

## CHAPTER SEVEN: REVENUE AND TAXATION

### Subchapter 7.04: Transient Occupancy Tax

#### 7.04.010 Short Title.

This chapter shall be known as the Town of Colma Transient Occupancy Tax Ordinance.

[*History:* ORD. 787, 11/6/18]

#### 7.04.020 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *Hotel* means any structure, or any portion of any structure, in the Town of Colma, 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, mobile home or house trailer at a fixed location, or other similar structure or portion thereof, even if such structure is also used for other purposes, including residential purposes.

(b) *Occupancy* means the use or possession, or the right to the use or possession of any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes, whether or not the person entitled to the use or possession actually uses or possesses such room or rooms or portion thereof. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or as exhibition, sample or display space shall not be considered "occupancy" unless the person uses or possesses, or has the right to use or possess all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

(c) *Online Short Term Rental Company* shall mean any person, whether operating for profit or not for profit, which facilitates the connection between transient and operator to purchase occupancy in any hotel via the Internet, or by similar electronic means.

(d) *Online Travel Company* shall mean any person, whether operating for profit or not for profit, which enables transients to purchase occupancy in a hotel via the Internet, or by similar electronic means.

(e) *Operator* means a person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, seller, reseller, or any other capacity. Where the operator performs his functions through a managing agent or booking agent of any type or character, other than an employee, the managing agent or booking agent duties and liabilities as his principal. Full compliance with the provisions of this chapter by either the principal or the managing agent or booking agent shall, however, be considered to be compliance by both.

(f) *Person* shall mean 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.

(g) *Rent* means the total consideration charged to the transient, including but not limited to, room rates, service charges, parking fees, purchase price, advance registration, block or group reservation charges, assessments, retail markup, commission, processing fees, cancellation charges, attrition fees, or online booking or broker fees, whether charged by an operator or a rental agent, whether or not received, for occupancy 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. Nothing in this definition shall be construed to mean that rent is charged directly or indirectly for occupancy in a hotel when a room is provided to the transient as a compliment for the operator and where no consideration is charged to or received from any other person. Further, bona fide charges for food and beverages which are subject to tax under the California Sales and Use Tax Law. (Revenue and Taxation Code Sections 6001 *et. seq.*) shall not be deemed rent subject to the tax imposed by this chapter.

(h) *Rental agent* means any person other than an operator who collects rent from a transient for the transient's occupancy of a hotel, including but not limited to an online travel company or an online short term rental company.

(i) *Tax administrator* means the Town director of finance, or his or her designee.

(j) *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 calendar days or less, counting portions of calendar days as full days. The following rules shall apply to this definition:

(1) Any such person so occupying or entitled to occupy a room in a hotel shall be deemed to be a transient until the period of 30 calendar days has expired. In the event a person exercises or is entitled to occupancy for a continuous and uninterrupted period of longer than 30 calendar days, he or she shall be deemed a transient and subject to the tax for only the first 30 calendar days of occupancy and shall cease being a transient and the tax shall not apply on the 31st calendar day of occupancy and following. However, any break or interruption in occupancy shall start a new 30-day period subject to the tax.

(2) 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.

(3) Any person who exercises or is entitled to occupancy for a period of 30 consecutive calendar days or less shall be deemed to be a transient for that period, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising or entitled to occupancy or by another person. The intent is to tax the person exercising occupancy or having the entitlement to occupancy of a hotel room.

[History: ORD. 787, 11/6/18]

**7.04.030 Tax Rate, Payment.**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of twelve percent (12%) of the rent paid by the transient. This tax constitutes a debt owed by the transient to the Town which is extinguished only by payment to the operator, the Town or to a rental agent pursuant to Section 7.04.070. The transient shall pay the tax to the operator or rental agent 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 occupancy. If for any reason the tax due is not paid to the operator or rental agent, the tax administrator may require that such tax shall be paid directly to the tax administrator.

[History: ORD. 787, 11/6/18]

**7.04.030 Exemptions.**

No tax levied under this chapter shall be imposed upon the following:

- (a) Any person as to whom, or any occupancy as to which, it is beyond the power of the Town to impose the tax.
- (b) Any federal or State of California officer or employee when occupying a room while on official government business. For purposes of this section, students, non-employee supporters and volunteers of California public universities and colleges shall not be deemed to be officers or employees of the State of California.
- (c) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.
- (d) 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 administrator. Any federal or State of California officer or employee when on official government business claiming such an exemption shall provide to the operator as conclusive evidence that his or her occupancy is for the official business of his or her employer:
- (e) Travel orders from his or her government employer; or a government warrant issued by his or her employer to pay for the occupancy; or a government credit card issued by his or her employer to pay for the occupancy; and
- (f) Proof of his or her governmental employment as an employee or officer as described in paragraph (1) of this subsection B, and proof, consistent with these provisions, that his or her occupancy is for the official business of his or her governmental employer.
- (g) It shall be the duty of an operator to keep and maintain for a period of three years written documentation in support of each exemption granted under this section.

[History: ORD. 787, 11/6/18]

**7.04.050 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 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.

[History: ORD. 787, 11/6/18]

#### **7.04.060 Registration.**

Within 30 days after commencing business, each operator of a hotel renting occupancy to transients shall register the hotel with the tax administrator and obtain from him or her a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. This certificate shall, among other things, state the following:

- (a) The name of the operator.
- (b) The address of the hotel.
- (c) The date upon which the certificate was issued.
- (d) That the transient occupancy registration certificate signifies that the person named on the face thereof has fulfilled the requirements of this chapter 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, and that such 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 this Town, that such certificate does not constitute a permit and is not transferable to a different operator.

[History: ORD. 787, 11/6/18]

#### **7.04.070 Third Party Rental Transactions.**

(a) Any transient who pays rent to a rental agent instead of to an operator shall, at the time the rent is paid, pay the tax to the rental agent in the manner required by section 7.04.030. If for any reason the tax is not paid to the rental agent, it shall be paid to the operator before the transient has ceased occupancy in the hotel or paid directly to the tax administrator pursuant to section 7.04.030. Any transient seeking a refund under section 7.04.130 of taxes paid to a rental agent must establish that the transient has been unable to obtain a refund from the rental agent who collected the tax.

(b) Any rental agent who collects rent shall comply with all obligations of the operator set forth in sections 7.04.050 and 7.04.120 of this chapter. The rental agent shall remit all collected taxes to the operator before the deadline for the operator to remit the taxes to the tax administrator under section 7.04.080, and the rental agent shall provide the operator with copies of all records required to be maintained by the operator pursuant to section 7.04.120 of

this chapter, including records necessary for the operator to comply with its obligations under this chapter.

(c) If the tax administrator determines that a rental agent has failed to collect, remit, or report any tax, the tax administrator may take any action against the rental agent that he or she may take against an operator under sections 7.04.090 and 7.04.100 of this chapter subject to the requirements of those sections. If the tax administrator assesses unremitted taxes and penalties against the rental agent, the rental agent shall be subject to the provisions of sections 7.04.100, 7.04.110, 7.04.130 and 7.04.140 of this chapter as if it were an operator. Nothing in this section shall prohibit the tax administrator from assessing the full amount of any unremitted taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent.

[History: ORD. 787, 11/6/18]

#### **7.04.080 Reporting and Remitting.**

Each operator 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 shall 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. If no tax was due or collected during the previous reporting period, the operator shall file a return so stating under penalty of perjury. 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 or she 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 Town until payment thereof is made to the tax administrator.

[History: ORD. 787, 11/6/18]

#### **7.04.090 Delinquency, 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 or Misrepresentation.* If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to intentional conduct, misrepresentation or fraud, an 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 maximum rate allowable by law 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.

(e) *Penalties merged with tax.* Every penalty imposed and such interest as accrues under this section shall become a part of the tax required to be paid.

#### **7.04.100 Failure to Collect and Report.**

If any operator shall fail or refuse to collect the tax imposed pursuant to this chapter and to make, within the time provided in this chapter, any report and remittance of this tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax administrator shall procure 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 tax and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. If 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 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 ten days' written notice in the manner prescribed in this section to the operator to show cause at a time and place fixed in the 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 in this section of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in 7.04.110.

#### **7.04.110 Appeal.**

Under this chapter, any operator aggrieved by a decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of appeal with the Town clerk within 15 days of the serving or mailing of the determination of tax due. The City Council shall fix a time and place for hearing such appeal, and the Town clerk shall give notice in writing to such operator at his last known place of address. The findings of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed in this section for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

#### **7.04.120 Records.**

It shall be the duty of every operator liable for the collection and payment to the Town 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 such tax as he may have been liable for the collection of and payment to the Town, which records the tax administrator shall have the right

to examine and audit at all reasonable times for the purpose of determining the accuracy thereof.

#### **7.04.130 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 Town 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 in compliance with Chapter 1.14. The claim 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, paid more than once or erroneously or illegally collected or received 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 had 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 Town 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 this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

#### **7.04.140 Debt to Town/Actions to Collect.**

Any tax required to be paid by any transient under this chapter shall be deemed a debt owed by the transient to the Town. Any such tax collected by an operator which has not been paid to the Town shall be deemed a debt owed by the operator to the Town. Any person owing money to the Town under this chapter shall be liable to an action brought in the name of the Town.

#### **7.04.150 Use of Tax Proceeds.**

The proceeds arising from the tax imposed by this chapter shall be credited to the general fund of the Town.

#### **7.04.160 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.**

The Town shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted in accordance with this chapter, and properly expended according to applicable municipal law. The verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

#### **7.04.170 Amendment or Repeal – Adjustment of Taxing Rate or Methodology.**

This chapter may be repealed or amended by the Town Council without a vote of the People of the Town of Colma. However, as required by California Constitution Article XIII C (Proposition 218), voter approval is required for any amendment or provision that would increase the maximum rate or methodology of any tax levied pursuant to this chapter. The People of the Town of Colma affirm that the following actions shall not constitute an increase of the rate or methodology of the transient occupancy tax requiring subsequent voter approval:

- (a) The restoration of the rate of the tax to a rate that is no higher than the maximum set by this voter-approved chapter, if the Town Council has previously acted to reduce the rate of the tax;
- (b) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;
- (c) The establishment of a class of person or service that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception explicitly set forth in this chapter); and
- (d) Resuming collection of the tax imposed by this chapter, even if the Town had, for some period of time, either suspended collection of the tax or otherwise failed to collect the tax, in whole or in part.

**7.04.180 Violations; Misdemeanor.**

Any operator or other person who violates any of the provisions of this chapter or who fails or refuses to register as required herein, or to furnish any returns or other data required by the tax administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as provided in this Code.