

## MEMORANDUM

TO: Mayor and City Council

FROM: Roberta Likens, Finance Director

SUBJECT: FIRST VOTE FOR AN ORDINANCE AMENDING TITLE 5, BUSINESS LICENSES AND REGULATIONS, CHAPTER 5.32, TRANSIENT ROOM TAX

DATE: September 7, 2022

### Background

In 2017, the Oregon Legislature amended ORS 305.620, allowing the Oregon Department of Revenue to collect local transient room taxes on behalf of counties and cities. To do so, an intergovernmental agreement is required between the City and the Oregon Department of Revenue, and the State can recoup its administrative costs.

The City of Cottage Grove has had in effect a transient room tax since April 1989. A 4% tax rate was in place prior to December 31, 2001. For a number of years, the City of Eugene has contracted with the City of Eugene to collect the City's transient room tax from the Transient Lodging Facilities within the city limits of Cottage Grove.

Cottage Grove was provided notice from the City of Eugene that they will no longer be collecting transient lodging taxes for the various jurisdictions that they currently do and that they are transitioning to the Oregon Department of Revenue to collect the City of Eugene's taxes. We have been coordinating with the other jurisdictions, including the City of Eugene and Lane County, to transition to the State as a group, beginning October 1, 2022. The final details of the ordinance and the intergovernmental agreement were made available last week.

The City of Eugene charged \$131 per month in administrative costs for collecting the tax. The administrative costs for the Department of Revenue to collect the taxes are estimated to be approximately \$197 per month. The tax turnover to the City will be in April, July, October, and January of each year. The City of Eugene was collecting and paying the City monthly.

The proposed code amendment will align the City's existing room tax procedures with the administrative requirements of the Department of Revenue. It is important to note that the


amendments do not create a new tax or change the City's existing room tax rate applicable to transient rentals within the City of Cottage Grove. The term transient room tax is being updated to transient lodging tax as used in ORS Chapter 320. The ordinance repeals Title 5, Chapter 5.32, and replaces it in full, attached to the ordinance as Exhibit A.

Recommendation

After Council deliberation, it is recommended that City Council hold the first vote on the attached ordinance.


Cost

None.



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Richard Meyers, City Manager



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Roberta Likens, Finance Director

ORDINANCE NO. \_\_\_\_

AN ORDINANCE AMENDING TITLE 5, BUSINESS LICENSES AND REGULATIONS,  
CHAPTER 5.32, TRANSIENT ROOM TAX

WHEREAS, the City of Cottage Grove (City) has had a transient room tax since 1989; and

WHEREAS, the City's four percent tax rate has been in place since prior to December 31, 2001;  
and

WHEREAS, for many years, the City has contracted with the City of Eugene to collect the City's transient room tax. In addition to working with Cottage Grove, the City of Eugene administers the room taxes for Lane County, Springfield and Florence; and

WHEREAS, in 2017, the Oregon Legislature amended ORS 305.620 to allow the Oregon Department of Revenue to collect local transient room taxes on behalf of counties and cities. Under the 2017 amendment, the Department of Revenue is permitted to collect local taxes if the local government and the Department of Revenue enter into an intergovernmental agreement and the Department of Revenue recoups its administrative costs; and

WHEREAS, since the 2017 statutory change, the Department of Revenue and the League of Oregon Cities have worked together to develop a model ordinance for jurisdictions to use to align the state and local administrative tax procedures so that there could be consistent application for the Department of Revenue to perform tax collection duties. In order to have the Department of Revenue administer a local jurisdiction's room tax, the local jurisdiction needs to update its local regulations and enter into an intergovernmental agreement with Department of Revenue for collection and administration. Under such an arrangement, the Department of Revenue will undertake all aspects of administering the local room tax, including auditing and enforcement duties; and

WHEREAS, coinciding with the start of the next fiscal year in July, the City of Eugene will be moving its own tax administration to the Department of Revenue and will no longer offer tax administration services; and

WHEREAS, under the present circumstances, it is in the interests of the City to have the Department of Revenue administer the City's room tax. The City will work with the Department of Revenue to enter into an intergovernmental agreement to transition the City's lodging tax administration from the City of Eugene to the Department of Revenue effective October 1, 2022; and

WHEREAS, this Code amendment is intended to align the City's existing room tax procedures with the administrative requirements of the Department of Revenue. The amendments do not create a new tax or change the City's existing room tax rate applicable to transient rentals within the City. Adopting the model ordinance serves to update the City's tax provisions, while maintaining the City's existing tax rate and tax revenue allocation formula; and

WHEREAS, the Code amendment updates the name of the tax from the "transient room tax" to the "transient lodging tax." This change updates the name of the tax to the identifier used by many other jurisdictions and as used in ORS Chapter 320; and

WHEREAS, the City will maintain the tax revenue allocation formula that has been in place since before April 10, 1989.

Based on these findings of fact,

THE CITY OF COTTAGE GROVE ORDAINS AS FOLLOWS:

Section 1. The Cottage Grove Municipal Code, Title 5, Chapter 5.32 is hereby repealed and replaced, in full, to read as shown in Exhibit A.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS \_\_\_\_ DAY  
OF \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jeffery D. Gowing, Mayor

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Richard Meyers, City Manager

Dated: \_\_\_\_\_

**EXHIBIT A**  
**Chapter 5.32**  
**TRANSIENT LODGING TAX**

SECTION:

5.32.010	Definitions
5.32.020	Tax Imposed
5.32.030	Collection of Tax by Transient Lodging Tax Collector
5.32.040	Short-Term Rental Hosting Platform Fees
5.32.050	Liability for Tax
5.32.060	Exemptions
5.32.070	Registration of Transient Lodging Provider – Form and Contents – Execution – Certification of Authority
5.32.080	Remittances and Returns
5.32.090	Penalties and Interest
5.32.100	Deficiency Determination – Fraud, Evasion, Local Tax Trustee Delay
5.32.110	Redeterminations
5.32.120	Collections
5.32.130	Liens
5.32.140	Refunds
5.32.150	Administration
5.32.160	Appeals to City Council
5.32.170	Penalty

**5.32.010 Definitions**

The following definitions apply in this chapter. In this Chapter, the following mean:

A. “Occupancy” means the right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for less than 30 days.

B. “Occupant” means any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.

C. “Person” means any individual, firm, partnership, joint venture, limited liability company, corporation, limited liability partnership, association, host, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

D. “Rent” means the consideration paid or payable by an occupant for the occupancy of space in transient 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.

E. "Short-Term Rental" means a house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling unit where a person rents a guest bedroom or the entire residential dwelling unit for transient lodging occupancy. Generally, a short-term rental is zoned residential or has a building occupancy that only allows for residential use.

F. "Short-Term Rental Hosting Platform" means a business or other person that facilitates the retail sale of transient lodging by connecting occupants with transient lodging providers, either online or in any other manner. Short-term rental hosting platforms are transient lodging intermediaries.

G. "Tax Administrator" means the Finance Director of the City of Cottage Grove, or its designee, which may include the Oregon Department of Revenue. If the city utilizes the Oregon Department of Revenue as its tax administrator, it will comply with ORS 305.620 in that it will follow the rules adopted by the Department of Revenue regarding the administration, collection, enforcement and distribution of transient lodging taxes.

H. "TLT" or "Tax" means the transient lodging tax.

I. "Transient Lodging" or "Transient Lodging Facilities" means:

1. Hotel, motel, and inn dwelling units that are used for temporary overnight human occupancy;
2. Spaces used for overnight parking of recreational vehicles or placement of tents during periods of human occupancy; or
3. Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

J. "Transient Lodging Intermediary" means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and:

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

K. "Transient Lodging Provider" means a person that furnishes transient lodging.

L. "Transient Lodging Tax Collector" means a transient lodging provider or transient lodging intermediary.

### **5.32.020 Tax Imposed**

A. Each occupant shall pay a TLT in the amount of four percent (4%) of the rent. The occupant shall pay the TLT with the rent to the transient lodging tax collector. TLT amounts shall be rounded down to the nearest cent. The transient lodging tax collector

shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the occupant to the transient lodging tax collector with each installment unless the occupant pays the entire amount with the first payment.

- B. Bills, receipts or invoices provided to occupants shall list the TLT separately and must accurately state the amount of tax. All amounts listed as TLT on invoices, bills or receipts must be reported as TLT and, after collection, must be turned over to the city, less the five percent (5%) administrative charge.

#### **5.32.030 Collection of Tax by Transient Lodging Tax Collector**

- A. Every transient lodging tax collector shall collect the TLT at the time rent is paid, unless an exemption applies. If payment is by credit card, for purposes of this section, payment is made at the time credit card information is provided to the transient lodging tax collector, not when the transient lodging tax collector ultimately receives credit for the transaction. While holding the payment in trust for the city, a transient lodging tax collector may commingle the tax proceeds with the transient lodging tax collector's funds, but the transient lodging tax collector is not the owner of tax proceeds, except that, when a return is filed, the transient lodging tax collector becomes the owner of the administrative fee authorized to be retained. Transient lodging tax collectors may choose to file returns and remit payment based on amounts accrued but not yet collected. The transient lodging tax collector is liable for any TLT that should have been collected from the occupant, except in cases of nonpayment of rent by the occupant.
- B. Upon request of the city, transient lodging tax collectors must provide all physical addresses of transient lodging facilities within the city limits and the related contact information, including the name and mailing address, of the general manager, agent, owner, host or other responsible person for the location.

#### **5.32.040 Short-Term Rental Hosting Platform Fees**

A hosting platform for short-term rentals may collect a fee for booking services in connection with short-term rentals only when those short-term rentals are lawfully registered as operators with the city and possess a certificate of authority at the time the short-term rental is occupied.

#### **5.32.050 Liability for Tax**

Transient lodging providers who receive any portion of the rent for transient lodging and transient lodging intermediaries that provide booking service are both transient lodging tax collectors and are jointly and severally liable for the tax.

#### **5.32.060 Exemptions**

No TLT shall be imposed upon:

- A. 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 Oregon Department of Human Services or the Oregon Health Authority;
- B. A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;
- C. A dwelling unit that is used by members of the general public for temporary human occupancy for fewer than 30 days per year;
- D. 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;
- E. A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility; or
- F. A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:
  1. All dwelling units occupied are within the same facility; and
  2. The person paying consideration for the transient lodging is the same person throughout the consecutive period.

**5.32.070 Registration of Transient Lodging Provider – Form And Contents – Execution – Certification of Authority**

- A. Every person engaging or about to engage in business as a transient lodging provider shall provide a completed registration form to the tax administrator within 15 calendar days after commencing business. The registration form shall require the transient lodging provider to provide the name of the business, any separate business addresses, and other information as the tax administrator may require to implement this chapter. Transient lodging providers who own or operate transient lodging facilities in Cottage Grove shall provide the address of the lodging facility. The registration form shall be signed by the transient lodging provider. The tax administrator shall, within 15 days after registration, issue without charge a certificate of authority to collect the TLT. The transient lodging provider's obligation to collect the TLT is imposed once rent for transient lodging is paid, even if the registration form has not been filed or if the certificate has not been issued. If the rent transaction is facilitated online, the certificate of authority must be able to be viewed by the occupant by clicking on a link to the certificate of authority at a reasonable place during the payment transaction.
- B. Certificates shall be non-assignable and non-transferable and shall be surrendered to the tax administrator when the business is sold or transferred or when a transient lodging facility ceases to operate at the location specified in the registration form. Each certificate issued to a transient lodging provider for a specific lodging facility shall be prominently displayed at the lodging facility and include:



1. The name of the transient lodging provider;
2. The address of the transient lodging facility;
3. The date the certificate was issued; and
4. The certificate number as assigned by the tax administrator.

#### **5.32.080 Remittances and Returns**

- A. Transient lodging tax collectors must submit a completed tax return form to the tax administrator on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected, less a five percent (5%) administration fee. The return shall be filed in such form as the tax administrator may prescribe. The tax administrator if they deem it necessary in order to ensure payment or facilitate collection by the City of the amount of taxes in any individual case, may require returns and payment of the amount of taxes on other than monthly periods.
- B. The transient lodging tax collector is entitled to the administration fee. If a transient lodging facility has multiple owners, they are not entitled to retain additional fees.
- C. Remittances are delinquent if not made by the last day of the month in which they are due.
- D. Returns shall show the gross rents collected, taxable rents, the total amount of TLT collected and the amount of the administrative fee retained by the transient lodging tax collector. Returns shall also show the exempt and excluded rents and the basis for exemptions and exclusions.
- E. The person required to file the return shall deliver the return, together with payment of the amount of the tax due, to the tax administrator, to the appropriate office, either by personal delivery, by mail, or by electronic tax return filed through a reporting and payment portal furnished by the tax administrator, or its designee. If the return is mailed, the postmark shall be considered the date of delivery.
- F. The tax administrator may extend the time for making any return or remittance of the tax by up to 30 days. No further extension shall be granted, except by the city council. Any transient lodging tax collector to whom an extension is granted shall pay interest at the rate of one percent (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 tax for computation of penalties.

#### **5.32.090 Penalties and Interest**

- A. Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return to the tax administrator was originally required to be filed to the time of payment.

- B. If a transient lodging tax collector fails to file a return or pay the tax as required, a penalty shall be imposed in the same manner and amount provided under ORS 314.400.
- C. Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid and remitted to the tax administrator.
- D. Taxes, interest, and penalties paid to the tax administrator under this section shall be distributed to the fund receiving lodging tax revenues.

**5.32.100 Deficiency Determination – Fraud, Evasion, Local Tax Trustee Delay**

- A. 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 transient lodging tax collector, who shall remit deficiencies within 10 business days of the deficiency notice. Notice may be by personal delivery or certified or registered mail.
  - 1. 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.
  - 2. Except in the case of fraud or intent to evade the TLT, notice of deficiency determinations shall be issued within three years of the period for which the deficiency determination is made.
  - 3. The time to remit deficient payment amounts under this section shall be extended if the local tax trustee timely requests a redetermination.
- B. Fraud – Refusal to Collect – Evasion. If any transient lodging tax collector fails to collect, report or remit the 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 transient lodging tax collector for tax remittance, interest and penalties and provide notice to the transient lodging tax collector 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.

**5.32.110 Redeterminations**

- A. Any person affected by a deficiency determination may file a petition for redetermination with the tax administrator within 10 business days of service of notice of the tax deficiency. A determination becomes final if a petition for redetermination is not timely filed.
- B. 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.

- C. After considering the petition and all available information, the tax administrator shall issue a redetermination decision and mail the decision to 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.
- D. 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 city manager within that time. The appeal shall be filed with the tax administrator. The city manager'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 city manager's decision.

#### **5.32.120 Collections**

- A. 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.
- B. The city is entitled to collect reasonable attorneys' fee in any legal action brought to collect on amount owed to the city under this chapter.

#### **5.32.130 Liens**

The city may record a lien in the city's lien docket against any real property owned by a transient lodging provider who receives any portion of the rent from a transient lodging facility located within the city as to any delinquent remittances by the transient lodging provider.

#### **5.32.140 Refunds**

- A. Refunds by City to Transient Lodging Tax Collector. If the transient lodging tax collector remits more tax, penalty or interest than is due, the transient lodging tax collector 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 transient lodging tax collector.
- B. Refunds by City to Occupant. A transient lodging tax collector 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 to the occupant.
- C. Refunds by Transient Lodging Tax Collector to Occupant. If an occupant has paid tax to a transient lodging tax collector but stays a total of 30 or more consecutive days in the same transient lodging facility, the transient lodging tax collector shall refund to the occupant any tax collected for any portion of the continuous stay. The transient lodging

tax collector shall account for the collection and refund to the tax administrator. If the transient lodging tax collector has remitted the tax prior to the refund or credit to the occupant, the transient lodging tax collector shall be entitled to a corresponding refund or offset if the claim for refund is filed within three years from the date of collection.

- D. Burden of Proof. The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund.

#### **5.32.150 Administration**

- A. Records Required from Local Tax Trustee. Every local tax trustee shall keep records of each transaction involving rent and/or collection of TLT. All records shall be retained for at least three years and six months.
- B. Examination of Records – Investigations. The tax administrator or agent may examine all records of a local tax trustee relating to receipt of rent and TLT and remittance of tax during normal business hours and may obtain copies of the records to audit returns.
- C. Authority of Tax Administrator. The tax administrator shall have the power to enforce this chapter, conduct audits, and to adopt rules, regulations and forms consistent with this chapter. The tax administrator may also issue written interpretations on request of a transient lodging tax collector.
- D. Confidential Character of Information Obtained – Disclosure Unlawful. The city shall maintain the confidentiality of information provided by transient lodging tax collector. Nothing in this subsection shall be construed to prevent:
  - 1. The disclosure to, or the examination of records and equipment by, another City of Cottage Grove 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.
  - 2. Disclosure of information to the transient lodging tax collector and the transient lodging tax collector’s agents.
  - 3. The disclosure of the names and addresses of any persons to whom certificates of authority have been issued.
  - 4. The disclosure of general statistics regarding taxes collected or business done in the City.
  - 5. Disclosures required by ORS Chapter 192.
  - 6. Disclosures required by ORS Chapter 297.

#### **5.32.160 Appeals to City Manager**

Any person aggrieved by any decision of the tax administrator may appeal to the city manager or the city manager’s designee, 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 and provide the appellant notice of the hearing at least 10 business days before the hearing. The city manager or the city manager’s designee may agree to a compromise of the amount of tax remittance if there is a good faith dispute over the amount owing.

### **5.32.170 Penalty**

A violation of this chapter is a Class A civil infraction. Each day that a violation remains uncured is a separate infraction.