

## CHAPTER 11

### TAXATION

#### ARTICLE 11.01 GENERAL PROVISIONS

##### **Sec. 11.01.001 Bingo games**

There shall be a fee imposed on all bingo games conducted and held within the city, pursuant to and in accordance with the state Bingo Enabling Act, V.T.C.A., Occupations Code, chapter 2001. (Ordinance 982 adopted 2/21/84)

**State law reference**—Bingo Enabling Act, V.T.C.A., Occupations Code, ch. 2001.

#### ARTICLE 11.02 PROPERTY TAXES<sup>i\*</sup>

##### **Sec. 11.02.001 Discounts on taxes**

- (a) The city hereby adopts the discounts provided by subsection (a) of section 31.05 [of the Tax Code] in the manner required by law for official action.
- (b) The city will allow a person who is entitled to a discount from the amount of city tax due such discount if he or she pays the tax before January.
- (c) The amount of discount is as follows:
  - (1) Three percent (3%) if the tax is paid in October or earlier.
  - (2) Two percent (2%) if the tax is paid in November.
  - (3) One percent (1%) if the tax is paid in December.

(Ordinance 2023 adopted 9/17/91; Ordinance adopting Code)

**State law reference**—Tax discount for early payment, V.T.C.A., Tax Code, sec. 31.05.

##### **Sec. 11.02.002 Exemption for elderly and disabled**

- (a) An exemption in the amount of five thousand dollars (\$5,000.00) is granted on the appraised value of residence homesteads of individuals who are disabled or are sixty-five (65) years or older. (Ordinance 1023 adopted 8/6/82)

(b) The city commission hereby authorizes a tax freeze on residence homesteads of the disabled and of the elderly and their spouses. (Ordinance 2301 adopted 1/13/04)

**State law reference**—Residence homestead tax exemptions, V.T.C.A., Tax Code, sec. 11.13.

## **ARTICLE 11.03 SALES AND USE TAXES<sup>ii\*</sup>**

### **Division 1. Generally**

#### **Sec. 11.03.001 Sale of gas and electricity**

The city, by majority vote of its governing body, hereby votes to retain the taxes authorized by the Municipal Sales and Use Tax Act (V.T.C.A., Tax Code, chapter 321) 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, as authorized by section 6 of House Bill No. 1, Acts 1978, 65th Legislature, Second Called Session. (Ordinance 955 adopted 3/6/79)

**State law reference**—Authority of municipality to impose tax on sales of gas and electricity, V.T.C.A., Tax Code, sec. 321.105.

#### **Secs. 11.03.002–11.03.030 Reserved**

### **Division 2. Industrial Development<sup>iii†</sup>**

#### **Part I. In General**

#### **Sec. 11.03.031 Tax levy**

The governing body has found and determined, and hereby finds and determines, that an additional sales and use tax in the amount of one-half (1/2) of one percent (1%) is hereby levied, imposed, ratified, and confirmed on the receipts from the sale at retail of taxable items within the city in accordance with the provisions of the Development Corporation Act, the Texas Tax Code, including but not limited to section 321.102(a), as amended, Texas Tax Code, and all other applicable law to be effective as of January 1, 1995. (Ordinance 2157, sec. 1, adopted 3/18/97)

#### **Sec. 11.03.032 Authority for collection of tax**

The governing body has found and determined, and hereby finds and determines, that the election held in the city on August 13, 1994, concerning the imposition of an additional sales and use tax was called, conducted and canvassed in accordance with the provisions of all applicable law and that the city is authorized to collect, for the benefit of the [industrial development] authority, the additional sales and use tax as authorized by the provisions of the act. (Ordinance 2157, sec. 2, adopted 3/18/97)

#### **Sec. 11.03.033 Creation of industrial development authority**

The governing body has found and determined, and hereby finds and determines, that it is advisable that a nonprofit economic development corporation be authorized and created, with such development corporation to be known as the San Benito Industrial Development Authority, Inc. (the “authority”). (Ordinance 2157, sec. 3, adopted 3/18/97)

**Sec. 11.03.034 Approval of articles of incorporation and bylaws for organizing industrial development authority**

The governing body hereby approves the articles of incorporation and the bylaws proposed to be used in organizing the authority (copies of which are attached in substantially final form to Ordinance 2157 as exhibit A and are incorporated by reference for all purposes of this part). (Ordinance 2157, sec. 4, adopted 3/18/97)

**Sec. 11.03.035 Public purposes of development authority–Generally**

The public purposes of the city, which the authority may further on behalf of the city, are as set forth in the act and the authority’s articles of incorporation. (Ordinance 2157, sec. 5, adopted 3/18/97)

**Sec. 11.03.036 Same–Powers generally**

The authority is hereby designated as the duly constituted authority and instrumentality of the city (within the meaning of those terms in the regulations of the Treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to the Internal Revenue Code of 1988, as amended) and shall be authorized to act on behalf of the city for the specific public purposes as set forth in the act; but the authority is not intended to be and shall not be a political subdivision or a political corporation within the meaning of the constitution and the laws of the state, except as provided in the act, and shall have all of the powers set forth in the act. (Ordinance 2157, sec. 6, adopted 3/18/97)

**Sec. 11.03.037 Scope of industrial development authority**

The authority may, under the conditions set forth in this part, issue obligations on behalf of the city; acquire, lease, sell, or convey certain properties; and make loans for the promotion and development of industrial and manufacturing enterprises to promote and encourage employment and the public welfare and to finance projects as defined in the act. The city shall not lend its credit or grant any public money or thing of value in aid of the authority. Furthermore, obligations issued by the authority with the approval of the city shall be deemed not to constitute a debt of the state, the city, or of any other political corporation, subdivision or agency of the state or a pledge of the faith and credit of any of them, but such obligations shall be payable solely as provided in the act. (Ordinance 2157, sec. 7, adopted 3/18/97)

**Sec. 11.03.038 Effect of dissolution of industrial development authority**

Upon dissolution of the authority, the city shall accept title to or other interest in any real or personal property owned by the authority at such time. (Ordinance 2157, sec. 8, adopted 3/18/97)

**Sec. 11.03.039 Purpose of adopting part**

This part is adopted for the purpose of satisfying the conditions and requirements of the act and the provisions of the Internal Revenue Code of 1986, as amended, and the regulations prescribed thereunder from time to time and for the benefit of the authority, the city, the owners or holders from time to time of the obligations of the authority, and all other interested persons. (Ordinance 2157, sec. 9, adopted 3/18/97)

**Sec. 11.03.040 Adoption of preamble to ordinance**

The recitals contained in the preamble of Ordinance 2157 are hereby found to be true, and such recitals are hereby made a part of this part for all purposes and are adopted as a part of the judgment and findings of the governing body. (Ordinance 2157, sec. 10, adopted 3/18/97)

**Sec. 11.03.041 Construction and enforcement of part**

This part shall be construed and enforced in accordance with the laws of the state and the United States of America. (Ordinance 2157, sec. 12, adopted 3/18/97)

**Secs. 11.03.042–11.03.070 Reserved**

**Part II. Industrial Development Authority**

**Sec. 11.03.071 Created**

There is hereby created a corporation, which is named the “San Benito Industrial Development Authority, Inc.,” and which shall be a nonprofit corporation, hereinafter referred to as the “corporation,” and which shall be governed by a group of seven (7) individuals meeting the requirements set forth in article VI of the articles of incorporation of the San Benito Industrial Development Authority, Inc., which group shall be referred to as the “board of directors.” (Ordinance 2171, sec. I, adopted 7/10/97)

**Sec. 11.03.072 Board of directors**

The seven (7) members of the board of directors shall be appointed by a majority vote (at least three members) of the city commission, which is the governing body of the city. Each director shall serve for a term of two (2) years; however, the city commission may vote to remove a director at any time without having to specify cause. Each director must be a resident of the city. No more than four of the seven directors may also be elected city officials or city employees of the city. Any vacancy shall be filled by a majority vote of the city commission. Terms for all directors shall expire on March 1. Appointments will be made by the city commission on the second regularly scheduled city commission meeting during the month of February. The terms of Place 1, Place 2, Place 3, and Place 4 expire in odd-numbered years. The terms of Place 5, Place 6, and Place 7 shall expire in even-numbered years. Directors shall be appointed or reappointed for the respective two-year terms. With the exception of the mayor and/or city commissioners

appointed to the board, no person shall serve as a director while simultaneously serving as a director of any other board or organization that receives funding from the industrial development authority. Prior to appointment, nominees for directors for the industrial development authority shall identify those boards or organizations on which they serve as director and which they contemplate may seek funding through the industrial development authority. (Ordinance 2171, sec. II, adopted 7/10/97)

**Sec. 11.03.073 Organization**

The corporation [industrial development authority] is organized exclusively for the purposes authorized by V.A.C.S. article 5190.6, which include promoting, assisting, and enhancing economic development activities for the city as provided by said Development Corporation Act. (Ordinance 2171, sec. III, adopted 7/10/97)

**Sec. 11.03.074 Rights, powers, privileges, authorities and functions**

The corporation [industrial development authority] shall have and exercise all the rights, powers, privileges, authorities, and functions given by the general laws of the state to nonprofit corporations by the Texas Non-Profit Corporation Act, and by the Texas Development Corporation Act. If any conflict should arise between these statutes regarding the corporation's powers, Texas Revised Civil Statutes Annotated article 5190.6 shall control and govern the corporation. (Ordinance 2171, sec. IV, adopted 7/10/97)

**State law references**—Texas Non-Profit Corporations Act, V.T.C.S., art. 1396-1.01 et seq.; Development Corporation Act of 1979, Vernon's Ann. Civ. St. art. 5190.6.

**ARTICLE 11.04 HOTEL OCCUPANCY TAX<sup>iv\*</sup>**

**Sec. 11.04.001 Definitions**

The following words, terms and phrases are, for the purpose of this article, except where the context clearly indicates a different meaning, defined as follows:

*Consideration.* The cost of the room, sleeping space, bed, or dormitory space or other facility in such hotel if the room or space is ordinarily used for sleeping, and shall not include the cost of any food served or personal services rendered to the occupant not related to cleaning and readying such room or space for occupancy, and shall not include any tax assessed for occupancy thereof for any other governmental agency.

*Hotel.* Any building or buildings, trailer, railroad Pullman car not being utilized for the transportation of travelers, or other facility in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses or courts, trailer motels, lodginghouses, inns, roominghouses, trailer houses, railroad Pullman cars parked on a siding or other areas and used for sleeping accommodations not involving transportation of travelers, dormitory space where bed space is rented to individuals or groups, apartments not occupied by permanent residents, as the same is hereinafter defined, and all other facilities where

rooms or sleeping facilities or space are furnished for a consideration, but excluding hospitals, sanitariums, or nursing homes.

Occupancy. The use or possession, or the right to the use or possession, of any room, space or sleeping facility, and if the occupant's use, possession, or right to use or possession extends for a period of less than thirty (30) days.

Occupant. Anyone who, for a consideration, uses, possesses, or has a right to use or possess any room or sleeping space in a hotel under any lease, concession, permit, right of access, license, contract or agreement.

Permanent resident. Any occupant who has or shall have the right to occupancy of any room or rooms or sleeping space or facility in a hotel for at least thirty (30) consecutive days during the current calendar year or preceding year, and with such thirty-consecutive-day period following the acquisition of such right to occupancy.

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

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

Tax collector. The city.

(Ordinance 995, sec. 1, adopted 6/21/83)

#### **Sec. 11.04.002 Levy; reimbursement of operators; exceptions**

- (a) There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where such cost or occupancy is at the rate of two dollars (\$2.00) or more per day, such tax to be equal to seven percent (7%) of the consideration paid by the occupant of such room, space or facility to such hotel, exclusive of other occupancy taxes imposed by other governmental agencies.
- (b) Every person charged with responsibility of collection of the tax imposed herein may retain, as reimbursement for administrative expenses incurred, a sum of one percent (1%) of the amount of the tax so collected.
- (c) No tax shall be imposed hereunder upon a person or entity who is exempt from paying the tax as provided in V.T.C.A., Tax Code, section 351.006.

(Ordinance 995, sec. 2, adopted 6/21/83; Ordinance adopting Code)

#### **Sec. 11.04.003 Collection**

Every person owning, operating, managing or controlling any hotel in the city shall collect the tax imposed by this article for the city. (Ordinance 995, sec. 3, adopted 6/21/83)

**Sec. 11.04.004 Required reports**

On the last day of the month following each calendar year quarterly period, every person required in section 11.04.003 hereof to collect the tax imposed herein shall file a report with the city showing the consideration paid for all room occupancies for the preceding quarter, the amount of the tax collected on such occupancies, and any other information the tax collector may reasonably require. Such person shall also file a copy of the quarterly report filed with the state comptroller of public accounts in connection with the state hotel occupancy tax. Such person shall pay the tax due on such occupancies at the time of filing of such reports. (Ordinance 995, sec. 4, adopted 6/21/83; Ordinance adopting Code)

**Sec. 11.04.005 Rules and regulations**

The tax collector shall have the power to promulgate such rules and regulations as are necessary to effectively collect the tax levied herein, which such rules and regulations shall be published and maintained on file at the city hall to be available to any person required to make reports and collect and pay the taxes to the city as herein provided for. The tax collector shall, upon reasonable notice, have access to books and records of each hotel in the city as may be necessary to enable him or her to determine the accuracy of any report filed as required hereunder and the amount of taxes due as assessed hereunder. (Ordinance 995, sec. 5, adopted 6/21/83)

**Sec. 11.04.006 Violations and penalties**

(a) If any person, required by the provisions of this article to collect a tax imposed herein, make reports as required herein, and pay to the tax collector the tax imposed herein, shall fail to collect such tax or fail to file such report or fail to pay such tax or file a false report, such person shall be deemed guilty of a misdemeanor, any and all of such acts herewith being declared a misdemeanor, and upon conviction thereof such person shall be punished by a fine in accordance with the general penalty in section 1.01.009 of this code. (Ordinance 995, sec. 6, adopted 6/21/83)

(b) In addition, any person who fails to pay and remit to the tax collector the tax imposed by this article on or before the time required for such remission shall pay penalties for such late payment as provided in V.T.C.A., Tax Code, section 351.004. (Ordinance 995, sec. 6, adopted 6/21/83; Ordinance adopting Code)

**Sec. 11.04.007 Disposition of revenue**

The revenue derived from the hotel occupancy tax authorized herewith may only be used for:

- (1) The acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities including, but

- not limited to, civic center convention building, auditoriums, coliseums, civic theaters, museums, and parking areas or facilities for the parking or storage of motor vehicles or other conveyances located at or in the immediate vicinity of the convention center facilities;
- (2) The furnishing of facilities, personnel and materials for the registration of convention delegates or registrants;
  - (3) Advertising for general promotional and tourist advertising for the city and its vicinity and conducting a solicitation and operating program to attract conventions and visitors either by the city or through contracts with persons or organizations selected by the city;
  - (4) The encouragement, promotion, improvement, and application of the arts, including music (instrumental and vocal), dance, drama, folk art, creative writing, architecture, design, and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, and exhibition of these major art forms; and
  - (5) Historical preservation and restoration.

(Ordinance 995, sec. 7, adopted 6/21/83)

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<sup>i\*</sup> State law reference—Property taxes, V.T.C.A., Tax Code, sec. 1.01 et seq.

<sup>ii\*</sup> Editor's note—Imposition of the sales and use tax as authorized by V.T.C.A., Tax Code, ch. 321, was approved by the voters in an election held on December 12, 1976.

State law reference—Authority of municipality to impose local sales and use tax, V.T.C.A., Tax Code, ch. 321.

<sup>iii†</sup> Editor's note—Pursuant to the preamble of Ordinance 2157, the city commission ordered that an election be held in the city on June 28, 1994, concerning the authorizing of an additional sales and use tax in accordance with the provisions of section 4B of the Development Corporation Act of 1979, as amended, Texas Revised Civil Statutes Annotated, article 5190.6, and the city citizens approved the imposition of the additional sales and use tax at the election held in the city on August 13, 1994.

State law references—Development Corporation Act of 1979, Vernon's Ann. Civ. St. art. 5190.6; Texas Economic Development Act, V.T.C.A., Tax Code, ch. 313.

<sup>iv\*</sup> State law reference—Authority of municipality to impose hotel occupancy tax, V.T.C.A., Tax Code, ch. 351.