

Chapter 5.32

TRANSIENT OCCUPANCY TAX

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Section 5.32.010 Definitions.

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

"Hotel" means any structure, which is occupied or intended or designed for use or occupancy by transients, including but not limited to dwelling, lodging or sleeping purposes, and includes 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.

"Occupancy" means the use or possession, or the right or entitlement to the use or possession, of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

"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 management functions through a managing agent or 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, 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.

"Rent" means the amount of the consideration charged or chargeable to the tenant or person entitled to occupancy, for the occupancy of space, valued in money whether received in money, labor or otherwise, including the full value of receipts, cash, credits, property or services of any kind or nature, without any deduction whatsoever.

"Tax Administrator" means the City Finance Director or designated agent.

"Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement of whatever nature, for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days. Any person so occupying space in a hotel shall be deemed to be a transient if his actual total period of occupancy does not exceed thirty days. Unless days of occupancy or entitlement to occupancy by one person are consecutive without any break, then prior to subsequent periods of such occupancy or entitled to occupancy shall not be counted when determining whether a period exceeds the stated thirty calendar days. (Ord. 6058 § 1, 1993; Ord. 3380 § 2, 1966)

Section 5.32.020 Tax imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eleven 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 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 that such tax shall be paid directly to the Tax Administrator. (Ord. 6066 § 1, 1993; Ord. 6058 § 1, 1993; Ord. 5050 § 1, 1982; Ord. 3999 § 1, 1973; Ord. 3486 § 1, 1967; Ord. 3380 § 3, 1966)

Section 5.32.030 Exemptions.

A. No tax shall be imposed upon:

1. 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;
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 exemptions 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 Tax Administrator. (Ord. 6058 § 1, 1993; Ord. 3380 § 3, 1966)

Section 5.32.040 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 the tax shall be separately stated from the amount of the rent charged. No operator 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. 6058 § 1, 1993; Ord. 3380 § 5, 1966)

Section 5.32.050 Registration.

A. Every person desiring to engage in or conduct business as operator of a hotel renting to transients within the City shall file with the Tax Administrator an application for a transient occupancy registration permit for each place of business. Every application for such a permit shall be made upon a form prescribed by the Tax Administrator and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business, and such other information as the Tax Administrator may require. The application shall be signed by the owner if a natural person, by a member or partner, if an association or partnership, by an executive officer or some person specifically authorized by the corporation to sign the application in the case of a corporation. The transient occupancy registration permit must be in effect at all times while the business is in operation and shall be at all times posted in a conspicuous place on the premises. Said permit shall, among other things, state the following:

1. Name of hotel;
2. Name of operator;
3. Hotel address;
4. The date upon which the permit was issued;

5. "This Transient Occupancy Registration Permit signifies that the person named on the face hereof has fulfilled the requirements of the Transient Occupancy Tax Chapter 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 Permit does not authorize any person to conduct any unlawful business in an unlawful manner, nor operate a hotel without strictly complying with all applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This Permit does not apply in lieu of such other permits which are otherwise required."

B. This certificate is nonassignable and nontransferable and shall be surrendered immediately to the tax collector upon cessation of business at the location named or upon the sale or transfer of the business or the real property on which the business is located.

C. At the time of making an application for a registration permit, the applicant shall pay a registration fee equal to the base tax of the business tax payment required for operation of a hotel as enumerated in Chapter 5.04 of the Riverside Municipal Code. The registration fee and the business tax payment are both required to operate a hotel.

D. It shall be unlawful to operate a hotel without a transient occupancy registration permit or to fail to post the certificate in a conspicuous place at all times. (Ord. 6058 § 1, 1993; Ord. 3380 § 6, 1966)

Section 5.32.060 Returns and remittances.

The tax imposed under Section 5.32.020 is:

A. Due to the Tax Administrator at the time it is collected by the operator; and

B. Becomes delinquent and subject to penalties if not received by the Tax Administrator on or before the fifteenth day of the month following the close of each calendar month. (Ord. 6058 § 1, 1993)

Section 5.32.070 Reporting and remitting.

A. Each operator shall, on or before the fifteenth calendar day of the month following the close of each calendar month, file a return with the Tax Administrator on forms provided, including any rentals charged for occupancies exempt under the provisions of Section 5.32.030,

of the total rents charged and received and the amount of tax collected for transient occupancies. Each such return shall contain a declaration under penalty of perjury, executed by the operator or his authorized agent, that to the best of the signer's knowledge, the statements in the return are true, correct and complete. Amounts claimed on the return as exempt from the tax shall be fully itemized and explained on the return or supporting schedule. In determining the amount of "taxable receipts" on the tax return, "rent" as defined in Section 5.32.010 may not be reduced by any business expenses including but not limited to the amount of service charges deducted by credit card companies or commissions paid to travel agencies. At the time the return is filed, the tax fixed at the prevailing transient occupancy tax rate for the amount of rentals charged, and which are not exempt from the tax shall be remitted to the Tax Administrator.

B. The Tax Administrator may establish other, shorter reporting periods.

C. The Tax Administrator may require a cash deposit or bond or a separate trust fund bank account for any certificate holder if it is deemed necessary in order to insure receipt of the tax by the City, and the Tax Administrator may require additional information in the return.

D. All taxes collected by operators pursuant to this chapter shall be and remain public money, the property of the City and shall be held in trust for the account of the City until remittance thereof is made to the Tax Administrator. (Ord. 6058 § 1, 1993; Ord. 5050 § 2, 1982; Ord. 3380 § 7, 1966)

Section 5.32.080 Cessation of business.

Each operator shall notify the Tax Administrator ten days prior to the sale or cessation of business for any reason, and returns and remittances are due immediately upon the sale or cessation of business. (Ord. 6058 § 1, 1993)

Section 5.32.090 Delinquency.

Any operator who fails to remit any tax to the City or any amount of tax required to be collected and remitted to the City, including amounts based on determination made by the Tax Administrator under Section 5.32.110, within the time required, shall pay penalties of ten percent of the tax in addition to the tax amount due the first day on which the tax required to be collected becomes delinquent, twenty-five percent in addition to the tax amount due shall be imposed on the thirtieth day of delinquency, and fifty percent in addition to the tax amount due shall be imposed on the sixtieth day of delinquency. In addition, interest of one percent per month, or fraction thereof, shall be imposed from the date on which the tax required to be collected becomes delinquent until the day of payment. (Ord. 6058 § 1, 1993; Ord. 3380 § 8 (part), 1966)

Section 5.32.100 Fraud.

If the Tax Administrator determines that the failure to make any remittance or payment due under this chapter is due to fraud, a penalty of one hundred percent of the amount of the tax and penalties, shall be added thereto in addition to the penalties stated in Section 5.32.090. (Ord. 6058 § 1, 1993; Ord. 3380 § 8 (part), 1966)

Section 5.32.110 Failure to collect and report tax--Determination of tax by Tax Administrator.

If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance required by this chapter, the Tax Administrator shall obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator procures such facts and information upon which to base the assessment of any

tax imposed by this chapter, the Tax Administrator 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 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 last known address. Such operator may within ten days after the serving or within fifteen days after the 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, interest 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 five days' written notice to the operator to show cause at a time and place fixed in said 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 Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of the determination and the 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 Section 5.32.120. (Ord. 6058 § 1, 1993; Ord. 3380 § 9, 1966)

Section 5.32.120 Administrative appeal.

Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of any tax, interest or penalties, if any, may appeal to the Finance Committee within fifteen days after notice thereof by filing with the City Clerk a written notice of appeal, briefly stating in such notice the grounds relied upon for appeal. If such appeal is made within the time prescribed, the City Clerk shall cause the matter to be set for hearing before the Finance Committee within thirty days from the date of receipt of such notice of appeal, giving the appellant not less than ten days' notice in writing of the time and place of hearing. The findings and determination of the Finance Committee at such hearing shall be final and conclusive, and within three days after such findings and determination are made, the City Clerk shall give notice thereof to the appellant. (Ord. 6058 § 1, 1993; Ord. 3380 § 10, 1966)

Section 5.32.125 Judicial review.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the City or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to this Chapter and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability. (Ord. 7055 § 1, 2, 2009)

Section 5.32.130 Records.

A. It shall be the duty of every operator liable for the collection and remittance to the City of any tax imposed by this chapter to keep and preserve, in the City, for a period of three years, records in such form as the Tax Administrator may require to determine the amount of such tax.

B. The Tax Administrator or his designated agent shall have the right to inspect such records at all reasonable times.

C. Failure to allow inspection at all reasonable times shall be cause for revocation of the transient occupancy registration permit pursuant to Section 5.32.150.

D. It shall be unlawful to refuse to permit such inspection to be conducted after a lawful

demand therefor by the Tax Administrator. (Ord. 6058 § 1, 1993; Ord. 3380 § 11, 1966)

Section 5.32.140 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 Tax Administrator within three years of the date of the payment. The claims 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 or paid more than once 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; 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 person or credited to rent subsequently payable by the person to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once, and 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 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 right thereto by written records. (Ord. 6058 § 1, 1993; Ord. 3380 § 12, 1966)

Section 5.32.150 Revocation of permit.

A. Whenever any operator fails to comply with any provisions of this chapter relating to occupancy tax or any rule or regulation of the Tax Administrator relating to occupancy tax prescribed and adopted under this chapter, the Tax Administrator upon hearing, after giving the operator ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may suspend or revoke any one or more of the permits held by the operator. The Tax Administrator shall give to the operator written notice of the suspension or revocation of any of his permits. The notices herein required may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The Tax Administrator shall not issue a new permit after revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the occupancy tax and regulations of the Tax Administrator.

B. At the time of making application for a new permit, the applicant shall pay a registration fee equal to the base tax of the business tax payment required for operation of a hotel as enumerated in Chapter 5.04 of the Riverside Municipal Code. (Ord. 6058 § 1, 1993)

Section 5.32.160 Closure of hotel without permit.

During any period of time during which a permit has not been issued, or is suspended, revoked or otherwise not validly in effect, the Tax Administrator may require that the hotel be closed. (Ord. 6058 § 1, 1993)

Section 5.32.170 Recording certificate--Lien.

If any amount required to be remitted or paid to the City under this chapter is not remitted or paid when due, the Tax Administrator may, within three years after the amount is due file for record in the Office of the Riverside County Recorder a certificate specifying the

amount of tax, penalties and interest due, the name and address as it appears on the records of the Tax Administrator of the operator liable for the same and the fact that the Tax Administrator has complied with all provisions of this chapter in the determination of the amount required to be remitted and paid. From the time of the filing for record, the amount required to be remitted together with penalties and interest constitutes a lien upon all real property in the County owned by the operator or afterwards and before the lien expires acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for ten years from the time of filing of the certificate unless sooner released or otherwise discharged. (Ord. 6058 § 1, 1993)

Section 5.32.180 Priority and lien of tax.

A. The amounts required to be remitted and/or paid by any operator under this chapter with penalties and interest shall be satisfied first in any of the following cases:

1. Whenever the person is insolvent;
2. Whenever the person makes a voluntary assignment of his assets;
3. Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased;
4. Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this chapter are levied upon by process of law. This chapter does not give the City a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

B. The preference given to the City by this section shall subordinate to the preferences given to claims for personal service by Sections 1204 and 1206 of the Code of Civil Procedure. (Ord. 6058 § 1, 1993)

Section 5.32.190 Warrant for collection of taxes.

At any time within three years after any operator is delinquent in the remittance or payment of any amount herein required to be remitted or paid or within three years after the last recording of a certificate under Section 5.32.170, the Tax Administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this chapter. The warrant shall be directed to any Sheriff, Marshal or Constable and shall have the same effect as writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Administrator may pay or advance to the Sheriff, Marshal or Constable the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution. The Tax Administrator, and not the court, shall approve the fees for publication in a newspaper. (Ord. 6058 § 1, 1993)

Section 5.32.200 Seizure and sale.

At any time within three years after any operator is delinquent in the remittance or payment of any amount, the Tax Administrator may forthwith collect the amount in the following manner: The Tax Administrator shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect occupancy taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure. (Ord. 6058 § 1, 1993)

Section 5.32.210 Successor's liability--Withholding by purchaser.

If any operator liable for any amount under this chapter sells out his business or quits the

business, his successor shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Administrator showing that it has been paid or a certificate stating that no amount is due. (Ord. 6058 § 1, 1993)

Section 5.32.220 Liability of purchaser--Release.

If the purchaser of a hotel fails to withhold purchase price as required, he shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money.

At the time purchaser applies and pays his business tax and requests a permit to operate a hotel, the Tax Administrator shall either issue the permit or give notice to the purchaser of the amount that must be paid as a condition of issuing the permit. Failure of the Tax Administrator to give notice of the amount due does not release liability of the purchaser. (Ord. 6058 § 1, 1993)

Section 5.32.230 Responsibility for payment.

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 and payable through the operator. Any such tax collected by an operator which has not been remitted to the City is a fiduciary obligation of the operator to the City and collectible in the same manner as a debt. Any person owing money to the City under the provisions of this chapter shall be liable in an action brought in the name of the City of Riverside for the recovery of such amount. (Ord. 6058 § 1, 1993)

Section 5.32.240 Withhold notice.

If any person or operator is delinquent in the remittance or payment of the amount required to be remitted or paid by him or in the event a determination has been made against him for the remittance of tax and payment of the penalty, the City may, within three years after the tax obligation became due, give notice thereof personally or by registered mail to all persons, including the State or any political subdivision thereof, having in their possession or under their control any credits or other personal property belonging to the taxpayer. After receiving the withholding notice, the person so notified shall make no disposition of the taxpayer's credits, other personal property or debts until the City consents to a transfer or disposition or until sixty days elapse after the receipt of the notice, whichever expires earlier. All persons, upon receipt of said notice, shall advise the City immediately of all such credits, other personal property or debts in their possession, under their control or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of the bank, to be effective the notice shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. If any person so notified makes transfer or disposition of the property or debts required to be held hereunder during the effective period of the notice to withhold, he shall be liable to the City to the extent of the value of the release up to the amount of the indebtedness owed by the taxpayer to the City. (Ord. 6058 § 1, 1993)

Section 5.32.250 Violations--Misdemeanor.

A. Any operator or other person who knowingly or willfully fails or refuses to remit transient occupancy tax collections to the Tax Administrator prior to the time of delinquency is guilty of a misdemeanor.

B. Any person knowingly violating any of the provisions of this chapter shall be guilty of a misdemeanor.

C. Any operator or other person who willfully fails or refuses to register as required

herein, 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 Tax Administrator, or who renders a false or fraudulent return or claim is guilty of a misdemeanor.

D. Any person required to make, render, sign or verify any report or claim who willfully 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.

E. The commencement of criminal proceedings shall neither preclude nor abate administration or civil actions to collect taxes due under this chapter. (Ord. 6058 § 1, 1993; Ord. 3380 § 14, 1966)

Section 5.32.260 Extension of time.

The Tax Administrator, for good cause, may extend not to exceed thirty days the time allotted to return or pay any transient occupancy tax, penalties and interest required under this chapter. The extension may be granted at any time, provided a request is filed with the Tax Administrator prior to the period for which the extension may be granted. Any person granted an extension shall pay, in addition to the tax, interest calculated at one percent per month or fraction thereof, from the date upon which the tax was due until the date of payment. (Ord. 6058 § 1, 1993)

Section 5.32.270 Confidentiality of records.

All records, returns and payments submitted by each operator shall be treated as confidential by the Tax Administrator and all persons having an administrative duty under this chapter and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of California, the County of Riverside or the City of Riverside for official use only. (Ord. 6058 § 1, 1993)

Section 5.32.280 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional. (Ord. 6058 § 1, 1993)