

1 ATTACHMENT "A"

2 MEASURE " "

3
4 Section I. County Code Amendment

5 A. Title 1, Division 4, Chapter 2, Section 14.0203 of the County Code is amended
6 as follows (with new language underlined and repealed language in ~~strikeout~~ text):

7 § 14.0203 Uniform Transient Occupancy Tax.

8 (a) *Definitions and General Provisions.*

9 (1) *Reference to Ordinance or Statute.* Whenever any reference is made to any
10 portion of this, or of to any other ordinance, or to any statute, such reference shall apply
11 to all amendments and additions thereto now or hereafter made.

12 ~~(2) Severance Clause. If any section, subsection, subdivision, paragraph,
13 sentence, clause or phrase of this Chapter or any part thereof is for any reason held to
14 be unconstitutional, such decision shall not affect the validity of the remaining portions
15 of this Chapter or any part thereof. The Board of Supervisors hereby declares that it
16 would have passed each section, subsection, subdivision, paragraph, sentence, clause
17 or phrase thereof, irrespective of the fact that any one or more sections, subsections,
18 subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.~~

15 (32) *Tenses.* The present tense includes the past and future tenses.

16 (43) *Genders.* Each gender includes the all other two genders.

17 (54) *Number.* The singular number includes the plural and the plural the singular.

18 (65) *Definitions.* Unless the context otherwise requires, the definitions in this
19 Section Article shall govern the construction of this SectionChapter.

20 ~~ARTICLE. An Article of this Chapter unless some other chapter or statute is
21 mentioned.~~

22 ~~BOARD. The Board of Supervisors of the County of San Bernardino County.~~

23 ~~COUNTY. The County of San Bernardino County.~~

24 ~~HOTEL. Any structure in the unincorporated territory of the County, or any portion of
25 any such structure, which is occupied or intended or designed for occupancy by
26 transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist
27 home or house including short term rentals, motel, studio hotel, bachelor hotel, lodging
28 house, rooming house, apartment house, dormitory, public or private club, mobilehome
or house trailer at a fixed location, or other similar structure or portion thereof.~~

~~OCCUPANCY. 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.~~

~~OPERATOR. The person who is proprietor of the hotel, whether in the capacity of
owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity
Where the operator performs ~~his or her~~ its functions through a managing agent, the
managing agent shall also be deemed an operator for the purposes of this Chapter
Section and shall have the same duties and liabilities as ~~his or her principal~~ the~~

1 operator. Compliance with the provisions of this ~~Chapter~~ Section by either the principal
2 or the managing agent shall, ~~however, be considered deemed~~ to be compliance by
3 both.

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

7 **RENT.** The consideration charged, whether or not received, for the occupancy of
8 space in a hotel valued in money, whether to be received in money, goods, labor or
9 otherwise including all receipts, cash, credits and property and services of any kind or
10 nature, without any deduction therefrom whatsoever.

11 ~~SECTION. A Section of this Chapter.~~

12 **SHALL and MAY.** "Shall" is mandatory and "may" is permissive.

13 **TAX.** The transient occupancy tax.

14 **TAX ADMINISTRATOR.** The Tax Collector or other County Department designated
15 by the Board of Supervisors.

16 **TAX COLLECTOR.** ~~The Tax Collector of the County of San Bernardino County.~~

17 **TRANSIENT.** Any person who exercises occupancy or is entitled to occupancy by
18 reason of concession, permit, right of access, license or other agreement for a period of
19 30 consecutive calendar days or less, counting portions of calendar days as full days.
20 Any such person so occupying space in a hotel shall be deemed a transient until the
21 period of 30 days has expired unless there is an agreement in writing between the
22 operator and the occupant providing for a longer period of occupancy. In determining
23 whether a person is a transient, uninterrupted periods of time extending both prior and
24 subsequent to the effective date of this Section ~~Chapter~~ may be considered.

25 (b) *Imposition of Tax.*

26 (1) *Tax imposed.* For the privilege of occupancy in any hotel, each transient is
27 subject to and shall pay a tax in the amount of ~~seven~~ eleven percent (11%) of the rent
28 charged by the operator.

(2) *Payment by Transient.* The transient shall pay the tax to the operator of the
hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share
of the tax shall be paid with each installment. The unpaid tax shall be due upon the
transient's ceasing to occupy space in the hotel. If, for any reason the tax due is not
paid to the operator of the hotel, the Tax Collector may require the transient to pay such
tax directly to the Tax Collector.

(3) *Exemptions.* If a proper claim for exemption is made, a tax shall not be imposed
upon ~~(a), (b), (c)~~ any of the following:

(a) Any person as to whom, or any occupancy as to which, it is beyond the legal
power of the County to impose the tax ~~herein provided;~~

(b) Any Federal or State of California officer or employee when on official
business;

(c) Any officer or employee of a foreign government who is exempt by reason of
express provision of Federal law or ~~intentional~~ international treaty.

(d) Any occupancy of a hotel which is used exclusively for religious, educational,
charitable or welfare purposes, such as church or other religious lodges, camps and
retreats, Boy Scout and Girl Scout grounds, fresh air camps, and similar sites, shall be
exempt from this tax, and the operators of such hotels are not required to register-as

1 provided for under Article 3. However, it shall be the duty of the operator of any such
2 hotel to furnish the Tax Collector with such information as the Tax Collector deems
3 specifies as necessary to establish or retain such exempt status. Transients occupying
4 such hotels are not required to furnish individual exemption claims.

5 (4) *Claim of Exemption.* The Tax Collector shall prepare and furnish to the
6 operators of hotels who have registered as required by this Section, Article 3 forms by
7 which transients may claim exemption from the payment of the tax. An exemption shall
8 not be granted to any transient except upon a claim therefor made at the time rent is
9 collected and under penalty of perjury upon the form supplied by the Tax Collector.

10 (5) *Operator's Duties.* Each operator shall collect the tax imposed by this Section
11 to the same extent and at the same time as the rent is collected from every transient.
12 The amount of tax shall be separately stated from the amount of the rent charged, and
13 each transient shall receive a receipt for payment from the operator. The operator of a
14 hotel shall not advertise or state in any manner, whether directly or indirectly, that the
15 tax or any part thereof will be assumed or absorbed by the operator, or that it will not be
16 added to the rent, or that, if added, any part will be refunded except in the manner
17 hereinafter provided.

18 (6) *Records.* Every operator liable for the collection and payment to the County of
19 any tax imposed by this Section Article shall keep and preserve, for not less than three
20 years, all records which may be reasonably necessary to determine the amount of such
21 tax for the collection of, and payment of, to the County of any tax for which the operator
22 may be, or may become, liable. The Tax Collector or Tax Collector's designee may
23 inspect these records at any reasonable time. The operator shall make such records
24 available at any reasonable time requested by the Tax Collector.

25 (c) *Registration.*

26 (1) *Operator Must Register.* Within 30 days after the effective date of this Section,
27 or within 30 days after commencing business, whichever is later, each operator of any
28 hotel renting occupancy to transients shall register the said hotel with the Tax Collector.
Upon such registration, the Tax Collector shall issue to such operator a "Transient
Occupancy Registration Certificate."

(2) *Posting of Certificate.* The operator shall post, and at all times keep posted in a
conspicuous place on the premises of the hotel, the Transient eOccupancy
Registration eCertificate.

(3) *Contents of Certificate.* The Transient eOccupancy Registration eCertificate
shall, ~~among other things~~, state the following: A1) the name of the operator; B2) the
address of the hotel; C3) the date upon which the certificate was issued; and D4) "This
Transient Occupancy Registration Certificate signifies that the person named on the
face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax
Ordinance by registering with the Tax Collector for the purpose of collecting from
transients the Transient Occupancy Tax and remitting said tax to the Tax Collector. This
certificate does not authorize any person to conduct any unlawful business or to
conduct any lawful business in an unlawful manner, nor to operate a hotel without
strictly complying with all local applicable laws, including but not limited to those
requiring a permit from any board, commission, department or office of this County. This
Certificate does not constitute a permit."

(d) *Reporting and Remitting.*

1 (1) *Operator Must Report.* Each operator, on or before the last day of the month
2 following the close of the calendar quarter, or at the close of any other reporting period
3 which may be established by the Tax Collector, shall make a return to the Tax Collector,
4 on forms the Tax Collector provides ~~by him or her~~, of the total rents charged and
5 received and the amount of tax collected for transient occupancies.

6 (2) *Payment of the Tax.* At the time the return is filed, the operator shall remit to the
7 Tax Collector the full amount of the tax collected ~~to the Tax Collector~~. The Tax Collector
8 may establish shorter, longer, or other reporting periods for any certificate holder if ~~he or~~
9 ~~she~~ the Tax Collector deems it necessary or expedient in order to insure collection of the
10 tax. The Tax Collector may require further information in the return. Returns and
11 payments are due immediately upon cessation of business for any reason.

12 (3) *Taxes Held in Trust.* Every operator shall hold all taxes collected by such
13 operator in trust for the account of the County until payment thereof is made to the Tax
14 Collector, ~~all taxes collected by such operator.~~

15 (e) *Penalties and Interest.*

16 (1) *Original Delinquency.* Any operator who fails to remit any tax imposed by this
17 Section within the time required, shall pay a penalty of ten percent of the amount of the
18 tax, in addition to the amount of the tax.

19 (2) *Continued Delinquency.* Any operator who fails to remit any delinquent
20 remittance on or before a period of 30 days following the date on which the remittance
21 first became delinquent, shall pay a second delinquency penalty of ten percent of the
22 amount of the tax, in addition to the amount of the tax and the ten percent penalty first
23 imposed.

24 (3) *Fraud.* If the Tax Administrator determines that the non-payment of any
25 remittance due under this Section is due to fraud, a penalty of 25 percent of the amount
26 of the tax shall be added thereto, in addition to the penalties stated in Subsections
27 § 14.0203(e)(1) and 14.0203(e)(2).

28 (4) *Interest.* In addition to the penalties imposed, any operator who fails to remit
any tax imposed by this Section shall pay interest at the rate of one-half of one percent
per month or fraction thereof on the amount of the tax, exclusive of penalties, from the
date on which the remittance first became delinquent until paid.

(5) *Penalties Merged with Tax.* Every penalty imposed and such interest as
accrues under the provisions of this Section shall become a part of the tax herein
required to be paid.

(6) *Failure to Collect and Report Tax.* Determination of Tax Administrator. If any
operator shall fail or refuse to collect said tax and to make, within the time provided in
this Section, any report and remittance of said tax or any portion thereof required by this
Section, the Tax Collector shall proceed in such manner as he or she may deem best to
obtain facts and information on which to base his or her an estimate of the tax due. As
soon as the Tax Collector shall procure such facts and information as he or she is able
to obtain upon which to base the assessment of any tax imposed by this Section and
payable by any operator who has failed or refused to collect the same and to make such
report and remittance, he or she shall proceed to determine and assess against such
operator the tax, interest and penalties provided for by this Section.

(7) *Notice.* If the Tax Collector makes a determination pursuant to this Section
Chapter, he or she shall give a notice of the amount so assessed, either by serving

1 such notice personally or by depositing it in the United States mail, postage prepaid,
2 addressed to the operator so assessed at his or her last known place of business.

3 (8) *Application for Hearing.* Within ten days after the serving upon any operator of
4 such notice, such operator may apply in writing to the Tax Collector for a hearing on the
5 amount assessed. If application by the operator for a hearing is not made within the
6 time prescribed, the tax, interest and penalties, if any, determined by the Tax Collector,
7 shall become final and conclusive and immediately due and payable.

8 (9) *Hearing by Tax Collector.* If such application is made, the Tax Collector shall
9 give not less than five days written notice in the manner prescribed herein to the
10 operator to show cause at a time and place fixed in said notice why said amount
11 specified therein should not be fixed for such tax, interest and penalties. At such
12 hearing, the operator may appear and offer evidence why such the specified tax,
13 interest and penalties contained in the notice should not be fixed-assessed. After such
14 hearing, the Tax Collector shall determine the proper tax to be remitted and shall
15 thereafter give written notice to the person in the manner prescribed herein of such
16 determination and the amount of such tax, interest and penalties. The amount
17 determined to be due shall be payable after 15 days unless an appeal is taken as
18 provided in Subsection (f)(4).

19 (f) *Appeal.*

20 (1) *Notice of Appeal.* Any operator deeming himself or herself aggrieved by any
21 decision of the Tax Collector with respect to the amount of the tax, interest and
22 penalties, if any, may appeal to the Board by filing a notice of appeal with the Clerk of
23 the Board within 15 days of the serving or mailing of the determination of the tax due.

24 (2) *Notice of Hearing.* Upon the filing of a notice of appeal, the Board shall fix a
25 time and place for hearing such appeal and the Clerk of the Board shall give not less
26 than five days' notice in writing, either personally or by United States mail, postage
27 prepaid, to the last known address of the operator.

28 (3) *Appointment of Referee.* The Board may appoint a referee to take testimony at
any hearing provided for in this Article Subsection (f), and to report the his findings and
recommendations to the Board. Neither the Tax Collector nor any officer or employee in
be the Office of the Tax Collector may be appointed referee.

(4) *Compensation of Referee.* If the Board appoints a County officer or County
employee to act as referee, he or she shall serve as such without any additional
compensation. All time spent as a referee shall be considered as time spent by such
officer or employee in performing the duties of his or her position.

(5) *Conduct of Hearing.* At the time set for the hearing, or at the date to which the
hearing may be continued by the Board or referee, the Board or referee shall hear the
appellant and any other competent witnesses, and decide whether the determination of
the Tax Collector was correct or not, and, if not, what tax, interest, or penalties, if any,
are due to the County from the appellant. The Board or referee may place any witness,
including the appellant, under oath.

(6) *Decision on Appeal.* The Board shall determine from the evidence, or from the
report of the referee, what tax, interest, or penalties, if any, are due to the County from
the appellant. This decision shall be final and conclusive. The Clerk of the Board shall
serve a copy of the decision upon the appellant in writing, either personally or by United
States mail, postage prepaid, to the last known address of the operator, as provided in

1 ~~§ 14.0202(9)(2)~~ Any amount due shall be immediately due and payable upon the
2 service of the said notice.

3 (g) *Refunds.* Whenever the amount of any tax, interest or penalty has been overpaid,
4 or paid more than once, or has been erroneously or illegally collected or received by the
5 County under this Section, the operator so paying may have such amount applied to
6 subsequent taxes due, or it may be refunded as provided in this Section Article if, within
7 three years after the date of payment the operator files with the Tax Collector in writing,
8 a claim therefor. In such claim the operator shall state, under penalty of perjury, the
9 specific grounds and specific facts upon which the claim is founded. The claims shall be
10 on forms furnished by the Tax Collector.

11 (1) *Credit to Operator.* An operator may take as credit against subsequent taxes,
12 the amount overpaid, paid more than once, or erroneously or illegally collected or
13 received, when it is established in a manner prescribed by the Tax Collector that the
14 person from whom the tax was collected was not a transient, and the amount of the tax
15 so collected has either been refunded to the transient or credited to rent subsequently
16 payable by the transient to the operator.

17 (2) *Refund to Operator.* When an operator establishes a right to a credit as
18 provided in this Section Article, and also shows to the satisfaction of the Tax Collector
19 either that he or she no longer is operating a hotel in the unincorporated territory of the
20 County, or will cease such operation before the credit can be applied, and files a proper
21 claim therefor, in lieu of such credit the County shall refund to such operator the amount
22 overpaid, paid more than once or erroneously or illegally collected or received.

23 (3) *Refund to Guest.* A transient or other guest of a hotel may obtain a refund of
24 taxes overpaid or paid more than once or erroneously or illegally collected or received
25 by the County by filing a claim in the manner provided in this Subsection (g), if the tax
26 was paid by the transient or other guest directly to the Tax Collector, or if the transient
27 or other guest has paid the tax to the operator, and establishes to the satisfaction of the
28 Tax Collector that the transient or other guest has been unable to obtain a refund from
the operator who collected the tax.

(4) *Written Records.* A refund shall not be paid pursuant to this Section Article
unless the claimant establishes his or her right thereto by written records showing that
he or she is entitled thereto.

(h) *Civil Actions.*

(1) *Debt Due From Transient.* Any tax required to be paid by any transient under
the provisions of this Section shall be deemed a debt owed by the transient to the
County.

(2) *Debt Due from Operator.* Any tax collected from a transient by an operator
pursuant to the provisions of this Section which has not been paid to the County shall
be deemed a debt owed by the operator to the County.

(3) *Actions to Collect.* The Tax Collector, in the name of the County of San
Bernardino County, as plaintiff, may bring suit for the recovery of the unpaid tax
imposed by of this Section.

(4) *Responsibility.* ~~Any tax required to be paid by any transient under the~~
~~provisions of this Chapter shall be deemed a debt owed by the transient to the County.~~
~~Any such tax collected by an operator which has not been paid to the County shall be~~
~~deemed a debt owed by the operator to the County.~~ Any person owing money to the

1 County under the provisions of this ~~Section~~Chapter shall be liable to an action brought
2 in the name of the ~~County of San Bernardino County~~ for the recovery of such amount.

3 (5) *Recording Certificate; Lien.* If any amount required to be paid to the County
4 under this ~~Section~~Chapter is not paid when due, the Tax Collector may, within three
5 years after the amount is due, file for record in the Office of the San Bernardino County
6 Recorder a certificate specifying the amount of tax, penalties and interest due, the name
7 and address as it appears on the records of the Tax Collector of the operator liable for
8 the same and the fact that the Tax Collector has complied with all provisions of this
9 ordinance in the determination of the amount required to be paid. From the time of the
10 filing for record, the amount required to be paid together with penalties and interest
11 constitutes a lien upon all real property in the County owned by the operator or
12 afterwards and before the lien expires acquired by him or her. The lien has the force,
13 effect and priority of a judgment lien and shall continue for ten years from the time of
14 filing of the certificate unless sooner released or otherwise discharged.

15 (6) *Priority and Lien of Tax.* The amount required to be paid by any operator under
16 this ~~Section~~Chapter with penalties and interest shall be satisfied first in any of the
17 following cases:

18 (A) Whenever the person is insolvent;

19 (B) Whenever the person makes a voluntary assignment of his or her assets;

20 (C) Whenever the estate of the person in the hands of executors, administrators
21 or heirs is insufficient to pay all debts due from the deceased;

22 (D) Whenever the estate and effects of an absconding, concealed or absent
23 person required to pay any amount under this ~~Section~~Chapter are levied upon by
24 process of law. This ~~Section~~Chapter does not give the County a preference over any
25 recorded lien which attached prior to the date when the amounts required to be paid
26 became a lien;

27 (E) Whenever the person files for Assignment to the Benefit of Creditors.

28 The preference given to the County by this Section shall be subordinate to the
preference given to claims for personal services by Code of Civil Procedure §§ sections
1204 and 1206.

(7) *Seizure and Sale.* At any time within three years after any operator is
delinquent in the payment of any amount, the Tax Collector may forthwith collect the
amount in the following manner:

The Tax Collector 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 occupancy taxes due shall
be only of property of the operator not exempt from execution under the provisions of
the Code of Civil Procedure.

(8) *Successor's Liability—Withholding by Purchaser.* If any operator liable for any
amount under this ~~Section~~Chapter sells out his or her business or quits the business,
his or her successor or assignee shall withhold sufficient of the purchase price to cover
such amount until the former owner produces a receipt from the Tax Collector showing
that it has been paid or a certificate stating that no amount is due.

(9) *Liability of Purchaser, Release.* If the purchaser of a hotel fails to withhold from
the purchase price as required, he or she shall become personally liable for the

1 payment of the amount required to be withheld by him or her to the extent of the
2 purchase price, valued in money. Within 30 days after receiving a written request from
3 the purchaser for a certificate, or within 30 days from the date the former owner's
4 records are made available for audit, whichever period expires the later, but in any
5 event not later than 60 days after receiving the request, the Tax Collector shall either
6 issue the certificate or mail notice to purchaser at his or her address as it appears on
7 the records of the Tax Collector of the amount that must be paid as a condition of
8 issuing the certificate. Failure of the Tax Collector to mail the notice will release the
9 purchaser from any further obligation to withhold from the purchase price as above
10 provided. The time within which the obligation of the successor may be enforced shall
11 start to run at the time the operator sells his or her business or at the time that the
12 determination against the operator becomes final, whichever event occurs the later.

13 (i) *Violations.*

14 (1) *Misdemeanor.* Every person is guilty of a misdemeanor who:

15 (A) Fails or refuses to register as required by this Section;

16 (B) Fails or refuses to furnish any return required to be made, or fails or refuses
17 to furnish a supplemental return or other data required by the Tax Collector;

18 (C) Renders a false or fraudulent return;

19 (D) If required by this Section to make, render, sign or verify any report or claim,
20 makes any false or fraudulent report or claim with intent to defeat or evade the
21 determination of any amount due;

22 (E) Collects the tax due pursuant to this Section from any transient and fails to
23 pay the same to the County;

24 (F) Violates in any way any other provision of this Section.

25 (2) *Punishment.* Violation of any provisions of this Section is punishable by a fine
26 of not more than \$500.00 or by imprisonment in the County Jail for not more than six
27 months or by both such fine and imprisonment.
28