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## Article 24.02 Transient Lodging Tax

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### **24.02.001 Transient Lodging Tax.**

This article shall be known as the Transient Lodging Tax of the City of Lake Oswego.

(Ord. 2655, Amended, 09/30/2014; Ord. 2064, Sec. 1, 01/01/93)

### **24.02.010 Definitions.**

As used in this article:

Accrual Accounting means the operator enters the rent due from a transient on his or her records when the rent is earned, whether or not it is paid.

Cash Accounting means the operator does not enter the rent due from a transient on his or her records until rent is paid.

City means the City of Lake Oswego.

Hotel means any structure or any portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes. This includes any hotel, inn, tourist home or house, motel, studio hotel, bed and breakfast, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, public or private club, and also means space in mobile home or trailer parks, or similar structure or space so occupied, provided such occupancy is for less than a 30-day period.

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

Operator means the person who is proprietor of the hotel in any capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this article and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of these sections by either the principal or managing agent shall be considered to be compliance by both.

Person means any individual, firm, partnership, joint venture, association, social club, fraternal organization, 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.

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.

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 article shall be the same charge made for rent when not a part of a package plan.

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 or she is required to report his or her collections.

Tax Administrator means the Finance Director of the City of Lake Oswego, Oregon, or his or her designee.

Transient means any person who exercises occupancy or is entitled to occupancy in a hotel for a period of 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 30-day period if the transient is not charged rent for that day by the operator. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than 30 consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this article may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

(Ord. 2655, Amended, 09/30/2014; Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.020 Tax Imposed.**

1. For the privilege of occupancy in any hotel in the City, each transient shall pay a tax in the amount of 6% 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 by the operator 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 or her records when rent is collected if the operator keeps his or her records on the cash accounting basis and when earned if the operator keeps his or her 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. 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 space occupancy in mobile home parks or trailer parks.
2. The tax imposed by this article shall apply to all hotels located within the corporate limits of the City.

(Ord. 2655, Amended, 09/30/2014; Ord. 2529, Amended, 10/07/2008, Effective 01/01/2009; Ord. 2136, Amended, 07/02/96; Ord. 2113, Amended, 01/17/95; Ord. 2104, Amended, 09/20/94; Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.030 Tax – Collection by Operator.**

1. Every operator renting rooms in the City, the occupancy of which is not exempt under the terms of LOC [24.02.050](#), 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. Adjustments may be made for uncollectibles.
3. The tax administrator shall enforce provisions of this article and shall have the power to adopt rules and regulations not inconsistent with this code as may be necessary to aid in enforcement.
4. For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.

(Ord. 2655, Amended, 09/30/2014; Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.040 Tax – Operator Duties.**

Each operator shall collect the tax imposed by LOC [24.02.020](#) 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. 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 article.

(Ord. 2655, Amended, 09/30/2014; Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.050 Tax – Exemptions.**

1. No tax imposed under LOC [24.02.020](#) shall be imposed upon:
  - a. Any occupant for more than 30 successive calendar days; (a person who pays on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);
  - b. Any occupant whose rent is of a value less than \$4.00 per day;
  - c. Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people; or
  - d. Employees, officials or agents of the U.S. Government occupying a hotel in the course of official business.

(Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.060 Registration of Operator.**

1. Every person engaging or about to engage in business as an operator of a hotel in the City shall register with the tax administrator on a form provided by the tax administrator. Operators engaged in business at the time this code is adopted must register not later than 20 calendar days after the effective date of this code. Operators starting business after this code is adopted must register within 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.

2. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his or her 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.

3. The tax administrator shall, within 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 of each registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the tax administrator upon the 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.

4. 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; and

d. "THIS TRANSIENT OCCUPANCY REGISTRATION CERTIFICATE signifies that the person named on the face hereof has fulfilled the requirements of the TRANSIENT LODGING TAX ORDINANCE of Lake Oswego, Oregon, by registration with the tax administrator for the purposes of collection from transients the lodgings 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 lawful business in an unlawful manner, or to operate a hotel without strictly complying with all of the local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City of Lake Oswego. This certificate does not constitute a permit."

(Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.070 Due Date, Returns, Payments and Collection Charges.**

1. The tax imposed by LOC [24.02.020](#) 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, less the collection reimbursement charge as provided in subsection (4) of this section, are due and payable to the tax administrator on a monthly basis on the fifteenth of the following 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 day of the month following each monthly of collection, a return for the preceding monthly tax collections shall be filed with the tax administrator. The returns 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 or her office, either by personal delivery or by mail.

The operator may retain a collection reimbursement charge of not more than 5% of the collection tax. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

5. For a good cause, the tax administrator may extend for not to exceed one month the time for making any return or payment of tax. No further extension shall be granted, except by the City Council. Any operator to whom an extension is granted shall pay interest at the rate of 1% 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 a part of the tax for computation of penalties described in LOC [24.02.080](#).

(Ord. 2529, Amended, 10/07/2008, Effective 01/01/2009; Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.080 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 LOC [24.02.020](#) prior to delinquency shall pay a penalty of 10% of the amount of the tax due in addition to the amount of the 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 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 15% of the amount of the tax due plus the amount of the tax the 10% penalty first imposed.

3. Fraud. If the tax administrator determines that the nonpayment of any remittance due pursuant to this article is due to fraud or intent to evade the provisions of this article, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (1) and (2) of this section.

4. Interest. In addition to the penalties imposed, any operator who fails to remit a tax imposed by LOC [24.02.020](#) shall pay interest at the rate of one-half of 1% per month or a 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 and become a part of the tax required to be paid.

6. Petition for Waiver. Any operator who fails to remit the tax herein levied within the time required shall pay the penalties. The operator may petition the tax administrator for waiver and refund of the penalty or any portion thereof and the tax administrator may, if a good and sufficient reason is shown, waive and direct a refund of the penalty and any portion thereof.

(Ord. 2655, Amended, 09/30/2014; Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.090 Deficiencies.**

1. If the tax administrator determines that the returns are incorrect, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information within his or her possession or that may come into his or her 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 LOC [24.02.080](#).

2. In making a determination, the tax administrator may offset any overpayments which may have been previously made for a period or periods against any underpayment 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 for in LOC [24.02.080](#).

3. The tax administrator shall give to the operator or occupant a written notice of his or her determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at his or her address as it appears on the records of the tax administrator. In case of service by mail or any notice required by these sections, the service is complete at the time of deposit in the United States Post Office.

4. Except in the case of fraud or intent to evade this article or authorized rules and regulations, every deficiency determination shall be made and notice mailed within three years 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 years after return is filed, whichever period expires the later.

5. Any determination shall become due and payable upon receipt of notice and shall become final within 10 days after the tax administrator has given notice. The operator may petition for redemption and refund if the petition is filed before the determination become final as herein provided.

(Ord. 2655, Amended, 09/30/2014; Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.100 Fraud or Evasion.**

If any operator shall fail or refuse to collect the tax or to make any report and remittance of said tax or any portion thereof as required by this article, or makes a fraudulent return or otherwise willfully attempts to evade these sections, the tax administrator shall proceed in such manner as he or she 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 article from any operator who has failed or refused to collect the same and to report and remit said tax, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this article. In case such determination is made, the tax administrator shall give a notice pursuant to LOC [24.02.090](#)(4) of the amount so assessed. Such determination and notice shall be made and mailed within three years after discover by the tax administrator of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file a return. A determination shall become due and payable immediately upon receipt of notice and shall become final within 10 days after the tax administrator has given notice. The operator may, however, petition for redemption and refund if the petition is filed before the determination becomes final.

(Ord. 2655, Amended, 09/30/2014; Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.110 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 or she shall make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined shall be immediately due and payable, and the operator shall immediately pay such determination to the tax administrator after service of notice. The operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within 10 days from the date of service of notice by the tax administrator.

(Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.120 Redetermination.**

1. Any person against whom a determination is made under LOC [24.02.090](#) to [24.02.110](#) or any person directly interested may petition for a redetermination and redemption and refund within the time required in

LOC [24.02.090](#) to [24.02.110](#). If a petition for redetermination and refund is not filed within the time required in LOC [24.02.090](#) to [24.02.110](#), 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 or her petition, shall grant the person an oral hearing and shall give him 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 redemption or redetermination and refund becomes final 10 days after service upon the petitioner of notice, unless appeal of such order or decision is filed with the City Council within the 10 days after service of such notice.
5. No petition or appeal shall be effective for any purpose unless the operator has first complied with the payment provisions.

(Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.130 Refunds.**

1. Refunds by City to Operator. 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 article, it may be refunded, provided a verified claim in writing, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three years from the day 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 amount then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to such operator, his or her administrators, executors or assignees.
2. Refunds by City to Transient. Whenever the tax required by this article 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, stating the specific reason on which the claim is founded, is filed with the tax administrator within three years from the date of payment.
3. Refunds by Operator to Tenant. Whenever the tax required by this article has been collected by the operator and it is later determined that the tenant occupies the hotel for a period exceeding 30 days without interruption, the operator shall refund to such tenant the tax previously collected by the operator from that tenant as a transient. The operator shall account for such collection and refund to the tax administrator. If the operator has remitted the tax prior to refund or credit to the tenant, he or she shall be entitled to a corresponding refund under this section.

(Ord. 2655, Amended, 09/30/2014; Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.140 Security for Collection of Tax.**

1. The tax administrator, after delinquencies or whenever he or she deems it necessary to ensure compliance with this chapter, may require any operator to deposit with the tax administrator 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 or she files returns, determined in such manner as the



tax administrator deems proper, or \$5,000, whichever amount is lesser. The amount of the security may be increased or decreased by the tax administrator subject to the limitations herein provided.

2. At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three 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.

(Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.150 Administration – General.**

1. 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 years and six months after they come into being.

2. The tax administrator, or any person authorized in writing by the tax administrator, may examine during normal business hours, the books, papers and accounting records relating to room sales of any operator, after notification to the operator 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. It shall be unlawful for the tax administrator or any person having an administrative or clerical duty under the provisions of this article to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any persons required to obtain a Transient Occupancy Registration Certificate, or pay a transient occupancy tax, or any other persons 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 to another City official, employee or agent for collection of taxes for the sole purposes of administrating or enforcing any provision of this article, or collecting taxes imposed hereunder.

b. The disclosure, after the filing of a written request to that effect, to the taxpayer, receivers, trustees, executors, administrator, 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 and that the tax administrator may refuse to make any disclosure referred to in this subsection when in his or her 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.

4. The tax administrator shall place all tax revenues into the general fund of the City. Such revenues shall be allocated for expenditures pursuant to State Local Budget Law.

(Ord. 2655, Amended, 09/30/2014; Ord. 2064, Sec. 1, 01/01/93)

#### **24.02.160 Administration – Appeal to Council.**



Any person aggrieved by a final decision of the tax administrator may appeal to the City Council by filing a notice of appeal with the City Recorder within 10 days of the serving or the mailing of the notice of the decision given by the tax administrator. The tax administrator shall submit the file of said appealed matter to the Mayor who shall fix a time and place for hearing the appeal from the decision of the tax administrator. The Mayor shall give the appellant not less than 10 days written notice of the time and place of the hearing.

(Ord. 2064, Sec. 1, 01/01/93)

**24.02.170 Violations.**

Any operator or other person who shall fail or refuse to register as required herein, or who shall fail or refuse to furnish a return, supplemental return or other data required herein or by the tax administrator, or, with intent to defeat or evade the determination of any amount due hereunder, shall make, render, sign or verify any false or fraudulent report, commits an offense which constitutes a violation of this article, punishable upon conviction as a violation pursuant to LOC [13.02.020](#).

(Ord. 2655, Amended, 09/30/2014; Ord. 2064, Sec. 1, 01/01/93)

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**The Lake Oswego Municipal Code is current through Ordinance 2670, passed April 21, 2015.**

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