

ORDINANCE NO. 284

AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO. FINDING THAT SAID CITY HAS SIGNIFICANT ECONOMIC DEPENDENCE ON VISITORS AND TRAVELERS; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE IMPOSITION OF CERTAIN NON PROPERTY TAXES, TO-WIT: A FIVE PER CENTUM (5%) HOTEL-MOTEL ROOM OCCUPANCY TAX, AND A FIVE PER CENTUM (5%) LIQUOR BY-THE-DRINK TAX; PROVIDING FOR A FIVE (5) YEAR DURATION OF SAID NON PROPERTY TAXES; ESTABLISHING THE PURPOSES FOR WHICH THE REVENUES DERIVED FROM SAID NON PROPERTY TAXES SHALL BE USED; CREATING A PROPERTY TAX RELIEF FUND; AUTHORIZING THE CITY CLERK TO ADMINISTER, REGULATE, AND COLLECT SAID NON PROPERTY TAXES; PROVIDING FOR PERMITS AND ISSUANCE, PROVIDING METHOD FOR PAYMENT OF TAXES, AUDITS, DEFICIENCY DETERMINATIONS; PREDETERMINATIONS OF DEFICIENCY, APPEALS, INTEREST ON DEFICIENCY, COLLECTIONS AND ENFORCEMENT; REFUNDS. LIMITATIONS AND INTEREST; PROVIDING FOR RESPONSIBILITY FOR PAYMENT OF TAXES; PROVIDING PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION; ESTABLISHING SUCCESSOR'S LIABILITY; PROVIDING FOR GENERAL ADMINISTRATION BY CITY CLERK; PROVIDING PENALTIES AND PENALTY CHARGE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED by the Mayor and City Council of Ketchum, Idaho:

SECTION 1. FINDING:

The City Council of the City of Ketchum hereby finds that said City is a city that derives the major portion of its economic well being from people catering to recreational needs and meeting needs of people traveling to that distinct City for an extended period of time; that said City has a significant economic dependence upon visitors and travelers passing through or staying in the community and said City; and, that said visitors and travelers require services of said City which place an undue burden upon the taxpayers of said City.

SECTION 2. DEFINITIONS:

(a) Hotel-motel - Any business including hotels, motels, condominiums, tourist homes, and any other business which in the regular course of business rents or leases for occupancy temporary lodging to individuals with or without meals, except where residence is maintained continuously under terms of a lease or similar agreement for a period in excess of thirty (30) days.

(b) Liquor by-the-drink - The term as used in this ordinance, includes:

(i) "Alcohol," meaning the product of distillation of any fermented liquor, rectified either once or oftener, whatever may be the origin thereof, or synthetic ethyl alcohol.

(ii) "Spirits," meaning any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, among other things, brandy, rum, whiskey, and gin.

~~(iii) "Wine," meaning any alcohol beverage obtained by the fermentation of the natural sugar content of fruits (grapes, apples, etc.) or other agricultural products containing sugar (honey, milk, etc.)~~

~~(iv) "Beer," meaning any alcohol beverage obtained from the fermentation of sugar, barley, hops, malt, yeast and similar ingredients.~~

(v) Any liquid or solid, patented or not, containing alcohol, spirits, or wine and susceptible of being consumed by a human being, for beverage purposes.

(c) Sale of Liquor by-the-drink - The terms sale, retail sale, and sale at retail mean the sale of liquor by-the-drink for consumption on the premises, and includes any transfer of money, title,

exchange, barter or credit, conditional or otherwise, in any manner or by any means whatsoever as consideration.

(d) Room occupancy charge - The total amount charged for the rental use or temporary occupancy of a room or living unit, valued in money, whether paid in money or otherwise, without any deduction.

(e) Seller of liquor by-the-drink - Any individual, partnership, corporation, organization or association that engages in sale of liquor by-the-drink for consumption on the premises, whether by agent, employee or principle.

(f) Taxpayer - Any person subject to or liable for any tax or payment of any tax imposed under this ordinance.

(g) "In the City of Ketchum" - Means within the exterior boundaries of the City of Ketchum, Blaine County, Idaho.

(h) "Person" - Shall include any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit.

(i) Sales Price - The total amount for which liquor by-the-drink is sold, valued in money, whether paid in money or otherwise, without any deduction.

SECTION 3. IMPOSITION OF CERTAIN NON PROPERTY TAXES, TO-WIT: A FIVE PER CENTUM (5%) HOTEL-MOTEL ROOM OCCUPANCY TAX, AND A FIVE PER CENTUM (5%) LIQUOR BY-THE-DRINK TAX.

The City of Ketchum, hereby imposes and shall collect, as set forth herein, certain NON PROPERTY taxes as follows:

(a) HOTEL-MOTEL ROOM OCCUPANCY - A tax is hereby imposed at the rate of five per centum (5%) on the room occupancy charge for each hotel-motel room rented or leased within the City of Ketchum, Blaine County, Idaho. Said room occupancy tax shall apply, be computed on and collected on all room occupancy charges including all credit, installment, conditional or similar rental or lease fees at the time the fee for rental is charged. Said room occupancy tax shall be collected by the owner of said property or his authorized agent from the renter or lessee.

(b) LIQUOR BY-THE-DRINK TAX - A tax is hereby imposed at the rate of five per centum (5%) of the sales price upon each sale at retail of liquor by-the-drink. The tax shall apply to, be computed on, and collected for all sales including credit, or similar sales at the time of the sale, and shall be collected by the retailer from the consumer.

(c) When the sales price involves a fraction of a dollar, said NON PROPERTY taxes shall be collected on that fractional portion of the price by adding thereto the tax based upon the following bracket system.

1. \$.01 to	.29 .01
2. \$.30 to	.49 .02
3. \$.50 to	.69 .03
4. \$.70 to	.89 .04
5. \$.90 to	1.00 .05

The retailer shall calculate the tax upon the entire amount of purchases of the consumer made at a particular time subject to this ordinance, and not separately upon each item purchased. The retailer

may retain any amount collected under said bracket system which is in excess of the amount of tax for which he is liable to the City during the period as compensation for the work of collecting said tax.

(d) All monies collected and/or retained under the provisions of this ordinance shall be held in trust for the City of Ketchum and for payment thereof to the City Clerk in the manner and at the times in this ordinance provided.

SECTION 4. DURATION OF TAXES.

The NON PROPERTY taxes authorized and collected under this ordinance are hereby imposed for a duration of FIVE (5) years from the effective date of this ordinance.

SECTION 5. PURPOSES FOR WHICH THE REVENUES DERIVED FROM SAID NON PROPERTY TAXES SHALL BE USED.

The NON PROPERTY tax revenue derived from and collected under this ordinance shall be used for the following purposes:

- (a) Municipal Transportation.
- (b) Open Space Acquisition and Recreation.
- (c) Capital Improvements: Roads, Water, Sewer, Parking.
- (d) Emergency Services: Police, Fire, Ambulance.
- (e) Property Tax Relief.
- (f) Direct Costs to Collect and Enforce the Tax.

SECTION 6. CREATION OF A PROPERTY TAX RELIEF FUND.

(a) There is hereby created in the office of the City Clerk a fund to be designated as the "Municipal Property Tax Relief Fund". All monies collected under this ordinance, and not otherwise budgeted by the City Council, shall be placed by the City Clerk into the municipal property tax relief fund. All monies collected and placed into said fund shall be used to replace City property taxes in the ensuing fiscal year.

SECTION 7. AUTHORIZATION FOR CITY CLERK TO ADMINISTER, REGULATE AND COLLECT SAID NON PROPERTY TAXES.

(a) The City Clerk of the City of Ketchum is hereby authorized and empowered to administer, regulate and collect payment of all NON PROPERTY taxes adopted and imposed by this ordinance. Said Clerk shall have all of the powers set forth in this ordinance together with those additional powers necessary and proper to carry out the provisions of this ordinance.

SECTION 8. PERMITS-ISSUANCE.

(a) Every person desiring to engage in or conduct business of renting a hotel-motel room, and/or selling liquor by-the-drink within this City shall file with the City Clerk an application for a municipal NON PROPERTY tax permit for each place of business. A separate permit is required for each place of business within the City. Every application for said permit shall be made upon a form prescribed by the City Clerk and shall set forth the name under which the applicant transacts or intends to transact business, the location of the business or places of business, and such other information as the City Clerk may require. The application shall be signed by the owner, if he is a natural person; or in the

case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or other person authorized by the corporation to sign the application. Initial permits shall be issued upon completion of the application and payment of a Five Dollar (\$5.00) application fee for each permit sought.

(b) Upon filing an application meeting the requirements set out above, the City Clerk shall issue to each applicant a permit for each place of business. A permit shall not be assignable, and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the location for which it was issued. Issuance of a permit may be subject to additional requirements as set forth in this ordinance.

(c) On the face of the permit shall be fixed a municipal NON PROPERTY tax number which shall be used by the applicant as an identifying number on all filing, payment and correspondence with regard to the NON PROPERTY tax imposed under this ordinance.

SECTION 9. METHOD FOR PAYMENT OF TAXES.

(a) The taxes imposed by this ordinance shall be computed and paid for each calendar month. Said taxes are due and payable to the City Clerk on or before the 25th day of the succeeding month. The amount of tax paid shall be computed on the total dollar value of liquor by-the-drink sold and/or hotel-motel room charges. Each person required to hold a municipal NON PROPERTY tax permit and number shall file a municipal NON PROPERTY tax return and a copy of their Idaho State Sales Tax Return for the month at the same time said taxes are paid to the City Clerk, unless said person has been permitted in writing by the Idaho State Tax Commission to file quarterly sales or use tax returns. Persons who have been permitted to file other than monthly returns shall notify the City Clerk in writing and the City Clerk thereupon may require reporting of State Tax Returns over some other period.

(b) The first payment of taxes under this ordinance shall be due and payable together on the 25th day of February, 1979, for that period beginning December 15, 1978, and ending January 31, 1979. Thereafter all payments shall be made monthly.

(c) A municipal NON PROPERTY tax return shall be filed each and every month by every person engaging in the sale of liquor by-the-drink and/or hotel-motel rental or lease irregardless of whether or not any tax is due. Returns shall be signed by the person required to file the return or by a duly authorized agent.

SECTION 10. AUDITS - DEFICIENCY DETERMINATIONS.

(a) The City Clerk may order an audit of any taxpayer under this ordinance for the purpose of ascertaining the correctness or completeness of any return or payment.

(b) If any error or omission is discovered in such audits or in any other way, the City Clerk may compute and determine the amount of tax due upon the basis of facts obtained from such information within its possession and assert a deficiency. One or more deficiency determinations may be made for the amount due for one or for more than one period. In making such a determination, the City Clerk may offset over payments against amounts due. Further, said determinations shall be made for the period or periods in respect to which the person fails to make a return and shall be based upon any information which is in the City Clerk's possession.

(c) The City Clerk shall give written notice of its determination and the amount of its deficiency, including interest, at the rate of eight per cent (8%) per annum from the date due, to the person from whom such deficiency amount is due. Such notice may be given personally or mailed to the person at the address furnished to the City Clerk in the NON PROPERTY tax permit application.

SECTION 11. REDETERMINATION OF DEFICIENCY.

(a) Any person against whom a deficiency determination is made under this ordinance, or any person directly interested, may petition in writing for a redetermination within thirty (30) days after service- upon the person of notice thereof. If the petition for redetermination is not filed within the thirty (30) day period, the determination becomes final at the expiration of the period.

(b) If a petition for redetermination is filed within the thirty (30) day period, the City Clerk shall reconsider the determination and, if the person so requests in the petition, grant the person oral hearing and give said person ten (10) days' notice of the time and place of the hearing personally or by mail addressed to the person at the address furnished to the City Clerk in said person's application for a NON PROPERTY tax permit.

SECTION 12. APPEALS, INTEREST ON DEFICIENCY.

(a) When a redetermination is made , the City Clerk shall give notice to the taxpayer against whom the redetermination is made. Within thirty (30) days of the date upon which such notice of redetermination is mailed or served, the taxpayer may file an appeal with the City Council or may file a complaint with the District Court for review of the City Clerk's redetermination. There shall be no right of review to the City Council nor to the District Court on the determination of taxes due made by the City Clerk unless a petition for redetermination has been timely filed. No assessment of a deficiency in respect to the tax imposed by this ordinance or proceeding to collect for its collection shall be made, begun or prosecuted until such notice has been mailed to the taxpayer and expiration of such thirty (30) day period after notice of redetermination, nor if a protest is filed until a decision on the protest becomes final. If the taxpayer does not protest to the City Council or file an action in District Court within the time prescribed in this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the City Clerk.

(b) Interest upon any deficiency shall be assessed at the same time as the deficiency and shall become due and payable upon notice and demand from the City Clerk and shall be collected as part of the tax at the rate of eight per cent (8%) per annum from the date prescribed for payment of the tax.

SECTION 13. COLLECTIONS AND ENFORCEMENT.

(a) As soon as practical after monthly municipal NON PROPERTY tax return and payment is filed, the City Clerk shall examine same, determine the correct amount of the tax. For the purpose of ascertaining the correctness of any payment determining the amount of tax due where none has been made, determining liability of any person for any tax payable under this ordinance, or the liability at law or in equity of any person in respect to any tax provided by this ordinance or collecting any such liability, the City Clerk, or duly authorized deputy, is authorized (1) to examine the books, papers, records or other data which may be relevant or material to the inquiry; (2) to summon the person liable for the tax or any officer, agent or employee of such person, or any person having possession, custody or care of books of accounting containing entries relating to the business of the person liable for the tax, to appear before the City Clerk, or deputy, at a time and place named in its summons to produce such books, papers, records or other data and/or give such testimony under oath as may be relevant or material to such inquiry.

SECTION 14. REFUNDS, LIMITATIONS AND INTEREST.

(a) If the City Clerk determines that any amount due under this ordinance has been paid more than once or has been erroneously or illegally collected or computed, the City Clerk shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount due or payable to the City Clerk for NON PROPERTY taxes from that person, and any balance refunded to the person by whom it was paid or to his successors, administrators or executors.

(b) No such credit or refund shall be allowed or made after one (1) year from the time the payment was made unless before the expiration of such period a claim therefor is filed by the taxpayer.

(c) Interest shall be allowed on the amount of such credits or refunds at the rate of eight per cent (8%) per annum from the date which such tax was paid.

(d) Appeal from the City Clerk's decision denying in part or in whole a claim for refund shall be made in accordance with the laws of the State of Idaho with regard to claims against municipalities.

SECTION 15. RESPONSIBILITY FOR PAYMENT OF TAXES.

(a) Every person with a duty to account for or pay over any tax imposed by this ordinance on behalf of a corporation as an officer employee of the corporation, or on behalf of a partnership, as a member employee of the partnership shall be personally liable for payment of such tax, plus penalties and interest.

SECTION 16. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

(a) The amount of taxes imposed under this ordinance shall be assessed within three (3) years of the time the return upon which the tax asserted to be due was or should have been filed, whichever is later; provided, however, if a deficiency determination or assessment has been made within the prescribed time, such tax may be collected within a period of six (6) years after assessment. The running of limitations provided by this section shall be suspended for the period during which the City Clerk is prohibited from making the assessment or from collecting or proceeding in court due to a petition for redetermination or an appeal therefrom, and for thirty (30) days thereafter.

(b) In the cases of taxes due during the lifetime of a decedent, the tax shall be assessed any proceedings for collection begun within six (6) months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent-unless the assessment is stayed by a petition for redetermination or any appeal therefrom.

(c) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within three (3) years after the date of the discovery of the facts constituting the fraud.

SECTION 17. SUCCESSORS' LIABILITY.

(a) If a vendor liable for any amount of tax under this ordinance sells out his business or stocks and goods, the vendee shall make an inquiry to the City Clerk and withhold from the purchase price any amount of tax that may be due under this ordinance until such time as the vendor produces receipt stating that no amount is due.

(b) If the purchaser of business or stock of goods fails to withhold from the purchase price as above required, he is personally liable for the payment of the amount required to be withheld by him to be extended a purchase price valued in money.

SECTION 18. GENERAL ADMINISTRATION BY CITY CLERK.

(a) The City Clerk shall enforce the provisions of this ordinance and may prescribe, adopt and enforce rules and regulations relating to its administration and enforcement. The City Clerk may employ qualified auditors for examination of taxpayers' books and records, and shall also employ such accountants, investigators, assistants, clerks, and other personnel as are necessary for the efficient administration of this ordinance, and may delegate authority to its representatives to conduct hearings, or perform other duties imposed by this ordinance.

(b) Every hotel-motel owner and seller of liquor by-the-drink in this City shall keep such records, receipts, invoices, and other pertinent papers as the City Clerk may require. Every such hotel-motel owner and seller of liquor by-the drink who files tax payments required under this ordinance shall keep all such records for not less than four (4) years after making such payments unless the City Clerk in writing authorizes their destruction.

(c) The City Clerk, or any person authorized in writing by the Clerk, may examine the books, papers, records and equipment of any person selling liquor by-the-drink and any hotel-motel owner or any person liable for any tax, and may investigate the character of the business of the person in order to verify the accuracy of any return made, or if no return is made by the person to ascertain and determine the amount required to be paid. Any hotel-motel owners or persons who sell liquor by-the-drink whose pertinent records are kept outside of the City must bring the records to the City for examination by the City Clerk upon request of the latter, or by agreement with the City Clerk permit an auditor designated by the City Clerk to visit the place where the records are kept, and their audit such records.

SECTION 19. PENALTIES.

(a) Any person who violates any provision of this ordinance shall be guilty of a misdemeanor, punishable by up to one (1) year in the county jail, and/or Three Hundred Dollars (\$300.00) fine, or both. Furthermore, each month in which a person fails to report, or intentionally fails to accurately compute, or intentionally fails to accurately disclose the total amount of sales or rentals or the amount of tax to be paid, as imposed under this ordinance, shall be considered a separate offense.

(b) Any person who violates any provision of this ordinance shall have his municipal NON PROPERTY tax permit and tax number revoked. The City Clerk shall send written notice of revocation of said permit and tax number to the permit holder by mailing same certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the City Council, challenging said revocation. If no appeal is timely made said revocation becomes final. Whenever a person subject to this ordinance has had said permit and tax number revoked, the City Clerk shall not reissue said permit nor issue a new permit to said person until said person places with the City Clerk a bond or other sufficient security in the amount equal to three (3) times the actual, determined or estimated average monthly amount of tax payable by such person pursuant to this ordinance.

(c) The City Clerk, whenever it is deemed necessary to insure compliance with this ordinance, may require any person subject to this ordinance to place with it such security as it may determine. The amount of said security shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this ordinance. The amount of the security may be increased or decreased by the City Clerk at any time, subject to the limitations set forth above.

(d) Any person who violates any provision of this ordinance shall have all municipal beer license(s), and wine license(s), and retail liquor by-the-drink license(s) revoked.

(e) Any amount of tax due under this ordinance for which a person fails to report or accurately compute, shall become a lien upon the property of said taxpayer on the date that the same becomes due, and the City may seek to enforce said lien and collect all taxes and interest due together with the reasonable costs of collection, including attorney's fees, in a court of competent jurisdiction.

(f) or the purposes of proper administration of this ordinance, and to prevent evasion of said non-property taxes, the burden of proving that a sale of liquor by-the-drink or rental of a hotel-motel room is not a sale under this ordinance is upon the person who makes the sale or rental in question.

SECTION 20. PENALTY CHARGE.

(a) Any person who is required to collect, truthfully account for, and pay over any tax imposed by this ordinance and who willfully fails to collect such a tax or truthfully account for or pay over such a tax, or willfully attempts in any manner to evade or defeat such a tax or payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the amount of the tax evaded, or not collected, or not accounted for and paid over. The City Clerk shall determine and assess such penalties, and the same shall become due and payable upon notice and demand from the City Clerk. The City Clerk shall send written notice of such penalty charge to the permit holder by mailing same certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the City Council challenging said penalty charge determination. If no appeal is timely made, said penalty charge determination becomes final.

SECTION 21. EXEMPTIONS.

All transactions by the State of Idaho, otherwise, subject to imposition of said taxes, are exempt from the provisions of this ordinance.

SECTION 22. SEVERABILITY.

It is hereby declared to be the legislative intent that the provisions, and parts thereof, of this ordinance shall be severable. Should any section, subsection, paragraph, clause or phrase of this ordinance, or any particular application thereof, be declared invalid or unconstitutional for any reason by a court of competent jurisdiction, such decision shall not affect the remaining portions of said section, subsection, paragraph, clause or phrase of this ordinance.

SECTION 23. This ordinance shall be in full force and effect on December 15, 1978, and after voter approval, passage by City Council and Mayor, and publication according to law prior to December 15, 1978.

PASSED BY THE CITY COUNCIL and approved by the Mayor this 20th day of November, 1978.

GERALD N. SEIFFERT, Mayor

(SEAL)

ATTEST: Betty A. Coles, City Clerk