

ORDINANCE NO. _____

AN ORDINANCE TEMPORARILY SUSPENDING CERTAIN PROVISIONS AND EXTENDING DEADLINES FOR REMITTANCE OF HOTEL OCCUPANCY TAXES (HOT) AND PAYMENT OF TOURISM PUBLIC IMPROVEMENT DISTRICT (PID) ASSESSMENTS AND ELIMINATING PENALTIES, INTEREST, AND FEES FOR CERTAIN TOURISM PID ASSESSMENTS AND FREEZING SUCH AMOUNTS FOR CERTAIN HOT COLLECTIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL PRIOR ORDINANCES AND REPEAL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, chapter 351 of the Texas Tax Code authorizes a municipality, by ordinance, to impose a tax on a person who pays for use, possession, or the right to use or possess a room that is in a hotel and ordinarily used for sleeping (“hotel occupancy tax”) and provides that a person who fails to remit tax when due “is liable” for certain costs, including penalties and interest; and

WHEREAS, the City of Fort Worth (“City”) has, by ordinance, imposed a hotel occupancy tax, which is codified at Article II, Chapter 32 of the Code of the City of Fort Worth (2015), as amended; and

WHEREAS, section 372.0035 of the Texas Local Government Code (“TLGC”) allows for the creation of a public improvement district consisting solely of hotels meeting certain criteria, authorizes assessments against hotels in such a district, and provides that on failure to pay assessment a municipality “may” pursue remedies available for failure to pay hotel occupancy tax; and

WHEREAS, Section 372.018 of the TLGC provides the City with flexibility in assessing interest on delinquent public improvement district assessments by allowing City Council to set the interest rate and the accrual date; and

WHEREAS, the City, by adoption of Resolution 4837-08-2017 authorized and established Fort Worth Public Improvement District No. 18 (“Tourism PID”), consisting solely of certain hotels (“Resolution”); and

WHEREAS Section 2.6 of the Resolution and Section 4 of the Fiscal Year 2020 Tourism PID Assessment Ordinance (No. 23838-09-2019) establish the method of assessment and provide that assessments, including any delinquent payments, be collected in the same manner and in accordance with the same procedures as those established for collection of the City’s hotel occupancy tax; and

WHEREAS, in accordance with the process found in Chapter 32 of the City Code, the due date for hotel occupancy taxes and Tourism PID assessments for each month is the first business day of the following month; and

WHEREAS, in accordance with the process found in Chapter 32 of the City Code, the due date for hotel occupancy taxes and Tourism PID assessments for each month are considered delinquent if not paid by the twenty-fifth day of the following month with delinquency resulting in imposition of penalties and liability for interest; and

WHEREAS, on March 13, 2020, a State of National Emergency for the United States of America was declared and the Governor of Texas certified that the novel coronavirus (COVID-19) poses an imminent threat of disaster and declared a state of disaster for all counties in Texas in accordance with state law and subsequently issued executive orders mandating certain obligations recommended in guidelines issued at the federal level; and

WHEREAS, on March 13, 2020, the Mayor of Fort Worth issued a Declaration of Public Health Emergency in and for the City of Fort Worth, Texas, which declaration has been amended and extended by the Fort Worth City Council in accordance with state law; and

WHEREAS, travel restrictions and distancing measures undertaken to inhibit the spread of the virus had an immediate and dramatic economic impact, particularly with regard to the travel sector and hotel industry, with the brunt of the impact initially hitting in March 2020; and

WHEREAS, the Hotel Association of Tarrant County has requested that the Fort Worth City Council consider adoption of a deferral that would allow hoteliers to delay remitting their hotel occupancy taxes and paying their Tourism PID assessments until September 1, 2020, with the understanding that the PID assessments and all collected hotel occupancy taxes would be due and payable no later than the date on which such deferral period concludes; and

WHEREAS, the City has pledged and uses proceeds of its municipal hotel occupancy tax for the repayment of secured debt instruments and in connection therewith has covenanted not to take action that would impair or prohibit imposition, collection, and use of such funding source; and

WHEREAS, in light of the ongoing public health emergency and resulting severe economic constraints – particularly in the hotel and travel sectors, the Fort Worth City Council finds that requiring strict compliance with the deadlines for remittance of its hotel occupancy taxes might provide immediate funding in the near term but could undermine the ongoing viability of many hotels, thereby serving to jeopardize hotel occupancy tax revenues over the intermediate and long term; and

WHEREAS, City staff has analyzed the financial resources currently available and to become available between today's date and the due dates for the next debt service payments and determined that authorization of a deferral of collections of hotel occupancy taxes until September 1, 2020, would not prevent the City from making such debt service payments; and

WHEREAS, the City Council finds that agreeing to a brief delay in collections of hotel occupancy tax and Tourism PID assessment revenues in the near term would serve to aid the struggling hotel industry during the current public health crisis, thereby enhancing hotel occupancy tax receipts as a revenue source throughout the life of the outstanding debt that is secured by and payable from such revenues; and

WHEREAS, given the differences in the underlying state law, it is the City's position that it has authority to defer Tourism PID assessments that came due in March and April 2020 (February and March payments), can eliminate any associated penalties and interest, can defer remittance of hotel occupancy taxes going forward, and can pause the further accrual of penalties and interest on hotel occupancy taxes during the deferral period but lacks authority to waive penalties or interest that were incurred on hotel occupancy tax prior to the date on which this ordinance is adopted; and

WHEREAS, within the limits of its authority, the City wishes to enact a deferral on hotel occupancy taxes and Tourism PID assessments until September 1, 2020 to aid the hotel industry.

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

SECTION 1.

That the portion of Section 2.6 of Resolution 4837-08-2017 and Section 4 of Ordinance No. 23838-09-2019 providing that Tourism PID assessments are to be collected in the same manner as hotel occupancy tax are hereby suspended until September 1, 2020.

SECTION 2.

That with respect to hotel occupancy taxes that came due in March or April 2020, the application of Section 32-18(c) (relating to penalty) and 32-18(d) (relating to interest) are hereby suspended from and after the date on which this ordinance is adopted and until September 1, 2020, such that any interest or penalty that was incurred prior to today's date shall remain payable but no further penalty or interest shall apply *so long as* the hotel occupancy taxes that came due in March and April 2020 and all related amounts are paid in full on or before September 1, 2020.

SECTION 3.

That with respect to hotel occupancy taxes that would otherwise be due and payable in May, June, July, or August 2020, all portions of Section 32-18 relating to remittance, delinquency, penalty, and interest are hereby suspended from and after the date on which this ordinance is adopted and until September 1, 2020, such that no penalty or interest shall apply with respect to such amounts *so long as* the hotel occupancy taxes that would otherwise be due in May, June, July, and August are paid in full on or before September 1, 2020 and provided further that all persons liable for collection and remittance of such amounts shall still be obligated to submit reports regarding revenues and hotel occupancy taxes collected in strict accordance with Section 32-18.

SECTION 4.

That with respect to Tourism PID assessments that would otherwise be due and payable in March, April, May, June, July, or August 2020, all portions of Section 32-18 relating to payment, delinquency, penalty, and interest are hereby suspended from and after the date on which this ordinance is adopted and until September 1, 2020, such that no penalty or interest shall apply with respect to such amounts *so long as* the Tourism PID assessments that would otherwise be due in March, April, May, June, July, and August are paid in full on or before September 1, 2020 and provided further that all persons liable for collection and remittance of such amounts shall still be

obligated to submit reports regarding revenues and Tourism PID assessments in strict accordance with Section 32-18.

SECTION 5.

That this ordinance shall be cumulative of all other ordinances of the City of Fort Worth, Texas, and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

SECTION 6.

That all rights or remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the City Code, or any amendments thereto that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil and criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 7.

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of these ordinances are severable, and if any phrase, clause, sentence, paragraph or section of these ordinances shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of these ordinances, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 8.

This ordinance shall take effect on adoption.

APPROVED AS TO FORM AND LEGALITY:

ATTEST:

Denis C. McElroy, Asst City Attorney

Mary J. Kayser, City Secretary

ADOPTED and EFFECTIVE: _____