

City Council Action Item Cover Sheet

DATE: July 3, 2018

Agenda Item:

Ordinance 351

Question Before Council:

Discussion of proposed changes to Section 3.08 of the Code to meet the new State Law.

The Council will be asked in the Regular meeting if Council moves to approve the changes to 3.08?

Person/Group Initiating Request:

City Manager

Item Summary/Background:

HB4120 revises the definition of "transient lodging intermediary" to clarify that all online platforms (like Air BNB) are subject to lodging tax collection, as well as, filing and payment requirements. Therefore, voluntary collection agreements to pay local lodging taxes will no longer be necessary to receive payments.

To take advantage of the new law, cities must synchronize their ordinance definitions with the new transient lodging intermediary definition. The City attorney reviewed Yachats Ordinance and made changes to synchronize the ordinance language with the new law. Included are: 1) Rationale for proposed changes, 2) A copy that highlights the changes, and 3) a clean copy of the proposed changes in Ordinance form.

Rationale for changes

- 1) The primary purpose of the changes was to include a definition of “lodging intermediary” based upon the new state statute. This definition is a copy of the state provision and is intended to capture AIRBNB and similar on-line vacation rental retailers. For ease of other changes in the code, a new definition of “lodging tax collector” is created that is defined as either the operator (i.e., owner) or the lodging intermediary.
- 2) Definition change of “hotel” to “lodging facility” since in large part we are talking about vacation houses and not commercial hotels.
- 3) Additions to the exemptions to come closer to the state exemptions.
- 4) Section 3.08.060 is largely the same, in that it calls for registration of operators, but it does not add lodging intermediaries to this registration requirement. We could certainly add lodging intermediaries to the registration requirement. But it needs to be considered what the impact of the change would be – is AIRBNB really going to register and do we want to fight them about it?
- 6) These changes take the City closer to the state model for its lodging tax provisions. But this does not take us all the way to the state model, so the City tax is not a mirror of the state tax. If the City wants to eventually use the state DOR for tax collection, we will likely need to make some additional code changes so that the code more closely follows the state provisions. But until that decision is made, and until we see what the DOR collection agreement looks like, we would just be guessing at what changes DOR would require.

Section 3.08.010 Definitions.

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

"Accrual accounting" means the ~~operator~~ lodging tax collector enters the rent due from a registered guest on his or her records when the rent is earned, whether or not it is paid.

"Cash accounting" means the lodging tax collector ~~operator~~ does not enter the rent due from a registered guest on his or her records until rent is paid.

"City council" means the City Council of the City of Yachats.

"~~Lodging facility~~ Hotel" means any structure, or any portion of any structure which is occupied or intended or designed for short-term occupancy ~~for thirty (30) days or less~~ for dwelling, lodging or sleeping purposes, and includes any hotel, motel, inn, condominium, vacation home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, or similar structure or space or portions thereof so occupied, provided such occupancy is for less than a thirty (30) day period.

"Lodging intermediary" means a person other than an operator that facilitates the retail sale of lodging facilities and: a) charges for occupancy of the lodging facility; b) collects the consideration charged for occupancy of the lodging facility; or c) 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.

"Lodging tax collector" means an operator or a lodging intermediary.

"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 lodging facility ~~hotel~~, or portion thereof.

"Occupancy tax review committee" means the City Council or, if it so elects, a committee composed of five (5) persons appointed by the City Council and may be owners or operators of a lodging facility ~~"hotel" as defined in this section.~~

"Operator" means ~~the~~ the person that furnishes lodging in a lodging facility ~~who is the proprietor of the hotel in any capacity.~~ Where the operator performs his or her 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 his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

"Person" means any individual, 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 entity, group or combination acting as a unit.

"Registered guest" means any individual who exercised occupancy or is entitled to occupancy in a hotel lodging facility for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a registered guest checks out of the lodging facility ~~hotel~~ shall not be

included in determining the thirty (30) day period if the registered guest is not charged rent for that day by the ~~operator~~lodging tax collector. Any individual so occupying space in a ~~hotel~~lodging facility shall be deemed to be a registered guest until the period of thirty (30) days has expired 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 thirty (30) consecutive days. In determining whether a person is a registered guest, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter 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 registered guest. An owner of a condominium unit, or any other person residing in the same, who is required to pay any consideration for the use of the unit, shall be deemed a registered guest.

“Rent” means the total consideration charged, including all charges other than taxes, paid by a person, whether or not received by the operator or lodging intermediary, for the occupancy of space in a ~~hotel~~lodging facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction, but shall not include charges to a condominium unit owner which are solely for cleaning or maintenance of such unit so long as the charges are made in connection therewith for space occupancy.

“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 occupancy tax under this chapter shall be the same charge made for rent when consideration is not a part of the package plan. The amount applicable to rent for determination of occupancy tax under this chapter shall be that amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package and taking into consideration the charge for rent when the space is rented separately and not included in a package plan.

“Tax” means either the tax payable by the registered guest or the aggregate amount of taxes due from an operator or lodging intermediary during the period for which he or she is required to report his or her collections.

“Tax administrator” means the City Recorder of the City of Yachats or his or her designee.

“Visitor amenities” shall include items such as, but not limited to, public restrooms, informative signage, trash receptacles, parks and trails, visitor information center, and any other items that have substantial benefit to visitors, as determined by City Council.

Section 3.08.020 Tax imposed.

For the privilege of occupancy in any ~~hotel~~lodging facility, which is in the City of Yachats, on or after November 1, 1976, each registered guest shall pay a tax in the amount of six percent (6%) of the rent charged by the ~~lodging tax collector~~operator. Effective January 1, 2016 each registered guest shall pay a tax in the amount of nine percent (9%) of the rent charged by the ~~operator~~lodging tax collector. The tax constitutes a debt owed by the registered guest to the City which is extinguished only by payment by the ~~operator~~lodging tax collector to the City. The registered guest shall pay the tax to the ~~lodging tax collector~~operator of the ~~lodging facility~~hotel at the time the rent is paid. The ~~lodging tax collector~~operator shall enter the tax on his or her records when rent is collected if the lodging tax collector

~~collectoroperator~~ keeps his or her records on the cash accounting basis and when earned if the lodging tax collectoroperator keeps his or her records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the registered guest to the lodging tax collectoroperator with each installment. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities, other than the furnishing of rooms and accommodations.

Section 3.08.030 Collection of tax ~~by operator~~—Rules for collection.

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

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

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.

Section 3.08.040 Operator's Lodging tax collector duties.

Each operatorlodging tax collector shall collect the tax imposed by this chapter at the same time as the rent is collected from every registered guest. The amount of tax shall be separately stated upon the operator'slodging tax collector's records, and any receipt rendered by the operatorlodging tax collector. No operatorlodging tax collector of a hotellodging facility shall advertise that the tax or any part of the tax will be assumed or absorbed by the operatorlodging tax collector, 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.

Section 3.08.050 Exemption.

No tax imposed under this chapter shall be imposed upon:

A. Any occupant for more than thirty (30) successive calendar days with respect to any rent imposed for the period commencing after the first thirty (30) days of such successive occupancy;

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

C. Any occupant whose rent is paid ~~for hospital room or~~ to a health care facility, including hospitals, ~~a~~ medical clinics, convalescent homes, ~~or~~ homes for the aged people, and long-term care facilities.

D. Any occupant whose rent is paid~~er~~ to a public institution owned and operated by a unit of the government.

E. Any occupant whose rent is paid to a facility providing treatment for drug or alcohol abuse or providing mental health treatment.

F. Any occupant whose rent is funded through a contract with a government agency and the purpose of such occupancy is to provide emergency or temporary shelter.

G. Any occupant whose rent is paid to a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility.

H. Any occupant whose rents a private home, vacation cabin, or similar residential facility from any lodging operator who rents such facility incidentally to the lodging operator's own personal use thereof, and where the total number of rental days for the facility are less than 30 days per year.

I. Any occupant who is a federal employee on official federal government business.

Section 3.08.060 Registration of operator—Certification of authority.

Every person engaging or about to engage in business as an operator ~~of a hotel~~ in this city shall register with the tax administrator on a form provided by him or her. Operators engaged in business at the time the ordinance codified in this chapter is adopted must register not later than thirty (30) calendar days after passage of said ordinance. Operators starting business after said ordinance is adopted must register within fifteen (15) days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration sets forth the name under which the operator transacts or intends to transact business, the location of his or her place or places of business and such other information to facilitate collection of the tax as the tax administrator may require. The registration shall be signed by the operator. The tax administrator shall, within ten (10) days after registration issue without charge a certificate of authority to each registrant to collect the tax from the registered guest, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate 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.

The certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the lodging facility~~hotel~~;

C. The date upon which the certificate was issued;

D. "This Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Occupancy Tax Ordinance of the City of Yachats, Oregon, by registration with the tax administrator for the purpose of collection from registered guests, the occupancy tax imposed by said City and remitting said tax to the tax administrator. 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~~ lodging facility without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City of Yachats, Oregon. This certificate does not constitute a permit."

Section 3.08.070 Due date—Returns and payments.

A. The tax imposed by this chapter shall be paid by the registered guest to the ~~operator~~ lodging tax collector at the time that rent is paid. All amounts of such taxes collected by any ~~operator~~ lodging tax collector are due and payable to the tax administrator on a quarterly basis on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) and are delinquent on the first day of the month following (in the months of May, August, November and February). Commencing July 1, 2002 and for each three-month quarter thereafter, the quarters shall be consistent with the City's fiscal year (e.g., October 1, January 1 and April 1 of each fiscal year). The tax administrator has authority to classify and/or district the ~~lodging tax collector~~ operators for determination of applicable tax periods, and shall notify each ~~lodging tax collector~~ operator of the due and delinquent dates for the ~~lodging tax collector's~~ operator's returns.

B. 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 ~~operator~~ lodging tax collector liable for payment of tax.

C. The returns shall show the total rent and fees for each month in the quarter on a separate line, with a total for the quarter.

D. The person required to file the return shall remit the amount of the tax due, to the tax administrator at his or her office, either by personal delivery or by mail before the last day of the month following each quarter of collection.

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 occupancy tax review committee. Any ~~lodging tax collector~~ operator to whom an extension is granted shall pay the delinquent fees unless waived by the occupancy tax review committee.

F. The tax administrator, if he or she deems it necessary in order to insure 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.

Section 3.08.080 Penalties.

A. Original Delinquency. Any ~~lodging tax collector~~~~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 delinquency shall pay ten percent (10%) of the amount of the tax due and a delinquency fee of \$100 in addition to the amount of the tax.

B. Continued Delinquencies. Any ~~lodging tax collector~~~~operator~~ who has not been granted an extension of time for remittance of tax due, and who fails to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay an additional ten (10) percent for each thirty (30) day period the tax remains delinquent.

C. 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 twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Penalties Merged With Tax. Every penalty imposed under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

E. Petition for Waiver. Any ~~lodging tax collector~~~~operator~~ who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated, provided, however, the ~~lodging tax collector~~~~operator~~ may petition the occupancy tax review committee for waiver and refund of the penalty or any portion thereof and the occupancy tax review committee may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

Section 3.08.090 Deficiency determinations—Evasion, ~~operator~~~~lodging tax collector~~ delay.

A. Deficiency Determinations. If the tax administrator determines that the returns are incorrect, he or she 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 his or her possession or that may come into his or her 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 herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 3.08.080.

1. In making a determination the tax administrator may offset over-payments, 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 3.08.080.

2. The tax administrator shall give to the ~~lodging tax collector~~~~operator~~ or occupant a written notice of his or her determination. The notice may be served personally or by mail. If by mail the notice shall be addressed to the ~~lodging tax collector~~~~operator~~ at his or her address as it appears on the records of the tax administrator. In case of service by mail, any notice required by this chapter shall be served by mailing such notice by registered mail, postage prepaid, return receipt requested.

3. 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 (3) 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 (3) years after the return is filed, whichever period expires the later.

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 ~~lodging tax collector~~~~operator~~ may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

B. **Fraud—Refusal to Collect—Evasion.** If any ~~lodging tax collector~~~~operator~~ shall fail or refuse to collect the tax or to make within the time provided in this chapter any report or 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 he or she may deem best to obtain the 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 ~~lodging tax collector~~~~operator~~ who has failed or refused to collect the same and to report and remit the tax, he or she shall proceed to determine and assess against such ~~lodging tax collector~~~~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 (3) years of the 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 upon receipt of notice and shall become final within twenty (20) days after the tax administrator has given notice thereof, provided, however, the ~~lodging tax collector~~~~operator~~ may petition for redemption refund if the petition is filed before the determination becomes final as herein provided.

C. **Lodging Tax Collector**~~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, he or she 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 herein provided shall be immediately due and payable, and the ~~lodging tax collector~~~~operator~~ shall immediately pay such determination to the tax administrator after service of notice thereof; provided, however, the ~~lodging tax collector~~~~operator~~ may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within twenty (20) days from the date of service of notice by the tax administrator.

Section 3.08.100 Redeterminations.

A. Any person against whom a determination is made under Section 3.08.090 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 3.08.090. If a petition for redetermination and refund is not filed within the time required in Section 3.08.090, 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 his or her petition, shall grant the person an oral hearing and shall give him or her twenty (20) 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 each 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 twenty (20) days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the occupancy tax review committee within twenty (20) days after the 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~~ lodging tax collector has first complied with the payment provisions hereof.

Section 3.08.110 Security for collection of tax.

A. The tax administrator, whenever he or she deems it necessary to insure the compliance with this chapter, may require the lodging tax collector~~operator~~ subject thereto to deposit with him or her such 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 lodging tax collector'~~operator's~~ estimated average quarterly liability for the period for which he or she files returns, determined in such a manner as the tax administrator deems proper, or five thousand dollars (\$5,000.00), whichever amount is lesser. The amount of security may be increased or decreased by the tax administrator subject to limitations herein provided. The lodging tax collector~~operator~~ has a right to appeal to the occupancy tax review committee any decision of the tax administrator made pursuant to this section. The lodging tax collector'~~operator's~~ right to appeal is pursuant to Section 3.08.170.

B. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the tax administrator may bring any action in the courts of this 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, and reasonable attorney's fees, to be determined by the court, together with court costs.

Section 3.08.120 Lien.

Any deficiency for occupancy room taxes identified in a final deficiency determination shall become a lien against the real property used for the hotel-lodging facility upon which the occupancy tax has been assessed. The tax administrator shall cause a lien to be entered in the lien docket of the City.

In addition to other remedies provided in this chapter, any deficiency for occupancy taxes identified in a final deficiency determination shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Yachats for the recovery of such amount. In lieu of filing an action for the recovery, the City may submit deficiencies to a collection agency. In the event the City turns over a deficient tax account to a collection agency, the City may add to the amount owing an amount equal to the collection agency fees, not to exceed twenty-five percent of the outstanding tax owing. The City shall provide notice as may be required by state law.

Section 3.08.130 Refunds.

A. Refunds by the City to the ~~Operator~~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 chapter, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three (3) 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 amount then due and payable from the ~~lodging tax collectoroperator~~ from whom it was collected or by whom paid and the balance may be refunded to such ~~lodging tax collectoroperator~~, his or her administrators, executors or assignees.

B. Refunds by City to Registered Guest. Whenever the tax required by this chapter has been collected by a ~~lodging tax collectoroperator~~, and deposited by ~~lodging tax collectoroperator~~ 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 registered guest, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the tax administrator within three (3) years from the date of payment.

C. Refunds by ~~Lodging Tax CollectorOperator~~ to Tenant. Whenever the tax required by this chapter has been collected by the ~~operatorlodging tax collector~~ and it is later determined that the tenant occupies the ~~hotellodging facility~~ for a period exceeding thirty (30) days without interruption, the ~~lodging tax collectoroperator~~ shall refund to such tenant the tax previously collected by the ~~lodging tax collectoroperator~~ from that tenant as a registered guest. The ~~lodging tax collectoroperator~~ shall account for such collection and refund to the tax administrator. If the ~~lodging tax collectoroperator~~ has remitted the tax prior to the refund or credit to the tenant, he or she shall be entitled to a corresponding refund under this section.

Section 3.08.140 Collection fee.

Every ~~lodging tax collectoroperator~~ liable for collection and remittance of the tax imposed by this chapter may withhold five (5) percent of the net tax herein collected, to cover the ~~lodging tax collectoroperator's~~ expense in collection and remittance of the tax.

Section 3.08.150 Administration.

A. Not less than thirty (30) percent of the occupancy tax received by the City shall be allocated to visitor amenities each year. No more than fifty (50) percent of that amount shall be allocated to a visitor information center.

B. Records Required From Lodging Tax Collectors~~Operators~~—Form. Every lodging tax collector~~operator~~ shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the ~~operator~~lodging tax collector for a period of three (3) years and six months after they come into being.

C. Examination of Records—Investigations. The tax administrator, or any person authorized in writing by him or her, may examine during normal business hours the books, papers and accounting records relating to room sales of any lodging tax collector~~operator~~, after notification to the lodging tax collector~~operator~~ liable for the tax, and may investigate the business of the ~~operator~~lodging tax collector in order to verify the accuracy of any return made, or if no return is made by the lodging tax collector~~operator~~, to ascertain and determine the amount required to be paid.

D. Confidential Character of Information Obtained—Disclosure shall follow the Public Records Laws of the State of Oregon.

Section 3.08.160 Occupancy tax review committee—Appeal rules and procedure.

An occupancy tax review committee is created to be composed of five (5) persons. The City Council may elect not to provide for the occupancy tax review committee. The committee shall select from its members a chair who shall serve at its pleasure. Three (3) members of the committee shall constitute a quorum. The committee shall keep a record of its transactions. The committee shall be deemed to be in the office of the tax administrator and shall keep its files in his or her office. The members of the committee shall not, at any time, receive any compensation as such members or acting members for their services on the committee. The committee shall be appointed by the City Council and shall serve four-year terms.

The committee shall have power and it shall be its duty:

A. To hear and determine appeals of orders or decisions of the tax administrator made upon petitions for redetermination of tax. The committee may affirm, modify or reverse such orders or decisions or dismiss the appeals therefrom, as may be just, and shall prescribe such forms, rules and regulations relating to appeals as it may deem necessary. In the review of the tax administrator decision or order, the committee may take such evidence and make such investigation as it may deem necessary. It shall give notice of its determinations in the manner prescribed for service of notice of a tax administrator's decision and shall file a copy of each such determination with the tax administrator with certification thereon of the date of service thereof. Such determination shall become final twenty (20) days thereafter and shall thereupon become due and payable, subject to interest penalties, and enforceable by the tax administrator in like manner as an order or decision of the tax administrator;

B. To approve, modify or disapprove all forms, rules and regulations prescribed by the tax administrator in the administration and enforcement of this chapter and such forms, rules and regulations adopted or promulgated after November 1, 1976;

C. To hear and determine in such manner as shall be just, any protest which may be made by any person who may be interested, to any form, rule or regulation approved or prescribed by the committee;

D. To grant for good cause, applications for extensions of time in excess of one month, for making any return or payment of tax, and to prescribe rules therefor;

E. To make such investigations as it deems advisable regarding the imposition and administration of the occupancy tax and report its findings to the board of commissioners; to act in an advisory capacity to the legislative body on matters pertaining to the occupancy tax and enforcement problems and to recommend to the board of commissioners the adoption, amendment or repeal of legislation pertaining thereto.

Section 3.08.170 Appeal to occupancy tax review committee.

Any person aggrieved by any decision of the tax administrator may appeal to the occupancy tax review committee by filing notice of appeal with the tax administrator within twenty (20) days of the serving or mailing of the tax notice of a decision given by the tax administrator. The tax administrator shall fix a time and place for hearing such appeal as prescribed by the occupancy tax review committee in its rules and regulations and shall give the appellant twenty (20) days written notice of the time and place of hearing.

Section 3.08.180 Appeals to City Council.

Any person aggrieved by any decision of the occupancy tax review committee may appeal to the City Council by filing notice of appeal with the tax administrator within twenty (20) days of the serving or the mailing of the notice of the decision given by the occupancy tax review committee. The tax administrator shall transmit the notice of appeal together with the file of the appealed matter to the City Council, who shall fix a time and place for hearing such appeal from the decision of the occupancy tax review committee. The City Council shall give the appellant not less than twenty (20) days written notice of the time and place of hearing of the appealed matter. Action by the City Council on appeals shall be decided by a majority of the members of the City Council present at the meeting where such appeal is considered.

Section 3.08.190 Violations.

It is unlawful for any ~~operator or other~~ person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the tax administrator or to render a false or fraudulent return. No person

required to make, render, sign or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this chapter.

Section 3.08.200 Penalties.

Any person who violates any of the provisions of this chapter commits a Class A civil infraction and shall be subject to the procedures and penalties of Chapter 1.12, as now constituted or hereafter amended, revised or repealed.

**CITY OF YACHATS
ORDINANCE NO. 351**

**AN ORDINANCE AMENDMENT THE YACHATS MUNICIPAL CODE CHAPTER 3.08
RELATED TO TRANSIENT LODGING TAXES**

Whereas, the City has assessed taxes on hotels and other transient lodging facilities for several decades; and

Whereas, Yachats Municipal Code Chapter 3.08 has been updated over time to account for the changing landscape of transient lodging facilities within the City in attempt to apply the tax in a fair and consistent manner; and

Whereas, with the increasing use internet-based platforms that streamline reservations and payments for transient lodging facilities, the City needs to update its taxing systems again to ensure fair and consistent assessment of its lodging tax; and

Whereas, in the 2018 Oregon legislative session, the Oregon Legislature adopted HB 4120 which addressed third-party companies that assist lodging facilities in booking transient lodging and collection of payments from transient lodgers; and

Whereas, the City wishes to take steps to harmonize its local transient lodging tax with Oregon's state transient lodging tax so that transient lodging facilities within the City can experience a clearer and more harmonious system of local and state taxes; and

Whereas, the City wants to encourage all those property owners that engage in short-term renting of their property to collect and remit the appropriate taxes so that all property owners are operating under the same rules,

NOW THEREFORE, the City of Yachats ordains as follows:

Section 1. Yachats Municipal Code Chapter 3.08.

Yachats Municipal Code Chapter 3.08 shall be amended to read as follows:

Section 3.08.010 Definitions.

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

“Accrual accounting” means the lodging tax collector enters the rent due from a registered guest on his or her records when the rent is earned, whether or not it is paid.

“Cash accounting” means the lodging tax collector does not enter the rent due from a registered guest on his or her records until rent is paid.

“City council” means the City Council of the City of Yachats.

“Lodging facility” means any structure, or any portion of any structure which is occupied or intended or designed for short-term occupancy for dwelling, lodging or sleeping purposes, and includes any hotel, motel, inn, condominium, vacation home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, or similar structure or space or portions thereof so occupied, provided such occupancy is for less than a thirty (30) day period.

“Lodging intermediary” means a person other than an operator that facilitates the retail sale of lodging facilities and: a) charges for occupancy of the lodging facility; b) collects the consideration charged for occupancy of the lodging facility; or c) 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.

“Lodging tax collector” means an operator or a lodging intermediary.

“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 lodging facility, or portion thereof.

“Occupancy tax review committee” means the City Council or, if it so elects, a committee composed of five (5) persons appointed by the City Council and may be owners or operators of a lodging facility.

“Operator” means a person that furnishes lodging in a lodging facility. Where the operator performs his or her 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 his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

“Person” means any individual, 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 entity, group or combination acting as a unit.

“Registered guest” means any individual who exercised occupancy or is entitled to occupancy in a lodging facility for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a registered guest checks out of the lodging facility shall not be included in determining the thirty (30) day period if the registered guest is not charged rent for that day by the lodging tax collector. Any individual so occupying space in a lodging facility shall be deemed to be a registered guest until the period of thirty (30) days has expired 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 thirty (30) consecutive days. In determining whether a person is a registered guest, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter 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 registered guest. An owner of a condominium unit, or any other person residing in the same, who is required to pay any consideration for the use of the unit, shall be deemed a registered guest.

“Rent” means the total consideration charged, including all charges other than taxes, paid by a person, whether or not received by the operator or lodging intermediary, for the occupancy of space in a lodging facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction, but shall not include charges to a condominium unit owner which are solely for cleaning or maintenance of such unit so long as the charges are made in connection therewith for space occupancy.

“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 occupancy tax under this chapter shall be the same charge made for rent when consideration is not a part of the package plan. The amount applicable to rent for determination of occupancy tax under this chapter shall be that amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package and taking into consideration the charge for rent when the space is rented separately and not included in a package plan.

“Tax” means either the tax payable by the registered guest or the aggregate amount of taxes due from an operator or lodging intermediary during the period for which he or she is required to report his or her collections.

“Tax administrator” means the City Recorder of the City of Yachats or his or her designee.

“Visitor amenities” shall include items such as, but not limited to, public restrooms, informative signage, trash receptacles, parks and trails, visitor information center, and any other items that have substantial benefit to visitors, as determined by City Council.

Section 3.08.020 Tax imposed.

For the privilege of occupancy in any lodging facility, which is in the City of Yachats, on or after November 1, 1976, each registered guest shall pay a tax in the amount of six percent (6%) of the rent charged by the lodging tax collector. Effective January 1, 2016 each registered guest shall pay a tax in the amount of nine percent (9%) of the rent charged by the lodging tax collector. The tax constitutes a debt owed by the registered guest to the City which is extinguished only by payment by the lodging tax collector to the City. The registered guest shall pay the tax to the lodging tax collector of the lodging facility at the time the rent is paid. The lodging tax collector shall enter the tax on his or her records when rent is collected if the lodging tax collector keeps his or her records on the cash accounting basis and when earned if the lodging tax collector keeps his or her records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the registered guest to the lodging tax collector with each installment. In all cases, the rent paid or charged for occupancy shall

exclude the sale of any goods, services and commodities, other than the furnishing of rooms and accommodations.

Section 3.08.030 Collection of tax—Rules for collection.

A. Every lodging tax collector renting lodging facilities in this city, the occupancy of which is not exempted under the terms of this chapter, shall collect a tax from the registered guest. The tax collected or accrued by the lodging tax collector constitutes a debt owing by the lodging tax collector to the City.

B. In all cases of credit or deferred payment of rent, the payment of tax to the lodging tax collector may be deferred until the rent is paid, and the 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.

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.

Section 3.08.040 Lodging tax collector duties.

Each lodging tax collector shall collect the tax imposed by this chapter at the same time as the rent is collected from every registered guest. The amount of tax shall be separately stated upon the lodging tax collector's records, and any receipt rendered by the lodging tax collector. No lodging tax collector of a lodging facility shall advertise that the tax or any part of the tax will be assumed or absorbed by the lodging tax collector, 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.

Section 3.08.050 Exemption.

No tax imposed under this chapter shall be imposed upon:

A. Any occupant for more than thirty (30) successive calendar days with respect to any rent imposed for the period commencing after the first thirty (30) days of such successive occupancy;

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

C. Any occupant whose rent is paid to a health care facility, including hospitals, medical clinics, convalescent homes, homes for the aged people, and long-term care facilities.

D. Any occupant whose rent is paid to a public institution owned and operated by a unit of the government.

E. Any occupant whose rent is paid to a facility providing treatment for drug or alcohol abuse or providing mental health treatment.

F. Any occupant whose rent is funded through a contract with a government agency and the purpose of such occupancy is to provide emergency or temporary shelter.

G. Any occupant whose rent is paid to a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility.

H. Any occupant whose rents a private home, vacation cabin, or similar residential facility from any lodging operator who rents such facility incidentally to the lodging operator's own personal use thereof, and where the total number of rental days for the facility are less than 30 days per year.

I. Any occupant who is a federal employee on official federal government business.

Section 3.08.060 Registration of operator—Certification of authority.

Every person engaging or about to engage in business as an operator in this city shall register with the tax administrator on a form provided by him or her. Operators engaged in business at the time the ordinance codified in this chapter is adopted must register not later than thirty (30) calendar days after passage of said ordinance. Operators starting business after said ordinance is adopted must register within fifteen (15) days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration sets forth the name under which the operator transacts or intends to transact business, the location of his or her place or places of business and such other information to facilitate collection of the tax as the tax administrator may require. The registration shall be signed by the operator. The tax administrator shall, within ten (10) days after registration issue without charge a certificate of authority to each registrant to collect the tax from the registered guest, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate 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.

The certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the lodging facility;
- C. The date upon which the certificate was issued;

D. "This Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Occupancy Tax Ordinance of the City of Yachats, Oregon, by registration with the tax administrator for the purpose of collection from registered guests, the occupancy tax imposed by said City and remitting said tax to the tax administrator. 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 lodging facility without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City of Yachats, Oregon. This certificate does not constitute a permit."

Section 3.08.070 Due date—Returns and payments.

A. The tax imposed by this chapter shall be paid by the registered guest to the lodging tax collector at the time that rent is paid. All amounts of such taxes collected by any lodging tax collector are due and payable to the tax administrator on a quarterly basis on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) and are delinquent on the first day of the month following (in the months of May, August, November and February). Commencing July 1, 2002 and for each three-month quarter thereafter, the quarters shall be consistent with the City's fiscal year (e.g., October 1, January 1 and April 1 of each fiscal year). The tax administrator has authority to classify and/or district the lodging tax collectors for determination of applicable tax periods, and shall notify each lodging tax collector of the due and delinquent dates for the lodging tax collector's returns.

B. 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 lodging tax collector liable for payment of tax.

C. The returns shall show the total rent and fees for each month in the quarter on a separate line, with a total for the quarter.

D. The person required to file the return shall remit the amount of the tax due, to the tax administrator at his or her office, either by personal delivery or by mail before the last day of the month following each quarter of collection.

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 occupancy tax review committee. Any lodging tax collector to whom an extension is granted shall pay the delinquent fees unless waived by the occupancy tax review committee.

F. The tax administrator, if he or she deems it necessary in order to insure 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.

Section 3.08.080 Penalties.

A. **Original Delinquency.** Any lodging tax collector 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 delinquency shall pay ten percent (10%) of the amount of the tax due and a delinquency fee of \$100 in addition to the amount of the tax.

B. **Continued Delinquencies.** Any lodging tax collector who has not been granted an extension of time for remittance of tax due, and who fails to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay an additional ten (10) percent for each thirty (30) day period the tax remains delinquent.

C. **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 twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. **Penalties Merged With Tax.** Every penalty imposed under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

E. **Petition for Waiver.** Any lodging tax collector who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated, provided, however, the lodging tax collector may petition the occupancy tax review committee for waiver and refund of the penalty or any portion thereof and the occupancy tax review committee may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

Section 3.08.090 Deficiency determinations—Evasion, lodging tax collector delay.

A. **Deficiency Determinations.** If the tax administrator determines that the returns are incorrect, he or she 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 his or her possession or that may come into his or her 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 herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 3.08.080.

1. In making a determination the tax administrator may offset over-payments, 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 3.08.080.

2. The tax administrator shall give to the lodging tax collector or occupant a written notice of his or her determination. The notice may be served personally or by mail. If by mail the notice shall be addressed to the lodging tax collector at his or her address as it appears on the records of the tax administrator. In case of service by mail, any notice required by this chapter shall be served by mailing such notice by registered mail, postage prepaid, return receipt requested.

3. 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 (3) 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 (3) years after the return is filed, whichever period expires the later.

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 lodging tax collector may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

B. **Fraud—Refusal to Collect—Evasion.** If any lodging tax collector shall fail or refuse to collect the tax or to make within the time provided in this chapter any report or 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 he or she may deem best to obtain the 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 lodging tax collector who has failed or refused to collect the same and to report and remit the tax, he or she shall proceed to determine and assess against such lodging tax collector 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 (3) years of the 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 upon receipt of notice and shall become final within twenty (20) days after the tax administrator has given notice thereof, provided, however, the lodging tax collector may petition for redemption refund if the petition is filed before the determination becomes final as herein provided.

C. **Lodging Tax Collector 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, he or she 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 herein provided shall be immediately due and payable, and the lodging tax collector shall immediately pay such determination to the tax administrator after service of notice thereof; provided, however, the lodging tax collector may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within twenty (20) days from the date of service of notice by the tax administrator.

Section 3.08.100 Redeterminations.

A. Any person against whom a determination is made under Section 3.08.090 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 3.08.090. If a petition for redetermination and refund is not filed within the time required in Section 3.08.090, 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 his or her petition, shall grant the person an oral hearing and shall give him or her twenty (20) 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 each 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 twenty (20) days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the occupancy tax review committee within twenty (20) days after the service of such notice.

E. No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the lodging tax collector has first complied with the payment provisions hereof.

Section 3.08.110 Security for collection of tax.

A. The tax administrator, whenever he or she deems it necessary to insure the compliance with this chapter, may require the lodging tax collector subject thereto to deposit with him or her such 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 lodging tax collector's estimated average quarterly liability for the period for which he or she files returns, determined in such a manner as the tax administrator deems proper, or five thousand dollars (\$5,000.00), whichever amount is lesser. The amount of security may be increased or decreased by the tax administrator subject to limitations herein provided. The lodging tax collector has a right to appeal to the occupancy tax review committee any decision of the tax administrator made pursuant to this section. The lodging tax collector's right to appeal is pursuant to Section 3.08.170.

B. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the tax administrator may bring any action in the courts of this

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, and reasonable attorney's fees, to be determined by the court, together with court costs.

Section 3.08.120 Lien.

Any deficiency for occupancy room taxes identified in a final deficiency determination shall become a lien against the real property used for the lodging facility upon which the occupancy tax has been assessed. The tax administrator shall cause a lien to be entered in the lien docket of the City.

In addition to other remedies provided in this chapter, any deficiency for occupancy taxes identified in a final deficiency determination shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Yachats for the recovery of such amount. In lieu of filing an action for the recovery, the City may submit deficiencies to a collection agency. In the event the City turns over a deficient tax account to a collection agency, the City may add to the amount owing an amount equal to the collection agency fees, not to exceed twenty-five percent of the outstanding tax owing. The City shall provide notice as may be required by state law.

Section 3.08.130 Refunds.

A. Refunds by the City to the 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 chapter, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three (3) 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 amount then due and payable from the lodging tax collector from whom it was collected or by whom paid and the balance may be refunded to such lodging tax collector, his or her administrators, executors or assignees.

B. Refunds by City to Registered Guest. Whenever the tax required by this chapter has been collected by a lodging tax collector, and deposited by lodging tax collector 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 registered guest, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the tax administrator within three (3) years from the date of payment.

C. Refunds by Lodging Tax Collector to Tenant. Whenever the tax required by this chapter has been collected by the lodging tax collector and it is later determined that the tenant

occupies the lodging facility for a period exceeding thirty (30) days without interruption, the lodging tax collector shall refund to such tenant the tax previously collected by the lodging tax collector from that tenant as a registered guest. The lodging tax collector shall account for such collection and refund to the tax administrator. If the lodging tax collector has remitted the tax prior to the refund or credit to the tenant, he or she shall be entitled to a corresponding refund under this section.

Section 3.08.140 Collection fee.

Every lodging tax collector liable for collection and remittance of the tax imposed by this chapter may withhold five (5) percent of the net tax herein collected, to cover the lodging tax collector's expense in collection and remittance of the tax.

Section 3.08.150 Administration.

A. Not less than thirty (30) percent of the occupancy tax received by the City shall be allocated to visitor amenities each year. No more than fifty (50) percent of that amount shall be allocated to a visitor information center.

B. **Records Required From Lodging Tax Collectors—Form.** Every lodging tax collector shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the lodging tax collector for a period of three (3) years and six months after they come into being.

C. **Examination of Records—Investigations.** The tax administrator, or any person authorized in writing by him or her, may examine during normal business hours the books, papers and accounting records relating to room sales of any lodging tax collector, after notification to the lodging tax collector liable for the tax, and may investigate the business of the lodging tax collector in order to verify the accuracy of any return made, or if no return is made by the lodging tax collector, to ascertain and determine the amount required to be paid.

D. **Confidential Character of Information Obtained—Disclosure** shall follow the Public Records Laws of the State of Oregon.

Section 3.08.160 Occupancy tax review committee—Appeal rules and procedure.

An occupancy tax review committee is created to be composed of five (5) persons. The City Council may elect not to provide for the occupancy tax review committee. The committee shall select from its members a chair who shall serve at its pleasure. Three (3) members of the committee shall constitute a quorum. The committee shall keep a record of its transactions. The committee shall be deemed to be in the office of the tax administrator and shall keep its files in his or her office. The members of the committee shall not, at any time, receive any compensation

as such members or acting members for their services on the committee. The committee shall be appointed by the City Council and shall serve four-year terms.

The committee shall have power and it shall be its duty:

A. To hear and determine appeals of orders or decisions of the tax administrator made upon petitions for redetermination of tax. The committee may affirm, modify or reverse such orders or decisions or dismiss the appeals therefrom, as may be just, and shall prescribe such forms, rules and regulations relating to appeals as it may deem necessary. In the review of the tax administrator decision or order, the committee may take such evidence and make such investigation as it may deem necessary. It shall give notice of its determinations in the manner prescribed for service of notice of a tax administrator's decision and shall file a copy of each such determination with the tax administrator with certification thereon of the date of service thereof. Such determination shall become final twenty (20) days thereafter and shall thereupon become due and payable, subject to interest penalties, and enforceable by the tax administrator in like manner as an order or decision of the tax administrator;

B. To approve, modify or disapprove all forms, rules and regulations prescribed by the tax administrator in the administration and enforcement of this chapter and such forms, rules and regulations adopted or promulgated after November 1, 1976;

C. To hear and determine in such manner as shall be just, any protest which may be made by any person who may be interested, to any form, rule or regulation approved or prescribed by the committee;

D. To grant for good cause, applications for extensions of time in excess of one month, for making any return or payment of tax, and to prescribe rules therefor;

E. To make such investigations as it deems advisable regarding the imposition and administration of the occupancy tax and report its findings to the board of commissioners; to act in an advisory capacity to the legislative body on matters pertaining to the occupancy tax and enforcement problems and to recommend to the board of commissioners the adoption, amendment or repeal of legislation pertaining thereto.

Section 3.08.170 Appeal to occupancy tax review committee.

Any person aggrieved by any decision of the tax administrator may appeal to the occupancy tax review committee by filing notice of appeal with the tax administrator within twenty (20) days of the serving or mailing of the tax notice of a decision given by the tax administrator. The tax administrator shall fix a time and place for hearing such appeal as prescribed by the occupancy tax review committee in its rules and regulations and shall give the appellant twenty (20) days written notice of the time and place of hearing.

Section 3.08.180 Appeals to City Council.

Any person aggrieved by any decision of the occupancy tax review committee may appeal to the City Council by filing notice of appeal with the tax administrator within twenty (20) days of the serving or the mailing of the notice of the decision given by the occupancy tax review committee. The tax administrator shall transmit the notice of appeal together with the file of the appealed matter to the City Council, who shall fix a time and place for hearing such appeal from the decision of the occupancy tax review committee. The City Council shall give the appellant not less than twenty (20) days written notice of the time and place of hearing of the appealed matter. Action by the City Council on appeals shall be decided by a majority of the members of the City Council present at the meeting where such appeal is considered.

Section 3.08.190 Violations.

It is unlawful for any person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the tax administrator or to render a false or fraudulent return. No person required to make, render, sign or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this chapter.

Section 3.08.200 Penalties.

Any person who violates any of the provisions of this chapter commits a Class A civil infraction and shall be subject to the procedures and penalties of Chapter 1.12, as now constituted or hereafter amended, revised or repealed.

Section 2. Effective date.

Pursuant to the Yachats Charter, this ordinance shall take effect 30 days after adoption.

Passed and adopted by the City Council of the City of Yachats on this ___ day of _____, 2018.

Gerald Stanley, Mayor

Attest: _____
Shannon Beaucaire, City Manager

