

ORDINANCE 20-19

AN ORDINANCE THAT SHALL BE KNOWN AND CITED AS THE "CITY OF LAWTON HOTEL/TRANSIENT GUEST TAX ORDINANCE" LEVYING AND ASSESSING A TAX OF SEVEN PERCENT (7%) FOR A PERIOD OF TEN (10) YEARS ON RENTS RECEIVED FROM THE OCCUPANCY OF HOTEL ROOMS; PROVIDING FOR A TIME LIMIT ON SAID TAX AND EXTENSION BY VOTE; PROVIDING EXEMPTIONS FROM THE TAX; PLACING RESPONSIBILITY OF COLLECTING THE TAX UPON THE OPERATOR; REQUIRING RECORDS TO BE KEPT AND FOR THE FILING OF RETURNS; PROVIDING FOR THE PAYMENT OF TAX; PROVIDING CIRCUMSTANCES WHEN TAXES ARE DELINQUENT AND FOR INTEREST ON DELINQUENT TAXES; PROVIDING FOR ASSESSMENT AND DETERMINATION OF THE TAX; PROVIDING FOR REFUNDS AND REMEDIES; PROVIDING FOR GENERAL POWERS OF THE FINANCE DIRECTOR; PROVIDING THE PURPOSES FOR USE OF THE FUNDS; AUTHORIZING THE CITY COUNCIL TO MAKE ADMINISTRATIVE AND TECHNICAL CHANGES AND ADDITIONS EXCEPT TO THE TAX RATE AND TERM OF THE TAX; MAKING THE TAX CUMULATIVE; DEFINING TERMS; PROVIDING PENALTIES FOR FRAUDULENT RETURNS; MAKING RECORDS CONFIDENTIAL; PROVIDING OTHER PROVISIONS RELATING TO ASSESSMENT, COLLECTION AND ENFORCEMENT OF THE TAX; REQUIRING APPROVAL OF THE ORDINANCE BY A MAJORITY OF REGISTERED VOTERS VOTING AT AN ELECTION HELD FOR SUCH PURPOSE AS PROVIDED BY LAW; PROVIDING FOR AN EFFECTIVE DATE OF MAY 1, 2021; PROVIDING FOR CODIFICATION; AND PROVIDING THAT A COPY OF THIS ORDINANCE BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE CITY OF LAWTON, OKLAHOMA.

BE IT ORDAINED by the Council of the City of Lawton, Oklahoma, that:

SECTION 1. A new ordinance is hereby enacted which shall read as follows:

ARTICLE 12

HOTEL TAX

SECTION 10-12-1201 CITATION.

This article shall be known and cited as the "City of Lawton Hotel/Transient Guest Tax Ordinance."

SECTION 10-12-1202 DEFINITIONS.

A. As used in this article, the following terms shall have the meanings ascribed to them in this section:

1. **City Resident** shall mean a resident of the City of Lawton with possession of a current City of Lawton water bill or drivers license showing a City of Lawton address or a copy of a

valid permanent change of station (PCS) order assigning the person to Lawton/Ft. Sill with an assignment date prior to the date of registration.

2. **Director** shall mean the Director of Finance of the City of Lawton.

3. **Hotel** shall mean any building(s), structure(s), trailer(s), or other facility(ies) of any kind or nature, in which the public may, for consideration, obtain sleeping accommodations in which one (1) or more rooms are used for the accommodation of such guests (regardless of whether such rooms are located in one or several buildings, structures, trailers or facilities). The term shall include hotels, apartment hotels, motels, vacation rental homes, transient guest homes, tourist homes, houses or courts of any kind or nature, lodging houses, inns, rooming houses, bed and breakfast establishments, corporate lodgings, trailer houses, trailer motels, dormitory space where bed space is rented to individuals or groups, apartments of any kind or nature not occupied by permanent residents, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. The term shall not include hospitals, sanitariums or nursing homes.

4. **Occupancy** shall mean the use or possession, or the right to the use or possession of any room(s) in a hotel, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room(s).

5. **Occupant** shall mean a person, who for a consideration, uses, possesses, or has the right to the use or possession of any room(s) in a hotel under any lease, concession, permit, right of access, license to use, or other agreement or arrangement.

6. **Operator** shall mean:

- A. any entity or person operating a hotel in this City, including, but not limited to, the owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, manager or similar agent, or any other person otherwise operating such hotel; or,
- B. any third party entity or person that facilitates through online bookings or other means the sale of the occupancy of a room, or rooms and charges for the occupancy of the room or rooms, collects the consideration charged for the occupancy of the room or rooms, or receives a service fee or booking commission related to the occupancy of the room or rooms.

7. **Rent** shall mean the consideration received for occupancy 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 any amount for which credit is allowed by the operator to the occupant, without any deduction(s) therefrom whatsoever. Rent, as defined herein, specifically includes the sales value of any room(s) when they are provided free of charge or at discounted rates, whether complimentary or otherwise, through barter, trade or any other arrangement or agreement of any kind or nature, including payments made online or in any other fashion.

8. **Return** shall mean any return filed or required to be filed as herein provided.

9. **Room** shall mean any room(s) of any kind in any part or portion of a hotel available for or let out for use or possessed, for any purpose other than a place of assembly. As used herein, "place of assembly" means a room or space which is capable of being occupied by seventy-five (75) or more persons and which is used for educational, recreational or amusement purposes and shall include:

- a. Dance halls;
- b. Cabarets;
- c. Night clubs;
- d. Restaurants;
- e. Any room or space for public or private banquets, feasts, socials, card parties or weddings;
- f. Lodge and meeting halls or rooms;
- g. Skating rinks;
- h. Gymnasiums;
- i. Swimming pools;
- j. Billiard, bowling and table tennis rooms;
- k. Halls or rooms used for public or private catering purposes;
- l. Funeral parlors;
- m. Markets;
- n. Recreational rooms;
- o. Concert halls; and
- p. Broadcasting studios; and
- q. All other places of similar type of occupancy.

10. **Sales Value** means the price at which the type of room occupied would generally be rented in the ordinary course of business.

11. **Tax** means the tax levied pursuant to this article.

SECTION 10-12-1203 TAX RATE AND APPLICABILITY.

There is hereby levied and assessed a tax of seven percent (7%) on the rent for every occupancy of a room or rooms in a hotel in the City of Lawton. Rooms provided free of charge or at discounted rates, whether complimentary or otherwise, through barter, trade or any other arrangement or agreement of any kind or nature, are subject to such tax at the sales value of the room(s) so provided. The terms and provisions of the Oklahoma tax statutes, where applicable and not in conflict with the terms of this article, are incorporated herein by reference thereto.

SECTION 10-12-1204 TAX ADDITIONAL TO ALL OTHER EXCISE TAXES.

The tax levied pursuant to the provisions of this article is in addition to any and all other taxes levied or assessed by the City or any other taxing authority. Particularly, the taxes levied under this article shall be distinct, and in addition to, other taxes levied and assessed pursuant to Chapter 10, of this Code.

SECTION 10-12-1205 TIME LIMIT ON TAX -- EXTENSION BY VOTE.

The tax levied and imposed by this article shall remain in effect for a period of ten (10) years, commencing on May 1, 2021 and ending on April 30, 2031, and shall be collected on all rent for every occupancy of a room or rooms in a hotel within this City on and between those dates. The effective dates and duration of the tax imposed by this article may be extended or changed by a majority vote of qualified electors of the City as provided by law.

SECTION 10-12-1206 EXEMPTIONS.

A. The following shall be exempt from the tax levied in this article:

1. City Resident as defined herein.
2. The United States Government or any agency or division thereof when paid directly by the United States government rather than an employee.
3. The State of Oklahoma or any political subdivision thereof when paid directly by the State of Oklahoma or any political subdivision rather than an employee.

B. The operator shall record each qualified exemption allowed in a format established by the Director and submit said documentation with the returns required by this article.

SECTION 10-12-1207 OPERATOR RESPONSIBLE FOR COLLECTION.

The operator shall be responsible for the collection of the tax from the occupant and shall be liable to the City for the tax. Operators as defined by Section 10-12-1202(A) and 10-12-1202(B) are responsible for collection and remittance of the tax to the City as defined herein. An operator defined by Section 10-12-1202(A) who benefits from the collection and remittance of the tax to the City by a

third party entity or person as defined by Section 10-12-1202(B), is not otherwise relieved of any responsibility, liability, or obligation set forth in this Code, including the collection and remittance of the tax in the event the third party entity or person fails to collect and remit the tax to the City.

SECTION 10-12-1208 RECORDS TO BE KEPT.

Every operator shall keep records of every occupancy and of all rent paid, charged, or due thereon, including the number of rooms provided free of charge or at discounted rates and the sales value of such room as defined herein, in such form as the Director may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the Director, or a duly authorized agent or employee of the City, and shall be preserved for a period of three (3) years except that the Director may consent to their destruction within that period or may require that they be kept longer.

SECTION 10-12-1209 RETURNS.

A. Every operator shall file with the Director a return of occupancy and of rents and of the taxes payable on a monthly basis. The return shall be filed no later than the tenth calendar day of each month for the occupancy, rents and taxes payable for the preceding month from and after the effective date of this article.

B. The Director may permit or require returns to be made by shorter or longer periods and upon such dates as he may specify. The form of return shall be prescribed by the Director and shall contain such information as he may deem necessary for the proper administration of this article. The Director may require amended returns to be filed within twenty (20) days after notice and to contain the information specified in the notice.

SECTION 10-12-1210 PAYMENT OF TAX.

At the time of filing a return of occupancy and of rents, each operator shall pay to the Director the taxes imposed by this article upon the rents included in such return, as well as all other monies collected by the operator acting or purporting to act under the provisions of this article. All the taxes for the period for which a return is required to be filed shall be due from the operator and payable to the Director on or before the date fixed for the filing of the return for such period without regard to whether a return is filed or whether the return which is filed correctly shows the amount of rents and the taxes due thereon.

SECTION 10-12-1211 DELINQUENT TAXES.

The tax levied by this article shall be due and payable on or before the date fixed for the filing of the returns provided for in this article. All taxes not paid within five (5) days from the time they become due shall be delinquent. If taxes are delinquent for more than thirty (30) days, City utility services for water, sewer, and refuse collection for the hotel shall be terminated until the operator pays all past due taxes, interest and penalties. Upon full payment of delinquent taxes, interest, and penalties, City utility services shall be restored for the hotel as provided in the City

Code. Delinquent taxes, interest, and penalties shall constitute a lien on hotel property pursuant to Title 68, Okla. Stat. § 2704 until paid.

SECTION 10-12-1212 INTEREST ON DELINQUENT TAXES.

If any tax levied by this article becomes delinquent, the operator responsible and liable for such tax shall pay interest on such unpaid tax at the rate of two percent (2%) per month on the unpaid balance from the date of delinquency. If taxes are delinquent for more than thirty (30) days, the operator responsible and liable for such tax shall pay a penalty on such unpaid tax at the rate of ten percent (10%) per month on the unpaid balance from the date of delinquency to a maximum of fifty percent (50%) of the tax.

SECTION 10-12-1213 BOND REQUIRED.

Where the Director believes that any operator is about to cease business, leave the state, or remove or dissipate assets, or for any other similar reason he deems it necessary to protect the revenues collected under this article, he may require such operator to file with the City a bond issued by a surety company authorized to transact business in this state in such amount as the Director may fix to secure the payment of any tax or penalties and interest due, or which may become due from such operator. In the event that the Director determines that an operator is to file such bond, he shall give notice to such operator specifying the amount of bond required. The operator shall file such bond within five (5) days after the giving of notice unless within such five (5) days the operator shall request in writing a hearing before the City Council, at which hearing the necessity of the bond and amount of the bond shall be determined by the City Council. After such hearing, the City Council shall give written notice of its determination to the operator and such determination shall be final. In lieu of such bond, securities approved by the Director, or cash in such amount as he may prescribe, may be deposited with the Director who may, at any time after five (5) days notice to the depositor, apply them to any tax or any penalties due and for that purpose the securities may be sold at private or public sale.

SECTION 10-12-1214 ASSESSMENT AND DETERMINATION OF TAX.

A. If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the Director from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as: number of rooms, location, scale of rents, comparable rents, types of accommodations and services, number of employees, or other factors.

B. Written notice of such assessments shall be given to the operator liable for the collection and payment of the tax. Such assessment shall finally and irrevocably fix and determine the tax, unless the operator against whom it is assessed, within sixty (60) days after the giving of notice of such assessment, shall apply in writing to the City Council for a hearing, or unless the Director on his/her own initiative shall reassess the same. After such hearing, the City Council shall give written notice of its determination to the operator against whom the tax is assessed and such determination shall be final.

SECTION 10-12-1215 REFUNDS.

A. The Director shall refund or credit any tax erroneously collected if written application to the Director for such refund shall be made within sixty (60) days from the date of payment thereof. For like causes, and in the same period, a refund may be so made upon the initiative and the order of the Director. Whenever a refund is made, the reasons therefor shall be stated in writing. Such application may be made by the occupant upon whom such tax was imposed and who has actually paid the tax. Such application may also be made by the operator who has collected and paid such tax to the Director provided that the application is made within sixty (60) days of the payment by the occupant to the operator, but no refund of money shall be made to the operator until he has repaid to the occupant the amount for which the application for the refund is made. The Director, in lieu of any refund required to be made, may allow credit therefor on payments due from the applicant.

B. Upon application for a refund, the Director may receive evidence with respect thereto and make such investigation as he deems necessary. After making a determination as to the refund, the Director shall give notice thereof to the applicant. Such determination shall be final unless the applicant within thirty (30) days after such notice shall apply in writing to the City Council for a hearing. After such hearing the City Council shall give written notice of its decision to the applicant and such determination shall be final.

SECTION 10-12-1216 NOTICES.

Notices provided for under this article shall be deemed to have been given when such notice has been delivered personally to the operator or deposited in the United States mail to the last known address of the operator.

SECTION 10-12-1217 REMEDIES EXCLUSIVE.

The remedies provided in this article shall be the exclusive remedies available to any operator or other person for the review of tax liability imposed by this article.

SECTION 10-12-1218 GENERAL POWERS OF THE DIRECTOR.

A. In addition to all other powers granted to the Director, the Director is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this article for the purposes thereof;
2. To prescribe any necessary forms to aid in the collection of the taxes imposed by this article;
3. To extend, for cause shown, the time for filing any return for a period not exceeding sixty (60) days; and, for cause shown, to waive, remit or reduce penalties or interest;

4. To delegate his/her functions hereunder to an assistant or other employee or employees of the City;

5. To assess, reassess, determine, revise and readjust the taxes imposed by this article, but not the tax rate; and

6. To prescribe methods for determining the taxable and nontaxable rents.

SECTION 10-12-1219 CERTIFICATES OF REGISTRATION.

Every operator shall file with the Director a certificate of registration in a form prescribed by the Director within ten (10) days after the effective date of this article, or in the case of operator's commencing business or opening new hotels after such effective date, within three (3) days after such commencement or opening. The Director shall, within five (5) days after such registration, issue, without charge, to each operator, a certificate of authority empowering such operator to collect the tax from the occupant and duplicates thereof for each additional hotel. Each certificate or duplicate shall state the hotel to which it is applicable. Such certificate of authority shall be permanently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Director upon the cessation of business at the hotel named or upon its sale or transfer.

SECTION 10-12-1220 DISCOUNT.

In order to remunerate an operator for keeping tax records, filing reports, and remitting the tax when due, a three percent (3%) discount shall be allowed upon all taxes paid prior to the time they become delinquent.

SECTION 10-12-1221 USE OF FUNDS COLLECTED.

All taxes collected pursuant to provisions of this article shall be placed in a special fund of the City and appropriated annually for the exclusive purposes of encouraging, promoting and fostering conventions, tourism, industrial development and economic development in the City of Lawton. The Lawton City Council may enter into any agreements necessary or appropriate for accomplishing the aforesaid purposes.

SECTION 10-12-1222 RECORDS CONFIDENTIAL.

The confidential and privileged nature of the records and files concerning the administration of the tax is legislatively recognized and declared, and to protect the same the provisions of Title 68, Okla. Stat. § 205, and subsections thereof, are hereby adopted by reference and made fully effective and applicable to the administration of the hotel tax as if herein set forth.

SECTION 10-12-1223 FRAUDULENT RETURNS.

The failure or refusal of any operator to make reports and remittances herein required, or the making of any false or fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this article shall be an offense, and upon conviction thereof the offending operator shall be subject to penalty as provided in Section 1-119 of this Code.

SECTION 10-12-1224 AMENDMENTS.

The people of Lawton by their approval of this article at the election herein provided, hereby authorize the City Council to enter into an agreement with other parties to carry out the intent and purpose of this article, to make such administrative and technical changes or additions in the method and manner of administration and enforcing this article as may be necessary or proper for efficiency and fairness except that the rate of the tax and limitation of time for the collection of the tax herein shall not be changed without approval of the qualified electors of the City as provided by law.

SECTION 10-12-1225 PROVISIONS CUMULATIVE.

The provisions hereof shall be cumulative and in addition to any and all other taxing provisions of City ordinances.

SECTION 2. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of the ordinance.

SECTION 3. Effective Date. The provisions of this ordinance shall become effective on and after May 1, 2021, subject to the approval of a majority of qualified, registered voters of the City of Lawton, Oklahoma, voting on same at an election to be held on February 9, 2021, in the manner prescribed by law.

SECTION 4. Codification. Section 1 of this ordinance shall replace the current City of Lawton Hotel Tax expiring April 30, 2021 and the codification thereof, and be codified as Chapter 10, Article 12, Sections 10-1201 through 10-1225, both inclusive, Lawton City Code, 2015.

SECTION 5. Publication. This ordinance shall be published in full in a newspaper of general circulation in the City of Lawton, Oklahoma, within ten (10) days after its passage.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma this 27th day of October, 2020.



JAY BURK, MAYOR PRO TEM

ATTEST:

Traci L. Hushbeck
TRACI L. HUSHBECK, CITY CLERK

APPROVED as to form and legality this 28th day of October, 2020.

Tim Wilson
TIM WILSON, INTERIM CITY ATTORNEY