

ORDINANCE NO. 2000 - 3

AN URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF ELK GROVE
REGARDING TRANSIENT OCCUPANCY TAX

The City Council of the City of Elk Grove does ordain as follows:

Section 1. The Council of the City of Elk Grove finds that the ballot measure regarding incorporation of the City of Elk Grove specifically included authorization by the voters for the City to continue to levy and collect within the City the same general taxes, fees, charges, and assessments and rates as are presently levied and collected by the County of Sacramento, and that in adopting this ordinance it is the intent of the Council to exercise such authorization. In light of said approval by the voters, no further approval is required pursuant to Government Code section 57135, Proposition 62, or Proposition 218 prior to the adoption of the general taxes levied by this ordinance.

Section 2. A documentary transfer tax is hereby established as follows:

1. **SHORT TITLE.** This ordinance shall be known as the “uniform transient occupancy tax of the city.”
2. **DEFINITIONS.** Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance:
 - a. “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, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.
 - b. “Occupancy” means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.
 - c. “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 purpose 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.
 - d. “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.
 - e. “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.

f. “Tax and License Collector” means the City Manager or the City Manager’s designee.

g. “Transient” means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this ordinance may be considered.

3. **IMPOSED.**

a. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of twelve percent (12%) of the rent charged by the operator.

b. The 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 and license collector may require that such tax shall be paid directly to the tax and license collector.

4. **EXEMPTIONS.**

a. No tax shall be imposed upon 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. Charges incurred by a person in the performance of official duties as an employee of City, County, State and Federal governmental entities shall be exempt from the tax herein provided if an exemption certificate is submitted and payment is made either 1) directly to the hotel for rentals; or b) by government-sponsored corporate charge card.

c. No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax and license collector.

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.

6. **REGISTRATION.** Within sixty days after the effective date of this Ordinance, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register the hotel with the tax and license collector and obtain from him a transient occupancy registration certificate which shall be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, include the following:

- a. The name of the operator;
- b. The address of the hotel;
- c. The date upon which the certificate was issued;

d. The following statement: “This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the uniform transient occupancy tax by registering with the tax and license collector for the purpose of collecting from transients the transient occupancy tax and remitting the tax to the tax and license collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any unlawful business in an unlawful manner, nor 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.”

7 **REPORTING AND REMITTING.** Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the tax and license collector, make a return to the tax and license collector, on forms provided by him, of the total 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 shall be remitted to the tax and license collector. The tax and license collector may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. 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 and license collector.

8. **UNCOLLECTIBLE ACCOUNTS.** Any operator is relieved from liability for the remission to the City of the tax imposed under this ordinance insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income tax purposes. If the operator has previously remitted the tax, he may, pursuant to procedures prescribed by the tax and license collector, take as a deduction the amount of tax previously remitted for the worthless and charged off account. If any such accounts are thereafter in whole or in part collected by the operator, the amount so collected shall be included in the first return filed after such collection and the tax on such amount paid with the return.

9. **PENALTIES-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 ten percent of the amount of the tax in addition to the amount of the tax.
- b. **Continued delinquency.** Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.
- c. **Fraud.** If the tax and license collector determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections a and b.

d 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 one percent 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.

e. 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.

10. **DETERMINATION OF TAX-FAILURE TO COLLECT AND REPORT.** If any operator shall fail or refuse to collect the 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 and license collector 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 and license collector 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 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 and license collector shall give 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 days after the serving or mailing of such notice make application in writing to the tax and license collector for a hearing 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 and license collector shall become final and conclusive and immediately due and payable. If such application is made, the tax and license collector shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why the amount specified therein should not be fixed for such tax, interest and penalties. 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 tax and license collector shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 11, below.

11. **APPEAL.** Any operator aggrieved by any decision of the tax and license collector with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen days of the serving or mailing of the determination of tax due. The City Council shall fix a time and place of hearing such appeal, and the City Clerk shall give notice in writing to such operator at his last known place of address. The findings of the City Council shall be final and conclusive and shall 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.

12. **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 and license collector shall have the right to inspect at all reasonable time.

13 **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 subsections 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 and license collector within three years of the date of payment. The claim shall be on forms furnished by the tax and license collector.

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 and license collector 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 for filing a claim in the manner provided in subsection a, but only when the tax was paid by the transient directly to the tax and license collector, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the tax and license collector that the transient has been unable to obtain a refund from the operator who collected the tax.

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

14. **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 for the recovery of such amount.

15. **PENALTY FOR VIOLATIONS.**

a. 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, or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

b. 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 tax and license collector, 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 3. This ordinance is intended to, and hereby does, supersede Chapter 3.08 of the Sacramento County Code as adopted by the City of Elk Grove, unless this Ordinance is found to be invalid. This ordinance is merely a transfer of transient occupancy tax from Sacramento County to the City and will effect no increased tax burden on an operator.

Section 4. This ordinance shall take effect immediately as an urgency ordinance. Commencing July 1, 2000, the City of Elk Grove will be required to provide services to its citizens. The City is also required to make “revenue-neutrality” payments to Sacramento County in accordance with state law. In order to meet these obligations, the City must ensure that it begin receiving revenue from all sources to which it is entitled. For these reasons, the City Council finds that the immediate passage of this ordinance is necessary for the immediate preservation of the public peace, health and safety, and the fiscal integrity of the City.

Section 5. The City Clerk may post this ordinance in at least three public places in the City of Elk Grove within fifteen days of final passage, in lieu of publication.

PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 1st day of July, 2000, by the following roll call vote:

AYES: Cooper, Soares, Leary, Scherman, Briggs

NOES: 0

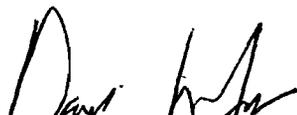
ABSENT: 0

ABSTAIN: 0



Mayor, City of Elk Grove

ATTEST:



City Clerk, City of Elk Grove

APPROVED AS TO FORM:



City Attorney, City of Elk Grove