

RESOLUTION NO. 2024-43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HOLLISTER, CALIFORNIA CALLING FOR THE PLACEMENT OF A TRANSIENT OCCUPANCY TAX MEASURE ON THE BALLOT FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF AN ORDINANCE TO AMEND CHAPTER 3.32 OF THE HOLLISTER MUNICIPAL CODE, ENACTING A FOUR PERCENTAGE POINT INCREASE IN OCCUPANCY TAX AND RESERVING THAT INCREASE FOR THE CITY GENERAL FUND; AND SETTING RULES AND DEADLINES FOR THE SUBMITTAL OF ARGUMENTS FOR AND AGAINST THE MEASURE

WHEREAS, the City Council of the City of Hollister ("City") is authorized to levy a Transient Occupancy Tax ("TOT") for general purposes pursuant to California Revenue and Taxation Code §7280, subject to approval by a majority vote of the electorate pursuant to Article XIII C, §2 of the California Constitution ("Proposition 218"); and

WHEREAS, pursuant to California Elections Code §9222, the City Council has authority to place local measures on the ballot to be considered at a Municipal Election; and

WHEREAS, the City Council would like to submit to the voters at the November 5, 2024 General Municipal Election a measure enacting an increase in TOT at a rate of four percentage (4%) on the occupancy in any hotel, in the City until it is ended by voters, as more specifically set forth in the attached proposed ordinance amending Section 3.32.030 of the City's Municipal Code; and

WHEREAS, if approved, TOT will increase from 8 percent to 12 percent; and

WHEREAS, TOT is a general tax, the revenue of which will be placed in the City's general fund and will be used to pay for important general City services; and

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 218, an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

WHEREAS, pursuant to Proposition 218 (California Constitution Article XIII C, §2(b)), the general rule is that any local election for the approval of an increase to a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, the next regularly scheduled general election at which City Council members are to be elected is November 5, 2024; and

WHEREAS, pursuant to Government Code section 53724 ("Proposition 62"), a two-thirds (2/3) vote of all members of the City Council is required to place the Measure on the

WHEREAS, the ordinance to be considered by the qualified voters and the terms of approval, collection, and use of TOT are described and provided for in the ordinance/measure attached hereto as Exhibit “A” (the “Measure”) and by this reference made an operative part hereof, in accordance with all applicable laws.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOLLISTER:

SECTION 1. Incorporation of **Recitals**. The foregoing recitals are true and correct and are hereby incorporated and made an operative part of this Resolution.

SECTION 2. Submission of Ballot Measure. Pursuant to California Elections Code §9222, Government Code §53724, Revenue and Taxation Code §7280 and any other applicable requirements of the laws of the State of California relating to the City, the City Council, **by a two-thirds (2/3) vote of all members**, hereby orders the Measure to be submitted to the voters of the City at the General Municipal Election to be held on **Tuesday, November 5, 2024**.

SECTION 3. The City Council, pursuant to California Elections Code §9222, hereby orders that the Measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the General Municipal Election to be held on Tuesday, November 5, 2024, in addition to any other matters required by law, there shall be printed substantially the following ballot question:

"Shall a measure enacting a four percentage point (4%) increase to transient occupancy tax, increasing the total tax levied on hotel occupants from 8 to 12 percent, and reserving the increase for the general fund, generating approximately \$300,000.00 annually for general City services such as public safety, park maintenance, recreation programs, street maintenance, solid waste, and community facilities maintenance until ended by voters, be adopted?"	YES
	NO

SECTION 4. Election Procedures/Request for Consolidation.

- A. The City Council consents to the consolidation of the election on this Measure with all other elections being held in the same territory on November 5, 2024, and to hold and conduct the consolidated election in the manner prescribed in Elections Code Section 10418.
- B. The ballots to be used at the election shall be in the form and content as required by law.

C. In accordance with Section 10403 of the Elections Code, the Board of Supervisors of San Benito County is hereby requested to consent to consolidation of the election on this Measure with the Statewide General Election and all other elections being held in the same territory on November 5, 2024, and to having the Registrar of Voters render such election services to the City of Hollister as may be requested by the City Clerk of said City, the County of San Benito to be reimbursed in full for such services as are performed.

D. The election services which the City of Hollister requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and guides; the establishment or appointment of precincts, voting centers, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for voting centers; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk of the City of Hollister; and the performance of such other election services as may be requested by the City Clerk.

E. The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia, or cause such actions to be made, that may be necessary in order to properly and lawfully conduct the election.

F. That the precincts, ballot drop box locations and hours of operations, vote center locations and hours of operations, vote-by-mail procedures and timing, and election officers, and all other persons and procedures for the General Municipal Election shall be the same as those utilized by the County of San Benito; and

G. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City.

H. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.

I. All ballots shall be tallied at a central counting place and not at the precincts. Said central counting place shall be at a County center as designated by the Registrar of Voters.

J. The San Benito County Registrar of Voters is hereby authorized to canvass the returns of said election.

K. The City Clerk of the City of Hollister shall receive the canvass as it pertains to the election on the Measure, and shall certify the results to the City Council, as required by law.

SECTION 5. Arguments and Analysis.

A. The City Council authorizes (i) the City Council or any member(s) of the City Council, (ii) any individual voter eligible to vote on the above measure, (iii) a bona fide association of such citizens or (iv) any combination of voters and associations, to file a written argument in favor of or against the City measure, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and may change the argument until and including **April 30, 2024**, after which no arguments for or against the measure may be submitted to the City Clerk. Arguments in favor of or against the measure shall each not exceed 300 words in length. Each argument shall be filed with the City Clerk, signed, and include the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

B. The City Clerk shall comply with all provisions of law establishing priority of arguments for printing and distribution to the voters, and shall take all necessary actions to cause the selected arguments to be printed and distributed to the voters.

C. Pursuant to Section 9280 of the Elections Code, the City Council directs the City Clerk to transmit a copy of the Measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the operation of the Measure. The City Attorney shall transmit such impartial analysis to the City Clerk, who shall cause the analysis to be published in the voter information guide along with the ballot Measure as provided by law. The Impartial Analysis shall be filed by the deadline set for filing of primary arguments as set forth in subsection (A) above. The impartial analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the Measure is not printed on the ballot, nor in the voter information guide, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **"The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the election official's office at (insert phone number) and a copy will be mailed at no cost to you."**

SECTION 6. Rebuttals.

A. That pursuant to Section 9285 of the Elections Code of the State of California, when the Clerk has selected the arguments for and against the various City initiated measures which will be printed and distributed to the voters, the Clerk shall send copies of the argument in favor of the measures to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not later than **May 10, 2024**. Rebuttal arguments shall be printed in the same manner as the direct

arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

B. That all previous resolutions providing for the filing of rebuttal arguments for City measures are repealed.

C. That the provisions herein shall apply only to the election to be held on November 5, 2024, and shall then be repealed.

SECTION 6. Notice of the election is hereby given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 7. Placement on the Ballot. The full text of the Measure shall not be printed in the voter information guide, and a statement shall be printed in the ballot pursuant to Elections Code §9223 advising voters that they may obtain a copy of this Resolution and the Measure, at no cost, upon request made to the City Clerk.

SECTION 8. Filing with County. The City Clerk shall, not later than the 88th day prior to the General Municipal Election to be held on Tuesday, November 5, 2024, file with the Board of Supervisors and the County Clerk – Registrar of Voters of the County of San Benito, State of California, a certified copy of this Resolution.

SECTION 9. Public Examination. Pursuant to California Elections Code §9295, this Measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The City Clerk shall post notice in the Clerk's office of the specific dates that the examination period will run.

SECTION 10. The City Council hereby finds and determines that the Measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b)(5).

SECTION 11. Severability. The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

SECTION 12. This Resolution shall become effective upon its adoption.

SECTION 13. The City Clerk shall certify to the adoption of this Resolution.

PASSED AND ADOPTED, by the City Council of the City of Hollister at a regular meeting held this 2nd day of April 2024, by the following roll call vote:

AYES: Councilmembers Perez, Resendiz, Morales, Burns, and Mayor Casey

NOES: None

ABSTAINED: None

ABSENT: None



Mia Casey, Mayor

ATTEST:

APPROVED AS TO FORM:
Lozano Smith Attorneys at Law



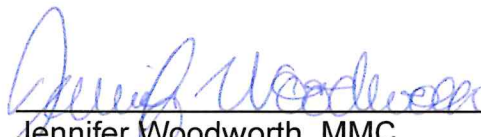
Jennifer Woodworth, MMC, City Clerk



Mary F. Lerner, City Attorney

I, Jennifer Woodworth, MMC, City Clerk of the City of Hollister, do hereby certify that the attached Resolution No. 2024-43 is an original resolution, or true and correct copy of a City resolution, duly adopted by the Council of the City of Hollister at a regular meeting held on this 2nd day of April 2024 at which meeting a quorum was present.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Hollister 2nd day of April 2024.



Jennifer Woodworth, MMC
City Clerk of the City of Hollister

Exhibit "A"
Transient Occupancy Tax

[attached behind this page]

ORDINANCE NO. _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF HOLLISTER, CALIFORNIA, AMENDING CHAPTER 3.32 OF TITLE 3 OF THE HOLLISTER MUNICIPAL CODE TO ENACT A FOUR PERCENTAGE POINT (4%) INCREASE TO TRANSIENT OCCUPANCY TAX TO BE RESERVED IN ITS ENTIRETY FOR THE CITY GENERAL FUND

WHEREAS, pursuant to California Revenue and Taxation Code Section 7280 the City of Hollister ("City") is authorized to levy a Transient Occupancy Tax for general purposes, subject to majority voter approval; and

WHEREAS, the People of the City desire to levy a Transient Occupancy Tax for general purposes until repealed to fund important general City services, at a rate of 12 percent (12%); and

WHEREAS, the People of the City desire to increase the percentage of Transient Occupancy Tax for general purposes to fund important City services, including public safety services, street maintenance, and parks and recreation programs; and

WHEREAS, if approved by the City Council and Hollister voters, the Transactions and Use Tax ordinance will be incorporated into Chapter 3.32 of Title 3 of the Hollister Municipal Code.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF HOLLISTER DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Title and Text. This Ordinance shall be known as the Uniform Transient Occupancy Tax Ordinance, the full text of which is set forth in Attachment "1", attached hereto and incorporated herein by reference.

Section 2. Approval by the City Council. Pursuant to California Government Code Section 53724 and Revenue and Taxation Code Section 7280, this Ordinance was duly approved for placement on the ballot by a minimum two-thirds (2/3) supermajority of all members of the City Council on April 2, 2024.

Section 3. Approval by the Voters. Pursuant to California Elections Code Section 9217, this Ordinance shall be deemed adopted and take effect only if approved by a majority of the eligible voters of the City of Hollister voting at the General Municipal Election of November 5, 2024. It shall be deemed adopted when the City Council has certified the results of that election by resolution and shall take effect ten (10) days thereafter.

Section 4. Operative Date. "Operative Date" for the Transient Occupancy Tax means the first day of the first calendar quarter commencing more than 110 days after the date this Ordinance is adopted, as set forth in Section 3 above.

Section 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the

application of such provision to other persons or circumstances shall not be affected thereby.

I hereby certify that the Hollister Transient Occupancy Tax Ordinance was **PASSED, APPROVED, AND ADOPTED** by the people of the City of Hollister on the 5th day of November, 2024

Mia Casey, Mayor

ATTEST:

APPROVED AS TO FORM:
Lozano Smith Attorneys at Law

Jennifer Woodworth, MMC, City Clerk

Mary Lerner, City Attorney

ATTACHMENT 1

CHAPTER 3.32. - UNIFORM TRANSIENT OCCUPANCY TAX

Sections:

- § 3.32.010 Short Title.
- § 3.32.020 Definitions.
- § 3.32.030 Tax Imposed.
- § 3.32.040 Exemptions from Provisions.
- § 3.32.050 Operator's Duties.
- § 3.32.060 Registration.
- § 3.32.070 Reporting and Remittances.
- § 3.32.080 Penalties and Interest.
- § 3.32.090 Failure to Collect and Report Tax.
- § 3.32.100 Appeals.
- § 3.32.110 Cessation of Business.
- § 3.32.120 Records.
- § 3.32.130 Refunds.
- § 3.32.140 Suspension and Revocation of Permits.
- § 3.32.150 Closure of Hotel Without Permit.
- § 3.32.160 Recording Certificates – Liens.
- § 3.32.170 Priority of Liens.
- § 3.32.180 Warrants for the Collection of Tax.
- § 3.32.190 Seizures and Sales.
- § 3.32.200 Successors' liability—Withholding by Purchasers.
- § 3.32.210 Liability of purchasers—Release.
- § 3.32.220 Notices to Withhold.
- § 3.32.230 Extensions of Time.
- § 3.32.240 Divulging of information forbidden
- § 3.32.250 Violations – Penalties

3.32.010 Short title.

This chapter shall be known as the Uniform Transient Occupancy Tax Law of the city.

3.32.020 Definitions.

Unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

Hotel means 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 shall include any hotel, 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 at a fixed location, or other similar structure, or portion thereof.

Occupancy means the use or possession, or the right to the use or possession, of any room, or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

Operator means the person who is the 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 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, however, shall 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 to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature, without any deduction therefrom whatsoever.

Tax administrator means the director of administrative services of the city.

Transient means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, time share arrangement or other agreement of whatever nature, for a period of 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 a period of 30 consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Unless days of occupancy or entitlement to occupancy by one person are consecutive without any break, then prior or subsequent periods of such occupancy or entitlement to occupancy shall not be counted when determining whether a period exceeds 30 calendar days.

3.32.030 Tax imposed.

For the privilege of occupancy in any hotel, each transient shall be subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator. Such tax shall constitute a debt owed by the transient to the city, which debt shall be extinguished only by payment to the operator. 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 administrator may require that such tax shall be paid directly to the tax administrator.

Effective April 1, 2025, Transient Occupancy Tax shall increase by four percentage points (4%), from 8 percent to 12 percent.

3.32.040 Exemptions from provisions.

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 provided for in this chapter;

2. Any federal or state officer or employee when on official business; or
 3. Any officer or employee of a foreign government, which officer or employee is exempt by reason of express provisions of federal law or international treaty.
- B. No exemption shall be granted except upon a claim therefor made at the time the rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

3.32.050 Operator's duties.

Each operator shall collect the tax imposed by the provisions of this chapter 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, 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 provided in this chapter.

3.32.060 Registration.

Within 30 days after the effective date of the ordinance codified in this chapter, or within 30 days after commencing business, whichever shall first occur, each operator of any hotel renting an occupancy to transients shall register such hotel with the tax administrator and obtain from the tax administrator a transient occupancy registration certificate which shall at all times be posted in a conspicuous place on the premises. Such certificate, among other things, shall set forth the following information:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued; and
- D. A statement as follows: "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Law by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting such tax to the Tax Administrator. This certificate shall not authorize any person to conduct any lawful business or 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 the City of Hollister. This certificate shall not constitute a permit."

3.32.070 Reports and remittances.

The tax imposed by Section 3.32.030 shall:

- A. Be due to the tax administrator at the time it is collected by the operator; and
- B. Become 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 quarter. Each operator, on or before the last working day of the month following the close of each calendar quarter, shall file a return with the tax administrator on the forms provided in Section 3.32.030, whether or not received, including any rentals charged for occupancies exempt under the provisions of Section 3.32.040, and the amount of the tax collected for transient occupancies. Each such return shall contain a declaration under penalty of perjury, executed by the operator or the operator's authorized agent, that to the best of the signer's knowledge, the statements in the return are true, correct and complete. Amounts claimed on the return as exempt from the tax pursuant to Sections 3.32.040 and 3.32.130 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 3.32.020, may not be reduced by any business expense, 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 pursuant to Sections 3.32.040 and 3.32.130, 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 the tax administrator deems it necessary in order to insure the collection of the tax, and the tax administrator may require further information on the return. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until remittance thereof is made to the tax administrator.

3.32.080 Penalties and interest.

- A. *Original Delinquencies.* Any operator who shall fail to remit any tax imposed by the provisions of this chapter within the time required shall pay a penalty in the amount of ten percent of the tax, in addition to the amount of the tax.
- B. *Continued Delinquencies.* Any operator who shall fail to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty in the amount of ten percent of the tax, in addition to the amount of the tax and the ten percent penalty first imposed.
- C. *Fraud.* If the tax administrator shall determine that the nonpayment of any remittance due pursuant to the provisions of this chapter is due to fraud, a penalty in the amount of 100 percent of the amount of the tax shall be added thereto, in addition to the penalties set forth in subsections A and B of this section.
- D. *Interest.* In addition to the penalties imposed, any operator who shall fail to remit any tax imposed by the provisions of this chapter shall pay interest at the rate 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.
- E. *Penalties and Interest Merged with Tax.* Every penalty imposed and such interest as accrues, pursuant to the provisions of this section, shall become a part of the tax required to be paid by the provisions of this chapter.

3.32.090 Failure to collect or report tax—Determination of tax by the tax administrator.

If any operator shall fail or refuse to collect such tax and to make, within the time provided in this chapter, any report and remittance of such tax, or any portion thereof, required by the provisions of this chapter, the tax administrator shall proceed in such manner as the tax administrator may deem best to obtain the facts and information on which to base his or her estimate of the tax due. As soon as the tax administrator shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any such tax imposed by the provisions of this chapter and payable by any operator who has failed or refused to collect the tax and to make such report and remittance, the tax administrator shall proceed to determine and assess against such operator the tax, interest and penalties provided for by the provisions of this chapter.

In the event such determination is made, the tax administrator shall give notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the operator's address as it appears in the records of the tax administrator. Such operator, within ten days after the service or mailing of such notice, may make an application in writing to the tax administrator for a hearing on the amount assessed. If an 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 an application is made, the tax administrator shall give not less than five days' written notice in the manner prescribed in this section to the operator to show cause at a time and place fixed in such notice why the 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 in this section of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after 15 days, unless an appeal is filed as provided in Section 3.32.100.

3.32.100 Appeals.

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 notice of appeal with the city clerk within 15 days after the service or mailing of the determination of the tax due. The city council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at the operator's last known place of address. The findings of the city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed in this chapter for the service of a notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3.32.110 Cessation of business.

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

3.32.120 Records.

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by the provisions of this chapter to keep and preserve, for a period of three years after the date any such tax is due and payable, 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, and payment to, the city, which records the tax administrator shall have the right to inspect at all reasonable times during regular business hours.

3.32.130 Refunds.

- A. Whenever the amount of any tax, interest or penalty has been overpaid, or paid more than once, or erroneously or illegally collected or received by the city pursuant to the provisions of this chapter, such amount 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 years after the date of payment. The claim shall be on forms furnished by the tax administrator.
- B. Any 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, 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, 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 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 pursuant to the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

3.32.140 Suspension and revocation of permits.

Whenever any operator fails to comply with any provision of this chapter relating to the transient occupancy tax or any rule or regulation of the tax administrator relating to such tax prescribed and adopted by this chapter, the tax administrator, upon a hearing, after giving the operator ten days' written notice in writing specifying the time and place of the hearing and requiring the operator to show cause why his or her permit or permits should not be revoked, may suspend or revoke any one or more of the permits held by the operator. The tax administrator shall give to the operator written notice of the suspension or revocation of any of the operator's permits. The notices required by this section may be served personally or by mail in the manner prescribed for the service of a notice of a deficiency determination. The tax administrator shall not issue a new permit after the revocation of a permit unless he or she is satisfied that the former

holder of the permit will comply with the provisions of this chapter relating to the transient occupancy tax and the regulations of the tax administrator.

3.32.150 Closure of hotels without permits.

During any period of time during which a permit has not been issued, or is suspended, revoked or otherwise not validly in effect, the tax administrator may require that the hotel be closed.

3.32.160 Recording certificates—Liens.

If any amount required to be remitted or paid to the city pursuant to this chapter is not remitted or paid when due, the tax administrator, within three years after the amount is due, may 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 they appear in the records of the tax administrator, of the operator liable for the same, and the fact that the tax administrator has complied with all the provisions of this chapter in the determination of the amount required to be remitted and paid. From the time of the filing for record, the amount required to be remitted, together with penalties and interest, shall constitute a lien upon all real property in the county owned by the operator or afterwards and before the lien expires acquired by the operator. The lien shall have the force, effect and priority of a judgment lien and shall continue for ten years after the time of the filing of the certificate, unless sooner released or otherwise discharged.

3.32.170 Priority of liens.

- A. The amounts required to be remitted and/or paid by any operator pursuant to this chapter, with penalties and interest, shall be satisfied first in any of the following cases:
 - 1. Whenever the person is insolvent;
 - 2. Whenever the person makes a voluntary assignment of his or her assets;
 - 3. Whenever the estate of the person in the hands of executors, administrators or heirs is insufficient to pay all of the debts due from the deceased; and
 - 4. Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount pursuant to this chapter is levied upon by process law. This chapter shall not give the city a preference over any recorded lien which is attached prior to the date when the amounts required to be paid become a lien.
- 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 1208 of the Code of Civil Procedure of the state.

3.32.180 Warrants for the collection of tax.

At any time within three years after any operator is delinquent in the remittance or payment of any amount required by this chapter to be remitted or paid, or within three years after the last recording of a certificate pursuant to Section 3.32.160, the tax administrator may issue a warrant for the enforcement of any lien and for the collection

of any amount required to be paid to the city pursuant to this chapter. The warrant shall be directed to any sheriff or marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and the sale made pursuant to it in the same manner and with the same effect as a writ of execution. The tax administrator may pay or advance to the sheriff or 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.

3.32.190 Seizures and sales.

At any time within three years after any operator is delinquent in the remittance or payment of any amount due pursuant to this chapter, the tax administrator may forthwith collect the amount by seizing any property, real or personal, of the operator and sell the property, or a sufficient part of it, at a 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 transient occupancy taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure of the state.

3.32.200 Successors' liability—Withholding by purchasers.

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

3.32.210 Liability of purchasers—Release.

If the purchaser of a hotel fails to withhold from the purchase price as required, the purchaser shall become personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days after the date the former owner's records are made available for audit, whichever period expires last, but in any event not later than 90 days after receiving the request, the tax administrator shall either issue the certificate or mail a notice to the purchaser at the purchaser's address as it appears in the records of the tax administrator of the amount which shall 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 chapter. 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 the determination against the operator becomes final, whichever shall last occur.

3.32.220 Notices to withhold.

If any operator is delinquent in the remittance or payment of the amount required to be remitted or paid by the operator pursuant to this chapter, or in the event a determination has been made against the operator for the remittance of the tax and the payment of the penalty, the city, within three years after the tax obligation became due, may give notice thereof by personal delivery or by registered mail to the operator and

any persons, including the state or any political subdivision thereof, having in their possession or under their control any credits or other personal property belonging to the taxpayer. After receiving the withholding notice, the person so notified shall make no disposition of the operator's credits, other personal property, or debts until the city consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever expires earlier. All persons, upon the receipt of such notice, shall advise the city immediately of all such credits, other personal property, or debts in their possession, under their control, or owing by them. If the 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 the deposit is carried or at which the 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 pursuant to this section 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 to the city.

3.32.230 Extensions of time.

The tax administrator, for good cause, may extend for not to exceed 30 days the time for making any return or paying any amount required to be paid pursuant to this chapter. The extension may be granted at any time provided a request therefor 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 fraction thereof, from the date on which the tax would have been due without the extension until the day of payment.

3.32.240 Divulging of information forbidden.

It is unlawful for any person having an administrative duty pursuant to this chapter to make known in any manner whatever the business affairs, operation or information obtained by an investigation of the records of any operator or any other person visited or examined in the discharge of his or her official duty, or the amount or source of income, profits, losses or expenditures, or any particular thereof, set forth or disclosed in any return, or to knowingly permit any return, or copy thereof, or any abstract, or particular thereof, 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 any unpaid tax or amounts of tax, penalties and interest required to be collected.

3.32.250 Violations—Penalties.

- A. Except for the failure of an operator to pay to the tax administrator taxes due pursuant to this chapter, which failure to pay shall be punishable as a felony pursuant to Section 424 of the Penal Code of the state, every violation of this chapter shall be a misdemeanor and punishable by a fine not exceeding \$500.00, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

- B. If the offense is not otherwise punishable as set forth in subsection A of this section, any person willfully failing to comply with, or knowingly violating, any of the provisions of this chapter shall be guilty of a misdemeanor, punishable as provided in subsection A of this section.
- C. Any operator or other person who willfully fails or refuses to register as required by 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, shall be guilty of a misdemeanor. Any person required to make, render, sign or verify any report or claim who willfully 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 shall be guilty of a misdemeanor, punishable as provided in subsection A of this section.