

A BILL FOR AN ORDINANCE CREATING) ORDINANCE BILL NO. 10
THE CITY OF LEBANON TRANSIENT ROOM) For 1993
TAX, PROVIDING FOR THE SAME, AND)
CREATING ADMINISTRATIVE PROCEDURES) ORDINANCE NO. 2134
FOR COLLECTING THE TAX.)

WHEREAS, the City Council of the City of Lebanon finds that the promotion of tourism is an important industry to be pursued by, and in the best interests of, the citizens of the City of Lebanon; and

WHEREAS, the assessment and collection of a transient room tax is required to further promote the City of Lebanon and generate the tourism industry in the City;

NOW, THEREFORE, THE PEOPLE OF THE CITY OF LEBANON DO ORDAIN AS FOLLOWS:

Section 1. This ordinance shall be known and may be cited as the City of Lebanon Transient Room Tax Ordinance.

Section 2. Definitions. Except where the context otherwise requires, the definitions given in this section shall govern the construction of this chapter:

(a) "Accrual Accounting" means the operator enters the rent due from a transient on his records when the rent is earned, whether or not it is paid.

(b) "Cash Accounting" means the operator does not enter the rent due from a transient on his records until such time as the rent is paid.

(c) "City Council" means the City Council of the City of Lebanon, Oregon.

(d) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designated for transient occupancy for lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, bed and breakfast, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private club, space in mobile home or trailer parks, or similar structure.

(e) "Occupancy" means the use or possession or the right to use or possess for lodging or sleeping purposes of any room or rooms in a hotel or space in a mobile home or trailer park or portion thereof.

(f) "Operator" means the person who is the proprietor of the hotel 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 chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

(g) "Person" means 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.

(h) "Recreation Park" means any area designated by the person establishing, operating, managing, or maintaining the same for overnight camping by the general public. "Recreation Park" shall mean only those areas available for use through the payment of a fee, and shall include spaces for recreational vehicles under the general heading of "camping".

(i) "Rent" means 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.

(j) "Rent Package Plan" means 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 room tax under this chapter shall be the same charge made for rent when consideration is not a part of a package plan.

(k) "Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(l) "Tax Administrator" means the Finance Director of the City of Lebanon.

(m) "Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of seven 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 seven day period, if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel shall be deemed to be a transient until the period of seven days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter 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 3. Tax Imposed.

(a) A transient shall pay a tax in the amount of \$1.00 per night per room or space of the rent charged for the privilege of occupancy in a hotel in the City or occupancy of a space in a recreational park. Hereafter, unless otherwise specified, references to "hotel" and "rooms" shall be deemed to include "recreation parks" and "spaces" respectively. The tax constitutes a debt owed by the transient to the City, and the debt is extinguished only when the tax is remitted by the operator to the City. The transient shall pay the tax to the operator at the time rent is paid. The operator shall enter the tax into the record when rent is collected if the operator keeps records on the cash accounting basis and when earned if the operator keeps records on the accrual accounting basis. If the rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. In all cases, rent paid or charged for occupancy shall exclude the sale of goods, services or commodities.

Section 4. Operator's Registration Form.

(a) An operator of a hotel shall register with the tax administrator, on a form provided by the administrator, within 15 days after beginning business, or before September 1, 1993, whichever date shall occur later.

(b) The registration shall include the following information:

(1) The name under which the operator transacts or intends to transact business;

(2) The location of the hotel;

(3) Any other information the tax administrator may require to facilitate the collection of the tax;

(4) The signature of the operator.

(c) Failure to register does not relieve the operator from collection the tax nor does it relieve a person from paying the tax imposed herein.

Section 5. Certificate of Authority.

(a) The tax administrator shall issue a Certificate of Authority to the registrant within 10 days after registration.

(b) Certificates are non-assignable and non-transferable and shall be surrendered immediately to the tax administrator on cessation of business at the location named or when the business is sold or transferred. However, in the event the business is transferred to a partnership or corporation wherein the proprietor still retains a majority interest, then the operator is only required to register the new name and other required information with the tax administrator.

(c) Each certificate shall state the place of business to which it applies and shall be prominently displayed.

(d) The certificate shall state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date when the certificate was issued;

(4) The following language: "This Transient Occupancy Registration Certificate signifies that the person named on the certificate has fulfilled the requirements of the Transient Room Tax Ordinance of the City of Lebanon by registering with the tax administrator for the purpose of collecting the room tax imposed by the City of Lebanon and remitting the tax to the tax administrator."

Section 6. Rules for Collection of Tax by Operator.

(a) The tax imposed by this chapter shall be paid by the transient to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the tax administrator on a quarterly basis on the 15th day of the following month for the preceding three months of the preceding quarter and are delinquent on the last day of the month in which they are due. The quarters are:

First quarter - January, February and March
Second quarter - April, May and June
Third quarter - July, August and September
Fourth quarter - October, November and December

(b) On or before the 15th day of the month following each quarter of collection, a return for the preceding quarter's tax collection shall be filed with the tax administrator. The return shall be filed in such form as the tax administrator may prescribe by every operator liable for payment of tax. The tax administrator may prescribe a form of amended return to be filed as directed by the tax administrator or by the operator within three years from the date the tax was due.

(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 the operator for such period, and an explanation in detail of any discrepancy between such amounts and the amounts of rents exempt, if any.

(d) After the gross tax, excluding any penalties as hereinafter assessed, has been calculated by the operator, the operator shall retain 5% of the gross tax as compensation for the recordkeeping services provided.

(e) 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.

(f) For good cause shown, 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 operator to whom an extension is granted shall pay interest at the rate of 1% 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 chapter.

(g) The tax administrator, if it is deemed necessary in order to insure 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 for other than quarterly periods.

Section 7. Penalties and Interest.

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

(b) **Continued Delinquency.** Any operator who has not been granted an extension of time for remittance of tax due and who 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 15% of the amount of the tax due plus the amount of the tax and the 10% penalty first imposed.

(c) **Fraud.** If the tax administrator determines that the non-payment of any remittance due under this chapter is due to fraud or intent to evade the provisions thereof, a penalty of

25% of the amount of the tax shall be added thereto, in addition to the penalty stated in subsections A and B of this Section.

(d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of 1% 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.

(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 part of the tax required in this chapter to be paid.

(f) Petition for Waiver. Any operator who fails to remit the tax levied in this chapter within the time stated in this chapter shall pay the penalties stated in this chapter; provided, however, that if the amount due by the operator to the City is \$100.00 or less, the operator may petition the tax administrator for waiver and refund of the penalty or any portion thereof, and the tax administrator may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof. For any amount greater than \$100.00 due to the City, the operator may petition City Council for such waiver and refund of the penalty or any portion thereof for good and sufficient reason shown.

Section 8. Deficiency Determinations.

(a) The tax administrator shall review returns filed in accordance with this ordinance. In doing so, the tax administrator shall have the power to determine if the returns are incorrect and the amount required to be paid on the basis of the facts contained in the return or on the basis of any other information.

(b) A deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately upon service of notice, after which the determined amount is delinquent. Penalties on deficiencies shall be applied as provided in Section 5.

(c) In making a determination, the tax administrator may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in Section 5.

Section 9. Notice of Determination.

(a) The tax administrator shall give the operator a written notice of the determination either personally or by mail. If the

notice is mailed, it shall be done by certified mail, return receipt requested, and addressed to the operator at the address that appears in the records of the tax administrator, and service is complete when the notice is received by the operator.

(b) Except in the case of fraud or attempt to evade the tax, a deficiency determination shall be made and notice mailed within three years after the last day of the month following the close of the quarterly period for which the determination has been made, or within three years after the return is filed, whichever is later.

Section 10. Redetermination Petition. A determination becomes payable immediately upon receipt of notice and becomes final within 10 days after the operator has received notice. However, the operator may petition for redetermination and refund by filing a petition before the determination becomes final as set forth hereafter.

Section 11. Redetermination.

(a) Any person against whom a determination is made under Section 6 or any person directly interested may petition for a redetermination of redemption and refund within the time required in Section 8. If a petition for redetermination and refund is not filed within the time required in Section 8, 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 the petition, shall grant the person an oral hearing and give 10 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 10 days after service upon the petitioner or notice thereof, unless appeal of such order or decision is filed with the City Council within the 10 days after service of such notice. Service of the notice shall be accomplished as required by Section 7(a).

(e) No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions of this chapter.

Section 12. Appeals. Any person aggrieved by any decision of the tax administrator may appeal to the City Council by filing a notice of appeal with the tax administrator within 10 days of the serving or the mailing of the notice of the decision given by the tax administrator. The tax administrator shall transmit the notice of appeal, together with the file of the appealed matter, to the City Council, which shall fix a time and place for hearing such appeal. Unless notice of the hearing is waived by the appellant, the City Council shall give the appellant not less than 10 days written notice of the time and place of the hearing of said appealed matter. Action by the City Council on appeals shall be decided by a majority of the members of the Council present at the meeting where such appeal is considered. The tax administrator shall also send a copy of the notice of appeal to the City Recorder. The sending of said notice to the City Recorder shall not be a jurisdictional requirement of the appeal to the City Council.

Section 13. Fraud; Refusal to Collect; Evasion.

(a) If an operator fails or refuses to collect the tax, make the report, or remit the tax, or makes a fraudulent return or otherwise willfully attempts to evade the tax payment, the tax administrator shall obtain facts and information on which to base an estimate of the tax due. After determining the tax due and the interest and penalties, the tax administrator shall give notice of the total amount due.

(b) Determination and notice shall be mailed by certified mail, return receipt requested, within three years after the discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately upon receipt of notice and becomes final 10 days after the operator has received notice.

(c) The operator may petition for redemption and refund if the petition is filed before the determination becomes final as set out in Section 13 herein.

Section 14. Security for Collection of Tax.

(a) The tax administrator may require an operator to deposit security in the form of cash, bond, or other security in the event an operator is found to be delinquent in his taxes pursuant to any portion of this ordinance. However, this section shall not apply if the operator has filed a form of petition affecting payment or any amount of tax due. The amount of security shall be fixed by the tax administrator and shall be not greater than twice the operator's estimated average quarterly liability for the period for which the operator files returns or \$5,000.00, whichever amount is less.

(b) Within three years after the tax becomes payable, or within three years after a determination becomes final, the tax administrator may bring an action in the name of the City in the courts of this state, another state, or the United States to collect the amount delinquent and penalties and interest.

Section 15. Liens.

(a) The tax, interest, penalty, and filing fees paid to the tax administrator and any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the county clerk until the tax is paid. The tax, penalty, and interest owed to the City shall continue to accrue until such time as the lien is satisfied. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's hotel. The lien may be foreclosed and the necessary property may be sold to discharge the lien, as provided by law.

(b) Notice of the lien shall be issued by the tax administrator when the operator has defaulted in payment of the tax, interest, and penalty. A copy of the notice shall be sent by certified mail to the operator.

(c) Personal property subject to the lien may be foreclosed in the same manner as a nonpossessory chattel lien as set forth in ORS Chapter 87.

(d) A lien for the tax, interest, and penalty shall be immediately released by the tax administrator when the full amount has been paid to the City. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest and penalty has been paid, that the lien is released and the record of the lien is satisfied.

Section 16. Refunds by City to Operator. When the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator, it may be refunded if a written claim stating the specific reason for the claim is filed within three years from the date of payment. The claim shall be submitted on forms provided by the tax administrator. If the claim is approved by the tax administrator, or the City Council, the excess amount may be refunded to the operator, or it may be credited to an amount then due and payable by the operator at the option of the tax administrator and any balance refunded.

Section 17. Refunds by City to Transient. If the tax has been collected by the operator and deposited with the tax administrator and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the transient if a written

verified claim by the transient stating the specific reason for the claim is filed with the tax administrator within three years from the date of payment. Notice of the refund available shall be mailed to the transient at the address the operator has on file or is known to the operator. The City shall give the transient 30 days from the date of mailing in which to file a verified claim for refund. In the event a claim is not made within the 30 day period, or in the event the City is unable to locate the transient, said amount shall be deposited into the transient room tax fund. The City is authorized to pay over any refund to an employer of the transient employee or to the transient's agent or successor upon filing the verified claim as herein set forth.

Section 18. Refunds by Operator to Transient. If the tax has been collected by the operator and it is later determined that the transient occupied the hotel for a period exceeding seven days without interruption, the operator shall refund the tax to the transient. The operator shall account for the collection and refund to the tax administrator. If the operator has remitted the tax prior to refund or credit to the transient, the operator shall be entitled to a corresponding refund.

Section 19. Records Required from Operators. Every operator shall keep guest records, accounting books, and records of room rentals for a period of three years and six months.

Section 20. Examination of Records. During normal business hours and after 72 hour notice to the operator, the tax administrator, or the administrator's designee, may examine books, papers, and accounting records related to room rentals to verify the accuracy of a return or, if not return is made, to determine the amount to be paid. In the event the operator refuses to turn over such records, then the tax administrator shall be entitled to seek injunctive relief in an appropriate court of competent jurisdiction.

Section 21. Confidentiality. The tax administrator or any person having an administrative or clerical duty under the provisions of this ordinance shall not make known in any manner the business affairs, operations, or information obtained by an investigation of records and equipment of a person required to file a return or pay a transient occupancy tax or a person visited or examined in the discharge of official duty; or the amount or source of income, profits, losses or expenditures contained in a statement or application; or permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

(a) Disclosure to or examination of records and equipment by a city official, employee or agent for collecting taxes for

the purpose of administering or enforcing the provisions or collecting the taxes imposed by this ordinance.

(b) Disclosure, after filing a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected, or interest and penalties. However, the City Attorney shall approve each disclosure and the tax administrator may refuse to make a disclosure referred to in this subsection when, in the tax administrator's opinion, the public interest would suffer.

(c) Disclosure of names and addresses of persons making returns.

(d) Disclosure of general statistics regarding taxes collected or business done in the City.

(e) Other such disclosures as required by Oregon law.

Section 22. Disposition and Use of Transient Room Tax Funds. All revenues received from the tax shall be deposited into a special fund known as the City of Lebanon Transient Room Tax Fund. The tax administrator's office shall be allocated not more than 10% of the revenue collected for the administration of the ordinance for one year after the effective date of this ordinance. Thereafter, such allocation shall be limited to the actual costs incurred. The remaining revenue shall be spent for the promotion, acquisition, construction, operation, and maintenance of recreational, cultural and tourist related services. It is the intent that the revenue of the tax shall be used to promote Lebanon, Oregon.

Any unused revenues may be invested by the City of Lebanon at the highest rate available and such revenues and interest shall be allocated to the Transient Room Tax Fund to be used for the purposes of this ordinance only.

Section 23. Severability. The sections of this ordinance are severable. The invalidity of a section shall not affect the validity of the remaining sections.

Section 24. Penalties. Failure to register pursuant to the ordinance is punishable by a fine not to exceed \$100.00 per day for each continuing day of violation, in addition to the penalties assessed for non-payment as set forth herein.

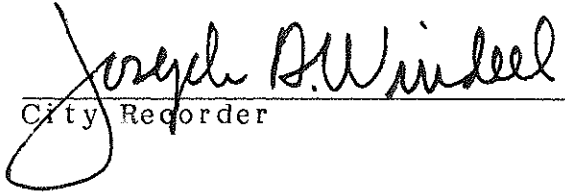
Section 25. Effective Date. Except for the provisions of Section 3 herein, this ordinance shall become effective on August 1, 1993. The taxes imposed by Section 3, and Section 3, shall become effective on October 1, 1993.

Passed by the Council of the City of Lebanon by a vote of
5 for and 0 against, and approved by the Mayor this
23rd day of June, 1993.



MAYOR

ATTEST:



City Recorder