

ORDINANCE NO. 574

AN ORDINANCE OF THE CITY OF KELLOGG, SHOSHONE COUNTY, IDAHO, FINDING THAT SAID CITY IS A RESORT CITY; PROVIDING DEFINITIONS; IMPOSING A LOCAL-OPTION NONPROPERTY TAX OF THREE AND ONE-HALF PERCENT ON ROOM OCCUPANCY CHARGES FOR EACH HOTEL-MOTEL ROOM RENTED; PROVIDING FOR A TEN YEAR DURATION FOR SAID ORDINANCE; PROVIDING THE PURPOSES FOR WHICH THE REVENUES DERIVED FROM SAID NONPROPERTY TAX SHALL BE USED; CREATING A PROPERTY TAX RELIEF FUND; AUTHORIZING THE CITY TREASURER TO ADMINISTER, REGULATE AND COLLECT SAID NONPROPERTY TAXES AND TO ESTABLISH REGULATIONS RELATING THERETO; REQUIRING A MUNICIPAL NONPROPERTY TAX PERMIT, AND PROVIDING THE APPLICATION AND ISSUANCE PROCESS; ESTABLISHING THE METHOD OF REPORTING AND PAYING THE TAX, INCLUDING A PENALTY OF FIVE PERCENT FOR LATE PAYMENT; AUTHORIZING AUDITS AND INTEREST ON DEFICIENCIES; PROVIDING FOR CREDITS AND REFUNDS; PROVIDING AN APPEAL PROCESS; PROVIDING A PERIOD OF LIMITATION ON COLLECTION; PROVIDING THAT A VIOLATION IS A MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED ONE THOUSAND DOLLARS, OR INCARCERATION NOT TO EXCEED SIX MONTHS, OR BOTH FINE AND JAIL; ADDRESSING CONFIDENTIALITY; PROVIDING SEVERABILITY; PROVIDING REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE UPON ELECTION APPROVAL.

IT IS ORDAINED by the City Council of the City of Kellogg, Shoshone County, Idaho as follows:

Section 1. Findings. The City Council hereby finds that said City is a resort City with a population not in excess of ten thousand (10,000), according to the most recent census within the state of Idaho, that it is organized under the general laws of the state, and that it derives the major portion of its economic well-being from businesses catering to recreational needs and meeting needs of people traveling to said City for an extended period of time.

Section 2. Definitions. The following definitions shall be applicable to this Ordinance.

"Hotel-Motel." The term "hotel-motel" means any business including, but not limited to, hotels, motels, condominiums, tourist homes, bed and breakfast establishments 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.

"Person." The term "person" means and includes any individual, firm, co-partnership, 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 to own or operate a Hotel-Motel. This definition shall include the officers, employees and agents of the owner or operator.

"Room Occupancy Charge." The term "room occupancy charge" means and includes 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.

Section 3. Imposition and Rate of Hotel-Motel Room Occupancy Tax.

a. A Hotel-Motel Room Occupancy Charge tax is hereby imposed at the rate of three and one-half percent (3.5%) on Room Occupancy Charge (thirty days or less) for each Hotel-Motel room rented or leased within the City limits. Said room occupancy tax shall apply to, be computed on and collected on, all Room Occupancy Charge, 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 the owner's authorized agent from the renter or lessee.

b. All monies collected under the provisions of this Ordinance shall be held in trust for the City of Kellogg and for payment thereof to the City Treasurer in the manner and at the times in this Ordinance provided.

Section 4. Duration of Taxes. The local-option nonproperty tax authorized and collected under this Ordinance is hereby imposed for a period of ten (10) years from the effective date of this Ordinance.

Section 5. Purposes for Which the Revenues Shall Be Used. The nonproperty tax revenue derived from and collected under this Ordinance shall be used for the following purposes:

- a. Maintenance of City street system and related projects;
- b. Matching grant funds;
- c. Any excess revenues received will be placed in a designated property tax relief fund;
- d. Actual cost of collecting and administering the tax (to be retained by the City).

Section 6. Property Tax Relief Fund. There is hereby created in the office of the City Treasurer 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 Treasurer 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. Administration and Collection.

a. The City Treasurer is hereby authorized and empowered to administer, regulate and collect payment of all nonproperty taxes adopted and imposed by this Ordinance. Said treasurer 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.

b. The City Treasurer is authorized to prescribe, adopt and enforce rules and regulations relating to its administration and enforcement. The City Treasurer may employ qualified auditors for examination of taxpayers' books and records, and may delegate the authority to conduct hearings, or perform other duties imposed by this Ordinance.

c. Every Permittee (hereinafter defined) subject to this Ordinance shall keep such records, receipts, invoices and other pertinent papers as the City Treasurer may require. Every such Permittee who files tax payments required under this Ordinance shall keep all such records for not less than four (4) years after making such payment unless the City Treasurer in writing authorizes their destruction.

d. The City Treasurer, or any person authorized in writing by the treasurer, may examine the books, papers, records, and equipment of any Permittee, and may investigate the character of the business of the Permittee in order to verify the accuracy of any return made, or if no return is made by the Permittee, to ascertain and determine the amount required to be paid. Any Permittee whose pertinent records are kept outside of the City must bring the records to the City for examination by the City Treasurer upon request of the latter, or by agreement with the City Treasurer permit an auditor designated by the City Treasurer to visit the place where the records are kept, and there audit such records.

Section 8. Permit Required, Application and Issuance.

a. Each owner desiring to engage in or conduct the business of renting a Hotel-Motel room within the City limits shall make application to the City Clerk, in such form and manner as provided herein, for a municipal nonproperty tax permit. A separate application must be filed for each separate place of business.

b. The application 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, and such other information as the City Clerk may require. The application shall be signed by the owner of the business or an authorized representative of the owner.

c. Upon filing an application meeting the requirements set out above, the City Clerk will issue a non-assignable permit, with a tax number affixed thereto, to the Person and place of business stated in the application (the "Permittee"). The permit shall be conspicuously displayed at all times at the location for which it was issued.

Section 9. Method for Payment and Reporting.

a. The taxes imposed by this Ordinance shall be computed on the total dollar value of Hotel-Motel room charges and paid for each calendar month, due and payable to the City Treasurer on or before the 20th day of the succeeding month. Each Permittee shall file a municipal nonproperty tax return and a copy of their Idaho state sales tax return for the month at the same time said taxes are paid, unless said Person has provided to the City Treasurer written verification that the Idaho state tax commission has authorized reporting state taxes on other than a quarterly basis. In that event, the City Treasurer may approve reporting of the state tax returns to the City Treasurer over some other period.

b. The first payment of any new taxes under this Ordinance shall be due and payable on the 20th day of November, 2015, for the period beginning October 1, 2015 and ending October 31, 2015. Thereafter all payments shall be made monthly.

c. Any Permittee who is required to collect and pay over to the City any tax imposed by this Ordinance and fails or refuses to pay the same when due in accordance with this Ordinance, shall be liable for a penalty on the tax not paid. Said penalty shall be equal to five percent (5%) of the tax not paid, or a minimum of \$10 (whichever is greater). The City Treasurer shall assess and collect said fee at the time any delinquent tax payment is tendered. The Permittee may appeal this determination pursuant to Section 12 herein. If no appeal is timely made as herein provided, said penalty determination shall be final.

d. A municipal nonproperty tax return shall be filed each and every month by every owner engaging in the Hotel-Motel rental or lease regardless 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.

e. A valid sales tax exemption certificate issued by the Idaho State Tax Commission upon filing a copy thereof with the City Clerk shall have the same effect to exempt the sale from the taxes imposed hereunder as in the Idaho Sales Tax Act.

f. As soon as practical after the monthly municipal nonproperty tax return and payment is filed, the City Treasurer shall examine the same for the purpose of ascertaining the correctness of any payment or lack thereof.

Section 10. Audits, Deficiencies, Determinations.

a. The City Treasurer may order an audit of any Permittee under this Ordinance for the purpose of ascertaining the correctness or completeness of any return or payment. In conducting that audit, the City Treasurer, 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 Permittee liable for the tax or any officer, agent or employee of such Permittee, or any person having possession, custody or care of books of accounting containing entries relating to the business liable for the tax, to appear before the City Treasurer, 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.

b. If any error or omission is discovered in such audits or in any other way, the City Treasurer may compute and determine the amount of tax due or over-paid for the period or multiple periods upon the basis of facts obtained.

c. The City Treasurer shall give written notice of its determination and the amount of its deficiency, including interest at the judgment rate established by the State Treasurer from the date due, to the Permittee from whom such deficiency amount is due. Such notice may be

given personally or mailed to the Permittee at the address provided on the application. Mailed notice shall be presumed to be received three (3) business days after the notice is mailed. The deficiency and interest shall be due and payable upon receipt of notice from the City Treasurer.

Section 11. Credits and Refunds, Limitations.

a. If the City Treasurer determines that any amount due under this Ordinance has been paid more than once or has been erroneously or illegally collected or computed, after documenting the supporting facts, the City Treasurer is authorized to credit the amount of any excess payments toward any nonproperty tax amount due and payable by the Permittee and to refund to the Permittee any remaining balance.

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

Section 12. Appeal.

a. Any Permittee against whom a deficiency or penalty determination is made under this Ordinance or a claim of refund has been denied may appeal the determination by filing a written appeal with the City Clerk within thirty (30) days after service of the notice. If the appeal is not filed within the thirty (30) day period, the determination/denial becomes final at the expiration of that period. If the appeal is timely filed, it shall be set for hearing at the next available City Council meeting. If the City Council decision is unsatisfactory to the appellant, the taxpayer may file a complaint with the district court for review of the City Treasurer's determination. There shall be no right of appeal to the City Council, nor review by the district court, unless the appeal was timely filed.

b. The collection of the deficiency and the assessment of interest shall be stayed during the pendency of a timely filed appeal.

Section 13. 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 during the stay pending the appeal, and for thirty (30) days thereafter.

b. 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 fraud.

Section 14. Penalties.

a. Any Person who violates any provision of this Ordinance shall be guilty of a misdemeanor, punishable by up to six (6) months in jail and/or One Thousand Dollars (\$1,000.00) 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. The burden of proving that rental of Hotel-Motel room is not a Room Occupancy Charge under this Ordinance is upon the Permittee.

Section 15. Confidentiality of Information.

- a. Confidentiality of the information provided by the Permittee shall be governed by title 9, chapter 3 of the Idaho Code.
- b. Notwithstanding the provisions of this Ordinance as to confidentiality, the Commissioner of Internal Revenue of the United States or his delegate or the proper officer of

any state imposing a tax may be allowed to inspect the nonproperty tax returns or information provided or obtained in connection therewith, or may furnish to such office, or its authorized agent, copies or an abstract thereof.

Section 16. Severability. The Ordinance is hereby declared to be severable. Should any portion of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the Ordinance before the declaration of partial invalidity.

Section 17. Repeal of Conflicting Provisions. All provisions of the current Kellogg City Code or ordinances of the City of Kellogg which conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.


Section 18. Effective Date. This Ordinance shall be effective upon voter approval, canvass of the returns of the election, and compliance by the City with Section 50-1047, Idaho Code, as amended.

PASSED under suspension of the rules upon which a roll call vote was duly taken and APPROVED by the City Council as an Ordinance of the City of Kellogg at a regular meeting of the City Council held on the 11th day of March, 2015.

CITY OF KELLOGG, SHOSHONE
COUNTY, IDAHO

By: 
Terry Douglas, Council President

ATTEST:


Nila Jurkovic, City Clerk/Treasurer