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ORDINANCE NO. _____

AN ORDINANCE AMENDING EL DORADO COUNTY ORDINANCE CODE Title 3 – REVENUE AND FINANCE (previous Ordinance 4545) to UPDATE THE COUNTY TRANSIENT OCCUPANY TAX ORDINANCE TO ADD SECTION 3.28.091 CERTIFICATE OF TAX LIEN AND TO INCORPORATE MINOR TEXT CORRECTIONS AND MODIFICATIONS FOR CONSISTENCY WITH COUNTY CODE

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 3.28 of Title 3 of the El Dorado County Ordinance Code is hereby amended to read as follows:

Section 3.28.020 - Definitions.

- A. Except where the context otherwise requires, the definitions given in this subsection govern the construction of this chapter, except where the context clearly indicates a different meaning:

Facility means room or rooms, or other living space, in a hotel, inn, tourist home or house, motel or other lodging, including 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, including any 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 to the use or possession of any facility unless the occupancy is for any period of more than 30 consecutive days.

Operator means the person who is proprietor of the facility, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his or her 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 purpose 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.

Other lodging includes, but is not limited to, a camping site or a space at a privately-owned campground or recreational vehicle park, except as excluded by Section 3.28.040 and specifically excluding a campsite in a unit of the State park system.

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 consideration charged, whether or not received, for the occupancy of any facility 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.

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 30 consecutive days or less. Any such person so occupying space in a facility shall be deemed to be a transient until the period of 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 the ordinance from which this chapter is derived may be considered.

Timeshare estate means a right of occupancy in a timeshare project which is coupled with an estate in the real property.

Membership camping contract means an agreement offered or sold within the State of California by a membership camping operator or membership camping broker evidencing a purchaser's right or license to use for more than 14 days in a year, the campgrounds of a membership camping operator and includes a membership which provides for this use.

Guest of that owner means a person who does either of the following:

- A. Occupies real property accompanied by the owner of either of the following:
 - 1. A timeshare estate in that real property; or
 - 2. A camping site in a privately-owned campground pursuant to a right or license under a membership camping contract.
- B. Exercises that owner's right of occupancy without payment of any compensation to the owner.

Guest of that owner specifically includes a person occupying a timeshare unit or a camping site in a privately-owned campground pursuant to any form of exchange program. (Ord. 4262, 1992).

Certificate of tax lien means an encumbrance imposed upon a specific property for unpaid taxes, penalties and interest.

- B. The definitions set forth in Revenue and Taxation Code § 7280 (Occupancy Taxes - Levy on privilege of occupying rooms or living space; definitions), as amended, shall be effective as definitions of the words, terms and phrases used in this chapter. All words, terms and phrases used herein, other than those specifically defined elsewhere in this chapter, shall have the respective meanings ascribed to them in Revenue and Taxation Code § 7280, as amended, and shall have the same scope and effect that the same words, terms and phrases have where used in Revenue and Taxation Code § 7280, as amended.

Sec. 3.28.030. – Imposed.

For the privilege of occupancy in any facility, except a camping site or a space at a privately-owned campground or recreational vehicle park, each transient is subject to and shall pay a tax in the amount of 10 percent of the rent charged by the operator. The 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 the tax to the operator of the facility 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 facility. If for any reason the tax due is not paid to the operator of the facility, the Tax Collector may require that the tax be paid directly to the Tax Collector.

Sec. 3.28.040. – Exemptions.

No tax levied by this article shall be imposed upon any person as to whom, or any occupancy as to which, it is beyond the County's legal authority to impose the tax herein provided:

- A. Any facility operated by a local government entity.
- B. Rent for rooms occupied by federal, state or local government employees on official business.
- C. The right of an owner of a timeshare estate in a room or rooms in a timeshare project, or the guest of an owner.
- D. The right of an owner of a membership-camping contract in a camping site at a privately-owned campground, or the guest of an owner.
- E. Nothing contained in this chapter shall affect, impair, or apply to the authority of the County to collect an occupancy tax from timeshare projects which were in existence as of May 1, 1985, pursuant to this chapter.
- F. Any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty. No exemption 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 Collector.
- G. Complimentary stay where no rent is received.

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribe by the Tax Collector. The claim for exemption must be filed with the operator and the Tax Collector on or before the occupancy. The transient occupancy claim form can be found on the El Dorado County Tax Collector's website.

Sec. 3.28.050. – Operator 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 facility 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 set forth in this chapter.

Sec. 3.28.060. – Registration.

Within 30 days after the effective date of the ordinance from which this chapter is derived, or within 30 days after commencing business, whichever is later, each operator of any facility renting occupancy to transients shall register the facility with the Tax Collector and obtain a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the facility;
- 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 County 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 lawful business in an unlawful manner, nor to operate a facility 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."

Certificate Nontransferable. The transient occupancy registration certificate shall be nontransferable and shall become null and void and shall be returned to the Tax Collector for cancellation whenever an operator to whom a certificate has been issued ceases to act in the capacity of an operator. Any succeeding operator shall apply for, and obtain, a separate transient occupancy registration certificate as provided in this section.

Sec. 3.28.70. – 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 Collector, make a return to the Tax Collector on forms provided 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 Collector. The Tax Collector may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to ensure collection of the tax and he or she 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 Collector.
- B. For the purposes of this section, “on or before” shall be interpreted as: (1) hand delivery; (2) postal delivery of a properly stamped and addressed envelope containing the return and full amount of the tax to the United States Postal Service; or (3) online completed submission date. Delivery to the Postal Service must be verified by cancellation by the Postal Service showing a postmark date no later than midnight on the date the tax is due. If the due date of the tax falls on a federal holiday date, the tax due date shall be the next business day. Private postal meter strips and dates shall not be considered evidence of delivery to the United States Postal Service. Online delivery shall be evidence by the date stamp of completed submission and payment and payment confirmation.
- C. An operator who intends to transfer, sell or terminate its facility operations shall notify the Tax Collector in writing of such sale, transfer or termination and the name and address of the purchaser or transferee at least 30 days in advance of the date of transfer, sale or termination, unless the decision to sell, transfer or terminate was made within less than a 30-day period.
- D. Each operator upon cessation of operations for any reason shall, no more than 30 days after cessation, file a return with the Tax Collector on approved forms of the total taxable rents charged, the amount of tax collected for the reporting period, remittances made, if any, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due, if any, shall be remitted to the Tax Collector. Returns filed and tax remitted and actually received by the Tax Collector on or before the same day of the next month following the cessation of business or on the last day of that month if no corresponding calendar day exists shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by this article.

Sec. 3.28.080. – 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 collection fee and a penalty of 10 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 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the 10 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 25 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 10 percent per annum, calculated at the rate of eight and one-third tenths percent per month from the first day of each month to the time of payment.
- E. *Penalties merged with tax.* Every penalty imposed and such interest as accrued under the provisions of this section shall become a part of the tax required to be paid in this chapter.

Sec. 3.28.090. Operator's Failure to collect and report.

- A. If any operator fails or refuses 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 or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the Tax Collector procures such facts and information as he or she 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 refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against the operator the tax, interest and penalties provided for by this chapter.
- B. After such determination has been made, the Tax Collector shall give written 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 or her last known place of address filed with the Tax Collector. The operator may within 20 days after the serving or mailing of the notice make application in writing to the Tax Collector with factual evidence to refute the amount assessed and request a hearing with the Tax Collector. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined shall become final and conclusive and the Tax Collector may thereafter record a Certificate of Tax Lien. Any amount assessed is immediately due and payable. Assessment is subject to all enforcement or execution procedures or actions as permitted by law. All Collection remedies at law and in this chapter are cumulative and no action taken by the Tax Collector or the County shall constitute an election to pursue one remedy to the exclusion of any others.
- C. If an application for a hearing with the Tax Collector is made, timely, received and no extension has been granted by the Tax Collector, 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 should not be fixed for the tax, interest and penalties and/or why such certificate of lien should not be enforced. At the hearing, the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed and/or why such certificate of lien should not be enforced. Failure to appear at the noticed hearing will result in dismissal of the application for hearing and forfeiture of any right to further hearing and appeal under this chapter and of the operator or person's administrative exhaustion of rights and remedies.
- D. Upon hearing all evidence at the hearing, the Tax Collector shall determine the proper tax to be remitted, if any, and shall thereafter give written notice to the person in the manner prescribed in this chapter of the determination and the amount of the tax, interest and penalties and the release, adjustment or maintenance of the certificate of tax lien recorded pursuant to Section 3.28.091 of the chapter. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in Section 3.28.100.

Sec. 3.28.091 Certificate of tax lien.

- A. The Tax Collector is authorized to record a Certificate of Delinquency of Transient Occupancy Tax Lien with the El Dorado County Recorder against any operator who fails to remit taxes, penalties, or interest due under this article within the times required herein. The Tax Collector shall add to the amount of the

lien the costs incurred by the County in collecting the tax due. The Certificate of Delinquency of Transient Occupancy Tax Lien may be recorded by the Tax Collector:

1. Twenty days after the service or mailing of the notice required by Section 3.28.090, if the operator does not file the application for a hearing with the Tax Collector permitted by Section 3.28.090(B).
2. Fifteen days after determination by the Tax Collector at hearing of the amount due pursuant to 3.28.090(D) if the operator does not file a timely appeal, or 10 days after service of the Hearing Officer's decision after appeal pursuant to Section 3.28.100. The Certificate of Delinquency of Transient Occupancy Tax Lien shall be filed within three years after the tax becomes due. The Certificate of Delinquency of Transient Occupancy Tax Lien shall specify the amount due, the name and last known address of the operator liable for the same, and a statement that the Tax Collector has complied with all provisions of this article with respect to the computation and levy of the tax owed by the operator. From the time of the recording of the Certificate of Delinquency of Transient Occupancy Tax Lien, the amount required to be paid, together with penalties, constitutes a lien upon all real property in the County owned by the operator or thereafter acquired before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for 10 years from the filing of the Certificate of Delinquency of Transient Occupancy Tax Lien, unless sooner released or otherwise discharged.

Within 10 years of the date of the recording of the Certificate of Delinquency of Transient Occupancy Tax Lien (or within 10 years of the date of the last extension of the lien), the Tax Collector may extend the lien by filing for record of a new certificate in the office of the El Dorado County Recorder, and from the time of filing the lien under the original Certificate of Delinquency of Transient Occupancy Tax Lien shall be extended for an additional 10 years, unless sooner released or otherwise discharged. The lien shall not be removed until the delinquent taxes, penalties for delinquency, and costs of collection are fully paid or the property is sold for payment of the delinquent taxes, penalties for delinquency, and costs of collection.

- B. At any time within three years after the recording of a Certificate of Delinquency of Transient Occupancy Tax Lien under Subsection A above, the Tax Collector may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of any tax and penalties required to be paid to the County under this article. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The Tax Collector may pay or advance to the sheriff such fees, commission, and expenses for services as are provided by law for similar services pursuant to a writ of execution.
- C. In lieu of issuing a warrant under Subsection B, at any time within the three years after a Certificate of Delinquency of Transient Occupancy Tax Lien was recorded under Subsection A, the Tax Collector may collect the delinquent amount by seizing, or causing to be seized, any property, real or personal, of the operator and sell any non-cash or non-negotiable property, or a sufficient part of it, at public auction to pay the amount of tax due, together with any penalties, interest, and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

Sec. 3.28.100. - Appeal.

Any operator aggrieved by any decision of the Tax Collector with respect to the amount of the tax, interest and penalties, if any, may request a hearing before a hearing officer by filing a notice of appeal with the County Clerk within 15 days of the serving or mailing of the determination of tax due. The County shall fix a time and place for hearing the appeal, and shall give notice in writing to the operator at his or her last known place of address. The findings of the Hearing Officer shall be final and conclusive and shall be served upon the appellant in the manner prescribed in this chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

Sec. 3.28.110. - Records.

It shall be the duty of every operator liable for the collection and payment to the County of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of the tax he or she may have been liable for the collection of and payment to the County, which records the Tax Collector shall have the right to inspect at all reasonable times.

Sec. 3.28.120. - 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 County 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 Collector within three years of the date of payment. The claim shall be on forms furnished by the Tax Collector.
- 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 Collector 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 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 County 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 Collector, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Tax Collector 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 or her right thereto by written records showing entitlement thereto.

Sec. 3.28.130. - Actions to collect.

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. 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 the provisions of this chapter shall be liable to an action brought in the name of the County for the recovering of the amount.

Sec. 3.28.140. - Penalty for violation.

- A. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished according to the general penalties described in Chapter 1.24.
- B. Any operator or other person who fails or refuses to register as required in this chapter, 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 Collector, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as set forth in Subsection A of this section. Any person required to make, render, sign or verify any report or claim, who 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 and is punishable as set forth in Subsection A of this section.

3.28.150 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, the decision shall not affect the validity of the remaining portions of this chapter or any part of this chapter. The Board of Supervisors declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the _____ day of _____, 2020, by the following vote of said Board:

ATTEST

Kim Dawson

Clerk of the Board of Supervisors

Ayes:

By _____
Deputy Clerk

Noes:

Absent:

Chair, Board of Supervisors

**APPROVED AS TO FORM
DAVID LIVINGSTON
COUNTY COUNSEL**

By: _____

Title: _____