

**CITY OF PHOENIX
PHOENIX, OREGON**

ORDINANCE NO. 978

**AN ORDINANCE OF THE CITY OF PHOENIX
ADOPTING AMENDMENTS TO TITLE 3 OF THE CITY MUNICIPAL CODE**

RECITALS:

WHEREAS, the City of Phoenix ("City") has enacted a transient room tax ordinance, codified in Title 3, governing the issuance of transient room tax and collection within City jurisdictional limits;

WHEREAS, the City Council of the City of Phoenix finds that the percentage of the city's transient lodging tax being expended on tourism promotion and tourism-related facilities as defined in ORS 320.300 as of July 1, 2003, was 0%;

WHEREAS, it is legislatively decided in the best interest to enact the following modified provisions to Title 3;

NOW, THEREFORE BE IT RESOLVED, THE CITY OF PHOENIX ORDAINS AS FOLLOWS:

3.16.010 - Definitions.

For purposes of this chapter:

- A. "Accrual accounting" means a system of accounting in which the operator enters the rent due from a transient into the record when the rent is earned, whether or not it is paid.
- B. "Bed and Breakfast Home" means a home where a resident individual or family rents out guest bedrooms (no more than two) in their house, which is continually occupied as their primary residence.
- C. "Bed and Breakfast Inn" means a home where a resident individual or family rents out guest bedrooms (between three and six) in their house, which is continually occupied as their primary residence.
- D. "Cash accounting" means 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.
- E. "Council" or "city council" means the city council of Phoenix, Oregon.

- F. "Hotel" means a part of a structure that is occupied or designed for occupancy by transients for dwelling, lodging or sleeping, including a hotel, inn, tourist home or house, motel, space in manufactured home or recreational vehicle (RV) parks, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, or similar structure or portions thereof so occupied, provided such occupancy is for thirty (30) days or less.
- G. "Occupancy" means use or possession of, or the right to use or possess, a room in a hotel for lodging or sleeping, or space in a manufactured home or RV park or portion thereof.
- H. "Operator" means 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 or character other than an employee, the managing agent shall also be deemed an operator and shall have the same duties and liabilities as his/her principal. For purposes of this chapter, compliance by either the operator or the managing agent shall be considered compliance by both.
- I. "Person" means 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.
- J. "Rent" means the gross consideration charged, whether or not received by the operator , for the occupancy of space in a hotel, valued in money, goods, labor, credits, property or any other consideration valued in money, without any deduction.
- K. "Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which the operator is required to report collections.
- L. "Tax administrator" means the city recorder.
- M. "Transient" means an individual who occupies or is entitled to occupy space in a hotel for a period of thirty (30) 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 thirty (30)-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 thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy or the tenant actually extends occupancy more than thirty (30) consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this Chapter may be considered.

3.16.020 - Tax imposed.

A transient shall pay a tax in the amount of six percent (6%) of the rent charged for the privilege of occupancy in a hotel in the city. 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 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 or commodities, other than the furnishing of rooms, accommodations, and space occupancy in manufactured home parks or RV parks.

3.16.030 - Rules for collection of tax by operator.

- A. Every operator renting space for lodging or sleeping shall collect a tax from the occupant. The operator shall be a fiduciary to the city for collection and remittance of the tax and shall have the highest standards of care at equity or law. The tax collected or accrued constitutes a debt owed by the operator to the City.
- B. 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.
- C. The City shall have the power to adopt rules and regulations not inconsistent with this Chapter as may be necessary to aid in the enforcement. Prior to the adoption of rules and regulations, the City shall give public notice of its intent to adopt rules and regulations, provide copies of the proposed rules and regulations to interested parties, and conduct a public hearing on the proposed rules and regulations. Public notice shall be given when rules and regulations have been finally adopted. Copies of current rules and regulations shall be made available to the public upon request. It is a violation of the Chapter to violate rules and regulations duly adopted by the City.
- D. The tax administrator shall enforce this chapter and may adopt rules and regulations necessary for enforcement.
- E. For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.

3.16.040 - Operator's duties.

Each operator shall collect the tax when the rent is collected from every transient. The amount of 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 chapter.

3.16.050 - Exemptions.

The tax shall not be imposed on:

- A. An occupant staying for more than thirty (30) consecutive days;
- B. 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, except bed and breakfast homes and inns;
- C. Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home, or home for aged people, or to a public institution owned and operated by a unit of government.
- D. Any person housed through an emergency shelter or disaster program where rent is paid with government assistance funds.

3.16.060 - Operator's registration form.

- A. Every person engaging or about to engage in business as an operator of a hotel in the city shall register with the tax administrator on a form provided by the tax administrator within fifteen days (15) after beginning business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or tax collection regardless of registration. Registration shall set forth the name in which an operator transacts or intends to transact business, the location of place or places of business and such other information to facilitate the collection of the tax as the tax administrator may require. The registration shall be signed by the operator. The tax administrator shall, within ten (10) days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. Failure to register does not relieve the operator from collecting the tax or a person from paying the tax.

3.16.070 - Certificate of authority.

- A. Each certificate shall state the place of business to which it applies and shall be prominently displayed and shall set forth:
1. The name of the operator;
 2. The address of the hotel;
 3. The date when the certificate was issued;
 4. 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 to register with the tax administrator for the purpose of collecting the room 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 hotel without strictly complying with all local applicable laws, including, but not limited to, those requiring a permit from any board, commission, department or office of the city. This certificate does not constitute a permit.

3.16.080 - Collections—Returns—Payments.

- A. The taxes collected by an operator are payable to the tax administrator on a quarterly basis on the fifteenth 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
2nd quarter:	April, May, June
3rd quarter:	July, August, September
4th quarter:	October, November, December

- B. A return showing tax collections for the preceding quarter shall be filed with the tax administrator, in a form prescribed by the tax administrator, before the sixteenth day of the month following each collection quarter.
- C. The operator may withhold ten percent of the tax collected to cover the expense of collecting and remitting the tax.
- D. Returns shall show the amount of tax collected or due for the related period. The tax administrator may require returns to show the total rentals on which the tax was collected or

is due, gross receipts of the operator for the period, a detailed explanation of any discrepancy between the amounts, and the amount of rentals exempt.

- E. 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.
- F. For good cause, the tax administrator may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the council. An operator to whom an extension is granted shall pay interest at the rate of five percent (5%) 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 due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in Section 3.16.090
- G. If an operator is delinquent more than once a year on a quarterly payment, then the tax administrator may require returns to ensure delinquent payments do not accumulate beyond an operator's ability to pay. The tax administrator may also require returns and payment of the taxes for other than monthly/quarterly periods in individual cases to ensure payment or to facilitate collection by the City. If six (6) consecutive payments are timely made, the quarterly plan may be reinstated.

3.16.090 - Delinquency penalties.

- A. An operator who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of ten percent (10%) of the tax due in addition to the tax.
- B. An operator who has not been granted an extension of time for remittance of 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 percent (15%) of the tax due, the amount of the tax, and the ten percent (10%) penalty first imposed.
- C. If the tax administrator determines that nonpayment of a remittance is due to fraud or intent to evade the tax, a penalty of twenty-five percent (25%) of the tax shall be added to the penalties stated in subsections (A) and (B) of this section.
- D. 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 one-half percent (.5%) per month, without proration for portions of a month, on the tax due, exclusive of penalties from the date of

which the tax first became delinquent until paid. 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.

- E. An operator who fails to remit the tax within the required time shall pay the penalties and interest herein stated; however, an operator may petition the council for waiver and refund of the penalty or a portion of it. The council may, at its own discretion, if good cause is shown, direct a refund of the penalty and/or interest, or a portion(s) thereof.

3.16.100 - Deficiency determinations.

- A. If the tax administrator determines that a return is incorrect, that required reports or returns have not been filed, or that an operator has otherwise failed to comply with the terms of this code, the tax administrator may compute and determine the amount required to be paid on the basis of any information within the tax administrator's possession or that may come into his or her possession.
- B. Deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable ten (10) days after service of notice, after which the determined amount shall be delinquent. Penalties on deficiencies shall be applied as provided in Section 3.16.090
- C. 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 provided in Section 3.16.090

3.16.110 - Redemption petition.

A determination becomes payable immediately on receipt of notice and becomes final within fifteen (15) days after the tax administrator has given notice. However, the operator may petition for redemption and refund by filing a petition before the determination becomes final.

3.16.120 - Fraud—Refusal to collect—Evasion.

- A. If an operator fails 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 of the total amount due.
- B. Determination and notice shall be made and mailed within two (2) years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The

determination becomes payable immediately on receipt of notice and becomes final fifteen (15) days after the tax administrator has given notice.

- C. The operator may petition for redemption and refund if the petition is filed before the determination has been made or within two (2) years after the return is filed, whichever is later.

3.16.130 - Notice of determination.

- A. The tax administrator shall give the operator a written notice of the determination. If notice is mailed it shall be addressed to the operator at the address that appears on the records of the tax administrator, and service is complete when the notice is deposited in the post office.
- B. Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within two (2) years after the last day of the month following the close of the quarterly period for which the determination has been made or within two (2) years after the return is filed, whichever is later.

3.16.140 - Operator delay.

If the tax administrator believes that collection of the tax will be jeopardized by delay, or if a determination will be jeopardized by delay, the tax administrator shall determine the tax to be collected, and state the exigency on the determination. The determined amount is due and payable immediately upon service of notice. After payment has been made, the operator may petition for redemption and refund of the determination if the petition is filed not later than fifteen (15) days from the date of service of notice by the tax administrator.

3.16.150 - Redetermination.

- A. An operator against whom a determination is made under Section 3.16.100, or a person directly interested, may petition for a redetermination, redemption and refund within the time required in Section 3.16.140. If a petition for redetermination and refund is not filed within the time required, the determination is final on expiration of the allowable time.
- B. If a petition for redetermination and refund is filed within the allowable period, the tax administrator shall reconsider the determination and, if the 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 tax administrator may continue the hearing if necessary.
- C. The tax administrator may increase or decrease the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing.

- D. The decision of the tax administrator on a petition for redemption becomes final fifteen (15) days after service of notice on the petitioner unless appeal of the decision is filed with the council within fifteen (15) days after notice is served.
- E. A petition for redetermination, redemption or refund or other appeal is not effective for any purpose unless the operator has first paid in full the amount determined to be due by the decision appealed.

3.16.160 - Security for collection of tax.

- A. The tax administrator 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 be not greater than twice the operator's estimated average quarterly liability for the period for which the operator files returns or five thousand dollars, whichever amount is less.
- B. Within two (2) years after the tax becomes payable or within two (2) years after a determination becomes final, the tax administrator may bring an action in the name of the city in the courts of the state of Oregon, another state, or the United States to collect the amount delinquent and penalties and interest.

3.16.170 - Liens.

The tax imposed by this chapter together with the interest and penalties herein provided and any filing fees paid to the county clerk of Jackson County, Oregon, and advertising costs that may be incurred when the tax becomes delinquent as set forth in this chapter shall be and, until paid, remain a lien from the date of its recording with the county clerk of Jackson County, Oregon. The lien shall be superior to all subsequent recorded liens on all tangible personal property used in the real and personal property of an operator within the city and may be foreclosed on and sold as may be necessary to discharge said lien, if the lien has been recorded with the county clerk of Jackson County, Oregon. Notice of lien may be issued by the finance director whenever the operator is in default in the payment of said tax, interest and penalty and shall be recorded with the county clerk of Jackson County, Oregon and a copy sent to the delinquent operator. The personal property subject to such lien may be foreclosed on and sold as provided by law.

Any lien as shown on the records of the proper county official shall, upon the payment of all taxes, penalties, and interest thereon, be released by the finance director when the full amount determined to be due has been paid to the city and the operator or person making such payment shall receive a receipt therefor stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied.

3.16.180 - 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 stating the specific reason for the claim is filed within two (2) years 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.

3.16.190 - Refunds by city to transient.

If the tax has been collected by the operator and deposited with the tax administrator and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the transient if a written verified claim stating the specific reason for the claim is filed with the tax administrator within two (2) years from the date of payment.

3.16.200 - 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 exceeding thirty (30) 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.

3.16.210 - Records required from operators.

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of two (2) years and six months, all records, books, reports, income tax reports and other matters required by this chapter as may be necessary to determine the amount of such tax as the operator may have been liable for the collection of and payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times as set forth below. Every operator shall maintain guest records of room rents, accounting books, and records of income. The operators must, at a minimum, include a daily room rental register, a room billing/revenue daily journal, a cash receipt and deposit journal, and a cash disbursements journal/check register for all authorized deductions. These records and books shall reconcile to the transient room tax reports and be auditable. They shall also reconcile to the operator's income tax reports. If the tax administrator finds the books and records of the operator are deficient in that they do not provide adequate support for transient room tax reports filed, or the operator's accounting system is unauditible, it shall be the responsibility of the operator to improve their accounting system to the satisfaction of the tax administrator.

3.16.220 - Examination of records.

During normal business hours and after notifying the operator, the tax administrator, or their authorized representative, 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.

3.16.230 - Confidentiality.

The tax administrator or a person having an administrative or clerical duty under the provisions of this chapter shall not make known in any manner the business affairs, operations, or information obtained by an investigation of 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:

- A. 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 chapter;
- B. Disclosure, after filing a written request, to the taxpayer, receivers, 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 its subsection when, in the tax administrator's opinion, the public interest would suffer;
- C. Disclosure of names and addresses of persons making returns;
- D. Disclosure of general statistics regarding taxes collected or business done in the city.

3.16.240 - Disposition and use of transient room tax funds.

The revenues received by the city from the tax shall be deposited by the tax administrator into the general fund of the city and may be used as the city deems necessary, except that 70% of the revenues received by the city from transients at recreational vehicle parks shall be deposited and placed in a separate fund and used for matters related to tourism promotion and tourism-related facilities or other uses as may be permitted by ORS 320.350 as it currently exists or may from time to time be amended. Expenditures of all revenue received shall be subject to the provisions of the Oregon Local Budget Law.

3.16.250 - Transient room tax promotion committee.

The mayor may appoint a transient room tax promotion committee with the approval, and to serve at the pleasure, of the city council. The committee shall be comprised of two(2) members of the council, two (2) operators and one independent layman. The lay member shall be a resident of the city. The committee shall propose a budget, advise and make recommendations to the council on promotional matters and will meet not less than annually and shall keep a record of its transactions and shall meet in and keep its files in the tax administrator's office. Said records shall be kept for two (2) years and six (6) months after they come into being.

3.16.260 - Appeals to the city council.

A person aggrieved by a decision of the tax administrator may appeal to the city council by filing a notice of appeal with the tax administrator within fifteen (15) days of service or mailing of the notice of a decision. The tax administrator shall fix a time and place for hearing and the appeal, as prescribed by the city council and shall give the appellant fifteen (15) days' written notice of the time and place of the hearing before the city council. At such hearing, the council may take any action it deems necessary regarding the matters before it at the hearing, and action on the appeal shall be by resolution passed by a majority of the council members present at the meeting where the appeal is considered.

3.16.270 - 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 legislative body declares that it would have passed such section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

3.16.280 - Penalties—Violations.

It is unlawful for any operator or any 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 the supplementary return or other data required by the finance director or to enter a false or fraudulent report, with intent to defeat or evade the determinations of any amount due required by this chapter.

3.16.290 – Civil and Criminal Remedies.

- A. The City may seek civil and criminal remedies for violation of any provision of this Chapter.
- B. Pursuant to Sec. 3.16.020 above, 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.

Breaches of duty and remedies shall include, but not be limited to, all of those available under the law to a principal in a fiduciary relationship.

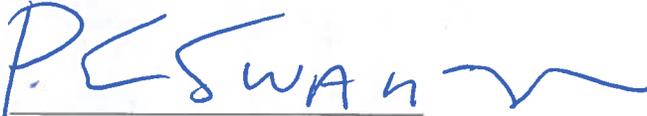
- C. Violation of any provision of this chapter shall be an infraction. Every day in which the violation is caused or permitted to exist constitutes a separate infraction. The infraction penalties are in addition to any other penalty, interest, sum or charge imposed by this code. Delinquent taxes and fees, penalty and interest imposed by this chapter, except the infraction penalty, may be collected in a civil action. When all or any part of the ordinance codified in this chapter is repealed, this chapter or the provision or provisions repealed remain in force for purpose of collecting delinquent taxes or imposing penalties for nonpayment of taxes due and owing and for the purpose of authorizing the accusation, prosecution, conviction and punishment of any person who violated this chapter or its provision or provisions.

PASSED AND ADOPTED by the City Council and signed by me in authentication of thereof on this 15th day of May 2017.



Mayor

ATTEST:



City Manager