

## **ORDINANCE NO. 2021-34**

AN ORDINANCE OF THE CITY OF IOWA COLONY, TEXAS, LEVYING A SEVEN PERCENT **HOTEL OCCUPANCY TAX** IN THE CITY LIMITS AND EXTRATERRITORIAL JURISDICTION; REQUIRING REPORTS; PROVIDING OFFENSES AND A PENALTY OF UP TO \$500 PER DAY FOR A VIOLATION OF THIS ORDINANCE; AND CONTAINING RELATED PROVISIONS.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IOWA COLONY, TEXAS:**

### **Sec. 1. Findings of Fact**

The City Council of the City of Iowa Colony, Texas ("the City") finds that all statements of fact in any part of this ordinance are true.

### **Sec. 2. Authority for Ordinance**

This ordinance is authorized by Chapter 351 of the Texas Tax Code, the Home Rule Charter of the City, and all other applicable law.

### **Sec. 3. Scope of Ordinance**

This ordinance applies throughout the city limits and extraterritorial jurisdiction of the City.

### **Sec. 4. Definitions**

a. The definitions in Chapter 351 of the Texas Tax Code shall apply in this ordinance.

b. The following terms not defined in Chapter 351 of the Texas Tax Code shall have the following definitions in this ordinance:

*Consideration* shall mean the amount paid for occupancy of a room that is ordinarily used for sleeping in a hotel.

*Hotel* shall mean any building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses or any other permanent building or structure where rooms are furnished for a consideration, but the term "hotel" shall not include hospitals, sanitariums, or nursing homes.

*Hotel keeper* shall mean a person owning, operating, managing, or controlling any hotel in the City or the extraterritorial jurisdiction of the City.

*Occupancy* shall mean the use or possession, or the right to the use or possession, of any room in a hotel.

*Occupant* shall mean any person who, for a consideration, uses, possesses or has a right to use or possess any room ordinarily used for sleeping in a hotel.

*Permanent resident* shall mean any occupant who has a right to use or possess, for a period of 30 or more consecutive days, any room ordinarily used for sleeping in a hotel.

#### **Sec. 5. Tax Levied.**

a. The City hereby levies a tax on any 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 or more each day, and is ordinarily used for sleeping.

b. This tax shall be equal to seven percent of the consideration paid by or on behalf of the occupant for the occupancy, excluding:

- (i) the cost of any food served or personal services performed by the hotel for the occupant of the room not related to the cleaning and readying of the room for use or possession; and
- (ii) any tax levied upon that occupancy by any other governmental entity. This exception does not apply to the income taxes of the hotel, so those income taxes are not subtracted from the consideration that is subject to the City hotel tax under this ordinance.

#### **Sec. 6. Exceptions**

However, the tax under this ordinance shall not apply to occupancy by:

- a. a permanent resident of the hotel; or
- b. a governmental agency or unit using the room on government business.

#### **Sec. 7. Collection and Payment to City**

a. Each hotel keeper shall collect, for and on behalf of the City, the tax imposed by this ordinance upon any taxable occupancy in that hotel and shall hold that revenue in trust for the City until paying it to the City.

b. On or before the last business day of the month (e.g., August) following each month of collection or required collection (e.g., July), the hotel keeper shall pay to the City all amounts collected or required to be collected for the preceding month (e.g., July) under this ordinance.

#### **Sec. 8. Record Keeping, Reports to City, and Inspection of Records**

a. Record Keeping. Each hotel keeper shall contemporaneously create and keep complete, true, and accurate records of each occupancy, the consideration for each occupancy,

each exempt occupancy hereunder, the consideration for each exempt occupancy, and the monthly totals of each of those categories. The hotel keeper shall preserve those records for three years after the end of the month to which those records apply.

b. Reports to City. On the last business day of the month (e.g., August) following each month of collection or required collection (e.g., July), a hotel keeper shall file a report with the assessor and collector of taxes of the city showing the information required by **Subsection a** for that month (e.g., July).

c. Inspection of Records. A hotel keeper shall provide to the assessor and collector of taxes of the City any books, records, and information the assessor and collector of taxes may request for the purpose of determining and verifying the amounts due under this ordinance. The hotel keeper shall provide those records as promptly as reasonably possible, but in any event within five business days after the tax assessor and collector requests those records in writing. The hotel keeper shall upon request provide copies of those records to the tax assessor and collector, allow the tax assessor to examine the originals, or both.

## **Sec. 9. Penalties and Interest**

a. Any person who either: (1) fails to timely file a report to the City in compliance with this ordinance; or (2) fails to pay to the City any amount when due hereunder; shall be liable for a civil penalty and interest in addition to any tax owed under this ordinance.

b. The amount of the civil penalty under this section is 15 percent of the total principal amount of the tax owed. If the tax is timely paid, but a report is not timely and properly filed, then the civil penalty is still due. In that event, the amount of the civil penalty is 15% of the principal amount of the tax obligation, even though paid, for the month required to be shown on the report (e.g., the tax obligation due in August for collections by the hotel keeper in July). This civil penalty shall not be collected more than once on the same delinquent amount or report.

c. The amount of interest under this section is six percent per year of the principal amount of the tax owed. If a suit is instituted for the recovery of the taxes, the person shall also be liable for the city's reasonable attorney fees and costs incurred for the recovery of the tax, penalties, and interest.

## **Sec. 10. Use of Revenues**

The revenues derived from this tax shall be used only for purposes authorized by Texas Tax Code section 351.101 or any other applicable law.

## **Sec. 11. Penalty and Continuing Offenses**

Any person violating any provision of this ordinance other than a failure to pay money shall be guilty of a misdemeanor and, upon conviction thereof shall be assessed a fine of not more than Five Hundred (\$500.00) Dollars. Each calendar day or portion of a calendar day a violation continues or recurs shall constitute a separate offense. No culpable mental state shall be required for a violation of this ordinance.

## **Sec. 12. Other Remedies**

a. Any and/or all of the following civil remedies may be imposed for violation of any provision of this ordinance: injunctive relief, declaratory relief, monetary damages, attorney's fees and all other expenses incurred in enforcing the City's rights or the violator's obligations or liabilities, costs of court, interest as provided by law, and all other remedies at law or in equity.

b. Some of the other remedies for a violation of this ordinance are provided by Texas Tax Code section 351.004.

## **Sec. 13. Cumulative Obligations and Remedies; No Election of Obligations or Remedies**

a. All obligations, prohibitions, and offenses under this ordinance or under any other applicable laws are cumulative. No such obligations, prohibitions, or offenses shall be construed to limit any other such obligations, prohibitions, or offenses.

b. All remedies and penalties in favor of the City or against any person other than the City under this ordinance, or under any other applicable laws are cumulative. The pursuit or receipt by the City of any one or more penalties or remedies shall not constitute an election of remedies, and shall not prevent the City from pursuing and receiving any and all other remedies and penalties of any nature whatsoever.

c. Without the limiting the generality of the foregoing, the City may pursue a criminal prosecution hereunder without pursuing civil remedies for a violation hereof; the City may pursue civil remedies without pursuing a criminal prosecution; or the City may do both.

## **Sec. 14. Conflicts in Terms**

In the event of any conflict in the terms of this ordinance, or between the terms of this ordinance and any other ordinance, the more restrictive provision shall govern and control.

## **Sec. 15. Nonwaiver of Immunity**

Nothing herein, in any document issued pursuant hereto, or in any action, omission, or condition pursuant hereto shall ever be construed as a full or partial waiver of governmental

immunity, official immunity, or any other immunity of the City or any of its agents, officers, attorneys, or employees.

**Sec. 16. Nonwaiver by Nonenforcement**

The failure or omission of the City, upon one or more occasions, to enforce any right, obligation, or remedy under this ordinance or any other applicable laws shall never be construed as a waiver of the City's right to strictly enforce such right, obligation, or remedy, and the City may resume such strict enforcement without advance notice.

**Sec. 17. Non-Liability Of City**

Neither the City nor any of its agents, officers, attorneys, or employees shall have any liability of any nature to any person other than the City for any act, omission, or condition in any way directly or indirectly related to the subject matter of this ordinance.

**Sec. 18. Severance Clause**

If any part of this ordinance, of whatever size, is ever declared invalid or unenforceable for any reason, the remainder of this ordinance shall remain in full force and effect.

**Sec. 19. Effective Date**

This ordinance shall be effective immediately upon its passage, approval, and adoption.

**PASSED AND APPROVED ON THE FIRST READING ON OCTOBER 18, 2021.**

**PASSED, APPROVED, AND ADOPTED ON THE SECOND AND FINAL READING ON NOVEMBER 15, 2021.**

**CITY OF IOWA COLONY**

By: 

**MICHAEL BYRUM-BRATSEN,  
MAYOR**

**ATTEST:**

  
**KAYLEEN ROSSER,  
CITY SECRETARY**

Iowa Colony/Ordinances/Hotel Occupancy Tax (10-13-21)

