

ORDINANCE NO. 490

AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES
ESTABLISHING A HOTEL INCENTIVE PROGRAM AND AMENDING THE
RANCHO PALOS VERDES MUNICIPAL CODE.

THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES HEREBY
ORDAINS AS FOLLOWS:

Section 1. Title 3 of the Rancho Palos Verdes Municipal Code is hereby amended by adding new Chapter 3.48 thereto to read as follows:

3.48.010 Purpose.

The purpose of this chapter is to provide support for the operation and maintenance of first class hotel facilities within the City of Rancho Palos Verdes, which will provide benefits to the City's residents, enhance the tourist and travel experience for visitors to the City of Rancho Palos Verdes, increase the sales tax revenue to the City, provide transient occupancy tax revenue to the City, and provide attractive amenities to the public and desirable visitor serving facilities and experiences along the California coast. In the implementation of this program, the City Council finds:

(a) The general welfare and material well being of the residents of the City of Rancho Palos Verdes depend in large measure upon the facilities that are available to the public and the City's residents.

(b) The operation and maintenance of first class hotels in the City of Rancho Palos Verdes will create desirable visitor serving facilities that will contribute to the growth and expansion of tourism and travel opportunities in the City, provide employment opportunities for the residents of the City, provide new tax revenues to the City, and promote and enhance the economy of the City.

(c) It is in the best interest of the City of Rancho Palos Verdes to induce and encourage the opening, operation and maintenance of first class hotel facilities that would not otherwise be successful, thereby creating new sources of tax revenues for the City's general fund that supports the public services that the City provides to its residents.

(d) The authority granted and the purposes to be accomplished by this chapter are properly local governmental and public purposes for which public funds can be expended and that the operation and maintenance of first class hotels is of paramount importance to the City of Rancho Palos Verdes, its residents, and businesses.

3.48.020 Definitions.

For the provisions of this chapter, the following definitions shall apply:

"Eligible Costs" means start-up costs associated with the opening of a new Eligible Hotel for which existing construction loan funds (not including the loan funds contemplated by Section 3.48.090 below) and existing equity funds are not available, and net operating losses incurred during the Operating Period of a new Eligible Hotel for which such funds (not including the loan funds contemplated by Section 3.48.090) are not available. Equity funds and construction loan funds designated for a different purpose necessary for the Eligible Hotel (such as for capital improvements and replacements and reserves) shall not constitute available funds. In calculating net operating losses, costs deducted from income can include costs of debt service, marketing costs, property taxes, working capital, and all other operating costs paid by an Eligible Hotel during the Operating Period.

"Eligible Hotel" means a First Class Hotel or resort containing 250 or more guest rooms which can accommodate 250 or more guests for compensation, and where the guest rooms are designed and intended as transient accommodations.

"First Class Hotel" means a hotel or resort which is, or is of a quality so that it will be, rated as a three star or three diamond hotel or higher under the rating criteria established for hotels by the American Automobile Association, J.D. Power & Associates, Mobil Oil Company, or comparable hotel rating entity, and which includes operation of the hotel on a twenty-four hours per day/seven days a week basis with housekeeping services, food and beverage services, room services, banquet and meeting services, including at least 20,000 square feet of meeting/banquet space, concierge and bell services, and parking services.

"Maximum Amount" means the lesser of (i) eighty percent (80%) of the total amount of Transient Occupancy Tax collected and remitted to the City with respect to the Operating Period by an Eligible Hotel that is enrolled in the City's Hotel Operations Incentive Program, or (ii) \$8,200,000.00.

"Operating Covenants" means the covenants described in Section 3.48.030 of this code.

"Operating Period" means a period commencing on the date designated in the Notice of Participation (but no later than the date which is two (2) months after the grand opening of the Eligible Hotel), and ending on the date which is the last day of the 34th month after such designated commencement date.

"Owner" means the person or entity that is the owner of an Eligible Hotel at the beginning of the Operating Period and each successor owner of the Eligible Hotel.

"Transient Occupancy" means an uninterrupted stay of no more than twenty-nine (29) consecutive calendar days.

"TOT" means the ten percent (10%) Transient Occupancy Tax levied by the City as of the date this ordinance is adopted, and shall not include any increases in such Transient Occupancy Tax rate enacted or adopted after the date on which this ordinance is adopted.

3.48.030 Eligibility to Participate in Hotel Operating Incentive Program.

To qualify for the hotel operations incentive program, the Owner of an Eligible Hotel shall:

(a) Complete and submit to the City Manager an application to participate in the incentive program established in this Chapter, which application shall be on the form provided by the City;

(b) Execute and record against the Eligible Hotel property a Notice of Participation, which shall include provisions regarding continuing use, maintenance, non-discrimination, discounts to be offered to residents of the City of Rancho Palos Verdes during the term of participation in the incentive program, the terms of repayment of the TOT to the City, and such other provisions as the City Council, in its sole discretion, may reasonably determine are necessary or appropriate to preserve the goals and intent of this Chapter.

(c) Execute an agreement to indemnify and defend the City against any claims or lawsuits that are brought against the City (and liabilities, damages and costs incurred by the City in connection therewith) as a result of the application of this ordinance to that Eligible Hotel.

(d) Pay the City for all of City's costs associated with the Eligible Hotel's enrollment in the Hotel Operating Incentive Program, including, but not limited to, the due diligence performed by the City and preparation of documents.

(e) Provide the City with audited financial statements and evidence satisfactory to City that: (i) the Eligible Hotel has at least \$10,000,000 in committed funds available to fund post-opening needs for the Eligible Hotel, (ii) the Owner is not in default under any loan

documents evidencing a loan secured in whole or in part by the Eligible Hotel, and (iii) the Eligible Hotel is in compliance with its applicable conditions of approval.

(f) Execute any other agreements containing provisions required by the City as a condition of participation in the Hotel Operating Incentive Program.

3.48.040 Operating Incentive Program.

(a) After an Eligible Hotel satisfies the requirements of Section 3.48.030 and enrolls in the Hotel Incentive Program, except as set forth in Section 3.48.040 (b) below, the City shall pay or "rebate" to an Owner of an Eligible Hotel or its designee an amount equal to eighty percent (80%) of the TOT collected by the Eligible Hotel for the Operating Period and remitted to the City, until the Maximum Amount has been paid to such Owner or its designee. The City will rebate the TOT to such Owner or its designee within five (5) business days of receipt of the TOT from the Eligible Hotel and after verification by the City, pursuant to an accounting review, of the amount of TOT that has been collected and remitted to the City. The rebated TOT shall be remitted to the Owner or the designee of the Owner for the entire Operating Period or until the Owner has received the Maximum Amount, whichever occurs first, except as set forth in Section 3.48.040 (b) below.

(b) Without regard to Section 3.48.040 (a), the rebates shall be suspended, after providing written notice to the Owner and thirty (30) days within which to cure the violation, during any period when: (a) the Owner fails to remit TOT to the City; (b) the operation of the Eligible Hotel ceases or substantially ceases; (c) the Eligible Hotel ceases to be operated as a First Class Hotel; (d) the Eligible Hotel ceases to comply with the provisions of this Chapter 3.48 of the Code; (e) the Owner fails, within one hundred eighty (180) days after the end of each fiscal year of Owner starting with fiscal year 2008, to deliver to the City annual audited financial statements for the Eligible Hotel which include an unqualified opinion from the auditor except for a qualification relating to or resulting from the sufficiency or insufficiency of capital; or (f) the Owner of an Eligible Hotel on the date such Owner elects to have such Eligible Hotel participate in the Hotel Operation Incentive Program applies for a reduction in such Eligible Hotel's ad valorem real property tax assessment, or in the tax assessment of any for-sale portion of such Eligible Hotel, which, if successful, would reduce such assessment to a value which is lower than the value agreed upon by such Owner in an agreement with the City executed prior to or concurrently with the Owner's making such election, except in the event of a force majeure event (such as damage or destruction) which materially reduces the use of all or a portion of the Eligible Hotel or for-sale portion thereof. The preceding clause (f) shall not prohibit either any reassessment resulting from a change of ownership of such Eligible Hotel or for-sale portion thereof, nor prohibit any challenge to any such reassessment.

3.48.050 Resident Discounts.

Each Eligible Hotel which has enrolled in the Hotel Incentive Program is required, at all times until the Eligible Hotel has reimbursed the City for the rebated TOT in accordance with the provisions of Section 3.48.060, to provide the following discounts to any resident of the City of Rancho Palos Verdes who has registered with such Eligible Hotel:

(a) a discount of 25% off the best available room rate for a comparable room on a comparable date;

(b) a discount of 10% off fees for use at any time of any spa and golf course that is located at the Eligible Hotel;

(c) a discount of 20% off fees for use during off-peak times of any golf course that is located at the Eligible Hotel; and

(d) a discount of 10% off food and beverage charges at the Eligible Hotel, including charges for alcoholic beverages.

The participation in this program shall be memorialized in the Notice of Participation referred to in Section 3.48.130, which shall be recorded with the Office of the Los Angeles County Recorder.

3.48.060 Interest; Repayment.

The Maximum Amount (or portion thereof) received by an Owner or its designee shall be repaid to the City as follows:

(a) Each rebate of TOT to the Eligible Hotel shall accrue interest from the date made until the date repaid at 3-month LIBOR plus a margin of 800 basis points and will be added to the rebate balance quarterly (resulting in quarterly compounding). If the Eligible Hotel elects to extend the repayment date for one year beyond the initial repayment date, the interest rate during the period of the one-year extension shall be 3-month LIBOR plus 1,100 basis points. In the event the balance is not paid in full on or before the date of the one-year extension, the interest rate shall be 3-month LIBOR plus 1,300 basis points. However, in no event shall the interest rate exceed the maximum interest rate permitted by applicable law.

(b) Upon each sale or refinancing of a participating Eligible Hotel after the date on which the Owner of such Eligible Hotel elects to participate in the Hotel Operation Incentive Program, the City shall be paid, through the escrow established for such sale or refinancing, an amount equal to 100% of the net proceeds (calculated after (i) repayment of all amounts owed under all loans secured by the Eligible Hotel at the time of such sale or refinancing, and (ii) subtraction from the gross proceeds of all costs of such sale or refinancing), until the Maximum Amount, together with any accrued interest, has been repaid in full. For purposes of clarity, in the event that an Owner takes back a purchase money loan upon a sale, the principal amount of such loan shall be deemed to be cash received for purposes of the calculation described in the preceding sentence. Except with the consent of the City, the Owner of an Eligible Hotel on the date such Owner elects to have such Eligible Hotel participate in the Hotel Operation Incentive Program shall not, after the date on which such Owner elects to participate in the Hotel Operation Incentive Program, sign a loan amendment which will have the effect of increasing the aggregate principal amount of all loans then secured by the Eligible Hotel by more than \$3,000,000, which \$3,000,000 must be expended on costs incurred in connection with the ownership, development and operation of the Eligible Hotel. For purposes of clarity: (x) nothing in the preceding sentence shall prohibit such Owner from increasing the principal balance of one existing loan in order to use the proceeds to pay down the principal balance of another existing loan; and (y) nothing in the preceding sentence shall prohibit an Owner from executing and encumbering the Eligible Hotel with a security instrument securing a larger principal balance than existed as of the date of such election, if such security instrument either secures a new refinancing loan or secures a loan the proceeds of which are used to purchase the Eligible Hotel, provided that in each case such security instrument is executed as part of a refinancing or sale transaction in which net proceeds are paid to the City as set forth in the first sentence of this Section 3.48.060 (b).

(c) In any event, the Maximum Amount (or portion thereof) that has been rebated by the City to an Owner of an Eligible Hotel (or its designee) shall be repaid in full to the City, together with accrued interest, no later than four years after December 31st of the first year when the TOT rebate payment is made to the Owner or its designee by the City; however, the Owner may extend such repayment date by one (1) year upon written notice given to City at least ninety (90) days prior to the initial repayment date.

(d) No distributions may be made to the equity investors in the Owner of a participating Eligible Hotel until the City has been repaid in full.

(e) Upon repayment in full, the City and the Owner of the participating Eligible Hotel shall execute, and the City shall record, a notice of termination of the Notice of Participation.

3.48.070 Use of Incentive Payments.

The incentive payments may be used by the Owner of an Eligible Hotel (i) to pay for Eligible Costs, or (ii) to reimburse a lender (as described in Section 3.48.090) who has advanced to such Owner funds which were used to pay Eligible Costs.

3.48.090 Designation of Recipient of Incentive Payments.

An Owner may use the projected Maximum Amount as collateral for a loan, the funds from which are used to pay Eligible Costs. If the Owner elects to obtain such a loan, then the Owner may designate in writing the party or parties who will receive the entire TOT rebate up to the Maximum Amount. Once such designation is made, the designee may only be changed by the original designating party or by the designated party, and not by the City nor by any subsequent Owner of the Eligible Hotel.

3.48.100 General Fund Revenues.

All transient occupancy tax revenues or transient occupancy tax increment remitted to the City by an Owner of an Eligible Hotel that is subject to the Operating Covenants, as provided in this chapter, shall be deemed general fund revenues of the City and shall be deposited in the City's general fund.

3.48.110 Administrative Rules and Regulations.

Consistent with the intent and goals of this chapter, the City Manager or the Director of Finance may adopt administrative rules and regulations for implementation and furtherance of the requirements of this chapter.

3.48.120 Remedies

Failure by an Eligible Hotel which has elected to participate in the incentive program established by this ordinance to comply with the terms of this ordinance will constitute: (i) a violation of the terms of the business license for such Eligible Hotel, and (ii) a violation of the conditions of approval for such Eligible Hotel, and the City may then, after providing notice to the Owner and thirty (30) days within which to cure the violation, in its sole and absolute discretion revoke the business license, conditional use permit(s) and certificate(s) of occupancy for the Eligible Hotel, and/or exercise any and all other remedies available to the City. In the event that distributions are made to equity investors in the Owner of an Eligible Hotel before the Maximum Amount, together with all interest accrued thereon, is repaid in full, then the City may recover such distributions from the party to whom they were distributed. Promptly after applying to participate in the incentive program, the Owner shall inform all such equity investors in writing of this prohibition on distributions and the City's right to recover distributions. In the event that the Maximum Amount, together with all accrued interest, is not repaid as set forth in this Chapter, in addition to any other remedy set forth in this Section 3.48.120, the City may sue to seek a judgment for the amount not paid when due, and if a judgment is obtained, may take all steps permitted under California law to enforce such judgment, including by recording a judgment lien against the assets of Owner, including the Eligible Hotel.

3.48.130 Required Language for Form of Notice of Participation.

Each Notice of Participation in this Hotel Incentive Program shall include the following language (in addition to the provisions described in Section 3.48.030 above):

"This Notice confirms that the real property encumbered by this Notice is a Hotel that has agreed to participate in the Hotel Incentive Ordinance adopted by the City of Rancho Palos Verdes (Chapter 3.48 of the Rancho Palos Verdes Municipal Code). Such ordinance requires that 100% of the net proceeds of any sale or refinancing of such real property must be paid to the City until the Maximum Amount (as defined in Chapter 3.48) together with all interest accrued thereon has been paid in full. Failure to comply with the terms of the ordinance will constitute a violation of the terms of the business license and operating conditions of such hotel and the City may then revoke the business license, conditional use permit(s) and certificate(s) of occupancy for the Eligible Hotel. Foreclosure of any lien senior to this Notice will not extinguish any of the obligations under the Hotel Incentive Ordinance.

PASSED, APPROVED AND ADOPTED, this 7th day of July, 2009.

/s/ Larry Clark
Mayor

ATTEST:

/s/ Carla Morreale
City Clerk

State of California)
County of Los Angeles) ss
City of Rancho Palos Verdes)

I, Carla Morreale, City Clerk of the City of Rancho Palos Verdes, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance No. 490 passed first reading on June 30, 2009, was duly and regularly adopted by the City Council of said City at a regular meeting thereof held on July 7, 2009 and that the same was passed and adopted by the following roll call vote:

Ayes: Stern, Wolowicz, and Clark
Noes: None
Absent: Long (Recused); Gardiner
Abstain: None

City Clerk