

CITY OF ROCKAWAY BEACH, OREGON

ORDINANCE NO. 19-432 .

AN ORDINANCE AMENDING THE ROCKAWAY BEACH CODE OF ORDINANCES, CHAPTER 34, SECTIONS 34.01 *et seq.*, AND ORDINANCES 13-419, 17-428 ALL RELATING TO LOCAL TRANSIENT LODGING TAXATION, INCLUDING IMPLEMENTING THE TRANSIENT LODGING TAX TO COLLECT FROM TRANSIENT LODGING LISTINGS ON HOSTING PLATFORMS.

RECITALS / FINDINGS:

1. The Rockaway Beach City Council on its own recommendation finds it is in the general health, safety and welfare interests of the citizens of Rockaway Beach, Oregon, to amend Rockaway Beach Code of Ordinances (RBCO or Code), chapter 34, Sections 34.01 *et seq.* (relating to local transient room taxes).
2. The Rockaway Beach transient lodging tax was first adopted January 9, 1980. The Rockaway Beach Code of Ordinances ("Code") was first adopted in February 2008, and was reaffirmed and adopted by ordinance on September 14, 2011. Rockaway Beach Code, Chapter 34, relating to Local Transient Lodging Taxation was last amended on July 12, 2017, by Rockaway Beach Ordinance #17-428.
4. A local transient lodging tax ("TLT") is a tax imposed by Rockaway Beach on the sale, service or furnishing of transient lodging for rent and/or other consideration;
5. Transient lodging includes without limitation hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy;
6. ORS 320.350 provides that a city council may impose any new local transient lodging tax if at least seventy percent (70%) of the net revenue shall be used to fund tourism promotion or tourism related facilities or certain debt related expenses and no more than thirty percent (30%) of net revenue may be used for city services; and
7. City wishes to require online travel companies and short-term rental hosting platforms that accept, receive or facilitate the payment of rent directly from occupants to be responsible for collecting and remitting the tax to the city.

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF ROCKAWAY BEACH ORDAINS AS FOLLOWS:

Section 1. RBCO Section 34.02 (Transient Room Tax) is amended to add the following provisions, unless otherwise expressed: The City Council reaffirms the existing transient lodging tax (TLT) in the amount of 10% percent of the rent. Effective July 1, 2019 (a date not less than 30 days after this ordinance adoption) or such other date as the City Council shall decide, each occupant shall pay a transient lodging tax (TLT) in the amount of 10% percent of the rent. (This expressly restates the existing tax. These statements are not, and shall not be construed as, a new tax. These statements shall not constitute the repeal of the existing tax.) The occupant shall pay the TLT with the rent to the local tax trustee. TLT amounts shall be rounded down to the nearest cent. The local tax trustee shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the occupant to the local tax trustee with each installment unless the occupant pays the entire amount with the first payment.

Section 2: The provisions within **Exhibit A**, attached and incorporated here by reference and entitled "Amendments to Section 34, Rockaway Beach Code" (hereafter 'RBC' or 'Code'), are hereby adopted. The provisions within Exhibit A shall control in the event of any conflict with any provision of existing RBC Section 34 or with any provision of the Rockaway Beach Code. All existing provision of the Section 34, Rockaway Beach Code shall be interpreted whenever possible to be consistent with the provisions within Exhibit A. Any existing Section 34 provision which cannot be interpreted to be consistent with Exhibit A provisions is hereby repealed.

Section 3. RBCO Section 34.17(F) as amended currently reads as follows:
“(F) *Allocation of funds collected.* The first 5% of the money collected pursuant to this chapter shall be allocated by the City Council to any one or more of the following during any one fiscal year as follows: fire and rescue equipment, police services and equipment, promotion and tourism, street and parking improvements, parks and recreation services and equipment, land acquisition and capital improvements, city beautification and urban renewal, provided, however, that no more than 40% of the total funds shall be allocated to any one category during one fiscal year. The next 2% of the money collected pursuant to this chapter shall be allocated in its' entirety to media advertising to promote tourism, economic development and a positive business environment in Rockaway Beach. The balance of 3% of the money collected pursuant to this chapter shall be allocated, following reductions attributed to collection reimbursement charges, consistent with ORS 320.350 (5) & (6).”¹

Section 4. One purpose of this ordinance amendment is to preserve City's transient room tax and rate existing on July 1, 2003, to preserve City's transient room tax and rate as amended on October 19, 2013, and July 17, 2017. Any increase here above City's current transient room tax rate is subject to the State's restrictions and exceptions in ORS 320.350 currently in effect.

Section 5 Savings. Should any clause or section of this ordinance, amendment and/or Code be declared by a court to be void or voidable, the remainder of this ordinance, amendment and Code shall remain in full force and effect.

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¹ ORS 320.350 (5) & (6) reads as follows: “(5) Subsections (1) and (2) of this section do not apply to a new or increased local transient lodging tax if all of the net revenue from the new or increased tax, following reductions attributed to collection reimbursement charges, is used consistently with subsection (6) of this section to:

(a) Fund tourism promotion or tourism-related facilities;

(b) Fund city or county services; or

(c) Finance or refinance the debt of tourism-related facilities and pay reasonable administrative costs incurred in financing or refinancing that debt, provided that:

(A) The net revenue may be used for administrative costs only if the unit of local government provides a collection reimbursement charge; and

(B) Upon retirement of the debt, the unit of local government reduces the tax by the amount by which the tax was increased to finance or refinance the debt.

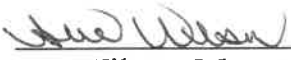
(6) At least 70 percent of net revenue from a new or increased local transient lodging tax shall be used for the purposes described in subsection (5)(a) or (c) of this section. No more than 30 percent of net revenue from a new or increased local transient lodging tax may be used for the purpose described in subsection (5)(b) of this section.”

Section 6. Effective Date. This ordinance shall be effective on July 1, 2019, or thirty days after its adoption, whichever is later.

PASSED I reading by the Rockaway Beach City Council this 8th day of May 2019.

PASSED 2nd reading by the Rockaway Beach City Council this 12th day of June 2019.

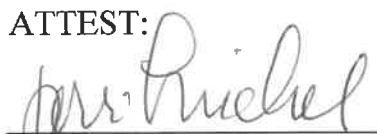
ADOPTED and APPROVED by the Rockaway Beach City Council this of 12th day of June 2019.



Sue Wilson, Mayor

Adoption Roll Call Vote:

City Council:	<u>(Aye / Nay)</u>
Kristine Hayes	Nay
Jonathan Beeman	Absent
Terry Walhood	Aye
James Doyle	Aye

ATTEST:


Terri Michel, City Manager

**Exhibit A. Amendments to Transient Lodging Tax,
Chapter 34, Rockaway Beach Code.**

Finding: The City Council specifically finds and interprets the provisions of Rockaway Beach City Code, Chapter 34, referenced below to be amendatory to all prior transient room taxation ordinance and amendments, including the transient room taxation ordinance(s) in effect on or before July 1, 2003, and as amended. By this finding, the City Council clarifies City is not repealing any original enabling legislation of any prior TRT tax, or its available or dedicated appropriation or expenditure, which is not otherwise subject to ORS 320.350. The amendment of this chapter shall not affect the validity or enforcement of the Transient Room or Lodging Tax in effect prior to this amendment.

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF ROCKAWAY BEACH ORDAINS AS FOLLOWS:

Chapter 34 of the Rockaway Beach municipal code is hereby AMENDED to read as follows:

Section 1: The Rockaway Beach City Code, Chapter 34: Finances title page in pertinent part shall read as follows:

Section

- 34.01 Definitions
- 34.02 Transient Lodging Tax
- 34.03 Collection of tax by Transient Lodging Provider;
rules for collection
- 34.04 Transient Lodging Provider's duties
- 34.05 Exemptions
- 34.06 Registration of Transient Lodging Provider
- 34.07 Payment of tax
- 34.08 Delinquency
- 34.09 Deficiency determinations
- 34.10 Fraud, refusal to collect or evasion
- 34.11 Transient Lodging Provider delay
- 34.12 Redeterminations
- 34.13 Security for collection of tax
- 34.14 Lien
- 34.15 Refunds
- 34.16 Collection fee
- 34.17 Administration
- 34.18 Appeals
- 34.99 Penalty

Section 2: Section 34.01 DEFINITIONS is amended to read as follows:

§ 34.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCRUAL ACCOUNTING means the Transient Lodging Provider enters the rent due from a transient on his or her records when the rent is earned, whether or not it is paid.

CASH ACCOUNTING means the Transient Lodging Provider does not enter the rent due from a transient on his or her records until rent is paid.

CITY or city means the City of Rockaway Beach, Oregon.

CITY COUNCIL. The City Council of the City of Rockaway Beach, Oregon.

OCCUPANCY means the right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for 31 consecutive days or less.

OCCUPANT means any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 31 consecutive calendar days or less, counting portions of calendar days as full days; Except, a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed an *Occupant*.

OPERATOR means *TRANSIENT LODGING PROVIDER*.

PERSON means any individual or lawful business entity, including without limitation the following: association, business trust, corporation, estate, firm, fraternity, fraternal organization, host, partnership, joint stock company, joint venture, limited liability company, limited liability partnership, public or private dormitory, receiver, social club, sorority, trust, trustee, syndicate, or any other group or combination acting as a unit.

RENT means the consideration paid or payable by an occupant for the occupancy of space in transient lodging valued in money, goods, labor, credits, property, or other consideration. If a separate fee is charged for services, goods or commodities and the fee is optional, that fee is not included in rent. Because neither the transient lodging provider nor the City can keep track of every transaction, whether particular charges are part of rent is based on the transient lodging provider's standard practices. If that separate fee/charge is mandatory for some and optional for others and is paid by an occupant, it shall constitute and be included in 'rent' regardless of transient lodging provider's standard practices. As rent, that separate fee/charge is, therefore, subject to the transient lodging tax.

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 Lodging Tax under this chapter shall be same charge made for rent when consideration is not part of a package plan.

SHORT-TERM RENTAL means any structure, or any portion of any structures, a house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling unit where a person rents a guest bedroom or the entire residential dwelling unit for transient lodging occupancy. Generally, a short-term rental is zoned residential or has a building occupancy that only allows for residential use.

TAX means the transient lodging tax, “**TLT**”, “**TRT**” or “**TRANSIENT ROOM TAX**”.

TRANSIENT means Occupant.

TRANSIENT LODGING or **TRANSIENT LODGING FACILITIES** means:

- a. Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy;
- b. Spaces used for overnight parking of recreational vehicles or placement of tents during periods of human occupancy; or
- c. Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

TRANSIENT LODGING INTERMEDIARY means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and:

- a. Charges for occupancy of the transient lodging;
- b. Collects the consideration charged for occupancy of the transient lodging; or
- c. Receives a fee or commission and requires the transient lodging provider to use a specified third-party entity to collect the consideration charged for occupancy of the transient lodging.

TRANSIENT LODGING PROVIDER means a person that furnishes transient lodging.

TRANSIENT LODGING TAX COLLECTOR means a transient lodging provider or transient lodging intermediary.

Section 3: Section 34.02 **TRANSIENT LODGING TAX IMPOSED** is amended to read as follows:

§ 34.02 TRANSIENT LODGING TAX IMPOSED.

- A. As required in the city for the privilege of occupancy in any short-term rental, each occupant shall pay a transient lodging tax or “TLT”, in the amount of ten percent (10%) of the rent. The occupant shall pay the TLT with the rent to the transient lodging tax collector. TLT amounts shall be rounded down to the nearest cent.
- B. The tax collected or accrued by the transient lodging tax collector constitutes a debt owing by the transient lodging tax collector to the city. The transient lodging tax collector shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the occupant to the transient lodging tax collector with each installment unless the occupant pays the entire amount with the first payment.
- C. Bills, receipts or invoices provided to occupants shall list the city TLT separately and must accurately state the amount of tax. All amounts listed as TLT on invoices, bills or receipts and/or collected as TLT must be reported as TLT and, after collection, must be turned over to the city, less an administrative charge of five percent (5%) of all amounts collected.¹
- D. Liability for Tax. Operators who receive any portion of the rent and hosting platform that provide booking service are jointly and severally liable for the tax.
- E. The amendment of this chapter shall not affect the validity or enforcement* of the Transient Room or Lodging Tax in effect prior to this amendment.

Section 4: Section 34.03 **COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION** is amended to read as follows:

§ 34.03 COLLECTION OF TAX BY TRANSIENT LODGING TAX COLLECTOR; RULES; DUTIES.

- A. Every transient lodging tax collector shall collect the TLT at the time rent is paid, unless an exemption applies. If payment is by credit card and for purposes of this section, payment is made at the time credit card information is provided to transient lodging tax collector, not when the transient lodging tax collector ultimately receives credit for the transaction. While holding the payment in trust for the city, a transient lodging tax collector may commingle the tax proceeds with the transient lodging tax collector’s funds, but the transient lodging tax collector is not the owner of tax proceeds, except that, when a return is filed, the transient lodging tax collector becomes the owner of the administrative fee authorized to be retained. Transient lodging tax collectors may choose to file returns and remit payment based on amounts accrued but not yet collected. The transient lodging tax collector is liable for any TLT that should have been collected from the occupant, except in cases of nonpayment of rent by the occupant. The

tax collected or accrued by the transient lodging tax collector constitutes a debt owing by the transient lodging tax collector to the city.

B. Annually and/or upon request of the tax administrator, transient lodging tax collectors shall provide all physical addresses of transient lodging facilities within the city limits and the related contact information, including the name and mailing address, of the general manager, agent, owner, host or other responsible person for the location.

C. Every transient lodging tax collector and operator shall provide to City and maintain with City their respective current physical and mailing addresses.

Section 5: Section 34.04 **TRANSIENT LODGING OPERATOR DUTIES** is amended to read as follows:

§ 34.04 SHORT-TERM RENTAL HOSTING PLATFORM FEES.

A hosting platform for short-term rentals may collect a fee for booking services in connection with short-term rentals only when those short-term rentals are lawfully registered as operators with the city and possess a certificate of authority at the time the short-term rental is occupied.

Section 6: EXEMPTIONS.ⁱⁱ Section 34.05 **EXEMPTIONS** is amended to read as follows:

§ 34.05 EXEMPTIONS.

No TLT shall be imposed upon:

A. A dwelling unit in a hospital, health care facility, long-term care facility or any other residential facility that is licensed, registered or certified by the Oregon Department of Human Services or the Oregon Health Authority;

B. A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;

C. A dwelling unit that is used by members of the general public for temporary human occupancy for fewer than 30 days per year;

D. A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;

E. A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility;

F. A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:

- (1) All dwelling units occupied are within the same facility; and
- (2) The person paying consideration for the transient lodging is the same person throughout the consecutive period;

G. Any churches, synagogues or nonprofit tax exempt charitable organizations in furtherance of its charitable or religious purposes;

H. State and federal employees on government business, where payment for the rooms is made by the government directly to the Transient Lodging Provider; or

I. Any occupant whose rent is paid by the city.

Section 7: Section 34.06 **REGISTRATION OF OPERATOR** is amended to read as follows:

§ 34.06 REGISTRATION OF OPERATOR, FORM AND CONTENTS, EXECUTION, CERTIFICATION OF AUTHORITY.

A. Every person engaging or about to engage in business as a transient lodging provider shall register as a transient lodging provider. Every person engaging or about to engage in business as a transient lodging provider shall provide a completed and signed city registration form to the tax administrator within 15 calendar days after commencing business. The city registration form shall require the transient lodging provider to provide the name of the business, any separate business address, and other information as the tax administrator may require to implement this Chapter. Transient lodging providers who own or operate transient lodging facilities in City shall provide the address of the lodging facility. The registration form shall be signed by the transient lodging provider. The tax administrator shall, within 15 days after registration, assign a transient lodging provider Number and issue without charge a certificate of authority to collect the TLT and bearing the transient lodging provider Number. The obligation to collect the TLT is imposed once rent for transient lodging is paid, even if the registration form has not been filed or if the certificate has not been issued. If rent transaction is facilitated online, the certificate of authority must be able to be viewed by the occupant by clicking on a link to the certificate of authority at a reasonable place during the payment transaction. Failure to register shall not excuse the transient lodging provider from complying with all obligations of this chapter.

B. Certificates of Authority shall be non-assignable and nontransferable, and shall be surrendered to the tax administrator when the business is sold or transferred or when a lodging facility ceases to operate at the location specified in the registration form. Each certificate issued to a transient lodging provider for a specific lodging facility shall be prominently displayed at the lodging facility and include:

- (1) The name of the transient lodging provider;

- (2) The address of the transient lodging facility;
- (3) The date the certificate was issued; and
- (4) The certificate of authority number as assigned by the tax administrator; and
- (5) “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 Rockaway Beach by registration with the for the purpose of collecting from transients the lodgings tax imposed by said city and emitting 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 short term rental 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 Rockaway Beach. This certificate does not constitute a permit.”

Section 8: Section 34.07 **PAYMENT OF TAX** is amended to read as follows:

§ 34.07 PAYMENT OF TAX; REMITTANCES AND RETURNS; EXTENSION.

- A. Transient lodging tax collectors shall submit a signed, completed tax return form to the tax administrator on or before the last day of the month next following the end of each calendar quarter reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected, less a five percent (5%) administration fee based on TLT amounts collected.ⁱⁱⁱ The quarters are:
 - (a) First Quarter: January, February, March;
 - (b) Second Quarter: April, May, June;
 - (c) Third Quarter: July, August, September;
 - (d) Fourth Quarter: October, November, December.
- B. The transient lodging tax collector is entitled to the five percent (5%) administration fee. If a transient lodging facility has multiple operators, they are not entitled to retain additional fees.
- C. Remittances are delinquent if not made by the last day of the month in which they are due.
- D. Returns shall show the gross rents collected, taxable rents, the total amount of TLT collected and the amount of the administrative fee retained by the transient lodging tax collector. Returns shall also show the exempt and excluded rents and the basis for exemptions and exclusions.
- E. Tax returns and remittances may be submitted in person or by mail. If the return and remittance is mailed, the postmark shall be considered the date of delivery.

- F. For good cause shown, the tax administrator may extend the time for making any return or remittance of the tax by up to 30 days. No further extension shall be granted, except by the city council. Any transient lodging tax collector to whom an extension is granted shall pay an extension fee of **three percent (3.0%)** on the amount of the remittance due without proration for a fraction of a month. If a return is not filed, and the remittance and extension fee due is not paid by the end of the extension granted, then the extension fee shall become a part of the tax for computation of penalties.
- G. The Tax Administrator, if he or she deems it 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.
- H. This section shall not be construed to allow any withholding for a specific occupancy in excess of 5% of the net tax herein collected from among one or more transient lodging providers and/or owners jointly and severally liable for the remittance of the net tax collected to the City.

Section 9: Section 34.08 **DELINQUENCY** is amended to read as follows:

§ 34.08 DELINQUENCY; PENALTIES AND INTEREST.

- (A) *Original delinquency.* Any Transient Lodging Provider 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 interest and penalties as described below.
- (B) *Continued delinquency.* Any Transient Lodging Provider 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 interest and penalties as described below.
- (C) *Fraud.* If the Tax Administrator determines that the nonpayment 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 penalties stated in divisions (A) and (B) of this section.
- (D) *Interest and Penalties.* In addition to the penalties imposed, interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return was originally required to be filed by the transient lodging tax collector to the time of payment. If the transient lodging tax collector fails to file a return or pay the tax as required, a penalty shall be imposed upon the transient lodging tax collector in the same manner and amount provided under ORS 314.400.

(E) *Penalties, Interest merged with tax.* Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid by the transient lodging tax collector and remitted to the city.

(F) *Petition for waiver.* Any Transient Lodging Provider who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated, provided, however, the Transient Lodging Provider may petition the City Council or its designee for waiver and refund of the penalty or any portion thereof and the City Council or its designee may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

(G) Enforcement. If at any time a transient lodging tax collector fails to remit any amount owed in taxes, interest or penalties, the city, its agent or authorized designee such as the **Oregon Department of Revenue**, may enforce collection on behalf of the city of the owed amount.

Section 10: Section 34.09 **DELINQUENCY** is amended to read as follows:

§ 34.09 DEFICIENCY DETERMINATION – FRAUD, EVASION, LOCAL TAX TRUSTEE DELAY.

A. Deficiency Determination. The tax administrator may review tax returns and adjust the amount due based on the information in the return, on information obtained during a review or audit of records, or on the basis of other evidence. In the event of a deficiency, the tax administrator shall provide notice of the deficiency to the transient lodging tax collector, who shall remit deficiencies within 10 business days of the deficiency notice date.

(1) In reviewing and adjusting tax returns, the tax administrator shall offset any amount received in excess of the remittances due against any shortages in remittances.

(2) Except in the case of fraud or intent to evade the TLT, notice of deficiency determinations shall be issued within three years of the period for which the deficiency determination is made.

(3) The time to remit deficient payment amounts under this section shall be extended if the transient lodging tax collector timely requests a redetermination.

B. Fraud – Refusal to Collect – Evasion. If any transient lodging tax collector fails to collect, report or remit the tax as required, submits a fraudulent return, or otherwise violates or attempts to violate this chapter, the tax administrator shall estimate the tax due, and calculate the amount owing from the transient lodging tax collector for tax remittance, interest and penalties and provide notice to the transient lodging tax collector of the assessment.

C. Deficiency/Fraud Determination Notice. The determination and notice shall be made and mailed within three years of the discovery by the tax administrator of the violation. The determination is due and payable upon receipt of notice and shall become final 10 business days

after the date notice was delivered if no petition for redetermination is filed. Notice may be by personal delivery or certified or registered mail.

Section 11: Section 34.10 **FRAUD, REFUSAL TO COLLECT OR EVASION** is deleted in its entirety since it is moved into section 34.09 above AND is amended to read as follows:

§ 34.11 [reserved for expansion].

Section 12: Section 34.11 **OPERATOR DELAY** is amended to read as follows:

§ 34.11 TRANSIENT LODGING PROVIDER 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 or 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 Transient Lodging Provider shall immediately pay such determination to the Tax Administrator after service of notice thereof; provided, however, the Transient Lodging Provider 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 13: Section 34.12 **REDETERMINATIONS** is amended to read as follows:

§ 34.12 REDETERMINATIONS.

- A. Any person affected by a determination may file a petition for redetermination with the tax administrator within 10 business days of service of notice of the tax deficiency. A determination becomes final if a petition for redetermination is not timely filed. No petition for redetermination and redemption and refund or appeal therefrom shall be effective for any purpose unless the Transient Lodging Provider has first complied with the payment provisions hereof.
- B. If a petition for redetermination is filed within the allowable period, the tax administrator shall reconsider the determination and grant an oral hearing if requested. The petitioner shall be allowed at least 20 business days to prepare for the hearing.
- C. After considering the petition and all available information, the tax administrator shall issue a redetermination decision and mail the decision to the petitioner. During the redetermination process, the tax administrator may agree to a compromise of the amount due if there is a good faith dispute over the amount owing.
- D. The decision of the tax administrator on redetermination becomes final and payment is due 10 business days after the decision is mailed unless the petitioner files an appeal to the city council within that time. The appeal shall be filed with the tax administrator. The city council's

decision shall be final when reduced to writing and mailed to the petitioner and all amounts due must be paid within 10 business days of mailing of the city council decision.

Section 14: Section 34.13 **SECURITY FOR COLLECTION OF TAX** is amended to read as follows:

§ 34.13 SECURITY FOR COLLECTION OF TAX; COLLECTIONS.

A. The Tax Administrator, whenever he or she deems it necessary to insure the compliance with this chapter, may require the Transient Lodging Provider subject thereto to deposit with him or her such security in the form of cash, bond or other security 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 Provider's estimated average quarterly liability for the period for which he or she files returns, determined in such a manner as the Tax Administrator deems proper, or \$5,000 whichever amount is lesser. The amount of security may be increased or decreased by the Tax Administrator subject to limitations herein provided. The Transient Lodging Provider has a right to appeal to the City Council any decision of the Tax Administrator made pursuant to this section. The Transient Lodging Provider's right to appeal is pursuant to § 34.18.

B. The city may bring legal action to collect on any amounts owed to the city under this chapter within three years after remittance is due to the city or within three years after any determination becomes final.

C. The city is entitled to collect reasonable attorneys' fee in any legal action brought to collect on amount owed to the city under this chapter.

Section 15: Section 34.14 **LIEN** is amended to read as follows:

§ 34.14 LIEN.

(A) The city may record a lien in the city's lien docket against any real property owned by an operator who receives any portion of the rent from a transient lodging facility located within the city as to any delinquent remittances by the operator. If City does not maintain a lien docket, City may record a lien in Tillamook County deed/lien records.

(B) *To remain a lien.* The tax imposed by this chapter together with the interest, administrative costs, attorney fees and penalties herein provided and the filing fees paid to the county clerk of Tillamook County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this chapter shall be and, until paid, remain a lien from the date of its recording with the department of records, Tillamook County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the short term rental of an Transient Lodging Provider within the city 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 Tillamook County, Oregon. Notice of the lien may be issued by the Tax Administrator or his or her deputy whenever the Transient Lodging Provider is in default in the payment of said tax,

interest and penalty shall be recorded with the department of records of Tillamook County, Oregon, and a copy sent to the delinquent Transient Lodging Provider. The personal property subject to such lien seized by any deputy or employee of the Tax Administrator may be sold by the department seizing same at public auction after 10-days' notice which means 1 publication in a newspaper published in the city. Any lien for taxes shown on the records of the proper county official shall, upon payment of all taxes, penalties, and interest thereon, be paid to the city and the Transient Lodging Provider or person making such payment shall have a receipt therefor stating 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.

(C) *Lien on real property.* The tax imposed by this chapter together with the interest, administrative costs, attorney fees and penalties herein provided and the filing fees paid to the county clerk of Tillamook County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this chapter shall become a lien on real property 30 days after notification of payment due. The lien hereby created may be foreclosed in any manner provided by law or city ordinance.

(D) *Attorney fees.* In the event of litigation, the prevailing party shall be entitled to recover reasonable attorney fees and other costs and disbursements provided by law.

Section 16: Section 34.15 **REFUNDS** is amended to read as follows:

§ 34.15 REFUNDS.

A. Refunds by the city to the transient lodging tax collector. If the transient lodging tax collector remits more tax, penalty or interest than is due, the transient lodging tax collector may file a claim in writing stating the facts relating to the claim, within three years from the date of remittance. If the claim is approved by the tax administrator, the excess amount shall be either refunded or credited on any amount due from the transient lodging tax collector.

B. Refunds by City to Occupant. A transient lodging tax collector may file a claim for refund by filing a claim in writing within three years of payment providing the facts relating to the claim for refund. If the tax administrator determines that the tax was collected and remitted to the city and the occupant was not required to pay the tax or overpaid, the city shall issue a refund.

C. Refunds by Transient Lodging Tax Collector to Occupant. If an occupant has paid tax to a transient lodging tax collector, but then stays a total of 30 or more consecutive days, the transient lodging tax collector shall refund to the occupant any tax collected for any portion of the continuous stay. The transient lodging tax collector shall account for the 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 occupant, the transient lodging tax collector shall be entitled to a corresponding refund or offset if the claim for refund is filed within three years from the date of collection.

D. Burden of Proof. The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund.

E. City Refund Liability Limitation. City shall be liable only in the amount of any tax, penalty, and/or interest paid or received in excess of TRT due, including any TRT erroneously or illegally collected or received by the Tax Administrator. Payment of all or part of any amount described herein to any occupant, owner or transient lodging tax collector shall be a defense to the City to a claim by any other occupant, owner or transient lodging tax collector having actual or constructive notice of the underlying facts of the amounts remitted to, or collected by, City.

Section 17: Section 34.16 **COLLECTION FEE** is deleted in its entirety.

Section 18: Section 34.17 **ADMINISTRATION** is amended to read as follows:

§ 34.17 ADMINISTRATION.

A. Use of TLT Funds. Revenue from the TLT tax rate of 10% shall be used as described in Rockaway Beach Code of Ordinances (RBCO or Code), Sections 34.02 and 34.17 (as amended by Rockaway Beach Ordinance #17-428, July 12, 2017) consistent with ORS 320.350 (as amended) for uses and in such proportions as permitted therein.

B. Records Required from Transient lodging tax collector. Every transient lodging tax collector shall keep records of each transaction involving rent and/or collection of TLT. All records shall be retained for at least three years and six months from the later of the date the TLT was remitted, or due to be remitted, to City. Failure to maintain business records for the time required and sufficient to prove compliance with the duties, responsibilities, tax and administrative fees herein is a violation subject to penalty pursuant to section 34.99. Such records include, but are not limited to,

- (1) Records Required from Transient lodging tax collector. Every transient lodging tax collector shall keep records of each transaction involving rent and/or collection of TLT. All records shall be retained for at least three years and six months from the later of the date the TLT was remitted, or due to be remitted, to City. Failure to maintain business records for the time required and sufficient to prove compliance with the duties, responsibilities, tax and administrative fees herein is a violation subject to penalty pursuant to section 34.99. Such records include, but are not limited to, Registration cards with sequential numbers;
- (2) Daily and/or monthly deposit and room rental summaries;
- (3) Adjustment to summaries, including, but not limited to, refunds, exempt rent and monthly rent;
- (4) Worksheets, showing computations for quarterly reports; and
- (5) General ledger records relating to gross and net rental receipts.

C. Examination of Records – Investigations. The tax administrator or agent may examine all records of a transient lodging tax collector relating to receipt of rent and TLT and remittance of tax during normal business hours and may obtain copies of the records to audit returns.

D. Authority of Tax Administrator. The tax administrator shall have the power to enforce this chapter, including without limitation to issue citations, conduct audits, and to adopt rules, regulations and forms consistent with this chapter. Rules and regulations of general application shall be mailed to all registered operators. The tax administrator may also issue written interpretations on request of a transient lodging tax collector. City may establish a fee for such interpretations by resolution. As to the transient lodging tax collector to whom the interpretation is issued, the City will act consistently with the interpretation until it is withdrawn, and the city shall provide 30 days' written notice of withdrawal of an interpretation.^{iv}

E. Confidential Character of Information Obtained – Disclosure Unlawful. The city shall maintain the confidentiality of information provided by transient lodging tax collectors. Nothing in this subsection shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another city official, employee, agent or authorized designee for collection of taxes for the purpose of administering or enforcing any provisions of this chapter or collecting city business license fees.
- (2) Disclosure of information to the transient lodging tax collector and the transient lodging tax collector's agents.
- (3) The disclosure of the names and addresses of any persons to whom certificates of authority have been issued and of transient lodging providers and their agents.
- (4) The disclosure of general statistics regarding taxes collected or business done in the City.
- (5) Disclosures required by ORS Chapter 192.
- (6) Disclosures required by ORS Chapter 297.

F. Allocation of Funds Collected. The first 5% of the money collected pursuant to this chapter shall be allocated by the City Council to any one or more of the following during any one fiscal year, as follows: fire and rescue equipment, police services and equipment, promotion and tourism, street and parking improvements, parks and recreation services and equipment, land acquisition and capital improvements, city beautification and urban renewal, provided, however, that no more than 40% of the total funds shall be allocated to any one category during one fiscal year. The next 2% of the money collected pursuant to this chapter shall be allocated in its entirety to media advertising to promote tourism, economic development and a positive business environment in Rockaway Beach. The balance of 3% of the money collected pursuant to this chapter shall be allocated following, reductions attributed to collection reimbursement charges, consistent with O.R.S. 320.350(5) and (6).

Section 19: Section 34.18 **APPEALS TO CITY COUNCIL** is amended to read as follows:

A. Appeal to City Council. Any person aggrieved by any decision of the tax administrator may appeal to the city council by filing a written appeal with the tax administrator

within 10 business days of the serving or mailing of the decision being appealed. The city manager shall schedule the hearing on a city council agenda and provide the appellant written notice of the hearing at least 10 business days before the hearing. The city council may agree to a compromise of the amount of tax remittance if there is a good faith dispute over the amount owing. Any person may appeal the issuance of a rule or regulation issued by the tax administrator to the city council by filing a written appeal within 10 business days of the mailing of the notice of the regulation.

B. *Notice of appeal.* The notice of appeal shall state facts relied upon for relief, a statement or proposition of law or ordinance relied upon, the relief requested and shall bear the signature of the appellant or authorized representative of the appellant.

C. *Appeals to be de novo.* All proceedings before the City Council shall be original and independent proceedings and shall be heard without a jury and de novo. The Tax Administrator shall fix a time and place for hearing such appeal as prescribed by the City Council.

D. *Burden of proof.* In appeals to the City Council, a preponderance of the evidence shall be required to sustain the burden of proof. The burden of proof shall fall upon the appellant seeking relief from a determination of the Tax Administrator.

E. *Hearings open to the public.* An appeal hearing before the City Council shall be open to the public and minutes shall be kept regarding such proceeding. In any case regarding confidential information involving trade secrets or other confidential business records, upon motion of the appellant, the City Council may make such protective orders as may be necessary to protect the confidentiality of such records. In determining whether such protective order should be issued, the City Council shall weigh the harm that might be suffered by the appellant against any benefit received by the public as the result of disclosure.

F. *Executive session.* After closing the appeal hearing the City Council may continue its meeting in executive session to consider records that are exempt by law from public inspection or to consult with counsel regarding current litigation or litigation likely to be filed in the matter on appeal.

G. *Decision of the City Council.* The City Council shall render its decision at an open meeting in writing, including therein a concise statement of the facts found by them and the conclusions and findings reached. The Council may affirm, reverse, modify or remand any order or determination of the Tax Administrator and shall grant such other relief as shall be appropriate. The written decision shall be incorporated in the minutes of the Council.

Section 20. Section 34.99 **PENALTY** is amended to read as follows:

§ 34.99 PENALTY

Unless otherwise specified herein, a violation of this chapter is a Class A civil violation. Each day that a violation remains uncured is a separate infraction.

Section 21: **SAVINGS; SEVERABILITY.** Should any clause or section of this ordinance and/or amendment be declared by a court to be void or voidable, the remainder of this ordinance and/or amendment shall remain in full force and effect. The provisions of this Ordinance are severable. This ordinance shall be interpreted to be an amendment to all pre-existing transient room tax ordinances. The amendment of this chapter shall not affect the

validity, dedications, allocations, or enforcement of the Transient Room or Lodging Tax in effect prior to this amendment. All City ordinances, resolutions and orders, if any, inconsistent with the above are hereby repealed. All City ordinances whose subject matter is not addressed in the Code are reaffirmed and adopted.

ⁱ For new or increased TLTs, the administration fee cannot be less than 5%. See ORS 320.345.

ⁱⁱ Under state law, exemptions are only applicable to the state tax, but most local jurisdictions choose to apply the exemptions to the local tax as well.

ⁱⁱⁱ Under ORS 320.345, 5% is the minimum reimbursement for new or increased TLTs. Cities can choose to increase this percentage, but not decrease it.

^{iv} Cities are advised to closely track TLT funds. The best practice is to form a “Tourism Fund” where the tax revenue is used only for tourism promotion and tourism related facilities. In this way, if the city’s compliance with ORS 320.350 is ever challenged, the city can prove the funds were used appropriately. If TLT funds are placed in the general fund, or combined with other tax revenue, this may be more difficult.

Likewise, if a city transfers TLT funds to a third party—such as a chamber of commerce—the city should have an agreement with the third party which gives the city the ability to audit the funds to ensure compliance with the law. Please see Appendix C for recommended language to include.