

**ORDINANCE NO. 2663****AN ORDINANCE PROVIDING FOR A TRANSIENT OCCUPANCY TAX FOR THE CITY OF COOS BAY AND TO PROVIDE THE ADMINISTRATIVE PROCEDURES FOR COLLECTION OF SAME; AS AMENDED BY ORDINANCE NO. 83, 195, 315, AND 374.**

The City of Coos Bay ordains as follows:

**Section 1. Title.** This ordinance shall be known as the Transient Room Tax Ordinance of the City of Coos Bay.

**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 operator 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 Coos Bay, Oregon.
- (d) **Finance Director** means the City of Coos Bay Finance Director, or his or her designee.
- (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, 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, 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) **Operator** means the person who is proprietor of the motel in any capacity. Where the operator performs 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 ordinance and shall have the same duties and liabilities as the principal. Compliance with the provisions of the ordinance by either the principal or the managing agent shall be considered compliance by both.

(i) **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.

(j) **Rent** means the consideration charged, whether or not received by the operator, 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.

(k) **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.

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

(m) **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 thirty-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 thirty days has expired unless there is an agreement in writing between the operator 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.

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

[Amended by Ordinance No. 374, Section 1 and 2, enacted September 6, 2005]

**Section 3. Tax Imposed.** For the privilege of occupancy in any motel, each transient shall pay a tax in the amount of seven percent (7%) 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 the operator's records when rent is collected, if the operator keeps his records on the cash accounting basis, or when earned, if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax is not paid to the operator 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 parking space in mobile home parks or trailer parks.

**Section 4. Collection of Tax by Operator - Rules for Collection.**

- (a) Every operator 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 operator constitutes a debt owing 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 credits are paid or deferred payments are made.

**Section 5. Operator's Duties.** Each operator 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 operator's records and any receipt tendered by the operator. No operator 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 operator, 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 for more than thirty (30) successive calendar days;
- (b) Any individual whose rent has a value less than \$2.00 per day;
- (c) Any individual who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidental to the owner's use thereof;
- (d) Any individual whose rent is paid for occupancy in a hospital room or to a medical clinic, convalescent home, or home for aged people.
- (e) 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.

**Section 7. Registration of Operator; Form and Contents; Execution.** Every person engaging or about to engage in business as an operator of a motel in the City of Coos Bay shall register with the City on a form provided by the Finance Director. Persons starting business must register within fifteen (15) calendar days after commencing business. Registration shall set forth the name under which the operator transacts or intends to transact business, the location of the operator's place or places of business, and such other information to facilitate the collection of the tax as the Finance Director may require.

**Section 8. Returns and Payments.**

- (a) The tax shall be paid by the transient to the operator at the time that rent is paid.

Such tax collected by any operator is due and payable to the Finance Director as follows:

- (1) For the first twelve months following registration as an operator of a motel in the city, payment for any given month will be made by the last day of the following month; or
- (2) Whenever the operator has been delinquent in two or more consecutive payments, for a period designated by the Finance Director, payment for any given month will be made by the last day of the following month; or
- (3) For all other operators, payment will be made on a quarterly basis, with payment for each quarter to be made by the last day of the month following the close of the quarter. The quarters are:

1st Quarter	January, February, March
2nd Quarter	April, May, June
3rd Quarter	July, August, September
4th Quarter	October, November, December

(b) Taxes are delinquent if not paid by the last day of the month following the close of the period referenced in paragraph "a" above."

(c) Returns shall be filed in such form as the Finance Director may prescribe and 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 Finance Director may require returns to show the total occupancies upon which tax was collected or otherwise due.

(d) The operator shall deliver the return, together with remittance of the amount of the tax due, to the Finance Director at the City of Coos Bay Finance Office either by personal delivery or by mail. If the return is mailed, date of postmark shall be considered the date of delivery for determining delinquencies.

[Amended by Ordinance No. 374, Section 4, enacted September 6, 2005]

#### **Section 9. 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 percent 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 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 25 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), an operator who fails to remit the required tax shall pay interest on the tax due at the rate of 1.0 percent per month, without proration 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.

(f) 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 Finance Director 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.

[Amended by Ordinance No. 374, Section 5, enacted September 6, 2005]

#### **Section 10. Deficiency Determinations; Fraud, Evasion, Operator Delay.**

(a) **Deficiency Determination.** If the Finance Director determines that an operator'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 operator 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 operator shall fail, refuse to collect the tax, or to make within the time provided in this ordinance any report and remittance of the tax, or any portion thereof, 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 operator the tax and interest 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 ten days after the Finance Director has given notice thereof, and shall be deemed delinquent if not paid by such date.

(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.

#### **Section 11. Redetermination and Refund.**

(a) Any operator against whom a determination is made under Section 10 or any person against whom the tax has been imposed may file a petition for redetermination or refund within ten days of the date notice is given to the operator 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 redetermination 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 City Manager shall reconsider the determination or imposition, and, if the operator or person has so requested in the petition, shall give the operator or person a hearing after not less than two weeks notice of the time and place for 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 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 City Manager upon a petition becomes final ten (10) days after service upon the petitioner of notice thereof unless an appeal is filed with the City Council, in writing, within the ten (10) days after service of such notice.

(e) No petition, or appeal therefrom, shall be effective for any purpose unless the operator 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 an operator 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 operator's estimated average quarterly liability for the period for which the operator files returns or five thousand dollars, whichever is less. Pursuant to Section 15, the operator has a right to appeal any decision of the Finance Director made pursuant to this section to the Transient Occupancy Tax Appeal Board by filing a notice of appeal with the City Manager within ten days after service of notice of requirement to provide such security.

**Section 13. 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 Finance Director may examine, during normal business hours, the books, papers, and accounting records relating to room sales of any operator after notification to the operator, 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 of the tax required to be paid.

(c) **Confidential Character of Information Obtained.** No person having an administrative or clerical duty under the provisions of this ordinance shall make known in any manner whatsoever the business affairs, operations, or information obtained by an investigation of records and equipment of any operator, except as follows:

(1) The disclosure to, or the examination of, records and equipment by another City of Coos Bay official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provision of this ordinance or collecting taxes imposed hereunder;

(2) The disclosure, after the filing of a written request to that effect, to the taxpayer himself, 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; further provided, however, that the City Attorney approves each such disclosure and that the Finance Director may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby.

**Section 14. Transient Occupancy Tax Appeal Board.** A Transient Occupancy Tax Appeal Board is hereby created to be composed of members of the Coos Bay City Council. Four members of the Board shall constitute a quorum. The Board shall keep a record of its transactions and shall not receive any compensation for their services on the Board. The Board shall have the power to:

(a) Hear and determine appeals of orders or decisions made pursuant to this ordinance. The Board may affirm, modify, or reverse such orders or decisions, and may prescribe such forms, rules, and regulations relating to appeals as it may deem necessary. In the review of a decision or order, the Board may take such evidence and make such investigation as it may deem necessary and give notice of its determinations. Such determination shall become final sixty days thereafter;

(b) Approve, modify, or disapprove all forms, rules, and regulations prescribed by the Finance Director in the administration and enforcement of this ordinance;

(c) Make such investigations as it deems advisable regarding the imposition and administration of the tax;

(d) Revoke the business license issued to any operator for repeated failure to comply with this ordinance, and order such revocation to continue until the operator has come into compliance and paid in full all taxes owing, including delinquency penalties, interest, and costs. Such revocation shall be made only following a hearing with ten days written notice to the operator. Such revocation may be in addition to any other penalties imposed by this ordinance.

**Section 15. Violations.** It is unlawful for any operator 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 16. Penalty.** Any person violating any provision of this ordinance shall be fined not more than seven hundred and fifty dollars for each such offense.

**Section 17. Effect of Repeal.** Repeal of any section shall not revive any section in effect before or at the time the repealed section took effect. Repeal shall not affect a fee, charge, or penalty incurred before the repeal took effect, nor a suit, prosecution, or proceeding pending at the time of the repeal to collect any fee or charge or prosecute any offense committed under the repealed section.

**Section 18. Severability.** The sections and subsections of this Ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.

**Section 19. Effective Date.** This ordinance shall become effective at 12:01 a.m. on the 1st day of April and the first payment of taxes hereunder shall become delinquent unless paid on or prior to the 12th day of July, 1976.

Passed by the Council and approved by the Mayor January 26, 1976.