

ORDINANCE 24-352

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MISSION VIEJO, CALIFORNIA, AMENDING CHAPTER 3.25 OF THE MISSION VIEJO MUNICIPAL CODE REGARDING TRANSIENT OCCUPANCY TAX

The city council of the City of Mission Viejo does ordain as follows:

1. All legal prerequisites to the introduction of this Ordinance have occurred as required by law.
2. Chapter 3.25 of the Mission Viejo Code is hereby rescinded and replaced with the following Chapter 3.25, which shall read as follows:

Sec. 3.25.010. Short title.

This chapter shall be known as the "Uniform Transient Occupancy Tax of the City of Mission Viejo."

Sec. 3.25.020. Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

Facilitator means any person or entity who provides a means through which a person may book a hotel room to Transients, regardless of whether payment is transferred through or processed by such Facilitator. Online Travel Companies are considered Facilitators, as used herein.

Hotel means 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, and includes, but is not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof; duplex, triplex, single-family dwelling units except any private dwelling house or other individually owned single-family dwelling rented only infrequently and incidental to normal occupancy; or any timeshare as set out in Revenue and Taxation Code § 7280; provided that the burden of establishing that the facility is not a hotel shall be on the owner or operator thereof.

Occupancy means the use or possession or the right to the use or possession of any room or rooms or portion thereof, offered for rent for dwelling, lodging or sleeping purposes.

Online Travel Company is an organization that books reserves, or rents hotel or motel rooms and makes other travel arrangements for consumers via the World Wide Web, internet or other digital means. Online Travel Companies are considered Facilitators, as used herein.

Operator means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent also is an operator for the purposes of this chapter and has the same duties and

liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent is, however, considered to be compliance by both.

Person means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

Rent means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether 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.

Short-term rental unit refers to the temporary occupancy of a lodging unit for a period of less than thirty consecutive calendar days. It encompasses the rental of a residential unit, excluding individual guest rooms in hotels, motels, or approved bed and breakfasts, to another entity, person, or group of persons for dwelling, lodging, or sleeping purposes for a period of thirty calendar days or less. Short-term rental units are considered hotels, as used herein.

Tax administrator means the city manager.

Transient means any person who occupies or is entitled to occupy 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. Any such person so occupying space in a hotel is a transient until the period of 30 days has expired unless there is an agreement in writing between the operator or facilitator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, an uninterrupted period of time extending both prior and subsequent to the effective date of this chapter may be considered.

Sec. 3.25.030. Rate.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator or by the facilitator. This tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or facilitator of the hotel at the time the rent is paid. The unpaid tax is due upon the transient's ceasing to occupy space in the hotel. If, for any reason, the tax due is not paid to the operator or facilitator of the hotel, the tax administrator may require that such tax be paid directly to the tax administrator.

Sec. 3.25.040. Exemptions.

No tax shall be imposed upon:

- (1) Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided.
- (2) Any federal or state officer or employee when on official business.
- (3) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

No exemption is 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.

Sec. 3.25.050. Operator's duties.

Each operator or facilitator 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 or facilitator. No operator or facilitator of a hotel 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 facilitator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

Sec. 3.25.060. Registration.

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

- (1) The name of the operator.
- (2) The address of the hotel.
- (3) The date upon which the certificate was issued.
- (4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax 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, nor to operate a hotel without strictly complying with all applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City."

Sec. 3.25.070. Reporting and remitting.

Each operator or facilitator shall, on or before the last day or one 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, 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. 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 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 and facilitators pursuant to this chapter are held in trust for the account of the city until payment thereof is made to the tax administrator.

Sec. 3.25.080. Penalties and interest.

- (a) *Original delinquency.* Any operator or facilitator 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.* For each subsequent 30-day period following the date on which an operator's or facilitator's remittance first becomes delinquent the operator or facilitator shall pay a 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, up to a maximum of 50 percent.
- (c) *Fraud.* If the tax administrator 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 or facilitator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent 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 the provisions of this section shall become a part of the tax herein required to be paid.

Sec. 3.25.090. Failure to collect and report.

- (a) If any operator or facilitator 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 administrator shall proceed in such manner as he deems best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax administrator procures such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator or facilitator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator or facilitator the tax, interest and penalties provided for by this chapter. 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 or facilitator so assessed at his last known place of business. Such operator or facilitator 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 or facilitator 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 herein to the operator or facilitator 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 or facilitator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed.
- (b) After such hearing the tax administrator shall determine the proper tax to be remitted and thereafter give written notice to the person in the manner prescribed herein 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 section 3.25.100.

Sec. 3.25.100. Appeal.

Any operator or facilitator aggrieved by any 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 city 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 city clerk shall give notice in writing to such operator or facilitator at his last known place of business. The findings of the city council are 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 is immediately due and payable upon the service of notice.

Sec. 3.25.110. Records.

It is the duty of every operator or facilitator liable for the collection and payment to the city 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 city, which records the tax administrator shall have the right to inspect at all reasonable times.

Sec. 3.25.120. 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 city 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 within three years of the date of payment. The claim shall be on forms furnished by the tax administrator.
- (b) An operator or facilitator 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 is 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 or facilitator.
- (c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city 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 or facilitator, establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator or facilitator who collected the tax.
- (d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

Sec. 3.25.130. 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 city. Any such tax collected by an operator or facilitator which has not been paid to the city shall be deemed a debt owed by the operator or facilitator to the city. Any person owing money to the city under the provisions of this chapter is liable to an action brought in the name of the city for the recovery of such amount.

Sec. 3.25.140. Violations designated misdemeanor.

Any operator or facilitator or other person who fails or refuses to register as required herein, 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 administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor. 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 is guilty of a misdemeanor.

PASSED, APPROVED, and ADOPTED by the City Council of the City of Mission Viejo at a regular meeting held on the 23rd day of January, 2024.



Trish Kelley
Mayor

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF MISSION VIEJO)


I, Kimberly Schmitt, City Clerk of the City of Mission Viejo, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on the 9th day of January, 2024 and duly adopted at a regular meeting of the City Council of the City of Mission Viejo, held on the 23rd day of January, 2024.

AYES: Bucknum, Goodell, Kelley and Vasquez
NOES: None
ABSENT: Ruesch



Kimberly Schmitt
City Clerk

APPROVED AS TO FORM:



William P. Curley III
City Attorney