

**ORDINANCE NO. 2009-117**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO AMENDING ARTICLE 6 OF DIVISION 4 OF TITLE 1 OF THE ORANGE COUNTY CODE, AS ADOPTED BY THE CITY OF ALISO VIEJO, REGARDING THE TRANSIENT OCCUPANCY TAX**

**THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Article 6 of Division 4 of Title 1 of the Orange County Code, as adopted by the City of Aliso Viejo pursuant to Ordinance No. 2001-018, is hereby amended in its entirety to read as follows:

**“Article 6  
Transient Occupancy Tax**

**Sections:**

- 1-4-119 Definitions.**
- 1-4-120 Tax Imposed.**
- 1-4-121 Exemptions.**
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- 1-4-145      **Agreement with county and other cities.**
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- 1-4-119      **Definitions.**

The following definitions apply to the use of these terms for purposes of this article:

A.      *Hotel.* Any structure, or any portion of any structure, which is occupied, intended or designed for use or occupancy by transients, including, but not limited to, dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house, or portion thereof, duplex, triplex, single-family dwelling units except as provided in this section.

Hotel does not mean any of the following: Any hospital, sanitarium, medical clinic, convalescent home, rest home, home for aged people, foster home or other similar facility operated for the care or treatment of human beings; any asylum, jail, prison, orphanage or other facility in which human beings are detained and housed under legal restraint; any housing owned or controlled by an educational institution and used exclusively to house students, faculty or other employees, and any fraternity or sorority house or similar facility occupied exclusively by students and employees of such educational institution, and officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by an organization having qualifications for exemption from property taxes under California law; any housing owned by a governmental agency and used to house its employees or for governmental purposes; any camp as defined in the California Labor Code or other housing furnished by an employer exclusively for employees; any private dwelling house or other individually owned single-family dwelling unit rented infrequently and incidentally to the normal occupancy by the owner or his or her family; provided that the burden of establishing that the housing or facility is not a hotel as defined in this section shall be upon the operator, who shall file with the tax administrator such information as the he or she may require to establish and maintain such status.

B.      *Occupancy.* The use or possession, or the right to the use or possession, of any portion of any room or rooms offered for rent for dwelling, lodging or sleeping purposes, regardless of the purpose for which such rooms are rented.

C. *Operator.* The person who is proprietor of the hotel whether in the capacity of owner, lessee, sub lessee, mortgage in possession, licensee or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, the managing agent shall also be deemed an operator for the purpose of this article, and shall have jointly and severally the same duties and liabilities as his or her principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.

D. *Person.* Any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

E. *Rent.* The amount of the consideration charged or chargeable to the tenant for the occupancy of space, valued in money whether received as money, goods, labor or otherwise, including in full value of receipts, cash, credits, property or services of any kind or nature, without any deduction. It is not the intent of this subsection to make the operator liable for the tax on uncollected rent. However, uncollected rent must be reported.

F. *Tax Administrator.* The city manager or his or her designated agent.

G. *Transient.* Any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired. Occupants remaining in a hotel after the expiration of the thirty (30) days are required to re-register and the thirty (30) day time period shall start anew. In determining whether a person is a transient, an uninterrupted period of time extending both prior and subsequent to the effective date of this article may be considered.

#### **1-4-120 Tax imposed.**

For the privilege of occupancy in any hotel, each transient is subject to, and shall pay, a tax in the amount of ten percent (10%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city.

#### **1-4-121 Exemptions.**

- A. No tax shall be imposed upon:
1. Any person, or any occupancy, which is beyond the power to the city as to the imposition of the tax;
  2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

B. No exemptions shall be granted except upon a claim made at the time the rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

**1-4-122 Operator's duties.**

Each operator shall collect the tax imposed by this article to the same extent and at the same time as the rent is collected from every transient. The amount of the tax shall be separately stated from the amount of the rent charged. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part of it will be assumed or absorbed by the operator; or that it will not be added to the rent; or that, if added, any part will be refunded, except in the manner provided in this article.

**1-4-123 Permit required – application.**

A. Every person desiring to engage in or conduct business as operator of a hotel renting to transients within the city shall file with the tax administrator an application for a transient occupancy registration permit for each place of business. Every application for such a permit shall be made upon a form prescribed by the tax administrator and shall set forth the name under which the applicant transacts, or intends to transact, business, the location of his or her place of business and such other information as the tax administrator may require. The application shall be signed by the owner, if a natural person, by a member or partner, if an association or partnership, or, if a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application. The transient occupancy registration permit must be in effect at all times while the business is in operation and shall be at all times posted in a conspicuous place on the premises. The permit shall, among other things, state the following:

1. Name of hotel;
2. Name of operator;
3. Hotel address;
4. The date upon which the permit was issued;
5. "This Transient Occupancy Registration Permit

signifies that the person named on the permit has fulfilled the requirements of the transient occupancy tax regulations by registering with the tax administrator for the purpose of collecting from transients the transient occupancy tax and remitting the tax to the tax administrator. This permit does not authorize any person to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all applicable laws, including, but not limited to, those requiring a permit from any board, commission, department or office of this city. This permit does not serve in lieu of other required permits."

B. At the time of making an application for a registration permit, the applicant shall pay a registration fee as established by resolution of the city council.

**1-4-124 Tax due.**

The tax imposed under Section 1-4-125 is:

- A. Due to the tax administrator at the time it is collected by the operator; and
- B. Becomes delinquent and subject to penalties if not received by the tax administrator on or before the last working day of the month following the close of each calendar month.

**1-4-125 Reporting and remittance.**

Each operator shall, on or before the fifteenth (15) day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies and the average number of rental units available during the quarterly period and number of unit nights that were rented. Each such return shall contain a declaration under penalty of perjury, executed by the operator or his or her authorized agent, that to the best of the signatory's knowledge, the statements in the return are true, correct and complete. Amounts claimed on the return as exempt from the tax pursuant to Section 1-4-121 shall be fully itemized and explained on the return or supporting schedule. In determining the amount of taxable receipts on the tax return, rent as defined in Section 1-4-119(E), may not be reduced by any business expenses, including, but not limited to, the amount of service charges deducted by credit card companies or commissions paid to travel agencies. At the time the return is filed, the tax fixed at the prevailing transient occupancy tax rate for the amount of rentals charged or chargeable, which are not exempt from tax under Section 1-4-121, shall be remitted to the tax administrator. The tax administrator may establish other reporting periods and may require a cash deposit or bond, or a separate trust fund bank account for any permit holder if he or she deems it necessary in order to insure collection of the tax, and he or she may require further information in the return. All taxes collected by operators pursuant to this article shall be held in trust for the account of the city until remitted to the tax administrator.

**1-4-126 Cessation of business.**

Each operator shall notify the tax administrator, ten days prior to the sale or cessation of business for any reason. Returns and remittances are due immediately upon the sale or cessation of business.

**1-4-127 Delinquency – interest and penalties.**

Any operator who fails to remit any tax to the city or any amount of tax required to be collected and remitted to the city, including amounts based on determinations made by the tax administrator under Section 1-4-129, within the time required, shall pay a penalty consisting of ten percent (10%) of the amount owed plus interest at the rate of one percent per month, or part of a month, from the date on which the tax owed becomes delinquent until the date of remittance. Any operator who fails to pay any penalty imposed under this Section within ten (10) days after receiving a notice of delinquency shall pay a penalty consisting of: (1) ten percent (10%) of the amount owed plus interest at the rate of one percent per month, or part of a month; and (2) ten percent (10%) interest of the total amount owed in (1) at the rate of one percent per month, or part of a month, from the date on which the penalty becomes due and payable to the city until the date of remittance.

**1-4-128 Fraud – penalty.**

If the tax administrator determines that the failure to make any payment due under this article is due to fraud, a penalty of one hundred percent (100%) of the amount of the tax and penalties shall be added to the amount owed in addition to the penalties stated in section 1-4-127.

**1-4-129 Failure to collect and report tax; estimation of taxes due; notification; hearing.**

A. If any operator fails or refuses to collect the tax and to timely make any report and/or remittance of the tax or any portion of it, the tax administrator shall follow his or her best judgment in obtaining facts and information on which to base his or her estimation of the tax due. When the tax administrator determines the amount due, he or she shall then determine and assess against the operator the tax, interest and penalties as provided in this article.

B. When the tax administrator makes a determination of the total amount due, as required in (A), he or she shall give notice of the amount assessed by serving the notice personally or by depositing it in the United States mail, postage prepaid, addressed to the operator at his or her last known address.

C. An operator may, within ten days after the serving or mailing of the notice, apply in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five days written notice in the manner prescribed in (B) to the operator so that he or she has the opportunity to show cause, at a time and place fixed in the notice, why the amount specified in the notice is incorrect or unwarranted.

D. At the hearing, the operator may appear and offer evidence explaining why the specified tax, interest and penalties should not be assessed against him or her by the tax administrator. After the hearing, the tax administrator shall determine the proper tax to be remitted and shall give written notice as described in (B) containing the final assessment and determination of tax, interest and penalties owed by the operator. That amount shall be payable after fifteen (15) days of receipt of the notice, unless an appeal is taken as provided in Section 1-4-130.

#### **1-4-130 Appeal.**

Any operator aggrieved by any decision of the tax administrator with respect to the amount of any tax, interest and/or penalties owed, may file an appeal as follows:

A. Hearing officers - assignment.

The City shall hire through a process of issuing requests for qualifications, and shall maintain a panel of, qualified city managers to serve as hearing officers for matters appealed according to the procedures set forth in this article. "Qualified city manager" means, at a minimum, a person who has at least five (5) years experience serving as a city manager. Hearing officers shall be assigned to matters on a rotating basis to assure fair and impartial review and analysis of issues on appeal. The city shall have no role in the selection, assignment or rotation of the hearing officers, provided that this shall not prevent the city from selecting qualified city managers to serve on the city's panel of hearing officers.

B. Appeal procedures.

1. Notice of Appeal; Fee. An appeal may be filed within ten (10) days of the tax administrator's decision by filing a written notice of appeal with the city clerk, stating the grounds for why such decision is not proper and thus being contested. Any appeal shall be limited to such written grounds. Payment of any fee for appeal, which may be established by city council resolution, must be deposited with the Notice.

2. Hearing Officer Assignment; Hearing Date. The City Clerk shall forward the appeal for assignment to the next hearing officer in the rotation from the panel of qualified hearing officers maintained by the city, as provided for in above. The hearing officer so assigned shall schedule a date for hearing within ten (10) days after the date of referral of the appeal by the city clerk; provided, however, that the hearing officer may take more than ten (10) calendar days if he or she reasonably determines that additional time is necessary or upon the mutual agreement of the parties. The hearing shall be held not more than thirty (30) days from time of referral by the city clerk to the hearing officer; provided, however, that the hearing officer may schedule the hearing more than thirty (30) calendar days out if he or she reasonably determines that additional time is necessary or upon the mutual agreement of the parties. At least ten (10) days prior to the date of the hearing on the appeal, the hearing officer shall notify the appellant and city official of the time, date and place for the appeal hearing. To the extent that specific state statutes or city ordinances set forth additional notice provisions, the hearing officer shall also comply with such provisions. In addition, the hearing officer may continue the hearing date from time to time as he or she determines is reasonably necessary to allow a full and fair adjudication of the issues.

3. Stay of Decision. Nothing in this article shall impair a person's right to seek temporary relief from a court of competent jurisdiction pending the hearing officer's decision on the appeal; provided, however, that without a court order the city official's decision shall not be stayed and nothing in this code shall be interpreted to require or support such temporary relief.

4. Rights of Hearing Officer. The hearing officer is authorized to issue subpoenas, to administer oaths and to conduct the hearing on the appeal. At such hearing, the appellant and the city official may present evidence relevant to the decision of the city official. The hearing officer shall have authority to receive evidence and shall rule on the admissibility of evidence and on questions of law. At the hearing, any person may present evidence in opposition to or in support of appellant's case.

5. Recording of Appeal Hearing. All hearings shall be recorded by a video or audio device. Any party to the appeal hearing may also, at its own expense, use a court reporter to record the proceeding. If a court reporter is not used, the city will make the video or audio tapes of the hearing available to any party. The city may charge a reasonable fee for reproducing the tapes. If a court reporter is used, a party to the hearing may obtain a copy of the transcript upon payment of any applicable fees or costs charged by the court reporter. The city may destroy such tapes or transcripts following the time during which any and all appeals of the administrative decision are required to be made pursuant to this article or following the time during which such tapes or transcripts are required to be retained by the city pursuant to state law, whichever is later.



6. Evidentiary Rules. The hearing need not be conducted in accordance with the technical rules of evidence. Each party shall have the right to call and examine witnesses, to introduce exhibits and to cross-examine opposing witnesses who have testified under direct examination. The hearing officer may call and examine any witness. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in a civil action. The rules of privilege are applicable to the extent they are permitted in civil actions. Any relevant evidence may be admitted if it is the type on which reasonable persons are accustomed to rely in the conduct of their affairs, regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Oral evidence may be taken on oath or affirmation. Irrelevant collateral, undue or repetitious evidence shall be excluded.

7. Hearing Officer Decision. At the conclusion of the hearing, the hearing officer may uphold, modify or reverse, in any manner he or she deems justified pursuant to the evidence presented, the decision of the tax administrator which is the subject of the appeal. The decision shall not, however, conflict with any substantive provisions of the applicable article(s) of this code. The hearing officer shall, within five (5) calendar days of the conclusion of the hearing, file with the city clerk his or her written decision, along with written findings of fact and conclusions of law, and shall provide a copy of the decision to all parties; provided, however, that the hearing officer may take more than five (5) calendar days if he or she reasonably determines that additional time is necessary or upon the mutual agreement of the parties. If any party is represented by an attorney, the attorney shall be served. The decision of the hearing officer is final when filed with the city clerk. The hearing officer shall also submit the original copies of the record to the city clerk.

8. Failure to Request Hearing. Failure to timely submit a notice of appeal and make the deposit required by this section shall constitute a failure by the person who was entitled to appeal to exhaust his or her administrative remedies.

C. The decision of the hearing officer shall be the final city decision, and no action by the city council shall be required.

D. Judicial review.

Any person aggrieved by the final decision on appeal may obtain review of the decision by filing with the court of competent jurisdiction over the matter, in accordance with the applicable provisions set forth in the California Government Code, Code of Civil Procedure, or other applicable law.

**1-4-131 Records to be kept; inspection; subpoena.**

It shall be the duty of every operator liable for the collection and remittance to the city of any tax imposed by this article to keep and preserve, in the city, for a period of three (3) years, records in such form as the tax administrator may require to determine the amount of such tax. The tax administrator shall have the right to inspect and audit the records at all reasonable times, and such records shall be accessible for inspection and audit by the tax administrator. The tax administrator may subpoena the records of any operator who refuses to make them available for examination.

**1-4-132 Refunds.**

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the city under this article, it may be refunded as provided in subsections B and C of this section provided that: (1) the operator makes a claim in writing, using a form furnished by the tax administrator, stating under penalty of perjury the specific grounds upon which the claim is founded; and (2) the claim is filed within three (3) years of the date of payment.

B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received, when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the person or credited to rent subsequently payable by the person to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once erroneously, or illegally collected or received by the city, by filing a claim in the manner provided in subsection A of this section, but only when the transient, having paid the tax to the operator, establishes to the satisfaction of the tax administrator that he or she has been unable to obtain a refund from the operator who collected the tax.

D. If the claimant cannot provide written records proving his or her right to the refund, no refund shall be paid under the provisions of this section.

**1-4-133 Revocation of permit.**

Whenever any operator fails to comply with any provision of this article relating to occupancy tax, or any rule or regulation of the tax administrator relating to occupancy tax, as prescribed and adopted under this article, the tax administrator, upon proper notice and hearing, may suspend or revoke any one or more of the operator's permits. The tax administrator must give the operator

ten (10) days notice in writing specifying the time and place of hearing and requiring the operator to show cause why his or her permit or permits should not be revoked. The required notice may be served personally or by mail in the manner prescribed in 1-4-129(B). The tax administrator shall not issue a new permit after revocation unless he or she is satisfied that the former holder of the permit will comply with the provisions of this article relating to the occupancy tax and regulations of the tax administrator. The hearing required by this section shall be conducted by a hearing officer selected pursuant to section 1-4-130 .

**1-4-134 Closure of hotel without permit.**

Where a permit has not been issued, or where a permit is suspended, revoked or otherwise not validly in effect, the tax administrator may require that the hotel be closed.

**1-4-135 Recording certificate – lien.**

If any amount required to be paid to the city under this article is not paid when due, the tax administrator may, within three years after the amount is due, file for record in the office of the county recorder, a certificate specifying the amount of tax, penalties and interest due, the name and address, as it appears on the records of the tax administrator, of the operator, and the fact that the tax administrator has complied in determining the amount owed. From the time of the filing for record, the amount due, together with penalties and interest, constitutes a lien upon all real property in the county owned, or subsequently acquired by the operator, prior to the expiration of the lien. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of the filing of the certificate, unless sooner released or otherwise discharged.

**1-4-136 Priority and lien of tax.**

A. The amount required to be paid by any operator under this article, with penalties and interest, shall be satisfied prior to any other debts owed by the operator in any of the following cases:

1. Whenever the operator is insolvent;
2. Whenever the operator makes a voluntary assignment of his or her assets;
3. Whenever the estate of the operator, in the hands of executors, administrators or heirs, is insufficient to pay all the debts due from the deceased;
4. Whenever the estate and effects of an absconding, concealed or absent operator required to pay any amount under this article are levied upon by process of law. This article does not give the city a preference over any recorded lien which attached prior to the date when the city's lien was recorded.

B. The preference given to the city by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1205 of the California Code of Civil Procedure.

**1-4-137 Warrant for collection of tax.**

At any time within three (3) years after any operator is delinquent in the remittance or payment of any amount, or within three years after the last recording of a certificate under Section 1-4-135, the tax administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the city under this article. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner as a levy and sale made pursuant to a writ of execution. The tax administrator may pay or advance to the sheriff, marshal or constable the same fees, commissions and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The tax administrator, and not the court, shall approve the fees for publication in a newspaper.

**1-4-138 Seizure and sale.**

At any time within three years after any operator is delinquent in the remittance or payment of any amount, the tax administrator may collect the amount in the following manner:

The tax administrator shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due, together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due under this article shall be only of property of the operator not exempt under the provisions of the California Code of Civil Procedure.

**1-4-139 Successor's liability – withholding by purchaser.**

If any operator liable for any amount under this article sells out his or her business or quits the business, his or her successor or assigns shall withhold a sufficient amount of the purchase price to cover the amount until the former owner produces a receipt from the tax administrator showing that it has been paid or a certificate stating that no amount is due.

**1-4-140      Liability of purchaser – release.**

If the purchaser of a hotel fails to withhold a sufficient amount of the purchase price as required, he or she shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price. Within sixty (60) days after receiving a written request from the purchaser for a certificate, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires later, but in any event not later than ninety (90) days after receiving the request, the tax administrator shall either issue the certificate or mail notice to the purchaser at his or her address as it appears on the records of the tax administrator of the amount that must be paid as a condition of issuing the certificate. Failure of the tax administrator to mail the notice will release the purchaser from any further obligation to withhold the purchase price as provided in this section. The time within which the obligation of the successor may be enforced shall start to run at the time the operator sells his or her business or at the time that the determination against the operator becomes final, whichever occurs later.

**1-4-141      Responsibility for payment.**

Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been remitted to the city is a fiduciary obligation of the operator to the city and collectible in the same manner as a debt. Any person owing money to the city under the provisions of this article shall be subject to an action brought in the name of the city for the recovery of such amount. The city shall have the right to examine or audit the books and records of any taxpayer and any deficiency found shall be assessed against such taxpayer in the same manner as a debt. Any such deficiency which is in excess of one hundred dollars (\$100) shall be increased by an amount equal to the cost the city incurred in causing and conducting the audit.

**1-4-142      Withhold notice.**

If any person or operator is delinquent in the remittance or payment of the amount required to be remitted or paid by him or her, or, in the event a determination has been made, against him for the remittance of tax and payment of the penalty, the city may, within three years after the tax obligation became due, give notice personally or by registered mail to all persons, including the state or any political subdivision, having in their possession or under their control any credit or other personal property belonging to the taxpayer. After receiving the withholding notice, the person so notified shall make no disposition of the taxpayer's credits, other personal property or debts until the city consents to a transfer or disposition, or until sixty (60) days elapse after the receipt of the notice, whichever is later. All persons, upon receipt of the notice, shall advise the city immediately of all such credits, other personal property or debts in their

possession, under their control or owed by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank, or other credits or personal property in the possession or under the control of the bank, to be effective, the notice shall be delivered or mailed to the branch or office of the bank at which such deposit is carried or at which such credits or personal property is held. If any person so notified makes a transfer or disposition of the property or debts required to be held during the effective period of the notice to withhold, he or she shall be liable to the city to the extent of the value of the release up to the amount of the indebtedness owed by the taxpayer of the city.

**1-4-143 Extension of time.**

The tax administrator, for good cause, may extend for no more than one (1) month the time for making any return or paying any amount required to be paid under this article. The extension may be granted at any time, provided a request is filed with the tax administrator within or prior to the period for which the extension may be granted. Any person to whom an extension is granted shall pay, in addition to the tax, interest at the rate of one percent per month or part of a month, from the date on which the tax would have been due without the extension until the date of payment.

**1-4-144 Divulging of information forbidden.**

A. It is unlawful for any person having an administrative duty under this article to:

1. make known in any manner the business affairs, operations or information obtained by an investigation of the records of any operator or any other person visited or examined in the discharge of official duty;
2. to disclose the amount or source of income, profits, losses, expenditures, or any other information, set forth or disclosed in any return; or
3. to knowingly permit any return or copy of a return, or any abstract or portions of an abstract to be seen or examined by any person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the amount of unpaid tax or amounts of tax, penalties and interest required to be collected.

**1-4-145 Agreement with county and other cities.**

The city is empowered to enter into a joint powers agreement with other cities and the county, and if such agreement or agreements can be made in which central collection for the county is provided, then it shall be done upon approval of the city council.

**1-4-146 Expenses paid from gross receipts.**

The expenses for staff and collection of the tax under this article shall be paid from the gross receipts.

**1-4-147 Use of proceeds.**

The net proceeds from the tax imposed in this article shall be used for any lawful purpose of the city.

**1-4-148 Violations – misdemeanor.**

A. Any operator or other person who:

1. knowingly or willfully fails or refuses to remit taxes due under this article to the tax administrator prior to the time of delinquency as specified in Section 1-4-124 through 1-4-126;
2. who willfully fails or refuses to register as required;
3. who willfully fails to furnish any return required to be made;
4. who fails or refuses to furnish a supplemental return or other data required by the tax administrator; or
5. who renders a false or fraudulent return or claim

is guilty of a misdemeanor.

B. Any person required to make, render, sign or verify any report or claim who does so with the intent to defeat or evade the determination of any amount due under this article, is guilty of a misdemeanor.

**1-4-149 Reserved**

**1-4-150 Reserved**

**1-4-151 Reserved**

**1-4-152 Reserved"**

**SECTION 2. CEQA**

The City Council finds that the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3), as it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment because this Ordinance updates regulations and standards regarding a transient occupancy tax and will not have a physical effect on the environment.

### **SECTION 3. Previous Ordinances**

All former ordinances or parts conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

### **SECTION 4. Severability**

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

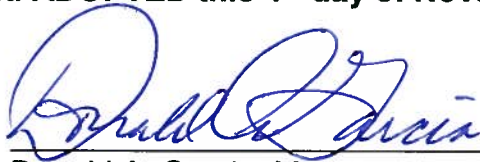
### **SECTION 5. Certification and Publication**

The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

### **SECTION 6. Effective Date**

This ordinance shall take effect thirty (30) days after its adoption.

**PASSED, APPROVED and ADOPTED this 4<sup>th</sup> day of November 2009.**

  
\_\_\_\_\_  
Donald A. Garcia, Mayor

ATTEST:

  
\_\_\_\_\_  
Susan Ramos, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Scott C. Smith, City Attorney



