

ARTICLE A. HOTEL/MOTEL TAX

2-2A-1: CITATION:

This Article shall be known and cited as the *CITY OF PRYOR CREEK HOTEL/MOTEL TAX ORDINANCE OF 1998*, and is hereinafter referred to as this Article. (Ord. 98-4, 5-19-1998)

2-2A-2: DEFINITIONS:

As used in this Article, the following words and terms shall have the meanings ascribed to them in this Section:

CITY TREASURER: The Treasurer of the City of Pryor Creek, Oklahoma.

HOTEL OR MOTEL: Any building or buildings, structures, trailers or other facilities in which the public may, for consideration, obtain sleeping accommodations in which three (3) or more rooms are used for the accommodation of transient guests whether such rooms are in one or several structures. The term shall include hotels, apartment hotels, motels, tourist homes, houses or courts, lodging houses, bed and breakfast inns, inns, rooming houses, trailer houses, trailer motels, apartments and sleeping rooms not occupied by "permanent residents", and all other facilities where rooms or sleeping accommodations or spaces are furnished for a consideration. The term shall not include hospitals, sanitariums, nursing homes, university dormitories or other educational or charitable institutions.

OCCUPANCY: The use or possession, or the right to use or possess any room or rooms in a hotel/motel 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 or rooms.

OCCUPANT: A person who for a consideration possesses, or has the right to the use or possess, any room or rooms in a hotel/motel under any lease, concession, permit, right of access, license to use or other agreement.

OPERATOR: Any person operating a hotel/motel in this City, including, but not limited to, the owner, proprietor, lessee, sublease, mortgagee in possession, licensee or any other person otherwise operating such hotel/motel.

RENT: 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 therefrom whatsoever.

RETURN: Any return filed or required to be filed as herein provided.

ROOM: Any room or rooms of any kind in any part or portion of a hotel/motel which is available for or let out or used or possessed for any purpose other than a place of assembly. As used herein, "place of assembly" means a room or space which is not capable of being occupied for lodging purposes and which is used for educational, recreational or amusement purposes and shall include dance halls; cabarets; nightclubs; restaurants; any room or space for public or private banquets, feasts, socials, card parties or weddings; lodge and meeting halls or rooms; skating rinks; gymnasiums; swimming pools; billiards, bowling and table tennis rooms; halls or rooms used for public or private catering purposes; funeral parlors; markets; recreational rooms; concert halls; broadcasting studios; and all other places of similar type of occupancy.

TAX: The tax levied pursuant to this article. (Ord. 98-4, 5-19-1998; amd. 2000 Code)

2-2A-3: ADMINISTRATION; ENFORCEMENT:

A. Accounting: All revenues from the hotel/motel tax shall be accounted for separately from any and all other revenues, maintained in its own independent, interest bearing account and administered separate from other city monies.

B. City Treasurer Duties: In addition to all other powers granted to the city treasurer, he/she is hereby authorized and empowered to:

1. Make, adopt and amend rules and regulations appropriate to the collection of taxes pursuant to this article;
2. 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;
3. Delegate his/her functions hereunder to an assistant or other employee of the city;
4. Assess, reassess, determine, revise and readjust the taxes imposed by this article;
5. Prescribe methods for determining the taxable and nontaxable rents. (Ord. 98-4, 5-19-1998)

C. Allocation Board:

1. Selection Of Board:

a. The hotel/motel tax allocation board shall consist of five (5) members. (Ord. 98-5, 6-19-1998; amd. 2000 Code)

b. Selection Procedure:

(1) No board member shall be knowingly affiliated with any applicant or funding request. In the event a board member becomes aware of such an affiliation he or she shall abstain from reviewing and/or voting on said grant application.

(2) Appointments shall be made by the mayor and confirmed by the city council.

c. Term:

(1) One member approved by the council will fill a two (2) year term.

(2) One member approved by the council will fill a three (3) year term.

(3) Three (3) members approved by the council will fill a four (4) year term. (Ord. 2005-3, 3-1-2005)

(4) As each member's term expires, they resign or are removed, they will be replaced by a new member to be elected from individuals nominated by the organization that nominated the original board member. (Ord. 98-5, 6-19-1998; amd. 2000 Code; Ord. 2005-3, 3-1-2005)

(5) Notwithstanding the terms set forth in this section, all members elected to this board shall serve until their successors are elected and qualified. (Ord. 2003-6, 8-5-2003; amd. Ord. 2005-3, 3-1-2005)

(6) Should any position on the board remain unfilled for thirty (30) days without replacement nomination as set forth above, the city council shall fill said position from nominations made in open city council proceedings.

(7) The city council may remove any member who has failed to attend three (3) scheduled meetings in the previous twelve (12) months. (Ord. 98-5, 6-19-1998; amd. 2000 Code; Ord. 2005-3, 3-1-2005)

2. Officers: The board shall select officers to include:

a. Chairperson (1 year term);

b. Vice chairperson (chairperson elect) (1 year term);

c. Secretary. (Ord. 98-5, 6-19-1998; amd. 2000 Code)

3. Duties:

a. The board shall meet a minimum of three (3) times each year to review any new applications. In June of each year the board shall review all previous applicants/awardees and make recommendations, if any, to the budget committee.

b. The board shall notify the public that applications for the following year's award cycle shall be accepted from June 1 through July 1 of the following year.

c. The hotel/motel tax allocation board shall recommend to the budget committee the allocation of hotel/motel tax receipts prior to the second council meeting in August of each year. Said awards shall be for the purpose of encouraging, promoting and

fostering conventions, conferences and tourism development in the city; promotion of cultural, recreational, commercial, industrial, educational and economic events for economic development of the city; solicitation of visitor attractions, events, tourism, conferences, conventions and meetings in the city; park and recreation activities and other city development projects, activities and/or events. The maximum amount of funds to be allocated shall not exceed the total amount of funds received in the hotel/motel tax fund during the previous year, plus any amount carried over from previous years. (Ord. 2005-3, 3-1-2005)

D. Legal, Enforcement Fees: In the event a suit in a court of competent jurisdiction is caused to be filed, either on behalf of or against the city, and said cause is the direct result of the conditions, stipulations or requirements herein set forth, an amount necessary to pay all legal fees incurred by the city, as well as fines or penalties imposed against it, shall be set aside from the monies authorized to be collected hereby in payment thereof, regardless of whether said cause was for the purpose of enforcing or defending the provision of this article. (Ord. 98-4, 5-19-1998)

2-2A-4: SUBSISTING STATE PERMITS:

All valid and subsisting permits to do business by the Oklahoma tax commission pursuant to the Oklahoma sales tax code are, for the purposes of this article, hereby ratified, confirmed and adopted in lieu of any requirement for an additional city permit for the same purpose. (Ord. 98-4, 5-19-1998)

2-2A-5: EFFECTIVE DATE; TERMINATION:

This article shall become and be effective on or after June 24, 1998, subject to approval of a majority of the registered voters of the city, voting on the same in the manner proscribed by law; provided, that upon approval of the voters as required above, this article shall remain in effect and not be repealed unless repealed by a majority of the registered voters of the city, voting to repeal same in the manner as required by its approval. (Ord. 98-4, 5-19-1998)

2-2A-6: REGISTRATION, AUTHORITY CERTIFICATES:

Every operator shall file with the city treasurer a registration certificate in a form prescribed by the city treasurer within ten (10) days after the effective date hereof or, in the case of operators commencing business or opening new hotels/motels after such effective date, within three (3) days after such commencement or opening. The city treasurer shall, within five (5) days after

the filing of such certificate, 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/motel. Each certificate or duplicate shall state the hotel/motel 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 city treasurer upon the cessation of business at the hotel/motel, or upon its sale or transfer. (Ord. 98-4, 5-19-1998)

2-2A-7: TAX LEVIED:

There is hereby levied an excise tax of five percent (5%) of the gross rental receipts derived from all sales taxable under the Oklahoma sales tax code upon the service of furnishing rooms by hotels or motels within the city, except that the tax shall not be assessed where the rent is less than five dollars (\$5.00) per day. This excise tax shall be in addition to any existing sales taxes imposed by the city or the state. (Ord. 98-4, 5-19-1998)

2-2A-8: EXEMPTIONS; PROOF REQUIRED:

- A. Officers, agents, representatives or employees of any government, corporation, organization or association that is legally exempted from Oklahoma sales taxation or City sales taxation and whose occupancy of the room is required in connection with the official business or affairs of said government, corporation, organization or association, shall be exempt from the tax levied by this Article.
- B. Any person claiming to be exempt from the tax pursuant to subsection A of this Section shall display proof of exemption and tax identification number certifying that the corporation, organization or association with which he is affiliated is exempt from the tax. (Ord. 98-4, 5-19-1998)

2-2A-9: BOND REQUIRED:

Where the City Treasurer believes that any operator is about to cease business, leave the State or remove or dissipate assets, or for any other similar reason he/she deems it necessary in order to protect revenues under this Article, he/she 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 City Treasurer 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 City Treasurer determines that an operator is to file such bond, he/she shall give notice to the operator specifying the amount of bond required, which shall in no event exceed twice the amount of the sum in controversy. The operator shall file the bond within five (5) days after receiving the notice unless within such five (5) days, the operator shall request in writing a hearing before the City Council, at which time the necessity and amount of the bond shall be determined by the City Council. Such determination shall be final and shall be complied with within fifteen (15) days thereafter. In lieu of such bonds, securities approved by the City Treasurer, or cash in such amount as he may prescribe, may be deposited with the City Treasurer, who may at any time after five (5) days' notice to the depositor, apply them to any tax and/or any penalties due, and for that purpose, the securities may be sold at private or public sale. (Ord. 98-4, 5-19-1998)

2-2A-10: USE OF FUNDS:

Funds collected pursuant to the provisions of this Article shall be set aside and used by the Mayor and City Council for one or more of the following purposes: City development activities and/or events identified by the Hotel/Motel Tax Allocation Board and approved by the City Council. (Ord. 98-4, 5-19-1998)

2-2A-11: RETURNS:

A. Date; Forms: The tax levied hereunder shall be due and payable to the City Treasurer on the first day of each month, except as herein provided, by any person liable for the payment of any tax due under this Article. For the purpose of ascertaining the amount of the tax payable under this Article, it shall be the duty of all operators, on or before the fifteenth day of each month, to deliver to the City Treasurer, upon forms prescribed and furnished by him/her, returns, under oath, showing the gross receipts or gross proceeds arising from rents received from occupancy of hotel rooms during the preceding calendar month. The returns shall show such further information as the City Treasurer may require to correctly compute and collect the tax herein levied. In addition to the information required on returns, the City Treasurer may request and the operator shall furnish any information deemed necessary for a correct computation of the tax levied herein. Such operator shall compute and remit to the City Treasurer the required tax due for the preceding calendar month. The remittance or remittances of the tax shall accompany the returns herein required. If not paid on or before the fifteenth of such month, the tax shall be delinquent after such date; provided, that no interest or penalty shall be charged on such return filed on or before the twentieth day of such month.

B. Exceptions; Amendments: The City Treasurer may permit or require returns to be made by shorter or longer periods and upon such dates as he/she may specify. The form of return

shall be prescribed by the City Treasurer and shall contain such information as he/she may deem necessary for the proper administration of this Article. The City Treasurer may require amended returns to be filed within twenty (20) days after notice, which amended return shall contain the information specified in the notice. (Ord. 98-4, 5-19-1998)

2-2A-12: PAYMENT OF TAX:

At the time of filing a return of occupancy and of rents, each operator shall pay to the City Treasurer the tax 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. (Ord. 98-4, 5-19-1998)

2-2A-13: OPERATOR RESPONSIBILITIES:

- A. Designate Tax: The operator shall separately designate, charge and show all taxes on all bills, statements, receipts, or any other evidence of charges or payment of rent for occupancy issued or delivered by the operator.
- B. 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.
- C. Records Maintenance: It shall be the duty of every operator required to make a return and pay any tax under this Article to keep and preserve suitable records of the gross daily rentals, together with other pertinent records and documents which may be necessary to determine the amount of tax due hereunder and such other records as will substantiate and prove the accuracy of such returns. All records shall remain in the City and be preserved for a period of three (3) years, unless the City Treasurer, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the City Treasurer or by any of his/her duly authorized agents. The burden of proving that a sale was not a taxable sale shall be upon the operator who makes the sale. (Ord. 98-4, 5-19-1998)

2-2A-14: COMPENSATION TO OPERATOR:

In order to compensate an operator for keeping tax records, filing reports and remitting the tax

when due, a discount equal to that allowed by the Oklahoma Tax Commission for the collection of sales tax shall be allowed upon all taxes paid prior to the time they become delinquent. (Ord. 98-4, 5-19-1998)

2-2A-15: ASSESSMENT BY CITY:

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 City Treasurer 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. Written notice of such assessments shall be given to the person liable for the collection and payment of the tax. Such assessment shall finally and irrevocably fix and determine the tax unless the person against whom it is assessed, within ninety (90) days after the giving of notice of such assessment, shall apply in writing to the City Council for a hearing or unless the City Treasurer, upon his/her own initiative, shall reassess the same. After such hearing, the City Council shall give written notice of its determination to the person against whom the tax is assessed and such determination shall be final. (Ord. 98-4, 5-19-1998)

2-2A-16: DELINQUENCY; INTEREST:

If any tax levied by this Article becomes delinquent, the person responsible and liable for such tax shall pay interest on such unpaid tax at the rate of one and one-half percent ($1\frac{1}{2}\%$) per month on the unpaid balance from the date of delinquency until said unpaid balance is paid in full. (Ord. 98-4, 5-19-1998)

2-2A-17: REFUNDS:

A. Procedure: The City Treasurer shall refund or credit any tax erroneously, illegally or unconstitutionally collected if written application to the City Treasurer for such refund shall be made within ninety (90) days from the date of payment thereof. For like causes and in the same period, a refund may be made upon the initiative and the order of the City Treasurer. Whenever a refund is made, the reasons therefor shall be stated in writing. Such application may be made by the person upon whom such tax was imposed and who has actually paid the tax. Such application may also be made by the person who has collected and paid such tax to the City Treasurer; provided, that the application is made within ninety (90) 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 refund is made. The City Treasurer, in lieu of any refund required to be made, may allow credit therefor on payments due from the applicant.

- B. Determination; Hearing: Upon application for a refund, the City Treasurer may receive evidence with respect thereto, and make such investigation as he/she deems necessary. After making a determination as to the refund, the City Treasurer shall give notice thereof to the applicant. Such determination shall be final unless the applicant, within ninety (90) 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. (Ord. 98-4, 5-19-1998)

2-2A-18: NOTICES:

Any notice 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 addressed to the last known address of the operator. (Ord. 98-4, 5-19-1998)

2-2A-19: CONFIDENTIAL RECORDS:

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 provision of 68 Oklahoma Statutes section 205 of the State Sales Tax Code, and each subsection thereof, are hereby adopted by reference and made fully effective and applicable to the administration of this Article as if herein set forth. (Ord. 98-4, 5-19-1998)

3-2A-20: FRAUDULENT RETURNS:

The wilful 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 a portion thereof rightfully due under this Article, shall be an offense against the City. (Ord. 98-4, 5-19-1998)

2-2A-21: AMENDMENTS:

The people of Pryor Creek, by their approval of the Ordinance codified herein, at the election herein provided, hereby authorize the City Council, by ordinance duly enacted, to make such administrative and technical changes or additions in the method and manner of administering and enforcing this Article as may be necessary or proper for efficiency and fairness, except that the rate of the tax herein provided shall not be changed without approval of the qualified voters of the City as provided by law. (Ord. 98-4, 5-19-1998)

2-2A-22: REMEDIES EXCLUSIVE:

The remedies provided in this Article shall be exclusive remedies available to any person for the review of tax liability imposed by this Article. (Ord. 98-4, 5-19-1998)

2-2A-23: PROVISIONS CUMULATIVE:

The provisions hereof shall be cumulative and in addition to any and all other taxing provisions of City ordinances. (Ord. 98-4, 5-19-1998)