

**RINCON SAN LUISENO BAND OF
MISSION INDIANS**

TRIBAL TAX CODE

ORDINANCE 2001 # 1

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**RINCON SAN LUISENO BAND OF MISSION INDIANS
RINCON TRIBAL TAX CODE**

CHAPTER 1. GENERAL PROVISIONS

1. **Title.** This Ordinance shall be known as the Rincon Tribal Tax Code.
2. **Authority.** This Ordinance is adopted by the Rincon Business Committee pursuant to Section 6 of the Articles of Association of the Tribe, and pursuant to the inherent sovereignty of the Tribe.
3. **Findings and Purpose.**

(1) The Rincon San Luiseno Band of Mission Indians (■Tribe●) is a federally recognized Indian tribe which exercises jurisdiction over the lands within the Rincon Indian Reservation, consistent with its Articles of Association and laws and the Constitution and laws of the United States.

(2) The Rincon Business Committee (■Business Committee●) is the governing body of the Tribe in accordance with the authority of its Articles of Association. The Business Committee is responsible for Reservation economic growth and seeks to ensure that residents of the Reservation enjoy adequate employment, health care, educational opportunities, social and other governmental services.

(3) As part of its effort to promote economic development on the Reservation and raise needed tribal revenue in an effort to attain self-sufficiency and further promote a strong tribal government, the Tribe has adopted a Class III gaming ordinance and entered into a Class III gaming compact with the state of California, pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. ●● 2701, *et seq.*

(4) Pursuant to its gaming ordinance and the compact, the Tribe has entered into a management agreement with HCAL Corporation for the development of a Class III gaming enterprise, to consist of a casino, hotel, restaurant, retail shops and associated facilities.

(5) The gaming enterprise will be a source of significant tax revenue. In order to maximize the benefit from the gaming enterprise, the Tribe, consistent with the provisions of the management agreement, desires to adopt a tax ordinance governing the assessment and collection of taxes against the gaming enterprise and other businesses operating within the boundaries of the Rincon Indian Reservation.

(6) It is the policy of the Tribe to promote economic development on the Reservation. To that end the Tribe seeks to adopt a tax scheme conducive to economic development in the private

sector, which at the same time ensures that taxpayers are responsible for contributing to the cost of necessary government and services on the Reservation.

(7) It is the purpose of this Tax Code to preempt any dual tax imposed on the gaming enterprise by the state of California or any of its governmental subdivisions, including San Diego County, consistent with the provisions of the Indian Gaming Regulatory Act and applicable principles of federal law.

4. General Definitions. Except as otherwise provided, the following terms are defined as follows:

(a) **Business** includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(b) **Person** includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit, but shall not include the United States, the Tribe, California, or any agency thereof, or any city, county, district or other political subdivision of California.

(c) **Reservation** means the Rincon Indian Reservation, and includes all land located within the exterior boundaries of the Reservation, and any additional lands added thereto in the future, including any lands which are subsequently taken in trust by the United States for the Tribe's benefit.

(d) **Tax Commission** means the Rincon Tribal Tax Commission, which may be created pursuant to this Ordinance and charged with carrying out the administrative provisions of this Ordinance. If the Business Committee elects not to immediately establish a Tax Commission, all references to Tax Commission in this Ordinance shall mean the Tribal Business Committee, which shall have all the power and authority of the Tax Commission until such time as a Tax Commission is established.

(e) **Taxpayer** means any person charged with the payment of taxes under this Ordinance.

(f) **Tribe** means the Rincon, San Luiseno Band of Mission Indians.

CHAPTER 2. CHALLENGES AND APPEALS

1. Limited Waiver of Sovereign Immunity. The Tribe hereby consents to arbitration and enforcement thereof pursuant to the Tribe's Arbitration Enforcement Ordinance, for equitable relief and for such monetary relief as is expressly provided for pursuant to the Rincon Tribal Tax Code. Said consent to suit is limited thereto. No other private right of action by any person shall be deemed created by the Tribal Tax Code. Arbitration and enforcement thereof under the Tribes Arbitration

Enforcement Ordinance shall be the sole and exclusive forum to adjudicate matters brought pursuant to the Rincon Tribal Tax Code. Said limited waiver of sovereign immunity shall not apply to any claim for a refund of taxes paid prior to the enactment of this provision, except that the limited waiver shall extend to taxes paid under protest prior to the enactment of this Chapter.

2. Challenges and Appeals to Validity of Tribal Tax Code; Petition.

(a) Any person desiring to challenge the legal validity of the Tribal Tax Code must first petition the Tribal Tax Commission which shall hear and decide the matter in the first instance.

(b) If the petitioner is not satisfied with the determination of the Tribal Tax Commission, the petitioner may appeal the decision by filing a demand for arbitration within thirty days of an adverse determination by the Tribal Tax Commission. The ruling of the arbitrator pursuant to the Arbitration Enforcement Ordinance, shall be final.

3. Challenges and Appeals Concerning the Assessment, Levy or Collection of Taxes.

(a) Subject to the requirements of this Chapter 2, any person desiring to challenge the assessment, levy or collection of taxes, interest or penalties imposed pursuant to the Tribal Tax Code must first petition the Tribal Tax Commission and the Tax Commission shall render a decision thereon.

(b) If the petitioner is not satisfied with the determination of the Tribal Tax Commission, the petitioner may appeal the decision by filing a demand for arbitration within 30 days of the adverse decision. The Tax Commission shall prescribe by regulation the rules and procedures governing the arbitration proceedings and the selection of an arbitrator. Enforcement of the arbitrator's decision shall be pursuant to the Arbitration Enforcement Ordinance. The ruling of the arbitrator and any subsequent enforcement thereof pursuant to the Arbitration Enforcement Ordinance shall be final. No appeals shall be allowed after expiration of the 90 day period except upon a showing of good cause.

4. Application of Chapter Stated. The provisions of this Chapter shall apply with respect to the taxes imposed under this Tax Code.

5. Deficient and Delinquent Payments, Penalties and Interest Limitations.

(a) If upon examination of any returns or from other information obtained by the Tax Commission, it appears that a tax or penalty has been paid in an amount less than that properly due, the Tax Commission shall assess against the taxpayer such additional amount found to be due and shall add thereto interest at the rate of 12% per annum from date the tax was due until date of payment. The Tax Commission shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within ten days from the date of the notice or within such further time as the Tax Commission may provide. If payment is not received by the Tax Commission by the due date specified in the notice, or any extension thereof, the Tax Commission

shall add a penalty of 10% of the amount of the additional tax found due. If the Tax Commission finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, further penalty of 50% of the additional tax found to be due shall be added.

(b) No assessment or correction of an assessment for additional taxes due may be made by the Tax Commission more than four years after the close of the tax year, except (1) upon a showing of fraud or a showing of misrepresentation of a material fact by the taxpayer or (2) where a taxpayer has executed a written waiver of such limitation.

6. Excess Payment Credit or Refund. If upon receipt of an application by a taxpayer for a refund or for an audit of his records, or upon an examination of the returns or records of any taxpayer, it is determined by the Tax Commission that within the period of assessment of taxes prescribed by § 5, a tax has been paid in excess of that properly due, the excess amount paid within such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer at his option. No refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

7. Records to Be Preserved Examination.

(a) Every person liable for any tax imposed by this Code shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records and invoices shall be open for examination at any time by the Tax Commission.

(b) In the case of an off-Reservation person or concern which does not keep the necessary books and records on the Reservation, it shall be sufficient if it produces on the Reservation such books and records as shall be required by the Tax Commission or permits the examination by an agent authorized or designated by the Tax Commission at the place where such books and records are kept. Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceeding, the correctness of any assessment of taxes made by the Tax Commission based upon any period for which such books, records and invoices have not been so kept and preserved.

(c) Any person claiming a credit or deduction allowed under the terms of this tax ordinance shall keep and preserve until the claim has been verified or allowed by the Tax Commission such sufficient books, records and invoices to prove the right to and amount of such claim for credit or deduction, and no such claim shall be allowed by the Tax Commission unless such books, records and invoices shall have been kept and preserved.

8. Payment.

(a) Payment of the tax may be made by uncertified check under such regulations as the Tax Commission shall prescribe, but, if a check so received is not paid by the bank on which it is

drawn, the taxpayer, by whom such check is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

(b) A return or remittance which is transmitted to the Tax Commission by United States Mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it.

(c) The Tax Commission, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the date due, and any extension in excess of thirty days shall be conditional upon deposit with the Tax Commission of an amount to be determined by the Tax Commission which shall be approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit shall be deposited within the Tribal treasury and a credit reported to taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

(d) The Tax Commission shall review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

(e) The Tax Commission shall keep full and accurate records of all funds received and disbursed by it. The Tax Commission shall apply the payment of the taxpayer first against any penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

(f) The Tax Commission may refuse to accept any return which is not accompanied by a remittance of the tax shown to be due thereon. When such return is not accepted, a taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the procedures and penalties provided in this chapter.

9. Late Payment Penalties.

(a) If payment of any tax due is not received by the Tax Commission by the last day of the month in which the tax becomes due, there shall be assessed a penalty of 5% of the amount of the tax; if the tax is not received by the last day of the month next succeeding the month in which the due date falls, there shall be assessed a total penalty of 10% of the amount of the tax; and if the tax is not received by the last day of the second month next succeeding the month in which the due date falls, there shall be assessed a total penalty of 20% of the amount of the tax. No penalty so added shall be less than \$25.00.

(b) If payment of any tax is received within the first ten days of the month next succeeding the month in which the tax is payable, the amount of such payment shall be credited to,

and shall be treated for all purposes as having been collected during, the fiscal year which includes the month preceding the month in which such due date falls.

(c) Notwithstanding the foregoing, the aggregate of penalties imposed under this chapter for failure to file a return, late payment of any tax, increase, or penalty, shall not exceed 25% of the tax due or \$50.00, whichever is greater.

10. Failure to File Returns Assessment of Tax by Tax Commission Penalties.

(a) If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the Tax Commission shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to that end the Tax Commission may examine the books, records and papers of any such person and may take evidence, on oath, of any person, relating to the subject of inquiry.

(b) As soon as the Tax Commission procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and penalties due, but such action shall not deprive such person from appealing to a court of competent jurisdiction as provided for in 2 and 15 of this Chapter. To the assessment the Tax Commission shall add the appropriate penalties. The Tax Commission shall notify the taxpayer by mail of the total amount which shall become due and shall be paid within ten days from the date of such notice.

(c) No assessment or correction of assessment may be made by the Tax Commission more than four years after the close of the tax year, except (1) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (2) where a taxpayer has executed a written waiver of such limitation.

11. Waiver or Cancellation of Interest or Penalties; Extension of Time To File Returns.

(a) If the Tax Commission finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was a result of circumstances beyond the control of the taxpayer, the Tax Commission may waive or cancel any interest or penalties imposed under this chapter with respect to such tax.

(b) The Tax Commission may, for good cause shown by the taxpayer, grant an extension of time to file a return and pay any tax due. The taxpayer must request such an extension in writing to the Tax Commission prior to the due date of the return and/or payment.

12. Taxpayer Quitting Business Liability of Successor.

(a) Whenever any taxpayer quits business, or sell out, exchanges or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor to such business shall become liable for the full amount of the

tax and withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the Tax Commission showing payment in full of any tax due or a certificate that no tax is due. If such tax is not paid by the taxpayer within ten days from the date of such sale, exchange or disposal, the purchaser or successor shall become liable for the payment of the full amount of tax, and the payment thereof by such purchaser or successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such purchaser/successor from the taxpayer.

(b) No successor shall be liable for any tax due from the person from whom he has acquired a business or stock of good if he gives written notice to the Tax Commission of such acquisition and no assessment is issued by the Tax Commission within six months of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor.

13. Correction of Tax-Hearing. Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the Tax Commission, may within twenty days after the issuance of the original notice of the amount thereof or within the period covered by an extension of the due date thereof granted by the Tax Commission, petition the Tax Commission in writing for correction of the amount of the assessment, and a hearing for examination and review of the assessment. The petition shall set forth the reasons why the correction should be granted and the amount of the tax, interest or penalties, which the petitioner believes to be due. The Tax Commission shall promptly consider the petition and may grant or deny it. If denied, the petitioner shall be notified by mail thereof forthwith. If a hearing is granted, the Tax Commission shall fix the time and place therefor and notify the petitioner thereof by mail. After the hearing, the Tax Commission shall make such determination as may appear to be just and lawful and shall mail a copy of its determination to the petitioner. If no such petition is filed within the twenty day period, the assessment covered by the notice shall become final.

14. Reduction of Tax After Payment Hearing. Any person, having paid any tax, original assessment, additional assessment, or corrected assessment of any tax, may apply to the Tax Commission within the time limitation for refund provided in this Chapter, or petition in writing for a correction of the amount paid and a hearing for examination and review of the tax liability, in which petition he shall set forth the reasons why the hearing should be granted, and the amount in which the tax, interest or penalty should be refunded. The Tax Commission shall promptly consider the petition, and may grant or deny it. If denied, the petitioner shall be notified by mail thereof forthwith; if a hearing is granted, the Tax Commissioner shall notify the petitioner of its order by

mail of the time and place fixed therefore. After the hearing, the Tax Commission shall notify the petitioner of its determination in writing.

15. Appeals. Any person, except one who has failed to keep and preserve books, records and invoices as required in this Chapter, and having paid any taxes, penalties or interest required and feeling aggrieved by the amount of the tax, penalties, or interest may appeal the final determination of the Tax Commission as provided in • 3 of this Chapter.

16. Payment Made Under Protest.

(a) If any person feels aggrieved by a tax assessment, penalty or interest imposed pursuant to this Code such person shall pay the amount of such assessment, penalty or interest due before the delinquent date and shall at that time give notice, in writing, to the Tax Commission that all or part of such payment is made under protest, and shall in the notice give the grounds and reasons for such protest and shall state that a certain part thereof, or that the total sum, is protested. Within ten days of filing the protest notice the taxpayer shall request a tax hearing before the Tribal Tax Commission, and the Tax Commission shall set the matter for hearing as soon as practicable.

(b) Upon the receipt of any payment made under protest, the Tribal Treasurer shall deposit such receipts in a separate escrow account clearly denominated as such. Funds from this account shall not be expended by the Tribe, until a final determination is made that the protest is unwarranted.

(c) Should the aggrieved taxpayer who has paid taxes, penalties, or interest under protest be unsuccessful in challenging all or part thereof, the Tribal Treasurer shall transfer the sum determined to be properly paid from the escrow account to the revenue account, as provided in • 19.

17. Accounting Period Prescribed. Taxes imposed hereunder, and the returns required therefor, shall be upon a calendar year basis; but, if any taxpayer in transacting his business, keeps books reflecting the same on a basis other than the calendar year, he may, with the consent of the Tax Commission, make returns, and pay taxes on the basis of his accounting period as shown by the method of the books of his business.

18. Tax Declared Additional. Taxes imposed under the Tribal Tax Code shall be in addition to any and all other licenses and fees levied or imposed by the Tribe.

19. Revenue to Tribal Treasurer. Upon the receipt of any payment made pursuant to the terms of this Tax Code, the Tax Commission shall transmit the same to the Tribal Treasurer. The Tribal Treasurer upon receipt of such payments shall deposit them in the tribal treasury.

20. Closing Agreements Authorized. The Tax Commission may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the preceding chapters of this title for any taxable period or periods. Upon approval of such agreement, evidenced by execution thereof by the Tax Commission and the person so agreeing, the agreement shall be final and conclusive as to tax liability or tax immunity covered thereof, and, except upon a showing of fraud or malfeasance, or of misrepresentation of a material fact:

(a) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any agent of the Tribe or Tax Commission, or the taxpayer; and

(b) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith shall not be annulled modified, set aside, or disregarded.

21. Seizure and Sale of Personal Property to Satisfy Taxes and Costs: Procedure; Notice of Seizure When Mobile Home, House Trailer or Boat Seized.

(a) If the person assessed with taxes under this Code neglects or refuses to pay the taxes within 30 days after demand, the Tax Commission may seize, seal or lock enough of the personal property on the Reservation of the person, so neglecting or refusing to pay to satisfy the taxes and costs.

(b) The Tax Commission shall then post a notice of the seizure, with a description of the property, in three public places on the Reservation, and shall, at the expiration of 5 days, proceed to sell at public auction, at the time and place mentioned in the notice, to the highest bidder, for lawful money of the United States, a sufficient quantity of the property to pay the taxes and expenses incurred. For this service the Tax Commission must be allowed from the delinquent person a fee of \$3.

(c) Upon payment of the purchase money, the Tax Commission shall deliver to the purchaser of the property sold, with a certificate of the sale, a statement of the amount of taxes or assessment and the expenses thereon for which the property was sold, whereupon the title of the property so sold vests absolutely in the purchaser.

(d) The Tax Commission may not enter the taxpayers private premises for the purposes of seizing personal property of the taxpayer without first obtaining a distress warrant authorizing such entry.

(e) The Taxpayer shall have 30 days after the sale in which to redeem the property sold, by paying the full purchase price, plus all costs associated with the sale to the Tax Commission.

22. Action to Recover Tax.

(a) In addition to any other remedies provided by law for the collection of delinquent taxes, the Tax Commission may bring a civil action for the recovery of any tax due.

(b) Where a nonresident of the Reservation, or owner of migratory property, is a defendant in any such action and judgment is recovered against such owner, such judgment becomes a lien on any real property of such owner then or thereafter found within the Reservation.

23. Payment of Delinquent Taxes Before Sale and Institution of Suit; Filing of Tax Receipt.

(a) At any time after a tax becomes due and before the institution of suit, as provided in this chapter, and before the sale of any property, any delinquent taxpayer may pay to the Tax Commission the taxes assessed against the delinquent taxpayer, together with the penalties and costs provided by law, taking from the Tax Commission a receipt for the amount paid.

(b) After having been paid by any person for the total amount of the taxes, penalties and costs due from such person, the Tax Commission shall not commence or continue the suit authorized by this chapter against such person or property.

24. List of Delinquent Taxes as Prima Facie Evidence, Sufficient for Issuance of Distress Warrant.

(a) The delinquent list or a copy thereof certified by the Tax Commission showing unpaid taxes against any person or property shall be prima facie evidence in any court or forum to prove:

- (1) The assessment.
- (2) The property assessed
- (3) The delinquency
- (4) The amount of taxes due and unpaid.

(5) That all the forms of law in relation to the assessment and levy of such taxes have been complied with.

(b) Such delinquent list or certified copy thereof shall be sufficient to authorize the issuance of a distress warrant for the seizure of the delinquent taxpayer's personal property in accordance with • 21.

CHAPTER 3. CASINO SALES & USE TAX

1. Definitions.

(a) ■Casino■ means any Casino Gaming Enterprise operated on the Reservation, including hotels, restaurants, retail shops and all other facilities associated therewith.

(b) "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with such rules and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer has

purchased property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state, or has paid any applicable use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses or any other expense.

(3) The cost of transportation of the property prior to its sale to the purchaser.

The total amount of the sale or lease or rental price includes all of the following:

(1) Any services that are a part of the sale.

(2) All receipts, cash, credits and property of any kind.

(3) Any amount for which credit is allowed by the seller to the purchaser.

"Gross receipts" does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) Promotional allowances, defined as the retail value of complimentary food, beverages, merchandise, and tokens for gaming, provided to customers as promotional items.

(3) Sale price of property returned by customers when the full sale price is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(4) The price received for labor or services used in installing or applying the property sold.

(5) The amount of any tax (not including, however any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(6) For purposes of the sales tax, if the retailers establish to the satisfaction of the Tax Commission that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

(c) ■Occasional sale■ includes:

(1) A sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller's permit under tribal law or California law, provided such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit.

(2) Any transfer of all or substantially all the property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.

For the purposes of this section, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity.

(d) ■Purchase■ means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

(1) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price is a purchase.

(2) A transfer for a consideration of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication, is also a purchase.

(e) ■Retail Sale and Sale at Retail■ means a sale for any purpose other than resale in the regular course of business of tangible personal property.

(1) The delivery on the Reservation of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business on the Reservation, is a retail sale on the Reservation by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

(f) ■Sale■ means and includes any transfer or title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

(1) "Transfer of possession," "lease," or "rental" includes only transactions found by the Tax Commission to be in lieu of a transfer of title, exchange or barter.

(2) "Sale" includes:

a. The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing or imprinting.

b. The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

c. The furnishing, preparing, or serving for a consideration of food, meals or drinks.

d. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

e. A transfer for consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication.

(g) ■Sales price means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold.

(2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(3) The cost of transportation of the property prior to its purchase.

The total amount for which property is sold includes all of the following:

(1) Any services that are a part of the sale.

(2) Any amount for which credit is given to the purchaser by the seller.

"Sales price" does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(h) ■**Seller**• includes every person engaged in the business of selling tangible personal property of any kind on the premises of any Casino, the gross receipt from the retail sale of which are required to be included in the measure of the sales tax.

(i) ■**Storage**• includes any keeping or retention on the Reservation for any purpose except sale in the regular course of business or subsequent use solely outside the Reservation of tangible personal property purchased from a retailer. "Storage" and "use" do not include keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the Reservation for use thereafter solely outside the Reservation, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the Reservation and thereafter used solely outside the Reservation.

SALES TAX

2. Imposition and Rate. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers on the sale of all tangible personal property sold at retail on the premises of any Casino, or on land leased for casino purposes on the Reservation, on or after the effective date of this Code. The rate of the tax is hereby established as the same rate applying to sales by retailers located outside the Reservation in unincorporated San Diego County, California. Such rate is currently seven and one-half percent (7.5%) and shall be adjusted on the same effective date and to the same rate as any future changes to the sales tax rate applicable to off-Reservation retailers in unincorporated San Diego County.

3. Method of Collection. The tax hereby imposed shall be collected by the retailer from the consumer insofar as it can be done.

4. Tax as Debt to Tribe. The tax required to be collected by the retailer constitutes a debt owed by the retailer to the Tribe.

5. Advertisement of Assumption or Absorption of Tax by Retailer Unlawful.

(a) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

(b) Any person violating any provision of this section is guilty of a misdemeanor, and shall be subject to a civil fine not to exceed \$5,000 per occurrence.

6. Tax Must Be Displayed Separately from Price. The Tax Commission may by regulation provide that the amount collected by the retailer from the consumer in reimbursement of the tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

7. Application for Permit Required: Form; Contents.

(a) Every person desiring to engage in or conduct business as a seller on the premises of the Casino must file with the Tax Commission an application for a permit for each place of business.

(b) Every application for a permit must:

(1) Be made upon a form prescribed by the Tax Commission

(2) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business.

(3) Set forth other information which the Tax Commission may require.

(c) The application must be signed by the owner if he is a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which must be attached the written evidence of his authority.

8. Fee for Permit. At the time of making an application, the applicant must pay to the Tax Commission a permit fee of \$10.00 for each permit.

9. Issuance and Display of Permit; Assignability. After compliance with ● 7 and 8 by the applicant, the Tax Commission shall grant and issue to each applicant a separate permit for each place of business within the Reservation. A permit is not assignable, and is valid only for the person in whose name it is issued and for the transaction of business at the place designated on it. It must at all times be conspicuously displayed at the first place for which issued.

10. Fee for Reinstatement of Suspended or Revoked Permit. A seller whose permit has been previously suspended or revoked must pay the Tax Commission a fee of \$10.00 for the renewal or issuance of a permit.

11. Revocation or Suspension of Permit: Procedure; Limitation on Issuance of New Permit.

(a) Whenever any person fails to comply with any provision or any regulation of the Tax Commission, relating to the sales tax prescribed and adopted under this chapter, the Tax Commission, after a hearing at which the person was given prior notice of at least 10 days in writing specifying the time and place of the hearing and requiring him to show cause why his permit or

permits should not be revoked, may revoke or suspend any one or more of the permits held by the person.

(b) The Tax Commission shall give to the person written notice of the suspension or revocation of any of his permits.

(c) The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(d) The Tax Commission may not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the sales tax and the regulations of the Tax Commission.

12. Presumption of Taxability; Resale Certificate. For the purpose of the proper administration of this chapter and to prevent evasion of the sales tax, it is presumed that all gross receipts from Casino Sales are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

13. Effect of Resale Certificate. A resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for in • 7 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

14. Form and Contents of Resale Certificate.

(a) The certificate must:

(1) Be signed by and bear the name and address of the purchaser.

(2) Indicate the number of the permit issued to the purchaser.

(3) Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.

(b) The certificate must be substantially in such form as the Tax Commission may prescribe.

15. Liability of Purchaser Giving Resale Certificate. If a purchaser who gives a certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the use is taxable to the purchaser as of the time the property is first so used by him, and the sales price of the property to him is the measure of the tax. Only when there

is an unsatisfied use tax liability on this basis is the seller liable for sales tax with respect to the sale of the property to the purchaser. If the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the sales price of the property to him.

16. Improper Use of Resale Certificate; Penalty. Any person who gives a resale certificate for property which he knows at the time of purchase is not to be resold by him in the regular course of business for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor, and shall be subject to a civil fine not to exceed \$5,000 per occurrence.

17. Resale Certificate: Commingled Fungible Goods. If a purchaser gives a certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

USE TAX

18. Imposition and Rate.

(a) An excise tax is hereby imposed on the storage, use or other consumption on the Reservation of tangible personal property purchased from any retailer for storage, use or other consumption within a casino or on land leased for casino purposes on the Reservation, at the same rate as the sales tax imposed by Section 2 hereof.

(b) The tax is imposed with respect to all property which was acquired off the Reservation in a transaction that would have been a taxable sale if it had occurred on the Reservation.

19. Liability for Tax; Extinguishment of Liability. Every person storing, using or otherwise consuming on the Reservation tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to the Tribe, except that a receipt from a retailer maintaining a place of business on the Reservation or from a retailer who is authorized by the Tax Commission, under such rules and regulations as it may prescribe, to collect the tax and who is, for the purposes of this chapter relating to the use tax, regarded as a retailer maintaining a place of business on the Reservation, given to the purchaser pursuant to • 20 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

20. Collection by Retailer; Purchaser's Receipt. Every retailer maintaining a place of business on the Reservation and making sales of tangible personal property for storage, use or other consumption in this state, not exempted under this chapter shall, at the time of making the sales or, if

the storage use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the Tax Commission.

21. Tax as Debt to Tribe. The tax required to be collected by the retailer constitutes a debt owed by the retailer to the Tribe.

22. Advertisement of Assumption or Absorption of Tax by Retailer Unlawful.

(a) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

(b) Any person who violates this section shall be subject to a civil fine not to exceed \$5,000 per occurrence.

23. Registration of Retailers. Every retailer who sells tangible personal property for storage, use or other consumption on the Reservation shall register with the Tax Commission and give:

(a) The name and address of all agents operating on the Reservation.

(b) The location of all distribution or sales houses or offices or other places of business on the Reservation.

(c) Such other information as the Tax Commission may require.

24. Presumption of Purchase of Use; Resale Certificate. For the purpose of the proper administration and to prevent evasion of the use tax and the duty to collect the use tax, it is presumed that tangible personal property sold by any person for delivery on the Reservation is sold for storage, use or other consumption on the Reservation until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

25. Effect of Resale Certificate. A resale certificate relieves the person selling the property from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided by this chapter and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

26. Form and Contents of Resale Certificate.

- (a) The certificate must:
 - (1) Be signed and bear the name and address of the purchaser.
 - (2) Indicate the number of the permit issued to the purchaser.
 - (3) Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.
- (b) The certificate must be substantially in such form as the Tax Commission may prescribe.

27. Liability of Purchaser Giving Resale Certificate: Use of Article Bought for Resale. If a purchaser who gives a certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. If the sole use of the property, other than retention, demonstration or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him.

28. Resale Certificate: Commingled Fungible Goods. If a purchaser gives a certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

29. Presumption of Purchase from Retailer. It is presumed that tangible personal property shipped or brought to the Reservation by the purchaser on or after the effective date of this Ordinance was purchased from a retailer on or after the effective date of this Ordinance, for storage, use or other consumption on the Reservation.

30. Presumption of Use: Off-Reservation Delivery.

(a) On and after the effective date of this Ordinance, it is presumed that tangible personal property delivered outside the Reservation to a purchaser known by the retailer to be a resident of the Reservation was purchased from a retailer for storage, use or other consumption on the Reservation and stored, use or otherwise consumed on the Reservation.

(b) This presumption may be controverted by:

(1) A statement in writing, signed by the purchaser or his authorized representative, and retained by the vendor, that the property was purchased for use at a designated point or points outside the Reservation.

(2) Other evidence satisfactory to the Tax Commission that the property was not purchased for storage, use or other consumption on the Reservation.

31. Applicability. Except as otherwise expressly provided by this Ordinance, the sales and use tax imposed by this chapter shall apply only to the same extent that the sales and use tax applies under the law of California, as evidenced in the California Revenue and Taxation Code, §§ 6001-7279 inclusive. All exemptions, deductions, credits etc. granted under California law shall be granted under this Chapter, as well. Nothing in this section shall be construed as acquiescence in or consent to the application of state or local taxes on personal property sold or used on the reservation.

RETURNS AND PAYMENTS

32. Date Tax Due. The taxes imposed by this chapter are payable to the Tax Commission monthly on or before the last day of the month next succeeding each month.

33. Return: Time for Filing; Persons Required to File; Signatures.

(a) On or before the last day of the month following each reporting period, a return for the preceding period must be filed with the Tax Commission in such form as the Tax Commission may prescribe.

(b) For purposes of the sales tax a return must be filed by each seller. For purposes of the use tax a return must be filed by each retailer maintaining a place of business on the Reservation and by each person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax.

(c) Returns must be signed by the person required to file the return or by his authorized agent but need not be verified by oath.

34. Contents of Return.

(a) For the purposes of the sales tax, the return must show the gross receipts of the seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return must show the total sales price of the property sold by him, the storage, use of consumption of which property became subject to the use tax during the preceding reporting period.

(b) In the case of a return filed by a purchaser, the return must show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period.

(c) The return must also show the amount of the taxes for the period covered by the return and such other information as the Tax Commission deems necessary for the proper administration of this chapter.

35. Reimbursement to Taxpayer for Collection of Tax. The taxpayer shall deduct and withhold from the taxes otherwise due from him 1.5% of it to reimburse himself for the cost of collecting the tax.

36. Delivery of Return; Remittance. The person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the Tax Commission.

37. Periods for Returns.

(a) The reporting and payment period of a taxpayer whose taxable sales do not exceed \$10,000 per month is a calendar quarter.

(b) the Tax Commission, if it deems this action necessary in order to insure payment to or facilitate the collection by the Tribe of the amount of taxes, may require returns and payment of the amount of taxes for periods other than calendar months or quarters, depending upon the principal place of business of the seller, retailer or purchaser, as the case may be, or for other than monthly or quarterly periods.

38. Lease and Rental Receipts: Reporting; Payment. For the purposes of the sales tax, gross receipts from rentals or leases of tangible personal property must be reported and the tax paid in accordance with such regulations as the Tax Commission may prescribe.

39. Affixing and Canceling of Revenue Stamps. The Tax Commission, if it deems it necessary to insure the collection of the taxes, may provide by regulation for the collection of the taxes by the affixing and canceling of revenue stamps and may prescribe the form and method of the affixing and canceling.

40. Extension of Time for Filing Return and Paying Tax. The Tax Commission for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid under this chapter.

41. Deferral of Payment.

(a) Payment of the tax on the sale of capital goods for a sales price of \$100,000 or more may be deferred without interest in accordance with this section. If the sales price is:

(1) At least \$100,000 but less than \$350,000, the tax must be paid within 12 months.

(2) At least \$350,000 but less than \$600,000, the tax must be paid within 24 months.

(3) At least \$600,000 but less than \$850,000, the tax must be paid within 36 months.

(4) At least \$850,000 but less than \$1,000,000, the tax must be paid within 48 months.

(5) One million dollars or more, the tax must be paid within 60 months. Payment must be made in each month at a rate which is at least sufficient to result in payment of the total obligation within the permitted period.

(b) A person may apply to the Tax Commission for such deferment. If the Tax Commission finds that the applicant is eligible for deferment under California law, the Tax Commission shall allow for deferment.

(c) Upon allowance of deferment the Tax Commission shall verify the sale, the price paid and the date of the sale and assign the applicable period for payment of the deferred tax. It may require security for the payment in an amount which does not exceed the amount of tax deferred.

(d) The Tax Commission shall adopt regulations governing:

(1) The aggregation of related purchases which are made to expand a business, establish a new business, or renovate or replace capital equipment; and

(2) The period within which such purchases may be aggregated.

DEFICIENCY DETERMINATION

42. Recomputation of Tax; Determination on Discontinuance of Business.

(a) If the Tax Commission is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the Tribe by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one or for more than one period.

(b) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in • 45 as to liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability as otherwise specified in this chapter.

43. Offsetting of Overpayments; Computation of Interest.

(a) In making a determination the department may offset an overpayment for a period, together with interest on the overpayment, against any underpayment for another period, against any penalty, and against the interest on the underpayment.

(b) The interest on any underpayment shall be 12% per annum.

44. Notice of Tax Commission's Determination; Service by Mail Complete upon Deposit with United States Postal Service.

(a) The Tax Commission shall give written notice of its determination to all affected Taxpayers.

(b) The notice may be served personally or by mail; if by mail, the notice must be addressed to the retailer or person storing, using or consuming tangible personal property at his address as it appears in the records of the Tax Commission.

(c) In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit with the United States Postal Service.

45. Time Within Which Notice of Determination must Be Mailed; Consent to Later Mailing of Notice.

(a) Except in the case of fraud, intent to evade this chapter or regulations adopted under it, a failure to make a return, or of a claim for additional amount pursuant to • 5 of Chapter 2, every notice of the determination of a deficiency must be personally served or mailed within 3 years after the last day of the calendar month following the period for which the amount is proposed to be determined or within 3 years after the return is filed, whichever period expires later. In the case of a failure to make a return, or a claim for additional amount pursuant to • 5 of Chapter 2, every notice of determination must be mailed or personally served within 8 years after the last day of the calendar month following the period for which the amount is proposed to be determined.

(b) If, before the expiration of the time prescribed in this section for the mailing of a notice of determination, the taxpayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time before the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

DETERMINATIONS WHEN NO RETURN MADE

46. Estimation and Computation by Tax Commission; Discontinuance of Business.

(a) If any person fails to make a return, the Tax Commission shall make an estimate of the amount of the gross receipts of the person. The estimate must be made for the period or periods in respect to which the person failed to make a return and be based upon any information which is in the Tax Commission's possession or may come into its possession. Upon the basis of that estimate, the Tax Commission shall compute and determine the amount required to be paid to the Tribe, adding to the sum thus arrived at a penalty equal to 10% of the sum. One or more determinations may be made for one or for more than one period.

(b) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in ● 45 as to liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability as otherwise specified in this chapter.

47. Offsets: Computation; Interest.

(a) In making a determination, the Tax Commission may offset an overpayment for a period, together with interest on the overpayment, against any underpayment for another period, against any penalty, and against the interest on the underpayment.

(b) The interest on any underpayment or overpayment must be computed in the manner set forth in ● 48.

48. Interest on Amount of Determination. The amount of the determination, exclusive of penalties, bears interest at the rate of 12% per annum, from the last day of the month following the period for which the amount or any portion of it should have been returned until the date of payment.

49. Penalty for a Failure to File Return Resulting from Fraud or Intent to Evade. If the failure of any person to file a return is due to fraud or intent to evade this chapter or regulations, a penalty of 25% of the amount required to be paid by the person, exclusive of penalties, must be added to it in addition to the 10% penalty provided in ● 46.

50. Notice of Estimate, Determination and Penalty: Service. Promptly after making its determination the Tax Commission shall give the person written notice of the estimate, determination and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

51. Finality of Redetermination Unless Appealed, Date Upon Which Determined Amount Is Due, Penalties.

(a) Unless a determination is appealed pursuant to the provisions of Chapter 2, the order or decision as to a determination becomes final 30 days after service upon the taxpayer of notice of estimate and determination, pursuant to ● 45. If appealed, the determination becomes final after all appeals are exhausted.

(b) All determinations made by the Tax Commission are due at the time they become final. If they are not paid when due, a penalty of 10% of the amount of the determination, exclusive of interest and penalties, must be added to it.

52. Change in Determined Amount. The Tax Commission may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Commission at or before any hearing had on an appeal taken pursuant to ● 3 and 15 of Chapter 2.

53. Authority of Tax Commission; Amount; Sales; Return of Surplus.

(a) The Tax Commission, whenever it deems it necessary to insure compliance with this chapter, may require any person subject to this chapter to place with it such security as the Tax Commission may determine. The Tax Commission shall fix the amount of the security which, except as provided in subsection b, may not be greater than twice the estimated average tax due quarterly of persons filing returns for quarterly periods or three times the estimated average tax due monthly of persons filing for monthly periods, determined in such manner as the Tax Commission deems proper.

(b) In the case of persons who are habitually delinquent in their obligations under this chapter, the amount of the security may not be greater than three times the average actual tax due quarterly for persons filing returns for quarterly periods or five times the average actual tax due monthly for persons filing returns for monthly periods.

(c) The limitations provided in this section apply regardless of the type of security placed with the Tax Commission.

(d) The amount of the security may be increased or decreased by the Tax Commission subject to the limitations provided in this section.

(e) The Tax Commission may sell the security at public auction if it becomes necessary to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail; if by mail, service must be made in the manner prescribed for service of a notice of a deficiency determination and must be addressed to the person at his address as it appears in the records of the Tax Commission. Security in the form of a bearer bond issued by the United States or the state of California which has a prevailing market price may be sold by the Tax Commission at a private sale at a price not lower than the prevailing market price.

(f) Upon any sale any surplus above the amounts due must be returned to the person who placed the security.

54. Evidentiary Effect of Certificate Showing Delinquency. In any proceeding or action commenced to collect delinquent taxes hereunder, a certificate by the Tax Commission showing the delinquency is prima facie evidence of the determination of the tax or the amount of the tax, of the delinquency of the amounts set forth, and of the compliance by the Tax Commission with all the provisions of this chapter in relation to the computation and determination of the amounts.

55. Filing of Abstract or Copy of Judgment with County Recorder; Creation, Duration and Extension of Lien.

(a) If an action is commenced in any court of competent jurisdiction and a judgment is rendered in favor of the Tax Commission, an abstract of the judgment or a copy may be filed for record with the office of the Tribal Business Committee and the county recorder of any county.

(b) From the time of the filing, the amount required to be paid, together with interest and penalty set forth, constitutes a lien upon all the real property in the county owned by the person liable or acquired by him afterwards and before the lien expires. The lien has the effect and priority of a judgment lien and continues for 5 years from the date of the judgment so entered by the county clerk unless sooner released or otherwise discharged.

(c) The lien may, within 5 years from the date of the judgment or within 5 years from the date of the last extension of the lien pursuant to this subsection, be extended by filing for record in the office of the county recorder of any county, an abstract or copy of the judgment, and from the time of filing, the lien is extended to the real property in the county for 5 years, unless sooner released or otherwise discharged.

56. Execution: Issuance; Sale. Execution must issue upon the judgment upon request of the Tax Commission in the same manner as execution may issue upon other judgments, and sales must be held under the execution as prescribed by law.

57. Recordation of Certificate of Delinquency: Resulting Lien; Duration and Extension.

(a) If any amount required to be paid to the Tribe under this chapter is not paid when due, the Tax Commission may, within 3 years after the amount is due, file or record in the office of any county recorder a certificate specifying the amount, interest and penalty due, the name and address as it appears on the records of the Tax Commission of the person liable for the amount due, and the fact that the Tax Commission has complied with all provisions of this chapter in the determination of the amount required to be paid.

(b) From the time of the filing for record, the amount required to be paid, together with interest and penalty, constitutes a lien upon all real property in the county owned by the person or acquired by him afterwards and before the lien expires. The lien has the effect and priority of a judgment lien and continues for 5 years from the time of the filing of the certificate unless sooner released or otherwise discharged.

(c) The lien may, within 5 years from the date of the filing of the certificate or within 5 years from the date of the last extension of the lien pursuant to this subsection, be extended by filing for record a new certificate in the office of the county recorder of any county, and from the time of filing, the lien is extended to the real property in the county for 5 years, unless sooner released or otherwise discharged.

58. Tax Commission May Release or Subordinate Lien. The Tax Commission may at any time release all or any portion of the property subject to any lien provided for in this chapter from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount, interest and penalties are secured sufficiently by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest and penalties.

59. Evidentiary Effect of Certificate of Release or Subordination. A certificate by the Tax Commission to the effect that any property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, is conclusive evidence that the property has been released, or that the lien has been subordinated as provided in the certificate.

WARRANT FOR COLLECTION

60. Issuance; Effect; Levy and Sale.

(a) At any time within 3 years after any person is delinquent in the payment of any amount required to be paid, or within 3 years after the last recording of an abstract under • 55, or of a certificate under • 57, the Tax Commission or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the Tribe under this chapter.

(b) The warrant must be directed to any law enforcement officer and has the same effect as a writ of execution.

(c) The warrant must be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

61. Successor or Assignee to Withhold Tax from Purchase Price. If any retailer who is liable for any amount under this chapter sells out his business or stock of goods, or quits the business, his successors or assigns shall withhold a sufficient amount of the purchase price to cover that amount until the former owner produces a receipt from the Tax Commission showing that it has been paid or a certificate stating that no amount is due.

62. Liability of Purchaser for Failure to Withhold Sufficient Amount; Release.

(a) If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires later, but not later than 90 days after receiving the request, the Tax Commission shall issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Tax Commission, of the amount that must be paid as a condition of issuing the certificate.

(b) Failure of the Tax Commission to mail the notice releases the purchaser from any further obligation to withhold the purchase price.

(c) The time within which the obligation of a successor may be enforced begins at the time the retailer sells out his business or stock of goods or at the time that the determination against the retailer becomes final, whichever event occurs later.

63. Certification of Excess Amount Collected; Credit and Refund; Overpayment of Tax by Purchaser. If the Tax Commission determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Tax Commission shall set forth that fact in the records of the Tax Commission and certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid must be credited on any amounts then due from the person under this chapter, and the balance refunded to the person, or his successors, administrators or executors.

64. Limitations on Claims for Refund or Credit. Except as otherwise provided in this Code:

(a) No refund may be allowed unless a claim for it is filed with the Tax Commission within 3 years from the last day of the month following the close of the period for which the overpayment was made, or, with respect to determinations made under ● 42 to 59 inclusive, within 6 months after the determinations become final, or within 6 months from the date of overpayment, whichever period expires later.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Tax Commission within that period, or unless the credit relates to a period for which a waiver is given pursuant to ● 11 of Chapter 2.

65. Form, Contents and Requirement of Claim for Credit or Refund. Every claim must in writing and must state the specific grounds upon which the claim is founded. No suit or proceeding may be maintained in any court or other forum for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed.

66. Failure to File Claim Constitutes Waiver. Failure to file a claim within the time prescribed in ● 64 constitutes a waiver of any demand against the Tribe on account of overpayment.

67. Service of Notice of Disallowance of Claim. Within 30 days after disallowing any claim in whole or in part, the Tax Commission shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

68. Interest on Overpayments.

(a) Interest must be paid upon any overpayment of any amount of tax at the rate of one-half of one percent (0.5%) per month from the last day of the calendar month following the period for which the overpayment was made. No refund or credit may be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

(b) The interest must be paid:

(1) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Tax Commission that a claim may be filed.

(2) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

69. Disallowance of Interest. If the Tax Commission determines that any overpayment has been made intentionally or by reason of carelessness, it may not allow any interest on it.

70. Injunction or Other Process to Prevent Collection of Tax Prohibited. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against the Tribe or against any officer of the Tribe to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected.

71. Records to Be Kept by Sellers, Retailers and Others.

(a) Every seller, every retailer, and every person storing, using or otherwise consuming on the Reservation tangible personal property purchased from a retailer shall keep records, receipts, invoices and other pertinent papers in such form as the Tax Commission may require.

(b) Every seller, retailer or person who files the returns required under this chapter shall keep the records for not less than 4 years from their making unless the Tax Commission in writing sooner authorizes their destruction.

(c) Every seller, retailer or person who fails to file the returns required under this chapter shall keep the records for not less than 8 years from their making unless the Tax Commission in writing sooner authorizes their destruction.

72. Examination of Records; Investigation of Business. The Tax Commission, or any person authorized in writing by the Tax Commission, may examine and audit the books, papers, records and equipment of any person selling tangible personal property and any person liable for taxes and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

73. Disclosure of Information Unlawful; Exceptions.

(a) Except as otherwise provided in this section, it is unlawful for any member of the Tax Commission or officer or employee of the Tax Commission to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular of them, set forth or disclosed in any return, or to permit any return or copy of a return, or any book containing any abstract or particulars of it to be seen or examined by any person not connected with the Tax Commission.

(b) The Tax Commission may agree with the governing body of the state of California, or any county, city or town for the continuing exchange of information concerning taxpayers.

(c) The Tax Commission may, by general or special order, authorize examination of its records maintained under this chapter by tax officers of the state of California or any other state if a reciprocal arrangement exists, by the Federal Government if a reciprocal arrangement exists, or by any other person. The information so obtained may not be made public except to the extent and in the manner that the order may authorize that it be made public.

(d) Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of any unpaid tax or amounts of tax required to be collected, interest and penalties.

(e) Relevant information may be disclosed as evidence in an appeal by the taxpayer from a determination of tax due.

CHAPTER 4. HOTEL OCCUPANCY TAX

1. Definitions. Except where the content 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 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. **Hotel** does not mean any of the following: any hospital, convalescent home, sanitarium, medical clinic, rest home, home for aged people, foster home, or other similar facility operated for the care or treatment of human beings; any asylum, jail, prison, orphanage or other facility in which human beings are detained and housed under legal restraint; any housing owned or controlled by any educational institution and used exclusively to house students, faculty or other employees, and any fraternity or sorority house or similar facility occupied exclusively by students and employees of such educational institutions, and

officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by any organization having qualifications for exemption from property taxes under the laws of the Tribe or California; any housing owned by a government agency and used to house its employees or for governmental purposes; any housing furnished by an employer exclusively for employees or any camp whether profit or nonprofit, offering recreational activities and operated exclusively for minors under the age of sixteen (16).

(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) ■ **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 (30) consecutive calendar days or less, counting portions of calendar days as full days. Any person who in fact exercises occupancy or in fact is entitled to occupancy for a period of thirty-one (31) days or more, counting portions of calendar days as full days, shall be deemed not to have been a transient with respect to the first thirty (30) days of occupancy or entitlement to occupancy.

(d) ■ **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 of nature, without any deduction therefrom whatsoever.

(e) ■ **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 functions through a managing agent of 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 by the managing agent shall, however, be considered compliance by both.

2. Tax Imposed. For the privilege of providing lodging in any hotel, including any hotel owned by the Tribe, a tax is hereby imposed at the same rate, and shall be collected in the same manner as the San Diego County Uniform Transient Occupancy Tax Ordinance applicable to Hotel Operators in unincorporated San Diego County, California, as enacted by the County pursuant to the California Revenue and Taxation Code, ● 7280-7283. Such rate is currently 9% and shall be adjusted on the same effective date and to the same rate as any future changes to the San Diego County Uniform Transient Occupancy Tax rate applicable to off-Reservation Hotel Operators in unincorporated San Diego County.

3. Exemptions. No tax shall be imposed:

(a) Upon any Tribal, federal or state of California officer or employee when on official business;

(b) Upon any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or International treaty;

(c) Where the rent is at the rate of four dollars (\$4.00) per day or less;

(e) Upon any person who receives a free or complimentary room as a promotional allowance or otherwise, where the only consideration provided within the definition of rent in • 1(d) is publicity value for the hotel.

4. 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 hereinafter provided.

5. Registration. Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Commission and obtain from him 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 Rincon Hotel Occupancy Tax Ordinance by registering with the Tax Commission for the purpose of collecting from transients the Tourist Tax and remitting said tax to the Tax Commission. 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 Tribe. This certificate does not constitute a permit.

6. 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 reporting period which may be established by the Tax Commission, make a return to the Tax Commission, on forms provided by the Tribe, 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 Tax Commission.

Returns filed or taxes remitted and actually received by the Tax Commission on or before the last day of the month following the close of each calendar quarter shall be deemed timely filed or remitted. Returns filed or taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns or taxes is addressed to the Tax Commission, has sufficient postage and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting or remitting without penalty, if such envelope or the container bears a postage meter imprint as well as a United States post office cancellation mark, the latter shall govern in determining whether the filing or remittance is timely. The Tax Commission may establish shorter reporting periods for any certificate holder if it deems it necessary in order to insure collection of the tax and it 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 Tribe until payment thereof is made to the Tax Commission.

7. 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 5% of the amount of the tax in addition to the amount of this tax.

(b) Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before the first day of each calendar month following the date on which the remittance first became delinquent shall pay an additional delinquency penalty of 5% of the amount of the tax and any penalties previously added thereto.

(c) Fraud. If the Tax Commission determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five (25%) 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 the Chapter shall pay interest at the rate of one (1%) 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 herein required to be paid.

(f) Audit Deficiency. If, upon audit by the Tax Commission, an operator is found to be deficient in his return or his remittance or both, the Tax Commission shall immediately notify the operator and assess the net deficiency and any delinquency penalties if applicable if the operator fails or refuses to pay the deficient amount and applicable penalties within fourteen (14) days after the date of the Tax Commission's notice, the penalties prescribed in paragraph (b) above shall apply, using the fifteenth (15) day after the date of the Tax Commission's notice as the date when the continued delinquency penalty first applies.

8. Failure to Collect and Report Tax, Determination of Tax by Tax Commission. If any operator 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 or if such operator maintains records which are inadequate to show the amount of tax due, the Tax Commission shall proceed in such manner as it may deem best to obtain facts and information on which to base its estimate of the tax due. As soon as the Tax Commission shall procure such facts and information as it 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, it 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 Tax Commission 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 last known place of address.

Such operator may within fourteen (14) days after the serving or mailing of such notice make application in writing to the Tax Commission 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 Tax Commission shall become final and conclusive and immediately due and payable. If such application is made, the Tax Commission shall give not less than (5) days written notice in the manner prescribed herein to the operator 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 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 Tax Commission 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 and penalties. The amount determined to be due shall be payable after fourteen (14) days unless an appeal is taken as provided in • 9.

9. Appeal. Any operator aggrieved by any decision of the Tax Commission with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the provisions of • 3 and 15 of Chapter 2. Following any such appeal, any amount found to be due shall be immediately due and payable upon the service of notice.

10. Records. It shall be the duty of every operator liable for the collection and payment to the Tribe 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 Tribe including but not limited to all business records, bank statements and copies of federal and state income tax returns filed by the operator with the state of California or the United States of America, which records the Auditor and Tax Commission shall have the right to inspect at all reasonable time.

All returns and payments submitted by each operator shall be treated as confidential by the Tax Commission and Tribe. Examination and disclosure of records shall be governed by • 73 of Chapter 3.

11. Refunds.

(a) Erroneously or Illegally Collected. 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 Tribe under this chapter it may be refunded as provided in subsections (b) and (c) of this section provided that a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Commission within two years of the date of payment. The claim shall be on forms furnished by the Tax Commission.

(b) Credit Against Taxes. 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 Tax Commission 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 person from whom the tax was collected or credited to rent subsequently payable by that person to the operator.

(c) Repayment to Transient. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the Tribe 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 Tax Commission or when the transient having paid the tax to the operator, establishes to the satisfaction of the Tax Commission that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) Records 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.

12. (Reserved)

13. Violations: Infraction. Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made or who fails to refuse to furnish a supplemental return or other data required by the Tax Commission, or who renders a false or fraudulent return or claim is guilty of an infraction, and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes 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 an infraction and is punishable as aforesaid.

CHAPTER 5. CREDIT FOR STATE TAXES; APPORTIONMENT

1. Legislative Declarations and Policy.

(a) The Tribal Business Committee finds that the imposition of state taxes upon on-Reservation transactions is inconsistent with federal and tribal goals of promoting tribal economic

development and self-sufficiency, and also infringes upon the Tribe's right to establish tax policy on the Reservation and decide for itself the extent to which commerce will be taxed on the Reservation.

(b) The Business Committee hereby declares that dual tribal and state and local taxation would frustrate economic development on the Reservation, and unduly burden Reservation commerce. It is the policy of the Business Committee to avoid dual taxation, through the preemption of state and local taxes or, failing that, through the use of a tax credit, as provided in • 2 of this Chapter.

2. Credit for State Taxes.

(a) There is hereby granted to all taxpayers on the Reservation a credit against any tribal taxes paid pursuant to this Ordinance, for the amount of any similar state taxes paid by the taxpayer during the same tax period.

(b) The taxpayer seeking the credit shall submit proof of payment of state taxes on his tribal tax return, showing the amount paid and the tax period for which the state tax was paid. Upon receipt of sufficient proof by the Tax Commission, the Tax Commission shall reduce the taxpayer's tribal tax liability by the amount of state taxes paid by the taxpayer for the same period.

3. State Taxation Not Approved. Nothing in this chapter shall be deemed to constitute acquiescence in or approval of any jurisdiction of California to tax Reservation transactions. It is the intention to preempt any dual state or local taxes by the passage of this Ordinance.

4. Apportionment. The taxes imposed pursuant to this Ordinance and pursuant to California law may, upon the agreement of the Tribe, California and/or San Diego County, be apportioned between the Tribe and the State to reflect the amount of services each government provides on the Reservation and in light of any other revenue sharing or financial arrangements between the Tribe, California and/or San Diego County, or according to any equitable formula agreed to by the Tribe, California and/or San Diego County.

CHAPTER 6. RULES AND REGULATIONS

1. Authorization. The Tax Commission shall have the power to make all necessary rules and regulations and prescribe all necessary forms or other requirements, not inconsistent with the provisions of this Ordinance, for the purpose of making the administration of the Code effective.

2. Appointment of Assistants and Agents. The Tax Commission may appoint auditors, accountants, assessors, inspectors, deputies, clerks and such other employees or agents as it may deem necessary to enforce its powers and perform its duties under this Ordinance.

CHAPTER 7. SEVERABILITY

If any provision of this Ordinance or its application to any person or circumstances is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions of this Ordinance or applications which can be given effect without the invalid provision or application; to this end the provisions of this Ordinance are declared to be severable.

CHAPTER 8. EFFECTIVE DATE

This Ordinance shall become effective on the first day of the first month immediately following enactment of this Ordinance.