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**3.20.010 Definitions.**

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As used in this chapter:

“Hotel” means:

1. Any structure, or any portion of any structure, which is occupied, 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; and
2. Any portion of any real property which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes and includes any recreational vehicle, trailer, trailer coach, house car or motor home, and includes campgrounds and recreational vehicle parks.

“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.

“Operator” means the person who is the 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 or her 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 or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be in compliance by both.

“Person” means 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” 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 or nature, without any deduction therefrom whatsoever.

“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 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 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. (Rev. Code 1954 § 4600; O1645; O2773; O4007; O4272)

**3.20.020 Tax imposed.**

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For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of 12% of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the 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 upon the transient ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the City Collector may require that such tax shall be

paid directly to the City Collector. (Rev. Code 1954 § 4601; O645; O1834; O2276; O2773; O3034; O93-024)

### **3.20.030 Exemptions.**

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No tax hereunder shall be imposed upon:

- A. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided, and only when in the performance of official duties thereof.
- B. 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 City Collector. It is incumbent for the transient to provide the necessary proof of exemption. Exemption requires payment of rents to be made directly by other than the occupant of the hotel. Governments and governmental agencies are generally not exempt from taxation. A copy of eligible exemption claims shall be submitted monthly at the same time as the required tax return reporting. (Rev. Code 1954 § 4602; O1645; O4272)

### **3.20.040 Operator's duties.**

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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. (Rev. Code 1954 § 4603; O1645)

### **3.20.050 Registration of hotels.**

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Within 30 days after commencing business, each operator of any hotel renting occupancy to transients shall register said hotel with the City Collector and obtain from him or her 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 Municipal Code of the City pertaining to the uniform transient occupancy tax by registering with the City Collector for the purpose of collecting from transients the transient occupancy tax and remitting said tax to the City Collector. 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 City. This certificate does not constitute a permit." (Rev. Code 1954 § 4604; O1645; O2773)

### **3.20.060 Reporting and remitting of tax.**

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On the 10th day of each calendar month, each operator shall make a return to the city declaring the total rents charged and received and the amount of tax collected for transient occupancies for the month next preceding the previous month. At the time the return is filed, the full amount of the tax collected shall be remitted to the city.

The City Collector may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to insure collection of the tax and he or she 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 city until payment thereof is made to the City Collector. (Rev. Code 1954 § 4605; O1645; O2773)

### **3.20.070 Penalties and interest.**

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- A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of 10% 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 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10% of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed.
- C. Fraud. If the City Collector determines that the nonpayment of remittance due under this chapter is due to fraud, a penalty of 25% of the amount of 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 this chapter shall pay interest at the rate of one 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, Interest Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become part of the tax herein required to be paid. (Rev. Code 1954 § 4606; O1645; O2773)

### **3.20.080 Failure to collect and report tax—Determination of tax by City Collector.**

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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, the City Collector shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the City Collector shall procure such facts and information as he or she 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, he or she 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 City Collector 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 or her last known place of address. Such operator may within 10 days after the serving or mailing of such notice make application in writing to the City Collector 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 City Collector shall become final and conclusive and immediately due and payable. If such application is made, the City Collector shall give not less than five days written notice in the manner prescribed herein to the operator to show cause in 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 City Collector 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 15 days unless an appeal is taken as provided in Section 3.20.090. (Rev. Code 1954 § 4607; O1645)

### **3.20.090 Appeals.**

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Any operator aggrieved by any decision of the City Collector with respect to the amount of such tax, interest and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within 15 days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing such appeal and the City Clerk shall give notice in writing to such operator at his or her last known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Rev. Code 1954 § 4608; O1645)

### **3.20.100 Records required to be kept—Right to inspect.**

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It shall be the duty of every operator liable for the collection and payment to the city 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 or she may have been liable for the collection of and payment to the city, which records the City Collector shall have the right to inspect at all reasonable times. (Rev. Code 1954 § 4609; O1645)

### **3.20.110 Refunds.**

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- 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 city under this chapter, 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 City Collector within three years of the date of payment. The claims shall be on forms furnished by the City Collector.
- 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 City Collector that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor 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 city 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 City Collector, or when the transient having paid the tax to the operator, establishes to the satisfaction of the City Collector 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 or her right thereto by written records showing entitlement thereto. (Rev. Code 1954 § 4610; O1645)

### **3.20.120 Duty of successor of operator.**

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If an operator who is liable for any tax or penalties under this chapter sells or otherwise disposes of his or her business, his or her successor shall notify the City Collector of the date of sale at least 30 days before the date of sale, or if the decision to sell was made less than 30 days prior to the actual sale, then immediately and shall withhold a sufficient portion of the purchase price to equal the amount of such tax or penalty until the selling operator produces a receipt from the Collector showing that the tax or penalty has been paid or a tax clearance certificate from the City Collector stating that no tax or penalty is due. If the seller does not present a receipt or tax clearance certificate within 30 days after such successor commences to conduct business, the successor shall deposit the withheld amount with the City Collector pending settlement of the account of the seller. (Rev. Code 1954 § 4611; O1645; O93-031)

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**3.20.130 Liability of successor for failure to withhold—Notice of amount due.**

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If the successor to the business fails to withhold a portion of the purchase price as required, it shall be liable to the city for the payment of the amount required to be withheld. Within 30 days after receiving a written request from the successor for a tax clearance certificate stating that no tax or penalty is due, the City Collector shall either issue the certificate or mail notice to the successor at its address as it appears on the records of the City Collector of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate. (O93-031)

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**3.20.140 Actions by city to collect.**

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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 city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Rev. Code 1954 § 4611; O1645; O93-031)

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**3.20.150 Violation—Penalty.**

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Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor.

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 City Collector, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor. 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 chapter to be made, is guilty of a misdemeanor. (Rev. Code 1954 § 4612; O1645; O93-031)

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