ORDINANCE NO. 245

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

The Board of Supervisors of the County of Mariposa do ordain as follows:

SECTION I. Title. This ordinance shall be known as the Uniform Transient Occupancy Tax Ordinance of the County of Mariposa.

SECTION II. 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, but is not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, boarding house, apartment house, dormitory, public or private club, mobile home 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 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; provided, however, that "rent" shall not include lodging furnished in kind to an employee by an employer solely for the convenience of the employer.

(f) **Operator.** "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub-lessee, 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.

SECTION III. **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 per cent (4%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the County which is extinguished only by payment to the operator or to the County. 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 install-
ments, 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 Collector
may require that such tax shall be paid directly to the Tax Col-
lector.

SECTION IV. 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 County to impose the tax herein pro-
vided;

(b) Any federal, or State of California officer or em-
ployee, 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 in-
ternational treaty.

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 Collector.

SECTION V. 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 pay-
ment 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 VI. Registration. Within thirty (30) days after
the effective date of this ordinance, or within thirty (30) days
after commencing business, whichever is later, each operator of
any hotel renting occupancy to transients shall register said hotel
with the Tax Collector 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/fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Collector for the purpose of collecting from transients the Transient Occupancy Tax, and remitting said tax to the Tax Collector. 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 County. This certificate does not constitute a permit."

SECTION VII. 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 Collector, make a return to the Tax 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 Collector. The Tax 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 County until payment thereof is made to the Tax Collector.

SECTION VIII. 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 period of 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 Collector 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 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.

SECTION IX. Failure to Collect and Report Tax. Determina-
tion of Tax by Tax Collector. If any operator 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 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
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 any operator who has failed or re-
fused 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
such determination is made, the Tax Collector shall give a
notice of the amount so assessed by serving it personally or by de-
positing 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 (10) days after the serving or mailing
of such notice make application in writing to the Tax Collector
for a hearing on the amount assessed. If application by the oper-
ator for a hearing is not made within the time prescribed, the tax,
interest, and penalties, if any, determined by the Tax Collector,
shall become final and conclusive, and immediately due and payable.
If such application is made, the Tax Collector shall give not less
than five (5) days written notice in the manner prescribed here-
in to the operator to show cause at a time 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 Col-
lector shall determine the proper tax to be remitted and shall
thereafter give written notice to the person in the manner prescrib-
ed herein of such determination and the amount of such tax, inter-
est, and penalties. The amount determined to be due shall be pay-
able after fifteen (15) days, unless an appeal is taken as provided
in Section 10.

SECTION X. Appeal. Any operator aggrieved by any decision
of the Tax Collector with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the County Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The Board of Supervisors shall fix a time and place for hearing such appeal, and the County Clerk shall give notice in writing to such operator at his last known place of address. The findings of the Board of Supervisors 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 XI. Records. It shall be the duty of every operator liable for the collection and payment to the County 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 County, which records the Tax Collector shall have the right to inspect at all reasonable times.

SECTION XII. 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 County 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 Collector within three years of the date of payment. The claim shall be on forms furnished by the Tax Collector.

(b) An operator may claim a refund or take as credit to be 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 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 al-
lowed 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 County 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 Collector, or when the trans-
ient, having paid the tax to the operator, establishes to the satis-
faction of the Tax 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 the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

SECTION XIII. 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 County. Any such tax collected by an operator which has not been paid to the County shall be deemed a debt owed by the operator to the County. Any person owing money to the County under the provisions of this or-
dinance shall be liable to an action brought in the name of the County of Mariposa, in any Court of competent jurisdiction within the County of Mariposa, or within the County of residence of such person, at the option of the Tax Collector, for the recovery of such amount.

SECTION XIV. Violations; Misdemeanor. Any person violat-
ing 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 ($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 or other person who fails or refuses to re-
gister 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 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 XV. Severability. If any section, subsection, sub-
division, paragraph, sentence, clause, or phrase of this ordinance
or any part thereof is for any reason held to be unconstitutional,
such decision shall not affect the validity of the remaining por-
tions of this ordinance or any part thereof. The Board of Supervi-
sors hereby declares that it would have passed each section, sub-
section, subdivision, paragraph, sentence, clause, or phrase there-
of, irrespective of the fact that any one or more sections, sub-
sections, subdivisions, paragraphs, sentences, clauses, or phrases
be declared unconstitutional.

SECTION XVI. Effective Date. This ordinance shall be ef-
fective thirty (30) days from and after the date of its passage
except that the tax imposed by this ordinance shall become operative
and be imposed on April 1, 1964, and shall not apply prior to said
date.

PASSED AND ADOPTED by the Board of Supervisors of the County
of Mariposa, this 27th day of January, 1964, by the fol-
lowing vote:

AYES: McGregor, Jenkins, Gordo, Miller & Schatz
NOES: None
NOT VOTING: None
ABSENT: None

[Signature]
Chairman of the Board of Supervisors, County of Mariposa, State of California.