

CITY COUNCIL

For City Clerk's Use:

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APPROVED

☐

DENIED

Reso No. _____

File No. _____

Ord No. _____

Agenda Item No.: 17

Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Gilbert Rojas, Director of Finance

SUBJECT: Revise Municipal Code Chapter 25 Article 4 relating to Transient Occupancy Tax

RECOMMENDATION:

It is requested that Council adopt Ordinance No. 2012-19.

FISCAL ANALYSIS:

Transient Occupancy Tax (TOT) amounts to approximately \$1.1 million dollars in revenue to the City. This ordinance change will assist staff in enforcing this tax fairly to all lodging establishments.

BACKGROUND:

This is a general tax imposed on occupants for privilege of occupying rooms(s) in hotel, motel, inn, etc. The authority for the tax is the State of California Revenue and tax code 7280 and 7281. This tax is collected by the operators of hotels/motel or their agents and remitted to the City.

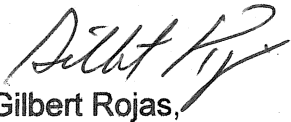
The revisions to this ordinance should:

- Aid in the timely collection of TOT and prompt enforcement when not remitted on time;
- Lowers the late charge from 25% to 10% per month;
- Emphasizes TOT is public money held in trust;
- Emphasizes record keeping requirements including long term Qualified Rental Agreements for 31 days and longer stays;
- Allows security deposits/certificate revocation when the Operator violates the code;
- Establishes procedures for business termination;
- Shortened appeal period;
- Adds cost recovery provisions for records inspection (beyond the routine)
- Updates definitions; and
- Clarifies that hotel receipts should not be comingled with personnel funds.

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Transient Occupancy Tax ordinance 2012-19
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A copy of the proposed ordinance change has been forwarded to all current TOT collectors.

Respectfully submitted,



Gilbert Rojas,
Director of Finance

ORDINANCE NO. 2012-19

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING ESCONDIDO MUNICIPAL CODE
CHAPTER 25, TAXATION, ARTICLE 4,
TRANSIENT OCCUPANCY TAX**

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN
as follows:

WHEREAS, the Escondido City Council believes the periodic review and revision
of the Escondido Municipal Code facilitates efficient governance; and

WHEREAS, in an effort to ensure the City's means of collecting transient
occupancy tax are current, staff reviewed Escondido Municipal Code Chapter 25,
Article 4, Transient Occupancy Tax, and determined it needs to be updated; and

WHEREAS, the Escondido City Council determines the proposed amendment
properly regulates hotels subject to the transient occupancy tax and provides the City
with enhanced audit procedures and enforcement mechanisms.

NOW, THEREFORE, the City Council of the City of Escondido, California, DOES
HEREBY ORDAIN, as follows:

SECTION 1. That Escondido Municipal Code Chapter 25, Article 4 is repealed
and replaced as follows:

Chapter 25

TAXATION

ARTICLE 4. Transient Occupancy Tax.

Sec. 25-75 Definitions. The following definitions are applicable to this Article:

(a) Hotel shall mean any structure, or any portion of any structure, which is occupied
or intended or designed for occupancy by Transients for dwelling, lodging or sleeping
purposes, and includes any inn, tourist home or house, motel, studio, bachelor hotel,

lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or portion thereof. "Hotel" does not mean any hospital, convalescent home or sanitarium.

(b) Occupancy shall mean the use or possession or the right to the use or possession of any room or rooms or portion thereof in any Hotel for dwelling, lodging or sleeping purposes.

(c) Operator shall mean the person who is proprietor of the Hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. "Operator" includes a managing agent, a resident manager, a resident agent or any other individual acting in a management capacity. Where the Operator performs the function of booking or charging for a room through an agent of any type or character other than an employee, the agent shall also be deemed an Operator for the purposes of this article and shall have the same duties and liabilities as the principal.

(d) Person shall mean 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) Qualifying Rental Agreement shall mean and is limited to a written contract signed by both the Operator and tenant, legally enforceable by either party, for a Rental period of not less than thirty consecutive days. "Qualifying Rental Agreement" shall expressly exclude: (1) any agreement regardless of length of the Rental term which may be terminated for any reason by either party or by mutual consent prior to the thirtieth consecutive day of the tenancy or (2) any agreement which would constitute a violation of law.

(f) Rent shall mean the consideration charged to the Transient, whether or not received, for the occupancy of space in a Hotel, valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever and any (1) un-refunded advance Rental deposits or (2) separate charges levied for items or services which are part of such occupancy including, but not limited to, furniture, fixtures, appliances, linens, towels, non-coin-operated safes, energy surcharges and maid service. Charges for parking to Hotel guests are considered to be part of the room Rent in computing the charges subject to the occupancy tax. Charges for products or services that are subject to tax under sales and use tax laws, such as food or beverages, will not be subject to the occupancy tax.

(g) Successor to Operator shall mean any person who acquires the right to operate a Hotel from a preceding Operator, by whatever means, including purchase, foreclosure, operation of lease, or by any other means. A transfer of an ownership or management interest in a Hotel, wherein the facility continues to operate as such, either

continuously or for business interruption not exceeding thirty days, shall constitute a succession for purposes of this Article.

(h) Tax Administrator shall mean the City of Escondido's Director of Finance.

(i) Transient shall mean 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 consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a Hotel shall be deemed to be a Transient until thirty consecutive days have expired or until such date that a person has entered into a Qualifying Rental Agreement.

(j) Transient Occupancy Registration Certificate shall mean the form provided by the Tax Administrator authorizing an Operator to collect Transient Occupancy Tax on behalf of the City of Escondido.

Sec. 25-76. Tax administrator's regulations. The Tax Administrator may promulgate reasonable rules, interpretations and regulations to implement and enforce the provisions of this Article.

Sec. 25-77. Transient occupancy registration certificate.

(a) Before commencing business or following a change in Hotel ownership, each Operator renting to Transients shall register with the Tax Administrator and shall obtain a Transient Occupancy Registration Certificate. The certificate shall at all times be posted in a public visible place on the premises such that Transients may read the certificate during the registration process.

(b) The certificate shall, among other things, state the following:

- (1) The name of the Operator;
- (2) The Hotel address;
- (3) The date upon which the certificate was issued.

(c) A Transient Occupancy Registration Certificate signifies that the Operator understands the requirements of this Article, has registered with the Tax Administrator for the purpose of collecting Transient Occupancy Tax and acknowledges the procedures for remitting such tax to the Tax Administrator each month. The certificate is not assignable and is nontransferable and shall be surrendered immediately to the tax collector upon cessation of business at the location named or upon the sale or transfer of the business or the real property on which the business is located

(d) A Transient occupancy registration certificate does not authorize any person to conduct any unlawful business, to conduct any lawful business in an unlawful manner,

or to operate a Hotel without strictly complying with all local applicable laws.

(e) To insure compliance with transient occupancy tax payment requirements, the Tax Administrator may require a security deposit, equal to one month's estimated Transient Occupancy Tax, from a new Operator before issuing a Transient Occupancy Registration Certificate. The Tax Administrator may release the security deposit following twelve months of timely remittance of all required Transient Occupancy Tax and associated returns.

Sec. 25-78. Tax rate; collection; payment.

(a) For the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay a Transient Occupancy Tax in the amount of ten percent (10%) of the Rent charged by the Operator. The tax imposed pursuant to this article constitutes a tax owed by each Transient to the City which is extinguished only by payment to the Operator at the time the Rent is paid or to the City. If the Rent is paid in installments, a proportionate share of the tax shall be paid with each installment.

(b) A person who begins occupancy in any Hotel as a Transient and later signs a Qualifying Rental Agreement owes the Transient Occupancy Tax for each day of occupancy prior to the effective date of the Qualifying Rental Agreement.

Sec. 25-79. Operator duties.

(a) All taxes collected by an Operator shall be held in trust for the City of Escondido until submitted to the Tax Administrator. An Operator shall maintain records as required by the Tax Administrator to ensure the proper amount of tax is collected and remitted. An Operator shall not commingle any funds from personal or other business sources with financial accounts containing Hotel income.

(b) Each Operator shall collect the tax imposed by this Article at the same time as the Rent is collected from every Transient. The amount of tax shall be separately stated from the amount of the Rent charged and the Operator shall maintain records documenting every occupancy whether Transient or not. A Qualifying Rental Agreement shall document every non-Transient occupancy. Each Transient shall receive a receipt for the tax payment from the Operator and the Operator shall maintain a duplicate receipt in accordance with this Article.

(c) If the Operator collects the Rent but fails to collect the Transient Occupancy Tax for any reason, the Operator shall pay the Transient Occupancy Tax.

(d) No Operator of a Hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof 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 hereinafter provided.

(e) An Operator who collects Transient Occupancy Taxes and fails to remit the taxes collected pursuant to this chapter may be subject to prosecution under Section 424 of the Penal Code of the State of California.

Sec. 25-80. Reporting, remitting tax.

(a) All Operators shall remit monthly the full amount of taxes collected for Transient occupancies for the preceding month along with the required Transient Occupancy Tax return on a form approved by the Tax Administrator.

(b) Taxes remitted shall include the appropriate tax return form and must be actually received by the Tax Administrator on or before the last day of the month that follows the reporting month; otherwise the taxes are delinquent and subject to the penalties authorized by section 25-82. When city hall is closed on the last day of the month, the tax submission deadline shall be extended to the next business day.

(c) Upon cessation of business or change in ownership, all tax due and the associated tax return shall be immediately remitted to the Tax Administrator.

(d) When required by the Tax Administrator to protect the funds held in trust, the Operator shall submit tax returns and payments at an increased frequency. The Tax Administrator may also order the Operator to segregate Transient Occupancy Taxes collected into a separate trust account maintained on behalf of the City of Escondido in a financial institution acceptable to the Tax Administrator.

Sec. 25-81. Violations.

(a) The purpose of this Article is to regulate the collection of taxes collected by Operators and held in trust for the City of Escondido. Violation of any provision of this Article shall be treated as a strict liability offense. Any Operator or other person violating any of the provisions of this Article shall be guilty of a misdemeanor and shall be punishable therefor as provided by Escondido Municipal Code section 1-13.

(b) It shall be unlawful to operate a Hotel without a Transient Occupancy Registration Certificate.

(c) It shall be unlawful for any Operator to fail to collect Transient Occupancy Taxes as required by this Article.

(d) It shall be unlawful to fail to remit the Transient Occupancy Taxes collected or owed on the date due to the City of Escondido.

(e) It shall be unlawful to fail to submit the required Transient Occupancy Tax return on the date due to the City of Escondido.

(f) It shall be unlawful for any Operator to make, render, sign or verify any report related to Transient Occupancy Tax collection or to make any false or fraudulent report or claim.

(g) It shall be unlawful to fail to retain records related to the Transient Occupancy Tax collection or amount due as required by this Article.

(h) It shall be unlawful to refuse to provide or allow timely access to required Transient Occupancy Tax records after a lawful demand by the Tax Administrator.

(i) It shall not be a defense to violations of this Article that the Operator had forwarded any return due or tax collected to its principal or corporate headquarters, nor that any failure to file or remit taxes was based on the direction or inaction of such principal or corporate headquarters.

Sec. 25-82. Penalties.

(a) Delinquency. An Operator who fails to fully remit the tax due and the associated tax return by the due date shall pay a penalty equal to ten percent (10%) of the amount of the tax. The penalty is due on the first day the tax remittance is delinquent.

(b) Continued delinquency. Any Operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent, shall pay an additional delinquency penalty of ten percent (10%) of the amount of the tax due for each delinquent month, or portion thereof, in addition to the amount of the tax and the ten percent (10%) penalty first imposed. Such penalty shall not accrue to more than one hundred percent (100%) of the tax.

(c) Interest. In addition to the penalties imposed and upon demand of the Tax Administrator, an Operator who fails to remit any tax collected or owed, including any merged penalties and prior interest, imposed by this Article shall pay interest on the amount owed from the date on which the remittance first became delinquent. The annual interest rate shall be seven percent (7%).

(d) Merger. Every penalty imposed, any interest accrued and any assessment made under the provisions of this Article shall immediately become a part of the tax herein required to be paid.

(e) Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this Article is due to fraud, an additional penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to any mandatory penalties.

(f) Relief from Penalties. Upon showing of good cause and when in the public interest, the Tax Administrator may waive penalties assessed pursuant to this Article.

Sec. 25- 83. Remedies cumulative. All remedies prescribed by this Article or any other provisions of law and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

Sec. 25-84. Tax assessment; hearing.

(a) If any Operator shall fail to collect or remit the required Transient Occupancy Tax or any completed report required by this Article, the Tax Administrator shall obtain facts and information upon which to base the assessment of the tax imposed by this Article and owed to the City of Escondido. The Tax Administrator shall give a notice of the amount so assessed including penalties and interest via first class mail to the address provided on the Transient Occupancy Registration Certificate. In no manner does this assessment excuse the Operator from the requirement to submit the actual amount of tax collected and the associated tax return for the assessment period.

(b) Following receipt of an assessment, the Operator may, within seven (7) days of the postmarked notice date, make application in writing to the Tax Administrator for a hearing to dispute the amount assessed. If a complete application by the Operator for a hearing is not made within the time provided; the tax, penalties and interest determined by the Tax Administrator shall become immediately due and payable.

(1) Upon completed application, the Tax Administrator shall promptly schedule a hearing and provide notice to the Operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, penalties, and interest.

(2) The Operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the hearing officer shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable immediately.

(c) Payment of all tax, penalties, interest and the submission of the associated tax returns are required conditions precedent to seeking administrative review of any liability related to the provisions of this Article and shall accompany any application for a hearing.

(d) If the Operator succeeds at an assessment hearing, the City shall promptly refund any overpayment of transient occupancy tax, penalty and interest.

Sec. 25-85 Appeal; Payment Under Protest

(a) An Operator may appeal any hearing decision to the city manager by filing a notice of appeal with the city clerk within seven (7) days of the hearing decision. Payment of all tax, interest and penalties is a required condition precedent to seeking administrative or judicial review of any liability related to the provisions of this Article.

(b) The City Manager shall appoint an appeal hearing officer and shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such

Operator at the address provided on the Transient Registration Occupancy Certificate. The findings of the appeal hearing officer shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing.

(c) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the City or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to this chapter and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability.

(d) If the Operator succeeds following an appeal hearing, the City shall promptly refund any overpayment of transient occupancy tax, penalty and interest.

Sec. 25-86. Registration certificate revocation.

(a) If an Operator is delinquent more than one time in any twelve-month period or fails to comply with any regulation authorized by this Article, the Tax Administrator may order a security deposit or may revoke the Operator's Transient Occupancy Registration Certificate.

(1) The Tax Administrator shall give the Operator written notice of the revocation of the registration certificate.

(2) The Operator may request a hearing or appeal by following the same procedures as outlined in sections 25-84 and 25-85.

(b) The Tax Administrator shall not issue a new registration certificate after a revocation until satisfied that the Operator will comply with the provisions of this chapter relating to the occupancy tax and regulations of the Tax Administrator.

(c) During any period of time during which a Transient Occupancy Registration Certificate has not been issued or revoked or otherwise not validly in effect, the Tax Administrator may require that the Hotel be closed to Transients.

Sec. 25-87. Records retention; inspection; cost recovery.

(a) Records. It shall be the duty of every Operator liable for the collection and payment to the City of any tax imposed by this Article to keep and preserve, for a period of four (4) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the City. An Operator shall create and retain financial records that account for all Hotel bank deposits and all receipts that explain any discrepancies between gross Hotel income and Rent income that is subject to the Transient Occupancy Tax. Further an Operator shall create and retain records to allow reconciliation between income reported on state or federal tax returns with Rent income reported on Transient Occupancy Tax returns. The Tax

Administrator and authorized agents shall have the right to inspect at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City.

(b) Inspection. It shall be the duty of every Operator responsible for the collection of Transient Occupancy Taxes to cooperate with any lawful records inspection. The Tax Administrator and authorized agents in the exercise of duties imposed by this Article shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City. Access to all Transient Occupancy Tax records, including Qualified Rental Agreements, shall be made available within one business day of a lawful demand.

(c) Travel. If the Tax Administrator or designate agent must travel beyond the City of Escondido City limits to conduct a records inspection or audit pursuant to this Article, the Tax Administrator shall assess the Transient Occupancy Tax Operator for any additional costs incurred as a result of performing the audit outside of the City of Escondido. Before incurring travel related costs, the Tax Administrator shall notify the Operator and allow a reasonable opportunity for the Operator to produce the records within the City.

(d) Audit deficiency. If, upon audit or records inspection by the City, an Operator is found to be deficient in his return or his remittance, or both, the Tax Administrator shall immediately invoice the Operator for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. Failure to pay the deficiency and penalty shall subject the amount owed to the penalty, interest, hearing and appeal procedures provided in this Article.

(e) Cost Recovery.

(1) In addition to the penalties and interest provided in this section, the Operator shall reimburse City for the cost an audit or records inspection if an audit or inspection identifies a five percent (5%) or greater discrepancy between the amount of annual Transient Occupancy Tax due to the City and the amount paid by the Operator. Such reimbursement shall be paid by Operator within thirty (30) days of the date City notifies Operator in writing of the amount of City's costs.

(2) If any Operator shall fail or refuse to collect the tax required by this chapter or fail to provide, within the time provided in this Article, any report and remittance of said tax, of any portion thereof, required by this Article, the Tax Administrator may order an inspection of the records of the Operator to determine the proper amount of any tax owed. The entire cost of the inspection shall be assessed against the Operator.

(3) Any discrepancy between state or federal tax records or gross hotel receipts and Rent income reported on Transient Occupancy Tax returns or the lack of adequate records to explain any discrepancy shall result in the Operator reimbursing

the City for the cost of the audit, in addition to any tax, penalties or interest that may be owed.

(f) Failure to reimburse the City for audit or inspection related expenses may result in revocation of the Operator's Transient Occupancy Registration Certificate.

Sec. 25-88. 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 a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

(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 Transient or credited to Rent subsequently payable by the Transient to the Operator.

(c) A Transient may obtain a refund of taxes overpaid or paid more than once or 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 tax was paid by the Transient directly to the Tax Administrator, or when the Transient having paid the tax to the Operator, establishes to the satisfaction of the Tax Administrator that the Transient has been unable to obtain a refund from the Operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

Sec. 25-89. Actions to collect taxes and enforcement of liens.

(a) Actions. 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 tax collected by an Operator which has not been paid to the City shall be deemed funds held in trust for the account of the City which are due and payable by the Operator to the City pursuant to the provisions of this Article. Any person, including an Operator, owing money to the City under the provisions of this Article shall be liable to an action brought in the name of the City for the recovery of such amount, including applicable penalties and interest.

(b) Recording of a certificate of lien. If any amount required to be paid to the City under this Article is not paid when due, the Tax Administrator may record in the office of the San Diego County Recorder a certificate which specifies the amount of tax and penalties and interest due, the name and address of the Operator liable for the same, a statement that the Tax Administrator has complied with all provisions of this Article in the determination of the amount required to be paid and a legal description of the real property owned by the Operator. From the time of the recording of the certificate, the amount required to be paid together with penalties and interest, constitutes a lien upon all the real property in the county owned by the Operator or thereafter acquired before the lien expires. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged.

(c) Warrant for collection of tax. At any time within three (3) years after the recording of a certificate of lien under subsection (b) of this section, the Tax Administrator may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of any tax and penalties required to be paid to the City under this Article. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The Tax Administrator may pay or advance to the sheriff or marshal such fees, commissions and expenses for services as are provided by law for similar services pursuant to a writ of execution.

(d) Seizure and sale. In lieu of issuing a warrant under subsection (c) of this section, at any time within the three (3) years after an assessment was issued or a certificate of lien was recorded under subsection (c) of this section, the Tax Administrator may collect the delinquent amount by seizing or causing to be seized any property, real or personal, of the Operator and sell any noncash or nonnegotiable property or a sufficient part of it at public auction to pay the amount of tax due together with any penalties and any cost incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the Operator not exempt from execution under the provisions of the Code of Civil Procedure.

(e) Notice of provisions for seizure. Prior to seizure of the Transient Occupancy Tax Renting Occupancy to Transients, the Tax Administrator shall give a notice of such proposed action, which will include the amount assessed, by serving the notice personally or by depositing it in the United States mail, postage prepaid, addressed to the Operator assessed at his last known place of address, provided such Operator is still the Operator of record of such Transient Occupancy Tax. Such Operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the Tax Administrator for a hearing on the proposed seizure. The City Manager shall appoint an independent hearing officer. If application by the Operator for a hearing is not made within the time prescribed, the Tax Administrator may seize the Transient Occupancy Tax as soon as practicable, but no earlier than the eleventh day after mailing the notice. If such application is made, the Tax Administrator shall give not less than five (5) days written notice in the manner herein to the Operator to show

cause at a time and place fixed in said notice why said seizure should not take place. At such hearing, the Operator may appear and offer evidence only as to why such seizure is not an appropriate remedy for the delinquency. After such hearing, the Tax Administrator shall make a determination concerning the seizure and shall thereafter give written notice to the Operator in the manner prescribed herein of such determination and the proposed date of seizure, if any. Such seizure shall not be earlier than five (5) days from the date of the notice of the determination of seizure. Within five (5) days from the date of the notice, an appeal may be taken as provided in section 25-85, provided that such appeal is only taken for the determination concerning the seizure and not concerning the amount of the assessment.

(f) Any person owing money to the City under the provisions of the chapter shall be liable to an action brought in the name of the City for the recovery of such amount plus attorney's fees and costs.

Sec. 25-90. Business Termination.

(a) Change of Ownership. An Operator who is transferring, selling, terminating its business or who has received any legal notice that could impact the Operator's interest in the property shall immediately notify the Tax Administrator in written form. The Operator shall, at the same time, notify the Successor to Operator of their responsibility for any unpaid collected taxes. Operator shall further certify in writing to the Tax Administrator that the Operator has provided a copy of this Article to the Successor to Operator.

(b) Cessation of Business. Upon change of ownership or cessation of business, all Transient Occupancy Taxes collected are due, though penalties shall not accrue until the first day of the following month. The Operator shall immediately file the tax return for the last reporting period. After filing the final return and remitting the balance due, the Operator shall make his records of account available for a closeout inspection by the Tax Administrator or authorized agent.

Sec. 25-91. Duty of Successor of Operator

(a) A Successor to Operator shall promptly notify the Tax Administrator of a change in ownership or Operator. For property sales, the Successor to Operator shall notify the Tax Administrator of the date of sale immediately and shall withhold a sufficient portion of the purchase price to equal the amount of such tax obligations as directed by the Tax Administrator. If the Operator does not remit all transient Occupancy Taxes collected or owed, the Successor to Operator shall deposit the withheld amount with the Tax Administrator.

(b) If the Successor of Operator fails to withhold a portion of the purchase price as required, it shall be responsible to the City for the payment of the amount required to be withheld. The Tax Administrator may withhold issuance of a Transient Occupancy

Registration Certificate to the Successor to Operator until the Operator's Transient Occupancy Tax obligations have been cleared.

(c) A Successor to Operator may request a tax clearance certificate from the Tax Administrator and the Tax Administrator may charge an administrative fee to cover the costs in issuing the certificate pursuant to the California Revenue and Tax Code section 7283.5.

Sec. 25-92. Confidentiality.

(a) Returns filed with the City pursuant to this chapter, and information regarding the amount of gross receipts, adjustments, credits, over collections, tax, penalty and interest, are confidential records.

(b) No person having an administrative duty under this chapter shall make known in any manner whatever the business affairs, operations, or information obtained by an investigation or audit of the records of any Operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, of the Operator, set forth or to knowingly permit any return or any abstract, or copy of the return to be seen or examined by any person, except this section shall not apply to any disclosures made in connection with any hearing, appeal, or any civil action or proceeding relating to the determination or recovery of the tax; any prosecution of any person for violation of any provision of this chapter; or any criminal or civil proceeding pertaining to the tax.

(c) This section shall not prohibit, nor be construed to prohibit, disclosure of statistical or cumulative information derived from tax returns, when the information disclosed does not identify or relate to any particular Operator nor be construed to prohibit, any disclosure of tax returns or information when disclosure is compelled by an order of court or other judicial process.

Sec. 25-93. Notice. Any notice required to be given pursuant to this chapter, shall be deemed given if personally served on the Operator or the Operator's representative, or if deposited in the United States mail, first class postage prepaid, and addressed to the Operator at the address shown on the Transient Occupancy Registration Certificate.

Sec. 25-94. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Article or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

SECTION 2. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 3. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.