

**CHAPTER 37**  
**TRANSIENT OCCUPANCY TAX**

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**37.010. Title.** This chapter shall be known and may be cited as the "Transient Occupancy Tax Ordinance of the City of Salem." (Ord No. 172-74)

**37.020. Definitions.** As used in this chapter, unless the context otherwise requires:

(a) "Hotel" means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for 27 days or less, for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is for 27 days or less.

(b) "Occupancy" means the use or possession, or the right to the use or possession 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.

(c) "Operator" means the person who is proprietor of the hotel in any capacity. Where the operator 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 the operator. Compliance with the provisions of this ordinance by either the operator or the managing agent shall be considered to be compliance by both.

(d) "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.

(e) "Cash accounting" means the operator does not enter the rent due from a transient on the operator's records until rent is paid.

(f) "Accrual accounting" means the operator enters the rent due from a transient on the

operator's records when the rent is earned whether or not it is paid.

(g) "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.

(h) "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 transient room tax under this ordinance shall be the same charge made for rent when consideration is not a part of a package plan.

(i) "Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of 27 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 27 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 27 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 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.

(j) "Tax" means either the tax payable by the transient, or the aggregate amount of taxes due from an operator during the period for which the operator is required to report his collections. (Ord No. 172-74; Ord No. 51-96)

**37.030. Tax Imposed.** For the privilege of occupancy in any hotel, on and after July 1, 1999 each transient shall pay a tax in the amount of nine percent of the rent charged by the operator. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on the operator's records 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 rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If, for any reason, the tax due is not paid to the operator of the hotel, the director of finance may require that such tax shall be paid directly to the city. In all cases, the rent paid or charged for occupancy, shall exclude the sale of any goods, services and commodities, other than the furnishing of rooms, accommodations, and parking space in mobile home parks or trailer parks. (Ord No. 172-74; Ord No. 90-84; Ord No. 56-85; Ord No. 36-99)

**37.040. Collection of Tax by Operator; Rules for Collection.**

(a) Every operator renting rooms in this city, the occupancy of which is not exempted under the terms of this ordinance, shall collect a tax from the occupant.

(b) 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, and the operator shall not be liable for the tax until credits are paid or deferred payments are made.

(c) The director of finance shall enforce provisions of this ordinance and shall have the power to adopt rules and regulations not inconsistent with this ordinance as may be necessary to aid in the enforcement. (Ord No. 172-74; Ord No. 117-84; Ord No. 56-85; Ord No. 61-99)

**37.050. Operator's Duties.** Each operator 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 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 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. The operator shall pay the tax to this city as imposed by this ordinance as provided by SRC 37.080. (Ord No. 172-74; Ord No. 56-85)

**37.060. Exemptions.** No tax imposed under this Chapter shall be imposed upon:

- (a) Any occupant for more than 27 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 per day;
- (c) Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his own use thereof;
- (d) Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home, or home for aged people.
- (e) An employee of the federal government or an instrumentality of the federal government traveling on official business provided documentation of official travel authorization is presented to the operator;
- (f) A foreign diplomat upon presentation of a valid diplomatic tax exemption card; or
- (g) Any person housed through an emergency shelter or disaster program where the rent is paid with government assistance funds. (Ord No. 172-74; Ord No. 42-94; Ord 8-15)

**37.070. Registration of Operator; Form and Contents; Execution; Certification of Authority.**

Every person engaging or about to engage in business as an operator of a hotel in this city shall register with the director of finance on a form provided by the director. Operators engaged in business at the time this ordinance is adopted must register not later than 30 calendar days after said adoption. Operators starting business after this ordinance is adopted must register within 15 calendar 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 of collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of the place or places of business and such other information to facilitate the collection of the tax as the director of finance may require. The registration shall be signed by the operator. The director of finance shall, within ten days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the director of finance 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.

Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (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 Occupancy Tax Ordinance of the City of Salem by registration with the director of finance for the purpose of collecting from transients the room tax imposed by said city and remitting said tax to the director of finance. 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 of Salem. This certificate does not constitute a permit." (Ord No. 172-74; Ord No. 36-99)

**37.080. Due Date; Returns and Payments.**

- (a) The tax imposed by this ordinance 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 shall be paid to the director of finance on a monthly basis on the 15th day of the month, immediately following,

for the preceding month; and are delinquent on the 20th day of the month in which they are due.

(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 director of finance. The return shall be filed in such form as the director of finance may prescribe by every operator liable for payment of tax.

(c) Returns shall show the amount of tax collected or otherwise due for the related period. The director of finance may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

(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 director of finance at the office of the director 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 director of finance 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 council. Any operator to whom an extension is granted shall pay interest at the rate 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.

(f) If the director of finance deems it necessary in order to ensure payment or facilitate collection by the city of the amount of taxes in any individual case, the director may require returns and payment of the amount of taxes for other than monthly periods. (Ord No. 172-74; Ord No. 56-85; Ord No. 51-96; Ord No. 36-99)

### **37.090. 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 ordinance prior to delinquency shall pay a penalty of 10 percent 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 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.

(c) Fraud. If the director of finance 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 paragraphs (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 ordinance shall pay interest at the rate of one-half of one 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.

(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 operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated provided, however, the operator may petition the director of finance for waiver and refund of the penalty or any portion thereof. (Ord No.

**37.100. Deficiency Determinations; Fraud, Evasion, Operator Delay.**

(a) Deficiency determination. If the director of finance determines that the returns are incorrect, the director 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 that may come into the possession of the director. One or more deficiency determinations 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 SRC 37.090.

(1) In making a determination the director of finance 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 SRC 37.090.

(2) The director of finance shall give to the operator or occupant a written notice of the determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the operator at the address of the operator as it appears in the records of the director of finance. In case of service by mail of any notice required by this ordinance, the service is complete at the time of deposit in the mail.

(3) Except in the case of fraud, 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 the later.

(4) Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten days after the director of finance 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.

(b) Fraud, refusal to collect, evasion. If any operator shall fail or refuse to collect said tax or to make, within the time provided in this ordinance, any report and 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 director of finance shall proceed in such manner as the director may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the director of finance has determined the tax due that is imposed by this ordinance from any operator who has failed or refused to collect the same and to report and remit said tax, the director shall proceed to determine and assess against such operator the tax, interest, and penalties, provided for by this ordinance. In case such determination is made, the director of finance 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 after discovery by the director of finance 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 immediately upon receipt of notice and shall become final within ten days after the director of finance 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.

(c) Operator delay. If the director of finance 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, the director shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the

determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay same determination to the director of finance

after service of notice thereof, provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within ten days from the date of service of notice by the director of finance. (Ord No. 172-74; Ord No. 36-99)

### **37.110. REDETERMINATIONS.**

(a) Any person against whom a determination is made under SRC 37.100 or any person directly interested may petition for a redetermination and redemption and refund within the time required in SRC 37.100. If a petition for redetermination and refund is not filed within the time required therein, 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 director of finance shall reconsider the determination, and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give the person ten days notice of the time and place of the hearing. The director of finance may continue the hearing from time to time as may be necessary.

(c) The director of finance 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 director of finance, upon a petition for redetermination of redemption and refund, becomes final ten days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the council within the ten days after service of such notice.

(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 hereof. (Ord No. 172-74; Ord No. 51-96)

### **37.120. Security for Collection of Tax.**

(a) Whenever the director of finance deems it necessary to insure compliance with this ordinance, the director may require any operator subject thereto to deposit such security in the form of cash, bond, or other security as the director of finance may determine. The amount of the security shall be fixed by the director of finance but shall not be greater than twice the operator's estimated average monthly liability for the period for which the operator files returns, determined in such manner as the director of finance deems proper, or \$5,000, whichever amount is the lesser. The amount of the security may be increased or decreased by the director of finance subject to the limitations herein provided.

(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 director of finance may bring an action in the courts of this state, or any other state, or of the United States in the name of the City of Salem to collect the amount delinquent together with penalties and interest. (Ord No. 172-74; Ord No. 36-99)

### **37.140. Refunds.**

(a) Operators refunds. 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 director of finance 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 director of finance within three years from the date of payment. The claim shall be made on forms

provided by the director of finance. If the claim is approved by the director of finance, the excess amount collected or paid may be refunded or may be credited on any amounts then due

and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to such operator, or administrators, executors, or assignees of the operator. All refunds shall be charged to the Cultural and Tourism Fund.

**(b)** Transient refunds. Whenever the tax required by this ordinance has been collected by the operator, and deposited by the operator with the director of finance, and it is later determined that the tax was erroneously or illegally collected or received by the director of finance, it may be refunded by the director to the transient, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with said director of finance within three years from the date of payment. All refunds shall be charged to the Cultural and Tourism Fund. (Ord No. 172-74; Ord No. 36-99)

**37.150. Collection Fee.** Every operator liable for the collection and remittance of the tax imposed by this ordinance may withhold 5 percent of the net tax due to cover the operator's expense in the collection and remittance of said tax. (Ord No. 172-74)

**37.160. Administration.**

**(a)** Special revenue fund. The director of finance shall deposit all money collected pursuant to this ordinance to the credit of the Cultural and Tourism Fund. The director of finance shall report annually the status of this account on June 30 of each year.

**(b)** Records required from operators, etc.; form. Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for a period of three years and six months after they come into being.

**(c)** Examination of records; investigations. The director of finance or any person authorized in writing by the director may examine, during normal business hours, the books, papers, and accounting records relating to room sales of any operator after notification to the operator 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. To assist in this process, the director of finance may request certified copies of annual tax returns covering operator.

**(d)** Confidential character of information obtained; disclosure unlawful. It shall be unlawful for the director of finance or any person having an administrative or clerical duty under the provisions of this ordinance to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate, or pay a transient occupancy tax, or any 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 either, or any book containing any abstract or particulars thereof to be seen or examined by any person, provided that nothing in this subsection shall be construed to prevent:

**(1)** The disclosure to, or the examination of records and equipment by another City of Salem official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this ordinance; or collecting taxes imposed hereunder.

**(2)** The disclosure after the filing of a written request to that effect, to the taxpayer or receivers, trustees, executors, administrators, assignees, or guarantors of the taxpayer, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the city attorney approves each such disclosure and that the director of finance may

refuse to make any disclosure referred to in this paragraph when in the opinion of the director the public interest would suffer thereby;

- (3) The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration Certificates have been issued.
- (4) The disclosure of general statistics regarding taxes collected or business done in the city.
- (5) The disclosure required by ORS 192.502 of information on taxes delinquent over 60 days. (Ord No. 172-74; Ord No. 36-99; Ord No. 67-2000)

**37.165. Distribution of Moneys from Cultural and Tourism Fund.**

- (a) Consistent with Section 56 of the Salem Charter, the Director shall distribute moneys from the Cultural and Tourism Fund for;
  - (1) Enhancement and beautification of vehicular and pedestrian entrance ways to the city;
  - (2) Urban beautification generally;
  - (3) Improvements to or operation of major tourist attraction or cultural facilities, and;
  - (4) Activities performed directly by the City or through contracts which promote use of Salem for conventions, conferences, seminars, or for general tourism.
- (b) 25% of each fiscal year's Transient Lodging Tax net receipts shall be allocated to the City's Destination Tourism Marketing Organization. In the event the City does not have a current contract with a Destination Tourism Marketing Organization at the time due for a disbursement under this section, the funds shall be allocated to uses consistent with subsection (a)(4) of this section. (Ord No. 36-99; Ord No. 34-2001; Ord No. 27-2004; Ord No. 50-05; Ord No. 31-06, Ord No. 18-16)

**37.170. Appeals to Council.** Any person aggrieved by any decision of the director of finance may appeal to the council by filing a notice of appeal with the director of finance within ten days of the serving or the mailing of the notice of the decision given by the director of finance. The director of finance 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 director of finance. The council shall give the appellant not less than ten days written notice of the time and place of hearing of said appealed matter. Action by the council on appeals shall be by resolution. (Ord No. 172-74; Ord No. 51-96)

**37.180. Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional (or otherwise invalid), such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The legislative body hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional (or otherwise invalid). (Ord No. 172-74)

**37.190. Violations.**

(a) It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or to fail to pay the tax collected, or fail or refuse to furnish a supplemental return or other data required by the director of finance 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.

(b) Notwithstanding paragraph (a) of this section, the city attorney, in addition to other remedies permitted by law, may commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the tax imposed. (Ord No. 172-74; Ord No. 56-85)

**37.200. Penalties.** Any person willfully violating any of the provisions of this ordinance shall be punished therefore, as provided in SRC 1.070. (Ord No. 172-74)

(CHAPTERS 38, 39, AND 40 RESERVED FOR EXPANSION)

