

DEPARTMENT:

BY:

PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: Consider the request from the owners of the Hotel Jeffery to waive the TOT penalty and render an order regarding said penalty.

Please see attached staff report.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:
ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Financial Impact? () Yes (x) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		Request letter, ordinance
Source:		
Internal Transfer		<u>Other Misc. Documents</u>
Unanticipated Revenue _____ 4/5's vote		
Transfer Between Funds _____ 4/5's vote		
Contingency _____ 4/5's vote		
() General () Other		

CLERK'S USE ONLY:

Res. No.: 10-130 Ord. No. _____
 Vote - Ayes: _____ Noes: _____
 Absent: _____
 () Approved
 Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 _____ No Opinion
 Comments:

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____
 Attest: MARGIE WILLIAMS, Clerk of the Board
 County of Mariposa, State of California
 By: _____
 Deputy

CAO: 



COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BRAD ABORN
LYLE TURPIN
JANET BIBBY
KEVIN CANN
JIM ALLEN

DISTRICT I
DISTRICT II
DISTRICT III
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: RICHARD J. BENSON, CAO

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: Consider the Request from the Owners of the Hotel Jeffery to Waive the Transient Occupancy Tax (TOT) Penalty and Render an Order Regarding said Penalty
RES. 10-130

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on March 16, 2010

ACTION AND VOTE:

18

Administration

Consider the Request from the Owners of the Hotel Jeffery to Waive the Transient Occupancy Tax (TOT) Penalty and Render an Order Regarding said Penalty
BOARD ACTION: Rick Benson reviewed the request and the background; and discussion was held as to when the Schimmelfennigs reopened the Hotel Jeffery and relative to the TOT issues. Keith Williams, Treasurer/Tax Collector, provided input relative to the assessment and collection of the TOT and of his discussions with Peter Schimmelfennig; and he advised that the TOT with penalty and interest was paid. The amount in question is the additional penalty that was assessed pursuant to County Code section 3.36.210. Discussion was held relative to the appeal that was filed and confusion of the interpretation of the twenty days – whether it was calendar or working days.

Input from the public was provided by the following:

Peter Schimmelfennig, President of P&C Development, Inc., Hotel Jeffery, provided input on his previous business experience and efforts to reopen the Hotel and kitchen facilities and his interactions with County departments. He questioned why the County did not give them information on the TOT tax process during their contact with the County. He asked that the Board set aside the penalty and presented the following documents and reviewed the chronology of events:

- a copy of a memo of December 23, 2003 from the Mariposa County Fire Department, Chief Shultz, relative to the evaluation of their facility;
- copies of telephone records showing calls made to Mariposa Fire Department trying to determine the status of the release letter the Department was supposed to prepare so the Certificate of Occupancy could be issued;
- copies of receipts from 2006 showing the trips they made to Mariposa trying to obtain the letter in question; he advised that he was notified by Planning in 2007 that they did not have his TOT permit application and he maintained that he previously applied for the permit;
- a copy of the TOT permit application he made in February 2007 which he said was a re-application; he advised that the Treasurer contacted him in

early February of 2007 and they had a series of meetings trying to resolve the TOT issues and he advised that up until then, he had not received any information on how to pay the tax, but he was collecting it; he paid the \$22,003.82 that it was determined he owed in back TOT, interest, and penalty;

- a copy of a letter dated August 28, 2007 he received from Keith Williams advising of the additional \$42,527.58 that he owed in penalties and informing him of his appeal rights; then he finally received a memo from the new Fire Chief Wilson authorizing the issuance of the Certificate of Occupancy; and
- a copy of the TOT tax audit and payments he made for 2004-07.

Discussion was held with Peter Schimmelfennig relative to the processing of his appeal that he submitted in 2007 and relative to the TOT issues.

Sarah Williams, Deputy Planning Director, provided input on the TOT permit application procedures and the differences in processing an application for a transient residential permit versus an existing hotel – the owner for an existing hotel just needs to come in and apply for a change of ownership.

Further discussion was held with Peter Schimmelfennig relative to the hotel being idle for 21-months and his contacts with the County during this time.

Lester Bridges, businessman and friend of Peter Schimmelfennig, referred to the Labor laws as an example of the many rules and regulations that businesses must follow. He feels that mistakes were made on the part of the County, and he noted that funds were set aside for the payment of the TOT tax. He noted that a lot was invested in the Hotel Jeffery and in the community, and that Peter's wife is fighting cancer; and he asked for compassion.

MaryAnn Huff, past President of the Chamber of Commerce and resident of North County and commercial business property owner, stated she is also a personal friend of Peter Schimmelfennig. She noted that business is dying in Coulterville, the Hotel Jeffery is the hub of Coulterville and its closure has devastated North County. She advised of a situation with her building and a break down in communication with the County permitting of the kitchen. She feels that the County needs to provide more information to businesses.

Keith Williams provided additional input on this matter; and he advised that this matter is before the Board today to give Peter Schimmelfennig a chance to present his request to ask the Board to set aside the penalty before his office perfects a lien on the property. He clarified that this penalty is a fine on top of the TOT, penalty and interest that has already been paid; and there is no dispute of the amount. Further discussion was held, and Keith Williams clarified that this is the first case where the double penalty was applied and he feels that this was very confusing for the owners. He further advised of the availability of the TOT Ordinance.

(M)Aborn, (S)Turpin, Res. 10-130 was adopted waiving the 200-percent TOT penalty in the amount of \$42,527.58 for the Hotel Jeffery for this specific case, finding that this does not set precedent. Supervisor Turpin initiated discussion relative to reviewing the procedures for clarity, and he noted that other counties do not have this 200-percent penalty clause. Supervisor Cann noted that there was no willful defiance found for not paying the tax, and expressed concern with the County official that did not seem to respond over the two-year period; and he noted that the appeal was filed in the timeframe advised by the Treasurer. Supervisor Bibby suggested that the businesses be reminded of requirements and that a caution be added to the applications, that they are only an application and the applicant needs to follow through to obtain the permit. Ayes: Unanimous.

Cc: Keith Williams, County Clerk
Chris Ebie, Auditor
Kris Schenk, Planning Director
File

MARIPOSA COUNTY


Richard J. Benson
County Administrative Officer



5100 Bullion Street
P.O. Box 784
Mariposa, CA 95338
209-966-3222
1-800-736-1252
FAX 209-966-5147
rbenson@mariposacounty.org

March 9, 2010

TO: Board of Supervisors

FROM: Rick Benson, County Administrative Officer 

SUBJECT: Request to waive TOT penalty assessed against the Hotel Jeffery

Peter Schimmelfennig, the owner of the Hotel Jeffery in Coulterville has made a written request (attached) that your Board consider setting aside a penalty of \$42,527.58 that was assessed against the hotel by the Treasurer/Tax Collector under County ordinance 3.36.210. This penalty was imposed because Mr. Schimmelfennig did not obtain a transient occupancy tax certificate nor pay the TOT tax during the first 2+ years of the hotel's operation and is in addition to other penalties and interest charges previously assessed and paid.

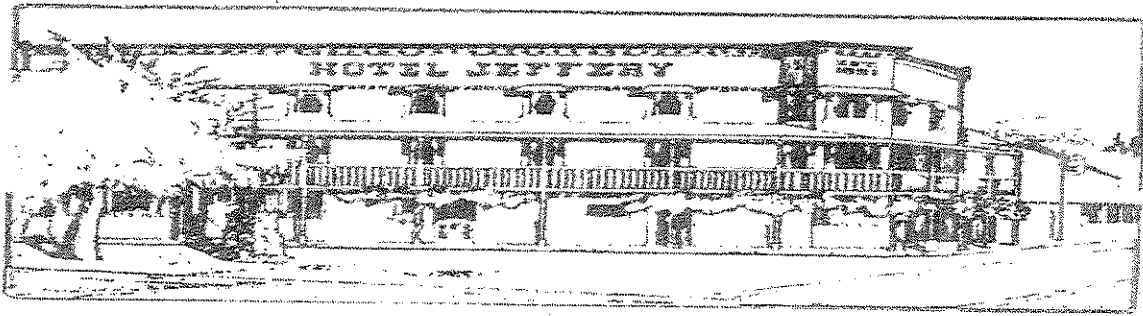
It is the consensus opinion of County staff, including County Counsel, that the Treasurer/Tax Collector assessed the charge properly per the ordinance. In addition, the deadlines for all appeals have already passed. Therefore, the only basis for your Board's consideration is whether or not it is in the public's interest to collect, reduce or waive this penalty. Mr. Schimmelfennig has indicated that the imposition of this penalty will present an extremely serious obstacle for the continued viability of his business. Given that the operation of the hotel is important for the Coulterville community, it could be deemed that the closing of the hotel would not be in the public interest.

Although there is no record of the intent of the Board at the time the ordinance was enacted, it can be inferred that this provision was placed to discourage the willful defiance of the code. There is no indication that the operators of the Hotel Jeffery meant to defy the County ordinance. Once the nonpayment was brought to their attention they did make the proper payment including the other penalties required by the ordinance.

Waving or reducing this penalty is not specifically addressed in the ordinance, however, Section 3.36.080 does provide a mechanism for your Board to waive other penalties incorporated in the code. Since this is controlled by a County ordinance, ultimately your Board has the authority to consider this request.

It should be noted that any action your Board takes should be predicated upon the unique circumstances presented here. Although not of the same magnitude, other hoteliers have paid the penalty under this section. If your Board were to waive or reduce this penalty it most certainly will invite similar requests for consideration in the future.

It is recommended that your Board consider this request and render an order to either retain, reduce, or waive the penalty.



HOTEL JEFFERY

5001 Main Street PO Box 150 Coulterville, Ca. 95311

209-878-3471 Fax 209-878-3472

peter@hoteli Jefferygold.com

November 23, 2009

Mariposa County Board of Supervisors
PO Box 784
Mariposa, Ca. 95338

Dear Board,

This letter is written to this Board to request that you consider setting aside a penalty of \$42,527.58 that has been accessed on the Hotel Jeffery under County Ordinance 3.36.210, for failure to obtain a T.O.T certificate and pay taxes.

We had applied for a Transient Occupancy Certificate at the County Planning Department just after the purchase of this property in October 2003. I was informed that I would be responsible for scheduling all inspections as needed. It was explained to me that the kitchen would need re-engineering and building inspections along the way after approved drawings were submitted. The Fire Marshall would need to be involved with the kitchen final approval and also the hotel would need a fire inspection and final approval before a T.O.T certificate would be issued.

In April of 2004, the kitchen received final approval and opened for business. The hotel fire safety upgrades were completed during August of 2004 and then Fire Marshall Schultz completed the inspection/operational test and said, on the spot, that I could begin renting rooms. He would send in the needed letter of approval to the Planning and Building Departments next week.

Some time in late 2005 I received a call from the Planning Department requesting closure on the application for the hotel Transient Occupancy Registration Certificate and I was informed that the Fire Marshall's release letter was not on file. By this time I had already been in contact with the Fire Marshall's office and he had explained to me that he was very busy but the letter was forth coming.

By Christmas of 2005, my wife and I decided that phone calls to the Fire Marshall had not resulted in a final inspection letter so we stepped up our efforts. Beginning in 2006 we made efforts to stop by the Fire Marshalls office when either one of us was in Mariposa. Between January and the end of 2006 we visited his office no less than six times. We had always just missed him and were told that he would call us and/or write the letter. It turns out that the Fire Marshall retired in December of 2006 and he had been busy finishing other business and had let this slip by him.

By February of 2007 the Planning Department wrote a letter stating that I "must notify the Planning Department immediately upon any change" regarding a change in property ownership. I reminded them that I had done this since this department had received my certificate application and a final inspection on the kitchen construction was submitted. On March 6, 2007 the planning department issued Transient Occupancy Registration Certificate #200701 to the Hotel Jeffery. (Please see copy of certificate attached)

About this time I was contacted by the County Treasurer for the failure to obtain a Transient Occupancy Registration Certificate and pay T.O.T. taxes. I assured him that I had been attempting to gain a certificate and that I would pay any taxes due. An audit by the Treasurer concluded the amount due, combining tax, penalty and interest, was \$22,003.82. This amount was paid by the Hotel on April 30, 2007 and the matter was considered closed.

In April of 2007, incoming Fire Marshall, Jim Wilson was researching this letter issue and determined that a release letter for the Hotel Jeffery fire inspection final never made its way to either Planning or Building Departments. So on the 20th of April 2007 he wrote his release letter. (Please see a copy attached) This final letter was written 45 days after a Transient Occupancy Registration Certificate was issued to the Hotel Jeffery.

On August 28 of 2007, the treasurer wrote in a letter that this company had been assessed a penalty of \$42,527.58 under County Ordinance 3.36.210 for failure to obtain a certificate and pay taxes. . He further wrote that I had the right to appeal this penalty to this Board provided I file an appeal within 20 days of the post mark of his letter. I called Treasurer Williams to discuss an appeal and he stated that an appeal filed in 20 days meant 20 working days, since we had used "working days" with regards to any deadlines he had given me during the T.O.T. audit. Our appeal was filed with this Board with in 20 working days, on September 24, 2007, but was rejected by the county council for being filed late.

This letter is written now to request that this Board consider setting aside this penalty for the following:

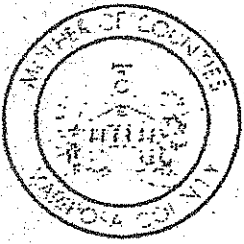
1. Fire Marshall Shultz failed in his duty to complete his portion of the application process for the Hotel Jeffery. He further unreasonably withheld a final inspection letter which led to an excessive delay in issuing of the Transient Occupancy Registration Certificate for the Hotel.
2. The Planning Department Director failed to issue a Transient Occupancy Registration Certificate in a timely manner. The director withheld a certificate from August of 2004 until March of 2007 stating that the Fire Marshall's release letter was first needed . Yet for unknown reasons, he did issue a certificate 45 days before the Fire Marshall wrote the inspection release letter on April 20, 2007. The Planning Department really did not need a release letter at all.
3. I filed an appeal to the penalty with this Board in a timely manner as directed by the Treasurer.
4. The Hotel Jeffery did secure a T.O.T. certificate.
5. The Hotel Jeffery did pay taxes when requested.

SUMMARY: The Fire Marshalls failure to write a timely release letter and/or the Planning Directors false request that this letter be on file before a certificate was issued resulted in an accessed penalty. Compounded by in-accurate advice from the Treasurer this penalty has gone un-appealed, until now. I there fore request that this Board consider the facts above and cause this penalty to be waved and set aside.

Sincerely,



Peter Schimmelfennig,
President



COUNTY OF MARIPOSA

PLANNING DEPARTMENT

TRANSIENT OCCUPANCY REGISTRATION CERTIFICATE

Issue Date: March 6, 2007

Certificate: 200701

Owner: P & C Golden Acres. LLC.
Operator: (Other than owner) P & C Development Inc.
Business Name: Hotel Jeffrey
Address: 5001 Main Street, Coulterville

The "Transient Occupancy Registration Certificate" signifies this lodging property meets the requirements of the Mariposa County Uniform Transient Occupancy Tax Ordinance by registering with the Planning Department for the purpose of collecting the Transient Occupancy Tax. This certificate does not authorize any operation of lodging property without strictly complying with all local applicable laws, and state applicable laws. This certificate does not constitute a permit, but is validation that this lodging property is known to the County.

Maximum: 21 guest rooms


Kris Schenk, Planning Director

To be posted at all times in a conspicuous place on the premises.

- This certificate becomes VOID upon any change of ownership or location whatsoever. You MUST notify the Planning Department IMMEDIATELY upon any change.

Mariposa County Planning Department, 5100 Bullion Street, P.O. Box 2039, Mariposa, CA 95338 209.966.5151 • FAX 209.742.5024

MARIPOSA COUNTY FIRE DEPARTMENT

Jim Wilson
Fire Chief

P. O. Box 162
Mariposa, CA 95338
PHONE 209-966-4330 FAX 209-966-0252

Jim Middleton
Deputy Fire Chief

Everyone Goes Home

Memo

Date: April 20, 2007

To: Kris Schenk, Planning Director
John Davis, Building Director
Peter Schimmelfenning, Owner
Jim Middleton, Deputy Chief

From: Jim Wilson, Fire Chief



RE: Jeffrey Hotel-Certificate of Occupancy

In August of 2004 then Fire Chief/Fire Marshal Blaine Shultz conducted a final inspection of the Jeffrey Hotel in Coulterville. He verified that all conditions of the 12-23-03 survey were satisfied and recommended a Certificate of Occupancy be issued. Unfortunately, the release letter did not find its way to either the Planning or Building departments.

Following an extensive search of our files I cannot locate a copy of the release. This letter will certify that I have spoken to Chief Shultz and he has assured me that all conditions were met as of August 2004. You may issue the Certificate of Occupancy for the Jeffrey Hotel.

I apologize for any inconvenience this oversight may have caused. Please feel free to contact me with additional questions or concerns.

Chapter 3.36

TRANSIENT OCCUPANCY TAX

Sections:

- 3.36.010 Title.
- 3.36.020 Definitions.
- 3.36.030 Imposition of tax.
- 3.36.040 Exemptions from tax. (Repealed)
- 3.36.050 Operator's duties.
- 3.36.060 Registration--Certificate.
- 3.36.070 Reporting rents and remitting tax.
- 3.36.080 Penalty--Original delinquency.
- 3.36.090 Penalty--Continued delinquency.
- 3.36.100 Penalty--Fraud.
- 3.36.110 Penalty--Merged with tax.
- 3.36.120 Failure to collect and report tax--Determination of tax by tax collector.
- 3.36.130 Appeal to board for grievance with decision of tax collector.
- 3.36.140 Records to be kept by operators.
- 3.36.150 Refund--Procedure.
- 3.36.160 Refund--Claim by operator.
- 3.36.170 Refund--Claim by transient.
- 3.36.180 Refund--Claimant to establish right by written records.
- 3.36.190 Actions to collect tax.
- 3.36.200 Violation--Penalty.
- 3.36.210 Failure to obtain certificate and pay taxes - Penalty.

3.36.010 Title.

This chapter shall be known as the uniform transient occupancy tax chapter of the county. (Ord. 245 Sec.1, 1964).

3.36.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

A. "Due date" or "date due" shall mean the date designated by the tax collector wherein the tax is due to be paid. Should the "due date" or the "date due" fall on a Saturday, Sunday, or holiday where either the post office or county offices are closed, the "due date" or "date due" shall be the first working day following the Saturday, Sunday or holiday.

B. "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, bed and breakfast establishment or transient rental as defined in section 17.108.180 of this code, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse,

apartment house, dormitory, public or private club, mobile home or house trailer, at a fixed location, or other similar structure or portion thereof.

C. "Occupancy" means 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.

D. "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, 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 in 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. "Remit" as used in this chapter means that the taxes due under this chapter shall be received by the tax collector on the due date or the postage containing the taxes must be postmarked no later than the due date of the tax."

G. "Rent" means the consideration charged, whether or not received, 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 therefrom whatsoever; provided, however, that "rent" shall not include lodging furnished in kind to any employee by an employer solely for the convenience of the employer.

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 (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. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered. This definition of "transient" shall also apply in cases where an individual or organization rents a premises for in excess of thirty (30) days as defined herein and that individual or organization allows use throughout the rental period by different individuals. (Ord. 953, Sec.I, 2000; Ord. 245 Sec.2, 1964).

3.36.030 Imposition of tax.

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 by the operator. Such tax constitutes a debt owed by the transient to the county, which is extinguished only by payment to the operator, or to the county. 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 due is not paid to the operator of the hotel, the tax collector may require that such tax be paid directly to the tax collector. (Measure B, effective 3/27/96; Repealed Ord. 892 Sec.I, 1995; Ord. 780 Sec.1, 1990).

3.36.040 Exemptions from tax. (Repealed Ord. 892 Sec.II, 1995; Ord. 780 Sec.2, 1990; Ord. 469 Sec.B(30) and (31), 1977; Ord. 263 Sec.2, 1965; Ord. 245 Sec.4, 1964).

3.36.050 Operator's duties.

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 provided in sections 3.36.160 through 3.36.190. (Ord. 245 Sec.5, 1964).

3.36.060 Registration--Certificate.

Within thirty (30) days after the effective date of the ordinance codified in this chapter, or within thirty (30) days after commencing business, pursuant to other applicable provisions of county code (title 17), whichever is later, each operator of any hotel renting occupancy to transients shall register the hotel with the planning department and obtain a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. A separate certificate shall be issued for each and every separate hotel or bed and breakfast and for each individual rental unit in a transient rental business. Existing certificates which have been issued to multiple facilities under one ownership shall be converted to separate certificates (per unit, as described above) within six (6) months of the effective date of this ordinance. 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 number of rooms (if a hotel operation) or bedrooms (if a transient rental or bed and breakfast) approved for rental. If in Wawona, the certificate shall list maximum occupancy by number of guests;

E. 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 planning department for the purpose of collecting for transients 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 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 county. This certificate does not constitute a permit. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.6, 1964).

3.36.070 Reporting rents and remitting tax.

Each operator shall, on or before the last day of the 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, and which may be obtained from the tax collector's office, of the total rents charged and received, and the amount of tax collected for transient occupancies. It shall be the responsibility of the operator to obtain the forms as described herein. 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. The tax collector may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure 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 county until payment thereof is made to the tax collector. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.7, 1964).

3.36.080 Penalty--Original delinquency.

Any operator who fails to remit any tax imposed by this chapter within the time required (due date) shall pay a penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax. The board of supervisors shall have the authority to waive penalties imposed by section 3.36.080 and section 3.36.090 when the board of supervisors determines in a public meeting that good cause exists for waiving the penalties. (Ord. 977 Sec.I, 2002; Ord. 953 Sec.I, 2000; Ord. 245 Sec.8(a), 1964).

3.36.090 Penalty--Continued delinquency.

When taxes remain unpaid at 5 p.m., or the close of business whichever is later, on the last day of the second succeeding calendar month after delinquency, operator shall pay an additional penalty of one and one half percent (1-1/2%) per month together with any actual costs of collection incurred by the county up to the time the delinquency is paid [§2922(c), (d)]. In the event taxes are not received by the tax collector on the due date, the tax collector shall, within thirty (30) days of the delinquency notify the operator, in writing, of the delinquency and the addition of penalties for failure to pay on the due date and additional penalties to be added.

This additional penalty attaches on the first day of every month thereafter until payment is made or a court judgment is entered, whichever occurs first. (Ord. 953 Sec.I, 2000; Ord. 245 Sec. 8(b), 1964).

3.36.100 Penalty--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 sections 3.36.080 and 3.36.090. (Ord. 245 Sec.8(c), 1964).

3.36.110 Penalty--Merged with tax.

Every penalty imposed, and such interest as accrues under the provisions of sections 3.36.080 through 3.36.120, shall become a part of the tax herein required to be paid. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.8(d), 1964).

3.36.120 Failure to collect and report tax--Determination of tax by tax collector.

If any operator fails or refuses to collect the tax, and to make, within the time provided in this chapter (due date), any report and remittance of the tax or any portion thereof required by this chapter, the tax collector 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 tax collector procures 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 and 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 tax collector 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 business. Such operator may within ten (10) days after the serving or postmark of such notice make application in writing to the tax collector 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 tax

collector, shall become final and conclusive, and immediately due and payable. If such application is made, the tax collector 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 the notice why the 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 tax collector 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 3.36.130. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.8(e), 1964).

3.36.130 Appeal to board for grievance with decision of tax collector.

This section shall apply only to section 3.36.120 above. There is no appeal for late payment of taxes. Any operator aggrieved by any decision of the tax collector with respect to the amount of such tax, interest, and penalties, if any, may appeal to the board of supervisors by filing a notice of appeal with the clerk of the board of supervisors within twenty (20) calendar days of the personal service or postmark of the determination of tax due by the tax collector. The board of supervisors shall fix a time and place for hearing such appeal, and the clerk of the board shall give notice in writing to such operator at his last known place of address. The findings of the board of supervisors 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. As a condition precedent to the appeal rights contained herein the operator must pay the taxes determined by the tax collector. Should the operator prevail in the appeal the taxes determined not to be due shall be refunded. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.9, 1964).

3.36.140 Records to be kept by operators.

It shall be the duty of every operator liable for the collection and payment to the county of any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the county, which records the tax collector shall have the right to inspect at all reasonable times. (Ord. 245 Sec.10, 1964).

3.36.150 Refund--Procedure.

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 county under this chapter, it may be refunded only upon a verified claim filed by the person

who paid the tax, his guardian, executor or administrator, provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax collector within three (3) years of the date of payment. The claim shall be on forms furnished by the tax collector. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.11, 1964).

3.36.160 Refund--Claim by operator.

An operator may claim a refund or take as credit against taxes to be 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 tax collector 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. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.12(a), 1964).

3.36.170 Refund--Claim by transient.

A transient may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the county by filing a claim in the manner provided in section 3.36.160, but only when the tax was paid by the transient directly to the tax collector, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the tax collector that the transient has been unable to obtain a refund from the operator who collected the tax. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.12(b), 1964).

3.36.180 Refund--Claimant to establish right by written records.

No refund shall be paid under the provisions of sections 3.36.160 through 3.36.190 unless the claimant establishes his right thereto by written records showing entitlement thereto and only upon a verified claim filed by the person who paid the tax, his guardian, executor or administrator. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.12(c), 1964).

3.36.190 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 county. Any such tax collected by an operator which has not been paid to the county shall be deemed a debt owed by the operator to the county. Any person owing money to the county under the provisions of this chapter shall be liable to an action brought in the name of the county, in any court of competent jurisdiction within the county, or within the county of residence of such person, at the option of the tax collector, for the recovery of such amount. Said delinquencies shall be collected in the same manner as any unsecured tax collection procedure as provided by the California revenue and taxation code. (Ord. 953 Sec.I, 2000; Ord. 245 Sec. 12(d), 1964).

3.36.200 Violation--Penalty.

A. Any person, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this title is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000) plus assessments on fines as prescribed by law, and other sections relating thereto, or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment, or pursuant to section 1.20.020 of the county code, as that section may be amended from time to time. A separate offense shall have been committed for each and every day during which a violation of any portion of this title persists. This penalty is in addition to the penalties described in section 3.36.080, 3.36.090 and 3.36.100.

B. Any operator or other person who fails or refuses to register as required herein, 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 tax collector, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. 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 and is punishable as aforesaid. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.13, 1964).

**3.36.210 Failure to obtain certificate and pay taxes--
Penalty.**

Should an operator fail to obtain a certificate as required in section 3.36.060 above, and fail to pay taxes as due hereunder, the operator shall be subject to a penalty equal to twice the amount of taxes due as determined by the tax collector pursuant to the method as described in section 3.36.120 above. (Ord. 953 Sec.I, 2000; Ord. 245 Sec.14, 1964).