CHAPTER 3. TRANSIENT OCCUPANCY TAX

Sec. 8-3.01. Purpose.

The intent and purpose of this chapter are to impose a tax upon the privilege of transient occupancy in any hotel or motel within the City and to provide a means for the collection thereof. *(Ord. 775, eff. April 16, 1965)*

Sec. 8-3.02. Definitions.

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

a. ***Person*** shall mean 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.

b. ***Hotel*** shall mean any structure or any portion of any structure which is occupied or intended or designed for occupancy by transients for lodging or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or portion thereof.

c. ***Occupancy*** shall mean the use or possession, or the right to the use or possession of, any room or portion thereof in any hotel for lodging or sleeping purposes.

d. ***Transient*** shall mean 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 (30) consecutive calendar days or less, counting portions of calendar days as full days.

e ***Rent*** shall mean 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, property and services of any kind or nature, without any deduction therefrom whatsoever.

f. ***Operator*** shall mean 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. *(Ord. 775, eff. April 16, 1965; and by §1, Ord. 1923, eff. 5/21/98)*

Sec. 8-3.03. Tax Imposed.

For the privilege of occupancy in any hotel, each transient shall be subject to and shall pay a tax which shall be calculated as a percentage of the rent charged by the operator. From the date of October 23, 1984, to and including October 31, 1984 the tax shall be seven percent of the rent charged by the operator. From the date of November 1, 1984, the tax shall be eight and one-half (8.5) percent of the rent charged by the operator. Such tax shall constitute a debt owed by the transient to the City, which debt shall be 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'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 shall be paid directly to the Director of Finance*. (Ord. 775, eff. April 16, 1965, as amended by §1, Ord. 932, eff. October 1, 1968, and by §1, Ord. 1215, eff. July 3, 1974, §1, Ord. 1358, eff. June 30, 1978 and by §l, Ord. 1607, eff. October 23, 1984)*

Sec. 8-3.04. 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 City to impose the tax provided for in this chapter;

b. Any officer or employee of a foreign government, which officer or employee is exempt by reason of express provision of federal law or international treaty;

c. Any occupancy for which the rent is paid by a charitable organization or a governmental agency for the exclusive purpose of providing shelter for indigent persons. As used in this section, the term "charitable organization" shall mean any organization exempt from taxation under Section 501(C)(3) of the Internal Revenue Code.

No exemption shall be granted except upon a claim therefor made at the time the rent is collected and under penalty of perjury upon a form prescribed by the Director of Finance. *(Ord. 775, eff. April 16, 1965, as amended by §1, Ord. 815, eff. December 31, 1965; and by §1, Ord. 1651, eff. 9/12/86)*

Sec. 8-3.05. Operator's Duties.

Each operator shall collect the tax imposed by the provisions of 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 provided in this chapter. *(Ord. 775, eff. April 16, 1965)*

Sec. 8-3.06. Registration.

On or before May 16, 1965, or within thirty days after commencing business, whichever is later, each operator of any hotel renting an occupancy to transients shall register such hotel with the Director of Finance and obtain from him a "Transient Occupancy Registration Certificate" which shall at all times be posted in a conspicuous place on the premises. Such certificate shall, among other things, set forth the following information:

a. The name of the operator;

b. The address of the hotel;

c. The date upon which the certificate was issued; and

d. A statement as follows: "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Law by registering with the Director of Finance for the purpose of collecting from transients the Transient Occupancy Tax and remitting such tax to the Director of Finance. This certificate shall 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 shall not constitute a permit." *(Ord. 775, eff. April 16, 1965)*

Sec. 8-3.07. 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, 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 Director of Finance. The Director of Finance may establish shorter reporting periods for any certificate holder if he deems it necessary in order to ensure collection of the tax, and he may require further information in the return. Returns and payments shall be due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to the provisions of this chapter shall be held in trust for the account of the City until payment thereof is made to the Director of Finance. *(Ord. 775, eff. April 16, 1965)*

Sec. 8-3.08. Penalties and Interest.

a. ***Original Delinquency.*** Any operator who shall fail to remit any tax imposed by the provisions of this chapter within the time required shall pay a penalty in the amount of ten (10%) percent of the tax in addition to the amount of the tax.

b. ***Continued Delinquency.*** Any operator who shall fail to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty in the amount of ten (10%) percent of the tax in addition to the amount of the tax and the ten (10%) percent penalty first imposed.

c. ***Fraud.*** If the Director of Finance shall determine that the non-payment of any remittance due pursuant to the provisions of this chapter is due to fraud, a penalty in the amount of twenty- five (25%) percent of the amount of the tax shall be added thereto in addition to the penalties set forth in subsections (a) and (b) of this section.

d. ***Interest.*** In addition to the penalties imposed, any operator who shall fail to remit any tax imposed by the provisions of this chapter shall pay interest at the rate of one-half (2) 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 Merged with Tax.*** *Every penalty imposed, and such interest as accrues, pursuant to the provisions of this section shall become a part of the tax required to be paid by the provisions of this chapter.* (Ord. 775, eff. April 16 1965)

Sec. 8-3.09. Failure to Collect and Report Tax: Determination of Tax by Director of Finance.

If any operator shall fail or refuse to collect such tax and to make, within the time provided in this chapter, any report and remittance of such tax, or any portion thereof, required by the provisions of this chapter, the Director of Finance shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due. As soon as the Director of Finance shall procure such facts and information as he is able to obtain upon which to base the assessment of any such tax imposed by the provisions of this chapter and payable by any operator who has

failed or refused to collect the same and to make such report and remittance, the Director of Finance shall proceed to determine and assess against such operator the tax, interest and penalties provided for by the provisions of this chapter. In the event such determination is made, the Director of Finance shall give 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 address. Such operator may, within ten (10) days after the service or mailing of such notice, make an application in writing to the Director of Finance for a hearing on the amount assessed. If an 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 an application is made, the Director of Finance shall give not less than five (5) days` written notice in the manner prescribed in this section 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 Director of Finance 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 such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is filed as provided in §8-3.10 of this chapter. *(Ord. 775, eff. April 16, 1965)*

Sec. 8-3.10. Appeals.

Any operator aggrieved by any decision of the Director of Finance 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 fifteen (15) days after the service or mailing of the determination of the tax due. The Council shall fix a time and place for hearing such appeal, the City Clerk shall give notice in writing to such operator at his 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 in this chapter for the service of a notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. *(Ord. 775, eff. April 16, 1965)*

Sec. 8-3.11. Records.

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by the provisions of this chapter to keep and preserve, for a period of three (3) 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 to the City, which records the Director of Finance shall have the right to inspect at all reasonable times. *(Ord. 775, eff. April 16, 1965)*

Sec. 8-3.12. Refunds.

a. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or erroneously or illegally collected or received by the City, such amount 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 (3) years after the date of payment. The claim shall be on forms furnished by the Director of Finance.

b. Any 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 Director of Finance that the person from whom the tax has been collected was not a transient; provided, however, 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, 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 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 pursuant to the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. *(Ord. 775, eff. April 16, 1965)*

Sec. 8-3.13. Actions to Collect.

Any tax required to be paid by any transient pursuant to 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 pursuant to 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. 775, eff. April 16, 1965)*

Sec. 8-3.14. Violations of Provisions.

Any operator or other person who fails or refuses to register as required, 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 shall be guilty of an infraction. Any person required to make, render, sign or verify any report or claim and who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by the provisions of this chapter to be made shall be guilty of an infraction. *(Ord. 775, eff. April 16, 1965; and by §5, Ord. 1733, eff. 1/4/90)*

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