

**FULL TEXT OF MEASURE C
ORDINANCE NO. 3280
ORDINANCE SUBMITTING TO VOTERS IMPOSITION
OF TIME-SHARE INTEREST TAX**

The Board of Supervisors of the County of Santa Cruz do ordain as follows:

SECTION I

SUBMISSION OF SPECIAL TAX FOR VOTER APPROVAL. The Board of Supervisors of the County of Santa Cruz hereby submit an ordinance for enactment of an ordinance adding Chapter 7.06 to the Santa Cruz County Code to impose a special tax on time-share interests in the unincorporated portion of the County of Santa Cruz at the rate of eight percent of the rental value of the premises for the period of the time-share interest. Such ordinance shall be submitted to the voters of the unincorporated portion of the County of Santa Cruz on November 2, 1982 and upon approval of two-thirds of the votes cast by the voters voting upon such measure, shall take effect immediately.

SECTION II

ORDINANCE IMPOSING TIME SHARE INTEREST TAX UPON VOTER APPROVAL. Upon voter approval as described in Section I hereof, Title VII of the Santa Cruz County Code is hereby amended by adding Chapter 7.06 thereto, said new chapter to read:

**CHAPTER 7.06
TIME-SHARE INTEREST TAX**

Sections:

- 7.06.010 Title
- 7.06.020 Definitions
- 7.06.030 Tax Imposed
- 7.06.035 Exemptions
- 7.06.040 Collection of Tax
- 7.06.050 Reporting and Remitting
- 7.06.060 Penalties and Interest
- 7.06.070 Determination of Tax Upon Failure to Collect and Report Tax
- 7.06.080 Appeal
- 7.06.090 Records
- 7.06.100 Refunds
- 7.06.110 Actions to Collect
- 7.06.120 Violations-Misdemeanor

7.06.010 TITLE. This Chapter shall be known as the Time-Share Interest Tax of the County of Santa Cruz.

7.06.020 DEFINITIONS. Except where the context otherwise requires, the definitions given in this section govern the construction of this Chapter:

- (a) "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.
- (b) "Time-Share Interest" means a time-share estate or a time-share use in a time-share project, all as defined in Section 11003.5 of the California Business and Professions Code.
- (c) "Time-Share Owner" means the person or persons who own one or more time-share interests in a time-share project within the unincorporated area of the County of Santa Cruz.
- (d) "Promoter" means the owner of the time-share project who sells or offers time-share interest for sale.
- (e) "Manager" means the person who is employed by the owner and/or association to manage, maintain, or operate a time-share project.
- (f) "Association" means the organization of owners as organized in a recorded Covenants, Conditions and Restrictions for the time-share project, and includes the Promoter for such times as the Promoter is entitled to controlling vote in the association or its Board of Directors.
- (g) "Tax Administrator" shall mean the County Tax Collector.

7.06.030 TAX IMPOSED. for the privilege of time-share ownership in any time-share project for any period of time, and in lieu of the Transient Occupancy Tax under Chapter 7.05 of this Code, any time-share owner shall pay a tax for each such period of ownership equivalent to eight percent (8%) of rental value of the premises for the period of the time-share interest.

The Tax Administrator shall determine the rental value of each time-share unit periodically in advance from relevant evidence available, including but not limited to: prevailing rates for rental of similar facilities; actual rentals charged by the promoter in unsold time-share units in the project; rentals charged by time-share owners.

Each time a rental value is established for a time-share project, the Tax Administrator shall mail written notice of the determination to the Promoter, Association or Manager of the project. Any person aggrieved by such a determination shall have 15 days from the receipt of the notice to appeal such to the Board of Supervisors. The determination of the Board of Supervisors on appeal shall be final.

The tax hereby imposed shall not apply to transient rentals of units by the Promoter prior to sale, but such shall be subject to Chapter 7.05. The tax under this Chapter

shall apply, in lieu of Chapter 7.05, to occupancy by or through a time-share owner, whatever consideration may have been given. The Board of Supervisors shall be authorized to establish the amount of the special tax at below the rate set forth in this section prospectively on an annual basis.

7.06.035 EXEMPTIONS. The provisions of this Chapter shall not apply to a time-share project owned or operated by a private non-profit organization which is tax exempt under state and federal law, and used for religious, educational or charitable purposes.

7.06.040 COLLECTION OF TAX. The Promoter, Association or Manager shall collect the applicable tax from the time-share owner or the person actually having the right to occupy the unit by or through such owner either at the time of sale, actual right of occupancy, or collection of the maintenance assessment.

7.06.050 REPORTING AND REMITTING. The Promoter, Manager, or Association 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 Tax Administrator, make a return to the Tax Administrator, on forms provided by him, of the total time-share interests and the taxes due hereunder on account thereof and the taxes collected. Such return may collectively report time-share interests of equal rental values, if supported by required records. At the time the return is due, the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator may establish shorter reporting periods if he deems it necessary in order to insure collection of the tax and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected pursuant to this Chapter shall be segregated from the Promoter's, Manager's or Association's funds and shall be held in trust for the benefit and account of the County of Santa Cruz until payment thereof is made to the Tax Administrator.

7.06.060 PENALTIES AND INTEREST.

(a) **Original Delinquency.** Any Promoter, Association or Manager which fails to remit any tax imposed by this Chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax.

(b) **Continued Delinquency.** Any Promoter, Association or Manager 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 (10%) of the amount of the tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.

(c) **Fraud.** If the Tax Administrator determines that the non-payment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (a) and (b) of this section.

(d) **Interest.** In addition to the penalties imposed, any Promoter, Association or Manager who fails to remit any tax imposed by this Chapter, shall pay interest at the rate of one and one-half percent (1-1/2%) 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, all interest due, and all costs incurred under the provisions of this section shall become a part of the tax herein required to be paid.

7.06.070 DETERMINATION OF TAX UPON FAILURE TO COLLECT AND REPORT TAX. If any Promoter, Association or Manager shall fail or refuse to collect said tax and to make, within the time provided in this Chapter, any report and remittance of said tax or any portion thereof required by this Chapter, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this Chapter and payable by any Promoter, Association or Manager who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such Promoter, Association or Manager the tax, interest, penalties and costs provided for by this Chapter. In case such determination is made, the Tax 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 Promoter, Association or Manager so assessed at his last known place of address. Such Promoter, Association or Manager may within ten days after the serving or mailing of such notice, make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the Promoter, Association or Manager for a hearing is not made within the time prescribed, the tax, interest, penalties and costs, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five days written notice in the manner prescribed herein to the Promoter, Association or Manager to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest, penalties and costs. At such hearing, the Promoter, Association or Manager may appear and offer evidence why such specific tax, interest, penalties or costs should not be so fixed. After such hearing, the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest, penalties and costs. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 7.06.080.

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7.06.080 APPEAL. Any Promoter, Association or Manager aggrieved by any decision of the Tax Administrator with respect to such tax, interest, penalties and costs, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the County Clerk within fifteen days of the serving or mailing of the determination of tax due. The Board of Supervisors shall fix a time and place for hearing such appeal, and the County Clerk shall give notice in writing to such appellant at his last known place of address. The findings of the Board of Supervisors 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.

7.06.090 RECORDS. It shall be the duty of every Promoter, Association or Manager liable for the collection and payment to the County 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 he may have been liable for the collection of and payment to the County, which records the Tax Administrator shall have the right to inspect at all reasonable times.

7.06.100 REFUNDS.

(a) **Filing Claim.** Whenever the amount of any tax, interest, penalty or costs has been overpaid or paid more than once or has been erroneously or illegally collected or received by the County under this Chapter, it may be refunded as provided in subparagraphs (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 Tax Administrator within three years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

(b) **Refund.** A Promoter, Association or Manager 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 Tax Administrator that the person from whom the tax has been collected was not liable therefor; 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 such person or credited to tax subsequently payable by such person to the Promoter, Association or Manager. A time-share owner may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the County by filing a claim in the manner provided in subparagraph (a) of this section, but only when the tax was paid by the time-share owner directly to the Tax Administrator, or when the time-share owner having paid the tax to the Promoter, Association or Manager establishes to the satisfaction of the Tax Administrator that he or she has been unable to obtain a refund from the Promoter, Association or Manager who collected the tax.

(c) **Proof Required.** No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

7.06.110 ACTIONS TO COLLECT. Any tax required to be paid by any time-share owner under the provisions of this Chapter shall be deemed a debt owed by the time-share owner to the County. Any such tax collected by a Promoter, Association or Manager which has not been paid to the County shall be deemed a debt owed by the Promoter, Association or Manager to the County. Any tax which a Promoter, Association or Manager has failed to collect, wilfully or negligently or by failure to carry out the duties hereunder required, and any interest, penalties or costs thereon shall be deemed a debt owed the County by such Promoter, Association or Manager. Any person owing money to the County under the provisions of this Chapter shall be liable to an action brought in the name of the County of Santa Cruz for the recovery of such amount.

7.06.120 VIOLATIONS - MISDEMEANOR. Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than \$500 or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment.

Any Promoter, Association or Manager or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Tax Administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes 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, is guilty of a misdemeanor and is punishable as aforesaid.

Compliance with the provisions of this Chapter as to any time-share project by the Promoter, Manager, or Association shall be considered to be compliance by all.

SECTION III

SEVERABILITY. If any part of the Ordinance set forth at Section II is for any reason declared invalid by final judgment of any court, such judgment shall not affect the remaining portion of the ordinance. The people of the unincorporated portion of the County of Santa Cruz hereby declare that they would have adopted this ordinance and each and every section, subsection, sentence, phrase, clause or part thereof, irrespective of whether any one or more of such parts may be declared invalid.

SECTION IV

AMENDMENT. The Board of Supervisors may from time to time amend the provisions of Chapter 7.06 of the Santa Cruz County Code, provided that the rate of tax shall not be amended to exceed eight percent (8%) except by voter approval in accordance with law.

IMPARTIAL ANALYSIS OF MEASURE C
TIME-SHARE INTEREST TAX

Existing law authorizes the County of Santa Cruz to impose a special tax if two-thirds of the voters approve. There is no existing special tax on time-share interests.

If approved by the voters, the proposed special tax on time-share interests would operate as follows. A special tax on the privilege of time-share ownership in the unincorporated portion of the County of Santa Cruz would be imposed at the rate of eight percent (8%) of the rental value of the premises for the period of the time-share interest. Rental value would be determined periodically by the County Tax Collector. The tax would be collected and remitted by the time-share project promoter, manager, or owner's association. The measure would establish a system for reporting and remitting, penalties and interest, record keeping, appeals, refunds, and actions to collect. Violation of the ordinance establishing the special tax on time-share interests would be a misdemeanor. The Board of Supervisors would be authorized to amend the ordinance except that the tax rate could not be amended to exceed eight percent (8%) without voter approval in accordance with law. The Board of Supervisors would be authorized to establish the amount of the special tax at below eight percent (8%) prospectively on an annual basis.

CLAIR A. CARLSON, COUNTY COUNSEL
s/ JONATHAN WITTWER
Assistant County Counsel

ARGUMENT IN FAVOR OF MEASURE C

INTRODUCTION

The new tax proposed in this Measure will make our existing Transient Occupancy Tax system more equitable, and will close a potential "loophole" in the present system.

THE PRESENT SYSTEM

Presently, an 8% Transient Occupancy Tax is charged to all visitors to the unincorporated portions of Santa Cruz County who stay in hotel or motel rooms, or in other rental facilities.

Visitors to our County use law enforcement services, litter clean-up services, drive on our roads, and use our parks. It's both fair and reasonable to ask visitors to help pay for the services they use. The existing Transient Occupancy Tax applies only to visitors, not to County residents.

A POTENTIAL "LOOPHOLE"

A potential "loophole" exists in our present Transient Occupancy Tax system. The tax presently applies only to those who stay in rental facilities. "Time-share" facilities are not, strictly speaking, rental facilities. Thus, visitors who stay in "time-share" facilities would not pay the tax, even though they would use County services just as other visitors do.

This Measure will extend the existing 8% tax to visitors who stay in "time-share" facilities, and thus make certain that all visitors are treated equally.

CONCLUSION

Measure C will apply only to visitors, not to County residents. Adoption of this Measure will make our system of Transient Occupancy Taxes more equitable, insuring that all visitors to our County will be treated the same. This Measure will insure that all visitors will help pay for the services they use. Adoption of this Measure will help reduce costs to local taxpayers, and help insure that visitors pay their own way in Santa Cruz County.

s/ GARY A. PATTON, Supervisor
Third District
s/ JOE CUCCHIARA, Supervisor
Fifth District

NO ARGUMENT AGAINST THIS
MEASURE WAS SUBMITTED

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