

ORDINANCE NO. 1015

AN ORDINANCE OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING DEL MAR MUNICIPAL CODE CHAPTER 3.12 – TRANSIENT OCCUPANCY (HOTEL) TAX (TOT) ALLOWING THE CITY TO COLLECT TOT FROM SHORT-TERM RENTAL OPERATORS AND MODERNIZING TOT REGULATIONS

(NOTE: Additions are highlighted in ***bold italics*** and deletions are highlighted in ~~strikeout~~)

BE IT ORDAINED BY THE VOTERS OF THE CITY OF DEL MAR:

WHEREAS, this Ordinance amends, clarifies and modernizes the City's existing transient occupancy tax (TOT) regulations under Chapter 3.12 of the Del Mar Municipal Code (DMMC); and

WHEREAS, pursuant to DMMC Chapter 3.12, the City currently imposes TOT at a voter-approved rate of thirteen percent (13%) upon guests of hotels, motels, inns, tourist homes, and other temporary transient accommodations with three or more units used for dwelling, lodging or sleeping purposes for a period of 30 consecutive calendar days or less; and

WHEREAS, as drafted, DMMC Chapter 3.12 does not currently allow for the collection of TOT from guests who stay in lodging facilities with less than three units, including short-term rentals (STRs); and

WHEREAS, the City is undergoing a public process to develop and adopt STR regulations, which is expected to be complete by December 2024. As part of the STR regulations, the City Council desires to require the collection of TOT from STR guests; and

WHEREAS, the City Council also desires to clarify that TOT is collected based on the full rent charged to guests, which includes all fees and rates charged by the operator, such as room rates, resort fees, parking, cancellation charges, cleaning fees, extra guest fees, pet fees, WIFI/Internet charges, and other charges, and excludes any service, booking and other transaction fees charged by hosting platforms, online travel companies and third-party booking vendors; and

WHEREAS, the City Council further desires to modernize the City's existing TOT regulations to authorize hosting platforms, online travel companies, and third-party booking vendors to collect and remit TOT to the City; and

WHEREAS, TOT is not a tax on Del Mar residents, property owners, long-term renters of more than 30 days, hotel operators, STR operators, and operators of other lodging facilities in the City; and

WHEREAS, TOT is only paid by transient guests who stay in local lodging facilities, and ensures tourists pay their fair share to use and benefit from the City's services and amenities during their stay, including fire, law enforcement and emergency medical services, driving on local roads, and visiting local beaches, parks, trails, and libraries, as well as other City services and amenities; and

WHEREAS, TOT revenues remain in the City, are controlled by the City, and are used for unrestricted general municipal purposes such as public safety, infrastructure, street operations, maintenance and repairs, recreation services, senior programs, water conservation, and other general public services and amenities benefitting the community and which make Del Mar a safe and desirable place to live, visit and do business; and

WHEREAS, by amending the existing TOT regulations to apply to lodging facilities with less than three units, including STRs, it is estimated that the City will generate approximately \$775,000 annually in additional General Fund revenue, which will be used for general City services, including protecting residents' quality of life and continuing to provide a high level of service to the community of Del Mar; and

WHEREAS, on May 20, 2024, the City Council directed staff to prepare a Resolution calling for the placement of a proposed Ordinance amending DMMC Chapter 3.12 (Transient Occupancy Tax) on the ballot for the November 5, 2024 General Municipal Election.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Del Mar, California, does hereby ordain as follows:

SECTION ONE:

That the foregoing recitals are true and correct.

SECTION TWO:

That subject to the approval of the majority of the voters of the City of Del Mar at the November 5, 2024, General Municipal Election so designated by the City Council in a separate Resolution placing the proposal on the ballot for such election, DMMC Section 3.12.030 (Transient Occupancy Tax – Definitions) is hereby amended as follows:

3.12.030 Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Hotel. Any structure or any portion of any structure ~~which has three or more unit(s)~~ occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, including any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, **short-term rental**, 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. The use or possession or the right to the use or possession of any room or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

Operator. 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 functions through a managing agent or any type or character other than an employee, the managing agent shall also be deemed 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.

Rent. 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. ***This amount shall include any cleaning fees, resort fees, parking fees, pet fees, extra guest fees, cancellation charges, WIFI/Internet charges, and any other fees, rates and charges as part of the total “rent” charged. Any fees, rates and charges not collected directly by the operator, including service, booking and other transaction fees charged by hosting platforms, online travel companies, and third-party booking vendors, are excluded from the definition of “rent” for purposes of this Chapter.***

Transient. 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 30 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 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy; provided, that any person who actually occupies the same premises for a period of 31 or more consecutive days shall be deemed exempt from the tax imposed by this Chapter on that specific occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this Chapter may be considered.

SECTION THREE:

That subject to the approval of the majority of the voters of the City of Del Mar at the November 5, 2024, General Municipal Election so designated by the City Council in a separate Resolution placing the proposal on the ballot for such election, DMMC Section 3.12.040 (Transient Occupancy Tax – The Collection of Tax) is hereby amended as follows:

3.12.040 The Collection of Tax.

- A. It shall be unlawful for an operator to fail to collect from the transient the tax imposed by this Chapter at the same time as the rent is collected from the transient.
- B. The operator shall deliver to the transient a receipt for payment which states the amount of the tax separately from the amount of the rent charged.

- C. No operator 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 the tax will not be added to the rent, or that, if added, any part will be refunded except in a manner provided in this Chapter.
- D. ***For purposes of this Section, if the operator uses a web- or application-based hosting platform, online travel company, or third-party booking vendor that facilitates rentals and payments for hotel rentals, the hosting platform, online travel company, or third-party booking vendor shall be considered an agent of the operator for purposes of collecting and remitting the tax to the City.***

SECTION FOUR:

The transient occupancy tax set forth herein shall be collected and administered in the manner set forth in Chapter 3.12 of the DMMC.

SECTION FIVE:

Pursuant to California Constitution Article XIII C, Section (2)(b) and California Elections Code Section 9217, this Ordinance shall take effect only if approved by a majority of the eligible voters of the City of Del Mar voting at the General Municipal Election to be held on November 5, 2024, and shall become effective as of January 1, 2025.

SECTION SIX:

If any portion of this Ordinance is declared invalid by a court of law or other legal body with applicable authority, the invalidity shall not affect or prohibit the force and effect of any other provision or application of the Ordinance that is not deemed invalid. The voters of the City hereby declare that they would have circulated for qualification and/or voted for the adoption of this Section, and each portion thereof, regardless of the fact that any portion of the initiative may be subsequently deemed invalid.

SECTION SEVEN:

The Mayor is hereby authorized to attest to the adoption of this Ordinance by the People voting thereon on November 5, 2024, by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED, AND ADOPTED by the People of the City of Del Mar on the 5th day of November, 2024.

Dave Druker, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, SARAH KRIETOR, Administrative Services Manager/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 1015, which has been published pursuant to law, and adopted by the vote of the People of the City of Del Mar on the 5th day of November, 2024.

Sarah Krietor, Administrative Services Manager/
City Clerk
City of Del Mar