

Exhibit "A"

ORDINANCE NO. O-14-16

MEASURE "___"

AN ORDINANCE OF THE PEOPLE OF THE CITY OF COLTON AMENDING THE CITY'S TRANSIENT OCCUPANCY (ROOM) TAX CODE BY INCREASING THE RATE FROM 10% TO 12.5%, DEDICATING THE ADDITIONAL 2.5% OF THE TAX RATE ABOVE 10% FOR SPECIFIC PURPOSES, AND ADDRESSING ONLINE TRAVEL COMPANY AND OTHER THIRD PARTY BOOKINGS, AND MAKING VARIOUS CONFORMING CHANGES.

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

THE PEOPLE OF THE CITY OF COLTON, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 3.24.020 of Chapter 3.24 of Title 3 of the Colton Municipal Code is hereby amended to read as follows:

"3.24.020. Definitions.

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

"Block Reservation" means an arrangement whereby a person reserves, whether on an exclusive or non-exclusive basis, a room or block/group of rooms for a defined period of time under a written or oral agreement with an operator, intending for such room(s) to be occupied by that person's employees or agents on an intermittent, periodic or "as needed" basis during that defined period of time.

"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.

"Occupancy" means the use or possession, or the right to use, or possession of any room or rooms or portion thereof (*whether or not the person entitled to the use or possession actually uses or possesses such room or rooms or portion thereof*), in any hotel for dwelling, lodging or sleeping purposes. *The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibits, sample or display space shall not be considered "occupancy" within the meaning of this definition unless the person exercising occupancy uses or possesses, or has the right to use or possess all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.*

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2 ***"Online Short Term Rental Company" shall mean any person, whether operating***
3 ***for profit or not for profit, which facilitates the connection between transients aiming to***
4 ***purchase occupancy in any hotel via the Internet, or by similar electronic means.***

5 ***"Online Travel Company" shall mean any person, whether operating for profit or***
6 ***not for profit, which enables transients to purchase occupancy in a hotel via the Internet,***
7 ***or by similar electronic means.***

8 ***"Operator" means the person who is proprietor of the hotel or any other person who***
9 ***has the right to rent rooms within the hotel to customers or to facilitate the rental of rooms***
10 ***via an online short term rental company, whether in the capacity of owner, lessee, sublessee,***
11 ***mortgagee in possession, licensee, seller, reseller, or any other capacity. Where the operator***
12 ***performs his functions through a managing agent or booking agent of any type or character,***
13 ***other than an employee (including, but not limited to, an online travel company or online***
14 ***short term rental company), the managing agent or booking agent shall also be deemed an***
15 ***operator for the purposes of this chapter and shall have the same duties and liabilities as his***
16 ***principal. Full compliance with the provisions of this chapter by either the principal or the***
17 ***managing agent or booking agent shall, however, be considered to be compliance by both.***

18 ***"Person" means any individual, firm, partnership, joint venture, association, social***
19 ***club, fraternal organization, joint stock company, corporation, estate, trust, business trust,***
20 ***receiver, trustee, syndicate, or any other group or combination acting as a unit.***

21 ***"Rent" means the total consideration charged to the transient, (including but not***
22 ***limited to, room rates, service charges, parking fees, purchase price, advance registration,***
23 ***block or group reservation charges, assessments, retail markup, commission, processing***
24 ***fees, cancellation charges, attrition fees, or online booking or broker fees), whether or not***
25 ***received, for the occupancy of space in a hotel valued in money, whether to be received in***
26 ***money, goods, labor or otherwise, including all receipts, cash, credits and property and***
27 ***services of any kind or nature, without any deduction therefrom whatsoever. Nothing in this***
28 ***definition shall be construed to mean that rent is charged directly or indirectly for***
29 ***occupancy in a hotel when a room is provided to the transient as a compliment for the***
30 ***operator and where no consideration is charged to or received from any other person.***
31 ***Further, bona fide charges for food and beverages which are subject to tax under the***
32 ***California Sales and Use Tax Law (Revenue and Taxation Code Sections 6001 et. seq.)***
33 ***shall not be deemed rent subject to the tax imposed by this Part.***

34 ***"Tax Administrator" means city manager or such other city employee/official, as shall***
35 ***be designated by the City Council manager.***

36 ***"Transient" means any person who exercises occupancy or is entitled to occupy by***
37 ***reason of concession, permit, right of access, license or other agreement for a period of thirty***
38 ***consecutive calendar days or less, counting portions of calendar days as full days. The***
39 ***following rules shall apply to this definition:***

- 40 ***A. Any such person so occupying space or entitled to occupy a room in a hotel***
41 ***shall be deemed to be a transient until the period of (30) calendar days has***
42 ***expired unless there is an agreement in writing between the operator and the***

1 occupant providing for a longer period of occupancy. Any individual who
2 exercises or is entitled to occupancy for a period of thirty *consecutive* calendar
3 days or less shall be deemed to be a transient, regardless of whether the
4 reservation and payment or payment for occupancy is made directly by the
5 individual exercising *or entitled to* occupancy or another person or entity. The
intent is to tax the individual occupying *or having the entitlement to occupy*
the hotel room.

6 For purposes of this definition, the exercise of or entitlement to occupancy shall be
evidenced by any of the following:

- 7 1. An individual's signature on a Hotel registration card or form, a Hotel
8 invoice or receipt or any other document associated with an individual's
Occupancy in a Hotel; and/or
 - 9 2. An individual's providing identification to Hotel staff as proof of
10 employment, membership or affiliation ~~with a Person as defined in~~
subsection D. of this section as a condition of or in connection with
exercising Occupancy in a Hotel.
- 11 **B.** In determining whether a person is a transient, uninterrupted periods of time
12 extending both prior and subsequent to the effective date of this Part may be
considered.
- 13 **C.** *In the event a person exercises or is entitled to occupancy for a continuous*
14 *and uninterrupted period of longer than 30 calendar days, he or she shall be*
15 *deemed a transient and subject to the tax for only the first 30 calendar days*
16 *of occupancy and shall cease being a transient and the tax shall not apply on*
17 *the 31st calendar day of occupancy and following. However, any break or*
18 *interruption in occupancy shall start a new 30 day period subject to the tax.*
- 19 **D.** *In the case of a block reservation, a person's employee or agent shall be*
20 *deemed a transient if that employee or agent exercises or is entitled to*
21 *occupancy of a room for a period of 30 consecutive calendar days or less,*
22 *regardless of the duration of any block reservation agreement. By way of*
23 *example, if a corporation enters into a one-year block reservation agreement*
24 *with an operator and one of the corporation's employees occupies a room for*
25 *30 calendar days, the employee shall be deemed a transient whose occupancy*
26 *is subject to the tax, notwithstanding the fact that the block reservation*
27 *agreement has a duration longer than 30 calendar days."*

23 SECTION 2. Section 3.24.030 of Chapter 3.24 of Title 3 of the Colton Municipal Code is
24 hereby amended to read as follows:

25 **"3.24.030 Imposition—Rate—Purposes of Tax.**

- 26 **A.** For the privilege of occupancy in any hotel, each transient is subject to and
27 shall pay a tax in the amount of ~~10~~ 12.5 percent of the rent charged by the
28 operator. This tax constitutes a debt owed by the transient to the City which is
extinguished only by payment to the operator of the hotel at the same time the
rent is paid. If the rent is paid in installments, *a* proportionate share of the tax
shall be paid with each installment. The unpaid tax shall be due when the

1 transient ceases to occupy space in the hotel occupancy. If for any reason the
2 tax due is not paid to the operator of the hotel, the Tax Administrator may
3 require that such tax shall be paid directly to the Tax Administrator.

4 **B. The basic 10% rate of the tax is and shall remain a general tax, the revenues**
5 **from which shall be deposited into the City's general fund and which may be**
6 **used to pay for any valid general expenditures of the City of Colton.**

7 **C. The additional 2.5% of the tax rate is hereby declared to be a special tax, the**
8 **revenues from which shall be deposited into a special fund of the City and**
9 **which may only be expended for the following specific purposes: The**
10 **construction, maintenance and/or rehabilitation of athletic/recreational**
11 **fields and related facilities located within the City of Colton.**

12 SECTION 3. Section 3.24.040 of Chapter 3.24 of Title 3 of the Colton Municipal Code is
13 hereby amended to read as follows:

14 **"3.24.040. Exemptions.**

15 No tax shall be imposed upon:

- 16 A. Any person as to whom, or any occupancy as to which, it is beyond the power
17 of the City to impose the tax herein provided;
- 18 B. Any federal or State of California officer or employee when occupying a
19 room while on official government business. For purposes of this section,
20 non-employee students, supporters and volunteers of California public
21 universities and colleges shall not be deemed to be officers or employees of
22 the State of California.
- 23 C. Any officer or employee of a foreign government who is exempt by reason of
24 express provision of federal law or international treaty.
- 25 D. No exemption shall be granted except upon a claim therefor made at the time
26 rent is collected and under penalty of perjury upon a form prescribed by the
27 Tax Administrator. Any federal or State of California officer or employee
28 when on official government business claiming such an exemption shall
provide to the operator as conclusive evidence that his or her occupancy is
for the official business of his or her employer:
- (1) Travel orders from his or her government employer; or a government
warrant issued by his or her employer to pay for the occupancy; or a
government credit card issued by his or her employer to pay for the
occupancy; and
- (2) proof of his or her governmental employment as an employee or
officer as described in subsection (B), and proof, consistent with these
provisions, that his or her occupancy is for the official business of his
or her governmental employer.

It shall be the duty of an operator to keep and maintain for a period of three
(3) years written documentation in support of each exemption granted under
this Section."

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2 SECTION 4. **Effective Date.** Pursuant to California Constitution Article XIII C
3 §(2)(d) and California Elections Code §9217, if a two-thirds (2/3) supermajority of the
4 qualified voters voting in the election on Measure “___” vote in favor of the adoption of such
5 measure, this ordinance shall be deemed valid and binding and shall be considered as adopted
6 upon the date that the vote is declared by the City Council, and shall go into effect ten (10)
7 days after that date.

8 SECTION 5. **Severability.** If any section, sentence, clause or phrase of this
9 ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of
10 competent jurisdiction, such decision shall not affect the validity of the remaining provisions
11 of this ordinance. The People of the City of Colton hereby declare that they would have
12 adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the
13 fact that any one or more section, subsections, sentences, clauses or phrases be declared
14 invalid or unconstitutional.

15 SECTION 6. **Certification/Summary.** Following the City Clerk’s certification that
16 the citizens of Colton have approved this Ordinance, the Mayor shall sign this Ordinance and
17 the City Clerk shall cause the same to be entered in the book of original ordinances of said
18 City; and shall cause the same, or a summary thereof, to be published as required by law.

19 Adopted by the People of the City of Colton on the 8th day of November, 2016.

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Richard A. DeLaRosa, Mayor

ATTEST:

Carolina R. Padilla, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney
Best Best & Krieger

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF COLTON)

4 CERTIFICATION

5 I, **CAROLINA R. PADILLA**, City Clerk of the City of Colton, California, do hereby
6 certify that the foregoing is a full, true and correct copy of **RESOLUTION NO. R-74-16**,
7 duly adopted by the City Council of said City, and approved by the Mayor of said City, at its
8 Regular Meeting of said City Council held on the **2nd day of August, 2016**, and that it was
9 adopted by the following vote, to wit:

10	AYES:	COUNCILMEMBER	Toro, Jorin, Navarro, González, Suchil
11			and Mayor DeLaRosa
12	NOES:	COUNCILMEMBER	None
13	ABSTAIN:	COUNCILMEMBER	None
14	ABSENT:	COUNCILMEMBER	Bennett

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16 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal
17 of the City of Colton, California, this 11th day of August, 2016.

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19
20 Caroline R. Padilla
21 CAROLINA R. PADILLA
22 City Clerk
23 City of Colton

24 (SEAL)
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