



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Proposed Amendment to Lodi Municipal Code Chapter 3.12
Relating to Transient Occupancy Tax (TOT) Code Provisions

MEETING DATE: March 20, 1996

PREPARED BY: Finance Director

RECOMMENDED ACTION: Council consideration and possible introduction of Ordinance No. 1630 amending Chapter 3.12 by adding Sections 3.12.112 and 3.12.114 relating to Sale or Transfer and Successor Liability.

BACKGROUND INFORMATION: A review of the TOT code provisions in the Lodi Municipal Code indicates that the current code does not have language dealing with the circumstances of a sale or transfer of a business which is liable for the TOT. The following language should be added to the code to cover the circumstance where a sale or transfer of such a business takes place.

Section 3.12.112 - Sale or Transfer:

"If an operator who is liable for any tax or penalties under this *Chapter* sells or otherwise transfers his business, his successor *in interest* 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 *Tax Administrator* 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 *Tax Administrator* pending settlement of the account of the seller."

Section 3.12.114 - Successor Liability:

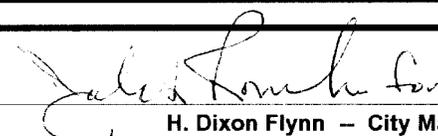
"If the successor to the business fails to withhold a portion of the purchase price as required, *the successor* shall be liable to the City for the payment of the amount required to be withheld. Within thirty (30) days after receiving a written request from the successor for a tax clearance certificate stating that no tax or penalty is due, the *Tax Administrator* shall either issue the certificate or mail notice to the successor at its address as it appears on the record of the City of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate."

FUNDING: None.


Vicky McAthie
Finance Director

Coordinated with City Attorney

APPROVED:


H. Dixon Flynn - City Manager

ORDINANCE NO. 1630

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
AMENDING CHAPTER 3.12 OF THE LODI MUNICIPAL CODE BY ADDING
THERE TO SECTIONS 3.12.112 AND 3.12.114, RELATING TO
TRANSIENT OCCUPANCY TAX CODE PROVISIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS
FOLLOWS:

SECTION 1. Chapter 3.12 - Transient Occupancy Tax - is hereby amended by adding thereto new Sections 3.12.112 and 3.12.114, relating to Sale or Transfer and Successor Liability to read as follows:

Section 3.12.112 - Sale or Transfer:

“If an operator who is liable for any tax or penalties under this Chapter sells or otherwise transfers his business, his successor in interest 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 Tax Administrator 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 Tax Administrator pending settlement of the account of the seller.”

Section 3.12.114 - Successor Liability:

“If the successor to the business fails to withhold a portion of the purchase price as required, the successor 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 Tax Administrator shall either issue the certificate or mail notice to the successor at its address as it appears on the records of the City of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate.

SECTION 2 - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3 - Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 5. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect immediately after its passage and approval.

Approved this ___ day of _____, 1996

DAVID P. WARNER
Mayor

Attest:

JENNIFER M. PERRIN
City Clerk

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State of California
County of San Joaquin, ss.

I, Jennifer M. Perrin, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1630 was introduced at a regular meeting of the City Council of the City of Lodi held March 20, 1996 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 1996 by the following vote:

- Ayes: Council Members -
- Noes; Council Members -
- Absent: Council Members -
- Abstain: Council Members -

I further certify that Ordinance No. 1630 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

JENNIFER M. PERRIN
City Clerk

Approved as to Form:

A handwritten signature in cursive script that reads "Randall A. Hays".

RANDALL A. HAYS
City Attorney