

# TIGARD MUNICIPAL CODE

## Chapter 3.85 LOCAL TRANSIENT LODGING TAX

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### **3.85.010 Purpose.**

The purpose of this chapter is to impose a tax upon the transient lodging by any occupant in the City of Tigard. (Ord. 17-18 §1)

### **3.85.020 Definitions.**

As used in this chapter, unless the context requires otherwise:

“City” means the City of Tigard, Oregon.

“City council” means the City Council of the City of Tigard, Oregon.

“Finance department” means the finance department of the city.

“Finance director” means the director of the finance department or his/her designee.

“Lodging” means “transient lodging” as defined by ORS 320.300, except that “lodging” shall not include dwelling units at nonprofit facilities, dormitory rooms used for educational purposes, camping sites, and recreational vehicle sites.

“Occupancy” means the use or possession, or the right to use or possession, for lodging purposes, of any space, or portion thereof, in lodging.

“Occupant” means a person who uses or possesses, or who has the right to use or possess any space, or portion thereof, in a lodging.

“Rent” means the consideration charged, whether or not received by the transient lodging provider, for the occupancy of space in lodging, whether or not valued in money, without any deduction.

“Tax” or “taxes” means either the tax payable by the occupant or the aggregate amount of taxes due from a provider during the period for which the provider is required to report collections.

“Transient lodging provider” or “provider” means the person who is the proprietor of a lodging in any capacity. Where management functions are performed through a managing agent other than an employee, the managing agent who shall have the same duties and liabilities as the proprietor shall be the provider. Compliance with the provisions of this chapter by either the proprietor or the managing agent shall be considered to be compliance by both. (Ord. 17-18 §1)

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## **3.85.030 Tax Imposed.**

For the privilege of occupancy in any lodging, each occupant shall pay a tax in the amount of two and a half percent of the rent charged by the transient lodging provider. The tax constitutes a debt owed by the occupant to the city, which is extinguished only by payment to the transient lodging provider at the time the rent is paid. The transient lodging provider shall enter the tax on the provider's records when the rent is collected. If the rent is paid in installments, a proportionate share of the tax shall be paid by the occupant to the provider with each installment. If for any reason the tax due is not paid to the provider, the finance director may require that the tax be paid directly to the city. The tax must be computed on the total retail price, including all charges other than taxes, paid by a person for occupancy of the transient lodging. (Ord. 17-18 §1)

## **3.85.040 Collection.**

A. Except when occupants or lodgings are exempt under this chapter, every transient lodging provider renting occupancy in a lodging in the city shall collect a tax from the occupant. The tax collected or accrued by the provider constitutes a debt owing by the provider to the city.

B. In cases of credit or deferred payment of rent, the payment of the tax to the provider may be deferred until the rent is paid, and the provider shall not be liable for the tax until the credit is paid or the deferred payment is made.

C. The finance director shall enforce this chapter and the city may adopt policies, rules, and regulations consistent with this chapter as necessary to aid in the enforcement. (Ord. 17-18 §1)

## **3.85.050 Provider's Duties.**

Each transient lodging provider shall collect the tax imposed by this chapter on an occupant. The amount of the tax shall be separately stated upon the provider's records and on any receipt for the rent rendered by the provider to the occupant. No provider shall advertise that the tax or any part of the tax will be assumed or absorbed by the provider, or that it will not be added to the rent, or that, when added, any part will be refunded. (Ord. 17-18 §1)

## **3.85.060 Exemptions.**

No tax imposed by this chapter shall be imposed upon dwelling units described in ORS 320.308. (Ord. 17-18 §1)

## **3.85.070 Registry.**

A. Every person engaging or about to engage in business as a transient lodging provider in this city shall register with the city on a form provided by the finance department. Providers starting business must register within 30 calendar days after commencing business. The privilege of registration after the date of imposition of the tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration forms shall require the name under which a provider transacts or intends to transact business, the location of the place of business, and other similar additional information required by the finance department to facilitate the collection of the tax. The registration shall be signed or electronically submitted by the provider.

B. The finance department shall, within 15 business days after registration, issue without charge a certificate of authority to each provider to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of each provider. Certificates shall be

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non-assignable and nontransferable and shall be surrendered immediately to the finance department upon the cessation of business at the location named, or upon the business sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed.

C. The certificate shall state, at minimum, the following:

1. The name of the provider;
2. The address of the lodging;
3. The date upon which the certificate was issued; and
4. This statement: “This Transient Lodging Registration Certificate signifies that the person named has fulfilled the requirements of the transient lodgings tax chapter of the Tigard Municipal Code for the purpose of collecting and remitting the lodgings tax. 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 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. This certificate does not constitute a permit.” (Ord. 17-18 §1)

## **3.85.080 Returns.**

A. The tax imposed by this chapter shall be paid by the occupant to the transient lodging provider when the occupant pays rent to the provider. All transient lodging taxes collected by a provider are due and payable to the finance department, on a quarterly basis, on or before the last day of the month following the end of the calendar quarter, or, if the last day is not a business day, the next business day thereafter.

B. Providers shall file, with the quarterly tax payment, or, if there is no tax payment due for a given quarter, at the time the tax payment would have been due, a return for that quarter’s tax collections. The return shall be filed with the finance department and shall be on a form prescribed by the finance department. The return shall reflect the amount of tax collected or otherwise due for the period for which the return is filed. At the discretion of the finance director, it may also reflect:

1. The total rentals upon which the tax is collected or otherwise due;
2. Gross receipts of the provider for the period;
3. The amount of rents exempt, if any; and
4. An explanation in detail of any discrepancies.

C. The provider or his/her designee shall deliver the quarterly tax payment and return to the finance department at its office either by personal delivery, via a website portal, or by United States Mail. If the return and taxes are mailed, the postmark shall be considered the date of delivery for determining delinquency.

D. At any time before the due date, the finance director may, for good cause, extend the due date for making any return and/or payment of tax for up to 30 days after the date the tax would have become due but for the extension. Further extensions must be approved by the city manager. A provider who is granted an extension shall pay a fee of three percent per month of the unpaid tax without proration for a fraction of a month.

E. If the finance director deems it necessary, in order to ensure payment or to facilitate collection by the city of the amount of

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taxes in any individual case, the finance director may require that payment of the taxes be made in other than quarterly periods. (Ord. 17-18 §1)

## **3.85.090 Penalties and Interest.**

A. A penalty will be imposed on a provider who mails, hand delivers, or submits online the return and the tax payment after the due date. The penalty is five percent of the unpaid tax. If the provider files and/or pays more than thirty days after the due date, an additional 10% penalty of the unpaid tax will be added to the balance of the unpaid tax. Interest at the rate of 10% per annum will be imposed on any unpaid tax and penalties starting 60 days after the due date until the date payment in full is received by the finance department.

B. If the finance director 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 18% of the amount of the tax shall be added, in addition to the penalties and interest above. (Ord. 17-18 §1)

## **3.85.100 Deficiencies.**

A. If the finance director determines that a return is incorrect, the finance director may compute and determine or estimate the amount required to be paid based on the facts contained in the return or returns or any other information within the finance director's possession. One or more deficiency determinations may be made on the amounts due for one or more periods.

B. In making a deficiency determination, the finance director may offset overpayments, if any, which may have been previously made for a period or periods against any deficiency for a subsequent period or periods, or against penalties and interest on the deficiency.

C. Once a deficiency determination is made, the finance director shall serve a written deficiency notice on the provider (or occupant, in the case of a request for a refund). The notice may be given personally or sent by United States mail. If sent by mail, the notice shall be addressed to the provider at his/her address as it appears on the records of the city or as the city can best determine.

D. Any deficiency is due and payable 30 days after the finance director serves the written deficiency notice. If not paid by the 30th day after service of a deficiency notice, the amount shall be delinquent and penalties and interest shall be applied as established in this chapter.

E. The provider (or occupant, in the case of a request for a refund) may petition for a redetermination provided that the petition is filed within 15 days of service of the deficiency notice. Nothing prohibits the finance director from extending the time for petition beyond 15 days at his/her discretion.

F. Except as provided in this chapter, every deficiency determination shall be made and notice mailed within three years after a return was originally filed or subsequently amended, whichever period expires later. In the case of the filing of a false or fraudulent return with the intent to evade this chapter, a failure to file a required return, or a willful refusal to collect and remit the tax, a deficiency determination may be made, or a proceeding for the collection of the deficiency may be commenced at any time.

G. If the finance director believes that the collection of any 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 finance director may make a determination of the tax or amount of tax required to be collected. The finance director will serve a written

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deficiency notice and demand for immediate payment on the provider. The amount shall be immediately due and payable, and the provider shall immediately pay such determination to the city after service of the notice, provided, however, the provider may petition, after payment has been made, for a redetermination of the finance director's assessment, provided that the petition is filed within 15 days of service of the deficiency notice. (Ord. 17-18 §1)

## **3.85.110 Redetermination.**

A. If a petition for redetermination, redemption, and refund is filed within the requisite time period, the finance director shall reconsider the determination, and, if the person has so requested in his/her petition, shall grant the person an oral hearing and shall give him/her 15 days' notice of the time and place of the hearing. The finance director may continue the hearing from time to time as necessary.

B. The finance director may decrease or increase the amount of the determination as a result of the reconsideration, the hearing, or both, and, if an increase is determined, such increase shall be payable immediately after the reconsideration or the hearing, as appropriate.

C. The decision of the finance director upon a petition for redetermination, redemption, and refund becomes final 15 days after service of the notice of decision upon the petitioner.

D. No petition for redetermination, redemption, or refund or other appeal shall be accepted and no petition is effective for any purpose unless the provider has first complied with the payment provision of this chapter and has paid in full the amount determined to be due under the decision appealed from. (Ord. 17-18 §1)

## **3.85.120 Security.**

The finance director, whenever the finance director deems it necessary to ensure compliance with this chapter, may require any provider subject to this chapter to deposit with the finance director security in the form of cash, bond, or other assets, as the finance director determines. The amount of the security shall be fixed by the finance director but shall not be greater than the provider's estimated quarterly liability for the period for which the provider files returns, determined in a manner the finance director deems proper, or \$500, whichever amount is less. The amount of security may be increased or decreased by the finance director within the limitation of this section. (Ord. 17-18 §1)

## **3.85.130 Refunds.**

A. Whenever the amount of any tax imposed under this chapter has been paid more than once or has been erroneously or illegally collected or received by the finance department, it may be refunded; provided a verified claim in writing, stating the specific reason upon which the claim is founded, is filed with the finance director within two years from the date of payment. The claim shall be made on forms provided by the finance department. If the claim is approved, the excess amount collected or paid may be refunded to the provider from whom it was collected or by whom it was paid, or the provider's administrators, executors, or assignees. Alternatively, at the discretion of the finance director, the refund may be credited toward any amounts then due and payable from the provider from whom it was collected or by whom it was paid, and the balance, if any, may be refunded to the provider or the provider's administrators, executors, or assignees.

B. Whenever the tax required by this chapter has been collected by the provider and it is later determined that the occupant has occupied

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the occupancy for a period exceeding 30 days without interruption, the provider shall refund to the occupant the tax previously collected by the provider from the occupant. If the provider has remitted the tax prior to refund or credit to the occupant, the provider shall be entitled to a corresponding refund under this section. The provider shall account for all collections and refunds under this subsection to the finance department. (Ord. 17-18 §1)

### **3.85.140 Expenditure of Funds.**

All money collected pursuant to this chapter shall be the general funds of the city and may be used in any lawful manner, as prescribed by state law. (Ord. 17-18 §1)

### **3.85.150 Collection Fee.**

Every provider liable for collection and remittance of the tax imposed by this chapter may withhold five percent of the net tax due to cover expenses in its collection and remittance. (Ord. 17-18 §1)

### **3.85.160 Administration.**

A. Every provider shall keep records of rentals and accounting books that are sufficient to demonstrate compliance with the provisions of this chapter. These records shall be retained for three years and six months after they are created.

B. The finance director may examine, during normal business hours, the books, papers, and accounting records relating to rentals of any provider liable for the tax, after notification to the provider, and may investigate the business of the provider in order to verify the accuracy of any return made, or if no return is made by the provider, to ascertain and determine the amount required to be paid.

C. A formal audit of all of the providers' records may be conducted at the discretion of the finance director. If, under this formal audit, it is determined that any provider has underpaid the taxes due by three percent or more, the provider shall pay his/her prorated portion of the total audit fee. Should the finance director, in his/her sole discretion, conduct or cause to be conducted individual audits in addition to the audit anticipated above, and should that individual audit determine that the audited provider has underpaid the taxes due by three percent or more, the provider shall pay the total individual audit fee.

D. Except as otherwise required by law, it shall be unlawful for any officer, employee, or agent of the city to divulge, release, or make known in any manner any financial information submitted or disclosed to the city under the terms of this chapter. Nothing in this section shall be construed to prohibit:

1. The disclosure to, or the examination of, financial records by city officers, employees, or agents for the purpose of administering or enforcing the terms of this chapter, or collecting taxes imposed under the terms of this chapter;
2. The disclosure to the taxpayer or his/her authorized representative of financial information, including amounts of transient lodging taxes, penalties, or interest, after filing of a written request by the taxpayer or his/her authorized representative and approval of the request by the finance director;
3. The disclosure of the names and addresses of any person to whom this chapter applies;
4. The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular taxpayer's return or application; or

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5. The disclosure of financial information to the city Attorney or other legal representative of the city to the extent the finance director deems disclosure or access necessary for the performance of the duties of advising or representing the finance director, the finance department, or the city. (Ord. 17-18 §1)

## **3.85.170 Notice.**

In case of service by mail of any notice required by this chapter, the service is complete three days after deposit with the United States Post Office. (Ord. 17-18 §1)

## **3.85.180 Appeals.**

Any person aggrieved by any decision of the finance director may appeal to the city manager (or his/her designee) by filing a notice of appeal with the finance director within 15 days of the serving of the notice of the finance director's decision. The finance director shall transmit the notice, together with the file of the appealed matter, to the city manager, who shall fix a time and place for hearing the appeal. The city manager shall give the appellant not less than 15 days' written notice of the time and place for hearing the appeal. The city manager may continue the hearing from time to time as necessary. (Ord. 17-18 §1)

## **3.85.190 Violations and Penalty.**

A. No provider or other person required to do so may fail or refuse to, in the time periods prescribed by this chapter, furnish any return required to be made under this chapter or furnish a supplemental return or other data required by the finance director, or make the remittance to the finance director of the amount of the taxes, penalties, or interest due. No person may render a false or fraudulent return under this chapter. No person required to make, render, sign, or verify

any report regarding the tax may make any false or fraudulent report.

B. At any time within three years after any tax required to be collected becomes due and payable, at any time within three years after any determination by the finance director or city manager under this chapter becomes final, or at any time within three years after any person who is required to do so fails to furnish true and non-fraudulent information within the time periods prescribed by this chapter, the city may commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

C. A person who violates a provision of this chapter commits a Class 1 civil infraction. Each transient lodging transaction for which tax, penalty or interest otherwise due is not paid shall be deemed a separate civil infraction. Each day a person fails to register as a transient lodging tax collector shall be deemed a separate civil infraction. (Ord. 17-18 §1)

## **3.85.200 Intergovernmental Agreement.**

The city council may enter into an IGA with Washington County whereby the county is responsible for the administration, collection, distribution, or enforcement of the tax authorized under this chapter, either in full or in part. The terms of that agreement shall apply in lieu of and shall supersede conflicting provisions of this chapter but shall not be construed as repealing any provision of this chapter. (Ord. 17-18 §1) ■