

## **Article 6. Transient Occupancy Tax**

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## **ARTICLE 6. TRANSIENT OCCUPANCY TAX**

### **2-4-601: TITLE:**

This article shall be known as the *BURBANK UNIFORM TRANSIENT OCCUPANCY TAX ORDINANCE*. [Formerly numbered Section 14-87; renumbered by Ord. No. 3058, eff. 2/21/87.]

### **2-4-602: DEFINITIONS:**

The following words and phrases, wherever used in this article, shall be construed as herein defined:

**DIRECTOR:** The City Manager, or the designee or designees of the City Manager.

**HOTEL ACCOMMODATIONS:** Any room or rooms in any structure, or any portion of a structure, which is occupied or intended or designed for occupancy for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof. The term "hotel accommodations" does not include an accommodation which a person occupies as his domicile and permanent residence.

**OCCUPANCY:** The use or possession or the right to the use or possession of any hotel accommodations.

**OPERATOR:** Any person who engages in the proprietorship of a hotel without regard to his legal estate in the premises; the term includes the executor, administrator, assignee or

immediate successor in interest of the proprietor of a hotel.

**RENT:** The consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether or not 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.

**TRANSIENT:** Any person who exercises occupancy or is entitled to occupancy of any hotel accommodation by reason of concession, permit, right of access, license or other agreement. For the purpose of this definition, "transient" does not include:

A. Any natural person who, by way of advance monthly payment, is entitled to and actually does occupy a hotel accommodation for a calendar month or, in the alternative, for thirty (30) consecutive calendar days; nor

B. Any natural person who, having occupied a hotel accommodation for a calendar month or, in the alternative, for thirty (30) consecutive calendar days, and having paid the transient occupancy tax during said period, thereafter continues to occupy said hotel accommodation. [Formerly numbered Section 14-88; renumbered by Ord. No. 3058, eff. 2/21/87; 3110, 3028, 2937, 2926.]

#### **2-4-603: TAX IMPOSED:**

For the privilege of occupancy of any hotel accommodation, each transient is subject to and shall pay a tax in the amount designated in the Burbank Fee Resolution. This tax shall constitute a debt owed by the transient to the City which is extinguished only by payment to the operator of the hotel 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 hotel. If for any reason the tax due is not paid to the operator of the hotel, the Director may require that such tax shall be paid directly to the License Division. [Formerly numbered Section 14-89; renumbered by Ord. No. 3058, eff. 2/21/87.]

#### **2-4-604: 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 City to impose the tax herein provided;

B. Any Federal or State officer or employee while on official business only and when payment for such occupancy is made directly to the operator by duly authorized voucher payment from a governmental accounting office;

C. Any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Director. [Formerly numbered Section 14-90; renumbered by Ord. No. 3058, eff. 2/21/87; 3110, 2926.]

**2-4-605: OPERATOR'S DUTIES:**

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. No operator 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 that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided. [Formerly numbered Section 14-91; renumbered by Ord. No. 3058, eff. 2/21/87.]  
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**2-4-606: REGISTRATION:**

Within thirty (30) days after he undertakes the proprietorship of a hotel, every operator renting occupancy to transients shall register his hotel with the Director and obtain from him a "Transient Occupancy Registration Certificate". The certificate issued by the Director is personal to each operator and is not transferable from person to person or from place to place. [Formerly numbered Section 14-92; renumbered by Ord. No. 3058, eff. 2/21/87; 2926.]

**2-4-607: REGISTRATION CERTIFICATES:**

The Transient Occupancy Registration Certificate issued to each registered operator shall be posted by him in a conspicuous place upon the hotel premises. The certificate shall be entitled "Transient Occupancy Registration Certificate" and shall state:

A. The name of the registered operator.

B. The name and address of the hotel.

C. The date of issuance of the certificate.

D. The explanation, "This certificate does not constitute a permit. It signifies that the person named hereon has fulfilled the requirements of the Burbank Uniform Transient Occupancy Tax Ordinance by registering with the Director for the purpose of collecting and remitting the required transient occupancy tax. This certificate does not authorize any person to operate a hotel without strictly complying with all state and local laws including those requiring a permit from any board, commission, office or department of the City of Burbank"; and

E. The legend:

*THIS CERTIFICATE IS NOT TRANSFERABLE. A new proprietor of this hotel must obtain a new Transient Occupancy Registration Certificate from the Director within thirty (30) days. A new proprietor is liable for all accrued and unpaid transient occupancy taxes.*

[Formerly numbered Section 14-93; renumbered by Ord. No. 3058, eff. 2/21/87; 2926.]

**2-4-608: REPORTING AND REMITTING:**

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 Director, make a return to the Director, 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 Director. He 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 pursuant to this article shall be held in trust for the account of 263

the City until payment thereof is made to the Director. [Formerly numbered Section 14-94; renumbered by Ord. No. 3058, eff. 2/21/87; 2926.]

#### **2-4-609: SECURITY DEPOSIT:**

Whenever he deems it reasonably necessary to ensure remittance of the transient occupancy tax, the Director may require any operator to deposit security for his payment of the tax. The type and amount of security deposit shall be determined by the Director but shall not exceed a sum or value equal to twice the estimated tax payable by the operator for any one calendar quarter. To recover transient occupancy tax, including penalty and interest, remittable by the depositor, the Director may apply or sell at public auction the security deposited with him. Security deposits in the form of bearer bonds issued by the United States of America or by the State may be sold by the Director at private sale for the current market price. At least ten (10) days prior to the application or sale of a security deposit, the Director shall serve upon the depositing operator notice of intent to apply or sell the security deposit. Service of notice may be made by placing the notice in the United States mail, postage prepaid, addressed to the depositing operator at his hotel. Any portion of the proceeds from the sale of security remaining after satisfaction of outstanding transient occupancy taxes, penalty, interest and costs of sale, may be retained by the Director for security or may be paid over by him to the depositing operator. [Formerly numbered Section 14-95; renumbered by Ord. No. 3058, eff. 2/21/87; 2926.]

#### **2-4-610: TRANSFER OF BUSINESS:**

A. Successor's Liability: If an operator conveys or quits his hotel business, his assignee or successor in interest shall withhold sufficient of the purchase price to cover the accrued or outstanding transient occupancy tax liability of the operator until the operator produces a certificate of the Director stating the nonliability of the operator for payment of transient occupancy tax. If the assignee or successor in interest fails to withhold the amount required to pay the tax liability, he shall become personally liable for the payment of the amount required to be withheld by him.

B. Certificate of Nonliability: Within thirty (30) days from the date of receipt of the application of any operator for a certificate of nonliability for the payment of transient occupancy tax, the Director shall issue the certificate if the operator's tax liability has been satisfied to the date of application. If tax has accrued to that date, the Director shall give notice to the operator of the amount which must be paid as a condition of issuing the certificate. [Formerly numbered Section 14-96; renumbered by Ord. No. 3058, eff. 2/21/87; 2926.]

#### **2-4-611: PENALTIES AND INTEREST:**

A. Original Delinquency: Any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten percent (10%) 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 (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of twenty percent (20%) of the amount of the tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.

C. Fraud: If the Director determines that the nonpayment of any remittance due under this article is due to fraud, a penalty of twenty five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Interest: In addition to the penalties imposed, any operator who fails to remit any tax imposed by this article shall pay interest at the rate of two percent (2%) per month or fraction thereof on the amount of tax 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. [Formerly numbered Section 14-97; renumbered by Ord. No. 3058, eff. 2/21/87; 2926.]

#### **2-4-612: FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX:**

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this article, any report and remittance of said tax or any portion thereof required by this article, the Director shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Director shall procure such facts and information as he 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, he 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 Director shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Director 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 Director shall become final and conclusive and immediately due and payable. If such application is made, the Director shall give not less than five (5) 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 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 Director shall determine the proper tax to be remitted and shall 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 fifteen (15) days unless an appeal is taken as provided in Title 2, Chapter 1, Article 15 of this code. [Formerly numbered Section 14-98; renumbered by Ord. No. 3058, eff. 2/21/87; 3078, 2926.]

## **2-4-613: RECORDS:**

A. Right of Inspection: No reports or statements by an operator shall be conclusive as to the matters set forth in such reports or statements, nor shall the filing of such reports or statements preclude the City from collecting by appropriate action such sum as is actually due and payable under this article. The reports or statements of the operator and each of the several items in such reports and statements shall be subject to audit and verification by the Director, his deputies, or authorized agents of the City, who are hereby authorized to examine, audit, and inspect such books and records of any operator as may be necessary in their judgement to verify or ascertain the tax due.

B. Maintenance of Records: It shall be the duty of every operator to keep and preserve for a period of not less than three (3) years all records as may be necessary to determine the amount of any tax liability pursuant to this article, which records the Director or his deputies or agents shall have the right to inspect and copy at all reasonable times upon demand. Each operator within the City is hereby required to permit an examination of such books and records for the purposes described in this section and at a location within the City of Burbank. In the event such books and records cannot be made available within the City of Burbank, the operator is hereby required to reimburse the City for the costs of all transportation, lodging, meals, portal to portal travel time, and other incidental costs reasonably incurred by the City in obtaining said audit.

C. Confidentiality: Except as specifically provided in this subsection the information furnished or secured pursuant to this article shall be confidential. Any unauthorized disclosure or use of such information by any officer, agent, or employee of the City of Burbank shall constitute a misdemeanor and such officer, agent, or employee shall be subject to the penalty provisions of this code, in addition to any other penalties provided by law; provided, however, this section shall not apply to any disclosures made in connection with any appeal proceeding pursuant to this article or any civil action relating to the recovery of such taxes, interest, or penalties, or any prosecution of any person for violation of any provisions of this article. The provisions of this subsection C shall not include, however, the monthly or annual gross revenues of an operator taxable under this article or the amount of tax paid by an operator pursuant to this article. [Formerly numbered Section 14-100; renumbered by Ord. No. 3058, eff. 2/21/87; 3110, 2926.]

## **2-4-614: REFUNDS:**

A. Claim To Be In Writing: 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 article, 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 Director within three (3) years of the date of payment. The claim shall be on forms furnished by the Director.

B. Operator's Refund; Options: 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 Director 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. Transient Refund: 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 Director, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Director that the transient has been unable to obtain a refund from the operator who collected the tax.

D. Records Required: No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. [Formerly numbered Section 14-101; renumbered by Ord. No. 3058, eff. 2/21/87; 2926.]

**2-4-615: ACTIONS TO COLLECT:**

Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this article shall be liable to an action brought in the name of the City for the recovery of such an amount. [Formerly numbered Section 14-102; renumbered by Ord. No. 3058, eff. 2/21/87.]

**2-4-616: FAILURE TO REGISTER OR FILE REPORTS, ETC.:**

An operator 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 Director, or who renders a false or fraudulent return or claim, and 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. [Formerly numbered Section 14-103; renumbered by Ord. No. 3058, eff. 2/21/87; 2926.]

**2-4-617: EFFECTIVE DATE:**

The tax imposed by this article shall become operative and be imposed on October 1, 1964, and shall not apply prior to said date. [Formerly numbered Section 14-104; renumbered by Ord. No. 3058, eff. 2/21/87.]