

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING SUBSECTIONS A, B, C, D, F, I AND L OF SECTION 3.64.010, SUBSECTION A OF SECTION 3.64.100 AND SECTIONS 3.64.020, 3.64.040, 3.64.050, 3.64.080, 3.64.090, 3.64.100, 3.64.110 AND 3.64.120 OF CHAPTER 3.64; AND BY ADDING SUBSECTIONS M, N AND O TO SECTION 3.64.010, AND ADDING SECTIONS 3.64.055, 3.64.085, 3.64.112, 3.64.115, 3.64.130, 3.64.150, AND 3.64.160 TO CHAPTER 3.64, ALL RELATING TO TRANSIENT OCCUPANCY TAX

WHEREAS, Chapter 3.64 of the Long Beach Municipal Code establishes the imposition and collection of transient occupancy tax on hotels operating in the City of Long Beach; and

WHEREAS, Sections 3.64.030 and 3.64.035 of the Long Beach Municipal Code impose a transient occupancy tax totaling twelve percent (12%) of the rent upon every transient for occupancy of a guest room in the City, as approved by the Long Beach City Council in 1980 and 1993 in Ordinance Numbers C-5584 and C-7121 respectively; and

WHEREAS, the transient occupancy tax is imposed on all room occupancies where an individual person stays not more than thirty (30) consecutive days at his own expense or at the expense of another pursuant to Subsection L of Section 3.64.010 of Chapter 3.64 of the Long Beach Municipal Code; and

WHEREAS, Proposition 218 permits the continued collection of taxes existing before January 1, 1995 without further taxpayer ratification; and

1 WHEREAS, certain changes occurred in the California Revenue &
2 Taxation Codes in 2004 pertaining to transient occupancy tax procedures and
3 additionally the City seeks to clarify the existing law as to the tax burden and obligations
4 created by Chapter 3.64 involving the imposition of transient occupancy tax; and

5 WHEREAS, in order to more clearly express the intent of Chapter 3.64
6 that the transient occupancy tax shall apply to any individual who, for a consideration,
7 uses or has the right to use any guest room for not more than thirty (30) consecutive
8 days; and

9 WHEREAS, such amendments to Chapter 3.64 as contained herein,
10 which reflect the current transient occupancy tax of twelve percent (12%), do not
11 represent any change in the rate or amount of the tax, or the persons taxed, and do not
12 increase the amount of tax paid by any person doing business in the City;

13 NOW, THEREFORE, the City Council of the City of Long Beach ordains
14 as follows:

15
16 Section 1. Subsection A of Section 3.64.010 of the Long Beach Municipal
17 Code is amended to read as follows:

18 A. "Business license section" means the Business License
19 Section, City department of Financial Management.
20

21 Sec. 2. Subsection B of Section 3.64.010 of the Long Beach Municipal
22 Code is amended to read as follows:

23 B. "Guest room" means any room or rooms or space or portion
24 thereof, in a "hotel", as defined in this section, occupied, or intended,
25 arranged or designed for occupancy.
26

27 Sec. 3. Subsection C of Section 3.64.010 of the Long Beach Municipal
28 Code is amended to read as follows:

1 C. "Hotel" means any apartment house, auto court,
2 boardinghouse, bungalow court, club, hotel, inn, lodging house, motel,
3 rooming house, camp, studio, dormitory, tourist home or other structure,
4 private or public, or portion thereof, within the City offering or renting to
5 transients for lodging, dwelling, or sleeping purposes, in guest rooms for
6 compensation, and shall further include any trailer court, trailer spaces, or
7 combinations of such spaces and trailers, including mobile homes, time-
8 share units not occupied by the time-share owner or a guest of the owner,
9 and docked boats and ships, occupied or intended or designed for
10 occupancy by transients for dwelling, lodging or sleeping purposes. It
11 does not mean any convalescent home or facility, home for the aged,
12 hospital, jail, military installation, fraternity or sorority house recognized
13 and approved by a Long Beach educational institution, nor does it mean a
14 structure operated exclusively by an association or corporation for
15 religious, charitable or educational purpose or purposes, no part of the
16 earnings of which association or corporation inures to the benefit of any
17 private shareholder or individual.

18
19 Sec. 4. Subsection D of Section 3.64.010 of the Long Beach Municipal
20 Code is amended to read as follows:

21 D. "Occupancy" means the use or possession, or the right to the
22 use or possession, of any guest room or rooms or space or portion thereof
23 in any hotel for lodging, dwelling, or sleeping purposes.

24
25 Sec. 5. Subsection F of Section 3.64.010 of the Long Beach Municipal
26 Code is amended to read as follows:

27 F. "Operator" means the person who is either the proprietor of the
28 hotel or any other person who has the right to rent rooms within the hotel,

1 whether in the capacity of owner, lessee, licensee, mortgagee in
2 possession, sublessee or any other capacity. The owner or proprietor
3 who is primarily responsible for operation of the hotel shall be deemed to
4 be the principal operator. If the principal operator performs or assigns its
5 functions, in whole or in part, through a managing agent, a booking agent,
6 a room seller or room reseller, or any other agent or contractee, including
7 but not limited to on-line room sellers, on-line room resellers, and on-line
8 travel agents, of any type or character other than an employee, those
9 persons shall be deemed to be secondary operators.

10 A secondary operator shall be deemed an operator for purposes of
11 this chapter and shall have the same duties and liabilities as the principal
12 operator, including but not limited to the collection and remittance of the
13 full amount of the tax owed under the provisions of this chapter to the City.
14 A secondary operator may satisfy its obligations under the provisions of
15 this chapter by submitting the full amount of tax due under this chapter,
16 with credit for any taxes remitted to any other operator, either directly to
17 the Director or through the principal operator. The principal operator may
18 satisfy any potential liability it may have for taxes owed by a secondary
19 operator by entering into a legally binding agreement with that secondary
20 operator to remit the portion of the tax owed by the secondary operator
21 directly to the City. Upon request, the principal operator shall provide the
22 Director with copies of any such agreements.

23 Compliance with the provisions of this chapter by either the
24 principal operator or the secondary operator shall be deemed compliance
25 by both and no provision of this chapter shall be deemed to require the
26 payment and/or remittance of any amount other than the full amount of
27 the tax owed by the transient.
28

1 Sec. 6. Subsection I of Section 3.64.010 of the Long Beach Municipal
2 Code is amended to read as follows:

3 I. "Rent" means the consideration charged, whether or not
4 received, for occupancy of room or space in a hotel, valued in money,
5 whether received in money, or goods, labor, or otherwise, including all
6 receipts, cash, credits, property or services of any kind or nature, without
7 any deduction therefrom whatsoever, including, but not limited to, credit
8 card charges. If the charge made by a hotel includes any charge and
9 services in addition to that for occupancy, such as food, then such
10 amount shall be distinctly set out and billed as separate items with the
11 appropriate tax charged. Nothing in this definition shall be construed to
12 mean that rent is charged directly or indirectly for the occupancy of room
13 or space in a hotel when that room or space is provided to the occupant
14 as a compliment from the operator and where no consideration is charged
15 to or received from any other person.
16

17 Sec. 7. Subsection L of Section 3.64.010 of the Long Beach Municipal
18 Code is amended to read as follows:

19 L. "Transient" means any occupant, who, for a period of not more
20 than thirty (30) consecutive days, either at his own expense or at the
21 expense of another, obtains the right of occupancy of a guest room, for
22 which occupancy rent is charged.

23 For an individual to avoid being deemed a transient during a thirty
24 (30) consecutive day period, the individual exercising occupancy rights in
25 a hotel must, prior to occupancy, enter into a written agreement with the
26 hotel operator. The written agreement shall obligate a person to pay rent
27 for the individual's occupancy for a period of at least thirty-one (31)
28 consecutive days. The minimum substance of such written agreement

1 shall contain the guest's name, address, period of occupancy , rent and
2 signature. If the written agreement requirements are satisfied, the
3 individual exercising said occupancy rights shall not be considered a
4 transient under this Chapter and, therefore, shall not be subject to the tax
5 imposed pursuant to Sections 3.64.030 and 3.64.035. In the absence of
6 said written agreement prior to the commencement of occupancy, the
7 individual shall be deemed a transient and subject to the tax until the
8 qualifying period (30 consecutive days) for non-transient status has been
9 satisfied. On the thirty-first consecutive day, and on each consecutive day
10 thereafter, the tax shall not apply. If the individual fails to stay for at least
11 thirty-one (31) consecutive days, irrespective of the written agreement,
12 then the tax shall be due.

13 Nothing in this definition or this chapter shall be construed as
14 prohibiting the operator from refunding or making a credit allowance to a
15 person who has paid tax as required by this chapter where it is
16 established that the person was not a "transient" as defined herein or was
17 exempt from the tax for any other reason, or had for any reason overpaid
18 the tax.

19 In determining whether an individual is a transient, uninterrupted
20 periods of time extending both prior and subsequent to the effective date
21 of the ordinance codified herein may be considered.

22
23 Sec. 8. A new Subsection M is added to Section 3.64.010 of the Long
24 Beach Municipal Code to read as follows:

25 M. "Director" means the Director of Financial Management or
26 his designee.

27
28 Sec. 9. A new Subsection N is added to Section 3.64.010 of the Long

1 Beach Municipal Code to read as follows:

2 N. "Imposition" or "imposed" means the determination that the
3 transient occupancy tax is applicable to and levied upon the transient and
4 attaches as a condition of occupancy or the right to the use or possession
5 of any room or rooms or space or portion thereof, in any hotel for dwelling,
6 lodging or sleeping purposes.

7
8 Sec. 10. A new Subsection O is added to Section 3.64.010 of the Long
9 Beach Municipal Code to read as follows:

10 O. "Tax" means the transient occupancy tax imposed in section
11 3.64.030 and section 3.64.035 which shall include all penalties, interest or
12 other fees, costs and charges, if applicable, for collection purposes.

13
14 Sec. 11. Section 3.64.020 of the Long Beach Municipal Code is amended
15 to read as follows:

16 3.64.020 Administration

17 It shall be the duty of the Business license section to administer the
18 provisions of this chapter. The City may prescribe, adopt and enforce
19 reasonable and necessary rules and regulations, forms, policies and
20 procedures relating to the administration and enforcement of this chapter,
21 which shall be available at the business license office of the City.

22
23 Sec. 12. Section 3.64.040 of the Long Beach Municipal Code is amended
24 to read as follows:

25 3.64.040 Exemptions.

26 No tax shall be imposed under this chapter upon:

27 A. Any person as to whom, or any occupancy as to which, it is
28 beyond the power of the City to impose the tax provided in this chapter;

1 B. Any Federal or State of California officer or employee when on
2 official government business, including employees of federal credit
3 unions, and who provides proof that he or she is on official Federal, State
4 or federal credit union business;

5 Provided, however, that no exemption shall be granted under
6 subsection 3.64.040.A or 3.64.040.B of this section except upon a claim
7 therefor made at the time rent is collected and under penalty of perjury,
8 upon a form prescribed by the City Business license section.

9 It shall be the duty of the operator to keep and maintain written
10 documentation in support of each exemption claimed for a period of five
11 (5) years.

12
13 Sec. 13. Section 3.64.050 of the Long Beach Municipal Code is amended
14 to read as follows:

15 3.64.050 Collection.

16 A. On and after November 1, 1972, every operator receiving any
17 payment for rent with respect to which a tax is due under this chapter shall
18 at the same time collect from the transient, or from the person making such
19 payment, the amount of the tax imposed by this chapter. The amount of
20 tax shall be separately stated from the amount of the rent charged, and
21 each transient shall receive a receipt for payment from the operator.

22 B. No operator of a hotel shall advertise or state in any manner,
23 whether directly or indirectly, that the tax or any part thereof will be
24 assumed or absorbed by the operator, or that it will not be added to the
25 rent, or that, if added, any part will be refunded except in the manner
26 provided in this chapter.

27 C. The tax required to be collected under this chapter shall be
28 deemed to be held in trust for the account of the City by the person or

1 persons required to collect the tax for the account of the City until payment
2 thereof is made to the City. Any such tax imposed and required to be
3 collected by an operator which has not been paid to the City shall be
4 deemed a debt owed by the operator to the City.

5 D. Any person owing money to the City under the provisions of this
6 chapter shall be liable to an action brought in the name of the City for the
7 recovery of such amount. Any operator who undertakes legal or collection
8 action to recover unpaid rent due from a transient shall include the amount
9 of tax due from the transient in the amount sought to be recovered.

10
11 Sec. 14. A new section 3.64.055 is added to the Long Beach Municipal
12 Code to read as follows:

13 3.64.055 Refunds.

14 A. Where a tax has been collected based on rent for a period of
15 thirty (30) days or less and the occupant subsequently completes thirty one
16 (31) consecutive days of occupancy, thereby qualifying as a permanent
17 lodger, the operator shall return to such occupant an amount equivalent to
18 the amount of the tax so collected either in cash or by crediting his account
19 unless, however, the tax has been paid over to the Business license
20 section. In such latter event, the operator who collected such tax may,
21 within one (1) year from the date of such payment to the Business license
22 section, provided he has returned the equivalent amount of such tax to
23 such permanent lodger or credited his account therewith, either take credit
24 for the amount so reimbursed on a subsequent return or file a claim for
25 refund of such tax. Refund of such tax shall be made from the fund
26 referred to in section 3.64.035 and 3.64.100 in the same percentage and in
27 accordance with the provisions of sections 3.48.030 through 3.48.070.

28 B. Whenever the amount of tax has been overpaid, it shall be

1 refunded or credited provided a claim is submitted in writing signed under
2 penalty of perjury stating the specific grounds upon which the claim is
3 founded and filed with the Business license section upon forms furnished
4 by the Business license section within one (1) year of the date of payment
5 to the City.

6 C. An operator may claim a refund or take as credit against taxes
7 collected and remitted the amount overpaid, paid more than once or
8 erroneously or illegally collected or received when it is established in a
9 manner prescribed by the Business license section that the individual from
10 whom the tax has been collected was not a transient; provided, however,
11 that neither a refund nor a credit shall be allowed unless the amount of the
12 tax so collected has either been refunded to the transient or credited to
13 rent subsequently payable by the transient to the operator.

14 D. A transient may obtain a refund of taxes overpaid or paid more
15 than once or erroneously or illegally collected or received by the City by
16 filing a claim in the manner provided in subsection A of this section, but
17 only when the tax was paid by the transient directly to the Business license
18 section, or when the transient having paid the tax to the operator,
19 establishes to the satisfaction of the Business license section that the
20 transient has been unable to obtain a refund from the operator who
21 collected the tax.

22 E. No refund shall be paid under the provisions of this section
23 unless the claimant establishes his right thereto by written records showing
24 entitlement thereto within one (1) year of the date of payment of the tax to
25 the City.

26
27 Sec. 15. Section 3.64.080 of the Long Beach Municipal Code is amended
28 to read as follows:

1 3.64.080 Records.

2 A. It shall be the duty of every operator liable for the collection and
3 payment to the City of any tax imposed by this chapter to keep and
4 preserve, or cause to be kept and preserved, for a period of five (5) years
5 all records as may be necessary to compute the amount of any tax due
6 under the provisions of this Chapter. Such records shall clearly
7 substantiate the operator's gross receipts, the amount of room rentals, the
8 rentals paid by permanent lodgers and exemptions claimed by officers and
9 employees of the Federal or State of California government and federal
10 credit unions while they are on official business. Such records shall be
11 made available for inspection by the City auditor and City finance director
12 or their authorized agents at all reasonable times.

13 B. The records maintained by the operator under this section shall
14 include, but not be limited to, the following:

15 (1) Daily summary sheets for each day the hotel is open for
16 business containing, at a minimum, the following:

- 17 (a) The name of at least one (1) individual occupying the room;
18 (b) The registration card number applicable to the room;
19 (c) The room number;
20 (d) The daily rate charged and amount collected or charged by
21 credit card for rental of the room;
22 (e) The date occupancy commenced.

23 (2) Registration cards shall be pre-numbered and bear consecutive
24 numbers preprinted on the registration cards by a print shop or
25 manufacturer of the cards. Registration cards shall be maintained in
26 sequential order. Voided cards shall be kept by operator for audit
27 purposes. All registration cards shall be accounted for and the amount of
28 the tax stated separately on the card.

1 (3) Numbered rooms: The operator shall fill out and maintain on
2 file a registration card for each guest room occupied which shall contain, at
3 a minimum, the following information:

- 4 (a) The name of at least one (1) individual who will occupy, or be
5 entitled to occupy, the room;
- 6 (b) The total number of people who will occupy or be entitled to
7 occupy the room;
- 8 (c) The identification of room by number;
- 9 (d) The date the occupancy commences and the expected date
10 of the departure of the transient; and
- 11 (e) The daily rent charged and amount collected as and for rental
12 of the room with the amount of tax stated separately.
- 13 (4) Exemptions: A written record of each occupancy charge for
14 which an exemption is claimed, including the name of the
15 individual occupying the room, dates of occupancy and
16 reason(s) for exemption.
- 17 (5) Bank accounts: All operators shall keep bank statements
18 and deposit slips showing hotel rents and other revenue for
19 verification of the total revenue from operations.
- 20 (6) Other data substantiating occupancy, rents, exemptions,
21 claimed revenues and exemptions on tax payments, financial
22 documentation, books and ledgers, bank records and similar
23 financial information

24 C. Every operator shall keep such records, receipts, invoices,
25 registration cards and other pertinent papers in such form as the Business
26 license section may require.

27 D. The Business license section or City Auditor, or any person
28 authorized by the Director, may examine the books, papers, records,

1 registration cards or other pertinent papers and records of any operator
2 and may investigate the character of the business of the operator in order
3 to verify the accuracy of the return made, or, if no return has been made by
4 the operator, to ascertain and determine the amount required to be paid.

5 E. It is unlawful for the Business license section or for any person
6 having audit or administrative duty under this Chapter to make known, in
7 any manner whatever except in the performance of his official duties, the
8 business affairs, operations or information obtained from an investigation
9 of the records of the operation.

10
11 Sec. 16. A new section 3.64.085 shall be added to the Long Beach
12 Municipal Code to read as follows:

13 3.64.085 Tax Clearance Certificate

14 A. Within thirty (30) days after the operative date of this section, the
15 Director of Finance shall establish procedures which would allow a
16 purchaser, transferee, or other person or entity attempting to obtain
17 ownership of a hotel property which is required to collect tax, to make a
18 written application for a "Tax Clearance Certificate" to establish that the
19 hotel operator has no unpaid taxes due to the City.

20 B. An administrative fee to cover the cost of issuing the certificate
21 shall be established by resolution of the City Council and applications shall
22 be available from the City Clerk and the Business license section. No
23 application for a certificate shall be accepted unless the application is fully
24 completed and the administrative fee is paid in full.

25 C. Within ninety (90) days of receiving an application and payment
26 of the administrative fee, the City shall do either of the following:

- 27 (1) Issue the tax clearance certificate, or
28 (2) Request the current hotel operator to make available the

1 operator's transient occupancy tax records for the purpose of
2 conducting an audit regarding transient occupancy taxes that
3 may be due and owing from the operator.

4 D. The City shall complete an audit performed pursuant to section
5 3.64.085 C (2) on or before ninety (90) days after the date that the current
6 or former hotel operator has provided all books, records and information
7 necessary to perform a complete tax audit.

8 E. Within thirty (30) days after completing the audit pursuant to
9 section 3.64.085 D, the City shall notify the applicant of one of the
10 following:

- 11 (1) The City will issue a tax clearance certificate to the applicant;
12 or
13 (2) After completing the audit, the City has made a determination
14 that the current operator has unpaid transient occupancy tax
15 due and owing and no certificate will be issued; or
16 (3) The operator's records are insufficient to make a
17 determination of whether transient occupancy taxes may be
18 due and owing and therefore the City will not issue a tax
19 clearance certificate due to the insufficiency of the prior
20 owner's records.

21 F. If the City does not comply with sections C through E, the
22 purchaser, transferee, or other person or entity that obtains ownership of
23 the hotel property shall not be liable for any transient occupancy tax
24 obligations incurred prior to the purchase or transfer of the property from
25 the operator.

26 G. For a tax clearance certificate issued under this section, all of
27 the following apply:

- 28 (1) The certificate shall state the amount of tax due and owing

1 for the subject property, if any.

2 (2) The certificate shall state the period of time for which it is
3 valid.

4 (3) The purchaser, transferee, or other person or entity who
5 obtains ownership of the property may rely upon the tax
6 clearance certificate as conclusive evidence of the tax liability
7 associated with the property as of the date specified on the
8 certificate.

9 H. Any purchaser, transferee, or other person or entity who does
10 not apply for and obtain a tax clearance certificate under this section, or
11 who obtains a tax clearance certificate that indicates that tax is due and
12 fails to withhold, for the benefit of the City sufficient funds in the escrow
13 account for the purchase of the property to satisfy the transient occupancy
14 tax liability, shall be held liable for the amount of tax due and owing from
15 the operator on the property.

16 I. This section may not be construed to relieve an operator or
17 property owner of transient occupancy tax obligations incurred when an
18 operator or owner of the property.

19
20 Sec. 17. Section 3.64.090 of the Long Beach Municipal Code is amended
21 to read as follows:

22 3.64.090 Cessation of business.

23 A. Whenever any operator required to collect and remit to the
24 Business license section a tax under this Chapter ceases to operate,
25 dissolves, abandons, terminates, liquidates, sells, transfers, or disposes of
26 his business, any tax payable under this Chapter shall become
27 immediately due and payable and such operator shall immediately file a
28 return and pay the tax due.

1 B. Upon cessation of operations, termination, dissolution,
2 liquidation, bankruptcy or abandonment of the hotel operations by the
3 operator, any operator, officer, or other person having control or
4 supervision of, or who is charged with the responsibility for the filing of
5 returns or payment of the tax, or who is under a duty to act for the operator
6 in complying with this Chapter, shall be personally liable for any unpaid tax
7 or penalty.

8
9 Sec. 18. Subsection A of Section 3.64.100 of the Long Beach Municipal
10 Code is amended to read as follows:

11 A. Refunds made pursuant to the provisions of section 3.64.055.

12
13 Sec. 19. Section 3.64.110 of the Long Beach Municipal Code shall be
14 amended to read as follows:

15 3.64.110 Failure to Collect or Pay and Notice of Determination

16 A. If any operator omits, fails, or refuses to collect the tax, or to
17 collect the correct amount of tax, or remit the correct amount of tax, or to
18 keep accurate or complete records, or to make, within the time provided in
19 this Chapter, any return or remittance required by this Chapter, the
20 Business license section shall proceed in such manner as it may deem
21 best to obtain facts and information on which to base its estimate of the tax
22 due including but not limited to an audit of operator's records. As soon as
23 the Business license section procures such facts and information upon
24 which to base an estimate of the tax due, it shall proceed to determine and
25 assess against such operator the tax and penalties provided for by this
26 Chapter. If an audit discloses under-reporting or underpayment of ten
27 percent (10%) or more of the tax, then the operator shall be charged for
28 the cost of the audit, not to exceed \$1,500.

1 B. The Director shall notify such operator with a notice of
2 determination of tax due, which notice shall include both tax and penalties,
3 if applicable, by first class mail postage prepaid, to the operator's last
4 known address.

5
6 Sec. 20. A new Section 3.64.112 shall be added to the Long Beach
7 Municipal Code to read as follows:

8 3.64.112 Request for Hearing with Director

9 A. Any operator not in agreement with the notice of tax
10 determination shall request a hearing in writing on the amount assessed
11 within ten (10) days of the date contained in the notice of determination
12 and pay a hearing fee which shall be the same fee as set by resolution for
13 business license hearings. Upon a timely, written request and fee payment
14 from the operator, the Director or his designee shall give not less than ten
15 (10) days written notice by mail to the operator to show cause at a time
16 and place fixed in said notice, why the assessed amount should not be
17 fixed for tax and penalty. The request for hearing shall be filed with the
18 Business license section.

19 B. Conduct at hearing: The operator may appear and offer
20 evidence why the assessed tax and penalties should not be fixed. The
21 operator may be represented by counsel.

22 C. Determination: The Director or his designee shall determine the
23 proper tax and penalties to be remitted and shall give a written notice of
24 final tax determination to the Operator by first class mail postage prepaid
25 containing the amount of tax and penalties due. The amount determined
26 to be due shall be delinquent fifteen (15) days following the date on the
27 final notice of tax determination, unless an appeal is taken to the City
28 Council as provided in Section 3.64.115.

1 D. Failure to timely request a hearing with the Director shall be
2 deemed a waiver of the right to appeal as prescribed in Section 3.64.115
3 and to seek judicial review. The notice of determination assessed by the
4 Business license section shall become conclusive and immediately due
5 and payable.

6
7 Sec. 21. A new Section 3.64.115 shall be added to the Long Beach
8 Municipal Code to read as follows:

9 3.64.115 Appeal of Final Notice of Determination

10 A. Any operator not in agreement with the Director's final notice of
11 determination with respect to the amount of tax and penalties as
12 determined by the Director may appeal to the City Council by filing a notice
13 of appeal with the City Clerk within fifteen (15) days of the date on the
14 Director's final notice of determination of tax due. All fees for an appeal
15 shall be the same as required for business license appeals as set by
16 resolution and paid at the time of filing.

17 B. The City Council appeal and hearing shall be according to the
18 procedures established in Chapter 2.93, except section 2.93.060.

19 C. The decision of the City Council shall be final and conclusive
20 and any amount determined to be due for tax and penalties shall be due
21 and payable within ten (10) days of the date on the notice of decision.

22
23 Sec. 22. Section 3.64.120 of the Long Beach Municipal Code shall be
24 amended to read as follows:

25 3.64.120 Delinquent Payment Penalty.

26 A. If any operator fails or refuses to remit to the Business license
27 section the proper amount of the tax required to be collected and paid
28 under this Chapter on or before the last day of the month following the

1 month in which said taxes were collected by the operator, and up to a
2 period of thirty days thereafter, shall have added to such tax a penalty of
3 twenty-five percent of the amount of the tax, in addition to the amount of
4 the tax, which penalty shall immediately become part of the tax due for
5 collection purposes.

6 B. Any operator who fails or refuses to remit to the Business license
7 section the proper amount of the tax required to be collected and paid
8 under this Chapter for any period more than thirty days following the date
9 on which the remittance first became delinquent shall pay a delinquency
10 penalty of fifty percent of the amount of the tax in addition to the amount of
11 the tax, which penalty shall immediately become part of the tax due for
12 collection purposes.

13 C. An additional penalty of one percent (1%) per month shall be
14 assessed on the tax remaining unpaid more than sixty (60) days following
15 the date on which the remittance first became delinquent.

16
17 Sec. 23. A new Section 3.64.130 shall be added to the Long Beach
18 Municipal Code to read as follows:

19 3.64.130 Action to Collect Tax and Enforcement of Lien

20 A. Any tax required to be paid by any transient under the provisions
21 of this article shall be deemed a debt owed by the transient to the City.

22 B. Failure of an operator to collect tax required to be paid by a
23 transient shall not excuse the operator from the operator's obligation under
24 this Chapter. Any such tax collected by an operator which has not been
25 paid to the City shall be deemed a debt owed by the operator to the City.
26 Any tax required to be paid by any transient which is not collected by the
27 operator is deemed a debt owed by the operator to the City.

28 C. Any person owing money to the City under the provisions of this

1 Chapter shall be liable to an action brought in the name of the City for the
2 recovery of such amount including a reasonable attorney's fee.

3 D. Assessment and Lien. Whenever delinquent tax and penalties
4 is not paid to the City after proper notification to the property/business
5 owner and operator, the total uncollected amount including tax and
6 penalties and administrative fees may become assessments, and the City
7 Clerk or the City Clerk's duly authorized representative may compile a list
8 of such assessments together with parcel number designations and
9 address upon which the assessments are being fixed.

10 After notice and hearing, and upon confirmation of the imposition of
11 the liens by resolution of the City Council and Mayor, the City Clerk shall
12 file a certified copy of the approved resolution with the Los Angeles County
13 Tax Collector, State of California, directing that all unpaid transient
14 occupancy taxes, penalties and administrative fees be entered as lien
15 charges against said property as it appears on the current assessment
16 rolls. Liens will be collected at the same time and in the same manner,
17 subject to the same penalties and interest upon delinquencies, as the
18 general real property taxes are collected for the City of Long Beach. The
19 City Clerk shall present for recording appropriate notices of the imposition
20 of these liens with the Los Angeles County Recorder.

21 This Chapter does not give the City a preference over any recorded
22 lien which attached prior to the date when the amounts required to be paid
23 became a lien.

24
25 Sec. 24. A new Section 3.64.150 shall be added to the Long Beach
26 Municipal Code to read as follows:

27 3.64.150 Enjoining Collection Forbidden

28 A. No injunction or writ of mandate or other legal or equitable

1 process shall issue in any suit, action or proceeding in any court against
2 the City or an officer thereof, to prevent or enjoin the collection of taxes
3 sought to be collected pursuant to this Chapter and payment of all tax,
4 interest and penalties shall be required as a condition precedent to seeking
5 judicial review of any tax liability.

6 B. No suit or proceeding shall be maintained in any court for
7 recovery of any amount alleged to have been erroneously or illegally
8 determined or collected unless a claim for each refund or credit has been
9 duly filed pursuant to section 3.64.055.

10
11 Sec. 25. A new Section 3.64.160 shall be added to the Long Beach
12 Municipal Code to read as follows:

13 3.64.160 Assessments, presumption and time limit for action to collect
14 unpaid taxes

15 In the case of an audit or investigation by the City, the Director may
16 make a deficiency determination or assessment for transient occupancy
17 tax not paid or remitted by a person required to pay or remit, as evidenced
18 by information provided by such person or other persons to the Director, or
19 based upon a reasonable estimate of the Director if complete evidence is
20 not provided by the operator or person required to pay or remit the tax.
21 Such reasonable estimate shall be entitled to a rebuttable presumption of
22 correctness. Notwithstanding any other provision of law, except in the
23 case of fraud or the failure of an operator to file a transient occupancy tax
24 return, the City may institute an action to collect unpaid transient
25 occupancy taxes within four (4) years of the date on which the transient
26 occupancy taxes were required to be paid.

27
28 Sec. 26. Constitutionality, Severability. If any section, subsection,

1 sentence, clause, phrase, or word of this ordinance is for any reason held by a court of
2 competent jurisdiction to be unconstitutional or invalid for any reason, such decision
3 shall not affect the validity of the remaining portions of the ordinance. The City Council
4 hereby declares that it would have passed this ordinance and each section, subsection,
5 sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more
6 section, subsection, sentence, clause, phrase, or word be declared invalid. Additionally,
7 the determination of an unconstitutional or invalid section, subsection, clause or phrase
8 shall have the effect of reviving the prior section, subsection, sentence, clause, or
9 phrase as though it had never been amended by this ordinance.

10
11 Sec. 27. Savings Clause. The changes provided for in this ordinance shall
12 not affect any offense or act committed or done or any tax or penalty or forfeiture
13 incurred or any right established or accruing before the effective date of this ordinance;
14 nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered
15 prior to the effective date of this ordinance.

16
17 Sec. 28. The City Clerk shall certify to the passage of this ordinance by
18 the City Council and cause it to be posted in three conspicuous places in the City of
19 Long Beach, and it shall take effect on the thirty-first day after it is approved by the
20 Mayor.

21 //

22 //

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 I hereby certify that the foregoing ordinance was adopted by the City Council of
2 the City of Long Beach at its meeting of _____, 2005, by the
3 following vote:

4 Ayes: Councilmembers: _____

5 _____

6 _____

7 _____

8 Noes: Councilmembers: _____

9 _____

10 Absent: Councilmembers: _____

11 _____

12 _____
13 City Clerk

14
15
16 Approved: _____

17 Mayor
18
19
20
21
22
23
24
25
26

27 CAS/sk #05-00497 rev. 5-26-05
28 L:\APPS\CityLaw32\WPDOCS\ID016\IP004\00074728.WPD