

ORDINANCE NO. 0-15613 (New Series)

Adopted on NOV 16 1981

An Ordinance Amending Chapter III, Article 5, of The San Diego Municipal Code By Amending Sections 35.0107, 35.0108, 35.0109 and 35.0110, Relating to Transient Occupancy Tax Reporting and Remitting, Penalties, Collect and Report Tax and Appeal of Transient Occupancy Tax and Appeals.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter III, Article 5, of the San Diego Municipal Code be and the same is hereby amended by amending Sections 35.0107, 35.0108, 35.0109 and 35.0110 to read as follows:

SEC. 35.0107 REMITTING AND REPORTING

All operators shall remit monthly the full amount of taxes collected with the appropriate stub from the quarterly return form provided by the City Treasurer, and a return shall be filed quarterly.

Returns filed quarterly and taxes remitted monthly and actually received by the City Treasurer on or before the last day of the following month shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0108.

Returns may be made on a calendar quarter basis or a reporting basis other than a calendar quarter reporting period. An operator that desires to utilize a reporting period other than a calendar quarter reporting period must request and obtain written approval from the City Treasurer prior to the implementation of such reporting plan. Unless such approval is given, operators shall report on a calendar quarter basis.

a. Calendar Quarter. Each operator reporting on a calendar quarter basis shall, on or before the last day of the month following the close of each calendar quarter, make a return to the City Treasurer, on forms provided, of the total taxable rents charged and the amount of tax collected for the quarter, remittances made for each of the first two months of the calendar quarter, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the City Treasurer.

b. Other Approved Reporting Periods. Each operator reporting on an approved basis other than a calendar quarter basis shall, on or before the same day of the next month following the close of such reporting period, or on the last day of the next month if no corresponding day exists, make a return to the City Treasurer, on forms provided, of the total taxable rents charged and the amount of tax collected for the quarter, remittances made for each of the first two months of the approved reporting period, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the City Treasurer.

c. Nonapproved Reporting Periods. Each operator reporting on other than a calendar quarter basis without previous approval shall, on or before

the same day of the next month following the close of such reporting period, or on the last day of the next month if no corresponding day exists, make a return to the City Treasurer, on forms provided of the total taxable rents charged, the amount of tax collected for the quarter, remittances made for each of the first two months of the reporting period and the balance of the tax due. At the time the return is filed, the full amount of tax collected shall be remitted to the City Treasurer.

d. Cessation of Business. Each operator, upon cessation of business for any reason, shall, on or before the same day of the next month following the cessation of business, or on the last day of the month if no corresponding day exists, make a return to the City Treasurer, on forms provided of the total taxable rents charged, the amount of tax collected for the reporting period, remittances made, if any, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due, if any, shall be remitted to the City Treasurer. Returns filed and taxes remitted and actually received by the City Treasurer on or before the same day of the next month following the cessation of business, or on the last day of the next month if no corresponding day exists, shall be deemed timely

filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0108.

e. Timely Returns. Returns filed and taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the City Treasurer, has sufficient postage and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting and remitting without penalty. If such envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely. The City Treasurer may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. All taxes collected by operator pursuant to this Article shall be held in trust for the account of the City until payment thereof is made to the City Treasurer. All returns and payments submitted by each operator shall be treated as confidential by the City Treasurer and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the

United States, the State of California, the County of San Diego, or the City of San Diego for official use only.

SEC. 35.0108 PENALTIES

a. Delinquency. Any operator who fails to remit any tax imposed by this Article within the time required shall pay a penalty computed at the rate of one percent (1%) for the first day of delinquency and one-third of one percent (1/3 of 1%) for each day thereafter, including Saturdays, Sundays, and holidays, but not to exceed twenty-five percent (25%) of the amount of the tax due and payable for the entire reporting period in addition to the amount of the tax.

b. Fraud. If the City Treasurer determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraph (a) of this section.

c. Audit Deficiency. If, upon audit by the City, an operator is found to be deficient in his return or his remittance, or both, the City Treasurer shall immediately invoice the operator for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. If the operator fails or refuses to pay the deficient amount and applicable penalties within fourteen (14) days of the date of the City Treasurer's invoice, an additional penalty shall be imposed at the rate of one-third of one percent (1/3 of 1%) per day of the net deficiency, not to exceed fifteen percent (15%).

SEC. 35.0109 FAILURE TO COLLECT AND REPORT TAX

DETERMINATION OF TAX BY CITY TREASURER. If any operator shall fail

or refuse to collect the tax and to make, within the time provided in this article, any report and remittance of said tax or any portion thereof required by this article or if such operator maintains records which are inadequate to show the amount of tax due, the City Treasurer shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the City Treasurer shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax and penalties provided for by this article. In case such determination is made, the City Treasurer shall give notice of the amount so assessed by delivering it to the operator or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within fourteen (14) days after the serving or mailing of such notice make application in writing to the City Treasurer for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax and penalties, if any, determined by the City Treasurer shall become final and conclusive and immediately due and payable. If such application is made, the City Treasurer shall give not less than five (5) days' written notice in the manner prescribed herein to the operator of the time and place for a hearing before a board consisting of the City Treasurer, the City Auditor and Comptroller, and the City Manager or the duly appointed deputy of each. At the hearing, the operator may appear and offer evidence why the specified tax and penalties should not be so fixed. The board shall consider all evidence produced and shall

determine the proper tax to be remitted. After the hearing, the City Treasurer shall give written notice to the operator in the manner prescribed herein of the determination and the amount of such tax and penalties. If the amount in dispute does not exceed \$750.00, the decision of the hearing board shall be final and conclusive. Any amount found to be due shall be payable within fourteen (14) days of the serving or mailing of the determination of the tax due unless an appeal is taken as provided in Section 35.0110.

SEC. 35.0110 APPEAL

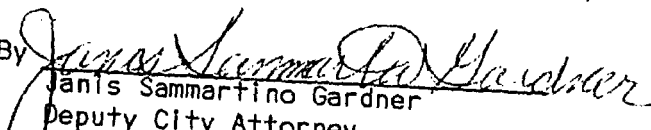
Any operator aggrieved by any decision of the Hearing Board with respect to the amount of such tax and penalties, if any, involving a dispute, the total amount of which exceeds \$750.00, may appeal to the Committee on Rules, Legislation & Intergovernmental Relations of the Council by filing a notice of appeal with the City Clerk within fourteen (14) days of the serving or mailing of the determination of tax due. The City Clerk shall immediately transmit a copy of said notice to the Committee Consultant who shall fix a time and place for hearing such appeal, and shall give notice in writing to such operator at his last known place of address. The findings of the Committee on Rules, Legislation & Governmental Relations of the Council shall be served upon the appellant in the manner prescribed above for service of notice of hearing and shall be final and conclusive unless a hearing is set before the City Council pursuant to Section 22.0101, Rule 4. Any amount found to be due shall be due and payable within fourteen (14) days of serving or mailing the Committee's findings.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

○ -15613



APPROVED: John W. Witt, City Attorney

By 
Janis Sammartino Gardner
Deputy City Attorney

JSG:vl:160.1
06/22/81
(Rev. 08/13/81)
(Rev. 9/11/81)
(Rev. 10/2/81)
Or. Dept.: Treas.
FORM=o.amc
0-81-269

NOV 16 1981

Passed and adopted by the Council of The City of San Diego on _____
by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fred Schnaubelt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By *Barbara Berridge*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its ^{re}introduction and the day of its final passage, to wit, on

OCT 26 1981

NOV 16 1981

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By *Barbara Berridge*, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number **0-15613** Adopted NOV 16 1981

CERTIFICATE OF PUBLICATION

RECEIVED
CITY CLERK'S OFFICE
1981 DEC -2 AM 10:50
SAN DIEGO, CALIF.
Hja

SAN DIEGO, CITY OF
202 C St. 12th floor
San Diego, CA 92101
BARBARA BERRIDGE

IN THE MATTER OF

NO.

ORDINANCE NO. 0-15613 (New Series)

ORDINANCE NO. 0-15613
(New Series)

An Ordinance Amending Chapter III, Article 5, of the San Diego Municipal Code By Amending Sections 35.0107, 35.0108, 35.0109 and 35.0110, Relating to Transient Occupancy Tax Reporting and Remitting Penalties, Collect and Report Tax and Appeal of Transient Occupancy Tax and Appeals.

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SEC. 35.0107 REMITTING AND REPORTING
All operators shall remit monthly the full amount of taxes collected with the appropriate stub from the quarterly return form provided by the City Treasurer, and a return shall be filed quarterly.

Returns filed quarterly and taxes remitted monthly and actually received by the City Treasurer on or before the last day of the following month shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0108.

Returns may be made on a calendar quarter basis or a reporting basis other than a calendar quarter reporting period. An operator that desires to utilize a reporting period other than a calendar quarter reporting period must request and obtain written approval from the City Treasurer prior to the implementation of such reporting plan. Unless such approval is given, operators shall report on a calendar quarter basis.

a. Calendar Quarter. Each operator reporting on a calendar quarter basis shall, on or before the last day of the month following the close of each calendar quarter, make a return to the City Treasurer, on forms provided, of the total taxable rents charged, and the amount of tax collected for the quarter, remittances made for each of the first two months of the calendar quarter, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the City Treasurer.

b. Other Approved Reporting Periods. Each operator reporting on an approved basis other than a calendar quarter basis shall, on or before the same day of the next month following the close of such reporting period, or on the last day of the next month if no corresponding day exists, make a return to the City Treasurer, on forms provided, of the total taxable rents charged, and the amount of tax collected for the quarter, remittances made for each of the first two months of the approved reporting period, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the City Treasurer.

c. Nonapproved Reporting Periods. Each operator reporting on other than a calendar quarter basis without previous approval shall, on or before the same day of the next month following the close of such reporting period, or on the last day of the next month if no corresponding day exists, make a return to the City Treasurer, on forms provided, of the total taxable rents charged, the amount of tax collected for the quarter, remittances made for each of the first two months of the reporting period and the balance of the tax due. At the time the return is filed, the full amount of tax collected shall be remitted to the City Treasurer.

I, Charlene Lance, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

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(New Series)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

November 30, 1981

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 30th day of Nov., 1981.

Charlene Lance

(Signature)

18 3/4 x 2 x 8.06 = 157.13

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d. Cessation of Business. Each operator, upon cessation of business for any reason, shall, on or before the same day of the next month following the cessation of business, or on the last day of the month if no corresponding day exists, make a return to the City Treasurer, on forms provided of the total taxable rents charged, the amount of tax collected for the reporting period, remittances made, if any, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due, if any, shall be remitted to the City Treasurer. Returns filed and taxes remitted and actually received by the City Treasurer on or before the same day of the next month following the cessation of business, or on the last day of the next month if no corresponding day exists, shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0108.

e. Timely Returns. Returns filed and taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the City Treasurer, has sufficient postage and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting and remitting without penalty. If such envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely. The City Treasurer may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. All taxes collected by operator pursuant to this Article shall be held in trust for the account of the City until payment thereof is made to the City Treasurer. All returns and payments submitted by each operator shall be treated as confidential by the City Treasurer and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of California, the County of San Diego, or the City of San Diego for official use only.

SEC. 35.0108 PENALTIES

a. Delinquency. Any operator who fails to remit any tax imposed by this Article within the time required shall pay a penalty computed at the rate of one percent (1%) for the first day of delinquency and one-third of one percent (1/3 of 1%) for each day thereafter, including Saturdays, Sundays, and holidays, but not to exceed twenty-five percent (25%) of the amount of the tax due and payable for the entire reporting period in addition to the amount of the tax.

b. Fraud. If the City Treasurer determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraph (a) of this section.

c. Audit Deficiency. If, upon audit by the City, an operator is found to be deficient in his return or his remittance, or both, the City Treasurer shall immediately invoice the operator for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. If the operator fails or refuses to pay the deficient amount and applicable penalties within fourteen (14) days of the date of the City Treasurer's invoice, an additional penalty shall be imposed at the rate of one-third of one percent (1/3 of 1%) per day of the net deficiency, not to exceed fifteen percent (15%) of the net deficiency.

SEC. 35.0109 FAILURE TO COLLECT AND REPORT TAX

DETERMINATION OF TAX BY CITY TREASURER. If any operator shall fail or refuse to collect the tax and to make, within the time provided in this article, any report and remittance of said tax or any portion thereof required by this article or if such operator maintains records which are inadequate to show the amount of tax due, the City Treasurer shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the City Treasurer shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax and penalties provided for by this article. In case such determination is made, the City Treasurer shall give notice of the amount so assessed by delivering it to the operator or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within fourteen (14) days after the serving or mailing of such notice make application in writing to the City Treasurer for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax and penalties, if any, determined by the City Treasurer shall become final and conclusive and immediately due and payable. If such application is made, the City Treasurer shall give not less than five (5) days' written notice in the manner prescribed herein to the operator of the time and place for a hearing before a board consisting of the City Treasurer, the City Auditor and Comptroller, and the City Manager or the duly appointed deputy of each. At the hearing, the operator may appear and offer evidence why the specified tax and penalties should not be so fixed. The board shall consider all evidence produced and shall determine the proper tax to be remitted. After the hearing, the City Treasurer shall give written notice to the operator in the manner prescribed herein of the determination and the amount of such tax and penalties. If the amount in dispute does not exceed \$750.00, the decision of the hearing board shall be final and conclusive. Any amount found to be due shall be payable within fourteen (14) days of the serving or mailing of the determination of the tax due unless an appeal is taken as provided in Section 35.0110.

SEC. 35.0110 APPEAL

Any operator aggrieved by any decision of the Hearing Board with respect to the amount of such tax and penalties, if any, involving a dispute, the total amount of which exceeds \$750.00, may appeal to the Committee on Rules, Legislation & Intergovernmental Relations of the Council by filing a notice of appeal with the City Clerk within fourteen (14) days of the serving or mailing of the determination of tax due. The City Clerk shall immediately transmit a copy of said notice to the Committee Consultant who shall fix a time and place for hearing such appeal, and shall give notice in writing to such operator at his last known place of address. The findings of the Committee on Rules, Legislation & Intergovernmental Relations of the Council shall be served upon the appellant in the manner prescribed above for service of notice of hearing and shall be final and conclusive unless a hearing is set before the City Council pursuant to Section 22.0101, Rule 4. Any amount found to be due shall be due and payable within fourteen (14) days of serving or mailing the Committee's findings.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

Reintroduced on October 28, 1981.

Passed and adopted by the Council of The City of San Diego on November 18, 1981.

AUTHENTICATED BY: PETE WILSON

Mayor of The City of
San Diego, California,
CHARLES G. ABDELNOUR,
City Clerk of The City of
San Diego, California.

(SEAL)

By BARBARA BERRIDGE, Deputy.

Publish November 30, 1981

60-2546