

ORDINANCE NO. 010-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING CHAPTER 32 OF THE BIG SPRING CITY CODE ENTITLED "LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS," SECTION 32-58 "DEFINITIONS" TO INCLUDE SHORT-TERM RENTALS AND BED AND BREAKFASTS IN DEFINITION OF HOTEL IN ORDER TO REQUIRE PAYMENT AND COLLECTION OF HOTEL OCCUPANCY TAXES FROM SHORT-TERM RENTALS AND BED AND BREAKFASTS WITHIN THE CITY; AMENDING SECTION 32-60 TO INCLUDE INTERNET BOOKING AGENTS AS THOSE REQUIRED TO FILE REPORTS AND REMIT THE TAXES OWED TO THE CITY; AMENDING SECTION 32-63 TO REQUIRE ESTABLISHMENTS SUBJECT TO THE TAX TO REGISTER WITH THE CITY'S CONVENTION AND VISITOR'S BUREAU; AMENDING OTHER SECTIONS TO AUTHORIZE THE CVB DIRECTOR TO COLLECT THE TAX AND PROCESS REGISTRATIONS; PROVIDING FOR A PENALTY OF \$500; AND SUBJECTING COMMERCIAL SHORT-TERM RENTALS TO COMMERCIAL RATES FOR WATER AND SEWER UTILITIES AND TRASH COLLECTION; AND PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapters 156 and 351 of the Texas Tax Code provides for the collection of Hotel Occupancy Taxes; and

WHEREAS, Hotel Occupancy Taxes are assessed on rentals of less than thirty (30) consecutive days; and

WHEREAS, Tex. Tax Code § 351.004 places certain limitations on penalties for delinquent remittances of hotel occupancy taxes; and

WHEREAS, Tex. Tax Code § 351.0042 puts the penalty for delinquent payment at the higher of what the municipality sets or is set by Tex. Tax Code § 111.060; and

WHEREAS, short-term rentals and bed and breakfasts are subject to the Hotel Occupancy Tax but there is no manner of collection for the City of Big Spring; and

WHEREAS, the City Council finds it appropriate to amend regulations concerning Hotel Occupancy Tax in order to include short-term rentals and bed and breakfast as those establishments required to pay the local tax; and

WHEREAS, the Americans with Disabilities Act regulates hotels as places of public accommodations, but not if the proprietor of the establishment resides at the establishment and fewer than five rooms to rent are located at the establishment;

WHEREAS, for the purposes of treating similar businesses similarly, City Council would apply commercial rates for water service, sewer service, and trash collection to those short-term rentals that are regulated by the Americans with Disabilities Act as places of public accommodations as City Council considers such short-term rentals to be commercial in nature;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, THAT:

SECTION 1. The Big Spring City Code, Chapter 32 entitled “Licenses, Taxation and Miscellaneous Business Regulations,” Division 1 entitled “Generally,” Section 32-58 entitled “Definition of terms,” is hereby amended to add and amend certain definitions to read as follows:

Sec. 32-58. - Definition of terms.

Bed and Breakfast (BnB). See *hotel*.

~~*City secretary.* The city secretary of the City of Big Spring.~~

Commercial short-term rental. Any short-term rental that is regulated by the Americans with Disabilities Act as a place of public accommodations. See 28 C.F.R. § 36.104.

Convention and Visitor’s Bureau Director (CVB Director). The Convention and Visitor’s Bureau Director of the City of Big Spring, or another person designated by the City Manager.

Hotel.

- (a) A building in which members of the public obtain sleeping accommodations or a place of lodging 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:
 - (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 Texas Education Code § 61.003, 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
- (b) For the purposes of the imposition of hotel occupancy tax under this Division or other law, “hotel” includes a short-term rental. In this Article, “short-term rental” means the rental or all or part of a residential property to a person who is not a permanent resident under Section 156.101 of the Texas Tax Code. Also, see definition of “short-term rental” in City of Big Spring Zoning Ordinance.

Internet Booking Agent. One who acts as an agent of an owner in accepting bookings of rooms or spaces at one or more hotels physically located within the territorial jurisdiction of the City of Big Spring, Texas, and in accepting payment of consideration for an owner.

~~Person.~~ *Owner.* Any individual, company, corporation, or association owning, operating, managing, or controlling any hotel.

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

Short-term rental. See hotel.

SECTION 2. The Big Spring City Code, Chapter 32 entitled “Licenses, Taxation and Miscellaneous Business Regulations,” Division 2 entitled “Hotel Occupancy Tax,” Sections 32-59 “Levy of tax; tax rate; exception; use” is hereby amended to read in its entirety as follows:

Sec. 32-59. - Levy of tax; rate; exception; use.

- (a) There is hereby levied a tax 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 or space in a hotel, costs \$2.00 or more each day, and is ordinarily used for sleeping. Such tax is hereby levied at the rate of seven percent (7%) of the consideration paid by the occupant of the sleeping room to the hotel.
- (b) No tax shall be imposed hereunder upon a permanent resident.
- (c) Exemptions from the tax follow:
 - 1. A United States governmental entity described in Texas Tax Code § 156.103(a) or a person associated with the U.S. government as described in Texas Tax Code § 156.103(d) is exempt from the payment of the tax.
 - 2. A state governmental entity described in Texas Tax Code § 156.103(b) or a person described in Texas Tax Code § 156.103(c) shall pay the tax but is entitled to a refund of the tax paid.
 - 3. A person who presents a Texas Comptroller letter or card of hotel tax exemption is exempt from the tax.
 - 4. Permanent residents are exempt from the tax.
- (d) The revenue derived from the hotel occupancy tax levied pursuant to this article shall be expended only ~~to as according to state law. promote tourism and the convention and hotel industry. As provided for by Texas Tax Code Chapter 351, revenue from the municipal~~

~~hotel occupancy tax may be used and that use is limited to any combination of the following:~~

- ~~1. The acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both;~~
- ~~2. The furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;~~
- ~~3. Advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, and if the city receives \$2,000,000.00 or less in hotel tax revenues annually, at least one seventh of the hotel occupancy tax proceeds shall be so expended;~~
- ~~4. 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, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, and exhibition of these major art forms, in an amount not to exceed fifteen percent (15%) of the revenue received;~~
- ~~5. Historical preservation and restoration projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:~~
 - ~~a. At or in the immediate vicinity of convention center facilities or visitor information centers; or~~
 - ~~b. Located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates;~~
 - ~~c. Provided that no more than fifty percent (50%) of hotel tax received is so expended;~~
- ~~6. 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;~~
- ~~7. A transportation system to transport tourists from hotels in and near the municipality to:~~
 - ~~a. The commercial center of the municipality;~~
 - ~~b. A convention center in the municipality;~~
 - ~~c. Other hotels in or near the municipality; and~~

- ~~d. Tourist attractions in or near the municipality.~~
- ~~8. Signage directing the public to sights and attractions that are visited frequently by hotel guests in the municipality.~~
- ~~9. Day to day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in the promotion and servicing expenditures authorized under subsections (1) — (8). If a city entity conducts an activity under subsections (1) — (8) conducts other activities that are not under subsections (1) — (8), the portion of the total administrative costs of the entity for which hotel occupancy tax revenue may be used may not exceed the portion of those administrative costs actually incurred in conducting the activities under subsections (1) — (8).~~

SECTION 3. The Big Spring City Code, Chapter 32 entitled “Licenses, Taxation and Miscellaneous Business Regulations,” Division 2 entitled “Hotel Occupancy Tax,” Sections 32-60 through 32-64 are hereby amended to read in their entirety as follows:

Sec. 32-60. - General collection.

Every owner of a hotel shall collect the tax imposed in section 32-59 for the city. If an owner uses an Internet Booking Agent, the Internet Booking Agent shall collect the tax imposed in section 32-59 for the city.

Sec. 32-61. - Reports.

- (a) On the last day of the month following each monthly reporting period, every person required in section 32-60 to collect the tax imposed herein, shall file a report with the CVB Director showing the consideration paid for all room occupancies, and any other information as the CVB Director may reasonably require. Such person shall pay the amount of tax collected from occupants during the period of the report at the time of filing the report.
- (b) An exception to the monthly report required to be filed under subsection (a) of this section shall be that the filing of a report is not required until the total amount due to the city exceeds \$100.00 or until the end of a calendar quarter, whichever comes first. A report will be filed at the end of the second month of a calendar quarter if the amount due to the city exceeds \$100.00.

Sec. 32-62. Rules and regulations; registration.

- (a) The CVB Director 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 him/her 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.

(b) *Registration required.* An owner is required to register the hotel with the CVB Director, or the CVB Director's designee.

1. Owners must individually register each individual property, even if the tax payments are made under one taxpayer identification number.
2. A registration is valid from the date the completed registration is filed with the City unless 75% or more of the share of ownership of the hotel changes.
3. The owner must submit the following information:
 - a. The name, address, email, and telephone number of the owners of the hotel;
 - b. The name, address, email, and twenty-four (24) hour telephone number of the local contact person;
 - c. The local contact person is the person or persons designated by the owner who shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of responding within one (1) hour to complaints regarding the condition, operation, or conduct of occupants of the hotel;
 - d. The name and address of the hotel;
 - e. The number of bedrooms for rent and the applicable overnight and daytime occupancy limit of the hotel;
 - f. Whether every owner of the hotel or short-term rental occupies the facility as the proprietor's permanent residence, and if so, their names;
 - g. A copy of a valid Specific Use Permit, if required under the City of Big Spring Zoning Ordinance;
4. Each owner shall update the CVB Director with any changes to this information within thirty (30) days of pertinent changes.

(c) The CVB Director shall record any complaint filed against a hotel, bed and breakfast, or short-term rental and provide to the Planning and Zoning Committee such complaints and associated records during a renewal process for a special use permit for such hotel, bed and breakfast, or short-term rental.

Sec. 32-63. Penalties.

- (a) If any owner or Internet Booking Agent shall:

1. intentionally or knowingly fail to collect the tax imposed herein;
2. intentionally or knowingly fail to file a report as required herein; or
3. shall intentionally or knowingly fail to remit to the CVB Director the tax as imposed herein when said report for payment is due,

then such person shall be deemed guilty of a misdemeanor and, upon conviction, be punished by a fine not to exceed \$500.00. It is an exception to the application of this subsection if an owner or an Internet Booking Agent has collected the tax, filed the report, and remitted the tax as required.

- (b) If any owner or Internet Booking Agent shall intentionally or knowingly file a false report

then such person shall be deemed guilty of a misdemeanor and, upon conviction, be punished by a fine not to exceed \$500.00.

- (c) Any owner or Internet Booking Agent who fails to remit the tax imposed by this article within the time required shall forfeit: fifteen percent (15%) of the amount due as a penalty if the tax has been delinquent for at least one complete municipal fiscal quarter; interest at the rate of six percent (6%) per annum beginning sixty (60) days from the date due on the tax imposed by this article; and the city's reasonable attorney's fees.

Sec. 32-64. Collection from purchaser of hotel tax owed by seller to city upon sale of hotel.

- (a) If a person who is liable for the payment of an amount under this article is the owner of the hotel and sells the hotel, the successor to the seller or the seller's assignee or purchaser shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt from the CVB Director or his/her designee showing that the amount has been paid or a certificate stating that no amount is due. If the seller does not provide said receipt or certificate to the purchaser within ten (10) days from the date the hotel is sold to the purchaser, then the purchaser shall, within five (5) days after the expiration of said ten-day period, request in writing by certified mail, return receipt requested, the certificate or statement referred to in subsection (c) of this section. If tax is due the purchaser shall pay said tax to the CVB Director or his/her designee within five (5) days of receipt from the CVB Director of a statement of the amount of tax required to be paid before a certificate of no tax due may be issued (this liability of the purchaser shall be limited in accordance with subsection (b) of this section).
- (b) 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.-

- (c) The purchaser of a hotel may request that the CVB Director or his/her designee issue a certificate stating that no taxes are due or issue a statement of the amount required to be paid before a certificate may be issued. The CVB Director or his/her designee shall issue the certificate or statement within sixty (60) days after receiving the written request by certified mail, return receipt requested or within sixty (60) days after the day on which the records of the former owner of the premises are made available for audit, whichever period expires later, but in either event the CVB Director or his/her designee shall issue the certificate or statement within one (1) year after the date of receiving the request.-
- (d) If the CVB Director or his/her designee fails to mail the certificate or statement by certified mail, return receipt requested, within one (1) year after the purchaser's written request is received as specified in subsection (c) of this section, the purchaser is released from the obligation to withhold the amount of the purchase price specified in this section or pay the amount due.-
- (e) The period of limitation during which the CVB Director or his/her designee may assess tax against the purchaser under this section is four (4) years from the date when the former owner of the hotel sells the hotel or when a determination is made against the former owner, whichever event occurs later. At any time within three (3) years after a deficiency determination against the purchaser has become due and payable the City Attorney may bring an action in a court of competent jurisdiction in the name of the City to collect the delinquent amounts together with penalties and interest.
- (f) The provisions of this section are similar to the provisions in Texas Tax Code § 156.204 relating to collection of the state hotel tax from a purchaser of a hotel.

SECTION 4. The Big Spring City Code, Chapter 44 entitled “Solid Waste,” Article II entitled “Collection and Landfill Fees,” Division 1 entitled “Generally,” is hereby amended to add a new Section 44-44 to read in its entirety as follows:

Sec. 44-44. Rates for commercial short-term rentals.

Any bed and breakfast, short-term rental, or hotel, as defined in the Big Spring City Code section 32-58, that is a commercial short-term rental shall pay commercial rates under this Article.

SECTION 5. The Big Spring City Code, Chapter 50 entitled “Utilities,” Article IV entitled “Utility Service Charges,” is hereby amended to add a new Section 50-95 to read in its entirety as follows:

Sec. 50-95. Rates for commercial short-term rentals.

Any bed and breakfast, short-term rental, or hotel, as defined in the Big Spring City Code section 32-58, that is a commercial short-term rental shall pay commercial rates under this Article.

NOTE* Language to be added appears underlined and language to be deleted is ~~stricken~~.

SECTION 6. Should any section, paragraph, sentence, clause, phrase, or word of this ordinance be declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby.

SECTION 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 8. The City Secretary is hereby ordered and directed to cause the descriptive caption as well as the penalties for violation of this ordinance to be published as required by law.

SECTION 9. This ordinance shall take effect immediately after its publication in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **9th** day of **February, 2021** with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the **9th** day of **March, 2021** with all members of the Council voting “aye” for the passage of same.


Shannon D. Thomason, Mayor

ATTEST:


Tami L. Davis, Interim City Secretary