

ORDINANCE NO. 4402

ORDINANCE AMENDING CHAPTER 5.20 OF THE MENDOCINO COUNTY CODE - TAX IMPOSED ON TRANSIENTS

The Board of Supervisors of the County of Mendocino ordains as follows:

Section 5.20.020 of the Mendocino County Code is amended to read as follows:

“Sec. 5.20.020 - Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this Chapter:

- (A) "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) "Lodging establishment" means any shelter, room or rooms, or other living space or structure, or any portion thereof which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes and includes, but is not limited to, any hotel, inn, tourist home or house, motel, studio hotel, cottage, cabin, bachelor hotel, lodging houses, rooming house, house, room, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, private campground, recreational vehicle (RV) park, tent site (with or without tent; including “glamping” style accommodation), RV site, or any other similar structure or portion thereof.
- (C) "Occupancy" means the use or possession or the right to the use or possession of any room or rooms or portion thereof in any lodging establishment for dwelling or sleeping purposes.
- (D) "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 so occupying space in a lodging establishment shall be deemed to be a transient until a period of thirty (30) 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 Article [May, 1965] may be considered.
- (E) "Rent" means the consideration charged, whether or not received, for the occupancy of space in a lodging establishment 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.

- (F) "Operator" means the person who is proprietor of the lodging establishment, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity, including but not limited to use of a managing agent.
- (G) "Tax Administrator" means the Treasurer-Tax Collector of the County of Mendocino.

Sec. 5.20.030 - Tax Imposed.

For the privilege of occupancy in any lodging establishment, each transient is subject to and shall pay a tax in the amount of eight percent (8%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the County, which is extinguished only by payment to the operator or to the County. The transient shall pay tax to the operator of the lodging establishment at the time the rent is paid. If 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 lodging establishment. If for any reason the tax due is not paid to the operator of the lodging establishment, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator.

Sec. 5.20.031 - Additional Two Percent Tax.

In addition to the eight percent (8%) occupancy tax authorized by Section 5.20.030, this Section authorizes the reinstatement of an additional two percent (2%) of the rent charged by an operator and payable by a transient for the privilege of occupying any lodging establishment.

- (A) This Section is adopted pursuant to authority contained in Revenue and Taxation Code Section 7280. This Section was approved by the voters of the County of Mendocino at the election on March 4, 1997.
- (B) The revenue raised by this tax shall be used to fund the general governmental services and operations of the County of Mendocino.

Sec. 5.20.050 - Operator's Duties.

- (A) 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 lodging establishment 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.
- (B) Where the operator performs his or 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 purposes of this Chapter and shall have the same duties and liabilities as his or her 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.
- (C) Pursuant to Civil Code Section 2238, a proprietor performing his or her functions under this Chapter by a managing agent is responsible as principal for the negligence of his or her agent in the transaction of the business of the agency.

- (D) If the rent is charged as part of a single comprehensive cost or flat rate which includes reasonable charges for meals, food, or other services, the operator shall separately describe for the Tax Administrator or County Auditor-Controller the portion of the charge or rate applicable to lodging to the same extent as reported to the Board of Equalization of the State of California for meals, food, or other services.
- (E) If the operator imposes upon the transient occupant any fee or charge for use of facilities in conjunction with the lodging establishment, which fee or charge is a mandatory fee or charge additional to lodging, the Transient Occupancy Tax shall be applicable to such mandatory fee or charge.

Sec. 5.20.060 - Registration; Certificate.

In order that the County will have an accurate record of parties collecting Transient Occupancy Tax, each lodging establishment operator will be required to register as hereinafter provided.

- (A) Each lodging establishment owned or operated by the same owner or operator and located upon a separate parcel of property described by its own assessor's parcel number shall require a separate Registration Certificate.
- (B) Prior to commencing business each operator, including each managing agent, of any lodging establishment renting occupancy to transients shall register such lodging establishment with the Tax Administrator and obtain from him or her a Registration Certificate to be at all times posted in a conspicuous place on the premises. The Registration Certificate shall, among other things, state the following:
 - (1) Name and address of the lodging establishment;
 - (2) Name of the operator;
 - (3) Name and address of owners;
 - (4) Registration certificate number and date issued.
- (C) The Registration Certificate shall not be transferable, and shall be returned to the Tax Administrator upon sale of property or cessation of business along with the final remittance of Transient Occupancy Taxes due.
- (D) The operator named on the face of the Registration Certificate shall collect from transients the Transient Occupancy Tax and shall remit such tax to the Tax Administrator. The 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 lodging establishment without strictly complying with all local applicable laws, including but not limited to permit requirements from any board, commission, department, or office in this County.
- (E) The owner of the lodging establishment shall report all changes of operators or operations to the Tax Administrator immediately including, but not limited to, any change in operations, mailing address, number of rooms, or changes in ownership.
- (F) The Registration Certificate may be revoked by the Tax Administrator upon failure to comply with any provision of this Chapter. Revocation by the Tax Administrator may be appealed to the Board of Supervisors as provided in

Section 5.20.100. An appeal of revocation as provided herein will stay the revocation until the Board of Supervisors issues its decision.

- (G) Operation of a lodging establishment or lodging establishment business subject to this Chapter without a valid Registration Certificate shall be a misdemeanor and shall be punishable as provided by Section 5.20.140. Each day of operation without a valid Registration Certificate shall be deemed to be a separate offense.

Sec. 5.20.070 - Reporting and Remitting.

- (A) 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. Each operator shall describe in such return the rents attributable to each lodging establishment under the operator's control, together with the name of the owner of each lodging establishment, the address and location of each lodging establishment for which rents are reported in the return. Such return form to the Tax Administrator shall be executed by the operator under penalty of perjury under the laws of the State of California.
- (B) The failure to file such return shall be subject to a fine of Five Hundred Dollars (\$500).
- (C) Any advance deposit retained by the operator following cancellation of any advance lodging establishment reservation, which represents payment for keeping the room open for the person making the reservation, as opposed to constituting an administrative or a handling fee to recover the administrative cost of processing the room reservation and subsequent cancellation, shall be deemed to be a payment for room occupancy within the contemplation of this Ordinance, and shall be subject to the Transient Occupancy Tax.
- (D) 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 Chapter shall be held in trust for the account of the County until payment thereof is made to the Tax Administrator.

Sec. 5.20.080 - Penalties, Interest and Cash Security.

- (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 (10%) 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 (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.

- (C) **Fraud.** If the Tax Administrator determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in Subparagraphs (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 and one-half percent (1.5%) per month 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 herein required to be paid.
- (F) **Security Deposit for Noncompliance or Delinquency.** The Tax Administrator may require any operator of the lodging establishment, including any managing agent of the lodging establishment who has failed to comply with any provision of this Chapter or who has filed two or more delinquent returns or payments, in any twelve (12) month period, to deliver to said Administrator a cash security equal to three (3) times the anticipated tax for the highest reporting period as determined by the Tax Administrator. A certificate of deposit may be acceptable in place of a cash security upon the approval of the Tax Administrator. Failure to post this cash security when requested to do so shall be grounds for revocation of an operator's certificate of registration as provided in Section 5.20.060. The required security shall not be held longer than forty-eight (48) months from any delinquency.

Sec. 5.20.085 - Audit.

- (A) The County Auditor-Controller may audit the books and records of any operator to determine the adequacy of the Transient Occupancy Taxes due.
- (B) All operators shall keep and make available to the Tax Administrator and the County Auditor-Controller records including but not limited to lodging establishment receipts, room or lodging establishment registration records, sales tax returns, daily maid reports, linen service invoices, and all records described below in Section 5.20.110(A).

Sec. 5.20.130 - Actions to Collect.

- (A) Any tax required to be paid by any transient under this Chapter shall be deemed a debt owed by the transient to the County. Any such tax collected by an operator which has not been paid to the County shall be deemed a debt owed by the operator to the County. Any person owing money to the County under this Chapter shall be liable to an action brought in the name of the County of Mendocino for the recovery of such amount. The County shall be entitled to recover from anyone found liable for the debt, any costs, including attorney's fees, personnel costs, or other expenses incurred by the County because of the failure to timely remit tax proceeds to the County.
- (B) If judgment is obtained by the County, such judgment shall be recorded and shall constitute a lien against the subject property wherein the lodging establishment is located.

- (C) Whenever a debt owed by the operator to the County under this Chapter has not been paid to the County and the operator's Registration Certificate has been revoked under this Chapter, the County may obtain a court injunction against further operation of the lodging establishment until the debt owed has been paid.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 27TH day of February, 2018, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Croskey, Gjerde and Hamburg
NOES: None
ABSENT: None

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT,
County Counsel

DAN HAMBURG, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy