by this section or contract with another person to perform the audit on an hourly rate or fixed-fee basis. The City shall provide at least 30 days' written notice to a person who is required to collect the tax imposed by this chapter with respect to a hotel before conducting an audit of the hotel under this section.

**Sec. 2.10.051      Additional Enforcement Authority.** The City may take the following actions against a person who has failed to file a required report, failed to collect the tax imposed, failed to pay the taxes over to the City when due, or filed a false report:

- (a) Bring suit to collect the unpaid tax and/or to enjoin the person from operating a hotel in the corporate limits or extraterritorial jurisdiction of the City until the tax is paid or the report filed, as applicable, as provided by the court's order; and any other remedy provided under state law.

**Sec. 2.10.052      Use of Proceeds.** The proceeds of the hotel occupancy tax levied by this Ordinance shall be used for the purpose of promoting tourism and the convention and hotel industry, and for further purposes as set forth in Texas Tax Code, Section 351.101, as amended.

**Sec. 2.10.053      Administration**

(a) The Council shall review applications to fund projects with hotel occupancy tax revenues received by the city. The Council shall have such powers and authority as described herein and as prescribed by the charter and state law.

(b) Citizens, groups, or entities that wish to apply for funding of projects eligible for funding with hotel occupancy tax revenue shall make application with the city utilizing such forms as may be required and amended from time-to-time.

(c) The Council shall consider applications for projects one time per year in conjunction with approval of the city budget or at such other times at the Council's discretion.

**Sec. 2.10.054      Applications**

The city administrator, or designee, shall conduct the following functions:

- (1) Receive and review applications from businesses and individuals requesting funds for projects that are eligible for hotel occupancy tax funds;
- (2) Prioritize the requests for such funds and projects; and advise the Council regarding any recommendations;
- (3) Provide oversight of projects and entities or individuals that receive funds and verify that such funds are being used in accordance with state law requirements;

- (4) Report to Council on a semi-annual basis regarding the activities of any entities, individuals and the projects that have received funds;
- (5) Develop a planning calendar, procedure for evaluation and evaluation criteria to be used when recommending and prioritizing agencies and projects for hotel occupancy tax funds;
- (6) Recommend advertising and marketing strategies for the Council to consider and assist the city with negotiation and oversight of any contracts for advertising and marketing approved by the Council;
- (7) Require all successful applicants to execute an agreement for funding as approved by Council;
- (8) Any other function or duty directed by the Council in regards to use of revenues from the hotel occupancy tax.

**Section 3.** There is hereby created “Sec. 2.04.005 Hotel Occupancy Tax Advisory Committee”, of Article 2.04 BOARDS, COMMISSIONS AND COMMITTEES of the Codified Ordinances of the City of Wimberley, Texas to read as follows:

**Sec. 2.04.005      Hotel Occupancy Tax Advisory Committee**

- (a) Purpose. There is hereby established a six (6) member Hotel Occupancy Tax Advisory Committee (Committee), which shall provide advice on the implementation, collection, and use of hotel occupancy tax dollars to the Council.
- (b) Membership.
  - 1) Number of members.  
The committee will have six (6) members, one of whom will be the committee chair appointed by the Council.
  - (2) Terms of members.
    - (A) Upon initial appointment of the committee, in order to stagger terms of the committee, three members shall serve a one-year term and three members shall serve a two-year term. Members shall draw lots as to which term they shall initially serve. Thereafter, committee members will be appointed to serve a two-year term. There is no limit as to how many terms a member may serve.
    - (B) Terms shall commence November 1<sup>st</sup> each year.

(3) Member selection.

(A) As vacancies occur, city staff and Council will prepare a slate of nominees for Council consideration. The slate will include nominees of lodging owners. The slate will only include individuals that city staff has contacted and who have expressed an interest and availability to serve. Potential nominees may express interest in the committee by contacting the city secretary in writing.

(4) Resignation; vacancies. A committee member may resign by notifying the city secretary in writing of his or her intent to resign. A failure to attend three or more sequential committee meetings will constitute a de facto notification of intent to resign. Members appointed to fill a vacancy will complete the unexpired portion of the term.

(c) Responsibilities. The Committee is responsible for the following:

- (1) The Committee shall review revenue received by the City through the Hotel Occupancy Tax and shall make recommendations to the Council regarding appropriate expenditures.
- (2) The Committee shall formulate a plan for expenditures of Hotel Occupancy Tax revenue by the City and shall update the plan as requested by Council.
- (3) The Committee shall submit an annual report to the Council that identifies approved expenditures by the City for the preceding year, discuss approved and proposed expenditures in the context of compliance with state law regarding the use of Hotel Occupancy Tax funds, and evaluates the effectiveness of approved Hotel Occupancy Tax expenditures and programs.
- (4) All recommendations of the Committee are subject to formal approval of the Council at a regularly scheduled meeting. The Committee shall not spend any money or authorize the expenditure of any money.

(d) Meetings.

- (A) The committee will meet monthly at city hall, as coordinated with and arranged by city staff. Agendas will be drafted by the committee chair, under the advisement of committee members.
- (B) The committee chair, or his or her designee(s), will attend the first Council meeting of each month to update the Council on projects and progress.

(e) Authority.

The committee has no authority to make decisions binding on the city. The committee's functions are purely advisory and not subject to the Open Meetings Act.

**Section 4. Sunset Review.**

(a) Frequency of Review. On or after three (3) years from the effective date of this Ordinance, the Council shall conduct a sunset review of the Hotel Occupancy Tax and the work of the Advisory Committee. The Council shall thereafter conduct periodic reviews every two (2) years.

(b) Review Criteria. The purpose of the sunset review shall be to determine whether a public need exists for the continuation of the Hotel Occupancy Tax and/or the Advisory Committee. The Council may consider the following criteria as part of its review:

- (1) The benefit(s) enjoyed by the City and the City's tourism industry as a result of the Hotel Occupancy Tax;
- (2) Performance and compliance with applicable statutes and regulations;
- (3) The efficiency with which the Advisory Committee operates;
- (4) The extent to which the Hotel Occupancy Tax and/or the Advisory Committee is needed or used; and
- (5) Any other criteria identified by the Council.

**Section 5. Savings.**

The repeal of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this Ordinance.

**Section 6. Severability.**

Should any sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance be adjusted or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance in whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**Section 7. Repeater.**

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of

ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act that is prohibited by any other ordinance.

#### **Section 8. Effective Date.**

This Ordinance shall take effect immediately from and after its passage and publication as may be required by law. The Hotel Occupancy Tax created by this ordinance shall not take effect until April 1, 2022.

#### **Section 9. Proper Notice and Meeting.**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

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**PASSED AND APPROVED First Reading** this 18<sup>th</sup> of November 2021, by a vote of 4 (Ayes) to 0 (Nays) to 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

**PASSED AND APPROVED Second Reading** this 2<sup>nd</sup> of December 2021, by a vote of 5 (Ayes) to 0 (Nays) to 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

Gina V. Fulkerson  
Gina V. Fulkerson, Mayor

**ATTEST:**

Laura J. Calcote  
Laura J. Calcote, City Secretary

**APPROVED AS TO FORM:**

John E. Z.  
John E. Z., City Attorney

