



Honorable Mayor and Members of the Hermosa Beach City Council

**INTRODUCE AN ORDINANCE TO AMEND HBMC SECTION 3.32 TITLED
TRANSIENT OCCUPANCY TAX**

(Senior Management Analyst Ken Bales)

Recommended Action:

Staff recommends City Council introduce by title only and waive first reading of an ordinance updating the Hermosa Beach Municipal Code 3.32.020 Definitions, 3.32.030 Tax Imposed; and 3.32.100 Appeal (**Attachment 5**).

Executive Summary:

Hermosa Beach Municipal Code (“HBMC”) 3.32.030 is inconsistent with state law regarding the imposition and collection of Transient Occupancy Tax (“TOT”) from hotels as defined in HBMC 3.32.020. Currently, HBMC only imposes the collection of TOT on certain occupancies, including “permitted short-term rental as defined” which is not defined under HBMC 3.32.020. Similarly, voter approved increases in the TOT have not defined what type of occupancy the increase applied to, and state law allows the imposition of TOT on the occupancy, regardless of the type or whether the type is permitted or not. Therefore, Staff is recommending that Council adopt the code changes discussed below to be consistent with state law.

Additionally, HBMC 3.32.100 states that appeals regarding the imposition of TOT and any interest or penalties may be heard by the Council, which is burdensome, inefficient, and could create claims of actual or perceived bias. Therefore, Staff recommends that Council revise HBMC 3.32.100 so that any appeal is heard by the City Manager or their designee, so that appeals can be heard by a third-party administrative hearing officer.

Background:

HBMC 3.32.020 provides the following definitions, in relevant part:

- Hotel means 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 means the use or possession, or the right to the use or possession of any room or room or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.
- Operator means the person who is the proprietor of the hotel, hostel, or any other permitted short-term rental, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, and includes companies that arrange for reservations online. Though the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be determined 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.
- Transient means:
 - Any person as defined in this section who exercises, for any period of time, occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement; or
 - Any individual who personally 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.

HBMC 3.32.030 states:

- For occupancy of any hotel, motel, hostel, hospital or **permitted short-term rental as defined**, each transient is subject to and shall pay a tax in the amount of fourteen (14) percent of the rent or bill charged by the operator. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator of the hotel, motel, hostel, hospital, or **other permitted short-term accommodation at the time the rent or bill is paid**. If the rent or bill 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, motel, hostel, hospital or **other permitted short-term accommodation**. If for any reason the tax due is not paid to the operator, the tax administrator may require that such tax shall be paid directly to the tax administrator. (Emphasis added.)

Regarding TOT appeals, HBMC 3.32.100 allows any operator of a hotel who is aggrieved by the imposition of TOT may file an appeal to the Council through the City Manager's office within a certain time period for an appeal hearing.

Past Council Actions

Meeting Date	Description
November 24, 2015	Certification of 2015 elections and Ordinance No. 15-1358 approved.
November 21, 2019	Certification of 2019 elections and Ordinance No. 19-1401 approved.

Analysis:

Definitions – HBMC 3.32.020

Under the definition of “Operator”, using the word “permitted” in describing any type of lodging is inconsistent with state law as discussed below, and should be removed. “Short-term” rental, as it appears in HBMC 3.32.020 under the definition of “Operator” is one of several examples of lodging that falls under the broad definition of “Hotel.”

Tax Imposed – HBMC 3.32.030

There are several reasons to remove the language referring to “permitted short term rental as defined” and “other permitted short-term accommodation”—this language is inconsistent with state law, it is inconsistent the definitions and application of HBMC 3.32 generally, and it is inconsistent with voter approved ballot measures regarding the imposition of TOT.

State Law

State law governs many of the functions of municipalities including taxation authority. Specifically, California Revenue and Taxation Code 7280(a) states, in relevant part:

- The legislative body of any city, county, or city and county may levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days.

The state’s definition of lodging regarding TOT is consistent with HBMC 3.32.020, but inconsistent with the language of HBMC 3.32.030. California Rev & Tax Code 7280(a) does not limit TOT to permitted or unpermitted uses, neither does it distinguish its application to short term rentals, which already fall under the broad definition of lodging therein. Removing “permitted short term rental” and “other permitted short-term accommodation” is consistent with the breadth of authority provided by state law.

HBMC and TOT Ballot Language

HBMC 3.32.030 refers to “permitted short term rental as defined,” however, no further definition is provided under HBMC 3.32. Rather, the definitions related to TOT are found under HBMC 3.32.020 as described above, which do not include any reference to “short term rentals” permitted or otherwise, as a separate type of lodging. Instead, HBMC 3.32.020 includes a broad definition of hotel which, similar to CA Rev & Tax Code 7280(a),

covers what is commonly understood to be a short-term rental—a stay in any structure or portion thereof, intended or designed for occupancy by a transient.

Similarly, the anomalous language, “permitted short term rental,” is inconsistent with the TOT approved by city voters in 2015 and 2019. The plain language of both ballot measures asked voters to vote for or against an increase in the TOT. In 2015, the voters overwhelmingly approved a TOT increase from 10% to 12%, and then overwhelmingly approved a TOT increase from 12% to 14% in 2019 (**Attachment 1 & Attachment 2**). Neither ballot measure included any stipulation on what type of occupancy they applied to, nor did either limit the imposition of TOT to permitted or unpermitted occupancies.

In adopting the results of each election, Council at the time decided to artificially narrow the application of each by ordinance only after the ballot measures were approved, resulting in the “permitted short term rental” language in HBMC 3.32.030 (**Attachment 3 & Attachment 4**). Again, this language is not found in the ballot language approved by the voters, and neither is it found in any other section of the HBMC related to TOT, nor is it defined therein.

Removing the aforementioned language will make HBMC 3.32.030 consistent with state law, consistent with the definitions of HBMC 3.32.020, and consistent with the ballot measures approved by the voters of Hermosa Beach. This is also consistent with court cases that have held that TOT is a tax on the occupant for the privilege of occupying a room or space in a hotel for less than 30 days, and it applies regardless of whether a hotel is properly permitted or in compliance with zoning codes.

It is important to note that this recommendation does not change the calculation of the TOT, nor is it expanding its application as it has always applied to what was approved by the voters—the imposition of the City’s TOT on the occupancy of transients at a hotel as defined by HBMC 3.32.020.

TOT Appeals – 3.32.100

As noted above, HBMC 3.32.100 currently requires that all appeals related to the imposition of the TOT be heard by the City Council. Most administrative violations of the HBMC are heard by an independent, third-party administrative hearing officer which offers a better alternative to an appeal before the Council for several reasons:

- **Efficient Scheduling**—it can be difficult to coordinate a meeting among all five councilmembers and staff to hear an appeal; using a single administrative hearing officer will be easier to schedule.
- **Legal Knowledge**—most administrative hearing officers are attorneys with an understanding of the law and how it can apply to the facts of each case.
- **Fairness**—potential appellants may know some or all Councilmembers while others may not; using an independent, third-party administrative hearing officer will

help protect the City from any accusations of real or perceived bias regarding the appeal process or outcomes.

For these reasons, staff recommends that the Council approve changing the language of HBMC 3.32.100 to remove the Council as the appeals hearing body and allow that all appeals of the TOT be heard by the City Manager or their designee, so that appeals can be heard by an independent, third-party administrative hearing officer.

Options:

Option 1:

- Introduce by title only and waive first reading of an ordinance updating Hermosa Beach Municipal Code 3.32.020 Definitions; 3.32.030 Tax Imposed; and 3.32.100 Appeal.
- At a future meeting, adopt by title only and waive second reading of an ordinance updating Hermosa Beach Municipal Code 3.32.020 Definitions; 3.32.030 Tax Imposed; and 3.32.100 Appeal.
- Following adoption of ordinance, direct the City Clerk to print and publish the summary ordinances in a newspaper of general circulation within 15 days following adoption and post it on the City's bulletin for 30 days.

Option 2:

- Do not approve Staff's recommended changes to the Transient Occupancy Tax code, and/or provide further direction to Staff as determined by Council.

Fiscal Impact:

There is no direct fiscal impact to updating HBMC sections 3.32.020 Definitions, 3.32.030 Tax Imposed or HBMC 3.32.100 Appeal.

Attachments:

1. Resolution No.15-6983 (Petition for Transient Occupancy Tax)
2. Resolution No.19-7199 (Increase of Transient Occupancy Tax)
3. Ordinance No. 15-1358 (TOT Results)
4. Ordinance No. 19-1401 (TOT Increase)
5. Draft Ordinance

Respectfully Submitted by: Ken Bales, Senior Management Analyst

Noted for Fiscal Impact: Brandon Walker, Administrative Services Director

Legal Review: Jason Baltimore, Interim City Attorney

Approved: Steve Napolitano, City Manager