

ORDINANCE NO. 10190

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 3, "HOTEL OCCUPANCY TAX", SECTION 1, "DEFINITIONS", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO DEFINE "HOTEL" IN ACCORDANCE WITH STATE LAW; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to make certain amendments to the Midland City Code so as to define "hotel" in accordance with Section 156.001, Government Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Midland City Code Title III, "Departments", Chapter 3, "Hotel Occupancy Tax", Section 1, "Definitions", shall hereby be amended to read in its entirety as follows:

3-3-1. Definitions.

As used in this Chapter:

- (A) "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, bed and breakfast, or short-term rental. The term does not include:
- (1) a hospital, sanitarium, or nursing home;
 - (2) a dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, as amended, used by the institution for the purpose of providing sleeping

accommodations for persons engaged in an educational program or activity at the institution; or

(3) an oilfield portable unit, as defined by Section 152.001, Government Code, as amended.

(B) “Permanent resident” means a person who has the right to use or possess a room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for the period.

(C) “Short-term rental” means the rental of all or part of a residential property to a person who is not a permanent resident.

(D) “Tourism” means the guidance or management of tourists.

(E) “Tourist” means an individual who travels from the individual’s residence to a different municipality, county, state, or country for pleasure, recreation, education, or culture.

SECTION TWO. The provisions of any ordinance which are inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00) pursuant to State law.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 25th day of May, A.D., 2021; and passed to second reading on motion of Council member Trost, seconded by Council member Robnett, by the following vote:

Council members voting "AYE": Blong, Trost, Robnett, Payton, Dufford, Ladd, Norman

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Norman, seconded by Council member Trost, on the 8th day of June, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE": Trost, Payton, Ladd, Norman

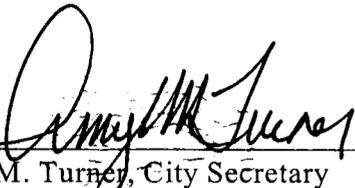
Council members voting "NAY": None

PASSED AND APPROVED THIS 8th day of June, A.D., 2021.



Patrick N. Payton, Mayor

ATTEST:



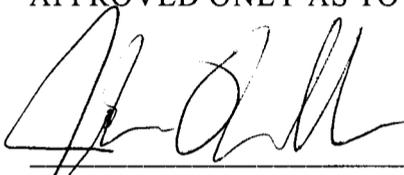
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:



Morris Williams, Assistant City Manager

APPROVED ONLY AS TO FORM:



John Ohnemiller, City Attorney

**APPROVED**

DATE: May 25, 2021

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, City Attorney

SUBJECT: A proposed ordinance amending Title III, "Departments", Chapter 3, "Hotel Occupancy Tax", Section 1, "Definitions", of the City Code of Midland, Texas, so as to define "hotel" in accordance with state law.

The proposed ordinance amends Title III, "Departments", Chapter 3, "Hotel Occupancy Tax", Section 1, "Definitions", of the City Code of Midland, Texas, by defining "hotel" in accordance with Section 156.001 of the Texas Government Code.

The ordinance would expressly include "short-term rental" in the definition of "hotel." "Short-term rental" means "the rental of all or part of a residential property to a person who is not a permanent resident" (e.g., an Airbnb rental). Section 156.001(b) of the Texas Government Code includes "short-term rental" in the definition of "hotel," and expressing this in the City Code will prevent confusion among local short-term rental operators regarding whether the City's hotel occupancy tax must be collected and paid.

Additionally, the ordinance would exclude "oilfield portable unit," as that term is defined by Section 152.001 of the Texas Government Code, from the definition of "hotel." Section 156.001(a) of the Texas Government Code excludes "oilfield portable unit" from the definition of "hotel," so it is not subject to state or local hotel occupancy tax. Thus, it would be prudent to exclude it from the City's definition of "hotel." Section 152.001 of the Texas Government Code defines "oilfield portable unit" as "a bunkhouse, manufactured home, trailer, or semitrailer that:

- (A) is not a travel trailer, as defined by Section 502.166(e), Transportation Code;
- (B) is designed to be used for temporary lodging or as temporary office space;
- (C) is used exclusively at any oil, gas, water disposal, or injection well site to provide to well site employees, contractors, or other workers sleeping accommodations or temporary work space, including office space; and
- (D) does not require attachment to a foundation or to real property to be functional."

Please do not hesitate to contact me should you have any questions.