

REPORT TO CITY COUNCIL

DATE: MAY 25, 2005

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: CRAIG STEELE, CITY ATTORNEY
GEORGETTE HOLT, FINANCE OFFICER

SUBJECT: 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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS APPROVING THE CITY'S USE OF THE "TRANSIENT OCCUPANCY TAX EXEMPTION CLAIM SUMMARY" FORM IN CONJUNCTION WITH ITS TRANSIENT OCCUPANCY TAX ORDINANCE

BACKGROUND

AB 1916 of the 2003-04 legislative session, effective January 1, 2005, made several changes to the Revenue and Taxation Code sections governing local transient occupancy taxes ("TOT") in general law cities. The changes to State law require revisions to the City's exemption language, and collection and enforcement procedures. Because no changes are proposed to the rate of the City's TOT or the occupants from whom it would be collected, no election is required under Proposition 218 for the City to adopt the proposed TOT revisions.

As required by AB 1916, approval of a "Transient Occupancy Tax Exemption Claim Summary" form is proposed in conjunction with the ordinance.

Proposed changes to the ordinance are as follows:

1. New Requirement for an Exemption "Safe Harbor"

The Ninth Circuit has held that federal employees traveling on federal business are exempt from local TOT. The same principles would immunize foreign governments' employees on governmental business. By contrast, the Attorney General has opined that state employees are not exempt. The City's municipal code currently reflects these exemption principles by exempting foreign or federal employees from TOT. New Revenue and Taxation Code Section 7280(e) does not require TOT ordinances to include any explicit exemptions. Instead, it requires a city that has incorporated governmental exemptions into its municipal code develop a standard form for hotel operators to use in documenting their guests' eligibility for TOT exemption. The state-imposed standard form requirement does not apply to any other exemptions from TOT. In

addition, Section 7280(e) requires that the city council approve the form. Moreover, Section 7280(e) requires that the council decide which single form of proof will be acceptable to show that a governmental employee is on official business. A revision to the TOT ordinance will affect only the method of proving entitlement to exemption, not the exemption itself, therefore, it does not require voter approval.

2. Longer Statute of Limitations for TOT Collection Actions

Before AB 1916, no statute addressed specifically the limitations period for TOT collection actions. The most likely statute of limitations was the three-year limit on actions on a liability created by statute. New Revenue and Taxation Code Section 7283.51 sets a four-year statute of limitations on TOT collection actions. Therefore, the City is amending its ordinance to require that operators keep records for at least four years following the occupancy. (As a matter of policy, the City's records retention schedule retains those tax-related records that are actually in the City's possession for five years.)

3. New Requirements Regarding Successor Liability

TOT is an excise tax on the activity of renting hotel rooms to transients, not a property tax. Nevertheless, new Revenue and Taxation Code Section 7283.5 provides for "tax clearance certificates" for property owners. Amendments to the City's TOT ordinance impose reporting and payment obligations upon sellers, to reduce the odds that a hotel operator will sell its business and vanish without paying TOT for its final weeks or months of operation. These provisions also require sellers to inform buyers about the buyers' potential responsibility for unpaid TOT. In addition, the City is adopting a time limit for provision of records as well as authority for its tax administrator to estimate a seller's liability if the seller fails or refuses to cooperate in the City's issuance of a tax certificate to the buyer.

4. Other Amendments

a. Define Repeat Guests as Transients

The revised ordinance defines "transient" to address the circumstances under which longer stays may and may not be "tacked" to create exemption from TOT.

b. Specify that "Block Booking" Guests are Transients

The revised ordinance clarifies that people who stay for thirty or fewer days in a hotel, but whose hotel bills are paid under a long-term "block booking" agreement with a business or organization are transients for whom TOT must be paid.

c. Limit Refund Claims

Under the Government Claims Act, a claimant would have to present a refund claim to the City within one year of the alleged overpayment.

d. Use a Lien Procedure to Collect Confirmed TOT Delinquencies

No statute or published judicial opinion states specifically that cities may (or may not) create real property liens to enforce delinquent TOT without first obtaining court judgments against delinquent operators. In *Isaac v. City of Los Angeles*, the Court of Appeal disapproved a Los Angeles ordinance that permitted the city to

impose a top-priority lien on master-metered multi-family property for unpaid water bills. Because no state statute authorized creation of the liens, the *Isaac* court held despite the city ordinance that such liens were not created “by operation of law” under Civil Code Section 2881. By statute, however, a local tax delinquency has the “effect of a judgment against the person.” Furthermore, a judgment creditor may create a judgment lien by recording an abstract of the judgment with the county recorder. The City’s revised ordinance allows the City to create liens for collection that have the same priority and effect as judgment liens. If a court disagreed and invalidated this provision, the City would have to refund any collection it had made because of the lien, or expunge the lien from the public records.

CONCLUSION

The Legislature’s adoption of AB 1916 in the 2003-04 legislative session, effective January 1, 2005, necessitates the above-described revisions to the Agoura Hills Municipal Code relating to local transient occupancy taxes. The attached ordinance makes the changes necessary to comply with State law. The attached resolution approves the City’s TOT exemption form as required by AB 1916.

RECOMMENDATION

Staff and the City Attorney recommend that:

1. The City Council waive the first reading in full and introduce, by title only, Ordinance No. 05-332.
2. The City Council adopt Resolution No. 05-1371.

Attachments: Ordinance, Resolution