

ORDINANCE BILL NO. 12 FOR 1987

ORDINANCE NO. \_\_\_\_\_

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*6/14/88*

AN ORDINANCE ESTABLISHING A CITY TRANSIENT LODGING TAX ORDINANCE AND DECLARING AN EMERGENCY.

The City of Sweet Home does ordain as follows:

Section 1. Title. This Ordinance shall be known as the "Sweet Home Transient Lodging Tax Ordinance."

Section 2. Definitions.

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

(b) Hotel. Any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for thirty (30) days or less, for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, and also means space in mobile home, recreational vehicle or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is less than a thirty (30) day period.

(c) Occupancy. The use of 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, recreational vehicle or trailer park, or portion thereof.

(d) Operator. The person who is 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 Chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this Chapter 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) 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, without any deduction.

(g) Rent Package Plan. The consideration charged for both food and rent where a single rate is made for the total or both. The amount applicable to rent for determination of transient room tax under this Chapter shall be the same charge made for rent when consideration is not a part of a package plan.

(h) Tax. The tax payable by the transient or, where the context so requires, the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(i) Tax Administrator. The person designated as such by separate order of the City Council or by intergovernmental agreement.

(j) Transient. Any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of thirty (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 thirty (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 thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. 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.

(k) Transient Lodging Tax Review Committee. A committee composed of an accountant, an attorney, an operator and two lay persons appointed by the City Council.

Section 3. Tax Imposed. For the privilege of occupancy in any hotel, beginning thirty (30) days after the effective date of this Chapter, each transient shall pay a tax in the amount of six percent (6%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator. 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. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. In all cases, the rent paid or charged for occupancy, shall exclude the sale of any goods, services and commodities, other than the furnishing of rooms, accommodations and space in mobile homes or trailers.

Section 4. Collection of Tax by Operator: Rules for Collection.

(a) Every operator renting rooms or space in a hotel or a mobile home, recreational vehicle or trailer park in this City, the occupancy of which is not exempted under the terms of this Chapter, shall collect the tax imposed by this Chapter from the occupant. The tax collected or accrued by the operator constitutes a debt owed 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.

(c) The tax due shall be rounded to the next whole dollar as follows:

The tax of each whole dollar shall be six cents; the tax on the first 16 cents over a whole dollar shall be dropped; the tax on the 17th through 33rd cent over a whole dollar shall be one cent; the tax on the 34th through 50th cent over a whole dollar shall be two cents; the tax on the 51st through 66th cent over a whole dollar shall be three cents; the tax on the 67th through 83rd cent over a whole dollar shall be four cents; the 84th through 99th cent over a whole dollar shall be five cents.

(d) The Tax Administrator shall enforce provisions of this Chapter and shall have the power to recommend rules and regulations for approval by the City Council not inconsistent with this Chapter as may be necessary to aid in the enforcement.

Section 5. Operator's Duties. Each operator shall collect the tax imposed by this Chapter 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 Chapter.

Section 6. Exemptions. No tax imposed under this Chapter shall be imposed upon:

(a) Any occupant for more than thirty (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 two dollars (\$2.00) per day.

Section 7. Registration of Operator; Form and Contents; Execution; Certification of Authority. Every person engaging 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 the Tax Administrator. Operators engaged in business at the time this Chapter is adopted must register not later than thirty (30) calendar days after the effective date of this Chapter. Operators starting business after this Chapter is adopted must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an 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 ten (10) days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. Said certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address of the hotel;
- (c) The date upon which the certificate was issued;

(d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the City Transient Lodging Tax by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by the 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. This certificate does not constitute a permit."

Section 8. Due Date: Returns and Payments.

(a) The tax imposed by this Chapter 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 on a monthly basis on the fifteenth (15th) day of the month for the preceding month; and are delinquent on the last day of the month in which they are due.

(b) On or before the fifteenth (15th) day of the month following each month of collection, a return for the preceding month'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 this 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 Transient Lodging Tax Review Committee. Any operator to whom an extension is granted shall pay interest at the rate of one percent (1%) per month on the amount of tax due without pro-ration for a fraction of a month. If a return is not filed, and the tax and interest due are 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 Chapter.

(f) The Tax Administrator, if he deems 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 for other than monthly periods.

#### Section 9. 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 Chapter prior to delinquency shall pay a penalty of ten percent (10%) 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 tax and penalty on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay an additional delinquency penalty of fifteen percent (15%) of the amount of the tax due, plus the amount of tax and the ten percent (10%) penalty first imposed.

(c) 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.

(d) 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 Transient Lodging Tax Review Committee for waiver and refund of the penalty or any portion thereof and the Transient Lodging Tax Review Committee may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

Section 10. Deficiency Determinations; Fraud, Evasion, Operator Delay.

(a) Deficiency Determination. 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 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 in the records of the Tax Administrator. In case of service by mail or any notice required by this Chapter the service is complete at the time of deposit in the United States Post Office.

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

(4) Any tax, interest or penalty found to be due upon the Tax Administrator's determination shall become due and payable immediately upon receipt of notice and shall become final fourteen (14) calendar days after the Tax Administrator has given notice thereof, provided, however, the operator may petition for redetermination 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 Chapter, any report and remittance of said tax or any portion thereof required by this Chapter, or makes a fraudulent return or otherwise willfully attempts to evade this Chapter, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this Chapter 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 Chapter. 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 (3) years after 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 final fourteen (14) calendar days after the Tax Administrator has given notice thereof, provided, however, the operator may petition for redetermination and 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 the determined amount to the Tax Administrator after service of notice thereof, provided, however, the operator may petition, after payment has been made, for redetermination and refund of such tax, if the petition is filed within fourteen (14) calendar days from the date of service of notice by the Tax Administrator.

#### Section 11. Redeterminations.

(a) Any person against whom a determination is made under Section 9 or any person directly interested may petition for a redetermination and refund within the time required in Section 9 hereof. 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 by petition, shall grant the person an oral hearing and shall give the person ten (10) days' notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.

(c) The Tax Administrator may decrease or increase the amount of the tax interest or penalty 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 and refund becomes final fourteen (14) calendar days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the Transient Lodging Tax Review Committee within the ten (10) days after service of such notice.

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

#### Section 12. Security for Collection of Tax.

(a) The Tax Administrator, whenever he deems it necessary to ensure compliance with this Chapter, may require any operator subject thereto to deposit such security in the form of cash, bond or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator, but shall not be greater than twice the operator's estimated average monthly liability for the period for which the operator turns, determined in such manner as the Tax Administrator deems proper, or \$5,000, whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided. Security deposits shall be to the Tax Administrator.

(b) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Tax Administrator may bring an action in the courts of this state, or any other state, or of the United States in the name of the City to collect the amount delinquent, together with penalties and interest.

Section 13. Lien. The tax imposed by this Chapter, together with the interest and penalties herein provided, filing fees owed or paid, reasonable attorneys' fees and advertising costs, shall be and, until paid, remain a lien from the date of its recording with the City Manager of Sweet Home, Oregon, 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 said lien, if the lien has been recorded with the City Manager of Sweet Home, Oregon. Notice of 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 City Manager of Sweet Home, 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 the same at public auction after ten (10) days' notice, which shall be by one publication in a newspaper of general circulation published within the City.

Any lien for taxes as shown on the records of the proper City official shall, upon the 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 receive a receipt therefor stating that the full amount of taxes, penalties and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied.

#### Section 14. Refunds.

(a) Operator's Refunds. 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 Chapter, 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 (3) 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 amounts 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, or operator's administrators, executors or assignees. All refunds shall be charged to the Special Fund set forth in Section 15 below.

(b) Transient Refunds. Whenever the tax required by this Chapter has been collected by the operator and deposited by the operator with the Tax Administrator, and it is later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment. All refunds shall be charged to the Special Fund set forth in Section 15 below.

Section 15. Collection Fee. Every operator liable for the collection and remittance of the tax imposed by this Chapter may withhold fifteen percent (15%) of the net tax due to cover the operator's expenses in the collection and remittance of the tax.

Section 16. Administration.

(a) Special Fund. The Tax Administrator shall deposit all net revenues collected pursuant to this Chapter with the City Treasurer, to be kept in a special fund and separately accounted for as set out in subsection (e) of this section.

(b) Records Required From Operators, Etc.; Form. Every operator shall keep guest records of lodging sales and rentals and accounting books and records of the lodging sales and rentals. All records shall be retained by the operator for a period of three (3) years and six (6) months after they come into being.

(c) Examination of Records; Investigations. The Tax Administrator or any person authorized in writing by the Tax Administrator may examine during normal business hours, the books, papers and accounting records relating to lodging 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 Chapter 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 lodging 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 official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this Chapter; or enforcing any provisions of this Chapter; or collecting taxes imposed hereunder.

(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 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.

(5) Necessary disclosures in connection with appeals or forced collections as provided in this Chapter.

(e) Special Purpose.

(1) The money received from the tax imposed by this Chapter, together with interest and penalties received from operators and interest earned while on deposit with the City Treasurer, is to be used only to pay for the collection of the tax and administration of this Chapter, and the promotion of tourism in the City.

(2) The money, the subject of this subsection, shall be budgeted by the City Budget Committee only as provided in subsection (1) above, but the City Budget Committee may establish a reserve fund in an amount deemed necessary to carry out the purpose of this Ordinance.

Section 17. Appeals to City Transient Lodging Tax Review Committee. Any person aggrieved by any determination or decision of the Tax Administrator may appeal to the City Transient Lodging Tax Review Committee by filing a notice of appeal with the Tax Administrator within ten (10) days of the serving or the mailing of the notice of the decision given by the Tax Administrator. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the Chairperson of the Transient Lodging Tax Review Committee, who shall fix a time and place for hearing such appeal from the decision of the Transient Lodging Tax Review Committee. The Chairperson shall give the appellant not less than ten (10) days' written notice of the time and place of hearing of said appealed matter.

Section 18. Appeals to City Council. Any person aggrieved by any determination or decision of the City Transient Lodging Tax Review Committee may appeal to the Sweet Home City Council by filing a notice of appeal with the Linn County Transient Lodging Tax Review Committee within ten (10) days of the serving or the mailing of the notice of the decision given by the City Transient Lodging Tax Review Committee. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the City Council who shall fix a time and place for hearing such appeal from the decision of the Transient Lodging Tax Review Committee. The City Council shall give the appellant not less than ten (10) days' written notice of the time and place of hearing of said appealed matter.

Section 19. Emergency Clause. It is hereby adjudged and declared that existing conditions are such that this ordinance is necessary for the immediate preservation of the public peace, health and safety. Therefore, an emergency is hereby declared to exist, and this ordinance shall take effect and be in full force and effect from and after its passage and approval of the Mayor.

PASSED by the Council and approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 1988.

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Mayor

ATTEST:

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City Manager - Ex Officio City Recorder