

*Repealed by  
Ord. No. 406*

ORDINANCE NO. 274 N.S.

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

THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES ORDAIN AS FOLLOWS:

SECTION 1. Title.

This ordinance shall be known as the Uniform Transient Occupancy Tax Ordinance of the City of El Paso de Robles.

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, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

(c) Occupancy. "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.

(d) Transient. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason

SECTION 16. Effective date. This Ordinance shall be effective upon its passage, except that the tax imposed by this Ordinance shall become operative and shall be imposed on January 1, 1965, and such tax shall not apply prior to said date.

PASSED AND ADOPTED this 21<sup>ST</sup> day of September, 1964.

Barney Schwatz  
Mayor

ATTEST:

J. Stueber  
City Clerk

STATE OF CALIFORNIA  
COUNTY OF SAN LUIS OBISPO  
CITY OF EL PASO DE ROBLES

} SS.


I, S. S. Tucker, City Clerk of the City of El Paso de Robles, California, do hereby certify that the foregoing ORDINANCE No. 274, N.S. was duly and regularly adopted, passed, and approved by the City Council of the City of El Paso de Robles, California, at a regular meeting of said City Council held at the regular meeting place thereof, on the 21st day, of September 1964, by the following vote:

AYES: Councilmen Blake, Galba, Dale Schwartz, Upton and Barney Schwartz

NOES: Councilmen None

ABSENT: Councilmen None

Dated this 21st day of September, 1964.

  
City Clerk and Ex-Officio Clerk of the City Council,  
City of El Paso De Robles, State of California.

of concession, permit, right of access, license or other agreement for a period of thirty (30) 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 (30) 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 this ordinance may be considered.

(e) 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.

(f) 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.

(g) Tax Administrator. "Tax Administrator" means the Tax Collector of this City.

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 percent (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 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 federal or State of California officer or employee when on official business;

(c) 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 except upon a claim therefor made at the time rent is collected and under penalty or 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 it later, each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Administrator and obtain from him a "Transient Occupancy Registration Certificate" 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 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 Ordinance 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. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful 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."

SECTION 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 Administrator, make a return to the Tax Administrator, 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 Administrator. The Tax Administrator 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 Administrator.

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) Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10% of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed.

(c) Fraud. If the Tax Administrator 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 subparagraphs (a) and (b) of this section.

(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 1% per month or fraction thereof on the amount of the tax, exclusive of

... on the remittance first became  
... penalties Merged With Tax. Every penalty  
... interest as accrues under the provisions of  
... shall become a part of the tax herein required to  
...  
SECTION 9. Failure to Collect and Report Tax. If any operator  
Determination of Tax by Tax Administrator. 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 shall give a notice  
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 at his last known place of address, to the  
operator so assessed by serving it personally or by depositing  
it in the United States mail, postage prepaid, addressed to the  
operator may within ten (10) days after the serving or mailing  
of such notice on the amount assessed. If application by  
operator for a hearing is not made within the time  
for a hearing on the amount assessed, if any, deter-  
mined by the Tax Administrator shall become final and con-  
sidered as such. If such application is made, the Tax Administrator  
shall give not less than five days notice of the hearing in the  
manner prescribed herein.



and place fixed in said notice why said 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 Administrator 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 (15) days unless an appeal is taken as provided in Section 10.

SECTION 10. Appeal. Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the City by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. 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 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.

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 by 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) 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

... by the operator to the City.  
... the City under the provisions of this  
Paso de Robles for the recovery of such amount.  
SECTION 14. Violations; misdemeanor. Any person  
guilty of a misdemeanor and shall be punishable therefor by  
a fine of not more than five hundred dollars (\$500.00) or by  
imprisonment in the County Jail for a period of not more than  
six months or by both such fine and imprisonment.

Any operator who fails or refuses  
to register as required herein, or to furnish any return re-  
quired to be made, or who fails or refuses to furnish a  
supplemental return or other person who fails or refuses  
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 with intent to defeat  
any false or fraudulent report or claim required by the Tax Administrator,  
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 ordi-  
nance or any part thereof is for any reason held to be unconsti-  
tutional, 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 the  
section, subsection, subdivision, paragraph, sentence, clause or phrase  
or phrase thereof, irrespective of the fact that any one or more  
sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases  
be declared unconstitutional.