

ORDINANCE NO. 12-671-O

AN ORDINANCE ESTABLISHING A TRANSIENT ROOM TAX AND PROVIDING RULES AND REGULATIONS ASSOCIATED WITH THE COLLECTION OF THE TRANSIENT ROOM TAX FOR THE CITY OF COLUMBIA CITY, OREGON.

THE CITY OF COLUMBIA CITY DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. Except where the context otherwise requires, the definitions given in this section govern the meanings of the following words and phrases as used in this ordinance.

"Accrual accounting" means a system of accounting in which the operator enters the rent due from a transient on his records when the rent is earned, whether or not it is paid.

"Cash accounting" means a system of accounting in which the operator does not enter the rent due from a transient on its records until the rent is paid.

"City Council" means the City Council of the City of Columbia City, Oregon.

"Hotel" means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for thirty days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, bed and breakfast, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, public or private club, fraternity, sorority, and also means space in mobile home or trailer parks (including recreational vehicle, tent trailer and tent camping parks), or similar structures or space or portions thereof so occupied, provided such occupancy is for a thirty-day period or less.

"Occupancy" means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in a hotel, or space in a mobile home or trailer park, or portion thereof.

"Operator" means the person who is the proprietor of the hotel in any capacity. Where the operator performs his functions through a managing agent other than an employee, the managing agent shall also be deemed an operator for the purposes of this ordinance and shall have the same duties and liabilities as its principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall be considered to be compliance by both.

"Person" means any individual, corporation, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint

stock company, corporation, estate, oration, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

"Rent" means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction, but shall not include charges to a condominium unit owner which are solely for cleaning or maintenance of such unit or personal use or occupancy by such owner, so long as the charges are made in connection therewith for space occupancy.

"Rent package plan" means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of the transient room tax under this ordinance shall be the same as the charge made for rent when food consideration is not a part of the package plan. The amount applicable for rent for determination of the transient room tax under this ordinance shall be that amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package and taking into consideration charge for rent when the space is rented separately and not included in a package plan.

"Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which collections are required to be reported.

"Tax administrator" means the City Administrator/Recorder of the City of Columbia City.

"Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of thirty 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 thirty-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel 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, or the tenancy actually extends more than thirty consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this ordinance may be considered. 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. Tax Imposed. For the privilege of occupancy in any hotel, on or after the effective date of this ordinance, each transient shall pay a tax in the amount of eight percent 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. The transient shall pay the tax to the operator of the hotel at the time when the rent is collected. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on a cash accounting basis and when earned if the operator

keeps his records on the accrual accounting basis. If rent is paid in installments, the transient shall pay a proportionate share of the tax to the operator with each installment. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities.

Section 3. Collection of Tax by Operator--Rules for Collection.

- A. Every operator renting rooms or space for lodging or sleeping purposes in this city, the occupancy of which is not exempted under this ordinance, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the City.
- B. In all 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 the credits are paid or the deferred payments are made. Adjustments may be made for uncollectibles.
- C. The City Administrator/Recorder shall enforce the provisions of this ordinance and shall have the power to adopt rules and regulations consistent with this ordinance that are necessary to aid in its enforcement.
- D. For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.

Section 4. Operator's Duties. The tax collected by the operator shall be separately stated on the operator's records and on the receipt rendered by the operator. An operator shall not advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded unless specifically set forth herein.

Section 5. Exemptions. The tax required by this ordinance shall not be imposed upon:

- A. Any occupant for more than thirty consecutive calendar days.
- B. Any person who pays for lodging on a monthly basis, irrespective of the number of days in such month.
- C. Any occupant whose rent is of a value less than two dollars per day.

Section 6. Registration of Operator--Form, Content, Execution and Certification of Authority.

- A. Every person engaging or about to engage in business as an operator of a hotel in this City shall register with the tax administrator on a form provided by

the City. Operators engaged in business at the time this ordinance is adopted must register not later than thirty calendar days after the effective date of this ordinance. Operators starting business after this ordinance is adopted must register within fifteen days after commencing business.

B. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of the tax regardless of registration. The registration shall set forth the name under which an operator transacts or intends to transact business, the location of place or places of business, and such other information to facilitate collection of the tax as the tax administrator may require. The operator shall sign the registration. The tax administrator shall, within ten days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon its sale or transfer of the business. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice of all occupants and persons seeking occupancy. Said certificate shall, among other things, illustrate 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. “This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Ordinance of the City of Columbia City by registration with the tax administrator for the purpose of collecting the transient room taxes imposed by said City and remitting said tax to the tax administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or 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 Columbia City. This certificate does not constitute a permit.”

Section 7. Due Date--Returns and Payments.

A. The tax imposed by this ordinance shall be paid by the transient to the operator at the time rent is paid. All amounts of such taxes collected by any

operator are due and payable to the tax administrator on a monthly basis on the fifteenth day of the following month for the preceding month, and are delinquent on the last day of the month in which they are due.

B. On or before the fifteenth day of the month following each month of collection, a return for the preceding month's tax collections shall be filed by each operator with the tax administrator. The return shall be filed in such form as the tax administrator may prescribe.

C. Returns shall show the amount of tax collected or otherwise due for the related period, the total rentals upon which tax was collected or otherwise due, gross receipts of such amounts, and the amount of the rents exempt, if any.

D. The person required to file the return shall deliver the return, together with the payment of the amount of the tax due, to the tax administrator, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery.

E. For good cause, the tax administrator may extend for a period not to exceed one month, the time for making any return or payment of tax. No further extension shall be granted, except by the City Council. Any operator to whom an extension is granted shall pay interest at the rate of 1% per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this ordinance.

Section 8. Penalties and Interest.

A. Original Delinquency. Any operator who has not been granted an extension of time for delivery of return and payment of tax due, and who fails to remit any tax imposed by this ordinance prior to delinquency, shall pay a penalty equal to ten percent of the amount of the tax due in addition to the amount of the tax.

B. Continued Delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who has failed to pay any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent, shall pay a second penalty of fifteen percent of the amount of the tax due plus the amount of the tax and the ten percent penalty first imposed.

C. Fraud. If the tax administrator determines that the non-payment of any remittance due under this ordinance is due to fraud or intent to evade the

provisions thereof, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to all other penalties provided for under this ordinance.

D. Interest. In addition to penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one percent per month or fraction thereof, without proration for portions of a month, on the amount of tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalties Merged with Tax. Every penalty imposed and such interest as accrued under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

F. Petition for Waiver. Any operator who fails to deliver the return and pay the tax herein levied within the time stated shall pay the penalties herein stated; provided, however, that the operator may petition the City Council for waiver and refund of the penalty or any portion thereof, and the City Council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

Section 9. Deficiency Determinations - Fraud - Evasion - Operator Delay.

A. Deficiency Determination. If the tax administrator determines that a tax return is incorrect, the tax administrator shall compute and determine the amount required to be paid upon the basis of the facts contained in the return, or upon the basis of any relevant information within the City's possession or that may come into the City's possession. One or more deficiency determinations may be made of the amount due for one or more periods, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 8.

1. In making a deficiency determination the tax administrator may offset overpayments, if any, which may have been previously made, against any underpayment for a subsequent period or periods or against penalties and interest on the underpayments.

2. The tax administrator shall give to the operator or occupant a written notice of deficiency determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at the address as it appears in the records of the tax administrator. In case of service by mail of any notice required by this ordinance, it shall be forwarded by registered or certified mail.

3. Except in the case of fraud or intent to evade this ordinance or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the monthly period for which the deficiency is proposed to be determined, or within three years after the return is filed, whichever period expires later.

4. Any deficiency determination shall become due and payable immediately upon receipt of notice and shall become final within twenty days after the tax administrator has given notice thereof; provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

B. Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make, within the time provided in this ordinance, any report and/or remittance of said tax or any portion thereof required by this ordinance, or makes a fraudulent return or otherwise willfully attempts to evade this ordinance, the tax administrator shall proceed in such manner as may be deemed best to obtain the facts and information on which to base an estimate of the tax due. As soon as the tax administrator has determined the tax due that is imposed by this ordinance from any operator who has failed or refused to collect the same and to report and remit said tax, the tax administrator shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this ordinance. In case such determination is made, the tax administrator shall give a notice in the manner aforesaid of the amount so assessed. The determination and notice shall be made and mailed within three years of the discovery by the tax administrator of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable upon receipt of notice and shall become final within twenty days after the tax administrator has given notice thereof; provided, however, the operator may petition for redemption or refund if the petition is filed before the determination becomes final as herein provided.

C. Operator Delay. If the tax administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined shall be immediately due and payable, and the operator shall immediately pay the determined amount to the tax administrator after service of notice thereof; The operator may, however, petition, after payment is made, for redemption and refund of the determination, if the petition is filed within twenty days from the date of service of notice by the tax administrator.

Section 10. Redeterminations.

- A. Any person against whom a determination is made may petition for a redetermination and redemption and refund within the time required in Section 9. If a petition for redetermination and refund is not filed within the time required in Section 9, the determination becomes final at the expiration of the allowable time.
- B. If a petition for redetermination and refund is filed within the allowable period, the tax administrator shall reconsider the determination, and if the person has so requested by petition, the tax administrator shall grant the person an oral hearing and the tax administrator shall give ten days notice of the time and place of the hearing. The tax administrator may continue the hearing from time to time as may be necessary.
- C. The tax administrator may decrease or increase the amount of the determination as a result of the hearing; and if an increase is determined, such increase shall be payable immediately after the hearing.
- D. The order or decision of the tax administrator upon a petition for redetermination or redemption and refund becomes final twenty days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the City Council within the twenty days after the service of such notice.
- E. No petition for determination or redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

Section 11. Security for Collection of Tax.

- A. When the tax administrator deems it necessary to ensure compliance with this ordinance, the tax administrator may require the operator to deposit with the City such security in the form of cash, bond or other security as the tax administrator determines. The amount of the 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 of which the operator files returns, determined in such a manner as the tax administrator deems proper, or five thousand dollars, whichever amount is less. The amount of security may be increased or decreased by the tax administrator subject to limitations herein provided. The operator has a right to appeal to the City Council any decision of the tax administrator made pursuant to this section. The operator's right to appeal is pursuant to Section 15 herein.

B. At any time within three years after any tax or any amount of tax required to be collected becomes due and payable, or at any time within three years after any determination becomes final, the city attorney, at the request of the tax administrator, may bring any 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 12. Refunds. Whenever the amount of any tax, penalty or interest imposed under this ordinance has been paid more than once, or has been erroneously or illegally collected or received by the tax administrator, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three years from the date of payment. The claim shall be made on forms provided by the tax administrator. If the claim is approved by the tax administrator, the excess amount collected or paid may be refunded or may be credited on any amount then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to such operator, or the operator's personal representatives or assigns.

Section 13. Administration.

A. Disposition and Use of Transient Room Tax Funds. All proceeds derived by the City from the transient room tax funds shall be deposited in the General Fund of the City.

B. Records Required from Operators, etc.; Form. Every operator shall keep guest records of room or space rentals, and accounting books and records of the room or space rentals. The operator shall retain all records for a period of three years and six months after they come into being.

C. Examination of Records; Investigations. The tax administrator or any person authorized in writing by the tax administrator, may examine, during normal business hours, the books, papers and records relating to room or space rentals of any operator after notification to the operator liable for the tax, and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

D. Confidential Character of Information Obtained; Disclosure Unlawful. Neither the tax administrator nor any person having an administrative or clerical duty under the provisions of this ordinance shall make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate or pay a transient room tax, or other person visited or examined in the discharge of official duty, or the amount

or source of income, profits, losses, expenditures or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person; provided that nothing in this section shall be so construed to prevent:

1. The disclosure to, or the examination of records and equipment by another City official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this ordinance, or collecting taxes imposed hereunder, or collecting city business license fees;
2. The disclosure, after the filing of a written request to that effect by the person seeking disclosure, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, or information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest and penalties; provided, however, that the city attorney approves each such disclosure. The tax administrator may refuse to make any disclosure referred to in this subsection when in his opinion the public interest would suffer thereby;
3. The disclosure of the names and addresses of any person to whom Transient Occupancy Registration a Certificates have been issued; and
4. The disclosure of general statistics regarding taxes collected in the City.

Section 14. Appeals to the City Council. Any person aggrieved by any decision of the tax administrator may appeal to the City Council by filing notice of appeal with the tax administrator within twenty days of serving or the mailing of the notice of the decision. The tax administrator shall transmit the notice of appeal, together with the file of said appealed matter, to the City Council which shall fix a time and place for hearing such appeal. The Council shall give the appellant not less than ten days written notice of the time and place of hearing of said appealed matter.

[Section 15. Severability.]

Section 16. Violations--Misdemeanor--Penalty. 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 fail or refuse to furnish a supplemental return or other data required by the tax administrator or to render a false or fraudulent return, or for any person to knowingly aid in any such act. 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 or required by this ordinance. Violation of this

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section shall constitute a violation punishable by a fine not to exceed five hundred dollars for each violation.

Passed by the council and approved by the mayor July 6, 2012.