

ORDINANCE NO. 2019- 13

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OZARK, ARKANSAS, AN ORDINANCE ENTITLED:

“AN ORDINANCE AMENDING AND COMPILING ORDINANCES NO. 1991-5, 2004-10 , AND 2006-20, REGARDING THE OZARK ADVERTISING AND PROMOTION COMMISSION AND THE OZARK ADVERTISING AND PROMOTION TAX”

WHEREAS, pursuant to the authority granted it in A.C.A. §§ 26-75-601—613, the City of Ozark has established an Advertising and Promotion Commission and instituted an Advertising and Promotion Tax by its Ordinance No. 1991-5, which has been amended substantively at least twice by other long and voluminous ordinances, which are difficult to read and understand, and

WHEREAS, the General Assembly amended A.C.A. §§ 26-75-601—613 by Act 560 of 2019, and the city council thinks it meet to conform its ordinances by compiling them into a single document, and to address the changes permissible by the recent Act,

NOW THEREFORE, IT IS FURTHER ORDAINED,

Section 1. The purpose of this ordinance is to compile the existing ordinances of the City of Ozark pertaining to the Advertising and Promotion Commission and Tax into a single ordinance and to conform the same with recent changes to the law enacted by the General Assembly. This Ordinance shall be so construed. Where there is a conflict, this Ordinance shall control. It is expressly stated as not the intent of the City Council to repeal the existing Advertising and Promotion Tax of 1991, or the ordinances implementing it, but to perpetuate it in a more concise manner which is easier to understand. To that end, City of Ozark Ordinances No. 1991-5, 2004-10 , and 2006-20 are hereby amended to read as follows:

“Section 1. Definitions.

1. Gross receipts tax. A tax of one per cent (1%) upon the gross receipts or gross proceeds from renting, leasing or otherwise furnishing of motel or hotel accommodations and upon the gross receipts or gross proceeds of restaurants, cafes and cafeterias (defined below) in the City of Ozark, Arkansas.
2. Hotel or Motel Accommodations. The renting, leasing or otherwise furnishing or accommodations in hotels or motels upon a day to day basis or a week to week basis. Provided, however, that this shall not include the renting, leasing or furnishing of accommodations upon month to month tenancies or tenancies of a longer duration.
3. Restaurants, Cafes and Cafeterias. Any establishment engaged in the business of selling prepared food for consumption on or off of the premises, whether fully cooked or assembled for cooking at another location, and shall include the gross receipts upon all such sales of prepared foods, including without limitation restaurants, delicatessens, food trucks, bakeries,

snow-cone or refreshment or concession stands, convenience stores, grocery stores, drive-in restaurants or similar businesses.

4. Advertising and Tourist Promotion. Any activity connected with tourism promotion or the arts, or otherwise authorized by A.C.A. § 26-75-601—613.

Section 2. From the effective date of the effective levying Ordinance, there is hereby levied a Gross Receipts tax of one percent (1%) as that term is defined above, and the tax herein levied shall be paid by the persons, firms or corporations liable therefore, and shall be collected by the City Advertising and Tourist Promotion commission in the same manner and at the same time as the Arkansas Gross Receipts Act 26-52-101. All the provisions of the Act, and the rules, regulations and forms promulgated and prescribed by the commissioner of Revenues pursuant to said act shall, as far as practicable, be applicable with respect to the enforcement and collection of the tax levied pursuant to this Ordinance. The Commission shall have the power to establish other forms and procedures that it deems necessary or advisable.

Section 3. Taxable Businesses.

The City Advertising and Tourist Promotion Commission shall prepare and maintain a current list of the business establishments in the City of Ozark subject to the above tax.

Section 4. Creation of City Advertising and Tourist Promotion Fund.

A. There is hereby created City of Ozark Advertising and Tourist Promotion Fund. The funds received by the City of Ozark Advertising and Tourist Promotion Commission, under the provisions of this Ordinance, shall be paid into a City of Ozark Advertising and Tourist Promotion Fund. The monies so collected shall be used exclusively for the advertising and promotion of the City of Ozark, Arkansas and its environs and/or for the extension, equipment, improvement, maintenance, repair and operation of a convention center or convention centers in such City, and facilities necessary for, supporting or otherwise pertaining to, a convention center in the manner as shall be determined by the City Advertising and Tourist Promotion Commission, or any other purpose authorized by law.

B. All revenues received by the City of Ozark Advertising and Tourist Promotion Commission pursuant to A.C.A. 26-75-601 – 26-75-613 shall be “special revenues”, and shall be deposited by the City Advertising and Tourist Promotion Commission in such bank account or accounts as may be designated by the City of Ozark Advertising and Tourist Promotion Commission.

Section 5. Creation of City Advertising and Tourist Promotion Commission.

A. The City of Ozark Advertising and Tourist Promotion Commission is hereby created. The said Commission shall be composed of seven (7) members who shall be qualified electors of the City of Ozark, Arkansas. Four (4) members shall be hotel, motel or restaurant owners or managers who shall be appointed by the Mayor with the approval of the governing body of the City, for staggered terms of four (4) years. Said four (4) members shall be selected from a list of two (2) candidates for each position, submitted by the Ozark Business Association. The remaining three members of the Commission shall be one citizen at large selected by the Mayor and approved by the City Council and two (2) Ozark City Alderpersons. Each commissioner shall file the oath, required by law in the State of Arkansas, of public officials. Each Commissioner shall furnish to the City of Ozark a FIVE THOUSAND DOLLARS (\$5,000.0) surety bond that will serve to insure the City against misappropriation or mishandling of funds. The surety on said bond shall be a reputable surety corporation. The premium of said bond shall be paid from the City of Ozark Advertising and Tourist Promotion fund.

B. Any Commissioner appointed under the provision of this Ordinance may be removed for cause upon a two-thirds (2/3) vote of the Ozark City council.

Section 6. Organization of Commission - - Powers and Duties.

A. The City of Ozark Advertising and Tourist Promotion Commission shall have such powers as are set forth herein or prescribed by law. The Commission shall meet within two (2) weeks of its appointment and shall be organized by electing a chairman, a secretary, and a treasurer. Thereafter, the Commission shall meet as often as may be necessary, and shall be subject to special call by the chairman. Provided, however, that the Commission shall meet at least quarterly each year. It shall be the duty of the secretary of said Commission to notify all members in writing at least seven (7) days in advance of said quarterly meetings.

B. The commissioners shall adopt such rules and regulations as they may deem necessary and expedient for the proper operation of said Commission, and they shall have the authority to alter, change or amend such rules and regulations at their discretion.

C. The Commission, hereunder appointed, shall have the exclusive authority to utilize all revenues collected in the City of Ozark Advertising and Tourist Promotion Fund for the advertising and promotion of the city and its environs and/or for the extension, equipment, improvement, maintenance, repair and operation of a convention center or convention centers in said City, and facilities necessary for, supporting or otherwise pertaining to, a convention center as provided by A.C.A 26-75-601 – 26-75-613.

D. The commissioners hereunder appointed, in addition to their other powers enumerated herein, shall have the exclusive right and power to make purchases of all supplies necessary for the management and operation of the Commission.

E. The Commissioners shall have the authority to employ the necessary personnel to assist in the administration and operation of the City of Ozark Advertising and Tourist Promotion Fund and shall have the authority to fix the salary or salaries for such personnel. Any employee who shall handle funds for the Commission shall likewise be bonded as provided for above for the Commissioners.

F. The funds of the Commission shall be subject to regular audit, and a report of such audit of the operations of the commission shall be provided to the Mayor and approved by the City Council of the City of Ozark, Arkansas, at least annually.

G. Attendance. The failure of any commissioners, having received due notice, to attend any two (2) consecutive meetings of said Commission and offering no sufficient excuse therefore, shall constitute cause for removal from said Commission. The Secretary shall report the dates of the non-attendance of the Commissioner to the chairman of the Commission who shall then forward said information to the City Council for appropriate action.

Section 7. A. ENFORCEMENT AND COLLECTION:

1. Any person required under this Section to pay the hotel and restaurant tax or file reports of said tax who willfully fails to pay said tax or file a report shall be guilty of a misdemeanor.

2. In addition to all other powers granted to the Commission pursuant to state law, the Commission shall have full enforcement and collection powers as set forth in ARK. Code Annotated § 26-75-603 and 26-18-101 *et seq.*, as well as the power to:

- a. Assess penalties and interest against taxpayers who fail to timely report or pay the tax. The penalty shall be equal to five percent (5%) of the unpaid tax amount per month not to exceed a total assessment of thirty-five (35%) of the unpaid tax. Simple interest on unpaid taxes shall be assessed at the rate of ten percent (10%) per annum;
- b. Assess unpaid unreported tax within three (3) years of the date the tax is due;
- c. Provide for judicial relief from proposed assessments in accordance with this section;
- d. Issue certificates of indebtedness in accordance with Section E.

B. EXAMINATION OF RECORDS

1. In the administration of the hotel and restaurant tax authorized by this Chapter, the Commission, for the purpose of determining the accuracy of a report of fixing any liability under such tax provisions, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities and the books records, papers, vouchers, accounts, and documents of any taxpayer or other person. Every taxpayer or other person and his agents and employees shall exhibit to the Commission these pieces and items and facilitate any examination or investigation.

C. NOTICE

1. The Commission shall give the taxpayer notice of any assessment, demand, decision or hearing before the Commission which directly involves that taxpayer.
2. All notice required to be given by the commission to a taxpayer shall be either served by personal service or sent by mail to the taxpayer's last address on record with the Commission. If this mail is returned unclaimed or refused, then proper notice shall have been served and given, and the Commission may take any action permitted by this Section and Ark. Code Ann. § 26-75-603.
3. If any taxpayer fails to file a report and remit the hotel and restaurant tax as provided for by this Section, the Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax due in accordance with the following procedure:

The Commission shall propose the assessment of tax due plus penalties, as the case may be, and shall give notice of the proposed assessment to the taxpayer. The notice shall explain the basis for the proposed assessment and shall state that a final assessment shall be made if the taxpayer does not protest such proposed assessment.

D. ADMINISTRATIVE PROCEDURE

1. Any taxpayer who wishes to seek administrative relief from any proposed assessment of taxes shall do so pursuant to the following procedures:
 - a. A taxpayer may at his option either request the Commission to consider his request for relief solely upon written documents furnished by the taxpayer or upon the written documents and any evidence produced by the taxpayer at a hearing.
 - b. A taxpayer who requests the Commission to render its decision based on written documents is not entitled by law to any other administrative hearing prior to the Commission's rendering of its decision, and, if necessary, the issuing of a final assessment and demand for payment or issuing of a certificate of indebtedness.
 - c. If the taxpayer requests a hearing, the Commission shall set the time and place for hearing and shall give the taxpayer reasonable notice thereof.

d. Within thirty (30) days of the issuance and service on the taxpayer of the notice and demand for payment of a deficiency in tax established by (a) a proposed assessment which is not protested by the taxpayer under this Chapter, or (b) a taxpayer may seek judicial relief from the final determination in accordance with Ark. Code Ann. § 26-75-603 (d).

E. CERTIFICATE OF INDEBTEDNESS/JUDGMENT

1. If a taxpayer does not timely and properly pursue his remedies seeking relief from a decision of the Commission, and a final assessment is made against the taxpayer, or if the taxpayer fails to pay the deficiency assessed upon notice and demand, then the Commission shall, as soon as practicable thereafter, utilize the provisions of Ark. Code Ann. § 26-75-603 (e) to enforce payment by issuing to the Circuit Clerk a certificate of indebtedness certifying that the person named therein is indebted to the Commission for the amount of the tax established by the Commission as due.

2. The Circuit Clerk shall enter immediately upon the Circuit Court judgment docket:

- a. The name of the delinquent taxpayer;
- b. The amount certified as being due;
- c. The name of the tax; and
- d. The date of entry upon the judgment docket.

3. The entry of the certificate of indebtedness shall have the same force and effect as the entry of judgment rendered by the Circuit Court. This entry shall constitute the Commission's lien upon the title of any real and personal property of the taxpayer in the county where the certificate of indebtedness is recorded.

4. The certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten-year period has run. Actions on the lien on the certificate of indebtedness shall be commenced within ten (10) years after the date of the recording of the certificate, and not afterward.

5. The Commission shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.

Section 8. Any person, organization or firm, group or party failing to comply with this ordinance shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), together with costs of the proceeding. Each day of such willful failure to comply shall constitute a separate offense and may be prosecuted accordingly.

Section 9. If for any reason, any portion of this Ordinance is held to be invalid, such invalidity shall in no way affect the remaining portions thereof which are valid, but such valid portions shall be and remain in full force and effect.

Section 10. All ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 11. This Ordinance being necessary for the immediate protection of the public welfare in making possible the advertising and tourist promotion, as herein provided, for the City of Ozark Arkansas, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED this _____ day of _____, 2019.

APPROVED:

Roxie Hall, Mayor

Approved Date: _____

ATTEST:

Sonya Eveld, Clerk

Attest Date: _____

SEAL