

RESOLUTION NO. 11650

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CALLING AN ELECTION TO BE HELD ON NOVEMBER 5, 2024, FOR VOTER CONSIDERATION OF A BALLOT MEASURE SEEKING VOTER AUTHORIZATION TO AMEND MUNICIPAL CODE CHAPTER 3.16 TO INCREASE THE CITY'S EXISTING TRANSIENT OCCUPANCY (HOTEL) TAX; ESTABLISHING POLICIES AND PROCEDURES IN CONNECTION WITH SUCH AN ELECTION; REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA TO CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE GENERAL ELECTION TO BE HELD ON NOVEMBER 5, 2024; REQUESTING CERTAIN SERVICES OF THE REGISTRAR OF VOTERS OF ALAMEDA COUNTY WITH RESPECT TO THE CONSOLIDATED GENERAL MUNICIPAL ELECTION; AND PROVIDING FOR SUBMITTAL OF BALLOT ARGUMENTS AND REBUTTALS AND AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS

WHEREAS, pursuant to section 7280 of California Revenue and Taxation Code, the legislative body of a city 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 for a period of 30 days or less; and

WHEREAS, Chapter 3.16 of the Newark Municipal Code establishes a transient occupancy tax ("TOT") which, through resolution, is set at ten percent (10%) within the City of Newark (the "City"); and

WHEREAS, the City seeks to continue to exercise local control over local funds for local needs – allowing the City to be self-reliant and requiring any new local funding approved by its voters are spent for Newark residents and cannot be taken by Sacramento; and

WHEREAS, for victims of heart attacks, strokes, accidents and other emergencies, seconds can make a difference, and a measure supporting local funding will help ensure fast 911 emergency response times; and

WHEREAS, additional local funding is needed to repair potholes and maintain streets on more than 105 miles of streets in the City; and

WHEREAS, for any additional local funding, the City will continue its high standards of fiscal accountability and transparency by requiring that any money generated must be spent only on the community priorities, and not for any other purpose; and

WHEREAS, through an engagement effort and discussion around the City's budget, residents identified City service funding priorities such as repairing potholes and City streets, maintaining neighborhood police patrols, fire protection and 911 emergency medical response, upgrading fire stations to ensure rapid response times, accommodate modern firefighting and life-saving emergency equipment, improving emergency dispatch for rapid response during an

earthquake or major disaster and enhancing parks and recreation programs and maintaining sports fields and children’s play structures as priorities for any future spending; and

WHEREAS, additional local funding from a TOT (hotel) measure will ensure that visitors to Newark contribute towards the services they use and that the burden will not fall on homeowners as only hotel and lodging guests pay this tax; and

WHEREAS, Article XIIC, section 2(b) of the California Constitution requires that any general tax for unrestricted general revenue purposes, such as a TOT, must be submitted to and approved by a majority vote of the voters voting on the issue of imposing any general tax; and

WHEREAS, the tax extension imposed by this proposed measure will only become effective if approved by a simple majority of the City’s voters voting on the question at the November 5, 2024 election; and

WHEREAS, based on all of the information presented at the June 27, 2024 meeting of the City Council, both written and oral, including the staff reports, minutes, and other relevant materials, the City Council finds that under CEQA Guidelines 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this tax does not constitute a project under CEQA and therefore review under CEQA, review is not required.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that:

Section 1. The foregoing recitals are true and correct and hereby incorporated by reference.

Section 2. The City Council is authorized to present a measure to the voters for their consideration pursuant to Elections Code Section 9222 and Government Code Section 53724.

Section 3. Pursuant to the requirements of the laws of the State of California, the City Council hereby calls an election at which it shall submit to the qualified voters of the City of Newark a measure that, if approved by a majority vote, would increase the TOT rate from ten percent (10%) to fourteen percent (14%). This measure shall be designated by letter by the Alameda County Registrar of Voters. Pursuant to California Elections Code Section 10400 et seq., the election for this measure shall be consolidated with the established statewide election to be conducted on November 5, 2024.

Section 4. The City Council does hereby submit for adoption by the qualified voters of the City of Newark at the General Municipal Election of November 5, 2024, the following question:

<u>“To maintain local services/ facilities, such as: repairing potholes/ city streets; replacing seismically unsafe fire stations; maintaining neighborhood police patrols, 9-1-1 and emergency medical response/ fire protection; and for general government use; shall the City of Newark measure be adopted increasing the existing voter approved</u>	YES	
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<u>transient occupancy (hotel) tax from 10% to 14%, paid only by hotel/ lodging guests, until ended by voters, providing \$2,100,000 more annually, that cannot be taken by Sacramento, including independent citizen oversight?"</u>	NO	
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Section 5. The full text of the proposed measure to be submitted to the voters is attached as Exhibit A (the "Measure") hereto. If a simple majority (50%+1) of the qualified voters voting on the Measure vote in favor therefor, the Measure shall be deemed adopted and shall be in full force and effect ten (10) days after the date the vote is declared by the City Council of the City of Newark. The City Council hereby approves the Measure, attached as Exhibit A, the form thereof, and its submission to the voters of Newark at the November 5, 2024 election.

Section 6. The Board of Supervisors of Alameda County is hereby requested to permit the Alameda County Registrar of Voters to provide such services as may be necessary to properly and lawfully hold and conduct a Consolidated General Municipal Election in the City on November 5, 2024, pursuant to this Resolution, including but not restricted to the providing and printing of ballots and polling place cards, election supplies, voting booths, flags, registration lists and any other materials and services required to lawfully conduct the election. The City recognizes that additional costs will be incurred by the County by reason of this Consolidated General Municipal Election, and the City agrees to reimburse the County based on the County's established rates. This request is made pursuant to California Elections Code Sections 10002 and 10403.

Section 7. The City Clerk is authorized, instructed and directed to work with the Office of the Registrar of Voters as needed in order to properly and lawfully conduct the election. The ballots to be used in the election shall be in form and content as required by law. The Office of the Registrar of Voters is authorized to canvass the returns of the general municipal election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections. The City Clerk is directed to file a certified copy of this resolution with the Board of Supervisors of Alameda County and the Registrar of Voters of Alameda County.

Section 8. Unless otherwise specified in this Resolution, the election on the Measure shall be held and conducted as provided in Resolution No. 11651, and as provided by law for holding municipal elections.

Section 9. (a) In accordance with Elections Code Sections 9282 and 9283, arguments submitted for or against the Measure shall not exceed 300 words in length, and shall be printed upon the same sheet of paper and mailed to each voter with the sample ballot for the election and may be signed by not more than five (5) persons.

(b) In accordance with Elections Code Section 9282, the following headings, as appropriate, shall precede the arguments' wording, but shall not be counted in the 300 word maximum: "Argument Against Measure _____" or "Argument In Favor Of Measure _____" (the blank spaces being filled only with the letter or number, if any, designating the Measure).

(c) In accordance with Elections Code Section 9283, printed arguments submitted to voters in accordance with Section 9282 of the Elections Code shall be filed with the City Clerk, accompanied by the printed name(s) and signature(s) of the author(s) submitting it or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers. Arguments are due in the office of the City Clerk prior to 2:00 p.m. on July 11, 2024.

(d) The City Council hereby authorizes Mayor Hannon to prepare and file a ballot argument in favor of the ballot measure set forth in this Resolution, which may be signed by members of the City Council, representatives of bona fide associations of citizens, and individual voters eligible to vote on the Measure. Members of the City Council who sign the ballot argument may use their titles. In accordance with Elections Code Section 9287, any council members authorized by the City Council to do so may sign the argument in favor of the Measure.

Section 10. (a) Pursuant to Elections Code Section 9285, when the City Clerk has selected the arguments for and against the Measure that will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the Measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument that it seeks to rebut.

(b) Rebuttal arguments shall not exceed 250 words and may be signed by not more than five persons. The persons that sign the rebuttal arguments may be different persons than the persons that signed the direct arguments.

(c) The last day for submittal of rebuttal arguments for or against the Measure shall be by 2:00 p.m. on July 18, 2024.

(d) The City Council hereby authorizes Mayor Hannon to prepare and file a rebuttal argument in favor of the ballot measure set forth in this Resolution, which may be signed by members of the City Council, representatives of bona fide associations of citizens, and individual voters eligible to vote on the Measure, who may be different from the people who signed the argument in favor of the measure. Members of the City Council who sign the rebuttal argument may use their titles. In accordance with Elections Code Section 9287, any council members authorized by the City Council to do so may sign the rebuttal argument for the Measure.

Section 11. In accordance with Elections Code Section 9280, the City Attorney is directed to file with the City Clerk, by 5:00 p.m. on July 11, 2024, an impartial analysis of the Measure, not to exceed 500 words, showing the effect of the Measure on the existing law and the operation of the Measure.

Section 12. (a) The City Clerk is directed to file a certified copy of this resolution with the Board of Supervisors of Alameda County and the Alameda County Registrar of Voters. The City Clerk is hereby authorized and directed to take all steps necessary to place the Measure on the ballot and to cause a synopsis of the Measure attached as Exhibit A to be published once in a

newspaper of general circulation in accordance with California Elections Code Section 12111 and California Government Code Section 6061. A copy of the Measure shall be made available to any voter upon request. The City Clerk is authorized and directed to give further additional notice of the Measure in the time, form, and manner required by law.

(b) In all particulars not recited in this Resolution, and except as provided for in Elections Code Sections 10403 and 10418, the election shall be held and conducted as provided by law for holding municipal elections.

Section 13. The approval of this resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”), based on the general rule set forth in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This resolution places a measure on the ballot that, if approved, increases the TOT rate; thus, it can be said with certainty that there is no possibility that the Measure will have a significant effect on the environment. Additionally, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to approval of the project, consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on June 27, 2024, by Council Member Jorgens who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES: Council Members Collazo, Jorgens, Vice Mayor Freitas, and Mayor Hannon

NOES: None

ABSENT: None

SECONDED: Council Member Collazo

APPROVED:

ATTEST:

MICHAEL K. HANNON
Mayor

SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:

KRISTOPHER J. KOKOTAYLO
City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF NEWARK AMENDING
CHAPTER 3.16 OF THE NEWARK MUNICIPAL CODE
RELATING TO THE TRANSIENT OCCUPANCY (HOTEL)
TAX

WHEREAS, pursuant to section 7280 of California Revenue and Taxation Code, the legislative body of a city 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 for a period of less than 30 days; and

WHEREAS, Chapter 3.16 of the Newark Municipal Code establishes a transient occupancy tax ("TOT") which, through resolution, is set at ten percent (10%) within the City of Newark (the "City"); and

WHEREAS, the City seeks to continue to exercise local control over local funds for local needs – allowing the City to be self-reliant and requiring any new local funding approved by its voters are spent for Newark residents and cannot be taken by Sacramento; and

WHEREAS, for victims of heart attacks, strokes, accidents and other emergencies, seconds can make a difference, and a measure supporting local funding will help ensure fast 911 emergency response times; and

WHEREAS, additional local funding is needed to repair potholes and maintain streets on more than 105 miles of streets in the City; and

WHEREAS, for any additional local funding, the City will continue its high standards of fiscal accountability and transparency by requiring that any money generated must be spent only on the community priorities, and not for any other purpose; and

WHEREAS, through an engagement effort and discussion around the City's budget, residents identified City service funding priorities such as repairing potholes and City streets, maintaining neighborhood police patrols, fire protection and 911 emergency medical response, upgrading fire stations to ensure rapid response times, accommodate modern firefighting and life-saving emergency equipment, improving emergency dispatch for rapid response during an earthquake or major disaster and enhancing parks and recreation programs and maintaining sports fields and children's play structures as priorities for any future spending; and

WHEREAS, additional local funding from a TOT (hotel) measure will ensure that visitors to Newark contribute towards City services they use and that the burden will not fall on homeowners as only hotel and lodging guests pay this tax; and

WHEREAS, the People of the City of Newark desire to increase the TOT rate.

NOW, THEREFORE, the People of the City of Newark do ordain as follows:

Section 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

Section 2. Municipal Code Amendment.

Chapter 3.16, "Transient Occupancy Tax" of the Newark Municipal Code is hereby amended to read as to read as set forth in Exhibit A, attached hereto and incorporated herein by reference (deletions in ~~striketrough~~; additions in underline).

Section 3. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The People of the City of Newark hereby declare that they would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4. Amendment or Repeal.

Chapter 3.16 of title 3 of the Newark Municipal Code may be repealed or amended by the City Council without a vote of the People. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance or impose the tax on a person not currently subject to the tax. The People of the City of Newark affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance if the City Council has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax or any definition applicable to the tax so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;
- C. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception other than the discontinuation of an exemption or exception specifically set forth in this Ordinance; and,
- D. The collection of the tax imposed by this Ordinance, even if the City had for some period of time failed to collect the tax.

Section 5. Codification.

Upon adoption of this Ordinance pursuant to the voter approval referenced above, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this Ordinance in the Newark Municipal Code.

Section 6. Publication and Effective Date.

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in a newspaper of general circulation printed and published in Alameda County and circulated in the City of Newark, in accordance with California Government Code Section 36933. If this Ordinance is approved by a majority of the voters voting on the issue at the November 5, 2024 election, pursuant to Elections Code Section 9217, this Ordinance shall become effective ten (10) days after the Council declares the results of the election.

Chapter 3.16 TRANSIENT OCCUPANCY TAX

3.16.010 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

- A. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designated for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse, apartment house, dormitory, public or private club, mobile home or house trailer in a fixed location except a mobilehome located within a mobile home park where the tenant is an employee of the owner or operator of the mobile home, or other similar structure or portion thereof.
- B. "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.
- C. "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. Where the operator performs ~~his~~their functions through a managing agent, such person shall also be deemed an operator for the purpose of this article and shall have the same duties and liabilities as ~~his~~-their 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.
- D. "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.
- E. "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.
- F. "Tax Administrator" means the director of finance.
- GF. "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 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 the ordinance codified in this chapter may be considered.

3.16.020 Tax imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax ~~as established by city council resolution based on a percentage~~in the amount of fourteen percent (14%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or operators of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to

occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the city council may require that such tax shall be paid directly to the [city-clerkTax Administrator](#).

3.16.030 Exemptions.

No tax shall be imposed upon:

- A. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax provided in this chapter;
- B. Any federal or state officer or employee when on official business;
- C. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

No exemptions shall be granted upon a claim therefor made at the time rent is collected under penalty of perjury upon a form prescribed by the [city-clerkTax Administrator](#).

3.16.040 Operator's duties.

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from 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 provided in Section 3.16.060 of this chapter.

3.16.050 Registration.

Within thirty days after the effective date of the ordinance codified in this chapter, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the [city-clerkTax Administrator](#) and obtain from ~~him~~ them a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued;
- D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the [City-ClerkTax Administrator](#) for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the [City-ClerkTax Administrator](#). This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit."

3.16.060 Reporting and remitting.

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reported period which may be established by the [city-clerkTax Administrator](#) make a

return to the [city-clerkTax Administrator](#), on forms provided by [himthem](#), of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the [city-clerkTax Administrator](#). The [city-clerkTax Administrator](#) may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and ~~he--~~ [they](#) may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the [city-clerkTax Administrator](#).

3.16.070 Penalties and interest.

- A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent 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 percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.
- C. Fraud. If the [city-clerkTax Administrator](#) determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.
- D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall by interest at the rate of one-half of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Penalties merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid by this chapter.

3.16.080 Failure to collect and report tax.

If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the [city-clerkTax Administrator](#) shall proceed in such manner as ~~hethey~~ may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the [city-clerkTax Administrator](#) procures such facts and information as ~~hethey~~ is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same, and to make such report and remittance, ~~hethey~~ shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the [city-clerkTax Administrator](#) shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at ~~his~~ [their](#) last known place of address. Such operator may within ten days after the serving or mailing of such notice, make application in writing to the [city-clerkTax Administrator](#) for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the [city-clerkTax Administrator](#) shall become final and conclusive and immediately due and payable. If such application is made, the [city-clerkTax Administrator](#) shall give not less than five days' written notice in the manner prescribed in this section to the operator to show cause at a time and place fixed in said notice why said amount specified in the notice should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the [city-clerkTax Administrator](#) shall determine the proper tax to be remitted and shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 3.16.090.

3.16.090 Appeal.

Any operator aggrieved by any decision of the [city-clerkTax Administrator](#) with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen days of the serving or mailing of the determination of tax due. The city council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at ~~his~~-~~their~~ last known place of address. The findings of the city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3.16.100 Records.

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as ~~hethey~~ may have been liable for the collection of and payment to the city, which records the [city-clerkTax Administrator](#) shall have the right to inspect at all reasonable times.

3.16.110 Refunds.

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the [city-clerkTax Administrator](#) within three years of the date of payment. The claim shall be on forms furnished by the [city-clerkTax Administrator](#).
- B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established once in a manner prescribed by the [city-clerkTax Administrator](#) 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 subsection A of this section, but only when the tax was paid by the transient directly to the [city-clerkTax Administrator](#), or when the transient having paid the tax to the operator, establishes to the satisfaction of the [city-clerkTax Administrator](#) that the transient has been unable to obtain a refund from the operator who collected the tax.
- D. No refund shall be paid under the provisions of this section unless the claimant established ~~his~~-~~their~~ right thereto by written records showing entitlement thereto.

3.16.120 Actions to collect.

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

3.16.130 Violations—Designated.

No operator or other person shall fail or refuse to furnish a supplemental return or other data required by the [city clerk Tax Administrator](#), or render a false or fraudulent return or claim. No person required to make, render, sign or verify any report or claim shall make any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made.

3.16.140 Violations—Penalty.

Any person, firm, corporation or organization violating any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars or by imprisonment for a term not exceeding six months in the county jail, or by both such fine and imprisonment. A person, firm, corporation or organization shall be deemed guilty of a separate offense for each day during any portion of which a violation of this chapter is committed, continued, or permitted by the person, firm, corporation or organization and shall be punishable as provided in this section.

3.16.150 Remedies cumulative.

All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

3.14.160 Independent community oversight committee.

The city council shall, prior to July 1, 2025, establish an independent community oversight committee to review the expenditure of the revenue from this transient occupancy tax. The committee shall consist of five members to be appointed by the mayor and approved by the city council. The terms of the committee members and their specific duties shall be established by resolution of the city council.