

**ORDINANCE NO. 2006-16**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, BY DELETING ARTICLE II OF CHAPTER 74 THEREOF AND SUBSTITUTING THEREFOR A NEW ARTICLE II OF CHAPTER 74; PROVIDING FOR A SEVEN PERCENT (7%) HOTEL OCCUPANCY TAX; PROVIDING RULES AND REGULATIONS FOR COLLECTION, PAYMENT, AND REPORTING REQUIREMENTS CONTAINED HEREIN; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED FIFTEEN PERCENT (15%) OF THE TOTAL AMOUNT OF TAX OWED; PROVIDING FOR THE IMPOSITION OF INTEREST ON UNPAID AMOUNTS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT HERewith; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$500 FOR EACH DAY OF VIOLATION HEREOF; AND PROVIDING FOR SEVERABILITY.**

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**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The Code of Ordinances of the City of Tomball, Texas, is hereby amended by deleting Article II of Chapter 74 thereof and substituting therefor a new Article II of Chapter 74 to provide as follows:

**“ARTICLE II. HOTEL OCCUPANCY TAX**

**Sec. 74-26. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Consideration* means the cost of the room, sleeping space, bed or other facilities in such hotel and shall not include the cost of any food served or personal services rendered to the occupant of such room or space not related to the cleaning and readying of such room or space for occupancy, and shall not include any tax assessed for occupancy thereof by any other governmental agency.

*Hotel* means a building or facility in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, bed and breakfast or other building where space is furnished for consideration. The term does not include a

hospital, sanitarium, nursing home or a dormitory or housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education, as defined by the State of Texas 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.

Similar provisions, V.T.C.A., Tax Code § 156.001(1); definition adopted, V.T.C.A., Tax Code § 351.001(5).

*Occupancy* means the use, possession, or right to use or possess any room or rooms, or sleeping space or facility in a hotel under any lease, concession, permit, right of access, license, contract or agreement.

*Occupant* means anyone, who, for a consideration, for any purpose, uses, possesses, or has a right to use or possess any room or rooms, or sleeping space or facility in a hotel under any lease, concession, permit, right of access, license, contract or agreement.

*Permanent resident* means any occupant who has or shall have the right to occupancy of any room or rooms, or sleeping space or facility in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for the period.

*Person* means any individual, partnership, company, corporation, association, or other legal entity owning, operating, managing or controlling any hotel.

*Quarterly period* means the regular calendar quarters of the year. The first quarter being the months of January, February and March; the second quarter being the months of April, May and June; the third quarter being the months of July, August and September; and the fourth quarter being the months of October, November and December.

**Sec. 74-27. Levy of tax; rate; exception.**

(a) There is hereby levied a tax upon the occupant of any room or space furnished by any hotel within the city where such costs of occupancy is at the rate of two dollars (\$2.00) or more per day, such tax to be equal to seven percent (7%) of the consideration paid by the occupant of such room, space or facility to such hotel, exclusive of other occupancy taxes imposed by other governmental agencies, effective as of May 1, 2003.

(b) The person required to collect the tax set forth in subsection (a) of this section may deduct and withhold from the person's payment to the city, as reimbursement for the cost of collecting the tax, an amount not to exceed one percent (1%) of the tax due and required to be reported to the city. If taxes due under this ordinance are not paid to the city within the time required or if the person required to file a report fails to file the

report when due, the person forfeits the claim to the reimbursement that could have been taken if the tax had been paid or the report filed when due.

(c) No tax shall be imposed under this section upon a permanent resident.

(d) No tax shall be imposed under this section upon an occupant of any room or space rented from a corporation or association organized and operated exclusively for religious, charitable or educational purposes, if no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) All revenue derived from the occupancy tax imposed in subsection (a) of this section, except the one percent which may be withheld under subsection (b) of this section, will be used only for those purposes permitted by law.

#### **Sec. 74-28. Collection.**

Every person owning, operating, managing or controlling any hotel shall collect the tax imposed in section 74-27 for the city. The failure of the person, firm or corporation owning, operating, managing or controlling said hotel, to collect sufficient monies from occupants to satisfy said tax shall not excuse the obligation to pay said tax to the city. Any person who receives or collects hotel tax from an occupant shall hold the amount so collected in trust for the benefit of the City of Tomball and is liable to the City for the full amount collected plus any accrued penalties and interest on the amount collected.

#### **Sec. 74-29. Reports.**

On the last day of the month following each quarterly period, every person required in section 74-28 to collect the tax imposed in this article on the City's behalf shall file a report with the Finance Director showing the consideration paid for all occupancies in the preceding quarter, the amount of the tax due on such occupancies, and any other information as the Finance Director may reasonably require. Such person shall pay the amount of tax due from occupants during the period of the report at the time of filing the report. There shall also be furnished to the City of Tomball Finance Director at the time of such report and payment, a copy of the State of Texas Hotel Occupancy Tax Report(s) for the corresponding period.

#### **Sec. 74-30. Rules and regulations.**

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

**Sec. 74-31. Penalties.**

If any person shall fail to collect the tax imposed in this article, or shall fail to file a report as required in this article, or shall fail to pay to the City of Tomball the tax as imposed in this article when such report for payment is due, or shall file a false report, then such person shall be deemed guilty of a misdemeanor and upon conviction be punished by a fine as provided in section 1-14 of this Code. In addition, such person who fails to remit the tax imposed by this article within the time required shall pay a fee of ten percent (10%) of the total amount of the tax owed, and after the first 30 days shall pay an additional five percent (5%) of the total amount of the tax owed. Delinquent taxes shall draw daily interest at the rate of ten percent per annum beginning 30 days from the date due on the tax imposed by this article.

The attorney acting for the city may bring suit against a person who is required to collect the hotel occupancy tax and pay the collections over to the city, and who has failed to file a tax report or pay the tax when due, to collect the delinquent taxes, or to enjoin the person from operating a hotel in the city until the tax is paid or the report filed, as applicable, as provided by a court order. In addition to the amount of any tax owed, the person is liable to the city for reasonable attorney fees, the costs of an audit conducted as determined by the city using a reasonable rate if the tax has been delinquent for at least two complete city fiscal quarters at the time the audit is conducted.”

**Section 2.** All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

**Section 3.** Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500. Each day of violation shall constitute a separate offense.

**Section 4.** In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 16<sup>TH</sup> DAY OF OCTOBER 2006.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>ABSENT</u>
COUNCILMAN FAGAN	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 6<sup>TH</sup> DAY OF NOVEMBER 2006.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN FAGAN	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

(signed) H. G. Harrington  
H. G. HARRINGTON, Mayor

ATTEST:

(signed) Doris Speer  
DORIS SPEER, City Secretary