

ORDINANCE NO. 4851

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE CHAPTER 3.14, TRANSIENT ROOM TAX.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS

Section 1. Albany Municipal Code Chapter 3.14, Transient Room Tax, is hereby amended to read as follows:

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

(1) "Accrual accounting" means the operator enters the rent due from a transient on his records when the rent is earned whether or not is paid.

(2) "Cash accounting" means the operator does not enter the rent due from a transient on his records until rent is paid.

(3) "City Council" means the city council of the city of Albany, Oregon.

(4) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for transient occupancy for thirty days or less for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse, apartment house, public or private club, space in mobile home or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is for less than a thirty-day period.

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

(6) "Operator" means the person who is proprietor of the hotel in any capacity. Where the operator performs his 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 principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

(7) "Person" means 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.

(8) "Rent" means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel valued in money, goods, labor, credits, property or other consideration valued in money without any deduction.

(9) "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 chapter shall be the same charge made for rent when consideration is not a part of a package plan.

(10) "Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(11) "Tax administrator" means the finance director of the city.

(12) "Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the thirty-day

period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in 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.

~~(13) -- "Transient room tax review committee" means a committee composed of an accountant, attorney, an operator and two laymen appointed by the mayor and approved by the council of the city.~~

3.14.025 Small establishments exempted. The definition of hotel or motel as set forth in Section 3.14.020 shall not apply to any structure or collection of units at one location when the total number of units is less than six or when the assessed value of the improvements on the real property is less than one hundred thousand dollars. In order for this exclusion to apply, it shall be necessary for the owner to make application to the ~~transient room tax review committee~~ tax administrator for the exclusion of being exempt from the provisions of Albany Municipal Code Section 3.14.040.

3.14.110 Due date--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. All amounts of such taxes collected by any operator are due and payable to the tax administrator on a monthly basis on the fifteenth day of the month for the preceding month, and are delinquent on the last day of the month in which they are due.

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

(c) Returns shall show the amount of tax collected or otherwise due for the related period. The tax administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of the operator for such period and an explanation in detail of any discrepancy between such amounts and the amount of rents exempt, if any.

(d) After the gross tax has been calculated by the operator, the operator shall retain five (5) percent of the gross tax as compensation for the record-keeping services provided.

(e) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the tax administrator at his 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.

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

(g) The tax administrator, if he deems it necessary in order to ensure

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 monthly periods.

3.14.120 Penalties 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 chapter prior to delinquency shall pay a penalty of 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 a second delinquency penalty of fifteen percent of the amount of the tax due plus the amount of the tax and the ten percent penalty first imposed.

(c) Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

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

(e) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become part of the tax required in this chapter to be paid.

(f) Petition for Waiver. Any operator who fails to remit the tax levied in this chapter within the time stated in this chapter shall pay the penalties stated in this chapter; provided, however, the operator may petition the ~~transient-room-tax-review-committee~~ City Council for waiver and refund of the penalty or any portion thereof, and the ~~transient-room-tax-review-committee~~ City Council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

3.14.140 Redetermination. (a) Any person against whom a determination is made under Section 3.14.130 or any person directly interested may petition for a redetermination of redemption and refund within the time required in Section 3.14.130. If a petition for redetermination and refund is not filed within the time required in Section 3.14.130, the determination becomes final at the expiration of the allowable time.

(b) If a petition for redetermination and refund is filed within the allowable period, the tax administrator shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him ten days' notice of the time and place of the hearing. The tax administrator may continue the hearing from time to time as may be necessary.

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

(d) The order or decision of the tax administrator upon a petition for redetermination of redemption and refund becomes final ten days after service upon the petitioner of notice thereof, unless appeal of such order or decision is

filed with the transient-room-tax-review-committee City Council within the ten days after service of such 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.

~~3.14.200--Transient-room-tax-review-committee--Organization.--A transient room-tax-review-committee is created to be composed of an accountant, an attorney, an operator, as defined in this chapter, and two lay members.--The committee shall select from its members a chairman who shall serve at its pleasure.--Three members of the committee shall constitute a quorum.--The committee shall keep a record of its transactions.--The committee shall be deemed to be in the office of the tax administrator and shall meet and keep its files in his office.--The members of the committee shall not, at any time, receive any compensation as such members or acting members for their services on the committee.--The committee shall be appointed by the Mayor and shall serve four-year terms except the accountant, the attorney and the operator appointed to the first committee after the adoption of the ordinance codified in this chapter shall serve three-year terms.--Thereafter, all terms shall be four years.~~

~~3.14.210--Transient-room-tax-review-committee--Powers and duties.--The transient-room-tax-review-committee shall have power and it shall be its duty:--~~

~~(1)--To hear and determine appeals of orders or decisions of the tax administrator made upon petitions for redetermination of the tax.--The committee may affirm, modify or reverse such orders or decisions 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 tax administrator's decision or order, the committee may take such evidence and make such investigation as it may deem necessary.--It shall give notice of its determinations in the manner prescribed for service of notice of a tax administrator's decision and shall file a copy of each such determination with the tax administrator with certification thereon of the date of service thereof.--Such determination shall become final ten days thereafter and shall thereupon become due and payable, subject to interest and penalties, and enforceable by the tax administrator in like manner as an order or decision of the tax administrator;--~~

~~(2)--To approve, modify or disapprove all forms, rules and regulations prescribed by the tax administrator in the administration and enforcement of this chapter, and such forms, rules and regulations shall be subject to and become effective only on such approval;--~~

~~(3)--To hear and determine in such manner as shall be just any protest which may be made by any person who may be interested to any form, rules or regulation approved or prescribed by the committee;--~~

~~(4)--To grant for good cause applications for extensions of time in excess of one month for making any return or payment of tax, and to prescribe rules therefor;--~~

~~(5)--To make such investigations as it deems advisable regarding the imposition and administration of the transient occupancy tax and report its findings to the council, and to act in an advisory capacity to the legislative body on matters pertaining to the transient room tax and enforcement problems and recommend to the council the adoption, amendment or repeal of legislation pertaining thereto.~~

~~3.14.220 - Appeal to transient room tax review committee. - Any person aggrieved by any decision of the tax administrator may appeal to the transient room tax committee by filing a notice of appeal with the tax administrator within ten days of the serving or mailing of the notice of a decision given by the tax administrator. - The tax administrator shall fix a time and place for hearing such appeal as prescribed by the transient occupancy tax review committee in its rules and regulations and shall give the appellant ten days' written notice of the time and place of hearing. -~~

3.14.230 Appeals to City Council. Any person aggrieved by any decision of the transient room tax review committee tax administrator may appeal to the common City Council of the City by filing a notice of appeal with the tax administrator within ten days of the serving or the mailing of the notice of the decision given by the transient room tax review committee tax administrator. The tax administrator shall transmit said notice of appeal, together with the file of said appealed matter, to the common City Council, who shall fix a time and place for hearing such appeal. ~~From the decision of the transient room tax review committee.~~ The common City Council shall give the appellant not less than ten days' written notice of the time and place of the hearing of said appealed matter. Action by the common City Council on appeals shall be decided by a majority of the members of the council present at the meeting where such appeal is considered.

Passed by Council: February 8, 1989

Approved by Mayor: February 9, 1989

Effective Date: March 10, 1989

  
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Mayor

ATTEST:

  
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City Recorder