

ORDINANCE NO. 67

AN ORDINANCE OF THE CITY OF RIDGECREST
IMPOSING A TAX UPON THE PRIVILEGE OF
TRANSIENT OCCUPANCY AND PROVIDING FOR
THE COLLECTION THEREOF

THE CITY COUNCIL OF THE CITY OF RIDGECREST DOES ORDAIN AS FOLLOWS:

Section 1. TITLE. This Ordinance shall be known as the Uniform Transient Occupancy Tax Law of the City of Ridgecrest.

Section 2. DEFINITIONS. Except where the context otherwise requires, the definitions given in this Section govern the construction of this Ordinance.

(a) Person. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(b) Hotel. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof. "Hotel" does not include a private home, vacation cabin or similar facility which is rented by a person who is not regularly engaged in the business of renting such facility and does so only occasionally and incidentally to his own use thereof.

(c) Occupancy. "Occupancy" means the use or possession or the right to use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

(d) Transient. "Transient" means any person who, for any period of not more than thirty (30) consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any lodging space in any hotel as hereinafter defined, for which lodging or use of lodging space a charge is made.

(e) Permanent Resident. "Permanent Resident" means any person who, as of a given date, has occupied or has had the right to occupy a room or rooms in a particular hotel, as herein defined, for the thirty consecutive days next preceding such date.

(f) Rent. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

(g) Operator. "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall, however, be considered to be compliance by both.

(h) Tax Administrator. "Tax Administrator" means the City Clerk of the City of Ridgecrest.

Section 3. TAX IMPOSED. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of four per cent (4%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator.

Section 4. EXEMPTIONS. No tax shall be imposed upon:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax herein provided;

(b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;

No exemption shall be granted under subsection (a) or (b) of this section, except upon a claim therefor made at the time the rent is collected and under penalty of perjury upon a form prescribed by the Tax Administrator.

Section 5. OPERATOR'S DUTIES. Each operator shall collect the tax imposed by this Ordinance to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

Section 6. REGISTRATION. Within thirty (30) days after the effective date of this Ordinance, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Administrator and obtain a "Transient Occupancy Registration Certificate" which might be combined with the business license to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The name and address of the hotel;
- (3) The date upon which the certificate was issued;

(4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Law by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator of the City of Ridgecrest. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, not to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit."

- (5) Such additional information as may be required by the City Council.

Section 7. REPORT AND REMITTING; ALLOWANCE FOR COLLECTION COSTS. Each operator shall, on or before the last day of the month following the close of each calendar quarter make a return to the Tax Administrator, on forms provided by him, of the total transient rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected, less two and one-half percent (2 1/2%) which may be deducted and retained to cover the administrative expense in collecting such taxes, shall be remitted to the Tax Administrator. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this ordinance shall be held in trust for the account of the City until payment thereof is made to the Tax Administrator as provided herein.

Section 8. PENALTIES AND INTEREST.

(a) Original Delinquency. Any operator who fails to remit any tax imposed by this Ordinance within the time required shall pay a penalty of 10% of the amount of the tax in addition to the amount of the tax.

(b) Fraud. If the City Council determines that the non-payment of any remittance due under this ordinance is due to fraud, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraph (a) of this section.

(c) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Ordinance shall pay interest at the rate of one-half of 1% per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(d) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

Section 9. FAILURE TO COLLECT AND REPORT TAX. DETERMINATION OF TAX BY TAX ADMINISTRATOR. APPEAL TO CITY COUNCIL. If any operator shall fail or refuse to collect said tax and to make, within the time provided in this Ordinance, any report and remittance of said tax or any portion thereof required by this Ordinance, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this Ordinance and payable by any operator who has failed or refused to collect the same and to make such report and remittance he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this Ordinance. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Tax Administrator for a hearing before the City Council on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application for a hearing before the City Council is made, the City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator appealing at his last known place of address. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the City Council shall determine the proper tax to be remitted and such findings shall be final and conclusive. The City Council shall cause such findings to be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

Section 10. USE OF FUNDS. All taxes, penalties, interest, and other sums collected pursuant to this ordinance shall be deposited in a special fund and one-half of such funds used solely for City recreation purposes and one-half of such funds used solely for City tourism purposes.

Section 11. RECORDS. It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this Ordinance to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the City, which records the Tax Administrator shall have the right to inspect at all reasonable times.

Section 12. REFUNDS.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this Ordinance it may be refunded as provided in subparagraphs (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

(b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City filing a claim in the manner provided in subparagraph (a) of this section, but only when the tax was paid by the transient directly to the Tax Administrator, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) Where the tax has been collected for room rental for thirty days or less and the occupant subsequently completes thirty-one consecutive days of occupancy, the person whose duty it is to collect said tax may return such tax to the occupant or person obligated to pay such tax. If said person whose duty it is to collect said tax has paid such tax over to the City, he may, within one year from the date of the payment to the Tax Administrator, and provided he has returned such tax to the occupant or person obligated to pay such tax, either take credit for the tax so paid on any subsequent return filed by him or file a claim for refund of such tax. Such claim may be paid to such person by the Tax Administrator. The taxes required to be collected hereunder shall be deemed to be held in trust by the person required to collect the same until remitted as hereinafter required.

(e) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

Section 13. ACTIONS TO COLLECT. Any tax required to be paid by any transient under the provisions of this Ordinance shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this Ordinance shall be liable to an action brought in the name of the City of Ridgecrest for the recovery of such amount.

Section 14. VIOLATIONS, MISDEMEANOR. Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for a period of not more than six months or by both such fine and imprisonment.

Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the City Council, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this Ordinance to be made, is guilty of a misdemeanor and is punishable as aforesaid.

Section 15. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

Section 16. The City Clerk shall cause the same to be published or posted in the manner required by law.

Passed and adopted by the City Council of the City of Ridgecrest this 17th day of August 1967, by the following vote:

AYES: Mayor Smith, Councilmen Fox, Kessler, and Shacklett
NOES: None
ABSENT: Councilman Jules

ATTEST:

James R. Heck
CITY CLERK

Kenneth M. Smith
KENNETH M. SMITH
Mayor