

**ORDINANCE NO. 694****AN ORDINANCE LEVYING A THREE PERCENT (3%) TRANSIENT ROOM TAX IN THE CITY OF MADRAS, OREGON.**

THE CITY OF MADRAS ORDAINS AS FOLLOWS:

**SECTION 1: TITLE**

This ordinance shall be known as the Transient Room Tax Ordinance of the City of Madras.

**SECTION 2: DEFINITIONS**

Except where the context otherwise requires the definitions given in this section govern the construction of this ordinance.

- (1) **“Accrual Accounting”** means the operator enters the rent due from a transient on his records when the rent is earned whether or not it is paid.
- (2) **“Cash Accounting”** means the operator does not enter the rent due from a transient on his records until the rent is paid.
- (3) **“City Council”** means the City Council of Madras, Oregon.
- (4) **“Hotel”** means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for thirty (30) days or less, for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, private dormitory, fraternity, sorority, public or private club, space in mobile home, campground, or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is for less than a thirty (30) day period.
- (5) **“Occupancy”** means the use or possession, or the right to the use or possession for lodging or sleeping purposes or any room or rooms in a hotel, or space in a mobile home, campground, 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 function through a managing agent or any type of 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 his principal. Compliance with the provisions in this ordinance 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.
- (10) **“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 same charge made for rent when consideration is not a part of a package plan.
- (11) **“Tax Administrator”** means the City Treasurer of the City of Madras.
- (12) **“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.
- (13) **“Transient”** means any individual who exercised occupancy or is entitled to occupancy in a hotel 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 hotel shall not be included in determining the thirty (30) 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 (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

**SECTION 3: TAX IMPOSED**

For the privilege of occupancy in any hotel, on or after the effective date of this ordinance, each transient shall pay a tax in the amount of three percent (3%) 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 hotel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the cash accounting basis and 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 due is not paid to the operator of the hotel, the Tax Administrator 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.

When rent is charged under the rent package plan, as defined in Madras ordinance Section 2 (10), an allowance of five dollars (\$5.00) per person per meal or forty percent (40%) of the rent package plan price, whichever is less, may be deducted in the determination of the transient room tax under this ordinance.

**SECTION 4: COLLECTION OF TAX BY OPERATOR:  
RULES FOR COLLECTION**

- (1) Every operator renting rooms in this city, the occupancy of which is not exempted under the terms of this ordinance, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the city.
- (2) 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.
- (3) The Tax Administrator shall enforce provisions of this ordinance and shall have the power to adopt rules and regulations and enter into contracts and intergovernmental agreements not inconsistent with this ordinance as may be necessary to aid in the enforcement.

- (4) For rent collected on portions of a dollar, the first one cent (1¢) of tax shall be collected on ten cents (10¢) through seventeen (17¢) inclusive; and second one cent (1¢) of tax on eighteen cents (18¢) through thirty-three cents (33¢); the third one cent (1¢) of tax on thirty-four cents (34¢) through fifty cents (50¢); the fourth one cent (1¢) of tax on fifty-one cents (51¢) through sixty-six cents (66¢) and the fifth one cent (1¢) of tax on sixty-seven cents (67¢) through eighty-three cents (83¢); the sixth one cent (1¢) of tax on eighty-four cents (84¢) through the next one dollar (\$1.00) of rent.

#### **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 every transient. The amount of tax shall be separately stated upon the operator's records, and any receipt rendered by the operator. No operator of a hotel shall advertise 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 in the manner provided by this ordinance. Every operator liable for collection and remittance of the tax imposed by Section 4 of this code may withhold 5% of the net tax due to cover his expense in the collection or remittance of the tax.

#### **SECTION 6: EXEMPTIONS**

No tax imposed under this ordinance shall be imposed upon:

- (1) Any occupant for more than thirty (30) successive calendar days. 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;
- (2) Any occupant whose rent is of a value of less than \$5.00 per day for one unit;
- (3) Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his own use thereof;
- (4) Any occupant whose rent is paid for hospital room or to a medial clinic, convalescent home or home for aged people.

**SECTION 7: REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION CERTIFICATION OF AUTHORITY**

Every person engaging or about to engage in business as an operator of a hotel to this city shall register with the Tax Administrator or designee on a form provided by him. Operators engaged in business at the time this ordinance is adopted must register not later than thirty (30) calendar days after passage of this ordinance. Operators starting business after this ordinance is adopted must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The registration shall be signed by the operator. The Tax Administrator shall, within ten (10) days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business for each registrant. Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the Tax Administrator upon a cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

Said certificate shall, among other things, state the following:

- (a) The name of the operator
- (b) The address of the hotel
- (c) The date upon which the certificate was issued
- (d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Ordinance of the City of Madras by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by said city and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any unlawful business

in an unlawful manner, or to operate a hotel 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 of Madras. This certificate does not constitute a permit.”

**SECTION 8: DUE DATE: RETURNS AND PAYMENTS**

1. The tax imposed by this ordinance 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 (15<sup>th</sup>) day of the month for the preceding month; and are delinquent on the last day of the month in which they are due.
2. On or before the fifteenth (15<sup>th</sup>) 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.
3. 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 operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.
4. 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.
5. For good cause, the Tax Administrator may extend but not to exceed one month the time for mailing any return or payment of tax. No further extension shall be granted, except by the City Council. Any operator to whom an extension is granted shall pay interest at the rate of one and one half 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 the extension granted, then the interest shall become part of the tax for computation of penalties described elsewhere in this ordinance.

6. The Tax Administrator, if he deems it necessary in order to insure, 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.

**SECTION 9: PENALTIES AND INTEREST**

1. **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 ordinance prior to delinquency shall pay a penalty of ten percent (10%) of the amount of tax due in addition to the amount of tax.
2. **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 (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due plus the amount of tax and the ten percent (10%) penalty first imposed.
3. **Fraud.** If the Tax Administrator determines that the nonpayment of any remittance due under this ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs 1 and 2 of this section.
4. **Interest.** In addition to the penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one and one-half (1 ½ %) 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.
5. **Penalties Merged With Tax.** Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.
6. **Petition for Waiver.** Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated, provided however, the operator may petition the City Council for waiver and refund of

the penalty or any portion thereof and the City Council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

**SECTION 10: DEFICIENCY DETERMINATIONS; FRAUD, EVASION AND OPERATOR DELAY**

1. **Deficiency Determination.** If the Tax Administrator determines that the returns are incorrect, he may compute and determine the amount required to be paid upon the basis of facts contained in the return or returns or upon the basis of any information within his possession or that may come into his 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 as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 9.
  - A. In making a determination the Tax Administrator may offset overpayments if any, which may have been previously made for a period or periods, against any under payment for a subsequent period or periods, or against penalties, and interest, on the underpayments. The interest on underpayments shall be computed in the manner set forth in Section 9.
  - B. The Tax Administrator shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the operator at his address as it appears in the records of the Tax Administrator. In case of service by mail of any notice required by this ordinance the service is complete at the time of deposit in the United States Post Office.
  - C. Except in the case of fraud, intent to evade this ordinance or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years (3) after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires the later.

- D. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof, provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.
2. **Fraud, Refusal to Collect, Evasion.** If any operator shall fail or refuse to collect said tax or to make, within the time provided in this ordinance any report and remittance of said tax or any portion thereof required by this ordinance, or makes a fraudulent return or otherwise willfully attempts to evade this ordinance, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this ordinance from any operator who has failed or refused to collect the same and to report and remit said tax, he shall proceed to determine and assess against such operator the tax, interest, and penalties, provided for by this ordinance. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Tax Administrator 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 (10) days after the Tax Administrator has given notice thereof, provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.
3. **Operator Delay.** If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the city will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay such determination to the Tax Administrator after service of notice thereof, provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the Tax Administrator.

**SECTION 11: REDETERMINATIONS**

1. Any person against whom a determination is made under Section 10 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 10 hereof. If a petition for redetermination and refund is not filed within the time required in Section 10, the determination becomes final at the expiration of the allowable time.
2. 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 (10) 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.
3. 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.
4. The order or decision of the Tax Administrator upon a petition for redetermination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the City Council within the ten (10) days after service of such notice.
5. 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 provision hereof.

**SECTION 12: SECURITY FOR COLLECTION OF TAX**

1. The Tax Administrator, whenever he deems it necessary to insure compliance with this ordinance, may require any operator subject thereto to deposit with him such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such manner as the Tax Administrator deems proper,

or five thousand dollars (\$5,000.00), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitation herein provided.

2. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Tax Administrator may bring an 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.

**SECTION 13:      LIEN**

- (1) The tax imposed by this ordinance together with the interest, penalties herein provided, and filing fees paid to the Clerk of Jefferson County, Oregon and any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the Clerk of Jefferson County until the tax is paid. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's hotel. The lien may be foreclosed and the necessary property may be sold to discharge the lien if the lien has been recorded.
- (2) Notice of the lien may be issued by the Tax Administrator or his deputy when the operator has defaulted in payment of the tax, interest, and penalty. A copy of the notice shall be sent by certified mail to the delinquent operator.
- (3) Personal property subject to the lien seized by any deputy or employee of the Tax Administrator may be sold by the deputy seizing the same at public auction after thirty (30) days notice published in a newspaper published in the City of Madras.
- (4) Any lien for taxes as shown on the records of the proper County official shall, upon the payment of all taxes, penalties, and interest thereon, be released by the Tax Administrator when the full amount has been paid to the city. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest, and penalty has been paid, that the lien is released and that the record of the lien is satisfied.

**SECTION 14: REFUNDS**

1. **Operators Refunds.** Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this ordinance, it may be refunded, provided a verified claim in writing therefore, stating the specific reason upon which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to each operator, his administrators, executors or assignees.
2. **Transient Refunds.** Whenever the tax required by this ordinance has been collected by the operator, and deposited by the operator with the Tax Administrator, and it is later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment.

**SECTION 15: ADMINISTRATION**

1. **Records Required from Operators, etc.; 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 three (3) years and six (6) months after they come into being.
2. **Examination of Records; Investigations.** The Tax Administrator or any person authorized in writing by him may examine during normal business hours, the books, papers and accounting records relating to room sales of any operator after notification to the operator liable for the tax 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 required to be paid.

3. **Confidential Character of Information Obtained - Disclosure Unlawful.** Unless required by the public records law or by the written permission of the operator, it shall be unlawful to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate, or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Provided that nothing in this subsection shall be construed to prevent:
- a. The disclosure to, or the examination of records and equipment by another City of Madras official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this ordinance; or collecting taxes imposed hereunder.
  - b. 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 referred to in this paragraph when in his opinion the public interest would suffer thereby.
  - c. The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration Certificates have been issued.
  - d. The disclosure of general statistics regarding taxes collected or business done in the city.

**SECTION 16:            APPEALS TO CITY COUNCIL;**

Any person aggrieved by any provision of the Tax Administrator may appeal to the City Council of the City of Madras by filing a notice of appeal with the Tax Administrator within ten (10) days of the Administrator's decision. The Tax Administrator shall transmit said notice of appeal, together with the file of said appeal matter to the City Council who will fix a time and place for hearing such appeal. The Council shall give the appellant not less than ten (10) days written notice of the time and place of hearing of said appealed matter.

**SECTION 17:            SEVERABILITY**

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional (or otherwise invalid), such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The legislative body hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the sentences, clauses, or paragraphs declared unconstitutional (or otherwise invalid)

**SECTION 18:            VIOLATION**

It is unlawful for any operator or other person so required 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 Tax Administrator or to render a false or fraudulent return. No person required to make, render, sign, or verify any report, shall do so with intent to defeat or evade the determination of any amount due required by this ordinance.

**SECTION 19:            OFFENSE**

Any person willfully violating any of the provisions of this ordinance shall be guilty of an offense and shall be punishable therefore by a fine of no more than five hundred dollars (\$500.00).

**SECTION 20:      FUNDS**

Funds collected pursuant to this ordinance will be distributed to the General Fund of the city.

Costs in collecting delinquent taxes will be charged to the entity to whom the tax would be paid if received. Taxes will be used by the City of Madras to encourage economic growth, but is not limited to being spent within the city. Economic growth means, but is not limited to promotion of fair board, airport, Industrial Site, Chamber of Commerce, parks, libraries, schools and like entries.

**PASSED** by the Council and approved by the Mayor on August 21, 2001.