

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE PEOPLE OF THE CITY OF GRAND TERRACE ADDING CHAPTER 3.30, ENTITLED "TRANSIENT OCCUPANCY TAX" TO TITLE 3 OF THE GRAND TERRACE MUNICIPAL CODE, WHICH ESTABLISHES A TRANSIENT OCCUPANCY TAX WITH A THE MAXIMUM TAX RATE OF 10%

**WHEREAS**, Revenue and Taxation Code Section 7280 et seq. authorizes the City of Grand Terrace to levy a tax upon the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging transient occupancy tax, as defined therein, which is commonly referred to as a "transient occupancy tax"; and

**WHEREAS**, the purpose of this Ordinance is to adopt a transient occupancy tax, as authorized by Revenue and Taxation Code Section 7280 et seq., as a general tax with a maximum tax rate of 10%; and

**WHEREAS**, Article XIIC, Section 2, of the California Constitution provides that any general tax must be submitted to the electorate and approved by a majority vote of the electorate; and

**WHEREAS**, approving this proposed measure requires approval of the majority of voters at either a general or special municipal election;

**NOW THEREFORE, ON THE BASIS OF THE FORGOING, THE PEOPLE OF THE CITY OF GRAND TERRACE, AT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION DO HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 3.30, entitled "Transient Occupancy Tax" is added to Title 3 of the Grand Terrace Municipal Code as follows:

**"Chapter 3.30 – Transient Occupancy Tax**

**Section 3.30.010 - Name of tax.**

The tax levied by this chapter shall be known as the Grand Terrace Transient Occupancy Tax.

**Section 3.30.020 - Definitions.**

Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this chapter:

"Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for temporary occupancy by transients for dwelling, lodging or sleeping purposes. "Hotel" shall include any inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming

house, apartment house, dormitory, public or private club, mobilehome or house trailer or other building or structure which is occupied, or intended or designed for temporary occupancy by transients for dwelling, lodging or sleeping purposes.

“Occupancy” means 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” means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, 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 other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

“Person” means 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.

“Rent” means the consideration charged, whether or not received, for the occupancy of space in a hotel, valued in money, whether 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.

“Tax administrator” means the city manager of the city, or his or her designee.

“Transient” means any person who exercises occupancy or is entitled to occupancy or a space in a hotel 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 so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

### **Section 3.30.030 - Rate.**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount established by resolution of the majority of the members of the city council, provided the rate shall not exceed ten (10) percent of the rent charged by the operator. Such tax constitutes a debt

owed by the transient to the city which is extinguished only by payment to the operator or to the city. 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.

**Section 3.30.040 - Exemptions.**

- A. No tax shall be imposed upon:
  - 1. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided;
  - 2. Any public officer or employee when on official business;
  - 3. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.
- B. No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

**Section 3.30.050 - Operator's duties.**

Each operator shall collect the tax imposed by this chapter at the time the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. 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.

**Section 3.30.060 - Registration.**

Within thirty (30) days after the effective date of the ordinance codified in this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel shall register such hotel with the tax administrator who shall issue a transient occupancy registration certificate, which shall, at all times, be posted in a conspicuous place on the hotel premises. Such certificate shall, among other things, state the following:

- A. The name of the operator; and

- B. The address of the hotel; and
- C. The date upon which the certificate was issued.

This certificate signifies that the person named on the face hereof has fulfilled the requirements of this chapter by registering with the tax administrator for the purpose of collecting from the transients the Transient Occupancy Tax and remitting said tax to the tax administrator. 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 City. This certificate does not constitute a permit.

**Section 3.30.070 - Reporting and remitting.**

- A. Each operator shall, on or before the last 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 the tax administrator, of the total rents charged or chargeable as provided in Section 3.30.030, whether or not received, including any rents charged for occupancies exempt under the provisions of Section 3.30.040 and the amount of tax collected for transient occupancies.
- B. Amounts claimed on the return as exempt from the tax pursuant to Sections 3.30.040 and 3.30.120 shall be fully itemized and explained on the return or supporting schedule.
- C. In determining the amount of "taxable receipts" on the tax return, "rent" as defined in Section 3.30.020, 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.
- D. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator.
- E. The tax administrator may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to ensure collection of the tax and he or she may require further information in the return.
- F. Each operator shall notify the tax administrator at least ten days prior to the sale or cessation of business for any reason. Returns and payments are due immediately upon sale or cessation of business for any reason.

- G. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator.
- H. Each 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 signator's knowledge, the statements in the return are true, correct and complete.

**Section 3.30.080 - Late payment—Penalties and interest.**

- A. **Original Delinquency.** Any operator who fails to remit any portion of any tax imposed by this chapter, within the times required, shall pay a penalty of ten (10) percent equal to the amount of the tax, in addition to the amount of the tax.
- 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 a second delinquency penalty of ten (10) percent equal to the amount of the tax in addition to the amount of the tax and the ten (10) percent penalty first imposed.
- C. **Fraud.** If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.
- D. **Interest.** In addition to the penalties imposed pursuant to this chapter, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof, on the unpaid balance of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid in full.

**Section 3.30.090 - Failure to collect and report tax—Determination of tax by tax administrator.**

If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof, the tax administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the tax administrator procures such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter due 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

chapter. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally, by electronic mail at the operator's last known electronic mail address, or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the operator's last known address. The 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 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 here, to the operator to show cause at a time and place fixed in such notice why such amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the tax administrator 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 after fifteen (15) days unless an appeal is taken as provided in Section 3.30.100.

#### **Section 3.30.100 - Appeal.**

Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a written notice of appeal with the city clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The city clerk shall fix a time and place for hearing such appeal, and the city clerk shall give five days' notice in writing thereof to such operator at his or her last known place of address or, in the case of electronic mail, the operator's last known electronic mail address. The city council shall review the tax administrator's determination and hear any evidence from the operator prior to determining whether registration is required and/or ascertaining the amount of tax, interest and penalties due. The findings of the city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing.

#### **Section 3.30.110 - Records.**

It shall be the duty of every operator liable for the collection and payment to the city of the tax imposed by this chapter, to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of any payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times.

### **Section 3.30.120 - 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 chapter, it shall 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 years of the date of payment; any such payment for which a claim is not filed within such three-year period shall conclusively be deemed to have been lawfully and properly due to city. 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 the 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 such tax has been received by the city.

### **Section 3.30.130 - Actions to collect.**

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 city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable therefor in an action brought in the name of the city for the recovery of such amount, together with penalties and interest thereon, and a reasonable sum as and for attorneys' fees and costs necessarily incurred in such collection.

### **Section 3.30.140 – Pay First – Litigate Later.**

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 any 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 imposed by this chapter.

**Section 3.30.150 – Violation a misdemeanor.**

Any operator or other person who fails or refuses to register as required in this chapter, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the tax administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as provided in this code. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made is guilty of a misdemeanor and is punishable as aforesaid.

**Section 3.30.160 – Duty to enforce.**

Tax administrator shall be responsible for the administration and enforcement of the provisions of this chapter, including, but not limited to, determinations as to whether any person is required to register as the operator of a hotel. All such determinations of the tax administrator are subject to city council review pursuant to Section 3.30.100 of this chapter.

**Section 3.30.170 - Amendment.**

For purposes of carrying out the purposes of this chapter, the City Council retains the full right to revise, change or amend this chapter to the same extent as other city ordinances, provided that the city council may not increase in any manner the rate of taxation above the maximum rate permitted in Section 3.30.030 without approval by a vote of the People pursuant to Article XIII C of the California Constitution and Section 9217 of the Elections Code.”

**SECTION 2. Council Authority to Amend.** This is a City Council-sponsored initiative Ordinance which otherwise would only be subject to amendment by the voters of the City. However, pursuant to Elections Code Section 9217, the City Council shall have and retain the right and authority to amend the Ordinance to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the City Council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

**SECTION 3. CEQA Exemption.** The adoption of this ordinance is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section §§ 21000 et seq.). CEQA Guideline 15378(b)(4) provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment are not projects subject to the requirements of CEQA.

**SECTION 4. Severability.** If any section, subsection, sentence, clause or phrase

of this ordinance or the application thereof to any person or circumstance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The People of the City of Grand Terrace hereby declared that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional.

**SECTION 5. Appropriations Limit.** Pursuant to Article XIII B of the California Constitution, the appropriations limit for the City of Grand Terrace is increased to the maximum extent over the maximum period of time allowed under the law consistent with the revenues generated by this tax.

**SECTION 6. Effective Date.** If a majority of the voters of the City of Grand Terrace voting at the General Municipal Election of November 8, 2022, vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City of Grand Terrace, and shall be considered as adopted upon the date that the vote is declared by the City Council of the City of Grand Terrace, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code Section 9217.

**SECTION 7. Passage and Execution.** The Mayor shall sign this Ordinance and the City Clerk shall attest and certify to the approval thereof and cause same to be published or posted pursuant to law.

PASSED AND ADOPTED by the voters of the City of Grand Terrace at an election held on November 8, 2022.

\_\_\_\_\_  
Darcy McNaboe, Mayor

ATTEST:

\_\_\_\_\_  
Debra Thomas, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Adrian R. Guerra  
City Attorney