

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5005

AN ORDINANCE regarding an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under Chapter 82.08 RCW and adding a new Chapter 4.18 to the Bellevue City Code.

WHEREAS, the City of Bellevue currently levies a 3% hotel/motel special excise tax pursuant to RCW 67.40.100(2); and

WHEREAS, the City also currently levies a 2% accommodations tax pursuant to RCW 67.28.180; and

WHEREAS, the City has covenanted and agreed to continue to levy these taxes (collectively, the "hotel/motel taxes") and has pledged them for the payment of certain obligations to the Bellevue Convention Center Authority (BCCA), and to the payment of certain bonds issued by the City in support of Meydenbauer Center; and

WHEREAS, the State Legislature has passed SSB 5867, Laws of 1997, repealing RCW 67.40.100(2), modifying RCW 67.28.180, adding new lodging tax authority, and requiring that the hotel/motel taxes enacted under RCW Chapter 67.28 be first submitted for consideration to a lodging tax advisory committee not less than 45 days in advance of final action on hotel/motel taxes by the City; and

WHEREAS, SSB 5867 will become law on July 27, 1997; and

WHEREAS, SSB 5867 appears to replace current hotel/motel taxing authority with a new statutory scheme; and

WHEREAS, the City is not legally able to reduce or repeal its current total 5% hotel/motel taxes in place without impairing contractual obligations owed by the City to the BCCA, Tochterman Management Group, and bondholders; and

WHEREAS, the City has filed a lawsuit against the State of Washington and its Director of Revenue in the Superior Court for Thurston County, Cause No. 97-2-01396-5, seeking a declaratory judgment, preliminary and permanent injunction, and writ of mandamus, all directing that SSB 5867 not be enforced insofar as it impairs the contractual obligations of the City; and

WHEREAS, a preliminary injunction was issued by the Court on July 18, 1997, allowing continued levy and collection of both the 3% and 2% taxes and requiring the State Department of Revenue to continue to collect and pay over to the City said taxes pending a trial in the matter, and in any event until May 15, 1998; and

WHEREAS, the City cannot now know precisely the form of final relief that might be granted by the Court, so that it is imperative that the City maintain in effect a total hotel/motel tax of 5% at all times regardless of the form of relief granted; and

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WHEREAS, by Resolution 6100, adopted June 2, 1997, the City Council established a Lodging Tax Advisory Committee and appointed the members thereof; and

WHEREAS, the City submitted the proposal to readopt the hotel/motel taxes to the Lodging Tax Advisory Committee for review and comment more than forty-five prior to final action as required by section 5(2) of SSB 5867; and

WHEREAS, the Committee has reviewed the proposal and recommended to the City Council that the proposal be adopted by passage of its Resolution 97-1 by a 5-0 vote of its members on July 1, 1997, a copy of which is filed under Clerk's Receiving No. 24647; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new Chapter 4.18, "Lodging Excise Tax," is added to the Bellevue City Code to read as follows:

#### CHAPTER 4.18

#### LODGING EXCISE TAX

4.18.010 Purpose. The purpose of this Chapter is to preserve and maintain the existing five percent total combined excise tax on the sale or charge made for the furnishing of lodging that is now imposed under Bellevue City Code Chapters 4.16 and 4.17 while implementing the new statutory system for levying such taxes which has been adopted by the State Legislature as SSB 5867, Laws of 1997.

4.18.020 Levy of Tax - Who Must Pay. There is imposed and levied and shall be collected an excise tax of five percent on the sale or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW. The tax applies to the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel or trailer camp and the granting of any similar license to use real property as distinguished from the renting or leasing of real property. It shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same.

4.18.030 Collection and Remittance By State. The State Department of Revenue is designated as the agent to the city for purposes of collection of the tax and remittance of the tax to the City. Taxes received by the City shall be deposited in the Hotel/Motel Tax Fund.

4.18.040 Use of Tax Proceeds. The proceeds of the tax collected under this Chapter shall be used solely for the purpose and in the manner provided by Section 4 of SSB 5867, Laws of 1997.

4.18.050 Preservation of Rights. To ensure against the impairment of the obligation of the City to make payments on existing bonds to which the hotel/motel taxes

are pledged, it is imperative that Bellevue maintain in effect a total hotel/motel tax of five percent as now currently levied under Bellevue City Code Chapters 4.16 and 4.17. To that end, Bellevue City Code Chapters 4.16 and 4.17 shall remain in force and effect for the purpose of assuring the continued and uninterrupted right and ability of the City to collect a total tax of five percent on the sale or charge made for the furnishing of lodging that is subject tax under chapter 82.08 RCW, provided the total tax levied under Chapters 4.16 and 4.17 and this Chapter shall not exceed five percent. If a final judgment of a court of competent jurisdiction rules that the City can collect the full five percent tax under this Chapter, then the taxes levied under Chapters 4.16 and 4.17 will not be levied, again to the end that the total tax collected shall not be less than, and shall not exceed, five percent.

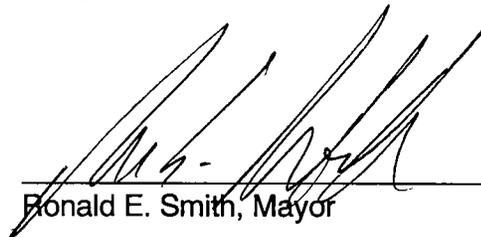
Section 2. The Finance Director is directed to transmit a copy of this ordinance to the State Department of Revenue.

Section 3. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

PASSED this 18th day of July, 1997, and signed in authentication of its passage this 18th day of July, 1997.

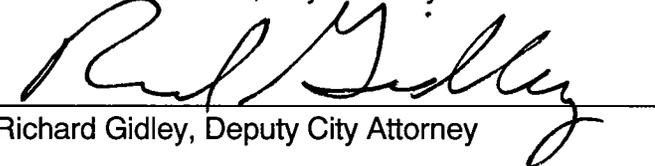
PASSED by the City Council this 18th day of July, 1997, and signed in authentication of its passage this 18th day of July, 1997.

(SEAL)

  
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Ronald E. Smith, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

  
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Richard L. Andrews, City Attorney

Attest:

  
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Myrna L. Basich, City Clerk

Published July 22, 1997