

ORDINANCE BILL NO. 14 FOR 2017

ORDINANCE NO. 1268

AN ORDINANCE AMENDING SWEET HOME MUNICIPAL CODE CHAPTER 3.24

The City of Sweet Home does ordain as follows:

Section 1. The first sentence of SHMC Section 3.24.010 Title and Purpose is amended to read as follows:

This chapter shall be known as the “Transient Lodging Tax Ordinance of the City of Sweet Home”.

Section 2. SHMC Section 3.24.020 Definitions for the following defined words shall be amended to read as follows:

DEFINITIONS.

- (a) **ACCRUAL ACCOUNTING.** The operator enters the rent due from an occupant on his or her records when the rent is earned whether or not it is paid.
- (b) **BOOKING SERVICE.** Any reservation and/or payment service provided by a person or entity that facilitates a short-term rental transaction between a host and a prospective occupant, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation and/or payment services provided for the short-term rental transaction. Booking services include directly or indirectly accepting, receiving or facilitating payment, whether or not the person or entity is the ultimate recipient of the payment, including through Application Programming Interfaces (APIs) or other computerized devices where third-party providers receive information about a transaction and collect funds for the transient lodging occupancy from an occupant.
- (c) **CASH ACCOUNTING.** The operator does not enter the rent due from an occupant on his or her records until rent is paid.
- (d) **HOST.** means the owner or person who resides at the short-term rental or has been designated by the owner or resident of the short-term rental and who rents out the short-term rental for transient lodging occupancy either directly or through the use of a hosting platform.
- (e) **HOSTING PLATFORM.** A person or entity that participates in the short-term rental business by collecting or receiving a fee for booking services through which a host may offer a transient lodging facility. Hosting platforms usually, though not necessarily, provide booking services through an online platform that allows a host to advertise the transient lodging through a website provided by the hosting platform and provides a means

for the hosting platform to conduct a transaction by which prospective occupants arrange transient lodging and payment whether occupant pays rent directly to the host or to the hosting platform.

- (f) **LOCAL TAX TRUSTEE.** The operator, hosting platform or designee thereof that accepts receives or facilitates the payment directly from the occupant, whether or not the operator or hosting platform is the ultimate recipient of the payment.
- (g) **TRANSIENT LODGING or TRANSIENT LODGING FACILITIES.** 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 motel, inn, tourist home or house, hotel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, bed and breakfast, space in manufactured home park, space in mobile home park, space in trailer park, space in recreational vehicle park, or similar structure including space or portions thereof so occupied; provided, the occupancy is for temporary human occupancy.
- (h) **OCCUPANCY.** The right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for less than 30 days.
- (i) **OPERATOR.** (1) Any person who provides transient lodging for occupancy to the general public for compensation. Furnishing accommodations can be done via employees, contractors, agents or any other person allowed to process reservations and accept payment for the transient lodging on behalf of the transient lodging provider; or (2) Any person who facilitates the reservations of an accommodation and collects the payment for the transient lodging reservation from the occupant; or (3) Any transient lodging provider, transient lodging intermediary or transient lodging tax collector as defined in ORS 320.300.
- (j) **PERSON.** Any individual, firm, partnership, joint venture, limited liability company, limited liability partnership, 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.
- (k) **RENT.** The consideration paid or payable by an occupant for the occupancy of space in transient lodging valued in money, goods, labor, credits, property or other consideration. If a separate fee is charged for services, goods or commodities and the fee is optional, that fee is not included in rent.
- (l) **SHORT-TERM RENTAL.** A house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling unit where a person rents guest bedrooms or the entire residential dwelling unit for transient lodging occupancy. Generally, a short-term rental is zoned residential or has a building occupancy that only allows for residential use.

(m) **TAX.** (TLT) Means the transient lodging tax.

(n) **TAX ADMINISTRATOR.** The Finance Director of the City of Sweet Home.

(o) **OCCUPANT.** 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.

Section 3. SHMC Section 3.24.030 Tax Imposed is amended to read as follows:

TAX IMPOSED.

(A) Effective July 1, 1990, each occupant shall pay a tax (TLT) in the amount of 6% of the rent. The occupant shall pay the TLT with the rent to the Local Tax Trustee. TLT amounts shall be rounded down to the nearest cent. The Local Tax Trustee shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the occupant to the Local Tax Trustee with each installment unless the occupant pays the entire amount with the first payment.

(B) Bills, receipts or invoices provided to occupants shall list the city TLT separately and must accurately state the amount of tax. All amounts list as TLT on invoices, bills or receipts must be reported as TLT and, after collection, must be turned over to the City.

(C) No Local Tax Trustee shall advertise that the TLT or any part of the TLT will be assumed or absorbed by the Local Tax Trustee, or that it will not be added to the rent, or that any part of it will be refunded, except in the matter provided by this chapter.

Section 4. SHMC Section 3.24.040 Collection of Tax By Operator is replaced with Collection of Tax By Local Tax Trustee and amended to read as follows:

COLLECTION OF TAX BY LOCAL TAX TRUSTEE.

A. Every Local Tax Trustee shall collect the TLT 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 Local Tax Trustee not when the Local Tax Trustee ultimately receives credit for the transaction. While holding the payment in trust for the City, a Local Tax Trustee may commingle the tax proceeds with the Local Tax Trustee's funds, but the Local Tax Trustee is not the owner of tax proceeds. Local Tax Trustees may choose to file returns and remit payment based on amounts accrued but not collected. The Local Tax Trustee is liable for any TLT that should have been collected from the occupant, except in cases of nonpayment of rent by the occupant.

B. Upon request of the City, Local Tax Trustees must provide all physical addresses of transient lodging facilities within the city limits and the related contact information, including the name and mailing address, of the general manager, agent, owner, host or other responsible person for the location.

C. Operators who receive any portion of the rent and hosting platform that provide booking service are jointly and severally liable for the tax.

Section 5. SHMC Section 3.24.050 Operator's Duties is replaced with Short-Term

Rental Hosting Platform Fees and amended to read as follows:

SHORT-TERM RENTAL HOSTING PLATFORM FEES.

A hosting platform for short-term rentals may collect a fee for booking services in connection with short-term rentals only when those short-term rentals are lawfully registered as operators with the city and possess a certificate of authority at the time the short-term rental is occupied.

Section 6. SHMC Section 3.24.060 Exemptions is amended to read as follows:

EXEMPTIONS.

No tax imposed under this chapter shall be imposed upon:

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;

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

C. 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;

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

E. 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.

Section 7. SHMC Section 3.24.070 Registration of Operator-Form and Contents-Executions is replaced with Registration of Operator-Form and Contents-Executions-Certification of Authority and amended to read as follows:

REGISTRATION OF OPERATOR—FORM AND CONTENTS—EXECUTIONS-CERTIFICATION OF AUTHORITY.

A. Every person engaging or about to engage in business as an operator in the City of Sweet Home shall register with the Tax Administrator.

B. Operators engaged in business at the time the ordinance codified in this chapter is adopted must register not later than 30 days after passage of the ordinance codified in this chapter. Operators starting business after this chapter is adopted must register within 15 calendar days after commencing business. The privilege of registration after the date of imposition of the tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. The registration form shall be signed by the Operator and 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.

C. The Tax Administrator shall, within 15 days after registration, issue without charge a certificate of authority to collect the TLT. The obligation to collect the TLT is imposed once

rent for transient lodging is paid, even if the registration form has not been filed or if the certificate has not been issued. If rent transaction is facilitated online, the certificate of authority must be able to be viewed by the occupant by clicking a link to the certificate of authority at a reasonable place during the payment transaction.

D. Certificates shall be non-assignable and nontransferable, and shall be surrendered to the Tax Administrator when the business is sold or transferred or when a lodging facility ceases to operate at the location specified form. Each certificate issued to an operator for a specific lodging facility shall be prominently displayed at the lodging facility and includes:

- (1) The name of the Operator;
- (2) The address of the transient lodging facility;
- (3) The date the certificate was issued;
- (4) The certificate number as assigned by the Tax Administrator; and
- (5) The amount of City authorized Lodging Tax as a percentage.

Section 8. SHMC Section 3.24.080 Returns and Payments is replaced with Returns and Remittances and amended to read as follows:

RETURNS AND REMITTANCES.

The tax imposed by this chapter shall be paid by the occupant to the Operator at the time that rent is paid. The taxes collected by any operator are due and payable to the Tax Administrator as follows:

- A. Local Tax Trustees shall 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.
- B. Remittances are delinquent if not made by the last day of the month in which they are due.
- C. Returns shall show the gross rents collected, taxable rents and the total amount of TLT collected. Returns shall also show the exempt and excluded rents and the basis for exemption and exclusion.
- D. Tax returns and remittances may be submitted in person or by mail. If the return and remittance is mailed, the postmark shall be considered the date of delivery.
- E. The Tax Administrator may extend the time for making any return or remittance of the tax up to 30 days. No further extension shall be granted, except by the City Council. Any local Tax Trustee to whom an extension is granted shall pay interest at the rate of 1% 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 part of tax for computation of penalties.

Section 9. SHMC Section 3.24.090 Delinquency Penalties is replaced with Penalties and Interest and amended to read as follows:

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 Oregon

- Department of Revenue was originally required to be filed to the time of payment.
- B. If a Local Tax Trustee fails to file a return with the Oregon Department of Revenue 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 Oregon Department of Revenue.
 - D. Taxes, interest and penalties transferred to the City of Sweet Home by the Oregon Department of Revenue will be distributed to the City's General Fund.
 - E. If at any time a Local Tax Trustee fails to remit any amount owed in taxes, interest or penalties, the Oregon Department of Revenue is authorized to enforce collection on behalf of the City of the owed amount, an agreement between the Oregon Department of Revenue and City of Sweet Home under ORS 305.620 and any applicable administrative rules adopted by the Oregon Department of Revenue.

Section 10. SHMC Section 3.24.100 Deficiency Determination-Fraud-Evasion-Operator Delay is replaced with Deficiency Determination-Fraud-Evasion-Local Tax Trustee Delay and amended to read as follows:

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 Local Tax Trustee, who shall remit deficiencies within 10 business days of the deficiency notice. Notice may be by personal delivery or certified or registered mail. Penalties on deficiencies shall be applied as set forth in SHMC 3.24.090.

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 TLT, 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.
4. The Tax Administrator shall mail or personally serve written notice of final determination to the Local Tax Trustee.

B. *Fraud, refusal to collect, evasion.* If any Local Tax Trustee 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 Local Tax Trustee for tax remittance, interest and penalties and provide notice to the Local Tax Trustee of the assessment. The determination and notice shall be made and mailed within three years of the discovery by the Tax Administrator of the violation. The determination is due and payable upon receipt of notice and shall become final 10 business days after the date notice was delivered if no petition for redetermination is filed.

C. *Costs of determining tax.* All costs to the city in determining the actual tax due from any

operator shall be added to and become a part of the amount owed by the operator upon written notice to the operator, served personally or by mail.

Section 11. SHMC Section 3.24.120 Security For Collection of Tax is replaced with REDETERMINATIONS and amended to read as follows:

REDETERMINATIONS:

- A. Any person affected by a determination may file a petition for determination with the tax administrator within 10 business days of service 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 mail the decision to the petitioner. 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 decision is mailed unless the petitioner files an appeal to the city council within that time.

Section 12. SHMC Section 3.24.130 Operator's Refunds is replaced with Refunds and amended to read as follows:

REFUNDS.

- A. Refunds by the City to the Local Tax Trustee – If the Local Tax Trustee remits more tax, penalty or interest than is due, the Local Tax Trustee 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 Local Tax Trustee.
- B. Refunds by City to Occupant – A Local Tax Trustee 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.
- C. Refunds by Local Tax Trustee to Occupants – If an occupant has paid tax to a Local Tax Trustee, but then stays a total of 30 or more consecutive days, the Local Tax Trustee shall refund to the occupant any tax collected for any portion of the continuous stay. The Local Tax Trustee shall account for the collection and refund to the Tax Administrator. If the Local Tax Trustee has remitted the tax prior to the refund or credit to the occupant, the Local Tax Trustee 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 established the basis for the refund.

Section 13. SHMC Section 3.24.140 Administration is amended to read as follows:

ADMINISTRATION.

A. *Records required from operators—form.* Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for a period of at least three years and six months after they come into being.

B. *Examination of records—investigations.* The Tax Administrator or agent 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.

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. Rules and regulations of general application shall be mailed to all registered operators. The Tax Administrator may also issue written interpretations on request of a Local Tax Trustee. As to the Local Tax Trustee 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—disclosures unlawful.* The City shall maintain the confidentiality of information provided by Local Tax Trustees. 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 Local Tax Trustee and the Local Tax Trustee'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.

Section 14. SHMC Section 3.24.160 Remedies and Liens is replaced with Remedies, Collections and Liens and amended to read as follows:

REMEDIES, COLLECTIONS AND LIENS.

A. The remedies, which include penalties herein, provided for in this chapter or sections thereof shall be cumulative and not exclusive and shall be in addition to any and all other remedies available to the city.

B. The City 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.

C. The City is entitled to collect reasonable attorneys' fees in any legal action brought to collect on amounts owed to the City under this chapter.

D. The City may record a lien in the City's lien docket against any real property owned by an operator who receives any portion of the rent from a transient lodging facility located within the

City as to any delinquent remittances by the operator.

Section 15. SHMC Section 3.24.170 Violation is amended to read as follows:

VIOLATION.

A. It is unlawful for any operator or other person so required, to fail or refuse to register as required in this chapter, or to furnish any return required to be made, or to 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 an amount due required by this chapter. No person shall violate any provision of this chapter.

B. Violation of this chapter constitutes a violation and may be prosecuted under the provisions of SHMC Chapter 9.36 and any amendments thereto. Each day that a violation remains uncured is a separate offense.

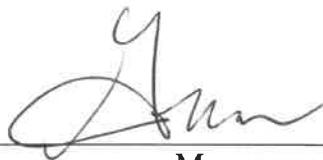
Section 16. SHMC 3.24.180 Appeals to City Council is created and reads as follows:

APPEALS TO CITY COUNCIL.

Any person aggrieved by any decision of the tax administrator may appeal to the city council by filing a written appeal with the Tax Administrator within 10 business days of the serving or mailing of the decision being appealed. The city manager shall schedule the hearing on a city council agenda and provide the appellant notice of the hearing at least 10 business days before the hearing. The city council 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 council by filing a written appeal within 10 business days of the mailing of the notice of the regulation. The City Council's decision shall be final when reduced to writing and mailed to the petitioner and all amounts due must be paid within 10 business days of mailing of the city council decision.

Section 17. Sweet Home Ordinance No. 1022 is amended hereby as set forth herein to correspond herewith.

PASSED by the Council and approved by the Mayor this 12th day of December, 2017



Mayor

ATTEST: 

City Manager – Ex Officio City Recorder