

ORDINANCE NO. 2017-13

**ORDINANCE OF THE CITY OF FOREST GROVE
IMPLEMENTING A TWO AND ONE-HALF PERCENT LODGING TAX;
AMENDING FOREST GROVE CODE OF ORDINANCES BY ADDING NEW
SUBCHAPTER (§ 34.25 THROUGH § 34.40), TITLED TRANSIENT LODGING TAX**

WHEREAS, a local transient lodging tax is a tax imposed by a local government on the sale, service or furnishing of transient lodging;

WHEREAS, transient lodging includes hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles 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;

WHEREAS, ORS 320.350 provides that a City Council may impose a 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

WHEREAS, the local transient lodging tax imposed by this ordinance is in addition to the Washington County transient lodging tax collected within the corporate limits of the city; and

WHEREAS, the local transient lodging tax imposed by this ordinance is in addition to any state transient lodging tax; and

WHEREAS, the 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; and

WHEREAS, the City Council wants to impose a two and a half percent (2.50%) transient lodging tax.

WHEREAS, the City Council held a duly-noticed Public Hearing on November 13, 2017, and continued the hearing on November 27, 2017.

NOW THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1: CITY of Forest Grove Code of Ordinances is hereby amended by adding new Subchapter (codification as § 34.25 through § 34.40), as follows:

TRANSIENT LODGING TAX

(§ 34.25) DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply.

BOOKING SERVICE. Any reservation and/or payment service provided by a person or entity that facilitates a short term rental transaction between a host and a prospective occupant, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation and/or payment services provided for the short term rental transaction. Booking services include directly or indirectly accepting, receiving or facilitating payment, whether or not the person or entity is the ultimate recipient of the payment, including through Application Programming Interfaces (APIs) or other computerized devices where third party providers receive information about a transaction and collect funds for the transient lodging occupancy from an occupant.

HOST. The owner or person who resides at the short term rental or has been designated by the owner or resident of the short term rental and who rents out the short term rental for transient lodging occupancy either directly or through the use of a hosting platform.

HOSTING PLATFORM. A person or entity that participates in the short term rental business by collecting or receiving a fee for booking services through which host may offer a transient lodging facility. Hosting platforms usually, though not necessarily, provide booking services through an online platform that allows a host to advertise the transient lodging through a website provided by the hosting platform and provides a means for the host to conduct a transaction by which prospective occupants arrange transient lodging and payment, whether occupant pays rent directly to the host or to the hosting platform.

LOCAL TAX TRUSTEE. The operator or hosting platform or designee thereof that accepts, receives or facilitates the payment directly from the occupant, whether or not the operator or hosting platform is the ultimate recipient of the payment.

OCCUPANCY. The right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for less than 30 days.

OCCUPANT. Any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.

OPERATOR:

(1) Any person who provides transient lodging for occupancy to the general public for compensation. Furnishing accommodations can be done via employees, contractors, agents or any other person allowed to process reservations and accept payment for the transient lodging on behalf of the transient lodging provider; or

(2) Any person who facilitates the reservations of an accommodation and collects the payment for the transient lodging reservation from the occupant; or

(3) Any transient lodging provider, transient lodging intermediary or transient lodging tax collector as defined in ORS 320.300.

PERSON. Any individual, firm, partnership, joint venture, limited liability company, corporation, limited liability partnership, association, host, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, estate,

trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

RENT. 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.

SHORT-TERM RENTAL. A house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling unit where a person rents guest bedrooms 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 ADMINISTRATOR. The City Manager of the City of CITY or the City Manager's designee, which could be someone employed by an entity other than the City of CITY.

TRANSIENT LODGING OR TRANSIENT LODGING FACILITIES:

- (1) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy;
- (2) Spaces used for overnight parking of recreational vehicles during periods of human occupancy; or
- (3) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

"TLT" OR TAX. The transient lodging tax.

(§ 34.26) TAX IMPOSED.

(A) Effective January 1, 2018, each occupant shall pay a TLT in the amount of two and one-half (2.50%) percent of the rent. 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.

(B) 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 must be reported as TLT and, after collection, must be turned over to the City, less the five percent (5%) administrative charge.

(C) The TLT shall automatically sunset on December 31, 2027, unless re-authorized by the City Council.

(§ 34.27) COLLECTION OF TAX BY LOCAL TAX TRUSTEE.

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

(B) Upon request of the City, local tax trustees must 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.

(§ 34.28) 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.

(§ 34.29) EXEMPTIONS.

No TLT shall be imposed upon:

(A) Any person for that portion of the occupancy that is more than thirty consecutive calendar days;

(B) Any occupant whose rent is valued at less than two dollars per day;

(C) Rent paid for a hospital room or to a medical clinic, convalescent home, assisted living facility, hospice, group home for aged or disabled persons, or similar facility;

(D) Occupancy by an employee of the federal or state government on official business provided the employee seeking the exemption provides reasonable documentation to the operator; or

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

(§ 34.30) REGISTRATION OF OPERATOR –FORM AND CONTENT—EXECUTION—CERTIFICATION OF AUTHORITY.

(A) Every person engaging or about to engage in business as an operator shall provide a completed registration form to the tax administrator within fifteen (15) calendar days after commencing business. The registration form shall require the operator to provide the

name of the business, any separate business address, and other information as the tax administrator may require to implement this subchapter. Operators 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 Operator. The tax administrator shall, within ten (10) days after registration, issue without charge a certificate of authority to collect the TLT. 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 link to the certificate of authority at a reasonable place during the payment transaction.

(B) Certificates 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 an operator for a specific lodging facility shall be prominently displayed at the lodging facility and include:

- (1) The name of the operator;
- (2) The address of the transient lodging facility;
- (3) The date the certificate was issued; and
- (4) The certificate number as assigned by the tax administrator.

(§ 34.31) REMITTANCE AND RETURNS.

(A) Local tax trustees shall submit a completed tax return form to the tax administrator on a monthly basis on the tenth day of the month for the preceding month, reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected, less a five (5%) percent administration fee.

(B) The local tax trustee is entitled to the 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 tenth day of the month for the preceding month.

(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 local tax trustee. 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) The tax administrator may extend the time for making any return or remittance of the tax by up to thirty (30) days. No further extension shall be granted, except by the City Council. Any local tax trustee to whom an extension is granted shall pay interest at the rate of one percent (1%) per month 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 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.

(§ 34.32) PENALTIES AND INTEREST.

(A) Interest. In addition to the penalties imposed, interest shall be added to the overall tax amount due at a rate of one percent (1%) for each month, or fraction of a month without proration for portions of a month, from the time the return was originally required to be filed by the local tax trustee to the time of payment.

(B) Penalty. If the local tax trustee fails to file a return or pay the tax as required, a penalty shall be imposed upon the local tax trustee in the amount of ten percent (10%) of the amount of tax due in addition to the amount of the tax. Any local tax trustee who fails to file a return or pay the tax as required on or before thirty (30) days following the date on which the remittance first became delinquent, shall pay a second penalty of fifteen percent (15%) of the amount of the tax due in addition to the amount of tax and the original ten percent (10%) penalty.

(C) Financial Obligation. Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid by the local tax trustee and remitted to the City.

(D) Enforcement. If at any time a local tax trustee fails to remit any amount owed in taxes, interest or penalties, the City or an authorized designee such as the Oregon Department of Revenue, may enforce collection on behalf of the City of the owed amount.

(§ 34.33) 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 local tax trustee, who shall remit deficiencies within ten (10) business days of the deficiency notice. Notice may be by personal delivery or certified or registered mail. Penalties on deficiencies shall be applied as set forth in this subchapter.

- (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 amounts payment under this section shall be extended if the local tax trustee timely requests a redetermination.

(B) Fraud – Refusal to Collect – Evasion. If any local tax trustee fails to collect, report or remit the tax as required, submits a fraudulent return, or otherwise violates or attempts to violate this subchapter, the tax administrator shall estimate the tax due, and calculate the amount owing from the local tax trustee for tax remittance, interest and penalties and provide notice to the local tax trustee of the assessment. 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 immediately and shall become final ten (10) business days after the date notice was delivered if no petition for redetermination is filed.

(§ 34.34) REDETERMINATIONS.

(A) Any person affected by a determination may file a petition for redetermination with the tax administrator within ten (10) business days of service of notice of the tax deficiency. A determination becomes final if a petition for redetermination is not timely filed. Payment in full of all taxes, penalties, and interest as determined by the tax administrator to be due is a prerequisite to filing a petition for redetermination. Filing a petition for re-determination and refund is a prerequisite to seeking judicial review.

(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 tax administrator shall grant the petitioner an oral hearing with ten (10) days' notice of the time and place.

(C) The tax administrator may decrease or increase the amount of the determination as a result of the hearing and if an increase is determined, such increase shall be due on notice of the decision.

(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 ten (10) business days of mailing of the City Council decision.

(§ 34.35) COLLECTIONS.

(A) The City may bring legal action to collect on any amounts owed to the City under this subchapter within three years after remittance is due to the City or within three years after any determination becomes final.

(B) The City is entitled to collect reasonable attorneys' fee in any legal action brought to collect on amount owed to the City under this subchapter.

(§ 34.36) LIENS.

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.

(§ 34.37) REFUNDS.

Refunds by the City to the local tax trustee. If the local tax trustee remits more tax, penalty or interest than is due, the local tax trustee may file a claim in writing stating the facts relating to the claim, within one year 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 local tax trustee.

(§ 34.38) ADMINISTRATION.

(A) Use of TLT Funds. At least seventy percent (70%) of the revenue from the tax rate of two and one-half percent (2.5%) shall be used for tourism promotion and tourism related facilities. Up to thirty percent of the revenue of the two and one-half percent (2.5%) may be used for City services.

(B) Records Required from Local Tax Trustee. Every local tax trustee 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.

(C) Examination of Records – Investigations. The tax administrator or agent may examine all records of a local tax trustee 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 subchapter, conduct audits, and to adopt rules, regulations and forms consistent with this Subchapter. 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 local tax trustee. As to the local tax trustee to whom the interpretation is issued, the City will act consistently with the interpretation until it is withdrawn, and the City shall provide thirty (30) days written notice of withdrawal of an interpretation.

(E) Confidential Character of Information Obtained – Disclosure Unlawful. The City shall maintain the confidentiality of information provided by local tax trustees. 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 or agent for collection of taxes for the purpose of administering or enforcing any provisions of this subchapter or collecting City business license fees.
- (2) Disclosure of information to the local tax trustee and the local tax trustee's agents.
- (3) The disclosure of the names and addresses of any persons to whom certificates of authority have been issued.
- (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.

(§ 34.39) APPEALS 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 ten (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 notice of the hearing at least ten (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 ten (10) business days of the mailing of the notice of the regulation.

(§ 34.40) PENALTY.

A violation of this subchapter is a civil infraction as provided in § 10.99 of this code of ordinances. Each day that a violation remains uncured is a separate infraction. In addition to and not in lieu of a civil infraction proceeding, the City may enforce compliance with this ordinance by filing an action for an injunction, appointment of a receiver or any other relief provided by law.

Section 2: This ordinance is effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED the first reading this 13th day of November, 2017.

PASSED the second reading this 27th day of November, 2017.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 27th day of November, 2017.



Peter B. Truax, Mayor

Date: November 27, 2017

Agenda Item: 7.

Subject: CONTINUE PUBLIC HEARING: SECOND READING OF ORDINANCE NO. 2017-13 IMPLEMENTING A TWO AND HALF PERCENT (2.5%) LODGING TAX; ADDING TO FOREST GROVE CODE OF ORDINANCES NEW SUBCHAPTER (§34.25 THROUGH § 34.40), TITLED TRANSIENT LODGING TAX, EFFECTIVE JANUARY 1, 2018, AND AUTOMATICALLY SUNSET ON DECEMBER 31, 2027, UNLESS RE-AUTHORIZED BY CITY COUNCIL

CITY COUNCIL MEETING

Request to Testify at Public Hearing

Public Hearings – Public hearings are held on each matter required by state law or City policy. Anyone wishing to testify should sign-in for the Public Hearing prior to the meeting. The Mayor or presiding officer will review the complete hearing instructions prior to testimony. The Mayor or presiding officer will call the individual or group by the name given on the sign-in form. When addressing the Mayor and Council, please move to the witness table (center front of the room). Each person should speak clearly into the microphone and must state their first and last name and provided a mailing address for the record. All testimony is electronically recorded. In the interest of time, Public Hearing testimony is limited to three minutes unless the Mayor or presiding officer grants an extension. Written or oral testimony is heard prior to any Council action.

Please sign-in below to testify.

PROPONENTS: *(Please print legibly)*

First & Last Name:

Address:

City, State & Zip Code:

OPPONENTS: *(Please print legibly)*

First & Last Name:

Address:

City, State & Zip Code:

OTHERS: *(Please print legibly)*

First & Last Name:

Address:

City, State & Zip Code:



A place where families and businesses thrive.

<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	7
MEETING DATE:	11/13/17
FINAL ACTION:	FIRST READING

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *November 13, 2017*

PROJECT TEAM: *Paul Downey, Director of Administrative Services
Jeffrey King, Economic Development Program Coordinator*

SUBJECT TITLE: *Public Hearing and First Reading of City's TLT Ordinance*

ACTION REQUESTED:

<input checked="" type="checkbox"/>	Ordinance	<input type="checkbox"/>	Order	<input type="checkbox"/>	Resolution	<input type="checkbox"/>	Motion	<input type="checkbox"/>	Informational
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X all that apply

ISSUE STATEMENT:

The City has been considering whether to establish a City Transient Lodging Tax (TLT) Ordinance since October 2016. After review by a City-appointed TLT Ad-Hoc Advisory Group and presentations to the City Council, staff is bringing an ordinance proposing a two and one-half percent (2.5%) TLT to be charged on lodging stays in Forest Grove, effective January 1, 2018.

BACKGROUND:

The state of Oregon and its cities, counties and regional governments have the authority to impose and collect taxes on paid overnight stays at lodging properties such as hotels, motels, resorts, inns, bed & breakfasts or short-term home rentals. These taxes are known as transient lodging taxes (TLT) and are a combination of state and locally assessed taxes.

As of July 1, 2017, there is a state-wide tax rate of 1.8 percent; this rate will reduce to 1.5% on July 1, 2020. In addition to the state wide tax, 15 counties and over 90 cities levy a local TLT. These local taxes range from 1 percent to 13.5 percent. In July, 2016, Washington County amended their TLT ordinance to allow local municipalities to keep 100% of a locally levied TLT above the existing County and State TLT.

In a work session and presentation to City Council on October 10, 2016, and October 24, 2016, respectively, consensus was attained on the composition, purpose, timeline and scope of a temporary Ad-Hoc Advisory Group (Group) which was established in November 14th by resolution. The Group initially held seven meetings; analyzing collateral marketing materials, web searches, existing tourism goals and objectives, the Forest Grove Branding Guide, hotel operations and needs, regional competitor hotel pricing, and alternative organizations for a potential tourism coordinator.

On April 24, 2017, the Group presented their initial recommendations to the City Council. After input from the City Council, the Group met an additional four times and presented its final recommendations to the Council at work session on October 9, 2017. The Group included two representatives from local hotels who are in agreement with the final recommendations which include a 2.5% TLT to be used by the City exclusively for tourism in four program areas:

- Part-time Tourism Coordinator
- Capital Projects
- Promotion and Marketing
- Innovation and Events

There is broad agreement on using the funds for these areas. The implementation details are still being finalized for each of these areas. If the Council adopts the ordinance, the implementation of the four areas will be finalized and brought back to Council for approval in the form of a resolution.

The ordinance has been drafted by the City Attorney's Office and sets out the rate, effective date, and rules on collection and the administration of the TLT. For uses, the ordinance states that at least seventy percent (70%) of the revenue from the tax rate of two and one-half percent (2.5%) shall be used for tourism promotion and tourism related facilities. Up to thirty percent of the revenue of the two and one-half percent (2.5%) may be used for City services. The actual use of the TLT will be 100% for tourism. The wording in the ordinance allows for maximum flexibility for future Councils and still comply with state statutes.

The Ordinance defines Transient Lodging Facilities as 1) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; 2) Spaces used for overnight parking of recreational vehicles during periods of human occupancy; or 3) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy. Occupancy means the right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for less than 30 days.

Staff is requesting that the ordinance be adopted before all of the program elements are finalized due to the lag in the funds being collected by the County and being turned over to the City. If the TLT commences January 1, 2018, it will be May 2018 when the County turns over to the City the TLT collected from January 1, 2018, through March 31, 2018.

Additionally, if the Council approves the ordinance, staff will bring the following items to the Council for approval at the next meeting: 1) an intergovernmental agreement (IGA) with Washington County to collect the TLT on behalf of the City; and 2) a resolution establishing a separate fund for the collection and expenditure of the City's TLT so the TLT taxes are separately accounted for by the City.

FISCAL IMPACT:

The proposed 2.5% TLT is estimated to bring in approximately \$95,000 to the City. The lodging establishments are allowed to keep 5% of the tax they collect as an administrative expense and the County charges a small fee (a minimum of 0.33% of the taxes allocated) for its services. The taxes are to be used for tourism purposes listed above.

STAFF RECOMMENDATION:

Staff recommends the City Council consider the attached ordinance adopting the proposed TLT.

ATTACHMENT(s):

TLT PowerPoint Presentation
TLT Ordinance



A place where families and businesses thrive.

NOTICE OF PUBLIC HEARING PROPOSED ORDINANCE ENACTING PROVISIONS IMPOSING A TRANSIENT LODGING TAX FOR THE CITY OF FOREST GROVE

NOTICE IS HEREBY GIVEN that the Forest Grove City Council will hold a Public Hearing on **Monday, November 13, 2017, 7:00 p.m.** or thereafter, in the Community Auditorium, 1915 Main Street, Forest Grove, to consider enacting an ordinance imposing a transient lodging tax of 2.5 percent (2.5%), effective January 1, 2018, pertaining to occupancy in any transient lodging, for example, hotels and motels, and to be collected by the operator for the occupancy. The proposed ordinance, if enacted by the Forest Grove City Council, would take effect on the thirtieth day (30th) after enactment unless the City Council declares an emergency. The transient lodging tax will be collected effective January 1, 2018.

This hearing is open to the public and interested parties are encouraged to attend. A copy of the report and proposed ordinance are available for inspection before the hearing at the City Recorder's Office or by visiting the City's website at www.forestgrove-or.gov. Written comments or testimony may be submitted at the hearing or sent to the attention of the City Recorder's Office, P. O. Box 326, 1924 Council Street, Forest Grove, OR 97116, prior to the hearing. For further information, please call Anna Ruggles, City Recorder, at 503.992.3235.

**Anna D. Ruggles, CMC, City Recorder
City of Forest Grove**

To be published: Wednesday, November 8, 2017



Proposed Transient Lodging Tax Ordinance

Jesse VanderZanden, City Manager
Paul Downey Administrative Services Director
Jeff King, Economic Development
November 13, 2017

Purpose of Presentation

- Recap the Transient Lodging Tax (TLT) Ad-Hoc Group Recommendations
- Discuss establishing a 2.5% TLT Ordinance
- Discuss implementation steps if ordinance is approved:
 - Resolution to Establish a City TLT Fund and dedicate funds for tourism
 - Resolution for IGA with Washington County for the collection of the City's TLT funds
 - Resolution establishing TLT program areas

TLT –Recap

- The TLT is not an income or property tax, it is a tax charged on room rentals for temporary lodging (i.e. hotels).
- Local governments are required to spend 70% of net revenue for specified tourism related purposes. Not more than 30% can be used for municipal services.
- The City's TLT, as proposed, would be used entirely for tourism.

TLT –Recap

- ORS 320.300 and 320.350 define tourism related purposes as:
 - Tourism-Related facility and/or the finance or refinance of debt for a tourism-related facility
 - Tourism Promotion
 - Advertising or publicizing information
 - Strategic planning or research
 - Operating tourism promotion agencies
 - Marketing special events and festivals

TLT –Recap

- In 2016, Washington County amended their TLT ordinance to allow local municipalities to establish and keep 100% of a local TLT.
- Several cities in Washington County have established a local TLT with the rates ranging from 2.5% to 4.0%. The City's proposed rate is 2.5%.
- Washington County imposes a 9% TLT. The State imposes a 1.8% TLT bringing the total for Washington County to 10.8%. The City's TLT would be in addition to these TLT's.
- Each 1% in the City's local TLT would generate approximately \$40,000 in annual revenue.

TLT –City Process Recap

- TLT consideration is in response to City Council Goal 3.24 to establish a public-private working (advisory) group for tourism promotion in collaboration with the Forest Grove Chamber of Commerce.
- City Council passed Resolution 2016-62 on November 14th, 2016, establishing a 13 member Temporary TLT Ad-Hoc Advisory Group (Group) and defining scope and purpose of group. The Group included three representatives from the lodging industry within the City.
- The Group met 11 times over the past year and had presented a proposed rate for the TLT and a program to manage how the funds are expended.

TLT –City Process Recap

- At the October 9, 2017, Work Session, the Ad-Hoc Committee presented its final recommendations which included:
 - Establish a 2.5% TLT.
 - Establish a 9-11 member Tourism Stakeholder Committee and a 3 member Executive Committee to oversee the Tourism programs.
 - Establish four tourism programs:
 - Part-Time Tourism Coordinator
 - Capital Projects Fund
 - Promotion and Marketing Fund
 - Innovative Projects and Events Development Fund
- How the programs will be administered has not been finalized and will be brought to Council for approval at a subsequent meeting if the proposed ordinance is approved.

TLT – City Process Recap

- The Four Program Areas include:
 - Part-Time Tourism Coordinator: major duties include, but area not limited to, administering all tourism grant programs and serving as single point of contact for tourism related activities.
 - Capital Projects Fund: funds are for investment in physical assets that support tourism.
 - Promotion and Marketing Fund: supports new and existing marketing initiatives that support growth of tourism. Supports collateral materials, advertising programs, branding.
 - Innovative Projects and Events Development Fund: provides gap funds for innovative public or private events, ideas or projects that are open to the public and support or promote tourism.

Establish a TLT Ordinance

- Principal purpose of tonight's meeting is to consider establishing a Transient Lodging Tax in Forest Grove.
- The proposed Ordinance has been drafted and reviewed by the City Attorney. It is modeled after Hillsboro's Ordinance and is very similar to Beaverton's.
- Major elements of the proposed ordinance include:
 - A TLT of 2.5% starting January 1, 2018.
 - Defines who is subject to the TLT:
 - Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy;
 - Spaces used for overnight parking of recreational vehicles 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.
 - Occupancy means the right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for less than 30 days.

Establish a TLT Ordinance

- Elements of Ordinance continued...
 - Describes use of the TLT. For maximum flexibility in the future, the ordinance reflects state law by requiring that at least 70% of the TLT be spent on tourism and no more than 30% for City purposes.
 - Collection and other administrative provisions.
 - Contains a 10 year sunset provision.
 - Allows for administrative fee for collection by lodging property.
 - This Ordinance exempt non-profits.

Next Steps if Ordinance Adopted

- If the proposed ordinance is moved for adoption at this meeting, staff will bring the following to the next Council meeting:
 - A proposed Intergovernmental Agreement (IGA) with Washington County for the collection of City's TLT by Washington County who already collects the other TLT charged within Washington County.
 - A proposed resolution establishing a separate fund to account for the collection and expenditure of the City's TLT and a provision that all of the City's TLT will be used for tourism.
 - A proposed resolution establishing three Tourism Program areas including: 1) Part-Time Tourism Coordinator, 2) Capital Projects Fund, and 3) Promotion and Events Development Fund.

Next Steps if Ordinance Adopted

- At a future meeting, staff will bring a resolution to the Council that describes the structure and administration of the tourism program based on the recommendations of the Ad-Hoc Tourism Advisory Group.
- The ordinance needs to be in place to begin collection of the TLT so the funds can begin to be collected.
- There will be a lag of several months between the commencement of the collection of the TLT and when the City receives the first taxes so there is time to finalize the details of how the program will be administered.

**Written Testimony:
Agenda Item 7
November 13, 2017**

November 2, 2017

Dear Mayor Truax and City Council:

The Forest Grove Economic Development Commission (FGEDC), at its November 2nd, 2017 meeting, unanimously recommended passage of a 2.5% Transient Lodging Tax. The Transient Lodging Tax is a critical tool that will create expanded opportunities in the local tourism economy. For the first time there will be a consistent dedicated resource and personnel to support tourism.

Support and growth of the tourism sector has been an on-going goal of the FGEDC. Given that the Forest Grove area has the greatest amount of leisure tourism activities and amenities in Washington County, there are opportunities to increase tourism's contribution to the local economy. Many of the operators of area tourism amenities are locally owned small businesses whose growth will lead to increased jobs and income.

The Forest Grove Economic Development Commission pledges its continued assistance to the City Council's goal of supporting tourism growth.

Sincerely,



James Draznin
Chair, Forest Grove Economic Development Commission

Date: November 13, 2017

Agenda Item: 7.

Subject: PUBLIC HEARING AND FIRST READING OF ORDINANCE NO. 2017-13 IMPLEMENTING A TWO AND HALF PERCENT (2.5%) LODGING TAX; ADDING TO FOREST GROVE CODE OF ORDINANCES NEW SUBCHAPTER (§34.25 THROUGH § 34.40), TITLED TRANSIENT LODGING TAX, EFFECTIVE JANUARY 1, 2018, AND AUTOMATICALLY SUNSET ON DECEMBER 31, 2027, UNLESS RE-AUTHORIZED BY CITY COUNCIL

CITY COUNCIL MEETING

Request to Testify at Public Hearing

Public Hearings – Public hearings are held on each matter required by state law or City policy. Anyone wishing to testify should sign-in for the Public Hearing prior to the meeting. The Mayor or presiding officer will review the complete hearing instructions prior to testimony. The Mayor or presiding officer will call the individual or group by the name given on the sign-in form. When addressing the Mayor and Council, please move to the witness table (center front of the room). Each person should speak clearly into the microphone and must state their first and last name and provided a mailing address for the record. All testimony is electronically recorded. In the interest of time, Public Hearing testimony is limited to three minutes unless the Mayor or presiding officer grants an extension. Written or oral testimony is heard prior to any Council action.

Please sign-in below to testify.

PROPONENTS: (Please print legibly)

First & Last Name:

Address:

City, State & Zip Code:

HOWARD SULLIVAN

2735 BUXTON ST LG 97116

Steve Vuylsteke

29335 BW BURKHAWER RD HDSO

OPPONENTS: (Please print legibly)

First & Last Name:

Address:

City, State & Zip Code:

OTHERS: (Please print legibly)

First & Last Name:

Address:

City, State & Zip Code:



6605 S.E. Lake Road, Portland, OR 97222
 PO Box 22109 • Portland, OR 97269-2109
 Phone: 503-684-0360 Fax: 503-620-3433
 E-mail: legals@commnewspapers.com

AFFIDAVIT OF PUBLICATION

State of Oregon, County of Washington, SS I, Charlotte Allsop, being the first duly sworn, depose and say that I am the Accounting Manager of the **Forest Grove News-Times**, a newspaper of general circulation, published at Forest Grove, in the aforesaid county and state, as defined by ORS 193.010 and 193.020, that

City of Forest Grove
Notice of Public Hearing – Transient Lodging Tax
FGNT12811

a copy of which is hereto attached, was published in the entire issue of said newspaper for

1
 week in the following issue:
November 8, 2017

Charlotte Allsop

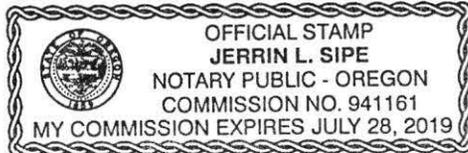
 Charlotte Allsop, Accounting Manager

Subscribed and sworn to before me this
 November 8, 2017.

Jerrin L. Sipe

 NOTARY PUBLIC FOR OREGON

Acct #298024
 PO #: 20165070
Attn: Anna Ruggles
 City of Forest Grove
 PO Box 326
 Forest Grove, OR 97116
 Size: 2 x 4.542"
 Amount Due: \$86.75*
 *Please remit to the above address.



**NOTICE OF PUBLIC HEARING
 PROPOSED ORDINANCE ENACTING PROVISIONS
 IMPOSING A TRANSIENT LODGING TAX
 FOR THE CITY OF FOREST GROVE**

NOTICE IS HEREBY GIVEN that the Forest Grove City Council will hold a Public Hearing on Monday, November 13, 2017, 7:00 p.m. or thereafter, in the Community Auditorium, 1915 Main Street, Forest Grove, to consider enacting an ordinance imposing a transient lodging tax of 2.5 percent (2.5%), effective January 1, 2018, pertaining to occupancy in any transient lodging, for example, hotels and motels, and to be collected by the operator for the occupancy. The proposed ordinance, if enacted by the Forest Grove City Council, would take effect on the thirtieth day (30th) after enactment unless the City Council declares an emergency. The transient lodging tax will be collected effective January 1, 2018.

This hearing is open to the public and interested parties are encouraged to attend. A copy of the report and proposed ordinance are available for inspection before the hearing at the City Recorder's Office or by visiting the City's website at www.forestgrove-or.gov. Written comments or testimony may be submitted at the hearing or sent to the attention of the City Recorder's Office, P. O. Box 326, 1924 Council Street, Forest Grove, OR 97116, prior to the hearing. For further information, please call Anna Ruggles, City Recorder, at 503.992.3235.

Anna D. Ruggles, CMC, City Recorder
 City of Forest Grove
 Publish 11/08/2017.

FGNT12811

FIRST READING:

ORDINANCE NO. 2017-13

**ORDINANCE OF THE CITY OF FOREST GROVE
IMPLEMENTING A TWO AND ONE-HALF PERCENT LODGING TAX;
AMENDING FOREST GROVE CODE OF ORDINANCES BY ADDING NEW
SUBCHAPTER (§ 34.25 THROUGH § 34.40), TITLED TRANSIENT LODGING TAX**

WHEREAS, a local transient lodging tax is a tax imposed by a local government on the sale, service or furnishing of transient lodging;

WHEREAS, transient lodging includes hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles 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;

WHEREAS, ORS 320.350 provides that a City Council may impose a 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

WHEREAS, the local transient lodging tax imposed by this ordinance is in addition to the Washington County transient lodging tax collected within the corporate limits of the city; and

WHEREAS, the local transient lodging tax imposed by this ordinance is in addition to any state transient lodging tax; and

WHEREAS, the 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; and

WHEREAS, the City Council wants to impose a two and a half percent (2.50%) transient lodging tax.

WHEREAS, the City Council held a duly-noticed Public Hearing on November 13, 2017, and continued the hearing on November 27, 2017.

NOW THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1: CITY of Forest Grove Code of Ordinances is hereby amended by adding new Subchapter (codification as § 34.25 through § 34.40), as follows:

TRANSIENT LODGING TAX

(§ 34.25) DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply.

BOOKING SERVICE. Any reservation and/or payment service provided by a person or entity that facilitates a short term rental transaction between a host and a prospective occupant, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation and/or payment services provided for the short term rental transaction. Booking services include directly or indirectly accepting, receiving or facilitating payment, whether or not the person or entity is the ultimate recipient of the payment, including through Application Programming Interfaces (APIs) or other computerized devices where third party providers receive information about a transaction and collect funds for the transient lodging occupancy from an occupant.

HOST. The owner or person who resides at the short term rental or has been designated by the owner or resident of the short term rental and who rents out the short term rental for transient lodging occupancy either directly or through the use of a hosting platform.

HOSTING PLATFORM. A person or entity that participates in the short term rental business by collecting or receiving a fee for booking services through which host may offer a transient lodging facility. Hosting platforms usually, though not necessarily, provide booking services through an online platform that allows a host to advertise the transient lodging through a website provided by the hosting platform and provides a means for the host to conduct a transaction by which prospective occupants arrange transient lodging and payment, whether occupant pays rent directly to the host or to the hosting platform.

LOCAL TAX TRUSTEE. The operator or hosting platform or designee thereof that accepts, receives or facilitates the payment directly from the occupant, whether or not the operator or hosting platform is the ultimate recipient of the payment.

OCCUPANCY. The right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for less than 30 days.

OCCUPANT. Any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.

OPERATOR:

(1) Any person who provides transient lodging for occupancy to the general public for compensation. Furnishing accommodations can be done via employees, contractors, agents or any other person allowed to process reservations and accept payment for the transient lodging on behalf of the transient lodging provider; or

(2) Any person who facilitates the reservations of an accommodation and collects the payment for the transient lodging reservation from the occupant; or

(3) Any transient lodging provider, transient lodging intermediary or transient lodging tax collector as defined in ORS 320.300.

PERSON. Any individual, firm, partnership, joint venture, limited liability company, corporation, limited liability partnership, association, host, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, estate,

trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

RENT. 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.

SHORT-TERM RENTAL. A house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling unit where a person rents guest bedrooms 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 ADMINISTRATOR. The City Manager of the City of CITY or the City Manager's designee, which could be someone employed by an entity other than the City of CITY.

TRANSIENT LODGING OR TRANSIENT LODGING FACILITIES:

- (1) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy;
- (2) Spaces used for overnight parking of recreational vehicles during periods of human occupancy; or
- (3) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

"TLT" OR TAX. The transient lodging tax.

(§ 34.26) TAX IMPOSED.

(A) Effective January 1, 2018, each occupant shall pay a TLT in the amount of two and one-half (2.50%) percent of the rent. 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.

(B) 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 must be reported as TLT and, after collection, must be turned over to the City, less the five percent (5%) administrative charge.

(C) The TLT shall automatically sunset on December 31, 2027, unless re-authorized by the City Council.

(§ 34.27) COLLECTION OF TAX BY LOCAL TAX TRUSTEE.

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

(B) Upon request of the City, local tax trustees must 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.

(§ 34.28) 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.

(§ 34.29) EXEMPTIONS.

No TLT shall be imposed upon:

(A) Any person for that portion of the occupancy that is more than thirty consecutive calendar days;

(B) Any occupant whose rent is valued at less than two dollars per day;

(C) Rent paid for a hospital room or to a medical clinic, convalescent home, assisted living facility, hospice, group home for aged or disabled persons, or similar facility;

(D) Occupancy by an employee of the federal or state government on official business provided the employee seeking the exemption provides reasonable documentation to the operator; or

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

(§ 34.30) REGISTRATION OF OPERATOR –FORM AND CONTENT—EXECUTION—CERTIFICATION OF AUTHORITY.

(A) Every person engaging or about to engage in business as an operator shall provide a completed registration form to the tax administrator within fifteen (15) calendar days after commencing business. The registration form shall require the operator to provide the

name of the business, any separate business address, and other information as the tax administrator may require to implement this subchapter. Operators 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 Operator. The tax administrator shall, within ten (10) days after registration, issue without charge a certificate of authority to collect the TLT. 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 link to the certificate of authority at a reasonable place during the payment transaction.

(B) Certificates 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 an operator for a specific lodging facility shall be prominently displayed at the lodging facility and include:

- (1) The name of the operator;
- (2) The address of the transient lodging facility;
- (3) The date the certificate was issued; and
- (4) The certificate number as assigned by the tax administrator.

(§ 34.31) REMITTANCE AND RETURNS.

(A) Local tax trustees shall submit a completed tax return form to the tax administrator on a monthly basis on the tenth day of the month for the preceding month, reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected, less a five (5%) percent administration fee.

(B) The local tax trustee is entitled to the 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 tenth day of the month for the preceding month.

(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 local tax trustee. 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) The tax administrator may extend the time for making any return or remittance of the tax by up to thirty (30) days. No further extension shall be granted, except by the City Council. Any local tax trustee to whom an extension is granted shall pay interest at the rate of one percent (1%) per month 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 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.

(§ 34.32) PENALTIES AND INTEREST.

(A) Interest. In addition to the penalties imposed, interest shall be added to the overall tax amount due at a rate of one percent (1%) for each month, or fraction of a month without proration for portions of a month, from the time the return was originally required to be filed by the local tax trustee to the time of payment.

(B) Penalty. If the local tax trustee fails to file a return or pay the tax as required, a penalty shall be imposed upon the local tax trustee in the amount of ten percent (10%) of the amount of tax due in addition to the amount of the tax. Any local tax trustee who fails to file a return or pay the tax as required on or before thirty (30) days following the date on which the remittance first became delinquent, shall pay a second penalty of fifteen percent (15%) of the amount of the tax due in addition to the amount of tax and the original ten percent (10%) penalty.

(C) Financial Obligation. Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid by the local tax trustee and remitted to the City.

(D) Enforcement. If at any time a local tax trustee fails to remit any amount owed in taxes, interest or penalties, the City or an authorized designee such as the Oregon Department of Revenue, may enforce collection on behalf of the City of the owed amount.

(§ 34.33) 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 local tax trustee, who shall remit deficiencies within ten (10) business days of the deficiency notice. Notice may be by personal delivery or certified or registered mail. Penalties on deficiencies shall be applied as set forth in this subchapter.

- (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 amounts payment under this section shall be extended if the local tax trustee timely requests a redetermination.

(B) Fraud – Refusal to Collect – Evasion. If any local tax trustee fails to collect, report or remit the tax as required, submits a fraudulent return, or otherwise violates or attempts to violate this subchapter, the tax administrator shall estimate the tax due, and calculate the amount owing from the local tax trustee for tax remittance, interest and penalties and provide notice to the local tax trustee of the assessment. 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 immediately and shall become final ten (10) business days after the date notice was delivered if no petition for redetermination is filed.

(§ 34.34) REDETERMINATIONS.

(A) Any person affected by a determination may file a petition for redetermination with the tax administrator within ten (10) business days of service of notice of the tax deficiency. A determination becomes final if a petition for redetermination is not timely filed. Payment in full of all taxes, penalties, and interest as determined by the tax administrator to be due is a prerequisite to filing a petition for redetermination. Filing a petition for re-determination and refund is a prerequisite to seeking judicial review.

(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 tax administrator shall grant the petitioner an oral hearing with ten (10) days' notice of the time and place.

(C) The tax administrator may decrease or increase the amount of the determination as a result of the hearing and if an increase is determined, such increase shall be due on notice of the decision.

(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 ten (10) business days of mailing of the City Council decision.

(§ 34.35) COLLECTIONS.

(A) The City may bring legal action to collect on any amounts owed to the City under this subchapter within three years after remittance is due to the City or within three years after any determination becomes final.

(B) The City is entitled to collect reasonable attorneys' fee in any legal action brought to collect on amount owed to the City under this subchapter.

(§ 34.36) LIENS.

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.

(§ 34.37) REFUNDS.

Refunds by the City to the local tax trustee. If the local tax trustee remits more tax, penalty or interest than is due, the local tax trustee may file a claim in writing stating the facts relating to the claim, within one year 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 local tax trustee.

(§ 34.38) ADMINISTRATION.

(A) Use of TLT Funds. At least seventy percent (70%) of the revenue from the tax rate of two and one-half percent (2.5%) shall be used for tourism promotion and tourism related facilities. Up to thirty percent of the revenue of the two and one-half percent (2.5%) may be used for City services.

(B) Records Required from Local Tax Trustee. Every local tax trustee 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.

(C) Examination of Records – Investigations. The tax administrator or agent may examine all records of a local tax trustee 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 subchapter, conduct audits, and to adopt rules, regulations and forms consistent with this Subchapter. 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 local tax trustee. As to the local tax trustee to whom the interpretation is issued, the City will act consistently with the interpretation until it is withdrawn, and the City shall provide thirty (30) days written notice of withdrawal of an interpretation.

(E) Confidential Character of Information Obtained – Disclosure Unlawful. The City shall maintain the confidentiality of information provided by local tax trustees. 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 or agent for collection of taxes for the purpose of administering or enforcing any provisions of this subchapter or collecting City business license fees.
- (2) Disclosure of information to the local tax trustee and the local tax trustee's agents.
- (3) The disclosure of the names and addresses of any persons to whom certificates of authority have been issued.
- (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.

(§ 34.39) APPEALS 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 ten (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 notice of the hearing at least ten (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 ten (10) business days of the mailing of the notice of the regulation.

(§ 34.40) PENALTY.

A violation of this subchapter is a civil infraction as provided in § 10.99 of this code of ordinances. Each day that a violation remains uncured is a separate infraction. In addition to and not in lieu of a civil infraction proceeding, the City may enforce compliance with this ordinance by filing an action for an injunction, appointment of a receiver or any other relief provided by law.

Section 2: This ordinance is effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED the first reading this 13th day of November, 2017.

PASSED the second reading this 27th day of November, 2017.

Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 27th day of November, 2017.

Peter B. Truax, Mayor