

**Chapter 3.08**

**TRANSIENT LODGING TAX**

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### **3.08.010 Definitions.**

For the purpose of this chapter, the following words shall mean:

“Accrual accounting” means a system of accounting in which the operator enters the rent due from a transient into the record when the rent is earned, whether or not it is paid.

“Cash accounting” means a system of accounting in which the operator does not enter the rent due from a transient into the record until the rent is paid.

“City area beautification” means the enhancement and beautification of the city within the city’s urban growth boundary, but excluding acquisition, maintenance and/or repairs of city infrastructure with the exception of facilities used primarily by tourists. (Ord. 2003-06 § 5, 2003)

“City area tourism development” means 1) the expenditure of funds in areas outside of the city’s corporate and urban growth boundaries for the purpose of advertising and promoting areas within the city of Port Orford and its urban growth boundaries and. 2) support of activities within the city’s urban growth boundary which draw tourists to the area. (Ord. 2003-06 § 5, 2003)

“Hotel” means a part of any facility that is occupied or designed for occupancy by transients for lodging or sleeping, including a hotel, condominium, motel, inn, bed and breakfast home or house, recreational vehicle park, campground, tourist home or house, studio hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or similar facility.

“Occupy” occupancy means use or possession of, or the right to use or possess, a room in a hotel for lodging or sleeping, including a space in a recreational vehicle park or campground.

“Operator” means a person who is the proprietor of a hotel in any capacity. When an operator’s functions are performed through a managing agent of a type other than an employee, the managing agent shall also be considered an operator. For purposes of this chapter, compliance by either the operator or the managing agent shall be considered compliance by both.

“Person” means an individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or other group or combination acting as a unit.

“Rent” means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel valued in money, exclusive of other services.

“Tax” means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which the operator during the period for which the operator is required to report collections.

“Tax administrator” means the city manager.

“Transient” means an individual who occupies or is entitled to occupy space in a hotel for a period of thirty (30) consecutive days or less, counting portions of days as full days. The day a transient checks out of a hotel shall not be included in determining the thirty (30) day period if the transient is not charged rent for that day. A person occupying space in a hotel shall be considered a transient until a period of thirty-one (31) days has expired unless there is agreement in writing between the operator and the occupant providing for a longer period of occupancy or the tenant actually extends occupancy more than thirty

(30) consecutive days. A person who pays for a hotel shall be considered a transient until a period of thirty-one (31) days has expired unless there is agreement in writing between the operator and the occupant providing for a longer period of occupancy or the tenant actually extends occupancy more than thirty (30) consecutive days. A person who pays for lodging on a monthly basis, regardless of the number of days in the month, shall not be considered a transient. (Ord. 96-16 § 1, 1996; Ord. 212-90B § 1, 1990)

**3.08.020 Tax imposed.**

A transient shall pay a tax in the amount of six percent of the rest charged for the privilege of occupancy in a hotel in the city. The tax constitutes a debt owed by the transient to the city, and the debt is extinguished only when the tax is remitted by the operator to the city. The transient shall pay the tax to the operator at the time the rent is paid. The operator shall enter the tax into the record when rent is collected if the operator keeps records on the accrual accounting basis. If the rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. In all cases, rent paid or charged for occupancy shall exclude the sale of goods, services or commodities. All transient funds shall be held in trust by the operator on behalf of the transient until remitted to the city. (Ord. 96-16 § 3, 1996; Ord. 212-90B § 2, 1990)

**3.08.030 Rules for collection of tax by operator.**

A. Every operator renting space for lodging or sleeping shall collect a tax from the occupant. The tax collected or accrued constitutes a debt owed by the operator to the city.

B. In cases of credit or deferred payment of

rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made.

C. the tax administrator shall enforce this chapter and may adopt rules and regulations necessary for enforcement.

D. For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted. (Ord. 212-90B § 3, 1990)

**3.08.040 Operator's duties.**

An operator shall collect the tax when rent is collected from the transient. The amount of tax shall be stated separately in the operator's records and on the receipt given by the operator. An operator shall not advertise that the tax will not be added to the rent, that a portion of it will be assumed or absorbed by the operator, or that a portion will be refunded, except in the manner provided by this chapter. (Ord. 212-90B § 4, 1990)

**3.08.050 Exemptions.**

The tax shall not be imposed on:

A. An occupant staying more than thirty (30) consecutive days.

B. Any occupant of a hospital room medical clinic, convalescent home, or home for the aged, disabled or otherwise infirm;

C. Any occupant whose rent is paid as charitable assistance from any recognized nonprofit organization such as a church or Common Good;

D. Any recreational vehicle park. (Repealed: Ord. 2004-03 § 5, 2004);

E. Any government employee on official government business who presents a hotel/motel tax exemption certificate at the time of their current occupancy. (Ord. 96-16 § 4, 1996; Ord 212-90B § 5, 1990)

**3.08.060 Operator’s registration form.**

A. An operator of a hotel shall register with the tax administrator, on a form provided by the administrator, within fifteen (15) days after beginning business or within thirty (30) calendar days after passage of the ordinance codified in this chapter.

B. The registration shall include:

- 1. The name under which the operator transacts or intends to transact business;
- 2. The location of the hotel;
- 3. Any other information the tax administrator may require to facilitate collection of the tax;
- 4. The signature of the operator.

C. Failure to register does not relieve the operator from collecting the tax or a person from paying the tax. (Ord. 212-90B ' 6, 1990)

**3.08.070 Certificate of authority.**

A. The tax administrator shall issue a certificate of authority to the registrant within ten days after registration.

B. Certificates are non-assignable and nontransferable and shall be surrendered immediately to the tax administrator on cessation of business at the location named or when the business is sold or transferred.

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

D. the certificate shall state:

- 1. The name of the operator;
- 2. The address of the hotel;
- 3. The date when the certificate was issued;
- 4. This Transient Occupancy Registration Certificate signifies that the person named on the certificate has fulfilled the requirements of the Transient Room Tax Ordinance of the City of Port Orford by registering with the tax administrator for the purpose of collecting the room tax imposed by the City of Port Orford

and remitting the tax to the tax administrator.@ (Ord. 212-90B § 7, 1990)

**3.08.080 Collections, returns and payments.**

A. The taxes collected by an operator are payable to the tax administrator on a quarterly basis on the fifteenth day of the following month for the preceding three months and are delinquent on the last day of the month in which they are due. The initial return may be for less than the tree months preceding the due date. The quarters are:

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

B. a return showing tax collections for the preceding quarter shall be filed with the tax administrator, in a form prescribed by the tax administrator, before the sixteenth day of the month following each collection quarter.

C. 1. The operator shall withhold five percent of the tax to cover the expense of collecting and remitting the tax.

2. In instances where credit is extended to the transient for charges fr rental through the use of a credit card or other similar transaction whereby the amount paid to the operator is discounted by contract between the operator and the issuer of the credit card, the amount of such discount may be excluded from the definition of “rent” and no tax shall be imposed on the amount so discounted. D. Returns shall show the amount of the tax collect or due for the related period. The tax administrator may require returns to show the total rentals on which the tax was collected or is due, gross receipts of the operator for the period, a detailed explanation of any discrepancy between the amounts, and the

amount of rentals exempt.

E. The operator shall deliver the return and the tax due to the tax administrator's office. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

F. For good cause, the tax administrator may extend the time for filing a return or paying the tax for not more than one month. Further extensions may be granted only by the common council of the city of Port Orford.

G. the tax administrator may require returns and payments of the taxes for other than quarterly periods in individual cases to insure payment or to facilitate collection by the city. (Ord. 212-90B § 8,1990)

### **3.08.090 Delinquency penalties.**

A. An operator who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay penalty of ten percent of the tax due in addition to the tax.

B. An operator who has not been granted an extension of time for remittance of tax due and who fails to pay a delinquent remittance before the expiration of thirty-one (31) days following the date on which the remittance became delinquent shall pay a second delinquency penalty of fifteen (15) percent of the tax due, the amount of the tax due and the ten percent penalty first imposed.

C. if the tax administrator determines that nonpayment of a remittance is due to fraud or intent to evade the tax, a penalty of twenty-five (25) percent of the tax shall be added to the penalties stated in subsections A and B of this section.

D. In addition to the penalties imposed by this section, an operator who fails to remit the required tax shall pay interest at the rate of 0.5 percent per month, on the tax due, exclusive of penalties, from the date on which the tax first became delinquent until paid.

E. each penalty imposed and the interest accrued under the provisions of this section shall be merged and become part of the tax required to be paid.

F. An operator who fails to remit the tax within the required time may petition the common council of the city of Port Orford for waiver and refund of the penalty or a portion of it. The common council of the city of Port Orford may, if good cause is shown, direct a refund of the penalty or a portion of it. (Ord. 212-90B § 9, 1990)

### **3.08.100 Deficiency determination.**

A. In making a determination that the returns are incorrect, the tax administrator may determine the amount required to be paid on the basis of the facts contained in the return or on the basis of any other information.

B. Deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately on service of notice, after which the determined amount is delinquent. Penalties on deficiencies shall be applied as provided in Section 3.08.090.

C. In making a determination, the tax administrator may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in Section 3.08.090. (Ord. 212-90B § 10, 1990)

### **3.08.110 Redemption petition**

A determination becomes payable immediately on receipt of notice and becomes final within ten days after the tax administrator has given notice. However, the operator may petition for redemption and refund by filing a petition before the determination becomes final. (Ord. 212-90B § 11, 1990)

**3.08.120 Fraud-Refusal to Collect-Evasion.**

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

B. Determination and notice shall be made and mailed within three years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately on receipt notice and becomes final ten days after the tax administrator has given notice.

C. The operator may petition for redemption and refund if the petition is filed before the determination becomes final. (Ord. 212-90B §12, 1990)

**3.08.130 Notice of determination.**

A. The tax administrator shall give the operator a written notice of determination. If notice is mailed it shall be addressed to the operator at the address that appears on the records of the tax administrator, and service is complete when the notice is deposited in the post office.

B. Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within three years after the last days of the month following the close of the quarterly period for which the determination has been made or within three years after the return is filed, whichever is later.(Ord. 212-90B § 13, 1990)

**3.08.140 Operator delay.**

If the tax administrator believes that

collection of the tax will be jeopardized by delay, or if a determination will be jeopardized by delay, the tax administrator shall determine the tax to be collected and note facts concerning the delay on the determination. The determined amount is payable immediately on service of notice. After payment has been made, the operator may petition for redemption and refund of the determination if the petition is filed within ten days from the date of service of notice by the tax administrator. (Ord. 212-90B § 14, 1990)

**3.08.150 Redetermination.**

A. the common council of the city of Port Orford is designated as a committee to hear and determine appeals of order or decisions of the tax administrator, upon petition for redetermination of tax or other pertinent matters for which the tax administrator is herein designated or directed to perform. The city council, in such capacity, shall act as a committee to hear and determine such orders or decisions or dismiss the appeals therefrom, as may be just, and shall prescribe such forms, rules and regulations relating to appeals as it may deem necessary.

B. An operator against whom a determination is made under Section 3.08.100, or person directly interested, may petition the common council of the city of Port Orford for a redetermination, redemption and refund within the time required in Section 3.08.140. If a petition for redetermination and refund is not filed within the time required, the determination is final on the expiration of the allowable time.

C. If a petition for redetermination and refund is filed within the allowable period, the tax administrator shall set the time and place of the hearing before the common council of the city of Port Orford at the next regularly scheduled council meeting as prescribed in the council rules and regulations and give the

operator notice of the time and place of the hearing. The common council may continue the hearing if necessary.

D. The common council, sitting as a committee as herein above provided, shall have the authority:

1. To approve, modify or disapprove all forms, rules and regulations prescribed by the tax administrator in the administration and enforcement of this chapter;

2. In a review of the tax administrator's determination, the council committee may take such evidence and make such investigation as it may deem necessary;

3. The council committee may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing.

E. A petition for redetermination is not effective unless the operator has complied with the payment provisions. (Ord. 212-90B § 15, 1990)

**3.08.160 Security for collection of taxes.**

A. The tax administrator may require an operator to deposit security in the form of cash, bond or other security. The amount of security shall be fixed by the tax administrator and shall not be greater than twice the operator's average quarterly liability for the period for which the operator files returns or five thousand dollars (\$5,000.00), whichever amount is less.

B. Within three years after a tax becomes payable or within three years after a determination becomes final, the tax administrator may bring an action in the name of the city in the courts of this state, another state, or the United States to collect the amount delinquent and penalties and interest. (Ord. 212-90B § 16, 1990)

**3.08.170 Liens.**

A. the tax, interest, penalty and filing fees paid to the tax administrator and any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the county clerk until the tax is paid. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's hotel. The lien may be foreclosed and the necessary property sold to discharge the lien.

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

C. Personal property subject to the lien may be sold at public auction after ten day's notice published in a newspaper of general circulation in the county.

D. A lien for the tax, interest and penalty shall be released by the tax administrator when the full amount has been paid to the city. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest and penalty has been paid, that the lien is released and that the record of the lien is satisfied. (Ord. 212-90B § 17, 1990)

**3.08.180 Refunds by city to operator.**

When the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator, it may be refunded if a written verified claim stating the specific reason for the claim is filed within three years from the date of payment. The claim shall be submitted on forms provided by the tax administrator. If the claim is approved, the excess amount may

be refunded to the operator or it may be credited to an amount payable by the operator and any balance refunded. (Ord. 212-90B § 18, 1990)

**3.08.190 Refunds by city to transients.**

If the tax has been collected by the operator and deposited with the tax administrator and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the transient if a written verified claim stating the specific reason for the claim is filed with the tax administrator within three years from the date of the payment. (Ord. 212-90B § 19, 1990)

**3.08.200 Refunds by operator to transient.**

If the tax has been collected by the operator and it is later determined that the transient occupied the hotel for a period exceeding thirty (30) days without interruption, the operator shall refund the tax to the transient. The operator shall account for the collection and refund to the tax administrator. If the operator has remitted the tax prior to the refund or credit to the transient, the operator shall be entitled to a corresponding refund. (Ord. 212-90B § 20, 1990)

**3.08.210 Records required of operators.**

Every operator shall keep quest records, accounting books and records of room rentals for a period of three years and six months. (Ord. 212-90B § 22, 1990)

**3.08.220 Examination of records.**

During normal business hours and after notifying the operator, the tax administrator may examine books, papers and accounting records related to room rentals to verify the accuracy of a return or, if no return is made, to determine the amount to be paid. (Ord. 212-90B § 22, 1990)

**3.08.230 Confidentiality.**

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

A. Disclosure to or examination of records and equipment by city official, employee or agent for collecting taxes for the purpose of administering or enforcing the provision or collecting the taxes imposed by this chapter;

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

C. Disclosure of names and addresses of persons making returns;

D. Disclosure of general statistics regarding taxes collected or business done in the City. (Ord. 212-90B § 23, 1990)

**3.08.240 Disposition and use of transient room tax funds.**

The funds collected under this ordinance shall be retained by the City and allocated to the Parks Fund. The City Council may appropriate funds collected under this ordinance for tourism development and beautification, as provided by this ordinance. (Ord. 2000-04 § 1, 2000) (Ord. 2009-07 § 240, 2008)

**3.08.250 Transient lodging tax expenditure committee.**

(1) A transient lodging tax expenditure committee may be appointed by the Mayor to advise the council on the expenditure of any transient room tax funds appropriated by the Council for tourism development and beautification. The committee shall be composed of five members who are residents of the City, excluding members of the city council and City employees. (Ord. 2000-04 § 2, 2000)

(2) The members of this committee shall not receive compensation for their services on the committee.

(3) The term of office shall be for two (2) years. No member shall be appointed to more than three consecutive two-year terms without first taking a one-year break in service. After such break in service, the members shall be eligible to be reappointed for up to three (3) additional consecutive two-year terms before another one-term break in service is required.

(4) No member shall vote on a funding petition of any organization which said member is a current member.

(5) Should any member resign or be removed from office as herein provided, the Mayor, with Council approval, shall appoint a replacement member to fill the unexpired term of the replaced or resigned member.

(6) Any member of this committee may be removed from this committee for cause upon written recommendation by the Common Council.

(7) A quorum of three members shall be necessary to conduct the business of this committee.

(8) This committee shall select from its members a Chairperson, Vice Chairperson, and a Secretary who shall serve at the pleasure of this committee.

(9) This committee shall keep a record of its meetings and proceedings and shall keep all minutes, records and files of this committee in the Tax Administrator=s office. (Ord. 96-16 § 7, 1996; Ord. 212-90B § 25, 1990)

**3.08.255 Grant funding procedures.**

(A) Any recognized nonprofit organization may file an application for grants of transient room tax funds. The application shall state the name of the organization to be funded, the amount of funds requested, a description of the project to be funded, a statement of the public purpose furthered by the project, the source of matching funds, and such other information as may be required by the City.

(B) No grant made pursuant to this

section shall exceed fifty percent of the total project cost. No funds shall be disbursed until the grant recipient shows, to the satisfaction of the City, that it has the matching funds in cash or cash equivalent.

(C) All organizations receiving funding under this section shall provide a financial report which included a detailed report of the expenditure of funds received from the City, and sufficient supporting documents to demonstrate to the satisfaction of the City Council that the funds were expended pursuant to the terms of the grant. Reports of uncompleted projects shall be made annually, no later than April 1 of the fiscal year. Reports of complete projects shall be made no later than sixty days after completion of the project.

(D) Any organization previously funded under this section which has not complied with subsection (c) of this section shall not be eligible to receive any further funding until the organization has fully complied with the terms and conditions of subsection (c). Any organization which expends funds for purposes other than identified in the application shall be liable for return of funds, plus interest at the legal rate, until fully paid. (Ord. 2000-04 § 8, 2000)

**3.08.260 Violation-Penalty**

Any operator or other person who shall fail or refuse to register as required herein, or who shall fail or refuse to furnish any return, supplemental return or other data required by the tax administrator, or with intent to defeat or evade the determination of any amount evade the determination of any amount due hereunder, shall make, render, sign or verify any false or fraudulent report, commits an offense which constitutes a violation of this chapter, punishable by a fine in an amount to be fixed by a cognizant court, not exceeding

five hundred dollars (\$500.00) (Ord. 212-90B § 27, 1990).

**3.08.265 Administrative Compensation**

The City of Port Orford will be paid 5% of the collected taxes in payment for administering the Transient Lodging Tax. Said payment will be deposited into the General Fund. (Ord. 2003-06 § 5, 2003)

**3.08.270 Ordinance retroactive.**

The provision of this ordinance apply to any funds collected prior to the effective date of this ordinance. (Ord. 200-04 § 4, 2000)

**3.08.280 Severability.**

The sections and subsections of this ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections. (Ord. 2000-04 § 5, 2000)