



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Waive further reading and adopt Ordinance No. 1197 amending Chapter 3.12, "the Transient Occupancy Tax", of the Sausalito Municipal Code

RECOMMENDED MOTION:

Waive further reading and adopt Ordinance No. 1197 amending Chapter 3.12, "the Transient Occupancy Tax", of the Sausalito Municipal Code

DISCUSSION

On September 15, 2009, the City Council introduced and gave first reading to an ordinance amending the administration of the transient occupancy tax. Following its introduction, Council discussions and public input, no revisions were made.

Attached you will find a full copy of the ordinance as it was introduced. Ordinance No. 1197 will be published, in its entirety, within fifteen days after the adoption and go into effect thirty (30) days after the second reading.

FISCAL IMPACT

n/a

STAFF RECOMMENDATIONS

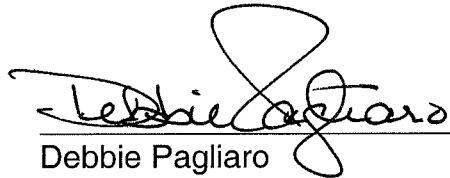
Waive further reading and adopt Ordinance No. 1197 amending Chapter 3.12, "the Transient Occupancy Tax", of the Sausalito Municipal Code

ATTACHMENTS

Ordinance No. 1197

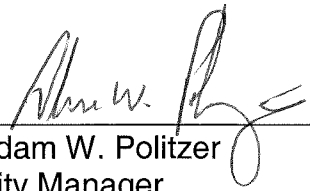
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PREPARED BY:



Debbie Pagliaro
Assistant to the City Manager

SUBMITTED BY:



Adam W. Politzer
City Manager

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ORDINANCE NO. 1197

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO
AMENDING CHAPTER 3.12, "THE TRANSIENT OCCUPANCY TAX", OF THE
SAUSALITO MUNICIPAL CODE

The City Council of the City of Sausalito does ordain as follows:

Section 1: Section 3.12.020 of the Sausalito Municipal Code, DEFINITIONS, is hereby amended to read as follows:

3.12.020 Definitions. The following words, terms and phrases shall, for the purposes of this Chapter and except where the context clearly indicates a different meaning, be defined as follows:

City. The City of Sausalito and, variously, the incorporated territory of the City of Sausalito, wherein the city government is empowered to impose this tax by **California Revenue and Taxation Code** Section 7280, *et seq.* or by its charter.

Due date. The twentieth (20th) day after the close of the monthly period for which the tax is to be computed.

Estimated tax liability. The lodging provider's prospective tax liability based upon the average monthly tax remittance in the prior fiscal year, as adjusted for change in tax rate or substantial change in circumstances due to damage to the hotel.

Administrative Services Director/Treasurer. The duly appointed Administrative Services Director/Treasurer of the city or his designee.

Folio. Primary documentation produced by a hotel that demonstrates interaction between the lodging provider and the occupant, and which, at a minimum, reflects the name and address given by the occupant, the date(s) of occupancy, the amount of rent charged for each date together with the amounts of applicable excise tax(es), and the method(s) of payment.

Guest room. Accommodations occupied, or intended, arranged, or designed for transient occupancy by one (1) or more occupants for the purpose of living quarters or residential use.

Hotel. Any lodging facility or any portion of a facility, including any rooming, boarding, apartment or other house; dormitory, Turkish bath, hotel, bachelor hotel, studio hotel, motel, motor hotel, auto or trailer court, truck stop, tourist cabin, lodge, inn, time-share or other condominium, docked boat, public club, or private club, containing guest rooms and which is occupied, or is intended or designed for transient occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise. Such includes any campground or recreational vehicle park which is occupied, or is intended or designed for occupancy, by transients. Such does not

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include any hospital, asylum, sanitarium, orphanage, jail, prison, or other facility in which human beings are housed for medical treatment and/or detained under legal restraint.

Lodging Provider. Any person operating a hotel in the city including, but not limited to, the owner or proprietor of such premises, lessee, sub-lessee, lender in possession, licensee or any other person operating such hotel; or any other person who is subject to the taxation imposed for furnishing for value to the public any rooms, lodgings, or accommodations.

Monthly period. The calendar months of any year.

Occupancy. The use or possession, or the right to the use or possession of any guest room in a hotel or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the guest room.

Occupant. Any person who, for a consideration, uses, possesses, or has the right to use or possess any guest room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Permanent resident. Any occupant who, as of a given date, has or shall have occupied or has or shall have the right of occupancy of any guest room in a hotel for not less than thirty (30) continuous days next preceding such date. Such right may be established prior to the inception of stay or at any time during said thirty (30) day period by written agreement to rent the guest room for longer than said period or by payment of the first thirty (30) days' rent in advance without refund. However, in instances of agreement, the guest room must be rented *de facto* for the thirty (30) day period for the occupant to qualify as a permanent resident.

Person. Any individual, firm, partnership, joint adventure, association, social club, fraternal organization, joint stock company, corporation, cooperative, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, the plural as well as the singular number; excepting any foreign diplomat enjoying tax exemption by United States treaty or consular convention, insurance company subject to the gross premiums tax, and the United States, the State of California and any instrumentality of either thereof, upon which the city is without power to impose the tax.

Rent. The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the lodging provider to the occupant, without any deduction wherefrom whatsoever.

Tax. The tax on occupants imposed by this ordinance, as provided for by **California Revenue and Taxation Code** Section 7280, et seq. or by charter.

Section 2: Section 3.12.030 of the Sausalito Municipal Code, IMPOSED -- RATE, is hereby amended to read as follows:

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3.12.030 Tax Rate.

There shall be paid for every occupancy of a guest room in a hotel in the city a tax at the rate of twelve percent (12%) of the amount of rent unless an exception is provided under Section 3.12.040.

Section 3: Section 3.12.040 of the Sausalito Municipal Code, EXEMPTIONS, is hereby amended to read as follows:

3.12.040. Exceptions.

(a) Exclusions. No tax shall be collected from an occupant after becoming a permanent resident; or from an insurance company subject to the gross premiums tax; or from the United States and the State of California or any instrumentality of either thereof; or from a foreign diplomat enjoying tax exemption by United States treaty or consular convention, when presenting substantiation issued by the United States Department of State.

Occupancy provided without charge in money or otherwise and denominated food costs are not subject to this tax.

Section 4: Section 3.12.050 of the Sausalito Municipal Code, OPERATOR DUTIES, is hereby amended to read as follows:

3.12.050 Collection of tax by lodging provider.

Every lodging provider furnishing guest rooms in a hotel in the city shall collect a tax of twelve percent (12%) on the amount of rent from the occupant unless an exception is provided in Section 3.12.040. The lodging provider shall provide a receipt to each occupant, which receipt shall reflect both the amount of rent and the amount of the tax applicable. This tax shall be due from the occupant, and shall be collected by the lodging provider at the same time that the rent is collected. The lodging provider shall be liable for any amount of tax that he fails to collect appropriately; and must remit to the city any amount of tax that he should collect inappropriately.

Section 5: Section 3.12.060 of the Sausalito Municipal Code, REGISTRATION AND CERTIFICATE POSTING REQUIRED, is hereby amended to read as follows:

3.12.060 Registration of lodging provider; form and contents; execution; certificate of authority.

Every person engaging or about to engage in business as a lodging provider in the city shall immediately register with the Administrative Services Director/Treasurer on a form provided by said official. Persons engaged in such business must so register not later than thirty (30) days after the date that this ordinance becomes effective. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of his place(s) of business and such other information which would facilitate the administration of the tax as prescribed by the Administrative Services Director/Treasurer. The registration shall be signed by the owner if a natural person; in case of ownership by an association or partnership, by a member or partner; in case of ownership by a corporation, by an officer. The Administrative Services Director/Treasurer shall, after such registration, issue without charge a certificate of authority to each lodging provider to collect the tax from the occupant. A separate registration shall be required for each place of business of a lodging provider. Each certificate shall state the

name and location of the business to which it is applicable.

Section 6: Section 3.12.070 of the Sausalito Municipal Code, REPORTING AND REMITTING BY OPERATOR, is hereby amended to read as follows:

3.12.070 Determination generally; returns; payments.

(a) Due date of taxes. All amounts of such tax shall be due and payable to the Administrative Services Director/Treasurer monthly on or before the twentieth (20th) day of the month next succeeding the respective monthly period. The tax shall become delinquent for any monthly period after the twentieth (20th) day of each succeeding month during which it remains unpaid.

(b) Return; remittance; time of filing; lodging providers required to file; contents. On or before the twentieth (20th) day of the month succeeding each monthly period, a return for the preceding monthly period together with appropriate remittance shall be filed with the Administrative Services Director/Treasurer. The return shall report the gross rent, taxable rent, exempt rent, amount of tax collected or otherwise due for the period, and such other information as may be required by the Administrative Services Director/Treasurer. However, if the estimated tax liability for any monthly period shall exceed two thousand five hundred dollars (\$2,500.00) for a lodging provider who, in the prior fiscal year remitted tax greater than two thousand five hundred dollars (\$2,500.00) in any three (3) consecutive months, such lodging provider shall file an estimated return and remit not less than fifty percent (50%) of the estimated tax liability for the monthly period by the twentieth (20th) day of that same monthly period. The amount of tax so remitted shall be credited against the amount to be due with the regular return for the monthly period to be filed on the twentieth (20th) day of the succeeding month.

(c) Extension of time of filing; authority; requirements; remittance; penalty and interest. The governing authority of the city may, for good cause, extend the time for making returns for not longer than thirty (30) days. No extension shall be valid unless granted in writing upon written application of the lodging provider. Such grant may not be applicable for longer period than twelve (12) consecutive months. A lodging provider granted an extension shall remit tax equaling not less than one hundred percent (100%) of the tax paid for the corresponding period of the prior fiscal year; such remittance to be made on or before the date the tax would otherwise come due without the grant of extension. No penalty or interest shall be charged during the first ten (10) days of the extension period. Thereafter, interest shall be collected on the unpaid balance at the rate of one percent (1%) per month.

(d) Acceptance of delinquent return and remittance without imposing penalty and interest; authority; requirements. If the failure to make any return or to pay the amount of tax by the due date results from providential cause shown to the satisfaction of the governing authority of the city by affidavit attached to the return, and remittance is made within ten (10) days of the due date, such return may be accepted exclusive of penalty and interest.

Section 7: Section 3.12.080 of the Sausalito Municipal Code, RECORDKEEPING REQUIREMENTS, is hereby amended to read as follows:

3.12.080 Administration of ordinance; record keeping.

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(a) Authority of Administrative Services Director/Treasurer. The Administrative Services Director/Treasurer shall administer and enforce the provisions of this ordinance for the collection of the tax.

(b) Records required from lodging providers, etc.; form. Every lodging provider renting guest rooms in the city shall preserve, for a minimum of five (5) years, all folios, receipts, certificates of exemption and such other documents as the Administrative Services Director/Treasurer may prescribe, and in such form as he may require. Said records shall at all times be available for examination within the city.

(c) Examination of records; audits. The Administrative Services Director/Treasurer or any person authorized in writing by him may examine the books, papers, records, financial reports, equipment and other facilities of any lodging provider renting guest rooms and any lodging provider liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the lodging provider, to ascertain and determine the amount required to be paid. Such examination shall be conducted at the applicable hotel in the city, unless the Administrative Services Director/Treasurer shall stipulate another place.

(d) Authority to require reports; contents. In administration of the provisions of this ordinance, the Administrative Services Director/Treasurer may require the filing of reports by any person or class of persons having in their possession or custody information relating to the rental of guest rooms which are subject to the tax. The reports shall be filed with the Administrative Services Director/Treasurer when required by said official, and shall set forth the rental charged for each occupancy, the date(s) of occupancy, the basis for exception, or such other information as the Administrative Services Director/Treasurer may prescribe.

Section 8: Section 3.12.090 of the Sausalito Municipal Code, TAX DEEMED DEBT TO CITY – LIABILITY, is hereby amended to read as follows:

3.12.090 Collection of tax by city.

(a) Action for delinquent tax; time for. At any time within four (4) years after any tax or any amount of tax required to be collected becomes due and payable, and at any time within four (4) years after the delinquency of any tax or any amount of tax required to be collected, the Administrative Services Director/Treasurer may bring an action in a court of competent jurisdiction in the name of the city to collect the amount delinquent together with penalty, interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

(b) Lodging provider selling or quitting business. If any lodging provider liable for any amount under this ordinance sells out his business or quits his business, he shall make a final return and remittance within fifteen (15) days after the date of selling or quitting the business.

(c) Duty of successors or assignees of lodging provider to withhold tax from purchase money. If any lodging provider liable for any amount of tax, interest or penalty under this ordinance sells out his business or quits the business, his successors or assigns shall withhold sufficiently from the purchase price to cover such amount until the former owner produces from the Administrative Services Director/Treasurer either a receipt reflecting full payment or a certificate

stating that no amount is due.

(d) Liability for failure to withhold. If the purchaser of a business fails to withhold from the purchase price as required, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price.

Section 9: Section 3.12.100 of the Sausalito Municipal Code, DETERMINATION OF TAX BY TAX COLLECTOR UPON OPERATOR'S FAILURE TO COLLECT AND REPORT TAX, is hereby amended to read as follows:

3.12.100 Determination of tax by Administrative Services Director/Treasurer

(a) Recomputation of tax; authority to make; basis of recomputation. If the Administrative Services Director/Treasurer is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the city by any lodging provider, he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly periods.

(b) Notice of determination; service of. The Administrative Services Director/Treasurer shall give to the lodging provider written notice of his determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the lodging provider at his address as it appears in the records of the city. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee.

(c) Time within which notice of deficiency determination to be mailed. Except in cases of failure to make a return or of fraud, every notice of deficiency determination shall be mailed within four (4) years after the twentieth (20th) day of the calendar month following the monthly period for which the amount is proposed to be determined, or within four (4) years after the return is filed, whichever period should last expire.

(d) Penalty and interest for failure to pay tax. Penalty and interest shall be assessed upon the amount of any determination, as provided by Section 3.12.070(b).

Section 10: Section 3.12.101 of the Sausalito Municipal Code shall be added and read as follows:

3.12.101 Determination if no return made.

(a) Estimate of gross receipts. If any lodging provider fails to make a return, the Administrative Services Director/Treasurer shall make an estimate of the amount of the gross receipts of the lodging provider, or as the case may be, of the amount of total rentals in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the lodging provider failed to make the return and shall be based upon any information which is or may come into the possession of the Administrative Services Director/Treasurer. Written notice shall be given in the manner prescribed in Section 3.12.100(b).

(b) Penalty and interest for failure to pay tax. Penalty and interest shall be assessed upon the amount of any determination, as provided by Section 3.12.070(b).

Section 11: Section 3.12.110 of the Sausalito Municipal Code, INTEREST AND PENALTIES FOR FAILURE TO REMIT TAX, is hereby amended to read as follows:

3.12.110 Interest and Penalties for Failure to Remit Tax.

(a) Penalty and interest for failure to pay tax by due date. A lodging provider who fails to make any return or to pay the amount of tax as prescribed, shall be assessed a specific penalty to be added to the tax in the amount of five percent (5%) or five dollars (\$5.00), whichever is greater, if the failure is for one (1) month or less; and an additional five percent (5%) or five dollars (\$5.00), whichever is greater, for each additional month or fraction thereof in which such failure shall continue; provided, however, that the aggregate penalty for any single violation shall not exceed twenty-five percent (25%) or twenty-five dollars (\$25.00), whichever is greater. Delinquent amounts shall bear interest at the rate of one percent (1%) per month, or fraction thereof, until paid.

(b) Penalty for fraud. In the case of a false or fraudulent return, or of failure to file a return where willful intent exists to defraud the city of any tax due, a penalty of fifty percent (50%) shall be assessed.

(c) Waiving of penalty and interest; authority. The governing authority of the city reserves to itself all authority to waive penalty and interest.

Section 12. Section 3.12.120 of the Sausalito Municipal Code, APPEAL PROCEDURES, is hereby amended to read as follows:

3.12.120. Appeal Procedures

Appeal or protest of deficiency determination. After paying the deficiency determination, the lodging provider may file a claim for refund with the governing authority addressed to the Administrative Services Director/Treasurer. Such person shall have three (3) years from the date of payment to file a claim for refund. Said claim shall be in writing and include a summary statement of the grounds upon which the lodging provider relies in contesting the deficiency determination. Said summary statement shall be supported by such documentation as the lodging provider believes may cause the abatement or reduction of the deficiency determination, thereby resulting in a refund. In the event that the lodging provider desires a conference or hearing before the governing authority in connection with any claim for refund, he shall so specify the request in writing in the claim. If the claim conforms to the requirements of this Section, the governing authority shall grant a conference or hearing at a time specified by the governing authority. The governing authority shall consider information contained in the lodging provider's claim for refund and such other information as is available. The governing authority shall approve or disapprove the lodging provider's claim and shall notify the lodging provider of its action. No refund provided for in this Section shall be assignable.

Section 13: **Section 3.12.130** of the Sausalito Municipal Code, REFUND OR CREDIT FOR OVERPAYMENT OF TAX, is hereby amended to read as follows:

3.12.130 Refund or credit for overpayment of tax.

Credit for tax, penalty or interest erroneously or illegally collected or erroneously paid. Whenever the amount of any tax, penalty or interest has been erroneously or illegally collected or received by the city, it may be refunded by the governing authority in accordance with the provisions of Section 3.12.120. If the lodging provider deems that he has overpaid or paid more than once, which fact has not been determined by the Administrative Services Director/Treasurer, he shall have three (3) years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The claimant may request a hearing before the governing authority at which the claim and any other information available will be considered. The governing authority shall approve or disapprove the claim, and notify the claimant of its action.

Section 14: Section 3.12.140 of the Sausalito Municipal Code shall be added and read as follows:

3.12.140 Violation.

Any lodging provider who fails, neglects or refuses to collect the tax as provided by Section 3.12.050 shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00), or confinement for a term not to exceed three (3) months, or both fine and confinement. Any lodging provider who fails or refuses to make any return as provided by Section 3.12.070, to keep adequate records or to open them for inspection by the city, or to furnish other data reasonably requested by the Administrative Services Director/Treasurer shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00), or confinement for a term not to exceed three (3) months, or both. Any lodging provider who makes a false or fraudulent return with intent to evade the tax shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00), nor more than three hundred dollars (\$300.00), or confinement for a term not to exceed three (3) months, or both. Each and every day during any portion of which any violation is committed, continued or permitted, shall constitute a separate offense and shall be punished accordingly.

Section 15. The provisions of this Ordinance are declared to be servable and if any provision, sentence, clause, section or part of this chapter is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this chapter or their application to persons and circumstances.

Section 16. This Ordinance shall be in full force and effect thirty (30) days after the date of its adoption.

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Section 17. This Ordinance shall be published once within fifteen (15) days after its passage and adoption in a newspaper of general circulation in the City of Sausalito.

THE FOREGOING ORDINANCE was read at a regular meeting of the Sausalito City Council on the 15th day of September, 2009, and was adopted at a regular meeting of the City Council on the _____ day of _____, 2009 by the following vote:

AYES:	COUNCILMEMBER:
NOES:	COUNCILMEMBER:
ABSENT:	COUNCILMEMBER:
ABSTAIN:	COUNCILMEMBER:

MAYOR OF THE CITY OF SAUSALITO

ATTEST:

CITY CLERK

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