

## **Town of Hochatown**

### **Ordinance No. 2023-03-07-01**

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF HOCHATOWN, STATE OF OKLAHOMA, RELATING TO THE IMPOSITION OF A TOWN LODGING TAX OF FOUR PERCENT (4%); ENACTING NEW PROVISIONS OF THE HOCHATOWN TOWN CODE OF ORDINANCES DEFINING TERMS; PROVIDING THAT THE LODGING TAX IS IN ADDITION TO ALL OTHER TAXES LEVIED OR ASSESSED BY THE TOWN, COUNTY, OR STATE; PROVIDING THAT THE ORDINANCE SHALL REMAIN IN EFFECT INDEFINITELY AND UNTIL LAWFULLY AMENDED, MODIFIED OR REPEALED; PROVIDING FOR EXEMPTIONS, ACKNOWLEDGMENT AND RECORDS; PROVIDING THAT TAX IS TO BE SEPARATELY DESIGNATED ON BILLS; PROVIDING THAT OPERATOR IS RESPONSIBLE FOR COLLECTION OF TAX; PROVIDING FOR CERTIFICATES OF REGISTRATION; REQUIRING RECORDS BE CREATED; PROVIDING FOR RETURNS; REQUIRING PAYMENT OF TAX; IDENTIFYING DELINQUENT TAXES AND PROVIDING FOR A LATE FEE; REQUIRING INTEREST ON UNPAID/DELINQUENT TAXES; PROVIDING FOR COLLECTION OF TAXES BY SUIT; AUTHORIZING FOR THE REQUIREMENT OF A BOND; PROVIDING FOR ASSESSMENT AND DETERMINATION OF TAX IF RETURN NOT FILED OR FILED INCORRECTLY OR INSUFFICIENTLY; PROVIDING FOR REFUNDS; PROVIDING FOR NOTICES; PROVIDING FOR EXCLUSIVE REMEDY; PROVIDING PENALTIES FOR FAILURE TO FILE, SUBMITTING FRAUDULENT RETURNS; REQUIRING RECORDS BE KEPT CONFIDENTIAL; DESIGNATING USE OF FUNDS; PROVIDING FOR REGULATIONS FOR THE ADMINISTRATION AND ENFORCEMENT OF THE LODGING TAX; PROVIDING THAT THE TREASURER SHALL HAVE THE AUTHORITY TO ADMINISTER OATHS AND COMPEL TESTIMONY; PROVIDING FOR PROCEEDINGS TO RECOVER THE TAX; AMENDMENTS; PROVIDING THAT PROVISIONS ARE CUMULATIVE; PROVIDING APPROVAL OF ORDINANCE BY A MAJORITY OF REGISTERED VOTERS VOTING AT AN ELECTION ON THIS ORDINANCE AND FIXING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

### **Ordinance**

Be it ordained by the Town Board of Trustees of the Town of Hochatown, Oklahoma, that the provisions of this Ordinance shall become and be made a part of the code of ordinances of the Town of Hochatown, Oklahoma, and the sections of this ordinance may be renumbered to accomplish this intention:

**SECTION 1. - CITATION.**

This article shall be known and cited as "Town of Hochatown Lodging Tax Ordinance."

**SECTION 2. - DEFINITIONS.**

The following words, terms and phrases, when used in this article, shall have the meanings described to them in this section, except where the context clearly indicates a different meaning:

**LODGING:** shall mean any buildings, structures, trailers, or other facilities of any kind or nature, in which the public may, for consideration, obtain sleeping accommodations in which one or more rooms are used for accommodations of such guests (regardless if the rooms are located in one or several buildings, structures, trailers, or facilities). The term 'lodging' includes hotels, apartment hotels, motels, tourist homes, transient lodging facility, RV parks, houses, courts of any kind or nature, lodging houses, inns, rooming houses, bed and breakfast, corporate lodging, trailer houses, trailer motels, dormitory space where bed space is rented to individuals or groups, apartments of any kind or nature, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. The term "lodging" does not include hospitals, sanitariums or nursing homes nor shall this term affect permanent resident facilities as defined below for residents for terms in excess of thirty (30) days.

**OCCUPANCY:** shall mean the use or possession, or the right to use or possession of any rooms in a Lodging or the right to use or possession of the furnishings or to the services and accommodations accompanying the use and procession of the Lodging.

**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 Lodging under lease, concession, permit, right to access, license to use, or other agreement.

**OPERATOR:** shall mean any person operating a Lodging, including RV park, in this town, including but not limited to, the owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, manager or similar agent, or any other person otherwise operating such Lodging.

**PERMANENT RESIDENT:** shall mean any occupant who has or shall have the right of occupancy of any room or rooms in a Lodging as defined herein in excess of thirty (30) consecutive days.

**RECREATIONAL VEHICLE :** shall mean a vehicle which is:

- (1) Built on a single chassis;
- (2) Designed to be self-propelled or permanently towable by a light duty truck; and
- (3) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreation, camping, travel, or seasonal use.

**RECREATIONAL VEHICLE PARK (RV Park):** shall mean a place where space is offered, with or without service facilities, by any persons or municipality to the public for the parking and accommodation of one or more automobile trailers, mobile homes, or recreational vehicles which are used for lodging, for either a direct money consideration or an indirect benefit to the lessor or owner in connection with a related business, such space being hereby defined as a room for purposes

of this article, and the rental price thereof shall include all service charges paid to the lessor. For the purposes of this definition, the terms "campground", "camping resort", "RV resort", "travel resort", and "travel park", or any variations of these terms, are synonymous with the term "recreational vehicle park".

**RENT:** Pursuant to this Article 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 reduction therefrom whatsoever. The term "rent" shall include the Sales Value of any rooms when they are provided free of charge, at discounted rates whether complimentary or otherwise, through barter, trade or any other arrangement.

**RETURN:** shall mean 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 Lodging as defined herein which is available for or let out for the use of or possessed for any purpose other than a place of assembly. As used herein, "place of assembly" means a room or space which is capable of being occupied by 75 or more persons and which is used for educational, recreational or amusement purposes and shall include: dance halls, cabarets, nightclubs, restaurants, any room or space for public or private banquet, feasts, socials, card parties or weddings, lodge and meeting halls or rooms, skating rinks, gymnasiums, swimming pools, billiard, bowling and table tennis rooms, halls or rooms used for public or private catering purposes, funeral parlors, markets, recreational rooms, concert halls, broadcasting studios, and all other places of similar type of occupancy.

**SALES VALUE:** shall mean the price at which the type of room occupied would generally be rented in the ordinary course of business.

**TAX:** shall mean the tax levied pursuant to this article.

**TOURIST HOMES:** shall mean all private homes and all buildings or other structures kept, used and maintained as places wherein sleeping accommodations are offered for hire to guests, with or without meals, and which are not customarily defined or considered as hotels, motels, or inns.

**TOWN RESIDENT:** shall mean any resident of Hochatown who can demonstrate his residency by way of utility bill or state driver's license with an address within the boundaries of Hochatown.

**TRANSIENT LODGING FACILITY:** shall mean a furnished room or furnished suite of room which is rented to a person on a daily basis, not as a principal residence, for a period less than thirty (30) days.

**TREASURER:** shall mean the person holding the position of Treasurer within the town or the Treasurer's designated representative.

### **SECTION 3. – LEVIED AMOUNT; ROOMS PROVIDED FREE OF CHARGE SUBJECT TO TAX.**

- (a) There is hereby levied and imposed an excise tax of four percent (4%) upon the gross proceeds or gross receipts derived from all rent for every occupancy of a room or rooms in Lodging in this Town. Room(s) provided free of charge, through barter, trade or any other arrangement or agreement of any kind or nature, are also subject to such tax at the Sales Value of the room so provided.
- (b) The tax levied pursuant to the provisions of this article is in addition to any and all other taxes levied or assessed by the Town or McCurtain County, Oklahoma or the State of Oklahoma or any other authority.
- (c) The tax levied and imposed by this article shall commence on May 1, 2023 and remain in force and effect indefinitely and until lawfully amended, modified or repealed and shall be collected on all rent for every occupancy of a room in lodging within the Town.

**SECTION 4. – EXEMPTIONS; ACKNOWLEDGMENT REQUIRED; RECORDS REQUIRED.**

- (a) *Exemptions.* The following shall be exempt from the tax levied in this article:
  - (1) Permanent Residents and Town Residents;
  - (2) The United States Government or any agency or division thereof when paid directly by the United States Government;
  - (3) The State of Oklahoma or any political subdivision thereof when paid directly by the State of Oklahoma or any political subdivision;
  - (4) Any Federally recognized tribal nation or agency thereof when paid directly by the tribal nation.

The Operator shall record each qualified exemption allowed in a format established by the Treasurer and submit the documentation with returns required by this article. Upon submission of these forms to the Town, the Treasurer shall make a final determination as to the validity of all claimed exemptions. Should the Treasurer determine that a claimed exemption is not valid, the Operator shall be assessed the then current percentage of tax applicable, within three months of the date that the exemption is claimed. The Operator claiming such exemption shall become liable for payment of the tax and shall submit the same with their next monthly tax remittance. For purposes of this section, an exemption will not be validated by the Treasurer unless the exemption is claimed for the month in which it accrues. For good cause shown, the Treasurer may grant an extension for claiming an exemption.

- (b) *Records required.* Every operator shall be required to maintain copies of monthly room reports, monthly exemption forms and individual exemption forms upon the business premises of the Lodging for a period of three years. Such records shall be available for inspection and examination at any time upon demand by the Treasurer, or a duly authorized agent or employee of the town. For purposes of this section, individual exemption forms shall be available from the Treasurer and shall include the following:
  - (1) A statement declaring the reason for exemptions;
  - (2) The name, signature, address, home telephone and work telephone numbers of the person claiming the exemption;

- (3) The date on which the exemption form is completed; and
- (4) An acknowledgment, by signature, of the exemption by an employee or agent of the hotel.

**SECTION 5. - TAX TO BE SEPARATELY DESIGNATED ON BILLS.**

The operator shall separately designate, charge and show the tax on all bills, statements, receipts or any other evidence of charges or payments of rent for occupancy issued or delivered by the operator.

**SECTION 6. - OPERATOR RESPONSIBLE FOR COLLECTION.**

The operator shall be responsible for the collection of the tax from the occupant and shall be liable to the Town for the tax.

**SECTION 7. - CERTIFICATES OF REGISTRATION.**

- (a) Every Operator shall file with the Treasurer in a form prescribed by the Treasurer:
  - (1) A certificate of registration;
  - (2) An affidavit and designation of operator.

The required filings shall be made within ten (1) days after the effective date of the ordinance from which this article is derived, or in the case of Operator's commencing business or opening a new lodging unit after such effective date, within three (3) days after commencement or opening on forms prescribed by the Town Administrator.

- (b) The Treasurer shall, within five (5) days after receipt of the required registration and affidavit, issue without charge, to each operator, a certificate of authority empowering such operator to collect the tax from the occupant and duplicates thereof for each additional hotel. Each certificate or duplicate shall state the Lodging to which it is applicable. Such certificate of authority shall be permanently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Treasurer upon the cessation of business at the Lodging named, or upon its sale or transfer, or upon the change of designated Operator.

**SECTION 8. - RECORDS REQUIRED.**

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

**SECTION 9. - RETURNS.**

- (a) Every operator shall file with the Treasurer a return of occupancy and of rents and of the taxes payable thereon for the period ending the last day of every month of each year. Said returns shall be filed on a monthly basis and are due no later than the fifteenth day of the month directly following the reporting period.
- (b) The Treasurer may permit or require returns to be made by shorter or longer periods and upon such dates as the Treasurer may specify. The form of the return shall be prescribed by the Treasurer and shall contain such information as the Treasurer may deem necessary for the proper administration of this article. The Treasurer may require amended returns to be filed within ten (10) days after notice and to contain the information specified in the notice.

**SECTION 10. - PAYMENT OF TAX.**

At the time of filing a return of occupancy and of rents, each operator shall pay to the Treasurer the taxes imposed by this article upon the rents included in such return, as well as all other monies collected by the operator acting or purporting to act under the provisions of this article. All taxes for the period for which a return is required to be filed shall be due from the Operator and payable to the Treasurer 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 which is filed correctly shows the amount of rents and the taxes due thereon.

**SECTION 11. - DELINQUENT TAXES.**

The tax levied by this article shall be due and payable when the return is filed. All taxes not paid within 15 days following the last day of the period shall be delinquent and a late fee of \$15 shall be assessed.

**SECTION 12. - INTEREST ON UNPAID/DELINQUENT TAXES.**

- (a) If any tax levied by this article becomes delinquent, the person responsible and liable for such tax shall pay interest on such unpaid tax at the rate of two percent (2%) per month on the unpaid balance from the date of delinquency.
- (b) If any tax levied by this article is not paid by the last calendar day of the month due, the operator responsible and liable for such tax shall pay a penalty on such unpaid tax at the rate of ten percent (10%) per month on the unpaid balance from the date of delinquency to a maximum of fifty percent (50%) of the tax.

**SECTION 13. - 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.

**SECTION 14. - BOND REQUIRED.**

Where the Treasurer believes that any Operator is about to cease business, leave the state, or remove or dissipate assets, or for any other similar reason the Treasurer deems it necessary in order to protect revenues under this article, the Treasurer may require such Operator to file with the Town

a bond issued by a surety company authorized to transact business in this state in such amount as the Treasurer may fix to secure the payment of any tax or penalties and interest due, or which may become due from such Operator. In the event the Treasurer determines that an operator is to file such bond, the Treasurer shall give notice to such operator specifying the amount of bond required. The Operator shall file such bond within five (5) days after the giving of such notice unless, within such five (5) days, the Operator shall request in writing, a hearing before the Board of Trustees or its designee, at which the propriety and amount of the bond shall be determined by the Board of Trustees or its designee. Such determination shall be final and shall be complied with, within fifteen (15) days thereafter. In lieu of such bond, securities approved by the Treasurer, or cash in such amount as the Treasurer may prescribe, may be deposited with the treasurer who may at any time after five (5) days' notice to the depositor, apply then to any tax and/or penalties due, and for that purpose the securities may be sold at a public or a private sale.

#### **SECTION 15. - ASSESSMENT AND DETERMINATION OF TAX.**

If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the Treasurer from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices such as number of rooms, location, scale of rents, comparable rents, types of accommodations and services, number of employees, or other factors. Written notice of such assessments shall be given to the person liable for the collection and payment of the tax. Such assessment shall finally and irrevocably fix and determine that tax unless the person against whom it is assessed, within ninety (90) days after the giving of notice of such assessment, shall apply in writing to the Board of Trustees or its designee for a hearing or unless the Treasurer on his/her own motion shall reassess the same. After such hearing, the Board of Trustees or its designee shall give written notice of its determination to the person against whom the tax is assessed and such determination shall be final.

#### **SECTION 16. - REFUNDS.**

- (a) The Treasurer shall refund or credit any tax erroneously, illegally or unconstitutionally collected if written application to the Treasurer for such refund shall be made within Ninety (90) days from the date of payment thereof. For like causes, and in the same period, a refund may be so made upon the initiative and the order of the Treasurer. Whenever a refund is made, the reasons therefor shall be stated in writing. Such application may also be made by the Occupant upon whom such tax was imposed and who has actually paid the tax, provided that the application is made within ninety (90) days of the payment of the Occupant to the Operator, but no refund of money shall be made to the Operator until he has repaid to the Occupant the amount for which the application for refund is made. The Treasurer in lieu of any refund required to be made, may allow credit thereof on payment due from the applicant.
- (b) Upon application for a refund, the Treasurer may receive evidence with respect thereto, and make such investigation as he deems necessary. After making a determination as to the refund, the Treasurer shall give notice thereof to the applicant. Such determination shall be final unless the applicant, within thirty (30) days after such notice, shall apply in writing to the Board of Trustees or its designee for a hearing. After such hearing, the Board of Trustees or its designee, shall give written notice of the decision to the applicant.

#### **SECTION 17. - NOTICES.**

Notices provided for under this article shall be deemed to have been given when such notice has been delivered personally to the Operator or deposited in the United States Mail, addressed to the last known address of the Operator.

**SECTION 18. - REMEDIES EXCLUSIVE.**

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

**SECTION 19. - FAILURE TO FILE; SUBMITTING FRAUDULENT RETURNS; FAILURE TO POST A BOND; PENALTIES.**

The failure or refusal of any Operator/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 or failure to post a bond, shall be an offense and, upon conviction thereof, the offending taxpayer shall be subject to costs and to a fine of not more than \$200.00 or imprisonment for not more than thirty (30) days, or both such fine and imprisonment. Each day a violation exists shall constitute a separate offense and is subject to all penalties herein.

**SECTION 20. - RECORDS CONFIDENTIAL.**

The confidential and privileged nature of the records and files concerning the administration of the Lodging tax is legislatively recognized and declared, and to protect the same the 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 tax as if herein set forth.

**SECTION 21. - USE OF FUNDS.**

All taxes collected pursuant to the provisions of this article shall be deposited into the Town's general fund.

**SECTION 22. - ADMINISTRATION AND ENFORCEMENT.**

- (a) *Authority of Board of Trustees.* The Board of Trustees may, from time to time, make, adopt and amend rules and regulations appropriate to the carrying out of this article for the purposes thereof. The Board of Trustees may also assess, reassess, revise, and readjust, as necessary, the tax allocation, but not the tax rate, imposed by this article on an annual basis.
- (b) *Authority of Treasurer.* The Treasurer is authorized to prescribe any necessary forms to aid in the collection of the taxes imposed by this article, to prescribe methods for determining the taxable and nontaxable rents, and to delegate his/her functions under this article or other Town staff. The Treasurer is also authorized to extend, for cause shown, the time for filing any return for a period not exceeding sixty (60) days and, for good cause shown, to waive, remit, or reduce penalties or interest.

**SECTION 23. - ADMINISTRATION OF OATHS AND COMPELLING TESTIMONY.**

The Treasurer, or his/her designated representative, 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 article. The Treasurer 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/her duties hereunder and all the enforcement of this article and to examine them in relation thereto.

**SECTION 24. - PROCEEDINGS TO RECOVER TAX.**

- (a) Whenever any taxpayer or other person shall fail to collect and pay over any tax or any tax penalties due and owing, or interest imposed by this article as herein provided, the Town attorney shall, upon request of the Treasurer, take appropriate action to enforce the payment of same.
- (b) Pursuant to the authority of 68 O.S. § 2701 et seq., all taxes, interest and penalties imposed by this article, are hereby declared to constitute a lien in favor of the Town of Hochatown, upon all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by the person, firm or corporation owing the tax, whether such property is employed by such person, firm or corporation in the conduct of its business or in the hands of an assignee, trustee, or receiver, for the benefit of a creditor, from the date said taxes are due and payable under provisions of this article.

**SECTION 25. - AMENDMENTS.**

The citizens of Hochatown, by their approval of this article at the election herein provided, hereby authorize the Board of Trustees, by ordinance duly enacted, to make such administrative and technical changes or additions in the method and manner of administration and enforcing this article as may be necessary or proper for efficiency and fairness; except that the rate of the tax herein provided shall not be changed without approval of the qualified electors of the Town as provided by law.

**SECTION 26. - PROVISIONS CUMULATIVE**

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

**SECTION 27. - PROVISIONS SEVERABLE.**

The provisions hereof are hereby declared to be severable, and if any section, paragraph, sentence or clause of this article is for any reason held invalid or inoperative by any court of competent jurisdiction, such decision shall not affect any other section, paragraph, sentence or clause hereof.

**SECTION 28. - EFFECTIVE DATE.**

This article shall become and be effective on the first day of May 1, 2023, subject to the approval of the majority of registered voters of the Town of Hochatown voting on the same in the manner prescribed by law.

**SECTION 29. – SAVINGS CLAUSE**

Nothing in these ordinances hereby adopted shall be construed to affect any suit or proceeding now pending in court, or any rights acquired or liability incurred, nor any cause or causes of action accrued or existing under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired or affected by this ordinance.

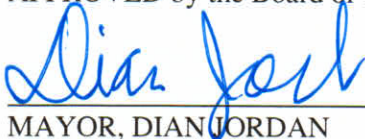
**SECTION 30. - PUBLICATION.**

This ordinance shall be published pursuant to and in accordance with Title 11 O.S. § 14-106.

**SECTION 31. - EMERGENCY.**

WHEREAS, in the judgment of the Board of Trustees it is necessary for the preservation of the peace, health, welfare and safety of the Town of Hochatown, Oklahoma and of the inhabitants thereof that the provisions of this ordinance be put into full force and effect immediately, an emergency is hereby declared to exist by reasons whereof this Ordinance shall take effect and be in full force from and after its passage as provided by law.

APPROVED by the Board of Trustees this 16th day of March, 2023.

  
MAYOR, DIAN JORDAN

Absent

TRUSTEE, JANET CRESS

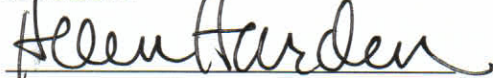
Absent

TRUSTEE, MICHAL TODD MCDANIEL

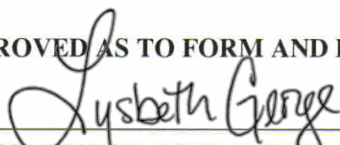
  
TRUSTEE, CHAD SARGENT

  
TRUSTEE, HOWARD HAGGARD

ATTEST:

  
Town Clerk

APPROVED AS TO FORM AND LEGALITY:

  
ATTORNEY FOR HOCHATOWN, OKLAHOMA