

**ORDINANCE NO. 09-0283**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF SOLVANG  
AMENDING THE SOLVANG MUNICIPAL CODE REGARDING TRANSIENT  
OCCUPANCY TAXES**

**THE COUNCIL OF THE CITY OF SOLVANG  
DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1. Title 3 Chapter 2 of the Solvang Municipal Code Relating to Transient  
Occupancy Taxes.

Title 3 Chapter 2 of the Solvang Municipal Code is amended to read as set forth in exhibit "A", attached hereto and incorporated as though fully set forth herein.

Section 2. Exemptions From CEQA.

The City Council finds, pursuant to Title 14 of the California Code of Regulations, section 15061 (b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project, which has the potential for causing a significant effect on the environment.

Section 3. Effective Date

**This Ordinance shall be in full force and shall  
take effect thirty (30) days after its passage.**

Section 4. Publication

A summary of the ordinance has been prepared by the City Attorney. The summary has been published and a certified copy of the full text of the proposed ordinance or proposed amendment has been posted in the office of the city clerk at least five days prior to the city council meeting at which the proposed ordinance or amendment or alteration thereto was adopted. Within 15 days after adoption of the ordinance or amendment, the city council shall publish a summary of the ordinance or amendment with the names of those city council members voting for and against the ordinance or amendment and the city clerk shall post in the office of the city clerk a certified copy of the full text of the adopted ordinance or amendment along with the names of those city council members voting for and against the ordinance or amendment.

**PASSED, APPROVED, AND ADOPTED** this 27th day of April, 2009.

### **3-2-1: DEFINITIONS:**

For the purposes of this chapter the following words and phrases shall have the meanings respectively ascribed to them:

**HOTEL:** 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, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

**OCCUPANCY:** 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; unless such dwelling, lodging or sleeping is for the following such purposes:

**FAM Tours:** Familiarization And Marketing Tours. These can be extended to one person, a couple of people or a group of people. The purpose of these tours is to familiarize the group with the area in an effort to get them to sell, promote, film or write about Solvang rather than other areas.

**Host Visits:** These are prospective client site visits often arranged by the hotelier. It can be extended to one person, a couple of people or a group of colleagues.

**Media:** The various means of mass communication considered as a whole, including television, radio, magazines, internet and newspapers and those involved in

the production of their projects.

**Film Production:** People and companies involved in the production of television, cable, movies, catalogue shoots, videos, documentaries and the like, including film scouts, producers, writers, actors, designers and their crew.

**Tour Groups:** Individuals traveling together through purchased pre-arranged packaged tour, usually by mass transit (example: bus, plane, rail, ship, etc.) A typical comp is one tour guide room in addition to the tour bus driver for a group of 20 paid rooms. Agreements vary by hotels.

**Events:** Hosting of event producers, promoters, sponsors and staff to encourage and develop one-time and returning events that bring visitors and spending to Solvang.

**Marketing Partners:** Other marketing agencies/entities that cross-promote Solvang (examples: Santa Barbara Conference and Visitors Bureau & Film Commission, Central Coast Tourism Council, California Travel and Tourism Commission, Travel Industry of America, Visit USA Committee, etc.)

**Charity/Non Profit Groups:** To allow tax free lodging for charity and nonprofit organization groups

**Family Visitors/Owners:** Tax free lodging for hotel owners and their family members.

**Others:** Any category not previously mentioned is subject to the review and approval of the Finance Director or designee and allowed only on the basis that it is used for the benefit of promoting the City of Solvang.

**OPERATOR:** The person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub lessee, 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.

**RENT:** The consideration charged for those rooms not considered to be complimentary, 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 there from whatsoever.

**TRANSIENT:** 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, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

**FINANCE DEPARTMENT:** City of Solvang Finance Director or designee.

### **3-2-2: TAX IMPOSED:**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten percent (10%) of the rent charged or 10% of the value of the complimentary room-calculated on the average monthly room rate . Such tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time 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 is not paid to the operator of the hotel, the Finance Department may require that such tax shall be paid directly to the Finance Department.

### **3-2-3: EXEMPTIONS FROM TAX:**

The tax imposed in section [3-2-2](#) of this chapter shall not apply to the following:

A. Occupancy charges incurred by government employees, which are billed directly to, and paid directly by, a unit of the state or federal government. The employee must provide valid photo identification proving his or her government employment.

B. A service charge collected by an operator and paid by the operator to employees of the hotel in lieu of tips or gratuities. To qualify for this exemption, this service charge shall not be paid to employees in lieu of all or part of the

salary the employees received from the hotel on December 10, 1990.

C. The officer or employee claiming the exemption shall sign a standard form to claim this exemption under penalty of perjury. The standard form shall be set by resolution of the City Council and shall contain a requirement that the officer or employee claiming the exemption provide the operator evidence that his or her occupancy is for the official business of his or her employer conclusive evidence of such by providing , (a) travel orders from his or her government employer, (b) a government warrant issued by his or her employer to pay for the occupancy or (c) a government credit card issued by the employer to pay for the occupancy.

D. Any room acknowledged as an acceptable complimentary room as included on the listing provided in section 3-2-1 Definitions, under Occupancy. The City Council shall require copies of hotel records (folios) of complimentary rooms be provided with monthly returns and listed on the remittance form under the category in which it falls. Documentation of the reason for the complimentary room shall be included with the remittance or noted on the hotel records provided.

### **3-2-4: REGISTRATION CERTIFICATE REQUIRED:**

Within thirty (30) days after the effective date of this chapter or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register his hotel with the Finance Department and obtain from him a transient occupancy registration certificate to be at all times posted in

a conspicuous place on the premises. The certificate shall, among other things, state the following:

- 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 Uniform Transient Occupancy Tax Ordinance by registering with the Finance Department for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Finance Department. 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 local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit.*

### **3-2-5: COLLECTION AND REMITTANCE OF TAX:**

- A. Duty Of Operator; Tax Stated Separately: Each operator shall collect the tax imposed by 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 hereinafter provided.

B. Reporting And Remitting Tax: Each operator shall, on or before the last day of the month following the close of each calendar month, commencing June 30, 1985, or at the close of any shorter reporting period which may be established by the Finance Department, make a return to the Finance Department, on city forms provided by the city, of the reporting month, name of the hotel, total rooms available for rent, total rooms occupied, percentage of rooms occupied in month, gross receipts from occupancy, less gross receipts from monthly rentals, number of taxable complimentary rooms, average monthly room rate and taxable complimentary revenue, number of non-taxable complimentary rooms, category of acceptable complimentary rooms are reported under, less transient exemptions claimed, equals taxable rent, and interest and penalty if applicable. At the time the return is filed, the full amount of the tax collected shall be remitted to the Finance Department. The Finance Department may establish shorter reporting periods for any certificate holder if he deems it necessary in order to ensure collection of the tax, and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the Finance Department.

### **3-2-6: RECORDS MAINTAINED:**

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of four (4) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of any payment to the city, which records the Finance Department shall have the right to inspect at all reasonable times. *All records which may be necessary to inspect, shall be kept within the City or shall be produced within ten (10) working days of written notice at the business location within the City.*

*In the event that records are not produced upon request, or, such records are not reasonably able to be audited; tax, interest and penalties will be levied based upon the average room rate and occupancies for similar properties within the City during the audit period. Further and without limitation, any operator who does not produce records following written notice as set forth shall pay, as a penalty, in addition to any tax, penalty or interest, the sum of \$100 per day for each business day the records are not produced for audit.*

### **3-2-7: REFUNDS:**

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously, or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section provided a claim in writing therefore is filed with the Finance Department. The claim shall conform in all respects to the requirements set forth for claims against the city in [title 1, chapter 9](#) of this

code. The claim shall be on forms furnished by the Finance Department.

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 Finance Department that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient directly to the Finance Department, or when the transient having paid the tax to the Finance Department, establishes to the satisfaction of the Finance Department that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

### **3-2-8: FAILURE TO COLLECT AND REPORT TAX:**

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

this chapter, the Finance Department shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Finance Department shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Finance Department 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 so assessed at his last known place of address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Finance Department for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Finance Department shall become final and conclusive and immediately due and payable. If such application is made, the Finance Department shall give not less than five (5) days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why such 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 Finance Department shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein 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 taken as provided in section 3-2-9 of this chapter.

### **3-2-9: APPEALS:**

Any operator aggrieved by any decision of the Finance Department with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The city 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 city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

### **3-2-10: PENALTIES AND INTEREST:**

A. Original Delinquency: Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency: Any operator who fails 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 of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.

C. Willful Failure To Pay: If the financial officer or his or her designee determines that the nonpayment of any remittance due under this chapter is willful, a penalty of twenty five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Interest: In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half (1 ½%) percent per month 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 such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

F. Waiver: The city, in its sole discretion, may waive the penalty and interest provided for in subsections A and D of this section not more than once every five (5) years per hotel, based upon good cause shown, provided the tax due is not delinquent more than twenty nine (29) days following the date on which the remittance first became due. The operator shall apply in writing to the city for waiver of the penalty, on such forms as the finance officer or his or her designee may designate. In the event the hotel is sold and no waiver has been applied for by the predecessor operator of the hotel, the successor operator of the hotel may apply for the waiver. Nothing in this subsection shall relieve the operator from liability for the tax imposed by this chapter.

### **3-2-11: ACTIONS TO COLLECT TAX:**

Any tax required to be paid by any transient under 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 under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

### **3-2-12: SALE OR TERMINATION OF BUSINESS; TAX LIABILITY:**

A. Liability Of Successor: If any operator liable for any amount under this chapter sells the hotel or terminates operation of the hotel for any reason, his successor or assigns shall withhold a sufficient portion of the purchase price for the hotel to cover the amount owed under this chapter, until the former operator produces a receipt from the Finance Department showing that it has been paid in addition to a tax clearance certificate.

B. Liability Of Purchaser: If the purchaser of a hotel fails to withhold money from the purchase price, as required in subsection A of this section, he shall become personally liable to the city for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty (60) days after receiving a written request from the purchaser for the certificate set forth in subsection A of this section, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than ninety (90) days after receiving the request, the

Finance Department shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the city of the amount that must be paid as a condition of issuing the certificate.

In the alternative, a prospective operator may apply for and be issued a certificate as provided for above.

### **3-2-13: VIOLATIONS; PENALTY:**

A. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor.

B. Any operator or other person who fails or refuses to register as required in this chapter, 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 Finance Department, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor. Any person required to make, render, sign or verify any report or claim 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, is guilty of a misdemeanor.

C. Misdemeanors under this chapter shall be punishable as provided in section [1-3-3](#) of this code.