

City of Wimberley

221 Stillwater, P.O. Box 2027, Wimberley, Texas 78676

SPECIAL CITY COUNCIL MEETING
WIMBERLEY CITY HALL-CITY COUNCIL CHAMBERS
221 STILLWATER, WIMBERLEY, TEXAS
FRIDAY, FEBRUARY 9, 2018 – 10:00 A.M.

AGENDA

1. **CALL TO ORDER** February 9, 2018 at 10:00 a.m.
2. **CALL OF ROLL**
3. **DISCUSSION ITEMS**
 - A. Discussion regarding operations and procedures related to the hotel occupancy tax and the role of the Hotel Occupancy Tax Advisory Committee.
 - B. Discussion regarding Ordinance No. 2018-02 to increase the tax rate to be imposed on hotel occupancy within the corporate limits and the extraterritorial jurisdiction of the City from zero percent (0%) to five percent (5%), effective April 1, 2018. *(Interim City Administrator Paul Parker)*
 - C. Discussion regarding the Visitor Center Operations Agreement between the City of Wimberley and the Wimberley Convention and Visitors Bureau Foundation. *(Place One Council member Steve Thurber)*
 - D. Discussion regarding Resolution No. 06-2018 amending the 2017/2018 Operating Budget (Budget Amendment No. 7) providing for an increase of revenue in the Hotel Occupancy Tax Fund and to increase expenses in the Hotel Occupancy Tax Fund. *(Interim City Administrator Paul Parker)*

4. **ADJOURNMENT**

The City Council may retire into Executive Session at any time between the meeting's opening and adjournment for the purpose of discussing any matters listed on the agenda as authorized by the Texas Government Code including, but not limited to, homeland security pursuant to Chapter 418.183 of the Texas Government Code; consultation with legal counsel pursuant to Chapter 551.071 of the Texas Government Code; discussion about real estate acquisition pursuant to Chapter 551.072 of the Texas Government Code; discussion of personnel matters pursuant to Chapter 551.074 of the Texas Government Code; deliberations about gifts and donations pursuant to Chapter 551.076

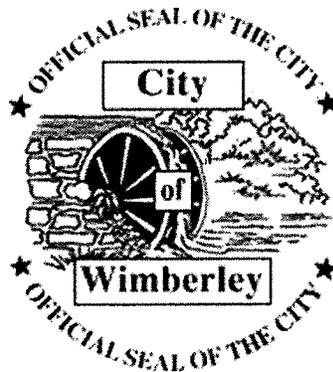
of the Texas Government Code; discussion of economic development pursuant to Chapter 551.087 of the Texas Government Code; action, if any, will be taken in open session.

CERTIFICATION

I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the Wimberley City Hall on Tuesday, February 6, 2018, by 9:00 a.m.

Laura J. Calcote
Laura J. Calcote, City Secretary

The City of Wimberley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact Laura Calcote, City Secretary, at (512) 847-0025 for information. Hearing-impaired or speech-disabled persons equipped with telecommunication devices for the deaf may call (512) 272-9116 or may utilize the stateside Relay Texas Program.



Ordinance No. 2017-020

“Amend Hotel Occupancy Tax Committee”

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, TO AMEND THE HOTEL OCCUPANCY TAX COMMITTEE; PROVIDE FOR FINDINGS OF FACT, SAVINGS, SEVERABILITY, REPEALER, AN EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Wimberley (“City”), Texas has established a Hotel Occupancy Tax Committee; and

WHEREAS, the City Council of the City of Wimberley, Texas strives to consider qualified individuals who represent a broad sampling of the community when appointing members to City boards and commissions; and

WHEREAS, the City Council of the City of Wimberley, Texas desires to amend the formal appointment process for the Hotel Occupancy Tax Committee and finds that the procedures herein will enhance the membership of the Committee;

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 II. AMENDMENT

Ordinance No. 2015-017, Section III, Hotel Occupancy Tax Advisory Committee, is hereby amended as follows:

~~“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.~~ ***Establishment and Purpose.*** *In order to generate maximum hotel/motel occupancy within the City by attracting and securing overnight visitors in accordance with Texas Tax Code Section 351.001 as stated in the Texas Attorney General’s “Texas Tax Code Section 351.001”, a Hotel Occupancy Tax Advisory Committee (HOT Committee) is established.*

B. Membership and Terms.

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

a. ~~Four Two 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.~~

e. *One At Large Representative*

f. *One Councilmember Representative*

2. Each Committee member shall be appointed to a two-year term and may be reappointed by the Council for ~~two~~ *one* additional consecutive two-year terms. After serving a ~~third~~ *second* 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 other than the Councilmember Representative (one ~~large~~ lodging facility representative, ~~one small lodging facility representative,~~ one Chamber representative, *and one At Large Representative*) shall be for two-years. *The one member that is a Councilmember Representative shall serve without term limits.*

~~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.~~

3. All nominees must be representatives of a business, ~~or~~ *entity or individual* that is located within the city limits or extraterritorial jurisdiction of the City of Wimberley.

4. *Application. Applicants shall submit an application to serve as a Committee Member to the Council and shall specify in their application which position of the representative groups they are applying for.*

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 Council regarding appropriate expenditures.~~

~~2.1.~~ 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.

~~3.2.~~ 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.

~~4.3.~~ *To foster cooperative efforts with tourism-related organization/businesses;*

4. *To further the promotion of tourism and publicity for the area;*

5. *To raise public visibility of local features and activities throughout the state, regionally, nationally and internationally; and*

6. *To enhance special events and local features by assisting with advertising.*

4-7. *To review and recommend grant awards to the Council. 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."*

SECTION III. DISSOLUTION OF PRIOR HOTEL OCCUPANCY TAX ADVOSORY COMMITTEE

The HOT Committee that was in existence prior to the adoption of this Ordinance is hereby dissolved. A member of the prior HOT Committee shall be eligible to apply for a position on the re-constituted HOT Committee for which that person is qualified, as described by this Ordinance.

SECTION IV. 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 V. 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 VI. 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 VII. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication as may be required by law.

SECTION VIII. PROPER NOTICE AND MEETING

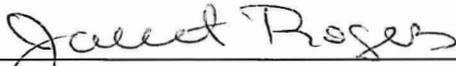
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was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

PASSED AND APPROVED this 2nd day of November, 2017.



Herschel "Mac" McCullough
Mayor

ATTEST:



Janet Rogers
Interim City Secretary

APPROVED AS TO FORM:



City Attorney

Deputy



What Cities Need to Know to Administer Municipal Hotel Occupancy Taxes

Abridged Version

Texas Hotel & Lodging Association

REVISED FALL 2011

Table of Contents

EDITOR'S NOTE	3
AUTHORIZED ENTITIES	3
COLLECTING THE TAX	3
EXEMPTIONS FROM THE LOCAL TAX	4
PENALTIES FOR FAILURE TO REPORT OR COLLECT THE TAX	4
USE OF LOCAL HOTEL OCCUPANCY TAX REVENUES	5
Criteria #1: First, every expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry.	5
Criteria #2: Every expenditure of the hotel occupancy tax must clearly fit into one of nine statutorily provided categories for expenditure of local hotel occupancy tax revenues.	7
1) Funding the establishment, improvement, or maintenance of a convention center or visitor information center.	7
2) Paying the administrative costs for facilitating convention registration.	7
3) Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity.	8
4) Expenditures that promote the arts.	8
5) Funding historical restoration or preservation programs.	9
6) Funding certain expenses, including promotional expenses, directly related to a sporting event within counties with a population of under 1 million.	9
7) Funding the enhancement or upgrading of existing sports facilities or sports fields for certain municipalities.	10
8) Funding transportation systems for tourists	10
9) Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.	11
ADMINISTERING HOTEL OCCUPANCY TAX REVENUE EXPENDITURES	12
Duty of funded entities to provide a list of activities.	12
Delegating management of funded activities.	12
Use of hotel occupancy tax revenues to cover administrative expenses.	13
SPECIAL RULES FOR SELECTED MUNICIPALITIES	14
ADDITIONAL INFORMATION	14

Editor's Note

This is the abridged version of THLA's *What Cities Need to Know to Administer Municipal Hotel Occupancy Taxes*. A full version of this article, with information including expanded information on hotel tax collection, tax exemptions, and city-specific rules, is available by contacting THLA at 512-474-2996.

Authorized Entities

All incorporated Texas municipalities, including general law and home rule cities, may enact a hotel occupancy tax within the city limits.¹ A city with a population of under 35,000 may also adopt the hotel occupancy tax within that city's extraterritorial jurisdiction (ETJ).² Most cities are eligible to adopt a hotel occupancy tax at a rate of up to 7 percent of the price paid for the use of a hotel room.³ If a city adopts the hotel occupancy tax within its ETJ, the combined state, county, and municipal hotel occupancy tax rate may not exceed 15 percent.⁴ Texas has among the highest combined hotel occupancy tax rates of any major metropolitan areas in the nation, with Houston at 17 percent and San Antonio at 16 ¾ percent.⁵

In addition to local hotel occupancy taxes, all lodging properties operating in Texas are subject to a six percent state hotel occupancy tax.⁶ Governed under Chapter 156 of the Texas Tax Code, the state hotel occupancy tax is administered by the Texas Comptroller. Funds from the state six percent hotel occupancy tax flow directly to the Texas Comptroller's office and are largely used for the general governmental operations of the State. A portion of the state hotel occupancy tax revenue also goes toward funding tourism promotion through Texas's ad campaign. Most Texans know this successful ad campaign by its famous tagline, "Texas, it's like a whole other country."

Collecting the Tax

Under the Texas Tax Code, the following businesses are considered "hotels" and are required to collect hotel occupancy taxes from their guests: "Any building or buildings in which members of the public obtain sleeping accommodations for consideration" for less than 30 days, including a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast facilities. The Texas Administrative Code also includes "manufactured homes, skid mounted bunk houses, residency inns, condominiums, cabins, and cottages within the definition of a "hotel" if the facility is rented for periods of under 30 days.⁷ Hospitals, sanitariums, nursing homes, dormitories or other non-hotel housing facilities owned by institutions of higher education, and oilfield portable units do not collect the tax.⁸ Subject to various exemptions, the hotel tax is imposed on any "person" who

¹ Tex. Tax Code Ann. § 351.002(a) (Vernon 2011).

² § 351.0025(a).

³ § 351.003(a).

⁴ § 351.0025(b).

⁵ Source: National Business Travel Association 2009 Survey.

⁶ Tex. Tax Code § 156.051.

⁷ Tex. Tax Code § 156.001; 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2009).

⁸ Tex. Tax Code § 156.001.

pays for the use of a room in a hotel, including corporations, organizations, and other legal entities. The hotel room must cost \$2 or more per day for the local hotel tax to apply, and \$15 or more per day for the state hotel tax to apply.⁹

A full version of this article, with information including expanded information on hotel tax collection is available by contacting THLA at 512-474-2996.

Exemptions from the Local Tax

Texas law provides certain hotel tax exemptions based on the length of a guest's stay or the guest's affiliation with an exempt organization. Texas law is more permissive for exemptions from the state 6% hotel occupancy tax than it is for local hotel tax exemptions. The state hotel occupancy tax allows for an exemption for the following entities: educational, charitable, and religious entities are often exempt from the state hotel occupancy tax. These entities are *not exempt* from local hotel occupancy taxes.¹⁰

Focusing specifically on the local hotel occupancy taxes, there are primarily four categories of exemptions permitted from municipal and county hotel occupancy taxes:

- 1) **Federal Employees:** Federal employees traveling on official business;
- 2) **Diplomats:** Foreign diplomats with a tax exempt card issued by the U.S. Department of State;
- 3) **High Ranking State Officials:** A very limited number of state officials with a hotel tax exemption card (e.g. heads of state agencies, state legislators and legislative staff, members of state boards and commissions, and state judges); and
- 4) **Permanent Resident/Over 30 Day Stay:** Persons or businesses who have agreed in advance to use a hotel room for more than 30 consecutive days (i.e. the "permanent resident" hotel tax exemption).¹¹

A full version of this article with information including expanded information on tax exemptions is available by contacting THLA.

Penalties for Failure to Report or Collect the Tax

The local hotel occupancy tax statutes provide for specific penalties a city may assess against hotel operators who fail to file the hotel tax collections report, file late or without full payment, or produce false tax returns.¹²

A full version of this article with information including expanded information on hotel tax penalties is available by contacting THLA.

⁹ Tex. Tax Code § 156.051(a); § 351.002(a).

¹⁰ Tex. Tax Code § 156.102.

¹¹ § 156.104.

¹² § 351.004.

Use of Local Hotel Occupancy Tax Revenues

There is a two-part test for every expenditure of local hotel occupancy tax.¹³

Criteria #1: First, every expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry.¹⁴

Under the Tax Code, every event, program, or facility funded with hotel occupancy tax revenues must be likely to do two things: 1) directly promote tourism; and 2) directly promote the convention and hotel industry.¹⁵ "Tourism" is defined under Texas law as guiding or managing individuals who are traveling to a different, city, county, state, or country.¹⁶ A "direct" promotion of the convention and hotel industry has been consistently interpreted by the Texas Attorney General as a program, event, or facility likely to cause increased hotel or convention activity.¹⁷ This activity may result from hotel or convention guests that are already in town and choose to attend the hotel tax funded facility or arts or historical event, or it may result from individuals who come from another city or county to stay in an area lodging property at least in part to attend the hotel tax funded event or facility.

If the funded event or facility is not reasonably likely to directly enhance tourism and the hotel and convention industry, local hotel occupancy tax revenues cannot legally fund it.¹⁸ However, it is important to note that events and facilities that do not qualify for hotel occupancy tax funding are often still legally eligible for city funding from most of the other funding sources available to the city (general property tax revenues, general sales tax revenues, franchise fee revenues, etc.). State law is stricter in terms of how the local hotel occupancy tax revenues can be spent.

There is no statutory formula for determining the level of impact an event must have to satisfy the requirement to directly promote tourism and hotel and convention activity.¹⁹ However, communities with successful tourism promotion programs generally award the amount of the hotel occupancy tax by the proportionate impact on tourism and hotel activity incident to the funding request. Entities applying for hotel occupancy tax revenue funding should indicate how they will market the event to attract tourists and hotel guests. If an entity does not adequately market its events to tourists and hotel guests, it is difficult to produce an event or facility that will effectively promote tourism and hotel activity.

A city or delegated entity should also consider whether a funded event will be held in a venue that will likely attract tourists and hotel guests. For example, if an event is held in a local school or community center, it may be less likely to attract tourists than if it is held at a local performing arts venue, museum or civic center. Each community will need to assess whether the facility hosting the function is likely to attract tourists and hotel guests. Similarly, if an event is a community picnic, local parade, educational class, or other similar type of event, it is often not likely to attract tourists and hotel guests, and would likely not be eligible for hotel occupancy tax funding.

¹³ §§ 351.101(a), (b).

¹⁴ §§ 351.101(b).

¹⁵ *Id.*

¹⁶ § 351.001(6).

¹⁷ See Op. Tex. Att'y Gen. Nos. GA-0124 (2003), JM-690 (1987).

¹⁸ *Id.*

¹⁹ See generally Tex. Tax Code §§ 351.101(a), (b).

Finally, it is a good practice to utilize a hotel tax application form. THLA has a sample hotel occupancy tax application form and a “post event” form that are already in use by many city governments throughout Texas. For a copy of these two forms, simply call THLA at (512) 474-2996, or email THLA at news@texaslodging.com. These forms pose questions of funding applicants such as “Do you have a hotel room block for your events?,” and “What do you expect to be the number of room nights sold for this event?” Additionally, the application asks if the entity has negotiated a special hotel price for attendees of their funded event. If the entity does not find the need to reserve a hotel block or negotiate a special hotel rate, it is not likely that they anticipate their event/s will have a meaningful impact on hotel activity.

Funded entities can also visit with area hoteliers who, in many cases, can provide feedback on whether any of their hotel guests expressed an interest in attending such events or facilities in the past. Hotel front desk and management staff usually know what local events and facilities were of interest to their guests by notes in their reservation systems, requests for directions, information and transportation to such venues by hotel patrons.

After an applicant’s event or program is offered for several years, the applicant should have a reasonable idea as to whether their event or program’s attendance includes a number of tourists and hotel guests. For example, some entities track whether guests are staying at local hotels via their guest registry. Other entities measure potential out-of-town attendance from their ticket sales records or other survey information.

It is important to note that Texas law also provides that the hotel occupancy tax may not be used for general revenue purposes or general governmental operations of a municipality.²⁰ It also may not be used to pay for governmental expenses that are not directly related to increasing tourism and hotel and convention activity.²¹ For example, consider a request to use the hotel occupancy tax to pay for construction of additional lighting, restrooms, roads, sidewalks, or landscaping in a downtown area. These are expenditures for which the city would traditionally use its general revenues. Therefore, such an expenditure would violate the prohibition against using the hotel tax for “general governmental operations of a municipality.”²² It is difficult to argue that such improvements to a non-tourism facility would “directly” promote tourism and hotel activity. At best, one could argue the improvements would “indirectly” enhance tourism and hotel activity—which is not sufficient under the clear language of the Tax Code to qualify for funding from the hotel occupancy tax.

²⁰ Tex. Tax Code § 351.101(b); *see also* Op. Tex. Att’y Gen. Nos. JM-184 (1984), JM-965(1988).

²¹ *Id.*

²² *Id.*

Criteria #2: Every expenditure of the hotel occupancy tax must clearly fit into one of nine statutorily provided categories for expenditure of local hotel occupancy tax revenues.²³

The nine categories for expenditure of the hotel occupancy tax are as follows:

1) Funding the establishment, improvement, or maintenance of a convention center or visitor information center.

This category allows expenditures of the hotel tax for the creation, improvement, or upkeep of a convention center or a visitor information center.²⁴ The term “convention center” is defined to include civic centers, auditoriums, exhibition halls, and coliseums that are owned by the city or another governmental entity or that are managed in whole or in part by the city.²⁵ It also includes parking areas in the immediate vicinity of a convention center facility, and certain hotels that are owned by the city or another governmental entity, or that are managed in whole or in part by the city.²⁶ It does not include facilities that are not of the same general characteristics as the structures listed above.

Texas law specifies that for a facility to be funded as a convention center, it must be a facility primarily used to host conventions and meetings.²⁷ “Primarily used” in this context would arguably mean that more than 50 percent of the bookings for the facility are to host conventions or meetings that directly promote tourism and the hotel and convention industry.²⁸ In other words, holding local resident meetings in a facility would not count toward qualifying the facility as a convention center, but meetings of individuals from out-of-town who in part stay at hotels would qualify.

Simply naming a facility a convention center or visitor information center does not automatically qualify the facility as a “convention center.” The authority to use the hotel occupancy tax for facilities is limited and any such facility must meet the above noted “primary usage” test. For example, general civic buildings such as the city hall, local senior citizen centers or activity centers would not qualify as convention centers that could be funded by hotel tax.

2) Paying the administrative costs for facilitating convention registration.

This provision allows expenditures for administrative costs that are actually incurred for assisting in the registration of convention delegates or attendees.²⁹ This is generally an expenditure for larger cities that hold large conventions, and includes covering the personnel costs and costs of materials for the registration of convention delegates or attendees.

²³ Tex. Tax Code § 351.101(a).

²⁴ § 351.101(a)(1).

²⁵ § 351.001(2).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*; see generally Tex. Tax Code §§ 351.101(a), (b).

²⁹ Tex. Tax Code § 351.101(a)(2).

3) Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity.

This provision allows expenditures for solicitations or promotional programs/advertising directly related to attracting tourists and convention delegates to the city or its vicinity.³⁰ Such expenditures are traditionally in the form of internet, newspaper, mail, television, or radio ads; or solicitations to promote an event or facility. The advertising or promotion must directly promote the hotel and convention industry.³¹ For example, the Texas Attorney General ruled that the local hotel occupancy tax may not be used for advertising or other economic development initiatives or improvements to attract new businesses or permanent residents to a city.³²

In certain cases, a city may be able to use the advertising and promotion category to justify covering the costs of advertising an event that will attract tourists and hotel guests, even though the administrative or facility costs for the underlying event would not qualify for hotel tax funding.³³

4) Expenditures that promote the arts.

This section authorizes the expenditure of local hotel occupancy tax for a variety of art-related programs that also promote tourism and local hotel and convention activity.³⁴ Specifically, it allows funding 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.³⁵ However, it is not enough that a facility or event promotes the arts; Texas law requires that the arts related expenditure also directly promote tourism and the hotel and convention industry.³⁶

Section 351.101(a) of the Tax Code specifically states that “the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry.” The Texas Attorney General reaffirmed this standard when it held in Opinion GA-0124: “Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue only to promote tourism and the convention and hotel industry, and only for the specific uses listed in the statute.” There are many success stories of cities that have partnered with the arts entities to turn one day arts events into multi-day events that can substantially increase tourism and hotel activity. Such partnerships and long term planning can help both foster the arts and grow hotel tax proceeds that can be made available to the arts.

Additionally, the amount of funding a city allocates to the arts category may be limited by statute. See the “Special Rules” section of this guide, starting on page 23.

³⁰ § 351.101(a)(3).

³¹ § 351.101(b).

³² Op. Tex. Att’y Gen. No. JM-690 (1987).

³³ See generally Tex. Tax Code § 351.101(a)(3).

³⁴ Tex. Tax Code § 351.101(a)(4).

³⁵ *Id.*

³⁶ § 351.101(b).

5) Funding historical restoration or preservation programs.

A city may spend a portion of its hotel occupancy tax revenues to enhance 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 that are likely to attract tourists and hotel guests.³⁷ Texas law does not limit such funding to structures that are owned by a public or nonprofit entity, or to whether the project is listed on a historic registry, but the city may choose to impose such limitations.

It is not enough that a project or activity event merely be historical in nature; Texas law requires that the historical related expenditure also directly promote tourism and the hotel and convention industry.³⁸ Section 351.101(a) of the Tax Code specifically states that “the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry.” The Attorney General in Opinion GA-0124 (2003) reaffirmed this standard when it held: “Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue “only to promote tourism and the convention and hotel industry” and only for the specific uses listed in the statute.”

Additionally, the amount of funding a city allocates to the historical programs category may be limited by statute. See the “Special Rules” section of this guide, starting on page 23.

6) Funding certain expenses, including promotional expenses, directly related to a sporting event within counties with a population of under 1 million.

This section authorizes a municipality located in a county with a population of under 1 million to use local hotel occupancy tax revenue to fund certain expenses, including promotional expenses, directly related to a sporting event.³⁹ To qualify under this authorization, the sporting event must be one that would “substantially increase economic activity at hotels and motels within the city or its vicinity.”⁴⁰ The statutory authorization also requires that a majority of the participants in the sporting event also be tourists to the area.⁴¹

This category is intended to allow communities to fund the event costs for sporting tournaments that result in substantial hotel activity. For example, if a city had to pay an application fee to seek a particular sporting event or tournament, it could use hotel tax for such an expenditure if the sporting event would substantially increase economic activity at hotels and the city was within a county of under one million population. The requirement that a majority of the participants must be “tourists” is included in the statutory authority to prohibit the use of local hotel tax for sporting related facilities or events are purely local (e.g.; local recreation centers, local little league and parks events, intramural sports, etc.).

³⁷ § 351.101(a)(5).

³⁸ § 351.101(b).

³⁹ § 351.101(a)(6).

⁴⁰ *Id.*

⁴¹ *Id.*

7) Funding the enhancement or upgrading of existing sports facilities or sports fields for certain municipalities.

Certain statutorily bracketed cities may use local hotel occupancy tax to enhance and upgrade existing sports facilities owned by the municipality.⁴² Acceptable sports facilities include those for baseball, softball, soccer, and flag football.⁴³ The municipality must own the sporting facility, and the municipality must meet one of the following population requirements in the Code. A full version of this article, with information including which cities are eligible for this category, is available by contacting THLA at 512-474-2996.

Texas law further requires that before local hotel tax to be used for this purpose, the sports facilities and fields must have been used a combined total of more than 10 times for district, state, regional, or national sports tournaments in the preceding calendar year.⁴⁴

If hotel tax revenues are spent on enhancing or upgrading a sports facility, the municipality must also determine the amount of "area hotel revenue" generated by hotel activity from sports events held at the hotel tax funded facility for five years after the upgrades to the sport facility are completed.⁴⁵ The area hotel revenues that were generated from sports events at the hotel tax funded facility over that five year period must at least equal the amount of hotel tax that was spent to upgrade the sports facility.⁴⁶ If the amount of hotel tax that was spent on the facility upgrades exceeds hotel revenue attributable to events held at that facility over that five year period, the municipality must reimburse the hotel occupancy tax revenue fund any such difference from the municipality's general fund.⁴⁷

For example, if a city spent \$400,000 on improvements to its soccer fields, it would have to show at least \$400,000 in area hotel revenue directly attributable to events held at that soccer field over the five year period after the soccer field improvements were completed. If the city could only show \$300,000 in hotel industry revenue due to events held at that soccer field, the city would have to reimburse the city hotel tax with the \$100,000 difference from the city's general fund.

8) Funding transportation systems for tourists

Often with conventions and large meetings, there is a need to transport the attendees to different tourism venues. In 2007, the Texas Legislature authorized the use of city hotel tax for any sized city to cover the costs for transporting tourists from hotels to and near the city to any of the following destinations:

- the commercial center of the city;
- a convention center in the city;
- other hotels in or near the city; and
- tourist attractions in or near the city.⁴⁸

⁴² § 351.101(a)(7).

⁴³ *Id.*

⁴⁴ Tex. Tax Code §§ 351.101(a)(7), 351.1076.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ § 351.110(a).

The reimbursed transportation system must be owned and operated by the city, or privately owned and operated but financed in part by the city.⁴⁹ For example, this authority could be used to cover the costs of a city to finance certain private shuttles to operate between the convention center and area hotels and attractions for a large city-wide convention. The law specifically prohibits the use of the local hotel tax to cover the costs for a transportation system that serves the general public.⁵⁰

9) Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.

In 2009, the Texas Legislature added a statutory category that allows cities to use municipal hotel occupancy tax revenue to pay for signage directing tourists to sights and attractions frequently visited by hotel guests in the municipality.⁵¹ Arguably, this type of expenditure was permissible as “advertising and promotion” prior to this 2009 legislation. However, the Legislature codified this understanding to officially include signage directing tourists to sights and attractions that are frequently visited by hotel guests.⁵²

⁴⁹ § 351.110(b).

⁵⁰ § 351.110(c).

⁵¹ § 351.101(a)(9).

⁵² *Id.*

Administering Hotel Occupancy Tax Revenue Expenditures

Duty of funded entities to provide a list of activities.

All entities (including the city itself) that are directly or indirectly funded by the local hotel occupancy tax are annually required to provide a list of the scheduled activities, programs, or events that will directly enhance and promote tourism and the convention and hotel industry.⁵³ This list is to be provided annually to the city secretary or his/her designee prior to the expenditure of the hotel occupancy tax funding by the funded entity.⁵⁴ An entity may add items to this list at any time, and each city decides the format for providing this information. This documentation requirement does not apply if the entity already provides written information to the city indicating which scheduled activities or events that it offers that directly enhance and promote tourism and the convention and hotel industry. For example, cities that require quarterly or annual reports on the use of hotel tax by hotel tax funded entities would satisfy this requirement if their report addresses the extent to which their events directly promote tourism and hotel activity.⁵⁵

It is important to remember that if an entity does not have any such events or programs reasonably expected to directly promote tourism and the hotel and convention industry, it is not eligible for local hotel occupancy tax funding.⁵⁶ If only a portion of an entity's programs fit this criteria, then only a proportionate amount of that entity's costs should be covered by the local hotel occupancy tax.⁵⁷

Delegating management of funded activities.

The governing body of a city may delegate the management or supervision of programs funded by the hotel occupancy tax by written contract.⁵⁸ This delegation may be made to a person, another governmental entity, or to a private organization.⁵⁹ This delegation is often made to a local arts council, a chamber of commerce, or to the convention and visitors bureau. The municipality shall approve the entity's annual budget prior to delegating the management or supervision of hotel tax funded programs.⁶⁰ Furthermore, the municipality shall require the delegated entity to make periodic reports, at least quarterly, listing the hotel occupancy tax expenditures made by the delegated entity.⁶¹ Additionally, the Code requires that the contracted entity maintain complete and accurate financial records for every expenditure of hotel occupancy tax revenue, and upon the request of the municipality or another person, make the records available for inspection and review.⁶²

An entity with delegated authority to manage hotel tax funded programs undertakes a fiduciary duty with respect to the use of the tax revenue.⁶³ Such entities are also required to maintain the city hotel occupancy tax revenue in a separate bank account that may not be commingled with any other account

⁵³ § 351.108(b).

⁵⁴ *Id.*; § 351.108(d).

⁵⁵ § 351.108(g).

⁵⁶ § 351.101(b).

⁵⁷ § 351.101(e).

⁵⁸ § 351.101(c).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² § 351.101(d).

⁶³ § 351.101(c).

or funds.⁶⁴ The Tax Code does not contain similar prohibitions against commingling the funds for individual organizations, such as an arts or historical group that receives hotel tax funding for their individual program, but do not themselves oversee hotel tax funding to other entities.

Use of hotel occupancy tax revenues to cover administrative expenses.

Texas law allows proceeds of the municipal hotel occupancy tax to be used to cover the portion of administrative costs that are directly attributable to work on activities that may be funded by the tax.⁶⁵ For example, entities that manage activities funded by the hotel occupancy tax may spend some of the tax for certain day-to-day operational expenses.⁶⁶ These expenses may include supplies, salaries, office rental, travel expenses, and other administrative costs.⁶⁷ However, these costs may be reimbursed only if the expenses are incurred in the promotion and servicing of expenditures authorized under the hotel occupancy tax laws.⁶⁸ The portion of the administrative costs that are covered should not exceed the percentage of the cost that is attributable to the activity funded by the hotel occupancy tax.⁶⁹ For example, administrators who spend 33 percent of their time overseeing hotel occupancy tax funded programs should seek funding for no more than 33 percent of their salary or 33 percent of other related overhead costs. Additionally, hotel occupancy tax revenues may be spent on travel that is directly related to the performance of the person's job in an efficient and professional manner.⁷⁰ This travel should facilitate the acquisition of skills and knowledge that will promote tourism and the convention and hotel industry.⁷¹

⁶⁴ *Id.*

⁶⁵ § 351.101(e).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ § 351.101(f).

⁷¹ *Id.*

Special Rules for Selected Municipalities

The Texas Tax Code provides additional rules for certain Texas cities based on the city's population brackets. A full version of this article with information on city-specific rules is available by contacting THLA at 512-474-2996.

Additional Information

If a city or funded entity has additional questions about the administration or use of the hotel occupancy tax, it is welcome to contact the Texas Hotel & Lodging Association for assistance by phone at (512) 474-2996. THLA has sample documents available to assist in administering hotel taxes, such as funding grant application forms, post event forms, and tax collection guidelines.

Texas city officials can also make inquiries to the legal staff of the Texas Municipal League at (512) 231-7400. Finally, all entities may make inquiries to the Municipal Affairs Section of the Office of the Attorney General of Texas (OAG). The OAG's Municipal Affairs Division can be reached by phone at (512) 475-4683.

Index

- Administrative costs, 7, 13
- Advertising, solicitations, and promotions that attract tourists and convention delegates to the city, 8
- Application form, 6
- Arts expenditures, 8
- Attorney General. *See* Texas Attorney General's Office
- Authorized Entities and Procedures, 3
- Comptroller. *See* Texas Comptroller
- Contracts, 12
- Convention center, 7, 10
- Convention Center funding, 7
- Convention registration, 7
- Delegating the Management of Funded Activities, 12
- Dormitories, 3
- Exemptions from the Tax, 4
- Extraterritorial Jurisdiction (ETJ), 3
- Federal Employees, 4
- Fiduciary duty, 12
- Historical restoration and preservation, 9
- Hospitals, 3
- Houston, 3
- List of activities, 12
- Nursing homes, 3
- Penalties for Failure to Report or Collect the Tax, 4
- Permanent resident exemption, 4
- Post event form, 6, 14
- Religious entities, 4
- Reporting, 12
- San Antonio, 3
- Sanitariums, 3
- Signage, 11
- Sporting events, 9
- Sports facilities or sports fields, 10
- State officials, 4
- Texas Attorney General XE "Attorney General" \t "See Texas Attorney General's Office" 's Office, 8
- Texas Attorney General's Office, 9
- Texas Comptroller's Office, 3
- Transportation systems for tourists, 11
- Use of Local Hotel Occupancy Tax Revenues Criteria #2, 7
- Visitor Information Center funding, 7

By Bennett Sandlin
TML Executive Director



The Hotel Tax “Two-Step”



In the grand scheme of things, city hotel occupancy taxes account for just a small amount of city revenue. Property taxes and sales taxes are far more important to most cities. Why does it seem, then, that hotel taxes generate so much confusion and controversy?

The answer is this: hotel taxes, unlike most other taxes, are levied on a specific category of businesses—hotels. As a result, these businesses tend to pay close attention to how cities expend these funds. Spend city sales taxes in a controversial way, and no particular category of business feels singled out enough to raise a fuss. Perceived misuses of hotel taxes, on the other hand, are a different story.

Fortunately, it's very easy for a city official to remember how to legally spend hotel taxes. A city simply needs to remind itself to always follow the “two-part test.” The key element of a two-part test is—surprise—that it has two

parts! Cities frequently remember to meet one element of the test, but then forget the other part entirely. This article will succinctly describe the two-part test, and then describe some common situations to which we can apply the test.

Part 1: Heads in Beds

The first element of the two-part test is this: Every expenditure of hotel taxes must put “heads in beds.” What this means is that every funded project must attract overnight tourists to the city's hotels and motels, thus promoting the city's hotel industry.

For example, how about a weekend-long arts and crafts show? There's a very good chance that out-of-town guests might come to visit such an event, so expenditure of hotel tax money on that event would likely qualify.

On the other hand, how about a quilting bee at a local nursing home? While a worthy cause, the quilting bee is unlikely to attract overnight tourists and, therefore, probably wouldn't qualify to receive hotel tax funds.

Part 2: The Nine Categories

Once a project has cleared the first part of the test, it's time for—you guessed it—the second part of the test. Here it is: every expenditure of hotel taxes must *also* fit into one of nine statutorily authorized categories. These are the nine categories: (1) convention and visitor centers; (2) convention registration; (3) advertising the city; (4) promotion of the arts; (5) historical restoration and preservation; (6) sporting events in a county under one million in population; (7) enhancing or upgrading existing sports facilities or sports fields (only in certain cities); (8) tourist transportation systems; and (9) signage directing the public to sights and attractions that are visited frequently by hotel guests in the city.

Thus, even if an event puts heads in beds, it cannot receive hotel tax money unless it *also* fits into one of the nine categories. For instance, what about a livestock auction that will attract attendees from surrounding counties? While that event is likely to attract overnight tourists, it doesn't fit neatly into one of the nine categories. Therefore, it's likely not a valid recipient of hotel tax money.

It's not enough to meet one of the two prongs of the two-part test. A city must meet both! The following are some real-life examples that have been the focus of inquiries received by the TML Legal Department.

Fireworks, Anyone?

The prototype hotel tax controversy is an event like a fireworks show or a parade. Cities frequently ask if they can fund a fireworks show with hotel tax money.

Let's subject a fireworks show to the two-part test. Does a fireworks show put heads in beds? The answer is “probably

not,” unless it is a truly spectacular event. But let’s give it the benefit of the doubt. Suppose the town of Pyrotechnic, Texas, truly does put on a fireworks extravaganza that attracts tourists from around the state. So far, so good.

But what about the second part of the test—the nine categories? Do fireworks shows fit neatly into any of the nine? Not really. Some may argue that such shows “advertise” the city, but this is likely not what that category means. Advertising the city literally means some sort of print or other media that explicitly promote the city. Otherwise, a city could simply say that any popular event “advertises” the city that holds it. Direct funding of fireworks displays and the like are, usually, not a very good fit.

Sign of the Times?

Another frequent question concerns highway signs promoting the city. May a city fund a billboard routing the city’s attractions, restaurants, and hotels? Let’s put it to the two-part test. Heads in beds? Well, why not? If a billboard encourages motorists to stop in town, those motorists might stay the night, whereas without the sign they would have driven on to the next city. This is exactly what the statute intends. The nine categories? How about advertising? Prior to 2009, a convincing argument could be made that because a billboard literally advertises the city it refers to, it would fit within the advertising category. All doubt was erased in 2009, when the Texas Legislature added the ninth category—signage directing the public to sights and attractions. Conclusion—travel signs are a perfect fit for hotel occupancy tax expenditures.

Chambers of Commerce?

Cities frequently wonder if they can fund the local chamber of commerce using hotel tax money. Do chambers put heads in beds? Maybe, maybe not. Chambers of commerce are typically charged with promoting economic development, not tourism. Even assuming a chamber does promote tourism, though, how about the nine categories? Funding a chamber doesn’t, in itself, fall into any of the nine categories.

Fortunately, there is an easy solution. The laws governing hotel tax expenditures permit the city to delegate expenditure of hotel tax money to another entity, typically a chamber or convention and visitor bureau. As long as the chamber spends the money on projects that otherwise meet the two-part test mentioned above, it’s fine to delegate some funds to them. There must be a written contract laying out the duties of the chamber, though. Also, the chamber must keep the hotel funds in an account separate from its general operating fund.

Arts Organizations

City arts organizations are a common trouble area. It seems that every arts council in the state knows that promotion of the arts is one of the nine categories on which city hotel taxes may be expended. Cities know this because these arts groups frequently come asking for the money.

The thing to remember about arts groups is this: Direct funding of the organization’s operations does nothing in and of itself to put “heads in beds.” Put another way, funding the operating budget of an arts council meets the second part of the test (promotion of the arts) but not necessarily the first.

The solution? The city should encourage the group to seek funding only for its festivals and shows that do, in fact, attract tourists to the city. By limiting the expenditure to such events, the city meets both parts of the test.

What Else?

There are numerous other technical details about how to legally expend hotel tax funds. In truth, by simply learning and remembering the two-part test, city officials are 99 percent of the way toward full compliance with hotel tax laws. City officials with questions about the hotel occupancy tax should call the TML Legal Department at 512-231-7400. ★



ANA-LAB
CORP.
THE COMPLETE SERVICE LAB
Quality Analytical & Environmental Services Since 1965

Employee-owned Ana-Lab Corporation is one of the country's leading environmental testing labs serving clients in Texas and nationwide.

ANA-LAB CORPORATION
P. O. Box 9000 • Kilgore, Texas 75663
2600 Dudley Road
903-984-0551 • Fax: 903-984-5914
www.ana-lab.com • Email: corp@ana-lab.com



TEA
T104704201

MEMBER



ACIL



ACCREDITED



BBB
ACCREDITED BUSINESS

REGIONAL OFFICES

<p>Amarillo, TX Phone/Fax 806-355-3556 Email: panhandle@ana-lab.com</p> <p>Dallas, TX Phone/Fax 972-837-9412 Email: northtexas@ana-lab.com</p> <p>Austin, TX Phone/Fax 512-821-0045 Email: centex@ana-lab.com</p> <p>Brownsville, TX Phone/Fax 956-831-6437 Email: rgvtex@ana-lab.com</p>	<p>Houston, TX Phone/Fax 281-333-9414 Email: gulfcoast@ana-lab.com</p> <p>Norman, OK Phone/Fax 405-590-2533 Email: oklahoma@ana-lab.com</p> <p>Shreveport, LA Phone/Fax 318-219-9300 Email: arkla@ana-lab.com</p>
---	--

ORDINANCE NO. 2018-02

“HOTEL OCCUPANCY TAX”

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, TO INCREASE THE TAX RATE TO BE IMPOSED ON HOTEL OCCUPANCY WITHIN THE CORPORATE LIMITS AND EXTRATERRITORIAL JURISDICTION OF THE CITY; 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;

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. AMENDMENT

Ordinance No. 2015-017, Section II (Hotel Occupancy Tax), Subsection D (Tax Rate; Exemptions), Subparagraph (1), is hereby amended as follows:

“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.”

SECTION III. 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 IV. 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 V. 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, including, but not limited to, City of Wimberley Ordinance No. 2017-004, 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 VI. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication as may be required by law.

SECTION VII. 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.

PASSED AND APPROVED this ____ day of _____, 20____.

Herschel P. "Mac" McCullough,
Mayor

ATTEST:

Laura J. Calcote,
City Secretary

APPROVED AS TO FORM:

City Attorney

Visitor Center Operations Agreement

The **City of Wimberley**, a Texas general law Type A municipal corporation, (“City”), and the Wimberley Convention and Visitors Bureau Foundation, a Texas non-profit corporation, (“Visitor Center”), enter into this Operations Agreement (“Agreement”) on ____, 2018, upon the terms and conditions set forth below:

WHEREAS, Chapter 351 of the Texas Tax Code (the “Act”) addresses expenditures of the municipal hotel occupancy tax; and

WHEREAS, section 351.101(a)(1) of the Code authorizes expenditures for the equipping, repairing, operation, and maintenance of visitor information centers; and

WHEREAS, the Visitor Center is a non-profit corporation in the City of Wimberley that operates a visitor information center within the meaning of section 351.101(a)(1); and

WHEREAS, the City has included and thereby finds that this Agreement promotes tourism and the convention and hotel industry within the City, and further meets the requirements contained in the Act;

NOW, THEREFORE, in consideration of the promises, covenants, terms and conditions herein contained, the parties mutually agree:

I. Findings Incorporated

Each of the above recitals is hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration, and promises that bind the parties.

II. Term

This Agreement shall be effective beginning on the Effective Date (____) and shall remain in effect until 9-30, 2022, subject to the termination provision described in Section VII below.

III. Definitions

3.1 **Act.** The word “Act” means Chapter 351 of the Texas Tax Code, as amended.

3.2 **Agreement.** The word “Agreement” means this Visitor Center Operations Agreement, together with all exhibits and schedules attached to this Visitor Center Operations Agreement from time to time, if any.

3.3 **City.** The word “City” means the City of Wimberley, Texas.

3.4 **Effective Date.** The words “Effective Date” mean the earliest date on which all parties have executed this Agreement by and between the Visitor Center and the City.

3.5 **Fiscal Year.** The words “Fiscal Year” mean the twelve-month period beginning October 1 and ending September 30.

3.6 **Local Hotel Occupancy Tax Revenue.** The words “Local Hotel Occupancy Tax Revenue” mean the municipal hotel occupancy tax levied by the City pursuant to the Act, at such rates as are permitted by state law and approved by the Wimberley City Council, which tax is collected from guests staying at hotels or other taxable lodging within the City.

3.7 **Term.** The word “Term” means the term of this Agreement as specified in Section II of this Agreement.

3.8 **Visitor Center.** The words “Visitor Center” mean the Wimberley Convention and Visitors Bureau Foundation.

IV. Services to be Provided

4.1 **Obligation of City.** As part of its obligation under the Act to use Local Hotel Occupancy Tax Revenue for attracting and promoting tourism and the convention and hotel industry, the City hereby agrees to provide funds to the Visitor Center for the purposes described in section 351.101(a)(1) of the Act and according to the schedule attached as **Exhibit A** out of funds actually received by the City from the local hotel occupancy tax.

4.2 **Obligations of Visitor Center.** The Visitor Center agrees as follows:

- (a) The Visitor Center shall provide the following services to the City:
 - i. The Visitor Center will operate and maintain the Visitor Center facility and provide information to area visitors. The Visitor Center agrees to treat all tourist lodging facilities in a reasonably consistent manner and to provide information to tourists regarding all lodging options within the City.
- (b) The Visitor Center shall establish a separate checking account or banking account for receipt of the Local Hotel Occupancy Tax Revenue; and
- (c) Any proposed change to the use by the Visitor Center of Local Hotel Occupancy Tax Revenue according to the schedule attached as **Exhibit A** and as described by this Agreement must be approved in advance by the City Council and authorized by the City in writing as an amendment to this Agreement.

V. Budget, Accounting, and Reporting Requirements

5.1 **Budget.** Prior to the Effective Date of this agreement, and no later than June 15 of each year thereafter, the Visitor Center shall provide to the City a proposed written request for reimbursement of the previous year's operating expenses and for anticipated expenses for which there may be no historical experience as may be required. The budget shall also reflect the results of consultation between the Visitor Center and appropriate City staff concerning, projected available Local Hotel Occupancy Tax Revenue for the ensuing Fiscal Year, any amounts available

in the Visitor Center's reserve funds, and estimated costs of the services provided by this Agreement. The City agrees that, in the event of unforeseen emergencies which may occur from time to time during the course of this agreement, the Visitor Center may submit special requests for additional funding, if required. Funding for each request will be due within ninety days of the receipt of the request in year one, and March 31 for each year thereafter. Each request may be submitted in a form similar to that illustrated in **Exhibit A**.

5.2 Reporting Criteria. During the Term of this Agreement, the Visitor Center shall track and report the following criteria for purposes of historic reporting and goal measurement: (1) Visitor Guide Requests; (2) Phone Inquiries; (3) Email Inquiries; and (4) Retail Revenue resulting from the sale of merchandise offered for sale in the Visitor Center.

5.3 Accounting. The Visitor Center shall maintain separate, complete and accurate books and records of all financial activities, which the City may audit at any time upon reasonable notice. The Visitor Center shall maintain financial records on a regular basis in accordance with generally accepted accounting principles, subject to any variations as are required by state law or that are agreed to in writing by the City. Specifically, the Visitor Center shall account separately for the Local Hotel Occupancy Tax receipts and expenditures, and for any other funds provided to it by the City, including the activities identified in **Exhibit A**.

5.4 Annual Audit. At the conclusion of each year, during the term of this agreement, the Visitor Center shall engage an independent firm of certified public accountants to audit its financial statements in accordance with generally accepted auditing standards. The Visitor Center shall include such additional supplemental information as the City may request to be included in the auditor's report and shall deliver to the City Administrator a copy of its audited financial statements and related supplemental information, no later than 120 days after the end of each Fiscal year.

5.5 Quarterly Financial Reporting. Within 30 days after the end of each quarter in the Fiscal Year, the Visitor Center shall deliver to the City a (i) written report of its expenditures and (ii) unaudited financial statements for the quarter just ended, including at a minimum a balance sheet and an income statement.

5.6 Additional Quarterly Reporting. The Visitor Center will provide the City with monthly reports containing detailed information on performance of this Agreement. The Visitor Center shall also provide the City with copies of any reports or documentation required by federal or state law, as such laws may be amended from time to time during the Term of this Agreement.

VI. Payments by the City

6.1 Payments Subject to Annual Appropriation. In addition to any particular limitations and conditions that may be specifically stated in this Agreement, all obligations of the City are subject to annual appropriation by the City for this Agreement from proceeds of the Local Hotel Occupancy Tax Revenue that are available to pay for the services provided under this Agreement, and further subject to the ability of the City to collect such tax proceeds. This Agreement imposes no obligation upon the City to levy and collect the tax. Under no

circumstances shall this Agreement be construed to require the City to transfer monies from any other fund owned by the City to the Visitor Center.

6.2 **Payments Due Annually.** The City shall pay to the Visitor Center annually, by October 1 for each year under this agreement, with exception of the first year, the items and amounts listed in Appendix A, plus any additional items or amounts as may be approved by the City from time to time based upon the most recent fiscal year end and any other directives from the City as may apply.

6.3 **Limitation on Use of Funds.** The Visitor Center shall spend Local Hotel Occupancy Tax Revenue solely to perform this Agreement. It is understood and agreed by and between the parties that this Agreement creates a fiduciary duty by the Visitor Center to the City to spend the Local Hotel Occupancy Tax Revenue that it receives in accordance with this Agreement.

6.4 **Conflicts of Interest.** None of the Local Hotel Occupancy Tax Revenue funds hereby granted shall be paid, directly or indirectly, to a Wimberley City Council member, the head of any department of the City, an officer of the Visitor Center, a member of the Wimberley Hotel Occupancy Tax Advisory Committee, a member of the immediate family of the foregoing persons, or a business in which any of the foregoing persons has an economic interest.

VII. Termination

Either party may terminate this Agreement by written notice to the other party of such other party breaches any of its obligations under this Agreement and does not cure such breach within thirty (30) days after receiving written demand from the other party specifying the breach in question and demanding that it be cured. Such right to terminate shall be without prejudice to the other legal and equitable rights of the parties.

VIII. Miscellaneous

8.1 **Independent Contractor.** The Visitor Center is an independent entity, and the relationship between the Visitor Center and the City is and shall remain that of independent contractors. The City is not and shall not be liable for any of the Visitor Center's debts or obligations, including any operating deficit that may arise. The Visitor Center shall not hold itself out as an agent of the City nor in any way purport to bind the City with respect to any contract or other obligation.

8.2 **Indemnity.** The Visitor Center shall indemnify, save, and hold harmless the City, its officers, employees, agents, and licensees against any and all liability, damage, loss, claims, causes of action, expenses or demands (collectively "Costs") of any nature whatsoever, on account of personal injury (including without limitation, Workers' Compensation and death claims), or property loss or damage of any kind whatsoever, which arises, or is claimed to arise, out of or is, or is claimed to be, in any manner connected with the operations or activities of the Visitor Center. The Visitor Center must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based thereon using counsel satisfactory to

the City Council, the approval of which shall not be unreasonably withheld, and pay all other costs and expenses of any kind arising from any of such claims, demands or causes of action.

8.3 **Insurance.** The Visitor Center shall maintain a comprehensive general liability policy or policies with an insurance company or companies authorized to do business in the State of Texas, which shall include bodily injury, property damage, contractual, and automobile liability coverage with a minimum of not less than \$1,000,000 per occurrence with \$2,000,000 aggregate. The Visitor Center shall furnish the City with appropriate certificates of insurance along with copies of policy declaration pages and all policy endorsements evidencing the required coverage throughout the Term of this Agreement. The Visitor Center shall obtain an endorsement to the above policy that names the City as an additional insured and that waives the right of subrogation against the City. The Visitor Center shall not cause the insurance to be canceled nor permit any insurance to lapse during the term of this Agreement.

8.4 **Amendment.** This Agreement may not be amended without the written consent of the parties.

8.5 **No Third-Party Beneficiaries.** This Agreement is for the benefit of the City and the Visitor Center only, and no other party may seek to enforce or assert any rights under it.

8.6 **Assignment.** The Visitor Center may not assign this Agreement without the prior written consent of the City.

8.7 **Venue.** Venue for all lawsuits concerning this Agreement must be in the State District courts of Hays County, Texas.

8.8 **Waiver of Default.** Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default. Delay by a party in enforcing, or failure by such party to enforce, a right under this Agreement shall not be deemed a waiver of the same. A waiver of a party's rights shall be effective only if in writing and shall be limited to the single even or occurrence specified.

8.9 **Application of Law.** This Agreement must be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts must be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

8.10 **Multiple Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

8.11 **Entire Agreement.** This Agreement, including its exhibits and attachments, if any, represents the entire agreement between the parties regarding the subject matter, and there are no other representations, understandings, or agreements between the parties relative to such subject matter.

8.12 **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all parties. The City warrants and represents that the individual signing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to its terms. The Visitor Center warrants and represents that the individual signing this Agreement on behalf of the Visitor Center has full authority to execute this Agreement and bind the Visitor Center to its terms.

8.13 **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations under this Agreement is delayed by reason of war, civil commotion, acts of God, natural disaster, fire, or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing its obligations during the period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

8.14 **Ordinance Applicability.** The parties shall be subject to all ordinances of the City, whether now existing or in the future arising. This Agreement does not confer any vested rights on the Visitor Center unless specifically identified herein.

8.15 **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part of the Agreement.

8.16 **Undocumented Workers (required by TEX. GOV'T CODE Ch. 2264).** The Visitor Center certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, the Visitor Center is convicted of a violation under 8 U.S.C. § 1324a(f), the Visitor Center shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of eight percent (8%), not later than the 120th day after the City notifies the Visitor Center of the violation.

[Remainder of page intentionally left blank.]

APPROVED AND AGREED:

FOR THE CITY OF WIMBERLEY:

By: _____
Hershel P. "Mac" McCullough
Mayor
City of Wimberley, Texas

Date: _____

FOR WIMBERLEY CONVENTION AND VISITORS BUREAU FOUNDATION:

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT A

REVISED JANUARY 10, 2018

Year-to-Year Multiplier 3%

	Historical		PROPOSED HOTEL TAX FUNDING					
	Fiscal Yr	CITY	Fiscal Yr	Fiscal Yr	Fiscal Yr	Fiscal Yr	Fiscal Yr	Total
	Ended	HOT	Ending	Ending	Ending	Ending	Ending	
9/30/2016	SHARE	9/30/2018	9/30/2019	9/30/2020	9/30/2021	9/30/2022	Proposed	
Operating Expenses								
<u>PROPOSED SHARED OPERATING EXPENSES</u>								
Advertising	478	75%	369	380	392	403	416	1,960
Hospitality	1,047	75%	809	833	858	884	910	4,294
Copier Lease	1,648	75%	1,273	1,312	1,351	1,391	1,433	6,761
Insurance	1,192	75%	921	948	977	1,006	1,036	4,889
Office Supplies	1,066	75%	824	848	874	900	927	4,372
Postage	780	75%	602	620	639	658	678	3,198
Professional Fees	950	75%	734	756	779	802	826	3,896
Cleaning	2,482	75%	1,918	1,975	2,035	2,096	2,158	10,181
Repairs/Maintenance*	2,851	75%	2,202	2,268	2,337	2,407	2,479	11,693
Utilities - Electric	2,231	75%	1,724	1,775	1,829	1,884	1,940	9,152
Utilities - Water	632	75%	488	503	518	533	549	2,590
Utilities - Trash	841	75%	650	669	689	710	731	3,450
Telephone	1,858	75%	1,435	1,479	1,523	1,569	1,616	7,621
Staff Wages (New Part-time Position Non-management)**	-	100%	23,400	24,102	24,825	25,570	26,337	124,234
Staff Payroll Taxes (Non-management)	-	100%	1,865	1,921	1,979	2,038	2,099	9,902
Salaries - Management	92,146	25%	23,728	24,439	25,173	25,928	26,706	125,973
Payroll Tax Management	7,049	25%	1,815	1,870	1,926	1,983	2,043	9,637
	117,252		64,757	66,700	68,700	70,762	72,884	343,803
<u>EXPENSES TO BE TOTALLY FUNDED BY HOT</u>								
Lobby Renovation (To accommodate lodging, tourism)	-	100%	5,000	-	500	-	500	6,000
Furniture/Fixtures (Per Above)	-	100%	2,500	-	500	-	500	3,500
Computers	-	100%	750	-	750	-	750	2,250
Computer Maintenance	-	100%	500	525	551	579	608	2,763
	-		8,750	525	2,301	579	2,358	14,513
TOTAL	117,252		73,507	67,225	71,002	71,340	75,242	358,315

* \$1,800 has been added to repair and maintenance costs above actual expense for the period ended 9/30/16.
 Landscaping maintenance is currently done by volunteers, which may not continue in the future.

**Proposed wage is based upon 30 hrs/week up to \$15/hr.

RESOLUTION NO. 06-2018

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE 2017/2018 OPERATING BUDGET (BUDGET AMENDMENT NO. 7), PROVIDING FOR AN INCREASE OF REVENUE IN THE HOTEL OCCUPANCY TAX FUND AND TO INCREASE EXPENSES IN THE HOTEL OCCUPANCY TAX FUND (205); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council approved the 2017/2018 Operating Budget and projected revenue for the Hotel Occupancy Tax Fund; and

WHEREAS, the City Council has reviewed and approves the need for increased appropriations in the Hotel Occupancy Tax Fund (205) related to expenses for hotel tax operations.

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

Section 1

The City Council of the City of Wimberley, Texas, hereby authorizes and approves an amendment to the 2017/2018 Operating Budget (Budget Amendment No. 7) for the purpose and in the amounts shown below.

Hotel Occupancy Tax

Revenue Increase – Hotel Occupancy Tax Fund (205) by \$136,000.00 from \$0.00 to a total of \$136,000.00

Increase Expenditure Line Items:

6110	Salaries & Wages	\$40,000.00
6210	Healthcare	\$2,000.00
6620	Payroll Taxes	\$2,500.00
6230	TMRS	\$4,000.00
6250	Unemployment Compensation	\$20.00
6660	Office Supplies	\$1,000.00
6791	Capital Outlay Technology	\$6,000.00
6270	Dues	\$1,000.00
6551	Printing	\$500.00
6570	Travel	\$5,000.00
6572	Training	\$1,000.00
6651	Postage	\$500.00

The effect of these transactions will increase revenue in the Hotel Occupancy Tax Fund (205) by \$136,000.00, and increase expenditures in the Hotel Occupancy Fund Services and Charges by \$63,520.

Section 2

The City Council of the City of Wimberley, Texas, hereby amends the 2017/2018 Operating Budget, increasing appropriations in the funds stated in Section 1 above.

Section 3

This resolution shall be and become effective immediately upon and after its adoption and approval.

PASSED AND APPROVED this ____ day of _____, **20**_____.

The City of Wimberley, Texas

Herschel P. "Mac" McCullough, Mayor

ATTEST:

Laura J. Calcote, City Secretary