



DELIVERY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED
 AND BY ELECTRONIC MAIL (ramadasm@gmail.com)

November 5, 2024

Days Inn
 Joe Linn
 517 W. San Marcos Blvd.
 San Marcos, CA 92069

RE: NOTICE OF DETERMINATION AND RIGHT TO APPEAL – TRANSIENT OCCUPANCY TAX PENALTY DUE

Mr. Linn,


This notice serves as a determination of the Transient Occupancy Tax Penalty that is outstanding for 3rd quarter of 2024 pursuant to San Marcos Municipal Code (SMMC) 3.16:

A. Rents Charged and Received:	\$626,662.90
B. Amount of tax (10%of A) Due on 10/31/24; Paid on 11/1/24	\$62,666.29
C. Penalty Due (10% of B)	\$6,266.63
D. Interest Due and Paid 11/1/24	\$10.44

Pursuant to SMMC Section 3.16.100, each hotel operator shall file a return and pay the full amount of the tax due on or before the last day of the month following the close of each calendar quarter. Pursuant to SMMC section 3.16.110, failure to pay the tax due within the time required will result in a 10% penalty of the tax due for the first 30 days late and an additional 10% penalty if delinquency continues over the 30 days.

On November 1, 2024, you paid the amount of \$62,666.29 for the tax due on October 31, 2024 along with the interest of \$10.44 for one day of delinquency. The penalty amount due for the delinquency in the amount of \$6,266.63 remains outstanding.

Pursuant to SMMC section 3.16. 130, you have the right to appeal to the City Council the determination of tax penalty due. You have fifteen (15) days from the date of this Notice of Determination to file a written appeal with the City Clerk's office. A copy of SMMC Chapter 3.16, which outlines the appeal process, is also enclosed for your convenience.



Be advised that if no appeal request is timely filed, then the penalty amount of \$6,266.63 must be paid on or before November 30, 2024. If payment is not received on or before November 30, 2024, then an additional 10% penalty will be assessed. Pursuant to SMMC section 3.16.150, any tax required to be paid to the City shall be deemed a debt. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

If you have any questions regarding this determination, please contact Shauna Vuoti, Business License Officer at (760) 744-1050, Ext. 3101.

Sincerely,



Donna Apar
Finance Director

Cc: City Manager
City Clerk
City Attorney

Enclosures: San Marcos Municipal Code 3.16

CHAPTER 3.16**TRANSIENT OCCUPANCY TAX****SECTIONS:**

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3.16.010 Short title. This chapter shall be known as the "Uniform Transient Occupancy Tax Ordinance of the City of San Marcos"

3.16.020 Definitions. As used in this chapter, the following terms shall have the meaning ascribed to them in this section:

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 includes 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.

Occupancy shall mean the use or possession, or the right to the use or possession, of any room, rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

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 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 compliance by both.

Rent shall mean 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 there from whatsoever.

Tax administrator shall mean the city treasurer.

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 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 July 28, 1964, may be considered.

3.16.030 Tax imposed; manner of payment. For the privilege of occupancy in any hotel, each transient is subject to, and shall pay a tax in the amount of ten (10) per cent of the rent charged by the operator. Said tax constitutes a debt owed by the transient 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 administrator may require that such tax shall be paid directly to the tax administrator. (Ord. 88-789, 7-12-88)

3.16.040 Persons exempt from tax; establishment of exemption.

(a) No tax shall be imposed pursuant to this chapter upon:

(1) 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 chapter;

(2) Any federal or State of California officer or employee when on official business;

(3) Any officer or employee of a foreign government who is exempt by reason of an express provision of federal law or international treaty.

(b) No exemption permitted by subsection (a) shall be granted except upon a claim therefore made at the time the rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

3.16.050 Operator not to absorb tax. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax imposed by this chapter, 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 chapter.

3.16.060 Registration of hotel. Within thirty (30) days after July 28, 1964, or within thirty (30) days after commencing business, whichever is later each operator of any hotel renting occupancy to transients shall register the hotel with the tax administrator and obtain from him a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. 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 following statement: "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 of the City of San Marcos by registering with the tax administrator for the purpose of collecting from transients the transient occupancy tax and remitting the tax to the tax administrator. 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 the city. This certificate does not constitute a permit."

3.16.070 Manner of collection by the operator. 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 each 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.

3.16.080 Tax collected to be held in trust pending making of return. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator.

3.16.090 Required records. It shall be the duty of each operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of 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 and payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times.

3.16.100 Reports and returns.

(a) 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 administrator, make a return to the tax administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator.

(b) The tax administrator may establish shorter reporting periods for any registered hotel if he deems it necessary in order to insure collection of the tax and he may require further information in the return.

(c) Returns and payments are due immediately upon cessation of business for any reason.

3.16.110 Civil penalties and interest for noncompliance.

(a) Original delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten (10) per cent of the amount of the tax, in addition to the amount of the tax.

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

(c) Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five (25) per cent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one (1/2 of 1) per cent 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 merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required by this chapter to be paid.

3.16.120 Assessment of tax upon failure of operator to collect and report tax; hearing before tax administrator.

(a) If any operator shall fail or refuse to collect the tax imposed by this chapter and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the tax administrator 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 administrator shall procure 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 tax and to make such report and remittance, the tax administrator shall proceed to determine and assess against the operator the tax, interest and penalties provided for by this chapter.

(b) In case an assessment determination is made pursuant to subsection (a), the tax administrator 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 address. The operator may, within ten (10) days after serving or mailing of the notice, make application in writing to the tax administrator 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 tax administrator shall become final and conclusive and immediately due and payable. If a hearing application is made, the tax administrator shall give not less than five (5) days written notice in the manner prescribed in this subsection 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 the tax, interest and penalties should not be so fixed.

(c) After the hearing held pursuant to subsection (b), the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in subsection (b) of the determination and the amount of the 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 this chapter

3.16.130 Appeal from the determination of the tax administrator. Any operator aggrieved by any decision of the tax administrator with respect to the amount of the tax, interest and penalties assessed pursuant to this chapter, if any, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The City Council shall fix a time and place for hearing the appeal and the City Clerk shall give notice in writing to the operator at his last known place of address. The findings of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed in this section for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice of findings.

3.16.140 Refunds.

(a) 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 city under this chapter, it may be refunded as provided in subsections (b) and (c) of this section if a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the tax administrator.

(b) An 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 tax administrator that the person from whom the tax has been collected was not a transient; 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 or paid more than once or erroneously or illegally collected or received by the city 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 tax administrator or when the transient, having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

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

3.16.150 Action to recover unpaid 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 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 under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

3.16.160 Violations of this article. Any person violating any of the provisions of this Chapter, or who fails 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 administrator, or who renders a false or fraudulent return or claim, is punishable as provided in section 1.12.010.

3.16.170 Reserved. (Section repealed - Ord. 88-780, 4-12-88)