

*Classified
County adopted
Transient room tax*

ORDINANCE NO. 88-55-2

AN ORDINANCE PROVIDING FOR A TRANSIENT ROOM TAX AND PROVIDING ADMINISTRATIVE PROCEDURES FOR COLLECTING THE TAX

The City of John Day ordains as follows:

Section 1. **DEFINITIONS.** For purposes of this ordinance, the following shall mean:

ACCRUAL ACCOUNTING. A system of accounting in which the operator enters the rent due from a transient into the record when the tax is earned, whether or not it is paid.

CASH ACCOUNTING. A system of accounting in which the operator does not enter the rent due from a transient into the record until the rent is paid.

HOTEL. A part of a structure that is occupied or designed for occupancy by transients for lodging and sleeping, including a hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, or other similar structure, or a recreational vehicle occupying space in an RV or mobile home park.

OCCUPANCY. Use or possession of, or the right to use or possess a room in a hotel for lodging or sleeping.

OPERATOR. A person who is the proprietor of a hotel in any capacity. When an operator's functions are performed through a managing agent of a type other than an employee, the managing agent shall also be considered an operator. For purposes of this ordinance, compliance by either the operator or the managing agent shall be considered compliance by both.

PERSON. An 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 another group or combination acting as a unit.

RENT. The gross rent, exclusive of other services.

TAX. Either the tax payable by the transient or the aggregate amount of the taxes due from an operator during the period for which the operator is required to report collections.

TAX ADMINISTRATOR. The City Recorder of the City of John Day, Oregon.

TRANSIENT. An individual who occupies or is entitled to occupy space in a hotel for a period of fifteen (15) consecutive days or less, counting portions of days as full days. The day a transient checks out of a hotel shall not be included in determining the 15-day period if the transient is not charged rent for that day. A person occupying space in a hotel shall be considered a transient until a period of fifteen (15) days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy more than fifteen (15) consecutive days. A person who pays for lodging on a monthly basis, regardless of the number of days in the month, shall not be considered a transient.

TRANSIENT ROOM TAX. A four (4) member committee appointed by the City Council, which shall be responsible for reviewing and recommending the expenditures of funds derived from the tax, and shall work with the tax administrator in matters of extensions, fraud, or intent to evade the tax. Duties of the Transient Room Tax Review Committee are discussed in detail in Section 23.

Section 2. TAX IMPOSED. A transient shall pay a tax of one (\$1.00) dollar per room per day for the privilege of occupancy in a hotel in the City of John Day, fifty (\$.50) cents per space per day for the privilege of occupancy in a recreational vehicle park. Hereafter, unless otherwise specified, references to "hotel" and "rooms" shall be deemed to include "recreational vehicle parks" and "spaces" respectively. The tax constitutes a debt owed by the transient to the City and the debt is extinguished only when the tax is remitted by the operator to the City. The transient shall pay the tax to the operator at the time the rent is paid. The operator shall enter the tax into the record when rent is collected, if the operator keeps records on the cash accounting basis, and when earned if the operator keeps records on the accrual accounting basis. If the rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. In all cases, rent paid or charged for occupancy shall exclude the sale of goods, services and commodities.

Section 3. RULES FOR COLLECTION OF TAX BY OPERATOR.

(1) Every operator renting space for lodging or sleeping shall collect a tax from the occupant. The tax collected or accrued constitutes a debt owed by the operator to the City.

(2) In 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. Adjustments may be made for uncollectible accounts.

(3) The tax administrator shall enforce this ordinance and may adopt rules and regulations necessary for enforcement.

Section 4. OPERATOR'S DUTIES. An operator shall collect the tax when the rent is collected from the transient. The amount of the tax shall be stated separately in the operator's records and on the receipt given by the operator. An operator shall not

advertise that the tax will not be added to the rent, that a portion of it will be assumed or absorbed by the operator, or that a portion will be refunded, except in the manner provided by this ordinance.

Section 5. EXEMPTIONS. The tax shall not be imposed on:

- (1) An occupant staying for more than fifteen (15) consecutive days.
- (2) A room, the rent for which is less than \$10.00 per day, with the exception of spaces in a recreational vehicle park.
- (3) A person who rents a private home, vacation cabin, or similar facility from an owner who personally rents the facility incidentally to the owner's personal use.

Section 6. OPERATOR'S REGISTRATION FORM.

- (1) An operator of a hotel shall register with the tax administrator, on a form provided by the administrator, within fifteen (15) days after beginning business or within thirty (30) calendar days after passage of this ordinance.
- (2) The registration shall include:
 - (a) The name under which the operator transacts or intends to transact business.
 - (b) The location of the hotel.
 - (c) Any other information the Transient Room Tax Committee may require to facilitate collection of the tax.
 - (d) The signature of the operator.
- (3) Failure to register does not relieve the operator from collecting the tax or the occupant from paying the tax.

Section 7. CERTIFICATE OF AUTHORITY.

- (1) The tax administrator shall issue a Certificate of Authority to the registrant within ten (10) days of registration.
- (2) Certificates are nonassignable and nontransferable, and shall be surrendered immediately to the tax administrator on cessation of business at the location named or when the business is sold or transferred. However, in the event the business is transferred to a partnership or corporation wherein the proprietor still retains a majority interest, then the operator is only required to register the new name and other information with the tax administrator.
- (3) Each certificate shall state:
 - (a) The name of the operator.
 - (b) The address of the hotel.
 - (c) The date when certificate was issued.
 - (d) "This Transient Occupancy Registration Certificate signifies that the person named on the certificate has fulfilled the requirements of the Transient Room Tax Ordinance of the City of John Day by registering with the tax administrator for purposes of collecting the room tax imposed by the City and remitting the tax to the tax administrator."

Section 8. COLLECTIONS, RETURNS, AND PAYMENTS.

- (1) The taxes collected by an operator are payable to the

tax administrator on a quarterly basis on the fifteenth (15th) day of the following month for the preceding three (3) months, and are delinquent on the last day of the month in which they are due. The initial return may be for less than the three (3) months preceding the due date. The quarters are:

1st QUARTER: January, February, March	Tax Due: April 15
2nd QUARTER: April, May, June	Tax Due: July 15
3rd QUARTER: July, August, September	Tax Due: October 15
4th QUARTER: October, November, December	Tax Due: January 15

(2) A return showing tax collections for the preceding quarter shall be filed with the administrator in a form prescribed by the tax administrator before the sixteenth (16th) day of the month following each collection quarter.

(3) The operator may withhold five (5%) percent of the tax to cover the expense of collecting and remitting the tax.

(4) Returns shall show the amount of tax collected or due for the related period. The tax administrator may require returns to show the total rental on which the tax was collected or is due, a detailed explanation of any discrepancy between the amounts and the amount of rentals exempt.

(5) The operator shall deliver the return and the tax due to the tax administrator's office. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(6) For good cause, the tax administrator may extend the time for filing a return or paying the tax for not more than one month without penalty. Further extension may only be granted by the Transient Room Tax Review Committee. An operator to whom a further extension is granted shall pay interest at the rate of 1.5 percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of the penalties prescribed in Section 9.

(7) The tax administrator may require returns and payment of taxes for other than quarterly periods in individual cases to ensure payment or to facilitate collection by the City, upon good cause and approval by the Transient Room Tax Review Committee.

(8) The tax returns shall remain confidential and not open to the public.

Section 9. DELINQUENCY PENALTIES.

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

(2) An operator who has not been granted an extension of time for remittance of the tax due and who fails to pay a delinquent remittance before the expiration of thirty-one (31) days following the date on which the remittance became delinquent shall pay a second delinquency penalty of fifteen (15%) percent of the tax due, the amount of the tax, and the ten (10%) percent

penalty first imposed.

(3) If the tax administrator and the Transient Room Tax Review Committee determine that nonpayment of remittance is due to fraud or intent to evade the tax, a penalty of twenty-five (25%) percent of the tax shall be added to the penalties stated in subsections (1) and (2).

(4) 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 1.5 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.

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

(6) An operator who fails to remit the tax within the required time may petition the Transient Room Tax Review Committee for waiver and refund of the penalty or a portion of it. The Transient Room Tax Review Committee may, if good cause is shown, direct a refund of the penalty or a portion of it.

Section 10. DEFICIENCY DETERMINATIONS.

(1) The tax administrator shall review returns filed in accordance with this ordinance. In doing so, he/she shall have the power to determine if the returns are incorrect and the amount required to be paid on the basis of the facts contained in the return or on the basis of any other information.

(2) A deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately on service of notice after which the determined amount is delinquent. Penalties on deficiencies are as prescribed in Section 9.

(3) In making a determination, the tax administrator may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as prescribed in Section 9.

Section 11. NOTICE OF DETERMINATION.

(1) The tax administrator shall give the operator written notice of the determination either personally or by mail. If the notice is mailed, it should be done by certified mail, return receipt requested and addressed to the operator at the address that appears on the records of the tax administrator, and service is complete when the notice is received by the operator.

(2) Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice given within one (1) year after the return has been filed, whichever is later.

Section 12. REDETERMINATION PETITION. A determination becomes payable immediately upon receipt of notice and becomes final within ten (10) days after the operator has received notice. However, the operator may petition for redetermination and refund by filing a petition before the determination becomes final as set forth herein.

Section 13. REDETERMINATION.

(1) An operator against whom a determination is made under Section 10 may petition the Transient Room Tax Review Committee for a redetermination, redemption, and refund within the time required in Section 12 on forms provided by the tax administrator. If a petition for redetermination and refund is not filed within the time required, the determination is final on expiration of the allowable time.

(2) If a petition for redetermination and refund is filed within the allowable period, the Committee shall reconsider the determination and, if the operator requested a hearing in the petition, shall grant the hearing and give the operator fifteen (15) days notice of the time and place of the hearing. The Transient Room Tax Review Committee may continue the hearing if necessary.

(3) The Committee may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing.

(4) The decision of the Committee on a petition for redetermination becomes final twenty (20) days after service of notice on the petitioner, unless appeal of the decision is filed with the City Council within twenty (20) days after notice has been served as prescribed in Section 14.

Section 14. APPEALS TO THE COUNCIL. A person aggrieved by a decision of the Committee may appeal to the City Council in the form prescribed by the tax administrator within twenty (20) days of service, or mailing by certified or registered mail, a copy of the decision. The City Council shall consider the matter at its next regular meeting but may adjourn the matter for a maximum period of one (1) month from the date of that meeting in order to fully investigate the facts. They shall render their decision in writing, and no other appeals shall be heard by the City Council. If delinquent tax and all penalties are not paid within thirty (30) days after the decision is made, collection procedures shall begin. The lien mentioned herein becomes effective upon the initial determination

Section 15. FRAUD; REFUSAL TO COLLECT; EVASION.

(1) If an operator fails or refuses to collect the tax, make the report, or remit the tax, or makes a fraudulent return, or otherwise wilfully attempts to evade the tax payment, the tax administrator shall obtain facts and information on which to base an estimate of the tax due. After determining the tax due and the interest and penalties, the tax administrator shall give notice to the operator of the total amount due.

(2) Determination and notice shall be made and delivered within one (1) year of the discovery of fraud, attempt to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately on receipt of notice by the operator and becomes final ten (10) days after the tax administrator has given notice.

(3) The operator may petition for redemption and refund if

the petition is filed before the determination becomes final.

Section 16. SECURITY FOR COLLECTION OF TAX.

(1) Upon a written determination showing good cause, the City Council, upon recommendation of the Tax Review Committee, may require an operator to deposit security in the form of cash, bond, or other security. The amount of security shall be fixed by the tax administrator and shall not be greater than twice the operator's estimated quarterly liability for the period in which the operator files returns or \$5,000.00, whichever amount is less.

(2) Within one (1) year after the tax becomes payable or within one (1) year after a determination becomes final, the tax administrator may bring an action in the name of the City in the courts of this state, another state, or the United States to collect the amount delinquent and penalties and interest.

Section 17. LIENS.

(1) The tax, interest, penalty and filing fees paid to the tax administrator and any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the County Clerk, until the tax is paid. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's hotel. The lien may be foreclosed and the necessary property may be sold to discharge the lien.

(2) Notice of the lien shall be issued by the tax administrator when the operator has defaulted in payment of the tax, interest and penalty. A copy of the notice shall be sent by certified mail to the operator.

(3) Personal property subject to the lien may be foreclosed in the same manner as a nonpossessory chattel lien as set forth in ORS Chapter 87.

(4) A lien for the tax, interest, and penalty shall be released by the tax administrator when the full amount has been paid to the City. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest, and penalty has been paid, that the lien is released, and that the record of the lien is satisfied.

Section 18. REFUNDS BY CITY TO OPERATOR. When the tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator, it may be refunded if a written verified claim is filed within one (1) year from the date of payment. The claim shall be submitted on forms provided by the tax administrator. If the claim is approved, the excess amount may be refunded to the operator or it may be credited to an amount payable by the operator and any balance refunded.

Section 19. REFUNDS BY OPERATOR TO TRANSIENT. If the tax has been collected by the operator and it is later determined that the transient occupied the hotel for a period greater than fifteen (15) days without interruption, the operator shall refund the tax to the transient. The operator shall account for the

collection and refund to the tax administrator. If the operator has remitted the tax prior to refund or credit to the transient, the operator shall be entitled to a corresponding refund.

Section 20. RECORDS REQUIRED FROM OPERATORS. Every operator shall keep guest records, and records of room rentals for a period of one (1) year and six (6) months.

Section 21. EXAMINATION OF RECORDS. During normal business hours and after 72-hour notice to the operator, the tax administrator may examine books, papers, and accounting records related to room rentals to verify the accuracy of a return or, if no return is made, to determine the amount to be paid. In the event the operator refuses to turn over such records, then the tax administrator shall be entitled to injunctive relief.

Section 22. CONFIDENTIALITY. The tax administrator or a person having an administrative or clerical duty under the provision of this ordinance shall not make known in any manner the business affairs, operations, or information obtained by an investigation, or records and equipment of a person required to file a return or pay a transient occupancy tax or a person visited or examined in the discharge of official duty; or the amount or source of income, profits, losses or expenditures contained in a statement or application; or permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

(1) Disclosure to or examination of records and equipment by a City official, employee, or agent for collecting taxes for the purpose of administering or enforcing the provisions or collecting the taxes imposed by this ordinance.

(2) Disclosure, after filing a written request to the taxpayer, receiver, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected, or interest and penalties. However, the City attorney shall approve each disclosure, and the tax administrator may refuse to make a disclosure referred to in this subsection when, in the tax administrator's opinion, the public interest would suffer.

(3) Disclosure of names and addresses of persons making returns.

(4) Disclosure of general statistics regarding taxes collected or business done in the City.

Section 23. TRANSIENT ROOM TAX REVIEW COMMITTEE.

(1) There shall be appointed by the City Council a seven member committee known as the Transient Room Tax Review Committee. Of this seven member committee, at least two shall be operators as defined in Section 1 above and at least one shall be a member of the Grant County Chamber of Commerce Tourism and Economic Development Committee. The Council will initially appoint four members of the Committee to serve two years and three members to serve one year. Thereafter members will serve

for a term of two years, or until a resignation occurs, or until there is a removal for good cause by the Council.

(2) The Committee shall appoint one member to act as Chairman, and one member to serve as Secretary, who shall keep accurate minutes of all discussions and decisions made.

(3) Responsibilities of the Committee are as follows:

(a) To meet at least quarterly to review and discuss expenditures of funds derived from the Transient Room Tax.

(b) Review applications and make recommendations to the City Council regarding expenditures of the Transient Room Tax.

(c) To develop criteria for grant applications and approval of such applications.

(4) Additionally, the Committee shall consult with the tax administrator in matters of extensions as defined in Section 8, and determinations of fraud or intent to evade the tax or petitions for refund or waiver of penalties as defined in Section 9.

(5) In the event that the Committee feels that the funds are not being used to achieve the objectives of Section 24 hereof by any recipient of funds, they shall file a written report detailing the nature of their concerns with the City Council, and serve a written copy thereof on the alleged recipient. The recipient shall be entitled to present its written response to said report within twenty (20) days of receipt of the Committee report. Any determination made by the City Council following consideration of the Committee report and responsive recipient reports may be used in determining future grants of Transient Room Tax Funds.

Section 24. DISPOSITION AND USE OF TRANSIENT ROOM TAX REVENUES.

(1) The purpose for this tax is to raise revenues to be used to promote tourism generally in the City of John Day and Grant County, Oregon.

(2) All Transient Room Tax revenues collected by the City of John Day shall be placed in a separate City account to be entitled Transient Room Tax Fund and disbursed by the City Council in accordance with Section 23 above.

(3) The City Council may require, as a condition for any grant, that the funds so granted be placed in a separate identifiable account with an insured financial institution and that the monies therefrom be used strictly for the purposes stated in Section 24(1) above, and that monies placed in said account not be co-mingled with any other funds of that recipient and that the recipients agree to provide an accounting of said grant funds upon 72-hour written notice from the City Council.

(4) Operators shall withhold five (5%) percent of the tax collected, as described in Section 8.

(5) The tax administrator's office shall be allocated five (5%) percent of the tax collected for administration of the ordinance.

Section 25. REVIEW. This ordinance shall be reviewed in

two (2) years after its adoption by a special committee appointed by the City Council. This committee shall include, but is not limited to, representatives from the Grant County Chamber of Commerce, operators as defined in Section 1, and the City of John Day. This ordinance shall terminate and be of no further force and effect upon the effective date of a similar transient room tax ordinance passed by Grant County, Oregon.

Section 26. **SEVERABILITY.** The sections of this ordinance are severable. The invalidity of a section shall not affect the validity of the remaining section.

Section 27. **PENALTIES.** Failure to register pursuant to the ordinance is punishable by a fine not to exceed \$100.00 per day for each continuing day of violation, in addition to the penalties set forth herein.

Section 28. **EFFECTIVE DATE.** This ordinance shall become effective thirty (30) days after its approval.

PASSED by the City Council of the City of John Day, Oregon, this 29th day of June, 1988.

ATTEST: *Carol Berry*
City Recorder

30th APPROVED by the Mayor of the City of John Day, Oregon, this day of June, 1988.

Ralph C. Hunter
Mayor