

Chapter 4.12 - TRANSIENT OCCUPANCY TAX

Sections:

4.12.010 - Definitions.

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

"Campground" means an area or a tract of land where one or more spaces are occupied or intended to be occupied by a camping party and which is customarily occupied for temporary purposes using tents, tent trailers, or other such structure for sleeping purposes. Campground does not mean any of the following:

1. Any camp or other housing furnished by an employer exclusively for employees;
2. Any area or tract of land within the curtilage of any private dwelling house rented only occasionally and incidental to the normal occupancy of the dwelling house;
3. Any area or tract of land operated or used exclusively for religious, charitable, or educational purposes by any organization that has qualified for an exemption from property taxes under the laws of the state of California;
4. A campground owned and operated by the state of California.

"Camping party" means a person or group of persons occupying a space at a campground.

"Hotel" means 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, including any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof. A mobile home or house trailer at a fixed location shall not include a mobile home located within a mobile home park, nor a location where the mobile home tenant is an employee of the owner or operator of the property on which the mobile home is located.

"Occupancy" means the use or possession of, or the right to use or possess, any room or rooms or portion thereof in any hotel or dwelling, or space in any campground or recreational vehicle park, for lodging or sleeping purposes.

"Operator" means the person who is proprietor of the hotel, campground, or recreational vehicle park, 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.

"Person" means any individual, camping party, 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.

"Recreational vehicle" means a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational purposes and is either self-propelled, truck-mounted, or permanently towable on the highways without a permit.

"Recreational vehicle park" means an area or tract of land where one or more spaces are occupied or intended to be occupied by owners or users of recreational vehicles and which is customarily occupied for temporary purposes.

Recreational vehicle park does not mean any of the following:

1. A mobile home park as defined in the Health and Safety Code;
2. An area or tract of land used for the placement of manufactured homes as defined in the Health and Safety Code;
3. Any area or tract of land where spaces are furnished by an employer exclusively for employees;
4. Any area or tract of land within the curtilage of any private dwelling house rented only occasionally and incidental to the normal occupancy of the dwelling house;
5. Any area or tract of land used exclusively for religious, charitable, or educational purposes by any organization that has qualified for an exemption from property taxes under the laws of the state of California;

6. A recreational vehicle park owned and operated by the state of California.

"Rent" means the consideration charged, whether or not received, for the occupancy of any room or rooms or portion thereof in any hotel, or space in any campground or recreational vehicle park, 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.

"Space" means an area or tract of land of a campground or recreational vehicle park designated or used for the occupancy of a camping party or recreational vehicle.

"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 thirty consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying any room or rooms or portion thereof in a hotel, or space in any campground or recreational vehicle park, shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any occupant entering into a written month-to-month agreement shall not be considered a transient. A registration form signed by the occupant showing consecutive dates of occupancy will suffice as a written agreement between the operator and the occupant. Any occupant who enters into a written agreement providing for occupancy of thirty or more consecutive days, but terminates his or her occupancy without paying for at least thirty days, shall be considered a transient. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of amendment of this chapter may be considered.

(Ord. 2196 § 1, 1997; Ord. 2019 § 1 (part), 1992; Ord. 1242 § 1 (part), 1976; prior code § 26-20)

4.12.020 - Tax imposed—Payment and collection.

For the privilege of occupancy in any hotel, campground, or recreational vehicle park, 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, campground, or recreational vehicle park, 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 a room or rooms or portion thereof in

any hotel, or space in any campground or recreational vehicle park. If for any reason the tax due is not paid to the operator of the hotel, campground, or recreational vehicle park, the finance officer shall require that the tax be paid directly to the finance officer of the city.

(Ord. 2196 § 2 (part), 1997; Ord. 2019 § 1 (part), 1992: Ord. 1939 § 1, 1990)

4.12.030 - Exemptions.

A. No tax shall be imposed upon the following:

1. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax provided in this chapter;
2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

B. 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 finance officer of the city.

(Ord. 2196 § 2 (part), 1997; prior code § 26-22)

4.12.040 - Operator 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 the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel, campground, or recreational vehicle park 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. 2019 § 1 (part), 1992: prior code § 26-23)

4.12.050 - Registration certificates.

Within thirty days after the effective date of the ordinance codified in this chapter, or within thirty days after commencing business, whichever is later, each operator of any hotel, campground, or recreational vehicle park renting occupancy to transients shall register the hotel,

campground or recreational vehicle park with the finance officer of city and obtain from him 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 name and address of the hotel, campground, or recreational vehicle park;
- 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 Uniform Transient Occupancy Tax Ordinance by registering with the city finance officer for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the finance officer. 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, campground, or recreational vehicle park 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."

(Ord. 2196 § 2 (part), 1997; Ord. 2019 § 1 (part), 1992: prior code § 26-24)

4.12.060 - Reports and remittances.

Each operator shall, within twenty (20) days following the close of each month, make a return to the finance officer, 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 city finance officer. The finance officer may establish a shorter reporting period for any certificate holder if he deems it necessary in order to insure collection of the tax, and he may require further information on 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 finance officer.

(Ord. 2243 § 1, 1999; Ord. 2196 § 2 (part), 1997; prior code § 26-25)

4.12.070 - Delinquency—Interest.

- A. 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 in addition to the amount of the tax.
- B. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a secondary delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.
- C. If the finance officer determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five 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. 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 and one-half 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. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid by this chapter.

(Ord. 2243 § 2, 1999; Ord. 2196 § 2 (part), 1997; prior code § 26-26)

4.12.080 - Determination of delinquency.

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 finance officer 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 finance officer procures such facts and information as he 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 it and to make the report and remittance, he shall proceed to determine and assess against the operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the finance officer 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 business. The operator may, within ten days after the serving or mailing of the notice, make application in writing to the finance officer 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 finance officer shall become final and conclusive and immediately due and payable. If such application is made, the finance officer shall give not less than five days' written notice in the manner prescribed in this section to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for the tax, interest and penalties. At the hearing, the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed. After the hearing the finance officer shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of the determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 4.12.090.

(Ord. 2196 § 2 (part), 1997; prior code § 26-27)

4.12.090 - Appeal and hearing.

Any operator aggrieved by any decision of the finance officer with respect to the amount of the 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 or mailing of the determination of tax 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 last known place of address. The findings of the city council shall be final and conclusive and shall be served upon the appellant in the manner proscribed in Section 4.12.080 for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

(Ord. 2196 § 2 (part), 1997; prior code § 26-28)

4.12.100 - Records required.

It is the duty of every operator viable 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 may have been liable for the collection of and payment of the city, which records the finance officer shall have the right to inspect at all reasonable times.

(Ord. 2196 § 2 (part), 1997; prior code § 26-29)

4.12.110 - 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 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 finance officer within three years of the date of payment. The claim shall be on forms furnished by the finance officer.
- 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 finance officer 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 city by filing a claim in the manner prescribed in subsection A of this section, but only when the tax was paid by the transient directly to the finance officer, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the finance officer 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.

(Ord. 2196 § 2 (part), 1997; prior code § 26-30)

4.12.120 - Collection by court action.

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 recovery of such amount.

(Prior code § 26-31)

4.12.130 - Effective date.

This chapter shall be effective thirty days from and after the date of the adoption of the ordinance codified in this chapter, except that the tax imposed by this chapter shall become operative and be imposed on July 1, 1982, and shall not apply prior to that date, and from the effective date of the remainder of this chapter to July 1, 1982, the tax rate imposed shall be the prior rate of six percent of the rent charged by the operator.

(Ord. 1585 § 1 (part), 1982)

4.12.140 - Proceeds deposited in general fund.

Proceeds from the tax imposed pursuant to the terms of this chapter shall be deposited in the general fund for general city purposes. The city recognizes the importance of promotion of tourism and of support for, including maintenance and enhancement of use of, the Convention Center. In each budget year the city council will give the highest priority to continuing its financial support of the promotion of tourism and conventions. Nothing in this section or this chapter shall be construed as a dedication of funds for any specific purpose.

(Ord. 2156 § 1, 1996; Ord. 1937 § 1, 1990)

4.12.150 - Violation—Penalty.

- A. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars or by imprisonment in the city or county jail for a period of not more than six months or by both such fine and imprisonment.
- B. Any operator or other person who fails or refuses to register as required in this chapter, 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 finance officer, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as set out in subsection A of this section. 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 and is punishable as set out in subsection A of this section.

(Ord. 2196 § 2 (part), 1997; prior code § 26-32)