

ORDINANCE NO 1479.

***AN ORDINANCE OF THE CITY OF GLADSTONE IMPLEMENTING A SIX PERCENT
(6%) TRANSIENT LODGING TAX***

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

WHEREAS, transient lodging includes hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy;

WHEREAS, ORS 320.350 provides that a city council may impose a new local transient lodging tax if at least seventy percent (70%) of the net revenue shall be used to fund tourism promotion or tourism related facilities or certain debt related expenses and no more than thirty percent (30%) of net revenue may be used for city services; and

WHEREAS, the city wishes to require online travel companies and short-term rental hosting platforms that accept, receive or facilitate the payment of rent directly from occupants to be responsible for collecting and remitting the tax to the city; and

WHEREAS, the city council wants to impose a six percent (6%) transient lodging tax.

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF GLADSTONE ORDAINS AS FOLLOWS:

Subchapter 5.70 is hereby added to the City of Gladstone's municipal code as follows:

Section 1: DEFINITIONS

The following definitions apply in this chapter.

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

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

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

D. **Local Tax Trustee** means the operator or hosting platform or designee thereof that accepts, receives or facilitates the payment directly from the occupant, whether or not the operator or hosting platform is the ultimate recipient of the payment.

E. **Occupancy** means the right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for less than 30 days.

F. **Occupant** means any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.

G. **Operator** means:

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

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

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

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

I. **Rent** means the consideration paid or payable by an occupant for the occupancy of space in transient lodging valued in money, goods, labor, credits, property, or other consideration. If a separate fee is charged for services, goods or commodities and the fee is optional, that fee is not included in rent.

J. **Short-Term Rental** means a house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling unit where a person rents guest bedrooms or the entire residential dwelling unit for transient lodging occupancy. Generally, a short-term rental is zoned residential or has a building occupancy that only allows for residential use.

K. Tax Administrator means the Accounting Manager of the City of Gladstone.

L. Transient Lodging or Transient Lodging Facilities means:

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

M. "TLT" or tax means the transient lodging tax.

Section 2: TAX IMPOSED

A. Effective January 1, 2018, each occupant shall pay a TLT in the amount of 6% percent of the rent. The occupant shall pay the TLT with the rent to the local tax trustee. TLT amounts shall be rounded down to the nearest cent. The local tax trustee shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the occupant to the local tax trustee with each installment unless the occupant pays the entire amount with the first payment.

B. Bills, receipts or invoices provided to occupants shall list the city TLT separately and must accurately state the amount of tax. All amounts listed as TLT on invoices, bills or receipts must be reported as TLT and, after collection, must be turned over to the city, less the five percent (5%) administrative charge.

Section 3: COLLECTION OF TAX BY LOCAL TAX TRUSTEE

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

B. Upon request of the city, local tax trustees must provide all physical addresses of transient lodging facilities within the city limits and the related contact information, including the name and mailing address, of the general manager, agent, owner, host or other responsible person for the location.

Section 4: LIABILITY FOR TAX

Operators who receive any portion of the rent and hosting platform that provide booking service are jointly and severally liable for the tax.

Section 5: EXEMPTIONS

No TLT shall be imposed upon:

A. 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 Oregon Department of Human Services or the Oregon Health Authority;

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

C. A dwelling unit that is used by members of the general public for temporary human occupancy for fewer than 30 days per year;

D. 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;

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

F. A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:

(1) All dwelling units occupied are within the same facility; and

(2) The person paying consideration for the transient lodging is the same person throughout the consecutive period.

Section 6: REGISTRATION OF OPERATOR – FORM AND CONTENTS – EXECUTION – CERTIFICATION OF AUTHORITY

A. Every person engaging or about to engage in business as an operator shall provide a completed registration form to the tax administrator within 15 calendar days after commencing business. The registration form shall require the operator to provide the name of the business, any separate business address, and other information as the tax administrator may require to implement this Chapter. Operators who own or operate transient lodging facilities in the City of Gladstone shall provide the address of the lodging facility. The registration form shall be signed by the Operator. The tax administrator shall, within 15 days after registration, issue without charge a certificate of authority to collect the TLT. The obligation to collect the TLT is imposed once rent for transient lodging is paid, even if the registration form has not been filed or if the certificate has not been issued. If rent transaction is facilitated online, the certificate of authority

must be able to be viewed by the occupant by clicking on a link to the certificate of authority at a reasonable place during the payment transaction.

B. Certificates shall be nonassignable and nontransferable, and shall be surrendered to the tax administrator when the business is sold or transferred or when a lodging facility ceases to operate at the location specified in the registration form. Each certificate issued to an operator for a specific lodging facility shall be prominently displayed at the lodging facility and include:

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

Section 7: REMITTANCES AND RETURNS

A. Local tax trustees shall submit a completed tax return form to the tax administrator on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected, less a five percent (5%) administration fee.

B. The local tax trustee is entitled to the administration fee. If a transient lodging facility has multiple operators, they are not entitled to retain additional fees.

C. Remittances are delinquent if not made by the last day of the month in which they are due.

D. Returns shall show the gross rents collected, taxable rents, the total amount of TLT collected and the amount of the administrative fee retained by the local tax trustee. Returns shall also show the exempt and excluded rents and the basis for exemptions and exclusions.

E. Tax returns and remittances may be submitted in person or by mail. If the return and remittance is mailed, the postmark shall be considered the date of delivery.

F. The tax administrator may extend the time for making any return or remittance of the tax by up to 30 days. No further extension shall be granted, except by the city council. Any local tax trustee to whom an extension is granted shall pay interest at the rate of six percent (6%) per month on the amount of the remittance due without proration for a fraction of a month. If a return is not filed, and the remittance and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties.

Section 8: PENALTIES AND INTEREST

A. Interest. In addition to the penalties imposed, interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from

the time the return was originally required to be filed by the local tax trustee to the time of payment.

B. Penalty. If the local tax trustee fails to file a return or pay the tax as required, a penalty shall be imposed upon the local tax trustee in the same manner and amount provided under ORS 314.400.

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

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

Section 9: DEFICIENCY DETERMINATION – FRAUD, EVASION, LOCAL TAX TRUSTEE DELAY

A. Deficiency Determination. The tax administrator may review tax returns and adjust the amount due based on the information in the return, on information obtained during a review or audit of records, or on the basis of other evidence. In the event of a deficiency, the tax administrator shall provide notice of the deficiency to the local tax trustee, who shall remit deficiencies within 10 business days of the deficiency notice. Notice may be by personal delivery or certified or registered mail.

(1) In reviewing and adjusting tax returns, the tax administrator shall offset any amount received in excess of the remittances due against any shortages in remittances.

(2) Except in the case of fraud or intent to evade the TLT, notice of deficiency determinations shall be issued within three years of the period for which the deficiency determination is made.

(3) The time to remit deficient payment amounts under this section shall be extended if the local tax trustee timely requests a redetermination.

B. Fraud – Refusal to Collect – Evasion. If any local tax trustee fails to collect, report or remit the tax as required, submits a fraudulent return, or otherwise violates or attempts to violate this chapter, the tax administrator shall estimate the tax due, and calculate the amount owing from the local tax trustee for tax remittance, interest and penalties and provide notice to the local tax trustee of the assessment. The determination and notice shall be made and mailed within three years of the discovery by the tax administrator of the violation. The determination is due and payable upon receipt of notice and shall become final 10 business days after the date notice was delivered if no petition for redetermination is filed.

Section 10: REDETERMINATIONS

A. Any person affected by a determination may file a petition for redetermination with the tax administrator within 10 business days of service of notice of the tax deficiency. A determination becomes final if a petition for redetermination is not timely filed.

B. If a petition for redetermination is filed within the allowable period, the tax administrator shall reconsider the determination and grant an oral hearing if requested. The petitioner shall be allowed at least 20 business days to prepare for the hearing.

C. After considering the petition and all available information, the tax administrator shall issue a redetermination decision and mail the decision to the petitioner. During the redetermination process, the tax administrator may agree to a compromise of the amount due if there is a good faith dispute over the amount owing.

D. The decision of the tax administrator on redetermination becomes final and payment is due 10 business days after the decision is mailed unless the petitioner files an appeal to the city council within that time. The appeal shall be filed with the tax administrator. The city council's decision shall be final when reduced to writing and mailed to the petitioner and all amounts due must be paid within 10 business days of mailing of the city council decision.

Section 11: COLLECTIONS

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

B. The city is entitled to collect reasonable attorneys' fee in any legal action brought to collect on amount owed to the city under this chapter.

Section 12: LIEN

The city may record a lien in the city's lien docket against any real property owned by an operator who receives any portion of the rent from a transient lodging facility located within the city as to any delinquent remittances by the operator.

Section 13: REFUNDS

A. Refunds by the city to the local tax trustee. If the local tax trustee remits more tax, penalty or interest than is due, the local tax trustee may file a claim in writing stating the facts relating to the claim, within three years from the date of remittance. If the claim is approved by the tax administrator, the excess amount shall be either refunded or credited on any amount due from the local tax trustee.

B. Refunds by City to Occupant. A local tax trustee may file a claim for refund by filing a claim in writing within three years of payment providing the facts relating to the claim for refund. If the tax administrator determines that the tax was collected and remitted to the city and the occupant was not required to pay the tax or overpaid, the city shall issue a refund.

C. Refunds by Local Tax Trustee to Occupant. If an occupant has paid tax to a local tax trustee, but then stays a total of 30 or more consecutive days, the local tax trustee shall refund to the occupant any tax collected for any portion of the continuous stay. The local tax trustee shall account for the collection and refund to the tax administrator. If the local tax trustee has remitted the tax prior to the refund or credit to the occupant, the local tax trustee shall be entitled to a corresponding refund or offset if the claim for refund is filed within three years from the date of collection.

D. Burden of Proof. The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund.

Section 14: ADMINISTRATION

A. Use of TLT Funds. Seventy percent (70%) of the revenue from the tax rate of six percent (6%) shall be used for tourism promotion and tourism related facilities. Thirty percent (30%) of the revenue of the six percent (6%) shall be used for City services.

B. Records Required from Local Tax Trustee. Every local tax trustee shall keep records of each transaction involving rent and/or collection of TLT. All records shall be retained for at least three years and six months.

C. Examination of Records – Investigations. The tax administrator or agent may examine all records of a local tax trustee relating to receipt of rent and TLT and remittance of tax during normal business hours and may obtain copies of the records to audit returns.

D. Authority of Tax Administrator. The tax administrator shall have the power to enforce this chapter, conduct audits, and to adopt rules, regulations and forms consistent with this chapter. Rules and regulations of general application shall be mailed to all registered operators. The tax administrator may also issue written interpretations on request of a local tax trustee. As to the local tax trustee to whom the interpretation is issued, the city will act consistently with the interpretation until it is withdrawn, and the city shall provide 30 days' written notice of withdrawal of an interpretation.

E. Confidential Character of Information Obtained – Disclosure Unlawful. The city shall maintain the confidentiality of information provided by local tax trustees. Nothing in this subsection shall be construed to prevent:

(1) The disclosure to, or the examination of records and equipment by, another city official, employee or agent for collection of taxes for the purpose of administering or enforcing any provisions of this chapter or collecting city business license fees.

(2) Disclosure of information to the local tax trustee and the local tax trustee's agents.

(3) The disclosure of the names and addresses of any persons to whom certificates of authority have been issued.

(4) The disclosure of general statistics regarding taxes collected or business done in the City.

(5) Disclosures required by ORS Chapter 192.

(6) Disclosures required by ORS Chapter 297.

Section 15: APPEALS TO CITY COUNCIL

Any person aggrieved by any decision of the tax administrator may appeal to the city council by filing a written appeal with the tax administrator within 10 business days of the serving or mailing of the decision being appealed. The city administrator shall schedule the hearing on a city council agenda and provide the appellant notice of the hearing at least 10 business days before the hearing. The city council may agree to a compromise of the amount of tax remittance if there is a good faith dispute over the amount owing. Any person may appeal the issuance of a rule or regulation issued by the tax administrator to the city council by filing a written appeal within 10 business days of the mailing of the notice of the regulation.


Section 16: PENALTY

This Ordinance adopted by the Common Council of the City of Gladstone City Council and approved by the Mayor this 14th day of November, 2017.

ATTEST:



Tamara Stempel, Mayor



Tami Bannick, Acting City Recorder