



McAlester City Council

NOTICE OF MEETING

Special Meeting of the City Council Agenda

Monday, June 2, 2014 - 5:30 pm
McAlester City Hall – Council Chambers
28 E. Washington

Steve Harrison	Mayor
Weldon Smith	Ward One
John Titsworth	Ward Two
Travis Read	Vice Mayor, Ward Three
Robert Karr	Ward Four
Buddy Garvin	Ward Five
Jason Barnett	Ward Six
Peter J. Stasiak	City Manager
William J. Ervin	City Attorney
Cora M. Middleton	City Clerk

This agenda has been posted at the McAlester City Hall, distributed to the appropriate news media, and posted on the City website: www.cityofmcalester.com within the required time frame.

The Mayor and City Council request that all cell phones and pagers be turned off or set to vibrate. Members of the audience are requested to step outside the Council Chambers to respond to a page or to conduct a phone conversation.

The McAlester City Hall is wheelchair accessible. Sign interpretation or other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 918.423.9300, Extension 4956.

CALL TO ORDER

Announce the presence of a Quorum.

ROLL CALL

SCHEDULED BUSINESS

1. Discussion of Hotel/Motel tax and uses.

ADJOURNMENT

CERTIFICATION

I certify that this Notice of Meeting was posted on this _____ day of _____ 2014 at _____ a.m./p.m. as required by law in accordance with Section 303 of the Oklahoma Statutes and that the appropriate news media was contacted. As a courtesy, this agenda is also posted on the City of McAlester website: www.cityofmcalester.com.

Cora M. Middleton, City Clerk

City of McAlester
Hotel/Motel Tax

<u>City</u>	<u>Tax</u>	<u>Description/Use</u>
Ada	6.00%	County collects for Agria-Plex Event Center
Antlers	7.50%	Streets, Industrial Trust (Equally)
Ardmore	5.00%	Tourism
Atoka	5.00%	Sports Complex, Event Center, & Tourism (Equally)
Bartlesville	5.00%	Community Event center (60%) Economic Development (40%)
Bixsby	5.00%	Economic Development
Broken Arrow	4.00%	Tourism
Claremore	5.00%	City Admn. (1%) Tourism & Event center (4%)
Durant	0.00%	
Edmond	14.00%	Tourism
Elk City	8.70%	Tourism
El Reno	4.50%	Tourism & Event Center
Enid	8.00%	City of Enid (5%) County (3%)
Glenpool	5.00%	City discretion
Idabel	5.00%	Tourism
McAlester	4.00%	Tourism & Events Center
Muskogee	6.00%	Tourism
Norman	5.00%	Arts (25%) Parks (25%) Convention & Tourism (50%)
Oklahoma City	5.50%	Fairgrounds debt (54.55%) Tourism (36.36%) Events (9.09%)
Okmulgee	4.00%	Tourism & Main Street
Shawnee	5.00%	City (1%) Tourism (4%)
Stillwater	4.00%	Tourism
Tahlequah	3.00%	Tourism / Chamber
Tulsa	5.00%	Tourism
 23 City Average	 5.42%	

Dedicated Uses:

1. Tourism
2. City Funding
3. Sports/Event Center
4. Economic Development



City of Norman

April 2, 2013 Special Election Guest Room Tax Increase

On Tuesday, April 2, 2013, Norman residents will vote on whether to increase the Guest Room Tax by 1%. This is a tax paid by persons who stay in hotels and motels in Norman. In 1980, the Guest Room Tax was adopted to provide dedicated funding for encouraging, promoting and fostering convention and tourism development in Norman. The original tax rate approved by the voters was 4% and remains the same today. Whenever a guest comes to Norman and stays in a hotel room, the 4% tax is collected and those funds are spent on convention and tourism development, the arts, and parks development. Since its inception, the City has collected \$14,279,495.

The funds from this tax have paid for a number of projects in Norman, including improvements at Griffin Park baseball and softball complex, Reaves Park softball complex, community park playgrounds, and significant improvements at Westwood tennis, golf and aquatic complex.



Water slide at Westwood Aquatic Complex



Conference Attendees

Through the Norman Arts Council, events such as Jazz in June, May Fair, the Medieval Fair, the Norman Public Library's Cultural Festivals and the Norman Music Festival are supported. At this time, it is anticipated that these funds will be used for similar projects.

The question before the voters on April 2nd is whether to raise the Guest Room Tax by 1%. Based on last year's collections, this would result in an additional \$283,300 per year to be spent on convention and tourism development, the arts, and parks development. This tax would only be paid by those who stay overnight in hotels in Norman.

Because the convention business is particularly competitive, the City compared Norman's guest room tax rate with that of Oklahoma City and Tulsa. The 1% increase will put Norman in line with Tulsa's rate and 1/2% below Oklahoma City's rate.

Jazz in June



Community Walking Trail





The City of NORMAN

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APRIL 2ND GUEST ROOM TAX ELECTION

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2013 GUEST ROOM TAX ELECTION BALLOT LANGUAGE

PROPOSITION I

"SHALL ORDINANCE NO. O-1213-28 OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 8-503 OF CHAPTER 8 OF THE CODE OF ORDINANCES OF THE CITY OF NORMAN, OKLAHOMA, INCREASING THE EXCISE TAX UPON THE GROSS PROCEEDS OR GROSS RECEIPTS DERIVED FROM RENTS RECEIVED FROM OCCUPANCY OF HOTEL ROOMS BY ONE PERCENT (1%) TO A TOTAL OF FIVE PERCENT (5%) EFFECTIVE MAY 1, 2013 BE APPROVED?"

Election Information

When is the election? Tuesday, April 2, 2013. Polls are open from 7:00 a.m. to 7:00 p.m.

What are the early voting dates? If you are a registered voter in Norman, you can vote at the Cleveland County Election Board from 8:00 a.m. to 6:00 p.m. on Friday, March 29th and Monday, April 1st prior to the election. The Cleveland County Election Board is located at 641 E. Robinson St., Suite 200. Absentee ballot applications can be obtained by contacting the Cleveland County Election Board by phone at (405) 366-0210 during business hours or downloading the form from their website at www.clevelandcountyelectionboard.com.

For additional information, please contact: The City of Norman Action Center by phone at 366-5396, by emailing the Action.Center@normanok.gov or the City's website www.normanok.gov

the total amount of taxes due shall be assessed; but if a return is not filed and/or the total amount of the taxes is not paid after thirty (30) days from such due date, the penalty shall increase to twenty-five (25) percent of the total amount of taxes due. (Ord. No. 0-7980-58; Ord. No. 0-8586-35)

Sec. 8-520. Delinquent taxes.

The tax levied by this article shall be due and payable at the time filing of the returns provided for in this article is required. All taxes not paid within five (5) days from the time they become due shall be delinquent. (Ord. No. 0-7980-58)

Sec. 8-520.1. Collection by suit.

Such taxes and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claim of unsecured creditors and may be collected by suit as any other debt. (Ord. No. 0-8586-35)

Sec. 8-521. Use of funds.

All taxes collected pursuant to the provisions of this article shall be set aside and used exclusively for the purpose of encouraging, promoting and fostering the convention and tourism development of the City of Norman. Uses in parks development and in promotion of arts and humanities are thus contemplated. (Ord. No. 0-7980-58)

Sec. 8-522. Records confidential.

The confidential and privileged nature of the records and files concerning the administration of the hotel tax is legislatively recognized and declared, and to protect the same the provisions of 68 Oklahoma Statutes 1971, Section 205 of the State Sales Tax Code, and each subsection thereof, is hereby adopted by reference and made fully effective and applicable to administration of the Norman Transient Guest Room Tax as herein set forth. (Ord. No. 0-7980-58)

Sec. 8-523. Proceedings to recover tax.

(a) Whenever any taxpayer or other person shall fail to collect and pay over any tax or any tax penalty due and owing, or

Oklahoma City

All hotel tax revenues collected pursuant to the provisions of this article shall be set aside and used exclusively for the purpose of encouraging, promoting and/or foster the convention and/or tourism (visitor) development of the City by the following expenditures:

- (1) Four-elevenths of the revenues shall be expended for any projects, items, costs and/or expenses that encourage, promote and/or foster the convention and/or tourism (visitor) development of the City; and
- (2) Six-elevenths of the revenues shall be expended for improvements to the Oklahoma City Fairgrounds, not including operational costs; and
- (3) One-eleventh of the revenues shall be expended for the sponsorship and/or promotion of events recommended by the Oklahoma City Convention and Visitors Commission and anticipated to enhance the local economy through increased convention and/or tourism (visitor) activity in the City.

Owasso

In 2002, Owasso voters OK'd a 3 percent hotel tax, setting aside the funds to promote economic development, cultural enhancement and tourism. In 2008, voters approved increasing the surcharge to 5 percent. Just prior to that election, the City Council OK'd a resolution earmarking the would-be tax increase for the municipality's Strong Neighborhood Initiative.

O R D I N A N C E N O. 2130

AN ORDINANCE LEVYING AND ASSESSING AN EXCISE TAX OF FOUR PERCENT (4%) UPON THE GROSS PROCEEDS OR GROSS RECEIPTS DERIVED FROM THE RENT FROM OCCUPANCY OF HOTEL ROOMS; PROVIDING FOR EFFECTIVE DATE OF THIS ORDINANCE; PROVIDING FOR DEFINITIONS, PROVIDING IMPOSITION OF TAX, EXEMPTIONS; PROVIDING RECORDS TO BE KEPT; PROVIDING RETURNS; PROVIDING PAYMENT OF TAX; PROVIDING ASSESSMENT AND DETERMINATION OF TAX; PROVIDING REFUNDS; PROVIDING NOTICES; PROVIDING REMEDIES EXCLUSIVE; PROVIDING PROCEEDINGS TO RECOVER TAX; PROVIDING GENERAL POWERS OF THE TAX COLLECTOR; PROVIDING ADMINISTRATION OF OATHS AND COMPELLING TESTIMONY; PROVIDING DISCOUNT, DELINQUENT TAXES; PROVIDING INTEREST AND PENALTIES; PROVIDING CONFIDENTIAL RECORDS; PROVIDING AMENDMENTS; PROVIDING PROVISIONS CUMULATIVE; AND PROVIDING PURPOSE OF REVENUES.

* * * * * * * * * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF McALESTER, OKLAHOMA, THAT:

SECTION 1. Citation and Codification.

This Ordinance shall be known and cited as the City of McAlester Hotel Tax Ordinance and shall be codified as ARTICLE IV, Chapter 98, of the Ordinance of the City of McAlester.

SECTION 2. Effective Date.

This Ordinance shall become and be effective 3-1-01, subject to approval of a majority of the registered voters of the City of McAlester, Oklahoma, voting on the same in the manner prescribed by law.

SECTION 3. Definitions.

Unless a different meaning clearly appears from the context, for the purposes of this chapter, the following words and phrases shall have the meanings given herein:

A. **Person** shall mean an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of the above acting as a unit.

~B. **Operator** shall mean any person operating a hotel in this City, included, but not limited to, the owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.

~C. **Occupant** shall mean a person who, for a consideration, uses, possesses or has the right to the use or possession of any room or rooms in a hotel under any lease, concession, permit, right of access, license to use, or other agreement, or otherwise.

~D. **Occupancy** shall mean the use or possession or the right to the use or possession of any room or rooms in a hotel.

~E. **Hotel** shall mean any building or buildings, trailer or other facility in which three (3) or more rooms are used for the accommodation of such 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, inns, rooming houses, trailer houses, trailer motels, dormitory space where bed space is rented to individuals or groups, apartments not occupied by "permanent residents", as that term is hereinafter defined, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. As defined herein, "hotel" shall not include hospitals, sanitariums or nursing homes.

~F. **Room** shall mean any room or rooms of any kind in any part or portion of a hotel which is available for, let for the use of, or possessed for the purpose of lodging or sleeping.

~G. **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 therefrom whatsoever.

H. **Permanent Resident** shall mean any occupant who has or shall have the right of occupancy of any room or rooms in the same hotel for at least thirty (30) consecutive days during the current calendar year or preceding year.

~I. **Return** shall include any return filed or required to be filed as herein provided.

~J. **Tax Collector** shall mean the City Treasurer or such other Department of City Government duly designated by the City Council, to administer the collection of the tax herein levied.

SECTION 4. Imposition of Tax; Exemptions.

A. There is hereby levied an excise tax of four percent (4%) upon the gross proceeds or gross receipts derived from the rent from every occupancy of a room or rooms in a hotel in this City, except that the tax shall not be imposed where the rent is less than at the rate of Five Dollars (\$5.00) per day. This excise tax shall be in addition to any existing sales tax imposed by the City of McAlester or the State of Oklahoma.

B. No tax shall be imposed hereunder upon a permanent resident.

C. No tax shall be imposed hereunder upon the United States insofar as it is immune from taxation, the State of Oklahoma, nor any municipality or other political subdivision of the state.

D. The tax to be collected shall be stated and charged separately from the rent and shall be shown separately on any record thereof at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill, statement or charge made for such occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator as trustees for and on account of the City, and the operator shall be liable for the collection thereof and for the payment of the tax. The operator and any officer of any corporate operation shall be personally liable for the tax collected or required to be collected under this title, and the operator shall have the same right in respect to collecting the tax from the occupant or in respect to nonpayment of the tax by the occupant as if the tax were a part of the rent for the occupancy payable at the same time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he may have in the event of nonpayment of rent by the occupant; provided,

however, that the City of McAlester shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

E. Such taxes, penalty and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claim of unsecured creditors and may be collected by suit as any other debt.

F. Where the occupant has failed to pay and the operator has failed to collect a tax as imposed by this Chapter, then, in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the City, and it shall be the duty of the occupant to file a return thereof with the Tax Collector and to pay the tax imposed thereon to the Tax Collector, within fifteen (15) days after such tax was due.

G. The Tax Collector may, whenever he deems it necessary for the proper enforcement of this Chapter, provide by regulation that the occupant shall file returns and pay directly to the Tax Collector the tax herein imposed at such times as returns are required to be filed and payment over made by the operator.

H. The tax imposed by this section shall be paid upon any occupancy on or after 8-1-01, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to 8-1-01. Where rent is paid, charged, billed or falls due on either weekly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period after Aug. 1 2001, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days falling within such portion to the total number of days covered thereby. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Tax Collector may, by regulation, provide for credit or refund of the amount of such tax upon application as provided herein.

I. For the purpose of the proper administration of this Chapter, and to prevent evasion of the tax hereby imposed, it shall be presumed that all rentals are subject to the tax until facts to the contrary are established; and the burden of providing that a rent for occupancy is not taxable hereunder shall be upon the operator or the occupant.

J. No operator shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this Chapter is not considered as an element in the rent charged to the occupant.

SECTION 5. Records to be Kept.

Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon in such form as the Tax Collector may, by regulation, require. Such records shall be available for inspection and examination at any time upon demand by the Tax Collector or a duly authorized agent or employee of the City, and shall be preserved for a period of three (3) years, except that the Tax Collector may consent to their destruction within that period or may require that they be kept longer.

SECTION 6. Returns.

A. Every operator, on or before the fifteenth day of each month, shall file with the Tax Collector a return of occupancy and of rents and of the taxes payable thereon for the preceding calendar month. The date of filing shall be the date of delivery to the Tax Collector.

B. The Tax Collector 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 Tax Collector and shall contain such information as he may deem necessary for the proper administration of this code. The Tax Collector may require amended returns to be filed within twenty (20) days after notice, containing the information specified in the notice.

C. If a return required by this Chapter is not filed or if a return when filed is incorrect or insufficient on its face, the Tax Collector shall take the necessary steps to enforce the filing of a return or an amended return.

SECTION 7. Payment of Tax.

At the time of filing a return of occupancy and of rents, each operator shall pay to the City the taxes imposed upon the rents included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this chapter. All taxes for the period for which a return is required shall be due and payable 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 correctly filed shows the amount of rents and the taxes due. If any operator has twice failed to pay taxes on or before the date fixed for payment of such taxes or if any operator refuses to pay the taxes or if the Tax Collector has reasonable grounds for belief that the operator is about to cease business or leave the state or remove or dissipate assets, or if, for any similar reason he deems it necessary to protect revenues due hereunder, the Tax Collector may require an operator to file with the City either a performance and payment bond, as detailed herein, or in lieu of this bond, an escrow account or an irrevocable letter of credit as detailed herein. The performance bond, irrevocable letter of credit or escrow account shall be provided as follows:

A. A performance and payment bond in a form acceptable to the City, naming the operator as obligee thereof, executed by a surety acceptable to the City and authorized to do business in the State of Oklahoma, in a sum equal to the City-wide average daily room rental rate, to be ascertained by the Tax Collector, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times four percent (4%); or

B. An irrevocable letter of credit in a form acceptable to the City, executed by the operator and a federally insured financial institution acceptable to the City, providing for a sum equal to the City-wide average daily room rental rate, to be ascertained by the Tax Collector, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times four percent (4%); or

C. An escrow account held by the City in a sum equal to the City-wide average daily room rental rate, to be ascertained by the Tax Collector, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times four percent (4%).

SECTION 8. Assessment and Determination of Tax.

If a return required by this Chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the Tax Collector 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 such assessment, shall apply in writing to the Council of the City of McAlester for a Hearing, or unless the Tax Collector, at his discretion, shall reassess the same. After such Hearing, the Council of the City of McAlester shall give written notice of its determination to the person against whom the tax is assessed. If

the taxes and interest due are not paid within ten (10) days of assessment or reassessment by the Tax Collector or determination by the Council, in addition to the taxes and interest, the operator shall pay a penalty equal to ten percent (10%) of the taxes due.

SECTION 9. Refunds.

A. In the manner provided in this section, the Tax Collector shall refund or credit any tax erroneously, illegally or unconditionally collected if written application to the Tax Collector for such refund shall be made within two (2) years 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 Tax Collector. Whenever a refund is made, the reasons therefore 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, provided that the application is made within two (2) years of the payment by the occupant to the operator; but no refund of money shall be made to the operator until he shall first establish to the satisfaction of the Tax Collector, under such regulations as the Tax Collector may prescribe, that he has repaid to the occupant the amount for which the application for refund is made. The Tax Collector, in lieu of any refund required to be made, may allow credit therefore on payments due from the applicant.

B. An application for a refund or credit made, as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of, and the Tax Collector may receive evidence with respect thereto. After making his determination, the Tax Collector shall give notice thereof to the applicant. Such determination shall be final unless the applicant, within ten (10) days after such notice of determination, shall apply in writing to the Council for a Hearing. After such Hearing, the Council shall give written notice of its determination to the applicant.

C. A person shall not be entitled to revision, refund or credit of a tax under this section if he has had a Hearing or an opportunity for a Hearing as provided in this Chapter and has failed to avail himself of the remedies therein provided.

SECTION 10. Notices.

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

SECTION 11. Remedies Exclusive.

The remedies provided by Ordinance shall be exclusive remedies available to any person for the review of tax liability imposed by this Ordinance.

SECTION 12. Proceedings to Recover Tax.

A. Civil Remedies.

1. Whenever any operator, occupant or other person shall fail to collect and/or pay over any tax, or to owe any tax, penalty or interest imposed by this Chapter as herein provided, the Tax Collector may file notice of liens on behalf of the City of McAlester against the real estate upon which the hotel is located and/or against all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by the person owing the tax pursuant to 68 O.S. Sec. 2701, and 68 O.S. Sec. 2704.

2. The liens shall, upon proper filing, attach to the real estate and/or personal property then owned or thereafter acquired by the debtor, whether such property is used by the debtor in the operation of business or is under the authority of an assignee, trustee, or receiver for the benefit of creditors, from the date such taxes are due and payable as allowed by 68 O.S. Sec. 2704.

3. The Tax Collector shall notify the person owing the tax by personal service or by Certified Mail that the City of McAlester will file such liens if any delinquent lodging taxes, interest and/or penalties are not paid within fifteen (15) days of receiving such notice.

4. The Tax Collector may also request the City Attorney to institute an action in personam and in rem to enforce payment and collect any delinquent lodging taxes, penalties and/or interest.

B. Criminal Penalties.

1. In addition to all civil penalties provided by this Chapter, the Willful failure or refusal of any operator, occupant or other person to make reports and/or remittances as herein required or the making of any false and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this Chapter shall be an offense and upon conviction thereof the offending operator, occupant or other person shall be punished by a fine of not more than the penalty set out in Section 1-8 of the Code of the City of McAlester, excluding costs.

SECTION 13. General Powers of the Tax Collector.

In addition to all other powers granted to the Tax Collector, he is hereby authorized and empowered:

A. to make, adopt and amend rules and regulations appropriate to the carrying out of the provisions of this Chapter for the purposes thereof;

B. 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;

C. to delegate his functions hereunder to a Deputy or other employee or employees of the City;

D. to assess, reassess, determine, revise and readjust the taxes imposed by this Chapter; and

E. to prescribe methods for determining the taxable and non-taxable rents.

SECTION 14. Administration of Oaths and Compelling Testimony.

A. The Tax Collector, or employees or agents of the City duly designated and authorized by him, shall have the power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this Chapter. The Tax Collector shall have the power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this Chapter, and to examine them in relation thereto.

B. Any person who shall refuse to testify or to produce books or records, or who shall testify falsely in any material matter pending before the Tax Collector shall be guilty of an offense punishable by a fine of not more than the penalty set out in Section 1-8 of the Code of the City of McAlester, excluding costs.

SECTION 15. Discount, Delinquent Taxes.

A. At the time of filing the returns required under this Chapter with the Tax Collector, the operator shall remit therewith to the Tax Collector, except as hereinafter provided, ninety-seven percent (97%) of the tax due under the provisions of this Chapter; provided that the tax is delivered to the Tax Collector before the 15th of the month for the preceding calendar month's return, or if transmitted by mail, that the date of postmark by the U. S. Postal Service is before the 15th day of the month for the preceding month's return. In the event that payment of any tax due is not made before the 15th of the month, the operator forfeits his claim to the three percent (3%) discount and must remit to the Tax Collector one hundred percent (100%) of the taxes due. If the filing of the return and remittance of the taxes due are received by the Tax Collector after the fifteenth day of the month, the taxes are then delinquent and the operator shall pay, in addition to one hundred percent (100%) of the taxes due, interest and penalties as prescribed in Subsection 16.A. of this Article.

B. The discount granted by this section shall remunerate the operator for keeping tax records, filing reports and remitting the tax when due as required by this chapter.

SECTION 16. Interest and Penalties.

A. If an operator fails to file a return or remit the taxes due prior to the fifteenth day of the month, the operator shall pay, in addition to one hundred percent (100%) of the taxes due, the following interest and penalties:

1. One and one-half percent (1-1/2%) interest per month on the total amount of taxes due from the fifteenth day of the month to the date of filing; and
2. A penalty of ten percent (10%) of the total amount of the taxes due.

B. In addition to the penalties provided herein, the following persons shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not more than the penalty set out in Section 1-8 of the Code of the City of McAlester, excluding costs:

1. any operator or occupant who willfully fails to file a return as required by this chapter, or who files or causes to be filed, or makes or causes to be made, or causes to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this chapter which is willfully false;
2. any operator who willfully fails to file a bond required by this chapter or who willfully fails to file a registration certificate and such data in connection therewith as the Tax Collector may require, by regulation or otherwise, or who fails to display or surrender the license as required by this chapter, or who assigns or transfers such license;
3. any operator who willfully fails to charge separately from the rent the tax herein imposed, or who willfully fails to state such tax separately on any evidence of occupancy and on any bill, statement or

receipt of rent issued or employed by the operator, or who willfully fails or refuses to collect tax from the occupant;

4. any operator who willfully refers or causes reference to be made to this tax in a form or manner other than that required by this chapter; and

5. any operator who willfully fails to keep the records required by this chapter.

C. The affidavit of the Tax Collector to the effect that a tax has not been paid, that a return, bond, or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

SECTION 17. Confidential Records.

The confidential and privileged nature of the records and files concerning the administration of this tax is legislatively recognized and declared, and to protect the same, the provisions of 68 O.S. Section 205, and each subsection thereof, are hereby adopted by reference and made fully effective and applicable to administration of this tax as if they were herein set forth in full.

SECTION 18. Amendments.

The people of the City of McAlester, Oklahoma, shall by their approval of this chapter at the election herein provided, authorize the Council of the City of McAlester, Oklahoma, by Ordinance duly enacted, to make such changes or additions in the method and manner of administration and enforcing this chapter 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 electors of the City of McAlester as herein provided.

SECTION 19. Provisions Cumulative.

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

SECTION 20. Purpose of Revenues.

It is hereby declared to be the purpose of this Ordinance to provide revenues for the following specific purposes, and no others, to-wit:

1. for the operation of the Tourism and related departments of the City of McAlester;

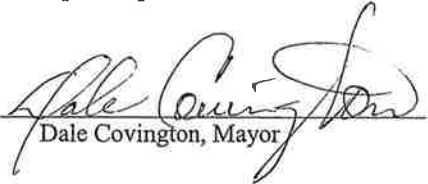
2. to adopt agreements, plans, policies, and programs to encourage the development of the City as a convention, trade show, and tourist center; and

3. to construct, reconstruct, operate, maintain and repair buildings and facilities of the City of McAlester necessary to foster the development of the City as a convention, trade show, and tourist center, and to acquire land in connection therewith.

PASSED and ADOPTED in regular session this 24th day of April 2001.

CITY OF McALESTER, OKLAHOMA
A Municipal Corporation

By

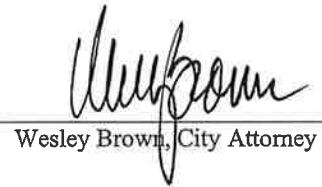

Dale Covington, Mayor

ATTEST:


Bobbie Lanz, City Clerk

Approved as to form and legality this 24th day of April 2001.

By


Wesley Brown, City Attorney

AN ORDINANCE AMENDING ARTICLE IV. HOTEL TAX, SECTION 98-106. DEFINITIONS; AND SECTION 98-107(c), IMPOSITION OF TAX; EXEMPTIONS; AND REPEALING SECTION 98-107(b); AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDERED BY THE MAYOR AND CITY COUNCIL, that:

SECTION 1: Sec. 98-106 of the Code of Ordinances, City of McAlester, Oklahoma, is hereby amended by deleting the definition of *Permanent Resident*. Remaining definitions in this section shall remain as written.

SECTION 2: Sec. 98-107(b) is hereby repealed.

SECTION 3: Sec. 98-107(c) is hereby amended to read as follows:

Sec. 98-107. Imposition of tax exemptions.

(c) The government of the United States, State Governments or any agencies or division thereof may file an application for refund of tax paid directly by the Treasury of either Government by sending proof of payment of the hotel tax to the City Treasurer of the City of McAlester, Oklahoma. Upon receipt of appropriate documentation that the tax has been paid, the Treasurer shall cause a refund of taxes to be made to the appropriate Government agency or division.

SECTION 4: EMERGENCY CLAUSE.

That an emergency is hereby declared to exist, and for the preservation of the public peace, health and safety, by reason whereof it is necessary that all acts take effect immediately and be in full force and effect from and after the passage and approval.

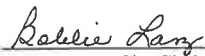
PASSED and the EMERGENCY CLAUSE ruled on separately this 11th day of February 2003.

CITY OF McALESTER, OKLAHOMA
A Municipal Corporation

By 
Dale Covington, Mayor

(SEAL)

ATTEST:


Bobbie Lanz, City Clerk

Approved as to form and legality this 11th day of February 2003.

By 
Wesley Brown, City Attorney

hereby adopted by reference and made a part of this article.

(Code 1974, § 27-66)

Sec. 98-83. Fraudulent returns.

In addition to all civil penalties provided by this article, the willful failure or refusal of any taxpayer to make reports and remittances herein required, or the making of any false and 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 taxpayer shall be punished as provided in section 1-8.

(Code 1974, § 27-67)

Sec. 98-84. Records confidential.

The confidential and privileged nature of the records and files concerning the administration of the municipal use tax is legislatively recognized and declared, and to protect the same provisions of 68 O.S. § 205 and each subsection thereof, is hereby adopted by reference and made fully effective and applicable to administration of the municipal use tax as is herein set forth in full.

(Code 1974, § 27-68)

Sec. 98-85. Provisions cumulative.

The provisions of this article shall be cumulative, and in addition to any and all other taxing provisions of the municipal ordinances.

(Code 1974, § 27-69)

Secs. 98-86—98-105. Reserved.

ARTICLE IV. HOTEL TAX

Sec. 98-106. Definitions.

Unless a different meaning clearly appears from the context, for the purposes of this chapter, the following words and phrases shall have the meanings given herein:

Hotel shall mean any building or buildings, trailer or other facility in which three or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. The term shall include hotels, apart-

ment hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, trailer houses, trailer motels, dormitory space where bed space is rented to individuals or groups, apartments not occupied by "permanent residents", as that term is hereinafter defined, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. As defined herein, "hotel" shall not include hospitals, sanitariums or nursing homes.

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

✓ *Occupancy* shall mean the use or possession or the right to the use or possession of any room or rooms in a hotel.

✓ *Operator* shall mean any person operating a hotel in this city, included, but not limited to, the owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.

Person shall mean an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of the above acting as a unit.

✓ *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 therefrom whatsoever.

✓ *Return* shall include any return filed or required to be filed as herein provided.

✓ *Room* shall mean any room or rooms of any kind in any part or portion of a hotel which is available for, let for the use of, or possessed for the purpose of lodging or sleeping.

Tax collector shall mean the city treasurer or such other department of city government duly designated by the city council, to administer the collection of the tax herein levied.

(Ord. No. 2130, § 3, 4-24-01; Ord. No. 2061, § 1, 2-11-03)

Sec. 98-107. Imposition of tax; exemptions.

(a) There is hereby levied an excise tax of four percent upon the gross proceeds or gross receipts derived from the rent from every occupancy of a room or rooms in a hotel in this city, except that the tax shall not be imposed where the rent is less than at the rate of \$5.00 per day. This excise tax shall be in addition to any existing sales tax imposed by the city or the state.

(b) Reserved.

(c) The government of the United States, state governments or any agencies or divisions thereof, may file an application for refund of tax paid directly by the treasury of either government by sending proof of payment of the hotel tax to the city treasurer of the City of McAlester, Oklahoma. Upon receipt of appropriate documentation that the tax has been paid, the treasurer shall cause a refund of taxes to be made to the appropriate government agency or division.

(d) The tax to be collected shall be stated and charged separately from the rent and shall be shown separately on any record thereof at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill, statement or charge made for such occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator as trustees for and on account of the city, and the operator shall be liable for the collection thereof and for the payment of the tax. The operator and any officer of any corporate operation shall be personally liable for the tax collected or required to be collected under this title, and the operator shall have the same right in respect to collecting the tax from the occupant or in respect to nonpayment of the tax by the occupant as if the tax were a part of the rent for the occupancy payable at the same time such tax shall become due and owing, including all rights of eviction, dispossession, repossession

and enforcement of any innkeeper's lien that he may have in the event of nonpayment of rent by the occupant; provided, however, that the city shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

(e) Such taxes, penalty and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claim of unsecured creditors and may be collected by suit as any other debt.

(f) Where the occupant has failed to pay and the operator has failed to collect a tax as imposed by this chapter, then, in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the city, and it shall be the duty of the occupant to file a return thereof with the tax collector and to pay the tax imposed thereon to the tax collector, within 15 days after such tax was due.

(g) The tax collector may, whenever he deems it necessary for the proper enforcement of this chapter, provide by regulation that the occupant shall file returns and pay directly to the tax collector the tax herein imposed at such times as returns are required to be filed and payment over made by the operator.

(h) The tax imposed by this section shall be paid upon any occupancy on or after August 1, 2001, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to August 1, 2001. Where rent is paid, charged, billed or falls due on either weekly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period after August 1, 2001, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days falling within such portion to the total number of days covered thereby. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the tax collector may, by regulation, provide for credit or refund of the amount of such tax upon application as provided herein.

(i) For the purpose of the proper administration of this chapter, and to prevent evasion of the tax hereby imposed, it shall be presumed that all rentals are subject to the tax until facts to the contrary are established; and the burden of providing that a rent for occupancy is not taxable hereunder shall be upon the operator or the occupant.

(j) No operator shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this chapter is not considered as an element in the rent charged to the occupant.

(Ord. No. 2130, § 4, 4-24-01; Ord. No. 2061, § 2, 3, 2-11-03)

Sec. 98-108. Records to be kept.

Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon in such form as the tax collector may, by regulation, require. Such records shall be available for inspection and examination at any time upon demand by the tax collector or a duly authorized agent or employee of the city, and shall be preserved for a period of three years, except that the tax collector may consent to their destruction within that period or may require that they be kept longer.

(Ord. No. 2130, § 5, 4-24-01)

Sec. 98-109. Returns.

(a) Every operator, on or before the 15th day of each month, shall file with the tax collector a return of occupancy and of rents and of the taxes payable thereon for the preceding calendar month. The date of filing shall be the date of delivery to the tax collector.

(b) The tax collector 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 tax collector and shall contain such information as he may deem necessary for the proper administration of this code. The tax collector may require amended returns to be filed within 20 days after notice, containing the information specified in the notice.

(c) If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face, the tax collector shall take the necessary steps to enforce the filing of a return or an amended return.

(Ord. No. 2130, § 6, 4-24-01)

Sec. 98-110. Payment of tax.

At the time of filing a return of occupancy and of rents, each operator shall pay to the city the taxes imposed upon the rents included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this chapter. All taxes for the period for which a return is required shall be due and payable 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 correctly filed shows the amount of rents and the taxes due. If any operator has twice failed to pay taxes on or before the date fixed for payment of such taxes or if any operator refuses to pay the taxes or if the tax collector has reasonable grounds for belief that the operator is about to cease business or leave the state or remove or dissipate assets, or if, for any similar reason he deems it necessary to protect revenues due hereunder, the tax collector may require an operator to file with the city either a performance and payment bond, as detailed herein, or in lieu of this bond, an escrow account or an irrevocable letter of credit as detailed herein. The performance bond, irrevocable letter of credit or escrow account shall be provided as follows:

- (1) A performance and payment bond in a form acceptable to the city, naming the operator as obligee thereof, executed by a surety acceptable to the city and authorized to do business in the state, in a sum equal to the city-wide average daily room rental rate, to be ascertained by the tax collector, times the number of rooms available for rent within the hotel multiplied by a factor of 30 times four percent; or
- (2) An irrevocable letter of credit in a form acceptable to the city, executed by the operator and a federally insured financial institution acceptable to the city, providing for a sum equal to the city-wide aver-

age daily room rental rate, to be ascertained by the tax collector, times the number of rooms available for rent within the hotel multiplied by a factor of 30 times four percent; or

- (3) An escrow account held by the city in a sum equal to the city-wide average daily room rental rate, to be ascertained by the tax collector, times the number of rooms available for rent within the hotel multiplied by a factor of 30 times four percent.
(Ord. No. 2130, § 7, 4-24-01)

Sec. 98-111. Assessment and determination of tax.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the tax collector 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 90 days after the giving of such assessment, shall apply in writing to the council of the city for a hearing, or unless the tax collector, at his discretion, shall reassess the same. After such hearing, the council of the city shall give written notice of its determination to the person against whom the tax is assessed. If the taxes and interest due are not paid within ten days of assessment or reassessment by the tax collector or determination by the council, in addition to the taxes and interest, the operator shall pay a penalty equal to ten percent of the taxes due.
(Ord. No. 2130, § 8, 4-24-01)

Sec. 98-112. Refunds.

(a) In the manner provided in this section, the tax collector shall refund or credit any tax erroneously, illegally or unconditionally collected if written application to the tax collector for such refund shall be made within two years 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 tax collector. Whenever a refund is made, the reasons therefore 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, provided that the application is made within two years of the payment by the occupant to the operator; but no refund of money shall be made to the operator until he shall first establish to the satisfaction of the tax collector, under such regulations as the tax collector may prescribe, that he has repaid to the occupant the amount for which the application for refund is made. The tax collector, in lieu of any refund required to be made, may allow credit therefore on payments due from the applicant.

(b) An application for a refund or credit made, as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of, and the tax collector may receive evidence with respect thereto. After making his determination, the tax collector shall give notice thereof to the applicant. Such determination shall be final unless the applicant, within ten days after such notice of determination, shall apply in writing to the council for a hearing. After such hearing, the council shall give written notice of its determination to the applicant.

(c) A person shall not be entitled to revision, refund or credit of a tax under this section if he has had a hearing or an opportunity for a hearing as provided in this chapter and has failed to avail himself of the remedies therein provided.
(Ord. No. 2130, § 9, 4-24-01)

Sec. 98-113. Notices.

Notices provided for under this chapter shall be deemed to have been given when such notices have been delivered personally to the operator or deposited in the United States mail to the last known address of the operator.
(Ord. No. 2130, § 10, 4-24-01)