

BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA

IN THE MATTER OF VOTER )  
APPROVED REVISIONS TO THE ) ORDINANCE NO. 834  
TRANSIENT OCCUPANCY TAX )

THE BOARD OF SUPERVISORS OF THE COUNTY OF SIERRA ORDAINS as follows:

**Ordinance Section One: FINDINGS**

- 1.1 On June 20, 1992 the Sierra County Board of Supervisors ("the Board") adopted an ordinance increasing the Transient Occupancy Tax from 6% to 10% and adding rented reserved outdoor space, mobile home parks, recreational vehicle parks, campgrounds, and parking areas to the definition of "lodging" in Part 5, Chapter 20, Section 010(d) and 020, collectively referred to hereinafter as "Rented Outdoor Space". The Ordinance was validly adopted pursuant to the authority granted to the Board of Supervisors by *Revenue & Taxation Code* § 7280 (Ordinance No. 786).
- 1.2 The 4% tax increase and the inclusion of Rented Outdoor Space as "lodgings" subject to the Transient Occupancy Tax were not submitted to the electorate in compliance with *Government Code* § 53723 because the decision of the California Court of Appeal in *City of Woodlake v. Logan* had declared § 53723 unconstitutional.
- 1.3 *City of Woodlake v. Logan* was disapproved by the California Supreme Court in *Santa Clara Local Transportation Authority v. Guardino* ("Guardino"), decided on September 28, 1995.
- 1.4 Without waiving its position that the tax adopted by Ordinance No. 786 was validly adopted and imposed, the Board wishes to comply with *Government Code* § 53723 and the implications of the California Supreme Court holding in *Guardino*, with respect to the amended Transient Occupancy Tax proposed herein.

**Ordinance Section Two: REPEAL OF TAX INCREASE AND INCLUSION OF RENTED OUTDOOR SPACE**

Consistent with the foregoing Findings, Part 5, Chapter 20, Section 010 (the inclusion of Rented Outdoor Space under the definition of lodging) and Section 020 (the 4% increase in tax rate) of Section Two of Ordinance No. 786 are repealed effective upon acceptance by the Board of the certified election results of the regularly scheduled Presidential Primary election of March 26, 1996, which results show an affirmative vote of a majority of the votes cast by the County electorate.

**Ordinance Section Three: LEVY OF TAX INCREASE AND APPLICATION TO RENTED OUTDOOR SPACE**

1. Consistent with the foregoing Findings, the Board does levy an increase in the Transient Occupancy Tax pursuant to *California Revenue & Taxation Code* § 7280, such that Part 5, Chapter 20, Sections 010(d) and 020 be amended to read as set forth in Section Five of this Ordinance, subject to the following:
  - a. The Transient Occupancy Tax increase of 4%, (from 6% to 10%), and the application of such tax on Rented Outdoor Space, hereby levied shall become effective immediately upon Board acceptance of the certified election results of the regularly scheduled Presidential Primary election of March 26, 1996 and thereby become effective immediately upon the above repeal of Part 5, Chapter 20, Sections 010 and 020 of Section Two of Ordinance No. 786 without lapse, provided however, that such tax shall be effective only if approved by a majority of the County electorate on March 26, 1996, as submitted to such electorate pursuant to *Government Code* §§ 7284.4 and 53723, and as set forth in Ordinance Section Three, Subsection 2, herein, but shall not be effective if not approved by such electorate on March 26, 1996;
  - b. Subject to Ordinance Section Three, Subsection 1(a) above, such tax shall be immediately effective and immediately imposed, pursuant to *Government Code* §§ 7284.4 and 53723, and shall immediately replace Part 5, Chapter 20, Sections 010 and 020 of Section Two of Ordinance No. 786, which shall be of no further force and effect, and Part 5, Chapter 20 of the Sierra County Code shall be amended as set forth in Section 5 below.
2. Consistent with the foregoing Findings, the tax increase of 4% and the inclusion of Rented Outdoor Space being subject to the tax as levied herein, and ratification of the tax increase of 4% levied by the Board pursuant to Ordinance No. 786 on June 20, 1992, subject to voter approval as set forth herein, shall be submitted to the electorate of the County of Sierra for approval pursuant to *Government Code* §§ 7284.4 and 53723 and specifically shall be presented to such electorate at the regularly scheduled Presidential Primary election of March 26, 1996.
3. That, pursuant to *Government Code* § 53724(a):
  - a. the proposed tax is a general tax, as defined in *Government Code* § 53721;
  - b. the proposed tax is a Transient Occupancy Tax as authorized by *Revenue & Taxation Code* § 7280.
  - c. the rates of the tax to be levied are: 10% (an increase of 4%) for the

privilege of occupying a lodging within the unincorporated areas of the County.

- d. the tax will be collected by the lodging operators from the transients.
- e. the tax increase from 6% to 10% and the inclusion of the tax on rented reserved outdoor space, mobile home parks, recreational vehicle parks, campgrounds, or parking areas shall be submitted to the electorate at the March 26, 1996 Presidential Primary election.

#### **Ordinance Section Four: RATIFICATION**

The adoption of Ordinance No. 786, the Transient Occupancy Tax increase from 6% to 10% and the application of the tax to rented reserved outdoor space, mobile home parks, recreational vehicle parks, campgrounds, and parking areas pursuant to Part 5, Chapter 20, Sections 010(d) and 020 of the Sierra County Code on June 20, 1992 by the Sierra County Board of Supervisors are, upon a majority affirmative vote of the electorate of Sierra County, ratified and approved.

**Ordinance Section Five: Part 5, Chapter 20, Sections 010 (d), 010(f), 020, 070 and 140(e) of the Sierra County Code are hereby amended in their entirety to read as follows:**

### **CHAPTER 5.20 - TRANSIENT OCCUPANCY TAX**

#### **Section:**

##### **5.20.010 Definitions**

##### **5.20.020 10 % Tax Imposed**

##### **5.20.070 Reporting and Remitting**

##### **5.20.140 Appeals Process**

#### **5.20.010 Definitions**

- (d) "Lodging" shall mean any building, portion of a building, reserved outdoor space, or other premises or area rented for use by transients for overnight accommodations. A "lodging" shall refer to the following premises, including but not limited to: motel, hotel, inn, tourist home, vacation home rental property, bed and breakfast, rooming house, apartment house, mobile home park, recreational vehicle park, campground, or parking area, or any property rented to a "transient" as defined below.
- (f) "Operator" means the person who is proprietor of the lodging whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or

in any other capacity. Where the operator performs his duties through a contracted managing agent of any type or character other than that of an employee, the managing agent shall also be deemed to be an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. If the contract between the operator and the managing agent so states, the managing agent shall be solely responsible for the duties and liabilities of the operator. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

**5.20.020 Ten Percent Tax Imposed**

For the privilege of occupying a lodging within the unincorporated areas of the County, each transient shall pay a tax in the amount of ten percent (10%) of the rent charged. This tax constitutes a debt owed by the transient to the County and that debt can be satisfied only by payment in full to the operator or to the County. Upon payment of the tax to the operator, the tax constitutes a debt owed by the operator to the County.

**5.20.070 Reporting and Remitting**

- (a) Each operator shall make a report to the Tax Collector, on forms provided by the Tax Collector, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter or longer reporting period which may be established by the Tax Collector.
- (b) The report shall include the total rents charged, total rents from transient occupancy, the amount of tax collected for transient occupancy and any further information required by the Tax Collector. The Tax Collector may establish shorter, longer or other reporting periods for any certificate holder if the Tax Collector deems it necessary or expedient in order to ensure collection of the tax.
- (c) At the time the report is filed, the full amount of the tax collected shall be paid to the Tax Collector. Returns and payments are due immediately upon cessation of business for any reason.
- (d) All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the County until payment of the tax is made to the Tax Collector.

**5.20.140 Appeals Process**

- (e) Payment of Tax a Condition of Appeal

After the determination of an amount of tax due from any operator has been made following an Initial Hearing as specified in 5.20.140(a) above, an operator must pay

the tax as specified in the notice as a condition precedent to filing an appeal. Failure to pay such tax, together with penalties and interest thereon, if any, shall result in the appeal being denied. In the event that it is ultimately determined that the whole or any part of the tax, interest and penalties was not due, the operator shall be entitled to a full refund of all the amounts paid but determined not to be due together with interest at the rate prescribed by *Revenue & Taxation Code* § 5151. The County may retain without interest those funds ultimately determined to be due to the County pursuant to this chapter.

**Ordinance Section Six:** Part 5, Chapter 20, Sections 075 and 130(d) of the Sierra County Code are hereby added to read as follows:

### CHAPTER 5.20 - TRANSIENT OCCUPANCY TAX

#### **Sections:**

- 5.20.075 Payment by Mail**
- 5.20.130 Failure to Collect or Report**

#### **5.20.075 Payment by Mail**

A payment shall be deemed received on the date shown by the post office cancellation mark stamped upon the envelope containing the remittance.

#### **5.20.130 Failure to Collect or Report**

- (d) Separate Trust Account

The Tax Collector may require the Operator to establish a separate trust account for deposit of the taxes as they are collected. The bank account shall be established in the ownership of Sierra County.

#### **Ordinance Section Seven: SEVERABILITY**

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

**Ordinance Section Eight:** This ordinance shall take effect upon certification to the Board of the results of the March 26, 1995 election as described in Ordinance Section Three above, which results show an affirmative vote of a majority of the electorate of Sierra County. Before the expiration of fifteen (15) days after certification of the aforementioned

election results, if this Ordinance is approved by a majority of the electorate of the County, this Ordinance shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance and the results of the election in the Mountain Messenger, a newspaper of general circulation published in the County of Sierra, State of California.

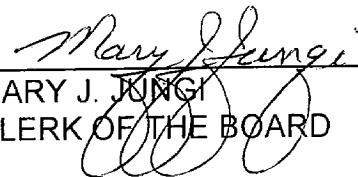
Introduced at a regular meeting of the Board of Supervisors held on the 5th day of December, 1995, and passed and adopted by the Board of Supervisors of the County of Sierra, State of California, on the 19th day of December, 1995, by the following roll call vote, to-wit:

AYES: Supervisors McIntosh, Luchessi, McCaffrey, Bowling, Whitley  
NOES: None  
ABSTAIN: None  
ABSENT: None


COUNTY OF SIERRA

  
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JEROME MC CAFFREY  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

  
\_\_\_\_\_  
MARY J. JUNGI  
CLERK OF THE BOARD

APPROVED AS TO FORM:

  
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WILLIAM W. PANGMAN  
COUNTY COUNSEL

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