

Chapter 3.28

TRANSIENT OCCUPANCY TAX

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3.28.010 Title. This chapter shall be known as, and may be cited as, the "uniform occupancy tax ordinance." (Ord. 277 Art. 1 §1, 1965)

3.28.020 Definitions. A. Construction. The present tense includes the past and future tenses. Each gender includes the other two genders. The singular number includes the plural and the plural the singular.

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B. Definitions. Unless the context otherwise requires, the definitions in this section shall govern the construction of this chapter.

1. "Board" means the board of supervisors of the county of Trinity.

2. "County" means the county of Trinity.

3. "Hotel" means any structure in the unincorporated territory of the county, or any portion of any such structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes which has one or more guest rooms, suites, or cottages, and includes 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, other similar structure or portion thereof, or camp sites other than those in the state or federal system not operated by private concessionaires; provided, however, this section does not authorize the county to levy a tax on a mobile home that is located within a mobile home park or on the privilege of renting any mobile home when the tenant is an employee of the owner or operator of the mobile home.

4. "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.

5. "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 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.

6. "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.

7. "Rent" means the consideration charged, whether or not received, for the occupancy or space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property

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and services of any kind or nature, without any deduction therefrom whatsoever.

8. "Section" means a section of this chapter.

9. "Shall" is mandatory and "may" is permissive.

10. "Tax collector" means the tax collector of the county of Trinity.

11. "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 space in a hotel 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. 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. 1147 §1, 1991; Ord. 1139 §1, 1990; Ord. 1089 §1, 1987; Ord. 1081 §1, 1986; Ord. 3.36 §1, 1981; Ord 277-2, 1971; Ord. 277 Art. 1 §§4-21, 1965)

3.28.030 Tax imposed. A. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of five percent of the rent charged by the operator.

B. The funds collected pursuant to this chapter shall be deposited into the general fund of the county. (Ord. 1209 §§1, 2, 1996; Ord. 1146 §§1, 2, 1990; Ord 1144, §1, 1990; Ord. 1139 §2, 1990; Ord 1089 §2, 1987; Ord. 1079 §1, 1986; Ord. 277-1 §1, 1972; Ord. 277 Art. 2 §21, 1965)

3.28.040 Payment. 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 tax collector may require the transient to pay such tax directly to the tax collector. (Ord. 277 Art. 2 §22, 1965)

3.28.050 Exemptions. If a proper claim for exemption is made, a tax shall not 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 provided in this chapter;

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B. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty. (Ord. 277 Art. 2 §23, 1965)

3.28.060 Claim of exemption. The tax collector shall prepare and furnish to the operators of hotels who have registered as required by Sections 3.28.100 through 3.28.120 forms by which transients may claim exemption from the payment of the tax. An exemption shall not be granted to any transient except upon a claim therefor made at the time rent is collected and under penalty of perjury upon the form supplied by the tax collector. (Ord. 277 Art. 2 §24, 1965)

3.28.070 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 the rent charged, and each transient shall receive a receipt for payment from the operator. The operator of a hotel shall not 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. 277 Art. 2 §25, 1965)

3.28.080 Operator's records. Every operator liable for the collection and payment to the county of any tax imposed by this chapter shall keep and preserve, for not less than three years, all records which may be necessary to determine the amount of such tax, for which tax the collection of, and payment of, to the county, he may be or may become liable. The tax collector may inspect these records at any reasonable time. The operator shall make such records available at any reasonable time required by the tax collector. (Ord. 277 Art. 2 §26, 1965)

3.28.100 Registration required--Certificate. 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 renting occupancy to transients shall register the hotel with the tax collector. Upon such registration the tax collector shall issue to such operator a transient occupancy registration certificate. (Ord. 277 Art. 3 §31, 1965)

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3.28.110 Certificate-Contents. The transient occupancy 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 Uniform Transient Occupancy Tax Ordinance by registering with the Tax Collector for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax 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 county. This certificate does not constitute a permit." (Ord. 277 Art. 3 §33, 1965)

3.28.120 Certificate-Posting. The operator shall post, and at all times keep posted in a conspicuous place on the premises of the hotel the transient occupancy registration certificate. (Ord. 277 Art. 3 §32, 1965)

3.28.130 Reporting and remitting. A. Operator Must Report. Each operator, on or before the last day of the month following the close of the calendar quarter, or at the close of any other reporting period which may be established by the tax collector, shall make a return to the tax collector, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupants.

B. Payment of the Tax. At the time the return is filed, the operator shall remit the full amount of the tax collected to the tax collector. The tax collector may establish shorter, longer, or other reporting periods for any certificate holder if he deems it necessary or expedient in order to insure collection of the tax. The tax collector may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason.

If the last day of the month falls on a weekend or holiday, then the due date shall be the first business day following the weekend or holiday. A return and payment shall be timely filed if postmarked on the due date, or personally delivered to the tax collector's office by four p.m. on such

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day. A payment or return not filed by the due date shall be deemed delinquent. Postage meter imprints are not "postmarks."

C. Taxes Held in Trust. Every operator shall hold in trust for the account of the county until payment thereof is made to the tax collector, all taxes collected by such operator. (Ord. 1236 §1, 2000; Ord. 277 Art. 4, 1965)

3.28.140 Delinquency-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 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 thirty 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 amount of the tax and the ten percent penalty first imposed.

C. Fraud. If the tax collector 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. 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-half 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 under the provisions of this section shall become a part of the tax required to be paid. (Ord. 277 Art. 5 §§51-55, 1965)

3.28.150 Failure to collect and report tax-Determination of tax by tax collector. If any operator shall fail or refuse 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 tax collector 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 tax collector shall procure 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 reused to collect the same and to make such report and remittance, he shall proceed to

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determine and assess against such operator the tax, interest and penalties provided for by this chapter. (Ord. 277 Art. 5 §56, 1965)

3.28.160 Notice. If the tax collector makes a determination pursuant to this chapter, he shall give a notice of the amount so assessed, either by serving such notice 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. (Ord. 277 Art. 5 §57, 1965)

3.28.170 Application for hearing. Within ten days after the serving upon any operator of such notice, such operator may apply in writing to the tax 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 tax collector shall become final and conclusive and immediately due and payable. (Ord. 277 Art.5 §58, 1965)

3.28.180 Hearing by tax collector. If such application is made, the tax collector shall give not less than five days' written notice in the manner prescribed in this chapter 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 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 collector shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this chapter of such determination and amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in sections 3.28.190 through 3.28.230. (Ord. 277 Art. 5 §59, 1965)

3.28.190 Appeal-Filing. Any operator deeming himself aggrieved by any decision of the tax collector with respect to the amount of the tax, interest and penalties, if any, may appeal to the board by filing a notice of appeal with the clerk of the board within fifteen days of the serving or mailing of the determination of the tax due. (Ord. 277 Art. 6 §61, 1965)

3.28.200 Appeal-Notice of hearing. Upon the filing of a notice of appeal the board shall fix a time and place for

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hearing such appeal and the clerk of the board shall give not less than five days' notice in writing, either personally or by United States mail, postage prepaid. (Ord. 277 Art. 6 §62, 1965)

3.28.210 Appeal-Referee. A. The board may appoint a referee to take testimony at any hearing provided for in this chapter and to report his findings and recommendations to the board.

B. If the board appoints a county officer or county employee to act as a referee, he shall serve as such without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position. (Ord. 277 Art. 6 §§63, 64, 1965)

3.28.220 Appeal-Conduct of hearing. At the time set for the hearing or at the date to which the hearing may be continued by the board or referee, the board or referee shall hear the appellant and any other competent witnesses and decide whether the determination of the tax collector was correct or not, and, if not, what tax, interest, or penalties, if any, are due to the county from the appellant. The board or referee may place any witnesses, including the appellant, under oath. (Ord. 277 Art. 6 §65, 1965)

3.28.230 Decision on appeal. The board shall determine from the evidence or from the report of the referee, what tax, interest, or penalties, if any, are due to the county from the appellant. This decision shall be final and conclusive. The clerk of the board shall serve a copy of the decision upon the appellant as provided in Section 3.28.200. Any amount due shall be immediately due and payable upon the service of the notice. (Ord. 277 Art. 6 §66, 1965)

3.28.240 Refunds-Filing of claim. 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, the operator so paying may have such amount applied to subsequent taxes due or it may be refunded as provided in Sections 3.28.250 through 3.28.280 if, within three years after the date of payment the operator files with the tax collector in writing a claim therefor. In such claim the operator shall state, under penalty of perjury, the specific grounds and specific facts upon which the claim is founded. The claims

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shall be on forms furnished by the tax collector. (Ord. 277 Art. 7 §71, 1965)

3.28.250 Refunds—Credit to operator. An operator may take as credit against subsequent taxes 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 collector that the person from whom the tax was collected was not a transient and 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. (Ord. 277 Art. 7 §72, 1965)

3.28.260 Refund to operator. When an operator establishes a right to a credit as provided in this chapter and, also, shows to the satisfaction of the tax collector either that he no longer is operating a hotel in the unincorporated territory of the county or will cease such operation before the credit can be applied, and files a proper claim therefor, in lieu of such credit the county shall refund to such operator the amount overpaid, paid more than once or erroneously or illegally collected or received. (Ord. 277 Art. 7 §73, 1965)

3.28.270 Refund to guest. A transient or other guest of a hotel 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 in Section 3.28.240, if the tax was paid by the transient or other guest directly to the tax collector, or if the transient or other guest has paid the tax to the operator, and establishes to the satisfaction of the tax collector that the transient or other guest has been unable to obtain a refund from the operator who collected the tax. (Ord. 277 Art. 7 §74, 1965)

3.28.280 Refunds—Written records. A refund shall not be paid pursuant to Sections 3.28.240 through 3.28.270 unless the claimant establishes his right thereto by written records showing that he is entitled thereto. (Ord. 277 Art. 7 §75, 1965)

3.28.290 Civil actions. A. Debt Due from Transient. 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.

B. Debt Due from Operator. Any tax collected from a transient by an operator pursuant to the provisions of this

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chapter which has not been paid to the county shall be deemed a debt owed by the operator to the county.

C. Actions to Collect. The tax collector, in the name of the county of Trinity as plaintiff, may bring suit for the recovery of any tax, interest or penalty due to the county pursuant to the provisions of this chapter. (Ord. 277 Art. 8, 1965)

3.28.300 Violation-Misdemeanors designated. Every person is guilty of a misdemeanor who:

A. Fails or refuses to register as required by this chapter.

B. Fails or refuses to furnish any return required to be made, or fails or refuses to furnish a supplemental return or other data required by the tax collector;

C. Renders a false or fraudulent return;

D. If required by this chapter to make, render, sign or verify any report or claim, makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due;

E. Collects the tax due pursuant to this chapter from any transient and fails to pay the same to the county;

F. Violates in any way any other provision of this chapter. (Ord. 277 Art. 9 §91, 1965)

3.28.310 Violation-Penalty. Violation of any provisions of this chapter is punishable by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment. (Ord. 277 Art. 9 §92, 1965)