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Article 6. - TRANSIENT OCCUPANCY TAX

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Sec. 1-4-119. - Title.

This ordinance shall be known as the Uniform Transient Occupancy Tax Ordinance of the County of Orange.

(Code 1961, § 14.061)

Sec. 1-4-120. - Definitions.

The following terms as used in this article shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth:

Hotel shall mean 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, roominghouse, 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, sanitarium, medical clinic, convalescent home, 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 an 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 institution, and officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by an organization having qualifications for exemption from property taxes under the laws of California; any housing owned by a governmental agency and used to house its employees or for governmental purposes; any camp as defined in the Labor Code or other housing furnished by an employer exclusively for employees; any private dwelling house or other individually owned single-family dwelling unit rented only occasionally and incidentally to the normal occupancy by the owner or his family; provided that the burden of establishing that

the housing or facility is not a hotel as defined herein shall be upon the operator thereof, who shall file with the Tax Collector such information as the Tax Collector may require to establish and maintain such status.

Occupancy shall mean the use or possession, or the right to the use or possession, of any room or rooms, or portion thereof, or other living space, in any hotel for dwelling, lodging or sleeping purposes.

Operator shall mean 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 article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.

Person shall mean any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

Rent shall mean the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

Tax administrator shall mean the Tax Collector of the County of Orange.

Transient shall mean 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 such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this article may be considered.

(Code 1961, § 14.062; Ord. No. 98-15, § 10, 12-8-98)

Sec. 1-4-121. - Tax imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten (10) percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the County which is extinguished only by payment to the operator or to the County. The transient shall pay the tax to the operator of the hotel at the time 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 upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator.

(Code 1961, § 14.063; Ord. No. 3484, § 1, 9-18-84; Ord. No. 3792, § 1, 8-29-90)

Sec. 1-4-122. - Exemptions.

No tax shall be imposed upon:

- (a) Any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose the tax herein provided;
- (b) Any Federal or State of California officer or employee when on official business;
- (c) Any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Tax Administrator.

(Code 1961, § 14.064)

Sec. 1-4-123. - Operator's duties.

Each operator shall collect the tax imposed by this article 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 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.

(Code 1961, § 14.065)

Secs. 1-4-124—1-4-128. - Reserved.

Sec. 1-4-129. - Registration.

Within thirty (30) days after commencing business, each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Administrator 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:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;
- (4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. 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 local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this County. This certificate does not constitute a permit."

(Code 1961, § 14.066; Ord. No. 98-15, § 11, 12-8-98)

Sec. 1-4-130. - 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 Administrator, make a return to the Tax Administrator, on forms provided by him, 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 Administrator. The Tax Administrator may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this article shall be held in trust for the account of the County until payment thereof is made to the Tax Administrator.

(Code 1961, § 14.067)

Sec. 1-4-131. - Penalties and interest.

- (a) *Original delinquency.* Any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax.
- (b) *Continued delinquency.* Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of tax in addition to the amount of the tax and the ten (10) percent penalty first imposed.
- (c) *Fraud.* If the Tax Administrator determines that the nonpayment of any remittance due under this article is due to fraud, a penalty of twenty-five (25) percent 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 penalty imposed, any operator who fails to remit any tax imposed by this article shall pay interest at the rate of one and one-half (1½) percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (e) *Penalties merged with tax.* Every penalty imposed and such interest as accrued under the provisions of this section shall become a part of the tax herein required to be paid.

(Code 1961, § 14.068; Ord. No. 3792, § 2, 8-29-90)

Sec. 1-4-132. - Failure to collect and report tax, determination of tax by Tax Administrator.

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this article, any report and remittance of said tax or any portion thereof required by this article, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this article. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five (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 Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in section 1-4-133.

(Code 1961, § 14.069)

Sec. 1-4-133. - Appeal.

Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the County Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The Board of Supervisors shall fix a time and place for hearing such appeal, and the County Clerk shall give notice in writing to such operator at his last known place of address. The findings of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

(Code 1961, § 14.0610)

Secs. 1-4-134—1-4-138. - Reserved.**Sec. 1-4-139. - Records.**

It shall be the duty of every operator liable for the collection and payment to the County of any tax imposed by this article to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the County, which records the Tax Administrator shall have the right to inspect at all reasonable times.

(Code 1961, § 14.0611)

Sec. 1-4-140. - Refunds.

- (a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the County under this article, it may be refunded as provided in subsections (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.
- (b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator 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 transient or credited to rent subsequently payable by the transient to the operator.

- (c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the County by filing a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the transient directly to the Tax Administrator, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient has been unable to obtain a refund from the operator who collected the tax.
- (d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

(Code 1961, § 14.0612)

Sec. 1-4-141. - Actions to collect.

Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owed by the transient to the County. Any such tax collected by an operator which has not been paid to the County shall be deemed a debt owed by the operator to the County. Any person owing money to the County under the provisions of this article shall be liable to an action brought in the name of the County of Orange for the recovery of such amount.

(Code 1961, § 14.0613)

Sec. 1-4-142. - Violations: Misdemeanor.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the County Jail for a period of not more than six (6) months or by both such fine and imprisonment.

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 or refuses to furnish a supplemental return or other data required by the Tax Administrator or who renders a false or fraudulent return or claim, is guilty of a misdemeanor and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article to be made, is guilty of a misdemeanor and is punishable as aforesaid.

(Code 1961, § 14.0614; Ord. No. 3792, § 3, 8-29-90)

Secs. 1-4-143—1-4-152. - Reserved.