

Rancho Mirage Municipal Code

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Title 3 REVENUE AND FINANCE

Chapter 3.24 TRANSIENT OCCUPANCY TAX

3.24.010 Short title.

The short title of the ordinance codified in this chapter shall be the Uniform Transient Occupancy Tax Ordinance. (Ord. 12 § 1, 1973)

3.24.020 Definitions.

Except where the context requires, the definitions given in this section shall govern the construction of this chapter.

A. **Hotel.** Hotel means any structure, or any portion of any structure, which is occupied or intended or designed for use or occupancy by transients, including, but not limited to, dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse, apartment house, condominium, cooperative apartment, duplex and any other type of private residence that is used for rental purposes, dormitory, public or private club, mobilehome or house trailer located outside a mobilehome park for occupancy on a transient basis unless such occupancy is for any period of more than twenty-seven days, or other similar structure or portion thereof subject to the business license provided in Title 5. This section does not authorize the city to levy a tax on the privilege of renting any mobilehome when the tenant is an employee of the owner or operator of the mobilehome.

B. **Occupancy.** Occupancy means the use or possession, or the right to the use or possession of any room, rooms or any portion thereof offered for rent for dwelling, lodging, or sleeping purposes regardless of the purpose for which such rooms are rented.

C. **Operator.** Operator means 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, the managing agent shall also be deemed an operator for the purpose of this chapter, and shall have jointly and severally 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.

D. **Person.** 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.

E. **Rent.** Rent means the consideration charged or chargeable for the occupancy of space valued in money whether received in money, goods, labor or otherwise, including the full value of receipts, cash, credits, property or service of any nature whatsoever. It is not the intent of this section to make the operator liable for the tax on uncollected rent. However, uncollected rent must be reported.

F. **Tax administrator.** Tax administrator means director of finance.

G. **Transient.** 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 twenty-seven 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 twenty-seven 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. 253 § 1, 1982; Ord. 100 §§ 58, 59, 1976; Ord. 12 § 2, 1973)

3.24.030 Imposition—Rate—Collection.

For the privilege of occupancy in any hotel, each transient is subject to, and shall pay a tax in the amount of ten percent of the rent charged by the operator. The 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 when the transient ceases 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. Tax on occupancies furnished transients which is chargeable but not charged, in exchange for services of any kind, is due and payable to the city by the operator, the amount of tax being determined on the basis of ten percent of the current rental value of the accommodations furnished. (Ord. 530 § 1, 1992; Ord. 410 § 1, 1988; Ord. 153 § 1, 1978; Ord. 12 § 3, 1973)

3.24.032 Rate—Amendment.

The proceeds of the one percent tax increase approved by Ordinance No. 819 approved by the city's voters on March 4, 2003, will be deposited into a special fund established to fund activities to promote the tourism and convention industry, including the payment of the city's obligations to support the Palm Springs Desert Resort Visitors and Convention Authority as a member of that joint powers authority. (Ord. 819 § 4, 2003)

3.24.040 Exemptions.

All employees or officials of any local, state or federal governmental agency shall be exempt from payment of the tax provided by this chapter if such employee or official is on official governmental business. All such persons, including any person determined by the city attorney based on a federal or state statute or case opinion to be exempt from payment of the tax provided by this chapter, shall be required by the operator to complete a transient occupancy tax exemption form, as provided by the city, and the operator shall submit all completed tax exemption forms to the tax administrator pursuant to the tax payment schedule set forth in Section 3.24.070. (Ord. 954 § 1, 2007; Ord. 412 § 1, 1988; Ord. 12 § 4, 1973)

3.24.050 Operator—Collection duty.

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 the tax shall be separately stated from the amount of the rent charged. 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 provided in this chapter. (Ord. 12 § 5, 1973)

3.24.060 Operator—Registration.

A. Every person desiring to engage in or conduct business as operator of a hotel renting to transients within the city shall file with the tax administrator an application for a transient occupancy registration permit for each place of business. Every application for such a permit shall be made upon a form prescribed by the tax administrator and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place of business and such other information as the tax administrator may require. The application shall be signed by the owner if a natural person, by a member or partner, if an association or

partnership, by an executive officer or some person specifically authorized by the corporation to sign the application in the case of a corporation. The transient occupancy registration permit must be in effect at all times while the business is in operation and shall be at all times posted in a conspicuous place on the premises. The permit shall, among other things, state the following:

1. Name of hotel;
2. Name of operator;
3. Hotel address;
4. The date upon which the permit was issued;

5. "This transient occupancy registration permit signifies that the person named on the face hereof has fulfilled the requirements of the uniform transient occupancy tax chapter by registering with the tax administrator for the purpose of collecting from transients the transient occupancy tax and remitting same tax to the tax administrator. This permit does not authorize any person to conduct any unlawful business in an unlawful manner, nor 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 this city. This permit does not apply in lieu of such other permits which are otherwise required."

B. The city council may, by resolution, establish a registration fee payable by all operators for each permit issued under this section. (Ord. 993 § 1, 2010; Ord. 12 § 6, 1973)

3.24.070 Operator—Payment duties.

A. The tax imposed under Section 3.24.030 is due and payable to the tax administrator on the first day of the month following the close of the preceding month and becomes delinquent on the first day of the second succeeding calendar month. If the operator elects to do so, instead of reporting on a calendar-month basis, he may use thirteen twenty-eight-day reporting periods for each year. In that event, the tax becomes delinquent on the twenty-eighth day of the next succeeding reporting period.

B. Return of Tax. Each operator shall, on or before the thirtieth day following the close of each reporting period, make a return to the tax administrator on forms provided by him or her of the total rents charged or chargeable as provided in Section 3.24.030, whether or not received, including any rents charged for occupancy exempted under the provisions of Sections 3.24.020(D) and 3.24.040 and the amount of the tax collected for transient occupancy. Amounts claimed on the return as exempt from the tax shall be fully itemized and explained on the return or supporting schedule. At the time the return is filed, the full amount of the tax due shall be remitted to the tax administrator. The tax administrator may establish other reporting periods for any operator and may require a cash deposit or bond for any permit holders if he or she deems it necessary in order to insure collections of the tax, and he or she may require further information in the return. All taxes collected by operators pursuant to this chapter shall be held in trust for the city. The operator shall establish a separate checking or savings account for the deposit of those taxes collected for the city until payment thereof is made to the tax administrator.

C. Cessation of Business. Each operator shall notify the tax administrator ten days prior to the sale or cessation of business for any reason, and returns and payments are due immediately upon the sale or cessation of business. (Ord. 302 § 1, 1984; Ord. 174 § 1, 1979; Ord. 41 § 1, 1974; Ord. 12 § 7, 1973)

3.24.080 Delinquency and fraud—Penalties.

A. Any operator who fails to pay any tax to the city or any amount of tax required to be collected and paid to the city, including amounts based on determinations made by the tax administrator under Section 3.24.090 of this chapter, within the time required, shall pay a penalty of fifteen percent of the tax plus interest at the rate of

one and one-half percent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected becomes due and payable to the city until the date of payment. Any operator who fails to remit any penalty imposed under this section within ten days after receipt of notice thereof shall pay interest thereon at the rate of one and one-half percent per month, or fraction thereof, from the date on which the penalty becomes due and payable to the city until the date of payment.

B. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to misrepresentation or fraud, a penalty of one hundred percent of this amount of the tax shall be added thereto in addition to the penalties stated in subsection A of this section. (Ord. 402 § 1, 1988; Ord. 12 § 8, 1973)

3.24.090 Failure to collect, report and maintain separate checking/savings account—Penalty assessed—Determination by tax administrator—Notice to operator.

A. If any operator fails or refuses to collect the tax and maintain a separate checking or savings account of the tax money held in trust for the city and to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof required by this chapter, the tax administrator 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. Failure to maintain a separate savings or checking account for the tax due in trust for the city shall result in an assessment of five hundred dollars in penalties. As soon as the tax administrator 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 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 by this chapter. In case such determination is made, the tax administrator shall give a notice of the amount 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 address.

B. Such operator may within ten 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 days'

written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in such notice why the 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 the determination and the amount of such tax, interest and penalties. The amount determined to be so due shall be payable after fifteen days unless an appeal is taken as provided in Section 3.24.100. (Ord. 302 § 2, 1984; Ord. 12 § 9, 1973)

3.24.100 Determination by tax administrator—Appeal.

A. Any operator aggrieved by any decision of the tax administrator with respect to the amount of any tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen days of the serving of the assessment or determination of tax and penalties, if any due. The city council shall fix a time and place for hearing the appeal, and the city clerk shall give notice in writing to the operator at his or her last known address. The findings of the city 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.

B. No payment is required as a condition of appealing any decision to the city council as provided in

subsection A. However, any challenge to the city council's final determination brought before any court of competent jurisdiction shall be subject to the payment requirements found in Chapter 3.60. (Ord. 995 § 2, 2010; Ord. 12 § 10, 1973)

3.24.110 Operator—Recordkeeping duties.

It is 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, in the city, for a period of three years, records in such form as the tax administrator may require to determine the amount of such tax. The tax administrator shall have the right to inspect such records at all reasonable times and may subpoena the records of any operator who refuses to make them available for examination. (Ord. 12 § 11, 1973)

3.24.120 Refund—Procedure—Conditions.

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 tax administrator within three years of the date of payment. The claims 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 credit 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 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 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. (Ord. 12 § 12, 1973)

3.24.130 Remedy—Applicability of Sections 3.24.140 through 3.24.210.

The remedies set forth in Sections 3.24.140 through 3.24.210 shall be applicable to preexisting tax debts provided for in this chapter. (Ord. 12 § 13 (part), 1973)

3.24.140 Remedy—Revocation of permit.

A. Whenever any operator fails to comply with any provision of this chapter relating to occupancy tax or any rule or regulation of the tax administrator relating to occupancy tax prescribed and adopted under this chapter, the tax administrator upon hearing, after giving the operator ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may suspend or revoke any one or more of the permits held by the operator.

B. The tax administrator shall give to the operator written notice of the suspension or revocation of any of his permits. The notice herein required may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

C. The tax administrator shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the occupancy tax and regulations of the tax administrator. During the period of time while such a permit is suspended, revoked or otherwise not validly in effect, the tax administrator may require that the operation be closed. (Ord. 12 § 13(A), 1973)

3.24.150 Remedy—Certificate of record—Lien.

A. If any amount required to be paid to the city under this chapter is not paid when due, the tax administrator may, within three years after the amount is due, file for record in the office of the Riverside County recorder, a certificate specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the tax administrator of the operator liable for the same and the fact that the tax administrator has complied with all provisions of this chapter in the determination of the amount required to be paid.

B. From the time of the filing for record, the amount required to be paid together with penalties and interest constitutes a lien upon all real property in the county owned by the operator or, afterwards and before the lien expires, acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for ten years from the time of filing of the certificate unless sooner released or otherwise discharged. (Ord. 12 § 13 (B), 1973)

3.24.160 Remedy—Priorities of satisfaction.

The amounts required to be paid by an operator under this chapter with penalties and interest shall be satisfied first in any of the following cases:

- A. Whenever the person is insolvent;
- B. Whenever the person makes a voluntary assignment of his assets;
- C. Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased;
- D. Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this chapter are levied upon by process of law. This chapter does not give the city a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

The preference given to the city by this section shall be subordinate to the preference given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure. (Ord. 12 § 13(C), 1973)

3.24.170 Remedy—Warrant for collection.

At any time within three years after any operator is delinquent in the payment of any amount required to be paid in this chapter or within three years after the last recording of a certificate under Section 3.24,140(A), the tax administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the city under this chapter. The warrant shall be directed to any sheriff, marshal or constable 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 administrator may pay or advance to the sheriff, marshal or constable the same fees, commissions and expenses for his services pursuant to a writ of execution. The tax administrator, and not the court, shall approve the fees for publication in a newspaper. (Ord. 12 § 13(D), 1973)

3.24.180 Remedy—Seizure and Sale.

At any time within three years after any operator is delinquent in the payment of any amount, the tax administrator may forthwith collect the amount in the following manner: The tax administrator shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect occupancy taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure. (Ord. 12 § 13(E), 1973)

3.24.190 Successor's liability—Withholding by purchaser required.

If any operator liable for any amount under this chapter sells out his business or quits the business, his successor or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the tax administrator showing that it has been paid or a certificate stating that no amount is due. (Ord. 12 § 13(F), 1973)

3.24.200 Liability of purchaser—Release.

If the purchaser of a hotel fails to withhold purchase price as required, he shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty days after receiving a written request from the purchaser for a certificate, or within sixty days from the date the former owner's records are made available for audit, whichever period expires later, but in any event not later than ninety days after receiving the request, the tax administrator shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the tax administrator of the amount that must be paid as a condition of issuing the certificate. Failure of the tax administrator to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the operator sells his business or at the time that the determination against the operator becomes final, whichever event occurs later. (Ord. 12 § 13(G), 1973)

3.24.210 Tax constitutes debt—Liability— Action by city.

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 the 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. (Ord. 12 § 13 (H), 1973)

3.24.220 Extension of time when—Authority.

The tax administrator, for good cause, may extend for not to exceed one month the time for making any return or paying any amount, required to be paid under this chapter. The extension may be granted at any time, provided a request therefor is filed with the tax administrator within or prior to the period for which the extension may be granted. Any person to whom an extension is granted shall pay, in addition to the tax, interest at the rate of one percent per month or fraction thereof from the date on which the tax would have been due without the extension, until the date of payment. (Ord. 12 § 15, 1973)

3.24.230 Divulging of information prohibited.

It is unlawful for any person having an administrative duty under this chapter to make known in any manner

whatever the business affairs, operations, or information obtained by an investigation of the records of any operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any return, or to knowingly permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the amounts of any unpaid tax or amount of tax, penalties and interest required to be collected. (Ord. 12 § 16, 1973)

3.24.240 Collection—Joint agreement.

The city is empowered to enter into a joint powers agreement with other cities and the county of Riverside, and if such agreement or agreements can be made wherein central collection for the county of Riverside is provided, then it shall be done upon approval by the city council. (Ord. 12 § 18, 1973)

3.24.250 Violation—Penalty.

It is a violation and shall be punishable according to the provisions of Title 14 of this Municipal Code:

A. For any operator or other person to wilfully fail or refuse to register as required in this chapter, or to fail to furnish any returns required to be made, or to fail or refuse to furnish a supplemental return or other data required by the tax administrator, or to render a false or fraudulent return or claim.

B. For any person required to make, render, sign or verify any claim, to do so with intent to defeat or evade the determination of any amount due required to be made by this chapter.

C. For any person who wilfully fails to pay the payments required by this chapter. (Ord. 928 § 2, 2006; Ord. 402 § 2, 1988; Ord. 302 § 3, 1984; Ord. 100 § 31, 1976; Ord. 12 § 14, 1973)