

ORDINANCE NO. 1014

CHAPTER 21: TAXATION

The City Council of the City of Red Bluff does ordain as follows:

That Chapter 21, Article III (titled "Transient Occupancy Tax") of the Red Bluff Municipal Code is rescinded in its entirety and replaced with the following:

ARTICLE III: TRANSIENT OCCUPANCY TAX

21.20 Definitions

21.21 Imposition; amount; where payable

21.22 Reserved

21.23 Collection; advertising that payment of tax not required prohibited

21.24 Transient occupancy registration certificate

21.25 Reports and remittances

21.26 Penalties for failure to remit tax when due

21.27 Failure of operator to collect and report tax, determination of tax by director of finance; notice and hearing

21.28 Appeal

21.29 Records to be kept for three years

21.30 Refunds

21.31 Actions to collect tax

21.32 Violation of provisions of article deemed misdemeanor; penalties

Statutory reference:

Taxation generally, see California Revenue and Taxation Code, §§ 7280 et seq.

§ 21.20 DEFINITIONS.

For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

The City of Red Bluff is an Equal Opportunity Provider

HOTEL. 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, a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, public or private club, mobile home or house trailer at a fixed location, or other lodging. For purposes of this Article, "other lodging" includes, but is not limited to, a camping site or a space at a campground or recreational vehicle park.

OCCUPANCY. The use or possession, or the right to the use or possession of any **HOTEL** as defined herein.

OPERATOR.

(1) The **PERSON** who is the proprietor of any **HOTEL**, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity.

(2) Where the **OPERATOR** performs his or her 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 his or her principal. Compliance with the provisions of this Article by either by the principal or the managing agent shall, however, be considered to be compliance by both.

PERSON. 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. The consideration charged, whether or not received, for the **OCCUPANCY** of space in a **HOTEL** 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 there from whatsoever.

TRANSIENT. Any **PERSON** who exercises **OCCUPANCY** or is entitled to **OCCUPANCY** of a **HOTEL** 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 **PERSONS** occupying space in a **HOTEL** shall be deemed to be **TRANSIENT** until the period of 30 days has expired. In determining whether a **PERSON** is a **TRANSIENT**, uninterrupted periods of time extending both prior and subsequent to the effective dates of this Article may be considered.

§ 21.21 IMPOSITION; AMOUNT; WHERE PAYABLE.

(A) For the privilege of **OCCUPANCY** in any **HOTEL**, each **TRANSIENT** is subject to and shall pay a tax in the amount of 10% of the **RENT** charged by the **OPERATOR**. The tax constitutes a debt owed by the **TRANSIENT** to the City which is extinguished only by payment to the **OPERATOR** or to the City.

(B) The **TRANSIENT** shall pay the tax 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** 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 of Finance of the City shall require that the tax be paid directly to the Director of Finance of the City.

§ 21.22 RESERVED.

§ 21.23 COLLECTION; ADVERTISING THAT PAYMENT OF TAX NOT REQUIRED 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**. 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.

§ 21.24 TRANSIENT OCCUPANCY REGISTRATION CERTIFICATE.

(A) Within 30 days after the effective date of this Article, or within 30 days after commencing business, whichever is later, each **OPERATOR** of any **HOTEL** renting **OCCUPANCY** to **TRANSIENTS** shall register the **HOTEL** with the Director of Finance and obtain from him or her a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises.

(B) The certificates shall, among other things, state the following:

- (1) The name of the **OPERATOR**;
- (2) The address of the **HOTEL**;
- (3) The date upon which the certificate was issued; and

(4) The statement: "This certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Director of Finance of the City for the purpose of collecting from **TRANSIENTS** the Transient Occupancy Tax and remitting the tax to the Director of Finance. 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 local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit."

§ 21.25 REPORTS AND REMITTANCES.

(A) 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 of Finance of the City, make a return to the Director of Finance on forms provided by him or her of the total **RENTS** charged and received and the amount of tax collected for **TRANSIENT OCCUPANCIES**.

(B) At the time the return is filed, the full amount of the tax collected shall be remitted to the Director of Finance. The Director of Finance may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to insure collection of the tax and he or she may require further information on the return. Returns and payments are due immediately upon cessation of business for any reason.

(C) All taxes collected by **OPERATORS** pursuant to this article shall be held in trust for the account of the City until payment thereof is made to the Director of Finance.

§ 21.26 PENALTIES FOR FAILURE TO REMIT TAX WHEN DUE.

(A) Any **OPERATOR** who fails to remit any tax imposed by this Article within the time required shall pay a penalty of 10% of the amount of the tax in addition to the amount of the tax.

(B) Any **OPERATOR** who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the tax first became delinquent shall pay a second delinquency penalty of 10% of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed.

(C) If the Director of Finance determines that the nonpayment of any remittance due under this article is due to fraud, a penalty of 25% of the amount of the tax shall be added thereto, in addition to the penalties stated in division (A) and (B) above.

(D) 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 .5% 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) Every penalty imposed and the interest as accrued under the provisions of this section shall become a part of the tax herein required to be paid.

§ 21.27 FAILURE OF OPERATOR TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY DIRECTOR OF FINANCE; NOTICE AND HEARING.

(A) (1) If any **OPERATOR** shall fail or refuse to collect the tax and to make, within the time provided in this article, any report and remittance of the tax or any portion thereof required by this article, the Director of Finance of the City shall proceed in a manner as he or she may deem best to obtain facts and information on which to base his or her estimate

of the tax due. As soon as the Director of Finance shall procure the facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this Article and payable by any **OPERATOR** who has failed or refused to collect the same and to make the report and remittance, he or she shall proceed to determine and assess against the **OPERATOR** the tax, interest and penalties provided for by this Article.

(2) In case the determination is made, the Director of Finance 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 or her last-known place of address.

(B) The **OPERATOR** may within ten days after the serving or mailing of the notice make application in writing to the Director of Finance 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 of Finance shall become final and conclusive and immediately due and payable. If the application is made, the Director of Finance 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 the notice why the amount specified therein should not be fixed for the tax, interest and penalties.

(C) At the hearing, the **OPERATOR** may appear and offer evidence why the specified tax, interest and penalties should not be so fixed. After the hearing, the Director of Finance shall determine the proper tax to be remitted and shall thereafter give written notice to the **PERSON** in the manner prescribed herein of the determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken, as provided in § 21.28.

§ 21.28 APPEAL.

(A) (1) Any **OPERATOR** aggrieved by any decision of the Director of Finance with respect to the amounts of the 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.

(2) The City Council shall fix a time and place for hearing the appeal and the City Clerk shall give notice in writing to the **OPERATOR** at his or her last-known place of address.

(3) The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing.

(B) Any amount found to be due shall be immediately due and payable upon the service of notice.

§ 21.29 RECORDS TO BE KEPT FOR THREE YEARS.

It shall be the duty of every **OPERATOR** liable for the collection and payment to the City 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 the tax as he or she may have been liable for the collection of and payment to the city, which records the Director of Finance shall have the right to inspect at all reasonable times.

§ 21.30 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 Article, it may be refunded as provided in divisions (B) and (C) below; 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 of Finance within three years of the date of payment. The claim shall be on forms furnished by the Director of Finance.

(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 Director of Finance that the **PERSON** from whom the tax has been collected was not **TRANSIENT**. 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 City by filing a claim in the manner provided in division (A) above, but only when the tax was paid by the **TRANSIENT** directly to the Director of Finance, or when the **TRANSIENT** having paid the tax to the **OPERATOR**, establishes to the satisfaction of the Director of Finance 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 his or her right thereto by written records showing entitlement thereto.

§ 21.31 ACTIONS TO COLLECT TAX.

Any tax required to be paid by any **TRANSIENT** under the provisions of this Article shall be deemed to be a debt owed by the **TRANSIENT** to the City. Any 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 the amount.

§ 21.32 VIOLATION OF PROVISIONS OF ARTICLE DEEMED MISDEMEANOR; PENALTIES.

(A) Any **PERSON** violating any of the provisions of this Article shall be guilty of a misdemeanor and shall be punishable therefor by a fine of no more than \$500 or by imprisonment in the County Jail for a period of not more than six months or by both the fine and imprisonment.

(B) Any **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 of Finance, or who renders a false or fraudulent return or claim is guilty of a misdemeanor and is punishable as aforesaid. Any **PERSON** required to make, render, sign or verify any report or claim, who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this Article to be made, is guilty of a misdemeanor and is punishable as aforesaid.

This ordinance shall take effect thirty (30) days after the date of its adoption. Within fifteen (15) days from the passage thereof, it shall be published at least once in the Red Bluff Daily News, a newspaper of general circulation, published and circulated in the City of Red Bluff.

The forgoing ordinance was introduced at a regular of the Red Bluff City Council on July 5, 2011 and adopted at a regular adjourned meeting of the Red Bluff City Council on September 6, 2011 by the following vote.

AYES: Councilmembers: Brown, Jackson and Carrel

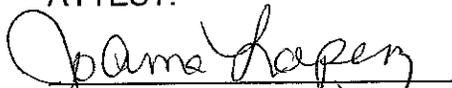
NOES: Councilmembers: Flynn and Schmid

ABSENT OR NOT VOTING: Councilmembers: None



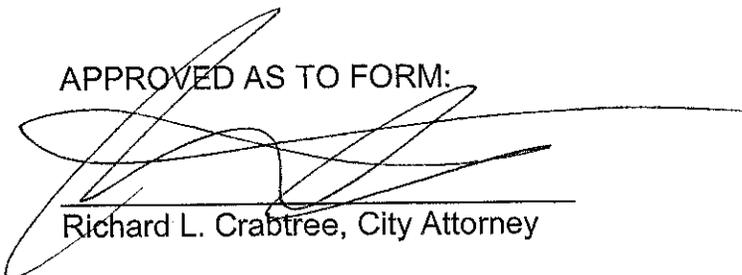
Bob Carrel, Mayor

ATTEST:



Jo Anna Lopez, City Clerk

APPROVED AS TO FORM:



Richard L. Crabtree, City Attorney

ORDINANCE NO. 1014 - SUMMARY

CHAPTER 21: TAXATION

ARTICLE III: TRANSIENT OCCUPANCY TAX

21.20 Definitions

21.21 Imposition; amount; where payable

21.22 Reserved

21.23 Collection; advertising that payment of tax not required prohibited

21.24 Transient occupancy registration certificate

21.25 Reports and remittances

21.26 Penalties for failure to remit tax when due

21.27 Failure of operator to collect and report tax, determination of tax by director of finance; notice and hearing

21.28 Appeal

21.29 Records to be kept for three years

21.30 Refunds

21.31 Actions to collect tax

21.32 Violation of provisions of article deemed misdemeanor; penalties

Statutory reference:

Taxation generally, see California Revenue and Taxation Code, §§ 7280 et seq.

This ordinance makes no substantive changes to the current Article III Transient Occupancy (TOT) Code sections of the City Code. It only clarifies application of the TOT Code provisions to stays in recreational vehicle parks. It also clarifies the 30 day exemption provision and makes the defined terms consistent in all sections (capitalizations).

The old and new definitions of "hotel" follows":

a. Current Definition

HOTEL. 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 any hotel, inn, tourist home or house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or portion thereof

b. Proposed Definition

HOTEL. 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, a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, public or private club, mobile home or house trailer at a fixed location, or other lodging. For purposes of this Article, "other lodging" includes, but is not limited to, a camping site or a space at a campground or recreational vehicle park.

Adoption of this ordinance does not expand the coverage of the transient occupancy tax to recreational vehicle parks; as they are already subject to the tax under the current code. This ordinance just clarifies application of the Code to recreational vehicle parks.

The definition of "TRANSIENT" is amended to clarify that the 30+ day exemption from the tax does not apply until the 31st day of OCCUPANCY.

Ordinance No. 1014 was introduced at the regular meeting of the City Council on July 5, 2011 and adopted at the regular adjourned meeting of the City Council on September 6, 2011 by the following vote:

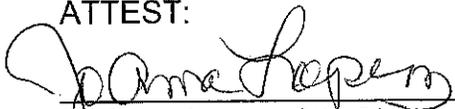
AYES: COUNCILMEMBERS: Brown, Carrel and Jackson

NOES: COUNCILMEMBERS: Flynn and Schmid

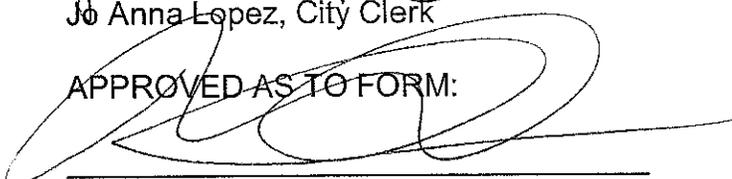
ABSENT OR NOT VOTING: COUNCILMEMBER: None


Bob Carrel, Mayor

ATTEST:


Jo Anna Lopez, City Clerk

APPROVED AS TO FORM:


Richard Crabtree, City Attorney