

**ORDINANCE N° 2795**

**AN ORDINANCE TO LEVY AN EIGHT (8%) PERCENT TRANSIENT ROOM TAX; AND TO PROVIDE THE ADMINISTRATIVE PROCEDURES FOR COLLECTION OF SAME.** (As amended by Ordinances N° 2853, 2875, 3162, 3279, 3360, 3411, 3418, 3423, 3561, 3637, 3670, 3734)

**CITY OF PENDLETON ORDAINS AS FOLLOWS:**

**SECTION 1. TITLE.**

- A. This Ordinance shall be known as the Transient Room Tax Ordinance of the City of Pendleton.
- B. Forty-Eight and Three Eighths percent (48.375%) of the total tax collected by the Tax Administrator pursuant to subsection A of section 3 of this ordinance shall be used exclusively for the improvement and operation of the Pendleton Convention Center.
- C. Fourteen percent (14%) (but not less than \$72,000 per annum) of the total tax collected by the Tax Administrator pursuant to subsection A of section 3 of this ordinance shall be paid by the Tax Administrator quarterly to the Pendleton Chamber of Commerce within forty-five (45) days of the end of each quarter and the Pendleton Chamber of Commerce shall use said funds for the promotion of tourism within the City of Pendleton.
- D. One and three-fourths percent (1.75%) of the total tax collected by the Tax Administrator pursuant to subsection A of section 3 of this ordinance shall be used to assist in making the arts available to the visitors to and residents of Pendleton, based on recommendations by residents, representatives of arts organizations, and artists in and around Pendleton to the City Council, which will make the final decision.
- E. The total tax collected by the Tax Administrator pursuant to subsection B of section 3 of this ordinance shall be used exclusively as follows:
- (1) Sixty percent of the amount described in this subsection shall be paid, on the schedule set out in subsection C, above, to the Pendleton Chamber of Commerce for deposit into a Tourist Promotion Account to be used for Tourism Promotion activities intended to increase room and Recreation Vehicle occupancy rates.
  - (2) Forty percent of the amount described in this subsection shall be used for capital improvements at the Pendleton Convention Center, a Tourism-Related Facility.
  - (3) Terms "Tourism Promotion" and "Tourism-Related Facilities" have the meanings set forth in ORS 320.300.
- F. The Pendleton Chamber of Commerce shall furnish without cost to the City of Pendleton a review financial statement using a comprehensive method of accounting. This review statement shall show all income and expenses for the Chamber of Commerce's calendar year. Said review statement shall be submitted annually to the Tax Administrator no later than May 10, following the year just ended. If the Pendleton Chamber of Commerce fails to provide the City the above described review statement the Tax Administrator shall withhold any and all sums due the Pendleton Chamber of Commerce under this Ordinance until the above described review statement is received by the City. Any interest accruing on the funds withheld by the Tax Administrator under this section shall be and remain the property of the City of Pendleton. (Section 1, as amended by Ordinance N° 3162, passed April 7, 1981; Ordinance N° 3279, passed December 6, 1983; Ordinance N° 3360, passed June 3, 1986; Ordinance N° 3423, passed June 21, 1988; and Ordinance N° 3561, passed April 15, 1997; Ordinance No. 3637 passed February 6, 2001; Ordinance 3670 passed July 16, 2002; and Ordinance No. 3734, passed November 21, 2006.)

**SECTION 2. DEFINITIONS.** Except where the context otherwise requires, the definitions given in this section govern the construction of this Ordinance.

“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.

“Cash Accounting” means the operator does not enter the rent due from a transient on his records until rent is paid.

“City” means the City of Pendleton, Oregon.

“Council” means the City Council of the City of Pendleton, Oregon.

“Hotel” 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 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, 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.

“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.

“Operator” means 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 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.

“Pendleton Chamber of Commerce” means the Pendleton (Oregon) Area Chamber of Commerce incorporated and organized under the laws of the State of Oregon.

“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.

“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.

“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.

“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.

“Tax Administrator” means the City Manager or designee of the City of Pendleton.

“Transient” means 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-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 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.

“Transient Room Tax Review Committee” means a committee composed of an accountant, attorney, an operator, and two lay members appointed by the City Council.

(Section 2, as amended by Ordinance N<sup>o</sup> 3162, passed April 7, 1981; and Ordinance N<sup>o</sup> 3418, passed April 5, 1988.)

### **SECTION 3. TAX IMPOSED.**

A. For the privilege of occupancy in any hotel, each transient shall pay eight percent (8%) 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 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 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 hotel, the Tax Administrator 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.

B. In addition to the tax imposed by Subsection A of this Section, for the privilege of occupancy in any hotel other than spaces in mobile home or trailer parks, each transient shall pay \$1.50 per night per paid room of occupancy and for mobile home or trailer park spaces, \$0.50 per night per paid space.

(Section 3, as amended by Ordinance N<sup>o</sup> 2853, passed December 7, 1976; Ordinance N<sup>o</sup> 3423, passed June 21, 1988; Ordinance 3670, passed July 16, 2002; and Ordinance No. 3734, passed November 21, 2006.)

#### **SECTION 4. COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION.**

A. Every operator renting rooms in 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.

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 of tax shall not be remitted.

**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 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 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 \$3.00 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, to a public institution owned and operated by a unit of government, to a shelter home, half-way house or other rehabilitation facility.

**SECTION 7. REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION; CERTIFICATE 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 City. Operators engaged in business at the time this Ordinance is adopted must register not later than December 20, 1976. 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 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 non-assignable and non-transferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and readily come to the notice 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. This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Ordinance of the City of Pendleton by registration with the Tax Administrator for the purpose of collecting from transients the room 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 Pendleton. This certificate does not constitute a permit.

(Section 7, as amended by Ordinance N<sup>o</sup> 2853, passed December 7, 1976.)

#### **SECTION 8. 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 accrue and are payable to the Tax Administrator quarterly. Such taxes accrue on the last day of the quarter and are delinquent thirty (30) days thereafter.

B. On or before the thirtieth (30th) day following each quarter of collection a return for that quarter's tax 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. The return shall state separately the taxes imposed by subsection A. of section 3 of this ordinance and the taxes imposed by subsection B of section 3 of this ordinance.

C. Any operator accruing less than \$100.00 tax annually may in lieu of quarterly reports file an annual report, if the operator applies for and receives verification from the Tax Administrator that the operator is eligible for this reporting method. Nothing in this section shall exempt operators from filing at least one report annually. Annual reports under this section are due on the last day of the calendar year and delinquent thirty (30) days thereafter.

D. 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.

E. 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 by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

F. For good cause, the Tax Administrator may extend for not to exceed one (1) months the time for making any return or payment of tax. No further extension shall be granted, except by the Transient Room Tax Review Committee. Any operator to whom an extension is granted shall pay interest at the rate of one (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.

G. 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, as amended by Ordinance N<sup>o</sup> 2853, passed December 7, 1976; and Ordinance No. 3734, passed November 21, 2006.)

#### **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 Ordinance prior to delinquency shall pay a penalty of ten (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 thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen (15%) percent of the amount of the tax due plus the amount of the tax and the ten (10%) percent penalty first imposed.

C. Fraud. If the Tax Administrator determines that the non-payment of any remittance due under this Ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five (25%) percent of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs 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 one (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 Transient Room Tax Review Committee for waiver and refund of the penalty or any portion thereof, and the Transient Room 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 9.

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 9.

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 Ordinance the service is complete at the time of deposit in the United States Post Office.

3. Except in the case of fraud, intent to evade this Ordinance 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 determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) 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 and remittance of said tax or any portion thereof required by this Ordinance, or makes a fraudulent return or otherwise willfully attempts to evade this Ordinance, 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 (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 due and payable immediately upon receipt of notice and shall become final within ten (10) 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.

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 same 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 ruled within ten (10) 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 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 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 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 determination as a result of the hearing and if any 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 ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the Transient Room Tax Review Committee 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 Tax Administrator, whenever he deems it necessary to insure compliance with this Ordinance, may require any 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 manner as the Tax Administrator deems proper, or Fifteen Thousand (\$15,000.00) Dollars; 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.

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 Ordinance together with the interest and penalties herein provided and the filing fees paid to the County Clerk of Umatilla 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 of Umatilla County, Oregon, and superior to all subsequent recorded liens on all tangible personal

property used in the hotel of an operator within Pendleton 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 of Umatilla County, 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 County Clerk of Umatilla 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 the same at public auction after ten (10) days notice which shall mean one publication in a newspaper published in the City.

Any lien for taxes as shown on the records of the proper County 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 therefore 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. Operators 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 Ordinance, it may be refunded, provided a verified claim in writing therefore, stating the specific reason upon which the claim is founded, is filed with the Tax Administrator within three (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 the balance may be refunded to such operator, his administrators, executors or assignees. All refunds shall be charged to the Transient Room Tax Account set forth in Section 16-A.

B. Transient Refunds. Whenever the tax required by this Ordinance 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 therefore, 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 Transient Room Tax Account as set forth in Section 16-A.

(Section 14, as amended by Ordinance N<sup>o</sup> 3279, passed December 6, 1983.)

**SECTION 15. COLLECTION FEE.** Every operator liable for the collection and remittance of the tax imposed by this Ordinance may withhold seven (7%) percent of the net tax due to cover the operators expense in the collection and remittance of said tax. (Section 15, as amended by Ordinance N<sup>o</sup> 2875, passed March 15, 1977.)

#### **SECTION 16. ADMINISTRATION.**

A. Special Account. The Tax Administrator shall deposit all money collected pursuant to this Ordinance to the credit of the Transient Room Tax Account.

B. Records Required from Operators, Etc.; 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 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 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 official, 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.

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 underpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the City Attorney approaches 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, as amended by Ordinance N° 3279, passed December 6, 1983.)

#### **SECTION 17. TRANSIENT ROOM TAX REVIEW COMMITTEE, APPEAL, RULES,**

**PROCEDURE.** A Transient Room Tax Review Committee is hereby created to be composed of an accountant, an attorney, an operator, as herein defined, and two lay members. The Committee shall select from its members a chairman who shall serve at its pleasure. Three (3) members of the Committee shall constitute a quorum. The Committee shall be deemed to be in the office of the Tax Administrator and shall meet and keep its files in his office. The members of the Committee shall not, at any time, receive any compensation as such members or acting members for their services on the Committee. The Committee shall be appointed by the Council and shall serve four (4) year terms, except the accountant, the attorney, and the operator appointed to the first Committee after the adoption of this Ordinance shall serve three (3) year terms. Thereafter, all terms shall be four (4) years. The Committee shall have power and it shall be its duty:

A. To hear and determine appeals of orders or decisions of the Tax Administrator made upon petitions for redetermination of tax. The Committee may affirm, modify, or reverse such orders or decisions 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 Tax Administrator decision or order, the Committee may take such evidence and make such investigation as it may deem necessary. It shall give notice of its determinations in the manner prescribed for service of notice of a Tax Administrator's decision and shall file a copy of each such determination with the Tax Administrator with certification thereon of the date of service thereof. Such determination shall become final ten (10) days thereafter and shall thereupon become due and payable, subject to interest and penalties, and enforceable by the Tax Administrator in like manner as an order or decision of the Tax Administrator.

B. To approve, modify, or disapprove all forms, rules, and regulations prescribed by the Tax Administrator in the administration and enforcement of this Ordinance and such forms, rules, and regulations shall be subject to, and become effective only on, such approval.

C. To hear and determine in such manner as shall be just, any protest which may be made by any person who may be interested, to any form, rule, or regulation approved as prescribed by the Committee.

D. To grant for good cause, applications for extensions of time in excess of one (1) month, for making any return or payment of tax, and to prescribe rules therefore.

E. To make such investigations as it deems advisable regarding the imposition and administration of the transient occupancy tax and report its findings to the Council. Act in any advisory capacity to the Council on matters pertaining to the transient room tax and enforcement problems and recommend to the Council the adoption, amendment, or repeal of legislation pertaining thereto.

#### **SECTION 18. APPEAL TO TRANSIENT ROOM TAX REVIEW COMMITTEE.**

Any person aggrieved by any decision of the Tax Administrator may appeal to the Transient Room Tax Review Committee by filing a

notice of appeal with the Tax Administrator within ten (10) days of the serving or mailing of the notice of a decision given by the Tax Administrator. The Tax Administrator shall fix a time and place for hearing such appeal as prescribed by the Transient Room Tax Review Committee in its rules and regulations and shall give the appellant ten (10) days written notice of the time and place of hearing.

**SECTION 19. APPEALS TO CITY COUNCIL.** Any person aggrieved by any decision of the Transient Room Tax Review Committee may appeal to the City Council 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 Transient Room Tax Review Committee. The Tax Administrator shall transmit said notice of appeal, together with the filing of said appeal matter to the City Council who shall fix a time and place for hearing such appeal from the decision of the Transient Room 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. Action by the City Council on appeals shall be decided by a majority of the members of the Council present at the meeting where such appeal is considered.

**SECTION 20. 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 City Council 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, sentences, clauses, or phrases be declared unconstitutional (or otherwise invalid).

**SECTION 21. 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 supplement 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 22. VIOLATION AND PENALTIES.**

A. A violation of a provision of this Ordinance shall be punishable by a fine not to exceed Five Hundred and No/100 (\$500.00) Dollars.

B. Every full business day during which a business activity continues to be conducted in violation of this Ordinance shall be considered a separate offense.

C. Offenses under this Section shall be tried in the Municipal Court as a violation and not as a crime. As a violation there is no right to jury trial or court-appointed counsel.

(Section 22, as amended by Ordinance N<sup>o</sup> 3411, passed January 5, 1988.)

**SECTION 23. CONFISCATION.** Any device operated, kept or maintained in violation of this Ordinance shall be confiscated by the City, and upon conviction, shall be disposed of as provided by applicable State law or City ordinance.

(Section 23, as added by Ordinance N<sup>o</sup> 3411, passed January 5, 1988.)

**SECTION 24. ADDITIONAL REMEDIES.**

A. In addition to the penalties provided in this Ordinance, the City may sue in a court of competent jurisdiction to obtain a judgment for a tax, fee or fine due under this Ordinance and enforce collection of the judgment by execution.

B. The City may seek an injunction to prohibit a person from engaging in conduct prohibited by this Ordinance.

C. In an action authorized by this Section, if the City prevails, it shall recover reasonable attorney's fees to be set by the Court in addition to its costs and disbursements. These fees are recoverable at all levels of trial and appeal.

(Section 24, as added by Ordinance N° 3411, passed January 5, 1988.)

**SECTION 25. EFFECTIVE DATE.** This Ordinance shall become effective at 12:01 A.M. on the 1st day of October, 1976, and the first payment of taxes hereunder shall become delinquent unless paid on or prior to April 30, 1976. (Section 26, as amended by Ordinance N° 2853, passed December 7, 1976; and Ordinance N° 3411, passed January 5, 1988.)

**PASSED** and approved August 3, 1976.