

FILED

**AMENDED ORDINANCE 14-01
(ORDINANCE NO. 01-03)**

DEC 18 2019

TIME 2:40 AM
HOPE TRAMMELL, COUNTY CLERK
PITTSBURG COUNTY
BY SK DEPUTY

AN ORDINANCE LEVYING AND ASSESSING AN EXCISE TAX OF EIGHT PERCENT (8%) UPON THE GROSS PROCEEDS OR GROSS RECEIPTS DERIVED FROM THE RENT FROM OCCUPANCY OF HOTEL ROOMS; PROVIDING FOR EFFECTIVE DATE OF THIS ORDINANCE; PROVIDING IMPOSITION OF TAX, EXEMPTIONS; PROVIDING RECORDS TO BE KEPT; PROVIDING RETURNS; PROVIDING PAYMENT OF TAX; PROVIDING ASSESSMENT AND DETERMINATION OF TAX; PROVIDING REFUNDS; PROVIDING NOTICES; PROVIDING REMEDIES EXCLUSIVE; PROVIDING PROCEEDINGS TO RECOVER TAX; PROVIDING GENERAL POWERS OF THE TAX COLLECTOR; PROVIDING ADMINISTRATION OF OATHS AND COMPELLING TESTIMONY; PROVIDING DISCOUNT, DELINQUENT TAXES; PROVIDING INTEREST AND PENALTIES; PROVIDING CONFIDENTIAL RECORDS; PROVIDING AMENDMENTS; PROVIDING PROVISIONS CUMULATIVE; AND PROVIDING PURPOSE OF REVENUES.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KREBS, OKLAHOMA, THAT:

SECTION 1. Citation and Codification.

This Ordinance shall be known and cited as the City of Krebs Hotel Tax Ordinance and shall be codified in the Ordinances of the City of Krebs.

SECTION 2. Effective date.

This Ordinance shall become effective 1-07-2014, by the City Council of the City of Krebs, Oklahoma, voting on the same in the manner prescribed by law.

SECTION 3. Definitions.

Unless a different meaning clearly appears from the context, for the purposes of this chapter, the following words and phrases shall have the meanings given herein:

- A. **Person** shall mean an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a Court or otherwise, or any combination of the above acting as a unit.
- B. **Operator** shall mean any person operating a hotel in this City, included, but not limited to, the owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.
- C. **Occupant** shall mean a person who, for a consideration, uses, possesses or has the right to the use or possession of any room or rooms in a hotel under any lease, concession, permit, right of access, license to use, or other agreement, or otherwise.
- D. **Occupancy** shall mean the use or possession or the right to use or possession of any room or rooms in a hotel.
- E. **Hotel** shall mean any building or buildings, trailer or other facility in which three (3) or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. The term shall include hotels, apartment hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, trailer houses, trailer motels, dormitory space where bed space is rented

to individuals or groups, apartments not occupied by "permanent residents," as that term is hereinafter defined, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. As defined herein, "hotel" shall not include hospitals, sanitariums or nursing homes.

- F. **Room** shall mean any room or rooms of any kind in any part or portion of a hotel which is available for, let for the use of, or possessed for the purpose of lodging or sleeping.
- G. **Rent** shall mean the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupancy, without any deduction therefrom whatsoever.
- H. **Permanent Resident** shall mean any occupant who has or shall have the right of occupancy of any room or rooms in the same hotel for at least thirty (30) consecutive days during the current calendar year or preceding year.
- I. **Return** shall include any return filed or required to be filed as herein provided.
- J. **Tax Collector** shall mean the City Treasurer or such other Department of City Government duly designated by the City Council, to administer the collection of the tax herein levied.

SECTION 4. Imposition of Tax: Exemptions.

- A. There is hereby levied an excise tax of eight percent (8%) upon the gross proceeds or gross receipts derived from the rent from every occupancy of a room or rooms in a hotel in this City, except that the tax shall not be imposed where the rent is less than at the rate of Five Dollars (\$5.00) per day. This excise tax shall be in addition to any existing sales tax imposed by the City of Krebs or the State of Oklahoma.
- B. No tax shall be imposed hereunder upon a permanent resident.
- C. No tax shall be imposed hereunder upon the United States insofar as it is immune from taxation, the State of Oklahoma, nor any municipality or other political subdivision of the State.
- D. The tax to be collected shall be stated and charged separately from the rent and shall be shown separately on any record thereof at the time when occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill, statement or charge made for such occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator as trustees for and on account of the City, and the operator shall be liable for the collection thereof and for the payment of the tax. The operator and any officer of any corporate operation shall be personally liable for the tax collected or required to be collected under this title, and the operator shall have the same right in respect to collecting the tax from the occupant or in respect to nonpayment of the tax by the occupant as if the tax were a part of the rent for the occupancy payable at the same time such tax shall become due and owing, including all rights of eviction, dispossession, repossession, and enforcement of any innkeeper's lien that he may have in the event of nonpayment of rent by the occupant; provided, however, that the City of Krebs shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.
- E. Such taxes, penalty and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claim of unsecured creditors and may be collected by suit as any other debt.

- F. Where the occupant has failed to pay and the operator has failed to collect a tax as imposed by this Chapter, then, in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the City, and it shall be the duty of the occupant to file a return thereof with the Tax Collector and to pay the tax imposed thereon to the Tax Collector, within fifteen (15) days after such tax was due.
- G. The Tax Collector may, whenever he deems it necessary for the proper enforcement of this Chapter, provide by regulation that the occupant shall file returns and pay directly to the Tax Collector the tax herein imposed at such times as returns are required to be filed and payment over made by the operator.
- H. The tax imposed by this section shall be paid upon any occupancy on or after 1-07-2014, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to 1-07-2014. Where rent is paid, charged, billed or falls due on either weekly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period after 1-07-2014, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days falling within such portion to the total number of days covered thereby. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Tax Collector may, by regulation, provide for credit or refund of the amount of such tax upon application as provided herein.
- I. For the purpose of the proper administration of this Chapter, and to prevent evasion of the tax hereby imposed, it shall be presumed that all rentals are subject to the tax until facts to the contrary are established; and the burden of providing that a rent for occupancy is not taxable hereunder shall be upon the operator or the occupant.
- J. No operator shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this Chapter is not considered as an element in the rent charged to the occupant.

SECTION 5. Records to be Kept.

Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon in such form as the Tax Collector may, by regulation, require. Such records shall be available for inspection and examination at any time upon demand by the Tax Collector or a duly authorized agent or employee of the City, and shall be preserved for a period of three (3) years, except that the Tax Collector may consent to their destruction within that period or may require that they be kept longer.

SECTION 6. Returns.

- A. Every operator, on or before the fifteenth day of each month, shall file with the Tax Collector a return of occupancy and of rents and of the taxes payable thereon for the preceding calendar month. The date of filing shall be the date of delivery to the Tax Collector.
- B. The Tax Collector may permit or require returns to be made by shorter or longer periods and upon such dates as he may specify. The form of return shall be prescribed by the Tax Collector and shall contain such information as he may deem necessary for the proper administration of this code. The Tax Collector may require amended returns to be filed within twenty (20) days after notice, containing the information specified in the notice.
- C. If a return required by this Chapter is not filed or if a return when filed is incorrect or insufficient on its face, the Tax Collector shall take the necessary steps to enforce the filing of a return or an amended return.

SECTION 7. Payment of Tax.

At the time of filing a return of occupancy and of rents, each operator shall pay to the City the taxes imposed upon the rents included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this Chapter. All taxes for the period for which a return is required shall be due and payable on or before the date fixed for the filing of the return for such period, without regard to whether a return is filed or whether the return correctly filed shows the amount of rents and the taxes due. If any operator has twice failed to pay taxes on or before the date fixed for payment of such taxes or if any operator refuses to pay the taxes or if the Tax Collector has reasonable grounds for belief that the operator is about to cease business or leave the State or remove or dissipate assets, or if, for any similar reason he deems it necessary to protect revenues due hereunder, the Tax Collector may require an operator to file with the City either a performance and payment bond, as detailed herein, or in lieu of this bond, an escrow account or an irrevocable letter of credit as detailed herein. The performance bond, irrevocable letter of credit or escrow account shall be provided as follows:

- A. Performance and payment bond in a form acceptable to the City, naming the operator as obligee thereof, executed by a surety acceptable to the City and authorized to do business in the State of Oklahoma, in a sum equal to the City-wide average daily room rental rate, to be ascertained by the Tax Collector, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times eight percent (8%); or
- B. An irrevocable letter of credit in a form acceptable to the City, executed by the operator and a federally insured financial institution acceptable to the City, providing for a sum equal to the City-wide average daily room rental rate, to be ascertained by the Tax Collector, times the number of rooms available for rent within the hotel multiplied by factor of thirty (30), times eight percent (8%); or
- C. An escrow account held by the City in a sum equal to the City-wide average daily room rental rate, to be ascertained by the Tax Collector, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times eight percent (8%).

SECTION 8. Assessment and Determination of Tax.

If a return required by this Chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the Tax Collector from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, types of accommodations and services, number of employees, or other factors. Written notice of such assessments shall be given to the person liable for the collection and payment of the tax. Such assessment shall finally and irrevocably fix and determine the tax, unless the person against whom is assessed, within ninety (90) days after the giving of such assessment, shall apply in writing to the Council of the City of Krebs for a Hearing, or unless the Tax Collector, at his discretion, shall reassess the same. After such Hearing, the Council of the City of Krebs shall give written notice of its determination to the person against whom the tax is assessed. If the taxes and interest due are not paid within ten (10) days of assessment or reassessment by the Tax Collector or determination by the Council, in addition to the taxes and interest, the operator shall pay a penalty equal to ten percent (10%) of the taxes due.

SECTION 9. Refunds.

- A. In the manner provided in this section, the Tax Collector shall refund or credit any tax erroneously, illegally or unconditionally collected if written application to the Tax Collector for such refund shall be made within two (2) years from the date of payment thereof. For like causes, and in the same period, a refund may be so made upon the initiative and the Order of the Tax Collector. Whenever a refund is made, the reasons therefore shall be stated in writing. Such application

may be made by the person upon whom such tax was imposed and who has actually paid the tax. Such application may also be made by the person who has collected and paid such tax to the City, provided that the application is made within two (2) years of the payment by the occupant to the operator; but no refund of money shall be made to the operator until he shall first establish to the satisfaction of the Tax Collector, under such regulations as the Tax Collector may prescribe, that he has repaid to the occupant the amount for which the application for refund is made. The Tax Collector, in lieu of any refund required to be made, may allow credit therefore on payments due from the applicant.

B. An application for a refund or credit made, as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of, and the Tax Collector may receive evidence with respect thereto. After making his determination, the Tax Collector shall give notice thereof to the applicant. Such determination shall be final unless the applicant, within ten (10) days after such notice of determination, shall apply in writing to the Council for a Hearing. After such Hearing, the Council shall give written notice of its determination to the applicant.

C. A person shall not be entitled to revision, refund or credit or a tax under this section if he has had a Hearing or an opportunity for a Hearing as provided in this Chapter and has failed to avail himself of the remedies therein provided.

SECTION 10. Notices.

Notices provided for under this Chapter shall be deemed to have been given when such notices have been delivered personally to the operator or deposited in the United States mail to the last known address of the operator.

SECTION 11. Remedies Exclusive.

The remedies provided by Ordinance shall be exclusive remedies available to any person for the review of tax liability imposed by this Ordinance.

SECTION 12. Proceedings to Recover Tax.

A. Civil Remedies.

1. Whenever any operator, occupant or other person shall fail to collect and/or pay over any tax, or to owe any tax, penalty or interest imposed by this Chapter as herein provided, the Tax Collector may file notice of liens on behalf of the City of Krebs against the real estate upon which the hotel is located and/or against all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by the person owing the tax pursuant to 68 O.S. Section 2701, and 68 O.S. Section 2704.
2. The liens shall, upon proper filing, attach to the real estate and/or personal property then owned or thereafter acquired by the debtor, whether such property is used by the debtor in the operation of business or is under the authority of an assignee, trustee, or receiver for the benefit of creditors, from the date such taxes are due and payable as allowed by 68 O.S. Section 2704.
3. The Tax Collector shall notify the person owing the tax by personal service or by Certified Mail that the City of Krebs will file such liens if any delinquent lodging taxes, interest and/or penalties are paid within fifteen (15) days of receiving such notice.
4. The Tax Collector may also request the City Attorney to institute an action in person and in rem to enforce payment and collect any delinquent lodging taxes, penalties and/or interest.

B. Criminal Penalties.

1. In addition to all civil penalties provided by this Chapter, the willful failure or refusal of any operator, occupant or other person to make reports and/or remittances as herein required or the making of any false and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this

Chapter shall be an offense and upon conviction thereof the offending operator, occupant or other person shall be punished by a fine of not more than the penalty set out in the Code of the City of Krebs, excluding costs.

SECTION 13. General Powers of the Tax Collector.

In addition to all other powers granted to the Tax Collector, he is hereby authorized and empowered:

- A. To make, adopt and amend rules and regulations appropriate to the carrying out of the provisions of this Chapter for the purposes thereof;
- B. To extend, for cause shown, the time for filing any return for a period not exceeding sixty (60) days; and for cause shown, to waive, remit or reduce penalties or interest;
- C. To delegate his functions hereunder to a Deputy or other employee or employees of the City;
- D. To assess, reassess, determine, revise and readjust the taxes imposed by this Chapter; and
- E. To prescribe methods for determining the taxable and non-taxable rents.

SECTION 14. Administration of Oaths and Compelling Testimony.

- A. The Tax Collector, or employees or agents of the City duly designated and authorized by him, shall have the power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this Chapter. The Tax Collector shall have the power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this Chapter, and to examine them in relation thereto.
- B. Any person who shall refuse to testify or to produce books or records, or who shall testify falsely in any material matter pending before the Tax Collector shall be guilty of an offense punishable by a fine of not more than the penalty set out in the Code of the City of Krebs, excluding costs.

SECTION 15. Discount, Delinquent Taxes.

- A. At the time of filing the returns required under this Chapter with the Tax Collector, the operator shall remit therewith to the Tax Collector, except as hereinafter provided, ninety-seven percent (97%) of the tax due under the provisions of this Chapter; provided that the tax is delivered to the Tax Collector before the 15th of the month for the preceding calendar month's return, or if transmitted by mail; that the date of postmark by the U.S. Postal Service is before the 15th day of the month for the preceding month's return. In the event that payment of any tax due is not made before the 15th of the month, the operator forfeits his claim to the three percent (3%) discount and must remit to the Tax Collector one hundred percent (100%) of the taxes due. If the filing of the return and remittance of the taxes due are received by the Tax Collector after the fifteenth day of the month, the taxes are then delinquent and the operator shall pay, in addition to one hundred percent (100%) of the taxes due, interest and penalties as prescribed in Subsection 16A. of this Article.
- B. The discount granted by this section shall remunerate the operator for keeping tax records, filing reports and remitting the tax when due as required by this Chapter.

SECTION 16. Interest and Penalties.

- A. If an operator fails to file a return or remit the taxes due prior to the fifteenth day of the month, the operator shall pay, in addition to one hundred percent (100%) of the taxes due, the following interest and penalties.
1. One and one-half percent (1 ½%) interest per month on the total amount of taxes due from the fifteenth day of the month to the date of filing; and
 2. A penalty of ten percent (10%) of the total amount of the taxes due.
- B. In addition to the penalties provided herein, the following persons shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not more than the penalty set out in the Code of the City of Krebs, excluding costs:
1. Any operator or occupant who willfully fails to file a return as required by this Chapter, or who files or causes to be filed, or makes or causes to be made, or causes to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this Chapter which is willfully false;
 2. Any operator who willfully fails to file a bond required by this Chapter or who willfully fails to file a registration certificate and such data in connection therewith as the Tax Collector may require, by regulation or otherwise, or who fails to display or surrender the license as required by this Chapter, or who assigns or transfers such license;
 3. Any operator who willfully fails to charge separately from the rent the tax herein imposed, or who willfully fails to state such tax separately on any evidence of occupancy and on any bill, statement or receipt of rent issued or employed by the operator, or who willfully fails or refuses to collect tax from the occupant;
 4. Any operator who willfully refers or causes reference to be made to this tax in a form or manner other than that required by this Chapter; and
 5. Any operator who willfully fails to keep the records required by this Chapter.
- C. The affidavit of the Tax Collector to the effect that tax has not been paid, that a return, bond, or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this Chapter, shall be presumptive evidence thereof

SECTION 17. Confidential Records.

The confidential and privileged nature of the records and files concerning the administration of this tax is legislatively recognized and declared, and to protect the same, the provisions of 68 O.S., Section 205, and each subsection thereof, are hereby adopted by reference and made fully effective and applicable to administration of this tax as if they were herein set forth in full.

SECTION 18. Amendments.

The people of the City of Krebs, Oklahoma, shall by their approval of this Chapter at the election herein provided, authorize the Council of the City of Krebs, Oklahoma, by Ordinance duly enacted, to make such changes or additions in the method and manner of administration and enforcing this Chapter as may be necessary or proper for efficiency and fairness, except that the rate of the tax herein provided shall not be changed without approval of the qualified electors of the City of Krebs as herein provided.

SECTION 19. Provisions Cumulative.

The provisions hereof shall be cumulative and in addition to any and all other taxing provisions of the City.

SECTION 20. Purpose of Revenues.

It is hereby declared to be the purpose of this Ordinance to provide revenues for the following specific purposes, and no others, to-wit:

1. 8% or 8 cents per dollar earmarked and dedicated to be utilized to build and maintain a Senior Citizen Community Center for the benefit of the City of Krebs.

PASSED and ADOPTED in regular session this 7th day of January, 2014.

CITY OF KREBS, OKLAHOMA
A Municipal Corporation

By: 

Bobby Watkins, Mayor

ATTEST:



W. Kay Scott, Interim Clerk/Treasurer

Approved as to form and legality this 7th day of January, 2014.

By: 

Pat Layden, City Attorney