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**ORDINANCE NO. 2012-21
UPDATING HOTEL OCCUPANCY TAX CODE
AND INCREASING THE HOTEL TAX RATE**

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AN ORDINANCE AMENDING CHAPTER 85 OF THE CODE OF ORDINANCES OF THE CITY OF SEABROOK, ENTITLED "TAXATION AND FINANCE," ARTICLE II, ENTITLED "HOTEL OCCUPANCY TAX," SECTIONS 85-28 THROUGH 85-32, AND 85-35, BY AMENDING SUCH SECTIONS TO UPDATE ITS PROVISIONS AND INCREASE THE HOTEL OCCUPANCY TAX FROM 6 1/2% TO 7%; ADDING A NEW SECTION 85- 37, "APPEAL OF TAX"; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$500 FOR VIOLATION OF ANY PROVISION HEREOF, TOGETHER WITH RELATED PENALTIES AND REMEDIES AS SPECIFIED HEREIN, BY INCLUSION INTO THE CODE OF ORDINANCES; PROVIDING FOR NOTICE, PROVIDING FOR AN EFFECTIVE DATE, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; AND PROVIDING FOR SEVERABILITY.

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WHEREAS, the City Council of the City of Seabrook is continually reviewing its programs and the provisions of the Code of Ordinances (Code) to more effectively fund the promotion of tourism, maintenance of City existing programs that promote tourism, and new programs for the attraction of out of town visitors; and

WHEREAS, the City Council of the City of Seabrook has investigated, reviewed and considered the need for increasing the hotel occupancy for needed additional funding to better promote tourism to the City and has determined to increase the hotel occupancy tax from 6 1/2% to 7% for such purposes, and to update Code provisions related thereto in accordance with Texas Tax Code 351.001, *et. seq.* and law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS:

Section 1. That the City Council of the City of Seabrook adopts the preceding preamble paragraphs as if repeated verbatim herein and find them as matters of fact.

Section 2. That Chapter 85, "Taxation and Finance", Article II, "Hotel Occupancy Tax," be amended by updating Code Sections 85-28 –85-32 and 85-35, increasing the hotel occupancy tax specified in Section 85-28 from 6 1/2% to 7% and adding a new Section 85-37, "Appeal of Tax," as follows:

Sec. 85-28. Levy of tax; rate.

There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where such costs of occupancy is at the rate of \$2.00 or more per day. Such tax shall be equal to [~~6½~~] seven (7) percent of the consideration paid by the occupant of

47 such rooms to such hotel. The price of a room in a hotel does not include the cost of food
48 served by the hotel and the cost of personal services performed by the hotel for the
49 person except for those services related to cleaning and readying the room for use or
50 possession.

51
52 (Code 1976, § 10-22; Code 1996, § 66-28; Ord. No. 97-22, 1-20-1998)

53
54 **Sec. 85-29. Exceptions.**

55
56 (a) No tax shall be imposed under this article upon the consideration paid by the
57 occupant of such room who is a permanent resident as provided in § 156.001, Texas
58 Tax Code.

59
60 ~~[(b) No tax shall be imposed under this article upon a corporation or association organized~~
61 ~~and used exclusively for religious, charitable or educational purposes, no part of the~~
62 ~~net earnings of which inures to the benefit of any private shareholder or individual.]~~

63
64 (b) No tax shall be imposed on a governmental entity of the United States or an
65 officer or employee of a governmental entity of the United States when traveling
66 on or otherwise engaged in the course of official duties for the governmental
67 entity; however, the State of Texas or a Texas agency, institution, board, or
68 commission must pay the tax. There is no exemption for city or county officers
69 and employees even if traveling on official business.

70
71 (c) A state officer or employee of a state governmental entity for whom a special
72 provision or exception to the general rate of reimbursement under the General
73 Appropriations Act applies and who is provided with photo identification
74 verifying the identity and exempt status of the person is not required to pay the
75 tax. All individuals claiming this exemption are required to fill out a Hotel
76 Occupancy Exemption Certificate.

77
78 (d) The right to use or possess a room or space in a hotel is exempt from taxation
79 under this chapter if the person required to collect the tax receives, in good faith
80 from a guest, a properly completed exemption certificate stating that the guest is
81 qualified for an exemption under § 156.102 or § 156.103 of the Texas Tax Code.
82 An exemption certificate must be supported by the documentation required
83 under rules adopted by the comptroller.

84
85 (Code 1976, § 10-23; Code 1996, § 66-29)

86
87 **Sec. 85-30. Use of tax collected ~~[over four percent].~~**

88
89 (a) Any revenues from the [a] tax ~~[in excess of four percent of the consideration paid~~
90 ~~by an occupant of the sleeping room of a hotel]~~ may only be used for purposes

91 specified ~~[in this section]~~ in accordance with V.T.C.A., Tax Code § 351.101,
92 including:

- 93
- 94 (1) The acquisition of sites for any construction, improvement, enlarging,
95 equipping, repairing, operation, and maintenance of convention center
96 facilities or visitor information centers, or both;
- 97 (2) The furnishing of facilities, personnel and materials for the registration of
98 convention delegates or registrants;
- 99 (3) Advertising and conducting solicitations and promotional programs to attract
100 tourists and convention delegates or registrants to the municipality or its
101 vicinity;
- 102 (4) The encouragement, promotion, improvement, and application of the arts,
103 including instrumental and vocal music, dance, drama, folk art, creative
104 writing, architecture, design and allied fields, painting, sculpture,
105 photography, graphic and craft arts, motion pictures, radio, television, tape
106 and sound recording, and other arts related to the presentation, performance,
107 execution, and exhibition of these major art forms; and
- 108 (5) Historical restoration and preservation projects or activities or advertising and
109 conducting solicitations and promotional programs to encourage tourists and
110 convention delegates to visit preserved historic sites or museums:

- 111
- 112 a. At or in the immediate vicinity of convention center facilities or visitor
113 information centers; or
- 114 b. Located elsewhere in the municipality or its vicinity that would be
115 frequented by tourists and convention delegates.
- 116

117 **(6) Subject to § 351.1076 of the Tax Code, the promotion of tourism by the**
118 **enhancement and upgrading of existing sports facilities or fields,**
119 **including facilities or fields for baseball, softball, soccer, and flag football,**
120 **if the City owns the facilities or fields and the sports facilities and fields**
121 **have been used, in the preceding calendar year, a combined total of more**
122 **than 10 times for district, state, regional, or national sports tournaments;**

123

124 **(7) Signage directing the public to sights and attractions that are visited**
125 **frequently by hotel guests in the municipality.**

- 126
- 127 (b) The City Council may contract delegate to a person, including another governmental
128 entity or a private organization, the management or supervision of programs and
129 activities funded with revenue from the tax authorized by this article. The City
130 Council in writing shall approve in advance the annual budget of the person to which
131 it delegates those functions and shall require the person to make periodic reports to
132 the City Council at least quarterly listing the expenditures made by the person with
133 revenue from the tax authorized by this article. The person must maintain revenue
134 provided from the tax authorized by this article in a separate account established for
135 that purpose and may not commingle that revenue with any other money. The City

136 may not delegate to any person the management or supervision of its convention and
137 visitors programs and activities funded with revenue from the tax authorized by this
138 article other than by contract as provided by this subsection. The approval by the
139 City Council of the annual budget of the person to whom the City Council delegates
140 those functions creates a fiduciary duty in the person with respect to the revenue
141 provided by the tax authorized by this article.

142
143 *(Code 1976, § 10-24; Code 1996, § 66-30)*

144 **State law reference**— *Use of tax revenue, power to contract for services, V.T.C.A., Tax Code*
145 *§ 351.101.*

146
147 **Sec. 85-31. Collection of taxes.**

148
149 Any person owning, operating, managing or controlling any hotel shall collect the tax
150 imposed by this Article for the City **and make payment as provided in 85-34.**

151
152 *(Code 1976, § 10-25; Code 1996, § 66-31)*

153
154 **Sec. 85-32. Failure to pay; remedies.**

155
156 (a) The city attorney or other attorney acting for the City may bring suit against a person
157 who is required to collect the tax imposed by this article and pay the collections over
158 to the City and who has failed to file a tax report or pay the tax when due, to collect
159 the tax not paid or to enjoin the person from operating a hotel in the City until the tax
160 is paid or the report filed, as applicable, as provided by the court's order. In addition
161 to the amount of any tax owed under this article, the person is liable to the City for
162 the City's reasonable attorney's fees, **the costs of an audit** and a penalty equal to 15
163 percent of the total amount of the tax owed **and all other remedies provided by**
164 **V.T.C.A. § 351.004, Tax Code.**

165
166 (b) V.T.C.A., Civil Practice and Remedies Code § 16.061, applies to the collection of a
167 tax under this article. A limitation period provided by Title 2 of the Tax Code
168 (V.T.C.A., Tax Code § 101.001 et seq.) relating to the time allowed to assess taxes
169 and bring a suit to collect taxes does not apply to a tax imposed under this article or to
170 a suit brought under this section.

171
172 (c) The remedies provided for in this section are in addition to other available remedies.

173
174 *(Code 1976, § 10-29(b); Code 1996, § 66-32; Ord. No. 2001-24, § 2, 10-2-2001)*

175 **State law reference**— *Tax collection and penalty, V.T.C.A., Tax Code § 351.004.*

181 **Sec. 85-33. Records.**

182
183 Every person who is required by the provisions of this article to collect the tax
184 imposed in this article shall have a record of the following information:

- 185
186 (1) The names and addresses of all occupants of the establishment;
187 (2) The period of time for which each room is rented; and
188 (3) The consideration paid for such rental.
189

190 *(Code 1976, § 10-26; Code 1996, § 66-33)*

191
192 **Sec. 85-34. Quarterly reports to city director of finance [secretary].**

- 193
194 (a) On the last day of the month following each quarterly period, every person required
195 in this article to collect the tax imposed in this article, shall file a report with the city
196 [secretary] director of finance showing the consideration paid for all room
197 occupancies in the preceding quarter, the amount of the tax collected on such
198 occupancies, and any other information the city [secretary] director of finance may
199 reasonably require. Such person shall pay the tax due on such occupancies at the time
200 of filing such report. There shall also be furnished to the at the time of payment of
201 such tax, a copy of the quarterly tax report filed with the state controller in connection
202 with the state hotel occupancy tax.
203
204 (b) The failure of any person owning, operating, managing or controlling such hotel to
205 collect sufficient monies from the occupants to satisfy the tax shall not excuse his or
206 her obligation to pay the tax to the City.
207

208 *(Code 1976, § 10-27; Code 1996, § 66-34)*

209
210 **Sec. 85-35. Rules and regulations [of city secretary]; access to books and records.**

211
212 The city [secretary] director of finance shall ~~[have the power to make such rules~~
213 ~~and regulations as are reasonable and necessary to effectively collect the tax levied~~
214 ~~hereby, and shall, upon reasonable notice, have access to books and records necessary~~
215 ~~to enable him or her to determine the correctness of any report filed as required by this~~
216 ~~article and the amount of taxes due under the provisions of this article]~~ have the
217 authority to require an operator to provide documentation regarding information
218 contained in a tax report filed pursuant to this article in order to verify the information
219 provided in such tax report and to verify the amount of municipal hotel occupancy
220 taxes due. Upon such request of the director of finance, an operator shall do one of the
221 following:

- 222
223 (1) Produce all records requested and deliver such records to the director of
224 finance in a form acceptable to the him/her; or
225

226 **(2) Make all records requested available for inspection during the hours of**
227 **8:00 a.m. to 5:00 p.m., Monday through Friday.]**
228

229 *(Code 1976, § 10-28; Code 1996, § 66-35)*
230

231 **Sec. 85-36. Violation of article a misdemeanor.**
232

233 If any person required by the provisions of this article to collect the tax imposed in
234 this article, make reports as required in this article, and pay to the city [secretary] the tax
235 imposed in this article, shall fail to collect such tax, shall fail to file such report, or shall fail
236 to pay such tax, or if such person shall file a false report, such person shall be deemed guilty
237 of a misdemeanor.
238

239 *(Code 1976, § 10-29(a); Code 1996, § 66-36)*

240 *State law reference— Penalty, V.T.C.A., Tax Code § 351.004(c).*
241

242 **Sec. 85-37. Appeal of tax.**
243

244 **(a) Upon a determination by the director of finance that an operator has not paid**
245 **the full amount of the municipal hotel occupancy tax due, s/he shall notify such**
246 **operator in writing of such deficiency and of the operator's right to appeal the**
247 **determination. Such notice shall be sent by first class mail.**
248

249 **(b) Upon receipt of written notice of a determination by the director of finance that**
250 **a balance is due for the municipal hotel occupancy tax, the operator may either**
251 **pay the amount due or appeal in writing to the city manager.**
252

253 **(c) An appeal must be filed within 14 days after receipt of the notice of**
254 **determination from the city manager/designee.**
255

256 **(d) The city manager/designee shall grant or deny the appeal and shall notify the**
257 **operator of his decision in a written notice sent by first class mail within 14 days**
258 **of receiving the request.**
259

260
261 **Secs. 85-3[7]8—85-65. - Reserved.”**
262

263 **SECTION 3. INCORPORATION INTO THE CODE; PENALTY CLAUSE.**
264

265 This Ordinance is hereby incorporated and made a part of the Seabrook City Code.
266 Violation of this Ordinance is subject to the penalty section of said Code of Ordinances,
267 Section 1-15 “General penalty; continuing violations” which provides that any person who
268 shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and,
269 upon conviction, shall be fined in an amount not to exceed \$500. Each day of violation shall
270 constitute a separate offense.

271 **SECTION 4. REPEAL OF CONFLICTING ORDINANCES.**

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282 **SECTION 5. NOTICE.**

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288 **SECTION 6. EFFECTIVE DATE.**

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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 of provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Seabrook, 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.

The City Secretary shall give notice of the enactment of this Ordinance by promptly publishing it or its descriptive caption and penalty after final passage in the official newspaper of the City.

This ordinance shall become effective on April 1, 2013.

PASSED AND APPROVED on first reading this the 23rd day of October 2012.

PASSED, APPROVED AND ADOPTED on second and final reading this the 6th day of November 2012.

By: Glenn R. Royal
Glenn R. Royal
Mayor

ATTEST:

By: Michele L. Glaser
Michele L. Glaser, TRMC
City Secretary

APPROVED AS TO FORM:

Steven Weathered
Steven Weathered
City Attorney

