ORDINANCE NO. 2023-_____

AN ORDINANCE CALLING AND SETTING A DATE FOR A SPECIAL ELECTION ESTABLISHING AN ADVERTISING AND PROMOTION COMMISSION FOR THE CITY OF BRYANT, ARKANSAS; LEVYING GROSS RECEIPTS TAX PURSUANT TO THE ARKANSAS "ADVERTISING AND PROMOTION COMMISSION ACT" IN ACA 26-75-601 THROUGH 26-75-619; AND, FOR OTHER PURPOSES WITH EMERGENCY CLAUSE

WHEREAS, tourism is one of the largest industries in the United States; and,

WHEREAS, as part of major economic development, it is imperative that the City of Bryant, Arkansas (hereinafter the "City") has every opportunity to participate in available tourism dollars; and,

WHEREAS, the levy of a hotel and restaurant tax is essential to various tourism programs and projects of the City and will result in substantial inflow of tourism dollars and result in economic benefits to the residents of the City; and,

WHEREAS, a hotel and restaurant tax will enable the City to continue and expand its tourism promotion programs and projects to further enhance the revenues and other benefits derived from tourism and to thereby improve the quality of life of all residences of the City; and,

WHEREAS, the purpose of this Ordinance is to call a special election to establish an Advertising and Promotion Commission and levy a gross receipts tax, pursuant to the authority of the Arkansas "Advertising and Promotion Commission Act".

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYANT, ARKANSAS:

SECTION 1: That there be and there is hereby called a special election to be held on November ____, 2023, to determine by a vote of the qualified electors of the City of Bryant, Arkansas, the question of whether to establish an Advertising and Promotion Commission for the City of Bryant, Arkansas and Levy Gross Receipts Tax pursuant to the Arkansas "Advertising and Promotion Commission Act".

SECTION 2: That the question shall be placed on the ballot for the special election in substantially the following form:

Question One:

There is submitted to the qualified electors of the City of Bryant, Arkansas, the question of the establishment of an Advertising and Promotion Commission for the City of Bryant, Arkansas and Levying Gross Receipts Tax pursuant to the Arkansas "Advertising and Promotion Commission Act:.

Tax Levied.

A. A tax in the sum of Three Percent (3%) shall be levied upon:

(1) The gross receipts or gross proceeds from renting, leasing, or otherwise furnishing a hotel, motel, house, cabin, bed and breakfast, campground, short-term condominium, or other similar rental accommodations for sleeping, meeting, or party room facilities for profit in such city or town, but such accommodations shall not include the rental or lease of such accommodations for periods of thirty (30) days or more; and

B. A tax in the sum of Two Percent (2%) shall be levied upon:

(1) The portion of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, or similar businesses as shall be defined in the levying ordinance from the sale of prepared food and beverages for on-premises or off-premises consumption, but such tax shall not apply to such gross receipts or gross proceeds of organizations qualified under 26 U.S.C. 501(c)(3).

C. The taxes levied herein shall take effect on the 91st day following the appointment of the commissioners to The City of Bryant Advertising and Promotion Commission and shall be remitted pursuant to this such rules and regulations as may be promulgated by the Commission.

Definitions.

The following definitions shall apply with respect to the interpretation of this Ordinance:

A. The words “hotel,” “motel,” “condominium,” “restaurant,” “cafes,” “cafeterias,” “delicatessens," "drive-in restaurants," "carry-out restaurants," "convenience stores," "grocery store-restaurants," and "food delivery business" shall have their commonly accepted English meanings, and shall apply to business establishments and activities affected by this Ordinance regardless of the name or characterization applied by the owner or operator of such establishment or business activity.

B. "Taxpayer" shall mean the person, firm, or corporation owning and/or operating any establishment or business activity upon which the tax levied by this Ordinance is imposed. The term "Taxpayer" shall, for purposes of this Ordinance, include any individual who actually signs any report of tax collected pursuant to this Ordinance or who signs any Arkansas or Federal withholding or gross receipts tax report for any business establishment or activity upon which the tax levied by this Ordinance is imposed.

City of Bryant Advertising and Promotion Commission Established.

The City of Bryant Advertising and Promotion Commission ("Commission") is hereby established. The said Commission shall be composed of seven (7) members, as follows:

A. Four (4) members shall be owners or managers of businesses in the tourism industry, and the owner or manager may reside outside the City of Bryant but shall reside within Saline County, at least three (3) of whom shall be owners or managers of hotels, motels, or restaurants, and who shall serve for staggered terms of four (4) years; two (2) members of the Commission shall be members of the governing body of the City of Bryant, who shall be selected by the City Council, and shall serve at the will of the City Council; and one (1) member shall be from the public at large, who shall reside in the City of Bryant, and shall serve for a term of four (4) years.

B. The initial members of the Commission shall be selected as follows:

   a. The four (4) tourism industry positions provided for in subdivision (1) of this section shall be nominated by the Mayor and approved by a majority vote of the City Council for staggered terms so that one (1) member will serve for a term of one (1) year, one (1) member will serve for a term of two (2) years; and one (1) member will serve for a term of three (3) years; and one (1) member will serve for a term of four (4) years. The industry

positions will be allocated to the 1, 2, 3, and 4-year terms based on a random drawing by the appointees.

b. The two (2) members of the Commission who are members of the governing body of the City of Bryant shall be selected by a majority vote of the City Council.
c. The at-large position provided for in subdivision (1) of this section shall be selected by the Mayor with the concurrence of a majority vote of the City Council.

C. Vacancies on the commission, whether resulting from the expiration of a regular term or otherwise, in any of the four (4) tourism industry positions or the at-large position shall be filled by appointment made by the remaining members of the Commission with the approval by a majority vote of the City Council of the City of Bryant. The City Council of the City of Bryant may remove any member of the Commission by a 2/3rds vote upon 30 days' notice of intent to take such vote and prior to such vote occurring.
D. Each member of the commission shall file the oath required by law in the State of Arkansas of public officials

Organization of Commission.

A. The Commission shall meet within two (2) weeks of its appointment and shall be organized by electing a chairman, secretary, and treasurer. Thereafter the Commission shall meet as often as may be necessary and shall also be subject to special call by the chairman of the commission. The Commission shall meet at least bi-annually.
B. The Commission shall have the authority to employ the necessary personnel to assist in the administration and operation of the City of Bryant Advertising and Promotion Fund or may contract with appropriate firms or the City of Bryant to perform functions of administration and operations.
C. The Commission shall make quarterly reports to the Mayor and City Council beginning three (3) months after taking their office, reporting in full on the operations of the Commission, including an accounting of receipts and disbursements, and shall, upon request of City Council furnish such other and further reports and data as may be required. The commissioners shall select a recognized auditing firm to submit an annual audit of the operations of the commission to the Mayor and City Council. The Commission may contract with the auditing firm that the City of Bryant retains for its audit purposes.

Collection of Tax.

A. The tax shall be paid by the Taxpayer and shall be collected by the Commission or by a designated agent of the Commission in the same manner and at the same time as the tax levied by the Arkansas Gross Receipts Act of 1941, as amended.
B. Taxpayers shall collect the applicable tax levied from the purchaser or user of the food or accommodations. Taxpayers paying the tax shall report and remit the tax collected upon forms provided by the Commission, and as directed by the Commission, but in no event later than the 20th day of the month following collection of the previous month's taxes.
C. The rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act of 1941, as amended, and the Arkansas Tax Procedure Act, as amended, shall, so far as practicable, be applicable with respect to the enforcement and collection of the tax levied. However, the administration and enforcement, and all actions, shall be

by, and in the name of the Commission through the proper Commission officials or agents. The Commission shall have the authority to sue and be sued in its name. The Commission shall for the purposes of collecting the tax levied, have all the power and authority stated in Arkansas Code Annotated Section 26-75-603 and as hereafter amended from time to time.

D. The Commission is authorized to pursue all remedies for tax collection and enforcement as identified in Arkansas Code Annotated Section 26-75-603 (c)-(f) and specifically meets the requirements of subsection (f) as may be amended from time to time by the Arkansas General Assembly.
E. It shall be unlawful for any person, business, or entity subject to the A&P tax to transact business within the City of Bryant prior to the issuance and receipt of an A&P tax permit from the Commission.
    a. A separate A&P tax permit must be obtained from the Commission for each location whereat the person, business, or entity conducts a business that is subject to the A&P Tax.
    b. An A&P tax permit shall have no stated term.
    c. Any person, business, or entity subject to the A&P tax transacting business in the city shall file with the Commission an application for an A&P tax permit to conduct business, the form and contents of which application shall be as prescribed by the Commission from time to time.
    d. The A&P tax permit shall not be assignable and shall be valid only for the person, business, or entity in whose name it is issued and for the location thereon designated. The A&P tax permit shall at all times be conspicuously displayed at the location thereon designated. The A&P tax permit shall expire at the time of cessation of the business of the person, business, or entity designated thereon.
F. The Commission shall promulgate rules and regulations to fulfill the purposes of enforcement and collection of the tax levied herein as it deems necessary and as allowed by Arkansas Code as may be amended from time to time by the General assembly within 60 days of formation of the commission. The grant of authority is to authorize the Commission to exercise all rights and privileges in the collection and enforcement of the tax levied herein to the greatest extent permitted by Arkansas law.

Administration of Funds.

A. There is hereby created the City of Bryant Advertising and Promotion Fund, to which fund there shall be credited all collections of the tax levied.
B. The Commission is the body that determines the use of the City of Bryant advertising and Promotion Fund that is not designated to the city parks system.
C. Fifty percent (50%) of all the funds credited to the City of Bryant Advertising and Promotion Fund shall be used for the construction, reconstruction, extension, equipment, improvement, maintenance, repair, and operation of, the city parks system, or for the payment of the principal of, interest on, and fees and expenses in connection with, bonds associated with such projects.
D. Five percent (5%) of all funds credited to the City of Bryant Advertising and Promotion Fund shall be used to cover administrative costs associated with collecting and managing the funds collected.
E. Forty-five percent (45%) of all the funds credited to the City of Bryant Advertising and Promotion Fund shall be used for advertising and promoting the City and its environs as shall be determined by the City of Bryant Advertising and Promotion Commission.

F. Pursuant to Arkansas Code Annotated Section 26-75-606(a)(2) as may be amended from time to time, if the Commission determines that funding of the arts is necessary for or supporting of its city's advertising and promotion endeavors, it can use its funds derived from the hotel and restaurant tax.

G. The Commission may not use proceeds from the Tax for:
   a. general capital improvements within the city;
   b. the costs associated with the general operation of the city;
   c. general subsidy of any civic groups or chamber of commerce.

H. The Commission may contract with groups to provide the commission actual services that are connected with tourism events or conventions; and the authorization and limitations contained in this subsection shall be reasonably construed so as to provide funds for promoting and encouraging tourism and conventions while not allowing such special revenues to be utilized for expenditures that are normally paid from general revenues of the City.

I. The Funds collected pursuant to the taxes levied and allocated to the City of Bryant Advertising and Promotions Fund may be used for any purposes identified and authorized in Arkansas Code Annotated Section 26-75-606, as may be amended from time to time by the General Assembly of the State of Arkansas.

Vote on the question by placing an "X" in one of the squares following the question, either for or against:

FOR the establishment of an Advertising and Promotion Commission for the City of Bryant, Arkansas and Levying Gross Receipts Tax pursuant to the Arkansas "Advertising and Promotion Commission Act……☐

AGAINST the establishment of an Advertising and Promotion Commission for the City of Bryant, Arkansas and Levying Gross Receipts Tax pursuant to the Arkansas "Advertising and Promotion Commission Act……☐

SECTION 3: That the election shall be held and conducted and the vote canvassed and the results declared under the law and in the manner now provided for Arkansas municipal special elections unless otherwise provided in Act 626 of 1989, and only qualified voters of the city shall have the right to vote at the election. The City Clerk is hereby directed to give notice of the special election by one advertisement in *The Saline Courier*, the publication to be not less than ten (10) days prior to the date of the election.

SECTION 4: That a copy of this Ordinance shall be given to the Saline County Board of Election Commissioners so that the necessary election officials and supplies may be provided.

SECTION 5: That the results of the special election shall be proclaimed by the Mayor, and his proclamation shall be published one time in *The Saline Courier*. The proclamation shall advise that the results as proclaimed shall be conclusive unless challenged in the Circuit Court of Saline County within thirty (30) days after the date of publication of the proclamation.

SECTION 6: That the Mayor and the City Clerk, for and on behalf of the City, be, and they hereby are authorized and directed to do any and all things necessary to call and hold the special election as herein provided and, if the establishment of an Advertising and Promotion Commission for the City of Bryant, Arkansas and Levying Gross Receipts Tax pursuant to the Arkansas "Advertising and Promotion Commission Act" is approved by the electors, to perform all acts of whatever nature necessary to carry out the authority conferred by this Ordinance.

SECTION 7: All ordinances and resolutions, and part thereof, in conflict in whole or in part, with any of the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 8: If any provisions of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 9: EMERGENCY CLAUSE. That it is hereby ascertained and declared that there is a critical need to obtain this additional funding, all in order to promote and protect the health, safety and welfare of the inhabitants of the City. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of public peace, health and safety shall be in force and effective immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF BRYANT, ARKANSAS, on this the _____ day of _____, 2023

APPROVED:

_____
Mayor Allen E. Scott

ATTEST:

_____
Mark Smith, City Clerk