



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Aldinger and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Bruce Moe, Finance Director
Robert V. Wadden, Jr., City Attorney

DATE: September 18, 2007

SUBJECT: Consideration of an Appeal of the City's Transient Occupancy Tax as it Applies to Vacation Home Rentals

RECOMMENDATION:

Staff recommends that the City Council accept an appeal of the City's Transient Occupancy Tax (TOT) as it relates to vacation home rentals, and provide direction.

FISCAL IMPLICATION:

The City will collect approximately \$3.7 million in TOT in FY 2007-2008. Based upon FY 2006-2007 records, approximately 3.5% of all lodging revenue is derived from stays over 30 days. The current application of our TOT is to collect for the first 30 days, and discontinue the collection on the 31st day. If as a result of this appeal, the ordinance were to be interpreted that no TOT is due from the first day for stays lasting 30 days or more, we have estimated the reduction in TOT revenue to be approximately \$130,000 per year.

BACKGROUND:

Recently, the City commenced enforcement of the Transient Occupancy Tax (TOT) on vacation home rentals. Prior to this, the tax was not reported or collected for these short term rentals. TOT is provided for in chapter 8.20 of the Municipal Code, a copy of which has been provided as Attachment "A."

DISCUSSION:

An appeal of the City's transient occupancy tax has been filed by Michele McGarry, owner of a property which is rented out as a vacation rental (see Attachment "B"). Ms. McGarry rented the property in the month of July 2007 for a period of thirty-one days. Ms. McGarry contends and interprets the code to mean that no TOT was due for this rental period because the couple stayed longer than the definition of transient as stated in the Municipal Code ("Transient" is defined in the Code as "any individual who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a consecutive period of thirty (30) days or less").

Finance department staff, and the City Attorney, have advised Ms. McGarry that the proper interpretation and application of the code is to collect the tax for the first thirty days, and discontinue collection on day thirty-one. This is consistent with how the tax has been collected by the City from lodging operators in the past. Additionally, this past practice is the only logical methodology since the other method (no tax collection) would encourage transients to lengthen the stay to avoid the tax all together (e.g., paying for 31 days of lodging would actually cost less than paying 30 days if no tax is collected).

Section 8.20.090 provides for the appeal process for the TOT. Under this section, the appellant may submit a request to the City Council who shall have the authority to hear the appeal, and make the final binding decision. Staff is therefore requesting that Council hear the appeal and provide direction.

- Attachments: A. Municipal Code Section 8.20
B. McGarry letter of appeal

cc: Michele McGarry

Chapter 8.20 UNIFORM HOTEL/MOTEL OCCUPANCY TAX

8.20.010 Definitions.

8.20.020 Tax imposed.

8.20.030 Exemptions.

8.20.040 Operator's duties.

8.20.050 Registration.

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8.20.090 Appeals.

8.20.100 Records.

8.20.110 Refunds.

8.20.120 Actions to collect.

8.20.130 Violations of provisions.

8.20.140 Information confidential.

8.20.010 Definitions.

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

A. "Person" shall mean 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.

B. "Hotel" shall mean 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, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof.

C. "Occupancy" shall mean the actual use or possession, or the right to actual use or possession, of any room, or portion thereof, in any hotel for dwelling, lodging or sleeping purposes by the same individual or individuals for a consecutive period of thirty (30) days or less.

D. "Transient" shall mean any individual who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a consecutive period of thirty (30) days or less.

E. "Rent" shall mean 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.

F. "Operator" shall mean 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 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 principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

G. "Tax Administrator" shall mean the Director of Finance.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964, as amended by § 1, Ord. 1278, eff. July 15, 1972; § 1, Ord. 1790, eff. April 1, 1989; § 2, Ord. 1954, eff. October 3, 1996)

8.20.020 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 ten percent (10%) 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 or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. 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. (§ 29, Ord. 1458, eff. June 17, 1976, as amended by § 1, Ord. 1578, eff. April 3, 1980; § 1, Ord. 1739, eff. November 20, 1986; § 2, Ord. 1987, eff. November 5, 1998)

8.20.030 Exemptions.

No tax shall be imposed upon:

A. 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; or

B. Any Federal or State officer or employee when on official business; or any employee of a foreign government who is exempt by reason of express provisions of Federal law or international treaty. No exemption shall be granted except upon a claim thereafter made at the time the rent is collected and under penalty of perjury upon a form prescribed by the Tax Administrator.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964; § 1, Ord. 1824, eff. September 6, 1990)

8.20.040 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 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.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964)

8.20.050 Registration.

On or before September 19, 1964, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting an occupancy to transients shall register such hotel with the Tax Administrator and obtain from him a "Uniform Hotel/Motel Occupancy Registration Certificate" which shall at all times be posted in a conspicuous place on the premises. Such certificate shall, among other things, 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 Uniform Hotel/Motel Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Hotel/Motel Occupancy Tax Law by registering with the Tax Administrator for the purpose of collecting from transients the Hotel/Motel

Occupancy Tax and remitting such tax to the Tax Administrator. This certificate shall not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including, but not limited to, those requiring a permit from any board, commission, department, or office of this City. This certificate shall not constitute a permit.”

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964)

8.20.060 Reporting and remitting.

Each operator shall, on or before the twentieth day of the month following the close of each calendar month, or at the close of any shorter reporting period which may be established by the Tax Administrator, make a return to the Tax Administrator, on forms provided by him, of the total rents charged and received and the amounts of tax collected for transient occupancies. At the time the return is filed, the full amount of tax collected shall be remitted to the Tax Administrator. Any operator whose estimated tax liability is less than two thousand dollars (\$2,000.00) per quarter, with prior approval of the Tax Administrator, may pay on a quarterly basis, due twenty (20) days after the end of each quarter, the full amount of the tax collected which shall be remitted to the Tax Administrator together with the forms specified above. The Tax Administrator 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. Returns and payments shall be due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to the provisions of this chapter shall be held in trust for the account of the City until payment thereof is made to the Tax Administrator.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964, as amended by 1, Ord. 1591, eff. December 18, 1980; § 1, Ord. 1730, eff. June 19, 1986; § 3, Ord. 1954, eff. October 3, 1996)

8.20.070 Penalties and interest.

A. Original Delinquency. 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 (10%) of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any operator who shall fail to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty in the amount of ten percent (10%) of the tax in addition to the amount of the tax and the ten percent (10%) 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 twenty-five percent (25%) 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-half of one percent (1/2%) 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 Merged with Tax. Every penalty imposed, and 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.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964)

8.20.080 Failure to collect and report tax: Determination of tax by Tax Arbitrator.

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 he may deem best to obtain the facts and information on which to base his estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by the provisions of this chapter and payable by any operator who has failed or refused to collect the same 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 his last known place of address. Such operator may, within ten (10) days after the service or mailing of such notice, 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 (5) 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 fifteen (15) days unless an appeal is filed as provided in Section 8.20.090 of this chapter.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964)

8.20.090 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 Council by filing a notice of appeal with the City Clerk within fifteen (15) days after the service or mailing of the determination of the tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator at his last known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed in this chapter for the service of the notice of hearing. Any amount found to be due shall immediately become due and payable upon the service of the notice.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964)

8.20.100 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 (3) years, all records as may be necessary to determine the amount of such tax as he 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.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964)

8.20.110 Refunds.

A. Whenever the amount of any such tax, interest, or penalty has been overpaid, or paid more than once, or erroneously or illegally collected or received by the City, 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 (3) years after the date of payment. The claim shall be on forms furnished by the Tax Administrator.

B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in 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 tax was paid by the transient directly to the Tax Administrator, or 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 right thereto by written records showing entitlement thereto.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964)

8.20.120 Actions to collect.

Any tax required to be paid by any transient pursuant to the provisions of this chapter shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City pursuant to the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964)

8.20.130 Violations of provisions.

Any operator or other person who fails or refuses to register as required, 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 and shall be punishable as set forth in Section 1.04.010 of this Code. Any person required to make, render, sign, or verify any report or claim and who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made shall be guilty of a misdemeanor and punishable as aforesaid.

(§ 1, Ord. 972, eff. August 20, 1964; tax operative eff. September 1, 1964)

8.20.140 Information confidential.

The statements filed pursuant to the provisions of this chapter shall be deemed confidential in character and shall not be subject to general public inspection. It shall be the duty of the Licensing Authority to preserve and keep the statements so that the contents thereof may not become known except to the persons charged by law with the administration of this chapter provided; however, that any and all such statements may be presented and used as evidence in any trial or proceeding relating to a violation of this chapter.

(Ord. No. 1894, Enacted, 01/20/94)

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August 31, 2007

Lisa Tamura
City Clerk
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

Subject: Notice of Appeal for Transient Occupancy Tax claim for July 2007

Dear Lisa,

In the month of July, I had a long-term renter of 31 days. I am being told by the finance department that I owe Transient Occupancy Tax on the first 30 days of that couple's stay but that is not the way the code reads.

Under definitions within the code (8.20.010), you will find:

- "Occupancy" shall mean the actual use or possession, or the right to actual use or possession, of any room, or portion thereof, in any hotel for dwelling, lodging, or sleeping purposes by the same individual or individuals for a consecutive period of thirty (30) days or less.
- "Transient" shall mean any individual who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a consecutive period of thirty (30) days or less.

Therefore, my tenants in July were not transient and are not subject to the Transient Occupancy Tax.

Please consider this my formal appeal and advise me on any additional forms I need to file.

Sincerely,



Michele McGarry

CC: City Council
Geoff Dolan, City Manager
Bruce Moe, Finance Director
Robert Wadden, City Attorney