



HOTEL OCCUPANCY TAX

**GUIDELINES CITY POLICY
APPLICATION WORKSHEET
APPLICATION FORMS
AFTER EVENT ACTION REPORT**

**HOTEL OCCUPANCY TAX USE GUIDELINES
UNDER TEXAS STATE LAW AND FUNDING APPLICATION FORM**

State Law: By law of the State of Texas, the City of Ingleside collects a Hotel Occupancy Tax (HOT) from hotels, motels, bed & breakfasts and inns. Under state law, the revenue from the HOT may be used only to directly promote tourism and the hotel and convention hotel industry. **Chapter 351 of the Tax Code states that the use of HOT funds is limited to:**

- a. Convention centers and visitor information centers:** the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing operation and maintenance of convention facilities or visitor information centers, or both;
- b. Registration of convention delegates:** the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants.
- c. Advertising, solicitations and promotions that directly promote tourism and the hotel and convention industry:** advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;
- d. Promotions of the arts that directly promote tourism and the hotel and convention industry:** the encouragement, promotion, improvement, and application of the arts that can be shown to have some direct impact on tourism and the hotel/convention industry. The impact may be that the art facility or event can show hotel nights that are booked due to their events or that guests at hotels attend the arts event. Eligible forms of art include instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion picture, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms.
- e. Historical restoration and preservation activities that directly promote tourism and the hotel and convention industry:** historical restoration and preservation projects or activities or advertising and conducting solicitation and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums.
- f. Sporting event expenses that substantially increase economic activity at hotels:** Expenses including promotional 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 city or its vicinity.
- g. Funding transportation systems for transporting tourists from hotels to and near the city to any of the following destinations:**
 - 1. The commercial center of the city;
 - 2. A convention center in the city;
 - 3. Other hotels in or near the city or;
 - 4. Tourist attractions in or near the city.The law specifically prohibits the use of local hotel tax to cover the costs for general city transit costs to transport the general public.
- h. Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.**

Mission statement of City of Ingleside: The City of Ingleside seeks to increase hotel/ motel occupancy by promoting the City of Ingleside, all of its tourism assets, and supporting local events.

City policy: To provide a unified understanding of the funding criteria between the applicant and City Council, the following guidelines will apply:

- a. Preference will be given to those requests which will be able to increase hotel occupancy.
- b. The City of Ingleside accepts applications from groups and businesses whose program fits into one or more of the above categories.
- c. The intent of the program is to provide funding for an event to help advertise and promote events increasing hotel occupancy.
- d. Continued funding in subsequent years of an event or tourism asset may be considered but should be in an amount commensurate with the anticipated return to the city in the form of HOT funds.
- e. Continued funding for annual events which have not demonstrated a progression of financial stability or a significant contribution to hotel occupancy may not be given preference.
- f. All requests for funds should be submitted in writing accompanied by the official application two weeks prior to a City Council which is held on the second and fourth Wednesday of the month.
- g. The applications will be reviewed by the Assistant City Manager of Ingleside at the earliest possible time with a recommendation given to the City Council for their next regularly scheduled meeting.
- h. The applicant is required to be present at the meeting to answer any questions regarding the application.
- i. Applicants will be notified one week prior to the meeting of the time and place for the review.
- j. City Council will have final approval for any and all application requests.

Eligibility and priority for Hotel Tax Funds: Priority will be given to those events and entities based on their ability to generate overnight visitors to Ingleside. If an event will not generate any meaningful hotel night activity, it is not eligible for receipt of hotel occupancy tax funds. Events can prove this potential to generate overnight visitors by:

- a. Historic information on the number of room nights used during previous years of the same events;
- b. Current information on the size of a room block that has been reserved at area hotels to accommodate anticipated overnight guests attending the event requesting hotel tax funds;
- c. Historical information on the number of guests at hotel or other lodging facilities that attended the funded event; and/ or
- d. Examples of marketing of the programs and activities that are likely to generate encourage overnight visitors to local lodging properties.

Use of local vendors: The City encourages all event organizers to patronize Ingleside businesses for food, supplies, material, printing, etc. when feasibly possible as this increases sales tax and overall economic well-being of the City.

Priority will be given to those applicants who support the local businesses.

Use of revenues from event: A portion of the revenues from any event and/or project receiving any type of funding assistance from the HOT funds should be channeled back into the future costs of operating that same event or the continued operation of the project. No other outside event(s), project, charity, etc., sponsored by the host organization may profit from the _____ (FILL IN NAME OF ENTITY REVIEWING FUNDING REQUESTS)'s funding of a particular event. (Remove or amend this provision if the event has a substantial impact on tourism and hotel activity but has a portion of its proceeds channeled to outside benevolent programs.)

Approved events shall not comingle HOT funds with any other event funding. Appropriate expenditures shall be drawn on an account expressively and exclusively established for HOT funds.

In certain circumstances, the funding of pre-event deposits may be approved prior to the event after Council consideration and action on the contract. The event coordinator should submit this type of funding request prior to paying a deposit.

Supplemental information required with application: Along with the application, please submit the following:

_____Proposed Marketing Plan for Funded Event

_____Schedule of Activities or Events Relating to the Funded Project

Submit to: City of Ingleside Attention:
Assistant City Manager
P. O. Drawer 400
Ingleside, Texas 78362
78362 -2815

For Questions Contact: Assistant City Manager
2665 San Angelo St.
Ingleside, Texas 78362
361.775.2517

Application Project Worksheet

A. Expenditures	a. Applicant's Grant Request	b. Cash from all other sources	c. In-kind (no cash paid for services)	Total of a, b & c
1. Personnel				
Administrative				
Artistic				
Technical				
Other Personnel				
2. Fees for outside professional services				
Administrative				
Artistic				
Technical/Other				
3. Space Rental				
4. Equipment Rental				
5. Travel/Transportation				
6. Promotion/Printing				
7. Costumes/Royalties				
8. Other (supplies, postage, etc.)				
		Total Expenditures		
B. Revenues - (For this project only) include in-kind services				
1. This grant request				
2. Admission & ticket sales				
3. Concessions				
4. Individual donations				
5. General funds budgeted				
6. Additional grants				
a. Arts				
b. Chamber				
c. Other				
	Total Income & Contributions			
	Total In-kind			
		Total Revenues		

Application for HOT Tax Funding

Date: _____

Organization Information

Name of Organization: _____

Address: _____

City, State, Zip: _____

Contact Name: _____ Contact Phone Number: _____

Web Site: _____

Address of Event: _____

Non-Profit or For-Profit status: _____ Tax ID#: _____

Entity's creation date: _____

Purpose of your organization: _____

Event Information

Name of event or project: _____

Date of event or project: _____

Primary location of event or project: _____

Amount requested: \$ _____

How will the funds be used?: _____

Primary purpose of funded activity/ facility: _____

Percentage of Hotel Tax support of related costs

_____ Percentage of total **event costs** covered by Hotel Occupancy Tax

_____ Percentage of total **facility costs** covered by Hotel Occupancy Tax for the funded event

_____ Percentage of **staff costs** covered by Hotel Occupancy Tax for the funded event

If staff costs are covered, estimate percentage of time staff spends annually on the funded event(s) compared to other activities _____%

Which category or categories apply to funding request, and amount requested under each category:

- a) **Convention Center or Visitor Information Center:** construction, improvement, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both. Amount requested under this category: \$ _____
- b) **Registration of Convention Delegates:** furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants. Amount requested under this category: \$ _____
- c) **Advertising, Solicitations, Promotional programs to attract tourists and convention delegates** or registrants to the municipality or its vicinity. Amount requested under this category: \$ _____
- d) **Promotion of the Arts that Directly Enhance Tourism and the Hotel & Convention Industry:** the encouragement, promotion, improvement, and application of the arts that can be shown to have some direct impact on tourism and the hotel/convention industry. The impact may be that the art facility or event can show hotel nights that are booked due to their events or that guests at hotels attend the arts event. Eligible forms of art include instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture photography, graphic and craft arts, motion picture, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms. Amount requested under this category: \$ _____
- e) **Historical restoration and preservation activities that directly promote tourism and the hotel and convention industry:** historical restoration and preservation projects or activities or advertising and conducting solicitation and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums. Amount requested under this category: \$ _____
- f) **Sporting Event Expenses that Substantially Increase Economic Activity at Hotels:** Expenses including promotional 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 city or it's vicinity. Amount requested under this category: \$ _____
- g) **Funding transportation systems for transporting tourists from hotels to and near the city to any of the following destinations:**
 - I. the commercial center of the city;
 - II. a convention center in the city;
 - III. other hotels in or near the city; or
 - IV. tourist attractions in or near the city.

The law specifically prohibits the use of the local hotel tax to cover the costs for general city transit costs to transport the general public.

Amount requested under this category: \$ _____

What sites or attractions will tourists be taken to by this transportation? _____

Will members of the general public (non-tourists) be riding on this transportation? _____

What percentage of the ridership will be local citizens? _____

h) **Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.** Amount requested under this category: \$ _____

What tourist attractions will be subject of the signs? _____

i) **Expenses including promotional expenses, directly related to a sporting event in which the majority of participants are tourists.** The event must substantially increase economic activity at hotels within the city or its vicinity. Amount requested under this category: \$ _____

How many individuals are expected to participate in the sporting related event? _____

How many of the participants at the sporting related event are expected to be staying in a local hotel? _____

Quantify how the sporting related event will substantially increase economic activity at hotels within the city or its vicinity.

Questions for All Funding Request Categories:

1. How many years have you held this Event or Project? _____
2. Expected Attendance: _____
3. How many area hotel rooms do you expect to be filled for this event? _____
4. Do you reserve a room block for this event at an area hotel and if so, for how many rooms and at which hotels? _____
5. List other years (over the last three years) that you have hosted your Event or Project with amount of assistance given from HOT and the number of hotel rooms used:

Month/Year held	Assistance amount	Number of hotel rooms used
------------------------	--------------------------	-----------------------------------

_____	_____	_____
_____	_____	_____

6. How will you measure the impact of your event on area hotel activity (e.g., room block usage information, survey of hoteliers, etc.) _____

7. Please list other organization, government entities, and grants that have offered financial support to your project: _____

8. Will the event charge admission? Do you anticipate a net profit from the event? If there is a net profit, what is the anticipated amount and how will it be used? _____

9. Please list all promotion efforts your organization is coordinating:
 - Digital
 - Radio
 - TV
 - Other: _____
10. Will you negotiate a special rate or hotel/ event package to attract overnight stays?

11. What new marketing initiatives will you utilize to promote hotel and convention activity for this event?

12. What geographic areas does your advertising and promotion reach: _____

13. If the funding requested is related to a permanent facility (e.g., museum, visitor center):

Expected attendance monthly/ annually: _____

Percentage of those in attendance that are staying at area hotels/ lodging facilities: _____%

14. What method will you use to document how many attendees will stay overnight in a hotel room in Ingleside?

Questionnaire or survey

Registration form

Guest book

Hotel room block report

Other, please describe: _____

15. Any damages to city property or parks will result in money being deducted from HOT funds for the applicant.

Applicant: _____ Reviewed by: _____

Approved by City Council on: _____ Assistant City Manager: _____

Note: You are requested to submit copies of the above documentation showing hotel room nights associated with your event with your Post Event Report.

All applications will be submitted by the end of June for the budgeting process for the following fiscal year which runs from October 1 to September 30. Events shall occur during the fiscal year to correspond with the budget.:

Assistant City Manager
P.O. Drawer 400
Ingleside, Texas 78362
361.776.3385

Part V: Supplemental Information: Please attach the following to the application prior to submission:

- Your organization's most recent financial statements, including a copy of the most current audit or review conducted. If a formal audit is not conducted, please describe the mechanism used by your organization to validate expense\$ (i.e., does the Board review?).
- A copy of your agency's IRS tax exempt certificate.
- Your organization's current budget, approved by your organization's board.
- Income statement from past event(s) that have received HOT Funds in the 12 months preceding your application.
- Proposed budget for event to be funded in whole or in part with grants from this application with line items where HOT Funds will be used highlighted. Include all items you expect the *HOT* funding to pay for, including salaries, benefits, and operating expenses - even if HOT Funds are only covering a portion of certain expenses.
- One or more of the following to demonstrate potential to generate overnight visitors:
Established events:
 - a) historic information documenting the number of room nights used during previous years of the same events;
 - b) historic information documenting the number of guests at hotel or other lodging facilities that attended the funded event (through surveys, guest directories, or other sources; and/or new events;
 - c) current information on the size of a room block that has been reserved at area hotels to accommodate anticipated overnight guests attending the funded event;
 - d) examples of the planned marketing of the programs and activities that will likely generate overnight visitors to local lodging properties from this event

Post Event Report Form

By law of the State of Texas, the City of Ingleside collects a Hotel Occupancy Tax (HOT) from hotels, motels, and bed & breakfast inns. The revenue from the HOT may be used only to directly promote tourism and the convention and hotel industry. The use of HOT funds is limited to:

- a. **Convention Centers and Visitor Information Centers**
- b. **Registration of Convention Delegates**
- c. **Advertising, Solicitations and Promotions that Directly Promote Tourism and the Hotel and Convention Industry**
- d. **Promotions of the Arts that Directly Promote Tourism and the Hotel and Convention Industry**
- e. **Historical Restoration and Preservation Activities that Directly Promote Tourism and the Hotel and Convention Industry**
- f. **Sporting Event Expenses that Substantially Increase Economic Activity at Hotels:**
- g. **Funding transportation systems for transporting tourists from hotels to and near the city to any of the following destinations:**
- h. **Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.**

The City of Ingleside accepts applications from groups and businesses meeting the above criteria and wishing to receive HOT funds. **All entities that are approved for such funds must submit a Post Event Report Form within 60 days of each funded event.** The report will be reviewed by the City to determine how well the entity met its goals and be used in consideration of future hotel occupancy tax funding requests. Priority will be given to those events that demonstrate an ability to generate overnight visitors to Ingleside.

POST EVENT REPORT FORM

Date: _____

ORGANIZATION INFORMATION

Name of Organization: _____

Address: _____

City, State, Zip: _____

Contact Name: _____

Contact Phone Number: _____

PROJECT OR EVENT

Name of Event or Project: _____

Date of Event or Project: _____

Primary Location of Event or Project: _____

Primary Purpose of Funded Event/Project: _____

Amount Received from Hotel Occupancy Tax Funds: _____

Amount Used from Hotel Occupancy Tax Funds: _____

How many years have you held this Event or Project? _____

Event Funding Information

1. Actual percentage of funded Event costs covered by hotel occupancy tax: _____

2. Actual percentage of Facility costs covered by hotel occupancy tax (if applicable): _____

3. Actual percentage of Staff costs covered by hotel occupancy tax (if applicable): _____

4. If staff costs were covered, estimate of actual hours staff spent on funded Event: _____

5. Did the event charge admission? Was there a net profit from this event? If there was a Net profit, what was the amount and how is it being used?

Event Attendance Information

1. How many people did you predict would attend this Event? (Number submitted in application for hotel occupancy tax funds): _____
2. What would you estimate was the actual attendance at the event? _____
3. How many room nights were generated at Ingleside hotels, motels, or bed & breakfasts by attendees of this Event or Project? _____
4. If this Event has been funded by hotel occupancy tax in the last three years, how many room nights were generated at Ingleside hotels, motels, or bed & breakfasts by attendees of this Event or Project? _____

Last Year _____
Two Years Ago _____
Three Years ago _____

5. What method did you use to determine the number of people who booked rooms at Ingleside hotels, motels, or bed & breakfasts (e.g.; room block usage. information, survey of hoteliers, etc.)? _____

6. Was a room block established for this Event at an area hotel(hotels) _____, and if so, did the room block fill. _____ If the room block did not fill, how many rooms were picked up? _____

Event Promotion Information

1. Please check all efforts your organization actually used to promote this Event and how much was actually spent in each category:

Newspaper: \$ _____
Radio: \$ _____
TV: \$ _____
Press Release \$ _____
Other \$ _____
2. Did you include a link to the Ingleside Visitor's Center or other source on your promotional handouts and in your website for booking hotel nights during this event? _____
3. Did you negotiate a special rate or hotel/event package to attract overnight stays? _____

4. What new marketing initiatives did you utilize to promote hotel and convention activity for this Event?

5. Please attach samples of documents showing how the City of Ingleside was recognized in your advertising/promotional campaign.

6. Please attach at least one sample of all forms of advertising/promotion used in your campaign. If the sample itself does not indicate the medium (radio, TV, print, or mail) used or where the advertising took place (e.g. a city's newspaper, or a radio spot that does not indicate the city where the spot was played), please include other information that would show location of the advertising and medium utilized.

Sporting Related Events

1. If the Event funded by hotel occupancy tax was a sporting-related function/facility, how many individuals actually participated in this event? _____

2. If the event was a sporting-related function/facility, how many of the participants were from another city or county? _____

3. If the event was a sporting-related function/facility, quantify how the activity substantially increased economic activity at hotel and motels within the city or its vicinity?

Additional Event Information

What Ingleside businesses did you utilize for food, supplies, materials, printing, etc?

Please Submit no later than 60 days after the event to:

City of Ingleside Attn:
Assistant City Manager
P.O. Drawer 400
Ingleside, TX 78362

What Cities Need to Know to Administer Municipal Hotel Occupancy Taxes

Abridged Version

Texas Hotel & Lodging Association

REVISED 2018

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Criteria #2: Every expenditure of the hotel occupancy tax must clearly fit into one of nine statutorily provided categories for expenditure of local hotel occupancy tax revenues.

- 1) Funding the establishment, improvement, or maintenance of a convention center
- 2) or visitor information center
- 3) Paying the administrative costs for facilitating convention registration.
- 4) Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity.
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Editor's Note

This is the abridged version of THLA's *What Cities Need to Know to Administer Municipal Hotel Occupancy Taxes*. A full version of this article, with information including expanded information on hotel tax collection, tax exemptions, and city-specific rules, is available by contacting THLA at 512-474-2996 or emailing us at news@texaslodging.com

Authorized Entities

All incorporated Texas municipalities, including general law and home rule cities, may enact a hotel occupancy tax within the city limits.¹ A city with a population of under 35,000 may also adopt the hotel occupancy tax within that city's extraterritorial jurisdiction (EU).² Most cities are eligible to adopt a hotel occupancy tax at a rate of up to 7 percent of the price paid for the use of a hotel room.³ Additionally, a city or county may not propose a hotel occupancy tax rate that would result in a combined hotel occupancy tax rate imposed from all sources that would exceed 17 percent of the price paid for the room.⁴ If a city adopts the hotel occupancy tax within its ETJ, the combined state, county, and municipal hotel occupancy tax rate may not exceed 15 percent.⁵ Texas has among the highest combined hotel occupancy tax rates of any major metropolitan areas in the nation, with El Paso at 17 ½ percent, Houston at 17 percent, and San Antonio at 16¾ percent.⁶

In addition to local hotel occupancy taxes, all lodging properties operating in Texas are subject to a six percent state hotel occupancy tax.⁷ Governed under Chapter 156 of the Texas Tax Code, the state hotel occupancy tax is administered by the Texas Comptroller. Funds from the state six percent hotel occupancy tax flow directly to the Texas Comptroller's office and are largely used for the general governmental operations of the State. A portion of the state hotel occupancy tax revenue also goes toward funding tourism promotion through Texas's ad campaign. Most Texans know this successful ad campaign by its famous tagline, "Texas, it's like a whole other country."

Collecting the Tax

Under the Texas Tax Code, the following businesses are considered "hotels" and are required to collect hotel occupancy taxes from their guests: "Any building or buildings in which members of the public obtain sleeping accommodations for consideration" for less than 30 days, including a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast facilities.⁸ Additionally, a "short-term rental," defined as the rental of all or part of a residential property to a person who is not a permanent resident, is subject to hotel occupancy taxes.⁹ The Texas Administrative Code also includes "manufactured homes, skid mounted bunk houses, residency inns, condominiums, cabins, and cottages within the definition of a "hotel" if the facility is rented for periods of under 30 days.¹⁰ Hospitals, sanitariums, nursing homes, dormitories or other non-hotel housing facilities owned by institutions of higher education, and oilfield portable units do not collect the tax.¹¹ Subject to various exemptions, the hotel tax is imposed on any "person" who pays for the use of a room in a hotel, including corporations, organizations, and other legal entities. The hotel room must cost \$2 or more per day for the local hotel tax to apply, and \$15 or more per day for the state hotel tax to apply.¹²

Meeting rooms versus sleeping rooms:

The rental of sleeping rooms in hotels is subject to both state and local hotel taxes. However, there is a difference in how state and local hotel taxes apply to the rental of hotel meeting rooms. While the rental of sleeping rooms in hotels are subject to both state and local hotel taxes, meeting room rentals are not subject to local hotel occupancy taxes.¹³ The rental of a meeting room or meeting space in a hotel is subject to the state 6 percent hotel occupancy tax, provided the room or space is physically located in a structure that also contains sleeping rooms.¹⁴ For meeting rooms and banquet halls located in a structure that is physically separated from a structure that contains sleeping rooms, neither state nor local hotel occupancy taxes apply to that rental of those meeting rooms or banquet halls, provided rental costs or charges are separately stated from any lodging costs or charges on the guest's invoice or receipt.¹⁵

However, it must be noted that sales tax may apply to the costs associated with the rental of meeting rooms or banquet halls located in a structure that is physically separated from a structure that contains sleeping rooms, if the lodging facility provides food or beverage service that is subject to sales tax.¹⁶ Such sales tax would apply to the meeting room or banquet hall rental costs or charges regardless of whether the food or beverage charges are separately stated on the guest's invoice or receipt.¹⁷

Food and beverage and other hotel charges:

Certain charges assessed by a hotel to a guest are subject to hotel occupancy taxes, while other added charges are subject to state and local sales tax. Common hotel charges usually subject to sales taxes (but generally not subject to hotel occupancy taxes) are banquet service fees, food and beverage fees, movie rentals, dry cleaning/laundry services, internet connection, parking, and portage or bellhop fees.

Hotel charges related to occupancy of a sleeping room or readying a sleeping room for occupancy are usually subject to hotel occupancy taxes only. Common hotel charges subject to hotel occupancy tax are rollaway bed charges, pet charges, smoking fees, room damage fees, room safe charges, and late or early checkout fees.¹⁸ It is important to note that if a hotel offers services as part of a package rate included with lodging, and the price of a specific good or service is not separately stated on a guest's invoice, bill, or folio, the entire package is subject to hotel occupancy taxes.¹⁹

Additionally, a special rule applies to whether hotel occupancy taxes are imposed on a hotel room rental cancellation fee. A 1989 Texas Comptroller's hearing concluded that hotel taxes are not due on charges to guests who 1) cancel more than 30 days before the scheduled stay begins, or 2) when the charge to the guest is less than the reserved room rate.²⁰ This rule applies both to individual reservations and also to group contracts.²¹

Application of local hotel tax rate increases on pre-existing contracts

If a municipality increases its hotel tax rate, the increased tax rate does not apply to a hotel room under a contract that was executed before the date the increased rate takes effect and if the contract provides for payment of the tax at the rate in effect when the contract was executed.²² This statute does not apply if the contract's terms state that the contract is subject to change or modification from a tax rate increase.²³

Exemptions from the Local Tax

Texas law provides certain hotel tax exemptions based on the length of a guest's stay or the guest's affiliation with an exempt organization. Texas law is more permissive for exemptions from the state 6% hotel occupancy tax than it is for local hotel tax exemptions. The state hotel occupancy tax allows for an exemption for the following entities: educational, charitable, and religious entities are often exempt from the state hotel occupancy tax. These entities are *not exempt* from local hotel occupancy taxes.²⁴

Focusing specifically on the local hotel occupancy taxes, there are primarily four categories of exemptions permitted from municipal and county hotel occupancy taxes:

- 1) **Federal Employees:** Federal employees traveling on official business.
- 2) **Diplomats:** Foreign diplomats with a tax-exempt card issued by the U.S. Department of State;
- 3) **High Ranking State Officials:** A very limited number of state officials with a hotel tax exemption card (e.g. heads of state agencies, state legislators and legislative staff, members of state boards and commissions, and state judges); and
- 4) **Permanent Resident/Over 30-Day Stay:** Persons or businesses who have agreed in advance to use a hotel room for more than 30 consecutive days (i.e. the "permanent resident" hotel tax exemption).²⁵
- 5) A full version of this article with information including expanded information on tax exemptions is available by contacting THLA.

Penalties for Failure to Report or Collect the Tax

The local hotel occupancy tax statutes provide for specific penalties a city may assess against hotel operators who fail to file the hotel tax collections report, file late or without full payment, or produce false tax returns.²⁶

A full version of this article with information including expanded information on hotel tax penalties is available by contacting THLA.

Use of Local Hotel Occupancy Tax Revenues

There is a two-part test for every expenditure of local hotel occupancy tax.²⁷

Criteria #1: First, every expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry.²⁸

Under the Tax Code, every event, program, or facility funded with hotel occupancy tax revenues must be likely to do two things: 1) directly promote tourism; and 2) directly promote the convention and hotel industry.²⁹ "Tourism" is defined under Texas law as guiding or managing individuals who are traveling to a different, city, county, state, or county.³⁰ A "direct" promotion of the convention and hotel industry has been consistently interpreted by the Texas Attorney General as a program, event, or facility likely to cause increased hotel or convention activity.³¹ This activity may result from hotel or convention guests

that are already in town and choose to attend the hotel tax funded facility or arts or historical event, or it may result from individuals who come from another city or county to stay in an area lodging property at least in part to attend the hotel tax funded event or facility.

If the funded event or facility is not reasonably likely to directly enhance tourism and the hotel and convention industry, local hotel occupancy tax revenues cannot legally fund it.³² However, it is important to note that events and facilities that do not qualify for hotel occupancy tax funding are often still legally eligible for city funding from most of the other funding sources available to the city (general property tax revenues, general sales tax revenues, franchise fee revenues, etc.). State law is stricter in terms of how the local hotel occupancy tax revenues can be spent.

There is no statutory formula for determining the level of impact an event must have to satisfy the requirement to directly promote tourism and hotel and convention activity.³³ However, communities with successful tourism promotion programs generally award the amount of the hotel occupancy tax by the proportionate impact on tourism and hotel activity incident to the funding request. Entities applying for hotel occupancy tax revenue funding should indicate how they will market the event to attract tourists and hotel guests. If an entity does not adequately market its events to tourists and hotel guests, it is difficult to produce an event or facility that will effectively promote tourism and hotel activity.

A city or delegated entity should also consider whether a funded event will be held in a venue that will likely attract tourists and hotel guests. For example, if an event is held in a local school or community center, it may be less likely to attract tourists than if it is held at a local performing arts venue, museum, or civic center. Each community will need to assess whether the facility hosting the function is likely to attract tourists and hotel guests. Similarly, if an event is a community picnic, local parade, educational class, or other similar type of event, it is often not likely to attract tourists and hotel guests and would likely not be eligible for hotel occupancy tax funding.

Finally, it is a good practice to utilize a hotel tax application form. THLA has a sample hotel occupancy tax application form and a "post event" form that are already in use by many city governments throughout Texas. For a copy of these two forms, simply call THLA at (512) 474-2996, or email THLA at news@texaslodging.com. These forms pose questions of funding applicants such as "Do you have a hotel room block for your events?," and "What do you expect to be the number of room nights sold for this event?" Additionally, the application asks if the entity has negotiated a special hotel price for attendees of their funded event. If the entity does not find the need to reserve a hotel block or negotiate a special hotel rate, it is not likely that they anticipate their event/swill have a meaningful impact on hotel activity.

Funded entities can also visit with area hoteliers who, in many cases, can provide feedback on whether any of their hotel guests expressed an interest in attending such events or facilities in the past. Hotel front desk and management staff usually know what local events and facilities were of interest to their guests by notes in their reservation systems, requests for directions, information, and transportation to such venues by hotel patrons.

After an applicant's event or program is offered for several years, the applicant should have a reasonable idea as to whether their event or program's attendance includes a number of tourists and hotel guests. For example, some entities track whether guests are staying at local hotels via their guest registry. Other entities measure potential out-of-town attendance from their ticket sales records or other survey

It is important to note that Texas law also provides that the hotel occupancy tax may not be used for general revenue purposes or general governmental operations of a municipality.³⁴ It also may not be used to pay for governmental expenses that are not directly related to increasing tourism and hotel and convention activity.³⁵ For example, consider a request to use the hotel occupancy tax to pay for construction of additional lighting, restrooms, roads, sidewalks, or landscaping in a downtown area. These are expenditures for which the city would traditionally use its general revenues. Therefore, such an expenditure would violate the prohibition against using the hotel tax for "general governmental operations of a municipality."³⁶ It is difficult to argue that such improvements to a non-tourism facility would "directly" promote tourism and hotel activity. At best, one could argue the improvements would "indirectly" enhance tourism and hotel activity- which is not sufficient under the clear language of the Tax Code to qualify for funding from the hotel occupancy tax.

Criteria #2: Every expenditure of the hotel occupancy tax must clearly fit into one of nine statutorily provided categories for expenditure of local hotel occupancy tax revenues.³⁷

The nine categories for expenditure of the hotel occupancy tax are as follows:

1) Funding the establishment, improvement, or maintenance of a convention center or visitor information center.

This category allows expenditures of the hotel tax for the creation, improvement, or upkeep of a convention center or a visitor information center.³⁸ The term "convention center" is defined to include civic centers, auditoriums, exhibition halls, and coliseums that are owned by the city or another governmental entity or that are managed in whole or in part by the city.³⁹ It also includes parking areas in the immediate vicinity of a convention center facility, and certain hotels that are owned by the city or another governmental entity, or that are managed in whole or in part by the city.⁴⁰ It does not include facilities that are not of the same general characteristics as the structures listed above.

Texas law specifies that for a facility to be funded as a convention center, it must be a facility primarily used to host conventions and meetings.⁴¹ "Primarily used" in this context would arguably mean that more than 50 percent of the bookings for the facility are to host conventions or meetings that directly promote tourism and the hotel and convention industry.⁴² In other words, holding local resident meetings in a facility would not count toward qualifying the facility as a convention center, but meetings of individuals from out-of-town who in part stay at hotels would qualify.

Simply naming a facility a convention center or visitor information center does not automatically qualify the facility as a "convention center." The authority to use the hotel occupancy tax for facilities is limited and any such facility must meet the above noted "primary usage" test. For example, general civic buildings such as the city hall, local senior citizen centers or activity centers would not qualify as convention centers- that could be funded by hotel tax.

1) Paying the administrative costs for facilitating convention registration.

This provision allows expenditures for administrative costs that are actually incurred for assisting in the registration of convention delegates or attendees.⁴³ This is generally an expenditure for larger cities that hold large conventions and includes covering the personnel costs and costs of materials for the registration of convention delegates or attendees.

2) Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity.

This provision allows expenditures for solicitations or promotional programs/advertising directly related to attracting tourists and convention delegates to the city or its vicinity.⁴⁴ Such expenditures are traditionally in the form of internet, newspaper, mail, television, or radio ads; or solicitations to promote an event or facility. The advertising or promotion must directly promote the hotel and convention industry.⁴⁵ For example, the Texas Attorney General ruled that the local hotel occupancy tax may not be used for advertising or other economic development initiatives or improvements to attract new businesses or permanent residents to a city.⁴⁶

In certain cases, a city may be able to use the advertising and promotion category to justify covering the costs of advertising an event that will attract tourists and hotel guests, even though the administrative or facility costs for the underlying event would not qualify for hotel tax funding.⁴⁷

3) Expenditures that promote the arts.

This section authorizes the expenditure of local hotel occupancy tax for a variety of art-related programs that also promote tourism and local hotel and convention activity.⁴⁸ Specifically, it allows funding 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. However, it is not enough that a facility or event promotes the arts; Texas law requires that the arts related expenditure also directly promote tourism and the hotel and convention industry.⁵⁰

Section 351.101(a) of the Tax Code specifically states that "the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry." The Texas Attorney General reaffirmed this standard when it held in Opinion GA-0124: "Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue only to promote tourism and the convention and hotel industry, and only for the specific uses listed in the statute."

Additionally, the amount of funding a city allocates to the arts category may be limited by statute. See the "Special Rules" section of this guide.

Attorney General opinion on arts facilities

In 2017, the Texas Attorney General issued opinion number KP-0131 regarding whether a city can expend hotel tax revenues for an arts-related facility under the arts category of the Tax Code. This opinion was requested by the City of Lakeway regarding funding the construction of a new performing arts center (referred to as "PAC"), to be owned by the City. The City of Lakeway requested an Attorney General opinion on whether the City may legally use hotel occupancy tax revenue to pay for 1) a feasibility study for the PAC, and 2) the construction, operation, and maintenance of the PAC.

In Opinion KP-0131, the Attorney General took a strict position on using local hotel tax revenue for an arts facility. The opinion states that the phrase, "promotion of the arts," in the state statute does not expressly authorize the use of municipal hotel tax revenues for the construction of arts facilities. The opinion continues, "construction costs of theater facilities, considered alone, are not within the scope" of the arts category of hotel occupancy tax expenditures.⁵¹ Based on this reasoning, it seems that the Texas Attorney General holds that funding of a physical structure with local hotel tax revenue must be coupled with some other authorized category of hotel tax expenditures aside from "promotion of the arts" alone.

4) Funding historical restoration or preservation programs.

A city may spend a portion of its hotel occupancy tax revenues to enhance 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 that are likely to attract tourists and hotel guests.⁵² Texas law does not limit such funding to structures that are owned by a public or nonprofit entity, or to whether the project is listed on a historic registry, but the city may choose to impose such limitations.

It is not enough that a project or activity event merely be historical in nature; Texas law requires that the historical related expenditure also directly promote tourism and the hotel and convention industry.⁵³ Section 351.101(a) of the Tax Code specifically states that "the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry." The Attorney General in Opinion GA- 0124 (2003) reaffirmed this standard when it held: "Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue "only to promote tourism and the convention. and hotel industry" and only for the specific uses listed in the statute."

Additionally, the amount of funding a city allocates to the historical programs category may be limited by statute. See the "Special Rules" section of this guide, starting on page 24.

5) Funding certain expenses, including promotional expenses, directly related to a sporting event within counties with a population of under 1 million.

This section authorizes a municipality located in a county with a population of under 1 million to use local hotel occupancy tax revenue to fund certain expenses, including promotional expenses, directly related to a sporting event.⁵⁴ To qualify under this authorization, the sporting event must be one that would "substantially increase economic activity at hotels and motels within the city or its vicinity."⁵⁵ The statutory authorization also requires that a majority of the participants in the sporting event also be tourists to the area.⁵⁶

This category is intended to allow communities to fund the event costs for sporting tournaments that result in substantial hotel activity. For example, if a city had to pay an application fee to seek a particular sporting event or tournament, it could use hotel tax for such an expenditure if the sporting event would substantially increase economic activity at hotels and the city was within a county of under one million population. The requirement that a majority of the participants must be "tourists" is included in the statutory authority to prohibit the use of local hotel tax for sporting related facilities or events that are purely local (e.g.; local recreation centers, local little league and parks events, intramural sports, etc.).

6) Funding the enhancement or upgrading of existing sports facilities or sports fields for certain municipalities.

Certain statutorily bracketed cities may use local hotel occupancy tax to enhance and upgrade existing sports facilities owned by the municipality.⁵⁷ The municipality must own the sporting facility, and the municipality must meet applicable population requirements. A full version of this article, with information including which cities are eligible for this category, is available by contacting THLA.

Texas law further requires that before local hotel tax to be used for this purpose, the sports facilities and fields must have been used a combined total of more than 10 times for district, state, regional, or national sports tournaments in the preceding calendar year.⁵⁸

If hotel tax revenues are spent on enhancing or upgrading a sports facility, the municipality must also determine the amount of "area hotel revenue" generated by hotel activity from sports events held at the hotel tax funded facility for five years after the upgrades to the sport facility are completed.⁵⁹ The area hotel revenues that were generated from sports events at the hotel tax funded facility over that five year period must at least equal the amount of hotel tax that was spent to upgrade the sports facility.⁶⁰ If the amount of hotel tax that was spent on the facility upgrades exceeds hotel revenue attributable to events held at that facility over that five year period, the municipality must reimburse the hotel occupancy tax revenue fund any such difference from the municipality's general fund.⁶¹

For example, if a city spent \$400,000 on improvements to its soccer fields, it would have to show at least \$400,000 in area hotel revenue directly attributable to events held at that soccer field over the five-year period after the soccer field improvements were completed. If the city could only show \$300,000 in hotel industry revenue due to events held at that soccer field, the city would have to reimburse the city hotel tax with the \$100,000 difference from the city's general fund.

7) Funding transportation systems for tourists

Often with conventions and large meetings, there is a need to transport the attendees to different tourism venues. In 2007, the Texas Legislature authorized the use of city hotel tax for any sized city to cover the costs for transporting tourists from hotels to and near the city to any of the following destinations:

- ▶ the commercial center of the city;
- ▶ a convention center in the city;
- ▶ other hotels in or near the city; and
- ▶ tourist attractions in or near the city.⁶²

The reimbursed transportation system must be owned and operated by the city, or privately

owned and operated but financed in part by the city.⁶³ For example, this authority could be used to cover the costs of a city to finance certain private shuttles to operate between the convention center and area hotels and attractions for a large city-wide convention. The law specifically prohibits the use of the local hotel tax to cover the costs for a transportation system that serves the general public.⁶⁴

8) Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.

In 2009, the Texas Legislature added a statutory category that allows cities to use municipal hotel occupancy tax revenue to pay for signage directing tourists to sights and attractions frequently visited by hotel guests in the municipality.⁶⁵ Arguably, this type of expenditure was permissible as "advertising and promotion" prior to this 2009 legislation. However, the Legislature codified this understanding to officially include signage directing tourists to sights and attractions that are frequently visited by hotel guests.⁶⁶

Administering Hotel Occupancy Tax Revenue Expenditures

City reporting of information to the Texas Comptroller

In 2017, the Texas Legislature passed a statute to require Texas cities to annually report hotel tax rate and spending information to the State Comptroller. Specifically, the statute requires the city to report: 1) its municipal hotel tax rate, 2) any applicable venue tax rate, 3) the amount of hotel tax revenue collected for the preceding fiscal year, and 4) the amount and percentage of funds spent on each major category under state law.

The Comptroller will adopt rules to administer this new statute in the second half of 2017. These new rules will include a form for cities to complete when providing the information to the State.

Duty of funded entities to provide a list of activities.

All entities (including the city itself) that are directly or indirectly funded by the local hotel occupancy tax are annually required to provide a list of the scheduled activities, programs, or events that will directly enhance and promote tourism and the convention and hotel industry.⁶⁷ This list is to be provided annually to the city secretary or his/her designee prior to the expenditure of the hotel occupancy tax funding by the funded entity.⁶⁸ An entity may add items to this list at any time, and each city decides the format for providing this information. This documentation requirement does not apply if the entity already provides written information to the city indicating which scheduled activities or events that it offers that directly enhance and promote tourism and the convention and hotel industry. For example, cities that require quarterly or annual reports on the use of hotel tax by hotel tax funded entities would satisfy this requirement if their report addresses the extent to which their events directly promote tourism and hotel activity.⁶⁹

It is important to remember that if an entity does not have any such events or programs reasonably expected to directly promote tourism and the hotel and convention industry, it is not eligible for local hotel occupancy tax funding.⁷⁰ If only a portion of an entity's programs fit these criteria, then only a proportionate amount of that entity's costs should be covered by the local hotel occupancy tax.⁷¹

Delegating management of funded activities.

The governing body of a city may delegate the management or supervision of programs funded

by the hotel occupancy tax by written contract.⁷² This delegation may be made to a person, another governmental entity, or to a private organization.⁷³ This delegation is often made to a local arts council, a chamber of commerce, or to the convention and visitors bureau. The municipality shall approve the entity's annual budget prior to delegating the management or supervision of hotel tax funded programs.⁷⁴ Furthermore, the municipality shall require the delegated entity to make periodic reports, at least quarterly, listing the hotel occupancy tax expenditures made by the delegated entity.⁷⁵ Additionally, the Code requires that the contracted entity maintain complete and accurate financial records for every expenditure of hotel occupancy tax revenue, and upon the request of the municipality or another person, make the records available for inspection and review.⁷⁶

An entity with delegated authority to manage hotel tax funded programs undertakes a fiduciary duty with respect to the use of the tax revenue.⁷⁷ Such entities are also required to maintain the city hotel occupancy tax revenue in a separate bank account that may not be commingled with any other account or funds.⁷⁸ The Tax Code does not contain similar prohibitions against commingling the funds for individual organizations, such as an arts or historical group that receives hotel tax funding for their individual program, but do not themselves oversee hotel tax funding to other entities.

Use of hotel occupancy tax revenues to cover administrative expenses.

Texas law allows proceeds of the municipal hotel occupancy tax to be used to cover the portion of administrative costs that are directly attributable to work on activities that may be funded by the tax.⁷⁹ For example, entities that manage activities funded by the hotel occupancy tax may spend some of the tax for certain day-to-day operational expenses.⁸⁰ These expenses may include supplies, salaries, office rental, travel expenses, and other administrative costs.⁸¹ However, these costs may be reimbursed only if the expenses are incurred in the promotion and servicing of expenditures authorized under the hotel occupancy tax laws.⁸² The portion of the administrative costs that are covered should not exceed the percentage of the cost that is attributable to the activity funded by the hotel occupancy tax.⁸³ For example, administrators who spend 33 percent of their time overseeing hotel occupancy tax funded programs should seek funding for no more than 33 percent of their salary or 33 percent of other related overhead costs. Additionally, hotel occupancy tax revenues may be spent on travel that is directly related to the performance of the person's job in an efficient and professional manner.⁸⁴ This travel should facilitate the acquisition of skills and knowledge that will promote tourism and the convention and hotel industry.⁸⁵

Special Rules for Selected Municipalities

The Texas Tax Code provides additional rules for certain Texas cities based on the city's population bracket. The Texas Tax Code provides additional rules for certain Texas cities based on the city's population brackets. A full version of this article with information on city-specific rules is available by contacting THLA.

Additional Information

If a city or funded entity has additional questions about the administration or use of the hotel occupancy tax, it is welcome to contact the Texas Hotel & Lodging Association for assistance by phone at (512) 474- 2996 or by email at news@texaslodging.com. THLA has sample documents available to assist in administering hotel taxes, such as funding grant application forms, post event forms, and tax collection guidelines.

Texas city officials can also make inquiries to the legal staff of the Texas Municipal League at (512) 231- 7400.

Annotations:

1 Tex. Tax Code Ann. § 351.002(a) (Vernon 2017).

2 § 351.0025(a).

3 § 351.003(a).

4 Tex. Loc. Gov't Code § 334.254(d). Note that the 17 percent cap does not apply to a city that approved a higher hotel tax through a venue ballot proposition prior to September 1, 2013, such as El Paso.

5 § 351.0025(b).

6 Source: National Business Travel Association 2009 Survey.

7 Tex. Tax Code § 156.051.

8 Tex. Tax Code § 156.001(a); 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2017).

9 Tex. Tax Code § 156.001(c).

10 Tex. Tax Code § 156.001(a); 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2017).

11 Tex. Tax Code § 156.001.

12 Tex. Tax Code § 156.051(a); § 351.002(a).

13 *Id.*

14 Tex. Tax Code § 156.051(a); Tex. Comptroller Opinion Letter No. 200103106L, Mar. 9, 2001.

15 *Id.*

16 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2017); Tex. Comptroller Opinion Letter No. 201010556L, Oct, 2010.

17 *Id.*

18 THLA maintains a list of most hotel charges and which tax, if any is assessed on a particular charge. This list is available upon request to THLA members.

19 Tex. Comptroller Opinion Letter No. 200102031L, Feb. 7,

2001. 20 Texas Comptroller's Hearing Decision No: 24,654 (1989).

21 *Id.*

22 Tex. Tax Code § 351.007. 2s *Id.*

24 Tex. Tax Code § 156.102.

25 Tex. Tax Code § 156.104.

26 § 351.004.

27 §§ 351.101(a), (b).

28 §§ 351.101(b).

29 *Id.*

30 § 351.001(6).

31 See Op. Tex. Att'y Gen. Nos. GA-0124 (2003), JM-690 (1987).

32 *Id.*

33 See generally Tex. Tax Code §§ 351.101(a), (b).

34 Tex. Tax Code § 351.101(b); see also Op. Tex. Att'y Gen. Nos. JM-184 (1984), JM-965 (1988). 35 *Id.*

36 *Id.*

37 Tex. Tax Code § 351.101(a). 38 §

351.101(a)(1).

39 § 351.001(2).

40 *Id.*

41 *Id.*

42 *Id.*; see generally Tex. Tax Code §§

351.101(a), (b). ⁴³ Tex. Tax Code §

351.101(a)(2).

44 § 351.101(a)(3).

45 § 351.101(b).

46 Op. Tex. Att'y Gen. No. JM-690 (1987).

47 See generally Tex. Tax Code §

351.101(a)(3). ⁴⁸ Tex. Tax Code §

351.101(a)(4).

49 *Id.*

50 § 351.101(b).

51 Op. Tex. Att'y Gen. No. KP-0131 {2017}.

52 § 351.101(a)(S).

53 § 351.101(b).

54 § 351.101(a)(6).

55 *Id.*

56 *Id.*

57 § 351.101(a)(7),

58 Tex. Tax Code §§ 351.101(a)(7), 351.1076.

59 *Id.*

60 *Id.*

61 *Id.*

62 § 351.110(a).

63 § 351.110(b).

64 § 351.110(c).

65 § 351.101(a)(9).

66 *Id.*

67 § 351.108(b).

68 *Id.*; § 351.108(d).

69 § 351.108(g).

70 § 351.101(b).

71 § 351.101(e).

72 § 351.101(c).

73 *Id.*

74 *Id.*

75 *Id.*

76 § 351.101(d).

77 § 351.101(c).

78 *Id.*

79 § 351.101(e).

80 *Id.*

81 *Id.*

82 *Id.*

83 *Id.*

84 § 351.101(f).

85 *Id.*