

ORDINANCE BILL NO. 14 FOR 1990

ORDINANCE NO. 1022

AN ORDINANCE PROVIDING FOR A TRANSIENT OCCUPANCY TAX FOR THE CITY OF SWEET HOME AND TO PROVIDE THE ADMINISTRATIVE PROCEDURES FOR COLLECTION OF SAME.

The City of Sweet Home does ordain as follows:

Section 1. Title & Purpose. This ordinance shall be known as the Transient Room Tax Ordinance of the City of Sweet Home. The taxes, interest and penalties collected shall be placed in the General Fund of the City of Sweet Home to be used for public purposes of the City of Sweet Home.

Section 2. Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance.

(a) Motel means 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 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 mobile home or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is for less than a thirty (30) day period.

(b) City Council means the City Council of the City of Sweet Home, Oregon.

(c) Occupancy means 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 means the person who is proprietor of the motel 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 provisions of this ordinance by either the principal or the managing agent shall be considered to be compliance by both.

(e) Person means 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 means the operator does not enter the rent due from a transient on his records until rent is paid.

(g) Accrual accounting means 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 means 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.

(i) Rent Package Plan means the consideration charged for both food and rent where 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.

(j) Transient means any individual who exercises occupancy or is entitled to occupancy in a motel 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-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a motel shall be deemed to be a transient until the period of thirty 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 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.

(k) Tax means either the tax payable by the transient, or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

Section 3. Tax Imposed. For the privilege of occupancy in any motel, on and after July 1, 1990, 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 or to the city. The transient shall pay the tax to the operator of the motel 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 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. If for any reason the tax due is not paid to the operator of the motel, the City Recorder may require that such tax shall be paid directly to the city. 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 parking space in mobile home parks or trailer parks.

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

(a) Every operator renting rooms in this city, the occupancy of which is not exempt 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.

Section 5. 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 motel 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 ordinance.

Section 6. Exemptions. No tax imposed under this ordinance 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 \$2.00 per day;

(c) Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his own use thereof;

(d) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people.

Section 7. Registration of Operator; Form and Contents; Execution. Every person engaging or about to engage in business as an operator of a motel in this city shall register with the City Recorder

Operators engaged in business at the time this ordinance is adopted must register not later than thirty (30) calendar days after passage of this ordinance. Operators starting business after this ordinance 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 City Recorder may require.

Section 8. 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. Such taxes collected by any operator are due and payable to the City Recorder as follows:

(1) On a monthly basis by the fifteenth day of the following month for the first twelve months following registration as an operator of a motel in the city; or

(2) On a monthly basis by the fifteenth day of the following month for a period of time designated by the City Recorder whenever the operator has been delinquent in two or more consecutive payments; or

(3) On a quarterly basis on the fifteenth day of the month following the close of the quarter for all other operators. The quarters are:

1st Quarter	January, February, March
2nd Quarter	April, May, June
3rd Quarter	July, August, September
4th Quarter	October, November, December

(b) Taxes are delinquent if not paid within ten days of the due date.

(c) Returns shall be filed in such form as the City Recorder may prescribe. Returns are due at the time the tax is paid. Returns shall show the amount of tax collected or otherwise due for the related period. The City Recorder may require returns to show the total rentals upon which tax was collected or otherwise due.

(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 City Recorder at his 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.

Section 9. Delinquency Penalties.

(a) An operator who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of 10 percent of the tax due in addition to the tax.

(b) An operator who has not been granted an extension of time for remittance of tax due, and who fails to pay a delinquent remittance before the extension of 30 days following the date on which the remittance became delinquent, shall pay a second delinquency penalty of 15 percent of the tax due, the amount of the tax, and the 10 percent penalty first imposed.

(c) If the tax administrator determines that the non-payment of a remittance is due to fraud or intent to evade the tax, a penalty of 25 percent of the tax shall be added in addition to the penalties stated in subsections (a) and (b).

(d) In addition to the penalties imposed by this section, an operator who fails to remit the required tax shall pay interest at the rate of 0.5 percent per month, without proration for portions of a month, on the tax due, exclusive of penalties, from the date on which the tax first became delinquent until paid.

(e) Each penalty imposed and the interest accrued under the provisions of this section shall be merged with and become a part of the tax required to be paid.

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

(a) Deficiency Determination. If the City Recorder 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 9.

(1) In making a determination the City Recorder 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 9.

(2) The City Recorder shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by mail.

(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 and remittance of said tax or any portion thereof required by this ordinance, the City Recorder 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 City Recorder 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 and interest provided for by this ordinance. In case such determination is made, the City Recorder 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 after discovery by the City Recorder 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 immediately upon receipt of notice and shall become final within ten days after the City Recorder has given notice thereof.

(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. Redeterminations.

(a) Any person against whom a determination is made under Section 10 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 10 hereof. If a petition for redetermination and refund is not filed within the time

required in Section 10, 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 City Manager shall reconsider the determination, and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give advance notice of the time and place of the hearing. The City Manager may continue the hearing from time to time as may be necessary.

(c) The City Manager 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 hearing.

(d) The order or decision of the City Manager upon a petition for redetermination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the Sweet Home City Council within the ten (10) days after 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 12. Security for Collection of Tax.

(a) The City Recorder, 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 City Recorder may determine. The amount of the security shall be fixed by the City Recorder but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such a manner as the City Recorder deems proper, or five thousand dollars, whichever amount is less. The operator has a right to appeal to the Transient Occupancy Tax Appeal Board any decision of the City Recorder made pursuant to this section. The operator's right to appeal is pursuant to Section 15 herein.

(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 City Recorder 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 13. Refunds.

(a) Operators Refunds. Whenever the amount of any tax, penalty, or interest has been paid more than once, or has been erroneously collected or received by the City Recorder, 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 City Recorder within three years from the date of payment. If the claim is approved 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, his administrators, executors or assignees. All refunds shall be charged to the Transient Occupancy Tax Revenue Account of the city's General Fund.

Section 14. 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 after they come into being.

(b) Examination of Records--Investigations. The City Recorder 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) Confidential Character of Information Obtained--Disclosures Unlawful. It shall be unlawful for the City Recorder 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, except

(1) The disclosure to, or the examination of records and equipment by another city of Sweet Home official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provision of this ordinance; or collecting taxes imposed hereunder, or

(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 infor-

mation as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties. However, the City Attorney shall approve each disclosure and the City Recorder may refuse to make any disclosure referred to in this section when in his opinion the public interest would suffer thereby.

Section 15. Transient Occupancy Tax Appeal Board-- Procedure. A Transient Occupancy Tax Appeal Board is hereby created to be composed of members of the Sweet Home City Council. Four members of the Board shall constitute a quorum. The Board shall keep a record of its transactions and shall not, at any time, receive any compensation for their services on the Board.

The Board shall have the power to:

(1) Hear and determine appeals of orders or decisions of the city Manager made upon petitions for redetermination of tax. The Board may affirm, modify, or reverse such orders or decision or dismiss the appeals therefrom, as may be just, and shall prescribe such forms, rules, and regulations relating to appeals as it may deem necessary. In the review of the City Manager decision or order, the Committee may take such evidence and make such investigation as it may deem necessary and give notice of its determinations. Such determination shall become final ten days thereafter and shall thereupon become due and payable, subject to interest and penalties.

(2) Modify, affirm, or disapprove all forms, rules, determinations, and regulations prescribed by the City Recorder in the administration and enforcement of this ordinance.

(3) Make such investigations as it deems advisable regarding the imposition and administration of the transient occupancy tax.

Section 16. 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 City Recorder 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. No person shall violate any provision of this ordinance.

Section 17. Penalties: Violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance No. 876, and any amendments thereto.

Section 18. Effective Date. This ordinance shall become effective at 12:01 a.m. on the 1st day of July and the first payment of taxes hereunder shall become delinquent unless paid on or prior to the 12th day of October, 1990.

Section 19. Remedies and Lien. The remedies, which include penalties herein, provided for in this ordinance or sections thereof shall be cumulative and not exclusive and shall be in addition to any and all other remedies available to the City.

Collection of the taxes, interest and penalties due and owing can be accomplished by any remedy open to the City, including using the procedures for placing a lien on real property as set out in Sections 27 to 31, inclusive, of Sweet Home Ordinance No. 955, and any amendments thereto. If the procedures for collection are followed as set out above, the taxes, interest and penalties due and owing and the costs of collection shall become a lien on the real property and/or an obligation of the owner of the real property as set out in Ordinance No. 955, and any amendments thereto.

Section 20. Severability. The sections, subsections or parts thereof, of this ordinance are severable. The invalidity of any section, subsection or part thereof, shall not affect the validity of the remaining sections, subsections or parts thereof.

PASSED by the Council and approved by the Mayor this 26th day of June, 1990.



Mayor

ATTEST:



City Manager - Ex Officio City Recorder