

ORDINANCE NO. 2163

AN ORDINANCE AMENDING BEND CODE TITLE XII BY ADDING A NEW CHAPTER 12.05 ROOM TAX AND AMENDING BEND CODE TITLE VII DELETING THE CURRENT ROOM TAX PROVISIONS IN BEND CODE SECTIONS 7.005 THROUGH 7.044

Findings

- A. The City of Bend is in the process of a thorough revision of the Bend Code.
- B. City staff has reviewed the current provisions relating to the City's Room Tax in Bend Code Sections 7.005 through 7.044 and proposes amendments, including moving the provisions to a new Chapter 12.05.
- C. The code provisions are intended to provide clarity for City staff and for those who administer the room tax, but not to make substantive changes.

Based on these findings

THE CITY OF BEND ORDAINS AS FOLLOWS:

- Section 1. Bend Code Chapter XII is amended by adding a new Chapter 12.05 Room tax to read as shown in Exhibit A.
- Section 2. Bend Code Chapter VII is amended by deleting Sections 7.005 through 7.044.
- Section 3. The code amendments made by this ordinance supersede any inconsistent material in any previous ordinance or other enactment of the City.

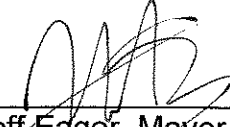
Read for the first time on April 20, 2011.

Read for the second time on May 4, 2011.

Adopted by roll call vote on May 4, 2011.

YES: 6

NO: 1




Jeff Eager, Mayor

ATTEST:



Patricia Stell, City of Bend Recorder

Approved as to form:



Mary Winters, City Attorney

EXHIBIT A

CHAPTER 12.05 ROOM TAX

12.05.010 Definitions

The following definitions apply in this Chapter.

- 1) "Occupancy" means the right to the use or possession of any space in temporary lodging for dwelling, lodging or sleeping purposes for less than 30 days.
- 2) "Occupant" means the person with the right to occupancy or who is responsible for payment for the occupancy.
- 3) "Operator" means any person who owns or operates temporary lodging. Compliance with the provisions of this code by either the owner or an agent shall be considered to be compliance by both.
- 4) "Rent" means the consideration paid or payable by an occupant for the occupancy of space in temporary lodging valued in money, goods, labor, credits, property, or other consideration. If a separate fee is charged for services, goods or commodities and the fee is optional, that fee is not included in rent. A guaranteed no-show charge based on the rate charged for the room is considered rent, but a cancellation fee is not rent. Examples of optional services may include, but are not limited to: pay-per-view movies, room service, long-distance telephone calls, use of an honor bar or parking. Optional charges require express permission of the occupant to incur the cost. If a group of rooms is booked or arranged at a negotiated rate, an additional charge is optional if the person acting for the group can avoid the charge for the group. Rent includes all fees and assessments based on the number of occupants, human and pets (including but not limited to cleaning, pet, smoking or recreational fees) for which payment is not optional to the occupant. If the operator offers a lodging package that includes something that is not associated with the actual lodging or is provided by a third party, the rent is the price of the package less the cost of the non-lodging portion of the package. If the operator charges room tax based on the total package price, the rent is the full amount of the package.

Because neither the operator nor the City can keep track of every transaction, whether particular charges are part of rent is based on the operator's standard practices. When an operator's practices would result in a specific fee being optional for some and not others, it will be treated as not optional for all.

Examples:

- (A) An operator charges \$100 per night for a room. Occupants are provided a breakfast that is included in the per night fee. Occupants may also have lunch or dinner at the property and may charge the cost of these meals to their room. The rent is \$100 per night because the breakfast is included in the room fee. The rent does not include any charges for optional meals purchased by occupants.
- (B) An operator charges \$90 for a room and \$10 for parking. If occupants are made aware of the parking charge and have the opportunity to avoid it before incurring the charge, the rent is \$90. If they are not made aware of the charge for parking and not given the opportunity to avoid the charge, the rent is \$100.
- (C)
 - (i) An operator charges \$100 for a room, but adds a mandatory 3% "resort fee" for use of hotel amenities. The rent is \$103 because the resort fee charge is mandatory, not optional.
 - (ii) An operator adds a facilities charge to all bills but will drop the facilities charge if an occasional occupant objects on the basis that the occupant did not use the "facilities." The facilities charge is part of the rent because it is imposed on occupants and is imposed on many who did not give permission to incur the cost.
- (D) A third party tour company offers a package for \$130 and pays the operator the \$100 for the room. The rent is \$100.
- (E) An operator charges \$90 for a smoking room and \$80 for a non-smoking room, and charges a \$100 penalty for smoking in a non-smoking room. The rent for the smoking room is \$90, but the \$100 penalty imposed on improper use of the non-smoking room is not part of the rent.
- (F) An operator charges a pet fee of \$10 per night for all pets. The pet fee is part of the rent because it is based on occupancy of the room. If the operator charges a refundable pet deposit of \$100, the deposit is not part of the rent, even if not refunded due to damages to the room.
- (G) A group reserves 50 rooms at \$80 per room and also orders a daily newspaper at an additional \$1 per room. The rent for each room is \$80 per night because the person acting for the group could have avoided the \$1 newspaper charge.

(6) "Tax Administrator" means the Finance Director of the City of Bend.

(7) "Room Tax" means the tax payable by the occupant under this Chapter.

(8) "Temporary lodging" means:

- (A) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy;
- (B) Spaces used for overnight parking of recreational vehicles or placement of tents during periods of human occupancy; or
- (C) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

12.05.015 Room Tax Imposed.

- (1) Each occupant shall pay a tax in the amount of 9% of the rent. The occupant shall pay the room tax with the rent payment. Tax amounts shall be rounded down to the nearest cent. The operator shall maintain records of all rent charged and room tax payments received. The amount of the room tax shall be stated separately from rent or any other charges on all receipts or invoices issued by the Operator. If rent is paid in installments a proportionate share of the room tax shall be paid by the occupant to the operator with each installment unless the operator pays the entire amount with the first payment. If payment is through a third party, such as a wholesaler or tour operator, the third party must collect the tax based on the rent paid by the operator and forward the full amount of the rent collected to the operator.
- (2) Bills and invoices provided to Occupants shall list the City of Bend Room Tax separately and must accurately state the amount of room tax. All amounts listed as room tax on invoices or bills must be reported as room tax and, after collection, must be turned over to the City, less the 5% administrative charge.

12.05.020 Collection of Room Tax by Operator

Every operator shall collect the Room Tax at the time rent is paid, unless an exemption under Section 12.05.025 applies. If payment is by credit card, payment is made at the time credit card information is provided, not when the operator ultimately received credit for the transaction. The operator holds the room tax payment in trust for the City until the taxes are remitted to the City as provided in Section 12.05.035. An operator may co-mingle the tax proceeds with funds of the operator, but the operator is not the owner of room tax proceeds, except that, when a return is filed, the operator becomes the owner of the administrative fee authorized to be retained under Section 12.05.035. Operators may choose to file returns and remit payment based on amounts accrued but not yet collected, and if they do so, will be entitled to a credit for any uncollectibles. The operator is liable for any tax that should have been collected from the occupant, except in cases of non-payment of rent by the occupant and except in cases where a third party failed to pass on to the operator the full amount of room tax, in which case the

operator is responsible to pass on only the tax based on the amount received as rent by the operator..

12.05.025 **Exemptions.** No room tax shall be imposed upon:

- (1) The United States or an employee of the federal government while on federal business;
- (2) A dwelling unit in a hospital, health care facility, long term care facility or any other residential facility that is licensed, registered or certified by the Department of Human Services;
- (3) A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;
- (4) A dwelling unit that is available for public lodging for fewer than 30 days per year (e.g., a hunting lodge that is only open one month during the year);
- (5) A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;
- (6) A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility; or
- (7) A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:
 - (A) All dwelling units occupied are within the same facility; and
 - (B) The person paying consideration for the temporary lodging is the same person throughout the consecutive period.

12.05.030 **Registration of Operator; Form and Contents; Execution; Certification of Authority.**

Every person engaging or about to engage in business as an operator shall provide a completed registration form to the Tax Administrator within 15 calendar days after commencing business. The registration form shall require the operator to provide the name of the business, the location of the lodging facility and any separate business address, and other information as the Tax Administrator may require. The registration form shall be signed by the operator. The Tax Administrator shall, within 15 days after registration, issue without charge a certificate of authority to the operator to collect the tax. The obligation to collect the tax is imposed once an operator rents a room, even if

the registration form has not been filed or if the certificate has not been issued.

Certificates shall be non-assignable and nontransferable, and shall be surrendered to the Tax Administrator when the business ceases to operate at the specified location or if the business is sold or transferred. Each certificate shall be prominently displayed at the business location and include:

- (1) The name of the operator;
- (2) The address of the lodging facility;
- (3) The date the certificate was issued;
- (4) The certificate number as assigned by the Tax Administrator.

12.05.035 Remittance and Returns

- (1) Operators shall submit a completed tax return form to the Tax Administrator for each calendar month by the 15th of the following month, accompanied by remittance of all tax collected, less a 5% administration fee. If the estimated monthly amount of average tax due is \$100.00 or less, the operator has the option of filing the return and remitting the tax on a quarterly basis on the 15th day of the month following the end of each calendar quarter (April 15th, July 15th, October 15th, and January 15th). Operators shall also submit any tax that was due but not collected if the rent on which the tax is based was paid, unless the rent and tax was paid to a third party and not passed on in full to the operator, in which case the operator shall pay at least the tax based on the amount of rent received by the operator.
- (2) Remittances are delinquent if not made by the 25th day of the month in which they are due.
- (3) Returns shall show the gross rents collected, exempt rents, taxable rents, the total amount of room tax collected and the amount of the administrative fee retained by the operator. Returns shall also show the exempt rents and the basis for exemptions.
- (4) Tax returns and remittances may be submitted in person or by mail. If the return and remittance is mailed, the postmark shall be considered the date of delivery.
- (5) For good cause, the Tax Administrator may extend the time for making any return or remittance of room tax by up to 30 days. No further extension shall be granted, except by the City Council. Any operator to whom an extension is granted shall pay interest at the rate of 1% per month on the amount of the remittance due without proration for a fraction of a month. If a return is not filed, and the remittance and interest due is not paid by the end of the extension

granted, then the interest shall become a part of the room tax for computation of penalties.

- (6) The Tax Administrator, in order to insure remittance of tax collected or facilitate collection may in individual cases require returns and remittances more frequently than monthly periods.

12.05.040 Penalties and Interest.

- (1) Original Delinquency Any operator who fails to remit room tax collected by the operator other than the 5% administrative fee prior to the date the remittance becomes delinquent shall pay a penalty of 10% of the amount due.
- (2) Continued Delinquency Any operator who failed to remit any delinquent amounts within thirty days after the date the remittance first became delinquent shall pay a second delinquency penalty of 15% of the amount due. The second delinquency penalty does not apply if the operator has, in good faith, filed a return accompanied by remittance of the amount calculated on the return, and pays the delinquent amount within 30 days after notification of the error. For example, if a good faith error is discovered during an audit three years later and the operator pays within 30 days of notification of the audit result, the second delinquency penalty will not be charged.
- (3) Fraud If the Tax Administrator determines that failure to make any remittance is intended to evade the provisions of this Chapter, a penalty of 25% of the amount due is imposed in addition to all other penalties and remittance obligations.
- (4) Interest In addition to the penalties imposed, any operator who fails to remit any tax by the delinquency date shall pay interest at the rate of 1% per month or fraction of a month without proration for portions of a month on the amount due to the City, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (5) Penalties Merged With Tax Every penalty imposed and accrued interest shall be merged with and become a part of the amount of room tax to be remitted by the operator.
- (6) Petition for Waiver An operator who has paid penalties may petition the City Council for waiver and refund of the penalty or a portion of the penalty. The City Council may waive and direct a refund of the penalty or a portion of the penalty for good cause.
- (7) Settlements The Tax Administrator may, after consultation with the City Attorney, adjust or enter into a settlement as regards any amount believed to be due if, as a result of a bankruptcy filing, foreclosure, bona fide legal or factual dispute, or similar circumstance, it is in the best interest of the City.

12.05.045 Deficiency Determinations; Fraud, Evasion, Operator Delay.

- (1) Deficiency Determination. The tax administrator may review tax returns and adjust the amount due based on the information in the return, on information obtained during a review or audit of records, or on the basis of other evidence. In the event of a deficiency, the tax administrator shall provide notice of the deficiency to the operator, who shall remit deficiencies within 10 business days of the deficiency notice. Notice may be by personal delivery or certified or registered mail.
 - (A) In reviewing and adjusting tax returns, the tax administrator shall offset any amount received in excess of the remittances due against any shortages in remittances.
 - (B) Except in the case of fraud or intent to evade the room tax, notice of deficiency determinations shall be issued within three years of the period for which the deficiency determination is made.
 - (C) The time to remit deficient amounts payment under this Section shall be extended if the operator timely requests a redetermination under Section 12.05.050.
- (2) Fraud, Refusal to Collect, Evasion If any operator fails to collect, report or remit the room tax as required, submits a fraudulent return, or otherwise violates or attempts to violate this chapter, the tax administrator shall estimate the tax due, and calculate the amount owing from the operator for tax remittance, interest and penalties and provide notice to the operator of the assessment. The determination and notice shall be made and mailed within three years of the discovery by the tax administrator of the violation. The determination is due and payable upon receipt of notice and shall become final 10 business days after the date notice was delivered if no petition for redetermination is filed.

12.05.050 Redeterminations.

- (1) Any person affected by a determination under section 12.05.045 may file a petition for redetermination with the Tax Administrator within 10 business days of service of notice of the tax deficiency. A determination under Section 12.05.045 becomes final if a petition for redetermination is not timely filed.
- (2) If a petition for redetermination is filed within the allowable period, the Tax Administrator shall reconsider the determination and grant an oral hearing if requested. The petitioner shall be allowed at least 20 business days to prepare for the hearing.

- (3) After considering the petition and all available information, the Tax Administrator shall issue a redetermination decision and mail the decision on the petitioner. During the redetermination process, the Tax Administrator may agree to a compromise of the amount due if there is a good faith dispute over the amount owing.
- (4) The decision of the Tax Administrator on redetermination becomes final and payment is due 10 business days after the decision is mailed unless the petitioner files an appeal to the Council within that time. The appeal shall be filed with the Tax Administrator. The Council's decision shall be final when reduced to writing and mailed to the petitioner and all amounts due must be paid within 10 business days of mailing of the Council decision.

12.05.055 Security for Collection of Tax.

The tax administrator may require an operator to deposit security in the form of cash, bond or other security acceptable to the tax administrator. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the operator's estimated average monthly liability for the period, or \$5,000.00, whichever is less. The amount of security may be increased or decreased by the tax administrator so long as the minimum security remains in place. The operator may appeal any decision of the tax administrator requiring security under Section 12.05.085

12.05.060 Collection

The City may bring legal action to collect on any amounts owed to the City under this Chapter within three years after remittance is due to the City or within three years after any determination becomes final.

12.05.065 Lien

The City may record a lien in the City's lien docket against any real property owned by the Operator in the City as to any delinquent remittances by the operator.

12.05.070 Refunds

- (1) Refunds by the City to the Operator If the operator remits more tax, penalty or interest than is due, the operator may file a claim in writing stating the facts relating to the claim, within three years from the date of remittance. If the claim is approved by the tax administrator, the excess amount shall be either refunded or credited on any amount due from the operator.
- (2) Refunds by City to Occupant An occupant may file a claim for refund by filing a claim in writing within three years of payment providing the facts relating to the claim for refund. If the Tax Administrator determines that the tax was collected

and remitted to the city and the occupant was not required to pay the tax or overpaid, the city shall issue a refund.

- (3) Refunds by Operator to Occupant If an occupant has paid tax to an operator, but then stays a total of 30 or more consecutive days, the operator shall refund to the occupant any tax collected for any portion of the continuous stay. The operator shall account for the collection and refund to the Tax Administrator. If the operator has remitted the tax prior to the refund or credit to the tenant, the operator shall be entitled to a corresponding refund or offset if the claim for refund is filed within three years from the date of collection.
- (4) Burden of Proof The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund.

12.05.075 Authority of Tax Administrator

The Tax Administrator shall have the power to enforce this Chapter, to adopt rules, regulations and forms consistent with this Chapter. Rules and regulations of general application shall be mailed to all registered operators. The Tax Administrator may also issue written interpretations on request of an operator. As to the operator to whom the interpretation is issued, the City will act consistently with the interpretation until it is withdrawn, and the City shall provide 30 days' written notice of withdrawal of an interpretation.

12.05.080 Administration

- (1) Use of Room Tax Funds Thirty percent of all room tax funds received by the City shall be paid into the Tourism Fund and used for tourism promotion. The City may enter into contracts with the Visit Bend, the Central Oregon Visitor's Association or other entities for tourism promotion.
- (2) Records Required from Operators Every operator shall keep records of each transaction involving rent and/or collection of tax. All records shall be retained for at least three years and six months.
- (3) Examination of Records; Investigations. The Tax Administrator or agent may examine all records of an operator relating to receipt of rent and tax and remittance of tax during normal business hours and may obtain copies of the records to audit returns.
- (4) Confidential Character of Information Obtained - Disclosure Unlawful. The City shall maintain the confidentiality of information provided by operators. Nothing in this sub-section shall be construed to prevent:
 - (A) The disclosure to, or the examination of records and equipment by another City official, employee or agent for collection of taxes for the

purpose of administering or enforcing any provisions of this chapter or collecting city business license fees.

- (B) Disclosure of information to the operator and the operator's agents.
- (C) The disclosure of the names and addresses of any persons to whom Certificates of Authority have been issued.
- (D) The disclosure of general statistics regarding taxes collected or business done in the city.
- (E) Disclosures required by ORS Chapter 192.

12.05.085 Appeals to City Council

Any person aggrieved by any decision of the Tax Administrator may appeal to the City Council by filing a written appeal with the Tax Administrator within 10 business days of the serving or mailing of the decision being appealed. The City Manager shall schedule the hearing on a Council agenda and provide the appellant notice of the hearing at least 10 business days before the hearing. The City Council may agree to a compromise of the amount of tax remittance if there is a good faith dispute over the amount owing. Any person may appeal the issuance of a rule or regulation issued by the Tax Administrator to the Council by filing a written appeal within 10 business days of the mailing of the notice of the regulation.

12.05.090 Penalt.

A violation of this Chapter is a Class A Civil Infraction. Failing to register or file a return when required, or submitting false or misleading information in a registration or return are violations of this Chapter. Each day that a violation for failing to register, file a return, or remit when due remains uncured is a separate infraction. The Municipal Court may increase the amount of penalty up to 10 times the normal penalty imposed on an operator if the Municipal Court Judge finds that the operator collected the tax imposed by this Chapter and intentionally failed to remit the tax proceeds to the City when required by this Chapter. All amounts listed as room tax in bills or invoices issued by the operator shall be considered tax collected by the operator, unless the operator received no payment on the bill or invoice.