

Chapter 17

TAXATION*

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***Editor's note**—On January 16, 1971 the city voted to impose a municipal sales and use tax pursuant to V.T.C.A., Tax Code § 321.101.

Cross references—Administration generally, ch. 2; licenses and miscellaneous business regulations, ch. 10.



ARTICLE I. IN GENERAL**DIVISION 1. GENERALLY****Sec. 17-1. Retention of sales tax on gas and electricity consumed for residential use.**

The city hereby votes to retain the taxes authorized by the Municipal Sales and Use Tax Act, V.T.C.A., Tax Code § 321.001 et seq. on the receipts from the sale, production, distribution, lease, or rental of and the use, storage, or other consumption of gas and electricity for residential use.

(Ord. No. 80, § 1, 4-9-1978)

Sec. 17-2. Homestead tax exemption—Persons over age 65.

Five thousand dollars of the assessed value of residence homesteads as defined by law of persons who have attained the age of 65 years on or before January 1 of the year for which the exemption is claimed shall be exempt from city ad valorem taxes. However, where the ad valorem tax has been pledged for the payment of any debt, the city taxing officers shall have authority to continue to levy and collect the tax against the homestead property at the same rate as the tax so pledged until the debt is discharged, if the cessation of the levy would impair the obligation of the contract by which the debt was created.

(Ord. No. 65, § 1, 2-5-1973; Ord. No. 112, 2-13-1984)

State law reference—Authority to adopt exemption, V.T.C.A., Tax Code § 11.13(d), (e).

Sec. 17-3. Same—Procedure to claim.

In order to secure the benefit of the homestead exemption as provided in section 17-2, the owner shall, between January 1 and April 1 of each year, file with the city tax assessor-collector, on a form furnished by the tax assessor-collector, a sworn inventory of such property owned on January 1 of each year for which the exemption is claimed and shall initially furnish proof of age by certified copy of his birth certificate or, if such person does not have a certificate of birth, by the affidavit of two persons at least

five years older than the exemption claimant with actual knowledge of the date and place of birth and by the original or certified copy of any two of the following documents, which must be at least five years old:

- (1) Social security record;
 - (2) Federal census record;
 - (3) State census record;
 - (4) Own child's birth certificate;
 - (5) Original birth notice in newspaper;
 - (6) School record;
 - (7) Insurance policy;
 - (8) Military record;
 - (9) Passport;
 - (10) Marriage record;
 - (11) Voter's registration record; and
 - (12) Employment record.
- (Ord. No. 65, § 2, 2-5-1973)

Secs. 17-4—17-10. Reserved.

DIVISION 2. COIN-OPERATED MACHINES

Sec. 17-11. Definitions.

Coin-operated machine means any kind of machine or device operated by or with a coin, metal slug, token, or check, including a music or skill or pleasure coin-operated machine.

Music coin-operated machine means any kind of coin-operated machine, including a phonograph, piano, or graphophone, that:

- (1) Dispenses music or is used to dispense music;
- (2) Is operated by inserting a coin, metal slug, token, or check; and

- (3) Is not an amusement machine designed exclusively for a child.

Operator means a person who exhibits or displays, or permits to be exhibited or displayed, a coin-operated machine in this city in a place of business that is not owned by the person.

Owner means a person who owns a coin-operated machine in this city.

Person includes an individual, association, trustee, receiver, partnership, corporation, or organization or a manager, agent, servant, or employee of an individual, association, trustee, receiver, partnership, corporation, or organization.

Service coin-operated machine means any kind of machine or device, including a pay toilet or telephone, that dispenses only a service. The term does not include a machine or device that dispenses merchandise, music, skill, or pleasure.

Skill or pleasure coin-operated machine means any kind of coin-operated machine that dispenses, or is used or is capable of being used to dispense or afford, amusement, skill, or pleasure, or is operated for any purpose, other than for dispensing only merchandise, music, or service, the term:

- (1) Includes a marble machine, marble table machine, marble shooting machine, miniature race-track machine, miniature football machine, miniature golf machine, miniature bowling machine, billiard or pool game, or machine or device that dispenses merchandise or commodities or plays music in connection with or in addition to dispensing skill or pleasure; and
 - (2) Does not include an amusement machine designed exclusively for a child.
- (Ord. No. 195, § 1, 10-9-2001; Ord. No. 199, § 1, 2-12-2001)

Sec. 17-12. Occupation tax on coin-operated machines.

(a) *Tax levy.* There is hereby levied on every coin-operated machine, except those that are exempt herein, an annual occupation tax of one-quarter the tax charge as collected by the state. Every person who owns, controls, exhibits, displays or who

permits to be exhibited or displayed in this city any coin-operated machines shall pay such tax; provided however, that nothing herein shall prevent the operator of such machines from paying the tax levied in this section for the account of the owner, but the payment of such tax by such operator or other person shall not relieve the owner of the responsibility of complying with all the provisions of this section.

(b) *Payment of tax and display of receipt.*

- (1) The occupation tax levied hereby shall be paid to the city secretary who shall issue an occupation tax receipt.
- (2) The occupation tax receipt shall be attached to the coin-operated machine mentioned in the receipt and shall bear the serial number of the particular machine.
- (3) It shall hereafter be unlawful for any person to operate, exhibit, or display any coin-operated machine in the city without having attached thereto an occupation tax receipt, and no occupation tax receipt issued for a certain coin-operated machine shall be transferred to any other machine.

(c) *Exemption from tax.* This tax does not apply to a stamp vending machine, a service coin-operated machine; or if subject to an occupation or gross receipts tax, a gas meter, food vending machine, confection vending machine, beverage vending machine, merchandise vending machine or cigarette vending machine. Individuals owning coin-operated machines located at their place of residency and used solely for personal entertainment are exempt from taxation.

(d) *Failure to pay tax.* The city shall seal every coin-operated machine subject to the payment of the tax levied herein where such tax has not been paid. A charge of \$5.00 in addition to the tax shall be paid for the release of a sealed coin-operated machine.

(e) *Application to illegal machines.* Nothing herein shall be construed to license, permit, authorize, or legalize any machine, device, table, or coin-operated machine—the keeping, exhibition,

operation, display, or maintenance of which is now illegal or in violation of any article of the penal code of this state or the constitution of this state.

(Ord. No. 195, § 2, 10-9-2001; Ord. No. 199, § 2, 2-12-2001)

Sec. 17-13. Location of establishments.

It shall be unlawful for any person who owns, controls, exhibits, displays, or who permits to be exhibited or displayed any coin-operated amusement device to be located within 300 feet of any school, church, or hospital.

(Ord. No. 195, § 3, 10-9-2001; Ord. No. 199, § 3, 2-12-2001)

Secs. 17-14—17-50. Reserved.

ARTICLE II. OCCUPANCY TAX*

Sec. 17-51. Definitions.

The following words, terms, and phrases are defined as follows:

Hotel means any building in which the public may, for a consideration, obtain sleeping accommodations, including hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, or other buildings where rooms are furnished for a consideration, but not including hospitals, sanitariums or nursing homes.

Consideration means the cost of the room in a hotel only if the room is ordinarily used for sleeping, and not including the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

Occupancy means the use or possession, or the right to the use or possession, of any room or rooms in a hotel if the room is one which is ordinarily used for sleeping and if the occupant is other than a permanent resident as hereinafter defined.

***Editor's note**—Ord. No. 226, §§ 1—7, adopted Jul. 23, 2005, did not specifically amend the Code, hence, inclusion herein as Art. II, §§ 17-51—17-57, was at the discretion of the editor.

Occupant means anyone who, for a consideration, uses, possesses, or has a right to use or possess any room or rooms in a hotel under any lease, concession, permit, right of access, license, contract or agreement. Other than a permanent resident as hereinafter defined.

Person means any individual, company, corporation or association owning, operating, managing or controlling any hotel.

Quarterly period means the regular calendar quarters of the year. The first quarter being composed of the months of October, November and December: the second quarter being the months of January, February and March: the third quarter being the months of April, May and June: and the fourth quarter being the months of July, August and September.

Permanent Resident: Any occupant who has or shall have the right to occupancy of any room or rooms in a hotel for at least 30 consecutive days during the current calendar year or preceding year.

(Ord. No. 226, § 1, 7-23-2005)

Sec. 17-52. Tax levied; amount; exemptions.

There is hereby levied a tax upon the cost of occupancy of any hotel where the cost of occupancy is at the rate of \$2.00 or more per day, such tax to be equal to seven percent of the consideration paid by the occupant of such room to such hotel, exclusive of the occupancy taxes imposed by other governmental agencies.

- (1) No tax shall be imposed hereunder on a permanent resident.
- (2) No tax shall be imposed hereunder upon a corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
- (3) No tax shall be imposed hereunder upon federal or state employees traveling on official business.

(Ord. No. 226, § 2, 7-23-2005)

Sec. 17-53. Collection of tax.

Every person owning, operating, managing or controlling any hotel shall collect the tax levied by this article for the City of Shepherd.

(Ord. No. 226, § 3, 7-23-2005)

Sec. 17-54. Quarterly reports to city secretary.

On or before the last day of the month immediately following each quarterly period, every person required to collect the tax imposed herein shall file a report with the city secretary showing the consideration paid for all room occupancies in the preceding quarter, the amount of the tax collected on such occupancies, and any other information the city secretary may reasonably require. Such person shall pay the amount of tax collected from the occupants during the period of the report at the time of filing the report. There shall also be furnished to the city secretary at the time of payment of said tax, a copy of the quarterly report filed with the state comptroller in connection with the state hotel occupancy tax. The city secretary shall, upon reasonable notice, have access to books and records kept by any person required to collect the tax imposed herein which may be necessary to enable the secretary to determine the correctness of any report filed as required by this section and the amount of taxes due under the provisions of the subchapter.

(Ord. No. 226, § 4, 7-23-2005)

Sec. 17-55. Penalties.

If any person required by the provisions of this section to collect the tax imposed herein, or make reports as required herein, and pay to the city the tax imposed herein, shall fail to collect such tax, file such report, or pay such tax, or if any such person shall file a false report, or any such person shall violate any of the provisions of this section, such person shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine as provided in V.T.C.A., Tax Code § 10.99 for each offense, and shall pay to the city the tax due, together with a penalty of five percent of the tax due for each 30 days or portion thereof that the same is not timely filed.

(Ord. No. 226, § 5, 7-23-2005)

Sec. 17-56. Additional penalties.

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

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

(Ord. No. 226, § 6, 7-23-2005)

Sec. 17-57. Use of revenue derived from levy of hotel occupancy tax.

The proceeds of the hotel occupancy tax levied by this article may be placed in the general fund of the city and be used by the city council for the sole purpose of advertising and encouraging the growth of tourist activity in the city, including financial support of such organizations and projects which promote this objective, and that use is limited to the following:

- (1) The acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation and maintenance of convention center facilities or visitor information centers, or both;
- (2) The furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;
- (3) Advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and
- (4) The encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio,

television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms.

- (5) Historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:
 - a. At or in the immediate vicinity of convention center facilities or visitor information centers; or
 - b. Located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates, or other visitors to the municipality.

(Ord. No. 226, § 7, 7-23-2005)

Secs. 17-58—17-75. Reserved.

ARTICLE III. TANGIBLE PERSONAL PROPERTY TAX

Sec. 17-76. Tangible personal property in transit.

The goods-in-transit, as defined in V.T.C.A., Tax Code § 11.253(a)(2), as amended by House Bill 621, enacted by the 80th Texas Legislature in Regular Session, shall remain subject to taxation by the City of Shepherd, Texas.

(Ord. No. 236, 12-10-2007)

Editor's note—Ord. No. 236, adopted Dec. 10, 2007, did not specifically amend the Code, hence, inclusion herein as Art. III, § 17-76 was at the discretion of the editor.

