

# City of Scappoose

## ORDINANCE 725

### AN ORDINANCE PROVIDING FOR A TRANSIENT ROOM TAX FOR THE CITY OF SCAPPOOSE; PROVIDING ADMINISTRATIVE PROCEDURES FOR COLLECTION OF SAME; AND ESTABLISHING VIOLATIONS AND PENALTIES THEREFOR.

#### The City of Scappoose ordains as follows:

**Section 1. Definition.** Except where the context otherwise requires, the definition given in this section governs the construction of the ordinance.

**A.** “Hotel” means any structure, or any 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, public or private club, and also means space in mobile home or trailer parks (including recreational vehicle, tent trailer and tent camping parks), or similar structures or space or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

**B.** “City council” means the City Council of the City of Scappoose, Oregon.

**C.** “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.

**D.** “Operator” means the person who is the proprietor of the hotel in any capacity. Where the operator performs his functions through a managing agent other than an employee, the managing agent shall also be deemed an operator for the purposes of this ordinance and shall have the same duties and liabilities as its principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall be considered to be compliance by both.

**E.** “Person” means any individual, corporation, partnership, joint venture, association, social club, fraternal organization, public or private dormitory, joint stock company, corporation, estate, oration, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

**F.** “Cash accounting” means the operator does not enter the rent due from a transient on its records when the rent is earned, but rather when it is paid.

**G.** “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.

**H.** “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, but shall not include charges to a

condominium unit owner which are solely for cleaning or maintenance of such unit or personal use or occupancy by such owner, so long as the charges are made in connection therewith for space occupancy.

I. "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 ordinance shall be the same as the charge made for rent when food consideration is not a part of the package plan. The amount applicable for rent for determination of the transient 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 charge for rent when the space is rented separately and not included in a package plan.

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

K. "Tax administrator" means the financial administrator of the City of Scappoose.

L. "Transient" means any individual who exercised occupancy or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any individual so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than 30 consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of 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 2. Tax Imposed.** For the privilege of occupancy in any hotel, on or after the 1st day of August 2002, each transient shall pay a tax in the amount of nine per cent of the rent charged by the operator. For a recreational vehicle, tent trailer and tent camping with self-pay slots, the tax shall be increased and assessed to the closest \$.25 interval. The tax constitutes a debt owed by the transient to the City, which is extinguished only by payment by the operator to the City.

The transient shall pay the tax to the operator of the hotel at the time when the rent is collected if the operator keeps records on the cash accounting basis and when earned if the operator keeps records on the accrual accounting basis. If rent is paid in installments, the transient shall pay a proportionate share of the tax to the operator with each installment. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities.

### **Section 3. Collection of Tax by Operator; 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 operator constitutes a debt owed by the operator to the City.

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.

C. The City Manager 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 enforcement.

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

**Section 4. 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 tax 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 5. Exemption.** No tax imposed under this ordinance shall be imposed upon:

A. Any occupant for more than 30 successive calendar days with respect to any rent imposed for the period commencing after the first 30 days of such successive occupancy;

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 incidental to his own use thereof for periods greater than 30 days.

D. Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people, or to a public institution owned and operated by a unit of the government and not operating under the veil of private sector competition in the City.

**Section 6. Registration of Operator; Form, Content, Execution and 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 tax administrator on a form provided by the City. 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 the tax regardless of registration. Registration sets forth the name under which the operator transacts or intends to transact business, the location of place or places of business and such other information to facilitate collection of the tax as the City Manager may require. The operator shall sign the registration. The City Recorder 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 non-transferable and shall be surrendered immediately to the City Recorder upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so

as to be seen and recognized by all occupants and persons seeking occupancy. Said certificate shall, among other things, illustrate the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued; and
- D. This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Lodging Tax Ordinance of the City of Scappoose by registration with the City Recorder for the purpose of collecting transient the lodging taxes imposed by said City and remitting said tax to the City Recorder. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City of Scappoose. This certificate does not constitute a permit.

**Section 7. Due Date; Returns and Payments.**

- A. The tax imposed by this ordinance shall be paid by the transient to the operator at the time rent is paid. All amounts of such taxes collected by any operator are due and payable to the City Recorder on a monthly basis on the 15th day of the following month for the preceding month; and are delinquent on the last day of the month in which they are due. The City Recorder has authority to classify and/or district the operators (by zones) for determination of applicable tax periods, and shall notify each operator of the due and delinquent dates for the operator's returns.
- 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 by each operator with the City Recorder. The return shall be filed in such form as the City Recorder may prescribe by every operator liable for payment of tax.
- C. Returns shall show the amount of tax collected or otherwise due for the related period. The City Recorder may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of such amounts, and the amount of the 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 City Recorder, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of receipt for determining delinquencies.
- E. For good cause, the City Manager 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 Scappoose City Council. Any operator to whom an extension is granted by the City Council shall pay interest at a rate determined by the City Council at that time. 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. Penalties and Interest.**

**A.** Original delinquency. Any operator who has not been granted an extension of time for remittance of tax due and fails to remit any tax imposed by this ordinance prior to delinquency, shall pay a penalty equal to 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 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 percent of the amount of the tax due plus the amount of the tax and the ten percent penalty first imposed.

**C.** Fraud. If the City Manager determines that the non non-payment 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 penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest on delinquent taxes at the rate of one percent per month or fraction thereof without prorating for portions of a month on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

**E.** Penalties merged with tax. Every penalty imposed and such interest as accrued 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 stated shall pay the penalties herein stated, provided, however, that the operator may petition the City Manager for waiver and refund of the penalty or any portion thereof and the City Manager may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

**Section 9. Deficiency Determination, Evasion, Operator Delay.**

**A.** Deficiency Determination. If the City Recorder determines that the returns are incorrect, he/she shall compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information submitted to the City or additional information provided for City Recorder review. 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 Section 8.

## **Section 10. Overpayment and Deficiency.**

- A.** In making a determination the City Recorder may offset tax overpayments, if any, which may have been previously made for a period or periods or against penalties and interest on underpayments. Interest on underpayments shall be computed in the manner set forth in Section 8.
- B.** The City Recorder shall give to the operator or occupant a written notice of deficiency determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at the address as it appears on the records of the City. In case of service by mail of any notice required by this ordinance, it shall be served by mailing such notice by certified mail, postage prepaid, return receipt requested.
- C.** 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.
- D.** Any deficiency determination shall become due and payable immediately upon receipt of notice and shall become final within 20 days after the City Recorder has given notice thereof, provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.
- E.** 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 or remittance of said tax or any portion thereof required by this ordinance, or makes a fraudulent return or otherwise willfully attempt to evade this ordinance, the City Manager shall proceed in such manner as may be deemed best to obtain the facts and information on which to base an estimate of the tax due. As soon as the City Manager 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 City Manager 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 City Manager 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 City Recorder 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 City Recorder has given notice thereof; provided, however, the operator may petition the City Manager for redemption or refund if the petition is filed before the determination becomes final as herein provided.
- F.** Operator Delay. If the City Recorder 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/she 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 such determination to the City Recorder after service of notice thereof;

provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within 20 days from the date of service of notice by the City Recorder.

### **Section 11. Redeterminations.**

**A.** Any person against whom a determination is made may petition for a redetermination and redemption and refund within the time required in Section 9. If a petition for redetermination and refund is not filed within the time required in Section 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 City Recorder shall reconsider the determination, and if the person has so requested by petition, the City Manager shall grant the person an oral hearing and the City Recorder shall give 20 days notice of the time and place of the hearing. The City Manager may continue the hearing from time to time as may be necessary.

**C.** The City Manager 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 City Manager upon a petition for redetermination or 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 Scappoose City Council within the 20 days after the service of such notice. No petition for determination or redemption and refund or appeal there from shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

### **Section 12. Security for Collection of Tax.**

**A.** The City Recorder, when he/she deems it necessary to insure compliance with this ordinance, may require the operator to deposit with the City such security in the form of cash, bond or other security as the City Recorder may determine. The amount of the security shall be fixed by the City Recorder but shall not be greater than twice the operator's estimated average monthly liability for the period of which the operator files returns, determined in such a manner as the City Recorder deems proper, or five thousand dollars (\$5,000.00), whichever amount is less. The amount of security may be increased or decreased by the City Recorder subject to limitations herein provided. The operator has a right to appeal to the City Manager any decision of the City Recorder made pursuant to this section. The operator's right to appeal is pursuant to Section 17 herein.

**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 City Attorney may bring any action in the courts of this state, or any other state, or of the United States in the name of the City to collect the amount delinquent together with penalties and interest.

**Section 13. Lien.** The tax imposed by this ordinance together with the interest and penalties herein provided and the filing fees paid to the City Recorder, and advertising costs which may be incurred when same becomes delinquent as set forth in this ordinance, shall be and, until paid, remain a lien from the date of its recording with the Department of Records, Columbia County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operation within Scappoose and may be foreclosed on and sold as may be necessary to discharge said lien. If the lien has been recorded with the Department of Records in Columbia County, Oregon, notice of the lien may be issued by the City Recorder whenever the operator is in default in the payment of said tax; interest and penalty shall be recorded with the Department of Records of Columbia County, Oregon, and a copy sent to the delinquent operator.

The personal property subject to such lien seized by any deputy or employee of the City may be sold by the department seizing it at public auction after 10 days notice, which means one publication in a newspaper, published in the City of Scappoose, Oregon. Any lien for taxes shown on the records of the proper county official shall, upon payment of all taxes, penalties, and interest thereon, be released by the City when the full amount determined to be due has been paid to the City, and the operator or person making such payment shall have a receipt therefor stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is hereby released and the record of lien is satisfied.

**Section 14. Refunds.**

**A.** Refunds by the City to the Operator. Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously collected or received by the City Recorder 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 City Recorder within three years from the date of payment. The claim shall be made on forms provided by the City Recorder. If the claim is approved by the City Recorder, the excess amount collected or paid may be refunded or may be credited on any amount 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 the operator's administrator, executor, or assignee.

**B.** Refunds by City to Transient. Whenever the tax required by this ordinance has been collected by an operator, and deposited by the operator with the City Recorder, and later is determined to have been erroneously collected or received by the City Recorder, it may be refunded by the City Recorder to the transient, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the City Recorder within three years from the date of payment.

**C.** Refunds by Operator to Tenant. Whenever the tax required by this ordinance has been collected by the operator and it is later determined that the tenant occupied the hotel for a period exceeding 30 days without interruption, the operator shall refund to such tenant the tax previously collected by the operator. The operator shall account for such collection and refund to the City Recorder. If the operator has remitted the tax prior to the refund or credit to the tenant, operator shall be entitled to a corresponding refund under this section.



**Section 15. Administration.**

- A. Disposition and Use of Transient Room Tax Funds. All proceeds derived by the City of Scappoose from the transient room tax funds shall be deposited in the General Fund of the City of Scappoose.
- 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. The operator shall retain all records for a period of three years and six months after they come into being.
- C. Examination of Records; Investigations. The City Manager, or any person authorized in writing by City Manager, may examine or, during normal business hours, the books, papers and accounting records relating to room sales of any 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.
- D. Confidential Character of Information Obtained. It shall be unlawful for the City Manager, City Recorder 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 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 section shall be so construed to prevent: (1) The disclosure to, or the examination of records and equipment by another City of Scappoose 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, or collecting City business license fees; (2) the disclosure, after the filing of a written request to that effect, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, or information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest and penalties; provided, however, that the City Attorney approves each such disclosure and that the City Manager may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby; (3) the disclosure of the names and addresses of any person to whom Transient Occupancy Registration certificates have been issued; and (4) the disclosure of general statistics regarding taxes collected in the City.

**Section 16. Use of Transient Room Tax.**

- A. The City shall use forty five percent (45%) of the transient room tax collections each year to promote business development or tourism in Scappoose.
- B. The City finds and declares that expenditure of a portion of the transient room tax collections for business development and tourism will serve a public purpose. The City will derive economic benefits through attraction of both new industry and visitors to the community. It is in the public interest to promote quality, integrity, and reliability in all "commerce" related

services and in information offered to visitors and new business development interests. There is a need to encourage communication and cooperation between the public and private sectors to promote the orderly growth and implementation of commercial and industrial development related objectives. In addition, it is important that visitors to the area be informed of the scenic and historic attractions, entertainment attractions, recreation opportunities, restaurant facilities, lodging facilities and other matters of special interest providing further benefits to business. It is also growing in import that with strategic planning, those businesses, which best benefit the City, be afforded development information for locating or expanding in Scappoose, thus resulting in greater private capital investment and community growth.

C. The City shall use forty-five percent (45%) of the transient room tax collections each year in support of parks and recreation facilities, programs and services in Scappoose in line with the City's Parks and Recreation Master Plan as approved by City Council for purposes of improving community livability.

D. Ten percent (10%) of all collections shall be recognized as a general administrative fee and may be applied to any budgeted purpose.


**Section 17. Appeals to the City Council.** Any person aggrieved by any decision of the City Manager may appeal to the City Council by filing notice of appeal with the City Recorder within 20 days of the serving or the mailing of the notice of the decision. The Council shall give the appellant not less than 20 days' written notice of the time and place of the 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 18. 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.

**Section 19. Violations.** It is unlawful for any operator or other person so required to fail or refuse to register as required herein, to furnish any return required to be made, to furnish a supplemental return or other date required by the City Recorder 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 or required by this ordinance. Violation of this section shall constitute a violation under the Scappoose Code punishable by a fine not to exceed two hundred fifty dollars (\$250) for each violation.


**Section 20. Misdemeanor.** Any person willfully violating any of the provisions of this ordinance shall be guilty of a misdemeanor and may be punishable therefor by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment.

CITY OF SCAPPOOSE, OREGON

  
Glenn E. Dorschler, Mayor

First Reading: August 5, 2002

Second Reading: August 19, 2002

Attest:   
Susan M Pentecost, City Recorder