

ORDINANCE NO. 05-332

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS AMENDING THE TRANSIENT OCCUPANCY TAX ORDINANCE PURSUANT TO AB 1916 WHICH MAKES CHANGES TO THE REVENUE AND TAXATION CODE, AND AMENDING CHAPTER 5 OF ARTICLE VI OF THE AGOURA HILLS MUNICIPAL CODE

The City Council of the City of Agoura Hills does hereby ordain as follows:

Section 1. The definition of “*Transient*” in Section 6501 of Chapter 5 of the Agoura Hills Municipal Code is hereby amended as follows:

“*Transient.* ‘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, 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 obliging the occupant to pay market rate for the occupancy for a period of at least thirty-one (31) consecutive days. The Tax Administrator may develop and promulgate standard forms setting for the minimum substance of such agreements, and may require submission of such forms with the returns required by Section 6506. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this article may be considered.”

Section 2. Section 6502 of Chapter 5 of the Agoura Hills Municipal Code is hereby amended to read as follows:

“6502. Tax imposed.

(a) For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of twelve (12%) percent of the rent charged by the operator. Such tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator of the hotel at the same time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient’s ceasing to occupy space in the hotel. If, for any reason, the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator.

(b) In the event that an agreement exists between the hotel and any person for occupancy, as defined in this article, for a period in excess of thirty (30) days, and

in the event that such person allows occupancy by another person for thirty (30) days or fewer as subtenant, guest, licensee or permittee, the person who has made the agreement with the hotel as aforesaid shall be subject to and shall pay the tax provided for herein.”

Section 3. Section 6503 of Chapter 5 of the Agoura Hills Municipal Code is hereby amended to read as follows:

“6503. Exemptions.

(a) No tax shall be imposed upon any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided.

(b) No exemption shall be granted except upon a claim in writing made at the time rent is collected upon a form complying with subsection (e) of Section 7280 of the Revenue and Taxation Code. The Tax Administrator may require submission of copies of such forms with the returns required by Section 6506.”

Section 4. New Section 6507 entitled, “Reporting and remitting requirements upon transfer or cessation of business” is hereby added to Chapter 5 of the Agoura Hills Municipal Code as follows:

“6507. Reporting and remitting requirements upon transfer or cessation of business.

(a) An operator who is transferring, selling, or terminating its business shall notify the Tax Administrator in writing at least thirty (30) days in advance of the date of transfer, sale, or termination. If the decision to sell, transfer, or terminate the business is made fewer than thirty (30) days before the transfer, sale, or termination occurs, the operator shall notify the Tax Administrator immediately upon making that decision and in no event later than the date of transfer, sale, or termination. The operator shall at the same time notify in writing any purchaser or transferee of its Hotel of the purchaser’s or transferee’s potential responsibility for unpaid collected taxes if any, as set forth in this article and in Revenue and Taxation Code Section 7283.5.

(b) Upon cessation of business, whether by sale, transfer, termination, an operator shall, on or before the same day of the next month following the cessation of business, or on the last day of that month if no corresponding day exists, make a return to the Tax Administrator on approved forms of the total taxable rents charged, the amount of tax collected for the reporting period ending on the cessation date, remittances made if any, and the balance of the tax due. The balance of tax due if any shall be remitted to the Tax Administrator at the time the final return is filed. After filing the final return and remitting the balance due, the operator shall make its records of account available for a closeout audit by the

Tax Administrator or his or her designee. Returns filed and taxes remitted and actually received by the Tax Administrator on or before the same day of the next month following cessation of business, or on the last day of that month of no corresponding day exists, shall be timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by this article.

(c) Any person purchasing an ongoing Hotel business may apply to the Tax Administrator for a tax clearance certificate showing the tax due, if any, from the selling operator as of a date specified in the tax clearance certificate request. For purposes of this Section, successive Hotel businesses conducted without substantial interruption at the same Hotel shall constitute an ongoing Hotel business.

(1) The issuance and effect of such certificates shall be as set forth in Revenue and Taxation Code Section 7283.5.

(2) Before requesting records and conducting the audit permitted by subdivision (b) of Revenue and Taxation Code Section 7283.5, the Tax Administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. The Tax Administrator shall notify the selling operator of this estimate when requesting records for audit. If the selling operator fails to provide records in response to the request within thirty days after the serving or mailing of the estimate and record request, the Tax Administrator may issue a tax certificate in the amount of the estimate.

(3) By resolution, the City may set an administrative fee for issuance of any such certificate.”

Section 5. Existing Sections 6507 through 6513 of Chapter 5 of the Agoura Hills Municipal Code are hereby renumbered as Sections 6508 through 6514.

Section 6. Section 6510, renumbered as Section 6511, of Chapter 5 of the Agoura Hills Municipal Code is hereby amended to read as follows:

“6511. Records.

(a) It is 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 years, all records as may be necessary to determine the amount of such tax for which the operator may be or may have been liable. The tax administrator shall have the right to inspect all such records at all reasonable times.

(b) All tax returns and information furnished by any operator pursuant to this chapter shall be confidential and shall not be open to public inspection nor the specific contents thereof disclosed by any officer or employee except as necessary in the performance of official duty pursuant to this chapter, or in the course of any proceeding, hearing or litigation involving the existence or amount of the tax liability of such operator, or with the written consent of the operator or his authorized representative.”

Section 7. Paragraph (a) of Section 6511, renumbered as Section 6512, of Chapter 5 of the Agoura Hills Municipal Code is hereby amended to read as follows:

“(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 article, it may be refunded as provided in subsections (b) and (c) of this section. No refund shall be issued except upon a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, filed with the tax administrator within one year of the date of payment. The claim shall be on forms furnished by the tax administrator. Each person seeking a refund must file an individual claim; no class claims shall be recognized.”

Section 8. Section 6512, renumbered as Section 6513, of Chapter 5 of the Agoura Hills Municipal Code is hereby amended to read as follows:

“6513. Tax declared a debt; action to collect.

(a) Any tax required to be paid by any transient under the provisions of this article 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 article shall be liable to an action brought in the name of the city for the recovering of such amount.

(b) Failure of an operator to collect tax required to be paid by any transient shall not excuse the operator’s obligation under this article. An operator must pay to the city any tax required to be paid by any transient, whether or not the operator collects such tax from that transient.

(c) If any amount required to be paid to the city under this article is not paid when due, the Tax Administrator may, within ten years after the amount is confirmed according to the procedure set forth in Section 6507 of this Article, file for record in the office of the Los Angeles County recorder a certificate specifying the amount of tax, penalties, and interest due; the name and address, as it appears on the Tax Administrator’s records, of the operator liable for the tax, penalties, and interest; and the fact that the Tax Administrator has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of filing for record, the amount of the tax, penalties, and interest constitutes a lien upon any real property in

the county owned by the operator or acquired by the operator thereafter. This lien has the force, effect, and priority of a judgment lien and shall continue for ten years from the time of filing of the certificate, unless sooner released or otherwise discharged, or unless renewed for subsequent periods in the manner prescribed by law. This article does not give the city a preference over any recorded lien that was attached before the date when the amounts required to be paid became a lien.

(d) The amounts required to be paid by any operator under this chapter with penalties and interest shall be satisfied first in any of the following cases:

(1) Whenever the operator is insolvent;

(2) Whenever the operator makes a voluntary assignment of its assets;

(3) Whenever the estate of the operator in the hands of executors, administrators, heirs, or receivers is insufficient to pay all debts;

(4) Whenever the estate and effects of an absconding, concealed, or absent operator required to pay any amount under this chapter are levied upon by process of law.”

Section 9. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2005.

Ed Corridori, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk

