

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 2, SECTION 2-6, TO AMEND THE REGULATIONS FOR THE IMPOSITION AND COLLECTION OF HOTEL OCCUPANCY TAX; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Code of Ordinances of the City of Allen, Texas, be and the same is hereby amended by amending Chapter 2, Section 2-6 by amending the regulations for the imposition and collection of hotel occupancy tax, to read as follows:

“Sec. 2-6. - Hotel occupancy tax.

- (a) *Tax Levied.* Under provisions of V.T.C.A., Tax Code § 351.002, there is hereby levied a tax at the rate of seven (7) percent of the price paid for a room in a hotel on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room in a hotel, that costs \$2 or more each day, and is ordinarily used for sleeping. The price of such room shall not include the cost of any food served or personal services rendered to such person not related to the cleaning and readying such room for use or possession. The tax does not apply to a person who is a permanent resident.
- (b) *Definitions.* As used in this section, the following words, terms and phrases are defined as follows:
 - (1) *Hotel* means 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, rooming house, or bed and breakfast. The term does not include: a hospital, sanitarium, or nursing home; 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 an oilfield portable unit, as defined by Tax Code Section 152.001.
 - (2) *Finance Director* shall mean the chief financial officer of the City or designee.

- (3) *Permanent resident* shall have the meaning assigned by Tax Code, Section 156.101, which is a person who has the right to use or possess a room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for the period.
- (c) *Collection of tax and monthly report.* Every person owning, operating, managing or controlling any hotel in the City shall collect the tax imposed by this section for the City and pay the same to the City through its Finance Director. The taxes provided for in this section shall be paid to the City on a monthly basis, and shall be due on the 20th day of the month following the last day of each calendar month, accompanied by a complete and accurate report, in a form provided by the City, showing the price paid for all rooms ordinarily used for sleeping, in the preceding month, and the amount of taxes collected on all persons in the preceding month who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2 or more each day, and is ordinarily used for sleeping, and such other information as the Finance Director may reasonably require. A copy of the report filed a hotel with the state comptroller's office reporting hotel occupancy taxes collected for the state, shall be included with the hotel monthly report provided to the City.
- (d) *No retainage.* A hotel may not retain any percentage of the taxes collected pursuant to this section.
- (e) *Records.* Every hotel within the City shall keep and maintain accurate records of the price paid for the use or possession or for the right to the use or possession of a room in the hotel, that costs \$2 or more each day, and is ordinarily used for sleeping, and tax paid by a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2 or more each day, and is ordinarily used for sleeping. Such records shall include, but not be limited to, at a minimum, guest folios, tax exemption certificates, and any original documents such as posting ledgers and rate and stay adjustment reports. These records may be retained in any retrievable format, including but not limited to micro form. These records shall be maintained for a period of not less than four (4) years; and shall be made available for inspection upon request by any employee, agent, officer or representative of the City at all reasonable times at the hotel premises. Any adjustments or allowances made or granted by the hotel to the tax imposed by this section shall be reported to the City on a form prescribed by the City.
- (f) *Penalty and Interest.* A penalty of fifteen percent (15%) of the tax due shall be imposed on the person required to collect and pay the tax imposed by this section to the City who fails to pay a tax imposed by this section by the end of the first full municipal fiscal quarter after the tax is due. A penalty of five percent (5%) of the tax due shall be imposed on a person who fails to pay the tax imposed by this section or fails to file a report required by this section when due, and, if the person fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, an additional five percent (5%) penalty shall be imposed. Pursuant to Tax Code, section 351.0042, a person who fails to pay the tax due under this section is liable to the City for interest on the unpaid amount of the tax at the rate of twelve percent (12%) compounded

monthly. Interest under this subsection accrues from the first day after the date the tax is due until the tax is paid.

(g) *Persons not exempt.* Under the provisions of the Tax Code, hotel occupancy tax is levied on all persons not exempted in subsection (h). Those not exempt include the following:

- (1) Educational institutions (including State of Texas colleges and universities);
- (2) Religious and charitable organization;
- (3) Local government entities;
- (4) Contract employees of exempt organizations.

(h) *Exemptions.* Under the provisions of the Texas Tax Code, hotel occupancy tax is not levied on the following:

- (1) The United States government agencies and their officers or employees when traveling or otherwise engaged in the course of official duties;
- (2) Military personnel traveling on official military business;
- (3) The State of Texas, or an agency, institution (excluding state educational institutions), board, or commission of the State of Texas and their officers or employees when traveling or otherwise engaged in the course of official duties;
- (4) Diplomatic personnel who present a tax exemption card issued by the United States Department of State;
- (5) Occupants whose use, possession, or whose right to use or possession of a hotel sleeping room extends for at least thirty (30) consecutive days.

Any exemption claimed shall be supported by a signed hotel occupancy tax exemption certificate and reported to the city on a form prescribed by the city.

(i) Under the provisions of V.T.C.A., Tax Code § 351.0041, if a hotel is sold, the purchaser shall withhold an amount of the purchase price sufficient to pay any amount due under this section until the seller produces a receipt showing that any amount due has been paid. If the purchaser fails to withhold an amount, the purchaser is liable to the City for the amount required to be withheld.

(j) *Offense.* Any person, firm or corporation violating any provision or term of this section shall be guilty of a class C misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed \$500.00 for each offense. Each and every day such violation exists shall be deemed to constitute a separate offense.”

SECTION 2. All ordinances of the City of Allen in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Five Hundred Dollars (\$500) for each offense.

SECTION 6. This ordinance shall take effect immediately from and after its passage and publication of the caption as required by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 27TH DAY OF NOVEMBER 2018.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(PGS:5-23-18:TM 99613)

Shelley B. George, CITY SECRETARY