

## CHAPTER 3.24: TRANSIENT OCCUPANCY TAX

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### § 3.24.010 TITLE AND PURPOSE.

This chapter shall be known as the "Transient Occupancy Tax Ordinance of the City of Sweet Home". The taxes, interest and penalties collected shall be placed in the General Fund of the city to be used for public purposes of the city.

(Ord. 1137, § 1, 2001; Ord. 1022, § 1, 1990)

### § 3.24.020 DEFINITIONS.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

**ACCRUAL ACCOUNTING.** The operator enters the rent due from a transient on his or her records when the rent is earned whether or not it is paid.

**CASH ACCOUNTING.** The operator does not enter the rent due from a transient on his or her records until rent is paid.

**CITY COUNCIL.** The City Council of the City of Sweet Home, Oregon.

**MOTEL.** Any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less, for dwelling, lodging or sleeping purposes, and includes any motel, inn, tourist home or house, hotel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, bed and breakfast, space in manufactured home park, space in mobile home park, space in trailer park, space in recreational vehicle park, or similar structure including space or portions thereof so occupied; provided, the occupancy is for less than a 30-day period.

**OCCUPANCY.** The use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in a motel, or space in a manufactured home park, mobile home park or portion thereof.

**OPERATOR.** The person who is proprietor of the motel in any capacity. 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 chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

**PERSON.** 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 unit.

**RENT.** The consideration charged, whether or not received by the operator, for the occupancy of a room or space in a motel valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

**RENT PACKAGE PLAN.** 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 transient room tax under this chapter shall be the same charge made for rent when consideration is not a part of a package plan.

**TAX.** Either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he or she is required to report his or her collections.

**TRANSIENT.** Any individual who exercises occupancy or is entitled to occupancy in a motel 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. Any such individual so occupying space in a motel shall be deemed to be a 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. In determining whether a person is a **TRANSIENT**, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter 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*.

(Ord. 1137, § 2, 2001; Ord. 1022, § 2, 1990)

**§ 3.24.030 TAX IMPOSED.**

For the privilege of occupancy in any motel, on and after July 1, 1990, each transient shall pay a tax in the amount of 6% 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. The transient shall pay the tax to the operator of the motel at the time the rent is paid. The operator shall enter the tax on his or her records when rent is collected if the operator keeps his or her records on the cash accounting basis and when earned if the operator keeps his or her 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 motel, the City Recorder may require that the tax shall be paid directly to the city. In all cases, the rent paid or charged per occupancy shall exclude the sale of any goods, services and commodities, other than furnishing of rooms, accommodations and parking space in a manufactured home park, mobile home park, trailer park, trailer park and recreational vehicle park.

(Ord. 1137, § 3, 2001; Ord. 1022, § 3, 1990)

**§ 3.24.040 COLLECTION OF TAX BY OPERATOR—RULES FOR COLLECTION.**

A. Every operator renting room or space in this city, the occupancy of which is not exempt under the terms of this chapter, shall collect a tax from the occupant.

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 credits are paid or deferred payments are made.

(Ord. 1137, § 4, 2001; Ord. 1022, § 4, 1990)

**§ 3.24.050 OPERATOR'S DUTIES.**

Each operator shall collect the tax imposed by this chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records and any receipt rendered by the operator. No operator of a motel shall 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, except in the manner provided by this chapter.

(Ord. 1022, § 5, 1990)

**§ 3.24.060 EXEMPTIONS.**

No tax imposed under this chapter shall be imposed upon:

A. Any occupant for more than 30 successive calendar days (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);

B. Any occupant whose rent is of a value less than \$2 per day;

C. Any person who rents a private home, vacation cabin or like facility from any owner who rents such facilities incidentally to his or her own use thereof; and

D. Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people.

(Ord. 1022, § 6, 1990)

### **§ 3.24.070 REGISTRATION OF OPERATOR—FORM AND CONTENTS—EXECUTIONS.**

A. Every person engaging or about to engage in business as an operator of a motel in this city shall register with the City Recorder.

B. Operators engaged in business at the time the ordinance codified in this chapter is adopted must register not later than 30 days after passage of the ordinance codified in this chapter. Operators starting business after this chapter is adopted must register within 15 calendar days after commencing business. The privilege of registration after the date of imposition of the tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his or her place or places of business and such other information to facilitate the collection of the tax as the City Recorder may require.

(Ord. 1022, § 7, 1990)

### **§ 3.24.080 RETURNS AND PAYMENTS.**

A. The tax imposed by this chapter shall be paid by the transient to the operator at the time that rent is paid. The taxes collected by any operator are due and payable to the City Recorder as follows:

1. On a monthly basis by the fifteenth day of the following month for the first 12 months following registration as an operator of a motel in the city;

2. On a monthly basis by the fifteenth day of the following month for a period of time designated by the City Recorder whenever the operator has been delinquent in two or more consecutive payments; or

3. On a quarterly basis on the fifteenth day of the month following the close of the quarter for all other operators. The quarters are:

a. First quarter: January, February, March;

b. Second quarter: April, May, June;

c. Third quarter: July, August, September; and

d. Fourth quarter: October, November, December.

B. Taxes are delinquent if not paid within ten days of the due date.

C. Returns shall be filed in such form as the City Recorder may prescribe. Returns are due at the time the tax is paid. Returns shall show the amount of tax collected or otherwise due for the related period. The City Recorder may require returns to show the total rentals upon which tax was collected or otherwise due.

D. The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the City Recorder at his or her office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(Ord. 1022, § 8, 1990)

**§ 3.24.090 DELINQUENCY PENALTIES.**

A. 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 10% of the tax due in addition to the tax.

B. 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 extension of 30 days following the date on which the remittance became delinquent, shall pay a second delinquency penalty of 15% of the tax due, the amount of the tax and the 10% penalty first imposed.

C. If the Tax Administrator determines that the non-payment of a remittance is due to fraud or intent to evade the tax, a penalty of 25% of the tax shall be added in addition to the penalties stated in subsections A. and B. above.

D. 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 0.5% 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.

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

(Ord. 1022, § 9, 1990)

**§ 3.24.100 DEFICIENCY DETERMINATIONS—FRAUD—EVASION—OPERATOR DELAY.**

A. *Deficiency determination.* If the City Recorder determines that the returns are incorrect, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for

one, or more than one period, 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 § 3.24.090.

1. In making a determination, the City Recorder may offset overpayments, if any, which may have been previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties, and interest, on the underpayments. The interest on underpayments shall be computed in the manner set forth in § 3.24.090; and

2. The City Recorder shall give to the operator or occupant a written notice of his or her determination. The notice may be served personally or by mail.

B. *Fraud, refusal to collect, evasion.* If any operator shall fail or refuse to collect the tax or to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the City Recorder shall proceed in such manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the city recorder has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect the same and to report and remit the tax, he or she shall proceed to determine and assess against the operator the tax and interest provided for by this chapter. In case such determination is made, the City Recorder 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 after discovery by the City Recorder of any fraud, intent to evade or failure or refusal to collect the tax or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten days after the City Recorder has given notice thereof.

C. *Costs of determining tax.* All costs to the city in determining the actual tax due from any operator shall be added to and become a part of the amount owed by the operator upon written notice to the operator, served personally or by mail.  
(Ord. 1022, § 10, 1990)

### **§ 3.24.110 REDETERMINATIONS.**

A. Any person against whom a determination is made under § 3.24.100 or any person directly interested may petition for a redetermination and redemption and refund within the time required in § 3.24.100. If a petition for redetermination and refund is not filed within the time required in § 3.24.100, 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 City Manager shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing and shall give advance notice of the time and place of the hearing. The City Manager may continue the hearing from time to time as may be necessary.

C. The City Manager may decrease or increase the amount of the determination as a result of the hearing and, if an increase is determined, the increase shall be payable immediately after hearing.

D. The order or decision of the City Manager upon a petition for redetermination of redemption and refund becomes final ten days after service upon the petitioner of notice thereof, unless appeal of the order or decision is filed with the City Council within the ten days after service of the notice.

E. No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions of this chapter. (Ord. 1022, § 11, 1990)

**§ 3.24.120 SECURITY FOR COLLECTION OF TAX.**

A. The City Recorder, whenever he or she deems it necessary to insure the compliance with this chapter, may require the operator subject thereto to deposit with him or her such security in the form of cash, bond or other security as the City Recorder may determine. The amount of the security shall be fixed by the City Recorder, but shall not be greater than twice the operator's estimated average monthly liability for the period for which he or she files returns, determined in such a manner as the City Recorder deems proper, or \$5,000, whichever amount is less. The operator has a right to appeal to the transient occupancy Tax Appeal Board any decision of the City Recorder made pursuant to this section. The operator's right to appeal is pursuant to § 3.24.150.

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 Recorder 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. (Ord. 1022, § 12, 1990)

**§ 3.24.130 OPERATOR'S REFUNDS.**

Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously collected or received by the City Recorder, 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 City Recorder within three years from the date of payment. If the claim is approved, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to the operator, his or her administrators, executors or assignees. All refunds shall be charged to the transient occupancy tax revenue account of the city's General Fund. (Ord. 1022, § 13, 1990)

**§ 3.24.140 ADMINISTRATION.**

A. *Records required from operators—form.* Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for a period of at least three years after they come into being.

B. *Examination of records—investigations.* The City Recorder may examine during normal business hours, the books, papers and accounting records relating to room sales 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.

C. *Confidential character of information obtained—disclosures unlawful.* It is unlawful for the City Recorder or any person having an administrative or clerical duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any person, except:

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 provision of this chapter; or collecting taxes imposed hereunder; or

2. The disclosure after the filing of a written request to that effect, to the taxpayer himself or herself, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties. However, the City Attorney shall approve each disclosure and the City Recorder may refuse to make any disclosure referred to in this section when, in his or her opinion, the public interest would suffer thereby.

(Ord. 1022, § 14, 1990)

### **§ 3.24.150 TRANSIENT OCCUPANCY TAX APPEAL BOARD—PROCEDURE.**

A. A transient occupancy appeal board is created to be composed of members of the City Council. Four members of the Board shall constitute a quorum. The Board shall keep a record of its transactions and shall not, at any time, receive any compensation for their services on the Board.

B. The Board shall have the power to:

1. Hear and determine appeals of orders or decisions of the City Manager made upon petitions for redetermination of tax. The Board may affirm, modify or reverse such orders or decision or dismiss the appeals therefrom, as may be just, and shall prescribe such forms, rules and regulations relating to appeals as it may deem necessary. In the review of the City Manager decision or order, the Committee may take such evidence and make such investigation as it may deem necessary and give notice of its determinations. The determination shall become final ten days thereafter and shall thereupon become due and payable, subject to interest and penalties;

2. Modify, affirm or disapprove all forms, rules, determinations and regulations prescribed by the City Recorder in the administration and enforcement of this chapter; and

3. Make such investigations as it deems advisable regarding the imposition and administration of the transient occupancy tax.

(Ord. 1022, § 15, 1990)

**§ 3.24.160 REMEDIES AND LIENS.**

A. The remedies, which include penalties herein, provided for in this chapter or sections thereof shall be cumulative and not exclusive and shall be in addition to any and all other remedies available to the city.

B. Collection of the taxes, interest and penalties due and owing can be accomplished by any remedy open to the city, including using the procedures for placing a lien on real property as set out in §§ 8.04.230 through 8.04.260, and any amendments thereto. If the procedures for collection are followed as set out above, the taxes, interest and penalties due and owing and the costs of collection shall become a lien on the real property and/or an obligation of the owner of the real property as set out in §§ 8.04.230 through 8.04.260 and any amendments thereto.

(Ord. 1022, § 19, 1990)

**§ 3.24.170 VIOLATION—PENALTY.**

A. It is unlawful for any operator or other person so required to fail or refuse to register as required in this chapter, or to furnish any return required to be made, or to fail or refuse to furnish a supplemental return or other data required by the City Recorder 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 an amount due required by this chapter. No person shall violate any provision of this chapter.

B. Violation of this chapter constitutes an infraction and may be prosecuted under the provisions of Chapter 9.36 and any amendments thereto.

(Ord. 1022, §§ 16, 17, 1990)

