

## Chapter 3.16

### TRANSIENT OCCUPANCY TAX

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#### **3.16.010 Title.**

This tax shall be known as the Transient Occupancy Tax of the City of Ripon. (Ord. 664 § 1, 2002)

#### **3.16.020 Definitions.**

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

(a) 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.

(b) Hotel. "Hotel" means any structure, or any portion of any structure within the City, which is intended or designed for lodging or sleeping purposes wherein the owner or operator thereof offers occupancy as defined in subsection (c) of this section.

(c) Occupancy. "Occupancy" means the use or possession, or the right to use or possession granted by the owner or operator thereof for compensation of any room or rooms or portion thereof for lodging or sleeping purposes for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

(d) 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 thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person exercising occupancy shall be deemed a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a tenure of greater than thirty (30) days for compensation.

(e) Rent. "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. Rent does not include compensation for services or products.

(f) 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/her 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 purpose of this article and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.

(g) Tax Administrator. "Tax Administrator" means the City Clerk or Finance Director of the City of Ripon. (Ord. 664 § 1, 2002)

#### **3.16.030 Tax Imposed.**

For the privilege of occupancy in any hotel, each

transient is subject to and shall pay a tax in the amount of 10% of the rent charged by the operator (the "Tax"). The Tax shall not be imposed until approval of the Tax by the voters of the City of Ripon at an election in accordance with the provisions of California Constitution Article XIIC, Section 2(b), California Government Code Section 53723, and other applicable law. Any increase in the Tax may thereafter be imposed only by resolution or ordinance of the City Council, after first having obtained voter approval in the same manner as required by law. Said 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 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 Administrator may require such tax shall be paid directly to the Tax Administrator. (Ord. 664 § 1, 2002)

### **3.16.040 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 herein provided.

(b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

(c) Any officer or employee of the United States Government, or of a state, county, city or other domestic public entity who pays rent in the discharge of official government business.

(d) Rent paid to any hospital, medical clinic, convalescent home or other temporary or permanent domicile equipped primarily for the care of aged or infirm people.

No exception 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 Tax Administrator. (Ord. 664 § 1, 2002)

### **3.16.050 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. 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. 664 § 1, 2002)

### **3.16.060 Registration.**

Within thirty (30) days after commencing business each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Administrator and obtain from the Tax Administrator a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said 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 by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. 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 City. This certificate does not constitute a permit." (Ord. 664 § 1, 2002)

**3.16.070 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 Tax Administrator, make a return to the Tax Administrator, on forms provided by the Tax Administrator, 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 Tax Administrator. The Tax Administrator may establish shorter reporting periods for any certificate holder if the Tax Administrator deems it necessary in order to insure collection of the tax and the Tax Administrator 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 article shall be held in trust for the account of the City until payment thereof is made to the Tax Administrator. (Ord. 664 § 1, 2002)

**3.16.080 Penalties.**

(a) Delinquency. Any operator who fails to remit any tax imposed by this article within the time required shall, in addition to the amount of the tax, pay a penalty of five (5) percent of the amount of the tax per month or fraction thereof until paid; the maximum penalty imposed on any one delinquency shall not exceed twenty-five (25) percent of the amount of the tax.

(b) Fraud. If the Tax Administrator determines that the non-payment of any remittance due from any transient or operator under this article is due to intentional non-payment or fraud, a penalty of twenty (20) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraph (a) of this section.

(c) Penalties Merged with Tax. Every penalty imposed under the provisions of this section shall become a part of the tax herein required to be paid. (Ord. 664 § 1, 2002)

**3.16.090 Failure to Collect and Report Tax.**

(a) Determination of Tax by Tax Administrator. If any operator shall fail or refuse to collect said tax and to make, within the time provided in this article, any report and remittance of said tax or any portion thereof required by this chapter, the Tax Administrator shall proceed in such manner as the Tax Administrator may deem best to obtain facts and information on which to base his/her estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as the Tax Administrator is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the Tax Administrator shall proceed to determine and assess against such operator the tax and penalties provided for by this article. In case such determination is made, the Tax Administrator 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/her last known place of address. Such operator may within thirty (30) 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 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 fifteen (15) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax and penalties. At such hearing, the operator may appear and offer evidence why such specified tax 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 such determination and the amount of such tax and penalties. The amount determined to be due

shall be payable after thirty (30) days unless an appeal is taken as provided in Section 3.16.100. (Ord. 664 § 1, 2002)

### **3.16.100 Appeal.**

Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax and penalties, if any, may appeal the decision to the City Council. (Ord. 664 § 1, 2002)

### **3.16.110 Records.**

It shall be 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, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and payment to the City, which records the Tax Administrator shall have the right to inspect with the operator's consent, or by use of a subpoena, administrative subpoena, search or inspection warrant. (Ord. 664 § 1, 2002)

### **3.16.120 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 article it may be refunded as provided in subparagraphs (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 (3) years of the date of payment. The claim 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 or was exempt; 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 provided in subparagraph (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/her right thereto by written records showing entitlement thereto. (Ord. 664 § 1, 2002)

### **3.16.130 Actions to Collect.**

Any tax required to be paid by any transient under the provisions of this article 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 article shall be liable to an action brought in the name of the City of Ripon for the recovery of such amount. (Ord. 664 § 1, 2002)

### **3.16.140 Violations.**

Any operator or transient who fails or refuses to register as required herein, or 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 Administrator, or renders a false or fraudulent return or claim or makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article shall be subject to one or both of the civil penalties provided in Section 3.16.080, as deemed appropriate by the Tax Administrator. (Ord. 664 § 1, 2002)

**3.16.150 Disposition of Proceeds.**

All moneys received by the City under or pursuant to the provisions of this article shall be deposited and paid into the General Fund of the City. (Ord. 664 § 1, 2002)

**3.16.160 Security for Collection of Tax.**

(a) The Tax Administrator, whenever the Tax Administrator deems it necessary to insure compliance with this article, may require any person subject thereto to deposit with the Tax Administrator such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the person's estimated average liability for the period for which he/she files returns, determined in such manner as the Tax Administrator deems proper, or ten thousand dollars (\$10,000.00), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided.

(b) If any operator liable for any amount under this article sells out or quits his/her business or a substantial portion thereof, his/her successors or assigns shall withhold sufficient of the purchase price to cover any transient occupancy tax which is

due against any portion of the business unless the former operator produces a receipt from the Tax Administrator showing that he/she has been paid or a certificate stating that no amount is due. If the successors or assigns of a business fail to withhold the tax from the purchase price as required, they shall be personally liable for the payment of the amount required to be withheld by them to the extent of the purchase price, valued in money. Said tax shall be a lien against the purchase price for any portion of the business. The successors or assigns may request in writing a certificate of no tax due. Within thirty (30) days after receiving a written request from the successors or assigns for a certificate, the Tax Administrator shall either issue the certificate or mail notice to them at the address given in the request 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 successors and assigns from any further obligation to withhold the purchase price as above provided. The time within which the obligation of the successors and assigns may be enforced shall start to run at the time the operator sells out his/her business or at the time that the determination against the operator becomes final, whichever event occurs later. (Ord. 664 § 1, 2002)