

**ORDINANCE NO. 631
CITY OF DAYTON**

**AN ORDINANCE ADDING A NEW SECTION TO THE CITY CODE
RELATING TO TRANSIENT LODGING TAX**

WHEREAS, transient room taxes are imposed by over 70 cities in Oregon for revenues to support city activities such as promotion of tourism and economic development; and

WHEREAS, the City does not have a transient room tax; and

WHEREAS, the City Council has determined a transient room tax will promote revenue for City activities.

NOW THEREFORE, THE CITY OF DAYTON ORDAINS AS FOLLOWS:

Section 1. A new Section 3.8 is hereby added to Section 3 “Business Regulations” of the Dayton Municipal Code establishing a tax on transient lodgings as follows:

3.8 TRANSIENT LODGING TAX

3.8.1 Title. This section is known as the transient room tax ordinance of the City of Dayton.

3.8.2 Definitions. Except where the context otherwise requires, the following terms are defined as follows:

- 1) “**Accrual Accounting**” means rent is due to operator from a transient on hotel records when the rent is earned, whether or not it is paid.
- 2) “**Cash Accounting**” means the operator does not enter the rent due from a transient on hotel records until the rent is paid.
- 3) “**Hotel**” means any structure, or any portion of any structure occupied or intended or designed for transient occupancy for thirty days or less for dwelling, lodging, or sleeping purposes. It includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, public or private club, and also means space in mobile home or trailer parks (including recreational vehicle, tent trailer and tent camping parks), or similar structures or space or portions thereof so occupied, for occupancy less than for 30-days.
- 4) “**Occupancy**” means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in a hotel, or space in a mobile home or trailer park, or portion thereof.
- 5) “**Operator**” means the proprietor of the hotel in any capacity. Where the operator performs as a managing agent other than an employee, the managing agent is an operator for the purposes of this section and has the same duties and liabilities as the principal. Compliance with the provisions of this section by either the principal or the managing agent is compliance by both.
- 6) “**Person**” means any individual, corporation, partnership, joint venture, association, social club, fraternal organization, public or private dormitory, joint stock company, corporation, estate, oration, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.
- 7) “**Rent**” means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credits, property or other consideration valued in money

without any deduction. It does not include charges to a condominium unit owner for cleaning or maintenance of such unit or personal use or occupancy by such owner.

- 8) **"Rent Package Plan"** means the consideration charged for both food and rent where a single rate is charged for both. The amount applicable to rent for determination of the transient room tax under this section is the same as the charge for rent when food is not a part of the package plan. The amount for rent is the amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package and the charge for rent when the space is rented separately and not part of a package plan.
- 9) **"Tax"** means the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which collections are required to be reported.
- 10) **"Transient"** means any individual who occupies or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel is not included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any individual so occupying space in a hotel is a transient until the 30-day period expires unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than 30 consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this section may be considered. A person who pays for lodging on a monthly basis is not a transient.

3.8.3 Tax Imposed

- (a) Effective April 1, 2016, each transient must pay a tax of eight percent of the rent charged by the operator for the privilege of occupancy in any hotel. For a recreational vehicle, tent trailer and tent camping with self-pay slots, the tax is increased and assessed to the closest twenty-five-cent interval. The tax is a debt owed by the transient to the city and is extinguished only by payment by the operator to the city
- (b) Each transient must pay the tax to the operator of the hotel at the time the rent is collected if the operator keeps records on the cash accounting basis, and when earned if the operator keeps records on the accrual accounting basis. If rent is paid in installments, the transient must pay a proportionate share of the tax to the operator with each installment. Rent paid or charged for occupancy excludes the sale of any goods, services and commodities.
- (c) The City will dedicate net revenue from the transient room tax per the provisions of ORS 320.350(6).

3.8.4 Collection of tax by Operator

- (a) Every operator renting rooms or space for lodging or sleeping purposes in this City not exempted under this section must collect a tax from the occupant. The tax collected or accrued by the operator is 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.
- (c) The City Manager has authority to enforce this section and may delegate authority to adopt rules and regulations consistent with this section to aid in enforcement.
- (d) The operator is permitted to deduct and keep five percent of the amount of taxes actually collected to compensate the operator for administrative expenses in collecting the taxes.

3.8.5 Operators' Duties

- (a) Each operator must collect the tax imposed by this section at the same time as the rent is collected from each transient.
- (b) The amount of tax must be separately stated in operators' records and receipts.
- (c) No operator may advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that the tax will not be added to the rent, or that, when added, any part will be refunded except as provided by this section.

3.8.6 Exemptions. The tax imposed by this section does not apply to:

- (a) Any occupant for more than 30 successive calendar days with respect to any rent imposed for the period commencing after the first 30 days of such successive occupancy.
- (b) Any person who rents a private home, vacation cabin, or like facility from any owner who rents out such facilities for less than 30 days per calendar year.
- (c) Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or similar facility.

3.8.7 Registration of Operator

- (a) Every person who is an operator of a hotel in this City must register with the City Manager on a form provided by the City. Operators engaged in business at the time this section takes effect must register no later than 30 calendar days after this section takes effect. Operators starting business after this section takes effect must register within 15 calendar days after commencing business.
- (b) Delay in registration does not relieve any person from the obligation of payment or collection of the tax. The registration must state the name under which the operator conducts business, the business location and other information as the City Manager may require. The operator must sign the registration. Within 10 days of registration, the City Manager will issue a certificate of authority to each registrant to collect the tax. Certificates are not assignable or transferable and must be surrendered to the City Manager upon the cessation of business at the location named or upon its sale or transfer of the business. Each certificate will state the place of business to which it is applicable and must be prominently displayed to be seen and recognized by all occupants and persons seeking occupancy. Each certificate will state:
 - 1) The name of the operator;
 - 2) The address of the hotel;
 - 3) The date the City issued the certificate; and
 - 4) This Transient Occupancy Registration Certificate signifies that the operator named has fulfilled the requirements of the Transient Lodging Tax Ordinance of the city by registration with the City Manager to collect the transient lodging taxes imposed by the city and remitting them to the City Manager. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without compliance with all local applicable laws."

3.8.8 Due date--Returns and Payments

- (a) The transient must pay the tax imposed by this section to the operator at the time rent is paid. All taxes collected by any operator are due and payable to the City Manager on a quarterly basis on or before the last day of the month following the end of each calendar quarter, reporting the amount of the tax due during the quarter. Taxes due are delinquent on the last day of the month in which they are due. For example, for the calendar quarter of January, February, and March, Transient Lodging Taxes are due by April 30th.

- (b) On or before the last day of the month following each quarter of collection, each operator must file with the City Manager a return for the preceding quarter's tax collections. The operator must file the return in such form as prescribed by the City Manager.
- (c) Returns must state the amount of tax collected or otherwise due for the related period. The City Manager may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of such amounts, and the amount of the rents exempt, if any.
- (d) The City Manager may extend, for a period not to exceed one month, the time for making any return or payment of tax for good cause. The City Manager may not grant any further extensions unless authorized by City Council.
- (e) The operator must deliver the return, together with the tax amount due, to the city manager either by personal delivery or by mail. If the operator files by mail, the postmark will be considered the date of filing for determining delinquencies.

3.8.9 Penalties and Interest

- 3.8.9.1 **Original Delinquency.** Any operator that has not been granted an extension of time for remittance of tax due and fails to remit any tax imposed by this section prior to delinquency must pay a penalty equal to 10 percent of the tax amount due in addition to the tax amount.
- 3.8.9.2 **Continued Delinquency.** Any operator that has not been granted an extension of time for remittance of tax due and which fails to pay any delinquent remittance within 30 days following the date the remittance first became delinquent, must pay a second delinquency penalty of 15 percent of the tax amount due in addition to the tax amount due and the 10 percent penalty first imposed.
- 3.8.9.3 **Fraud.** If the City Manager determines that the nonpayment of the any remittance or tax due under this section is due to fraud or an intent to evade this section's provisions, the City Manager will impose a penalty of 25 percent of the tax amount due in addition to the penalties imposed under subsections (a) and (b).
- 3.8.9.4 **Interest.** In addition to penalties imposed, any operator that fails to remit any tax imposed by this section must pay interest on delinquent taxes at the rate of one percent per month on the amount of the tax due from the date on which the remittance first became delinquent until paid. Penalties that are owed are not included for the purpose of calculating interest. Interest may be on a fraction of a month if the delinquency is for less than 30 days.
- 3.8.9.5 **Penalties Merged with Tax.** Every penalty imposed and all accrued interest will be merged with and become a part of the tax required to be paid.
- 3.8.9.6 **Petition for Waiver.** Any operator that fails to remit the tax within the time stated must pay the penalties. However, the operator may petition the City Manager for waiver and refund of the penalty or any portion thereof and the City Manager may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

3.8.10 Deficiency Determination

- (a) If the City Manager determines that returns are incorrect, the manager may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information submitted to the City or any additional information obtained by the City Manager.
- (b) One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount determined is due and payable immediately upon service of notice that the amount determined is delinquent. Penalties on deficiencies are applied under Section 3.8.080.

3.8.11 Overpayment and Deficiency

- 3.8.11.1 **Adjustments.** In making a determination the city manager may offset tax overpayments, if any, previously made or against penalties and interest on underpayments. Interest on underpayments will be computed under Section 3.8.9.
- 3.8.11.2 **Notice of Deficiency.** The City Manager will give to the operator a written notice of deficiency determination. The notice may be served personally or by mail. If by mail, the notice will be addressed to the operator at the address in city records. For service by mail of any notice required by this section, notice is served by mailing by certified mail, postage prepaid, return receipt requested.
- 3.8.11.3 **Expiration Period.** Except in the case of fraud or intent to evade this section or adopted rules, the City must make every deficiency determination and mail the appropriate notice within three years after the last day of the month following the close of the monthly period for which the amount became due, or within three years after the return is filed, whichever period expires later.
- 3.8.11.4 **Payable Upon Receipt.** Any deficiency determination becomes due and payable immediately upon receipt of notice and becomes final within 20 days after the City Manager gives notice. However, the operator may petition for refund if the petition is filed before the determination becomes final.

3.8.12 **Failure to Collect Tax. Fraud, Refusal to Collect, Evasion.** If any operator fails or refuses to collect the tax or to make any report or tax remittance required by this section, or makes a fraudulent return or otherwise willfully attempts to evade this section, the city manager may take any action deemed best to obtain the facts and information on which to base an estimate of the tax due. As soon as the city manager determines tax is due from any operator who has failed or refused to collect, report and remit the tax, the city manager will determine and assess against the operator the tax, interest and penalties provided in this section. The City Manager will give a notice of the amount assessed. Any determination by the city manager becomes due and payable upon receipt of notice and becomes final within 20 days after the notice. The operator may petition the City Manager for refund if the petition is filed before the determination becomes final.

3.8.13 Redeterminations

- (a) Any person against whom a determination is made may petition for a redetermination and refund within the time required in Section 3.8.11. If a petition for redetermination and refund is not filed within the time required in Section 3.8.11, the determination becomes final at the expiration of the allowable time.
- (b) If a petition for redetermination and refund is filed within the allowable period, the City Manager will reconsider the determination by an oral hearing and the City Manager will give 20 days' notice of the time and place of the hearing. The City Manager may continue the hearing from time to time as may be necessary.
- (c) The City Manager may decrease or increase the amount of the determination because of the hearing and if an increase is determined, the operator must pay that increase within three days after the hearing.
- (d) The written decision of the City Manager upon a petition for redetermination or refund becomes final 20 days after service upon the petitioner of notice by the city, unless appeal of the operator files the order or decision with the City Council within 20 days of the service of the notice. No petition for determination or refund or appeal is effective for any purpose unless the operator has first complied with all payment requirements.

3.8.14 Security for Collection of Tax

- (a) The City Manager may require an operator to deposit with the city such security in the form of cash, bond or other security as the manager may determine is sufficient to protect the city's interests. In no event may the amount of the security be greater than twice the operator's estimated average monthly liability

determined in such a manner, as the City Recorder deems proper, or \$5,000, whichever amount is less. The City Manager may increase or decrease the amount of security subject to these limitations.

- (b) The City Attorney may bring any legal action in the name of the City to collect the amount delinquent together with penalties and interest.

3.8.15 Lien

- (a) The tax imposed by this section together with the interest and penalties and any direct collection costs which may be incurred after delinquency become and remain a lien until paid from the date of its recording. After the lien is recorded, notice of the lien may be issued by the City Recorder whenever:

- 1) The operator is in default in the payment of the tax, interest and penalty, and
- 2) A copy is sent to the delinquent operator.

- (b) The personal property subject to such lien seized by the city may be sold at public auction.

3.8.16 Refunds

3.8.16.1 Refunds by the City to the Operator. Whenever the amount of any tax, penalty or interest is paid more than once or has been erroneously collected or received by the City Manager, the City Manager may refund it. The operator must file a verified claim in writing with the City Manager stating the specific reason for the claim, and the operator must do so no later than three years from the date of payment. The operator must make the claim on forms provided by the City Manager. If the City Manager approves the claim, the city manager may either refund the excess amount collected or paid, or provide a credit on any amount then due and payable by the operator, and the City Manager may refund the balance to the operator.

3.8.16.2 Refunds by City to Transient. Whenever an operator has collected a tax required by this section, and the operator has deposited that tax with the City Manager, and the City Manager later determines that the amount was erroneously collected or received by the City Manager, the City Manager may refund the incorrect amount to the transient. The operator must file a verified claim in writing with the City Manager stating the specific reason for the claim no later than three years from the date of payment.

3.8.17 Administration

- (a) **Disposition and Use of Transient Room Tax Funds.** All proceeds derived by the city from the transient room tax funds will be deposited in the General Fund of the city.
- (b) **Records Required from Operators.** Every operator must keep guest records of room sales and accounting books and records of the room sales. The operator must retain all records for at least three years.
- (c) **Examination of Records; Investigations.** The city manager, or any person authorized in writing by the city manager, may examine, during normal business hours, the books, papers and accounting records relating to room sales of any operator liable for the tax, and may investigate the business to verify the accuracy of any return made, or if no return is made to ascertain and determine the amount required to be paid.

3.8.18 Confidentiality

3.8.18.1 Confidential Character of Information Obtained. No person enforcing the provisions of this section may disclose the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate or pay a transient occupancy tax, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth in any statement or application, or to permit any statement or application, or other document for enforcement of this section.

3.8.18.2 Section 3.8.18.1 does not 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 sole purpose of administering or enforcing any provisions of this section or collecting taxes imposed,
- 2) The disclosure, after the filing of a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, or information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest and penalties,
- 3) The disclosure of the names and addresses of any person to whom Transient Occupancy Registration certificates have been issued; and
- 4) The disclosure of general statistics regarding taxes collected in the city

3.8.18.3 The City Manager may refuse to make any disclosure referred to in this subsection when the public interest would suffer thereby.


3.8.19 Appeals to the City Council. Any person aggrieved by any decision of the City Manager may appeal to the City Council by filing notice of appeal with the city recorder within 20 days of the serving or the mailing of the notice of the decision. The Council will give the appellant not less than 20 days' written notice of the time and place of a hearing on the appealed matter. Action by the Council on appeals is final.

3.8.20 Violations

- (a) It is unlawful for any operator or other person to fail or refuse to:
 - 1) Register as required under this section;
 - 2) File any return required to be made; or
 - 3) File a supplemental return or other data required by the City Manager or to make a false or fraudulent return.
- (b) No person required to make, render, sign or verify any report may make any false or fraudulent report, with intent to defeat or evade the determination of any amount due or required by this section.
- (c) Violation of this section is a Class A Violation under the Dayton Municipal Code.


Section 2. This ordinance takes effect 30 days after adoption by the City Council.

Ordinance adopted by the City Council of the City of Dayton this 7th day of December 2015.



Mayor, City of Dayton
Elizabeth Wytoski

ATTEST:



City Recorder, City of Dayton
Rochelle Roaden