

ORDINANCE NO. _____
AN ORDINANCE OF THE BOARD OF SUPERVISORS OF MADERA COUNTY
AMENDING CHAPTER 3.20 OF THE MADERA COUNTY CODE RELATING TO
TRANSIENT OCCUPANCY TAXES

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

SECTION 1. Chapter 3.20 of the Madera County Code is amended to read as follows:

“3.20 Title. This chapter shall be known as the “Uniform Transient Occupancy Tax Ordinance of the County of Madera.

3.20.020 Definitions.

Except where the context otherwise requires, the following definitions govern the construction of this chapter:

“Camper” means a person who is registered as a participant in a regular structured program on a fee or non-fee basis, and who may take on duties relating to such program.

“Lodging” means any structure or any portion of any structure that is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes in the unincorporated territory of the County as permitted by County Code Section 5.04.

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

“Operator” means the responsible party, the person, who is proprietor of the lodging, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity, including, not limited to managing agent, broker, property manager. The responsible party is deemed an operator once the registration has been filed and approved by the tax administrator. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

“Organized camp” means a camping site that operates a structured program at facilities established for the primary purposes of providing an outdoor group living experience with social, spiritual, educational, or recreational objectives, for up to thirty consecutive days during one or more seasons of the year.

“Person” means any individual or responsible party for a 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 except for a camper when participating in a structured program at an organized camp.

“Rent” means the consideration charged, whether or not received, 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, without any deduction therefrom whatsoever. Rent does not include any additional items not related to occupancy that are included in other additional non-room related items, must be separately itemized in operator's accounting records. If additional benefits or services are not separately itemized as indicated above, the entire amount paid by the transient shall be presumed to be rent. Required and collected amounts for room-related fees and services are subject to transient occupancy tax.

“Short-term rentals (STR)” means a residential unit; any single-family dwelling, or a portion of a single-family dwelling, that is rented to transient guest occupants typically for periods of thirty consecutive days or less, with weekend or weekly rental periods being the most common. Short-term rentals are routinely booked for numerous periods throughout the year, with a resident or non-resident property manager providing oversight and services for guest customers and are typically marketed through an online hospitality service such as VRBO, Airbnb, and other similar internet services. A short-term rental includes any lodging advertised as a vacation rental.

“Tax administrator” means the Madera County Tax Collector.

“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 thirty consecutive calendar days or less, counting portions of calendar days as full days. Any person so occupying space in a lodging shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified herein may be considered.

“Transient occupancy taxes” abbreviated in this chapter as TOT, means lodging taxes paid by an operator who rents a lodging as defined herein for thirty consecutive days or less.

3.20.030 Tax imposed.

For the privilege of occupancy in any lodging, each transient is subject to and shall pay a transient occupancy tax in the amount of nine percent of the rent charged

by the operator. The tax constitutes a debt owed by the transient to the tax administrator which is extinguished only by payment to the operator or the tax administrator. The transient shall pay the tax to the operator of the lodging at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the lodging. If for any reason the tax due is not paid to the operator of the lodging, the tax administrator may require that such tax shall be paid directly to the tax administrator."

3.20.040 Exemptions.

No tax shall be imposed upon:

- A. Any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose the tax herein provided.
- B. Any officer or employee of a foreign government who is exempt by reason of express provision of international treaty.
- C. Any long-term occupant for whom the period of occupancy exceeds thirty-one consecutive days, or any occupancy to which is considered a long-term rental agreement.
- D. A person is exempt from TOT if the lodging is required in the course of official business on behalf of the state or the federal government or any of its political subdivisions.

No exemption shall be granted except upon a claim therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

3.20.050 Operator's duties.

Each operator shall collect the transient occupancy tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a lodging 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 hereinafter provided. The operator is held responsible for compliance with this Chapter 3.20.

3.20.060 Registration.

Within thirty days after the effective date of the ordinance codified herein, or within thirty days after commencing business, whichever is later, each operator of any lodging to transients shall register said lodging with the tax administrator including any operator who performs their 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 chapter and shall have the same duties and liabilities as their principal. In order that the County will have an accurate record of parties collecting transient occupancy tax, each operator will be required to register as hereinafter provided.

A. Prior to commencing business, each operator of any lodging to transients shall obtain a County business license as outlined in Chapter 5.04 of the Madera County Code and complete the registration application to register such lodging with the tax administrator by submitting any information deemed necessary by the tax administrator, including, but not limited to, the following:

1. Name of lodging facility and parcel number;
2. Type of lodging facility (vacation rental, hotel, motel, campground, bed and breakfast, short term rental, home, room, or space, etc.) and advertising platforms;
3. Type of ownership (individual, corporation, partnership, LLC, etc.);
4. Name of owner and/or operator (if corporation or partnership, names of officer or partners). Any operator managing the property that is not the owner shall only be listed if operator is properly licensed per Chapter 5.04 of the Madera County Code;
5. Name, address, and phone number of person preparing reports and remittances;
6. Mailing and physical addresses of lodging facility;
7. Mailing address of owner and operator;
8. Phone number of facility, owner, and operator;
9. Starting date of business;
10. Authorized signature and date;
11. Number and types of units subject to rent for more than 30 days;
12. Rates charged for each type of unit subject to TOT and information concerning seasonal rentals; and
13. If the owner and the operator are not in the same capacity, the operator is attesting that the owner has knowledge of such registration of the lodging facility with the tax administrator.

The operator shall obtain from the tax administrator 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 property owners;
4. Registration certificate number and date issued.

The registration certificate is not transferable, and is to be returned to the tax administrator upon sale of property or cessation of business along with the final remittance of transient taxes due.

B. 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 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 lodging without strictly complying with all local applicable laws, including but not limited to those requiring a permit from the Madera County Board of Supervisors, commissions, departments, or offices in this County.

C. It shall be the responsibility of the owner and/or operator of the lodging to report in writing all changes of operator or operations to the tax administrator immediately including, but not limited to, any change in operations, mailing address, number of rooms, or changes in ownership.

D. A registration certificate may be revoked by the tax administrator upon failure to comply with any provisions stated in Chapter 5.04 of the Madera County Code including failure to renew business license annually, failure to pay any taxes assessed on the secured or unsecured tax roll, managing an unlicensed property, or working with an unlicensed operator. Revocation by the tax administrator may be appealed to the Board of Supervisors as provided in Section 3.20.100. An appeal of revocation as provided herein will stay the revocation until the Board of Supervisors issues its decision.

E. Operation without valid registration certificate shall be a misdemeanor and shall be punishable as provided in this Chapter.

3.20.070 Reporting and remitting.

Each operator shall submit the completed TOT return, remittance, and supporting documentation, which shall be postmarked on or before the last day of the month following the close of each calendar quarter, or at the close of any reporting period which may be established by the tax administrator. Such TOT return shall show any rents charged, and the amount of tax collected for transient occupancies. All operators, including operators contracted with any on-line platforms or third-party agencies to collect payment on their behalf, shall at the time the TOT return is filed, remit the full amount of the tax collected to the tax administrator along with copies of claims of exemptions and supporting documentation for all TOT returns for each reporting period. If operator does not operate in the time period specified, a zero TOT return must be remitted to the tax administrator. The tax administrator may

establish shorter reporting periods for any operator as deemed necessary in order to ensure collection of the tax. The tax administrator may require further information in the TOT return at any time. TOT 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 trust for the account of the County until payment thereof is made to the tax administrator.

3.20.080 Penalties and interest.

A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax due and shall become a part of the tax herein required to be paid.

B. Continued Delinquency. Any operator who fails to remit any delinquent or past due 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 percent of the amount of the tax due in addition to the amount of the tax due plus the ten percent penalty first imposed and shall become a part of the tax herein required to be paid.

C. Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax due in addition to the penalties stated in subsections A and B shall become a part of the tax herein required to be paid.

D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent per month or fraction thereof on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Fees, Penalties, and interest merged with Tax. Every fee assessed, 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.

F. Failure to timely submit any TOT returns due are subject to additional reminder notice fees in the amount of eighteen dollars. Additional fees for further legal collection action may be imposed. Contracting with any on-line platforms or third-party agencies to collect payment does not excuse an operator from timely submission of any TOT returns.

3.20.090 Failure to collect and report tax.

If TOT returns are rejected due to short/returned payment, incomplete documentation, and/or operator fails or refuses to collect said tax and complete, within the time provided in this chapter, any TOT return, and/or send remittance of

said tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as it may deem best to obtain facts and information on which to base the estimate of the tax due. As soon as the tax administrator procures such facts and information upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such TOT return and remittance, the tax administrator shall proceed to determine and assess against such operator the tax, interest, fees, 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 so assessed at their last known place of address as stated in the registration. 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, fees 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 to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest, fees, and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest, fees, 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 operator in the manner prescribed herein of such determination and the amount of such tax, interest, fees, and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 3.20.100.

3.20.100 Appeal.

Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest, fees, and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the County clerk of the Board 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 County clerk of the Board shall give notice in writing to such operator at their last known place of address. The findings of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed in Section 3.20.090 for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3.20.110 Records.

A. It shall be the duty of each operator keep and preserve for a period of five years all records as it may be necessary to determine the amount of such tax the

operator may have been liable to collect and pay to the tax administrator, commencing on first date open for business.

B. The tax administrator or designee, shall have the right at all times to inspect all books and records of the operator relating to the operation of lodging, including, but not limited to, the following:

1. General ledgers or financial statements.
2. Subsidiary ledgers and records.
3. Original documents and records including, but not limited to:
 - a. Daily record of room occupancies.
 - b. A written record of each occupancy charge for which an exemption is claimed, including the name of the person occupying the room, automobile license plate number, dates of occupancy and reason(s) for and documentation in support of claims for exemption.
 - c. Summary of the operator's monthly or quarterly revenue, supported by room registrations, a calendar of advance registrations, and pre-numbered 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.

C. All TOT returns and information furnished by any operator pursuant to this article shall be confidential and shall not be open to public inspection nor the specific contents thereof disclosed by any officer or employee except as necessary in the performances of official duty pursuant to this article, or in the course of any proceedings, hearings, and litigation involving the existence or amount of tax liability of such operator, or with the written consent of the operator, or an authorized representative. Said documents may be retained in electronic form.

3.20.115 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 apply for a new business license.

B. Following any change of ownership or operator, the new owner and operator are subject to an audit by the County treasurer-tax collector or designee.

C. Any owner and/or operator of a lodging facility required to collect or pay transient occupancy tax may apply for and receive within ninety days of application, an occupancy tax clearance certificate, provided that the taxes and any penalties are paid in full for the time period specified. Any purchaser, transferee, or other person or entity who obtains ownership without obtaining a tax clearance certificate or obtains a tax clearance certificate that shows a tax liability and fails to withhold sufficient funds in the escrow account, shall be held liable for the amount of the tax due.

3.20.116 Cessations and operations.

Remitting and reporting requirements upon cessation of operations.

A. An owner and/or operator who intends to transfer, sell or terminate its lodging operations shall notify the tax administrator in writing of such sale, transfer or termination and the name and address of the purchaser or transferee at least thirty days in advance of the date of transfer, sale or termination, unless the decision to sell, transfer or terminate was made within less than a thirty-day period, as provided in Section 3.20.060. Transfer, sale or termination may cause the operator, escrow, or new owner to obtain a tax clearance certificate as stated in Section 3.20.115.

B. Each operator upon cessation of operations for any reason shall, on or before the same day of the next month following the cessation of operations or on the last day of that month if no corresponding day exists, file a TOT return with the tax administrator on approved forms of the total taxable rents charged, the amount of tax collected for the reporting period, remittances made, if any, and the balance of the tax due. At the time the TOT return is filed, the full amount of the balance of the tax due, if any, shall be remitted to the tax administrator. TOT returns filed and tax remitted and actually received by the tax administrator on or before the same day of the next month following the cessation of business or on the last day of that month if no corresponding calendar day exists shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by this article.

C. Upon cessation of operation, the certificate of operation must be returned to the tax administrator's office.

3.20.117 Collection generally.

A. Overages. When the amount paid to the tax administrator on any transient occupancy tax exceeds the entire amount due, and the excess does not exceed twenty dollars, there is an overage. If the excess amount is not deposited in an overage account, it shall be refunded to the person who made the payment (R&T Code Section 2611.5, Gov. Codes Sections 29370—29375 and 29380.1).

B. Shortages. Whenever there exists a shortage based on a calculating (accounting error) from a TOT return remitted by an operator further collection may be waived without authorization of the Board of Supervisors or approval of the County counsel if the amount of any transient occupancy tax owing to the tax administrator is twenty dollars or less. A waiver from collection shall not be construed as releasing any person from payment that is due and owing the tax administrator (R&T Code Section 2611.4).

C. Whenever the amount of any transient occupancy tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter it may be refunded as provided in Section 3.20.120.

3.20.120 Refunds.

A. A claim for refund in writing stating under penalty of perjury the specific grounds upon which the claim is founded and must be 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 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 has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the tax administrator 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 the provisions of this section unless the claimant establishes the right thereto by written records showing entitlement thereto.

3.20.130 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 tax administrator. Any such tax collected by an operator which has not been paid to the tax administrator shall be deemed a debt owed by the operator to the tax administrator. Any person owing money to the tax administrator under the provisions of this chapter shall be liable to an action brought in the name of the County of Madera for the recovery of such amount.

3.20.140 Tax lien filed.

A. The tax collector is authorized to record a certificate of delinquency of transient occupancy tax lien with the Madera County Recorder against any operator who fails to remit taxes, penalties, fees, or interest due under this article within the times required herein. The tax administrator shall add to the amount of the lien the costs incurred by the tax administrator in collecting the tax due, such costs specified in section 3.20.130 above, including court costs and legal fees. The certificate of delinquency of transient occupancy tax lien may be filed by the tax collector:

1. Ten days after the serving or mailing of the notice required by Section 3.20.090, if the operator does not file the application for appeal permitted by Section 3.20.100.
2. If the operator files an appeal pursuant to Section 3.20.100, ten days after service of the Board of Supervisor's findings pursuant to Section 3.20.100.

The certificate of delinquency of transient occupancy tax lien shall be filed within four 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 administrator 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 tax lien, the amount required to be paid, together with penalties, interest, and fees, 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 years from the filing of the certificate of delinquency of transient occupancy tax lien, unless sooner released or otherwise discharged. Within ten years of the date of the recording of the certificate of delinquency of transient occupancy tax lien (or within ten years of the last extension of the lien), the tax administrator may extend the lien by filing for record a new certificate in the office of the Madera 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 years, unless sooner released or otherwise discharged. The lien shall not be removed until the delinquent taxes, penalties, interest, fees for delinquency, and costs of collection are fully paid or the property is sold for payment of the delinquent taxes, penalties, interest, fees, and costs of collection.

B. At any time within four years after the recording of a certificate of delinquency of transient occupancy tax lien under subsection A above, the tax administrator may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of any tax penalties, interest and fees required to be paid to the tax administrator under this article. The warrant shall have the same effect as a writ of execution, and be executed in the same effect as

a levy and sale pursuant to a writ of execution. The 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 four years after a certificate of delinquency of transient occupancy tax lien was recorded under subsection A, the tax administrator 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-negotiable property, or a sufficient part of it, at public auction to pay the amount of tax due, together with any penalties, interest, fees, 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.

3.20.150 Violations—Misdemeanor.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor and shall be punishable therefore by a fine of not more than five hundred dollars or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment.

Any operator or other person who fails or refuses to register as required herein, or to furnish any TOT return required to be, or who fails or refuses to furnish a supplemental TOT return or other data required by the tax administrator, or who renders a false or fraudulent TOT return or claim, is guilty of a misdemeanor, and is punishable as provided in this section. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as provided in this section.

Any lodging that is determined to be operating without a business license required under County ordinance Section 5.04.200 shall be subject to a license fee penalty."

SECTION 2.

This Ordinance is an ordinance pertaining to a tax and therefore shall take effect immediately upon its adoption and before the expiration of fifteen (15) after its passage, it (or a summary) shall be published with the names of the members of the Board of Supervisors voting for and against the Ordinance in a newspaper of general circulation published in the County of Madera.

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The foregoing Ordinance was adopted this day of _____,
2022, by following vote.

Supervisor Frazier voted: _____

Supervisor Rogers voted: _____

Supervisor Poythress voted: _____

Supervisor Gonzalez voted: _____

Supervisor Wheeler voted: _____

Chairman, Board of Supervisors

ATTEST:

Clerk, Board of Supervisors

Approved as to Legal form:
COUNTY COUNSEL

Dale E.
By: Bacigalupi

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dbacigalupi@lozanosmith.com C = US O
= Lozano Smith
Date: 2022.11.08 11:37:20 -08'00'