

ARTICLE III. - HOTEL OCCUPANCY TAX ^[120]

⁽¹²⁰⁾ **Editor's note**— Ord. No. 2009-1-10, § I, adopted January 26, 2009, amended article III in its entirety to read as herein set out. Formerly, article III pertained to similar subject matter, and derived from Ord. No. 92-8-17, §§ II—X, adopted August 10, 1992; Ord. No. 93-8-27, § I, adopted August 23, 1993; Ord. No. 93-12-19, § I, adopted December 13, 1993, and Ord. No. 2003-7-10, §§ I, II, adopted July 28, 2003.

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Sec. 20-71. - Levied; amount.

There is hereby established and levied a tax upon the cost of occupancy of any sleeping room furnished by any hotel in the City, where the cost of occupancy is at the rate of two dollars (\$2.00) or more per day. Such tax is hereby levied at the rate of seven (7) percent of the consideration paid by the occupant of the sleeping room to the hotel.

(Ord. No. 2009-1-10, § I, 1-26-09)

Sec. 20-72. - Definitions.

As used in this article, the following words, terms and phrases are defined as follows:

Consideration shall mean the price of, or value received for, the right to use a sleeping room, bed, or dormitory space or other sleeping facility in a hotel, and includes the price of conveniences customarily provided in connection with sleeping accommodations, including mattress, sheets, bedspreads, pillows, pillow cases, bed frames, air conditioning, electricity, lighting, water, soap, towels, wash cloths, toilet tissue, shower or bath facilities, lavatory, chairs, trash receptacles, plus any other goods or services which are not ordinarily subject to sales tax. The consideration paid for a sleeping room or facility shall not include the price of food served, nor the price of personal services rendered to the occupant which are unrelated to cleaning and readying a room for occupancy, nor any sales tax, nor occupancy tax assessed by other governmental agencies, provided that these charges are stated separately on the folio or invoice of the occupant. Charges not stated separately shall be presumed to be part of the consideration paid for occupancy of a sleeping room or sleeping facility, and shall be taxed under this article.

Hotel shall mean any building in which the public may, for a consideration, obtain sleeping

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accommodations. The term shall include hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, or other buildings where rooms are furnished for a consideration, but "hotel" shall not be defined so as to include hospitals, sanitariums, or nursing homes.

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.

Occupancy shall mean the use or possession, or the right to the use or possession, of any room in a hotel if the room is one ordinarily used for sleeping.

(Ord. No. 2009-1-10, § I, 1-26-09)

Sec. 20-73. - Revenue distribution.

The revenues derived from the hotel occupancy tax levied pursuant to this article shall be expended in the following manner as provided for by V.T.C.A., Tax Code ch. 351:

Percent of levy:

(1) For operating, maintaining, improving, and otherwise supporting a civic center facility: Four (4) percent.

(2) For all other purposes allowed, subject to annual appropriation by the City Council: Three (3) percent.

Total levy: Seven (7) percent.

(Ord. No. 2009-1-10, § I, 1-26-09)

Sec. 20-74. - Collection and reporting.

(a) Every person owning, operating, managing or controlling any hotel shall collect the tax imposed under this article and pay same to the City of Plano through its Finance Department.

(b) Such taxes shall be paid by the hotel to the City of Plano on a monthly basis, and shall be received for each month within thirty (30) days following the last day of each month.

(c) A hotel may retain one (1) percent of the taxes collected on a monthly basis, pursuant to this section, provided that:

(1) The gross amount collected is reported and the retainage calculated accordingly; and

(2) No retainage will be permitted on any amount paid after thirty (30) days following the last day of each month; and

(3) Reports are filed in a form(s) prescribed by the City of Plano and all information required by that report is complete and accurately provided.

(d) A hotel not filing a report in a complete and accurate manner in a form(s) prescribed by the City of Plano shall forfeit the right for retainage as provided by this section, and shall not deduct said retainage from the amount due the City of Plano for any given month for which a complete and accurate reporting is not made. Complete and accurate shall mean provision of each and every element contained or required, in a form(s) prescribed by the City of Plano. Forms are available on the City of Plano Finance

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Department web page or may be obtained by contacting the City's Finance Department. A substitute form may be used if it is approved in advance by the Director of Finance for the City of Plano.

(e) If the City finds that the underreporting of hotel revenue is greater than two (2) percent of the hotel's reported receipts for the audit period, the hotel shall pay a fee for the cost of the audit. This audit fee can only be assessed on taxes that have been delinquent for at least two (2) complete municipal fiscal quarters at the time the audit is conducted. If the City finds any underreporting of hotel revenue or late reporting of hotel revenue, the hotel will pay the City any previously withheld retainage for any month that hotel revenue was not properly and timely reported.

(Ord. No. 2009-1-10, § I, 1-26-09)

Sec. 20-75. - Occupants—Not exempted.

Under the provisions of the Texas Tax Code, hotel occupancy tax is levied on all occupants not exempted in section 20-76. Those not exempted include the following:

- (1) Educational institutions (including State of Texas colleges and universities).
- (2) Religious and charitable organizations.
- (3) Local government entities.
- (4) Contract employees of exempt organizations.

(Ord. No. 2009-1-10, § I, 1-26-09)

Sec. 20-76. - Same—Exempt.

Under the provisions of the Texas Tax Code, hotel occupancy tax is not levied on the following:

- (1) The United States Government agencies and their officers or employees when traveling or otherwise engaged in the course of official duties.
- (2) Military personnel traveling on official military business.
- (3) The State of Texas, or an agency, institution (excluding state educational institutions), board, or commission of the State of Texas and their officers or employees when traveling or otherwise engaged in the course of official duties.
- (4) Diplomatic personnel who present a tax exemption card issued by the United States Department of State.
- (5) Occupants whose use, possession, or whose right to use or possession of a hotel sleeping room extends for at least thirty (30) consecutive days.

Any exemptions claimed shall be supported by a signed hotel occupancy tax exemption certificate and reported to the City of Plano on a form or report similar to the Hotel Occupancy Tax Exemption Report listed on the City's Finance Department web site.

(Ord. No. 2009-1-10, § I, 1-26-09)

Sec. 20-77. - Records.

Every hotel within the City shall keep and maintain accurate records of the consideration and hotel occupancy tax paid by the occupant of each sleeping room in the hotel. Such records shall include, but not be limited to, at a minimum, guest folios, tax exemption certificates, and any original documents such as posting ledgers and rate and stay adjustment reports. These records may be retained in any retrievable format, including but not limited to micro form; shall be maintained for a period of not less than four (4) years; and shall be available for inspection upon request by any employee, agent, officer or representative of the City of Plano at all reasonable times. Any adjustments or allowances made or granted shall be reported in a letter to the City of Plano's Director of Finance.

(Ord. No. 2009-1-10, § I, 1-26-09)

Sec. 20-78. - Withholding amount due in event of sale.

Under the provisions of V.T.C.A., Tax Code § 351.0041, if a hotel is sold, the purchaser shall withhold an amount sufficient to pay any amount due under this article until the seller produces a receipt showing that any amount due has been paid. If the purchaser fails to withhold an amount, the purchaser is liable to the City of Plano for the amount required to be withheld.

(Ord. No. 2009-1-10, § I, 1-26-09)

Sec. 20-79. - Penalty.

(a) A penalty of fifteen (15) percent of the tax due shall be imposed on a hotel which fails to pay a tax imposed by this article when due. The tax imposed by this article that is not paid to City of Plano when it is due shall draw interest at a monthly rate of one (1) percent from the due date.

(b) The municipal attorney or other attorney acting for the City may bring suit against a person who is required to collect the tax imposed by this article and who fails to either file a tax report or pay the tax when due. The City's attorney may collect the tax not paid or enjoin the person from operating a hotel in the City until the tax is paid. In addition to the amount of any tax owed under this article, the person is liable to the City for the City's reasonable attorney's fees and a penalty equal to fifteen (15) percent of the total amount of the tax owed.

(c) If the operator of any hotel shall fail to file a report for any period as required by this article, or shall fail to pay the tax for any period as required by this article, then the tax assessor/collector is hereby authorized to make an assessment of the tax for such period. The tax assessed, together with any penalties provided by statute, shall be a prior and superior line on all property of the hotel.

(d) Any person, firm or corporation violating any of the provisions of this article shall be subject to the penalty as provided for in section 1-4(b) of the Code of Ordinances of the City of Plano, Texas.

(e) The penalties provided for herein, are in addition to other remedies and/or actions for collection available to the City by law.

(Ord. No. 2009-1-10, § I, 1-26-09)

Sec. 20-80. - Time limitation for refunds.

A state agency may apply for a refund of hotel occupancy tax paid under this article no later than two (2) years after the end of the fiscal year in which the payment occurred. A hotel may apply for a refund

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of hotel occupancy tax erroneously paid under this article no later than twelve (12) months after the end of the month in which the payment was incurred.

(Ord. No. 2009-1-10, § I, 1-26-09)

⁽¹²⁰⁾ **State Law reference**— Occupancy tax, Vernon's Ann. Civ. St., art. 1269j-4.1, § 3a et seq. (Back)