Article 5: Transient Occupancy Tax

("Transient Occupancy Tax" added 6–9–1964 by O–9033 N.S.)
(Referendum Election 2–16–1965— Referendum Failed.)

Division 1: Transient Occupancy Tax

(Editors note: Division 1 added 8–24–1988 for clarity.)

§35.0101 Purpose and Intent

(a) It is the purpose and intent of the City Council that there shall be imposed a tax on Transients.

(b) Some of the proceeds of the tax on Transients shall be used for promoting the City of San Diego, including the planning, construction, maintenance and operation of tourist– related cultural, recreational and convention facilities, as more particularly set forth in Chapter 3, Article 5, Division 1, and for those additional general governmental purposes as more particularly set forth in Chapter 3, Article 5, Division 1, as the City Council may from time to time provide in accordance with the Charter of the City and the City Council's appropriation ordinance.

(Retitled to "Purpose and Intent" and amended 6–20–1994 by O–18078 N.S.)

§35.0102 Definitions

The following definitions are applicable to Chapter 3, Article 5, Division 1:

"Campground" means any park or real property where a Person may locate a tent, trailer, tent trailer, pick-up, camper, or other similar temporary structure for the purposes of lodging, dwelling, or sleeping, whether or not water, electricity, or sanitary facilities are provide.

"Collected" means the time at which the Rent is earned if an Operator uses the accrual basis of accounting, or the time at which Rent is received if an Operator uses the cash basis of accounting.

"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 is held out as such to the public. "Hotel" does not mean any hospital, convalescent home, or sanitarium.

"Occupancy" means the use or possession, or the right to the use or possession, of any room, or portion thereof, in any Hotel, or space in a Recreational Vehicle Park, or Campground for dwelling, lodging, or sleeping purposes.

"Operator" means the Person who is the proprietor of the Hotel, Recreational Vehicle Park, or Campground, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. "Operator" includes a managing agent, a resident manager, or a resident agent, of any type or character, other than an employee without management responsibility.

"Recreational Vehicle" means any passenger vehicle, house car, trailer coach, camper, or camper trailer, as defined in California Vehicle Code sections 242, 243, 362, 465, 635, or California Health and Safety Code section 18010.

"Recreational Vehicle Park" means any park or location where a Recreational Vehicle may be parked for the purposes of lodging, dwelling, or sleeping, whether or not water, electricity, or sanitary hookup facilities are provided. A "Recreational Vehicle Park" may include a Campground.

"Rent" means the total consideration charged to a Transient as shown on the guest receipt for the Occupancy of a room, or portion thereof, in a Hotel, or a space in a Recreational Vehicle Park or Campground. "Rent" includes charges for utility and sewer hookups, equipment, (such as rollaway beds, cribs and television sets, and similar items), and in-room services (such as movies and other services not subject to California taxes), valued in money, whether received or to be received in money, goods, labor, or otherwise. "Rent" includes all receipts, cash, credits, property, and services of any kind or nature without any deduction therefrom.

"Successor to Operator" means any person who acquires the right to operate a hotel, recreational vehicle park, or campground from a predecessor Operator, directly or indirectly, by whatever means, including purchase, foreclosure, operation of lease, or other means. A transfer of an ownership or management interest in a hotel, recreational vehicle park, or campground wherein the facility continues to operate as such, either continuously or for business interruption not exceeding thirty days, shall constitute a succession for purposes of this division.

"Transient" means any Person who exercises Occupancy, or is entitled to Occupancy, by reason of concession, permit, right of access, license, or other agreement for a period of less than one (1) month. A month is defined as the period of consecutive days from the first calendar day of Occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists.
(Amended 6–1–1999 by O–18650 N.S.)

§35.0103 Tax Imposed

For the privilege of Occupancy in any Hotel located in The City of San Diego, each Transient is subject to and shall pay a tax in the amount of six percent (6%) of the Rent charged by the Operator.
(Amended 6–20–1994 by O–18078 N.S.)

§35.0104 Additional Tax Imposed

Notwithstanding the tax imposed by Section 35.0103 and in addition thereto, commencing on January 1, 1985 for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.
(Amended 6–20–1994 by O–18078 N.S.)

§35.0105 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103 or 35.0104 and in addition thereto, commencing on August 1, 1988 for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.
(Amended 6–20–1994 by O–18078 N.S.)

§35.0106 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103, 35.0104 or 35.0105 and in addition thereto, commencing on June 1, 1989, for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.
(Amended 6–20–1994 by O–18078 N.S.)

(6-2000)

§35.0107 Recreational Vehicle Park and Campground User Tax Imposed

Commencing on September 1, 1990, for the privilege of Occupancy in any Recreational Vehicle Park or Campground, each Transient is subject to and shall pay a tax in the amount of nine percent (9%) of the Rent charged by the Operator. *(Amended 6–20–1994 by O–18078 N.S.)*

§35.0108 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103, 35.0104, 35.0105, 35.0106, or 35.0107 and in addition thereto, commencing on August 1, 1994, for the privilege of Occupancy in any Hotel, any Recreational Vehicle Park, or any Campground, each Transient is subject to and shall pay an additional tax in the amount of one and one half percent (1.5%) of the Rent charged by the Operator.
("Additional Tax Imposed" added 6–20–1994 by O–18078 N.S.)

§35.0110 Tax as Debt; Time and Manner of Payment

(a) Any tax imposed pursuant to Chapter 3, Article 5, Division 1, constitutes a debt owed by each Transient to the City which is extinguished only by payment to the Operator or to the City.

(b) Each Transient shall pay any tax imposed pursuant to Chapter 3, Article 5, Division 1, to the Operator of the Hotel, the Recreational Vehicle Park, or the Campground at the time Rent is paid.

(c) If Rent is paid in installments, a proportionate share of the tax shall be paid by each Transient with each installment.

(d) The unpaid tax shall be due upon each Transient's ceasing to occupy a room, or portions thereof, in a Hotel, or space in a Recreational Vehicle Park or a Campground.

(e) If for any reason the tax due is not paid by the Transient to the Operator of the Hotel, the Recreational Vehicle Park, or the Campground, the City Treasurer may require that the tax be paid directly to the City Treasurer.

("Tax as Debt; Time and Manner of Payment" added 6–20–1994 by O–18078 N.S.)

§35.0111 Exemptions

(a) No tax shall be due or collected pursuant to Chapter 3, Article 5, Division 1, in the following cases:

(1) when the Transient has exercised Occupancy or was entitled to Occupancy for one month or more;

(2) when the total space rental charge at a Campground or Recreational Vehicle Park or the room rental charge in a Hotel is twenty-five dollars ($25.00) a day or less or the accommodations rented are in a dormitory and the total Rent for each Transient is twenty-five dollars ($25.00) a day or less; or

(3) when the Transient is by treaty, or federal law, or state law exempt from payment of transient occupancy taxes; or

(4) when Hotel Rents are directly paid by the United States Government or the State of California or their respective instrumentalities. This exemption does not exempt a transient who is employed by an exempt entity from payment of the tax when the payment is later to be reimbursed by the entity.

(b) Any Person who occupies a room, or any portion thereof, in a Hotel, or space in a Recreational Vehicle Park or Campground, or is entitled to Occupancy thereof, for a period of one (1) month or more, shall be deemed not to have been a Transient with respect to the first month of Occupancy or entitlement to Occupancy.

(Amended 4–15–2002 by O–19047 N.S.)

§35.0112 Operator's Duties and Accounting Procedures

(a) Each Operator shall collect the tax imposed by Chapter 3, Article 5, Division 1, to the same extent and at the same time as the Rent is collected from every Transient.

(b) If an Operator collects the Rent but fails to collect the tax imposed by Chapter 3, Article 5, Division 1, for any reason, the City shall require the Operator to pay the tax.

(c) The amount of tax charged each Transient shall be separately stated from the amount of Rent charged, and each Transient shall receive a receipt for payment from the Operator.

(d) A duplicate of the receipt given to each Transient shall be kept by the Operator in accordance with Section 35.0121.

(e) No Operator of a Hotel, a Recreational Vehicle Park, or a Campground shall advertise or state in any manner, whether directly or indirectly, that the tax charged pursuant to Chapter 3, Article 5, Division 1, 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.

(f) Each Operator shall account separately for, and maintain separate monthly summary totals for taxable and nontaxable Rents and for taxes collected.

(g) Each Operator shall maintain its financial and accounting records in accordance with established accounting principles acceptable to the City Treasurer.

(h) The costs of additional goods and services, which are not Rent, but which may be sold as a package, or are complimentary with a room, or portion thereof, in a Hotel, or a space in a Recreational Vehicle Park or Campground (such as golf, tennis, meals), shall be accounted for in accordance with any administrative rules and regulations promulgated by the City Treasurer.

(Amended 6–20–1994 by O–18078 N.S.)

§35.0113 Registration

(a) Within thirty (30) days after the effective date of this Article, or within thirty (30) days after commencing business, whichever is later, each operator renting occupancy to transients shall register with the City Treasurer and obtain a "Transient Occupancy Registration Certificate" to be posted at all times in a conspicuous place on the premises. Said certificate shall include the following:

(1) The name of the operator;

(2) The address;

(3) The date upon which the certificate was issued;

(4) The following statement: "This Transient Occupancy Registration certificate signifies that the person named on the face hereof is required to collect a transient occupancy tax from transients and to remit the same to the City Treasurer and has fulfilled the requirements of the Transient Occupancy Tax Ordinance by registering with the City Treasurer for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the City Treasurer. This certificate does not constitute a permit to operate a hotel, recreational vehicle park or campground business."

(b) It shall be unlawful to operate a hotel, recreational vehicle park or campground without a Transient Occupancy Tax Certificate or to fail to post the certificate in a conspicuous place at all times.

(Amended 8–6–1990 by O–17508 N.S.)

§35.0114 Remitting and Reporting

(a) Each Operator shall remit monthly the full amount of taxes collected for the previous month with the appropriate approved return form available from the City Treasurer.

(b) Returns and taxes remitted monthly by an Operator and actually received by the City Treasurer on or before the last day of the following month shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0116.

(c) Returns shall be made by each Operator on a calendar month basis unless a reporting basis other than a calendar month reporting period is approved. An Operator that desires to utilize a reporting period other than a calendar month reporting period must request and obtain written approval from the City Treasurer prior to the implementation of such reporting plan.

(d) Each Operator reporting on a calendar month basis shall submit, on or before the last day of the following month, a return on the appropriate approved forms to the City Treasurer of the total taxable Rents charged and the amount of tax collected for the previous month and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the City Treasurer.

(e) Each Operator reporting on an approved basis other than a calendar month basis shall submit, on or before the same day of the next month following the close of such reporting period, or on the last day of that month if no corresponding calendar day exists, a return on the appropriate approved forms to the City Treasurer of the total taxable Rents charged and the amount of tax collected for the month and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the City Treasurer.

(f) Returns filed and taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the City Treasurer, has sufficient postage, and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting and remitting without penalty. If the envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely.

(g) All taxes collected by an Operator pursuant to Chapter 3, Article 5, Division 1, shall be held in trust for the account of the City until payment thereof is made to the City Treasurer.

(h) All returns and payments submitted by each Operator shall be treated as confidential by the City Treasurer and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of California, the County of San Diego, or the City of San Diego for official use only.

(i) The same basis for accounting used by an Operator for keeping books and records shall be used for reporting and remitting.

(Amended 6–20–1994 by O–18078 N.S.)

§35.0115 Remitting and Reporting Requirements upon Cessation of Business

(a) An operator who is transferring, selling or terminating its business shall notify the City Treasurer in writing of such sale, transfer or termination and the name and address of the purchaser or transferee at least thirty (30) days in advance of the date of transfer, sale or termination, unless the decision to sell, transfer or terminate was made within less than a thirty (30) day period prior to the transfer, sale or termination, in which case the operator shall then immediately notify the City Treasurer. The operator shall, at the same time, notify the

purchaser or transferee of their responsibility for unpaid collected taxes as set forth in sections 35.0137 and 35.0138, and further certify in writing to the City Treasurer that the transferee or purchaser was notified of the requirements of this Article regarding its responsibility for unpaid collected taxes.

(b) Cessation of Business. Each operator upon cessation of business for any reason shall, on or before the same day of the next month following the cessation of business or on the last day of that month if no corresponding day exists, make a return to the City Treasurer on approved forms of the total taxable rents charged, the amount of tax collected for the reporting period, remittances made, if any, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due, if any, shall be remitted to the City Treasurer. After filing the final return and remitting the balance due, the operator shall make his records of account available for a closeout audit by the City Treasurer or duly authorized City employee. Returns filed and taxes remitted and actually received by the City Treasurer on or before the same day of the next month following the cessation of business or on the last day of that month if no corresponding calendar day exits shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0116.

(c) The liability of the transferee or purchaser for transient occupancy taxes collected by the transferor or seller is set forth in sections 35.0137 and 35.0138.

(d) Any operator who fails to comply with the provisions of subsections (a) or (b) hereunder is guilty of a misdemeanor.

("Remitting and Reporting Requirements Upon Cessation of Business" added 4–17–1989 by O–17278 N.S.)

§35.0116 Penalties

(a) Delinquency. Any operator who fails to remit any tax imposed by this Article within the time required shall pay a penalty computed at the rate of one percent (1%) for the first day of delinquency and one–third of one percent (1/3 of 1%) for each day thereafter, including Saturdays, Sundays, and holidays, but not to exceed twenty–five percent (25%) of the amount of the tax due and payable for the entire reporting period in addition to the amount of the tax.

(b) Fraud. If the City Treasurer determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty–five percent

(25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraph (a) of this section.

(c) Audit Deficiency. If, upon audit by the City, an operator is found to be deficient in either its return or its remittance or both, the City Treasurer shall immediately invoice the operator for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. If the operator fails or refuses to pay the deficient amount and applicable penalties within fourteen (14) days of the date of the City Treasurer's invoice, an additional penalty shall be imposed at the rate of one–third of one percent (1/3 of 1%) per day of the net deficiency, not to exceed fifteen percent (15%) for a combined total penalty not to exceed twenty–five percent (25%) of the net deficiency.

("Penalties" renumbered from Sec. 35.0108, retitled and amended 4–17–1989 by O–17278 N.S.)

§35.0117 Failure to Collect or Report Tax— Jeopardy Determination

(a) Determination of Tax by City Treasurer. If any operator shall fail or refuse to collect the tax or to make, within the time provided in this Article, any report or remittance of said tax or any portion thereof required by this Article or if such operator maintains records which are inadequate to show the amount of tax due, the City Treasurer shall forthwith assess the tax and penalties provided for by this Article against the operator.

(b) Jeopardy Determinations. When an operator fails or refuses to make or file a timely return or remittance of taxes, or when the City Treasurer or duly authorized employee makes a determination, after having applied necessary and accepted auditing procedures or by estimation if no records are available, that an operator is or will be unable to remit any taxes collected or otherwise due at the prescribed time, the City Treasurer may make a written Jeopardy Determination which shall be issued to the operator to require the operator to thereafter furnish additional information or provide adequate security as necessary to ensure collection of any taxes due or to become due, and to remit the taxes on a daily or weekly basis. The operator shall thereafter report and remit all taxes due under the terms and conditions prescribed by the City Treasurer. The City Treasurer shall cancel the requirements imposed under the Jeopardy Determination once timely accounting and remittance procedures have been established and the operator is satisfying all obligations imposed by law for the remittance of taxes.

(c) Notice. The City Treasurer shall deliver notice of the assessment or of the Jeopardy Determination to the operator or deposit it in the United States mail, postage prepaid, addressed to the operator at the last known place of business.

("Failure to Collect or Report Tax— Jeopardy Determination" renumbered from Sec. 35.0109, retitled and amended 4–17–1989 by O–17278 N.S.)

§35.0118 Administrative Remedies and Appeals

(a) The operator may within fourteen (14) days after the serving or mailing of such notice make application in writing to the City Treasurer for a hearing on the amount assessed pursuant to section 35.0117. If timely application for a hearing is not made, the tax and penalties determined by the City Treasurer shall become final and conclusive and immediately due and payable. If such application is made, the City Treasurer shall give not less than five (5) days written notice in the manner prescribed herein to the operator of the time and place for a hearing before a board consisting of the City Treasurer, the City Auditor and Comptroller and the Financial Management Director or the duly appointed deputy of each. At the hearing, the operator may appear and offer evidence why the specified tax and penalties should not be so fixed. The board shall consider all evidence produced and shall determine the proper tax to be remitted. After the hearing, the City Treasurer shall give written notice to the operator in the manner prescribed herein of the determination and the amount of such tax and penalties. If the amount remaining in dispute thereafter does not exceed $750.00, the decision of the hearing board shall be final and conclusive and shall constitute the exhaustion of the operator's administrative remedies. Any amount found to be due shall be payable within fourteen (14) days of the serving or mailing of the determination of the tax due unless a further appeal is filed with the City Manager as provided in this section within that fourteen (14) day period for any amount in excess of $750.00.

(b) When an appeal from the hearing board for remaining taxes and penalties exceeding $750.00 is filed, the City Manager shall cause the appeal to be assigned to a Hearing Officer, who shall schedule a hearing to be heard within a reasonable time thereafter. The Hearing Officer shall be appointed by the City Manager, shall be a member of the California State Bar and shall not be a City employee. The Hearing Officer shall be compensated by The City of San Diego for the time spent on deciding an appeal.

(c) The appellant and the City Manager or designate shall each have the right to appear in person and be represented by legal counsel, to receive notice, to present evidence, to call and cross–examine witnesses under oath and to

present argument. The Hearing Officer shall have the power to compel attendance of witnesses and documents by Subpoena in accordance with the Civil Code. The formal rules of evidence shall not apply and any relevant evidence that is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious business affairs shall be admissible. Hearsay evidence may be considered by the Hearing Officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The formal exceptions to the hearsay rule shall apply.

(d) The Hearing Officer is authorized to rule upon issues of law or fact and to determine the amount of the tax or penalty in accordance with this Article. The Hearing Officer shall not have any jurisdiction to waive, mitigate or suspend the collection of any tax or penalty found to be duly imposed.

(e) The decision of the Hearing Officer shall be issued in writing no later than fourteen (14) days after the conclusion of the hearing. The decision shall be the final administrative remedy of the appellant and shall be binding upon the City Manager. Any amounts due shall be immediately payable to the City Treasurer.

(f) The City Manager shall promulgate supplementary rules and procedures for the conduct of the hearing, the forms of notice and proceedings and the preparation and submission of the record.

(Amended 6–1–1999 by O–18650 N.S.)

§35.0121 Records

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this Article to keep and preserve, for a period of three years within the boundaries of this City, all business records as may be necessary to determine the amount of such tax for which the operator is liable for collection and payment to the City. The City Treasurer and authorized deputies or agents in the exercise of duties imposed by this Article shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City. It shall be unlawful to refuse to allow or to permit such audit to be conducted after a lawful demand therefor by the City Treasurer, or the City Auditor when so requested by the City Treasurer.

("Records" renumbered from Sec. 35.0111 and amended 4–17–1989 by O–17278 N.S.)

§35.0122 Refunds

(a) Whenever the amount of any tax or penalty has been overpaid, paid more than once or has been erroneously or illegally collected or erroneously received by the City under this article, the overpayment may be refunded provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the City Treasurer within three years of the date of payment. The claim shall be on forms available from the City Treasurer.

(b) An operator may claim a refund or take as a 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 City Treasurer that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(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 subparagraph (a) of this section, but only when the transient having paid the tax to the operator establishes to the satisfaction of the City Treasurer that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) An operator who has remitted an amount in excess of the amount required to be paid by this article may receive a credit to the extent of the excess. If the excess is discovered as a result of an audit by the City, no claim need be filed by the operator. Such credit, if approved by the Treasurer, shall be applied to any deficiency found or any further tax payments due under the rules prescribed by the Treasurer.

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

("Refunds" renumbered from Sec. 35.0112 and amended 4–17–1989 by O–17278 N.S.)

(6-2000)

§35.0123 Actions to Collect Taxes and Enforcement of Liens

(a) Any tax required to be paid by any transient under the provisions of this Article shall be deemed a debt owed by the transient to the City and payable through the operator. Any tax collected by an operator which has not been paid to the City shall be deemed funds held in trust for the account of the City which are due and payable by the operator to the City pursuant to the provisions of this Article. Any person owing money to the City under the provisions of the Article shall be liable to an action brought in the name of The City of San Diego for the recovery of such amount. Upon the concurrence of the City Attorney and the City Auditor and Comptroller, the City Treasurer is authorized to compromise the collection of the amount or establish a schedule of payment for any tax due, or to discontinue the collection of any claim if it appears that further proceedings would be without merit.

(b) Recording of a Certificate of Lien. If any amount required to be paid to the City under this Article is not paid when due, the City Treasurer may record in the office of the San Diego County Recorder a certificate which specifies the amount of tax and penalties due, the name and address of the operator liable for the same, a statement that the City Treasurer has complied with all provisions of this Article in the determination of the amount required to be paid and a legal description of the real property owned by the operator. From the time of the recording of the certificate, the amount required to be paid together with penalties constitutes a lien upon all real property in the county owned by the operator or thereafter acquired before the lien expires. The lien has the force, effect and priority of a tax lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged.

(c) Warrant for Collection of Tax. At any time within three (3) years after the recording of a certificate of lien under Section 35.0123(b), the City Treasurer may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of any tax and penalties required to be paid to the City under this Article. 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 a writ of execution. The City Treasurer may pay or advance to the sheriff or marshal such fees, commissions and expenses for services as are provided by law for similar services pursuant to a writ of execution.

(d) Seizure and Sale. In lieu of issuing a warrant under subsection (c), at any time within the three (3) years after an assessment was issued or a certificate of lien was recorded under section 35.0123(b), the City Treasurer may collect the delinquent amount by seizing or causing to be seized any property, real or personal, of the operator and sell any noncash or nonnegotiable property or a sufficient part of it at public auction to pay the amount of tax due together with any penalties and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.
(Amended 1–21–1992 by O–17733 N.S.)

§35.0124 Violations and Criminal Proceedings

(a) Any operator who wilfully fails to collect or cause to be collected the transient occupancy tax due from a transient is guilty of misdemeanor.

(b) Any operator who wilfully fails to file or cause to be filed any return required by this Article, or who files or causes to be filed a false return, or who wilfully fails or refuses to remit or cause to be remitted any tax collected, or who refuses to allow an audit to be conducted, is guilty of a misdemeanor.

(c) The commencement of criminal proceedings shall neither preclude nor abate administrative or civil actions to collect taxes due under this Article.

(d) Violations under this section are continuing violations and each day the violation continues constitutes a separate misdemeanor.

(e) Any operator violating any of the other mandatory provisions of this Article shall be guilty of a misdemeanor.

(f) Violations shall be punishable as misdemeanors by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment.

(g) Non–defense. It shall not be a defense to violations of this Article that the operator, including a resident manager, had forwarded any return due or tax collected to its principal or corporate headquarters, nor that any failure to file

or remit taxes was based on the direction or inaction of such principal or corporate headquarters.
("Violations and Criminal Proceedings" renumbered from Sec. 35.0114, retitled and amended 4–17–1989 by O–17278 N.S.)

§35.0127 Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Article or any part thereof. The City Council 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 phrases be declared unconstitutional.
("Severability" renumbered from Sec. 35.0115 on 4–17–1989 by O–17278 N.S.)

§35.0128 Utilization of Revenues from Tax Imposed by Section 35.0103

All revenues collected pursuant to the tax imposed by the City under Section 35.0103 shall be utilized as follows:

(a) Two–thirds (2/3) of all revenues collected by the City and remaining after payment of two–thirds (2/3) of the costs incurred in the administration of Chapter 3, Article 5, Division 1 shall be deposited in the Transient Occupancy Tax Fund and used solely for the purpose of promoting the City.

(b) One–sixth (1/6) of all revenue collected by the City and remaining after payment of one–sixth (1/6) of the costs incurred in the administration of Chapter 3, Article 5, Division 1 shall be deposited in the Transient Occupancy Tax Fund. Money shall be expended from this fund only by an ordinance appropriating part or all of the fund for any purpose the City Council may direct, including, but not limited to, promotion of the City.

(c) One–sixth (1/6) of all revenue collected by the City and remaining after payment of one–sixth (1/6) of the costs incurred in the administration of Chapter 3, Article 5, Division 1 shall be deposited to the General Fund. An annual allocation, as determined by the City Council, from revenues collected pursuant to the tax imposed by the City under Section 35.0103 may be deposited in the Housing Trust Fund of the City.

(Retitled to "Utilization of Revenues From Additional Tax Imposed by Section 35.0105" and amended 6–20–1994 by O–18078 N.S.)

§35.0129 Utilization of Revenues from Additional Tax Imposed by Section 35.0104

All revenues collected pursuant to the tax imposed by the City under Section 35.0104 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.
(Amended 6–20–1994 by O–18078 N.S.)

§35.0130 Utilization of Revenues from Additional Tax Imposed by Section 35.0105

All revenues collected pursuant to the tax imposed by the City under Section 35.0105 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.
(Amended 6–20–1994 by O–18078 N.S.)

§35.0131 Utilization of Revenues from Additional Tax Imposed by Section 35.0106

All revenues collected pursuant to the tax imposed by the City under Section 35.0106 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.
(Amended 6–20–1994 by O–18078 N.S.)

§35.0132 Utilization of Revenues From Tax Imposed by Section 35.0107

All revenues collected pursuant to the tax imposed by the City under Section 35.0107 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.
(Amended 6–20–1994 by O–18078 N.S.)

§35.0133 Utilization of Revenues From Tax Imposed by Section 35.0108

All revenues collected pursuant to the tax imposed by the City under Section 35.0108 shall be deposited in the General Fund of the City and be used for general

governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.
("Utilization of Revenues From Tax Imposed by Section 35.0108" added 6–20–1994 by O–18078 N.S.)

§35.0136 Treasurer's Regulations and Enforcement Authority

The City Treasurer may promulgate reasonable rules, interpretations and regulations to implement and enforce the provisions of this Article. Designated agents of the City Treasurer shall have the authority to arrest without a warrant any violator of a misdemeanor provision of this Article and to issue notices to appear pursuant to the provisions of Penal Code section 836.5.
("Treasurer's Regulations and Enforcement Authority " renumbered from Sec. 35.0117, retitled and amended 4–17–1989 by O–17278 N.S.)

§35.0137 Duty of Successor of Operator

If an operator who is liable for any tax or penalties under this Article sells or otherwise disposes of his business, his successor shall notify the City Treasurer of the date of sale at least thirty (30) days before the date of sale or, if the decision to sell was made less than thirty (30) days prior to the actual sale, then immediately and shall withhold a sufficient portion of the purchase price to equal the amount of such tax or penalty until the selling operator produces a receipt from the Treasurer showing that the tax or penalty has been paid or a tax clearance certificate from the City Treasurer stating that no tax or penalty is due. If the seller does not present a receipt or tax clearance certificate within thirty (30) days after such successor commences to conduct business, the successor shall deposit the withheld amount with the City Treasurer pending settlement of the account of the seller.
("Duty of Successor of Oper'tor" renumbered from Sec. 35.0118 'nd 'mended 4–17–1989 by O–17278 N.S.)

§35.0138 Liability of Successor for Failure to Withhold: Notice of Amount Due

If the successor to the business fails to withhold a portion of the purchase price as required, it shall be liable to the City for the payment of the amount required to be withheld. Within thirty (30) days after receiving a written request from the successor for a tax clearance certificate stating that no tax or penalty is due, the City Treasurer shall either issue the certificate or mail notice to the successor at its address as it

appears on the records of the City Treasurer of the estimated amount of the tax and – penalty that must be paid as a condition of issuing the certificate.
("Liability of Successor for Failure to Withhold: Notice of Amount Due" renumbered from Sec. 35.0119, retitled and amended 4–17–1989 by O–17278 N.S.)