

September 19, 2006

Honorable Mayor and Members of  
the Hermosa Beach City Council

City Council Meeting  
September 26, 2006

**ADOPTION OF AN ORDINANCE APPROVING THE AMENDMENTS TO CHAPTER 3.32 OF THE MUNICIPAL CODE, BRINGING IT INTO COMPLIANCE WITH CALIFORNIA'S TRANSIENT OCCUPANCY TAX (TOT) LAWS EFFECTIVE JANUARY 1, 2005; ADOPTION OF A RESOLUTION ESTABLISHING THE FEE FOR ISSUANCE OF A TAX CLEARANCE CERTIFICATE; ADOPTION OF A RESOLUTION APPROVING THE REVISED "TRANSIENT OCCUPANCY GOVERNMENT EMPLOYEE EXEMPTION FORM"**

**RECOMMENDATION:**

After the City Attorney reads the title of the Ordinance, it is recommended that the City Council:

1. Introduce on first reading Ordinance No. 06-\_\_\_\_ amending Chapter 3.32 of the Municipal Code,
2. Adopt Resolution No. 06-\_\_\_\_ establishing the fee for issuance of a tax clearance certificate,
3. Adopt Resolution No. 06-\_\_\_\_ approving the revised Transient Occupancy Tax Government Employee Exemption Form.

**BACKGROUND:**

AB 1916, a bill making changes to California's Transient Occupancy Tax (TOT) laws, became effective on January 1, 2005. The bill has three components of importance to the City.

**First**, the bill extends the prior three year statute of limitations on collection of past due TOT to four years.

**Second**, the bill provides a mechanism, called a "tax clearance certificate," for identifying past due TOT when ownership of a hotel property is transferred and clearly establishing both owner and successor liability when the mechanism is not utilized. Since the law provides for the City to charge a fee to cover expenses associated with certificate issuance, we are recommending that the fee be equal to the cost of the independent audit required to determine the amount of TOT owed.

**Third**, the bill provides that cities that elect to grant an exemption from TOT for government employees must provide detailed requirements, including a form approved by the legislative body of the municipality, for use by hotel operators in claiming the exemption. The City has been using a similar form for many years but the new law requires approval of the form by the legislative body. The Tax Administrator will be able to make administrative changes thereafter as needed.

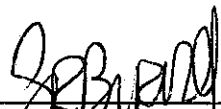
**ANALYSIS:**

The following documents are attached:

- An Ordinance changing the record keeping period from three to four years and incorporating the Tax Clearance Certificate procedure from state law.
- A Resolution establishing the fee for issuance of a tax clearance certificate.
- A Resolution approving the use of the revised Transient Occupancy Tax Government Employee Exemption Form. (The form is incorporated and attached to the resolution.)

Respectfully submitted,

  
\_\_\_\_\_  
Viki Copeland  
Finance Director

  
\_\_\_\_\_  
Stephen R. Burrell  
City Manager

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDINANCE NO. 06-**

**AN ORDINANCE OF THE CITY OF HERMOSA BEACH  
AMENDING PROCEDURAL PROVISIONS OF THE TRANSIENT  
OCCUPANCY TAX ORDINANCE AND AMENDING CHAPTER 3.32  
OF THE HERMOSA BEACH MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF HERMOSA  
BEACH DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Section 3.32.110 of Chapter 3.32, Title 3 of the Hermosa Beach Municipal Code is amended to read:

“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 years, all records as may be necessary to determine the amount of such tax as the operator may have been liable for the collection and payment of to the city, which records the Tax Administrator shall have the right to inspect at all reasonable times.”

**SECTION 2.** Section 3.32.125 is added to Chapter 3.32, Title 3 of the Hermosa Beach Municipal Code to read:

3.32.125 Change of Ownership--Tax Clearance Certificate

A. Pursuant to Revenue and Taxation Code Section 7283.5, and as that section may from time to time be amended, a purchaser, transferee, or other person attempting to obtain ownership of a transient occupancy facility, may request in writing from the Tax Administrator the issuance of a tax clearance certificate stating the amount of tax and any accrued penalties and interest due and owing, if any.

B. The Tax Administrator shall, within ninety days of the receipt of the written request for a tax clearance certificate issue the tax clearance certificate, or may conduct an audit of the subject transient occupancy facility. Any such audit must be completed within ninety days after the date the records of the

1 subject transient occupancy facility have been made available to the Tax  
2 Administrator and a tax clearance certificate issued within thirty days of the  
3 completion of the audit.

4 C. If following an audit the Tax Administrator determines that the current  
5 operator's records are insufficient to assess the amount of tax due and  
6 owing, the Tax Administrator shall, within thirty days of making that  
7 determination, notify the prospective purchaser, transferee or other person  
8 that a tax clearance certificate will not be issued.

9 D. If the Tax Administrator does not comply with the request for a tax  
10 clearance certificate, the purchaser, transferee or other person that obtains  
11 ownership of the transient occupancy facility shall not be liable for any  
12 transient occupancy tax obligation incurred prior to the date of the purchase  
13 or transfer of the property.

14 E. The tax clearance certificate shall state the following:

- 15 1. The amount of tax, interest and penalties then due and owing;
- 16 2. The period of time for which the tax clearance certificate is valid; and
- 17 3. That the purchaser, transferee, or other person may rely upon the tax  
18 clearance certificate as conclusive evidence of the tax liability  
19 associated with the property as of the date specified on the certificate.

20 F. Any purchaser, transferee, or other person who does not obtain a tax  
21 clearance certificate under this section, or who obtains a tax clearance  
22 certificate that indicates that tax is due and owing and fails to withhold,  
23 for the benefit of the county, sufficient funds in the escrow account for  
24 the purchase of the property to satisfy the transient tax liability, shall be  
25 held liable for the amount of tax due and owing.

26 G. The fee for issuance of a tax clearance certificate shall be established by  
27 resolution of the City Council.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SECTION 3.** The City Clerk shall certify to the passage and adoption of this ordinance, shall enter the same in the book of original ordinances of said city, and shall make minutes of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted.

**PASSED, APPROVED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2006 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

**PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, California

ATTEST:

APPROVED AS TO FORM:

---

City Clerk

---

City Attorney

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**RESOLUTION NO. 06-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, ESTABLISHING THE FEE FOR ISSUANCE OF A TAX CLEARANCE CERTIFICATE PURSUANT TO HERMOSA BEACH MUNICIPAL CODE § 3.32.125**

**SECTION 1.** The City Council of the City of Hermosa Beach find and declares as follows:

The City has adopted a procedure for the issuance of a tax clearance certificate consistent with Revenue and Taxation Code section 7283.5. The procedure is set forth in Hermosa Beach Municipal Code section 3.32.125.

- A. Pursuant to the authority vesting the City by Revenue and Taxation Code section 7283.5(a)(2), this resolution is being adopted to establish an administrative fee that will allow the City to recover its costs in issuing the certificate.

**SECTION 2.** **Calculation of Fee for Issuance of Tax Clearance Certificate.** The amount of the fee for issuance of a tax clearance certificate shall be equal to the actual cost of the audit performed by an independent contractor engaged by the City for purposes of calculating transient occupancy taxes that may be due and owing from the owner of the property in question. The fee shall not exceed the actual cost of providing the service.

**SECTION 3.** **Effective date of this Resolution.** The effective date of this resolution will coincide with the effective date of Ordinance No. \_\_\_\_, and will remain in effect unless repealed or superseded.

**NOW, THEREFORE,** it is hereby resolved that the City Council of the City of Hermosa Beach approves establishing a fee for issuance of a tax clearance certificate.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PASSED, APPROVED and ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

---

**PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, California

**ATTEST:**

**APPROVED AS TO FORM:**

---

City Clerk

---

City Attorney

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**RESOLUTION NO. 06-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING THE USE OF THE "TRANSIENT OCCUPANCY TAX GOVERNMENT EMPLOYEE EXEMPTION FORM" IN CONJUNCTION WITH ITS TRANSIENT OCCUPANCY TAX ORDINANCE**

**WHEREAS**, 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 in general law cities. The changes include revisions to exemption language, collection and enforcement procedures;

**WHEREAS**, Revenue and Taxation Code Section 7280(e) requires a city that has incorporated a governmental employee exemption into its municipal code to develop a standard form for hotel operators to use in documenting their guests' eligibility for the TOT exemption;

**WHEREAS**, Revenue and Taxation Code Section 7280(e) also requires that the City Council approve the exemption form to be used; and

**WHEREAS**, a proposed "Transient Occupancy Tax Government Employee Exemption Form" is attached hereto and incorporated herein by this reference.

**NOW, THEREFORE**, it is hereby resolved that the City Council of the City of Hermosa Beach approves the "Transient Occupancy Tax Government Employee Exemption Form" for use by hotel operators within the city and hereby authorizes the Tax Administrator to make administrative updates as necessary.



1 **PASSED, APPROVED** and **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2006.

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\_\_\_\_\_  
**PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, California

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney