

ORDINANCE NO. 2016-03-14

AN ORDINANCE OF THE CITY OF COFFEE CITY, TEXAS,
REGARDING COLLECTION OF HOTEL OCCUPANCY TAXES WITHIN
THE CITY AND THE CITY'S EXTRATERRITORIAL JURISDICTION.

WHEREAS, The City desires to collect the tax within the City and its ETJ under the provisions of this Ordinance; and

WHEREAS, The tax is authorized for collection by Texas Tax Code, Title 3, Subtitle D, Chapter 351, which authorizes a Hotel Occupancy Tax for Municipalities, and Texas Local Government Code, Title 2, Subtitle C, Chapter 42, which defines the ETJ as all area within 1/2-mile of the city limits of the city

WHEREAS, the tax is in the best interest of the citizens to be collected and used as allowed by law.

NOW, THEREFORE be it ordained by the City Council of the city that the tax shall be **seven percent** of the price paid for a room, as defined in the Texas Tax Code, Section 156, with exemptions as provided for in the same section.

Section 1. Finding of Fact

The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Definitions

The following words, terms and phrases are, for the purposes of this Ordinance (except where the context clearly indicates a different meaning), defined as follows:

Alternate collection/reporting period shall mean a period of a day or days other than the regular calendar months. Such periods are approved by the Mayor, or designee, upon request by the hotel manager, operator, or person in control, or imposed by the Mayor upon his finding that collections are at risk of loss if collections accumulated for the full calendar month are in the possession of the hotel owner, operator, manager, or person in control.

Price shall mean the consideration for, or value received for, the right to use a sleeping room, bed, or dormitory space or other sleeping facility in a hotel, and includes the price of conveniences customarily provided in connection with sleeping accommodations, including mattress, sheets, bedspreads, pillows, pillow cases, bed frames, air conditioning, electricity, lighting, water, soap, towels, wash cloths, toilet tissue, shower or bath facilities, lavatory, chairs, trash receptacles, plus any other goods or services which are not ordinarily subject to sales tax. Price shall not include the price

of food served, nor the price of personal services rendered to the occupant which are unrelated to cleaning and readying a room for occupancy, nor any sales tax, nor occupancy tax assessed by other governmental agencies, provided that these charges are stated separately on the folio or invoice of the occupant. Charges not stated separately shall be presumed to be part of the price.

Due date shall mean that the 20th day after the close of the monthly period for which the tax is to be computed.

Folio shall mean a primary documentation produced by a hotel that demonstrates interaction between the lodging provider and the occupant, and which, at a minimum, reflects the name and address given by the occupant, the dates of occupancy, the amount of rent charged for each date together with the amounts of applicable tax, and the means of payment.

Guest shall mean any person who, for a consideration, uses, possesses, or has the right to use or possess any guest room in a hotel under any lease, concession, permit, right of access, license, contract, or agreement.

Guest room shall mean a room in a hotel occupied, or intended, arranged, or designed for sleeping.

Hotel shall mean any building in which members of the public obtain sleeping accommodations for consideration, including a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast. The term hotel does not include hospitals, sanitariums or nursing homes, or the dormitory facilities at an institution of higher education.

Lodging Provider shall mean any person operating a hotel in the city, including, but not limited to, the owner or proprietor of such premises, lessee, sub-lessee, lender in possession, licensee, or any other person operating such hotel.

Monthly collection/reporting period shall mean the regular calendar months of the year.

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

Occupant shall mean any individual, corporation, governmental agency, partnership, or association that has paid a consideration for the exclusive right to use a guest room in a hotel.

Permanent resident shall mean any occupant who has occupied or has paid for the exclusive right to occupy a particular guest room in a hotel for at least 30 consecutive days; however, one change of guest rooms or facility during the first 30 days of occupancy in the hotel shall not terminate the status of the permanent resident.

Any person who does not fully prepay for the first 30 days is not a permanent resident during the first 30 days of occupancy.

Tax shall mean that the tax on occupants imposed by this ordinance, as provided for by Chapter 351 of the Texas Tax Code.

Section 3. Tax authorized; tax rate; exceptions to tax.

- (a) **Authorization.** There is hereby levied a tax upon the cost of or consideration paid for a sleeping room or sleeping facility furnished by any hotel.
- (b) **Tax rate.** The tax shall be equal **to 7%** of the total price of a guest room or sleeping facility.
- (c) **Exceptions.**
 - (1) No tax shall be collected from a guest after becoming a permanent resident. A guest becomes a permanent resident either after 30 continuous days' occupancy, or upon notifying the lodging provider in writing of his intention to occupy a guest room for longer than 30 continuous days and then proceeding to actually occupy the guest room for such period. A guest who would express intent, but fails to stay 30 continuous days, is not a permanent resident and is not exempt from the tax. However, a guest who expresses intent and does stay is exempted from the tax as of the date he notified the lodging provider of his intention.
 - (2) No tax shall be collected from the Federal Government nor an officer or employee of said government when traveling on government business and presenting official identification. The American Red Cross, federally chartered credit unions and the regional home loan banks are recognized as instrumentalities of the federal government.
 - (3) No tax shall be collected from a State of Texas officer or employee when presenting a photo identification card or other documentation that indicated that the bearer is exempt from paying hotel occupancy tax.
 - (4) No tax shall be collected from the following Texas quasi-governmental entities formed under the **Texas Local Government, and Health and Safety Codes**, nor an officer or employee of any such entity when presenting a Hotel Occupancy Tax Exemption Certificate: public facility corporations, housing authorities, housing finance corporations, and health facilities development corporations.
 - (5) No tax shall be collected from electric cooperatives formed under Chapter 161 of the **Texas Utilities Codes**, nor telephone cooperatives formed

under Chapter 162, nor an officer or employee of any such entity when presenting a Hotel Occupancy Tax Exemption Certificate.

- (6) No tax shall be collected from a foreign diplomat when presenting a tax exemption card issued by the United States Department of State.

Section 4. Registration of lodging provider; form and contents; execution; certificate of authority

Every person engaging or about to engage in business as a lodging provider in the city and its ETJ shall immediately register with the Mayor or the Mayor's designee on a form provided by said official. Persons engaged in such business must register no later than 30 days after the date that this ordinance becomes effective. Such registration shall set forth that name under which such person transacts business or intends to transact business, the location of the place of business and such other information which would facilitate the administration of the tax as prescribed by the Mayor. The registration shall be signed by the owner if a natural person; in case of ownership by an association or partnership, by a member or partner; in case of ownership by a corporation, by an officer. The Mayor shall, after such registration, issue without charge a certificate of authority to each lodging provider to collect the tax from the occupant. A separate registration shall be required for each place of business of a lodging provider. Each certificate shall state the name and location of the business to which it is applicable.

Section 5. Collection; payment to city; fee for collection.

- (a) Every person owning, operating, managing or controlling any hotel shall collect the tax imposed under this Ordinance and remit the collected tax to the City.
- (b) The lodging provider shall provide to each guest a receipt that reflects both the amount of rent and the amounts of this and other tax applicable.
- (c) The tax shall be due from the guest, and shall be collected by the lodging provider at the same time that the rent is collected.
- (d) The lodging provider shall be liable for any amount of tax that the lodging provider fails to collect; and must remit to the city any amount of tax collected in excess of that which should have been collected.

Section 6. Payments and Returns

- (a) Due date of taxes. All amounts of such tax shall be due and payable to the City **monthly** on or before the 20th day of the following month. A return for the preceding monthly period together with appropriate remittance shall be filed. The return shall report the gross rent, taxable rent, and non-taxable rent earned, the

amount of tax collected or otherwise due for the period and such other information as may be required by the Mayor.

- (b) Penalty for failure to pay tax by due date. A lodging provider who fails to make any return or to pay the amount of tax as prescribed shall be assessed a penalty to be added to the tax in the amount of **15% of the amount due**
- (c) Acceptance of delinquent return and remittance without imposing penalty; authority; requirements. If the failure to make any return or to pay the amount of tax by the due date results from good cause beyond the control of the lodging provider shown to the satisfaction of the governing authority of the city by affidavit attached to the return, and remittance is made within 10 days of the due date, such return may be accepted exclusive of penalty.
- (d) Waiving of penalty. Only the governing authority of the city may waive the penalty prescribed.
- (e) Extension of time of filing; authority; requirements; remittance; penalty. The governing authority of the city may, for good cause, extend the time for making returns for not longer than 30 days. No extension shall be valid unless granted in writing upon written application of the lodging provider. A lodging provider granted an extension shall remit tax equaling the tax paid for the **corresponding period of the prior fiscal year** on or before the date of tax would otherwise come due without the grant of extension. No penalty shall be charged during the extension period.

Section 7. Deficiency determinations

- (a) Recomputation of tax; authority to make; basis of recomputation. If the City is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the city any lodging provider, the City may compute and determine the amount required to be paid upon the basis of any information within its possession. Deficiency determinations may be made of the amount due for one or more monthly periods.
- (b) Penalty. Penalty shall be assessed upon the amount of any determination, as provided by Section 6.
- (c) Notice of determination; service of. The City shall give written notice of the deficiency determination to the lodging provider. The notice may be served personally or by mail. Service by mail shall be addressed to the lodging provider at the address as it appears in the records of the city. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee, or when made by statutory overnight delivery.

- (d) Time within which of deficiency determination to be mailed. Except in cases of fraud, every notice of deficiency determination shall be mailed within four years after the day the tax was due, or within four years after the return is filed, whichever period should last expire.
- (e) Appeal or protest of deficiency determination. Within 10 days of being served a notice of deficiency determination, the lodging provider may contest such in writing addressed to the City Council. The lodging provider shall include any documents to be considered in evaluating the deficiency determination. The governing authority shall approve and disapprove the appeal, and notify the appellant of its decision.

Section 8. Determination if no return made

Estimates of gross receipts. If any lodging provider fails to make a return, the City shall make an estimate of the amount of total rentals in the city which are subject to the tax. The estimate shall be based upon the returns from the preceding calendar year. This estimate shall be considered "prima facie: correct. Written notice shall be given in the manner prescribed in Section 7(c), and the lodging provider shall enjoy the same rights of protest as prescribed in Section 7 (e).

Section 9. Availability of records

- (a) Every lodging provider renting guest rooms in the city shall preserve, for a minimum of four years, all folios, receipts, certificates of exemptions and such other documents to demonstrate the amount of tax collected, the amount of total receipts, the amount of tax remitted to the City, and any other records necessary to demonstrate compliance with this ordinance. Said records shall be at all times be available for examination within the city.
- (b) Examination of records, audits. The City may examine the books, papers, records, financial reports, equipment, and other facilities of any lodging provider in order to verify the accuracy of any return made, or if no return is made by the lodging provider, to ascertain and determine the amount required to be paid. In the event that the tax has been delinquent for at least two complete fiscal quarters, the reasonable cost of the examination may be assessed against the lodging provider.
- (c) Authority to require reports; contents. In administration of the provisions of this ordinance, the City may require the filing of reports by any person or class of persons having in their possession or custody information relating to the rental of guest rooms which are subject to the tax.

Section 10. Collection of tax by city

- (a) Action of delinquent tax; time for. At any time within four years after any tax or amount of tax required to be collected becomes due and payable, the governing authority may bring an action in a court of competent jurisdiction in the name of the city to collect the amount delinquent together with penalty, court fees, filing fees, attorney's fees and other legal fees incident thereto. The governing authority may also seek to have the lodging provider enjoined from operating the hotel until such time as the delinquency is paid.
- (b) Lodging provider selling or quitting business. A lodging provider that closes or transfers ownership of the hotel shall file a final return and remit all taxes that were collected or should have been collected within 15 days of the closure or transfer of the hotel.
- (c) Duty of successors or assignees of lodging provider to withhold tax from purchase money. If a lodging provider sells the hotel, the purchaser of the hotel shall withhold an amount of the purchase price sufficient to pay the amount due until the seller obtains from the City, and provides to the purchaser, a receipt showing that the amount has been paid or a certificate showing that no tax is due. The purchaser of a hotel who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price. The purchaser of a hotel may request that the City provide a receipt showing the tax is paid, a certificate stating that no tax is due, or 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 the City receives the request. If the City fails to issue the certificate or statement within the 60-day period, the purchaser is released from the obligation to withhold the purchase price or pay the amount due.
- (d) Credit for tax or penalty paid more than once or erroneously or illegally collected. Whenever the amount of any tax or penalty has been paid more than once, or has been erroneously or illegally collected or received by the city, it may be refunded by the governing authority. If the lodging provider or person determines that he has overpaid or paid more than once, which fact has not been determined by the Mayor, such person shall have four years from the date of payment to file a claim in writing the specific ground upon which the claim is founded. The governing authority shall approve or disapprove the claim, and notify the claimant of its action.

Section 11. Rules and regulations

The Mayor is authorized to issue rules and regulations necessary to effectuate the full intent and purpose of this Ordinance concerning the information required on returns, the collection reporting periods, audits, the retention of records at the hotel, the forcible seizure of records for auditing purposes, the imposition of a daily or weekly collection or reporting period, the referral of delinquent returns or collections to legal

counsel for purpose of enjoining continued operation of a hotel, the filing of criminal complaints for violations of this Ordinance, and the acceptance of a surety bond in lieu of enjoining a hotel from doing business.

Section 12. Violations

- (a) Any lodging provider who fails, neglects, or refuses to collect the tax as provided by Section 3 (b) or to pay the penalty for failure to pay the tax as provided by Section 6 (b) shall be deemed guilty of a misdemeanor.
- (b) Any lodging provider who fails or refuses to make any return as provided by Section 6, to keep adequate records or to open them for inspection by the city, or to furnish other data reasonably requested by the governing authority shall be deemed guilty of a misdemeanor.
- (c) Any lodging provider who makes a false or fraudulent return with intent to evade the tax shall be deemed guilty of a misdemeanor.
- (d) Upon conviction of a violation under this section, the lodging provider shall be punished by a fine of not more than \$500.00.
- (e) Each day a violation is committed, continued, or permitted shall constitute a separate offense and shall be punished accordingly.
- (f) The City shall further have all remedies provided by law and equity for any violation which shall be cumulative.

Section 13. Suit to enjoin hotel operations

The Mayor shall refer any hotel occupancy tax account that has a delinquent balance older than 60 days to the city attorney for the purpose of filing a suit to enjoin the hotel owner, operator, manager, and other persons in control from operating any hotel in the City of Coffee City until the tax is paid. This remedy shall be in addition to the remedy of a collection suit and in addition to the municipal court criminal complaint that may be filed for each violation of this Ordinance.

Section 14. Surety bond in lieu of injunction suit

The Mayor shall not refer a delinquent account to the city attorney for the purpose of enjoining the hotel operators from doing business in Coffee City if the owner, manager, operator, or other persons in control provides an acceptable surety bond in an amount equal to the city hotel occupancy tax collected by the subject hotel in the six (6) best net revenue months of the twelve (12) full calendar months immediately prior to the acquisition of the bond, said bond to ensure payment for a one-year period, and be updated and approved by the Mayor annually if said hotel operators desire to continue such protection from business-closing during a period of delinquency.

Section 15. Conflicting Ordinances

All prior ordinances of the City dealing with to the subject matter of this Ordinance are hereby repealed to the extent of any conflict with the provisions of this Ordinance. In the event of a conflict or inconsistency between this Ordinance and any other ordinance of the City, the terms and provisions of this Ordinance shall govern.

Section 16. Severability

Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall in no way invalidate the remaining portion or portions of the Ordinance; and to this end the provisions of this Ordinance are declared to be severable.

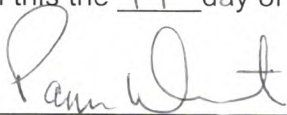
Section 17. Effective Date

This amendment continues the effective date of the original ordinance

Section 18. Publication

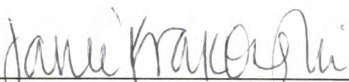
The City Clerk is hereby authorized and directed to publish the caption of this Ordinance, together with the penalty provision contained therein, in the manner and for the length of time prescribed by law.

PASSED, APPROVED and ADOPTED on this the 14th day of March, 2016



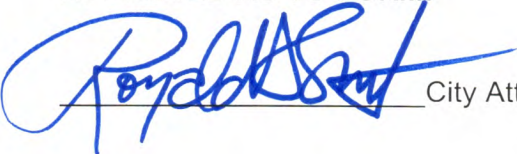
Pam Drost, Mayor

ATTEST:



Janie Krakowski, City Clerk/Secretary

APPROVED AS TO FORM:



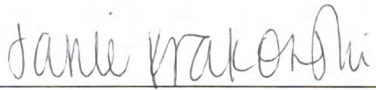
City Attorney

CERTIFICATE

THE STATE OF TEXAS
COUNTY OF Henderson

I, Janie Krakowski, being the current City Clerk/Secretary of the City of Coffee City, Texas, do hereby certify that the attached is a true and correct copy of Ordinance No. 2010-0514 (amended February 8, 2016) passed and approved by the City Council of the City of Coffee City, Texas, on the 8th day of February 2016, and such Ordinance was duly introduced, passed, approved and adopted at meetings open to the public and notices of the meetings, giving the dates, places, and subject matter thereof, were posted as prescribed by Government Code Section 551.043.

Witness my hand and seal of office this, the 14th day of March, 2016



Janie Krakowski
City Clerk/Secretary