

ORDINANCE NO. 691

PROVIDING FOR A TRANSIENT ROOM TAX FOR THE CITY OF Gearhart;
AND TO PROVIDE THE ADMINISTRATIVE PROCEDURES FOR COLLECTION OF
SAME.

The City of Gearhart ordains as follows:

Section 1. Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance.

(a) 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.

(b) City Council. The City Council of the City of Gearhart.

(c) Occupancy. 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 or portion thereof.

(d) Operator. The person who is the proprietor of the hotel in any capacity. Where the operator performs his 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 ordinance and shall have the same duties and liabilities as his principal. Compliance with the provision of this ordinance by either the principal or the managing agent shall be considered to be compliance by both.

(e) Person. 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.

(f) Cash Accounting. The operator does not enter the rent due from a transient on his records until rent is paid.

(g) Accrual Accounting. The operator enters the rent due from a transient on his records when the rent is earned, whether or not it is paid.

(h) Rent. 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, with any deduction.

(i) Rent Package Plan. The consideration charged for both food and rent, whether 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.

The amount applicable to rent for determination of transient room tax under this ordinance 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.

(j) 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 collections.

(k) Tax Administrator. The City Administrator of the City of Gearhart, Oregon.

(l) 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 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 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 ordinance 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.

Section 2. 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 seven percent 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 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 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.

Section 3. Collection of Tax by Operator; Rules for Collection.

(a) Every operator renting rooms or space for lodging or sleeping purposes on 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 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 payments are made. Adjustments may be made for uncollectibles.

(c) The tax administrator shall enforce provisions of this ordinance and shall have the power to adopt rules and regulations not inconsistent with this ordinance, 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.

Section 4. 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 be not added to the rent, or that, when added, any part will be refunded, except in the manner provided by this ordinance.

Section 5. Exemptions. No tax imposed under this ordinance 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 a 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 government.

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

Section 6. Registration of Operator; Form and Contents; Execution; Certification of Authority. 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. Operators engaged in business at the time this ordinance is adopted must register not later than 30 calendar days after passage of this ordinance. Operators starting business after this ordinance 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 registration. Registration sets forth the name under which the 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 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 non-assignable 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.

Said 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 hereof 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 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 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."

Section 7. Due Date; Returns and Payments.

(a) 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, 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 ordinance 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 office, either by personal delivery or my mails. 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 one-half of 1 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 a part of the tax for computation of penalties described elsewhere in this ordinance.

(f) 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 quarterly periods.

Section 8. 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 ordinance prior to delinquency, shall pay 10 percent of the amount of the tax due in addition to the amount of the tax.

(b) 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 percent of the amount of the tax due plus the amount of the tax and the 10 percent penalty first imposed.

(c) 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 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in (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 ordinance shall pay interest at the rate of 1 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.

(e) 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.

(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.

Section 9. Deficiency Determination; Evasion; Operator Delay.

(a) Deficiency Determinations. 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 the

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 8.

(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 Section 8.

(2) 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 on the records of the tax administrator.

In case of service by mail of any notice required by this ordinance, 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 ordinance 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 which 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 said tax, or to make within the time provided in this ordinance any report or remittance of said tax or any portion thereof required by this ordinance, or makes a fraudulent return, or otherwise wilfully attempts to evade this ordinance, the tax administrator shall proceed in such manner as he

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 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 years of the 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 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 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 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 20 days from the date of service of notice by the tax administrator.

Section 10. Redeterminations.

(a) Any person against whom a determination is made under Section 9, or any person directly interested, may petition for a redetermination and redemption and refund within the time required in Section 9. If a petition for redetermination and refund is not filed within the time required in Section 9, 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 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, such 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 or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

Section 11. Security for Collection of Tax.

(a) The tax administrator, whenever he deems it necessary to insure the compliance with this ordinance, may require the 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 quarterly liability for the period for which he files returns, determined in such a manner as the tax administrator deems proper, or \$5,000.00, 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 a 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.

Section 12. Lien. The tax imposed by this ordinance, together with the interest and penalties herein provided and the filing fees paid to the county clerk of Clatsop County, Oregon, and advertising costs which may be incurred when same becomes delinquent, as set forth in this ordinance, shall be and, until paid, remain a lien from the date of its recording with the county clerk, Clatsop County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator within the City of Gearhart; and may be foreclosed on and sold as may be necessary to discharge said lien, if the lien has been recorded with the county clerk in Clatsop County, Oregon. Notice of the lien may be issued by the tax administrator or his deputy, whenever the operator is in default in the payment of said tax interest and penalty, and shall be recorded with the county

clerk of Clatsop County, Oregon, 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 of Gearhart, Oregon. Any lien for taxes shown on the records of the proper 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 therefor, stating that the full amount of taxes, penalties and interest thereon have been paid, and that the lien is hereby released and the record of lien is satisfied.

Section 13. 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 ordinance, it may be refunded; provided a verified claim in writing therefor, 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; and the balance may be refunded to such operator, his administrators, executors or assignees.

(b) Refunds by City to Transient. Whenever the tax required by this ordinance 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 by Operator to Tenant. Whenever the tax required by this ordinance 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 the refund or credit to the tenant, he shall be entitled to a corresponding refund under this section.

Section 14. Collection fee. Every operator liable for collection and remittance of the tax imposed by this ordinance may withhold 5 percent of the net tax herein collected to cover the operator's expense in collection and remittance of said tax.

Section 15. Administration.

(a) The tax administrator shall pay the tax collected to the general fund of the City of Gearhart.

(b) Records Required from Operators, etc. 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, 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.

(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 ordinance 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 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:

(1) The disclosure to or the examination of records and equipment by another City of Gearhart office, 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, or collecting city business license fees.

(2) 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, and that the tax administrator may refuse to make any disclosure referred to in this paragraph when in his 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.

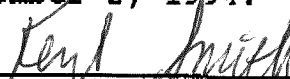
(4) The disclosure of general statistics regarding taxes collected or business done in the city.

Section 16. 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 fact that any one or more sections, subsections, subdivisions, paragraphs, sentence, clauses or phrases be declared unconstitutional (or otherwise invalid).

Section 17. 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 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 make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ordinance.

Section 18. Misdemeanor. Any person wilfully violating any of the provisions of this ordinance shall be guilty of a misdemeanor, and may be punishable therefor by a fine of not more than \$500.00, 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.

Passed by a majority of the City Council on November 2, 1994, and approved by the Mayor on November 2, 1994.



Kent Smith, Mayor

ATTEST:



Bruce Maltman
City Administrator

CITY OF GEARHART



PUBLIC NOTICE

NOTICE IS HEREBY GIVEN THAT AT THE REGULAR MEETING OF THE GEARHART CITY COUNCIL ON WEDNESDAY, OCTOBER 4, 1994, AT 7:30 P.M., THE CITY COUNCIL OF THE CITY OF GEARHART WILL ADOPT AN ORDINANCE PROVIDING FOR A TRANSIENT ROOM TAX FOR THE CITY OF GEARHART; AND TO PROVIDE THE ADMINISTRATIVE PROCEDURES FOR COLLECTION OF SAME. IN ACCORDANCE WITH THE CITY CHARTER, ADOPTED MARCH 31, 1987, SECTION 32, SUB-PARAGRAPH 3, A TRUE COPY OF THIS ORDINANCE IS AVAILABLE FOR INSPECTION AT GEARHART CITY HALL, 698 PACIFIC WAY, GEARHART, OREGON FROM SEPTEMBER 28, 1994 TO OCTOBER 4, 1994.

Bruce F. Maltman
BRUCE F. MALTMAN
CITY ADMINISTRATOR
CITY OF GEARHART

THE ABOVE NOTICE WAS POSTED AT THE FOLLOWING PLACES:

GEARHART CITY HALL
GEARHART FIRE HALL
GEARHART POST OFFICE