



BILL NO. B-17

ORDINANCE NO. 2012-17

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AMENDING ARTICLE 7, SECTION 6, OF THE FRESNO MUNICIPAL CODE RELATING TO ADMINISTRATION AND COLLECTION OF TRANSIENT OCCUPANCY TAX AND TOURISM BUSINESS IMPROVEMENT DISTRICT ASSESSMENTS

WHEREAS, on December 18, 2010, Council approved a Resolution creating the Fresno-Clovis Tourism Business Improvement District (TBID). The purpose was to enable the Fresno Convention and Visitor's Bureau (CVB) to establish a benefit assessment district that would help fund marketing and sales promotion efforts for Fresno and Clovis lodging facilities and to increase tourism to the Fresno and Clovis areas as tourist, meeting and event destinations; and

WHEREAS, the Resolution passed by Council stipulated that the assessments to fund the activities and improvements for the TBID would be collected at the same time and in the same manner as are Transient Occupancy Taxes (TOT) by the City; and

WHEREAS, Article 6 Transient Room Tax, within Chapter 7 of the Municipal Code of the City of Fresno (FMC) spells out the procedures with respect to collection of TOT, exemptions from TOT and due dates of returns and payments. TBID adopted parallel provisions, however delinquent collection efforts fall to the Bureau and not to the City. Both the TOT and TBID are assessed as a percentage of gross short term room rental revenue on lodging. Short term stays are defined as stays of less than 31 consecutive days. Those overseeing the delinquent TBID collections have encountered situations where a hotelier may be paying TOT to the City but is not paying the TBID assessment. Without having access to the gross receipt information provided to the City by the hotelier, it is impossible for TBID staff to pursue collection efforts

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Approved 9-4-12
Effective 10-5-12



particularly when attempting to enforce collection through the use of legal action; and

WHEREAS, The FMC as it is currently written does not allow the City Tax Administrator to share TOT information. This section of the FMC has not been revised for numerous years and as such it did not take into consideration the formation of or the need for the City and the TBID to assist each other in collection efforts by sharing information. TOT information is identified under the FMC as being confidential in nature. The FMC goes on further to state that it is unlawful to do so (share) and that any willful violation is a misdemeanor punishable by a fine or by imprisonment in the county jail. These provisions should be revised to allow for the sharing of information to enable both the City of Fresno and the Bureau to rightfully collect both TOT and TBID assessments; and

WHEREAS, a further hindrance to the collection of TOT as well as TBID is that the FMC does not provide for sufficient tools to assist Staff in pursuing more extensive or aggressive collection efforts. The FMC as currently written, while containing penalty and interest provisions is weak at best and merely calls for penalties and interest to become merged with the unpaid tax. The FMC does not provide for more compensatory measures that would enable the City and/or Bureau to pursue civil action in the form of recording a lien or collecting delinquent amounts by seizing or causing to be seized property of the operator/owner and selling non-cash or nonnegotiable property at public auction to pay the Tax due and to recover costs of seizure and sale.

WHEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 7 Section 6 of the Fresno Municipal Code is hereby amended to read as follows:



SECTION 7-601. TITLE. This article shall be known as the Transient Room Tax Ordinance of the City of Fresno.

SECTION 7-602. DEFINITIONS. Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance.

(a) "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 any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

(b) "Legislative body" means the City Council of the City of Fresno.

(c) "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms or portions 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, and includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to collect or remit the tax imposed by this article on behalf of such corporation or partnership.

(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) "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.

(g) "Tax Administrator" means the Controller and Director of Finance of the City of Fresno. ["Tax Administrator" as used herein, shall, where applicable, also include the person(s) authorized to collect assessments on behalf of the Tourism Business Improvement District, to the extent authority is delegated by ordinance, resolution, or agreement with the city.]

(h) "Transient" means any person who exercises occupancy or is entitled to occupancy in a hotel by reason of a lease, concession, permit, right of access, license or other agreement for a period of thirty 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 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 this ordinance may be considered.



SECTION 7-603. TAX IMPOSED.

[(a) “Transient Occupancy Tax.”] For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax [to be known as the “Transient Occupancy Tax” (“TOT”)] in the amount designated in the Master Fee Resolution. Said tax constitutes a debt owed by the transient to the city which is 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. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. Any 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 him.

[(b) Tourism Business Improvement District. The provisions of this ordinance, as applicable, shall also apply to the collection of a duly authorized “Tourism Business Improvement District” (“TBID”) assessment. All references to “tax” in this ordinance shall apply also to collection of the TBID assessment.]

SECTION 7-604. COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION SCHEDULES.

Every operator maintaining a place of business and renting rooms in this city, the occupancy of which is not exempted under the terms of this ordinance, shall collect the tax from the occupant. [The tax, when collected by the operator, shall immediately be deemed city funds held in trust by the operator for the sole benefit of the city, to be transferred to the city as provided in this ordinance.] The tax required to be collected by



the operator [also] constitutes a debt owing by the operator to the city. In all cases of transactions upon credit or deferred payment, the payment of tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefore at the time and to the extent that such credits are paid or deferred payments are made in accordance with the rate of tax owing on the amount thereof.

The Tax Administrator shall enforce the provisions of this ordinance and shall have the power to adopt rules and regulations not inconsistent herewith as may be necessary or desirable to aid in the enforcement hereof. He shall provide schedules for payment of the tax and such schedules shall eliminate fractions of one cent.

SECTION 7-605. OPERATOR'S DUTIES. Each operator shall collect the tax imposed by this ordinance 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 hereinafter provided.

SECTION 7-606. EXEMPTIONS. No tax imposed under this article shall be imposed upon:

- (a) Any person as to who, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided;
- (b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty or any federal



or California city, county or state government officer or employee when on official business;

(c) Any occupant for more than thirty successive calendar days;

(d) Any occupant whose rent is of a value less than two dollars (\$2.) a day;

(e) Any person who rents a private home, vacation cabin, or like facility from any owner who is not regularly engaged in the business of renting such facilities but does so only occasionally and incidentally to his own use thereof;

(f) Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or home for aged people;

(g) Any person who, while attending a convention or similar gathering in the city, rents a facility which is ordinarily used for occupancies not taxable under this article;

No exemption shall be granted under subsections (a) or (b) of this section except upon a claim therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the Tax Administrator.

SECTION 7-607. REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION; CERTIFICATION OF AUTHORITY.

Every person engaging or about to engage in business as an operator of a hotel in this city shall register with the Tax Administrator on a form provided by him. Persons engaged in such business must so register not later than July 15, 1964, or within fifteen days after commencing business whichever is later, but such privilege of registration after



the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax on and after the date of imposition thereof, regardless of registration. Such registration shall set forth the name under which such person transacts or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The registration shall be signed [by authorized representatives on behalf of both the owner of the property and the operator, if different]; in case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the registration. [The registration shall contain an express acknowledgement and consent to all terms contained in this ordinance, including but not limited to remedies for non-payment of the tax.]The Tax Administrator shall within ten days after such registration issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of such registrant. Such certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named[,] upon its sale or transfer[, or as provided in this ordinance]. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. [No person or entity shall operate a hotel in this city without a current and valid certificate of authority.]

Said certificate shall, among other things, state the following:

- (1) The name of the operator;



- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;
- (4) This Transient Occupancy Registration Certificate signifies that

the person named on the face hereof has fulfilled the requirements of the transient room tax ordinance of the City of Fresno by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by said city and remitting said 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, or 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 said city. This certificate does not constitute a permit.

If the Tax Administrator deems it necessary in order to facilitate initial registration hereunder of persons engaged in business on or prior to the date of imposition of tax as set forth in this ordinance, he may prescribe provisions therefore other than those provided in this section. Such provisions shall be made to effect the purposes hereof. For such purposes, such provisions shall be in lieu of or in addition to those herein provided. Such registration and certificate thereof shall have the same effect as that provided herein.

SECTION 7-608. PENALTIES AND INTEREST.

(a) Original Delinquency. Any operator who fails to remit any tax imposed by this ordinance within the time required shall pay a penalty of ten 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 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten per cent of the amount of the tax in addition to the amount of the tax and the ten per cent penalty first imposed.

(c) Fraud. If the Tax Administrator determines that the non-payment of any remittance due under this ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five per cent of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs (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 ordinance shall pay interest at the rate of one 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 be merged with and become a part of the tax herein required to be paid.

[(f) Liens and Collection. A real property lien shall attach to the location of the hotel effective immediately when a tax becomes delinquent. If any tax is not paid when due, the Tax Administrator may record in the office of county recorder of such counties as the Tax Administrator may determine, a certificate which specifies the amount of tax due and the name and address of the



owner and/or operator owing the tax. The certificate shall include a statement that the Tax Administrator has complied with all legal requirements in the determination of the tax owed and a legal description of the real property of the owner. Upon recording of the certificate, the tax, as well as all amounts becoming due thereafter unless paid, constitutes a lien upon all real property owned or thereafter acquired by the owner and/or operator. The lien has the force, effect and priority of a judgment lien.

(g) Warrant for Collection of Tax. At any time after the recording of a certificate of lien, the Tax Administrator may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of such tax. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to writ of execution. The Tax Administrator shall, upon request, pay or advance to the sheriff or marshal such fees, commissions and expenses for services as are provided by law.

(h) Seizure and Sale. In lieu of issuing a warrant, after an assessment is issued or a certificate of lien is recorded, the Tax Administrator may collect the delinquent amount by seizing or causing to be seized any property, real or personal, of the owner and/or operator and selling non-cash or nonnegotiable property at public auction to pay the tax due together with any costs of the seizure and sale. Any seizure made shall only be of property not exempt from execution under the provisions of the Code of Civil Procedure.



(i) Combining Actions. In the discretion of the Controller or Director of Finance and with consent of the TBID administrator, the city may combine in one action efforts to collect both TOT and TBID assessments due from an operator.]

SECTION 7-609. DUE DATE; RETURNS AND PAYMENTS.

(a) The tax imposed by this ordinance shall become due and payable from the occupant at the time of occupancy. All amounts of such taxes collectible or collected by any operator are due and payable to the Tax Administrator quarterly on the first day of the months of April, July, October, and January next succeeding each respective quarterly period and are delinquent after the last day of such months.

(b) On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe, by every operator and by every person liable to payment of tax hereunder during such quarterly period who has not paid such tax, and who has not made return in regard to the related occupancy which is the subject of tax.

(c) Returns shall show the amount of tax collected or otherwise due for the related period and such other information as is required by the Tax Administrator. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, the gross receipts of a



registered returnee for such period and the explanation in detail of any discrepancy between such amounts.

(d) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the Tax Administrator at his office.

(e) For good cause the Tax Administrator may extend for not to exceed one month the time for making any return or payment of tax. No further extension shall be granted, except by the Transient Occupancy Review Committee. Any person to whom an extension is granted who makes return and pays the tax within the period of such extension shall pay, in addition to the tax, interest on the amount thereof at the rate of one-half of one per cent per month, or fraction thereof, on the unpaid balance for the period of such extension to the time of return and payment, which interest shall become a part of the tax.

(f) The Tax Administrator, if he deems it necessary in order to insure payment or facilitate collection by the city of the amount of taxes may require returns and payment of the amount of taxes for other than quarterly periods.

SECTION 7-610. DEFICIENCY DETERMINATIONS.

(a) If the Tax Administrator 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 person, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one or more than one period.



The determination of the Tax Administrator shall constitute a legal presumption of the amount due.]

(b) In making a determination the Administrator may offset overpayments, if any, which may have been previously made for a period or periods together with interest on the overpayments, against any underpayment for a subsequent period or periods, or against penalties, and interest, on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in Section 7-608.

(c) The Tax Administrator shall give to the operator or occupant written notice of his determination. The notice may be served personally or by mail; if by mail, the notice shall be enclosed in a sealed envelope postage prepaid and addressed to the operator at his address as it appears in the records of the Administrator. In case of service by mail of any notice required by this ordinance the service is complete at the time of deposit in the United States Post Office.

(d) Except in the case of fraud, intent to evade this ordinance or authorized rules and regulations, or failure to make a timely return, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(e) If any operator shall fail or refuse to collect said tax or to make, within the time provided in this ordinance, any report and remittance of said tax or any portion thereof required by this ordinance or makes a fraudulent return or



otherwise willfully attempts to evade this ordinance, 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 ordinance 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 ordinance. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three years after discovery by the Tax Administrator of any fraud, intent to evade or failure to file return. Any determination shall become final within thirty days after giving notice thereof as herein provided.

(f) If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is immediately due and payable. If the amount specified in the determination is not paid within ten days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the ten days, unless a petition for redetermination is filed within the ten days and the delinquency penalty and



the interest provided in Section 7-608 shall attach to the amount of the tax or the amount of the tax required to be collected.

SECTION 7-611. REDETERMINATIONS.

(a) Any person against whom a determination is made under Section 7-610 or any person directly interested may petition for a redetermination within thirty days after service upon the person of notice thereof. If a petition for redetermination is not filed within the thirty-day period, the determination becomes final at the expiration of the period. Provided, however, a petition for redetermination under subsection (f) of Section 7-610 shall be filed within ten days after notice.

(b) If a petition for redetermination is filed within the allowable period, the Tax Administrator shall reconsider the determination, and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him ten days' notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.

(c) The Tax Administrator may decrease or increase the amount of the determination before it becomes final but the amount may be increased only if a claim for the increase is asserted by the Tax Administrator at or before the hearing.

(d) The order or decision of the Tax Administrator upon a petition for redetermination becomes final fifteen days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the Transient



Occupancy Tax Review Committee within fifteen days after service of such notice.

(e) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the city or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to this chapter, and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review, redetermination or appeal of any tax liability.

SECTION 7-612. SECURITY FOR COLLECTION OF TAX.

(a) The Tax Administrator, whenever he deems it necessary to insure compliance with this ordinance, may require any person subject thereto to deposit with him such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such manner as the Tax Administrator deems proper, or ten thousand dollars (\$10,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided.

(b) If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the Tax Administrator may, not later than three years after the payment became delinquent, give notice thereof by registered mail to all persons in the county having in their possession or under their control any credits



or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the Tax Administrator consents to a transfer or disposition or until twenty days elapse after the receipt of the notice. All persons so notified shall within five days after the receipt of the notice advise the Tax Administrator of all such credits, other personal property, or debts in their possession, under their control, or owing by them.

(c) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the Tax Administrator may bring an action in the courts of this State, or any other state, or of the United States in the name of the city to collect the amount delinquent together with penalties and interest.

(d) If any operator liable for any amount under this ordinance sells out his business or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Administrator showing that he has been paid or a certificate stating that no amount is due. If the purchaser of a business fails to withhold the tax from the purchase price as required, he becomes 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 thirty days after receiving a written



request from the purchaser for a certificate, the Tax Administrator shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Tax Administrator of the amount that must be paid as a condition of issuing the certificate. Failure of the Administrator 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 a successor may be enforced shall start to run at the time the operator sells out his business or at the time that the determination against the operator becomes final, whichever event occurs the later.

SECTION 7-613. REFUNDS. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this ordinance, it may be refunded provided a verified claim in writing therefore, stating the specific ground upon which the claim is founded, is filed with the Tax Administrator within three years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid and the balance may be refunded to such person, his administrators or executors.

SECTION 7-614. ADMINISTRATION.

(a) The Tax Administrator shall deposit into a special fund, referred to as the "Convention Center Fund," all transient room tax collections pledged pursuant to Section 20 of the Joint Exercise of Powers Agreement, Fresno City-



County Community and Convention Center Authority, entered into on February 24, 1964, as amended.

(b) Records Required from Operators, etc.; Form. Every operator renting guest rooms in this city shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Administrator may require. All records shall be retained by the operator for a period of three years and six months after they come into being.

(c) Examination of Records; Investigations. The Tax Administrator or any person authorized in writing by him may examine the books, papers, records and equipment of any person liable for the tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or if no return is made by the person, to ascertain and determine the amount required to be paid.

(d) Authority to Require Reports; Contents. In administration of the tax the Tax Administrator may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to rentals of guest rooms which are subject to the tax. The reports shall be filed when the Tax Administrator requires and shall set forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the Tax Administrator may require.

(e) Confidential Character of Information Obtained; Disclosure Unlawful. It shall be unlawful for the Tax Administrator or any person having an administrative duty under the provisions of this ordinance to make known in any



manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate, or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Provided that nothing in this subsection shall be construed to prevent:

(1) The disclosure to, or the examination of records and equipment by another city official, employee, [TBID administrator,] or agent for collection of taxes [or assessments] for the sole purpose of administering or enforcing any provisions of this ordinance; or collecting taxes [or assessments] imposed hereunder;

(2) The disclosure of information to, or the examination of records by, federal, or state officials, or the tax officials of another city, or county, or city and county, if a reciprocal arrangement exists; or to a grand jury or court of law, upon subpoena;

(3) The disclosure of information and results of examination of records of particular taxpayers, or relating to particular taxpayers, to a court of law in a proceeding brought to determine the existence or amount of any business tax liability of the particular taxpayers to the city;



(4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest, and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;

(5) The disclosure of the names and addresses of persons to whom Transient Occupancy Registration Certificates have been issued, the names and addresses of officers of corporations and members of partnerships to whom such certificates have been issued, and the general type or nature of their business;

(6) The disclosure to the legislative body by way of public meeting or otherwise of such information as may be necessary in order to permit it to be fully advised as to the facts when a taxpayer files a claim for refund of business taxes, or submits an offer of compromise with regard to a claim asserted against him by the city for business taxes, or when acting upon any other matter;

(7) The disclosure of general statistics regarding taxes collected or business done in the city.



SECTION 7-615. APPEAL. Any person aggrieved by any decision of the Tax Administrator may file an appeal under Chapter 1, Article 4. Whenever an appeal is available under this article and no appeal is filed within the time prescribed, the action of the Tax Administrator shall be final.

SECTION 7-616. SAVING CLAUSE. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional (or otherwise invalid), such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The legislative body hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or paragraphs be declared unconstitutional (or otherwise invalid).

SECTION 7-617. VIOLATIONS. It is unlawful for any operator or other person so required to, to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Tax Administrator or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of an amount due required by this ordinance to be made.

SECTION 7-618. MISDEMEANOR. Any person willfully violating any of the provisions of this ordinance shall be guilty of a misdemeanor and shall be punishable therefore by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in



the county jail for a period of not more than six months or by both such fine and imprisonment.

SECTION 7-619. CONVENTION CENTER FUND.

(a) The Convention Center Fund shall be used solely for the following purposes:

- (1) Administration of the provisions of this article.
- (2) Acquisition, construction, completion, operation, repair and maintenance of public assembly and convention halls, including convention center, auditorium, and little theater buildings with facilities for convention meetings and public assemblies (including dramatic and musical performances); public off-street parking facilities and other site improvements related thereto; lands, easements, and rights-of-way; and other works, property or structures, necessary or convenient for public assembly and convention halls.
- (3) Expense in connection with proposals or proceedings for acquisition of the facilities referred to in subdivision (2) hereof.
- (4) Interest and principal payments on bonds issued to acquire any of the facilities referred to in subdivision (2) hereof.
- (5) Lease payments for lease of any of the facilities referred to in subdivision (2) hereof.
- (6) Promotion, solicitation, advertisement and staging of conventions, special events, trade shows, and other gatherings to be held at the Fresno City-County Community and Convention Center and at other public or private facilities in the city; provided, that the Council may, by contract, allocate that



portion of the annual contributions to the fund from the revenues produced by the city's Transient Room Tax which may be used for this purpose.

(b) This fund was previously created by former Code Section 7-615, which was adopted by Ordinance No. 6194. The fund and pertinent provisions of that section are continued as reprinted herein.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that is would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one of more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

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SECTION 3. EFFECTIVENESS. This ordinance shall become effective and in full force and effect at 12:01 a.m., on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the 23rd day of August, 2012.

AYES : Baines, Brand, Quintero, Westerlund, Xiong, Olivier
NOES : None
ABSENT : Borgeas
ABSTAIN : None

Mayor Approval: N/A, 2012
Mayor Approval/No Return: August 4, 2012
Mayor Veto: N/A, 2012
Council Override Vote: N/A, 2012

YVONNE SPENCE, CMC
City Clerk

BY: [Signature]
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: [Signature]
Douglas T. Sloan
Assistant City Attorney

DTS:ns [59548ns/ord]- 8/7/12



August 24, 2012

Council Adoption: 8/23/2012
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

FROM: YVONNE SPENCE, CMC *YPS*
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 8/23/12, Council adopted the attached Ordinance No. 2012-17 entitled **amending Article 7, Section 6, of the Fresno Municipal Code relating to administration and collection of transient occupancy tax and Tourism Business Improvement District Assessments**, Item No. 1G, by the following vote:

Ayes : Baines, Brand, Quintero, Olivier, Westerlund, Xiong
Noes : None
Absent : Borgeas
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before September 3, 2012. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED/NO RETURN: _____

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Ashley Swearengin, Mayor

Date: _____

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes :
Noes :
Absent :
Abstain :