

***.**
***.ord
00/00/00



ORDINANCE NO. ~~5128~~ 5131

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:

Sec. 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.

Operator means the person who is proprietor of the facility, whether in the capacity of owner, lessee, sublessee, mortgage 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.

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. 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.

- 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.

(Prior Code, § 6402; Code 1997, § 3.28.020; Ord. No. 4262, 1992; Ord. No. 4545, 12-14-1999)

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 ten 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.

(Code 1997, § 3.28.030; Ord. No. 4618, 12-10-2002; election of 3-2-2004, eff. 3-26-2004; Amend. of 3-26-2004)

Editor's note— An amendment increasing the amount of transient occupancy tax from eight percent to ten percent was approved by voter referendum on March 2, 2004 and took effect on March 26, 2004.

Sec. 3.28.040. - Exemptions.

No tax shall be imposed upon:

- A. Any facility operated by a local government entity.
- B. Any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose the tax provided in this chapter.
- C. The right of an owner of a timeshare estate in a room or rooms in a timeshare project, or the quest 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 quest 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. Rent for rooms occupied by Federal, State or local government employees on official business.

(Prior Code, § 6404; Code 1997, § 3.28.040; Ord. No. 4545, 12-14-1999)

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.

(Prior Code, § 6405; Code 1997, § 3.28.050; Ord. No. 4262, 1992)

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 from him or her 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."

(Prior Code, § 6406; Code 1997, § 3.28.060; Ord. No. 4262, 1992)

Sec. 3.28.070. - 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 Collector, make a return to the Tax Collector on forms provided by him or her 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.

(Prior Code, § 6407; Code 1997, § 3.28.070)

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 penalty of ten 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 ten percent of the amount of the tax in addition to the amount of the tax and the ten 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 ten 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.

(Prior Code, § 6408; Code 1997, § 3.28.060; Ord. No. 4545, 12-14-1999)

Sec. 3.28.090. - Failure to collect and report.

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. In case the determination is made, the Tax Collector 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 or her last known place of address. The operator may within ten days after the serving or mailing of the notice make application in writing to the Tax Collector 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 Collector shall become final and conclusive and immediately due and payable. If the application is made, 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. At the hearing, the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed. After the hearing the Tax Collector 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 the determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in Section 3.28.100.

(Prior Code, § 6409; Code 1997, § 3.28.090)

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 appeal to the Board of Supervisors 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 Board of Supervisors shall fix a time and place for hearing the appeal, and the County Clerk shall give notice in writing to the operator at his or her last known place of address. The findings of the Board of Supervisors 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.

(Prior Code, § 6410; Code 1997, § 3.28.100)

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.

(Prior Code, § 6411; Code 1997, § 3.28.110)

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.

(Prior Code, § 6412; Code 1997, § 3.28.120)

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.

(Prior Code, § 6413; Code 1997, § 3.28.130)

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.

(Prior Code, § 6414; Code 1997, § 3.28.140)

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the 6th day of October, 2020, by the following vote of said Board:

ATTEST
Kim Dawson
Clerk of the Board of Supervisors

Ayes: Frentzen, Hidahl, Parlin, Novasel, Veerkamp

By Kyra Schaffneger
Deputy Clerk

Noes: None

Absent: None

Brian K. Veerkamp
Chair, Board of Supervisors
Brian K. Veerkamp

APPROVED AS TO FORM
DAVID LIVINGSTON
COUNTY COUNSEL

By: [Signature]
Title: County Counsel