ORDINANCE NO.   5003

An Ordinance amending the McMinnville Municipal Code provisions incorporating a Local Transient Lodging Tax (Ordinances No. 4994, 4974 and 4970).

RECITALS:

On June 11, 2013, the McMinnville City Council passed Ordinance No. 4970, implementing a Local Transient Lodging Tax.  Two subsequent amendments to the ordinance were adopted on November 26, 2013 (Ord. No. 4974) and October 13, 2015 (Ord. No. 4994), for the purpose of improving the administration and collection of the tax.  Ordinance 4970, as amended by Ord. 4974 and Ord. 4994, is codified in the McMinnville Municipal Code (MMC) at Chapter 5.10.

MMC Section 5.10.150(C) requires that, "[a] formal audit of all of the Tax Collector's records shall be conducted at least once in every three year period."  In order to allow the City to determine areas where a greater risk of non-compliance with the Ordinance exists and to focus resources on those areas, this section will be amended to provide "[a] formal audit of all of the Tax Collector's records may be conducted at the discretion of the Finance Director."

Additional changes to MMC Chapter 5.10, are also being proposed to further improve the administration and collection of the tax.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. The attached language is incorporated into this Ordinance by this reference.
2. This Ordinance amends and supersedes Ordinances 4970, 4974, and 4994.
3. This Ordinance allows the City to more efficiently verify the accurate collection, reporting and remittance of transient lodging tax collection and facilitates administration of the collection of the transient lodging tax.
4. The provisions of McMinnville Municipal Code Chapter 5.10 that are not expressly amended by this Ordinance shall remain in effect.
5. This ordinance will take effect 30 days after passage by the Council.

Passed by the Council this 12th day of April 2016, by the following votes:

Ayes:  Drabkin, Hill, Jeffries, Menke, Ruden, Yoder

Nays:

Approved this 12th day of April 2016.

Effective date: May 12, 2016.

_____
MAYOR

Attest:                                    Approved as to form:

_____          _____
CITY RECORDER                              CITY ATTORNEY

## Chapter 5.10
## LOCAL TRANSIENT LODGING TAXES

Sections:

5.10.010   Definitions.  For the purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

A.   "City" means the City of McMinnville, Oregon.

B.   "City Council" means the City Council of the City of McMinnville, Oregon.

C.   "Finance Department" means the Finance Department of the City.

D.   "Finance Director" means the Director of the Finance Department **or their designee**.

E.   "Lodging" means **"Transient Lodging" as defined by ORS 320.300, except that "Lodging" shall not include** any structure or portion of any structure which is occupied or intended or designed for Occupancy for less than thirty (30) days for dwelling, lodging, or sleeping purposes, and includes any hotel, motel, inn, bed and breakfast establishment, vacation home rental, apartment or apartment house, or similar structure or portion of a structure so occupied, provided the Occupancy is for less than a thirty (30) day period.  The term "Lodging" specifically excludes **dwelling units at nonprofit facilities,** dormitory rooms used for educational purposes, camping sites, and recreational vehicle sites.

F.   "Occupancy" means the use or possession, or the right to use or possession, for lodging purposes, of any space, or portion thereof, in a Lodging.

G.   "Occupant" means a person who uses or possesses, or who has the right to use or posses any space, or portion thereof, in a Lodging.

H.   "Rent" means the consideration charged, whether or not received by the Transient Lodging Tax Collector, for the occupancy of space in a Lodging, whether or not valued in money, without any deduction.

I.   "Tax" or "Taxes" means either the Tax payable by the Occupant or the aggregate amount of Taxes due from a Tax Collector during the period for which the Tax Collector is required to report collections.

J.   "Transient Lodging Intermediary" or "Lodging Intermediary" means a person other than a transient lodging provider who facilitates the retail sale of transient lodging and charges for occupancy of the transient lodging.

K.   "Transient Lodging Provider" or "Provider" means the person who is the proprietor of a Lodging in any capacity.  Where management functions are performed through a managing agent other than an employee, the managing agent who shall have the same duties and liabilities as the proprietor shall be the Provider.  Compliance with the provisions of this Chapter by either the proprietor or the managing agent shall be considered to be compliance by both.

L.   "Transient Lodging Tax Collector" or "Tax Collector" means a transient lodging provider or a transient lodging intermediary.

5.10.050  Exemptions.
   A.  No Tax imposed by this Chapter shall be imposed upon **dwelling units described in ORS 320.308.**~~:~~

~~1.   Any Occupancy consisting of thirty (30) or more successive calendar days.~~

~~2.   Any person who pays for Lodging on a monthly basis, irrespective of the number of days in the month.~~

~~3.   Any occupant in a hospital room, medical or mental health facility, convalescent home, home for aged people, or a government owned and operated public institution.~~

~~4.   Any person housed through an emergency shelter or disaster program where the Rent is paid with government assistance funds.~~

~~5.   Any federal government employee traveling on official government business, who presents an official Government Exemption Certificate, official travel authorization, or federal government identification.~~

5.10.150  Administration.

A.   Every Tax Collector shall keep records of rentals and accounting books **that are sufficient to demonstrate compliance with the provisions of this Chapter**. These records shall be retained for three (3) years and six (6) months after they are created.

B. The Finance Director may examine, during normal business hours, the books, papers, and accounting records relating to rentals of any Tax Collector liable for the Tax, after notification to the Tax Collector, and may investigate the business of the Tax Collector in order to verify the accuracy of any return made, or if no return is made by the Tax Collector, to ascertain and determine the amount required to be paid.

C. A formal audit of all of the Tax Collector's records **may**shall be conducted at **the discretion of the Finance Director**least once in every three year period.

D. Except as otherwise required by law, it shall be unlawful for any officer, employee, or agent of the City to divulge, release, or make known in any manner any financial information submitted or disclosed to the City under the terms of this Chapter. Nothing in this Section shall be construed to prohibit:

1. The disclosure to, or the examination of, financial records by City officers, employees, or agents for the purpose of administering or enforcing the terms of this Chapter, or collecting Taxes imposed under the terms of this Chapter;

2. The disclosure to the Tax Collector or his/her authorized representative of financial information, including amounts of Transient Lodging Taxes, penalties, or interest, after filing of a written request by the Tax Collector or his/her authorized representative and approval of the request by the Finance Director;

3. The disclosure of the names and addresses of any person to whom this Chapter applies;

4. The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular Tax Collector's return or application; or

5. The disclosure of financial information to the City Attorney or other legal representative of the City to the extent the Finance Director deems disclosure or access necessary for the performance of the duties of advising or representing the Finance Director, the Finance Department, or the City.