

ORDINANCE NO. 2019 - 1805

AN ORDINANCE AMENDING CHAPTER 11 OF THE SOLANO COUNTY CODE RELATING TO THE TRANSIENT OCCUPANCY TAX

The Board of Supervisors of the County of Solano ordains as follows:

Section 1.

Article II of Chapter 11 of the Solano County Code, beginning at section 11-20 and relating to the Transient Occupancy Tax, is amended as follows:

11-20 Definitions

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) **Lodging.** Any accommodation consisting of one (1) or more rooms or other living spaces that are occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes. "Lodging" includes any hotel, inn, tourist home or house, motel, studio hotel, bed and breakfast, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, recreational vehicle park, or public or private campground, including campgrounds that are seasonal, year-round, or event based (e.g., camping offered in association with a fair, festival, or other special event). "Lodging" does not include any of the following:

- (1) A room in a hospital, medical clinic, convalescent home, or home for the aged;
- (2) A room or other living space in a facility owned by a local government entity, or any campsite in a unit of the state park system; or
- (3) A room or other living space in an organized camp, as that term is defined by Section 18897 of the Health and Safety Code.

(b) **Occupancy.** The use or possession, or the right to use or possession, of one or more rooms or other living space in any lodging for dwelling, lodging, or sleeping purposes. For purposes of this subdivision, "occupancy" shall not mean the use or possession, or the right to use or possession, of a guest of the owner of a timeshare estate in a room or rooms in a timeshare project who accompanies the owner or who exercises that owner's right of occupancy in a timeshare estate either without payment of any compensation to the owner or pursuant to any form of an exchange program.

(c) **Online Booking Service.** An internet-based service that advertises lodging being offered by operators, assists operators and transients in booking lodging reservations, and accepts payment of rent from transients and forwards all or a portion of that rent to the lodging operator.

(d) **Operator.** The person who is the proprietor of the lodging, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs some or all of his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this article and shall have the same duties and liabilities as the principal. Compliance with the provisions of this article by either the proprietor or the managing agent shall be considered to be compliance by both.

(e) **Rent.** The total consideration charged to a transient, whether or not received by the operator and exclusive of the amount of tax charged to the transient pursuant to this article, for the occupancy of a lodging room or other living space, 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 whatsoever. Rent includes, but is not limited to, charges for any of the following:

- (1) Any and all expenses required to rent the room or lodging, including but not limited to charges such as nonrefundable housekeeping or cleaning fees, nonrefundable booking fees, pet fees, parking fees, linens charges, energy charges, resort fees, and the like, whether charged all inclusively or separately;
- (2) Charges for equipment or furnishings, such as rollaway beds, cribs, television sets, and similar items;
- (3) Charges for in-room services, such as movies and other services not subject to California sales taxes;
- (4) Charges for utility or sewer hookups; or
- (5) The fair market value of lodging provided as part of a package that includes other goods or services (e.g. a room and winery tour package).

Notwithstanding the foregoing, "Rent" does not include consideration or charges for any of the following, if separately itemized on the bill and if the transient has the option not to incur such additional charges in connection with the transient's occupancy of a lodging room or other living space:

- (6) Use of banquet or meeting rooms;
- (7) Use of recreational equipment (e.g., bicycles, horses) or off-site recreational facilities;
- (8) Childcare services;
- (9) Use of safes or other secure storage areas;
- (10) Food, meals, or beverages;
- (11) Pay-per-view movies, video games, telephones, internet, and the like;
- (12) Off-site tours or excursions;
- (13) Shuttle service; or
- (14) Cancellation charges other than nonrefundable booking fees.

(f) Room or other living space. A room or portion of any room in any lodging; any cabin or tent cabin; or any space designated for location of a mobile home or house trailer, tent trailer, recreational vehicle, tent, or other movable living space.

(g) Tax administrator. The Solano County Treasurer/Tax Collector/County Clerk or designated deputy.

(h) Transient. 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 thirty consecutive days or less, counting portions of calendar days as full days. Any such person so occupying space in a lodging 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 and the operator has provided a certificate of lease (in a form acceptable to the tax administrator) evidencing this agreement with the tax administrator as an attachment to the quarterly (or more frequent) transient occupancy tax reports required by Section 11-26.

11-21 Imposition of tax, Payment of tax by transient

For the privilege of occupancy in any lodging located in the unincorporated area of Solano County, each transient is subject to and shall pay a tax in the amount of five per cent (5%) of the rent charged to the transient. Such tax constitutes a debt owned by the transient to the county which is extinguished only by payment to the operator, to an online booking service that accepts payment of both rent and tax from the transient, or to the county. The transient shall pay the tax at the earliest of the following: (a) at the time the rent is paid by the transient to the operator, (b) at the time rent is paid by the transient to an online booking service, if the online booking service and the county have entered into an agreement whereby the booking service will collect tax from the transient, or (c) at the time the transient arrives at the lodging and prior to occupancy, if the transient has paid rent through an online booking service and the online booking service has not collected tax from the transient. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. Any unpaid tax shall be due upon the transient's ceasing to occupy space in the lodging. If for any reason the tax due is not paid to the operator of the lodging or an online booking service with which the county has entered into a tax collection agreement, the tax administrator may require that such tax shall be paid by the transient directly to the tax administrator.

11-22 Exemptions from payment of tax

No tax levied by this article shall be imposed upon:

(a) Any person who is an employee or officer of (i) a government outside the United States, (ii) the United States government, (iii) a Federal Credit Union organized and operating under the Federal Credit Union Act, (iv) the state government, or (v) the government of a political subdivision of the state, and whose occupancy of the lodging is for the official business of his or her employer, provided an exemption certificate is submitted and payment is made directly to the lodging operator either by the governmental entity or credit union, or by the transient using a government-sponsored or credit union corporate charge card.

(b) Any person for whom emergency housing is provided pursuant to a voucher issued by a non-profit tax-exempt agency or organization during times of natural disaster or calamity.

- (c) Complimentary rooms provided to the transient without charge for purposes of advertising or public relations, provided that no non-cash consideration other than advertising is given to the operator for use of the rooms.
- (d) The owner of a timeshare estate, as that term is defined in Section 11212 of the Business and Professions Code, and any guest accompanied by the owner, when occupying a room or rooms to which the owner retains an ownership interest.
- (e) The owner of a membership camping contract, as that term is defined in Section 1812.300 of the Civil Code, and any guest accompanied by the owner, when occupying a camping site to which the owner retains an ownership interest; or

11-23 Collection of tax; advertisements that tax will not be collected prohibited

Each operator shall collect the tax imposed by this article 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 or, if rent and tax is paid to an online booking service, from the online booking service. No operator of a lodging and no online booking service 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 article.

11-24 Registration of lodging; issuance of certificates

(a) Any person engaging in or about to engage in business as an operator of a lodging renting occupancy to transients shall register such lodging with the tax administrator, on a form provided by the tax administrator, together with payment of a registration fee as may be set by the board of supervisors. Such registration form shall set forth the name of the lodging proprietor, the name under which such person transacts or intends to transact business, the location of the lodging, the operator's property manager, if any, whether the operator or an online booking service is primarily responsible for collecting and reporting the tax, and such other information to facilitate the collection of tax as the tax administrator may require. If the lodging proprietor is a business entity, the names and addresses of the officers or the entity and the names and addresses of all partners or shareholders holding more than a twenty percent (20%) equity interest in the entity shall be listed on the form. The registration form shall be signed by the lodging proprietor if the proprietor is a natural person, by a member or partner in the case of an association or partnership, or by an executive officer or some person specifically authorized to act on behalf of a corporation. Any changes in the information contained in a previously submitted registration form shall be reported to the tax administrator within thirty (30) days.

(b) Upon submission by the operator of a complete registration form and its acceptance as complete by the tax administrator, the tax administrator shall issue a "Transient Occupancy Registration Certificate" to each operator of the lodging to collect the tax from transients. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon sale or transfer of the lodging. Each certificate shall be prominently displayed in the lodging so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. Failure to post the certificate in a prominent place shall be a violation of Section 11-34 of this article. If rent is collected from the transient at a business office or location other than the lodging, the certificate shall be made readily available for viewing by any person seeking occupancy. If rent is collected from the transient at a website, the certificate number shall be displayed publicly on the listing for the lodging. The certificate shall contain the following information:

- (1) The name of the lodging proprietor, including the name under which such person transacts business.
- (2) The address of the lodging.
- (3) The date upon which the certificate was issued.
- (4) Such other relevant information as may be required by the tax administrator to assist in correct reporting and collection of the transient occupancy tax.

The certificate shall also contain the following statement:

"This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Occupancy Tax Ordinance of the County of Solano by registering with the Tax

Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or 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 of this county. This certificate does not constitute a business license, a land use permit, or a license to operate lodging on these premises or to operate a lodging business without full compliance with all other statutes, ordinances, and zoning regulations.”

11-25 Change of ownership or operator

(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 administrator.

(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 administrator.

(c) Following any change of ownership or operator, the new owner and operator are subject to an audit by the tax administrator.

(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.

11-26 Filing of reports; remittance of tax

The tax administrator shall establish a reporting period for each operator holding an authority to collect tax pursuant to this article. No reporting period shall be greater than one year. Each operator whose reporting period is one month or longer shall, on or before the last day of the month following the close of the reporting period, make a return to the tax administrator on forms provided by the tax administrator of the total rents charged and received and the amount of tax collected for transient occupancies. Each operator whose reporting period is established at less than one month shall make the return to the tax administrator within three days after the close of the period. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. If it is deemed to be in the best interest of the county, the tax administrator may require the operator to report and remit any taxes due by electronic means. Any additional information which the tax administrator may deem necessary in order to insure collections shall be included with the return. When tax is collected by an online booking service, reporting and remittance of tax collected shall be performed as specified in a written agreement between the online booking service and the county. Returns and payments are due immediately upon cessation of business by an operator or online booking service for any reason. All taxes collected by operators or online booking services pursuant to this article shall be held in trust for the account of the county until payment thereof is made to the tax administrator.

11-27 Penalties for delinquent payment

(a) Original delinquency. Except when an online booking service has collected tax from the transient and will remit the tax directly to the county pursuant an agreement between the booking service and the county, any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten per cent of the amount of the tax, in addition to the amount of the tax.

(b) Continued delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten per cent of the amount of the tax, in addition to the amount of the tax and the ten per cent penalty first imposed.

(c) Fraud. If the tax administrator determines that the nonpayment of any remittance due under this article is due to fraud, a penalty of twenty-five per cent of the amount of the tax shall be added in addition to the penalties stated in subdivisions (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 article shall pay interest at the rate of one-half of one per cent 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, such interest as accrues under the provisions of this section, and all tax administrator's actual costs of collection of tax incurred from the time of delinquency until the time the transient occupancy tax, penalties, and interest are actually paid or collected, shall become a part of the tax required to be paid under this article.

11-28 Determination of tax by tax administrator upon default of operator

If any operator shall fail or refuse to collect the tax imposed pursuant to 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 tax administrator shall proceed in such manner as the administrator may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the tax administrator shall procure such facts and information as the tax administrator 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 and to make such report and remittance, the administrator shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this article. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the operator's last known place 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 five days written notice in the manner prescribed in this article to the operator to show cause at a time and place fixed in such notice why such amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this article of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days after the serving or mailing of such notice unless an appeal is taken as provided in section 11-30.

11-29 Deficiency determinations

If the tax administrator is not satisfied with a return filed by an operator of the amount of the tax required to be paid to the County pursuant to a return, the tax administrator may compute and determine the amount required to be paid upon the basis of facts contained in the return or upon the basis of any information within his or her possession or that may come into his or her possession. One (1) or more deficiency determinations may be made of the amount due for any period. The tax administrator shall give to the operator written notice of his or her determination in the same manner as provided in Section 11-28 of this article. The operator shall be entitled to apply for a hearing on the amount assessed to him pursuant to the procedure set forth in Section 11-28 of this article and shall thereafter be entitled to appeal to the Board of Supervisors in accordance with the provisions of Section 11-30 of this article. The penalties and interest provided by Sections 11-27 of this article shall be applicable to the amount of deficiency established pursuant to this section.

11-30 Appeals

Any operator aggrieved by any decision of the tax administrator with respect to any amount of such tax, interest and penalties, if any, may appeal to the board of supervisors by filing a notice of appeal with the clerk to the board of supervisors within fifteen days of the serving or mailing of the determination of tax due. The board of supervisors shall fix a time and place for hearing such appeal, and the clerk to the board of supervisors shall give notice in writing to such operator at the operator's last known place of business. The findings of the board of supervisors

shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

11-31 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 tax administrator under this article, it may be refunded as provided in subdivisions (b) and (c) of this section, provided that a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator by the person(s) who paid the tax, interest, or penalty, or the administrator or executor or such person, within three years of the date of payment. The claim shall be on forms furnished by the tax administrator. If the claim is approved by the tax administrator, the excess of any amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid. The balance may be refunded to such person, his administrators or executors.

(b) An operator may claim a refund or take as a credit against taxes to be collected and remitted the amount overpaid, paid more than once, or erroneously paid when it is established in a manner prescribed by the tax administrator that the operator from whom the tax has been paid has not collected that amount of tax and has committed an error in reporting.

(c) Any 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, 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.

(d) 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 subdivision (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.

(e) No refund shall be paid under the provisions of this section unless the claimant establishes his right by written records showing entitlement.

(f) Only the person who paid the tax, penalty, or interest and the person who made the tax refund claim that was rejected may bring an action against the county to recover such taxes. No other person may bring such an action.

11-32 Records to be kept

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 three years, all records as may be necessary to determine the amount of such tax as the operator may have been liable for the collection of and payment to the county, which records the tax administrator shall have the right to inspect at all reasonable times.

11-33 Collection of tax, penalty, and interest by court action or lien

(a) Suit for Taxes. Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owned by the transient to the county. Any such tax collected or required to be 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 article who does not pay such tax by the date due shall be liable to an action brought in the name of the county for the recovery of such amount. This remedy is cumulative and not exclusive of any other remedy set out in this section.

(b) If any transient occupancy tax, any penalty or interest thereon is unpaid as of the date of delinquency, the tax administrator may file, without fee, a certificate of transient occupancy tax delinquency for recordation in accordance with the procedure set forth in Revenue and Taxation Code Sections 2191.3-2191.4. This certificate shall specify the name of the operator who has defaulted in the payment of transient occupancy taxes collected; the last known

business address of the operator, the amount of taxes, penalties, and interest in default; and certification by the tax administrator that the amount of the taxes, penalties, and interest have been correctly calculated. Upon recordation of this certificate of delinquency without a fee with the county recorder, the county shall have a lien against the operator which shall be enforceable as a lien against the operator's real property in the county under the provisions of Revenue and Taxation Code Section 2191.4-2193. The remedies under this subsection are cumulative and not exclusive of any other remedy in this section.

11-34 Violations

No operator or other person shall operate or offer a lodging for rent without compliance with this article, or fail or refuse to register the lodging as required in this article, or fail or refuse to post the transient occupancy registration certificate in a prominent place as required by Section 11-24 or 11-25, or fail or refuse to furnish any return required by Section 11-26, or fail or refuse to furnish a supplemental return or other data required by the tax administrator. No person required to make, render, sign, or verify any report or claim shall make 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.

Section 2.

Any portion of this ordinance deemed invalid or unenforceable shall be severed from the remainder, which shall remain in full force and effect.

Section 3.


This ordinance shall take effect 30 days after its adoption.

Section 4.

A summary of this ordinance will be published within 15 days after its adoption in the Fairfield Daily Republic, a newspaper of general circulation in Solano County.

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on September 10, 2019 by the following vote:

AYES:	Supervisors	<u>Brown, Vasquez, Thomson</u>
		<u>and Chairwoman Hannigan</u>
NOES:	Supervisors	<u>None.</u>
EXCUSED:	Supervisors	<u>Spering</u>


ERIN HANNIGAN, Chairwoman
Solano County Board of Supervisors

ATTEST:
BIRGITTA E. CORSELLO, Clerk
Solano County Board of Supervisors

By: 
Jeanette Neiger, Chief Deputy Clerk

Introduced: August 27, 2019
Adopted: September 10, 2019
Effective: October 10, 2019