

TITLE III REVENUE AND FINANCE

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CHAPTER 3.05 ROOM TAX

3.05.010 Definitions

The following definitions apply to this chapter.

- A. **Hotel** means any structure or any portion of any structure that is occupied or intended or designed for occupancy for thirty days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club. "Hotel" also means space in mobile home or recreational vehicle parks, or similar structure or space occupied for less than thirty days.
- B. **Monthly Rental Plan** means any rental agreement for a period of one month or greater, including month-to-month tenancies.
- C. **Occupant** means any individual who has the right to use all or part of a room in a hotel or a space in a mobile home or residential vehicle park for lodging or sleeping purposes for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days, but not including the check-out day if not charged for that day. Any individual occupying space in a hotel shall be deemed to be an occupant until thirty days has expired unless there is an agreement in writing providing for a longer period of occupancy, or the occupant has paid for more than 30 consecutive days. A person who pays for lodging on a monthly basis is not an occupant regardless of the number of days in the month.
- D. **Operator** includes the owner and any manager of a hotel. Compliance by either the principal or the manager shall be considered to be compliance by both.
- E. **Person** means any individual, 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, governmental entity or agency or any other group or combination acting as a unit.
- F. **Rent** means the consideration charged 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 does not include any charges for additional services, goods or commodities.

- G. **Rent Package Plan** means the consideration charged for both food and rent for lodging where a single combined charge is made for both food and lodging, or where food and lodging are offered as a package. The entire amount charged for the “rent package plan” shall be considered rent unless the lodging is also offered independently of any food at a lower price, in which case the rent shall be the charge which would be made for the lodging if purchased separately from any food.
- H. **Tax Administrator** means the city manager or designee

3.05.020 Tax Imposed

Each occupant shall pay a tax in the amount of nine and one half percent of the rent charged by the operator. The occupant shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall maintain records of all tax payments by occupants as soon as they are made. If rent is paid in installments, a proportionate share of the tax shall be paid by the occupant to the operator with each installment.

3.05.030 Collection of Tax by Operator

- A. Every operator shall collect the room tax from all occupants at the time of payment unless an exemption applies. If payment is by credit card, payment is made at the time the occupant provides credit card information to the operator, not when the operator ultimately receives credit.
- B. Tax amounts shall be rounded down to the nearest cent.
- C. In credit card and similar transactions, the amount of rent shall include only the amount ultimately paid to the operator, excluding any credit charge transaction charges.

3.05.040 Operator Record Keeping and Expenses

- A. The operator shall maintain records showing the amount of tax separately from rent charged, and any receipt shall show the tax separately. No operator of a hotel 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 ordinance.
- B. Operators may withhold five percent of room tax collected to cover the operator's collection and remittance expenses.

3.05.050 Exemptions

No tax imposed under this ordinance shall be imposed upon:

- A. Any person who occupies the same room for more than thirty successive calendar days. Any person who has paid a room tax and occupies a room for more than 30 successive days may obtain a refund under Section 3.05.130.
- B. Any occupant whose rent is less than \$2.00 per day.
- C. Any occupancy of a room in a hospital, medical clinic, convalescent home or home for the aged.
- D. Occupancy of any public institution owned and operated by a governmental body in its governmental capacity.
- E. The United States of America or any federal agency or body, to the extent exempt under the United States Constitution. This exemption applies only if the exempt agency pays the operator directly for the room or space.
- F. A person occupying a room on a monthly rental plan.

(Chapter 3.05.050 amended by Ordinance No. 2006; adopted on July 19, 2010; and effective on August 18, 2010.)

3.05.060 Registration of Operator

- A. Every person engaging or about to engage in business as an operator of a hotel shall provide a completed registration form to the tax administrator within fifteen days after commencing business. The registration form shall require the operator to provide the name of the business, the hotel name, if different, the location of the hotel and any separate business address, and other information as the tax administrator may require. The registration shall be signed

by the operator. The tax administrator shall, within ten days after registration issue without charge certificates of authority to collect the room tax for each hotel operated by the 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. Each certificate shall be prominently displayed at the business location and include:

1. The name of the operator;
 2. The address of the hotel;
 3. The date upon which the certificate was issued;
 4. The following language: "This Room Tax Registration Certificate signified that the person named on the face hereof has fulfilled the requirements of the Room Tax Ordinance of the City of Newport by registration with the tax administrator for the purpose of collecting from occupants the lodging tax 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 Newport. This certificate does not constitute a permit."
- A. The obligation to collect the tax is imposed once an operator rents a room, and not when the registration form is filed or the certificate issued.
- B. Owners and managers of hotels are exempt from the registration requirement if they offer occupancy only by monthly rental plan and file an affidavit with the tax administrator including:
1. The name of the operator.
 2. The name and address of the hotel.
 3. The name and address of the owner of the hotel, and if not an individual, the nature of the entity.

4. The facts upon which the operator relies for exemption.
5. That the operator will collect and remit the room tax and comply with reporting requirements if and when any portion of the hotel is occupied or made available for occupancy other than a Monthly Rental Plan

3.05.070 Remittance and Returns

- A. All taxes, after deduction of the 5% collection and remittance credit, collected by any operator shall be remitted to the tax administrator monthly. Remittance is due within 15 days of the end of the monthly reporting period and is delinquent if remittance is not received within 30 days of the end of the monthly reporting period. The tax administrator may establish monthly reporting periods other than calendar months, but must advise each operator of the reporting periods, due dates, and delinquency dates for the operator.
- B. A return for the preceding month's tax collections shall be filed with the tax administrator on or before the due date in a form prescribed by the tax collector. If the return is mailed, the postmark shall be considered the date of delivery.

For good cause, the tax administrator may extend the time for making any return or payment of tax by up to one month. No further extension shall be granted, except by the Room Tax Committee. Any operator to whom an extension is granted shall pay interest at the rate of one-half of one percent per month or portion of a month on the amount of tax due. 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.

3.05.080 Late Charges and Interest

- A. **Original delinquency.** Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this ordinance prior to delinquency shall pay 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 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 an additional 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 nonpayment of any remittance due under this ordinance is due to fraud or intent to evade payment of the tax, an additional charge of twenty-five percent of the amount of the tax shall be imposed in addition to the penalties stated in paragraphs (a) and (b) of this section.
- D. **Interest**. In addition to the other charges imposed by this section, 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 , on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. **Additional amounts with tax**. Every additional amount and interest imposed by this section shall be merged with and become a part of the tax payable
- F. **Petition for waiver**. An operator who has paid all tax, additional charges and interest may petition the tax administrator for waiver and refund all or part of the additional charges and the tax administrator may, if a good and sufficient reason is shown, waive and direct a refund of all or part of the additional charges.

3.05.090 Deficiency Determinations, Evasion, Operator Delay

- A. **Deficiency determinations**. The tax administrator may review tax returns and adjust the amount payable based on the information in the return, on information obtained during a review or audit of records, or on the basis of other evidence. In the event of a deficiency, the tax administrator shall provide notice of the deficiency to the operator, who shall pay any deficiencies within 15 days of the deficiency notice. Notice may be by personal delivery or certified or registered mail.
 - 1. In reviewing and adjusting tax returns, the tax administrator shall offset any known overpayments against any underpayments.

2. Except in the case of fraud or intent to evade the room tax, notice of deficiency determinations shall be issued within three years of the period for which the deficiency determination is made.
- B. Fraud, refusal to collect, evasion. If any operator fails to collect, report or remit the room tax as required, submits a fraudulent return, or otherwise willfully violates or attempts to violate this chapter, the tax administrator shall estimate the tax due, and assess the tax, interest and penalties provided for by this chapter ordinance against the operator and provide notice to the operator of the assessment. The determination and notice shall be made and mailed within three years of the discovery by the tax administrator of the violation. The determination is due and payable upon receipt of notice and shall become final twenty days after the date notice was delivered if no petition for redetermination is filed.

3.05.100 Redeterminations

- A. Any person affected by a determination under Section 20.09 may petition for a redetermination within the time required in Section 20.09.
- B. If a petition for redetermination is filed within the allowable period, the tax administrator shall reconsider the determination, and grant an oral hearing, if requested. The petitioner shall be allowed at least 20 days to prepare for the hearing.
- C. After considering the petition and all available information, the tax administrator shall issue a redetermination decision and serve notice of the decision on the petitioner.
- D. The decision of the tax administrator on a petition for redetermination becomes final twenty days after service of notice, unless the petitioner files an appeal within that time.
- E. No petition for redetermination shall be effective for any purpose unless the operator has first paid the amounts set forth in the tax administrator's determination, and no appeal may be filed unless accompanied by any additional payment that may be required by the decision on redetermination.

3.05.110 Security for Collection of Tax

The tax administrator may require an operator to deposit security in the form of cash, bond or other security acceptable to the tax administrator. 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, or \$5,000.00, whichever is less. The amount of security may be increased or decreased by the tax administrator so long as the minimum security remains in place. The operator may appeal any decision of the tax administrator requiring security under Section 3.05.170(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 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 any tax, penalties, or interest owing.

3.05.115 Secured Interest in Personal Property

As a privilege for conducting a business providing lodging within the City of Newport and to secure payment of the tax collected by the operator to the City of Newport, the operator, by act of filing a registration to engage in business as an operator of a hotel in the City of Newport irrevocably grants to the City of Newport a security interest in all tangible personal property of the operator, which security interest shall be effective at the time when any tax, penalty or interest become delinquent. The city may foreclosure its security interest as provided by ORS Chapter 79. By filing of a registration to conduct a business engaged as a hotel in the City of Newport, the operator grants a special power of attorney-in-fact to the city manager for purposes of executing a financing statement to give evidence of the granted security interest at the time of delinquency and authorizes the city manager to execute the UCC financing statement on behalf of the debtor, listing as collateral all tangible personal property of the operator and to file the financing statement with the Oregon Secretary of State and with the Lincoln County Clerk, if appropriate.

The tax administrator shall give notice of the delinquency to the operator . The notice shall include the effective date of the security interest against all tangible personal property of the operator, and the date of recordation of the UCC

financing statement if filed, or if not, the city's intent to file a UCC financing statement.

3.05.130 Refunds

- A. **Refunds by the City to the Operator.** If any overpayment of tax, penalty or interest is made, the operator may file a claim in writing on the city claim form, stating the facts relating to the claim within one year from the date of payment. If the claim is approved by the tax administrator, the excess amount collected or paid shall be either refunded or credited on any amount then due and payable from the operator.

- B. **Refunds by City to Occupant.** An occupant may file a claim for refund by filing a claim on the city claim form within one year of payment providing the facts relating to the claim for refund. If the tax administrator determines that the tax was collected and remitted to the city and the occupant was not required to pay the tax or overpaid, the city shall issue a refund.

- C. **Refunds by operator to tenant.** If an occupant has paid tax to an operator, but then stays a total or more than 30 consecutive days, the operator shall refund to the occupant any tax collected for any portion of the continuous stay. The operator shall account for the collection and refund to the tax administrator. If the operator has remitted the tax prior to the refund or credit to the tenant, the operator shall be entitled to a corresponding refund or offset if the claim for refund is filed within one year from the date of collection.

3.05.140 Rules, Regulations and Forms

The tax administrator may promulgate rules and regulations and adopt forms as the tax administrator determines appropriate for administration and enforcement of this chapter.

3.05.150 Administration

- A. **Disposition and use of room tax funds.**
 - 1. At least 46% of the room tax revenue shall be used for tourism promotion and tourism related facilities. The city may accumulate funds dedicated to tourism promotion and tourism related facilities and such

funds will be considered to be used for tourism promotion and tourism related facilities. The City Council shall have the authority to determine which facilities are tourism related. The City Council may determine that some facilities are in part tourism related facilities, and funds reserved for tourism related facilities may be used to cover an equivalent proportion of the cost of such facilities.

(Chapter 3.05.150(A)(1.) was amended by Ordinance No. 1971 on January 21, 2009; effective February 21, 2009.)

2. The finance director shall account for the room tax revenues and expenditures and may establish funds and sub-funds in the budget as needed to administer the provisions of this chapter and the allocation of funds provided in this section.

B. **Records required from operators.** Every operator shall keep records to account for all proceeds from room rentals and collection of room tax for at least three years and one half years.

C. **Examination of records; investigations.** The tax administrator or designee may examine the records during normal business hours and may obtain copies of the records to audit the returns.

D.

E. **Confidential character of information obtained; disclosure unlawful.** The tax administrator and all designees shall maintain the confidentiality of information provided by operators. Nothing in this sub-section shall be construed to prevent:

The disclosure to, or the examination of records and equipment by another City of Newport official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter or collecting city business license fees.

Disclosure of information to the operator and the operator's agents.

The disclosure of the names and addresses of any persons to whom Room Tax Registration Certificates have been issued.

The disclosure of general statistics regarding taxes collected or business done in the city.

3.05.170 Appeal to City Council

Any person aggrieved by any decision or action of the tax administrator may appeal to the City Council by filing a written appeal with the tax administrator within twenty days of the serving or mailing of the tax notice or decision of the tax administrator. The tax administrator shall fix a time and place for the hearing the appellant twenty days written notice of the time and place of hearing.

3.05.180 Severability

If any section, subsection paragraph, sentence, clause or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional or otherwise invalid, the remaining portions of this ordinance shall remain valid and enforceable. The Council would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

3.05.190 Violations

It is unlawful for any person required to register to fail or refuse to register, 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 re turn. 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.

3.05.200 Penalty

- A. A violation of any provision of this chapter is a civil infraction, with a maximum civil penalty of \$500.00. If a person commits a further violation within 24 months of a judgment that the person has violated this chapter, the maximum civil penalty shall be \$1000.00. The penalty is in addition to all other remedies, including but not limited to late charges and the requirement to pay interest on late payments.
- B. Each day during which a violation shall continue shall constitute a separate infraction. If more than one

provision of this chapter is violated, each violation of each separate provision shall constitute a separate infraction.

(Chapter 3.05 was adopted by Ordinance No. 1916 on May 21, 2007; effective on June 15, 2007)