

ORDINANCE NO. 4994

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

RECITALS:

On June 11, 2013, the McMinnville City Council adopted Ordinance No. 4970, incorporating a Local Transient Lodging Tax. While developing forms and policies for the implementation of the tax, several possibilities for improving Ordinance No. 4970 presented themselves. Additionally, the statutes regarding the state's transient lodging taxes were amended after Ordinance 4970 was adopted. It appeared that making the City's Ordinance mirror, as closely as possible, state requirements would enable the tax to be administered smoothly and would enable those responsible for paying the tax to coordinate payment of the City tax with the payment of their state tax. For these reasons, on November 26, 2013, the Council adopted Ordinance No. 4974, amending Ordinance No. 4970.

To enhance the administration and enforcement of existing law governing transient lodging tax in the state of Oregon, the Legislature passed House Bill (HB) 2656, which further amends the Oregon Revised Statutes (ORS) relating to transient lodging tax. HB 2656 states that transient lodging tax shall be collected by the transient lodging tax collector that receives the consideration rendered for occupancy of the transient lodging. Transient lodging tax collectors are defined as transient lodging providers and transient lodging intermediaries. A transient lodging intermediary is defined as a person other than a transient lodging provider who facilitates the retail sale of transient lodging and charges for occupancy of the transient lodging. HB 2656 also clarifies that transient lodging intermediaries are responsible for collecting and remitting tax based on the entire retail price.

The amended language provided in this Ordinance again mirrors, to the extent possible, the requirements found in state statute. This should, again, enable the tax to be administered smoothly and enable those transient lodging tax collectors responsible for paying the tax to coordinate payment of this tax with the payment of their state tax. Other amendments are included in this Ordinance which will facilitate administration of the collection of the transient lodging tax.

NOW, THEREFORE, 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 Ordinance No. 4974.
3. Transient lodging taxes are collected quarterly. This ordinance will take effect January 1, 2016, affecting fiscal year third quarter taxes. Further, this Ordinance brings the provisions of the City Code into compliance with the provisions found in state law. Adoption of this Ordinance will enable local tax collectors to coordinate payment of the City tax with payment of the state tax.

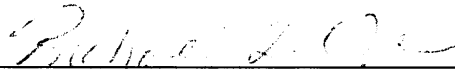
Passed by the Council this 13th day of October 2015, by the following votes:

Ayes: Drabkin, Hill, Jeffries, Yoder

Nays: _____

Approved this 13th day of October 2015.

Effective date: January 1, 2016.



MAYOR

Attest:

Approved as to form:



CITY RECORDER



CITY ATTORNEY

Chapter 5.10
LOCAL TRANSIENT LODGING TAXES

Sections:

- 5.10.010 Definitions.
- 5.10.020 Tax imposed.
- 5.10.030 Collection.
- 5.10.040 Tax Collector's duties.
- 5.10.050 Exemptions.
- 5.10.060 Registry.
- 5.10.070 Returns.
- 5.10.080 Penalties and interest.
- 5.10.090 Deficiencies.
- 5.10.100 Redetermination.
- 5.10.110 Security.
- 5.10.120 Refunds.
- 5.10.130 Expenditure of funds.
- 5.10.040 Collection fee.
- 5.10.150 Administration.
- 5.10.160 Notice.
- 5.10.170 Appeals.
- 5.10.180 Violations.
- 5.10.090 Penalty.

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.
- E. "Lodging" means 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 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.

5.10.020 Tax imposed. For the privilege of Occupancy in any Lodging, each Occupant shall pay a Tax in the amount of eight percent (8%) of the Rent charged by the Transient Lodging Tax Collector. The Tax constitutes a debt owed by the Occupant to the City, which is extinguished only by payment to the Transient Lodging Tax Collector at the time the Rent is paid. The Transient Lodging Tax Collector shall enter the Tax on the Tax Collector's records when the Rent is collected. If the Rent is paid in installments, a proportionate share of the Tax shall be paid by the Occupant to the Tax Collector with each installment. If for any reason the Tax due is not paid to the Tax Collector, the Finance Director may require that the Tax be paid directly to the City. The Tax must be computed on the total retail price, including all charges other than taxes, paid by a person for occupancy of the Transient Lodging.

5.10.030 Collection.

- A. Except when Occupants or Lodgings are exempt under this Chapter, every Transient Lodging Tax Collector renting Occupancy in a Lodging in the City shall collect a Tax

from the Occupant. The Tax collected or accrued by the Tax Collector constitutes a debt owing by the Tax Collector to the City.

- B. In cases of credit or deferred payment of rent, the payment of the Tax to the Tax Collector may be deferred until the Rent is paid, and the Tax Collector shall not be liable for the Tax until the credit is paid or the deferred payment is made.
- C. The Finance Director shall enforce this Chapter and the City may adopt policies, rules, and regulations consistent with this Chapter as necessary to aid in the enforcement.

5.10.040 Tax Collector's duties. Each Transient Lodging Tax Collector shall collect the Tax imposed by this Chapter on an Occupant. The amount of the Tax shall be separately stated upon the Tax Collector's records and on any receipt for the Rent rendered by the Tax Collector to the Occupant. No Tax Collector shall advertise that the Tax or any part of the Tax will be assumed or absorbed by the Tax Collector, or that it will not be added to the Rent, or that, when added, any part will be refunded.

5.10.050 Exemptions.

A. No Tax imposed by this Chapter shall be imposed upon:

- 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.

5.10.060 Registry.

- A. Every person engaging or about to engage in business as a Transient Lodging Provider or Transient Lodging Intermediary in this City shall register with the City on a form provided by the Finance Department. Providers and Lodging Intermediaries starting business or engaging in collection of the Tax from the Occupant must register within 15 calendar days after commencing business or engaging in collection

of the Tax. The privilege of registration after the date of imposition of the Tax shall not relieve any person from the obligation of payment or collection of Tax regardless of registration. Registration forms shall require the name under which a Provider or Lodging Intermediary transacts or intends to transact business, the location of the place of business, and other similar additional information required by the Finance Department to facilitate the collection of the Tax. The registration shall be signed by the Provider or Lodging Intermediary.

- B. The Finance Department shall, within ten days after registration, issue without charge a certificate of authority to each Provider to collect the Tax from the Occupant, together with a certificate for each additional place of business of each Provider. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Finance Department upon the cessation of business at the location named, or upon the business sale or transfer. Each certificate shall state the place of business to which it is applicable and shall be prominently displayed.
- C. The certificate shall state, at minimum, the following:
 - 1. The name of the Provider,
 - 2. The address of the Lodging,
 - 3. The date upon which the certificate was issued, and
 - 4. This statement: "This Transient Lodging Registration Certificate signifies that the person named has fulfilled the requirements of the Transient Lodgings Tax Chapter of the McMinnville Municipal Code for the purpose of collecting and remitting the Lodgings Tax. 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 Lodging 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."
- D. A Lodging Intermediary that has registered with the Finance Department will not be issued a Transient Lodging Registration Certificate.

5.10.070 Returns.

- A. The Tax imposed by this Chapter shall be paid by the Occupant to the Transient Lodging Tax Collector when the Occupant pays Rent to the Tax Collector. All Transient Lodging Taxes collected by a Tax Collector are due and payable to the Finance Department, on a quarterly basis, on or before the last day of the month

following the end of the quarter, or, if the last day is not a business day, the next business day thereafter.

- B. Tax Collectors shall file, with the quarterly Tax payment, or, if there is no Tax payment due for a given quarter, at the time the Tax payment would have been due, a return for that quarter's Tax collections. The return shall be filed with the Finance Department and shall be on a form prescribed by the Finance Department. The return shall reflect the amount of Tax collected or otherwise due for the period for which the return is filed. At the discretion of the Finance Director, it may also reflect:
1. The total rentals upon which the Tax is collected or otherwise due,
 2. Gross receipts of the Tax Collector for the period,
 3. The amount of Rents exempt, if any, and
 4. An explanation in detail of any discrepancies.
- C. The Tax Collector or his/her designee shall deliver the quarterly Tax payment and return to the Finance Department at its office either by personal delivery or by United States Mail. If the return and Taxes are mailed, the postmark shall be considered the date of delivery for determining delinquency.
- D. At any time before the due date, the Finance Director may, for good cause, extend the due date for making any return and/or payment of Tax for up to thirty days after the date the Tax would have become due but for the extension. Further extensions must be approved by the City Manager. A Tax Collector who is granted an extension shall pay a fee of three percent (3%) per month without proration for a fraction of a month.
- E. If the Finance Director deems it necessary, in order to ensure payment or to facilitate collection by the City of the amount of Taxes in any individual case, the Finance Director may require that payment of the Taxes be made in other than quarterly periods.

5.10.080 Penalties and interest.

- A. A penalty will be imposed on a Tax Collector who mails or hand delivers the return and the Tax payment after the due date. The penalty is five percent (5%) of the unpaid tax. If the Tax Collector files and/or pays more than thirty days after the due date, an additional twenty percent (20%) penalty will be added to the unpaid tax. Interest at the rate of one percent (1%) per month or fraction of a month without proration for portions of a month will be imposed on any unpaid tax from the due date until the date payment in full is received by the Finance Department. The Finance

Director may waive interest imposed if the Finance Director determines that the amount of interest imposed is de minimis and that the administrative cost of collecting the interest exceeds the amount of interest imposed.

- B. If the Finance Director determines that the nonpayment of any remittance due under this Chapter is due to fraud or intent to evade the provisions of this Chapter, a penalty of twenty-five (25) percent of the amount of the Tax shall be added, in addition to the penalties above.

5.10.090 Deficiencies.

- A. If the Finance Director determines that a return is incorrect, the Finance Director may compute and determine or estimate the amount required to be paid based on the facts contained in the return or returns or any other information within the Finance Director's possession. One or more deficiency determinations may be made on the amounts due for one or more periods.
- B. In making a deficiency determination, the Finance Director may offset overpayments, if any, which may have been previously made for a period or periods against any deficiency for a subsequent period or periods, or against penalties and interest on the deficiency.
- C. Once a deficiency determination is made, the Finance Director shall serve a written deficiency notice on the Tax Collector (or Occupant, in the case of a request for a refund). The notice may be given personally or sent by United States mail. If sent by mail, the notice shall be addressed to the Tax Collector at the Tax Collector's address as it appears on the records of the City or as the City can best determine.
- D. Any deficiency is due and payable ten (10) days after the Finance Director serves the written deficiency notice. If not paid by the tenth day after service of a deficiency notice, the amount shall be delinquent and penalties and interest shall be applied as established in this Chapter.
- E. The Tax Collector (or Occupant, in the case of a request for a refund) may petition for a redetermination provided that the petition is filed within ten (10) days of service of the deficiency notice. Nothing prohibits the Finance Director from extending the time for petition beyond ten (10) days at his/her discretion.
- F. Except as provided in this Chapter, every deficiency determination shall be made and notice mailed within three (3) years after a return was originally filed or subsequently amended, whichever period expires later. In the case of the filing of a false or fraudulent return with the intent to evade this Chapter, a failure to file a required return, or a willful refusal to collect and remit the Tax, a deficiency

determination may be made, or a proceeding for the collection of the deficiency may be commenced at any time.

- G. If the Finance Director believes that the collection of any Tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, the Finance Director may make a determination of the Tax or amount of Tax required to be collected. The Finance Director will serve a written deficiency notice and demand for immediate payment on the Tax Collector. The amount shall be immediately due and payable, and the Tax Collector shall immediately pay such determination to the City after service of the notice, provided, however, the Tax Collector may petition, after payment has been made, for a redetermination of the Finance Director's assessment, provided that the petition is filed within ten (10) days of service of the deficiency notice.

5.10.100 Redetermination.

- A. If a petition for redetermination or refund is filed within the requisite time period, the Finance Director shall reconsider the determination, and, if the person has so requested in his/her petition, shall grant the person an oral hearing and shall give him/her ten (10) days notice of the time and place of the hearing. The Finance Director may continue the hearing from time to time as necessary.
- B. The Finance Director may decrease or increase the amount of the determination as a result of the reconsideration, the hearing, or both, and, if an increase is determined, such increase shall be payable immediately after the reconsideration or the hearing, as appropriate.
- C. The decision of the Finance Director upon a petition for redetermination or refund becomes final ten (10) days after service of the notice of decision upon the petitioner.
- D. No petition for redetermination or refund or other appeal shall be accepted and no petition is effective for any purpose unless the Tax Collector has first complied with the payment provision of this Chapter and has paid in full the amount determined to be due under the decision for which the appeal has been filed.

5.10.110 Security. The Finance Director, whenever the Finance Director deems it necessary to ensure compliance with this Chapter, may require any Tax Collector subject to this Chapter to deposit with the Finance Director security in the form of cash, bond, or other assets, as the Finance Director determines. The amount of the security shall be fixed by the Finance Director but shall not be greater than the Tax Collector's estimated quarterly liability for the period for which the Tax Collector files returns, determined in a manner the Finance Director deems proper, or five hundred dollars (\$500), whichever amount is less. The amount of security may be increased or decreased by the Finance Director within the limitation of this Section.

5.10.120 Refunds.

- A. Whenever the amount of any Tax imposed under this Chapter has been paid more than once or has been erroneously or illegally collected or received by the Finance Department, it may be refunded, provided a verified claim in writing, stating the specific reason upon which the claim is founded, is filed with the Finance Director within three (3) years from the date of payment. The claim shall be made on forms provided by the Finance Department. If the claim is approved, the excess amount collected or paid may be refunded to the Provider from whom it was collected or by whom it was paid, or the Provider's administrators, executors, or assignees. Alternatively, at the discretion of the Finance Director, the refund may be credited toward any amounts then due and payable from the Provider from whom it was collected or by whom it was paid, and the balance, if any, may be refunded to the Tax Collector or the Tax Collector's administrators, executors, or assignees. All refunds shall be charged to the Transient Lodging Tax Fund.
- B. Whenever the Tax required by this Chapter has been collected by the Tax Collector and it is later determined that the Occupant has occupied the Lodging for a period of thirty (30) days or more without interruption, the Tax Collector shall refund to the Occupant the Tax previously collected by the Tax Collector from the Occupant. If the Tax Collector has remitted the Tax prior to refund or credit to the Occupant, the Tax Collector shall be entitled to a corresponding refund under this Section. The Tax Collector shall account for all collections and refunds under this subsection to the Finance Department.

5.10.130 Expenditure of funds. All money collected pursuant to this Chapter shall be the General Funds of the City and may be used in any lawful manner, with a minimum of seventy (70) percent of the net proceeds dedicated for tourism promotion or tourism related facilities as prescribed by state law.

5.10.140 Collection fee. Every Tax Collector liable for collection and remittance of the Tax imposed by this Chapter may withhold five percent (5%) of the net Tax due to cover expenses in its collection and remittance.

5.10.150 Administration.

- A. Every Tax Collector shall keep records of rentals and accounting books. 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 shall be conducted at 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.

5.10.160 Notice. In case of service by mail of any notice required by this Chapter, the service is complete three days after deposit with the United States Post Office.

5.10.170 Appeals. Any person aggrieved by any decision of the Finance Director may appeal to the City Manager (or his or her designee) by filing a notice of appeal with the Finance Director within ten (10) days of the serving of the notice of the Finance Director's decision. The Finance Director shall transmit the notice, together with the file of the appealed matter, to the City Manager, who shall fix a time and place for hearing the appeal. The City Manager shall give the appellant not less than ten (10) days' written notice of the time and place for hearing the appeal. The City Manager may continue the hearing from time to time as necessary.

5.10.180 Violations.

- A. No Tax Collector or other person required to do so may fail or refuse to, in the time periods prescribed by this Chapter, furnish any return required to be made under this Chapter or furnish a supplemental return or other data required by the Finance Director, or make the remittance to the Finance Director of the amount of the Taxes, penalties, or interest due. No person may render a false or fraudulent return under this Chapter. No person required to make, render, sign, or verify any report regarding the Tax may make any false or fraudulent report.

- B. At any time within three (3) years after any Tax required to be collected becomes due and payable, at any time within three (3) years after any determination by the Finance Director or City Manager under this Chapter becomes final, or at any time within three (3) years after any person who is required to do so fails to furnish true and non-fraudulent information within the time periods prescribed by this Chapter, the City may bring an action in the McMinnville Municipal Court or in the courts of this state, any other state, or the United States, in the name of the City.

5.10.190 Penalty. Any person violating any of the provisions of this Chapter shall, upon conviction, be punished by a fine of not more than \$500 for each violation. This fine shall be in addition to any and all administrative penalties and interest assessed pursuant to this Chapter. The court may increase the amount of penalty up to ten (10) times the normal penalty imposed if the judge finds that the Tax Collector collected the tax imposed by this Chapter and intentionally failed to remit the tax proceeds to the City when and as required by this Chapter. All amounts listed as room tax in bills or invoices issued by the Tax Collector will be considered tax collected by the Tax Collector, unless the Tax Collector received no payment on the bill or invoice.