

EXHIBIT A

CHAPTER 3.28 - ~~HOTEL/MOTEL~~TRANSIENT LODGING TAX

Sec. 3.28.010. - Definitions.

Except where the context otherwise requires, the definitions in this section govern the construction of this chapter:

Accrual accounting means a system of accounting in which the ~~operator~~transient lodging tax collector enters the rent due from ~~a transient~~an occupant on ~~his~~the records when the rent is earned, whether or not it is paid.

Cash accounting means a system of accounting in which the ~~operator~~transient lodging tax collector does not enter the rent due from ~~a transient~~an occupant on the records until rent is paid.

~~*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, and includes any hotel, inn, tourist home, condominium, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home or trailer parks or similar structure or portions thereof so occupied.~~

~~*Motel.* See definition for "hotel" above.~~

Occupancy means the right to the use or possession of ~~the right to the use of possession for lodging or sleeping purposes of any room or rooms in a hotel, any space in transient lodging for dwelling, lodging or sleeping purposes for less than 30 days. a mobile home or trailer park or portion thereof.~~

Occupant means any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.~~*Operator* means the person who is proprietor of a hotel in any capacity. Where the operator performs his function through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purpose of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or managing agent shall be considered to be compliance by bot~~

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

Rent means the consideration ~~charged~~paid or payable by an occupant, whether or not received by the operator, for the occupancy of space in ~~a motel,~~transient lodging valued in money, goods, labor credits, property or other consideration valued in money, ~~without any deduction.~~ Rent

includes fees charged for a service when the service is not optional, or if the value of a service is included in the normal lodging rate, the amount allocated to the service. Examples of non-optional services include, but are not limited to, cleaning service, breakfast, pet charges, transportation to the airport, additional person charge, booking service fees, and providing an extra bed. If a separate fee is charged for services, goods or commodities and the fee is optional, that fee is not included in rent.

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.

Short-Term Rental Hosting 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.

TLT or 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 collectionthe transient lodging tax.;

Tax Administrator means the Finance Director of the City of Sandy, or its designee, which may include Clackamas County or the Oregon Department of Revenue. If the City utilizes the Oregon Department of Revenue as its tax administrator, it will comply with ORS 305.620 in that it will follow the rules adopted by the Department of Revenue regarding the administration, collection, enforcement and distribution of transient lodging taxes.~~Transient means any individual 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 of 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 30 days has expired unless there is an agreement in writing between the operator and the occupancy 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 chapter 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.~~

Transient Lodging or Transient Lodging Facilities means:

- A. Hotel, motel, and inn dwelling units that are used for temporary overnight human occupancy;
- B. Spaces used for overnight parking of recreational vehicles or placement of tents during periods of human occupancy; or
- C. Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

Transient Lodging Intermediary means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and:

- A. Charges for occupancy of the transient lodging;
- B. Collects the consideration charged for occupancy of the transient lodging; or
- C. 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.

Transient Lodging Provider means a person that furnishes transient lodging.

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

(Ord. No. 7-88, § 1(part), 1988)

Sec. 3.28.020. - Tax imposed.

~~For the privilege of occupancy in any hotel, Each transient occupant shall pay a tax in the amount of three percent of the rent charged by the operator. The tax constitutes a debt owed by the transient occupant to the City which is extinguishable only by payment to the operator transient lodging tax collector. The transient occupant shall pay the tax to the operator at the time the rent is collected transient lodging tax collector. Tax amounts shall be rounded down to the nearest cent. The transient lodging tax collector shall maintain records of all rent charged and tax payments received. The operator transient lodging tax collector shall enter the tax on his the records when rent is collected if the transient lodging tax collector operator keeps his records on a cash accounting basis and when earned if the transient lodging tax collector 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 occupant to the transient lodging tax collector operator with each installment. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services or commodities.~~

(Ord. No. 7-88, § 1(part), 1988; Ord. No. 1-96, § 1, 1996)

Sec. 3.28.030. - Rules for collection.

- A. ~~Every transient lodging tax collector operator renting rooms or space for lodging or sleeping purposes, unless the occupancy is exempt, shall collect the tax 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. Each transient lodging tax collector is deemed to hold the amount of tax imposed pursuant to this chapter collected in trust for the City. While holding the payment in trust for the City, a transient lodging tax collector may commingle the tax proceeds with the transient lodging tax collector's~~

funds, but the transient lodging tax collector is not the owner of tax proceeds, except that, when a return is filed, the transient lodging tax collector becomes the owner of the administrative fee authorized to be retained. Transient lodging tax collectors may choose to file returns and remit payment based on amounts accrued but not yet collected. The transient lodging tax collector is liable for any tax 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 ~~operator~~ transient lodging tax collector constitutes a debt owed by the ~~operator~~ transient lodging tax collector to the City.

~~B.—~~ In cases of credit or deferred payment of rent, payment of tax by the transient lodging tax collector ~~operator~~ may be deferred until the rent is paid, and the transient lodging tax collector ~~operator~~ shall not be liable for the tax until the credits are paid or the deferred payments are made. Adjustments may be made for uncollectibles.

~~B. C. The manager may enforce the provisions of this chapter and may adopt rules and regulations necessary to aid in its enforcement.~~

C. For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.

~~D.—~~

(Ord. No. 7-88, § 1(part), 1988) ____

Sec. 3.28.040– Liability for tax.

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 tax.

Sec. 3.28.0540. - Operator's Transient lodging collector's duties.

The tax collected by the ~~operator~~ transient lodging tax collector shall be separately stated on the ~~operator's~~ transient lodging tax collector's records and on the receipt given by the ~~operator~~ transient lodging tax collector. A transient lodging tax collector ~~n-operator~~ shall not advertise that the tax or any part of the tax will be assumed or absorbed by the ~~operator~~ transient lodging tax collector, or that it will not be added to the rent, or that, when added, any part will be refunded unless specifically set forth herein. All amounts listed as tax on invoices, bills or receipts must be reported as tax and, after collection, must be turned over to the City, less the five percent percent administrative charge.

(Ord. No. 7-88, § 1(part), 1988)

Sec. 3.28.0650. - Exemptions.

~~A.—~~ The tax required by this chapter shall not be imposed upon:

~~B.A.~~ A dwelling unit in a hospital, health care facility, long-term care facility or any other residential facility that is licensed, registered or certified by the Oregon Department of Human Services or the Oregon Health Authority;

~~C.B.~~ A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;

C. A dwelling unit that is used by members of the general public for temporary human occupancy for fewer than 30 days per year. The exemption granted under this subsection does not apply to a dwelling unit that is rented out as transient lodging using a platform of any kind provided in any manner by a transient lodging intermediary;

D. A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;

E. A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility; or

~~D.F.~~ A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:

(1) All dwelling units occupied are within the same facility; and

(2) The person paying consideration for the transient lodging is the same person throughout the consecutive period.

~~An occupant who occupies any room for more than 30 successive days.~~

~~E.G.~~ ~~B.~~ An occupant whose rent is of a value less than \$2.00 per day.

(Ord. No. 7-88, § 1(part), 1988)

Sec. 3.28.0760. - Payment of tax.

~~All net taxes collected are due and payable to the city on a monthly basis on the fifteenth day of the month for the preceding month. Any delinquency in payment shall be subject to a penalty of ten percent of the amount together with interest on the amount due at two percent per month without proration for fractions of a month.~~

- A. Transient lodging tax collectors must submit a completed tax return form to the tax administrator on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected. The return shall be filed in such form as the tax administrator may prescribe. The tax administrator if they deem it necessary in order to ensure 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 on other than monthly periods.

B. If the ~~operator-transient lodging tax collector~~ has complied with all of the terms of this chapter, and specifically those relating to prompt payment of taxes, the ~~operator-transient lodging tax collector~~ shall be permitted to deduct as an ~~an personal-collection expense~~administration fee five percent of the amount of taxes collected.

C. The transient lodging tax collector is entitled to the administration fee. If a transient lodging facility has multiple owners, they are not entitled to retain additional fees.

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

E. Returns shall show the gross rents collected, taxable rents, the total amount of tax collected and the amount of the administrative fee retained by the transient lodging tax collector. Returns shall also show the exempt and excluded rents and the basis for exemptions and exclusions.

F. The person required to file the return shall deliver the return, together with payment of the amount of the tax due, to the tax administrator, to the appropriate office, either by personal delivery, by mail, or by electronic tax return filed through a reporting and payment portal furnished by the tax administrator, or its designee. If the return is mailed, the postmark shall be considered the date of delivery.

~~B-G.~~ The tax administrator may extend the time for making any return or remittance of the tax by up to 30 days. No further extension shall be granted, except by the City Manager. Any transient lodging tax collector to whom an extension is granted shall pay interest at the rate established under ORS 305.220 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 granted, then the interest shall become a part of the tax for computation of penalties.

(Ord. No. 7-88, § 1(part), 1988)

Sec. 3.28.~~0780~~. - Records.

The ~~operator shall keep complete records separately, itemizing the tax accrued or collected, collection expense deducted, payments made, and interest accruing, which~~transient lodging tax collector's records shall be available for inspection by the Ccity at all reasonable times.

(Ord. No. 7-88, § 1(part), 1988)

Sec. 3.28.~~0890~~. - Disposition of tax.

All ~~transient room~~taxes collected by the Ccity shall be used for the promotion of tourism and economic development.

(Ord. No. 7-88, § 1(part), 1988)

Sec. 3.28.100. – Penalties and interest.

- A. Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return to the tax administrator was originally required to be filed to the time of payment.
- B. If a transient lodging tax collector fails to file a return or pay the tax as required, a penalty shall be imposed in the same manner and amount provided under ORS 314.400.
- C. Every penalty imposed, 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 penalties paid to the tax administrator under this section shall be distributed to the City's General Fund, for use as described in Section 3.28.090.

Sec. 3.28.110. – Deficiency determination – fraud, evasion, local tax trustee delay.

- A. Deficiency Determination. 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 basis of other evidence. In the event of a deficiency, the tax administrator shall provide notice of the deficiency to the transient lodging tax collector, who shall remit deficiencies within 10 business days of the deficiency notice. Notice may be by personal delivery or certified or registered mail, effective upon receipt or refusal of delivery.
 - (1) In reviewing and adjusting tax returns, the tax administrator shall offset any amount received in excess of the remittances due against any shortages in remittances.
 - (2) Except in the case of fraud or intent to evade the tax, notice of deficiency determinations shall be issued within three years of the period for which the deficiency determination is made.
 - (3) The time to remit deficient payment amounts under this section shall be extended if the local tax trustee timely requests a redetermination.
- B. Fraud – Refusal to Collect – Evasion. 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 transient lodging tax collector for tax remittance, interest and penalties and provide notice to the transient lodging tax collector of the assessment. The determination and notice shall be made within three years of the discovery by the tax administrator of the violation. Notice may be by personal delivery or certified or registered mail, effective upon receipt or refusal of delivery. The determination is due and payable upon the effective date of notice and shall become final 10 business days thereafter if no petition for redetermination is filed.

Sec. 3.28.120. – Redeterminations.

- A. Any person affected by a deficiency determination may file a petition for redetermination with the tax administrator within 10 business days of the effective date 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 shall reconsider the determination and grant an oral hearing if requested. The petitioner shall be allowed at least 20 business days to prepare for the hearing.
- C. After considering the petition and all available information, the tax administrator shall issue a redetermination decision and provide the decision to the petitioner by personal delivery or certified or registered mail, effective upon receipt or refusal of delivery. During the redetermination process, the tax administrator may agree to a compromise of the amount due if there is a good faith dispute over the amount owing.
- D. The decision of the tax administrator on redetermination becomes final and payment is due 10 business days after the effective date of notice of the decision unless the petitioner files an appeal to the City Manager within that time. The appeal shall be filed with the tax administrator. The City Manager's decision shall be final when reduced to writing and provided to the petitioner by personal delivery or certified or registered mail, effective upon receipt or refusal of delivery. All amounts due must be paid within 10 business days of the effective date of notice of the City Manager decision.

Sec. 3.28.130. – Collections.

- A. The City and the tax administrator, if the tax administrator is Clackamas County or DOR, may bring legal action to collect on any amounts owed to the City under this chapter within three years after remittance is due to the City or within three years after any determination becomes final.
- B. The City and the tax administrator, if the tax administrator is Clackamas County or DOR, are entitled to collect reasonable attorneys' fee in any legal action brought to collect on amounts owed to the City under this chapter.

Sec. 3.28.140. – Liens.

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.

Sec. 3.28.150. – Refunds.

- A. Refunds by City to Transient Lodging Tax Collector. If the transient lodging tax collector remits more tax, penalty or interest than is due, the transient lodging tax

- collector may file a claim in writing stating the facts relating to the claim, within three 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 transient lodging tax collector.
- B. Refunds by City to Occupant. A transient lodging tax collector may file a claim for refund by filing a claim in writing within three 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.
- C. Refunds by Transient Lodging Tax Collector to Occupant. 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 transient lodging tax collector shall refund to the occupant any tax collected for any portion of the continuous stay. The transient lodging tax collector shall account for the collection and refund to the tax administrator. If the transient lodging tax collector has remitted the tax prior to the refund or credit to the occupant, the transient lodging tax collector shall be entitled to a corresponding refund or offset if the claim for refund is filed within three years from the date of collection.
- D. Burden of Proof. The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund.

Sec. 3.28.160. – Administration.

- A. ~~A. Records Required from Local Tax Trustee. Every local tax trustee shall keep records of each transaction involving rent and/or collection of tax. All records shall be retained for at least three years and six months.~~
- B. Examination of Records – Investigations. The tax administrator or agent may examine all records of a local tax trustee relating to receipt of rent and tax and remittance of tax during normal business hours and may obtain copies of the records to audit returns.
- C. Authority of Tax Administrator. The tax administrator shall have the power to enforce this chapter, conduct audits, and to adopt rules, regulations and forms consistent with this chapter. 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 30 days' written notice of withdrawal of an interpretation.
- D. Confidential Character of Information Obtained – Disclosure Unlawful. The City shall maintain the confidentiality of information provided by transient lodging tax collector to the extent permitted by law. Nothing in this subsection shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another city official, employee or agent for collection of taxes for the purpose of administering or enforcing any provisions of this chapter or collecting City business license fees.
- (2) Disclosure of information to the transient lodging tax collector and the transient lodging tax collector's agents.
- (3) The disclosure of the names and addresses of any persons to whom certificates of authority have been issued.
- (4) The disclosure of general statistics regarding taxes collected or business done in the City.
- (5) Disclosures required by ORS Chapter 192.
- (6) Disclosures required by ORS Chapter 297.
- (7) Disclosures otherwise required by law.

Sec. 3.28.170. – Appeals to City Manager.

If the Oregon Department of Revenue is the tax administrator, all appeals shall be filed in the Oregon Tax Court. See ORS 305.620(6). In all other cases, any person aggrieved by any decision of the tax administrator may appeal to the City Manager by filing a written appeal with the tax administrator within 10 business days of the effective date of notice of the decision being appealed. The City Manager shall schedule the hearing and provide the appellant notice of the hearing at least 10 business days before the hearing. The City Manager may agree to a compromise of the amount of tax remittance if there is a good faith dispute over the amount owing. Any person may appeal the issuance of a rule or regulation issued by the tax administrator to the City Manager by filing a written appeal within 10 business days of the mailing of the notice of the regulation.

Sec. 3.28.~~09~~180. – Penalties for violations.

~~A. Failure to remit taxes when due shall be grounds for revocation of the operator's city business license and shall subject the operator to the penalties of~~A violation of this chapter is a Class "A" infraction ~~under Chapter 1.18.~~ Each day that a violation remains uncured is a separate infraction. Any penalties under this section shall be in addition to any penalties, late fees or interest imposed by the City's tax administer under this chapter.

~~B. Failure to comply with any provision of this chapter shall be a Class "A" infraction.~~

(Ord. No. 7-88, § 1(part), 1988)