

Ordinance No. 2015-017

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 A HOTEL OCCUPANCY TAX 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 further for the general purposes of convention center facilities or visitor information centers; advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; the encouragement, promotion, improvement, and application of the arts, 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; for a municipality located in a county with a population of one million or less, expenses, including promotion expenses, directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity; and signage directing the public to sights and attractions that are visited frequently by hotel guests in the municipality; and

WHEREAS, as further authorized by Section 351.0025, a municipality with a U.S. Census population of less than 35,000, may impose a hotel occupancy tax in the municipality's extraterritorial jurisdiction; and the U.S. Census 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 I. 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 II. HOTEL OCCUPANCY TAX

A. Short Title. This Ordinance will be known and may be cited as the Hotel Occupancy Tax Ordinance.

B. 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.

C. Definitions. For purposes of this Ordinance, and in accordance with Chapter 351 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.

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.

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 a hospital, sanitarium or nursing home.

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 two dollars or more each day.

Person. Any individual, company, corporation or association.

D. Tax Rate; Exemptions.

1. A tax of five percent (5%) 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 two dollars or more each day and is ordinarily used for sleeping.

2. This Ordinance does not impose a tax on:

a. 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

b. The United States, a governmental entity of the United States, or an officer or employee of the United States; or

c. A person who made a hotel reservation on or before the approval date of the second and final reading of this ordinance; or

d. Any other person entitled to an exemption under Chapter 356 of the Texas Tax Code.

3. Except as otherwise provided in Section 156.103 (Exception-State and Federal Government) of the Texas Tax Code, the State of Texas, or an agency, institution, board, or commission of the State of Texas other than an institution of higher education, as that term is defined by Section 61.003 (Definitions) of the Texas Education Code, shall pay the tax imposed by this subchapter and is entitled to a refund of the amount of tax paid.

4. A person entitled to a refund of tax paid under this section shall make an application for a refund according to the rules prescribed by the City in the form prescribed by the City.

E. Collection by Operator.

1. A person who owns, operates, manages, or controls a hotel or collects payment for the use or possession or for the right to the use or possession of 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.

2. 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.

3. 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 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.

F. Reports and remittances.

1. 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:

a. 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

b. Pay the tax due for that period.

2. A report under this section shall be in the form prescribed by the City and shall include:

a. The total consideration paid for rooms subject to the tax in the reporting period;

b. The total amount of tax collected; and

c. The total amount of tax exemptions granted.

3. If requested by the City, a person responsible for collecting the tax shall provide the City with:

a. The names, addresses, and identification relied upon to grant an exemption from the tax; and

b. Any other information the City may reasonably require.

4. 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.

G. Collection Procedure on Purchase of a Hotel.

1. If a hotel owner sells a hotel, the purchaser or his assignee shall withhold an amount of the purchase price sufficient to pay the amount of tax due until the seller provides:

a. A receipt issued by the City showing that the amount of tax due has been paid; or

b. A certificate issued by the City showing that no tax is due.

2. 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.

3. The purchaser of a hotel may file a written request with the City for the issuance of a certificate stating that no tax is due or for a statement of the amount required to be paid before a certificate may be issued. The City shall issue the certificate or statement not later than the 60th day after the date that the City receives the request.

4. If the City fails to issue the certificate or statement within the period provided by Subsection (3), the purchaser is released from the obligation to withhold the amount of tax from the purchase price or pay the amount of tax due.

H. Rules and Regulations--Record Inspection Authority.

1. 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.

2. 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 and request entry. If such entry is refused, the City shall have recourse to every remedy provided by law to secure entry.

3. 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 shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the City for the purpose of inspection and examination pursuant to this subchapter.

I. Offenses.

1. 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.

2. An offense under this subchapter is a Class C misdemeanor, punishable by a fine not to exceed \$500.00.

J. Penalty and Interest on Unpaid Tax.

1. In addition to the tax imposed under this subchapter, a person shall pay a penalty of five percent (5%) of the tax due if the person:

- a. Fails to file a report on or before the due date;
- b. Fails to pay the tax imposed on or before the due date; or
- c. Files a report containing false information.

2. A person who fails to pay any amount of the tax and penalty due under Subsection (1) on or before the 60th day after the tax is due shall pay an additional five percent (5%) penalty on the unpaid tax. A delinquency penalty shall not be less than one dollar.

3. Beginning on the 61st day after the due date, delinquent taxes shall draw interest at a rate of ten percent (10%) per annum.

K. 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:

1. Bring suit to collect the unpaid tax 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

2. Any other remedy provided under state law.

SECTION III. HOTEL OCCUPANCY TAX ADVISORY COMMITTEE

A. Purpose. There is hereby established a seven-member Hotel Occupancy Tax Advisory Committee (Committee), which shall oversee the implementation, collection, and use of hotel occupancy tax dollars.

B. Membership.

1. The seven members of the Committee shall be selected from the following representative groups:

a. Four Lodging Operator representatives nominated by the Wimberley Valley Tourism and Lodging Association Board, which shall include:

- i. Two large lodging facility representatives (over \$250,000 in annual lodging revenue).

- ii. One small lodging facility representative (operator with less than three lodging rooms or less than \$250,000 in annual lodging revenue).
- iii. One lodging reservation booking representative.
- b. One Chamber Representative nominated by the Chamber of Commerce Board.
- c. One Arts/Historical Attraction Representative nominated by the Wimberley Valley Arts and Cultural Alliance.
- d. One Merchants Association Representative nominated by the Wimberley Merchants Association.

2. Each Committee member shall be appointed to a two-year term and may be reappointed by the Council for two additional consecutive two-year terms. After serving a third consecutive two-year term, an individual is not eligible for reappointment for two-years. The initial terms for one of the two large lodging facility representatives, the lodging reservation booking representative, the Merchants Association Representative and the Arts/Historical Attraction Representative shall be for one-year. The initial term for the remaining members (one large lodging facility representative, one small lodging facility representative, one Chamber representative) shall be for two-years.

3. Each Responsible Organization (Wimberley Valley Tourism and Lodging Association Board, Chamber of Commerce Board, Wimberley Valley Arts and Cultural Alliance, and Wimberley Merchants Association) shall provide its slate of nominees to the City Council no later than 30 days from the effective date of this Ordinance; otherwise, the Council may nominate committee members of its own choosing.

4. All nominees must be representatives of a business or entity that is located within the city limits or extraterritorial jurisdiction of the City of Wimberley.

5. Appointment to the Committee is subject to the approval of a majority vote of the Council. Members shall serve at the pleasure of the Council, and any member may be removed by majority vote of the Council at any time. In the event of removal, the Responsible Organization shall provide a replacement nominee no later than 30 days from the date of the vacancy; otherwise, the Council will nominate a person of its own choosing to fill the vacant position.

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 City 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, discusses 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 approval of the Council. The Committee shall not spend any money or authorize the expenditure of any money.

D. Procedures.

1. All meetings of the Committee shall satisfy the requirements of the Texas Open Meetings Act.

2. The Committee shall elect a Chair, Vice Chair, and Secretary on an annual basis.

3. All Committee recommendations to the Council shall require an affirmative vote of three-fourths of all members of the Committee (a “Super-Majority” vote”).

SECTION IV. 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 Committee. The Council shall thereafter conduct periodic reviews of the tax and the work of the Committee 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 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 Committee operates;

4. The extent to which the Hotel Occupancy Tax and/or the Committee is needed or used;

5. The extent to which the Committee has encouraged participation by the public in making its decisions, as opposed to participation solely by an occupation, a business or an

institution, and the extent to which the public participation has resulted in decisions compatible with the objectives established by the Council for the Committee;

- 6. The extent to which the Committee has complied with the Open Meetings Act;
and
- 7. Any other criteria identified by the Council.

SECTION V. 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 VI. 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 VII. REPEALER

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 VIII. 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 October 1, 2015.

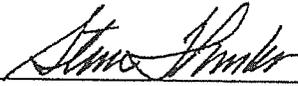
SECTION IX. PROPER NOTICE AND MEETING

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.

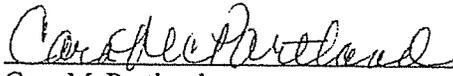
FIRST READING PASSED AND APPROVED this 20th day of August, 2015, by a vote of 3 (Ayes) to 1 (Nays) 1 (Abstain) vote of the City Council of the City of Wimberley, Texas.

SECOND AND FINAL READING PASSED AND APPROVED this 3rd day of September, 2015, by a vote of 3 (Ayes) to 1 (Nays) 1 (Abstain) vote of the City Council of the City of Wimberley, Texas.

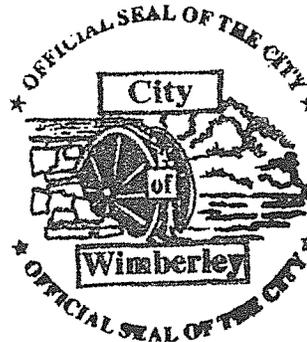


Steve Thurber
Mayor

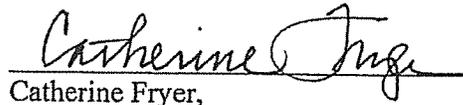
ATTEST:



Cara McPartland,
City Secretary



APPROVED AS TO FORM:



Catherine Fryer,
City Attorney