

## CHAPTER V. - TRANSIENT OCCUPANCY TAX

## Sec. A30-48. - Short title and adoption authority.

This chapter shall be known as the "Transient Occupancy Tax Ordinance" and is adopted pursuant to the authorization contained in Chapter 1, Part 1.7 of Division 2, of the state Revenue and Taxation Code (Revenue and Taxation Code § 7280 et seq.). If there is any conflict between this chapter and state law, state law shall prevail.

(Ord. No. NS-216.6, § 1, 8-26-86; Ord. No. NS-300.922, § 1, 3-6-18)

## Sec. A30-49. - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section or state law, unless the context or the provision clearly requires otherwise:

- (a) *Director of Finance* shall mean the Director of Finance for the County of Santa Clara or his or her designee.
- (b) *Guest of the owner* shall mean a person who does either of the following:
  - (i) Occupies real property accompanied by the owner of either of the following:
    - (A) A time-share estate in that real property.
    - (B) A camping site in a campground pursuant to a right or license under a membership camping contract.
  - (ii) Exercises that owner's right of occupancy without payment of any compensation to the owner.

Guest of the owner specifically includes a person occupying a time-share unit or a camping site in a campground pursuant to any form of exchange program.

- (c) *Hotel* means a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging. The term "other lodging" includes space at a recreational vehicle park or other recreational vehicle site, but does not include the following:
  - (i) Any facilities operated by a state or local government entity.

- (ii) Any lodging excluded pursuant to subsection (b).
- (d) *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.
- (e) *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 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 principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (f) *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.
- (g) *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. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered.

(Ord. No. NS-216.6, § 1, 8-26-86; Ord. No. NS-216.8, 12-13-05; Ord. No. NS-300.922, § 2, 3-6-18)

Sec. A30-50. - Tax imposed.

For the privilege of occupancy in a hotel in the unincorporated areas of the County, unless the occupancy is for a period of more than 30 days, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator. Said debt 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 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'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 Director of Finance may require that such tax be paid directly to the Director of Finance.

(Ord. No. NS-216.6, § 1, 8-26-86; Ord. No. NS-216.8, 12-13-05; Ord. No. NS-300.922, § 3, 3-6-18.)

Sec. A30-51. - 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 officer or employee of the federal or state government, or any political subdivision thereof, 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.

None of the above exemptions shall be granted except under a claim therefor made at the time rent is collected upon proof of identification, government employment, and under penalty of perjury upon a form prescribed by the Director of Finance.

(Ord. No. NS-216.6, § 1, 8-26-86; Ord. No. NS-300.922, § 4, 3-6-18.)

Sec. A30-52. - Operator's duties.

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 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.

(Ord. No. NS-216.6, § 1, 8-26-86)

Sec. A30-53. - Registration.

Each operator of any hotel in the unincorporated areas of the County renting occupancy to transients shall register the hotel with the Director of Finance and obtain from him or her a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. The 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 Transient Occupancy Tax Ordinance by registering with the Director of Finance for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Director of Finance. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in any unlawful manner, nor to operate a hotel without strictly complying with all applicable laws, including, but not limited to, those requiring a permit from any board, commission, department or office of the County of Santa Clara. This certificate does not constitute a permit."

(Ord. No. NS-216.6, § 1, 8-26-86; Ord. No. NS-300.922, § 5, 3-6-18.)

Sec. A30-54. - 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 Director of Finance, make a return to the Director of Finance, on forms provided by him or her, 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 tax collected shall be remitted to the Director of Finance. The Director of Finance may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to ensure 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 County until payment thereof is made to the Director of Finance.

(Ord. No. NS-216.6, § 1, 8-26-86)

## Sec. A30-55. - Penalties and interest.

- (a) *Original delinquency.* Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax.
- (b) *Continued delinquency.* Any operator who fails to pay 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 ten percent of the amount of the tax in addition to the ten percent penalty first imposed.
- (c) *Fraud.* If the Director of Finance determines that the nonpayment of any remittance under this chapter is due to fraud, a penalty of 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 penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of 1.5 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 accrues under the provisions of this section shall become a part of the tax herein required to be paid.

(Ord. No. NS-216.6, § 1, 8-26-86; Ord. No. NS-300.922, § 6, 3-6-18)

## Sec. A30-56. - Failure to collect and report tax; determination of tax by Department of Finance.

- (a) *Assessment of estimated tax.* If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the Director of Finance 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 Director of Finance procures 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.
- (b)

*Notice of assessment; hearing; determination of tax.* The Director of Finance 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 at his or her last-known address. Such operator may within ten days after the serving or mailing of such notice make application in writing to the Director of Finance for a hearing on the amount assessed. If the application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Director of Finance shall become final and conclusive and immediately due and payable. If such application is made, the Director of Finance shall give not less than five days' written notice in the manner prescribed herein for the operator to appear at a time and place fixed in the notice and show cause as to why the amount specified therein should not be fixed for such tax, interest and penalties. After such hearing, the Director of Finance shall determine the proper tax to be remitted and shall thereafter give written notice to the operator 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 paid in full within ten days after notice of such determination is given to the operator, unless an appeal is taken as provided in Section A30-57.

(Ord. No. NS-216.6, § 1, 8-26-86)

#### Sec. A30-57. - Appeal.

Any operator aggrieved by any decision of the Director of Finance with respect to the amount of any tax, interest or penalties imposed under this chapter may appeal such decision to the Board of Supervisors.

(Ord. No. NS-216.6, § 1, 8-26-86)

#### Sec. A30-58. - Records.

It shall be the duty of every operator liable for the collection and payment to the County 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, which records the Director of Finance shall have the right to inspect at all reasonable times.

(Ord. No. NS-216.6, § 1, 8-26-86)

## Sec. A30-59. - 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 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 Director of Finance within three years of the date of payment. The claim shall be on forms furnished by the Director of Finance.
- (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 to the satisfaction of the Director of Finance that the person from whom the tax has been collected was not a transient; however, neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the person who paid the tax or credited to rent subsequently payable by such person 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 by subsection (a) of this section, but only when the tax was paid by the transient directly to the Director of Finance, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Director of Finance 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 to such refund.

(Ord. No. NS-216.6, § 1, 8-26-86; Ord. No. NS-300.922, § 7, 3-6-18)

## Sec. A30-60. - Actions to collect.

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 such tax collected by an operator which has not been remitted 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 chapter shall be liable to an action brought in the name of the County for the recovery of such amount.

(Ord. No. NS-216.6, § 1, 8-26-86)

Sec. A30-61. - Proceeds to general fund.

The proceeds derived from the tax imposed pursuant to this chapter shall be deposited in the County's general fund. Such proceeds, to the extent of the first \$500,000.00, to which there shall be added annually an adjustment for changes in the cost of living and population since 1989, shall be used to promote art and culture in Santa Clara County. The balance of the proceeds of the tax shall be used for human service needs in Santa Clara County. The annual adjustment for changes in the cost of living and population shall be calculated in the same manner as the annual adjustment to the County's Gann Limit pursuant to article XIII B of the California Constitution.

(Ord. No. NS-216.6, § 1, 8-26-86; Ord. No. NS-300.922, § 8, 3-6-18)

Sec. A30-62. - Violations of chapter; penalties.

Any operator or other person who violates any of the provisions of this chapter or 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 Director of Finance, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor.

(Ord. No. NS-216.6, § 1, 8-26-86)

**Cross reference**— Penalty for misdemeanor, § A1-28.

Secs. A30-63—A30-75. - Reserved.