

ORDINANCE NO. 150

AN ORDINANCE OF THE CITY OF PONDERAY, BONNER COUNTY, IDAHO, FINDING THAT SAID CITY HAS SIGNIFICANT ECONOMIC DEPENDENCE ON VISITORS AND TRAVELERS; PROVIDING FOR DEFINITIONS: PROVIDING FOR THE IMPOSITION OF CERTAIN NONPROPERTY TAXES, TOWIT: A ONE PERCENT (1%) TAX ON THE SALES PRICE OF ALL PROPERTY SUBJECT TO TAXATION UNDER IDAHO CODE 633601, *et. seq.*, IDAHO SALES TAX ACT EXCEPT PURCHASES EXCEEDING \$999.99, AND OCCUPANY SALES ALREADY COVERED BY AN EXISTING TAX; PROVIDING FOR A FIVE (5) YEAR DURATION OF SAID NONPROPERTY TAXES; ESTABLISHING THE PURPOSES FOR WHICH THE REVENUES DERIVED FROM SAID NONPROPERTY TAXES SHALL BE USED; CREATING A PROPERTY TAX RELIEF FUND; AUTHORIZING THE CITY CLERK TO ADMINISTER, REGULATE, AND COLLECT SAID NONPROPERTY TAXES; PROVIDING FOR PERMITS AND ISSUANCE; PROVIDING METHOD FOR PAYMENT OF TAXES, AUDITS, DEFICIENCY DETERMINATIONS; REDETERMINATIONS OF DEFICIENCY, APPEALS, INTEREST ON DEFICIENCY, COLLECTIONS AND ENFORCEMENT; REFUNDS, LIMITATIONS AND INTEREST; PROVIDING FOR RESPONSIBILITY FOR PAYMENT OF TAXES; PROVIDING PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION; ESTABLISHING SUCCESSOR'S LIABILITY; PROVIDING FOR GENERAL ADMINISTRATION BY CITY CLERK; PROVIDING PENALTIES AND PENALTY CHARGES; PROVIDING EXEMPTIONS; PROVIDING CONFIDENTIALITY OF INFORMATION; PROVIDING FOR SEVERABILITY; PROVIDING A REPEALER CLAUSE; AND, PROVIDING AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PONDERAY, Idaho:

SECTION 1. FINDING. The City Council of the City of PONDERAY hereby finds that said City has a population not in excess of 10,000 according to the most recent census and is a City that derives the major portion of its economic well being from people catering to recreational needs and meeting needs of people traveling to said destination City for an extended period of time; that said City has a significant economic dependence upon visitors and travelers passing through or staying in the community and said City; and, that said visitors and travelers require services of said City which place an undue burden upon the taxpayers of said City.

SECTION 2. DEFINITIONS. For the purposes of this Ordinance, the following terms, phases, words and derivations shall have the meaning given herein.

(A) In the City of PONDERAY means within the municipal boundaries of the City of PONDERAY, BONNER County, Idaho.

(B) Person: The term "person" means and includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit.

(C) Purchase: The term "purchase" means and includes any transfer, rental, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price is a purchase. A transfer for a consideration of any publication or of tangible personal property which has been produced, fabricated, or printed to the special order of the customer is also a purchase.

(D) Retail sale Sale at retail: The terms “retail sale or sale at retail” mean a sale of tangible personal property for any purpose other than resale of that property in the regular course of business or lease or rental of that property in the regular course of business where such rental or lease is taxable under Section 633612(2)(h), Idaho Code.

1. All persons engaged in constructing, altering, repairing or improving real estate, which includes construction of prefabricated buildings as defined in Title 63, Chapter 36 Idaho Code, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

2. The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State, is a retail sale in this State by the person making the delivery. He shall include the retail selling price of the property in his total sales subject to tax under this Ordinance.

3. For the purposes of this Ordinance as enacted, the sale or purchase of a prefabricated building is deemed a sale or purchase of real property and not a sale or purchase of tangible personal property.

(E) Retailer: The term “retailer” means and includes:

1. Every seller who makes any retail sale or sales of tangible personal property and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.

2. Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

3. Every person making more than two (2) retail sales of tangible personal property during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy, or every person making fewer sales who holds himself out as engaging in the business of selling such tangible personal property at retail.

4. When the City Clerk determines that it is necessary for the efficient administration of this Ordinance to regard any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers, the City Clerk may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for the purpose of this Ordinance.

5. Persons conducting both contracting and retailing activities. Such persons must keep separate accounts for the retail portion of their business and pay tax in the usual fashion on this portion.

(F) Sale: The term “sale” means and includes any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration and shall include any transfer of possession through incorporation or any other artifice found by the State



Tax Commission to be in lieu of, or equivalent to, a transfer of title, an exchange or barter. "Sale" shall also include:

1. Producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

2. Furnishing, preparing, or serving for a consideration food, meals, or drinks.

3. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

4. A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

5. Admission charges.

6. Receipts from the use of or the privilege of using tangible personal property or other facilities for recreational purposes.

(G) Sales price: The term "sales price" means and includes the total amount for which tangible personal property including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules and regulations as the State Tax Commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

2. The cost of materials used, labor or service cost, losses, or any other expense.

3. The cost of transportation of the property prior to its sale.

The term "sales price" does not include any of the following:

1. Discounts allowed and taken on sales, but only to the extent that such discounts represent price adjustments as opposed to cash discounts offered only as an inducement for prompt payment.

2. Any sums allowed on merchandise accepted in part payment of other merchandise.

3. The amount charged for property returned by customers when the amount charged therefor is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

4. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property.

5. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

6. The amount charged for finance charges, carrying charges, service charges, timeprice differential, or interest on deferred payment sales, provided such charges are not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property.

7. Charges for transportation of tangible personal property after sale.

(H) Sales Tax Act shall mean the Idaho Sales Tax Act, Idaho Code 633601, *et. seq.*, including subsequent amendments thereto, which is hereby adopted by reference.

(I) Seller: The term "seller" means every person making sales at retail or retail sales to a buyer or consumer, whether as agent, broker, or principle.

(J) Tangible Personal Property: The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

(K) Taxpayer: Any person subject to or liable for any taxes imposed by this Ordinance.

SECTION 3. IMPOSITION AND RATE OF CERTAIN NONPROPERTY SALES TAXES, TOWIT: A ONE PERCENT (1%) TAX ON THE SALES PRICE OF ALL PROPERTY SUBJECT TO TAXATION, WITH THE EXCEPTION OF PURCHASES GREATER THAN \$999.99 AND EXCEPT OCCUPANCY SALES SUBJECT TO TAXATION UNDER CHAPTER 36 OF TITLE 63, IDAHO CODE. SAID SALES ARE ALREADY COVERED UNDER TITLE 2, CHAPTER 6 OF THE PONDERAY CITY CODE.

The City of PONDERAY, hereby imposes and shall collect certain nonproperty taxes, as follows:

(A) A municipal sales tax is hereby imposed upon each sale at retail within the City of PONDERAY, Idaho, at the rate of one percent (1%) of the sales price of all property subject to taxation under Idaho Code 633601, *et. seq.*, Idaho Sales Tax Act, including subsequent amendments thereto, except purchases greater than \$999.99 and except occupancy sales subject to taxation under chapter 6, title 2 of the Ponderay City Code.

(B) All monies collected and/or retained under the provisions of this Ordinance shall be held in trust for the City of PONDERAY and for payment thereof to the City Clerk in the manner and at the times provided in this Ordinance.

SECTION 4. DURATION OF TAXES. The nonproperty sales taxes authorized and collected under this Ordinance are hereby imposed for a duration of FIVE (5) years from the effective date of this Ordinance.



SECTION 5. PURPOSES FOR WHICH THE REVENUES DERIVED FROM SAID NONPROPERTY TAXES SHALL BE USED.

The nonproperty tax revenue derived from and collected under this Ordinance shall be used for the following purposes:

(A) Railroad Underpass and Development of Lakefront Property Commonly Referred to as Blackrock

(B) Field of Dreams Development

(C) Capital Improvements: Roads, Water, Sewer, Parking in furtherance of the projects outlined in subsections (A) and (B).

(D) Emergency Services: Police, Fire, Ambulance in furtherance of the projects outlined in subsections (A) and (B).

(E) City Promotion, Visitor Information and Special Events in furtherance of the projects outlined in subsections (A) and (B).

(F) Property Tax Relief

(G) Direct Costs to Collect and Enforce the Tax

SECTION 6. CREATION OF A PROPERTY TAX RELIEF FUND.

There is hereby created in the office of the City Clerk a fund to be designated as the "Municipal Property Tax Relief Fund." All monies collected under this Ordinance, and not otherwise budgeted by the City Council (excluding the current fiscal year which has already been budgeted ending September 30, 2020) shall be placed by the City Clerk into the municipal property tax relief fund. All monies collected and placed into said fund shall be used to replace City property taxes in the ensuing fiscal year.

SECTION 7. AUTHORIZATION FOR CITY CLERK TO ADMINISTER, REGULATE AND COLLECT SAID NONPROPERTY TAXES.

The City Clerk of the City of PONDERAY is hereby authorized and empowered to administer, regulate and collect payment of all nonproperty taxes adopted and imposed by this Ordinance. Said Clerk shall have all of the powers set forth in this Ordinance together with those additional powers necessary and proper to carry out the provisions of this Ordinance.

SECTION 8. PERMITS REQUIRED AND ISSUANCE OF PERMITS.

(A) Every person desiring to engage in or conduct business of retail sales, within this City shall file with the City Clerk an application for a municipal nonproperty sales tax permit for each place of business. A separate permit is required for each place of business within the City. Every application for said permit shall be made upon a form prescribed by the City Clerk and shall set forth the name under which the applicant transacts or intends to transact business, the location of the business or places of businesses, and such other information as the City may require. The application shall be signed by the owner, if he is a natural person; or in the case of an association or partnership, by a member or partner, in the case of a corporation, by an executive officer or other person authorized by the corporation to sign the application.

(B) Upon filing an application meeting the requirements set out above, the City Clerk shall issue to each applicant a permit for each place of business. A permit shall not be assignable, and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the location for which it was issued. Issuance of a permit may be subject to additional requirements as set forth in this Ordinance.

(C) On the face of the permit shall be fixed a municipal nonproperty tax number which shall be used by the applicant as an identifying number on all filing, payment and correspondence with regard to the nonproperty tax imposed under this Ordinance.

#### SECTION 9. METHOD FOR PAYMENT OF TAXES.

(A) The taxes imposed by this Ordinance shall be computed and paid for each calendar month. Said taxes are due and payable to the City Clerk on or before the 20th day of the succeeding month. The amount of tax paid shall be computed on all sales subject to taxation under this Ordinance. Each person required to hold a municipal nonproperty sales tax permit and number shall file a municipal nonproperty sales tax return and a copy of their Idaho State Sales Tax Return for the month at the same time said taxes are paid to the City Clerk, unless said person has been permitted in writing by the Idaho State Tax Commission to file quarterly sales or use tax returns. Persons who have been permitted to file other than monthly returns shall notify the City Clerk in writing and the City Clerk thereupon may require reporting of State Tax Returns over some other period.

(B) The first payment of taxes under this Ordinance shall be due and payable together on the 20th day of February, 2020, for that period beginning January 1, 2020, and ending January 31, 2020. Thereafter all payments shall be made monthly.

(C) A municipal nonproperty sales tax return shall be filed each and every month by every person engaging in sales subject to taxation under this Ordinance regardless of whether or not any tax is due. Returns shall be signed by the person required to file the return or by a duly authorized agent.

(D) A valid sales tax exemption certificate issued by the Idaho State Tax Commission upon filing a copy thereof with the City Clerk shall have the same effect to exempt the sale from the taxes imposed hereunder as in the Idaho Sales Tax Act.

#### SECTION 10. AUDITS DEFICIENCY DETERMINATIONS.

(A) The City Clerk may order an audit of any taxpayer under this Ordinance for the purpose of ascertaining the correctness or completeness of any return or payment.

(B) If any error or omission is discovered in such audits or in any other way, the City Clerk may compute and determine the amount of tax due upon the basis of facts obtained from such information within its possession and assert a deficiency. One or more deficiency determinations may be made for the amount due for one or for more than one period. In making such a determination, the City Clerk may offset over payments against amounts due. Further, said determinations shall be made for the period or periods in respect to which the person fails to make a return and shall be based upon any information which is in the City Clerk's possession.

(C) The City Clerk shall give written notice of its determination and the amount of its deficiency, including interest, at the rate of twelve percent (12%) per annum from the date due, to the person from



whom such deficiency amount is due. Such notice may be given personally or mailed to the person at the address furnished to the City Clerk in the nonproperty tax permit application.

#### SECTION 11. REDETERMINATION OF DEFICIENCY.

(A) Any person against whom a deficiency determination is made under this Ordinance, or any person directly interested, may petition in writing for a redetermination within thirty (30) days after service upon the person of notice thereof. If the petition for redetermination is not filed within the thirty (30) day period, the determination becomes final at the expiration of the period.

(B) If a petition for redetermination is filed with the thirty (30) day period the City Clerk shall reconsider the determination and, if the person so requests in the petition, grant the person an oral hearing and give said person ten (10) days notice of the time and place of the hearing personally or by mail addressed to the person at the address furnished to the City Clerk in said person's application for a nonproperty tax permit.

#### SECTION 12. APPEALS, INTEREST ON DEFICIENCY.

(A) When a redetermination is made, the City Clerk shall give notice to the taxpayer against whom the redetermination is made. Within thirty (30) days of the date upon which such notice of redetermination is mailed or served, the taxpayer may file an appeal with the City Council or may file a complaint with the District Court for review of the City Clerk's redetermination. There shall be no right of review to the City Council nor to the District Court on the determination of taxes due made by the City Clerk unless a redetermination has been timely filed. No assessment of a deficiency in respect to the tax imposed by this Ordinance or proceeding to collect for its collection shall be made, begun or prosecuted until such notice has been mailed to the taxpayer and expiration of such thirty (30) day period after notice of redetermination, nor if a protest is filed until a decision on the protest becomes final. If the taxpayer does not protest to the City Council or file an action in District Court within the time prescribed in this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the City Clerk.

(B) Interest upon any deficiency shall be assessed at the same time as the deficiency and shall become due and payable upon notice and demand from the City Clerk and shall be collected as part of the tax at the rate of twelve percent (12%) per annum from the date prescribed for payment of the tax.

#### SECTION 13. COLLECTIONS AND ENFORCEMENT.

As soon as practical after monthly municipal nonproperty sales tax return and payment is filed, the City Clerk shall examine the same and determine the correct amount of the tax. For the purpose of ascertaining the correctness of any payment determining the amount of tax due where none has been made, determining liability of any person for any tax payable under this Ordinance, or the liability at law or in equity of any person in respect to any tax provided by this Ordinance or collecting any such liability, the City Clerk, or duly authorized deputy, is authorized (1) to examine the books, papers, records, or other data which may be relevant or material to the inquiry; (2) to summon the person liable for the tax or any officer, agent or employee of such person, or any person having possession, custody or care of books of accounting containing entries relating to the business of the person liable for the tax, to appear before the City Clerk, or deputy, at a time and place named in its summons to produce such books, papers, records or other data and/or give such testimony under oath as may be relevant or material to such inquiry.

#### SECTION 14. REFUNDS, LIMITATIONS AND INTEREST.

(A) If the City Clerk determines that any amount due under this Ordinance has been paid more than once or has been erroneously or illegally collected or computed, the City Clerk shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount due or payable to the City Clerk for nonproperty taxes from that person, and any balance refunded to the person by whom it was paid or to his successors, administrators or executors.

(B) No such credit or refund shall be allowed or made after one (1) year from the time the payment was made unless before the expiration of such period a claim therefore is filed by the taxpayer.

(C) Interest shall be allowed on the amount of such credits or refunds at the rate of twelve percent (12%) per annum from the date which such tax was paid.

(D) Appeal from the City Clerk's decision denying in part or in whole a claim for refund shall be made in accordance with the laws of the State of Idaho with regard to claims against municipalities.

#### SECTION 15. RESPONSIBILITY FOR PAYMENT OF TAXES.

Every person with a duty to account for or pay over any tax imposed by this Ordinance on behalf of a corporation, as an officer employee of the corporation, or on behalf of a partnership, as a member employee of the partnership shall be personally liable for payment of such tax, plus penalties and interest.

#### SECTION 16. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

(A) The amount of taxes imposed under this Ordinance shall be assessed within three (3) years of the time the return upon which the tax asserted to be due was or should have been filed, whichever is later; provided, however, if a deficiency determination or assessment has been made within the prescribed time, such tax may be collected within a period of six (6) years after assessment. The running of limitations provided by this section shall be suspended for the period during which the City Clerk is prohibited from making the assessment or from collecting or proceeding in Court due to a petition for redetermination or an appeal therefrom, and for thirty (30) days hereafter.

(B) In the case of taxes due during the lifetime of a decedent, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within six (6) months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent unless the assessment is stayed by a petition for redetermination or any appeal therefrom.

(C) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return, the tax may be assessed, or a proceeding in Court for collection of such tax may be begun without assessment, at any time within three (3) years after the date of the discovery of the facts constituting the fraud.

#### SECTION 17. SUCCESSORS' LIABILITY.

(A) If a vendor liable for any amount of tax under this Ordinance sells out his business or stocks and goods, the vendee shall make an inquiry to the City Clerk and withhold from the purchase price any amount of tax that may be due under this Ordinance until such time as the vendor produces receipt stating that no amount is due.

(B) If the purchaser of business or stock of goods fails to withhold from the purchase price as above required, he is personally liable for the payment of the amount required to be withheld by him.



SECTION 18. GENERAL ADMINISTRATION BY CITY CLERK.

(A) The City Clerk shall enforce the provisions of this Ordinance and may prescribe, adopt and enforce rules and regulations relating to its administration and enforcement. The City Clerk may employ qualified auditors for examination of taxpayers' books and records, and shall also employ such accountants, investigators, assistants, clerks, and other personnel as are necessary for the efficient administration of this Ordinance, and may delegate authority to its representatives to conduct hearings, or perform other duties imposed by this Ordinance.

(B) Taxpayers in the City of PONDERAY shall keep such records, receipts, invoices, and other pertinent papers as the City Clerk may require. Each such taxpayer who files tax payments required under this Ordinance shall keep all such records for not less than four (4) years after making such payments unless the City Clerk in writing authorizes their destruction.

(C) The City Clerk, or any person authorized in writing by the Clerk, may examine the books, papers, records, and equipment of any taxpayer or any person liable for any tax, and may investigate the character of the business of the person in order to verify the accuracy of any return made, or if no return is made by the person, to ascertain and determine the amount required to be paid. Any taxpayer whose pertinent records are kept outside of the City must bring the records to the City for examination by the City Clerk upon request of the latter, or by agreement with the City Clerk permit an auditor designated by the City Clerk to visit the place where the records are kept, and there audit such records.

SECTION 19. PENALTIES.

(A) Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, punishable by up to one (1) year in the county jail, and/or Three Hundred Dollar (\$300.00) fine, or both. Furthermore, each month in which a person fails to report, or intentionally fails to accurately compute, or intentionally fails to accurately disclose the total amount of sales or rentals or the amount of tax to be paid, as imposed under this Ordinance, shall be considered a separate offense.

(B) Any person who violates any provision of this Ordinance shall have his municipal nonproperty sales tax permit and tax number revoked. The City Clerk shall send written notice of revocation of said permit and tax number to the permit holder by mailing the same by certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the City Council, challenging said revocation. If no appeal is timely made said revocation becomes final. Whenever a person subject to this Ordinance has had said permit and tax number revoked, the City Clerk shall not reissue said permit nor issue a new permit to said person until said person places with the City Clerk a bond or other sufficient security in the amount equal to three (3) times the actual, determined, or estimated average monthly amount of tax payable by such person pursuant to this Ordinance.

(C) The City Clerk, whenever it is deemed necessary to insure compliance with this Ordinance, may require any person subject to this Ordinance to place with it such security as it may determine. The amount of said security shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this Ordinance. The amount of the security may be increased or decreased by the City Clerk at any time, subject to the limitations set forth above.

(D) Any person who violates any provision of this Ordinance shall have all municipal nonproperty sales tax permits, municipal beer license(s), and wine license(s), and retail liquor by the drink license(s) revoked.

(E) Any amount of tax due under this Ordinance for which a person fails to report or accurately compute, shall become a lien upon the property of said taxpayer on the date that the same becomes due, and the City may seek to enforce said lien and collect all taxes and interest due, together with the reasonable costs of collection, including attorney 's fees, in a Court of competent jurisdiction.

(F) For the purposes of proper administration of this Ordinance, and to prevent evasion of said nonproperty sales taxes, the burden of proving that a sale or rental is not a sale under this Ordinance is upon the person who makes the sale or rental in question.

#### SECTION 20. PENALTY CHARGES.

(A) Any person who is required to collect and pay over any tax imposed by this Ordinance and fails or refuses to pay over to the City the same when due in accordance with Section 9, hereinabove, shall be liable and pay a penalty change equal to five percent (5%) of the tax not paid, or a minimum of \$10 (whichever is greater). The City Clerk shall assess and collect said fee at the time any delinquent tax payment is tendered. The permit holder shall have ten (10) days from the date payment is made to file a written appeal with the City Council challenging said penalty determination. If no appeal is timely made as herein provided, said penalty determination shall be final.

(B) Any person who is required to collect, truthfully account for, and pay over any tax imposed by this Ordinance and who willfully fails to collect such a tax or truthfully account for or pay over such a tax, or willfully attempts in any manner to evade or defeat such a tax or payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the amount of the tax evaded, or not collected, or not accounted for or paid over. The City Clerk shall determine and assess such penalties, and the same shall become due and payable upon notice and demand from the City Clerk. The City Clerk shall send written notice of such penalty charge to the permit holder by mailing the same by certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the City Council challenging said penalty charge determination. If no appeal is timely made as herein provided, said penalty charge determination shall be final.

SECTION 21. EXEMPTIONS. All transactions by the State of Idaho, otherwise subject to imposition of said taxes, are exempt from the provisions of this Ordinance.

#### SECTION 22. CONFIDENTIALITY OF INFORMATION.

(A) No City Clerk of the City of PONDERAY, BONNER County, Idaho, nor any duly authorized Deputy City Clerk, agent or employee shall divulge or make known to any persons, in any manner, any information whatsoever submitted or obtained, directly or indirectly, pursuant to this Ordinance, or to permit any nonproperty tax return or information supplied with regard thereto, or any copy thereof, or any paper or book so obtained, to be seen or examined by any person except as provided by law; provided that in any action or proceeding brought for the collection, remission, cancellation, or refund of the whole or any part of a tax imposed under this Ordinance, or for enforcing the penalties prescribed for making false or fraudulent returns, any and all information contained in or provided with said returns may be made accessible to the elected and appointed officials, officers, and representatives of said City charged with enforcing or defending the same, all such returns, information, statements and correspondence relating thereto may be produced into evidence in any action, civil or criminal, directly pertaining to such returns or the tax imposed on the basis of such returns.



(B) The PONDERAY City Council, under such rules and provisions as it may prescribe, may permit, notwithstanding the provisions of this Ordinance as to secrecy, the Commission of Internal Revenue of the United States or his delegate or the proper officer of any state imposing a tax to inspect the nonproperty tax returns or information provided or obtained in connection therewith, or may furnish to such officer, or his authorized agent, copies or an abstract thereof.

(C) Nothing in the Ordinance shall prohibit a taxpayer, or authorized representative upon proper identification, from inspecting and copying his own nonproperty tax returns and information supplied therewith.

SECTION 23. SEVERABILITY. It is hereby declared to be the legislative intent that the provisions, and parts thereof, of this Ordinance shall be severable. Should any section, subsection, paragraph, clause or phrase of this Ordinance, or any particular application thereof, be declared invalid or unconstitutional for any reason by a Court of competent jurisdiction, such decision shall not affect the remaining portions of said section, subsection, paragraph, clause or phrase of this Ordinance.

SECTION 24. REPEALER CLAUSE. All Ordinances or parts thereof in conflict herewith are hereby repealed.

SECTION 25. EFFECTIVE DATE. This Ordinance shall be in full force and effect on January 1, 2020, after voter approval, passage by City Council and Mayor, and publication according to law prior to January 1, 2020.

PASSED BY THE CITY COUNCIL and approved by the Mayor this \_\_16<sup>th</sup>\_\_ day of December, 2019.

*Steve Geiger*

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Steve Geiger, Mayor

ATTEST:

*Su Warren*

Su Warren  
City Clerk