

ORDINANCE NO. _____

CITY OF WOODCREEK, TEXAS

AMENDMENT TO CHAPTER 110 OF THE CODE OF ORDINANCES HOTEL OCCUPANCY TAX ORDINANCE

AN ORDINANCE AMENDING THE CITY OF WOODCREEK CODE OF ORDINANCES AT TITLE XI (" BUSINESS REGULATIONS"), CHAPTER 110 ("HOTEL OCCUPANCY TAX"); PROVIDING FOR ENACTMENT, REPEALER, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE, AND FINDING PROPER NOTICE AND MEETING.

WHEREAS, pursuant to Chapter 351 of the Texas Tax Code, the City is authorized to impose a hotel occupancy tax for the purpose of promoting tourism, and for the further purposes set forth in Texas Tax Code, Section 351.01, as amended; and

WHEREAS, as further authorized by Section 351.0025, a municipality with a population of less than 35,000, may impose a hotel occupancy tax in the municipality's extraterritorial jurisdiction: and the U.S. Census shows the population of the City of Woodcreek is less than 2000 people; and

WHEREAS, in order to promote local businesses and ensure financial stability for the community, the City Council finds it prudent to encourage tourism in our local attractions and reinvest in the infrastructure and promotional efforts that support them; and

WHEREAS, the Council recognizes there are benefits to valley-wide consistency in regulation with the levy of taxes on hotel operations being one of those instances; and

WHEREAS, the Council recognizes its responsibility and authority to impose ordinances and controls that are necessary for the government of the City and management of its resources and that such regulation is in the City's best interest, promotes the welfare of its citizens and is good government.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Woodcreek:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

Chapter 110 ("HOTEL OCCUPANCY TAX") of the Code of Ordinances of the City of Woodcreek is amended so as to read in accordance with Attachment A, which are attached hereto and incorporated into this Ordinance for all intents and purposes.

3. REPEALER

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby authorized and directed to record and publish the language of Title XI, Chapter 110, as amended by this Ordinance, in the City's Code of Ordinances.

6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon its passage and the publication of caption of this ordinance as provided by law.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. 27

PASSED & APPROVED this, the ___ day of October 2022, by a vote of ____ (ayes) to ____ (nays) and ____ (abstentions) of the City Council of Woodcreek, Texas.

Jeff Rasco, Mayor

Suzanne Mac Kenzie, City Secretary

Attachment "A"

City of Woodcreek

CODE OF ORDINANCES

TITLE XI: BUSINESS REGULATIONS

CHAPTER 110: HOTEL OCCUPANCY TAX

§ 110.01 AUTHORIZATION

Under the authorization provided by the Texas Tax Code chapter 351, the city levies a hotel occupancy tax as described herein to be effective on January 1st, 2023.

§ 110.02 DEFINITIONS

For purposes of this city chapter, and in accordance with chapter 351 and chapter 156 of the Texas Tax Code, the terms used will have the meanings set forth below. Words that are not defined will have their ordinarily accepted meanings unless defined elsewhere in this division.

Consideration. The price of a room that is ordinarily used for sleeping in a hotel but does not include the cost of food served by the hotel or the cost of personal services performed by the hotel except those services related to cleaning and readying the room for use or possession.

Hotel. A building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn or rooming house, vacation rental, and bed and breakfast, but does not include:

- (1) A hospital, sanitarium or nursing home;
- (2) A dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by section 61.003, Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution; or
- (3) An oilfield portable unit, as defined by section 152.001 of the Texas Tax Code.

Occupancy. The use or possession or the right to use or possession of a room or space for less than thirty consecutive days in a hotel costing \$2.00 or more each day.

Person. Any individual, company, corporation, or association.

§ 110.03 TAX LEVIED.

A tax of seven percent (7%) 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 \$2.00 or more each day and is ordinarily used for sleeping.

§ 110.04 EXEMPTIONS

(a) This chapter does not impose a tax on:

(1) A person who has the right to use or possess a hotel room for at least 30 consecutive days, so long as there is no interruption of payment for the period;

(2) A United States governmental entity described in section 156.103(a) of the Texas Tax Code is exempt from the payment of tax authorized by this chapter;

(3) A state governmental entity described in section 156.103(b) of the Texas Tax Code shall pay the tax imposed by this chapter but is entitled to a refund of the tax paid;

(4) A person who is described by section 156.103(d) of the Texas Tax Code is exempt from the payment of the tax authorized by this chapter;

(5) A person who is described by section 156.103(c) shall pay the tax imposed by this chapter but the state governmental entity with whom the person is associated is entitled to a refund of the tax paid; or

(6) Any other person entitled to an exemption under chapter 156 of the Texas Tax Code.

(b) To receive a refund of tax paid under this chapter, the governmental entity entitled to the refund must file a refund claim on a form provided by the city.

§ 110.05 COLLECTION BY OPERATOR

(a) A person who owns, operates, manages, or controls a hotel room within the corporate limits or the extraterritorial jurisdiction of the city shall collect the tax levied by this chapter for the city.

(b) A person who collects the tax shall keep and maintain for such hotel good, adequate and accurate records for the hotel, sufficient to show and establish the consideration paid to and received by the hotel, the true and correct amount of taxes due and payable by the hotel pursuant to this chapter, and the applicable exemptions if any.

(c) A person who is required to collect the tax under this section is hereby authorized to retain no more than one (1) percent of the tax amount collected to reimburse that person's costs in collecting the tax for the city. The reimbursement permitted by this subsection shall be

forfeited if the person collecting the tax fails to timely pay the tax to the city or fails to timely file the reports required by this chapter.

§ 110.06 REPORTS AND REMITTANCES

(a) On or before the same day that a person is required to file a report and remit hotel occupancy taxes to the state, that person shall also:

(1) File a written report with the city for the same period, with a copy of the report for state hotel occupancy taxes required by section 156.151 (report and payment) of the Texas Tax Code for the same period; and

(2) Pay the tax due for that period.

(b) A report under this section shall be in the form prescribed by the city and shall include:

(1) The total consideration paid for rooms subject to the tax in the reporting period;

(2) The total amount of tax collected; and

(3) The total amount of tax exemptions granted.

(c) If requested by the city, a person responsible for collecting the tax shall provide the city with:

(1) The names, addresses, and identification relied upon to grant an exemption from the tax; and

(2) Any other information the city may reasonably require.

(d) The city may request, and a person required to collect the tax shall provide within a reasonable time, additional documentation verifying the information contained in the report to the city.

§ 110.07 COLLECTION PROCEDURE ON PURCHASE OF A HOTEL

(a) If a person who is liable for the payment of a tax under this chapter is the owner of a hotel and sells the hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount of tax due until the seller provides a receipt issued by the city showing that the amount of tax due has been paid or a certificate issued by the city showing that no tax is due.

(b) A purchaser of a hotel who fails to withhold the amount of the purchase price as required by this section is liable for the unpaid tax required to be withheld to the extent of the value of the purchase price.

(c) The purchaser of a hotel may file a written request to the city administrator to issue a certificate stating that no tax is due or to issue a statement of the amount required to be paid

before a certificate may be issued. The city administrator shall issue the certificate or statement not later than the 60th day after the date that the city receives the request.

(d) If the city fails to issue the certificate or statement within the period provided by subsection (c), the purchaser is released from the obligation to withhold the amount of tax from the purchase price or pay the amount of tax due.

§ 110.08 RULES AND REGULATIONS – RECORD INSPECTION AUTHORITY

(a) The city shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied herein, and shall upon reasonable notice have access to books and records necessary to enable the city to determine the correctness of any report filed as required by this chapter and the amount of taxes due under the provisions of this chapter.

(b) Whenever necessary to make an inspection of books and records to enforce any of the provisions of this chapter, the city may enter such building or premises at all reasonable times to inspect the books and records or to perform any duty imposed upon the city by this chapter; provided, that if such building or premises be occupied, the city official shall first present proper credentials and request entry; and if such building or premises be unoccupied, the city shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises or books and records and request entry and/or production of books and records. If such entry or production is refused, the city shall have recourse to every remedy provided by law to secure entry.

(c) When the city shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises or books and records shall fail or neglect, after proper request is made as herein provided, to promptly produce books and records to or permit entry therein by the city for the purpose

of inspection and examination pursuant to this chapter.

§ 110.09 OFFENSES

(a) A person commits an offense if the person violates or fails to perform an act required by this chapter, or files a report containing false information. Each instance of a violation of this chapter is a separate offense, and each day that a person remains in violation constitutes a separate offense.

(b) An offense under this chapter is a class C misdemeanor, punishable by a fine not to exceed \$500.00 for each offense.

§ 110.10 PENALTY AND INTEREST ON UNPAID TAX

(a) In addition to the amount of any tax owed under this chapter, the person required to collect the tax is liable to the city for:

- (1) The city's reasonable attorney's fees;
 - (2) The costs of an audit conducted under subsection (b), as determined by the city using a reasonable rate, but only if:
 - (A) The tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and
 - (B) The city has not received a disbursement from the comptroller as provided by section 156.2513 of the Texas Tax Code related to the person's concurrent state tax delinquency described by section 351.008 of the Texas Tax Code;
 - (3) A penalty equal to 15 percent of the total amount of the tax owed if the tax has been delinquent for at least one complete municipal fiscal quarter; and
 - (4) Interest on the amount of tax owed under section 351.0042 of the Texas Tax Code.
- (b) If a person required to file a tax report under this chapter does not file the report as required by the city, the city may determine the amount of tax due under this division by:
- (1) Conducting an audit of each hotel in relation to which the person did not file the report as required by the city; or
 - (2) Using the tax report filed for the appropriate reporting period under section 156.151 of the Texas Tax Code in relation to that hotel.
- (c) If the person did not file a tax report under section 156.151 of the Texas Tax Code for that reporting period in relation to that hotel, the municipality may estimate the amount of tax due by using the tax reports in relation to that hotel filed during the previous calendar year under this chapter or section 156.151 of the Texas Tax Code. An estimate made under this subsection is prima facie evidence of the amount of tax due for that period in relation to that hotel.
- (d) The authority to conduct an audit under this section is in addition to any other audit authority provided by statute, charter, or ordinance. The city may directly perform an audit authorized by this section or contract with another person to perform the audit on an hourly rate or fixed-fee basis. The city shall provide at least 30 days' written notice to a person who is required to collect the tax imposed
- by this chapter with respect to a hotel before conducting an audit of the hotel under this section.

§ 110.11 ADDITIONAL ENFORCEMENT AUTHORITY

The city may take the following actions against a person who has failed to file a required report, failed to collect the tax imposed, failed to pay the taxes over to the city when due, or filed a false report:

(1) Bring suit to collect the unpaid tax and/or to enjoin the person from operating a hotel in the corporate limits or extraterritorial jurisdiction of the city until the tax is paid or the report filed, as applicable, as provided by the court's order; and any other remedy provided under state law.

§ 110.12 USE OF PROCEEDS

The proceeds of the hotel occupancy tax levied by this chapter shall be used for the purpose of promoting tourism and the convention and hotel industry, and for further purposes as set forth in Texas Tax Code, section 351.101, as amended.

§ 110.13 ADMINISTRATION

(a) The council shall review applications to fund projects with hotel occupancy tax revenues received by the city. The council shall have such powers and authority as described herein and as prescribed by the charter and state law.

(b) Citizens, groups, or entities that wish to apply for funding of projects eligible for funding with hotel occupancy tax revenue shall make application with the city utilizing such forms as may be required and amended from time-to-time.

(c) The council shall consider applications for projects one time per year in conjunction with approval of the city budget or at such other times at the council's discretion.

§ 110.14 APPLICATIONS

The city administrator, or designee, shall conduct the following functions:

(1) Receive and review applications from businesses and individuals requesting funds for projects that are eligible for hotel occupancy tax funds;

(2) Prioritize the requests for such funds and projects; and advise the council regarding any recommendations;

(3) Provide oversight of projects and entities or individuals that receive funds and verify that such funds are being used in accordance with state law requirements;

(4) Report to council on a semi-annual basis regarding the activities of any entities, individuals and the projects that have received funds;

(5) Develop a planning calendar, procedure for evaluation and evaluation criteria to be used when recommending and prioritizing agencies and projects for hotel occupancy tax funds;

(6) Recommend advertising and marketing strategies for the council to consider and assist the city with negotiation and oversight of any contracts for advertising and marketing approved by the council;

(7) Require all successful applicants to execute an agreement for funding as approved by council;

(8) Any other function or duty directed by the council in regards to use of revenues from the hotel occupancy tax.

§ 110.15 SUNSET REVIEW

(a) Frequency of review. On or after three (3) years from the effective date of this chapter, the council shall conduct a sunset review of the hotel occupancy tax and the work of the advisory committee. The council shall thereafter conduct periodic reviews every two (2) years.

(b) Review criteria. The purpose of the sunset review shall be to determine whether a public need exists for the continuation of the hotel occupancy tax and/or the advisory committee. The council may consider the following criteria as part of its review:

(1) The benefit(s) enjoyed by the city and the city's tourism industry as a result of the hotel occupancy tax;

(2) Performance and compliance with applicable statutes and regulations;

(3) The efficiency with which the advisory committee operates;

(4) The extent to which the hotel occupancy tax and/or the advisory committee is needed or used; and

(5) Any other criteria identified by the council.