

(O-89-169)

ORDINANCE NUMBER O- 17278 (NEW SERIES)

ADOPTED ON APR 17 1989

AN ORDINANCE AMENDING CHAPTER III, ARTICLE 5 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING, ADDING OR RENUMBERING SECTIONS 35.0101 THROUGH 35.0138 RELATING TO TRANSIENT OCCUPANCY TAX.

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 renumbering the following sections:

Section 35.0103.1	renumbered to	Section 35.0104
Section 35.0103.2	renumbered to	Section 35.0105
Section 35.0103.3	renumbered to	Section 35.0106
Section 35.0115	renumbered to	Section 35.0127
Section 35.0116.3	renumbered to	Section 35.0131

Section 2. That Chapter III, Article 5, section 35.0101 of the San Diego Municipal Code be amended to read as follows:

**SEC. 35.0101 TITLE AND PURPOSE**

a. No change in text.

b. Purpose and Intent. It is the purpose and intent of the Council that there be imposed on transient occupants of hotel rooms in the City of San Diego a tax, the proceeds of which are to be used for promoting the City of San Diego, including the planning, construction, maintenance and operation of tourist-related cultural, recreational and convention facilities and for those additional purposes set forth in Section 35.0128 of this article.

Section 3. That Chapter III, Article 5, section 35.0102 be amended to read as follows:

**SEC. 35.0102 DEFINITIONS**

Except where the context otherwise requires, the definitions in this section govern the construction of this article.

a. No change in text.

b. Hotel. "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 is held out as such to the public. "Hotel" does not mean any hospital, convalescent home or sanitarium.

c. Occupancy. "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.

d. Transient. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of less than one month. A month is defined as the period of consecutive days from the first calendar day of occupancy in any month to the same calendar day in the next month following or the last day of the next month following if no corresponding calendar day exists. Any person who in fact exercises occupancy or in fact is entitled to occupancy for a period of one month or more shall be deemed not to have been a transient with respect to the first month of occupancy or entitlement to occupancy.

e. Rent. "Rent" means the total consideration charged to the transient as shown on the guest receipt for the occupancy of space in a hotel, including charges for equipment, (such as rollaway beds, cribs and television sets, etc.), and in-room services (such as movies and other services not subject to California taxes), valued in money, whether received or to be received in money, goods, labor or otherwise. It shall include all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. The costs of additional goods and services, which are not "rent," but which may be sold as a package with the room (such as golf, tennis, meals, etc.), must be accounted for in accordance with rules and regulations promulgated by the City Treasurer.

f. No change in text.

g. Operator. "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 functions through a managing agent (including a resident manager or resident agent) of any type or character other than an employee without management responsibility, the managing agent shall also be deemed an operator for the purposes of this article and shall have the same duties and be subject to the same liabilities, both civil and criminal, as his principal. Except as provided in section 35.0124(g), compliance with the provisions of this article by either the

principal or the managing agent shall, however, be considered to be compliance by both.

h. No change in text.

i. No change in text.

Section 4. Chapter III, Article 5, section 35.0103.2 is hereby renumbered to section 35.0105 and further amended to read as follows:

**SEC. 35.0105 ADDITIONAL TAX IMPOSED**

Notwithstanding the tax imposed by Section 35.0103 or 35.0104 above and in addition thereto, commencing on August 1, 1988 for the privilege of occupancy in any hotel, each transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the rent charged by the operator. Said 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 such transient ceases to occupy space in the hotel. 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 City Treasurer may require that such tax shall be paid directly to the City Treasurer.

Section 5. That Chapter III, Article 5, section 35.0103.3 is hereby renumbered to section 35.0106 and further amended to read as follows:

**SEC. 35.0106 ADDITIONAL TAX IMPOSED**

Notwithstanding the tax imposed by Section 35.0103, 35.0104 or 35.0105 above and in addition thereto, commencing on June 1, 1989 for the privilege of occupancy in any hotel, each transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the rent charged by the operator. Said 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 such transient ceases to occupy space in the hotel. 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 City Treasurer may require that such tax shall be paid to the City Treasurer.

Section 6. That Chapter III, Article 5, section 35.0104 is hereby renumbered as section 35.0111 and further amended to read as follows:

**SEC. 35.0111 EXEMPTIONS**

No tax shall be due or collected in the following cases:

- a) When the transient has exercised occupancy or was entitled to occupancy for one month or more;
- b) When the total room rent is twenty dollars (\$20.00) a day or less or the accommodations rented are in a dormitory and the total rent for each transient is twenty dollars (\$20.00) a day or less; or

c) When the transient is by treaty or federal or state law exempt from payment of transient occupancy taxes; or

d) When hotel rents are directly paid by the United States Government or the State of California or their respective instrumentalities. This exemption does not exempt a transient who is employed by an exempt entity from payment of the tax when the payment is later to be reimbursed by the entity.

Section 7. That Chapter III, Article 5, section 35.0105 is hereby renumbered as section 35.0112 and further amended to read as follows:

**SEC. 35.0112 OPERATOR'S DUTIES AND ACCOUNTING PROCEDURES**

a) Each operator shall collect the tax imposed by this Article to the same extent and at the same time as the rent is collected from every transient. If the operator collects the rent but fails to collect the tax imposed by this Article for any reason, the City shall require the operator to pay such tax. 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. A duplicate of this receipt shall be kept by the operator in accordance with Section 35.0121. 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. Each operator shall account

separately for and maintain separate monthly summary totals for taxable and nontaxable rents and for taxes collected. Taxable rents are those defined in Section 35.0102.

b) The operator shall maintain its financial and accounting records in accordance with established accounting principles acceptable to the City Treasurer. In the event the operator offers paid packages or complimentary services to guests, the charges shall be accounted for in accordance with the rules and regulations promulgated by the City Treasurer.

Section 8. That Chapter III, Article 5, section 35.0106 is hereby renumbered as section 35.0113 and further amended to read as follows:

**SEC. 35.0113 REGISTRATION**

(a) Within thirty (30) days after the effective date of this Article, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the City Treasurer and obtain a "Transient Occupancy Registration Certificate" to be posted at all times in a conspicuous place on the premises. Said certificate shall include the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;
- (4) The following statement: "This Transient Occupancy Registration certificate signifies that the person named on the face hereof is required to collect a transient

occupancy tax from transients and to remit the same to the City Treasurer and has fulfilled the requirements of the Transient Occupancy Tax ordinance by registering with the City Treasurer for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the City Treasurer. This certificate does not constitute a permit to operate a hotel business."

(b) It shall be unlawful to operate a hotel without a Transient Occupancy Tax Certificate or to fail to post the certificate in a conspicuous place at all times.

Section 9. That Chapter III, Article 5, section 35.0107 is hereby renumbered as section 35.0114 and further amended to read as follows:

**SEC. 35.0114 REMITTING AND REPORTING**

All operators shall remit monthly the full amount of taxes collected for the previous month with the appropriate approved return form available from the City Treasurer.

Returns 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 35.0116

Returns shall be made on a calendar month basis unless a reporting basis other than a calendar month reporting period is approved. An operator that desires to utilize a reporting period other than a calendar month reporting period must request and obtain written approval from the City Treasurer prior to the implementation of such reporting plan.



a. Calendar Month. Each operator reporting on a calendar month basis shall, on or before the last day of the following month, make a return to the City Treasurer on approved forms of the total taxable rents charged and the amount of tax collected for the previous month 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 month 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 that month if no corresponding calendar day exists, make a return to the City Treasurer on approved forms of the total taxable rents charged and the amount of tax collected for the month 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. 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.

d. All taxes collected by an 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.

e. 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.

Section 10. That Chapter III, Article 5, section 35.0115 is hereby added to the Municipal Code, to read as follows:

**SEC. 35.0115 REMITTING AND REPORTING REQUIREMENTS  
UPON CESSATION OF BUSINESS**

a. An operator who is transferring, selling or terminating its business shall notify the City Treasurer in writing of such sale, transfer or termination and the name and address of the purchaser or transferee at least thirty (30) days in advance of the date of transfer, sale or termination, unless the decision to sell, transfer or terminate was made within less than a thirty (30) day period prior to the transfer, sale or termination, in which case the operator shall then immediately notify the City Treasurer. The operator shall, at the same time, notify the purchaser or transferee of their responsibility for unpaid collected taxes as set forth in sections 35.0137 and 35.0138, and further certify in writing to the City Treasurer that the transferee or purchaser was notified of the requirements of this Article regarding its responsibility for unpaid collected taxes.

b. 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 that month if no corresponding day exists, make a return to the City Treasurer on approved forms 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. After filing the final return and remitting the balance due, the operator shall make his records of account available for a closeout audit by the City Treasurer or duly authorized City employee. 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 that month if no corresponding calendar day exists shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0116.

c. The liability of the transferee or purchaser for transient occupancy taxes collected by the transferor or seller is set forth in sections 35.0137 and 35.0138.

d. Any operator who fails to comply with the provisions of subsections (a) or (b) hereunder is guilty of a misdemeanor.

Section 11. That Chapter III, Article 5, section 35.0108 is hereby renumbered as section 35.0116 and further amended to read as follows:

**SEC. 35.0116 PENALTIES**

- a. No change in text.
- b. No change in text.
- c. Audit Deficiency. If, upon audit by the City, an operator is found to be deficient in either its return or its 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%) for a combined total penalty not to exceed twenty-five percent (25%) of the net deficiency.

Section 12. That Chapter III, Article 5, section 35.0109 is hereby renumbered as section 35.0117 and further amended to read as follows:

**SEC. 35.0117 FAILURE TO COLLECT OR REPORT TAX - JEOPARDY DETERMINATION**

- a. Determination of Tax by City Treasurer. If any operator shall fail or refuse to collect the tax or to make,

within the time provided in this Article, any report or 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 forthwith assess the tax and penalties provided for by this Article against the operator.

b. Jeopardy Determinations. When an operator fails or refuses to make or file a timely return or remittance of taxes, or when the City Treasurer or duly authorized employee makes a determination, after having applied necessary and accepted auditing procedures or by estimation if no records are available, that an operator is or will be unable to remit any taxes collected or otherwise due at the prescribed time, the City Treasurer may make a written Jeopardy Determination which shall be issued to the operator to require the operator to thereafter furnish additional information or provide adequate security as necessary to ensure collection of any taxes due or to become due, and to remit the taxes on a daily or weekly basis. The operator shall thereafter report and remit all taxes due under the terms and conditions prescribed by the City Treasurer. The City Treasurer shall cancel the requirements imposed under the Jeopardy Determination once timely accounting and remittance procedures have been established and the operator is satisfying all obligations imposed by law for the remittance of taxes.

c. Notice. The City Treasurer shall deliver notice of the assessment or of the Jeopardy Determination to the

operator or deposit it in the United States mail, postage prepaid, addressed to the operator at the last known place of business.

Section 13. That Chapter III, Article 5, section 35.0110 is hereby renumbered as section 35.0118 and further amended to read as follows:

**SEC. 35.0118 ADMINISTRATIVE REMEDIES AND APPEALS**

a. The 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 pursuant to section 35.0117. If timely application for a hearing is not made, the tax and penalties 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 Financial Management Director 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 remaining in dispute thereafter does not exceed

\$750.00, the decision of the hearing board shall be final and conclusive and shall constitute the exhaustion of the operator's administrative remedies. 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 a further appeal is filed with the City Manager as provided in this section within that fourteen (14) day period for any amount in excess of \$750.

b. When an appeal from the hearing board for remaining taxes and penalties exceeding \$750.00 is filed, the City Manager shall cause the appeal to be assigned to a Hearing Officer, who shall schedule a hearing to be heard within ten (10) days thereafter. The Hearing Officer shall be appointed by the City Manager, shall be a member of the California State Bar and shall not be a City employee. The Hearing Officer shall be compensated by the City of San Diego for the time spent on deciding an appeal.

c. The appellant and the City Manager or designate shall each have the right to appear in person and be represented by legal counsel, to receive notice, to present evidence, to call and cross-examine witnesses under oath and to present argument. The Hearing Officer shall have the power to compel attendance of witnesses and documents by Subpoena in accordance with the Civil Code. The formal rules of evidence shall not apply and any relevant evidence that is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious business affairs

shall be admissible. Hearsay evidence may be considered by the Hearing Officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The formal exceptions to the hearsay rule shall apply.

d. The Hearing Officer is authorized to rule upon issues of law or fact and to determine the amount of the tax or penalty in accordance with this Article. The Hearing Officer shall not have any jurisdiction to waive, mitigate or suspend the collection of any tax or penalty found to be duly imposed.

e. The decision of the Hearing Officer shall be issued in writing no later than fourteen (14) days after the conclusion of the hearing. The decision shall be the final administrative remedy of the appellant and shall be binding upon the City Manager. Any amounts due shall be immediately payable to the City Treasurer.

f. The City Manager shall promulgate supplementary rules and procedures for the conduct of the hearing, the forms of notice and proceedings and the preparation and submission of the record.

Section 14. That Chapter III, Article 5, section 35.0111 is hereby renumbered as section 35.0121 and further amended to read as follows:

**SEC. 35.0121 RECORDS**

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this



Article to keep and preserve, for a period of three years within the boundaries of this City, all business records as may be necessary to determine the amount of such tax for which the operator is liable for collection and payment to the City. The City Treasurer and authorized deputies or agents in the exercise of duties imposed by this Article shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City. It shall be unlawful to refuse to allow or to permit such audit to be conducted after a lawful demand therefor by the City Treasurer, or the City Auditor when so requested by the City Treasurer.

Section 15. That Chapter III, Article 5, section 35.0112 is hereby renumbered as section 35.0122 and further amended to read as follows:

**SEC. 35.0122 REFUNDS**

a. Whenever the amount of any tax or penalty has been overpaid, paid more than once or has been erroneously or illegally collected or erroneously received by the City under this article, the overpayment may be refunded provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the City Treasurer within three years of the date of payment. The claim shall be on forms available from the City Treasurer.

b. An operator may claim a refund or take as a 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 City Treasurer 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 subparagraph (a) of this section, but only when the transient having paid the tax to the operator establishes to the satisfaction of the City Treasurer that the transient has been unable to obtain a refund from the operator who collected the tax.

d. No change in text.

e. No change in text.

Section 16. That Chapter III, Article 5, section 35.0113 is hereby renumbered as section 35.0123 and further amended to read as follows:

**SEC. 35.0123 ACTIONS TO COLLECT TAXES AND ENFORCEMENT OF LIENS**

a. Any tax required to be paid by any transient under the provisions of this Article shall be deemed a debt owed by

the transient to the City and payable through the operator. Any tax collected by an operator which has not been paid to the City shall be deemed funds held in trust for the account of the City which are due and payable by the operator to the City pursuant to the provisions of this Article. Any person owing money to the City under the provisions of the Article shall be liable to an action brought in the name of The City of San Diego for the recovery of such amount. Upon the concurrence of the City Attorney and the City Auditor and Comptroller, the City Treasurer is authorized to compromise the collection of the amount or establish a schedule of payment for any tax due, or to discontinue the collection of any claim if it appears that further proceedings would be without merit.

b. Recording of a Certificate of Lien. If any amount required to be paid to the City under this Article is not paid when due, the City Treasurer may record in the office of the San Diego County Recorder a certificate which specifies the amount of tax and penalties due, the name and address of the operator liable for the same, a statement that the City Treasurer has complied with all provisions of this Article in the determination of the amount required to be paid and a legal description of the real property owned by the operator. From the time of the recording of the certificate, the amount required to be paid together with penalties constitutes a lien upon all real property in the county owned by the operator or thereafter acquired before the lien expires. The

lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged.

c. Warrant for Collection of Tax. At any time within three (3) years after the recording of a certificate of lien under Section 35.0123(b), the City Treasurer may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of any tax and penalties required to be paid to the City under this Article. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The City Treasurer may pay or advance to the sheriff or marshal such fees, commissions and expenses for services as are provided by law for similar services pursuant to a writ of execution.

d. Seizure and Sale. In lieu of issuing a warrant under subsection (c), at any time within the three (3) years after an assessment was issued or a certificate of lien was recorded under section 35.0123(b), the City Treasurer may collect the delinquent amount by seizing or causing to be seized any property, real or personal, of the operator and sell any noncash or nonnegotiable property or a sufficient part of it at public auction to pay the amount of tax due together with any penalties and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the operator not exempt from

execution under the provisions of the Code of Civil Procedure.

Section 17. That Chapter III, Article 5, section 35.0114 is hereby renumbered as section 35.0124 and further amended to read as follows:

**SEC. 35.0124 VIOLATIONS AND CRIMINAL PROCEEDINGS**

a. Any operator who wilfully fails to collect or cause to be collected the transient occupancy tax due from a transient is guilty of a misdemeanor.

b. Any operator who wilfully fails to file or cause to be filed any return required by this Article, or who files or causes to be filed a false return, or who wilfully fails or refuses to remit or cause to be remitted any tax collected, or who refuses to allow an audit to be conducted, is guilty of a misdemeanor.

c. The commencement of criminal proceedings shall neither preclude nor abate administrative or civil actions to collect taxes due under this Article.

d. Violations under this section are continuing violations and each day the violation continues constitutes a separate misdemeanor.

e. Any operator violating any of the other mandatory provisions of this Article shall be guilty of a misdemeanor.

f. Violations shall be punishable as misdemeanors by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment.

g. Non-defense. It shall not be a defense to violations of this Article that the operator, including a resident manager, had forwarded any return due or tax collected to its principal or corporate headquarters, nor that any failure to file or remit taxes was based on the direction or inaction of such principal or corporate headquarters.

Section 18. That Chapter III, Article 5, section 35.0116 is hereby renumbered as section 35.0128 and further amended to read as follows:

**SEC. 35.0128 UTILIZATION OF REVENUES**

A. The tax imposed shall be utilized as follows:

(a) Two-thirds (2/3) of all revenues collected by the City under Section 35.0103 of this Article and remaining after payment of two-thirds (2/3) of the costs incurred in the administration of this Article shall be used solely for the purpose of promoting the City of San Diego. Revenues available under this subparagraph (a) shall be used to support any program including but not limited to programs of the San Diego Convention and Visitors Bureau, designed to promote the City, as the Council may direct in accordance with Section 35.0128(d) below.

(b)-(f) No change in text.

Section 19. That Chapter III, Article 5, section 35.0116.1 is hereby renumbered as section 35.0129 and further amended to read as follows:

**SEC. 35.0129 UTILIZATION OF REVENUES FROM ADDITIONAL TAX IMPOSED BY SECTION 35.0104**

All revenues collected by the City under Section 35.0104 shall be deposited to the General Fund of the City (Fund No. 100) and be used for general governmental purposes as the City Council may from time to time provide in accordance with the City Charter of the City of San Diego and its appropriation ordinances.

Section 20. That Chapter III, Article 5, section 35.0116.2 is hereby renumbered as section 35.0130 and further amended to read as follows:

**SEC. 35.0130 UTILIZATION OF REVENUES FROM ADDITIONAL TAX IMPOSED BY SECTION 35.0105**

All revenues collected by the City under Section 35.0105 shall be deposited to the General Fund of the City (Fund No. 100) and be used for general governmental purposes as the City Council may from time to time provide in accordance with the City Charter of the City of San Diego and its appropriation ordinances.

Section 21. That Chapter III, Article 5, section 35.0116.3 is hereby renumbered as section 35.0131 and further amended to read as follows:

**SEC. 35.0131 UTILIZATION OF REVENUES FROM ADDITIONAL TAX IMPOSED BY SECTION 35.0106**

All revenues collected by the City under Section 35.0106 shall be deposited to the General Fund of the City (Fund No. 100) and be used for general governmental purposes as the City Council may from time to time provide in accordance with

the City Charter of the City of San Diego and its appropriation ordinances.

Section 22. That Chapter III, Article 5, section 35.0117 is hereby renumbered as section 35.0136 and further amended to read as follows:

**SEC. 35.0136 TREASURER'S REGULATIONS AND ENFORCEMENT AUTHORITY**

The City Treasurer may promulgate reasonable rules, interpretations and regulations to implement and enforce the provisions of this Article. Designated agents of the City Treasurer shall have the authority to arrest without a warrant any violator of a misdemeanor provision of this Article and to issue notices to appear pursuant to the provisions of Penal Code section 836.5.

Section 23. That Chapter III, Article 5, section 35.0118 is hereby renumbered as section 35.0137 and further amended to read as follows:

**SEC. 35.0137 DUTY OF SUCCESSOR OF OPERATOR**

If an operator who is liable for any tax or penalties under this Article sells or otherwise disposes of his business, his successor shall notify the City Treasurer of the date of sale at least thirty (30) days before the date of sale or, if the decision to sell was made less than thirty (30) days prior to the actual sale, then immediately and shall withhold a sufficient portion of the purchase price to equal the amount of such tax or penalty until the selling operator produces a receipt from the Treasurer showing that



the tax or penalty has been paid or a tax clearance certificate from the City Treasurer stating that no tax or penalty is due. If the seller does not present a receipt or tax clearance certificate within thirty (30) days after such successor commences to conduct business, the successor shall deposit the withheld amount with the City Treasurer pending settlement of the account of the seller.

Section 24. That Chapter III, Article 5, section 35.0119 of the San Diego Municipal Code is hereby renumbered as section 35.0138 and is further amended to read as follows:

**SEC. 35.0138 LIABILITY OF SUCCESSOR FOR FAILURE TO WITHHOLD:  
NOTICE OF AMOUNT DUE**

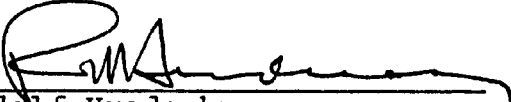
If the successor to the business fails to withhold a portion of the purchase price as required, it shall be liable to the City for the payment of the amount required to be withheld. Within thirty (30) days after receiving a written request from the successor for a tax clearance certificate stating that no tax or penalty is due, the City Treasurer shall either issue the certificate or mail notice to the successor at its address as it appears on the records of the City Treasurer of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate.

Section 25. The City Clerk is hereby authorized to reserve with Chapter III, Article 5 the following sections for further expansion of text: sections 35.0107 through 35.0110; sections 35.0119 through 0120; sections 35.0125 through 35.0126; and sections 35.0132 through 35.0135.

Section 26. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By

  
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Rudolf Hradecky  
Deputy City Attorney

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APR 17 1989

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

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR  
Mayor of The City of San Diego, California.

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

(Seal)

By *Ellen Board*, Deputy.

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

APR 3 1989, and on APR 17 1989

~~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 *Ellen Board*, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0-17278 Adopted APR 17 1989

89 MAR 16 PM 1:02

CITY CLERKS OFFICE  
SAN DIEGO, CA

[Faint, mostly illegible text, possibly a header or introductory paragraph]

Vol 3 380

VBB T 3 1090

[Faint, mostly illegible text, possibly a body paragraph]

[Faint, illegible text, possibly a signature or stamp area]

[Faint, illegible text, possibly a signature or stamp area]

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[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
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[illegible]	[illegible]	[illegible]	[illegible]

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VBB T 3 1090

Q

1118

MEMORANDUM

89 MAR 15 PM 1:32

CITY CLERK'S OFFICE  
SAN DIEGO, CA

[Faint, mostly illegible text, likely a memorandum or letter body]

TO: [illegible]

FROM: [illegible]

SUBJECT: [illegible]

[Several lines of faint text follow, including what appears to be a signature block and possibly a date or reference number.]

SA [illegible]  
 [illegible]  
 [illegible]  
 [illegible]

[illegible]  
 [illegible]  
 [illegible]

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CERTIFICATE OF PUBLICATION

OFFICE OF THE CITY CLERK  
202 C STREET, SECOND FLOOR  
SAN DIEGO, CA 92101

IN THE MATTER OF

NO.

AN ORDINANCE AMENDING CHAPTER III, ARTICLE 5 OF THE  
SAN DIEGO MUNICIPAL CODE BY AMENDING, ADDING OR RE-  
NUMBERING SECTIONS 35.0101-35.0138 RELATING TO THE  
TRANSIENT OCCUPANCY TAX.

**ORDINANCE NUMBER 0-17278 (NEW SERIES)**

**AN ORDINANCE AMENDING CHAPTER III, ARTICLE 5 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING, ADDING OR RENUMBERING SECTIONS 35.0101-35.0138 RELATING TO THE TRANSIENT OCCUPANCY TAX.**

This ordinance amends Chapter III, article 5 of the San Diego Municipal Code relating to the transient occupancy tax. The ordinance makes a number of changes affecting grammar, syntax and non-substantive language clarifications, and various sections are renumbered.

The following changes are further made to the transient occupancy tax code:

Section 35.0102(e) - clarifies the definition of "rent" and provides for the promulgation of additional rules and regulations by the City Treasurer.

Section 35.0102(g) - makes the resident manager or resident agent responsible for compliance with the transient occupancy tax ordinance.

Section 35.0111 (formerly 35.0104) - clarifies the exemptions from transient occupancy tax.

Section 35.0113(b) (formerly 35.0106) - makes it unlawful to operate a hotel without a transient occupancy tax certificate.

Section 35.0115 (new) - incorporates material included in former section 35.0107 and adds provisions obligating the operator to notify the purchaser or transferee of responsibility for any unpaid but collected transient occupancy taxes and imposes a requirement to certify in writing that such requirement was discharged. It is further made a misdemeanor for an operator to fail to comply with the provisions of this section.

Section 35.0117 (formerly 35.0109) - clarifies the authority of the City Treasurer to require operator to furnish additional information or provide adequate security when necessary to ensure the collection of any taxes due or to become due when the City Treasurer determines that the collection of such taxes may be jeopardized by the operator's actions or accounting procedures.

Section 35.0118 (formerly 35.0110) - revised to incorporate former section 35.0109(d) and to change the appeal process which now comprises a hearing board and hearing officer when the amount is in excess of \$750. This procedure makes the administrative remedy the final one and authorizes the hearing office to hear any appeal involving amounts in excess of \$750. It establishes rules of procedure and the authority of the hearing officer to rule upon issues of law or fact and determine the amount of tax or penalty finally due. The City Manager is authorized to promulgate supplementary rules and procedures for the conduct of the hearing and the proceedings and preparation of the record.

Section 35.0121 (formerly 35.0111) - clarifies the authority of the City Treasurer and authorized deputies to inspect accounting records, and makes it unlawful to refuse to allow an audit to be conducted after a lawful demand by the City Treasurer or City Auditor and Comptroller.

Section 35.0123 (formerly 35.0113) - authorizes the City Treasurer to resolve issues regarding the collection of taxes due, with concurrence of the City Attorney and the City Auditor and Comptroller. It further provides for the authority of the Treasurer to record a certificate of lien for unpaid taxes, to issue a warrant for collection of unpaid taxes, or take other enforcement action via seizure and sale for delinquent taxes.

THOMAS D. KELLEHER

I, \_\_\_\_\_, 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

ORDINANCE NUMBER 0-17278 (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:

MAY 1

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

Dated at San Diego, California this 1 day of MAY, 19 89.



(Signature)

8 1/2" x 2 x 92.06 = #183.34 Page 1 of 2

Section 35.0124 (formerly 35.0119) clarifies the violations and penalties for willful failure to collect a tax, for willful failure to file a required return, for filing a false return, for willful refusal to remit any tax collected, or for refusal to allow an audit. These provisions are misdemeanors. Criminal enforcement action shall not preclude civil or administrative action to collect taxes under this article. This revision further provides that it shall not be a defense to a violation that an operator failed to comply with the provisions of this article because of conflicting directions from a corporate headquarters.

Section 35.0136 (formerly 35.0117) provides that the City Treasurer and designated agents shall have authority, pursuant to Penal Code section 636.5, to issue notices to appear for violations of this article.

Section 35.0137 (formerly 35.0118) adds the requirement that an operator shall notify the City Treasurer at least 30 days in advance of any sale of the business.

A complete copy of the ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd floor, City Administration Building, 202 "C" Street, San Diego, CA 92101.

Introduced on April 3, 1989  
Passed and adopted by the Council of The City of San Diego on April 17, 1989.

AUTHENTICATED BY: MAUREEN O'CONNOR  
Mayor of The City of San Diego, California  
CHALRES G. ABDELNOUR  
City Clerk of The City of San Diego, California  
By ELLEN BOYARD, Deputy  
Pub. May 17, 1989