

ORDINANCE NO. 260

AN ORDINANCE PROVIDING FOR A TRANSIENT OCCUPANCY TAX FOR THE CITY OF DETROIT, OREGON; PROVIDING THE ADMINISTRATIVE PROCEDURES FOR COLLECTION OF SAME; RESCINDING ORDINANCE NO. 214 AND NO. 220; AND DECLARING AN EMERGENCY

The City of Detroit, Oregon ordains as follows:

Section 1. Title. This ordinance shall be known as the Transient Room Tax Ordinance of the City of Detroit, Oregon.

Section 2. Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance.

(a) **Accrual Accounting** means a system of accounting where the operator enters the rent due from a transient on the operator's records when the rent is earned, whether or not it is paid.

(b) **Cash Accounting** means a system of accounting where the transient lodging tax collector does not enter the rent due from a transient on the operator's records until the rent is paid.

(c) **City Council** means the City Council of the City of Detroit, Oregon.

(d) **Finance Director** means the City Recorder, or his or her designee. For purposes of this ordinance, the Finance Director acts as a tax administrator.

(e) **Motel** means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy for thirty (30) days or less for dwelling, lodging, or sleeping purposes, and includes, by way of illustration and not limitation, any motel, inn, bed and breakfast, 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, space in mobile home or trailer parks, RV parks, or similar structure or portions thereof so occupied.

(f) **Entitled to Occupancy** means the person so entitled is obligated to pay rent to the operator of the motel for each day during which the person has the right of occupancy in the motel. This term does not mean the person simply has reservations for a room, but that the person is obligated to pay rent for the room for each day such right exists.

(g) **Occupancy** means the use or possession, or the right to use or possession, of any room or rooms in a motel, or space in a mobile home or trailer park or portion thereof for lodging or sleeping purposes.

(h) **Person** means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, municipal or other public corporation, limited liability company, estate, trust, business trust, receiver, trustee, syndicate, or other group or entity in law or fact.

(i) **Rent** means the consideration charged, whether or not received by the transient lodging tax collector, for the occupancy of space in a motel, valued in money; or the monetary value of goods, labor, credits, property, or other consideration given in exchange instead of money, without any deduction.

(j) **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 transient room tax under this ordinance shall be the charge made for rent when food is not a part of a package plan.

(k) **Tax** means the transient occupancy tax hereinafter imposed, either as the tax payable by the transient or the aggregate amount of taxes due from a transient lodging tax collector during the period for which the transient lodging tax collector is required to report collections.

(l) **Transient** means any person who exercises occupancy or is entitled to exercise occupancy in a motel for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the motel shall not be included in determining the 30-day period if the transient is not charged rent for that day by the transient lodging tax collector. Any such individual so occupying space in a motel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the transient lodging tax collector and the occupant providing for a longer period of occupancy. An individual who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

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(m) **Transient Lodging Intermediary** means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and:

1. Charges for occupancy of the transient lodging;
2. Collects the consideration charged for occupancy of the transient lodging; or
3. Receives a fee or commission and requires the transient lodging tax collector to use a specified third-party entity to collect consideration charged for occupancy of the transient lodging.

(n) **Transient Lodging Provider** means a person that furnishes transient lodging.

(o) **Transient Lodging Tax Collector** means a transient lodging provider or a transient lodging intermediary.

(p) **Tenancy** means the letting of real estate as a landlord to tenant pursuant to a lease agreement creating a residential landlord-tenant relationship.

Section 3. Tax Imposed.

For the privilege of occupancy in any motel, mobile home park and RV park, each transient shall pay a percentage ("tax") of the rent charged by the transient lodging tax collector. Transient Occupancy required tax and collection fees shall be established and may be revised by resolution of the City Council. The tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the transient lodging tax collector or to the city. The transient shall pay the tax to the transient lodging tax collector of the motel at the time the rent is paid. The transient lodging tax collector shall enter the tax on the transient lodging tax collector's records when rent is collected, if the transient lodging tax collector keeps his records on the cash accounting basis, or when earned, if the transient lodging tax collector 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 transient lodging tax collector with each installment. If for any reason the tax is not paid to the transient lodging tax collector of the motel, the Finance Director may require that such tax shall 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 space occupancy in mobile home and RV parks.

Section 4. Collection of Tax by Transient Lodging Tax Collector - Rules for Collection.

(a) Every transient lodging tax collector renting rooms in this city, the occupancy of which is not exempt under the terms of this ordinance, shall collect the tax from the occupant. The tax collected or accrued by the transient lodging tax collector constitutes a debt owing by the transient lodging tax collector to the city.

(b) In all cases of credit or deferred payment of rent, the payment of tax to the transient lodging tax collector may be deferred until the rent is paid, and the transient lodging tax collector shall not be liable for the tax until credits are paid or deferred payments are made.

(c) The Finance Director shall enforce provisions of this chapter.

(d) In instances where credit is extended to the transient for charges for the rental of the unit through the use of a credit card or other similar transaction whereby the amount paid to the transient lodging tax collector is discounted by contract between the transient lodging tax collector and the issuer of the credit card, the amount of such discount shall be excluded from the definition of "rent" and no tax shall be imposed on the amount so discounted.

The transient lodging tax collector, after calculating the taxable rents and the tax thereon, may deduct a collection fee from the total tax due as compensation for required accounting and record keeping. ORS 320.345(2)). Transient Occupancy required tax and collection fees shall be established and may be revised by resolution of the City Council.

Section 5. Transient Lodging Tax Collector's Duties. Each transient lodging tax collector shall collect the tax imposed by this ordinance at the same time as the rent is collected from each transient. The amount of tax shall be separately stated upon the transient lodging tax collector's records and any receipt tendered by the transient lodging tax collector. No transient lodging tax collector of a motel shall advertise, or shall enter into agreement providing that the tax or any part of the tax will be assumed or

absorbed by the transient lodging tax collector, or that it will not be added to the rent, or that when added, any part will be refunded, except as otherwise provided by this ordinance.

Section 6. Exemptions. The tax shall not be imposed upon:

- (a) Any individual in actual occupation in a motel, mobile home park and RV park for more than thirty (30) consecutive calendar days;
- (b) Any individual whose rent has a value less than \$2.00 per day;
- (c) Any individual whose rent is paid for occupancy in a hospital room or to a medical clinic or convalescent home;
- (d) Any individual whose rent is paid for occupancy in a public dormitory owned and operated by a public educational institution when such occupancy is executed for educational purposes only.
- (e) A federal government employee traveling on official government business
- (f) All dwelling units during the time a federal instrumentality pays for the units. Example: The Red Cross (a federal instrumentality) contracts locally to provide temporary emergency housing for victims of disasters.

Section 7. Registration of Transient Lodging Tax Collector; Form and Contents; Execution.

(a) Every person engaging or about to engage in business as a transient lodging provider of a motel in the City of Detroit, Oregon will register with the City on a form provided by the Finance Director. Persons must register within fifteen (15) calendar days after commencing business. Registration shall set forth the name under which the transient lodging tax collector transacts or intends to transact business, the location of the transient lodging tax collector's place or places of business, and such other information to facilitate the collection of the tax as the Finance Director may require.

(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 tax regardless of registration.

(c) The registration shall be signed by the transient lodging provider.

(d) The Finance Director shall, within ten (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 thereof for each additional place of business of each registrant.

(e) Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Finance Director upon the cessation of business at the location named or upon sale or transfer.

(f) 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 readily of all occupants and persons seeking occupancy. Said certificate shall, among other things, state the following:

- a. The name of the transient lodging provider;
- b. The address of the motel or RV park;
- c. the date when the certificate is issued;

(g) 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 Detroit, Oregon by registration with the Finance Director for the purpose of collecting from transients the city's room tax and remitting the tax to the Finance Director. 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. This certificate does not constitute a permit.

Section 8. Returns and Payments.

The tax shall be paid by the transient to the transient lodging tax collector at the time that rent is paid. Such tax collected by any transient lodging tax collector is due and payable to the Finance Director as follows:

(a) All such taxes collected by any transient lodging tax collector are due and payable to the tax administrator quarterly, on or before the last day of April, July, October, and January, and are delinquent on the first day of the following month in which they are due.

(b) On or before the last day of the month following each quarter of collection by a transient lodging tax collector, s/he shall file a return for that quarter's tax collections with the Finance Director. The return shall be filed in such form as the Finance Director prescribes. A return must be filed even if taxes were not collected for the reporting period.

(c) Returns shall be filed in such form as the Finance Director may prescribe. A return shall show the amount of tax collected or otherwise due for the period for which the return is filed. The total rentals upon which the tax is collected or otherwise due, gross receipts of the transient lodging tax collector for the period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

(d) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, with the Finance Director at City Hall either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery.

(e) Transient lodging providers using a transient lodging intermediary shall provide proof of documentation of the transient occupancy taxes (TOT) the intermediary intends to transmit on their behalf. The transient lodging provider shall submit the proof of documentation in lieu of the quarterly transient occupancy tax return.

(f) For good cause, the Finance Director may extend for not to exceed one month the time for making any return or payment of tax. No further extension may be granted, except by the City Council. Any transient lodging tax collector to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due, without prorating 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 prescribed in section 9.

(g) The Finance Director, if s/he deems it necessary in order to insure payment or facilitate collection by the city of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than quarterly periods.

Section 9. Delinquency Penalties.

(a) A transient lodging tax collector 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 percent of the tax due, in addition to the tax.

(b) A transient lodging tax collector 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 30 days following the date on which the remittance became delinquent, shall pay a second delinquency penalty equal to 15 percent of the tax due, plus the amount of the tax and the 10 percent first penalty.

(c) If the Finance Director determines that nonpayment is due to fraud or intent to evade the tax, a penalty of 50 percent of the tax shall be added in addition to the penalties provided in subsections (a) and (b).

(d) In addition to the penalties provided in subsections (a), (b), and (c), a transient lodging tax collector who fails to remit the required tax shall pay interest on the tax due at the rate of 2.0 percent per month, without pro-ration for portions of a month, exclusive of penalties, from the date on which the tax first became delinquent until paid.

(e) Each penalty imposed and all interest accrued shall be merged with and become a part of the tax required to be paid.

Section 10. Deficiency Determinations; Fraud, Evasion, Transient Lodging Tax Collector Delay.

(a) **Deficiency Determination.** If the Finance Director determines that a transient lodging tax collector's returns are incorrect, the Finance Director 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, or that may come within, the Finance Director's 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 of the Finance Director's determination, as hereinafter provided. Penalties and interest on deficiencies shall be assessed as provided in Section 9.

(1) In making a deficiency determination, the Finance Director may offset overpayment, 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 underpayment.

(2) The Finance Director shall give to the transient lodging tax collector or occupant a written notice of the Finance Director's determination. The notice may be served personally or by mail.

(b) **Fraud, Refusal to Collect, Evasion.** If any transient lodging tax collector shall fail or refuse to collect said tax or to make within the time provided in this chapter any report 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 chapter, the Finance Director shall proceed, in such manner as the Finance Director may deem best, to obtain facts and information on which to base an estimate of the tax due. As soon as the Finance Director has determined the tax due based on such information, the Director shall proceed to assess against such transient lodging tax collector the tax, interest and penalties provided for by this ordinance. In case such determination is made, the Finance Director shall give a notice of the amount so assessed, such determination and notice to be made and mailed within three years after discovery by the Finance Director 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 immediately upon receipt of notice and shall become final within twenty (20) days after the Finance Director has given notice thereof. The transient lodging tax collector may petition, however, after payment is made, for redemption and refund of the determination, if the petition is filed within twenty (20) days from the date of service of notice by the Finance Director.

(c) **Costs of Determining Tax.** All costs to the city in determining the actual tax due from any transient lodging tax collector shall be added to, and become a part of, the amount owed by the transient lodging tax collector upon written notice to the transient lodging tax collector, served personally or by mail.

Section 11. Re-determination and Refund.

(a) Any transient lodging tax collector against whom a determination is made under Section 10 or any person against whom the tax has been imposed may file a petition for re-determination or refund within twenty (20) days of the date notice is given to the transient lodging tax collector under Section 10(b) or within one year to the date the tax is collected from the person, as the case may be. The petition shall be verified and shall state the specific reason the re-determination is merited or refund is due. If a petition is not filed within such time period, the determination or imposition of the tax becomes final and binding.

(b) If a petition is filed within the allowable period, the Finance Director shall reconsider the determination or imposition, and, if the transient lodging tax collector or person has so requested in the petition, shall give the transient lodging tax collector or person a hearing after not less than two weeks' notice of the time and place for the hearing. The Finance Director may continue the hearing from time to time as may be necessary.

(c) The Finance Director may decrease or increase the amount of the determination or imposition as a result of the hearing, and if an increase is determined, such increase shall be payable immediately after hearing.

(d) The order or decision of the Finance Director upon a petition becomes final twenty (20) days after service upon the petitioner of notice thereof unless an appeal is filed with the City Council, in writing, within the twenty (20) days after service of such notice.

(e) No petition, or appeal there from, shall be effective for any purpose unless the transient lodging tax collector has first complied with the payment provisions hereof.

Section 12. Security for Collection of Tax. The Finance Director, whenever deemed necessary to insure the compliance with this ordinance, may require a transient lodging tax collector to deposit with the City cash, bond, or other security deemed acceptable by the City Attorney. The amount of such cash, bond, or other security shall be fixed by the Finance Director, but it shall not be greater than twice the transient lodging tax collector's estimated average quarterly liability for the period for which the transient lodging tax collector files returns or five thousand dollars, whichever is less. Pursuant to Section 16, the transient lodging tax collector has a right to appeal any decision of the Finance Director made pursuant to this section to the City Council within ten days after service of notice of requirement to provide such security.

Section 13. Lien

(a) The tax imposed by section 3, together with the interest and penalties provided by section 9 and the filing fees paid to the Department of Records of Marion County, Oregon, and advertising costs which may be incurred when the tax becomes delinquent under section 10 shall be, and until paid remain, a lien from the date of its registration with the City of Detroit, Oregon, or recorded with the Marion County Clerk, and superior to all subsequent recorded liens on all tangible personal property used in the motel of an transient lodging tax collector within Detroit, Oregon and may be foreclosed on and sold as necessary to discharge the lien, if the lien has been so recorded. Notice of lien may be issued by the Finance Director whenever the transient lodging provider is in default in the payment of the tax, interest and penalty, and shall be recorded with the City of Detroit, Oregon or the Department of Records of Marion County, Oregon, and a copy sent to the delinquent transient lodging provider. The personal property subject to the lien and seized by any deputy of the Finance Director may be sold by the Finance Director at public auction after 10 days' notice published and posted.

(b) Any such lien as shown on the records of the City of Detroit, Oregon or the Department of Records of Marion County, Oregon, shall, upon the payment of the taxes, penalty and interest for which the lien has been imposed, be released by the Finance Director when their full amount has been paid to the city. The transient lodging provider or person making the payment shall receive a receipt therefore stating that the full amounts of the taxes penalties, and interest have been paid and that the lien is thereby released and the record of the lien satisfied.

Section 14. Refunds

A refund may be requested for an excess amount whenever the amount of any tax imposed under section 3 has been paid more than once or has been erroneously or illegally collected or received by the Finance Director. It may be refunded, provided a verified claim, in writing therefore stating the specific reason upon which the claim is founded, and is filed with the Finance Director within one year from the date of payment. If the Finance Director approves the claim, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the transient lodging tax collector from whom it was collected or by whom paid, and the balance may be refunded to the transient lodging intermediary or transient lodging providers administrators, executors or assignees. All refunds shall be charged to the Transient room tax fund.

Section 15. Administration.

(a) **Dedicated Transient Room Tax Fund.** The Finance Director shall deposit all money collected pursuant to all sections of this ordinance to the credit of the dedicated transient room tax fund.

(b) **Records Required From Transient Lodging Tax Collectors, Form.** Every transient lodging tax collector shall keep guest records of room rentals and accounting books and records of the room sales. All records shall be retained by the transient lodging tax collector for a period of at least three (3) years after they come into being.

(c) **Examination of Records--Investigations.** The Finance Director may examine, during normal business hours, the books, papers, and accounting records relating to room sales of any transient lodging tax collector after notification to the transient lodging tax collector, and may investigate the business of the transient lodging tax collector in order to verify the accuracy of any return made, or if no return is made by the transient lodging tax collector, to ascertain and determine the amount of the tax required to be paid.

Section 16. Appeal to City Council Any transient lodging tax collector aggrieved by a decision of the Finance Director shall have the right of appeal. The written notice of appeal to the Council shall be filed with the City Recorder within twenty (20) days of serving or mailing of the tax notice of a decision given by the Finance Director. The Council shall hear and make a determination in regards to the appeal at its next regular meeting immediately following the filing of the notice of appeal.

Section 17. Violations. It is unlawful for any transient lodging tax collector 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 Finance Director 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.

Section 18. Rescission of Ordinance No. 214 and No. 220

Ordinance No. 214 and No. 220 are hereby rescinded.

Section 19. Emergency Clause

Whereas HB 4120 necessitates Oregon cities to update the definition of “Transient Lodging Intermediary” in their local lodging tax ordinances, and the seasonal rental of transient lodging typically takes place in the summer months, an emergency is hereby declared to exist, and this ordinance shall be in effect immediately upon passage.

Passed by the Common Council of the City of Detroit, Oregon, this 9th day of July, 2019.

Aye ___ Nay ___ Abstain ___ Absent ___

Signed:

James R. Trett, Mayor

Attest:

Approved as to form:

Christine Pavoni, City Recorder

William Monahan, City Attorney