

**CITY OF GEARHART, OREGON  
CODE OF ORDINANCES**

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**TITLE III: ADMINISTRATION**

Chapter

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**CHAPTER 33: FINANCE AND REVENUE**

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## **TRANSIENT ROOM TAX**

### **§ 33.55 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ACCRUAL ACCOUNTING.*** 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.*** The operator does not enter the rent due from a transient on his or her records until rent is paid.

***CITY COUNCIL.*** The City Council of the City of Gearhart.

***HOTEL.*** 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, motel, inn, condominium and lodging house; and also means space in mobile home or trailer parks; provided such occupancy is for less than a 30-day period.

**OPERATOR.** The person who is the proprietor of the hotel in any capacity. There 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 subchapter and shall have the same duties and liabilities as his or her principal. Compliance with the provision of this subchapter by either the principal or the managing agent shall be considered to be compliance by both.

**RENT.** The consideration charged, whether or not received.

**RENT PACKAGE PLAN.** The consideration charged for both foot and rent, whether a single rate is made the total of both. The amount applicable to rent for determination of transient room tax under this subchapter shall be the same charge made for rent, when consideration is not part of a package plan. The amount applicable to rent for determination of transient room tax under this subchapter shall be that amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package, and taking into consideration the charge for rent when the space is rented separately and not included in a package plan.

**TAX.** Either the tax payable by transient, or the aggregate amount of taxes due from an operator during the period for which he is required to report his or her collections.

**TAX ADMINISTRATOR.** The City Administrator of the City of Gearhart.

**TRANSIENT.** 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, if the transient is not charged rent for that day by the operator. Any individual so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired, unless 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 subchapter 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. 691, passed 11-2-1994)

### **§ 33.56 TAX IMPOSED.**

For the privilege of occupancy in any hotel, on or after July 1, 1994, each transient shall pay a tax in the amount of 7% 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 then earned, if the operator keeps his or her records on the accrual 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 furnishings of rooms, accommodations, and space occupancy in mobile home parks or trailer parks.

(Ord. 691, passed 11-2-1994)

### **§ 33.57 COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION.**

(A) Every operator renting rooms or space for lodging or sleeping purpose in this city, the occupancy of which is not exempted under the terms of this subchapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owing by the operator to the city.

(B) 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 payment is made. Adjustments may be made for uncollectibles.

(C) The Tax Administrator shall enforce provisions of this subchapter and shall have the power to adopt rules and regulations not inconsistent with this subchapter, as may be necessary to aid in the enforcement.

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

(Ord. 691, passed 11-2-1994)

### **§ 33.58 OPERATOR'S DUTIES.**

Each operator shall collect the tax imposed by this subchapter 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 subchapter.

(Ord. 691, passed 11-2-1994)

### **§ 33.59 EXEMPTIONS.**

No tax imposed under this subchapter shall be imposed upon:

(A) Any occupant for more than 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).

(B) Any occupant whose rent is of value less than \$0.50 per day.

(C) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for the aged people or to a public institution owned and operated by a unit of the government.

(D) Any occupant whose rent is paid for a single-family dwelling.

(Ord. 691, passed 11-2-1994)

### **§ 33.60 REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION, CERTIFICATION OF AUTHORITY.**

(A) Every person engaging in or about to engage in business as an operator of a hotel in this city shall register with the Tax Administrator on a form provided by him or her. Operators engaged in business at the time this subchapter is adopted must register not later than 30 calendar days after this subchapter is adopted, must register within 15 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 his or her place of 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 10 days after the

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 non-assignable and non-transferable, 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 be prominently displayed therein, so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

(B) The certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;

(4) “The Transient Occupancy Registration Certificate signifies that the person named on the face thereof has fulfilled the requirements of the Transient Lodgings Tax Ordinance of the City of Gearhart by registration with the Tax Administrator for the purpose of collecting from transients the lodgings 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 local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City of Gearhart. This certificate does not constitute a permit.

(Ord. 691, passed 11-2-1994)

### **§ 33.61 DUE DATE; RETURNS AND PAYMENTS.**

(A) The tax imposed by this subchapter shall be paid by the transient to the operator at the time that rent is paid. All amounts of taxes collected by an operator are due and payable to the Tax Administrator, or delegate, on a quarterly basis on the 15th day of the following month for the preceding three months, and are delinquent on the last day of the month in which they are due. The Tax Administrator has authority to classify and/or district the operators for determination of applicable tax periods, and shall notify each operator of the due and delinquent dates for the operator's returns. The initial return under this subchapter may be for less than the three months preceding the due date; thereafter, returns shall be made for the applicable quarterly period.

(B) On or before the 15th day of the month following each quarter of collection, a return for the preceding quarter'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.

(C) 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.

(D) 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. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(E) For 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 .5% per month on the amount of tax due, without prorating 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 this subchapter.

(F) The Tax Administrator, if he or she 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 quarterly periods.

(Ord. 691, passed 11-2-1994)

### **§ 33.62 PENALTIES AND INTEREST.**

(A) *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 subchapter prior to delinquency, shall pay 10% of the amount of tax due in addition to the amount of the tax.

(B) *Continued delinquency.* Any operator who has not been granted an extension of the 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 become

delinquent, shall pay a second delinquency penalty of 15% of the amount of the tax due plus the amount of the tax and the 10% penalty first imposed.

(C) *Fraud.* If the Tax Administrator determines that the nonpayment of any remittance due under this subchapter is due to fraud or intent to evade the provisions thereof, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in divisions(A) and (B) of this section.

(D) *Interest.* In addition to the penalties imposed, any operator who fails to remit any tax imposed by this subchapter shall pay interest at the rate of 1% per month or fraction thereof without prorating 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.

(E) *Penalties merger 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.

(F) *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.

(Ord. 691, passed 11-2-1994)

### **§ 33.63 DEFICIENCY DETERMINATION; EVASION, OPERATOR DELAY.**

(A) *Deficiency determinations.* 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 § 33.62.

(1) 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 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 forth in § 33.62.

(2) (a) 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.

(b) In case of service by mail of any notice required by this subchapter, it shall be served by mailing such notice by registered mail, postage prepaid, return receipt requested.

(3) Except in the case of fraud or intent to evade this subchapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the quarterly period for the month and the amount is proposed to be determined, or within three years after the return is filed, whichever period expires the later.

(4) Any determination shall become due and payable immediately upon receipt of notice, and shall become final within 20 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.

(B) *Fraud; refusal to collect; evasion.* If any operator shall fail or refuse to collect the tax, or to make within the time provided in this subchapter any report or remittance of the tax or any portion thereof required by this subchapter, or makes a fraudulent return, or otherwise willfully attempts to evade this subchapter, the Tax Administrator shall proceed in such manner as he or she may deem best to obtain the 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 subchapter from any operator who has failed or refused to collect the same and to report and remit the tax, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this subchapter. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. The determination and notice shall be made and mailed within three years of the discovery by the Tax Administrator of any fraud, intent to evade or failure or refusal to collect the tax, or failure to file return. Any determination shall become due and payable upon receipt of notice, and shall become final within 20 days after the Tax Administrator has given notice thereof; provided, however, the operator may petition for redemption refund if the petition for redemption refund is filed before the determination becomes final, as herein provided.

(C) *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 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 the determination, if the petition is filed within 20 days from the date of service of notice by the Tax Administrator.

(Ord. 691, passed 11-2-1994)

### **§ 33.64 REDETERMINATION.**

(A) Any person against whom a determination is made under § 33.63, or any person directly interested, may petition for a redetermination and redemption and refund within the time required in § 33.63. If a petition for redetermination and refund is not filed within the time required in § 33.63, the determination becomes final at the expiration of the allowable time.

(B) 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 20 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.

(C) The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing; and if an increase is determined, the increase shall be payable immediately after the hearing.

(D) The order or decision of the Tax Administrator upon a petition for redetermination of redemption and refund becomes final 20 days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the City Council within the 20 days after the service of such notice.

(E) No petition for redetermination of redemption and refund appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

(Ord. 691, passed 11-2-1994)

### **§ 33.65 SECURITY FOR COLLECTION OF TAX.**

(A) The Tax Administrator, whenever he or she deems it necessary to insure the compliance with this subchapter, may

require the operator subject thereto to deposit with him or her 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 estimate average quarterly liability for the period for which he or she files returns, determined in such a manner as the Tax Administrator deems proper, or \$5,000, whichever amount is lesser. The amount of security may be increased or decreased by the Tax Administrator, subject to limitations herein provided. The operator has the right to appeal to the City Council any decision of the Tax Administrator made pursuant to this section. The operator may appeal within 20 days of the decision.

(B) 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 any 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. 691, passed 11-2-1994)

### **§ 33.66 LIEN.**

The tax imposed by this subchapter, together with the interest and penalties herein provided and the filing fees paid to the County Clerk, and advertising costs which may be incurred when same becomes delinquent, as set forth in this subchapter, shall be and, until paid, remain a lien from the date of its recording with the County Clerk, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator within the city; and may be foreclosed on and sold as may be necessary to discharge the lien, if the lien has been recorded with the County Clerk. Notice of the lien may be issued by the Tax Administrator or his or her deputy, whenever the operator is in default in the payment of the tax interest and penalty, and shall be recorded with the County Clerk, and a copy sent to the delinquent operator. The personal property subject to such lien seized by any deputy or employee of the Tax Administrator may be sold by the department seizing same at public auction, after 10 days notice; which means on publication in a newspaper of general circulation in the city. Any lien for taxes shown on the records of the property county official shall, upon payment of all taxes, penalties and interest thereon, be released by the Tax Administrator when the full amount determined to be due has been paid to the city; and the operator or person making such payment shall have a receipt therefore, stating that the full amount of taxes, penalties and interest thereon have been paid, and that the lien penalties and interest thereon have been paid, and that the lien is hereby released and the record of lien is satisfied.

(Ord. 691, passed 11-2-1994)

### **§ 33.67 REFUNDS.**

(A) *Refunds by the city to the 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 subchapter, 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 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 amount then due and payable from the operator from whom it was collected, or by whom paid; administrators, executors or assignees.

(B) *Refund by city to transient.* Whenever the tax required by this subchapter has been collected by an 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 thereof, stating the specific reason on which the claim is founded, is filed with the Tax Administrator within three years from the date of payment.

(C) *Refunds to operator by tenant.* Whenever the tax required by this subchapter has been collected by the operator and it is exceeding 30 days without interruption, the operator shall refund to such tenant the tax previously collected by the operator from the tenant as a transient. The operator shall account for the collection and refund to the Tax Administrator. If the operator has remitted the tax prior to the refund or credit to the tenant, he or she shall be entitled to a corresponding refund under this section.

(Ord. 691, passed 11-2-1994)

### **§ 33.68 COLLECTION FEE.**

Every operator liable for collection and remittance of the tax imposed by this subchapter may withhold 5% of the net tax herein collected to cover the operator's expense in collection and remittance of the tax.

(Ord. 691, passed 11-2-1994)

### **§ 33.69 ADMINISTRATION.**

(A) *Generally.* The Tax Administrator shall pay the tax collected to the general fund of the city.

(B) *Records required from operators and the like.* 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.

(C) *Examination of records; investigations.* The Tax Administrator, or any person authorized in writing by him or her, may examine during normal business hours the books, papers and accounting records relating to room sale 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.

(D) *Confidential character of information obtained; disclosure unlawful.* It shall be unlawful for the Tax Administrator or any person having an administrative or clerical duty under the provisions of this subchapter 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 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 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:

(1) The disclosure to or the examination of records and equipment by another city office, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this subchapter, or collecting taxes imposed hereunder, or collecting city business license fees.

(2) The disclosure, after the filing of a written request to that effect, to the taxpayer himself or herself, 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, 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.

(3) The disclosure of the names and addresses of any persons to whom transient occupancy registration certificates have been issued.

(4) The disclosure of general statistics regarding taxes collected or business done in the city.

(Ord. 691, passed 11-2-1994)

**§ 33.70 VIOLATIONS.**

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 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 make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this subchapter.

(Ord. 691, passed 11-2-1994) Penalty, see § 33.99

**§ 33.99 PENALTY.**

Any person willfully violating any of the provisions of §§ 33.55 through 33.70 shall be guilty of a misdemeanor, and may be punishable therefore by a fine of not more than \$500, or by imprisonment in the city or county jail for a period of not more than six months, or by both such fine and imprisonment.

(Ord. 691, passed 11-2-1994)