

**TOWN OF SEDGWICK
ORDINANCE #02-2010**

**AN EMERGENCY ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF SEDGWICK, SEDGWICK COUNTY, COLORADO
IMPOSING A LODGING OCCUPATION TAX AND REFERRING SUCH
ISSUE TO A VOTE OF THE REGISTERED ELECTORS AT THE
REGULAR MUNICIPAL ELECTION TO BE HELD APRIL 6, 2010.**

WHEREAS, declining revenue to the Town of Sedgwick (the "Town") is creating annual budget deficits for the Town; and

WHEREAS, C.R.S. §31-15-501(1)(c) authorizes the Town to tax any lawful occupation within its borders; and

WHEREAS, the provision of lodging to the traveling public results in the increased use of Town streets and rights-of-way, increased traffic, increased demands upon municipal services and utilities, and has substantial effect upon the health, safety, and welfare of the citizens of the Town and upon the expenditures budgeted by the Town; and

WHEREAS, the classification of the provision of lodging as separate businesses and occupations is reasonable, proper, uniform, and nondiscriminatory; and the taxable amount hereby levied is reasonable, proper, uniform, nondiscriminatory, and necessary; and

WHEREAS, the Board of Trustees finds and determines the imposition of a lodging occupation tax would be a source of additional revenue to the Town, and the imposition of such a tax will produce additional revenues for needed facilities and services, including but not limited to, services to lodging facilities and their guests; and

WHEREAS, Article X, Section 20 of the Colorado Constitution, also referred to as the Taxpayer's Bill of Rights ("TABOR"), requires voter approval for any new tax, tax rate increase, tax policy change directly causing a net revenue gain, and the spending of certain funds above limits established by TABOR; and

WHEREAS, TABOR requires that the Town submit ballot issues, as defined in TABOR, to the Town's registered electors on specified election days before action can be taken on such ballot issues; and

WHEREAS, the Town will hold a regular municipal election on April 6, 2010, as a polling place election, and such date is one of the election dates at which TABOR ballot issues may be submitted to the registered electors of the Town; and

WHEREAS, the Board of Trustees finds it is in the best interest of the Town and its citizens to submit to the registered electorate of the Town the TABOR ballot issue authorizing the imposition of the lodging occupation tax herein set forth.

BE IT, HEREBY ORDAINED BY THE BOARD OF TRUSTEES AS FOLLOWS:

Section 1. Purpose

The Board of Trustees hereby finds, determines and declares:

(a) For the purposes of this Ordinance, every person that furnishes lodging for consideration in the Town of Sedgwick is exercising a taxable privilege. The purpose of this Ordinance is to impose a tax which will be paid by every vendor providing such lodging in the Town of Sedgwick, which tax will provide revenues to be collected, retained and spent for any lawful municipal purpose; and

(b) Pursuant to authority found in the laws of the state of Colorado, the following lodging occupancy tax is adopted for the purpose of promoting the health, safety, morals and general welfare of the Town; and

(c) The provision of lodging to the traveling public results in the increased use of Town streets and rights-of-way, increased traffic, increased demands upon municipal services and utilities and has substantial effect upon the health, safety, and welfare of the citizens of the Town of Sedgwick and upon expenditures budgeted by the Town which is a matter of local concern; and

(d) The classification of the provision of lodging as separate businesses and occupations is reasonable, proper, uniform, nondiscriminatory, and necessary.

Section 2. Definitions

Lodging: shall mean hotel rooms, motel rooms, lodging rooms, motor hotel rooms, bed and breakfast rooms, guesthouse rooms, guest ranch rooms, mobile homes, cabins, or other similar accommodations that are rented to persons for a period of less than (1) month or thirty (30) consecutive days, but shall not include rentals under a written agreement for occupancy for a period of at least one (1) month or thirty (30) days.

Person: shall mean an individual, partnership, firm, joint enterprise, limited liability company, corporation, estate or trust, or any group or combination acting as a unit, but shall not include the United States of America, the State of Colorado, and any political subdivision thereof.

Sale: shall mean the furnishing for consideration by any person of lodging within the Town.

Tax: shall mean the tax payable by the vendor or the aggregate amount of taxes due from the vendor during the period for which the vendor is required to pay the occupation tax on the provision of lodging under this Ordinance.

Taxpayer: shall mean the vendor obligated to pay the tax under the terms of this Ordinance.

Vendor: shall mean a person furnishing lodging for consideration within the Town.

Section 3. Imposition of Tax

Effective July 1, 2010, there is hereby levied by the Town of Sedgwick an occupation tax on the provision of lodging upon every person or business that furnishes any hotel room, motel room, lodging room, motor hotel room, bed and breakfast room, guesthouse room, guest ranch room, mobile home, cabin or other similar accommodation for consideration for less than one (1) month or thirty (30) consecutive days within the Town of Sedgwick in the amount of Four dollars (\$4.00) per day, per occupied lodging room or accommodation.

Section 4. Exemptions

The following transactions shall be exempt from the tax imposed by this Ordinance:

(a) Lodging provided by the United States, the State of Colorado, its departments and institutions, and the political subdivisions of the State;

(b) Lodging provided by those charitable, religious, and eleemosynary organizations that have received and hold from the Internal Revenue Service status under Section 501(c)(3) of the Internal Revenue Code as a tax exempt organization, while in the conduct of their regular charitable, religious, or eleemosynary functions and activities; and

(c) Lodging provided to a person who is a permanent resident of a hotel, motel, apartment hotel, lodging house, motor hotel, bed and breakfast, guesthouse, guest ranch, mobile home, cabin or other similar business pursuant to a written agreement for a period of at least one (1) month or thirty (30) consecutive days.

Section 5. Collection of Tax

(a) Every vendor providing lodging taxable under this Ordinance shall remit such tax on or before the twentieth (20th) day of each month on account of lodging provided in the preceding month. Said payment shall be accompanied by a return which shall contain such information and be in such form as the Town Clerk may prescribe.

(b) The burden of proving that any transaction is exempt from the tax shall be upon the vendor.

(c) It shall be the duty of every vendor to maintain, keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the Town Clerk in order to determine the amount of the tax of which the vendor is liable under this Ordinance. It shall be the duty of every such vendor to keep and preserve for a period of three (3) years all such books, invoices and other records, and the same shall be open for examination by the Town Clerk or the Clerk's designee.

(d) The tax to be paid by a vendor shall not be stated and charged separately from the sales price of lodging on any record thereof at the time when the sale is made or at the time when evidence of the sale is issued; however, the vendor may indicate the sales price "includes \$4.00 per day, Town of Sedgwick Lodging Occupation Tax."

Section 6. **Audit of Records**

(a) For the purpose of ascertaining the correct amount of the occupation tax on the provision of the lodging due from any person engaged in such business in the Town under this Ordinance, the Town Clerk or an authorized agent may conduct an audit by examining any relevant books, accounts and records of such person.

(b) All books, invoices, accounts and other records shall be made available within the Town limits and be open at any time during regular business hours for examination by the Town Clerk or an authorized agent. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Town Clerk may issue a subpoena to require that the taxpayer or its representative attend a hearing or produce any such books, accounts and records for examination.

(c) Any exempt organization claiming an exemption under the provisions of this Ordinance is subject to audit in the same manner as any other person engaged in the lodging business in the Town.

Section 7. **Tax Overpayments and Deficiencies**

An application for refund of tax monies paid in error or by mistake shall be made within three (3) years after the date of payment for which the refund is claimed. If the Town Clerk determines that within three (3) years of the due date, a vendor overpaid the occupation tax due under this Ordinance, the Clerk shall process a refund or allow a credit against a future remittance from the same taxpayer. If at any time, the Town Clerk determines the amount paid is less than the amount due under this Ordinance, the difference together with interest at the rate of one and one-half percent (1.5%), assessed from the date such amount was first due, shall be paid by the vendor within ten (10) days after receiving written notice and demand from the Town Clerk. The Town Clerk may extend that time for good cause.

Section 8. Tax Information Confidential

(a) All specific information gained under the provisions of this Ordinance which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the Town and its officers, employees, or legal representative as confidential. Except as directed by judicial order or as provided in this Ordinance, no Town officer, employee, or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of such information shall be required to provide only such information as is directly involved in the action or proceeding. Any Town officer or employee who shall knowingly divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided in this Ordinance or by law, shall be guilty of a violation hereof punishable by a fine but not imprisonment.

(b) The Town Clerk may furnish to officials of any other governmental entity who may be owed sales tax any confidential information, provided that such jurisdiction enters into an agreement with the Town to grant reciprocal privileges to the Town.

(c) Nothing contained in this Section shall be construed to prohibit: the delivery to the taxpayer or its duly authorized representative a copy of such confidential information relating to such taxpayer; the publication of statistics so classified as to prevent the identification of particular taxpayers; the publication of the aggregate revenues generated by the tax; or the inspection of such confidential information by an officer, employee or legal representative of the Town.

Section 9. Forms and Regulations

The Town Clerk is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said occupation tax on the provision of lodging and in particular and without limiting the general language of this Ordinance, to provide for:

- (a) A form of report on the provision of lodging to be supplied to all vendors; and
- (b) The records which vendors providing lodging are to keep concerning the tax imposed by this Ordinance.

Section 10. Enforcement and Penalties

(a) It shall be unlawful for any person to intentionally, knowingly, or recklessly fail to pay the tax imposed by this Ordinance, or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this Ordinance. Any person convicted of a violation of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment not exceeding one (1) year or by both such fine and imprisonment. Each day, or portion thereof, that any violation of this Ordinance continues shall constitute a separate offense.

(b) A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.00), whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the tenth (10th) day of the month as required by this Ordinance, or such other date as prescribed in writing by the Town Clerk, and one and one-half percent (1.5%) interest shall accrue each month on the unpaid balance. The Town Clerk is hereby authorized to waive for good cause shown, any penalty assessed.

(c) If any part of a deficiency is due to negligence or intentional disregard of the provisions of this Ordinance or rules and regulations concerning the same, but without intent to defraud, then there shall be added ten percent (10%) of the total amount of the deficiency. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of total amount of the deficiency. The penalty under this subsection (c) shall be in addition to the penalty under subsection (b), and in all cases, the whole amount of the unpaid tax, together with all penalties and interest, shall become due and payable ten (10) days after written notice and demand by the Town Clerk.

(d) If any vendor fails to make a return and pay the tax imposed by this Ordinance, the Town may make an estimate, based upon available information of the amount of tax due and add the penalties and interest provided above. The Town shall mail notice of such estimate, by certified mail, to the vendor at his address as indicated in the Town records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Town Clerk ten (10) days from the date of service of the notice or the date of mailing by certified mail; provided, however, that within the ten (10) day period such delinquent taxpayer may petition the Town Clerk for a modification of such assessment and shall, within such ten (10) day period, furnish the Town Clerk the documents, facts and figures showing the correct amount of the taxes due and owing.

(e) Such petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally and shall be given by the taxpayer under penalty or perjury. Thereupon, the Town Clerk may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Ordinance. Such assessment shall be considered the final order of the Town Clerk, and may be reviewed under the Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Town Clerk of its intention to seek review within ten (10) days after receipt of the final order of assessment.

Section 11. Tax Lien

(a) The tax imposed by this Ordinance, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and until paid, remain a first and prior lien superior to all other liens on all the tangible personal property of a taxpayer within the Town and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Town Clerk whenever the taxpayer is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by any Town police officer, the county sheriff of the county wherein the property may be located or any duly

authorized employee of the Town. The property so seized may be sold by the agency seizing the same or by the Town Clerk, at public auction after ten (10) days have passed following an advertised notice in a newspaper published in the Town, in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply.

(b) The tax imposed by this Ordinance shall be, and remain, a first and prior lien, except as otherwise provided by law, superior to all other liens on the real property and appurtenant premises at which the taxable transactions occurred.

Section 12. Recovery of Unpaid Tax

(a) The Town Clerk may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the Town from the taxpayer.

(b) In case of failure to pay the taxes, or any portion thereof, or any penalty, costs or interest thereon, when due, the Town Clerk may recover at law the amount of such taxes, penalties, costs, the reasonable value of any attorney's time or the reasonable attorney's fees charged, plus interest, in any county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the tax became due) having jurisdiction of the amount sought to be collected.

(c) The return of the taxpayer or the assessment made the Town Clerk shall be prima facie proof of the amount due.

(d) Such actions may be actions in attachment, and writs of attachment may be issued to the Town police or the county sheriff of the county wherein the property may be located, as the case may be, and in any such proceeding no bond shall be required of the Town Clerk, nor shall any police officer or sheriff require of the Town Clerk an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Town Clerk may prosecute appeals in such cases without the necessity of providing bond therefor.

(e) It shall be the duty of the Town Attorney, when requested by the Town Board, to commence action for the recovery of taxes due under this Ordinance and this remedy shall be in addition to all other existing remedies or remedies provided in this Ordinance.

(f) The Town may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred to the County Treasurer for collection in the same manner as delinquent ad valorem taxes.

Section 13. Status of Unpaid Tax in Bankruptcy and Receivership

Whenever the business or property of a taxpayer subject to this Ordinance shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint

for taxes, all taxes, penalties and interest imposed by this Ordinance and for which the taxpayer is in any way liable under the terms of this Ordinance shall be a prior and preferred lien against all the property of the taxpayer, except as to other tax liens which have attached prior to the filing of the notice, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Ordinance under process or order of any court, without first ascertaining from the Town Clerk the amount of any taxes due and payable under this Ordinance, and if there be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as above provided.

Section 14. Hearings, Subpoenas, and Witness Fees

(a) Hearings before the Town Clerk pursuant to provisions in this Ordinance shall be held pursuant to this ordinance and rules and regulations promulgated by the Town Clerk. Any subpoena issued pursuant to this Ordinance may be enforced by the Sedgwick Municipal Court Judge pursuant to Sections 13-10-112(2), C.R.S. The fees of witnesses for attendance at hearings shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Town Clerk, such fees shall be paid by the Town. When the witness is subpoenaed at the instance of any party to any such proceeding, the Town Clerk may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned, and in such case, the Town Clerk may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

(b) The Sedgwick Municipal Court Judge, upon the application of the Town Clerk, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Town Clerk or duly authorized hearing officers, by an action for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court.

Section 15. Depositions

The Town Clerk or any party in an investigation or hearing before the Town Clerk may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

Section 16. Statute of Limitations

(a) Except as otherwise provided in this Section, the taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Ordinance shall not be assessed, nor shall notice of lien be filed, or distraint warrant be issued, or suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable. Nor shall any lien continue after such period, except

for taxes assessed before the expiration of such three (3) year period, notice of lien with respect to which has been filed prior to the expiration of such period.

(b) In case of a false or fraudulent return with intent to evade taxation, the tax, together, with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be commenced at any time.

(c) Before the expiration of such period of limitation, the taxpayer and the Town Clerk may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

Section 17: Election & Ballot Title

This Ordinance #02-2010 shall not take effect unless and until a majority of the registered voters voting at the April 6, 2010 regular municipal election vote "yes" in response to the following ballot title, which by order of the Board of Trustees is hereby referred to and shall appear for a vote of the registered electorate of the Town of Sedgwick at the next regular municipal election to be held Tuesday, April 6, 2010 between the hours of 7:00 a.m. and 7:00 p.m. Title of said ballot issue shall read and be fixed as follows:

SHALL TOWN OF SEDGWICK TAXES BE INCREASED \$1,500.00 (FIRST FULL FISCAL YEAR INCREASE) AND ANNUALLY THEREAFTER IN SUCH AMOUNTS AS ARE RECEIVED EACH YEAR FROM THE LEVY OF IMPOSING A LODGING OCCUPATION TAX AT A RATE OF \$4.00 PER DAY PER OCCUPIED LODGING ROOM, TO COMMENCE ON JULY 1, 2010, AND WITH ALL REVENUES DERIVED FROM SAID TAX TO BE COLLECTED, RETAINED, AND SPENT FOR ANY LAWFUL MUNICIPAL PURPOSE; AND SHALL THE TOWN BE PERMITTED TO COLLECT, RETAIN AND EXPEND ALL REVENUES DERIVED FROM SUCH TAX AS A VOTER-APPROVED REVENUE CHANGE AND AN EXCEPTION TO LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

_____ YES

*passed
4/6/10
32 yes
24 no*

_____ NO

Section 18: Severability

If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 19. Conflicting Ordinances

All other ordinances or portions thereof inconsistent or conflicting with this Ordinance #02-2010 or any portion or portions hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 20. Election Contest

Pursuant to Section 31-10-1308(2), C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

Section 21. Declaration of Emergency

The Board of Trustees herewith finds, determines, and declares that this Ordinance is necessary to the immediate preservation of public property, health, welfare, peace, or safety because there is an urgent need for the revenues from the tax proposed by this Ordinance, the Board of Trustees desires to submit the foregoing TABOR ballot issue to the registered electors of the Town at the regular municipal election on April 6, 2010, and there are several immediate deadlines related to the conduct of said election that must be met. Therefore, pursuant to C.R.S. § 31-16-105, the Board of Trustees herewith further finds, determines and declares that it is necessary for this ordinance to take effect immediately upon adoption.

INTRODUCED, READ, VOTED ON, ADOPTED AND APPROVED BY AFFIRMATIVE VOTES OF AT LEAST ¾ OF THE BOARD OF TRUSTEES OF THE TOWN OF SEDGWICK, SEDGWICK COUNTY, COLORADO AT A REGULAR MEETING HELD THIS 1ST DAY OF FEBRUARY, 2010 AND IS HEREBY ORDERED PUBLISHED BY "TITLE ONLY" IN COMPLIANCE WITH ORDINANCE #01-2006.



Patrick B. Woltemath, Mayor



Attest:

Rhonda K. Jones, Town Clerk

