

ORDINANCE NO. 2057

AN ORDINANCE PROVIDING FOR A TRANSIENT OCCUPANCY TAX AND PROVIDING ADMINISTRATIVE PROCEDURES FOR COLLECTING SAID TAX.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. For purposes of this ordinance, the following mean:

(1) Accrual Accounting. A system of accounting in which the operator enters the rent due from a transient into the record when the rent is earned, whether or not it is paid.

(2) Cash Accounting. A system of accounting in which the operator does not enter the rent due from a transient into the record until the rent is paid.

(3) Hotel. A structure, any portion of a structure, or any space that is occupied or intended or designed for transient occupancy for thirty (30) days or less for dwelling, lodging or sleeping purposes; and including, but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, public or private dormitory, fraternity, sorority, rooming house, public or private club, space in a mobile home or trailer park, space in a recreational vehicle park, or other similar structure if the occupancy is for less than a 30-day period.

(4) Occupancy. The use or possession or right to the use or possession of a room or space in a "hotel" for lodging or sleeping purposes.

(5) Operator. A person who is a proprietor of a hotel in any capacity. When the operator performs his functions through a managing agent of a type or character other than an employee, the managing agent shall also be considered an operator and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance be either the principal or the managing agent shall be considered compliance by both.

(6) Person. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unity.

(7) Rent. The consideration charged for the occupancy of space in a hotel as that term is defined by this Ordinance. (Section 1(7) as amended by Ordinance 2419 dated May 14, 2007.)

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(8) Rent Package Plan. The consideration charged for both food and rent when a single rate is made for the total of both. The amount applicable to rent for determination of the transient occupancy tax shall be the same charge made for rent when it is not a part of a package plan.

(9) Tax. The tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(10) Tax Administrator. The Finance Director or designee.

(11) Transient. An individual who exercises occupancy for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. An individual occupying space in a hotel shall be 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. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

Section 2. Imposition of Tax. For the privilege of occupancy in a hotel, a transient shall pay a tax in the amount of nine percent (9%) of the rent charged by the operator. The tax constitutes a debt owned by the transient to the City, and the debt is extinguished only when the tax is remitted by the operator to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax into the records when rent is collected if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that the tax be paid directly to the City. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities other than the furnishing of rooms, accommodations, and parking space in mobile home parks, trailer parks or recreation vehicle parks. (Section 2 as amended by Ordinance 2290 dated June 11, 2001.)

Section 3. Rules for Collection of Tax by Operator.

(1) Every operator renting space for lodging or sleeping, the occupancy of which is not exempted under terms of this ordinance, shall collect a tax from the occupant. The tax collected or accrued constitutes a debt owned by the operator to the City.

(2) In cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectible accounts.

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(3) The tax administrator shall enforce this ordinance and may adopt rules and regulations necessary for enforcement.

(4) For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.

Section 4. Operator's Duties. An operator shall collect the tax when the rent is collected from the transient. The amount of tax shall be stated separately in the operator's records and on the receipt given by the operator. An operator shall not advertise that the tax will not be added to the rent, that portion of it will be assumed or absorbed by the operator, or that a portion will be refunded, except in the manner provided by this ordinance. The operator shall pay the tax to this city as imposed by this ordinance as provided for in Section 8 of this ordinance.

Section 5. Exemptions. The tax shall not be imposed on:

- (1) An occupant staying for more than 30 consecutive days.
- (2) A person who rents a private home, vacation cabin or similar facility from an owner who personally rents the facility incidentally to the owner's personal use.
- (3) Any occupant whose rent is paid for a hospital room or stay in a medical clinic, convalescent home or home for aged people.
- (4) Any occupant whose rent is of a value less than \$2.00 per day.
- (5) Employees, officials or agents of the U.S. Government occupying a hotel in the course of official business. (Section 5(5) as amended by Ordinance 2419 dated May 14, 2007.)

Section 6. Operator's Registration.

- (1) An operator of a hotel shall possess a valid business registration in accordance with the requirements of Ordinance 2399.
- (2) Failure to register does not relieve the operator from collecting the tax imposed by this ordinance, or a person from paying said tax.

Section 7. Certificate of Authority.

(1) The tax administrator shall, within 10 days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate for each additional place of business of each registrant. Certificates are nonassignable and nontransferable and shall be surrendered immediately to the tax administrator on the cessation of business at the location named or on the sale or transfer of the business. Each certificate and duplicate shall state the place of business to which it is applicable and shall be

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prominently displayed so as to be seen by all occupants and persons seeking occupancy.

(2) The certificate shall state:

(a) The name of the operator.

(b) The address of the hotel.

(c) The date on which the certificate was issued.

(d) This Transient Occupancy Registration Certificate signifies that the person named has fulfilled the requirements of the Transient Occupancy Tax Ordinance of the City of Woodburn by registering with the tax administrator for the purpose of collecting from transients the occupancy tax imposed by the City and remitting the tax to the tax administrator. This certificate does not authorize any person 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 the City of Woodburn. This certificate does not constitute a permit. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner.

Section 8. Collections, Returns and Payments.

(1) The tax shall be paid by the transient to the operator at the time that rent is paid. The taxes collected by the operator are due and payable to the tax administrator on a calendar basis on the 15th day of the month for the preceding month and are delinquent on the last day of the month in which they are due.

(2) On or before the 15th day of the month following each month of collection, a return for the preceding month's tax collections shall be filed with the tax administrator. The return shall be filed on a form prescribed by the tax administrator.

(3) Returns shall show the amount of tax collected or otherwise due for the related period. The tax administrator may require returns to show the total rentals on which tax was collected or is due, gross receipts of the operator for the period, an explanation in detail of any discrepancy between the amounts, and the amounts of rents exempt.

(4) The operator is entitled to withhold ten percent (10.0%) of the tax due to cover the administrative expense of collecting and remitting the tax. This deduction shall be so noted in the appropriate place on the return form.

(5) The operator shall deliver the return and the tax due the City to the tax administrator's office either by personal delivery or by mail. If the return is by mail, the postmark shall be considered the date of delivery for determining delinquencies.

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(6) For good cause, the tax administrator may extend the time for filing a return or paying the tax for not more than one month. No further extensions shall be granted except by the Council. An operator to whom an extension is granted shall pay interest at the rate of one percent (1%) per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed, the tax and interest due are not paid by the end of the extension, the interest shall become part of the tax computation of penalties described in Section 9.

(7) The tax administrator may require returns and payment of the amount of taxes for other than monthly period in individual cases to ensure payment or to facilitate collection by the City.

Section 9. Delinquency Penalty.

(1) An operator who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of ten percent (10%) of the tax due in addition to the tax.

(2) An operator who has not been granted an extension of time for remittance of tax due and who fails to pay a delinquent remittance before the expiration of 31 days following the date on which the remittance became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the tax due, the amount of the tax, and the ten percent (10%) penalty first imposed.

(3) If the tax administrator determines that non payment of a remittance is due to fraud or intent to evade the tax, a penalty of twenty-five percent (25%) of the tax shall be added to the penalties state in subsections (1) and (2).

(4) In addition to the penalties imposed by this section, an operator who fails to remit the required tax shall pay interest at the rate of one percent (1.0%) per month, without proration for portions of a month, on the tax due, exclusive of penalties, from the date on which the tax first became delinquent until paid.

(5) Each penalty imposed and the interest accrued under provisions of this section shall be merged with and become part of the tax required to be paid.

(6) An operator who fails to remit the tax within the required time may petition the tax administrator for waiver and refund of the penalty or a portion of it. The tax administrator may, if good cause is shown, direct a refund of the penalty or a portion of it.

Section 10. Deficiency Determinations.

(1) In making a determination that the returns are incorrect, the tax administrator may determine the amount required to be paid on the basis of the facts contained in the return or on the basis of any other information.

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(2) Deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately on service of notice, after which the determined amount is delinquent. Penalties on deficiencies shall be applied as provided in Section 9.

(3) In making a determination, the tax administrator may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in Section 9.

Section 11. Redemption Petition. A determination becomes payable immediately on receipt of notice and becomes final within 10 days after the tax administrator has given notice. However, the operator may petition for redemption and refund by filing a petition before the determination becomes final.

Section 12. Fraud, Refusal to Collect, Evasion.

(1) If an operator fails or refuses to collect the tax, make the report, or remit the tax, or makes a fraudulent return or otherwise willfully attempts to evade the tax payment, the tax administrator shall obtain facts and information on which to base an estimate of the tax due. After determining the tax due and the interest and penalties, the tax administrator shall give notice of the total amount due.

(2) Determination and notice shall be made and mailed within three years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately on receipt of notice and becomes final 10 days after the tax administrator has given notice.

(3) The operator may petition for redemption and refund if the petition is filed before the determination becomes final.

Section 13. Notice of Determination.

(1) The tax administrator shall give the operator a written notice of the determination. If notice is mailed it shall be addressed to the operator at the address that appears on the records of the tax administrator, and service is complete when the notice is deposited in the post office.

(2) Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within three years after the last day of the month following the close of the monthly period for which the determination has been made or within three years after the return is filed, whichever is later.

Section 14. Operator Delay If the tax administrator believes that collection of the tax will be jeopardized by delay, the tax administrator shall determine the tax to be collected and note facts concerning the delay on the determination. The determined amount is payable immediately after service of notice. After payment has been made,

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the operator may petition for redemption and refund of the determination if the petition is filed within 10 days from the date of service of notice by the tax administrator.

Section 15. Redetermination.

(1) An operator against whom a determination is made under Section 10, or a person directly interested, may petition for a redetermination, redemption and refund within the time required in Section 14. If a petition for redetermination refund is not filed within the time required, the determination is final on expiration of the allowable time.

(2) If a petition for redetermination and refund is filed within the allowable period, the tax administrator shall reconsider the determination and, if the operator requested a hearing in the petition, shall grant the hearing and give the operator 10 days notice of the time and place of the hearing. The tax administrator may continue the hearing if necessary.

(3) The tax administrator may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing.

(4) The decision of the tax administrator on a petition for redetermination becomes final 10 days after service of notice on the petitioner unless appeal of the decision is filed with the City Council within 10 days after notice is served.

(5) A petition for redetermination or an appeal is not effective unless the operator has complied with the payment provisions.

Section 16. Security for Collection of Tax.

(1) The tax administrator may require an operator to deposit security in the form of cash, bond or other security. The amount of security shall be fixed by the tax administrator, but shall not be greater than twice the operator's estimated average monthly liability for the period for which the operator files returns or \$5,000, whichever amount is less. The amount of the security may be increased or decreased by the tax administrator, subject to the limitations of this subsection.

(2) Within three years after any amount of the tax becomes due and payable or within three years after any determination becomes final, the tax administrator may bring an action in the courts of this state, or any other state, or of the United States in the name of the city to collect the amount delinquent, together with penalties and interest.

Section 17. Liens

(1) The tax, interest, penalty, and filing fees paid to the tax administrator any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the County Clerk of Marion County, Oregon until the tax is

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paid. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's hotel. The lien may be foreclosed and the necessary property may be sold to discharge the lien.

(2) Notice of the lien shall be issued by the tax administrator when the operator has defaulted in payment of the tax, interest and penalty. A copy of the notice shall be sent by certified mail to the operator.

(3) Personal property subject to the lien may be sold at public auction after 10 days notice in a newspaper of general circulation in the city.

(4) A lien for the tax, interest and penalty shall be released by the tax administrator when the full amount has been paid to the city. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest and penalty has been paid, that the lien is released and that the record of the lien is satisfied.

Section 18. Refunds by City to Operator. When the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator, it may be refunded if a written verified claim stating the specific reason for the claim is filed within three years form the date of payment. The claim shall be submitted on forms provided by the tax administrator. If the claim is approved, the excess amount may be refunded to the operator or it may be credited to an amount payable by the operator and any balance refunded.

Section 19. Refunds by City to Transient. If the tax has been collected by the operator and deposited with the tax administrator and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the transient if a written verified claim stating the specific reason for the claim is filed with the tax administrator within three years from the date of payment.

Section 20. Records Required from Operators. Every operator shall keep guest records, accounting books, and records of room rentals for a period of three years and six months.

Section 21. Examination of Records. During normal business hours and after notifying the operator, the tax administrator may examine books, papers, and accounting records related to room rentals to verify the accuracy of a return or, if no return is made, to determine the amount to be paid. To assist in this process, the tax administrator may request certified copies of the annual income tax return covering the hotel operator.

Section 22. Confidentiality. The tax administrator or a person having an administrative or clerical duty under the provisions of this ordinance shall not make known in any manner the business affairs, operations, or information obtained by an investigation of records and equipment of a person required to file a return or pay a transient occupancy tax or a person visited or examined in the discharge of official

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duty; or the amount or source of income, profits, losses or expenditures contained in a statement or application; or permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

(1) Disclosure to or examination of records and equipment by a city official, employee or agent for collecting taxes for the purpose of administering or enforcing the provisions or collecting the taxes imposed by this ordinance.

(2) Disclosure, after filing a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected, or interest and penalties. However, the City Attorney shall approve each disclosure, and the tax administrator may refuse to make a disclosure referred to in this subsection when, in the tax administrator's opinion, the public interest would suffer.

(3) Disclosure of names and address of persons making the returns.

(4) Disclosure of general statistics regarding taxes collected or business done in the City.

Section 23. Disposition of Tax Funds. All revenue received from the transient occupancy tax shall be accounted for by a separate revenue line item contained in the General Fund. Sixty six and two thirds percent (66 2/3%) of all revenues received from the transient occupancy tax shall be used at the Council's discretion. Thirty three and one-third percent (33 1/3%) of all revenues received from the transient occupancy tax shall be dedicated to uses that promote and support tourism and economic development activities. Of the monies set aside for tourism and economic development the Council may, at its discretion, expend some or all of those monies on activities conducted by the City or other agencies that advance the Council's tourism and economic development goals. Monies distributed to agencies and organizations other than the City shall be on a fee for service basis, pursuant to a tourism and economic development grant program. Policies and procedures governing that program shall be established by City Council resolution. (Section 23 as amended by Ordinance 2435 passed March 24, 2008.)

Section 24. Appeals to Council. A person aggrieved by a decision of the tax administrator may appeal to the City Council by filing a notice of appeal with the tax administrator within ten days of notice of the decision. The tax administrator shall transmit the notice, together with the file of the appealed matter, to the Council. The Council shall fix a time and place for hearing the appeal and shall give the appellant not less than ten days written notice of the time and place of hearing.

Section 25. Severability. The provisions of this ordinance are severable. If a portion of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

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(1) It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or to fail to pay the tax collected, or fail or refuse to furnish a supplemental return or other data required by the tax administrator, or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ordinance.

(2) Notwithstanding paragraph (1) of this section, the City Attorney, in addition to other remedies permitted by law, may commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the tax imposed.

Section 27. Civil Infraction. A violation of any provision of this ordinance shall constitute a Class 2 civil infraction and shall be dealt with according to the procedures established by Ordinance No. 1998. Each day of noncompliance with this ordinance shall constitute a separate violation.

Section 28. Effective Date. This ordinance shall be in full force and effect effective June 1, 1991.

Passed by the Council April 8, 1991 and approved by the Mayor April 9, 1991.