

CITY OF SILVERTON
ORDINANCE
18-06

AN ORDINANCE OF THE SILVERTON CITY COUNCIL AMENDING SILVERTON MUNICIPAL CODE CHAPTER 3.12 (TRANSIENT OCCUPANCY TAX) TO RENAME THE CHAPTER, TO CLARIFY RECORDS MANAGEMENT AND THE LOCATION WHERE AN AUDIT WILL BE PERFORMED

WHEREAS, the term transient room tax is inconsistent with the terms used by staff and for grants; and

WHEREAS, the tax administrator (finance director) indicates it would be more accurate to rename the chapter Transient Occupancy Tax to ensure consistency; and

WHEREAS, the tax administrator recommends clarifying the location hotels shall maintain records and the location an audit will be performed; and

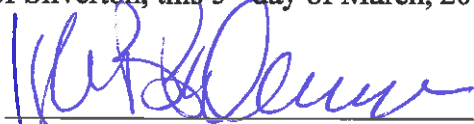
WHEREAS, the tax administrator believes this change will eliminate any issues or delays to perform an audit when an audit is requested.

NOW THEREFORE THE CITY OF SILVERTON ORDAINS AS FOLLOWS:

Section 1: The Silverton Municipal Code is amended in substantially the same form as set forth in the attached Exhibit A.


Section 2: This Ordinance shall be effective upon and from 30 days of its passage.

Ordinance adopted by the City Council of the City of Silverton, this 5th day of March, 2018.



Mayor, City of Silverton
Kyle Palmer

ATTEST



City Manager/Recorder, City of Silverton
Christy S. Wurster

EXHIBIT A Amending Chapter 3.12 Transient Occupancy Tax

Chapter 3.12 TRANSIENT OCCUPANCY ROOM TAX

3.12.010 Title.

This chapter shall be known as the Transient Occupancy Room Tax Ordinance of the city of Silverton. (~~Ord. 08-05 § 1, 2008~~)

3.12.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

- A. "Accrual accounting" means the operator enters the rent due from a transient on the records when the rent is earned, whether or not it is paid.
- B. "Cash accounting" means the operator does not enter the rent due from a transient on the records until rent is paid.
- C. "Council" means the city council.
- D. "Executive apartment" means a dwelling unit in an apartment complex that is typically rented to corporate executives, company employees or guests for 30 days or less.
- E. "Hotel" means any structure, or any portion of any structure, which is occupied, intended or designed for temporary use for dwelling, lodging or sleeping purposes, regardless of whether it is used temporarily or permanently, and includes any hotel, inn, tourist home or house, motel, studio hotel, lodginghouse, roominghouse, executive apartment, public or private dormitory, fraternity, sorority, public or private club, space in a recreational vehicle park, or similar structure or space or portions thereof so occupied.
- F. "Occupancy" means the use or possession, or the right to the use or possession, of any hotel for lodging or sleeping purposes.
- G. "Operator" means the person who is proprietor of the hotel in any capacity. Where the operator performs the functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as the principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.
- H. "Person" means any 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 any other group or combination acting as a unit.
- I. "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.

J. "Rent package plan" means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this chapter shall be the same charge made for rent when not a part of a package plan.

K. "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 transient is required to report the collections.

L. "Tax administrator" means the finance director of the city.

M. "Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel. (Ord. 08-05 § 2, 2008)

3.12.030 Tax imposed.

A. For the privilege of occupancy in any hotel in the city, each transient shall pay a tax in the amount of nine percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city, which is extinguished only by payment by the operator to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on its records when rent is collected if the operator keeps its records on the cash accounting basis and when earned if the operator keeps its records on the accrual accounting basis. If 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, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities.

B. The city shall dedicate net revenue from the transient room tax per the provisions of ORS 320.350(6).

C. The city council shall establish a process to award grants related to the promotion of tourism and to support tourism-related facilities in the city of Silverton. (Ord. 08-05 § 3, 2008)

3.12.040 Exemptions.

No tax imposed under this chapter shall be imposed upon:

A. Any occupant of a dwelling unit leased or otherwise occupied by the same person for more than 30 consecutive calendar days with respect to any rent imposed for the period commencing after the first 30 days of such consecutive occupancy;

B. Any occupant whose rent is of a value less than \$2.00 per day;

C. Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or home for aged people, or to a public institution owned and operated by a unit of the government. (Ord. 08-05 § 4, 2008)

3.12.050 Tax collected by operator – Enforcement.

A. Every operator renting rooms or space for lodging or sleeping purposes in the city, the occupancy of which is not exempted under the terms of this chapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owing by the operator to the city.

B. In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectibles.

C. The tax administrator shall enforce provisions of this chapter and shall have the power to adopt rules and regulations not inconsistent with this chapter as may be necessary to aid in the enforcement.

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

E. The operator shall be permitted to deduct as a personal collection expense five percent of the amount of taxes collected. (Ord. 08-05 § 5, 2008)

3.12.060 Operator – Duties and responsibilities.

Each operator shall collect the tax imposed by this chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records, and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this chapter. (Ord. 08-05 § 6, 2008)

3.12.070 Payment – Returns – Due date.

A. The tax imposed by this chapter shall be paid by the transient to the operator at the time rent is paid. All amounts of such taxes collected by any operator are due and payable to the tax administrator on a no later than quarterly basis on the fifteenth day of the following month for the preceding month(s), and are delinquent on the last day of the month in which they are due. The tax administrator has authority to classify and/or district the operators for determination of applicable tax periods, and shall notify each operator of the due and delinquent dates for the operator's returns. The initial return under this chapter may be for less than the three months preceding the due date; thereafter, returns shall be made for the applicable monthly or quarterly period.

B. On or before the fifteenth day of the month following each collection period, a return for the preceding month's or quarter's tax collections shall be filed with the tax administrator. The return shall be filed in such form as the tax administrator may prescribe by every operator liable for payment of tax.

C. Returns shall show the amount of tax collected or otherwise due for the related period. The tax administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

D. The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the tax administrator, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

E. For good cause, the tax administrator may extend for not to exceed one month the time for making any return or payment of tax. No further extension shall be granted, except by the city council. Any operator to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this chapter.

F. The tax administrator, if deemed necessary in order to ensure payment or facilitate collection by the city of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than quarterly periods. (Ord. 08-05 § 7, 2008)

3.12.080 Delinquent returns – Penalties and interest.

A. Original Delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this chapter prior to the delinquency shall pay a penalty of 10 percent of the amount of the tax due in addition to the amount of the tax.

B. Continued Delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 15 percent of the amount of the tax due plus the amount of the tax and the 10 percent penalty first imposed. (Ord. 08-05 § 8, 2008)

3.12.090 Fraud.

If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in SMC 3.12.080. (Ord. 08-05 § 9, 2008)

3.12.100 Failure to report.

In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid. (Ord. 08-05 § 10, 2008)

3.12.110 Penalties merged with tax.

Every penalty imposed and such interest as accrues under the provisions of this section and SMC 3.12.080, 3.12.090, 3.12.100 and 3.12.120 shall be merged with and become a part of the tax required to be paid by this chapter. (Ord. 08-05 § 11, 2008)

3.12.120 Petition for waiver.

Any operator who fails to remit the tax levied in this chapter within the time stated in this chapter shall pay the penalties stated in this chapter; provided, however, the operator may petition the city council for waiver and refund of the penalty or any portion thereof and the city council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof. (Ord. 08-05 § 12, 2008)

3.12.130 Deficiency determinations – Notification procedures.

If the tax administrator determines that the returns are incorrect, the tax administrator 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 within the tax administrator's possession or that may come into the tax administrator's possession. One or more deficiency determinations may be made of the amount due for one, or more than one, period, and the amount so determined shall be due and payable immediately upon service of notice as provided in this chapter after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in SMC 3.12.080 through 3.12.120.

A. In making a determination the tax administrator may offset overpayments, if any, which may have been previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in SMC 3.12.080 through 3.12.120.

B. The tax administrator shall give to the operator or occupant a written notice of determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at the address as it appears on the records of the tax administrator. In case of service by mail or any notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

C. Except in the case of fraud or intent to evade this chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later.

D. Any determination shall become due and payable immediately upon receipt of notice and shall become final within 10 days after the tax administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as provided in this chapter. (Ord. 08-05 § 13, 2008)

3.12.140 Failure to collect tax.

If any operator fails or refuses to collect the tax or to make within the time provided in this chapter any report and remittance of the tax or any portion thereof required by this chapter, or makes a fraudulent return or otherwise willfully attempts to evade this chapter, the tax administrator shall proceed in such manner as deemed best to obtain facts and information on which to base an estimate of the tax due. As soon as the tax administrator has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect the same and to report and remit the tax, the tax administrator shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the tax administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three years after discovery by the tax administrator of any fraud, intent to evade or failure or refusal to collect the tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within 10 days after the administrator has given notice thereof; provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as provided in this chapter. (Ord. 08-05 § 14, 2008)

3.12.150 Operator delay.

If the tax administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the city will be jeopardized by delay, or if any determination will be jeopardized by delay, the tax administrator shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as provided in this chapter shall be immediately due and payable, and the operator shall immediately pay such determination to the tax administrator after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within 10 days from the date of service of notice by the tax administrator. (Ord. 08-05 § 14, 2008)

3.12.160 Petition for redetermination and refund.

A. Any person against whom a determination is made under SMC 3.12.130, 3.12.140 or 3.12.150, or any person directly interested, may petition for a redetermination of redemption and refund within the time required in SMC 3.12.130, 3.12.140 or 3.12.150. If a petition for redetermination and refund is not filed within the time required in SMC 3.12.130, 3.12.140 or 3.12.150, 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 tax administrator shall reconsider the determination, and, if the person has so requested in the petition, shall grant the person an oral hearing and shall give 10 days' notice of the time and place of the hearing. The tax administrator may continue the hearing from time to time as may be necessary.

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 payable immediately after the hearing.

D. The order or decision of the tax administrator upon a petition for redetermination of redemption and refund becomes final 10 days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the city council within 10 days after service of such notice.

E. No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions of this chapter. (Ord. 08-05 § 15, 2008)

3.12.170 Security for collection.

A. The tax administrator, whenever deemed necessary to ensure compliance with this chapter, may require any operator subject thereto to deposit security in the form of cash, bond or other security as the tax administrator may determine. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the operator's estimated average quarterly liability for the period for which a return is filed, determined in such manner as the tax administrator deems proper, or \$5,000, whichever amount is the lesser. The amount of the security may be increased or decreased by the tax administrator subject to the limitations provided in this chapter.

B. At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the tax administrator may bring an action in the courts of the state, or any other state, or of the United States, in the name of the city to collect the amount delinquent together with penalties and interest. (Ord. 08-05 § 16, 2008)

3.12.180 Refund procedures.

A. Refunds by City to Operator. Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, it may be refunded, provided a verified claim in writing thereof, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three years from the date of payment. The claim shall be made on forms provided by the tax administrator. If the claim is approved by the tax administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to such operator or the operator's administrators, executors or assignees.

B. Refunds by City to Transient. Whenever the tax required by this chapter has been collected by the operator, and deposited by the operator 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 by the tax administrator to the transient, provided a verified claim in writing thereof, stating the specific reason on which the claim is founded, is filed with the tax administrator within three years from the date of payment. (Ord. 08-05 § 17, 2008)

3.12.190 Recordkeeping.

Every operator shall keep guest records of room sales and accounting books and records of the room sales at the location of the hotel in the city. All records shall be retained by the operator for a period of three years and six months after they come into being. (~~Ord. 08-05 § 18, 2008~~)

3.12.200 Examination of records.

The tax administrator, or any person authorized in writing by the tax administrator, may examine during normal business hours the books, papers and accounting records relating to room sales of any operator, after notification to the operator liable for the tax, and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid. Examination of the records shall take place at the hotel location. (~~Ord. 08-05 § 19, 2008~~)

3.12.210 Confidentiality.

The tax administrator or any person having an administrative or clerical duty under the provisions of this chapter shall protect the confidential business operations or similar information obtained to implement this chapter; provided, that nothing in this section shall be construed to prevent:

A. 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 chapter, or collecting taxes imposed under this chapter.

B. The disclosure, after the filing of a written request to that effect, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties; provided, however, that the tax administrator approves each such disclosure and that the tax administrator may refuse to make any disclosure referred to in this subsection when the public interest would suffer thereby.

C. The disclosure of the names and addresses of any person owning/operating a transient lodging facility.

D. The disclosure of general statistics regarding taxes collected or business done in the city.

E. The disclosure of information in accordance with the public records law. (Ord. 08-05 § 20, 2008)

3.12.220 Appeals to city council.

Any person aggrieved by any decision of the tax administrator may appeal to the city council, by filing a notice of appeal with the tax administrator within 10 days of the serving or the mailing of the notice of the decision given by the tax administrator. The tax administrator shall transmit the notice of appeal, together with the file of such appealed matter, to the city manager, who shall fix a time and place for hearing such appeal from the decision of the tax administrator. The city manager shall give the appellant not less than 10 days' written notice of the time and place of hearing of such appealed matter. Action by the council on appeals shall be decided by a majority of the members present at the meeting where such appeal is considered. (Ord. 08-05 § 21, 2008)

3.12.230 Violation – Penalty.

Any operator or other person who fails or refuses to furnish any return, supplemental return or other data required in this chapter or by the tax administrator, or, with intent to defeat or evade the determination of any amount due under this chapter, shall make, render, sign or verify any false or fraudulent report, commits an offense which constitutes a violation of this chapter punishable in accordance with the general penalty provisions of SMC 1.08.010. (Ord. 08-05 § 22, 2008)