

ORDINANCE NO. 16-03

[As amended by Ord. No. 18-04, 10/3/18 and Ord. No. 19-01, 7/10/19]

AN ORDINANCE PROVIDING FOR A TRANSIENT LODGING TAX FOR THE CITY OF MANZANITA, PROVIDING THE ADMINISTRATIVE PROCEDURES FOR COLLECTION OF SAME (AND REPEALING ORDINANCE NO. 87-5)

Section 1. Notices. All notices required or permitted to be given under this Ordinance may be served personally or by first class mail, postage prepaid, or electronically to the recipient of the notice. If notice is mailed to an Operator, it will be addressed to the Operator at the Operator's address as the address appears in the record of the Tax Administrator. Operator is required to provide Tax Administrator with Operator's current address and to provide Tax Administrator with any change of Operator's address. If notice is personally served, it is deemed served at the time of delivery. If notice is served by mail, it is deemed served (3) days after the date the notice is deposited for mailing with the United States Postal Service. [Amended by Ord. No. 19-01, adopted July 10, 2019]

Section 2. Definitions. Except where the content otherwise requires, the definitions given in this section govern the construction of this Ordinance.

(a) "City." The City of Manzanita. [Amended by Ord. No. 19-01, adopted July 10, 2019]

(b) "City Council." The City Council of the City of Manzanita, Oregon.

(c) Deleted. [Deleted by Ord. No. 19-01, adopted July 10, 2019]

(d) "Occupancy." The use or possession, or the right to the use or possession, for lodging or sleeping purposes, of any rooms as Transient Lodging.

(e) "Operator." The Person who is the proprietor of the Transient Lodging in any capacity. Where the Operator performs 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 Ordinance and shall have the same duties and liabilities as the Operator. [Amended by Ord. No. 19-01, adopted July 10, 2019]

(f) "Person." 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.

(g) "Rent." The full consideration charged, whether or not received by the Transient Lodging Tax Collector, for the Occupancy of Transient Lodging valued in money or in goods, labor, credits, property, or other consideration valued in money, without any deduction. Except as otherwise provided in this section, Rent includes all fees, charges and assessments (including but not limited to processing fees, cleaning fees or fees for maid service and pet fees) charged, assessed or allocated by the Operator or Transient Lodging Intermediary for the Occupancy of the Transient Lodging, the payment of which is not optional and not refundable. [Amended by Ord. No. 19-01, adopted July 10, 2019]

Rent does not include:

1. Any Taxes, fees, or assessments levied by any other governmental entity;
 2. The sale of any goods or services which are separate and independent from Occupancy; [Amended by Ord. No. 19-01, adopted July 10, 2019]
- (h) "Rent Package Plan." The full consideration charged, whether or not received by the Operator or Transient Lodging Intermediary, for Rent plus food and/or activities where a single rate is charged for the combination of Rent, food and/or activities. For purposes of calculating the City of Manzanita Transient Lodging Tax for a Rent Package Plan, the Operator may exclude from Rent an amount allocated by Operator as the Operator's reasonable cost of providing the food, activity, or activities as part of the Rent Package Plan. [Amended by Ord. No. 19-01, adopted July 10, 2019]
- (i) "Tax." Either the TLT payable by the Transient or the aggregate amount of TLT due from the Transient Lodging Tax Collector to the City during each period for which the Collector is required to report the collections.
- (j) "Tax Administrator." The City Manager of the City of Manzanita or designee.
- (k) "Transient" or "Occupant." Any individual who exercises Occupancy or is entitled to Occupancy in Transient Lodging for a period of less than thirty consecutive days, counting portions of calendar days as full days. The day the Transient checks out of the Transient Lodging shall not be included in determining the thirty-day period if the Transient is not charged Rent for that day by the Transient Lodging Tax Collector. Any such Person so occupying space in a Transient Lodging shall be deemed to be a Transient until the period of twenty-nine days has expired unless there is an agreement in writing between the Transient Lodging Tax Collector and the Occupant providing for a longer period of Occupancy, or the tenancy actually extends more than twenty-nine consecutive days. In determining whether a Person is a Transient, uninterrupted periods of Occupancy by the same individual extending both prior and subsequent to the effective date of this Ordinance may be considered. A Person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a Transient. [Amended by Ord. No. 19-01, adopted July 10, 2019]
- (l) "Transient Lodging." (a) Hotel, motel and inn dwelling units that are used for temporary overnight human Occupancy; (b) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human Occupancy.
- (m) "Transient Lodging Intermediary". A Person other than an Operator or agent of an Operator who facilitates the retail sale of Transient Lodging and:
- (1) Charges for occupancy of the Transient Lodging; [Amended by Ord. No. 19-01, adopted July 10, 2019]
 - (2) Collects the consideration charged for occupancy of the Transient Lodging; or

- (3) Receives a fee or commission and requires the Operator to use a specified third-party entity to collect the consideration charged for occupancy of the Transient Lodging. [Amended by Ord. No. 18-04 adopted October 3, 2018]

(n) “Transient Lodging Tax Collector.” An Operator or a Transient Lodging Intermediary.

(o) “Transient Lodging Tax” or “TLT.” The tax described in Section 3 of this Ordinance. [Added by Ord. No. 19-01, adopted July 10, 2019]

(p) “Transient Lodging Hosting Platform.” A business or other Person that facilitates the retail sale of Transient Lodging by connecting Occupants with Transient Lodging Operators, either online or in any other manner. Transient Lodging Hosting Platforms are Transient Lodging Intermediaries. [Added by Ord. No. 19-01, adopted July 10, 2019]

Section 3. Tax imposed. For the privilege of Occupancy in any Transient Lodging, on and after the effective date of this Ordinance, each Transient shall pay a Tax in the amount of nine percent (9%) of the Rent charged by the Operator or Transient Lodging Intermediary for Occupancy. The Transient shall pay the Tax to the Transient Lodging Tax Collector at the time the Rent is paid. The Transient Lodging Tax Collector shall enter the Tax on the Transient Lodging Tax Collector’s records when Rent is collected. The Tax imposed by this Ordinance shall apply only to those Transient Lodgings located within the incorporated area of the City of Manzanita. [Amended by Ord. No. 19-01, adopted July 10, 2019]

Section 4. Collection of Tax; Rules for Tax Collection.

A. The transient lodging Operator or Transient Lodging Intermediary that collects the consideration charged for occupancy of Transient Lodging, or a Transient Lodging Intermediary as described in Section 2(m)(3) of this Ordinance, as applicable, is responsible for collecting any Transient Lodging Tax and shall file a return of the Tax with the City of Manzanita reporting the amount of Tax due during the reporting period to which the return relates. [Amended by Ord. No. 19-01, adopted July 10, 2019]

B. The Tax collected or accrued constitutes a debt owed by the Transient Lodging Tax Collector to the City. [Amended by Ord. No. 18-04 adopted October 3, 2018] [Amended by Ord. No. 19-01, adopted July 10, 2019]

C. In all cases of credit or deferred payment of Rent, the payment of Tax to the Transient Lodging Tax Collector may be deferred until the Rent is paid, and the Transient Lodging Tax Collector shall not be liable for the Tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectables. [Amended by Ord. No. 19-01, adopted July 10, 2019]

D. The Tax Administrator shall enforce provisions of this Ordinance and shall have the power to adopt rules and regulations consistent with this Ordinance as may be necessary to aid in the enforcement.

E. For Rent collected on portions of a dollar, fractions of a penny shall not be remitted.

F. While holding the collected Transient Lodging Tax in trust for the City, the Transient Lodging Tax Collector is not the owner of the Taxes, except that, when a return is filed, the Transient Lodging Tax Collector becomes the owner of the administrative fee as authorized to be retained in Section 5(B) of this Ordinance. [Added by Ord. No. 19-01, adopted July 10, 2019]

G. Deleted. [Deleted by Ord. No. 19-01, adopted July 10, 2019]

H. Operators of Transient Lodging and Transient Lodging Intermediaries are jointly and severally liable for the aggregate Tax collected each quarter, except in cases of nonpayment of Rent by the Occupant. [Added by Ord. No. 19-01, adopted July 10, 2019]

Section 5. Collection Procedure; Operator Fee.

A. Deleted. [Deleted by Ord. No. 19-01, adopted July 10, 2019]

B. Each Transient Lodging Tax Collector may retain, as a collection reimbursement charge, five percent (5%) of all City of Manzanita Transient Lodging Tax (TLT) revenues collected by Transient Lodging Tax Collector.

C. Personal Liability. Each Person who uses, expends, diverts any Tax held in trust, or withholds or authorizes or directs such use, expenditure, diversion, or withholding, shall be personally liable to the City of Manzanita for all Taxes so used, expended, diverted, or withheld, plus all penalties and interest accrued or imposed as a result of such action.

D. Exemptions. The following are exempt from the City Transient Lodging Tax:

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

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

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

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

Section 6. Operator/Certificate of Authority. [Amended by Ord. 19-01, adopted July 10, 2019]

A. Prior to commencing business, every Operator of Transient Lodging in the City of Manzanita shall register with the Tax Administrator on a form provided by the Tax Administrator. Registration after commencing business shall not relieve any Person from the obligation of payment or collection of Tax implied by this Ordinance.

B. When registering, registrants shall provide the Tax Administrator with the following information:

(1) The name(s), contact address/information and signatures of all property owners or Persons who may have interest in said property;

- (2) The address of said property and any name under which an owner/Operator transacts or intends to transact business;
- (3) Any and all information to facilitate contact and collection of the Tax as the Tax Administrator may require.

C. The Tax Administrator shall, within ten (10) days after registration, issue without charge to the owner/Operator, a Certificate of Authority to each registrant to collect the Tax from the Occupant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon the sale or transfer of the Transient Lodging. Each Certificate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all Occupants and Persons seeking Occupancy.

D. The Certificate shall, among other things, state the following:

- (1) The name and phone number of the Owner/Operator or local contact Person;
- (2) The physical address of the certified transient lodging;
- (3) The date upon which the Certificate expires; and
- (4) The City of Manzanita Certificate of Authority number (MCA), as assigned by the Tax Administrator.
- (5) A statement that "This Certificate of Authority signifies that the Operator named has fulfilled the requirements of the Transient Lodging Tax Ordinance of the City of Manzanita by registration with the Tax Administrator for the purpose of collecting from Transients the Lodging Tax imposed by said City and remitting said Tax to the Tax Administrator."

E. Identification Required in Advertising of Transient Lodging.

Every Operator, in placing advertisements soliciting business for any location represented by that Operator, must include the Manzanita Certificate of Authority (MCA) number. For purposes of this Ordinance, advertisement includes any print, electronic, or audio media, including, but not limited to, advertisements appearing in newspapers, magazines, newsletters, flyers, internet sites, or any other advertising medium, regardless of origin, distribution method, or distribution location of such medium. Such identification shall appear as "MCA #" followed by the Certificate number assigned by the Tax Administrator for that location, shall appear in a readable size and font, if applicable, and shall be placed in such location that it is readily noticed as a part of the advertisement. No Operator shall fail or refuse to furnish information related to the advertising of any location upon request of the Tax Administrator.

Section 7. Returns and Payments-Date Due.

A. The Tax imposed under Section 2 of this Ordinance shall be paid by the Transient to the Transient Lodging Tax Collector. All amounts of such Taxes collected by any Transient Lodging Tax Collector are due and payable to the Tax Administrator on a quarterly

basis on last day of the following month for the preceding three months of the calendar quarter; and, are delinquent on the first day following the month in which they are due. The initial return under this Ordinance may be for less than the three months preceding the due date; thereafter, returns shall be made for the applicable quarterly period. If no income is collected for a calendar quarter, Transient Lodging Tax Collector must file the required reporting form showing zero (0) quarterly balances collected as set out above. The Tax shall not be paid to the City by the Transient Lodging Tax Collector until after the Transient has completed the stay. All Tax accrued or paid during an Occupancy that spans multiple calendar quarters shall be treated, for tax remittance purposes, as if collected on the last day of that Occupancy. [Amended by Ord. No. 19-01, adopted July 10, 2019]

B. The Tax Administrator, if deemed necessary in order to ensure payment or to facilitate collection by the City of Manzanita for the amount of Taxes in any individual case, may require returns and payment of the amount of Taxes for other than quarterly periods. [Amended by Ord. No. 19-01, adopted July 10, 2019]

C. On or before the last day of the month following each quarter of collection, a return for the preceding 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 Transient Lodging Tax Collector liable for payment of Tax. A return must be filed with the Tax Administrator even if no Taxes have been collected. (Amended by Ord. No. 18-04 adopted October 3, 2018)

D. Returns shall show the amount of Tax collected or otherwise due for the related period. The Tax Administrator may require returns to show any or all of the following:

1. The address for which rental income was collected during the required period;
2. Gross receipts of Transient Lodging Tax Collector for such period;
3. The total Rent upon which Tax was collected or otherwise due;
4. An explanation in detail of any discrepancy between such amounts; and
5. The amount of rents exempt, if any. (Amended by Ord. No. 18-04 adopted October 3, 2018)

E. The Transient Lodging Tax Collector required to file shall deliver the return and any Tax due to the Tax Administrator at the office of the Tax Administrator, either by personal delivery, by US mail, or electronically. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

F. For good cause, and upon written request from Transient Lodging Tax Collector, the Tax Administrator may extend the time for making any return or payment of Tax for a period not to exceed one month. No further extension shall be granted, except by the City Council. Any Transient Lodging Tax Collector to whom an extension is granted shall pay interest at the rate of one percent (1%) 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 Ordinance. (Amended by Ord. No. 18-04 adopted October 3, 2018)

Section 8. Penalties and Interest.

A. Original Delinquency. Any Operator who has not been granted an extension of time for filing a return or remittance of Tax due and who fails to file a return and remit any Tax imposed by this Ordinance prior to delinquency shall pay a penalty, the greater of ten percent (10%) of the amount of the Tax due or \$100.00 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 fails to pay any delinquent remittance and/or file a return on or before thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty, the greater of fifteen percent (15%) of the amount of the Tax due or \$150.00, plus the amount of the penalty first imposed by Section 8(A) of this Ordinance.

C. Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this Ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the Tax shall be added thereto in addition to the penalties stated in A and B of this Section.

D. Assessment of Interest. In addition to the penalties imposed, any Operator who fails to remit the Tax imposed by this Ordinance shall pay interest at the rate of one percent (1%) 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. E. Penalties Merged with Tax. Every penalty imposed and such interest as accrued under the provisions of this Ordinance shall be merged with and become a part of the Tax required to be paid.

Section 9. Deficiency Determination; Evasion, Operator 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. One or more deficiency determinations may be made on 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 Ordinance, after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 8 above. [Amended by Ord. No. 19-01, adopted July 10, 2019]

1. 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 Section 8 above.

2. The Tax Administrator shall give to the Transient Lodging Tax Collector a written notice of the determination made by the Tax Administrator. The notice may be served personally, by US mail or electronically; if by US mail, the notice shall be addressed to the Transient Lodging Tax Collector at the Transient Lodging Tax Collector's address as it

appears in the records of the Tax Administrator. In case of service by US mail of any notice required by this Ordinance, the service is complete at the time of deposit in the United States Post Office. [Amended by Ord. No. 19-01, adopted July 10, 2019]

3. Except in the case of fraud or intent to evade this Ordinance 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 month for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires later. [Amended by Ord. No. 19-01, adopted July 10, 2019]

4. Any determination shall become due and payable immediately upon receipt of notice and shall become final within twenty (20) days after the Tax Administrator has given notice thereof; provided, however, the Transient Lodging Tax Collector may petition for redemption and refund if the petition is filed before the determination becomes final as provided for in this Ordinance.

B. Fraud-Refusal to Collect-Evasion.

If any Transient Lodging Tax Collector (1) fails or refuses to collect the correct Transient Lodging Tax set forth in this Ordinance or fails or refuses to make, within the time provided in this Ordinance, any report and/or remittance of such Tax or any portion thereof required by this Ordinance, or (2) makes a fraudulent return or otherwise willfully attempts to evade any portion of this Ordinance, the Tax Administrator shall proceed in such manner as the Tax Administrator deems 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 by this Ordinance from any Transient Lodging Tax Collector who has failed or refused to collect the same and to report and remit such Tax, the Tax Administrator shall proceed to determine and assess against such Transient Lodging Tax Collector the Tax, interest and penalties provided for by this Ordinance. 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 (3) years after discovery by the Tax Administrator of any fraud, intent to evade, or failure or refusal to collect such Tax, or failure to file return. Any amount of Tax, interest, and penalties, which the Tax Administrator determines are owed, shall become due and payable immediately upon service of notice by the Tax Administrator. The determination shall become final within twenty (20) days after service of notice of the amount owed. The Operator may petition for redemption and refund if the petition is filed with the Tax Administrator before the determination becomes final as provided in this section. [Amended by Ord. No. 19-01, adopted July 10, 2019]

C. 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 of Manzanita will be jeopardized by delay, or if any determination of the Tax or amount of Tax required to be collected will be jeopardized by delay, the Tax Administrator shall make a determination of the Tax or amount of Tax required to be collected, noting the determination. The amount so determined as provided in this Ordinance shall be immediately due and payable, and the Transient Lodging Tax Collector shall immediately pay the determined amount to the Tax Administrator after service of notice thereof. The Transient Lodging Tax Collector may file a petition, after

payment has been made, for redemption and refund of all or a portion of any amount paid if the petition is filed within twenty (20) days from the date of service of notice by the Tax Administrator.

Section 10. Re-determinations.

A. Any Person against whom a determination is made under Section 9 of this Ordinance, or any Person directly interested may petition for a re-determination and redemption and refund within the time required in this Ordinance. If a petition for re-determination and refund is not filed within the time required in Section 9 above, the determination becomes final at the expiration of the time allowed to submit such petition.

B. If a petition for re-determination 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 a hearing and shall give the Person twenty (20) days written notice of the time and place of the hearing. The Tax Administrator may continue the hearing 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 decision of the Tax Administrator upon a petition for re-determination of redemption and/or refund becomes final twenty (20) days after service upon the petitioner of notice thereof, unless appeal to the City Council of such order or a decision is filed with the Tax Administrator within twenty (20) days after service of such notice.

E. No petition for re-determination of redemption and refund or appeal there from shall be effective for any purpose unless the Transient Lodging Tax Collector has first complied with the payment provisions of this Ordinance.

Section 11. Security for Collection of Tax.

A. The Tax Administrator, after delinquency and in the Tax Administrator's sole discretion to insure compliance with this Ordinance, may require any Transient Lodging Tax Collector to deposit with the Tax Administrator such security in the form of cash, bond or other security as the Tax Administrator deems appropriate. The amount of the security shall be fixed by the Tax Administrator, but shall not be greater than twice the Transient Lodging Tax Collector's estimated average quarterly liability for the period for which the Transient Lodging Tax Collector files returns, determined in such manner as the Tax Administrator deems proper, or \$5,000.00, whichever amount is less. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations provided in this Ordinance. The Transient Lodging Tax Collector has a right to appeal to the City Council any decision of the Tax Administrator made pursuant to this section.

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 forward for collection or may bring an action in any

Court of the State of Oregon, or of the United States, in the name of the City of Manzanita to collect the amount delinquent together with penalties and interest, plus reasonable attorney fees/costs and Court costs determined by the Court.

Section 12. Lien.

A. The Tax imposed by this Ordinance together with the interest and penalties provided in this Ordinance and the filing fees paid to the County Clerk of Tillamook County, Oregon, and legal posting costs which may be incurred when the same becomes delinquent as set forth in this Ordinance shall be and until paid, remain a lien from the date of the recording with the County Clerk of Tillamook County, Oregon, and a notice of lien, which shall be superior to all subsequent recorded liens on all tangible personal property used in the Transient Lodging of an Operator within the City of Manzanita and may be foreclosed on and sold as may be necessary to discharge such lien, if the lien has been recorded. Notice of the lien may be issued by the Tax Administrator, or a designee of the Tax Administrator, whenever the Transient Lodging Tax Collector is in default in the payment of such Tax, interest, and penalty and shall be recorded with the County Clerk of Tillamook County, Oregon and a copy sent to the delinquent Operator. The personal property subject to such lien seized by any deputy or employee of the Tax Administrator may be sold by the department seizing the same at public auction after ten (10) days notice, which shall mean one publication in a newspaper of general circulation within the County of Tillamook, Oregon.

B. Any lien for Taxes as shown on the records of the proper County official shall, upon the payment of all Taxes, penalties and interest thereon, be released by the Tax Administrator when the full amount determined to be due has been paid to the City and the Operator or Person making such payment shall receive a receipt therefore stating that the full amount of Taxes, penalties and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied.

Section 13. Refunds.

A. Refunds by the City to the Transient Lodging Tax Collector. 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 Ordinance, such amount may be refunded, provided a verified claim in writing therefore, 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 against any amounts then due and payable from the Transient Lodging Tax Collector from whom it was collected or by whom paid and the

balance may be refunded to such the Transient Lodging Tax Collector or the Transient Lodging Tax Collector’s administrators, executors or assignees.

B. Refunds by City to Transient. Whenever the Tax required by this Ordinance has been collected by the Transient Lodging Tax Collector, and deposited by the Transient Lodging Tax Collector with the Tax Administrator, and it is later determined that the Tax was erroneously paid 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 therefore, stating the specific reason on which the claim is founded, is filed with the Tax Administrator within three years from the date of payment.

Section 14. Administration.

A. Tax proceeds. The Tax Administrator shall deposit all money collected pursuant to this Transient Lodging Tax Ordinance into the General Fund, except for a portion as set out in ORS 320.350 shall be deposited into the Tourism Promotion and Facilities Fund.

B. Recordkeeping. Every Transient Lodging Tax Collector shall, on a current and ongoing basis, keep guest records, accounting records of room sales, records of Transient Lodging Tax collected and remitted to the City of Manzanita, and a record of all fees retained by Transient Lodging Tax Collector pursuant to this Ordinance. All records shall be retained by the Transient Lodging Tax Collector for a minimum period of three years and six months after the record is created. [Amended by Ord. No. 19-01, adopted July 10, 2019]

C. Examination of Records – Investigations. The Tax Administrator or its agent may examine all records of a Transient Lodging Tax Collector relating to receipt of Rent and Transient Lodging Tax and remittance of Tax during normal business hours and may obtain copies of the records to audit returns. [Amended by Ord. No. 19-01, adopted July 10, 2019]

D. Administration-Confidentiality.
It is unlawful for the Tax Administrator, or any Person having an administrative, auditing or clerical duty under the provisions of this Ordinance to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any Transient Lodging Tax Collector required to collect or remit a Transient Lodging Tax, or any other Person visited or examined in the discharge of official duty, 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 copy of either, or any books—containing any abstract or particulars thereof to be seen or examined by any Person; provided, that nothing in Ordinance shall be construed to prevent:

1. The disclosure to, or the examination of records and equipment by another City of Manzanita official, employee or agent for collection of Taxes for the sole purpose of administering or enforcing any provision of this Ordinance; or collecting Taxes imposed under this Ordinance.
2. Disclosure of information to the Transient Lodging Tax Collector and the Transient Lodging Tax Collector’s agents. [Amended by Ord. No. 19-01, adopted July 10, 2019]
3. The disclosure of general statistics regarding Taxes collected or business done in the City of Manzanita.

4. Disclosures required by ORS Chapter 192. [Amended by Ord. No. 19-01, adopted July 10, 2019]
 5. Disclosures required by ORS Chapter 297. [Added by Ord. No. 19-01, adopted July 10, 2019]
 6. The disclosure of the names and addresses of any Persons to whom the Certificates of Authority described under Section 6 have been issued. [Added by Ord. No. 19-01, adopted July 10, 2019]
- E. Authority of Tax Administrator.
The Tax Administrator shall have the power to enforce this Ordinance, conduct audits, and to adopt rules, regulations and forms consistent with this Ordinance. Rules and regulations of general application shall be sent by US mail or electronically to all licensed Operators. [Added by Ord. No. 19-01, added July 10, 2019]

Section 15. Appeals to City Council.

Any Person aggrieved by any decisions of the Tax Administrator may appeal to the City Council by filing a notice of appeal with the Tax Administrator within twenty (20) days of the serving or mailing of the notice of the decision of the Tax Administrator's decision. The Tax Administrator shall transmit such notice of appeal, together with the file of such appealed matter to the City Council who shall fix a time and place for hearing such appeal. City Council shall give appellant not less than twenty (20) days written notice of the time and place of hearing of such appealed matter.

Section 16. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional (or otherwise invalid) such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The legislative body hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional (or otherwise invalid).

Section 17. Actions to Collect.

A. Any Transient Lodging Tax required to be collected by a Transient Lodging Tax Collector which has not been paid to the City of Manzanita shall be deemed a debt owed by the Transient Lodging Tax Collector to the City. Any Person owing money to the City of Manzanita under the provisions of this Ordinance shall be liable to an action brought in the name of the City of Manzanita for the recovery of such amount. In lieu of filing an action for the recovery, the City of Manzanita, when Taxes due are more than 180 days delinquent, can submit any outstanding Tax to a collection agency, so long as the City of Manzanita has complied with the provisions set forth in ORS 697.105. In the event the City turns over a

delinquent Tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees. [Amended by Ord. No. 19-01, adopted July 10, 2019]

B. The City may bring legal action to collect on any amounts owed to the City under this Ordinance within three years after remittance is due to the City or within three years after any determination or re-determination becomes final, whichever is later. [Added by Ord. No. 19-01, adopted July 10, 2019]

C. The City is entitled to collect reasonable auditing costs by City staff and/or auditor fees to determine or re-determine Taxes owed to the City. [Added by Ord. No. 19-01, adopted July 10, 2019]

D. The City is entitled to collect reasonable attorneys' fees incurred in connection with any legal action brought to collect on amounts owed to the City under this Ordinance. [Added by Ord. No. 19-01, added July 10, 2019]

Section 18. Violations-Penalties.

It is a violation of this Ordinance for any Transient Lodging Tax Collector, Operator, agent, Transient Lodging Intermediary or other Person to: [Amended by Ord. No. 19-01, adopted July 10, 2019]

- (1) Fail or refuse to comply as required herein;
- (2) Fail or refuse to register with the Tax Administrator as required herein;
- (3) Fail or refuse to furnish any return required to be made;
- (4) Fail or refuse to permit inspection of records;
- (5) Fail or refuse to furnish a supplemental return or other data required by the Tax Administrator;
- (6) Render a false or fraudulent return or claim;
- (7) Fail, refuse or neglect to remit the Tax to the City by the due date.
- (8) Fail, refuse or neglect to collect or remit any Tax or Taxes required under this Ordinance
- (9) Fail or refuse to include the Manzanita Certificate of Authority number (MCA #) in a readable size and font in such location that it is readily noticed as a part of an advertisement soliciting transient lodging business.

Violation of any provision of this Ordinance shall be considered a Class A Civil Infraction enforceable under the procedures described in Manzanita Ordinance No. 15-01 and subject to penalties described therein. The remedies provided by this section are not exclusive and shall not prevent the City of Manzanita and/or the Tax Administrator from exercising any other remedy available under the law and this Ordinance, nor shall the provisions of this Ordinance prohibit or restrict the City of Manzanita or other appropriate prosecutor from pursuing criminal charges under State law or City Ordinance. Each day that a violation remains uncured is a separate infraction.

Consistent with Section 4(H), Operators of Transient Lodging and Transient Lodging Intermediaries are jointly and severally liable for collection and remittance of the City of Manzanita's Transient Lodging Tax and for compliance with all sections and provisions of this Ordinance. [Amended by Ord. No. 19-01, adopted July 10, 2019]

PASSED FIRST READING by the Council this 5th day of June, 2019.

PASSED SECOND READING by the Council this 10th day of July, 2019.

APPROVED by the Mayor this 10th day of July, 2019.

Michael Scott, Mayor

ATTEST:

Cynthia Alamillo, City Manager/Recorder