

**TOWN OF SAN ANSELMO
RESOLUTION NO. 3880**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO CALLING AND GIVING NOTICE OF THE HOLDING OF AN ELECTION TO BE HELD NOVEMBER 3, 2009 AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN TO CONSOLIDATE SAID ELECTION; AND AUTHORIZE THE TOWN CLERK OR HER DULY AUTHORIZED OFFICERS AND AGENCY TO CARRY OUT ALL THE NECESSARY PROCEDURES FOR SAID ELECTION SUBMITTING TO THE VOTERS THE QUESTION RELATING TO IMPOSING A HOTEL USERS TAX FOR LODGING ESTABLISHMENTS.

Whereas, the Town of San Anselmo is considering imposing a general tax for lodging establishments in the Town; and

Whereas, under the provisions of the laws relating to general law cities in the State of California, an election shall be held on November 3, 2009 for the submission to the voters of a question relating to a general tax for lodging establishments.

Whereas, Article XIII A, Section 4 of the California Constitution authorizes cities , by a simple majority vote of the qualified electors, to impose general taxes; and

Whereas, the Town Council desires to submit a proposition containing a ballot measure to adopt a 10% Hotel Users Tax to be used for the purpose of raising revenue for general fund purposes to the qualified voters of the Town of San Anselmo at the Consolidated General District and School Election to be held in the Town on November 3, 2009; and

Whereas, it is desirable that the election be consolidated with the statewide election to be held on the same date and that within the Town, the precincts, polling places, and election officers of the two elections to be the same; and

Whereas, it is desirable that the County Election Department of County of Marin canvass the returns of the Consolidated General District and School Election and that the election be handled in all respects as if there were only one election.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. That pursuant to the requirements of the laws of the State of California relating to General law Cities, there is called and ordered to be held in the Town of San Anselmo, California, on Tuesday, November 3, 2009.

Section 2. That pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Marin is hereby requested to consent and agree to the consolidation of said election.

Section 3. That the Town Council, pursuant to its rights and authority, does order submitted to the voters at the election the following question:

Shall an ordinance be adopted establishing a uniform hotel users tax of 10% on hotel rooms in San Anselmo to be paid by hotel guests with the revenue to be used for Town general purposes, which if approved, shall be effective July 1, 2010?	Yes
	No

Section 4. The text of the proposed ordinance to be submitted to the voters is attached hereto as Exhibit A.

Section 5. Pursuant to Elections Code section 9280, the Town Clerk shall transmit a copy of the measure to the Town Attorney who shall prepare an impartial analysis of the measure in accordance with said Section 9280. Arguments for and against said measure may be filed in accordance with applicable provisions of the law. Pursuant to Section 9285 of the Elections Code of the State of California, (the provisions of which are hereby adopted), when the clerk has selected the arguments for and against the measure which will be printed and distributed to the voters, the 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. The rebuttal arguments shall be filed with the Town Clerk not more than 10 days after the final date for filing direct arguments. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut. The text of the measure shall be printed on the ballot in the voter information portion of the sample ballot.

Section 6. That the County Election Department is authorized to canvass the returns of said election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 7. That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

Section 8. That the Town Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

Section 9. That the polls for the election shall be open at 7:00 a.m. of the election and shall remain open continuously from that time until 8:00 p.m. of the same day, when the polls shall be closed, except as provided in Section 14301 of the Elections Code of the State of California.

Section 10. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 11. That notice of the time and place of holding the election is given and Town Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.

Section 12. That the Town Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Election Department of the County of Marin.

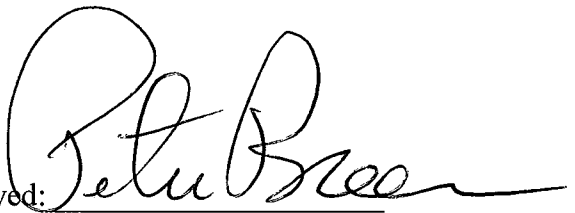
I, the undersigned hereby certify that the foregoing is a full, true, and complete copy of a resolution duly passed and adopted by the Council of the Town of San Anselmo at a regular meeting thereof held on the 23rd day of June 2009, by the following vote:

AYES: Breen, Greene, House, Thornton

NOES: Freeman

ABSENT: None

ABSTAIN: None

Approved: 
Peter Breen, Mayor

ATTEST: 
Barbara Chambers, Town Clerk

Draft
Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN OF SAN ANSELMO
ESTABLISHING A HOTEL USERS TAX**

The Town Council of the Town of San Anselmo does hereby ordain as follows:

Chapter 7, Title 8, of the San Anselmo Municipal Code is hereby established as follow:

§ 8-7.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

HOTEL. Any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by hotel users for dwelling, lodging or sleeping purposes and includes any hotel, inn, bed and breakfast inn, tourist home or house, motel, mobile home or other lodging. HOTEL shall not include any structure, or any portion of any structure, exempted by the provisions of California Government Code Sections 7280 and 7281.

HOTEL USER. HOTEL USER 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 30 consecutive calendar days or less, counting portions of calendar days as full days. Any such persons occupying space in a hotel shall be deemed to be a hotel user 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. In determining whether a person is a hotel user, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.

OCCUPANCY. 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.

OPERATOR. The person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator and shall have the same duties and liabilities as his or her 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.

PERSON. 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 entity.

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.

§ 8-7.02 TAX IMPOSED.

(A) For the privilege of occupancy in any hotel, each hotel user is subject to, and shall pay, a tax equal to the following percentage of the rent charged by the operator: ten percent.

(B) (1) The tax constitutes a debt owed by the hotel user to the Town which is extinguished only by payment to the operator or to the Town. The hotel user shall pay the tax to the operator of the hotel at the time the rent is paid.

(2) 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 hotel user's ceasing to occupy space in the hotel.

(3) If, for any reason, the tax due is not paid to the operator of the hotel, the Town Manager may require that such tax shall be paid directly to the Town Manager.

§ 8-7.03 EXEMPTIONS.

In addition to the exemptions provided for in California Government Code Sections 7280 and 7281, no tax shall be imposed upon any person as to whom, or any occupancy as to which, it is beyond the power of the Town to impose the tax.

§ 8-7.04 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 hotel user. The amount of tax shall be separately stated from the amount of the rent charged and each hotel user 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 this chapter.

§ 8-7.05 REGISTRATION.

(A) Within 30 days after the effective date of the ordinance codified in this chapter, or within 30 days after commencing business, whichever is later, the operator of any hotel renting occupancy to hotel users shall register the hotel with the Town and obtain from the Town a hotel users registration certificate to be at all times posted in a conspicuous place on the premises.

(B) The certificate shall, among other things, contain the following:

- (1) The name of the operator;
- (2) The address of the hotel;

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

(4) The following statement: "This Hotel User's Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of Chapter 7, Title 8 of the San Anselmo Municipal Code by registering with the Town Manager for the purpose of collecting from hotel users the hotel users tax and remitting that tax to the Town Manager. 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 applicable laws, including, but not limited to those requiring a permit from any board, commission, department or office of the Town of San Anselmo."

§ 8-7.04 REPORTING AND REMITTING.

(A) 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 reporting period which may be established by the Town Manager, make a return to the Town Manager on forms provided by the Town of the total rents charged and received and the amount of tax collected for hotel user occupancies. The Town Manager may establish shorter reporting periods for any certificate holder, if necessary, in order to insure collection of the tax and the Town Manager may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason.

(B) All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the Town until payment thereof is made to the Town Manager.

§ 8-7.05 GENERAL TAX.

The tax imposed by this chapter shall be a general tax and not a special tax. The proceeds of the tax shall be deposited in the town's general fund and shall be available for all municipal purposes.

§ 8-7.06 PENALTIES AND INTEREST.

(A) Any operator who fails to remit any tax imposed by this chapter within the required time shall pay an initial penalty of ten percent of the amount of the tax in addition to the amount of the tax. Any operator who fails to remit any delinquent remittance on or before a period of 30 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 ten percent penalty first imposed.

(B) If the Town Manager determines that the non-payment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the foregoing penalties. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of 0.5 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. Every penalty imposed and the interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

§ 8-7.07 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX.

(A) If any operator fails or refuses to collect the tax and to make, within the time required, any report and remittance of the tax or any portion thereof, the Town Manager shall proceed in a manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Town Manager shall procure the facts and information as he or she 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 the report and remittance, the Town Manager shall proceed to determine and assess against the operator the tax, interest and penalties provided for in this chapter.

(B) In case of the determination, the Town Manager shall give notice of the amount so assessed by serving it personally or by depositing it in the U.S. mail, postage prepaid, addressed to the operator so assessed at his or her last known place of business.

(C) The operator may, within ten days after the serving or mailing of the notice, make application, in writing, to the Town Manager 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 Town Manager shall become final and conclusive and shall be immediately due and payable. If such application is made, the Town Manager shall give not less than five days written notice, in the manner prescribed herein, to the operator to show cause, at a time; and place fixed in the notice, why the amount specified therein shall not be fixed for the tax, interest and penalties.

(D) At the hearing, the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed. After the hearing, the Town Manager shall determine the proper tax to be remitted and shall, thereafter, give written notice to the operator, in the manner prescribed in this section, of the determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable after 15 days.

§ 8-7.08 RECORDS.

It shall be the duty of every operator to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of the tax as the operator may have been liable for the collection of and payment to the town, which records the Town Manager shall have the right to inspect at all reasonable times.

§ 8-7.09 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 Town under this chapter, it may be refunded as hereinafter set forth provided a claim therefor, in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Town Manager within 90 days of the date of payment. The claim shall be on forms furnished by the Town Manager.

(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 in a manner prescribed by the Town Manager that the person from whom the tax has been collected was not a hotel user. Neither a refund, nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the hotel user or credited to rent subsequently payable by the hotel user to the operator.

(C) A hotel user may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the town, by filing a claim in the manner hereinabove set forth, but only when the tax was paid by the hotel user directly to the Town Manager or when the hotel user, having paid the tax to the operator, establishes to the satisfaction of the Town Manager that the hotel user 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 establishes the right thereto by written records showing entitlement thereto.

§ 8-7.10 ACTIONS TO COLLECT.

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

The foregoing ordinance was introduced at a regular meeting of the San Anselmo Town council on the _____ day of _____, 2009, and was adopted at a regular meeting on the _____ of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Peter Breen, Mayor

ATTEST:

Barbara Chambers, Town Clerk