

Chapter 7. Uniform Transient Occupancy Tax

Article 1. General Provisions

Sec. 8-7.101 Title.

This Chapter shall be known as the “Uniform Transient Occupancy Tax Ordinance of the City of Hercules.” (Ord. 206 Div. 1 Art. 1 (part), 1985)

Sec. 8-7.102 Definitions.

(a) Except as used in subsection (d) of this Section, “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” means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for 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, timeshare unit, mobile home or house trailer at a fixed location or other similar structure or portion thereof; or any space intended for transient occupancy by a camper, house trailer, motor home or recreational vehicle.

(c) “Occupancy” means the use or possession, or the right to the use or possession, of any room or rooms or portion thereof, or any space in any hotel for dwelling, lodging or sleeping purposes.

(d) “Transient” means any individual who exercises occupancy or is entitled to occupancy of a specific room or space 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 individual so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing providing for a longer period of occupancy of the room. 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.

(e) “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.

(f) “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 of any type or character is 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.

(g) "Tax Administrator" means the city Finance Director or designee. (Ord. 206 Div. 1 Art. 1 (part), 1985)

Article 2. Tax Imposed

Sec. 8-7.201 Tax Imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten percent (10%) of the rent charged by the operator. Such 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. 447 § 1, 2001: Ord. 206 Div. 1 Art. 2, 1985)

Article 3. Exemptions

Sec. 8-7.301 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 in this Chapter;
- (b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty. (Ord. 206 Div. 1 Art. 3, 1985)

Article 4. Operator's Requirements; Reporting

Sec. 8-7.401 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 provided in this Chapter. (Ord. 206 Div. 1 Art. 4 (part), 1985)

Sec. 8-7.402 Registration.

Within thirty (30) days after the effective date of this Chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register such hotel with the Tax Administrator and obtain from him a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;
- (4) 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 Administrator for the purpose of collecting from transients the transient occupancy tax and remitting such 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 the city. The certificate does not constitute a permit. (Ord. 206 Div. 1 Art. 4 (part), 1985)

Sec. 8-7.403 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 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 Tax Administrator. The Tax Administrator 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 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 city until payment thereof is made to the Tax Administrator. (Ord. 206 Div. 1 Art. 4 (part), 1985)

Article 5. Penalties; Procedures**Sec. 8-7.501 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 (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 the 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 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 percent (1%) 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. Interest shall be imposed on penalties from thirty (30) days after an operator is notified of a delinquency.

(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 by this chapter. (Ord. 206 Div. 1 Art. 5 (part), 1985)

Sec. 8-7.502 Failure to Collect and Report Tax—Determination of Tax by Tax Administrator.

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 this Chapter, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base the assessment of any tax imposed by this Chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such 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 place of address. Such operator may, within ten (10) 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, 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 (5) days' written notice in the manner prescribed in this Chapter to the operator to show cause at a time and place fixed in such notice why such 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 in this Chapter 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 taken as provided in Section 8-7.503 of this Article. (Ord. 206 Div. 1 Art. 5 (part), 1985)