

ORDINANCE NO.

**AN ORDINANCE AMENDING AND REVISING CHAPTER 5.32 OF THE
MERCED COUNTY CODE REGARDING TRANSIENT OCCUPANCY TAX
(Supercedes former Chapter 5.32 of the Merced County Code and Ord. No. 1748,
2005; Ord. No. 1464, 1993; Ord. No. 1374, 1991; Ord. No. 803, 1976)**

The Board of Supervisors of the County of Merced, State of California, ordains as follows:

SECTION 1. Chapter 5.32 is hereby amended and reinstated to the Merced County Code to read as follows:

**CHAPTER 5.32
TRANSIENT OCCUPANCY TAX**

- 5.32.010. Adoption – Legislative Authority.
- 5.32.020. Definitions.
- 5.32.030. Exemptions.
- 5.32.040. Amount – Payment by transient.
- 5.32.050. Refunds – Waiver.
- 5.32.060. Collection.
- 5.32.070. Registration of operators.
- 5.32.080. Reporting and Remitting.
- 5.32.090. Delinquency.
- 5.32.100. Operator’s Failure to collect and report tax – Hearing.
- 5.32.110. Certificate of Tax Lien
- 5.32.120. Purchaser(s’) and Title Company’s Withholding of Tax
- 5.32.130. Purchaser’s Failure to Collect and Report-Notice to Purchaser-Limited Liability
- 5.32.140. Deficiency determinations.
- 5.32.150. Refunds.
- 5.32.160. Appeals.
- 5.32.170. Records.
- 5.32.180. Tax deemed debt to county.
- 5.32.190. Violations – Penalties.
- 5.32.200. Severability

5.32.010. ADOPTION – LEGISLATIVE AUTHORITY.

This Ordinance is adopted pursuant to the provisions of California Revenue and Taxation Code §7280 and 7281.

5.32.020. DEFINITIONS.

Except where the context requires, the following definitions shall govern the construction of this chapter.

A. "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, but is not limited to, any hotel, inn, motel, hostel, or public or private club at a fixed location, or other similar structure or portion thereof. A hotel does not include a "bed and breakfast" facility, a "vacation rental" facility, "homestay" facility or other similar structure or portion thereof (collectively known as "other transient facility"), all of which are defined in Merced County Code Zoning § 18.60.270. "Hotel" does not include a hospital room, medical clinic, convalescent home or home for the aged.

B. "Other Transient Facility" includes a bed and breakfast, vacation rental, or homestay all of which are defined in Merced County Code Zoning § 18.60.270.

C. "Occupancy" means the use or possession or the right to the use or possession of any room or rooms or portions thereof, in any hotel or other transient facility for dwelling, lodging or sleeping purposes.

D. "Operator" means the person who is the proprietor of the hotel or other transient facility, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. If the operator performs his functions through a managing agent of any type or charter other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

E. "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.

F. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel or other transient facility valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credit, and property and services of any kind or nature, without any deduction there from whatsoever.

G. "Tax Collector" means the Tax Collector of the County of Merced.

H. "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 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.

I. "Certificate of Tax Lien" means an encumbrance or charge imposed upon specific property for security for performance of an act.

J. "County" means the County of Merced.

5.32.030. EXEMPTIONS.

No tax shall be imposed upon any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose the tax provided in this chapter. No

exemption shall be granted under this section unless a claim of exemption in 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.

5.32.040. AMOUNT – PAYMENT BY TRANSIENT.

There is imposed a tax upon each transient for the privilege of occupancy in any hotel or other transient facility in any unincorporated area within the County. The tax imposed by this chapter shall be at the rate of ten percent (10%) of the rent charged by the operator, on the effective date of this ordinance codified in this chapter. Said tax constitutes a debt owed by the transient to the County which is extinguished only by payment to the operator or directly to the Tax Collector. The transient shall pay the tax 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 when the transient ceases to occupy space in the hotel or other transient facility. The tax imposed by this chapter is for the purpose of raising revenues for the general governmental purposes of the County. All the proceeds for the said tax shall be placed in the County's general fund and used for the usual current expenses of the County.

5.32.050. REFUNDS - WAIVER.

If a transient exercises occupancy or is entitled to occupancy for a period longer than thirty (30) consecutive days, the operator shall refund to such person immediately the total amount of the tax previously collected by the operator from such person during the initial thirty (30) consecutive days of occupancy under this chapter. The operator shall not be liable to the Tax Collector for remittance of the amount of refunded tax required by this section, except that the operator shall report to the Tax Collector in the manner required by §5.32.080 of this chapter the collection and refund of said tax amount.

5.32.060. COLLECTION.

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 of the tax from the operator. No operator of a hotel or other transient facility shall advertise or state in any manner, whether directly or indirectly, that the tax or any party 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 provided in this chapter.

5.32.070. REGISTRATION OF OPERATORS.

Prior to establishing a transient occupancy business, each operator of any hotel or other transient facility shall submit an application to the Community and Economic Development Department. Upon Community and Economic Development Department approval, the Tax Collector shall issue a transient occupancy registration certificate that

must be posted in a conspicuous place on the premises at all times. Such 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. “This Transient Occupancy Registration Certificate signifies that the person or entity named on the face hereof has fulfilled the requirements of the Transient Occupancy Ordinance Chapter 5.32 and Short-Term Rentals Chapter 18.60.270 by registering with the Community and Economic Development Department for the purpose of complying with the zoning ordinance standards and collecting from transient 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 or other transient facility 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 the County. This certificate does not constitute a permit.”

5.32.080. 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, make a return to the Tax Collector, on forms provided by the Tax Collector. Each operator shall report total rents charged and received and the amount of tax collected from transient occupancies for the period. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Collector.

If an operator has been issued more than one transient occupancy registration certificate, the operator shall report the tax collected and due on each unit that has a transient occupancy registration certificate. The operator may remit payment in one check for multiple units, but the accounting for tax collected and due shall be itemized for each separate certificated rental unit. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Collector.

Failure to comply with the quarterly filing and remittance requirement may cause the Tax Collector to require monthly filing and remittance of TOT receipts to ensure timely compliance with the law.

The Tax Collector may establish shorter reporting periods for any operator and require additional information in the return if deemed necessary in order to insure collection of the tax. 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 County until payment thereof is made to the Tax Collector.

5.32.090. DELINQUENCY.

- 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 delinquent 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. Fraud. If the Tax Collector determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in the 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 of one percent (1.5%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first becomes 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 required to be paid by this chapter.

5.32.100. OPERATOR'S FAILURE TO COLLECT AND REPORT TAX – HEARING.

- A. If any operator fails or refuses to collect any tax required by this chapter and to make within the time provided in this chapter any report and remittance of said tax, then the Tax Collector shall proceed in such manner as he or she may deem best to obtain facts and information on which to base the estimate of the tax due. As soon as the Tax Collector secures such facts and information upon which to base the assessment of any tax imposed and made payable by this chapter, the Tax Collector shall then proceed to determine and assess against the operator the tax, interest and penalties provided for by this chapter.
- B. After such determination has been made, the Tax Collector shall give written notice of the amount so assessed and of the recording of the Certificate of Tax Lien made pursuant to §5.32.110 of this chapter by either serving such notice personally or by mailing it by first class mail, postage prepaid, addressed to the operator so assessed or person so responsible and aggrieved at their last known address as filed with the Tax Collector. Such operator or person may, within twenty (20) days after the personal service or mailing of such notice, make application in writing to the Tax Collector for a hearing before the Tax Collector. If application by the operator or person aggrieved for hearing is not made and received by the Tax Collector within said twenty (20) day period, or within the extended period provided by California Code of Civil Procedure §1013 where the Tax Collector mails such notice, then the tax, interest, and penalties determined and the Certificate of Tax Lien recorded by the Tax Collector shall become final, conclusive and subject to all enforcement or execution procedures or actions as

permitted by law. All collection remedies at law and this chapter are cumulative and no action taken by the Tax Collector or the County shall constitute an election to pursue one remedy to the exclusion of any others.

- C. If such application is timely made and received, the Tax Collector shall give not less than five (5) days written notice to the operator or person aggrieved, in the manner prescribed in this section, to show cause at a time and place stated why said tax, interest, and penalties should not be so fixed and/or why such Certificate of Tax Lien should not be enforced. At such hearing, the operator or person aggrieved shall appear either personally or by attorney and offer relevant evidence why the amount determined and the tax lien recorded by the Tax Collector should not be fixed and enforced. Failure to appear at the noticed hearing will result in dismissal of the application for hearing and forfeiture of any right to further hearing and appeal under this chapter and of the operator or person's administrative exhaustion of rights and remedies.
- D. After such hearing, the Tax Collector shall determine the proper tax to be remitted, if any, and shall thereafter give written notice to the operator or person aggrieved, in the manner prescribed by this section, of the Tax Collector's decision, including the amount of any tax, interest, and penalties assessed and the release, adjustment or maintenance of the Certificate of Tax Lien recorded pursuant to §5.32.110 of this chapter. The amount determined by the Tax Collector shall be payable ten (10) days after the personal service or mailing of the Tax Collector's notice of decision, unless an appeal made pursuant to §5.32.160 of this chapter is timely received by the Clerk of the County Board of Supervisors.

5.32.110. CERTIFICATE OF TAX LIEN – HEARING

- A. A Certificate of Tax Lien for any delinquent tax, interest or penalty imposed by §5.32.090 and §5.32.100 of this chapter will be recorded by the Tax Collector with the County Recorder on any real property in the County in which the operator or person responsible for collecting any tax imposed by this chapter has any ownership or beneficial interest. The Certificate of Tax Lien shall have the same legal force, effect and priority of a judgment lien on all personal and real property in the County owned by the operator or person responsible for the collection and remittance of tax under this chapter.
- B. A Certificate of Tax Lien will not be recorded against the mortgage holder of the real property, or against the owner of any property subject to the tax imposed by this chapter who solely leases it to another person to operate for transient occupancy as defined in § 5.32.020 of this chapter.
- C. The judgment is satisfied and the lien removed when, but not before, either of the following occur:
 - (1) The tax is paid or legally cancelled or extinguished.
 - (2) The property is sold to satisfy the tax lien.
- D. An operator or person aggrieved by the Tax Collector recording of a Certificate of Tax Lien may make a written application to the Tax Collector for a hearing within twenty (20) days of the notice by the Tax Collector given pursuant to §5.32.100,

subsection B, of this chapter. The civil enforcement or execution of the tax lien created by this section shall be stayed during the hearing and appeal process provided for by §5.32.100 and §5.32.160 of this chapter and during any judicial review petitioned for by either party to the proceedings under this chapter.

5.32.120. PURCHASER(S') AND TITLE COMPANY'S WITHHOLDING OF TAX

If an operator or any person responsible for the collection, reporting and remittance of any tax under this chapter sells or transfers the hotel, the purchaser(s), grantees) or title company shall withhold a sufficient portion of the purchase price or transfer in escrow to be made payable to the County to cover the amount for which such seller is responsible for under this chapter, unless and until such seller deposits into escrow a signed and sealed receipt from the Tax Collector showing that payment has been made and stating that no amount is due the County. Upon full payment of all amounts due under this chapter, the Tax Collector shall within ten (10) days record with the County Recorder a Satisfaction of Lien reflecting such payment and release of tax lien.

5.32.130. PURCHASER(S') OR TITLE COMPANY'S FAILURE TO COLLECT AND REPORT-NOTICE TO PURCHASER-LIMITED LIABILITY

A. If the purchaser(s) or grantee(s) of a hotel or other transient facility subject to a recorded Certificate of Tax Lien and any tax, interest and penalty imposed by this chapter fails to withhold such amounts from the purchase price or transfer as required by §5.32.120 of this chapter, then such purchaser(s) or grantee(s) who has actual knowledge of such tax lien or amounts due, shall be personally liable, jointly or individually for the payment of the amount required to be withheld pursuant to §5.32.120 of this chapter and to the extent of the purchase price or transfer, valued in U.S. currency.

B. If the title company retained in the transfer or sale and purchase of a hotel or other transient facility subject to a Certificate of Tax Lien recorded with the County Recorder fails to withhold such delinquent amounts from the purchase price or transfer as required by §5.32.120 of this chapter, the title company will be liable for the payment of the amount required to be withheld to the extent of the purchase price or transfer, valued in U.S. currency, unless such title company provides during the escrow period of such sale or transfer written and actual notice to each purchaser or grantee of the hotel or other transient facility of the purchaser's or grantee's potential liability under §5.32.120 and §5.32.130 of this chapter, together with notice of all amounts due and the Certificate of Tax Lien filed by the Tax Collector and recorded against the hotel. The title company shall within three (3) days of giving such notice to the purchaser(s) or grantee(s) provide and mail to the Tax Collector a copy of the title company's notice to the purchaser(s) or grantee(s) of the requirements of this chapter, the recorded Certificate of Tax Lien and the taxes due thereunder.

C. Within thirty (30) days after receiving a written request from the purchaser or grantee 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 or grantee from any further obligation to withhold taxes, interest or penalties from the purchase price or transfer as provided in §5.32.170 of this chapter.

5.32.140. DEFICIENCY DETERMINATIONS.

If the Tax Collector is not satisfied with a return filed by an operator or the amount of the tax required to be paid to the County pursuant to a return, the Tax Collector may compute and determine the amount required to be paid upon the basis of the facts contained in the return or upon the basis of any information within the Tax Collector's possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for any period. The Tax Collector shall give the operator written notice of his or her determination in the same manner as provided in §5.32.100 of this chapter. The operator shall thereafter be entitled to apply for a hearing on the amount assessed pursuant to the procedures set forth in §5.32.100 of this chapter, and shall thereafter be entitled to appeal to the County Board of Supervisors in accordance with the provisions of §5.32.160 of this chapter. The penalties and interest provided by §5.32.90 shall be applicable to the amount of deficiency established pursuant to this section.

5.32.150. REFUNDS.

Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected by the Tax Collector under this chapter, it may be refunded provided a verified claim for refund in writing stating the specific ground upon which the claim is founded, is filed with the Clerk of the County Board of Supervisor within three (3) years from the date of such payment or amount. The claim shall be made on forms provided by the Tax Collector. If the claim is approved by the County Board of Supervisors, the excess amount collected or paid shall be refunded or credited on any amounts then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to such operator, or the operator's administrators or executors, successors or assignees.

5.32.160. APPEALS.

Any operator or person aggrieved by any unfavorable determination or action of the Tax Collector made pursuant to this chapter may after exhausting his or her hearing rights pursuant to §5.32.100, appeal to the County Board of Supervisors by filing a written notice of appeal with the Clerk of the Board of Supervisors within ten (10) days after the personal service or mailing of the notice of the determination by the Tax Collector made pursuant to §5.32.100 or §5.32.110, subsection B, of this chapter. The Board of Supervisors shall fix a time for hearing such appeal based upon the full administrative record made pursuant to §5.32.100, subsections C and D, of this chapter, together with any official records of the County. The Clerk of the County Board of Supervisors shall give notice in writing to appellant(s) at their last known address as filed with the Tax Collector by first class mail, as prescribed by §5.32.110, subsection B., of this chapter of the Board of Supervisors' decision. There shall be no reconsideration of the Board's

decision. The decision of the Board of Supervisors shall be final upon the date the County Clerk mails the written decision of the Board of Supervisors to appellants.

5.32.170. RECORDS.

Every operator or person liable for the collection and payment to the County of any tax imposed by this chapter shall keep and preserve, for a period of three (3) years, all records necessary to determine the amount of such tax for which he or she may have been liable for the collection of and payment to the County. The Tax Collector shall have the right to inspect said records at all reasonable times and places.

5.32.180. TAX DEEMED DEBT TO COUNTY.

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 County. Any such tax required to be collected by an operator, purchaser, or title company which has not been paid to the County shall be deemed a debt owed by the operator to the County. It shall be the duty of the Tax Collector or designee to enforce the requirements of this chapter. Said delinquencies shall be collected in the same manner as any unsecured tax collection procedure as provided by the California Revenue and Taxation Code.

5.32.190. VIOLATIONS – FELONY/ MISDEMEANOR

- A. **Failure of an operator to pay the Tax Collector taxes collected under this ordinance is punishable as a felony pursuant to Section 424 of the Penal Code.** In addition, any person violating any of the provisions of this chapter is guilty of a misdemeanor and punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the County jail for the period of not more than six (6) months or by both such fine and imprisonment.
- B. Any person who fails or refuses to register as required in this chapter, or to furnish any return required to be made, or fails or refuses to furnish a supplemental return or other data required by the Tax Collector, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as set forth in subsection A of this section. 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 delay, obstruct or evade any determination or any amount due pursuant to this chapter is guilty of a misdemeanor and is punishable as stated in Subsection A of this section.

5.32.200. SEVERABILITY

If any provision of this ordinance is held to be unconstitutional, preempted by federal law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

This ordinance shall become effective and be in full force on and after thirty (30) days of its passage and adoption, and prior to the expiration of fifteen (15) days from the passage and adoption thereof, shall be published in a newspaper of general circulation printed and published in the County of Merced, State of California, together with the names of the members of the Board of Supervisors of the County of Merced, voting for or against the same.

The foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Merced, State of California at a regular meeting thereof held on the ____ day of _____ by the following vote:

SUPERVISORS

AYES:

NOES:

ABSENT:

Chairman, Board of Supervisors

ATTEST:

JAMES L. BROWN
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:
MERCED COUNTY COUNSEL

By: _____