

RESOLUTION NO. 22-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVALON, CALIFORNIA CALLING FOR THE PLACEMENT OF A TRANSIENT OCCUPANCY TAX MEASURE ON THE BALLOT FOR THE JUNE 7, 2022 GENERAL MUNICIPAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF AN ORDINANCE TO ENACT A ONE PERCENTAGE POINT INCREASE IN OCCUPANCY TAX AND RESERVING THAT INCREASE FOR THE CITY GENERAL FUND FOR A PERIOD OF 10 YEARS

WHEREAS, the City Council of the City of Avalon ("City") is authorized to levy a Transient Occupancy Tax ("TOT") for general purposes pursuant to California Revenue and Taxation Code §7280, subject to approval by a majority vote of the electorate pursuant to Article XIIC, §2 of the California Constitution ("Proposition 218"); and

WHEREAS, pursuant to California Elections Code §9222, the City Council has authority to place local measures on the ballot to be considered at a Municipal Election; and

WHEREAS, the City Council would like to submit to the voters at the June 7, 2022 General Municipal Election a measure enacting an increase in TOT at a rate of one percentage (1%) on the occupancy in any hotel for a period of 10 years, as more specifically set forth in the attached proposed ordinance adding Article 4 to Chapter 3 of Title 3 of the City's Municipal Code; and

WHEREAS, the increase of TOT by one percentage point (1%) shall not be subject to Article 1, of Title 3, Chapter 3 of the City's Municipal Code – Promotional Funds; and

WHEREAS, if approved, TOT will increase from 12 percent to 13 percent; and

WHEREAS, TOT is a general tax, the revenue of which will be placed in the City's general fund and will be used to pay for important general City services; and

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 218, an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

WHEREAS, pursuant to Proposition 218 (California Constitution Article XIIC, §2(b)), the general rule is that any local election for the approval of an increase to a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, the next regularly scheduled general election at which City Council members are to be elected is June 7, 2022; and

WHEREAS, pursuant to Government Code §53724 ("Proposition 62") and Revenue and Taxation Code §7285.9, a two-thirds (2/3) vote of all members of the City Council is required to place the Measure on the June 7, 2022 ballot; and

WHEREAS, the ordinance to be considered by the qualified voters and the terms of approval, collection and use of TOT are described and provided for in the ordinance/measure

attached hereto as Exhibit "A" (the "Measure") and by this reference made an operative part hereof, in accordance with all applicable laws.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AVALON:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated and made an operative part of this Resolution.

SECTION 2. Submission of Ballot Measure. Pursuant to California Elections Code §9222, Government Code §53724, Revenue and Taxation Code §7280 and any other applicable requirements of the laws of the State of California relating to the City, the City Council, **by a two-thirds (2/3) vote of all members**, hereby orders the Measure to be submitted to the voters of the City at the General Municipal Election to be held on **Tuesday, June 7, 2022.**

SECTION 3. The City Council, pursuant to California Elections Code §9222, hereby orders that the Measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the General Municipal Election to be held on Tuesday, June 7, 2022, in addition to any other matters required by law, there shall be printed substantially the following ballot question:

"Shall a measure be adopted by the City of Avalon enacting a one percentage point (1%) increase to Transient Occupancy Tax (TOT), increasing the total tax from 12 to 13 percent, and reserving the increase percentage for the general fund, generating approximately \$500,000.00 annually for general government use for a period of 10 years?"	YES
	NO

SECTION 4. Conduct of Election. The City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the Measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the operation of the Measure, and transmit such impartial analysis to the City Clerk not later than the deadline for submittal of primary arguments for or against the Measure.

The impartial analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the Measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **"The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance**

or measure, please call the Office of the City Clerk at [insert phone number] and a copy will be mailed at no cost to you.”

SECTION 6. Notice of the election is hereby given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 7. Placement on the Ballot. The full text of the Measure shall not be printed in the voter information guide, and a statement shall be printed in the ballot pursuant to Elections Code §9223 advising voters that they may obtain a copy of this Resolution and the Measure, at no cost, upon request made to the City Clerk.

SECTION 8. Filing with County. The City Clerk shall, not later than the 88th day prior to the General Municipal Election to be held on Tuesday, June 7, 2022, file with the Board of Supervisors and the County Clerk – Registrar of Voters of the County of Los Angeles, State of California, a certified copy of this Resolution.

SECTION 9. Public Examination. Pursuant to California Elections Code §9295, this Measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The City Clerk shall post notice in the Clerk’s office of the specific dates that the examination period will run.

SECTION 10. The City Council hereby finds and determines that the Measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines, section 15378(b)(5).

SECTION 11. Severability. The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

SECTION 12. This Resolution shall become effective upon its adoption.

SECTION 13. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Avalon on this 15th day of February, 2022, by the following vote:

AYES: Mayor Marshall, Councilmembers De La Rosa, Lavelle, MacGugan-Cassidy and Ponce.

NOES: None.

ABSENT: None.

ABSTAIN: None.



Ann H. Marshall, Mayor

ATTEST:



Gabrielle Morones, Deputy City Clerk

Exhibit "A"
Transient Occupancy Tax

[Attached behind this page]

ORDINANCE NO. ____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF AVALON, CALIFORNIA, AMENDING ARTICLE 4 TO CHAPTER 3 OF TITLE 3 OF THE AVALON MUNICIPAL CODE TO ENACT A ONE PERCENTAGE POINT (1%) INCREASE TO TRANSIENT OCCUPANCY TAX TO BE RESERVED IN ITS ENTIRETY FOR THE CITY GENERAL FUND FOR A PERIOD OF 10 YEARS

WHEREAS, pursuant to California Revenue and Taxation Code Section 7280 the City of Avalon ("City") is authorized to levy a Occupancy Tax for general purposes, subject to majority voter approval; and

WHEREAS, the People of the City desire to levy a Occupancy Tax for general purposes for a period of 10 years to fund important general City services, at a rate of 13 percent (13%); and

WHEREAS, if approved by the City Council and Avalon voters, the Transactions and Use Tax ordinance will be incorporated into Article 8 of Chapter 3 of Title 3 of the Avalon Municipal Code.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF AVALON DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Title and Text. This Ordinance shall be known as the Transient Occupancy Tax Ordinance, the full text of which is set forth in Attachment "1", attached hereto and incorporated herein by reference.

Section 2. Approval by the City Council. Pursuant to California Government Code Section 53724 and Revenue and Taxation Code Section 7280, this Ordinance was duly approved for placement on the ballot by a minimum two-thirds (2/3) supermajority of all members of the City Council on February 15, 2022.

Section 3. Approval by the Voters. Pursuant to California Elections Code Section 9217, this Ordinance shall be deemed adopted and take effect only if approved by a majority of the eligible voters of the City of Avalon voting at the General Municipal Election of June 7, 2022. It shall be deemed adopted when the City Council has certified the results of that election by resolution and shall take effect ten (10) days thereafter.

Section 4. Operative Date. "Operative Date" for the Transient Occupancy Tax means the first day of the first calendar quarter commencing more than 110 days after the date this Ordinance is adopted, as set forth in Section 3 above.

Section 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

I hereby certify that the Avalon Transient Occupancy Tax Ordinance was **PASSED, APPROVED, AND ADOPTED** by the People of the City of Avalon on the 7th day of June, 2022.

APPROVED:

Ann H. Marshall, Mayor

ATTEST:

Gabrielle Morones, Deputy City Clerk/Sr. Administrative Assist.

APPROVED AS TO FORM:

Scott Campbell, City Attorney
Best Best & Krieger, LLP

Article 4 – Transient Occupancy Tax

Sections:

- § 3-3.401 Title of Provisions.
- § 3-3.402 Definitions.
- § 3-3.403 Imposition of Tax.
- § 3-3.404 Exemptions from Provisions.
- § 3-3.405 Operator's Duties.
- § 3-3.406 Registration and Permit.
- § 3-3.407 Reporting and Remitting.
- § 3-3.408 Penalties and Interest.
- § 3-3.409 Failure to Collect and Report Tax.
- § 3-3.410 Determinations of Director of Finance: Appeals.
- § 3-3.411 Records.
- § 3-3.412 Refunds.
- § 3-3.413 Tax a Debt to City: Suits for Recovery.
- § 3-3.414 Violations of Provisions.
- § 3-3.415 Revocation of Permit.
- § 3-3.416 Closure of Hotel Without Permit.
- § 3-3.417 Recording Certificate of Lien.
- § 3-3.418 Priority and Lien of Tax.
- § 3-3.419 Warrant for Collection of Tax.
- § 3-3.420 Seizure and Sale.
- § 3-3.421 Duties on Transfer of Business.
- § 3-3.422 (Reserved)
- § 3-3.423 Withhold Notice.
- § 3-3.424 Stacking Prohibited.

§ 3-3.401 Title of Provisions.

This article shall be known as the Uniform Transient Occupancy Tax Law of the City.

§ 3-3.402 Definitions.

For the purposes of this article, certain words and phrases used herein are defined as follows:

(a) **HOTEL** – Shall mean 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 shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof.

(b) **OCCUPANCY** – Shall mean the use or possession, or the right to the use or possession of any room, or portion thereof, for dwelling, sleeping or lodging purposes. The Director of Finance may from time to time adopt administrative regulations specifying those services, goods, or other benefits related to the use or possession of the room, which are included within the meaning of "occupancy."

(c) **OPERATOR** – Shall mean the person who is the 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 article and shall have the same duties and liabilities as his principal.

Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.

(d) PERSON – Shall mean 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.

(e) RENT – Shall mean the consideration charged 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, property, and services of any kind or nature without deduction therefrom whatsoever. "Rent" includes the consideration charged for occupancy, as defined, regardless of whether named a fee, assessment, service charge, management fee, cleaning fee, or other expense.

(f) TAX – Shall mean transient occupancy tax.

(g) TRANSIENT – Shall mean 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 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 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 provisions of this article may be considered.

§ 3-3.403 Imposition of Tax.

For the privilege of occupancy in any hotel, each transient shall be subject to and shall pay a tax in the amount of 12% of the rent charged for such occupancy. Such tax shall constitute a debt owed by the transient to the City, which debt shall be extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid; however, where the operator blocks a room or rooms at a discounted or wholesale rate to a third party who collects the rent from the transient, then the third party shall pay to the operator the tax on the actual rent paid by the transient to the third party. The third party shall pay the tax based on the rate which the operator would charge a transient if the operator rented the same room or rooms directly to a transient.

Effective January 1, 2023, Transient Occupancy Tax shall increase by one percentage point (1%), from 12 percent to 13 percent for a period of 10 years. This tax increase shall not be subject to Article 1, Chapter 3-2 of Title 3 – Promotional funds.

§ 3-3.404 Exemptions from Provisions.

No tax shall be imposed upon:

- (a) Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax provided for in this article;
- (b) Any Federal or State officer or employee when on official business; or
- (c) Any officer or employee of a foreign government, which officer or employee is exempt by reason of express provisions of Federal laws or international treaties.

No exemption shall be granted except upon a claim therefor made at the time the rent is collected and under penalty of perjury upon a form prescribed by the Director of Finance.

§ 3-3.405 Operator's Duties.

Each operator shall collect the tax imposed by the provisions of this article 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 this article.

§ 3-3.406 Registration and Permit.

Every person desiring to engage in or conduct business as operator of a hotel renting to transients within the City shall file with the Director of Finance an application for a transient occupancy registration permit. Every application for such permit shall be made upon a form prescribed by the Director of Finance and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business, the name and address of the property owner if the hotel and/or land is subject to a lease, and such other information as the Director of Finance may require. The application shall be signed by a natural person; by a member or partner if an association or partnership; by an executive officer if a corporation, and state the address where notices to such person or entity shall be sent. In addition, any corporation registered under the provisions of this chapter shall provide to the Director of Finance a current certified document each year from the Secretary of State listing the officers and agent for service of process of the corporation. Within 10 days after change of ownership of the business, the new operator shall file said application. The transient occupancy registration permit must be in effect at all times while a business subject to the chapter is in operation, and shall be at all times posted in a conspicuous place on the premises. The permit shall state the following:

- (a) Name and address of the hotel;
- (b) Name of the operator;
- (c) Date on which the permit was issued;
- (d) A statement as follows: "This Transient Occupancy Registration Permit signifies that the person named on the face hereof has fulfilled the requirements of the Transient Occupancy Tax Chapter by registering with the Director of Finance for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Director of Finance. The permit does not authorize any person to conduct any unlawful business or in an unlawful manner, nor operate a hotel without strictly complying with all applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City or any other agency."

§ 3-3.407 Reporting and Remitting.

The operator collecting the transient occupancy tax shall make a report upon such forms and setting forth such information as the Finance Director may prescribe and require, including, but not limited to, the total amount of rents charged and collected, the amount of transient occupancy tax collected for the prior month and occupancy data. He shall sign the report under penalty of perjury and deliver the report and tax remittance monthly to the Finance Director on or before the last business day of the month following the reported month. Remittance by check or money order shall be made payable to the City. The Director of Finance may establish shorter reporting periods for any permit holder if he deems it necessary in order to assure collection and remittance of the tax. Reports and remittances shall be due immediately upon cessation of business for any reason. Remittance by check or money order shall be made payable to the City. All taxes collected by operators pursuant to this article shall be held in trust for the account of the City until payment thereof is made.

§ 3-3.408 Penalties and Interest.

(a) Original Delinquency. Any operator who shall fail to remit any tax imposed by the provisions of this article within the time required shall pay a penalty in the amount of 10% of the tax in addition to the amount of the tax. No penalty shall accrue where the regulations in effect at the time the transient's payment was received by the operator did not provide for the application of the tax to such payment or where the operator has obtained a written ruling from the Director of Finance regarding the application of the tax to a particular charge. The Director of Finance shall provide a written ruling within five days of his receipt of a written request for a ruling. The Director of Finance's rulings shall be kept on file by the City's Finance Department in a separate book and shall be made available upon request. The Director of Finance may waive any or all of a penalty imposed where, in his sole discretion, he deems it to be appropriate.

(b) Continued Delinquency. Any operator who shall fail to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty in the amount of 10% of the tax in addition to the amount of the tax and the 10% penalty first imposed.

(c) Fraud. If the Director of Finance shall determine that the nonpayment of any remittance due pursuant to the provisions of this article is due to fraud, a penalty in the amount of 25% of the amount of the tax shall be added thereto in addition to the penalties set forth in subsections (a) and (b) of this section.

(d) Interest. In addition to the penalties imposed, any operator who shall fail to remit any tax imposed by the provisions of this article shall pay interest at the rate of 1/2 of 1% per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(e) Penalties for Failure to Timely File Complete Report. If any person shall fail or refuse to timely file a complete monthly report as required by § 3-3.407, there shall be a penalty assessed until a complete report is filed, in the amount of \$30 per month or a prorated portion of the month, in addition to other penalties.

(f) Penalties Merged with Tax. Every penalty imposed, and such interest as accrues, pursuant to the provisions of this section shall become a part of the tax required to be paid by the provisions of this article.

§ 3-3.409 Failure to Collect and Report Tax.

If any operator shall fail or refuse to collect such tax and to make, within the time provided in this article, any report and remittance of such tax, or any portion thereof, required by the provisions of this article, the Director of Finance shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due. As soon as the Director of Finance shall procure such facts and information as he is able to obtain upon which to base the assessment of any such tax imposed and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the Director of Finance shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by the provisions of this article. In the event such determination is made, the Director of Finance shall give 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 address. Such operator may, within 10 days after the service or mailing of such notice, make an application in writing to the Director of Finance for a hearing on the amount assessed. If an application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the Director of Finance shall become final and conclusive and immediately due and payable. If such an application is made, the Director of Finance shall give not less than five days' written notice in the manner prescribed in this section to the operator to show cause at a time and place fixed in

such 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 shall not be so fixed. After such hearing the Director of Finance shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is filed as provided in § 3-3.410 of this article.

§ 3-3.410 Determinations of Director of Finance: Appeals.

Any operator aggrieved by any decision of the Director of Finance with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within 15 days after the service or mailing of the determination of the tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator at his last known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed in this article for the service of a notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

§ 3-3.411 Records.

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by the provisions of this article to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of any payment to the City, which records the Director of Finance shall have the right to inspect at all reasonable times.

§ 3-3.412 Refunds.

(a) Whenever the amount of any tax, interest, or penalty has been overpaid, or paid more than once, or erroneously or illegally collected or received by the City, such amount may be refunded as provided in subsections (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director of Finance within three years after the date of payment. The claim shall be on forms furnished by the Director of Finance.

(b) Any operator may claim a refund or take as credit against taxes 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 Director of Finance that the person from whom the tax has been collected was not a transient; provided, however, 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.

(c) A transient may obtain a refund of taxes overpaid, paid more than once, or erroneously or illegally collected or received by filing a claim in the manner provided in subsection (a) of this section but only when the tax was paid by the transient directly to the Director of Finance, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Director of Finance that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid pursuant to the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

§ 3-3.413 Tax a Debt to City: Suits for Recovery.

Any tax required to be paid by any transient pursuant to the provisions of this article shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which

has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City pursuant to the provisions of this article shall be liable to an action brought in the name of the City for the recovery of such amount.

§ 3-3.414 Violations of Provisions.

Any operator or other person who fails or refuses to register as required, 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 Director of Finance, or who renders a false or fraudulent return or claim shall be guilty of a misdemeanor. Any person required to make, render, sign, or verify any report or claim and who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by the provisions of this article to be made shall be guilty of a misdemeanor.

§ 3-3.415 Revocation of Permit. [1]

Whenever an operator fails to comply with any provision of this article relating to transient occupancy taxes or any rule or regulation prescribed by the Director of Finance relating to such tax or registration permit, the Director of Finance shall hold a hearing, after giving the lessor, if applicable and the operator 10 days' written notice sent by certified mail specifying the time and place of hearing and requiring the operator to show cause why his permit or permits should not be revoked. After such hearing, the Director of Finance may suspend or revoke any one or more of the permits held by the operator. Within five days after the hearing, the Director of Finance shall give the operator written notice by certified mail of the suspension or revocation of the permit or permits.

The aggrieved operator may appeal the suspension or revocation of the permit or permits to the City Council by filing a notice of appeal in writing with the City Clerk within 15 days after the service or mailing of the notice of suspension or revocation. The findings of the Council shall be final and conclusive.

The Director of Finance shall not issue a new permit after revocation or lift a suspension of a permit until the operator has satisfied any outstanding debt to the City under this article, including penalties and interest. Where an operator has failed to timely remit the return or taxes more than two times in any calendar year, whether or not such failure has resulted in a suspended or revoked permit, the Director of Finance may send written notice to the operator requiring that such operator post a bond within 15 days of such notice, in a form approved by the City Attorney and in an amount equal to the preceding six months taxes collected. The bond shall remain in force until the operator has timely remitted returns and taxes for a continuous period of six months. Thereafter, the bond shall be released. The failure to post the bond within 15 days after such notice shall constitute a violation of this article.

[1] Editor's Note: Prior ordinances codified herein include portions of Ordinance No. 474.

§ 3-3.416 Closure of Hotel Without Permit. [1]

During any period of time during which a permit has not been issued or is suspended, revoked or otherwise not valid, the Director of Finance may require that the hotel be closed. Notice of the closure shall be sent to the lessor, if applicable, and the operator by certified mail and shall be posted at the hotel. Any person who operates a hotel in violation of a notice of closure shall be guilty of a misdemeanor.

[1] Editor's Note: Prior ordinances codified herein include portions of Ordinance Nos. 508 and 666.

§ 3-3.417 Recording Certificate of Lien.

If any amount required to be remitted or paid to the City under this article is not remitted or paid when due, the Director of Finance may, within three years after the amount is due file for recording with the Los Angeles County Recorder's Office a certificate specifying the amount of the tax, penalties and interest due, the name and address as it appears on the registration permit of the operator liable for the amount and the fact that the Director of Finance has complied with all provisions of this article in determining such amount. From the time of the filing for recording the amount shall constitute a lien upon all real property in the County, except a proprietary lease, owned by the operator. The lien shall have the force, effect and priority of a judgment lien and shall continue for 10 years from the time of filing of the certificate unless sooner released or discharged.

§ 3-3.418 Priority and Lien of Tax.

(a) The amounts required to be remitted and/or paid by any operator under this article with penalties and interest shall be satisfied first in any of the following cases:

- (1) Whenever the person is insolvent;
- (2) Whenever the person makes a voluntary assignment of his assets;
- (3) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased;
- (4) Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this article are levied upon by process law. This article does not give the City a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

(b) The preference given to the City by this section shall be subordinate to the preferences given to claims for personal services by §§ 1204 and 1206 of the Code of Civil Procedure.

§ 3-3.419

Warrant for Collection of Tax.

At any time within three years after any operator is delinquent in the remittance or payment of any amount herein required to be remitted or paid or within three years after the last recording of a certificate under § 3-3.417, the Director of Finance may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this article. The warrant shall be directed to any sheriff, marshal, or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner with the same effect as a levy of and a sale pursuant to a writ of execution. The Director of Finance may pay or advance to the sheriff, marshal, or constable the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution. The Director of Finance, and not the court, shall approve the fees for publication in a newspaper.

§ 3-3.420 Seizure and Sale.

At any time within three years after any operator is delinquent in the remittance or payment of any amount, the Director of Finance may forthwith collect the amount in the following manner. The Director of Finance shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the

seizure and sale. Any seizures made to collect occupancy taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

§ 3-3.421 Duties on Transfer of Business.

(a) Registration. Within 10 days after change of ownership of the business, the new operator shall file said application.

(b) Successor's Liability — Withholding by Purchaser. If any operator liable for any amount under this article sells out his business, his successor or assigns shall withhold sufficient monies from the purchase price to cover such amount until the former operator produces a receipt from the Director of Finance showing that it has been paid or a certificate stating that no amount is due.

(c) Liability of Purchaser — Release. If the purchaser of a hotel operator's business fails to withhold part of the purchase price as required, he shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former hotel operator's records are made available for audit, whichever period expires later, but in any event not later than 90 days after receiving the request, the Director of Finance shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Director of Finance of the amount that must be paid as a condition of issuing the certificate. Failure of the Director of Finance to mail the notice will release the purchaser from any further obligation to withhold the purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the operator sells his business or at the time that the determination against the operator becomes final, whichever event occurs the later.

§ 3-3.422 (Reserved)

§ 3-3.423 Withhold Notice.

If any person or operator is delinquent in the remittance or payment of the amount required to be remitted or paid by him or in the event a determination has been made against him for the remittance of tax and payment of the penalty, the City may, within three years after the tax obligation became due, give notice thereof personally or by registered mail to all persons, including the state or any political subdivision thereof, having in their possession or under their control any credits or other personal property belonging to the taxpayer. After receiving the withholding notice, the person so notified shall make no disposition of the taxpayer's credits, other personal property or debts until the City consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever expires earlier. All persons, upon receipt of said notice, shall advise the City immediately of all such credits, other personal property or debts in their possession, under their control or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of the bank, to be effective the notice shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. If any person so notified makes transfer or disposition of the property or debts required to be held hereunder during the effective period of the notice to withhold, he shall be liable to the City to the extent of the value of the release up to the amount of the indebtedness owned by the taxpayer to the City.

§ 3-3.424 Stacking Prohibited.

It is a violation of this chapter for any person to knowingly aid or engage in the practice commonly known in the lodging industry as "stacking." As used herein, "stacking" occurs when

a transient occupant who is the registered occupant of a transient occupancy unit allows other persons to share occupancy of that unit for overnight sleeping on any night for which such other person or persons are not registered. Any transient who allows stacking to take place in the unit for which that person is registered, and any transient who occupies a unit knowing that his or her occupancy has not been reported to the owner or operator or has not been paid for, shall be in violation of this section. Any such violation shall be prosecuted as a misdemeanor, or, in the discretion of the prosecuting attorney, may be prosecuted as an infraction.

(a) Notice. In order to apprise transient occupants of potential violations of this section, all hotel and other transient occupancy facility operators are encouraged to incorporate language similar to the following in their registration documents:

"Your room/unit is to be occupied by not more than _____ persons. The Avalon Municipal Code prohibits housing additional unregistered guests in a unit."


STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF AVALON)

I, GABRIELLE MORONES, DEPUTY CITY CLERK OF THE CITY OF AVALON, do hereby certify that the foregoing is a true and correct copy of Resolution No. 22-14 and was duly passed, approved, and adopted by the Avalon City Council at the regular meeting of February 15, 2022 by the following vote:

Ayes: Mayor Marshall, Councilmembers De La Rosa, Lavelle, MacGugan-Cassidy
 and Ponce.
Noes: None
Absent: None
Abstain: None

and that the same has not been amended nor repealed.

Dated this 18th day of February, 2022.



Gabrielle Morones, Deputy City Clerk
City of Avalon, California