

ORDINANCE NO. 18- 11

AN ORDINANCE AMENDING THE ASTORIA CITY CODE BY THE ADDITION OF SECTION 8.045 CONCERNING TRANSIENT ROOM TAX.

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Astoria City Code Section 8.045 pertaining to Transient Room Tax is deleted in its entirety and replaced to read as follows:

"Transient Room Taxes

8.045 The term "ordinance" in the following sections refers to sections 8.045.1 to 8.045.18 of the Astoria Code.

8.045.1 Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance.

- (a) Transient Lodging Facility: Any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, bed and breakfast establishment, home stay lodging, vacation rental, or other such transient lodging facility (such as Airbnb, VRBO, etc.). Transient Lodging Facility also means space in mobile home or trailer parks, or similar structure of space or portions thereof so occupied, provided such occupancy is for less than a 30-day period. [Subsection (a) amended by Ordinance No. 90-07, Section 1, passed April 16, 1990; amended by Ordinance No. 18-\*\*, passed \*\*\*.]
- (b) City Council: The City Council of the City of Astoria, Oregon.
- (c) Occupancy: The use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in a Transient Lodging Facility, or space in a mobile home or trailer park or portion thereof. [Section 8.045.1.c amended by Ordinance No. 18-\*\*, passed \*\*\*]
- (d) Operator: The person who is the proprietor of the Transient Lodging Facility in any capacity. Where the operator performs his functions through a managing agent of any type or character 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 his principal. Compliance with the provision of this ordinance by either the principal or the managing agent shall be considered to be compliance by both. [Section 8.045.1.d amended by Ordinance No. 18-\*\*, passed \*\*\*]
- (e) Person: Any 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 any other group or combination acting as a unit.

- (f) Cash Accounting: The operator does not enter the rent due from a transient on his records until rent is paid.
- (g) Accrual Accounting: The operator enters the rent due from a transient on his records when the rent is earned, whether or not it is paid.
- (h) Rent: The consideration charged, whether or not received by the operator, for the occupancy of space in a Transient Lodging Facility, valued in money, goods, labor, credits, property, or other consideration valued in money, without any deduction. [Section 8.045.1.h amended by Ordinance No. 18-\*\*, passed \*\*\*]
- (i) 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 transient room tax under this ordinance shall be the same charge made for rent when consideration is not a part of a package plan.

The amount applicable to rent for determination of transient room tax under this ordinance shall be that amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package, and taking into consideration the charge for rent when the space is rented separately and not included in a package plan.

- (j) Tax: Either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.
- (k) Tax Administrator: The Finance Director of the City of Astoria, Oregon or his designee.
- (l) Transient: Any individual who exercises occupancy or is entitled to occupancy in a Transient Lodging Facility for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient guest checks out of the Transient Lodging Facility shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a Transient Lodging Facility 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 this ordinance may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient. [Section 8.045.1 added by Section 1 of Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance No. 18-\*\*, passed \*\*\*.]
- (m) Transient Lodging Facility Intermediary: A person, firm, or other third-party entity other than a lodging provider that facilitates the retail sale of lodging and charges and

collects the consideration charged including tax for occupancy of the lodging facility.  
[Section 8.045.1.m added by Ordinance No. 18-\*\*, passed \*\*\*]

- (n) Transient Lodging Tax Collector: An Operator or a Transient Lodging Facility Intermediary. Transient Lodging Tax Collector may also be referred to as "Operator".  
[Section 8.045.1.n added by Ordinance No. 18-\*\*, passed \*\*\*]

#### 8.045.2 Tax Imposed.

For the privilege of occupancy in any Transient Lodging Facility on or after January 1, 2018, each transient shall pay a tax in the amount of 11 percent of the rent charged by the Transient Lodging Tax Collector. The tax constitutes a debt owed by the transient to the City, which is extinguished only by payment by the Transient Lodging Tax Collector to the City. The transient shall pay the tax to the Transient Lodging Tax Collector of the Transient Lodging Facility at the time the rent is paid. The Transient Lodging Tax Collector shall enter the tax on his records when the rent is collected, if the operator keeps his records on the cash accounting basis, and when earned if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the Transient Lodging Tax Collector with each installment. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services, commodities, other than the furnishings of rooms, accommodations and space occupancy in mobile home parks or trailer parks." [Section 8.045.2 added by Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance No. 81-04, passed May 18, 1981; and Ordinance No. 90-07, passed April 16, 1990; amended by Ordinance No. 01-13, passed November 19, 2001; amended by Ordinance No. 18-\*\*, passed \*\*\*.]

#### 8.045.3 Collection of Tax by Transient Lodging Tax Collector; Rules for Collection.

- (a) Every operator renting rooms or space for lodging or sleeping purposes in this City, the occupancy of which is not exempted under the terms of this ordinance, shall collect a tax from the occupant. The tax collected or accrued by the Transient Lodging Tax Collector constitutes a debt owed by the Transient Lodging Tax Collector to the City.  
[Section 8.045.3.a amended by Ordinance No. 18-\*\*, passed \*\*\*.]
- (b) In all cases of credit or deferred payment of rent, the payment of tax to the Transient Lodging Tax Collector may be deferred until the rent is paid, and the Transient Lodging Tax Collector shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectibles. [Section 8.045.3.b amended by Ordinance No. 18-\*\*, passed \*\*\*.]
- (c) The tax administrator shall enforce provisions of this ordinance and shall have the power to adopt rules and regulations, approved by the City Manager, not inconsistent with this ordinance, as may be necessary to aid in the enforcement.

- (d) For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted. [Section 8.045.3 added by Section 3 of Ordinance No. 75-05, passed June 2, 1975.]
- (e) In the case of the tax collection and payment by other than the Operator, the Transient Lodging Facility Intermediary shall enter into a written agreement with the City for said tax collection and payment prior to start of operation as a third-party tax collector. Such agreement shall not preclude State collection of taxes and other rights of the City in Federal, State, or local laws, rules, and regulations. [Section 8.045.3.e added by Ordinance No. 18-\*\*, passed \*\*\*.]

#### 8.045.4 Transient Lodging Tax Collector's Duties.

Each Transient Lodging Tax Collector shall collect the tax imposed by this ordinance at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the Transient Lodging Tax Collector's records and any receipt rendered by the Transient Lodging Tax Collector. No Transient Lodging Tax Collector of a Transient Lodging Facility shall advertise that the tax or any part of the tax will be assumed or absorbed by the Transient Lodging Tax Collector, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this ordinance. [Section 8.045.4 added by Section 4 of Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance No. 18-\*\*, passed \*\*\*.]

#### 8.045.5 Exemptions.

No tax imposed under this ordinance shall be imposed upon:

- (a) Any occupant for more than 30 successive calendar days. (A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.)
- (b) Any occupant whose rent is of a value less than \$2.00 per day.
- (c) [Section 8.045.5(c) deleted by Ordinance No. 18-\*\*, passed \*\*\*]
- (d) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for the aged people, or to a public institution owned and operated by a unit of government. [Section 8.045.5 added by Section 5 of Ordinance No. 75-05, passed June 2, 1975.]

#### 8.045.6 Registration of Operator; Form and Contents; Execution; Certification of Authority.

- (a) Every person engaging or about to engage in business as an operator of a Transient Lodging Facility in this City shall register with the tax administrator on a form provided by him. Operators engaged in business at the time this ordinance is adopted must register not later than 30 calendar days after passage 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 such

tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. [Section 8.045.6.a amended by Ordinance No. 18-\*\*, passed \*\*\*.]

(b) Registration sets forth the following:

- (1) Name under which the operator transacts or intends to transact business; and
- (2) Location of his place or places of business; and
- (3) Name and address of the real property owner of the business location; and
- (4) Third-party identification number if utilizing a Transient Lodging Facility Intermediary; and
- (5) Such other information to facilitate the collection of the tax as the tax administrator may require.

[Section 8.045.6.b amended by Ordinance No. 18-\*\*, passed \*\*\*.]

(c) The registration shall be signed by the operator.

(d) The tax administrator shall, within 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 non-assignable 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.

(e) Said certificate shall, among other things, state the following:

- (1) The name of the operator.
- (2) The address of the Transient Lodging Facility. [Section 8.045.6.e.2 amended by Ordinance No. 18-\*\*, passed \*\*\*.]
- (3) The date upon which the certificate was issued.
- (4) "This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the transient lodgings tax ordinance of the City of Astoria by registration with the tax administrator for the purpose of collecting from transients the lodging tax imposed by said city and remitting said 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 Transient Lodging Facility 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 of Astoria. This certificate does not constitute a permit." [Section 8.045.6 added by Section 6 of Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance No. 18-\*\*, passed \*\*\*.]

8.045.7 Due Date; Returns and Payments.

- (a) The tax imposed by this ordinance shall be paid by the transient to the Transient Lodging Tax Collector at the time that rent is paid. All amounts of such taxes collected by any Transient Lodging Tax Collector are due and payable to the tax administrator on a monthly basis on the 15th day of the following month and are delinquent on the last day of the month in which they are due. The tax administrator has authority to classify and/or district the Transient Lodging Tax Collectors for determination of applicable tax periods and shall notify each Transient Lodging Tax Collector of the due and delinquent dates for the Transient Lodging Tax Collector's returns. The initial return under this ordinance may be for less than the three months preceding the due date; thereafter, returns shall be made for the applicable monthly period. [Section 8.045.7.a amended by Ordinance No. 18-\*\*, passed \*\*\*.]
- (b) On or before the 15th day of the month following each month of collection, a return for the preceding month's tax collections shall be filed with the tax administrator. The return shall be filed in such form as the tax administrator may prescribe by every Transient Lodging Tax Collector liable for payment of tax. [Section 8.045.7.b amended by Ordinance No. 18-\*\*, passed \*\*\*.]
- (c) Returns shall show the amount of tax collected or otherwise due for the related period. The tax administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of Transient Lodging Tax Collector for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any. [Section 8.045.7.c amended by Ordinance No. 18-\*\*, passed \*\*\*.]
  - (1) If the return is submitted by a Transient Lodging Facility Intermediary, the return shall list the identification number of the Transient Lodging Facility and the amount remitted for that specific facility. [Section 8.045.7.c.1 added by Ordinance No. 18-\*\*, passed \*\*\*.]
- (d) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the tax administrator at his office, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.
- (e) For good cause, the tax administrator 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 Transient Lodging Tax Collector to whom an extension is granted shall pay interest at the rate of one-half of 1 percent per month on the amount of tax due without proration for a fraction of a month. 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 penalties described elsewhere in this ordinance. [Section 8.045.7.e amended by Ordinance No. 18-\*\*, passed \*\*\*.]

- (f) The tax administrator, if he deems it necessary in order to insure payment or facilitate collection by the City of the amount of taxes in an individual case, may require returns and payment of the amount of taxes for other than monthly periods. [Section 8.045.7 added by Section 7 of Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance No. 18-\*\*, passed \*\*\*.]

#### 8.045.8 Penalties and Interest.

- (a) Original delinquency.

Any Transient Lodging Tax Collector who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this ordinance prior to delinquency shall pay 10 percent of the amount of the tax due in addition to the amount of the tax. [Section 8.045.8.a amended by Ordinance No. 18-\*\*, passed \*\*\*.]

- (b) Continued delinquency.

Any Transient Lodging Tax Collector who has not been granted an extension of time for remittance of tax due, and who failed 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 15 percent of the amount of the tax due plus the amount of the tax and the 10 percent penalty first imposed. [Section 8.045.8.b amended by Ordinance No. 18-\*\*, passed \*\*\*.]

- (c) Fraud.

If the tax administrator determines that the nonpayment of any remittance due under this ordinance is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in Subsections (a) and (b) of this section.

- (d) Interest.

In addition to the penalties imposed, any Transient Lodging Tax Collector who fails to remit any tax imposed by this ordinance shall pay interest at the rate of 1 percent per month or fraction thereof without proration 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. [Section 8.045.8.d amended by Ordinance No. 18-\*\*, passed \*\*\*.]

- (e) Penalties merged with tax.

Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

- (f) Petition for waiver.

Any Transient Lodging Tax Collector who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated; provided, however, the Transient Lodging Tax Collector may petition the City Council for waiver and refund of the penalty or any portion thereof, and the City Council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof. [Section 8.045.8 added by Section 8 of Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance No. 18-\*\*, passed \*\*\*.]

#### 8.045.9 Deficiency Determinations; Evasion; Transient Lodging Tax Collector Delay.

- (a) Deficiency determinations. If the tax administrator determines that the returns are incorrect, he may 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 within his possession or that may come into his possession. One or more deficiency determination may be made of the amount due for one or more than one 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 on deficiencies shall be applied as set forth in Section 8.045.8.
- (1) In making a determination, the tax administrator may offset overpayments, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in Section 8.045.8.
  - (2) The tax administrator shall give to the Transient Lodging Tax Collector or occupant a written notice of his determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the Transient Lodging Tax Collector at his address as it appears on the records of the tax administrator. In case of service by mail of any notice required by this ordinance, notice shall be served by registered mail, postage prepaid, return receipt requested. [Section 8.045.9.a.2 amended by Ordinance No. 18-\*\*, passed \*\*\*.]
  - (3) Except in the case of fraud or intent to evade this ordinance or authorized rules and regulations, 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 monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period expires later. [Section 8.045.9.a.3 amended by Ordinance No. 18-\*\*, passed \*\*\*.]
  - (4) Any determination shall become due and payable immediately upon receipt of notice and shall become final within 20 days after the tax administrator has given notice thereof; provided, however, the Transient Lodging Tax Collector may petition redemption and refund if the petition is filed before the determination becomes final as herein provided. [Section 8.045.9.a.4 amended by Ordinance No. 18-\*\*, passed \*\*\*.]



- (b) Fraud; refusal to collect; evasion.

If any Transient Lodging Tax Collector shall fail or refuse to collect said tax or to make, within the time provided in this ordinance, any report or remittance of said tax or any portion thereof required by this ordinance, or makes a fraudulent return or otherwise willfully attempts to evade this ordinance, the tax administrator shall proceed in such manner as he may deem best to obtain the facts and information on which to base an estimate of the tax due. As soon as the tax administrator has determined the tax due that is imposed by this ordinance from any Transient Lodging Tax Collector who has failed or refused to collect the same and to report and remit said tax, he shall proceed to determine and assess against such Transient Lodging Tax Collector the tax, interest and penalties provided for by this ordinance. In case such determination is made, the tax administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three years of the discovery by the tax administrator of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable upon receipt of notice and shall become final within 20 days after the tax administrator has given notice thereof; provided, however, the Transient Lodging Tax Collector may petition for redemption refund if the petition is filed before the determination becomes final as herein provided. [Section 8.045.9.b amended by Ordinance No. 18-\*\*, passed \*\*\*.]

- (c) Transient Lodging Tax Collector delay.

If the tax administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount to be determined, as herein provided, shall be immediately due and payable, and the Transient Lodging Tax Collector shall immediately pay such determination to the tax administrator after service of notice thereof; provided, however, the Transient Lodging Tax Collector may petition, after payment has been made, for redemption and refund of such determination if the petition is filed within 20 days from the date of service of notice by the tax administrator. [Section 8.045.9 added by Section 9 of Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance No. 18-\*\*, passed \*\*\*.]

#### 8.045.10 Redeterminations.

- (a) Any person against whom a determination is made under Section 8.045.9, or any person directly interested, may petition for a redetermination and redemption and refund within the time required in Section 8.045.9. If a petition for redetermination and refund is not filed within the time required in Section 8.045.9, the determination becomes final at the 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 person has so requested in his petition, shall grant the person an oral hearing, and shall give him 20 days' notice

of the time and place of the hearing. The tax administrator may continue the hearing from time to time as may be necessary.

- (c) The tax administrator may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, such increase shall be payable immediately after the hearing.
- (d) The order or decision of the tax administrator upon a petition for redetermination of redemption and refund becomes final 20 days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the transient lodgings tax review committee within the 20 days after the service of such notice.
- (e) No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the Transient Lodging Tax Collector has first complied with the payment provisions hereof. [Section 8.045.10 added by Section 10 of Ordinance No. 75-05 passed June 2, 1975; amended by Ordinance No. 18-\*\*, passed \*\*\*.]

#### 8.045.11 Security for Collection of Tax.

- (a) The tax administrator, whenever he deems it necessary to insure the compliance with this ordinance, may require the Transient Lodging Tax Collector subject thereto to deposit with him such security in the form of cash, bond or other security in the amount of 25% of the quarterly average or higher as the tax administrator may determine. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the Transient Lodging Tax Collector's estimated average applicable monthly liability for the period for which he files returns, determined in such a manner as the tax administrator deems proper, or \$5,000.00, whichever amount is less. The amount of security may be increased or decreased by the tax administrator subject to limitations herein provided. The Transient Lodging Tax Collector has a right to appeal to the City Council any decision of the tax administrator made pursuant to this section. The Transient Lodging Tax Collector's right to appeal is pursuant to Section 8.045.16 herein. [Section 8.045.11.a amended by Ordinance No. 18-\*\*, passed \*\*\*.]
- (b) 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 determination becomes final, the tax administrator 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. [Section 8.045.11 added by Section 11 of Ordinance No. 75-05, passed June 2, 1975.]

#### 8.045.12 Lien.

- (a) The tax imposed by Sections 8.045.1 to 8.045.17, together with the interest and penalties therein provided, and advertising costs which may be incurred when the same becomes delinquent, as set forth herein, shall be and, until paid, remain a lien from the date of its recording in the lien docket of the City and superior to all subsequent recorded liens on all real and tangible personal property, used in the

Transient Lodging Facility of an operator within the City of Astoria, and may be foreclosed on and sold as may be necessary to discharge said lien. A lien shall be recorded by the tax administrator or his deputy whenever the Transient Lodging Tax Collector is in default in payment of said tax and the lien is ordered by a resolution of the City Council. The lien shall be entered in the lien docket and on an electronic lien service provider such as "Net Assets" for the full value with separate amounts for tax and penalty. Interest shall commence from the date of entry in the lien docket. Interest shall accrue on the tax portion of the lien at 1 percent per month or fraction thereof without proration for portion of month. [Section 8.045.12.a amended by Ordinance No. 18-\*\*, passed \*\*\*.]

- (b) In addition to the lien against the operator's property as noted in Section 8.045.12(a), the tax imposed by this Chapter, together with the interest and penalties provided in this Chapter, shall be and until paid remain a lien from the date of its docketing with the City Manager of the City against the real property occupied by the Transient Lodging Facility, regardless of the ownership of said property. Recording of the lien shall be in accordance with Section 8.045.12(a). [Section 8.045.12.b added by Ordinance No. 18-\*\*, passed \*\*\*.]
- (c) In the case of a Transient Lodging Facility Intermediary, the tax imposed by this Chapter, together with the interest and penalties provided in this Chapter, shall be and until paid remain a lien from the date of its docketing with the City Manager of the City against all property of the Transient Lodging Facility Intermediary as authorized by local, State or Federal law. This lien shall have priority over all other liens and encumbrances of any character. The lien may be foreclosed on as provided by local, State or Federal law. Recording of the lien shall be in accordance with Section 8.045.12(a). [Section 8.045.12.c added by Ordinance No. 18-\*\*, passed \*\*\*.]
- (d) Other Remedies. Nothing herein contained shall prevent the City from exercising any right or seeking any remedy to which the City might otherwise be entitled or from filing a complaint with any appropriate governmental agency. This ordinance is in addition to any Federal, State, and other laws, rules and regulations, and methods of tax collection. [Section 8.045.12.d added by Ordinance No. 18-\*\*, passed \*\*\*.]
- (e) The lien shall be enforced as provided in Sections 2.185(3) to 2.185(5) of this code. [Section 8.045.12 added by Section 12 of Ordinance No. 75-05, passed June 2, 1975; and amended by Ordinance No. 79-02, passed February 5, 1979; renumbered by Ordinance No. 18-\*\*, passed \*\*\*.]

#### 8.045.13 Refunds.

- (a) Refunds by the City to the Transient Lodging Tax Collector.

Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator under this ordinance, it may be refunded; provided, a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three years from the date of payment. The claim shall be made on forms

provided by the tax administrator. If the claim is approved by the tax administrator, the excess amount collected or paid may be refunded, or may be credited on any amount then due and payable from the Transient Lodging Tax Collector from whom it was collected or by whom paid; and the balance may be refunded to such Transient Lodging Tax Collector, his administrators, executors, or assignees. [Section 8.045.13.a amended by Ordinance No. 18-\*\*, passed \*\*\*.]

(b) Refunds by City to transient.

Whenever the tax required by this ordinance has been collected by an Transient Lodging Tax Collector and deposited by Transient Lodging Tax Collector 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; provided, a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the tax administrator within three years from the date of payment. [Section 8.045.13.b amended by Ordinance No. 18-\*\*, passed \*\*\*.]

(c) Refunds by Transient Lodging Tax Collector to tenant.

Whenever the tax required by this ordinance has been collected by the Transient Lodging Tax Collector and it is later determined that the tenant occupies the Transient Lodging Facility for a period exceeding 30 days without interruption, the Transient Lodging Tax Collector shall refund to such tenant the tax previously collected by the Transient Lodging Tax Collector from that tenant as a transient. The Transient Lodging Tax Collector shall account for such 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 tenant, he shall be entitled to a corresponding refund under this section. [Section 9.045.13 added by Section 13 of Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance No. 18-\*\*, passed \*\*\*.]

8.045.14 Collection Fee.

Every Transient Lodging Tax Collector liable for collection and remittance of the tax imposed by this ordinance may withhold 5 percent of the net tax herein collected, to cover the Transient Lodging Tax Collector's expense in collection and remittance of said tax. [Section 9.045.14 added by Section 14 of Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance 18-\*\*, passed \*\*\*.]

8.045.15 Administration.

(a) [Subsection (a) repealed by Ordinance No. 87-10, passed May 18, 1987.]

(b) Records required from Transient Lodging Tax Collectors, etc.

Every Transient Lodging Tax Collector shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the Transient Lodging Tax Collector for a period of three years and six months after they come into being. [Section 8.045.15.b amended by Ordinance No. 18-\*\*, passed \*\*\*.]

(c) Examination of records; investigations.

The tax administrator, or any person authorized in writing by him, may examine during normal business hours the books, papers and accounting records relating to room sales of any Transient Lodging Tax Collector, after notification to the Transient Lodging Tax Collector liable for the tax, and may investigate the business of the Transient Lodging Tax Collector in order to verify the accuracy of any return made or, if no return is made by the Transient Lodging Tax Collector, to ascertain and determine the amount required to be paid. [Section 8.045.15.c amended by Ordinance No. 18-\*\*, passed \*\*\*.]

(d) Confidential Character of Information Obtained.

City will comply with the Public Records Law of the State of Oregon relating to the confidentiality of and allowable disclosure of records, reports or returns submitted pursuant to this transient room tax ordinance. [Subsection 8.045.15(d) repealed and replaced by Ordinance No. 1010, passed November 1, 2010.]

[Section 8.045.15 added by Section 15 of Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance No. 87-10, passed May 18, 1987]

8.045.16 Appeals to City Council.

Any person aggrieved by any decision of the tax administrator may appeal to the City Council by filing notice of appeal with the tax administrator within 20 days of the serving or the mailing of the notice of the decision given by the tax administrator. The tax administrator shall transmit said notice of appeal together with the file of said appealed matter to the council, who shall fix a time and place for hearing such appeal from the decision of the tax administrator. The council shall give the appellant not less than 20 days' written notice of the time and place of hearing of said appealed matter. Action by the council on appeals shall be decided by a majority of the members of the council present at the meeting where such appeal is considered. [Section 8.045.16 added by Section 16 of Ordinance No. 75-05, passed June 2, 1975.]

8.045.17 Violations; Criminal and Civil Penalties and Remedies.

(a) Failure to Register or Report.

It is unlawful for any Transient Lodging Tax Collector or 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 a supplemental return or other data required by the tax administrator or to render a false or fraudulent return. No person required to make, render, sign or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due required by this ordinance. Any person willfully violating any of the provisions of this ordinance shall be subject to the

penalties provided in Section 1.010 of this Code. [Section 8.045.17.a amended by Ordinance No. 18-\*\*, passed \*\*\*.]

(b) Nonpayment – Civil and Criminal Remedies and Penalties.

An Transient Lodging Tax Collector who, having collected transient room tax, and failing to remit them to the City, may, in addition to the penalties and lien imposed by this ordinance, be subject to the penalties provided in Section 1.010 of this Code, and be subject to civil action in a court of competent jurisdiction for conversion, money had and received or any other available civil remedy. At the City's discretion, the City may prosecute or have the Transient Lodging Tax Collector prosecuted for a misdemeanor or felony, as the facts may warrant, when it appears the Transient Lodging Tax Collector has committed theft as defined by Oregon statutes.

[Section 8.045.17 added by Sections 18 and 19 of Ordinance No. 75-05, passed June 2, 1975; amended by Ordinance No. 10-10, passed November 1, 2010; amended by Ordinance No. 18-\*\*, passed \*\*\*.]

8.045.18 Distribution and Management of Funds.

The transient room tax collected will be deposited as follows:

- (a) Fifty-three and nine tenths (53.9%) of the total taxes collected shall be deposited into the General Fund to fund City services.
- (b) Forty-six and one tenth percent (46.1%) of 9% of transient room tax collections shall be deposited into the Promote Astoria Fund.
- (c) Thirty percent (30%) of 2% of transient room tax collections adopted in Ordinance 17-11 shall be deposited into the General Fund to fund City services.
- (d) Seventy percent (70%) of 2% of transient room tax collections adopted in Ordinance 17-11 shall be deposited into the Promote Astoria Fund.

The tax transferred to the Promote Astoria Fund shall be used for tourism promotion and tourism-related facilities as defined in ORS 320.300 for the City of Astoria and immediate-surrounding areas.

Organizations receiving funds from the Promote Astoria Fund shall enter into a contract with the City that will include a scope of work and budget to be approved annually by the Astoria City Council. The contract will designate how the funds will be expended by contracting organizations.

Contracting organizations shall provide semi-annual financial reports, by August 1 and February 1, covering the six months ended June 30 and December 31, respectively, of each year. These reports shall provide a verified listing of the expenditures with adequate narrative, so the City can be satisfied as to the appropriateness of the

expenditures. In addition, the Budget Committee of the City shall review such reports during the budget process and recommend to the City Council the continuance, discontinuance, or changes to a contract each year.”

Section 2. Effective Date. This ordinance and its amendment will be effective 30 days following its adoption and enactment by the City Council.

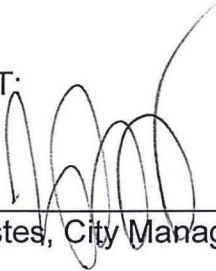
ADOPTED BY THE COMMON COUNCIL THIS 3 DAY OF December, 2018.

APPROVED BY THE MAYOR THIS 3 DAY OF December, 2018.

*Arlene LaMear*

\_\_\_\_\_  
Mayor

ATTEST:



\_\_\_\_\_  
Brett Estes, City Manager

ROLL CALL ON ADOPTION:

YEA

NAY

ABSENT

Commissioner

Nemlowill

X

Brownson

X

Price

X

Jones

X

Mayor LaMear

X