

ORDINANCE NO. 5080

An Ordinance amending McMinnville Municipal Code Chapter 5.10 provisions related to the Local Transient Lodging Tax

RECITALS:

On June 11, 2013, the McMinnville City Council passed Ordinance No. 4970, implementing a Local Transient Lodging Tax. Ordinance 4970, as amended, is codified in the McMinnville Municipal Code (MMC) at Chapter 5.10.

Some online travel companies and hosting platforms have argued that they are not responsible for the collection of local transient lodging taxes. To address these arguments, the Oregon Legislature passed HB 4120, effective July 1, 2018, which clarified that online travel companies and hosting platforms are considered "transient lodging intermediaries" under ORS 320.200 and are therefore required to collect and remit the tax.

Despite the change in state law, some online travel companies and hosting platform continue to fail or refuse to collect local transient lodging taxes. The proposed changes are intended to ensure that all transient lodging intermediaries, including online travel companies and hosting platforms, collect and remit the required local transient lodging taxes.

Additional changes are intended to improve the process for achieving compliance with the code requirements from transient lodging tax collectors, and to incorporate other best practices related to tax administration and collection.

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

1. The language set forth in the attached Exhibit 1, is incorporated into this Ordinance by this reference.
2. The amendments to MMC Chapter 5.10 will take effect September 12, 2019.

Passed by the Council August 13, 2019, by the following votes:

Ayes: Garvin, Geary, Menke, Peralta, Stassens

Nays: _____

Approved: August 13, 2019.

Effective Date: September 12, 2019



 MAYOR

Attest:



 CITY RECORDER

Approved as to form:



 CITY ATTORNEY

ORD 5080 - Exhibit 1

Contents

5.10.010	Definitions.....	1
5.10.020	Tax imposed.....	2
5.10.030	Collection of Tax by Transient Lodging Tax Collector.....	<u>32</u>
5.10.040	Short-Term Rental Hosting Platform Fees.....	<u>33</u>
5.10.050	Liability for Tax.....	<u>43</u>
5.10.060	Registry.....	<u>43</u>
5.10.070	Returns.....	<u>54</u>
5.10.080	Late payment fees and interest.....	<u>65</u>
5.10.090	Deficiencies.....	<u>66</u>
5.10.100	Redetermination.....	<u>77</u>
5.10.110	Collections and Liens.....	<u>87</u>
5.10.120	Refunds.....	<u>87</u>
5.10.130	Expenditure of funds.....	<u>98</u>
5.10.150	Administration.....	<u>98</u>
5.10.160	Notice.....	<u>109</u>
5.10.170	Appeals.....	<u>109</u>
5.10.190	Penalty.....	<u>1110</u>

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 dwelling units at nonprofit facilities or dormitory rooms used for educational purposes described in ORS 320.308.
- F. "Occupancy" means the right to the use or possession of any space in transient lodging for dwelling, or the right to use or possession, for lodging or sleeping purposes for less than 30 days, of any space, or portion thereof, in a lodging.
- G. "Occupant" means any person individual a person who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive days or less, counting portions of calendar days as full days, uses or possesses, or who has
 - a. The right to use or posses any space, or portion thereof,

~~b. In a lodging.~~

H. "Rent" means the consideration ~~paid or payable by an occupant charged, whether or not received by the transient lodging tax collector,~~ for the occupancy of space in ~~a transient~~ lodging, ~~whether or not valued in money, goods, labor, credits, property, or other consideration. If a separate fee is charged for services, goods or commodities and the fee is optional, that fee is not included in rent without any deduction. Rent includes the portion of any total retail price paid as part of a travel package by an occupant for occupancy of transient lodging, as may be determined by reasonable and verified standards from books and records kept in the ordinary course of a tax collector's business.~~

I. "Tax" or "taxes~~TLT~~" 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 collectionsthe transient lodging tax.~~

J. "Transient lodging intermediary" or "lodging intermediary" means a person other than a transient lodging provider ~~who that~~ facilitates the retail sale of transient lodging and:

- ~~1. e~~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 provider to use a specified third-party entity to collect the consideration charged 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~~ a person that furnishes transient lodging.

L. "Transient lodging tax collector" or "tax collector" means a transient lodging provider or a transient lodging intermediary.

M. "Person" means ~~any individual, firm, partnership, joint venture, limited liability company, corporation, limited liability partnership, association, host, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.~~

N. "Short-Term Rental" means ~~a house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling unit where a person rents a guest bedroom or the entire residential dwelling unit for transient lodging occupancy. Generally, a short-term rental is zoned residential or has a building occupancy that only allows for residential use.~~

O. "Short-Term Rental Housing Platform" means ~~a business or other person that facilitates the retail sale of transient lodging by connecting occupants with transient lodging providers, either online or in any other manner. Short-term rental hosting platforms are transient lodging intermediaries.~~

P. "Tax Administrator" means ~~the finance director or their designee.~~

5.10.020 Tax imposed.

A. ~~For the privilege of occupancy in any lodging, e~~Each occupant ~~shall~~ must pay a ~~tax-TLT~~ in the amount of ~~10 ten~~ percent (10%) of the rent ~~charged by the transient lodging tax collector. The tax constitutes a debt owed by the occupant must pay the TLT with the rent to the to the city, which is extinguished only by payment to the transient lodging tax tax collector at the time the rent is paidcollector. TLT amounts must be rounded down to the nearest cent. The transient lodging tax collector shall must enter the tax on the tax collector's maintain records when theof all rent is collectedcharged and TLT payments received.~~ If the rent is paid in installments, a proportionate share of the ~~tax-TLT shall must~~ be paid by the

occupant to the tax collector with each installment unless the occupant pays the entire amount with the first payment.

B. Bills, receipts or invoices provided to occupants must list the TLT separately and must accurately state the amount of tax. All amounts listed as TLT on invoices, bills or receipts must be reported as TLT and, after collection, must be turned over to the city, less a five -percent (5%) collection reimbursement charge.

5.10.030 Collection of Tax by Transient Lodging Tax Collector.

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 the TLT from the occupant at the time rent is paid, unless an exemption applies. If payment is by credit card, for purposes of this section, payment is made at the time credit card information is provided to the transient lodging tax collector, not when the transient lodging tax collector ultimately receives credit for the transaction. While holding the payment in trust for the city (no caps), a tax collector may commingle tax proceeds with the tax collector's funds, but the tax collector is not the owner of tax proceeds, except that, when a return is filed, the tax collector becomes the owner of the collection reimbursement charge authorized to be retained. Transient lodging tax collectors may choose to file returns and remit payments based on amounts accrued but not yet collected. The tax collector is liable for any TLT that should have been collected from the occupant, except in cases of nonpayment of rent by 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. Upon request of the city, transient lodging tax collectors must provide the following information for each transient lodging facility within the city for which the tax collector acts as a transient lodging provider or transient lodging intermediary:

1. The physical addresses of the transient lodging facility
2. The name and mailing address, of the general manager, agent, owner, host or other responsible person for the location.

5.10.040 Tax collector's duties Short-Term Rental Hosting Platform Fees.

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. A hosting platform for short-term rentals may collect a fee for booking services in connection with short-term rentals only when those short-term rentals are lawfully registered as operators with the city and possess a certificate of authority at the time the short-term rental is occupied.

5.10.050 ExemptionsLiability for Tax.

A. ~~No tax imposed by this chapter shall be imposed upon dwelling units described in ORS 320.308. Transient lodging providers who receive any portion of the rent for transient lodging and transient lodging intermediaries that provide booking service are both transient lodging tax collectors and are jointly and severally liable for the remittance of the tax to the city.~~

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~~ must provide a completed registration form to the tax administrator 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 fifteen (15) calendar days after commencing business or engaging in collection of the tax. The registration form shall require the transient lodging provider to provide the name of the business, any separate business addresses, and other information at the tax administrator may require to implement this Chapter. Transient lodging providers who own or operate transient lodging facilities in the city (no caps) must provide the address of the lodging facility. 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 form must shall be signed by the transient lodging provider or lodging intermediary.

B. ~~The finance department tax administrator shall, within ten-fifteen (15) business days after registration, issue without charge a certificate of authority to collect the TL~~ each provider to collect the tax from the occupant, together with a certificate for each additional place of business of each provider. The transient lodging provider's obligation to collect the TLT is imposed once rent for transient lodging is paid, even if the registration form has not been filed or if the certificate has not been issued. If the rent transaction is facilitated online, the certificate of authority must be able to be viewed by the occupant by clicking on a link to the certificate of authority at a reasonable place during the payment transaction.

C. ~~Certificates shall be non-assignable and non-transferable and shall~~ must be surrendered immediately to the finance department to the tax administrator when the business is sold or transferred or when a transient lodging facility ceases to operate upon the cessation of business at the location named, or upon the business sale or transfer specified on the registration form. Each certificate issued to a transient lodging provider for a specific lodging facility must be shall state the place of business to which it is applicable and shall be prominently displayed at the lodging facility and include:

C. ~~The certificate shall state, at minimum, the following:~~

1. ~~The name of the transient lodging provider;~~
2. ~~The address of the transient lodging facility;~~
3. ~~The date upon which the certificate was issued;~~ and,
4. ~~The certificate number as assigned by the tax administrator.~~ 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. Tax collectors must submit a completed tax return form to the tax administrator. 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 each calendar quarter, reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected, less a five percent (5%) collection reimbursement charge or, if the last day is not a business day, the next business day thereafter.~~

~~B. The transient lodging tax collector is entitled to the collection reimbursement charge. If a transient lodging facility has multiple owners, they are not entitled to retain additional collection reimbursement charges.~~

~~C. Remittances are delinquent if not made by the last day of the month in which they are due.~~

~~D. Returns must show the gross rents collected, taxable rents, the total amount of TLT collected and the amount of the collection reimbursement charge retained by the transient lodging tax collector. Returns must also show the exempt and excluded rents and the basis for exemptions and exclusions. 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.~~

~~EC. The tax collector or his/her designee shall must deliver submit the quarterly tax payment and returns and remittances to the finance department at its office either by personal delivery or by United States Mail. If the return and taxes remittance are mailed, the postmark shall will be considered the date of delivery ~~for determining delinquency.~~~~

~~FD. At any time before the due date, the finance director The tax administrator may, for good cause, extend the due date time period for making any return and/or payment of tax or remittance of the tax by for up to 30 days. after the date the tax would have become due but for the extension. No further Further extensions must may be granted, except by approval of be approved by the city manager. A tax collector who is granted an extension shall must pay a fee interest at the rate of three percent (3%) per month on the amount of the remittance due without proration for a fraction of a month. If a return is not filed, and the remittance and interest due is not paid by the end of the extension period, then the interest shall become a part of the tax for computation of late payment fees and interest.~~

~~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-Late payment fees and interest.

A. A ~~late payment fee~~penalty will be imposed on a tax collector who mails or hand delivers the tax return and the tax payment remittance after the due date. The ~~late payment fee~~penalty is ~~will be calculated at~~ five percent of the unpaid tax. If the tax collector files ~~and/or~~ pays more than 30 days after the due date, an additional 20 percent late payment fee penalty will be added to the unpaid tax. 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 late payment fee of 25 percent of the amount of the tax shall be added, in addition to the other fees described in this subsection.

~~B. In addition to any late payment fee, interest shall be added to the overall amount due at the rate interest at the rate of one percent 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~~tax administrator. The ~~finance tax administrator~~director may waive interest imposed if the tax administrator ~~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 25 percent of the amount of the tax shall be added, in addition to the penalties above.~~C. The late payment fee and any interest that accrues, becomes a part of the financial obligation required to be paid and remitted to the tax administrator.

D. Taxes, interest and fees paid to the tax administrator under this section shall be distributed to the city's transient lodging tax fund.

5.10.090 Deficiencies.

A. The tax administrator may review tax returns and adjust the amount due based on the information in the return, on information obtained during a review or audit of records, or on the bases of other evidence. In the event of a deficiency, the tax collector shall provide notice of the deficiency to the transient lodging tax collector, who must remit deficiencies within ten (10) business days of the deficiency notice. Notice may be by personal delivery or certified mail. 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 reviewing and adjusting tax returns, the finance director ~~tax administrator may~~ shall offset any amount received in excess of the remittances due overpayments, if any, which may have been previously made for a period or periods against any shortages in remittances 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 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 10 days of service of the deficiency notice. Nothing prohibits the finance director from extending the time for petition beyond 10 days at his/her discretion.

F. Except as provided in this chapter in the case of fraud, intent to evade the TLT, or other willful failure or refusal to collect and remit the tax, notice of every deficiency determination shall be made issued and notice mailed within three years of the period for which the deficiency determination was made, 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.

GD. If any transient lodging tax collector fails to collect, report or remit the tax as required, submits a fraudulent return or otherwise violates or attempts to violate this chapter, the tax administrator shall estimate the tax due, and calculate the amount owing from the tax collector for tax remittance, interest and penalties and provide notice to the tax collector of the assessment. The determination and notice shall be made and mailed within three years of discovery by the tax administrator of the violation. The determination is due and payable upon receipt of notice and will become final ten (10) business days after the date notice was delivered if no petition for redetermination is filed. 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 10 days of service of the deficiency notice.

5.10.100 Redetermination.

A. Any person affected by a deficiency determination may file a petition for redetermination with the tax administrator within ten (10) business days of service of notice of the tax deficiency. A determination becomes final if a petition for redetermination is not timely filed.

B. If a petition for redetermination is filed within the allowable period, the tax administrator 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 if requested. The petitioner shall be allowed at least and shall give him/her ten (10) days notice of the time and place of to prepare for the hearing. The tax administrator/finance director may continue the hearing from time to time as necessary.

BC. After considering the petition and all available information, the tax administrator shall issue a determination decision and mail the decision to the petitioner. During the redetermination process, the tax administrator/The finance director may decrease or increase the amount due 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.

CD. The decision of the finance director/tax administrator on upon a petition for redetermination or refund becomes final and payment is due ten (10) business days after the decision is mailed, unless that petitioner files an appeal to the city manager as provided in this chapter. 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 Collections and Liens.

~~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 \$500.00, whichever amount is less. The amount of security may be increased or decreased by the finance director within the limitation of this section.~~

~~A. The city (no caps) may bring legal action to collect any amounts owed to the city under this chapter within three (3) years after remittance is due to the city or within three (3) years after any determination becomes final. The city is entitled to collect reasonable costs and attorneys' fees in any legal action brought to collect on an amount owed to the city under this chapter.~~

~~B. The city may record a lien in the city's lien docket against any real property owned by a transient lodging provider who receives any portion of the rent from a transient lodging facility located within the city as to any delinquent remittances by the transient lodging provider.~~

5.10.120 Refunds.

~~A. If the tax collector remits more tax, penalty or interest than is due, the tax collector may file a claim in writing stating the facts relating to the claim, within three (3) years from the date of remittance. If the claim is approved by the tax administrator, the excess amount shall be either refunded or credited on any amount due from the tax collector. 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 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. A tax collector may file a claim for refund by filing a claim in writing within three (3) years of payment providing the facts relating to the claim for refund. If the tax administrator determines that the tax was collected and remitted to the city and the occupant was not required to pay the tax or overpaid, the city shall issue a refund to the occupant. 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 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.~~

C. If an occupant has paid tax to a transient lodging tax collector but stays a total of 30 or more consecutive days in the same transient lodging facility, the tax collector must refund to the occupant any tax collected for any portion of the continuous stay. The tax collector must account for the collection and refund to the tax administrator. If the tax collector has remitted the tax prior to the refund or credit to the occupant, the tax collector shall be entitled to a corresponding refund or offset if the claim for refund is filed within three (3) years from the date of collection.

D. The person claiming the refund has the burden of proving the facts that establish the basis for the refund.

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 70 percent of the net proceeds dedicated for tourism promotion or tourism related facilities as prescribed by state law defined in ORS 320.300.

~~5.10.140 Collection fee.~~

~~Every tax collector liable for collection and remittance of the tax imposed by this chapter may withhold five percent of the net tax due to cover expenses in its collection and remittance.~~

5.10.150 Administration.

A. Every tax collector ~~shall~~must keep records of each transaction involving rent and/or the collection of the TLT. All rentals and accounting books that are sufficient to demonstrate compliance with the provisions of this chapter. These records shallmust be retained for a minimum of three years and six months ~~after they are created.~~

B. The ~~finance director~~tax administrator or agent may examine, during normal business hours, ~~the books, papers, and accounting all records relating to rentals of any a tax collector relating to the receipt of rent and TLT and remittance of tax and may obtain copies of the records to audit returns. 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 be conducted at the discretion of the finance director. The tax administrator shall have the power to enforce this chapter, conduct audits, and to adopt rules, regulations and forms consistent with this chapter. Rules and regulations of general application shall be mailed to all registered transient lodging providers. The tax administrator may also issue written interpretations on request of a transient lodging tax collector. As to the transient lodging tax collector to whom the interpretation is issued, the city will act consistently with the interpretation until it is withdrawn, and the city shall provide thirty (30) days' written notice prior to the withdrawal of an interpretation.~~

D. Except as otherwise required by law, the city shall maintain the confidentiality of information provided by transient lodging tax collectors. 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 prevent or 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 ~~a~~Attorney or other legal representative of the city to the extent the ~~finance director~~tax administrator deems disclosure or access necessary for the performance of the duties of advising or representing the ~~finance director~~tax administrator, the finance department, or the city; ~~or~~
6. Disclosures required by ORS Chapters 192, 297, or 320.

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.

A. Any person aggrieved by any ~~final decision-determination~~ of the ~~tax administrator~~finance director may appeal to the city manager (or his or her designee) by filing a notice of appeal with the finance director within 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 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 in the manner provided by MMC 2.50.510 for the protest of code violations.

B. The written protest must, at a minimum, contain the following information:

1. The person's name, mailing address, telephone number and email address.
2. The physical address of each transient lodging facility that is the subject of the appeal.
3. A copy of the decision document(s) that form that basis for the appeal.
4. A written statement, together with all supporting evidence, that supports the person's arguments on appeal.

~~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 years after any tax required to be collected becomes due and payable, at any time within three years after any determination by the finance director or city manager under this chapter becomes final, or at any time within three 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.

~~A. A transient lodging provider or tax collector found to have violated the provisions of this Chapter may be assessed a civil penalty, pursuant to MMC Chapter 2.50.~~

~~B. The amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a 4 code violation.~~

~~Any person violating any of the provisions of this chapter shall, upon conviction, be punished by a fine of not more than \$500.00. 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 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.~~