

ORDINANCE NO. 2013-04

AN ORDINANCE OF THE CITY OF THROCKMORTON, TEXAS, ESTABLISHING A HOTEL/MOTEL OCCUPANCY TAX; AUTHORIZING THE IMPOSITION OF ATTORNEYS FEES UPON DELIQUENT HOTEL/MOTEL OPERATORS; PROVIDING FOR ENFORCEMENT, INCLUDING CRIMINAL FINES OF UP TO \$500 PER OFFENSE; PROVIDING FOR APPLICABILITY AND AN EFFECTIVE DATE AND PROVIDING FOR A SEVERABILITY CLAUSE

WHEREAS, the City Council of the city of Throckmorton, Texas ("City Council") desires to develop a tourism industry for the benefit of the City of Throckmorton ("City"); and

WHEREAS, the promotion and growth of the tourism industry will enhance the City; and

WHEREAS, there is available a Hotel Occupancy Tax of up to seven percent (7%) as provided by State Statute, the proceeds of which can be utilized by the City to promote tourism, and enhance the arts and historical preservation of the City; and

WHEREAS, it is deemed in the best interest of the City to accomplish the goals as set forth above, and to enact and approve a six percent (6%) Hotel/Motel Occupancy Tax, effective August 1, 2013, the proceeds of which can be devoted to the foregoing purposes; and

WHEREAS, the City Council of the City of Throckmorton deems it in the best interest of the City of Throckmorton to adopt a hotel/motel occupancy tax;

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

1. TAX LEVIED

A. Effective August 1, 2013, there is hereby levied, enacted, and approved a six percent (6%) Hotel/Motel Occupancy Tax within the incorporated municipal boundaries (i.e., City Limits) of the City of Throckmorton and its Extraterritorial Jurisdiction (ETJ).

2. DEFINITIONS

A. The following words, terms and phrases are defined as follows:

(1) **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.

(2) **Grant:** A transfer of moneys from the Hotel/Motel Tax Account to designated recipients following formal request procedures.

(3) **Hotel:** Any building or buildings in which members of the public may, for a consideration, obtain sleeping accommodations, including hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, bed and breakfast or other buildings where rooms are furnished for a consideration. The term does not include hospitals, sanitariums, nursing homes or dormitories or housing facilities owned or leased and operated by an institution of higher education or a private or independent institution of higher education, as defined by the State of Texas 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.

(4) **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.

(5) **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 hereafter defined.

(6) **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.

(7) **Person:** Any individual, partnership, company, corporation or association owning, operating, managing or controlling any hotel.

TAX AMOUNT & EXEMPTIONS

A. Effective August 1, 2013, there is hereby levied a tax of six percent (6%) 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 two dollars (\$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.

B. Exemptions are as follows:

- (1) No tax shall be imposed upon a permanent resident.
- (2) No tax shall be imposed for federal or 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.

4. COLLECTION OF TAX

A. Every person owning, operating, managing or controlling any hotel shall collect the tax levied by this ordinance for the City of Throckmorton. The failure of the person, firm or corporation owning, operating, managing or controlling said hotel, to collect sufficient monies from occupants to satisfy said tax shall not excuse the obligation to pay said tax to the City. Any person who receives or collects hotel tax from an occupant shall hold the amount so collected in trust for the benefit of the City and is liable to the City for the full amount collected plus ant accrued penalties and interest on the amount collected.

B. The hotel operator shall be entitled to one half of one-percent (.5%) of the hotel occupancy tax revenues collected by the hotel as reimbursement for the operator's administrative costs for collecting the tax. However, as herein provided, this reimbursement may be forfeited at the discretion of the City if the hotel operator fails to timely pay the tax or timely file a report as required by the City, or files a false report with the City.

5. MONTHLY REPORT TO CITY SECRETARY

A. On the twentieth (20th) day of the month following each last day of the month, 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 month, the amount of the tax collected on such occupancies, and any other information the City Council may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing such report.

B. The report shall be in a form prescribed by the City Council and shall contain a copy of the state report filed for the comparable period.

C. The City Secretary and Mayor are hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this Ordinance.

D. 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.

6. REGULATIONS RELATING TO ACCESS TO BOOKS AND RECORDS

The City Council 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 it 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.

7. ENFORCEMENT

A. Offenses

(1) It shall be unlawful for any person to fail to file a report with the City Secretary in accordance with this Ordinance.

(2) It shall be unlawful for any person to fail to render payment to the City Secretary of taxes levied by this Ordinance.

B. Administrative Penalties

Any person committing one or more of the following shall be charged an administrative penalty:

(1) failure to file a report as required by this Ordinance;

(2) filing a false report; or

(3) failure to pay to the City Secretary the tax as imposed herein when said report payment is due.

Any person committing the above acts shall pay an amount equal to five percent (5%) of the amount due as penalty.

After the first thirty (30) days, The person shall be charged an amount equal to an additional five percent (5%) of such tax (total 10%), and after the second thirty (30) days the person shall be charged an amount equal to an additional five percent (5%) of such tax (total 15%). However, such penalty shall never be less than one dollar (\$1.00).

C. Criminal Fines

Any person violating 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 payment, shall be guilty of a Class C misdemeanor and shall, upon conviction, be fined in

any sum not to exceed five hundred dollars (\$500.00). Each twenty-four (24) hours of any such violation shall constitute a separate offense.

8. ADDITIONAL PENALTIES

A. In addition to the amount of any tax owed under this Ordinance and the state law, the person is liable to the City for the municipality's reasonable attorney's fees.

B. 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;

(3) Ask the District Court to enjoin operation of the hotel until the report is filed and the tax is paid; and/or

(4) Bring suit against the hotel seeking any other remedies provided in the injunction.

9. ADDITIONAL AUTHORIZATION TO BRING SUIT

The City is hereby authorized to bring suit against any person required to collect the tax imposed hereby and required to pay the collector over to the City and who has failed to file a report, or filed a false report, or failed to pay 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.

10. USE OF TAX REVENUE

A. The Hotel/Motel Tax Revenue Advisory Committee is hereby established, membership of which shall consist of no more than two (2) sitting Council members, no more than two (2) representatives of local hotels, motels, and bed-and- breakfast, and the City Treasurer, to make recommendations to the City Council for expenditures approved by State Law.

B. 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 sites for and the construction, improvement, enlarging, equipment, repairing, operation, and maintenance of convention center facilities (as such is defined in the Texas 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 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) which are at or in the immediate vicinity of convention center facilities; or

(b) which are located elsewhere in the municipality or its vicinity that would be frequented by tourists, convention delegates, or other visitors to the municipality.

C. 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.

11. ADMINISTRATIVE REQUIREMENTS

A. The City Council hereby delegates to the Throckmorton County Chamber of Commerce, the management or supervision of programs and activities funded with revenue from the hotel occupancy tax.

B. The City Secretary 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.

C. 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 person or entity to which these functions may be delegated creates a fiduciary duty in the person or entity under the contract.

D. The City Secretary shall maintain complete and accurate financial records of each expenditure of hotel occupancy tax revenue made under the direction of the person or entity contracted, if any, and on request of the City Council shall make the records available for inspection and review.

E. Hotel occupancy tax revenue may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses, and 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 cost actually incurred in conducting the authorized activities.

F. 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.

12. EFFECTIVE DATE

The hotel occupancy tax authorized herein shall become effective on August 1, 2013, and shall thereafter be collected on all rooms under occupancy (as that term is herein defined) from and after the effective date, regardless of the date upon which payment or reservation for the occupancy was made.

13. REPEALER

This Ordinance, upon its enactment and effective date, shall repeal all conflicting provisions that may be contained in other City ordinances or regulations, except to the extent they apply to obligations and violations arising prior to the enactment of this Ordinance.

14. 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 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.

PASSED AND APPROVED this, the 9th day of July, 2013, by a 4 (ayes) to 0 (nays) and 0 (abstentions) vote of the City Council of Throckmorton, Texas.



Will Carroll, Mayor

ATTEST:

Judy Jackson

Judy Jackson, City Secretary