

CHAPTER 5.09 - TRANSIENT LODGING TAX

Legislative History: Ord. 1500 (1981); Ord. 1582 (1986); Ord. 1609 (1988); Ord. 1727 (1996)

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5.09.010 Title. There is added to the Hood River Municipal Code Chapter 5.09 entitled "transient lodging tax" and those sections and subsections that are hereafter set forth.

5.09.020 Definitions. Except where the context otherwise requires, the definitions given in this section govern the meanings of the following words and phrases as used in this chapter.

- A. "Accrual Accounting" means a system of accounting in which the Lodging Tax Collector enters the rent due from a transient on their records when the rent is earned, whether or not it is paid.
- B. "Cash Accounting" means a system of accounting in which the Lodging Tax Collector does not enter the rent due from a transient on their records until the rent is paid.
- C. "Chapter" means Chapter 5.09 of the Hood River Municipal Code.
- D. "Council" means the City Council of the City of Hood River, Oregon.
- E. "Lodging Facility" means any structure or any portion of any structure which is occupied or intended or designed for Transient Occupancy for less than a thirty-day period, for dwelling, lodging or sleeping purposes, and includes any hotel, inn, bed and breakfast, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, roominghouse, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home, condominium, cabin, tent camping, or trailer

parks or similar structure, or portions thereof so occupied, provided such Occupancy is for less than a thirty-day period.

F. "Lodging Intermediary" means a Person other than a Lodging Provider that facilitates the rental of lodging and:

1. Charges for Occupancy of the Lodging Facility; or
2. Collects the consideration charged for Occupancy of the lodging; or
3. Receives a fee or commission and requires the Lodging Provider to use a specified third-party entity to collect the consideration charged for Occupancy of the lodging

G. "Lodging Provider" mean the Person who is the proprietor of a Lodging Facility in any capacity. Where the Lodging Provider performs their functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an Lodging Provider for the purposes of this chapter and shall have the same duties and liabilities as their principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

H. "Lodging Tax Collector" means a Lodging Provider or Lodging Intermediary

I. "Occupancy" means the use or possession, or the right to use or possession for lodging or sleeping purposes of any room or rooms in a Lodging Facility, or space in a mobile home or trailer park, or portion thereof.

J. "Person" means any individual, partnership, Firm, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or other legal entity, group, or combination thereof acting as a unit.

K. "Rent" means the consideration charged, whether or not received by the Lodging Tax Collector, for the Occupancy of space in a Lodging Facility valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

L. "Tax Administrator" means the City Recorder or Finance Director of the City of Hood River.

M. "Tax" means either the tax payable by the Transient or the aggregate amount of taxes due from a Lodging Provider during the period for which they are required to report their collections.

N. "Transient" or "Occupant" or "Transient Occupant" means any Person who exercises Occupancy or is entitled to Occupancy in a Lodging Facility for a period of less than thirty consecutive calendar days, counting portions of calendar days as full days. The day a Transient checks out of the Lodging Facility shall not be included in determining the thirty-day period if the Transient is not charged rent for that day by the Lodging Tax Collector. Any such individual so occupying space in a Lodging Facility shall be deemed to be a Transient until the period of twenty-nine days has expired, unless there is an agreement in writing between the Lodging Provider and the occupant providing for a longer period of Occupancy.

5.09.030 Tax Imposed.

- A. For the privilege of transient occupancy in any lodging facility each Transient shall pay a tax in the amount of eight percent of the rent charged, including all charges other than taxes, paid by a transient for Occupancy of the Lodging Facility.
- B. The Tax constitutes a debt owed by the Transient to the City which is extinguished only by payment to the Lodging Tax Collector or to the City. The Transient shall pay the tax to the Lodging Tax Collector of the Lodging Facility at the time the rent is paid.
- C. The Lodging Tax Collector shall enter the Tax on their records when rent is collected if the Lodging Tax Collector keeps their 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 Lodging Tax Collector with each installment. If for any reason the Tax due is not paid to the Lodging Tax Collector of the Lodging Facility, the Tax Administrator may require that such Tax be paid directly to the City.
- D. 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.

5.09.040 Rules for Collection.

- A. The Lodging Provider or Lodging Intermediary that collects the consideration charged for Occupancy of a Lodging Facility, or a Lodging Intermediary as defined in HRMC 5.09.020.9 (F), as applicable, is responsible for collecting any lodging tax and shall file a return and pay the Tax to the Tax Administrator, reporting the amount of the Tax due during the reporting period to which the return relates.
- B. Every Lodging Tax Collector renting a room or portion thereof in this City, the Occupancy of which is not exempted under the terms of this chapter, shall collect a Tax from the occupant. The Tax collected or accrued by the Lodging Tax Collector constitutes a debt owed by the operator to the City.
- C. In all cases of credit or deferred payment of rent, the payment of Tax to the Lodging Tax Collector may be deferred until the rent is paid, and the Lodging Tax Collector shall not be liable for the Tax until credits are paid or deferred payments are made.
- D. Under the supervision of the City Manager, the Tax Administrator shall enforce the provisions of this chapter and shall have the power to adopt rules and regulations not inconsistent with this chapter as may be necessary to aid in the enforcement.
- E. For rent collected on portions of a dollar, the first one cent of Tax shall be collected on five cents through twenty-one cents inclusive; and the second one cent of Tax on twenty-two cents through thirty-eight cents; and the third one cent of Tax on thirty-nine cents through fifty-five cents; the fourth one cent of Tax on fifty-six cents through seventy two cents; the fifth one cent of Tax on seventy-three cents through eighty-nine cents and the sixth one cent of Tax on ninety cents through the next one dollar and four cents of rent.

5.09.050 Lodging Tax Collector's Duties.

Each Lodging Tax Collector 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 Lodging Tax Collector to the Transient. If a single amount is stated on the Operator's records or receipts without a breakout between Rent and Tax, the Tax Administrator will deem the entire amount is Rent and Tax will be calculated on the total amount. No imputation of Tax is permitted. No Lodging Tax Collector shall advertise that the Tax or any part of the Tax will be assumed or absorbed by the Lodging Tax Collector, 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.

5.09.060 Exemptions. No Tax imposed under this chapter shall be imposed upon:

- A. Any occupant for thirty consecutive calendar days or more;
- B. Any Person who pays for lodging on a monthly basis, irrespective of the number of days in such month;
- C. Any occupant whose rent is of a value less than two dollars per day;
- D. Any occupant whose rent is paid for hospital room or to a mental clinic, convalescent home or home for aged people.

5.09.070 Registration of Operator - Form and Contents - Execution - Certification of Authority.

Every Person engaging or about to engage in business as an Lodging Tax Collector of a Lodging Facility in this City shall register with the Tax Administrator on a form provided by the Tax Administrator. Lodging Tax Collectors engaged in business at the time this chapter is adopted must register not later than fifteen calendar days after passage of the ordinance codified in this chapter. Lodging Tax Collectors starting business after this chapter is adopted must register within fifteen 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 the Tax, regardless of registration. The registration shall set forth the name under which a Lodging Tax Collector 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 Lodging Tax Collector. The Tax Administrator shall, within ten 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 for 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 the sale or transfer of the business. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed so as readily to be seen and come to the notice of all Occupants and Persons seeking Occupancy.

The certificate shall, among other things, state the following:

- A. The name of the Lodging Tax Collector;
- B. The address of the Lodging Facility;

C. The date when 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 Transient Lodging Tax ordinance of the City of Hood River by registration with the Tax Administrator for the purpose of collecting from transients the Lodging Tax imposed by the City and remitting the 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 Lodging Facility 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 Hood River. This certificate does not constitute a permit."

5.09.080 Due Date - Returns and Payments.

A. The Tax imposed by this chapter shall be paid by the Transient to the Lodging Tax Collector at the time that rent is paid. All such taxes collected by any Lodging Tax Collector are due and payable to the Tax Administrator on a monthly basis on the fifteenth 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 day of the month following each month of collection by a Lodging Tax Collector, they shall file a return for the preceding month's Tax collections with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe.

C. Returns shall show the amount of Tax collected or otherwise due for the period for which the return is filed, the total rentals upon which Tax was collected or otherwise due, gross receipts of Lodging Tax Collector amounts, and the amount of rents exempt, if any.

D. The Person required to file the return shall deliver the return, together with payment of the amount of the Tax due, to the Tax Administrator at their office, either by personal delivery, by mail, or by electronic tax return filed through reporting and payment portal furnished by the Tax Administrator. If the return is mailed, the postmark shall be considered the date of delivery.

E. The Tax Administrator, if they deem 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 on other than monthly periods.

5.09.090 Penalties and Interest.

A. Original Delinquency. Any Lodging Tax Collector who has not been granted an extension of time for delivery of return and payment of Tax due, and who fails to remit any Tax imposed by this chapter prior to delinquency, shall pay a penalty of ten percent of the amount of the Tax due in addition to the amount of the tax.

B. Continued Delinquency. Any Lodging Tax Collector who has not been granted an extension of time for remittance of the tax due, and who fails to pay any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent, shall pay a second penalty of fifteen percent of the amount of the tax due, plus the amount of the tax and the ten percent penalty first imposed.

C. Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade the provisions of this chapter, a penalty of twenty-five percent of the amount of the Tax shall be added thereto in addition to all other penalties provided for under this chapter.

D. Interest. In addition to the penalties imposed, any Lodging Tax Collector who fails to remit any Tax imposed by this ordinance shall pay interest at the rate of one 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 Lodging Tax Collector who fails to deliver the return and pay the Tax herein levied within the time herein stated shall pay all penalties as provided herein. However, the Lodging Tax Collector may petition the City Council for a waiver and refund of the penalty or any portion thereof, and the City Council may, if a good and sufficient reason is shown, waive and direct a refund of a penalty or any portion thereof. (Ord. 1500 (part), 1981)

5.09.100 Deficiency Determinations - Fraud - Evasion - Operator Delay.

A. Deficiency Determination. If the Tax Administrator determines that a tax return by this chapter is incorrect, the Tax Administrator may compute and determine the amount required to be paid upon the basis of the facts contained in the return, or upon the basis of any relevant and credible information. One or more deficiency determinations may be made of the amount due for one or more periods, and the amount so determined shall be due and payable immediately upon service of notice as herein provided, after which the amount due is delinquent. Penalties on deficiencies shall be applied as provided in HRMC 5.09.090.

1. In making a deficiency determination, the Tax Administrator may offset any overpayments that may have been made, against any underpayment for a subsequent period(s), or against penalties, and interest, on the underpayments. The interest on under payments shall be computed in the manner set forth in HRMC 5.09.090.

2. The Tax Administrator shall give to the operator or occupant a written notice of the deficiency. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the Lodging Tax Collector at their address as it appears in the records of the Tax Administrator. In case of service by mail of 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, intent to evade this chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the monthly period for which the deficiency is proposed to be determined, or within three years after the return is filed, whichever period expires last.

4. Any deficiency determination shall become due and payable immediately upon service of notice and shall become final within ten days after the Tax Administrator

has given notice thereof; provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

B. Fraud; Refusal to Collect; Evasion. If any Lodging Tax Collector fails or refuses to collect the Tax or to make, within the time provided in this chapter, any report or remittance of 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 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 Lodging Tax Collector who has failed or refused to collect or report and remit the Tax, the Tax Administrator shall proceed to determine and assess against such Lodging Tax Collector the Tax, interest and penalties provided for by this chapter. In case such determination is made, the Tax Administrator shall give notice of the amount due. The determination and notice shall be made and mailed within three years after discovery by the Tax Administrator of any fraud, intent to evade or failure or refusal to collect the tax, or failure to file a required return. Any determination shall become due and payable immediately upon delivery of notice and shall become final within ten days after the Tax Administrator has given notice thereof. However, the Lodging Tax Collector may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

C. Lodging Tax Collector Delay. If the Tax Administrator determines 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, the Tax Administrator shall determine of the Tax amount required to be collected. The amount so determined shall be immediately due and payable, and the Lodging Tax Collector shall immediately pay the determined amount to the Tax Administrator after service of notice thereof. The Lodging Tax Collector may, however, petition, after payment is made, for redemption and refund of the determination, if the petition is filed within ten days from the date of service of notice by the Tax Administrator.

5.09.110 Redeterminations.

A. Any Person against whom a determination is made under HRMC 5.09.100 or any Person directly interested in the determination may petition for a redetermination and redemption and refund within the time required in HRMC 5.09.100. If a petition for redetermination and refund is not filed within the time required in HRMC 5.09.100, 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 so requested provide an oral hearing and ten days notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.

C. The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing; and if an increase is determined, such increase shall be payable immediately after the hearing.

D. The order or decision of the Tax Administrator upon a petition for redetermination and redemption and refund becomes final ten days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the City Council within the ten 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 Lodging Tax Collector has remit the disputed Tax amount.

5.09.120 Security for Collection of Tax.

A. Whenever the Tax Administrator deems it necessary to insure compliance with this chapter, the City may require any Lodging Tax Collector subject hereto to deposit such security in the form of cash, bond or other security as the Tax Administrator determines. The amount of the security shall be set by the Tax Administrator but shall not be greater than twice the operator's estimated average monthly liability, determined in such manner as the Tax Administrator deems proper, or five thousand dollars, whichever is less. 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 years after any Tax or any amount of Tax required to be collected becomes due and payable, or at any time within three years after any determination becomes final, the Tax Administrator may bring an action in State Circuit Court for Hood River County or Municipal Court to collect the amount delinquent, together with penalties and interest.

5.09.130 Lien. The Tax imposed by this chapter, together with the interest and penalties herein provided and the filing fees paid to the Department of Records and Assessments of Hood River County, Oregon, and the advertising costs which may be incurred when the same becomes delinquent as set forth in this chapter, shall be and, until paid, remain a lien from the date of its recording with the Hood River County Department of Records and Assessments, and be superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator within Hood River and may be foreclosed on and sold as may be necessary to discharge said lien, if the lien has been recorded. Notice of lien may be issued by the Tax Administrator when the Lodging Tax Collector is in default and the payment of said Tax, interest and penalty, and shall be recorded with the Hood River County Department of Records and Assessments, and a copy sent to the delinquent operator. The personal property subject to such a lien seized by any authorized employee or agent of the City of Hood River may be sold to the highest bidder at public auction after ten days' notice thereof published once in a newspaper in the City. The City of Hood River may bid on and purchase any such personal property foreclosed upon and sold. Any such lien as shown on the records of Hood River County shall, upon payment of all Taxes, penalties and interest for which the lien has been imposed, be released by the Tax Administrator when the full amount determined to be due has been paid to the City. The Lodging Tax Collector or Person making such payment shall receive a receipt therefor stating that the full amount of Taxes, penalties and interest have been paid, and that the lien is thereby released and the record of lien satisfied.

5.09.140 Refunds. Whenever the amount of any Tax, penalty or interest imposed under this chapter has been paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator, it may be refunded, provided a verified claim in writing therefor stating the specific reason upon which the claim is founded, is filed with the Tax Administrator within three years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the Lodging Tax Collector from whom it was collected or by whom paid, and the balance may be refunded to the Lodging Tax Collector, Transient, or their personal representatives or assigns.

5.09.150 Collection fee. Every Lodging Tax Collector liable for the collection and remittance of the Tax imposed by this chapter may withhold five percent of the net Tax due to cover the expense in the collection and remittance of the Tax.

5.09.160 Administration.

A. Tourism Promotion Fund. A special fund called "the tourism promotion fund" shall be established for the purpose of promoting tourism within the City of Hood River. The Tax Administrator shall deposit 25 percent of all money collected under the provisions of this chapter to the credit of the tourism promotion fund. All moneys paid to this account shall be used for the promotion of tourism. The City is authorized to enter into a contract with Hood River County Chamber of Commerce or to otherwise act as the Council may see fit to carry out this purpose.

B. Records Required from Lodging Tax Collectors, etc.; Form. Every Lodging Tax Collector shall keep guest records of room or space rentals, and accounting books and records of the room or space rentals. All these records shall be retained by the operator for a period of three years and six months after they come into being.

C. Examination of Records; Investigations. The Tax Administrator may examine, during normal business hours, the books, papers and records relating to room or space rentals of any Lodging Tax Collector after notification to the Lodging Tax Collector liable for the tax, and may investigate the business of the Lodging Tax Collector to verify the accuracy of any return made, or if no return is made by the Lodging Tax Collector, to ascertain and determine the amount required to be paid.

D. Confidential Character of Information Obtained; Disclosure Unlawful. Neither the Tax Administrator nor any Person having an administrative or clerical duty under the provisions of this chapter shall 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 of Hood River official, employee or agent for collection of taxes for the sole purpose of administering 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 their receivers, trustees, executors, administrators, assigns and guarantors, if directly interested, or information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties, provided that the City Attorney approves each such disclosure. 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 a transient occupancy registration certificate has been issued;
4. The disclosure of general statistics regarding taxes collected or business done in the City.

5.09.170 Appeals to City Council. Any Person aggrieved by any decision of the Tax Administrator may appeal to the City Council by filing a notice of appeal with the Tax Administrator within ten days of the delivery of the Tax Administrator's decision. The Tax Administrator shall transmit the notice of appeal, together with the file of the matter, to the Council which shall fix a time and place for the appeal hearing. The Council shall give the appellant not less than ten days written notice of the time and place of the hearing.

5.09.180 Severability. If any section, subsection, paragraph, sentence, clause or phrase of this chapter, 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 chapter or any part thereof. The Council 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 paragraphs be declared unconstitutional (or otherwise invalid). (Ord. 1500, 1981)

5.09.190 Violations. It is unlawful for any Lodging Tax Collector or other Person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Tax Administrator or to render a false or fraudulent return, or for any Person to knowingly aid in any such act. 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 under this chapter. Any Person who violates any requirement or prohibition of this chapter shall be guilty of a civil infraction and subject to prosecution under HRMC Chapter 1.10 (Civil Enforcement) or any other civil judicial enforcement remedy in any court of competent jurisdiction

5.09.200 Additional Penalties. Any Person willfully violating any of the provisions of this chapter shall be guilty of an offense, and shall be subject to punishment as prescribed in Chapter 1.10 of this code.