

CITY OF MARFA, TEXAS

HOTEL OCCUPANCY TAX ORDINANCE

THIRD AMENDED ORDINANCE NO. 07-11-3A

THE THIRD AMENDED ORDINANCE PROVIDING FOR THE ASSESSMENT AND COLLECTION OF A HOTEL ROOM OCCUPANCY TAX ON ALL HOTELS, INCLUDING SHORT-TERM RENTALS; PROVIDING FOR DEFINITIONS; THE LEVY OF A SEVEN (7%) PERCENT HOTEL TAX RATE; EXCEPTIONS; REQUIREMENTS FOR COLLECTION REPORTS; COLLECTION PROCEDURES ON THE PURCHASE OF A HOTEL; PENALTIES INCLUDING 5% FOR LATE FILING WITH FINES NOT TO EXCEED \$200.00 FOR VIOLATIONS; ADDITIONAL PENALTIES; USE REVENUE DERIVED FROM THE LEVY OF HOTEL OCCUPANCY TAX; ADMINISTRATIVE REQUIREMENTS; ACCOUNTABILITY; KEEPING OF RECORDS; REPEALER; SEVERABILITY; AND PUBLICATION; AND PROVIDING FOR AN EFFECTIVE DATE OF JANUARY 1, 2023.

WHEREAS, the City is authorized to impose a Hotel Occupancy Tax pursuant to Chapter 351 of the Texas Tax Code; and

WHEREAS, the most recent version of the Hotel Occupancy Ordinance No. 07-11-2A was passed and approved by the Marfa City Council on December 19, 2019; and

WHEREAS, on December 13, 2022, the City Council has deemed it expedient to amend the Hotel Occupancy Tax Ordinance at this time to update the ordinance.

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

SECTION 1. Definitions. The following words, terms, and phrases for the purpose of this Ordinance, except where the context clearly indicates another meaning, are respectively defined as follows:

- A. *Hotel* shall mean a building, trailer or other structure in which members of the public obtain sleeping accommodations for consideration. The term includes but is not limited to, a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, bed and breakfast, short-term rental, manufactured home, skid mounted bunk house, residency inn, condominium, cabin, an apartment, tent or yurt, RV, container home, and a cottage if the facility is rented for periods of less than 30 days. For purposes of the imposition of a hotel occupancy tax under this Ordinance, 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 Section 61.003, Education Code, used by the institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, 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, Tax Code.
- B. Consideration shall mean the cost of the room in such hotel only if the room is one ordinarily used for sleeping and is two dollars (\$2.00) or more per day, but it shall not include the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.
- C. Unit shall mean a separate accommodation, room, bungalow, casita, trailer, or cabin located on or within a single premises.
- D. Occupancy shall mean the exclusive use or possession or the exclusive right to use or possession of any room in a hotel if the room is one ordinarily used for sleeping and if the occupant's use, possession, or right to use or possession extends for a period of less than thirty (30) days.
- E. Occupant shall mean anyone, who, for a consideration uses, possesses, or has a right to use or possess any room in a hotel if the room is one ordinarily used for sleeping.
- F. Premises shall mean property, a lot, plot, or parcel of land, including any structures or portions of structures thereon.
- G. Person shall mean any individual, company, corporation, or association owning, operating, managing, or controlling any hotel.
- H. City Administrator shall mean the City Administrator of the City of Marfa, Texas.
- I. Calendar Quarterly Reporting Period shall mean the regular quarterly reporting periods ending on March 31st, June 30th, September 30th, and December 31st of any given year.
- J. Permanent Resident shall mean any occupant who has or shall have the right to occupancy of any room or rooms or sleeping space or facility in a hotel for at least thirty (30) consecutive days during the current calendar year or preceding year.

SECTION 2. Levy of Tax; Rate; Exception.

In accordance with Chapter 351 of the Texas Tax Code, there is hereby levied a tax of seven (7) percent of the price paid for a room or space furnished by any hotel within the City of Marfa and within its extraterritorial jurisdiction, on every 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 use or possess a room that is in a hotel, costs Two Dollars (\$2.00) or more per day, and is ordinarily used for sleeping. The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except those services related to the cleaning and readying of the room for possession.

A. Exceptions to taxation under Section 2A are as follows:

1. No tax shall be imposed hereunder upon a permanent resident.
2. No tax shall be imposed for federal employees traveling on official business.
3. A state officer or employee of a state governmental entity for whom a special provision or exception to the general rate of reimbursement under the General Appropriations Act applies and who is provided with photo identification verifying the identity and exempt status. (Heads of state agencies, state legislators and legislative staff, members of state boards and commissions, and state judges.
4. No tax shall be imposed upon diplomatic personnel who present a tax exemption card issued by the United States Department of State.
5. No tax shall be imposed for federal or state military personnel traveling on official military business. This exemption does not cover military staff on leave or between stations.

B. Except for permanent residents, every person claiming a hotel tax exemption must complete and provide the hotel with a Texas State Comptroller Form 12-302, Texas Hotel Occupancy Tax Exemption Certificate, and proof of exemption as specified in Texas Administrative Code Title 34, Part 1, Chapter 3, Subchapter K, Rule 3.161.

SECTION 3. Registration and Collection.

- A. Every person owning, operating, managing, or controlling any hotel (including short-term rentals) within the City of Marfa or within its extra-territorial jurisdiction, shall register each hotel or short-term rental with the City of Marfa, and receive a City of Marfa Identification Number. Each entity shall be registered within thirty (30) days of opening a new hotel or making a short-term rental available. Every person owning, operating, managing, or controlling any hotel within the City of Marfa or its extraterritorial jurisdiction (including short-term rentals), shall display the City of Marfa Identification Number for that particular hotel property in all third-party online advertisements.
- B. In order to register and receive a City of Marfa Identification Number, the person owning, operating, managing, or controlling the property shall use the form promulgated by the City of Marfa shall fully complete all requested information, and shall submit all required documentation.
- C. Every person owning, operating, managing, or controlling any hotel (including short-term rentals) within the City of Marfa or within its extraterritorial jurisdiction, shall collect the tax imposed in Section 2 hereof for the City of Marfa.
- D. The hotel operator shall be entitled to one (1) percent of the hotel occupancy tax revenues collected as reimbursement for the operator's administrative costs for collecting the tax. However, as herein below provided, this reimbursement may be forfeited at the discretion of the city if the hotel operator fails to timely pay the tax or timely file a report as required by the city, or files a false report with the city.

SECTION 4. Reports.

- A. On or before the 20th day after the close of each calendar quarter every person required in Section 3 hereof to collect the tax imposed herein shall file a written report with the City Administrator showing the consideration paid for all room or sleeping space occupancies in the preceding quarter, the amount of tax collected on such occupancies, and any other information as the City Administrator may reasonably require. Such persons shall pay the tax due on such occupancies at the time of filing of such report.

- B. The report shall be submitted on the “City of Marfa Hotel Occupancy Tax Report” Form promulgated by the City of Marfa.
- C. The quarterly report is due and shall be submitted to the City regardless of whether the hotel (including short-term rentals) has had any activity or occupancy within the preceding quarter.

SECTION 5. Access.

The City Administrator shall adopt such procedures, rules, and regulations as are reasonably necessary to effectively collect the tax levied herein. The City Administrator or his/her designees shall, upon reasonable notice, be permitted to have access to books and records of any hotel (including short-term rentals) during reasonable business hours as shall be necessary to enable the City Administrator or his/her designee to determine the correctness of any report filed as required by the provisions of this Ordinance or to determine whether or not a report should have been filed and the amount necessary of taxes due.

SECTION 6. Collection Procedures on Purchase of Hotel (Including Short-Term Rental).

- A. If a person who is liable for the payment of a tax under this article is the owner of a hotel and sells the hotel, the successor to the seller or the seller’s assignee shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt by a person designated by the city to provide the receipt showing that the amount has been paid or a certificate showing that no tax is due.
- 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 person designated by the city to provide under subsection (A) issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The person designated by the city shall issue the certificate or statement not later than the sixtieth day after the date that the person receives the request.

If the person designated by the city to provide a receipt under subsection (A) fails to issue the certificate or statement within the period provided by subsection (C), the purchaser is released from the obligation to withhold the purchase price or pay the

amount due.

SECTION 7. Penalties.

If any person required by the provisions of this Ordinance to collect the tax imposed herein, or make reports as required herein, and pay to the City Administrator the tax imposed herein, shall fail to collect such tax, file such report, or pay such tax, or if any such person shall file a false report, or any such person shall violate any of the provisions of this Ordinance; such person shall be deemed guilty of a misdemeanor and upon conviction be punished by fine not to exceed \$200.00 and shall pay to the City Administrator the tax due, together with a penalty of five percent (5%) of the tax due for each thirty (30) days that the same is not timely filed.

For the purposes of this Ordinance, advertising a property for lodging as a hotel (including short-term rentals) shall constitute prima facie evidence in a civil, criminal, or administrative proceeding that the property is in fact a hotel and is subject to city registration, reporting, and tax collection requirements.

SECTION 8. Additional Penalties.

The city is hereby authorized to take the following actions against any person required to collect the tax imposed hereby and pay the collection over to the city and who has failed to file a report, filed a false report, or failed to pay the tax when due:

1. Require the forfeiture of any revenue the city allowed the hotel operator to retain for its cost of collecting the tax;
2. Bring a civil and/or criminal suit against the hotel for noncompliance; and/or
3. Bring a civil and/or criminal suit against the hotel seeking any other remedies provided under Texas law.

SECTION 9. Use of Revenue Derived From Levy of Hotel Occupancy Tax.

A. The revenue derived from any hotel occupancy tax imposed and levied by this article may be used only to promote tourism and the convention and hotel industry, and that use is limited to 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 (as such is defined in Texas Tax Code, Section 351.001);

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;
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, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms; and
5. Historical restoration and preservation 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. Which are at or in the immediate vicinity of convention center facilities or visitor information centers; or
 - b. Which are located elsewhere in the municipality or its vicinity that would be frequented by tourists, convention delegates or other visitors to the municipality; and
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; and
7. Signage directing the public to sights and attractions that are visited frequently by hotel guests in the municipality;
8. Pursuant to Texas Tax Code §351.1 10(a), 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 .

9. Any other use authorized currently or subsequently by state statute.
- B. Revenue derived from the hotel occupancy tax shall be expended only in a manner that directly enhances and promotes tourism and the convention and hotel industry as hereinbefore delineated. Such revenue shall not be used for general revenue purposes or general governmental operations of the city which are not directly related to promoting the hotel and convention industry or tourism in the city.
- C. All hotel occupancy tax revenue shall be apportioned in a manner set forth from time to time by the City Council of the City of Marfa. as manifested in the annual budget of the City of Marfa. pursuant to the authority granted by the Constitution and laws of the State of Texas, including Chapter 351 of the Texas Tax Code providing for Municipal Hotel Occupancy Tax.

SECTION 10. Administrative Requirements: Accountability; Keeping of Records.

- A. The City Council may by contract, delegate to a person, including another governmental entity or a private organization, the management or supervision of programs and activities funded with revenue from the hotel occupancy tax. The City Council shall approve in writing and in advance of the annual budget of the entity to which it delegates those functions and shall require the entity to make periodic reports to the City Council at least annually listing the expenditures made by the entity of revenue from the tax provided by the city.
- B. The entity must maintain the revenue provided by the city from the tax in a separate account established for that purpose and may not commingle that revenue with any other money or maintain it in any other account.
- C. The city may not delegate to any person or entity the management or supervision of its convention and visitors' programs and activities funded with revenue from the hotel occupancy tax other than by contract as provided herein.
- D. The approval by the City Council of the annual budget of the entity to which these functions are delegated creates a fiduciary duty in the person or entity contracted with by the city with respect to the revenue provided by the city to the person or entity under the contract.

- E. A person or entity with whom the municipality contracts to conduct authorized activities shall maintain complete and accurate financial records of each expenditure of hotel occupancy tax revenue made by the person or entity and on request of the City Council or other person, shall make the records available for inspection and review.
- F. Hotel occupancy tax revenue may be spent for 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 of expenditures herein before authorized. The portion of the total administrative costs for activities for which hotel occupancy tax revenue may be used may not exceed the administrative costs actually incurred in conducting the authorized activities.
- G. Hotel occupancy tax revenue may not be spent for travel for a person to attend an event or conduct any activity the primary purpose of which is not directly related to the promotion of the person's job in an efficient and professional manner.

SECTION 11. Effective Date. This Ordinance shall be and become effective on and after January 1, 2023.

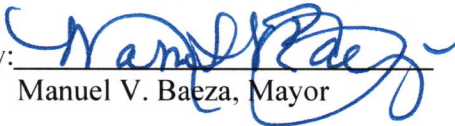
SECTION 12. Repealer. All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

SECTION 13. Severability. Should any part, sentence, or phrase of this Ordinance be determined to be unlawful, void, or unenforceable, the validity of the remaining portions of this Ordinance shall not be adversely affected. No portion of this Ordinance shall fail or become inoperative by reason of the invalidity of any other part. All provisions of this Ordinance are declared to be severable.

H. **SECTION 14. Publication.** Publication shall be made one time in the *Big Bend Sentinel* which publication shall contain the caption stating in substance the purpose of this Ordinance.

This Third Amendment is **PASSED AND APPROVED** on this 13th day of DECEMBER, 2022, by the City Council of the City of Marfa, Texas.

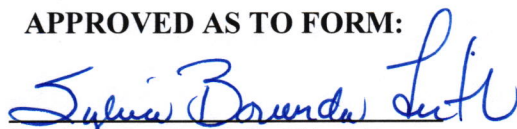
CITY OF MARFA, TEXAS

By: 
Manuel V. Baeza, Mayor

ATTEST:


Amanda T Roane, City Secretary

APPROVED AS TO FORM:


Sylvia Borunda Firth, City Attorney