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TRANSIENT OCCUPANCY TAX ORDINANCE

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CHAPTER 2
SAN DIEGO COUNTY
TRANSIENT OCCUPANCY TAX
ORDINANCE*

***Note**--Added by Ord. No. 2708 (N.S.), effective 10-1-64.

SEC. 22.201. TITLE.

This chapter shall be known as the Transient Occupancy Tax Ordinance of the County of San Diego. **(Amended by Ord. No. 6145 (N.S.), effective 9-10-81; amended by Ord. No. 9889 (N.S.), effective 10-26-07)**

SEC. 22.202. DEFINITIONS.

The following definitions shall apply to this chapter:

(a) "Hotel" means any structure, or any portion of any structure, which is occupied, intended or designed for occupancy by transients for lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, mobilehome, trailer or other lodging.

(b) "Occupancy" means the use or possession, or the right to use or possess a room, any portion of a room or any other living space in a hotel for lodging or sleeping purposes.

(c) "Transient" means a person who exercises occupancy or is entitled to occupancy, of a hotel, pursuant to a concession, permit, right of access, license or other agreement for a period of 30 consecutive days or less, counting portions of days as full days.

(d) "Rent" means the monetary value of the consideration charged, whether or not received, for the occupancy of living space in a hotel, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature, without any deduction.

(e) "Operator" means the person who is the proprietor of the hotel, whether as an owner, lessee, sublessee, mortgagee in possession, licensee, or in any other capacity. Where an operator engages a managing agent, who is a person, 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 the agent's principal. Compliance with this chapter by either the principal or by the managing agent shall, however, be considered to be compliance by both.

(f) "Tax Collector" means the Tax Collector of the County of San Diego.

(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

Cross reference(s)--Definitions, § 12.101 et seq.

SEC. 22.203. TAX IMPOSED.

For the privilege of providing lodging in any hotel located in the unincorporated area of the County, an operator is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator. The tax constitutes a debt owed by the operator to the County which is extinguished only by payment to the County. Payment of the tax shall be as provided in section 22.207.

(Amended by Ord. No. 3170 (N.S.), effective 4-1-68; amended by Ord. No. 4119 (N.S.), operative 7-1-73; amended by Ord. No. 6916 (N.S.), effective 3-1-85; amended by Ord. No. 7428 (N.S.), effective 2-4-88; amended by Ord. No. 7778

(N.S.), effective 8-23-90; amended by Ord. No. 9730 (N.S.), effective 8-2-05; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.204. EXEMPTIONS.

No tax shall be due for hotel occupancy:

(a) By any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose the tax in this chapter;

(b) By any federal or State of California officer or employee on official business;

(c) By any foreign government officer or employee exempt under federal law or international treaty;

(d) Where the rent is at the rate of four dollars per day or less;

(e) By any person who receives a free or complimentary room where the only consideration the operator receives is publicity value for the hotel.

(Amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 4120 (N.S.), effective 7-26-73; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.205. OPERATOR'S DUTIES.

(a) An operator shall collect the tax imposed by this chapter in the same manner and at the same time as the operator collects rent from a transient.

(b) The operator shall hold all taxes it collects under this chapter in trust for the County until the operator remits the taxes to the Tax Collector.

(c) The operator shall provide a statement to the transient that separates that amount of tax due from the rent due and shall provide the transient with a payment receipt. The operator shall retain a duplicate copy of the payment as required by section 22.210.

(d) It shall be unlawful for an operator to advertise or state in any manner, whether directly or indirectly, that the operator will not charge the tax or any part of it or that the operator will assume, absorb or refund the tax or any part of it.

(Amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.206. REGISTRATION.

(a) Within 30 days after commencing business an operator of a hotel renting occupancy to transients shall register the hotel with the Tax Collector and obtain a transient occupancy registration certificate from the County. The operator shall post the certificate in a conspicuous place on the inside of the hotel. The certificate shall include the following:

(1) The operator's name;

(2) The address of the hotel;

(3) The date the certificate was issued;

(4) A statement that provides, "This Transient Occupancy Registration Certificate signifies that the person named on the face of the certificate has registered with the County Tax Collector and is authorized to collect the San Diego County Transient Occupancy Tax. This certificate is not a permit to operate and does not excuse the person named from the requirement to obtain any other permits required by State or County laws."

(b) It shall be unlawful for any person to operate a hotel after being in business for more than 30 days, without the registration certificate required by this section.

(Amended by Ord. No. 6145 (N.S.), effective 9-10-81; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.207. REPORTING AND REMITTING.

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 the Tax Collector may establish, an operator shall file a return with the Tax Collector and remit the full amount of transient occupancy tax the operator was responsible to collect during the reporting period. The return shall be on a form provided by the Tax Collector. If an operator ceases operating a hotel for any reason the return and taxes are due within 30 days after the operator ceased doing business. Returns or taxes not received by the Tax Collector or sent by first class mail or Express Mail, with sufficient prepaid postage and postmarked by the due date are delinquent. If the Tax Collector determines that an operator has not filed a complete return by the due date, the Tax Collector may consider the return delinquent.
(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.208. PENALTIES AND INTEREST.

(a) An operator who fails to remit any tax imposed by this chapter by the due date shall be liable for a five percent penalty of the tax due, in addition to the amount of the tax.

(b) An operator who is delinquent under subsection (a) above, who fails to remit a delinquent payment on or before the first day of the next calendar month following the date the remittance first became delinquent shall be liable for a second delinquency penalty of an additional five percent of the unpaid tax in addition to the amount of the tax and the original five percent penalty imposed under subsection (a).

(c) If the Tax Collector determines that an operator failed to remit any tax due under this chapter due to fraud, the Tax Collector shall assess a 25% penalty of the amount of the tax in addition to the penalties assessed in subsections (a) and (b) above.

(d) In addition to the penalties imposed under this section, an operator who fails to remit any tax imposed by this chapter shall also pay interest at the rate of one percent per month or portion of a month on the unpaid tax calculated from the date the tax first became delinquent.

(e) Penalties imposed and the interest on unpaid taxes and penalties shall become a part of the tax due under this chapter.

(f) If the Tax Collector determines from an audit that an operator has not paid the full amount of taxes due the Tax Collector shall notify the operator of the amount of the taxes the operator owes, any applicable delinquency penalties and interest. If the operator fails or refuses to pay the deficient taxes, applicable penalties and interest within 14 days from the date of the Tax Collector's notice, the penalties prescribed in subsection (b) above shall apply, using the 15th day after the date of the Tax Collector's notice as the date when the second delinquency penalty shall be imposed, unless the operator requests a hearing before the Tax Collector pursuant to section 22.209(c). The Tax Collector's notice under this section shall comply with section 22.209(c). If the operator requests a hearing under this subsection, section 22.209(d) and (e) shall also apply.
(Amended by Ord. No. 2801 (N.S.), effective 4-5-65; amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.209. FAILURE TO COLLECT AND REPORT TAX. DETERMINATION OF TAX BY TAX COLLECTOR.

(a) If an operator fails to collect the tax imposed under this chapter, fails to file a return, fails to pay all taxes when due or fails to maintain adequate records to reflect the taxes due the Tax Collector shall have the right to conduct an investigation to determine the taxes owed by the operator.

(b) If the Tax Collector reasonably believes that an operator has failed to fulfill any of the operator's obligations under this chapter, the Tax Collector shall have the right to inspect the operator's records. It is a violation of this chapter for an operator to refuse to make records available when requested by the Tax Collector.

(c) If the Tax Collector determines pursuant to this section that an operator has not paid the County all taxes the operator owes, the Tax Collector shall serve the operator with a notice for the taxes, penalties and interest the Tax Collector proposes to assess against the operator. The notice shall state that the operator has 21 days from the date of the notice to make a written request for a hearing before the Tax Collector. The notice shall also state that if the operator fails to timely request a hearing within the time allowed, the Tax Collector's determination of taxes, interest and penalties is final.

(d) If the operator makes a timely request for a hearing to contest the proposed assessment, the Tax Collector shall schedule a hearing and give the operator at least 14 days notice of the hearing. A hearing under this section shall be informal and need not follow any formal rules of evidence. The Tax Collector shall designate a person in the department to conduct the hearing who was not involved in the Tax Collector's determination in subsection (c) above. At the hearing, the operator may present evidence to contest the Tax Collector's determination.

(e) After the hearing the Tax Collector shall make a final determination of the taxes, penalties and interest the operator owes and serve the operator with a notice of the Tax Collector's final determination. The notice shall also state the amount due and that it is payable within 14 days of the notice unless the operator appeals pursuant to section 22.210.

(Amended by Ord. No. 3650 (N.S.), effective 3-11-71; amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.210. APPEAL.

An operator may appeal a Tax Collector's decision only if the operator requested a hearing before the Tax Collector pursuant to section 22.208(f) or 22.209(c). An operator who receives a notice under section 22.209(e) may appeal by filing a notice of appeal with the Clerk of the Board of Supervisors within 14 days from the date of the notice. The Clerk shall schedule a hearing with a County hearing officer appointed pursuant to County Administrative Code sections 650 et seq. and shall assign the matter by selecting a hearing officer on a rotating basis from the list of appointed hearing officers. The operator shall receive at least 10 days notice of the hearing. The hearing officer shall render a written decision that shall be served on the operator. If the hearing officer finds the operator owes any taxes, penalties or interest, any amount due shall be due and payable in full within 10 days from the date the hearing officer's decision was served.

(Amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.211. RECORDS.

An operator liable for the collection and payment of the tax imposed by this chapter shall retain the following records for three years: rent receipts, duplicate copies of payment receipts given to transients, documents verifying a transient's exemption under section 22.204, occupancy records, room logs, gross receipts records, records used to calculate the amount of occupancy tax due and any other business records that show when rooms in the hotel were occupied. The Tax Collector shall have to the right to inspect the records during normal business hours.

(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3650 (N.S.), effective 3-11-71; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.212. REFUNDS AND CREDITS.

(a) Whenever any tax, penalty or interest has been overpaid, paid in error or erroneously collected or received by the County under this chapter a person who paid the tax, penalty or interest may file a written claim with the Tax Collector within three years of the date of payment, as provided in subsections (b) or (c) of this section. The claim shall be filed on a form furnished by the Tax Collector.

(b) An operator may claim a refund, or obtain a credit against unpaid taxes, for the amount the operator paid that the Tax Collector determines was not due the County. An operator may not claim a refund or a credit under this section unless the operator has made a full refund or given a credit to any transient from whom the operator collected the occupancy tax for which the operator requests the refund or credit.

(c) A person other than an operator who overpaid an occupancy tax, paid an occupancy tax in error or from whom an occupancy tax was erroneously collected or received by the County may file a claim as provided in subsection (a) above. A person may only file a claim under this subsection, however, if the person paid the tax (1) directly to the Tax Collector or (2) directly to an operator and establishes to the Tax Collector's satisfaction that the person claiming the refund has been unable to obtain a refund from the operator who collected the tax.

(d) No person shall be entitled to a refund or credit under this section unless the person can support the claim.

(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.213. ACTIONS TO COLLECT.

(a) Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the County. Any tax due by an operator under this chapter, which the operator has not paid to the County, shall be deemed a debt the operator owes to the County. The County may bring a civil action against a person who fails to pay the County an amount due under this chapter.

(b) If any person fails to pay any taxes, penalty or interest owed to the County under this chapter when due, the Tax Collector may within three years from date payment was first due record a certificate of taxes, penalty and interest due with the San Diego County Recorder. The certificate shall state the amount of tax, penalties and interest due, the person's name and last known address and that the Tax Collector has determined the amount due pursuant to this chapter. From the time the certificate is recorded the amount due at the time the certificate is recorded plus any accrued interest constitutes a lien upon all real and personal property located in San Diego County owned by the person named in the certificate. The lien also attaches to any property the person acquires after the certificate is recorded until the lien expires. The lien has the force, effect and priority of a judgment lien and shall continue for 10 years from the time the certificate is filed unless the lien is released or discharged.

(c) At any time within the three years after the Tax Collector has recorded a certificate under subsection (b) the Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this chapter. The warrant shall be directed to any sheriff and shall have the same effect as a writ of execution. The warrant shall 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. The Tax Collector may pay or advance to the sheriff the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution.

(d) In lieu of issuing a warrant under subsection (c), at any time within the three years after the Tax Collector has made a determination of taxes, penalties and interest due under section 22.208 or 22.209 or recorded a certificate under this section the Tax Collector may collect the amount owed the County by seizing or causing to be seized

any real or personal property owned by the person liable and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any interest due on the unpaid amount and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.
(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 6145 (N.S.), effective 9-10-81; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.214. DUTY OF PURCHASER.

If an operator who is liable for taxes, penalties or interest under this chapter sells or otherwise disposes of its interest in a hotel, the purchaser shall notify the Tax Collector of the date of sale at least 30 days before the sale or, if the agreement to sell the hotel provides for a sale date sooner than 30 days, the purchaser shall notify the Tax Collector immediately after entering the sales agreement. The purchaser shall withhold a portion of the purchase price at the time of sale that is sufficient to pay the Tax Collector the full amount the operator owes unless the operator produces a receipt from the Tax Collector showing the tax, penalty or interest has been paid in full or a certificate from the Tax Collector stating that no amount is due.
(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 6145 (N.S.), effective 9-10-81; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.215. LIABILITY OF PURCHASER FOR FAILURE TO WITHHOLD.

If the purchaser of a hotel fails to withhold from the purchase price an amount sufficient to pay an operator's liability for unpaid taxes, penalties or interest, the purchaser shall become jointly and severally liable for the amount owed the County by an operator. Within 30 days after the Tax Collector receives a written request from the purchaser for a certificate of registration the Tax Collector shall either issue the certificate or send notice to the purchaser of the amount that the purchaser shall pay in order for the Tax Collector to issue the certificate.
(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 6145 (N.S.), effective 9-10-81; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 22.216. VIOLATIONS.

It shall be unlawful for any person to:

(a) Fail or refuse to file any return due under this chapter; or
(b) Fail or refuse to collect any tax due under this chapter; or
(c) Fail or refuse to pay any tax when due under this chapter; or
(d) File a false or fraudulent return due under this chapter; or
(e) Fail or refuse to comply with any other requirement of this chapter.

(Amended by Ord. No. 5200 (N.S.), effective 8-10-78; amended by Ord. No. 9889 (N.S.), effective 10-26-07)