



**Auditor-  
Controller/Treasurer-Tax  
Collector  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

ALLEN ISHIDA  
District One

PETE VANDER POEL  
District Two

PHILLIP A. COX  
District Three

J. STEVEN WORTHLEY  
District Four

MIKE ENNIS  
District Five

**AGENDA DATE:** March 16, 2010

Public Hearing Required	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Advertised Published Notice	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Resolution, Ordinance or Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>

CONTACT PERSON: Hiley Wallis    PHONE: 636-5265

**SUBJECT:** Revision of Transient Occupancy Tax Ordinance

**REQUEST(S):**

That the Board of Supervisors:

1. At its regular meeting on March 16, 2010, introduce and waive the first reading of an ordinance amending sections 1-05-1355, 1-05-1365, 1-05-1380, 1-05-1385, 1-05-1420, 1-05-1425, 1-05-1435, 1-05-1455, 1-05-1460, 1-05-1465 AND 1-05-1470 of the Tulare County Ordinance Code. The proposed ordinance will update the definitions and exemptions of the Article and the location of where to obtain registration and reporting forms. The new sections to the proposed ordinance will add procedures for the operator to obtain a tax clearance certificate, for tax collector to waive penalties and interest and to collect transient occupancy tax from successor or assignees.
2. Direct the Clerk of the Board to publish the ordinance summary and post a full copy of the proposed ordinance in the Office of the Clerk of the Board.
3. At its regular meeting on April 6, 2010, introduce and waive the second reading of an ordinance amending sections 1-05-1355, 1-05-1365, 1-05-1380, 1-05-1385, 1-05-1420, 1-05-1425, 1-05-1435, 1-05-1455, 1-05-1460, 1-05-1465 AND 1-05-1470 of the Tulare County Ordinance Code, and direct the Clerk of the Board to publish a copy of the ordinance as prescribed by law.

**SUBJECT:** Revision of Transient Occupancy Tax Ordinance

**DATE:** March 16, 2010

**SUMMARY:**

Per the Board's instructions, the proposed ordinance will update the definitions and exemptions of the Article and the location of where to obtain registration and reporting forms. The new sections to the proposed ordinance will add procedures for the operator to obtain a tax clearance certificate, for tax collector to waive penalties and interest and to collect transient occupancy tax from successor or assignees.

Several years ago, the Board expressed the desire to exempt non-profit organizations from collecting and paying the Transient Occupancy Tax. This has been clarified in the update of the exemption language.

**FISCAL IMPACT/FINANCING:**

These revisions will allow for additional revenues to the County from the Transient Occupancy Taxes collected.

**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

The County's five-year strategic plan includes the Organizational Performance Initiative to continuously improve organizational effectiveness and fiscal stability. The suggested revisions will clarify several sections of the ordinance code and allow the Tax Collector to ensure uniformity and equality in the collection of Transient Occupancy Taxes. The changes will provide the public with quality information as to when Transient Occupancy Tax should be collected.

**ALTERNATIVES:**

The Board could chose to approve partial or none of the suggested revisions to the ordinance code. This is not recommended as the current wording of the ordinance is not clear and has caused confusion with county staff and the public.

**INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:**

None

**SUBJECT:** Revision of Transient Occupancy Tax Ordinance

**DATE:** March 16, 2010

**ADMINISTRATIVE SIGN-OFF:**

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Name

Title

Cc: Auditor/Controller  
County Counsel  
County Administrative Office (3)

Attachment(s)

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF Revision of )  
Transient Occupancy Tax Ordinance )  
)

RESOLUTION NO. \_\_\_\_\_  
AGREEMENT NO. \_\_\_\_\_

UPON MOTION OF SUPERVISOR \_\_\_\_\_, SECONDED BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD \_\_\_\_\_  
\_\_\_\_\_, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST: JEAN M. ROUSSEAU  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

1. At its regular meeting on March 16, 2010, introduced and waived the first reading of an ordinance amending sections 1-05-1355, 1-05-1365, 1-05-1380, 1-05-1385, 1-05-1420, 1-05-1425, 1-05-1435, 1-05-1455, 1-05-1460, 1-05-1465 AND 1-05-1470 of the Tulare County Ordinance Code. The proposed ordinance will update the definitions and exemptions of the Article and the location of where to obtain registration and reporting forms. The new sections to the proposed ordinance will add procedures for the operator to obtain a tax clearance certificate, for tax collector to waive penalties and interest and to collect transient occupancy tax from successor or assignees.
2. Directed the Clerk of the Board to publish the ordinance summary and post a full copy of the proposed ordinance in the Office of the Clerk of the Board.

**BEFORE THE BOARD OF SUPERVISORS  
 COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF Revision of )  
 Transient Occupancy Tax Ordinance )        **RESOLUTION NO. \_\_\_\_\_**  
    )        **AGREEMENT NO. \_\_\_\_\_**

             UPON MOTION OF SUPERVISOR \_\_\_\_\_,        SECONDED        BY  
 SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
 BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD \_\_\_\_\_  
 \_\_\_\_\_, BY THE FOLLOWING VOTE:

AYES:  
 NOES:  
 ABSTAIN:  
 ABSENT:

ATTEST:    JEAN M. ROUSSEAU  
                                  COUNTY ADMINISTRATIVE OFFICER/  
                                  CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
                                  Deputy Clerk

\* \* \* \* \*

1. At its regular meeting on April 6, 2010, introduced and waived the second reading of an ordinance amending sections 1-05-1355, 1-05-1365, 1-05-1380, 1-05-1385, 1-05-1420, 1-05-1425, 1-05-1435, 1-05-1455, 1-05-1460, 1-05-1465 AND 1-05-1470 of the Tulare County Ordinance Code, and directed the Clerk of the Board to publish a copy of the ordinance as prescribed by law.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTIONS 1-05-1355, 1-05-1365, 1-05-1380, 1-05-1385, 1-05-1420, 1-05-1425, 1-05-1435, 1-05-1455, 1-05-1460, 1-05-1465 AND 1-05-1470 OF ARTICLE 11 OF CHAPTER 5 OF PART 1 OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO THE TRANSIENT OCCUPANCY TAX.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. Section 1-05-1355 is amended to read:

Section 1-05-1355. DEFINITIONS

Except where the context otherwise requires, the following definitions shall govern the construction of this Article:

(a) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(b) "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 includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, or other similar structure or portion thereof. "Hotel" also includes a mobile home, as defined in section 18008 of the Health and Safety Code of the State of California, which is located outside a mobile home park when the tenant is not an employee of the owner or operator of the mobile home. "Hotel" does not include a

hospital room, medical clinic, convalescent home or home for the aged. Also, "hotel" does not include a private home, vacation cabin or similar facility or portion thereof which is rented by a person who is not regularly engaged in the business of renting such facilities and does so only occasionally and incidentally to his or her own use thereof; provided that the burden of establishing that the housing or facility is not a hotel as defined in this Section shall be upon the operator of the facility, who shall file with the Tax Collector such information as the Tax Collector may require to establish and maintain such status.

(c) "Occasionally and incidentally" means a period fewer than fifteen (15) days total during the calendar year. For the purpose of counting days in this subdivision, any day for which any rent is charged by the operator shall be deemed a full day.

(d) "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 for any period of time. "Any Period of Time" means any length of time, including hourly, partial day, and full day occupancy. Occupancy also includes the use or possession, or right to use or possess, of any room or rooms or portion thereof, which may be used for dwelling, lodging, or sleeping purposes, even if the room is only rented for hourly or partial day occupancy associated with an event including but not limited to a conference, banquet, or wedding.

(e) "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 thirty (30) consecutive calendar days or less. For the purpose of counting

consecutive days, each day for which full rent is charged by the operator shall be deemed a full day.

(f) "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom.

(g) "Operator" means the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sub lessee, mortgagee in possession, licensee, or any other capacity. If the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Article and shall have the same duties and liabilities as his or her principal. 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) "Tax Collector" means the Auditor-Controller/Treasurer-Tax Collector of the County of Tulare.

Section 2. Section 1-05-1365 is amended to read:

Section 1-05-1365. EXEMPTIONS: No tax shall be imposed upon the following persons and occupancies:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose the tax herein provided.

(b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.



(c) Any occupancy, by one or more occupants, for which the total rent paid by the occupants is less than Two Dollars (\$2.00) a day.

(d) Any person in the performance of official duties as an officer or employee of a city, county, state or federal government.

(e) Any person in the performance of official duties as a member of an organization having qualification as a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

No exemption shall be granted under subsections (a) or (b) of this section unless a claim of exemption on the form prescribed by the Tax Collector is executed by the transient under penalty of perjury and filed with the operator at the time rent is collected.

Section 3. Section 1-05-1380 is amended to read:

**Section 1-05-1380. REGISTRATION OF OPERATORS**

Every person engaging or about to engage in business as an operator of a hotel in the unincorporated area of Tulare County, shall register with the Tax Collector on a form which may be obtained at the Office of the Tax Collector or on the Tulare County Tax Collector's website. Persons engaged in such business must so register not later than January 1, 1965, or within thirty (30) days after commencing business, whichever is later, but such privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of collection and remittance of tax on and after the date of imposition thereof, regardless of registration. Such registration form shall set forth the name under which such person transacts or intends to transact business, the location of his or her place or places of business and such other information to facilitate the collection of the tax as the Tax Collector may require. The registration form shall be

signed by the owner if a natural person, by a member or partner in case of an association or partnership, and by an executive officer or some person specifically authorized by the corporation to sign the registration form in the case of a corporation. The Tax Collector shall, within ten (10) days after receiving such registration form, issue without charge a certificate of authority to each registrant to collect the tax from transients, together with a duplicate thereof for each additional place of business of such registrant. Such certificates shall be nonassignable and nontransferable and shall be surrendered within five (5) days to the Tax Collector upon the cessation of business at the location named or upon sale or transfer of the hotel. Each certificate shall be prominently displayed in the hotel so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

Said certificate shall contain the following information:

- (a) The name of the operator.
- (b) The address of the hotel.
- (c) The date upon which the certificate was issued.
- (d) The following statement:

This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Occupancy Tax Law of the County of Tulare by registering with the Tax Collector for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Collector. This certificate does 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 locally applicable laws, including but not limited to those requiring a permit from

any board, commission, department or office of this County. This certificate does not constitute a permit.

(e) Such additional information as may be required by the Tax Collector.

Section 4. Section 1-05-1385 is amended to read:

**Section 1-05-1385. REPORTING AND REMITTING**

Each operator shall, on or before the last day of the calendar month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Collector, file a return with the Tax Collector, on forms which may be obtained at the Office of the Tax Collector or on the Tulare County Tax Collector's website. The operator's return shall be complete when it is filed and it shall state the total rents charged and received and the amount of tax collected from transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Collector. The Tax Collector may establish shorter reporting periods for any operator if he or she deems it necessary in order to ensure collection of the tax and he or she may require additional information in the return. Returns and payments are due within five (5) days upon cessation of business for any reason. All taxes collected by operators pursuant to this Article shall be held in trust for the account of the County until payment thereof is made to the Tax Collector.

Section 5. Section 1-05-1420 is amended to read:

**Section 1-05-1420. FAILURE TO COLLECT AND REPORT TAX**

(a) If any operator shall fail or refuse to collect or remit the tax or any portion thereof required by this Article or to file, within the time provided in this Article, any report or return of said tax, the Tax Collector shall proceed in such manner as he or she

mailing of such notice unless an appeal is taken as provided in section 1-05-1435 of this Article.

Section 6. Section 1-05-1425 is amended to read:

Section 1-05-1425. DEFICIENCY DETERMINATIONS

(a) If the Tax Collector is not satisfied with a return filed by an operator or the amount of the operator's alleged tax liability, the Tax Collector shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the Tax Collector shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this Article, the Tax Collector shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this Article. In any case where determination is made, the Tax Collector shall give a 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 at his or her last known address.

(b) The operator may, within ten (10) days after service or mailing of such notice, apply in writing to the Tax Collector for a hearing on the amount assessed. If an application by the operator for a hearing is not received within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Collector shall become final and conclusive and immediately due and payable within five (5) days following the ten (10) day period after the service or mailing of notice. If such application is timely made, the Tax Collector shall give not less than five (5) days of written notice in the manner prescribed herein to the operator to show cause, at a time and place fixed in such notice, why the assessed amount should not be fixed for such tax, interest and penalties.

(c) At such hearing, the operator may appear and offer evidence why the assessed amount, including interest and penalties, should not be so fixed.

(d) After such hearing the Tax Collector shall determine the proper tax to be remitted and shall thereafter give written notice to the operator in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The Tax Collector's determination shall be presumed to be correct. In connection with all appeals, the operator has the burden of proving that the Tax Collector's determination is incorrect, and the burden of producing sufficient evidence to establish the correct tax liability. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 1-05-1435.

Section 7. Section 1-05-1435 is amended to read:

#### Section 1-05-1435. APPEALS

Any operator aggrieved by any decision of the Tax Collector may appeal to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of Supervisors within fifteen (15) days after the serving or mailing of the notice of the decision. The Board of Supervisors shall fix a time and place for hearing such appeal and the Clerk of the Board of Supervisors shall give notice in writing to such operator at his or her last known address. The decision of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator at his or her last known address. Any amount found to be due shall be immediately due and payable within five (5) days upon the service of said notice.

Section 8. Section 1-05-1455 is amended to read:

Section 1-05-1455. TAX CLEARANCE CERTIFICATE

(a) Pursuant to Revenue and Taxation Code Section 7283.5, and as that section from time to time be amended, a purchaser, transferee, or other person or entity attempting to obtain ownership for a transient occupancy property, may request in writing from the Tax Collector for the issuance of a tax clearance certificate stating the amount of tax and any accrued penalties and interest due and owing, if any.

(b) The Tax Collector shall, within ninety (90) days of the receipt of the written request for a tax clearance certificate issue the tax clearance certificate, or may conduct an audit of the subject transient occupancy property. Any such audit must be completed within ninety (90) days after the date the records of the subject transient occupancy property have been made available to the Tax Collector and a tax clearance certificate issued within thirty (30) days of the completion of the audit.

(c) If following an audit the Tax Collector determines that the current operator's records are insufficient to assess the amount of tax due and owing, the Tax Collector shall, within thirty (30) days of making that determination, notify the prospective purchaser, transferee or other person or entity that a tax clearance certificate will not be issued.

(d) If the Tax Collector does not comply with the request for a tax clearance certificate, the purchaser, transferee or other person or entity that obtains ownership for the transient occupancy property shall not be liable for any transient occupancy tax obligation incurred prior to the date of the purchase or transfer of the property.

(e) The tax clearance certificate shall state the following:

- (1) The amount of tax, interest and penalties then due and owing;
- (2) The period of time for which the tax clearance certificate is valid; and
- (3) That the purchaser, transferee, or other person or entity may rely upon the tax clearance certificate as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.

(f) Any purchaser, transferee, or other person who does not obtain a tax clearance certificate under this section, or who obtains a tax clearance certificate that indicates that tax is due and owing and fails to withhold, for the benefit of the County, sufficient funds in the escrow account for the purchase of the property to satisfy the transient tax liability, shall be held liable for the amount of tax due and owing.

(g) The fee for issuance of a tax clearance certificate shall be established by resolution of the Board of Supervisors.

Section 9. Section 1-05-1460 is amended to read:

Section 1-05-1460. WAIVER OF PENALTY AND INTEREST

(a) Any penalty or interest resulting from tax delinquency may be canceled by the Tax Collector upon a finding that the failure to make timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect, provided the principal payment for the proper amount of tax due is made within five (5) days upon notification.

(b) In the event a federal, state or local declared disaster affecting the unincorporated area of Tulare County results in the physical impairment of public infrastructure, including, but not limited to, roads, streets, and other public highways, and such impairment prevents public access to hotel facilities covered by this chapter, the Tax Collector may extend the period of time, without penalty, for reporting and remitting taxes. In such instances, the reporting date and payment date shall extend to the end of the month after the next succeeding calendar quarter following the expiration date of the declared disaster.

Section 10. Section 1-05-1465 is amended to read:

**Section 1-05-1465. FAILURE TO COLLECT AND REPORT – SUCCESSORS OR ASSIGNEES LIABLE FOR PAYMENT**

If any operator liable for any amount under this chapter sells or quits their business, the successors or assignees shall withhold a sufficient portion of the purchase price to cover the amount for which the operator is liable until the former owner produces either a receipt from the tax collector showing that payment has been made or a certificate stating that no amount is due.

Section 11. Section 1-05-1470 is amended to read:

**Section 1-05-1470. FAILURE TO COLLECT AND REPORT - NOTICE TO SUCCESSOR - LIMITED LIABILITY**

(a) If the purchaser of a business fails to withhold tax from purchase price as required by 1-05-1465, the purchaser shall be personally liable for the payment of the amount required to be withheld to the extent of the purchase price, valued in money.



(b) Within thirty days after receiving a written request from the purchaser for registration certificate, the tax collector shall either issue the certificate or mail notice to the purchaser, at the address as it appears on the records of the tax collector, of the amount that must be paid as a condition of issuing the certificate. Failure of the tax collector to timely mail the notice will release the purchaser from any further obligation to withhold taxes or penalties from the purchase price as provided in 1-05-1465.

(c) The time within which the obligation of a successor may be liable shall begin at the time the operator sells a business or at the time that the determination against the operator becomes final, whichever event occurs later.

Section 12. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof a summary shall be published once in the \_\_\_\_\_, a newspaper printed and published in the County of Tulare, State of California, together with the names of the Board of Supervisors voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the \_\_\_\_ day of \_\_\_\_\_, 2010, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOES: \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JEAN ROUSSEAU  
County Administrative Officer/  
Clerk of the Board of Supervisors  
of the County of Tulare

By: \_\_\_\_\_  
Deputy