

CITY OF BAY CITY
ORDINANCE NO. 667

**AN ORDINANCE ESTABLISHING A TRANSIENT LODGING TAX,
SETTING RULES, REGULATIONS AND PENALTIES THEREFOR
WITHIN THE CITY OF BAY CITY AND REPEALING ORDINANCE 657**

The City Council for the City of Bay City, ordains as follows: -

Section 1.0. PURPOSE: The City wishes to establish a transient lodging tax for the purpose of retaining funds within the City for the purpose of promoting the City of Bay City.

Section 2.0 DEFINITIONS: The following definitions shall apply:

2.1 Accrual accounting. The operator enters the rent due from a transient renter on the operator's records when the rent is earned, whether or not it is paid.

2.2 Cash accounting. The operator does not enter the rent due from a transient on its records when the rent is earned, but rather when it is paid.

2.3 City Council. The City Council of the City of Bay City, Oregon.

2.4 Collection reimbursement charge. The amount a transient lodging operator may retain as reimbursement for the costs incurred by the transient lodging operator in collecting and reporting the transient lodging tax and in maintaining transient lodging tax records.

2.5 Hotel/Motel. Any structure, or any portion of any structure, not excluded herein, which is occupied or intended or designed for transient overnight occupancy for 30 days or less for dwelling, lodging or sleeping purposes and includes:

2.5.1 Any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, public or private club;

2.5.2 Spaces in mobile home or trailer parks (including recreational vehicle, tent trailer and tent camping parks) or similar structures, space or portions thereof so occupied, provided the occupancy is for less than a 30-day period. "

2.6 Occupancy. The use or possession or the right to the use or possession for lodging or sleeping purposes in a hotel.

2.7 Operator. The person who is the proprietor of a hotel in any capacity. Where

the operator performs his or her functions through a managing agent other than an employee, the managing agent shall also be deemed an operator for the purposes of this ordinance and shall have the same duties and liabilities as its principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall be considered to be compliance by both.

2.8 Person. Any individual, corporation, partnership, joint venture, limited liability company, association, social club, fraternal organization, public or private dormitory, joint stock company, corporation, estate, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

2.9 Rent. The 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 other consideration valued in money, without any deduction; but shall not include charges to a condominium unit owner which are solely for cleaning or maintenance of the unit or personal use or occupancy by the owner, so long as the charges are made in connection therewith for space occupancy.

2.10 Rent package plan. The consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of the transient lodging tax shall be the same as the charge made for rent when food consideration is not a part of the package plan. The amount applicable for rent for determination of the transient lodging tax under this ordinance shall be the amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package and the charge for rent when the space is rented separately and not included in a package plan.

2.11 Tax. The tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which collections are required to be reported.

2.12 City Recorder. The City Recorder, or her designee. The City Recorder is the person responsible for administering this ordinance.

2.13 Transient. Any person who exercised occupancy or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any individual so occupying space in a hotel shall be deemed to be a transient until the period of 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 tenancy actually extends more than 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 the ordinance may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in the month, shall not be

deemed a transient.

Section 3.0 TAX IMPOSED.

For the privilege of occupancy in any hotel, on and after the first day of January 1, 2014, the operator shall collect from and each transient shall pay a tax to the City of Bay City in the amount of 9% of the total rent charged by the operator. For a recreational vehicle, tent trailer and tent camping with self-pay slots, the tax shall be increased and assessed to the closest \$.25 interval. The tax constitutes a debt owed by the transient to the City, and by the operator to the City which is extinguished only by payment by the operator to the City, and is in addition to any other tax levied by any other governmental jurisdiction.

3.1 For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.

3.2 The operator shall be entitled to retain a Collection Reimbursement Charge in the amount of 5% of the taxes collected pursuant to this section.

Section 4.0 TIME OF PAYMENT BY TRANSIENT.

The transient shall pay the tax to the operator of the hotel at the time when the 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 rent is paid in installments, the transient shall pay a proportionate share of the tax to the operator with each installment. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities. In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid.

Section 5.0 OPERATOR'S DUTIES.

Each operator shall collect the tax imposed by section 4.0 at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator or that the tax will not be added to the rent or that, when added, any part will be refunded except in the manner provided by this chapter.

Section 6.0 EXEMPTIONS.

No tax under this chapter shall be imposed upon:

6.1 Any occupant for more than 30 successive calendar days with respect to any rent imposed for the period commencing after the first 30 days of successive

occupancy;

6.2 Any occupant whose rent is of a value less than \$2 per day; or

6.3 Any person who rents a private home, vacation cabin or like facility from any owner who rents the facilities incidental to his or her own use thereof for periods greater than 30 days.

6.4 A hospital, medical clinic, assisted living facility, health care facility, adult foster care facility or home for aged people licensed by the State of Oregon;

6.5 A public institution or facility owned and operated by a unit of the government and not operating under the veil of private sector competition;

6.6 A facility operated by a nonprofit organization for the purpose of providing temporary emergency shelter for victims of domestic violence, elder abuse, child abuse, sexual abuse or physical abuse;

6.7 Any other dwelling unit or facility that is exempt from transient lodging tax under ORS 320.308, as it may amended from time to time;

6.8 Festivals in which the City allows temporary, short-term camping or parking of recreational vehicles on City property.

Section 7.0 REGISTRATION OF OPERATOR.

7.1 Every person engaging or about to engage in business as an operator of a hotel in this City shall register on a form provided by the city. Operators engaged in the hotel business at the time this ordinance is adopted must register not later than 30 calendar days after the effective date of this ordinance. Operators starting business after this ordinance is adopted must register within 15 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 the tax regardless of registration.

7.2 Registration shall set forth the name under which the operator transacts or intends to transact business, the location of place or places of business and other information to facilitate collection of the tax as the City Recorder may require. The operator shall sign the registration.

7.3 The City Recorder shall, within ten days after registration, issue, without charge, a certificate of authority for each registrant to collect the tax from occupants, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the City Recorder 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 recognized by all occupants and persons seeking occupancy. The certificate shall, among other things, contain the following:

7.3.1 The name of the operator;

7.3.2 The address of the hotel;

7.3.3 The date upon which the certificate was issued; and

7.3.4 A statement that "This transient occupancy registration certificate signifies that the person or facility named on the face hereof has fulfilled the requirements of the Transient Lodging Tax established by City of Bay City Ordinance 657 by registration with the City Recorder for the purpose of collecting the transient lodging tax imposed by the City and remitting that tax to the City Recorder. 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."

Section 8.0 DUE DATE OF OPERATOR PAYMENTS.

All taxes collected by any operator, less the 5 percent (5%) Collection Reimbursement Charge, are due and payable to the City Recorder on a calendar quarter basis on the fifteenth day of the first month following the end of the preceding calendar quarter (April 15, July 15, October 15 and January 15) and are delinquent on the last day of the month in which they are due.

Section 9.0 RETURNS.

On or before the fifteenth day of the month following each calendar quarter of collection, a return for the preceding quarter's tax collections shall be filed by each operator with the City Recorder. The return shall be filed in such form as the City Recorder may prescribe by every operator liable for payment of tax.

9.1 Returns shall show the amount of tax collected or otherwise due for the related period. The City Recorder may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of those amounts and the amount of the rents exempt, if any.

9.2 The operator shall deliver the return, together with the remittance of the amount of the tax due, to the City Recorder, either by personal delivery or by mail.

9.3 The return shall be signed by the operator and certified as being true and

accurate.

Section 10.0 PAYMENT EXTENSIONS.

For good cause, the City Recorder may extend, for not to exceed one month, the time for making any return or payment of tax. No further extension shall be granted, except by the City Council. Any operator to whom an extension is granted by the city shall pay interest at a rate of one percent (1%) per month, or portion thereof, from the original due date, until paid. If a return is not filed and the tax 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 interest and further penalties described in this ordinance.

Section 11.0 PENALTIES AND INTEREST.

11.1 Original delinquency. Any operator who has not been granted an extension of time for remittance of tax due and fails to remit any tax imposed by this ordinance prior to delinquency shall pay a penalty equal to ten percent (10%) of the amount of the tax due, in addition to the amount of the tax.

11.2 Continued delinquency. Any operator who has not been granted an extension of time for remittance of tax due and fails to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due, plus the amount of the tax and the ten percent (10%) penalty first imposed.

11.3 Fraud. If the City Recorder determines that the non-payment of any remittance due under this ordinance was due to fraud or was done with the intent to evade the provisions of this ordinance, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in divisions (1) and (2) of this section.

11.4 Interest. In addition to penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest on delinquent taxes at the rate of one percent (1%) per month, or fraction thereof, without prorating for portions of a month on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

11.5 Penalties merged with tax. Every penalty imposed and any interest accrued under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

11.6 Petition for waiver. Any operator who fails to remit the tax herein levied within the time stated shall pay the penalties herein stated; provided, however, that the operator may petition the City Recorder for waiver and refund of the penalty, or any

portion thereof, and the City Recorder may, in the City Recorder's sole discretion, and if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

Section 12.0 DEFICIENCY DETERMINATION.

If the City Recorder determines that a return is incorrect, the Administrator shall compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information submitted to the city or additional information provided or obtained for City Recorder review. One or more deficiency determinations may be made of the amount due for one or more than one reporting period and the amount so determined shall be due and payable immediately upon service of notice, as herein provided, after which the amount determined is delinquent. Penalties and interest on deficiencies shall be charged in this ordinance.

12.1 In making a determination, the City Recorder may offset tax overpayments, if any, which may have been previously made for a reporting period or periods or against penalties and interest on underpayments. Penalties and interest on underpayments shall be computed in the manner set forth in section 11.0.

12.2 The City Recorder shall give the operator a written notice of a deficiency determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at the address as it appears on the records of the city.

12.3 Except in the case of fraud or intent to evade the provisions of this ordinance or rules and regulations authorized hereunder, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the quarterly period for which the return was filed, or due to be filed, or within three years after the return is filed, whichever period expires later.

12.4 Any deficiency determination shall become due and payable immediately upon receipt of notice and shall become final within 20 days after the City Recorder has given notice thereof; provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

12.5 If any operator shall fail or refuse to collect the tax or to make, within the time provided in this ordinance any return, or remittance of the tax, or any portion thereof, required by this ordinance, or makes a fraudulent return, or otherwise willfully attempts to evade the provisions of this ordinance, the City Recorder shall proceed in the manner as may be deemed best to obtain the facts and information on which to base an estimate of the tax due. As soon as the City Recorder has determined the tax due from any operator who has failed or refused to collect the same and to report and remit the tax, the City Recorder shall proceed to determine and assess against that operator the

tax, interest and penalties provided herein. This determination and notice shall be made and mailed within three years of the discovery by the City Recorder of any fraud, intent to evade or failure or refusal to collect the tax or failure to file a return. Any determination shall become due and payable upon receipt of notice and shall be final 20 days after the City Recorder has given notice thereof; provided, however, the operator may petition the City Recorder for redemption or refund if the petition is filed before the determination becomes final as herein provided.

Section 13.0 PAYMENT IN JEOPARDY.

If the City Recorder believes that the collection of any tax, or any portion thereof, required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, the Administrator shall make a determination of the tax, penalties and interest required to be collected. The amount so determined shall be immediately due and payable and the operator shall immediately pay the tax to the City Recorder after service of notice thereof: provided, however, the operator may petition, after payment has been made, for redemption and refund of the determination, if the petition is filed with the City Recorder within 20 days from the date of service of notice by the City Recorder.

14.0 REDETERMINATIONS.

Any person against whom a deficiency determination is made may petition for a redetermination and redemption and refund within the time required in section 12.4. If a petition for redetermination and refund is not filed within the time required in section 12.4, the determination becomes final at the expiration of the allowable time.

14.1 If a petition for redetermination and refund is filed with the City Recorder within the allowable period, the City Recorder shall reconsider the determination and if the operator has so requested by petition, the City Recorder shall grant the operator an oral hearing and the City Recorder shall give a 20 day notice of the time and place of the hearing to the operator. The City Recorder may continue the hearing from time to time as may be necessary.

14.2 The City Recorder may decrease or increase the amount of the determination. If an increase is determined, the increase shall be payable immediately.

14.3 The decision of the City Recorder upon a petition for redetermination or redemption and refund is final 20 days after service upon the petitioner of notice thereof, unless appeal of the decision to the City Council is filed with the City Recorder within 20 days after the service of the notice. No petition for determination or redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

Section 15.0 SECURITY FOR COLLECTION OF TAX.

The City Recorder may require the operator to deposit with the City, security in the form of cash, bond or other security as the City Recorder may determine. The amount of the security shall be fixed by the City Recorder, but shall not be greater than twice the operator's estimated average quarterly tax liability, determined in any manner the City Recorder deems proper, or \$50.00, whichever amount is less. The operator may appeal any decision of the City Recorder made pursuant to this section to the City Recorder, pursuant to section 22.0.

Section 16.0 COLLECTION BY CITY ATTORNEY.

At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three years after any deficiency determination becomes final, the City Attorney may bring any action in the courts of this state or any other state or of the United States in the name of the City to collect the amount delinquent together with penalties and interest, or to foreclose the municipal lien pursuant to Section 17.0.

Section 17.0 LIEN FOR AMOUNTS OWED.

The tax imposed by this ordinance, together with the interest, administrative costs, attorney's fees and penalties herein provided, and the filing fees paid to the Tillamook County Clerk, and all advertising and notice expenses, and all other amounts owing to the City herein, shall be a lien from the date of its recording with the County Clerk of Tillamook County, Oregon, on all real property owned by the operator and on all tangible personal property used in the hotel, and may be foreclosed in the same manner as other municipal liens. The lien shall be satisfied upon payment of the full amount secured by the lien, including any interest accrued to the date of payment, and including payment of all recording fees for the lien and for its release.

Notice of the lien may be issued by the City Recorder, or her designee, whenever the operator is in default in the payment of said tax, interest and penalty and shall be recorded with the Tillamook County Clerk, and a copy sent to the delinquent operator. The personal property subject to such a lien may be seized by the City and may be sold by the City at public auction after 10 days notice which includes one publication in a newspaper distributed within the City. Any lien for taxes shown on the records shall, upon payment of all taxes, penalties and interest, be paid to the City. Upon the operator making payment in full, and paying any required administrative cost by the City, together with any recording fees for a Release of Lien, the City shall prepare a Release of Lien and record it with the Tillamook County Clerk.

The tax imposed by this ordinance, together with the interest, administrative costs, attorney's fees and penalties and the filing fees paid to the Tillamook County Clerk, together with any advertising and notice costs, which may be incurred after the

delinquency, shall become a lien on real property owned by the operator thirty days after notification of payment due. The lien created may be foreclosed in any manner provided by law or by City ordinance.

In the event of litigation, the prevailing party shall be entitled to recover their reasonable attorney's fees and other costs and disbursements provided by law, as may be awarded at trial and on appeal.

Section 18.0 REFUNDS TO OPERATOR OR TRANSIENT.

Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously collected or received by the City Recorder, it may be refunded provided a written claim therefore stating the specific reason upon which the claim is founded is filed with the City Recorder by the operator or the transient, whichever actually suffered the loss, within three years from the date of the alleged overpayment.

Section 19.0 REFUNDS BY OPERATOR TO TRANSIENT.

Whenever the tax required by this Ordinance has been collected by the operator and it is later determined that the tenant occupied the hotel for a period exceeding 30 days without interruption, the operator shall refund to that tenant the tax previously collected by the operator. The operator shall account for this collection and refund to the City Recorder. 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 from the city.

Section 20.0 OPERATOR RECORDS; CONFIDENTIALITY.

Every operator shall keep guest records of lodging sales and accounting books and records of the transient lodging sales. The operator shall retain all records for a period of three years and six months after they come into being.

20.1 The City Recorder, or the City Recorder's designee, may examine during normal business hours the books, papers and accounting records relating to lodging sales of any operator liable or potentially liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made or if no return is made by the operator, to ascertain and determine the amount required to be paid.

20.2 It shall be unlawful for the City Recorder, or any person having an administrative or clerical duty to administer this ordinance, to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of an operator or other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth in any statement or application or to permit any statement or application or copy of any book containing any abstract or

particulars thereof to be seen or examined by any person; provided that nothing in this section shall be so construed to prevent:

20.2.1 The disclosure to or the examination of records and equipment by another city official, employee or agent for collection of taxes or otherwise administering or enforcing any provisions of this ordinance;

20.2.2 The disclosure, after the filing of a written request, by the taxpayer, to and/or the taxpayer's receivers, trustees, executors, administrators, assignees and guarantors, or information as to any paid tax, any unpaid tax or amount of tax required to be collected or interest and penalties; provided, however, that the City Attorney approves each disclosure. The City Recorder may refuse to make any disclosure referred to herein when in the Recorder's opinion, the public interest would suffer thereby;

20.2.3 The disclosure of the names and addresses of any person to whom transient occupancy registration certificates have been issued; and

20.2.4 The disclosure of general statistics regarding taxes collected in the city.

20.2.4 Any disclosure required by law.

Section 21.0 USE OF TRANSIENT TAX PROCEEDS

The City shall dedicate not less than seventy percent (70%) of the transient lodging tax collections each year to fund tourism promotion or tourism-related facilities, and not more than thirty percent (30%) of the transient lodging tax collections each year to fund city services, including administrative fees. The City Council may, by resolution, establish criteria and procedures for the distribution of revenue collected by the tax imposed under this Ordinance.

Section 22.0 APPEALS TO CITY COUNCIL.

Any person aggrieved by any decision of the City Recorder may appeal to the City Council by filing written notice of appeal with the City Recorder within 20 days of the personal service or mailing of notice of the decision. The City Council shall give the appellant not less than a 20 day advance written notice of the time and place of the hearing.

All appeals before the City Council shall be heard de novo, with the appellant having the burden of proof to show that relief should be granted from a determination by the City Recorder for tax liability. All appeal hearings shall be open to the public. Upon request made by the appellant, if there is information involving trade secrets or other confidential business records, the City Council can make whatever protective orders as may be necessary to prohibit public disclosure of the confidential information. If

necessary, the City Council, may continue its deliberation in executive session, if it is necessary to discuss or consider confidential documents. Any decision by the Council shall be made in a public meeting. The Council may affirm, reverse, modify or remand any order or determination of the City Recorder and may grant such other relief as may be appropriate.

Section 23.0 ATTORNEY FEES.

If suit or action is instituted for any cause arising out of or in any way connected with the administering of this ordinance, the prevailing party, shall be entitled to recover reasonable attorney's fees and costs awarded by the trial and by the appellate court. The City shall also be entitled to recover from the operator, reasonable attorney's fees incurred in requiring the operator to comply with the terms of this chapter, even though no suit or action is instituted.

Section 24.0 SEVERABILITY.

If any section, division, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional or otherwise invalid, that decision shall not affect the validity of the remaining portions of this Ordinance.

Section 25.0 NOTICE.

Whenever a filing under this Ordinance is required or permitted by mail, that filing shall be considered to have been received two business days after the filing was placed in the US mail, addressed to the intended recipient, by certified mail, return receipt requested, and postage prepaid, regardless of whether or not the recipient accepts the mail.

Section 26.0 VIOLATIONS.

It is unlawful for any operator, or other person so required, to: fail or refuse to register as required herein; fail or refuse to furnish any return required to be made; fail or refuse to furnish a supplemental return or other data required by the City Recorder; or to render a false or fraudulent return. No person required to make, render, sign or verify any return shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due or required this Ordinance.

Section 27.0 PENALTIES.

Violation of any provision of this Ordinance shall constitute a violation. Each day a violation continues shall be a separate offense.

The Council may authorize a fine of up to \$100.00 per day for each day of violation.

In the event that there is willful violation of any provision of this ordinance, the Council may authorize a fine of not more than \$500.00 and/or revocation of the operator's Certificate of Authority to Collect Transient Lodging Tax.

The City shall have all other remedies available to it allowed by law.

Section 27.0 ENFORCEMENT.

The City Recorder shall administer and enforce provisions of this Ordinance.

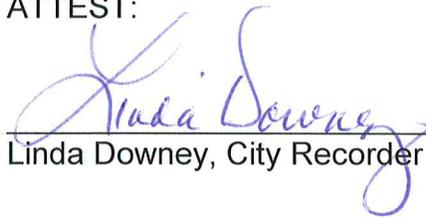
Section 28.0 REPEAL. Bay City Ordinance 657 is repealed in its entirety.

PASSED and ADOPTED by the City Council this 10th, day of November, 2015 and APPROVED by the Mayor this 10th day of November, 2015.



Shaena E. Peterson, Mayor

ATTEST:



Linda Downey, City Recorder

First Reading: November 10, 2015
Second Reading: November 10, 2015
Adoption: November 10, 2015
Ayes: 4
Nays: 0
Abstentions: 0