

ARTICLE III. - HOTEL OCCUPANCY TAX^[3]

Footnotes:

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State Law reference— Municipal hotel occupancy taxes, V.T.C.A., Tax Code ch. 351.

Sec. 44-44. - 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:

Due date means the 20th day, after the close of the monthly period, for which the tax is to be computed.

Folio means 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 date of occupancy, the amount of rent charged for each date, together with the amounts of applicable tax, and the means of payment.

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

Guestroom means a room in a hotel occupied, or intended, arranged, or designed for sleeping, and rented for more than \$2.00 per day.

Hotel means any structure or any portion of a structure, including any hotel, motel, inn, tourist house, tourist court, lodginghouse, roominghouse, or bed and breakfast, containing guestrooms and which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise. The meaning does not include any hospital, sanitarium, nursing home, or the dormitory facilities at an institution of higher education.

Lodging provider means any person operating a hotel in the city, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, licensee or any other person operating such hotel; and who is subject to collecting and remitting the tax imposed upon guests.

Monthly period means the calendar months of any year.

Occupancy means the use or possession, or the right to the use or possession of any guestroom in a hotel.

Permanent resident means any guest who, as of a given date, has or shall have occupied or has or shall have established the right of occupancy to any guestroom in a hotel for more than 30 continuous days.

Rent means the consideration charged for the occupancy of a guestroom, valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the lodging provider to the guest, without any deduction therefrom whatsoever.

Short-term rentals is defined as a residential dwelling, including a single-family residence, apartment, residential condominium unit, or other residential real estate improvement, in which the public may obtain sleeping accommodations in exchange for compensation for a period of less than 30 consecutive days. The term applies regardless of whether the dwelling was originally constructed or zoned as a residential dwelling.

Tax means the tax on occupants imposed by this article, as provided for by V.T.C.A., Tax Code ch. 351.

(Ord. No. 2005-14, § 1, 12-13-2005; Ord. No. 2017.06.13A, § 1, 6-13-2017)

Sec. 44-45. - Tax rate.

There shall be paid by the guest for every occupancy of a guestroom in the village a tax at the rate of four percent of the amount of rent unless an exception is provided under section 44-47.

(Ord. No. 2005-14, § 2, 12-13-2005)

Sec. 44-46. - Collection of tax by lodging provider.

Every lodging provider renting guestrooms in the village shall collect a tax of four percent on the amount of rent from the guest unless an exception is provided under section 44-47. The lodging provider shall provide a receipt to each guest, which receipt shall reflect both the amount of rent and the amounts of this and other tax applicable. This tax shall be due from the guest, and shall be collected by the lodging provider at the same time that the rent is collected. The lodging provider shall be liable for any amount of tax that he fails to collect appropriately, and must remit to the village any amount of tax collected in excess of that which should have been collected.

(Ord. No. 2005-14, § 3, 12-13-2005)

Sec. 44-47. - Exceptions.

- (a) No tax shall be collected from a guest after becoming a permanent resident. A guest becomes a permanent resident either after occupancy for 30 continuous days, 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 guestroom for such period. A guest who would express intent, but fails to stay 30 continuous days, is not a permanent resident and is not excepted from the tax. However, a guest who expresses intent and does stay is excepted from the tax as of the date he notified the lodging provider of his intention.
- (b) No tax shall be collected from the federal government nor an officer or employee of the 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.
- (c) No tax shall be collected from the following state quasi-governmental entities formed under the Texas Local Government, and Health and Safety Codes, nor an officer or employee of any thereof when presenting a hotel occupancy tax exemption certificate: public facility corporations, housing authorities, housing finance corporations, and health facilities development corporations.
- (d) No tax shall be collected from electric cooperatives formed under V.T.C.A., Utilities Code ch. 161, nor telephone cooperatives formed under V.T.C.A., Utilities Code ch. 162, nor an officer or employee of either thereof when presenting a hotel occupancy tax exemption certificate.
- (e) No tax shall be collected from a state officer or employee when presenting a photo identification card or other documentation that indicates that the bearer is exempt from paying hotel occupancy tax.
- (f) No tax shall be collected from a foreign diplomat when presenting a tax exemption card issued by the United States Department of State.

(Ord. No. 2005-14, § 4, 12-13-2005)

Sec. 44-48. - Registration of lodging provider; form and contents; execution; certificate of authority.

- (a) The purpose of this section is to establish regulations for the use of residential single family dwelling units ("dwelling units" herein) as short-term rentals to ensure the collection and payment of hotel/motel occupancy taxes.
- (b) For purposes of this section: An owner shall designate the owner, or an agent or a representative to comply with the requirements of this section on behalf of the owner. The owner or designated agent or representative is referred to as "operator" herein.
- (c) The owner shall not be relieved from any personal responsibility or personal liability for noncompliance with any applicable law, rule or regulation pertaining to the use and occupancy of the residential dwelling unit as a short-term rental unit, regardless of whether such noncompliance was committed by the owner's authorized agent or representative or the occupants of the owner's short-term rental unit or their guests.
- (d) This section is not intended to provide any owner of residential property with the right or privilege to violate any private conditions, covenants and restrictions applicable to the owner's property that may prohibit the use of such owner's residential property for short-term rental purposes as defined in this section.
- (e) The owner/operator who offers for rent or advertises for rent (in any manner) a short-term rental of a dwelling unit shall obtain a short-term rental registration and any other required documents from the village located at 1304 Monument Drive, Surfside Beach Texas 77541, the village may be contacted at 979-233-1531.
- (f) The owner/operator must submit the following information on a short-term rental registration form:
 - (1) The name, address, email and telephone number of the owner/operator of the subject short-term rental unit;
 - (2) The name, address, email and 24-hour telephone number of the local contact person;
 - (3) The local contact person is the person designated by the owner or the operator who shall be available 24 hours per day, seven days per week for the purpose of:
 - a. Responding in person within one hour to complaints regarding the condition, operation, or conduct of occupants of the short-term rental unit; and
 - b. Taking remedial action to resolve any such complaints.
 - (4) The name and address of the proposed short-term rental unit;
 - (5) The number of bedrooms and the applicable overnight and daytime occupancy limit of the proposed short-term rental unit;
 - (6) The property ID number as listed on the Brazoria County Appraisal District; and
- (g) If any information on the registration form changes, the owner/operator must modify that information within 30 days.
- (h) Registration fee:
 - (1) The short-term rental registration form shall be accompanied by an initial registration fee as established by the city council.
 - a. The initial rental registration fee shall be \$50.00 per rental unit;
 - b. The initial rental registration fee is waived for those properties that have been properly remitting hotel occupancy tax.
 - (2) A registration is valid from the date the completed registration is filed with the village and payment of the registration fee has been made, unless the ownership of the short-term rental changes.

- (3) Each property shall be issued a registration number.
- (i) The registration number must appear on any advertisement of the property available for short-term rental.

(Ord. No. 2005-14, § 5, 12-13-2005; Ord. No. 2017.06.13A, § 2, 6-13-2017)

Sec. 44-49. - Determination generally; returns; payments.

- (a) *Due date of taxes.* All amounts of such tax shall be due and payable to the finance director quarterly. The tax shall become delinquent for any 30-day period after the twentieth day of the succeeding quarter in which it remains unpaid.
- (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 specific penalty to be added to the tax in the amount of five percent after 30 days; ten percent after 60 days; and 15 percent after 90 days.
- (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 providential cause shown to the satisfaction of the city council of the village by affidavit attached to the return, and remittance is made within ten days of the due date, such return may be accepted exclusive of penalty.
- (d) *Waiving of penalty.* Only the city council of the village may waive the penalty prescribed.
- (e) *Return; remittance; time of filing; lodging providers required to file; contents.* On or before the 20th day of the month succeeding each quarterly period, a return for the preceding quarterly period together with appropriate remittance shall be filed with the finance director. The return shall report the gross rent, taxable rent, and nontaxable rent earned, the amount of tax collected or otherwise due for the period, and such other information as may be required by the finance director.
- (f) *Extension of time of filing; authority; requirements; remittance; penalty and interest.* The city council of the village 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. Such grant may not be applicable for longer period than 12 consecutive months. A lodging provider granted an extension shall remit tax equaling not less than 100 percent of the tax paid for the corresponding period of the prior fiscal year; such remittance to be made on or before the date the tax would otherwise come due without the grant of extension. No penalty shall be charged during the extension period.
- (g) *Collection fee allowed lodging providers.* Lodging providers collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be one percent of the amount due, but only if the amount due was not delinquent at the time of payment.

(Ord. No. 2005-14, § 6, 12-13-2005; Ord. No. 2006-2, 1-10-2006; Ord. No. 2008-5, 5-13-2008)

Sec. 44-50. - Deficiency determinations.

- (a) *Recomputation of tax; authority to make; basis of recomputation.* If the finance director is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the village by any lodging provider, he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession, one or more deficiency determinations may be made of the amount due for one or more quarterly periods.
- (b) *Penalty.* Penalty shall be assessed upon the amount of any determination, as provided by section 44-49.

- (c) *Notice of determination; service of.* The finance director shall give to the lodging provider written notice of his determination. The notice may be served personally or by mail. If by mail, such service shall be addressed to the lodging provider at his address as it appears in the records of the village. 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 notice of deficiency determination to be mailed.* Except in cases of failure to make a return or of fraud, every notice of deficiency determination shall be mailed within four years after the 20th day of the calendar month following the quarterly period for which the amount is proposed to be determined, or within four years after the return is filed, whichever period should last expire.
- (e) *Appeal or protest of deficiency determination.* Within ten days of being served a notice of deficiency determination, the lodging provider may contest such in writing addressed to the finance director. The lodging provider shall include such documents as he believes may present grounds for abatement of the determination. The finance director shall give written notice of his decision to the lodging provider in the same manner as provided in subsection (c) of this section. The decision of the finance director shall be deemed final unless an appeal is made in writing to the city council with ten days of the lodging provider having been served with the finance director's decision. The city council shall approve or disapprove the appeal, and notify the appellant of its decision.

(Ord. No. 2005-14, § 7, 12-13-2005; Ord. No. 2006-2, 1-10-2006)

Sec. 44-51. - Determination if no return made.

- (a) *Estimate of gross receipts.* If any lodging provider fails to make a return, the finance director shall make an estimate of the amount of the gross receipts of the lodging provider, or as the case may be, of the amount of total rentals in the village which are subject to the tax. The estimate shall be made for the period or periods in respect to which the lodging provider failed to make the return, and 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 44-50(c), and the lodging provider shall enjoy the same rights of protest as prescribed in section 44-50(e).
- (b) *Penalty.* Penalty assessed upon the amount of any determination shall be, as provided by section 44-49.

(Ord. No. 2005-14, § 8, 12-13-2005)

Sec. 44-52. - Collection of tax.

- (a) *Action for delinquent tax; time for.* At any time within four years after any tax or any amount of tax required to be collected becomes due and payable, and at any time within four years after the delinquency of any tax or any amount of tax required to be collected, the city council may bring an action in a court of competent jurisdiction in the name of the village to collect the amount delinquent together with penalty, court fees, filing fees, attorney's fees and other legal fees incident thereto. The city council may also seek to have the lodging provider enjoined from operating the hotel until such time as the delinquency is paid, as well as to require forfeiture of any applicable collection fee retained by the lodging provider.
- (b) *Lodging provider selling or quitting business.* If any lodging provider liable for any amount under this article sells out his business or quits his business, he shall make a final return and remittance within 15 days after the date of selling or quitting the business.
- (c) *Duty of successors or assignees of lodging provider to withhold tax from purchase money.* If any lodging provider liable for any amount of tax, interest or penalty under this article sells out his business or quits the business, his successors or assigns shall withhold sufficiently from the purchase price to cover such amount until the former owner produces from the finance director either a receipt reflecting full payment or a certificate stating that no amount is due.

- (d) *Liability for failure to withhold.* If the purchaser of a business fails to withhold from the purchase price as required, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price.
- (e) *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 village, it may be refunded by the city council. If the lodging provider or person determines that he has overpaid or paid more than once, which fact has not been determined by the finance director, such person shall have four years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The claimant may request a hearing before the city council at which the claim and any other information available will be considered. The city council shall approve or disapprove the claim, and notify the claimant of its action.

(Ord. No. 2005-14, § 9, 12-13-2005)

Sec. 44-53. - Administration of article; recordkeeping.

- (a) *Authority of finance director.* The finance director shall administer and enforce the provisions of this article for the collection of the tax.
- (b) *Records required from lodging providers, etc.; form.* Every lodging provider renting guestrooms in the village shall preserve, for a minimum of four years, all folios, receipts, certificates of exemption and such other documents as the finance director may prescribe, and in such form as he may require. The records shall at all times be available for examination within the village.
- (c) *Examination of records; audits.* The finance director or any person authorized in writing by him may examine the books, papers, records, financial reports, equipment and other facilities of any lodging provider renting guestrooms and any lodging provider liable for the tax, 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. Such examination shall be conducted at the place of lodging provision, unless the finance director shall authorize another place within the village. 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.
- (d) *Authority to require reports; contents.* In administration of the provisions of this article, the finance director 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 guestrooms which are subject to the tax. The reports shall be filed with the finance director when required by the official, and shall set forth the rental charged for each occupancy, the dates of occupancy, the basis for exemption, or such other information as the finance director may prescribe.

(Ord. No. 2005-14, § 10, 12-13-2005)

Sec. 44-54. - Compliance—Penalty provision.

- (a) The owner/operator shall comply with all applicable laws, rules and regulations pertaining to the use and occupancy of the subject short-term rental unit and shall submit a monthly report to the village, on the appropriate hotel occupancy tax collection report form, even if the short-term rental unit was not rented during any such month.
- (b) Any lodging provider who fails, neglects or refuses to collect the tax as provided by section 44-46 shall be deemed guilty of a misdemeanor. Any lodging provider who fails or refuses to make any return as provided by section 44-49, to keep adequate records or to open them for inspection by the village, or to furnish other data reasonably requested by the city council shall be deemed guilty of a misdemeanor. Any lodging provider who makes a false or fraudulent return with intent to evade the

tax shall be deemed guilty of a misdemeanor. Any violation of this article may be punished by a fine not to exceed \$500.00 for each offense or for each day such offense shall continue.

(Ord. No. 2017.06.13A, § 3, 6-13-2017)

Editor's note— Ord. No. 2017.06.13A, § 3, adopted June 13, 2017, repealed the former § 44-54, and enacted a new § 44-54 as set out herein. The former § 44-54 pertained to violations and derived from Ord. No. 2005-14, § 11, adopted Dec. 13, 2005; and Ord. No. 2006-2, adopted Jan. 10, 2006.

Secs. 44-55—44-81. - Reserved.