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: December 18, 2007

SUBJECT: Introduction of Ordinance Amending Section 8.20.010 of Chapter 8.20 of the Manhattan Beach Municipal Code to Clarify the Meaning of "Transient" Within the Uniform Hotel/Motel Occupancy Tax Ordinance

---

RECOMMENDATION:
Staff recommends that the City Council waive further reading and introduce Ordinance No. 2110 amending Section 8.20.010 of the Municipal Code to clarify the meaning of "transient" within the Uniform Hotel/Motel Occupancy Tax ordinance.

FISCAL IMPLICATION:
There is no direct financial implication in enacting this Ordinance. The Ordinance simply clarifies our past practice. As a point of information, the City will collect approximately $3.7 million in Transient Occupancy Tax (TOT) in FY 2007-2008. Based upon FY 2006-2007 records, approximately 3.5% of all lodging revenue for Manhattan Beach hotels is derived from stays over 30 days.

BACKGROUND:
At the September 18, 2007 meeting, the City Council considered, and subsequently denied an appeal of the City's TOT. The appeal was based upon the appellant's interpretation of the Municipal Code that there was to be no collection of any tax if a person stayed in a hotel or qualifying lodge for more than thirty days. This interpretation is contrary to our past practice of collecting the tax for the first thirty days, and discontinuing collection beginning on the thirty-first day, when the person is no longer considered a transient for purposes of the tax. While the City Council denied the appeal, they directed staff to make changes to the City's Municipal Code in order to clarify the transient occupancy tax.

DISCUSSION:
The suggested changes to the code provide clarification on when the person renting a hotel room or vacation home is considered transient, and therefore subject to the tax. The changes codify our past practice in that the tax applies for the first thirty days of a person's stay. Upon the thirty-first day, the person is no longer considered a transient subject to the tax.

Because the proposed ordinance does not impose a new tax or expand an existing tax, but merely clarifies the terms of an existing tax, voter approval under Proposition 218 and Proposition 62 is not necessary.

The proposed changes are presented in redline form for review purposes. If the Council approves these changes, staff recommends that the City Council waive further reading and introduce Ordinance No. 2110. The final ordinance will be approved at the January 15, 2008 Council meeting, and will take effect 30 days thereafter.

Attachments: A.   Ordinance No. 2110 (Draft)

ORDINANCE NO. 2110

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MANHATTAN BEACH, CALIFORNIA, AMENDING SECTION 8.20.010
OF CHAPTER 8.20 OF THE MANHATTAN BEACH MUNICIPAL CODE
TO CLARIFY THE MEANING OF "TRANSIENT"

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES
ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby finds as follows:

A. The City has always imposed the Transient Occupancy Tax ("TOT") on the first 30
days of a tenancy at a "hotel" even if the tenancy eventually exceeded 30 days;
B. Some vacation rental property owners have expressed their concern that the
present language of the code is ambiguous;
C. In order to clarify the existing intent of the TOT ordinance it is in the best interests
of the City to remove any ambiguity in the existing code language;
D. Because this is a clarification of an existing code, is consistent with past practice in
enforcing the code and the scope of the coverage, and the amount of the tax is not
affected, this ordinance does not "impose" a new tax for purposes of Proposition
218 or Proposition 62.

	Deleted: ou
	Deleted: and
	Deleted: are

SECTION 2. Section 8.20.010 of Chapter 8.20 of Title 8 of the Manhattan Beach
Municipal Code is hereby amended in its entirety to read as follows:

"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. Should the tenancy of any individual at a "Hotel" as defined
above exceed thirty (30) days, the tax shall be imposed on the first thirty (30) days of said
tenancy, but shall cease being imposed on the thirty-first (31st) consecutive day and for every
consecutive day of tenancy thereafter.
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."

SECTION 3. All other provisions of Manhattan Beach Municipal Code shall remain unchanged and continue in full force and effect.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 6. This ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 7. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2007.

Ayes:
Noes:
Absent:
Abstain:

_____
Mayor, City of Manhattan Beach, California

ATTEST:

_____
City Clerk

2