

ORDINANCE NO. ()

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING CHAPTER 12 ARTICLE III OF THE SONOMA COUNTY CODE

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

Section I. Purpose. These amendments are adopted to achieve the following purpose, among others, and directs that the provisions herein be interpreted to accomplish this purpose

- A. To make certain administrative changes to ensure consistency with and clarification of current practices of transient occupancy tax collection.

Section II. Amendments. Chapter 12 Article III of the Sonoma County Code is amended as follows (text to be added is shown in **bold italics**, text to be deleted is shown in ~~strikethrough~~):

- A. **Amendments to Definitions.** The following definitions within Section 12-10 are hereby amended:

- a. "Rent" means ***all*** consideration ~~regularly charged, for the occupancy of space in a lodging~~ 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 required to be paid ~~as part of the cost of occupancy~~ ***by a transient***, without any deduction therefrom whatsoever; ~~including but not limited to any of the following:~~

- (a) ~~Any and all expenses required to rent the room or lodging, including but not limited to charges such as housekeeping or cleaning fees, linens, energy charges, resort fees, and the like, whether charged all inclusively or separately; all, however classified~~
- (b) ~~Charges for roll-away beds~~
- (c) ~~The fair market value of lodging provided as part of a package that includes other goods or services (e.g. a room and golf package);~~
- (d) ~~Consideration actually charged to the occupant for rooms sold to tour operators, meeting planners, or any other party that resells rooms (e.g. Travelocity, Expedia);~~

Notwithstanding the foregoing, "Rent" does not include consideration or charges ~~received by an Operator~~ for any of the following:

- (a) Use of banquet or meeting rooms
- (b) Occupancy of space in a lodging by a pet owned by a transient;
- (c) Childcare services
- (d) Use of safes or other secure storage areas;

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- (e) Food or meals;
 - (f) Pay-per-view movies, video games, telephones, internet and the like; or
 - (g) cancellation charges.
 - (h) ***repair or damage/lost items in a lodging***
- b. "Tax collector" means the Sonoma County ~~auditor~~**Auditor-Controller/Treasurer-tax collector****Tax collector** and/or designated deputies.

B. Amendments to Registration. The following section is hereby amended:

- a. Section 12-14 is amended to read as follows: In order that the county will have an accurate record of parties collecting ***transient occupancy tax, each lodging operator will be required to register as hereinafter provided.***

~~transient occupancy tax, each lodging operator will be required to register as hereinafter provided.~~

- (a) Prior to commencing business each operator of any lodging renting occupancy to transients shall register such lodging with the ~~tax collector~~**Tax collector**, submitting any information deemed necessary by the ~~tax collector~~**Tax collector**, including, but not limited to, the following:
- (1) Name of lodging facility;
 - (2) Type of lodging facility (hotel, motel, campground, bed and breakfast, etc.);
 - (3) Type of ownership (individual, corporation, partnership, etc.);
 - (4) Name of owner and/or operator (if corporation or partnership names of officers or partners);
 - (5) Name, address and phone number of person preparing reports and remittances;
 - (6) Mailing and physical addresses of lodging facility;
 - (7) Mailing address of corporate or partnership office(s);
 - (8) Phone number of facility and operator;
 - (9) Starting date of business;
 - (10) Number, type and rental rate of lodging units within lodging facility;
 - (11) Authorized signature and date;
 - (12) If registration information is submitted by a rental agency, a listing of other lodging properties managed by that rental agency.

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The operator shall also obtain from the ~~tax collector~~**Tax collector** a registration certificate to be at all times posted in a conspicuous place on the premises. Registration certificate shall, among other things, state the following:

- (1) Name and address of the lodging;
 - (2) Name of the operator;
 - (3) Name and address of owners;
 - (4) Registration certificate number and date issued.
- (b) The registration certificate is not transferable, and is to be returned to the ~~tax collector~~**Tax collector** upon sale of property or cessation of business along with the final remittance of transient taxes due.
- (c) The operator named on the face of this registration certificate shall be responsible to collect from transients the transient occupancy tax and remitting such tax to the ~~tax collector~~**Tax collector**. 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 lodging without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department, or office in this county.
- (d) It shall be the responsibility of the owner of the lodging to report in writing all changes of operators or operations to the ~~tax collector~~**Tax collector** immediately including, but not limited to, any change in operations, mailing address, number of rooms, or changes in ownership.
- (e) A registration certificate may be revoked by the ~~tax collector~~**Tax collector** upon failure to comply with any provision of this article. Revocation by the ~~tax collector~~**Tax collector** may be appealed to the ~~board of supervisors~~**Board of supervisors** as provided in Section 12-21. An appeal of revocation as provided herein will stay the revocation until the ~~board of supervisors~~**Board of supervisors** issues its decision.
- (f) Operation without a valid registration certificate shall be a misdemeanor and shall be punishable as provided by Section 1-7 of Sonoma County Code. Each day of operation without a valid registration certificate shall be deemed to be a separate offense.
- (g) ***The registration certificate number shall be included on all contracts, rental agreements, advertising materials and websites.***

C. **Amendments to Reports and remittances.** The following section is hereby amended:

- a. Section 12-15 is amended to read as follows: 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~~**Tax collector**, make a *tax* return to the ~~tax collector~~**Tax collector**, on forms ~~provided~~ **and in the manner specified 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, *whether electronically, in person, or by depositing it in the United States mail*, the full amount of the tax collected shall be remitted to the ~~tax collector~~*Tax collector*. *A tax return may be deemed incomplete, and not made, until the Tax collector receives the tax return on the forms and in the manner specified by him or her, regardless of if the full amount of the tax collected has been remitted. At any time prior to or after receiving a tax return, the Tax collector may request supporting documentation for the return, which shall be supplied to the Tax collector within 5 business days. In the event a tax return is incomplete and not made pursuant to this section, penalties shall be imposed pursuant to Section 12-16.1 and the Tax collector shall determine the amount of the tax due pursuant to Section 12-17.*

The ~~tax collector~~*Tax collector* may establish shorter reporting periods for any certificate holder if he *or she* deems it necessary in order to insure collection of the tax and he *or she* may require further information in return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this article shall be held in a separate trust account, apart from the rents or business revenues ~~of the hotel~~, for the benefit of the county until payment thereof is made to the ~~tax collector~~*Tax collector*.

D. Amendments to Penalties for delinquent payment. The following section is hereby amended:

- a. Section 12-16 is amended to read as follows: Sec 12-16.1 Penalties for delinquent payment.
 - (a) Base Tax Defined. For purposes of this section, "base tax" means the tax to be collected by an operator pursuant to Section 12-13 (i.e., ~~9~~ **12%** of the taxable room rents to be collected within the reporting period).
 - (b) Original Delinquency. Any operator who fails to remit any base tax imposed by this article within the time required shall pay a penalty of ten (10) percent of the amount of the base tax in addition to the amount of the base tax, provided that the base tax and penalty are remitted ~~within~~ **on or before the last day of the month following the quarter due date.** ~~a period on or before thirty (30) days following the base tax due date.~~
 - (c) Continued Delinquency. Any operator who fails to remit any delinquent remittance **on or before the last day of the second month following the quarter due date** ~~on or before a period of thirty (30) days following the date on which the remittance first became delinquent~~ shall pay the base tax and the ten percent penalty imposed by subsection (b), plus a second delinquency penalty of ten (10) percent of the amount of the base tax.
 - (d) Fraud. If the ~~tax collector~~*Tax collector* determines that the nonpayment of any remittance due under this article is due to fraud, a penalty of twenty-five (25) percent of the amount of the base tax shall be

added thereto in addition to the penalties stated in subsections (b) and (c) of this section.

(e) Interest. In addition to the penalties imposed, any operator who fails to remit any base tax imposed by this article shall pay interest at the rate of one and one-half (1½) percent per month on the unpaid balance of the base tax, from the date on which the remittance first became delinquent until paid in full.

(f) 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 by this article to be paid.

(g) Security Bond. The ~~Tax Collector~~**Tax collector** is authorized to require any Operator who has failed to file two (2) or more returns or payments, or who has filed two (2) or more delinquent returns or payments, in any twelve (12) month period, to deliver to him a security bond equal to three (3) times the anticipated tax collected for the highest delinquent reporting period. Failure to post a bond in a form acceptable to the ~~tax collector~~**Tax collector** when requested to do so shall be grounds for revocation of an operator's certificate of registration as provided in Section 12-14(e).

E. **Amendments to Waiver of penalties and interest.** The following section is hereby added:

- a. Section 12-16.2 is added to read as follows: ***Sec 12-16.2 Waiver of penalties and interest.***

The Tax collector may waive interest accrued, and the first and second penalties of ten percent (10%) each imposed upon any person if:

The person provides evidence satisfactory to the Tax collector that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent base tax owed the county prior to applying to the Tax collector for a waiver.

F. **Amendments to Determination of tax by tax collector upon default of operator.** The following section is hereby amended:

- a. Section 12-17 is amended to read as follows: Sec. 12-17. Determination of tax by ~~the~~**Tax collector** upon default of operator.

If any operator shall fail or refuse to collect the tax levied by this article or to make, within the time provided in this article, any report and remittance of such tax or any portion thereof required by this article, the ~~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 estimate of the tax due. As soon as the ~~the~~**Tax collector** 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 article and payable by any operator who has failed or refused to collect the same or to make such report and remittance, the ~~tax~~**Tax** collector shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this article. In any case where determination is made, the ~~tax~~**Tax** collector shall give a notice of the amount so assessed, ***which shall be served upon the person by personal delivery, or electronic mail addressed to the person at the electronic mail address he or she shall register with the Tax collector for the purpose of receiving notices provided under this chapter, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax collector for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the Tax collector for such purpose, then to such person's last known address or electronic mail address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail. For purposes of this section, a service by electronic mail is complete at the time of transmission of the electronic mail.*** ~~by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator at his last known place of address.~~

The operator may, within ten (10) calendar days after the serving or mailing of such notice, make application in writing to the ~~Tax Collector~~**Tax collector** for a hearing on the amount assessed. Refer to Section 12-21.1 Appeals.

G. Amendments to Records to be kept. The following section is hereby amended:

- a. Section 12-18.1 is amended to read as follows: Sec. 12-18.1. ***Audits /*** Records to be kept.

The Tax collector shall have the right to audit an operator's records at any time at their discretion. It shall be the duty of every operator liable for the collection and payment to the county of any tax imposed by this article to keep and preserve, for a period of five (5) years, all records that may be necessary to determine the amount of such tax as he ***or she*** may have been liable for the collection of and payments to the county under this article. At a minimum, the records deemed necessary for this determination shall be a chronological cash journal showing tax and room rate separately, or other means acceptable to the ~~county auditor-controller/tax collector~~**Tax collector** of summarizing the operator's monthly or quarterly revenue, supported by room registrations (including the name and address of the transient), the automobile license plate number of the transient, a calendar of advance registrations, copies of forms used to claim exemption from the tax, and prenumbered payment receipts showing payment for occupancy which state the room rate separate from the amount of tax paid and which may, with reasonable

effort, be identified with the revenue summary. These records shall be available, at all times, for inspection by the ~~county auditor-controller/tax collector~~**Tax collector** or his deputies. Performance of an audit does not waive the county's right to any tax or the five (5) year requirement of preserving records. ***If adequate records are not kept, or if an operator fails or refuses to provide records when requested and within the timeframe prescribed, even if the operator has filed a return, the Tax collector shall determine the amount of base tax due in the manner prescribed in Section 12-17, and that amount shall be the base tax due for the time period requested.***

H. Amendments to Change of ownership or operator. The following section is hereby amended:

a. Section 12-18.2 is amended to read as follows:

- (a) In the event that there is a change in ownership or operator of any lodging facility, the new owner or operator is required to submit an updated registration form to the ~~tax collector~~**Tax collector**.
- (b) Unless otherwise provided by law, upon the sale of any lodging facility:
 - (1) it is the joint and several liability of both the seller and buyer to remit any tax due up until the date of sale; and
 - (2) A certificate of delinquent transient occupancy tax lien may be filed against both the seller and/or buyer in an amount determined by the ~~tax collector~~**Tax collector**.
- (c) Following any change of ownership or operator, the new owner and operator are subject to an audit by the ~~county tax collector~~**Tax collector**/~~auditor-controller or deputies~~.
- (d) Any owner of a lodging facility required to collect or pay transient occupancy tax may apply for and receive within ninety (90) days of application, an occupancy tax clearance certificate, provided that the taxes and any penalties are paid in full for the time period specified.

I. Amendments to Refunds. The following section is hereby amended:

a. Section 12-19 is amended to read as follows:

- (a) If a tax, interest or penalty imposed by this article has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the county, a refund may be sought by filing a claim according to the procedure established in Sonoma County Code Chapter 2, Art. XXV.

(i) *In accordance with Government Code Section 911.2, a person has one (1) year from the date of the transient occupancy tax overpayment to file a claim for refund.*

(b) No claim for refund of a tax may be filed by an operator unless it is established in the claim that the amount of the tax so collected has either been refunded to the person or entity that actually paid the tax, or has been credited to rent subsequently payable by such person or entity to the operator.

J. **Amendments to Appeal to tax collector.** The following section is hereby amended:

- a. Section 12-21.1 is amended to read as follows: Sec. 12-21.1. Appeal to ~~tax collector~~**Tax collector**.

Any operator aggrieved by any decision of the ~~tax collector~~**Tax collector** with respect to the amount of the tax imposed by Section 12-17 or by audit, and interest and penalties, if any, shall first appeal to the ~~tax collector~~**Tax collector**.

(a) Request must be made in writing within ten (10) calendar days after the serving or mailing of notice per Section 12-17, to the ~~tax collector~~**Tax collector** to appeal the decision on the amount assessed.

(b) At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed.

(c) After such hearing the ~~tax collector~~**Tax collector** shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in Section 12-17 of such determination and the amount of such tax, interest and penalties. The ~~tax collector~~**Tax collector**'s determination shall be presumed to be correct. At any appeal, the operator has the burden of proving that the ~~tax collector~~**Tax collector**'s determination is incorrect, and the burden of producing sufficient evidence to establish the correct tax liability. The amount determined to be due shall be payable ~~after~~**within** thirty (30) calendar days unless it is appealed to the ~~board of supervisors~~**Board of supervisors**.

K. **Amendments to Appeal to board of supervisors.** The following section is hereby amended:

- a. Section 12-21.2 is amended to read as follows: Sec. 12-21.2. Appeal to ~~board of supervisors~~**Board of supervisors**.

Failing a resolution with ~~tax collector~~**Tax collector** appeal process, the operator may then

(a) Appeal to the ~~board of supervisors~~**Board of supervisors** by filing a notice of appeal with the ~~county clerk~~**Tax collector** within ten (10)

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calendar days of the serving or mailing of the determination by the ~~tax collector~~**Tax collector** of the amount of tax due.

(b) The ~~board of supervisors~~**Board of supervisors** shall fix a time and place for hearing such appeal, and the ~~county~~**County** clerk or ~~tax collector~~**Tax collector** shall give notice in writing to such operator at his last known place of address. The ~~tax collector~~**Tax collector** shall present the matter to the board and include evidence submitted by ~~tax collector~~**Tax collector**.

(c) The ~~tax collector~~**Tax collector** shall also include proposed findings and a resolution of the appeal. At the hearing, both the ~~tax collector~~**Tax collector** and the owner or operator shall have an opportunity to explain their case and introduce other statements or evidence. The board may impose reasonable time limits on each party's presentation.

(d) The findings of the ~~board of supervisors~~**Board of supervisors** shall be final and conclusive and shall be served upon the appellant in the manner prescribed in Section 12-17 for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

L. Amendments to Appeal hearing—Appointment of County Hearing Officer.

The following section is hereby added:

- a. Section 12-21.3 is added to read as follows: ***Sec. 12-21.3. - Appeal hearing—Appointment of County Hearing Officer.***

The Board of supervisors may appoint the County hearing officer to hear the appeal as provided for in Section 12-21.2 of this chapter, which shall be governed by the Sonoma County Rules and Procedures for Administrative Hearings.

M. Amendments to Tax lien. The following section is hereby amended:

- a. Section 12-22 is amended to read as follows:

(a) The ~~tax collector~~**Tax collector** is authorized to record a certificate of delinquency of transient occupancy tax lien with the Sonoma 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~~**Tax collector** shall add to the amount of the lien the costs incurred by the county in collecting the tax due, such costs specified in Section 12-20 above. The certificate of delinquency of transient occupancy tax lien may be filed by the ~~tax collector~~**Tax collector**:

(1) Ten (10) days after the serving or mailing of the notice required by Section 12-17, if the operator does not file the application for appeal permitted by Section 12-21.1(a).

(2) If the operator files the application for appeal permitted by Section 12-21.1(a), thirty (30) days after the ~~tax collector~~**Tax collector**'s

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determination of the amount of tax to be remitted pursuant to Section 12-21.1(c), unless the operator files an appeal pursuant to Section 12-21.2(a).

(3) If the operator files an appeal pursuant to Section 12-21.2, ten (10) days after service of the ~~board~~**Board** of supervisor's findings pursuant to Section 12-21.2.

The certificate of delinquency of transient occupancy tax lien shall be filed within three (3) 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~~**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 ten (10) years from the filing of the certificate of delinquency of transient occupancy tax lien, unless sooner released or otherwise discharged. Within ten (10) years of the date of the recording of the certificate of delinquency of transient occupancy tax lien (or within ten (10) years of the date of the last extension of the lien), the ~~tax collector~~**Tax collector** may extend the lien by filing for record a new certificate in the office of the Sonoma 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 ten (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 (3) years after the recording of a certificate of delinquency of transient occupancy tax lien under subsection (a) above, the ~~tax collector~~**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 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~~**Tax collector** may pay or advance to the sheriff or marshal 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 (3) years after a certificate of delinquency of transient occupancy tax lien was recorded under subsection (a), the ~~tax collector~~**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-

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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.

N. **Amendments to Violations and penalties.** The following section is hereby amended:

a. Section 12-22.1 is amended to read as follows:

(a) Any person violating any of the provisions of this article shall be guilty of a misdemeanor and shall be punishable therefore as provided by Section 1-7.

(b) Any operator or other person who fails or refuses to register as required in this article, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other ~~date~~**data** required by the ~~tax collector~~**Tax collector**, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid and is subject to all sections of this chapter.

(c) 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 article to be made, is guilty of a misdemeanor and is punishable as aforesaid.

(d) In addition, the ~~tax collector~~**Tax collector** may pursue on behalf of the county, any civil or administrative remedy otherwise available for failure to comply with the requirements of this article. If the county prevails, the county shall be entitled to recover any costs, including attorney's fees, personnel costs or other expenses incurred because of failure to comply with the requirements of this article. Failure to pay such costs upon the demand shall be grounds for revocation of an Operator's certificate of registration as provided in Section 12-14(e).

Section III. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section IV. This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced on the 27th day of September, 2022, and finally passed and adopted this 4th

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day of October, 2022, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Gorin: Rabbitt: Coursey: Hopkins: Gore:

Ayes: Noes: Absent: Abstain:

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Sheryl Bratton,
Clerk of the Board of Supervisors