ORDINANCE NO. 1996

AN ORDINANCE AMENDING CENTRAL POINT MUNICIPAL CODE CHAPTER 3.24 TRANSIENT ROOM TAX

Recitals:

A. Words ~~lined through~~ are to be deleted and words **in bold** are added.

B. A recent review of the Room Tax revealed the need to amend, clarify and redefine portions of the code.

C. The proposed amendments are aimed at providing clear understanding of process and procedure.

THE PEOPLE OF THE CITY OF CENTRAL POINT DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3.24 Transient Room Tax is hereby amended to read as follows:

Chapter 3.24

TRANSIENT ~~ROOM~~LODGING TAX

Sections:

3.24.010 Definitions.

3.24.020 Tax imposed.

3.24.030 Rules for collection of tax by ~~operator~~**Operator**.

3.24.040 Operator's duties.

3.24.050 Exemptions.

3.24.060 Operator's registration form and certificate of authority.

3.24.070 Collections, returns and payments.

3.24.080 Delinquency penalties.

3.24.090 Deficiency determinations.

~~3.24.100 Fraud--Refusal to collect--Evasion--Determination.~~

~~3.24.110 Operator delay.~~

~~3.24.120 Redetermination.~~

3.24.130 Security for collection of tax.

3.24.140 Liens.

3.24.150 Refunds by **issued by** city ~~to operator~~.

~~3.24.160 Refunds by city to transient.~~

3.24.170 Refunds by ~~operator~~**Operator** to transient.

3.24.180 Records required from ~~operator~~**Operator**--Examination.

3.24.190 Confidentiality.

3.24.200 Disposition and use of transient room tax funds.

3.24.210 Appeals to the city council.

3.24.220 ~~Penalties and violations~~**Violations**.

3.24.230 ~~Penalties--Collection~~**Actions to Collect**.

3.24.010 Definitions.

For purposes of this chapter, the following definitions apply:

"Accrual accounting" means a system of accounting in which the ~~operator~~**Operator** enters the rent due from a transient into the record when the rent is earned, whether or not it is paid.

"Bed and Breakfast " means a single-family dwelling, or part thereof, other than a motel, hotel or multiple family dwelling, where traveler's accommodations and breakfast are provided for a fee on a daily or weekly room rental basis.

"Cash accounting" means a system of accounting in which the ~~operator~~**Operator** does not enter the rent due from a transient into the record until the rent is paid.

"Council/city council" means the city council of Central Point, Oregon.

~~"~~"Hotel~~"~~ **"** means ~~a part of a~~**any** structure ~~that~~**, or any portion of any structure which** is occupied or **intended or** designed for **transient** occupancy ~~by transients~~ for **30 days or less for dwelling,** lodging**,** or sleeping ~~including a~~**purposes, and includes any** hotel, inn, tourist home or house, motel, studio hotel, ~~bachelor hotel,~~ *lodging house, rooming house,* apartment house, **public or private** dormitory, **fraternity, sorority,** public or private club, ~~mobile home or house~~

~~trailer at a fixed location, recreational vehicle and trailer park, or similar structure or portions~~**and also means space or portion** thereof so occupied, provided such occupancy is for ~~twenty-seven days or~~ less **than a 30-day period**.

"Occupancy" means use or possession of, or the right to use or possess, a room ~~in a hotel for lodging or sleeping~~**or rooms or any portion thereof for transient lodgings**.

"Operator" means a person who is the proprietor of a ~~hotel~~**transient lodging facility** in any capacity. When an ~~operator's~~**Operator's** functions are performed through a managing agent of a type other than an employee, the managing agent shall also be considered an ~~operator~~**Operator**. For purposes of this chapter, compliance by either the ~~operator~~**Operator** or the managing agent shall be considered compliance by both.

"Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or another group or combination acting as a unit.

"Rent" means the ~~gross rent, exclusive of~~ **total retail price, including all charges** other ~~services;~~**than taxes, paid by a person for occupancy of the transient lodging. The total retail price paid by a person for occupancy of transient lodging that is part of a travel package may be determined by reasonable and verifiable standards from books and records kept in the ordinary course of the transient lodging Operator's business. Where** the consideration ~~charged~~**charge includes both food and rent in a single rate, the amount applicable to rent for determination of transient room tax under this chapter shall be the same charge made for rent of the identical room when it is not a part of a package plan**.

"Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an ~~operator~~**Operator** during the period for which the ~~operator~~**Operator** is required to report collections.

~~"Tax administrator"~~**"Director"** means the city of Central Point city manager, or his designee.

"Transient" means an individual who occupies or is entitled to occupy space in a ~~hotel~~**transient lodging facility** for a period of ~~twenty-seven~~**thirty (30)** consecutive days or less, counting portions of days as full days. The day a transient checks out of a hotel shall not be included in determining the ~~twenty-seven~~**thirty** day period if the transient is not charged rent for that day. A person occupying space in a ~~hotel~~**transient lodging facility** shall be considered a transient until a period of ~~twenty-seven~~**thirty (30)** days has expired unless there is an agreement in writing between the ~~operator~~**Operator** and the occupant providing for a longer period of occupancy or the tenant actually extends occupancy more than ~~twenty-seven~~**thirty (30)** consecutive days. A person who pays for lodging on a monthly basis, regardless of the number of days in the month, shall not be considered a transient.

"Transient Lodging" means hotel, bed and breakfast, or any part thereof, which are used or designed for occupancy by transients for dwelling, lodging or sleeping purposes and which are rented or intended for rent on a daily or weekly basis, or any period of thirty (30) days or less to transients for a charge or fee paid or to be paid for rental or use of facilities.

3.24.020 Tax ~~imposed~~Imposed.

~~A~~**For the privilege of occupancy in any transient lodging facility, a** transient shall pay a tax in the amount of nine percent of the rent charged for the privilege of occupancy in a ~~hotel~~**transient lodging facility** in the city. The tax constitutes a debt owed by the transient to the city, and the debt is extinguished only when the tax is remitted by the ~~operator~~**Operator** to the city. The transient shall pay the tax to the ~~operator~~**Operator** at the time rent is paid. The ~~operator~~**Operator** shall enter the tax into the record when rent is collected if the ~~operator~~**Operator** keeps records on the cash accounting and when earned if the ~~operator~~**Operator** keeps records on the accrual accounting basis. If the rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the ~~operator~~**Operator** with each installment. **The unpaid tax is due upon the transient's ceasing to occupy space in the transient lodging.** In all cases, rent paid or charged for occupancy shall exclude the sale of goods, services or commodities.

3.24.030 Rules for collection of tax by ~~operator~~Operator.

~~A. Every operator renting space for lodging or sleeping shall collect a tax from the occupant. The tax collected or accrued constitutes a debt owed by the operator to the city.~~

~~B.~~**A.** In cases of credit or deferred payment of rent, the payment of tax to the ~~operator~~**Operator** may be deferred until the rent is paid, and the ~~operator~~**Operator** shall not be liable for the tax until ~~credits are~~**rent is** paid or deferred payments are made. Adjustments may be made for uncollectible accounts.

~~C~~**B**. The ~~tax administrator~~**Director** shall enforce this chapter and may adopt rules and regulations necessary for enforcement.

~~D~~**C**. The rent collected on portions of a dollar, fractions of a penny of tax, shall not be remitted.

3.24.040 Operator's duties.

An ~~operator~~**Operator** shall collect the tax when the rent is collected from the transient. The amount of tax shall be stated separately in the ~~operator's~~**Operator's** records and on the receipt given by the ~~operator~~**Operator**. An ~~operator~~**Operator** shall not advertise that the tax will not be added to the rent, that a portion of it will be assumed or absorbed by the ~~operator~~**Operator**, or that a portion will be refunded, except in the manner provided in this chapter.

3.24.050 Exemptions.

The tax shall not be imposed on:

A. An occupant staying for more than ~~twenty-seven days~~**thirty (30) consecutive days, or a person paying for lodging on a monthly basis regardless of the number of days in the month**;

B. A person who rents a private home, vacation cabin or similar facility from an owner who personally rents the facility incidentally to the owner's personal use**, except a Bed and Breakfast**;

C. Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home, or home for aged people, or to a public institution owned and operated by a unit of the government.

D. Any room donated to a non-profit organization claiming exemption under IRS code 501;

E. Any home occasionally exchanged with a home outside the City without payment of rent;

F. Any person housed through an emergency shelter or disaster program where the rent is paid with government assistance funds;

G. Any Federal Government employee traveling on official government business, who presents an official Government Exemption Certificate or official travel authorization.

3.24.060 Operator's registration form and certificate of authority.

A. ~~Every person engaging or about to engage in business as an operator~~**Each Operator** of a ~~hotel in~~ **transient lodging facility within** the ~~city~~**City** shall register **said business** with the tax administrator**,** on a form provided by the ~~tax administrator~~**Director,** within fifteen days after ~~beginning~~**commencing** business.

B. The registration form shall set forth the name in which an ~~operator~~**Operator** transacts or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the ~~tax administrator~~**Director** may require. The registration shall be signed by the ~~operator~~**Operator**.

C. The ~~tax administrator~~**Director** shall, within ten days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the ~~tax administrator~~**Director** 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. Failure to register does not relieve the operator from collecting the tax or a person from paying the tax.~~

D. Each certificate of authority shall state the place of business to which it applies, shall be prominently displayed~~, and~~ **therein so as to be seen and be readily apparent to all transients**

seeking occupancy. Failure to register does not relieve the Operator from collecting the tax or a person from paying the tax. The certificate of authority shall set forth:

1. The name of the ~~operator~~**Operator**;

2. The address of the ~~hotel~~**transient lodging facility**;

3. The date the certificate was issued;

4. The following statement: "This transient occupancy registration certificate signifies that the person named on the certificate has fulfilled the requirements of the transient ~~room~~**lodging** tax ordinance of the city of Central Point by registering with the ~~tax administrator~~**Director** for the purpose of collecting the room tax imposed by the city of Central Point and remitting the tax to the ~~tax administrator.~~**Director.** 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~~**transient 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 Central Point. This certificate does not constitute a permit."

3.24.070 Collections, returns and payments.

A. ~~The taxes collected by an operator are payable to the tax administrator on a quarterly basis on the fifteenth day of the following month for the preceding three months and are delinquent on the last day of the month in which they are due.~~**Every Operator shall, on or before the fifteenth (15th) day of the month following the end of each calendar quarter (in the months of April, July, October and January) file a return with the Director, on forms provided by the City, specifying the total rent subject to this chapter and the amount of tax collected under this chapter. A return shall not be considered filed until it is actually received by the Director. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.** The initial return may be for less than the three months preceding the due date. The quarters are:

First quarter: January, February, March

Second quarter: April, May, June

Third quarter: July, August, September

Fourth quarter: October, November, December

B. ~~A return showing tax collections for the preceding quarter shall be filed with the tax administrator, in a form prescribed by the tax administrator, before the sixteenth day of the month following each collection quarter.~~

~~C. The operator may withhold five percent of the tax collected to cover the expense of collecting and remitting the tax.~~

~~D~~. Returns shall show the amount of tax collected or due for the related period. The ~~tax administrator~~**Director** may require returns to show the total rentals on which the tax was collected or is due, gross receipts of the ~~operator~~**Operator** for the period, a detailed explanation of any discrepancy between the amounts, and the amount of rentals exempt.

~~E. The operator shall deliver the return and the tax due to the tax administrator's office. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.~~

~~F.~~ **C. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.**

D. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any Operator if the Director deems it necessary in order to ensure collection of the tax. The Director also may

require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by Operators pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.

E. For good cause, the ~~tax administrator~~**Director** may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the city council. An ~~operator~~**Operator** to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in Section 3.24.080.

~~G. The tax administrator~~**F. Every Operator required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.**

G. Every Operator must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every Operator must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.

H. The Director may require returns and payment of the taxes for other than monthly/quarterly periods in individual cases to ensure payment or to facilitate collection by the city.

3.24.080 Delinquency ~~penalties.~~Penalties

~~A. An operator who has not been granted an extension of time for remittance of tax due and~~ **Any Operator** who fails to remit ~~the tax prior to delinquency~~ **any portion of any tax imposed by this chapter within the time required** shall pay a penalty of ten percent **(10%) of the amount** of the tax ~~due in addition to the tax~~.

~~B. An operator who has not been granted an extension of time for remittance of tax due and who fails to pay a~~

A. **Any Operator who fails to remit any** delinquent remittance **on or** before ~~the expiration~~**a period** of ~~thirty-one~~**31** days following the date on which the remittance **first** became delinquent**,** shall pay a second delinquency penalty of fifteen percent **(15%)** of the **amount of the** tax ~~due,~~**in addition to** the amount of the tax~~,~~ and the ~~ten percent~~ penalty first imposed.

~~C.~~

B. If the ~~tax administrator~~**Director** determines that **the** nonpayment of **a**~~any~~ remittance **due under this chapter** is due to fraud ~~or intent to evade the tax~~, a penalty of twenty-five percent **(25%) of the amount** of the tax shall be added **thereto in addition** to the penalties stated in ~~subsections~~**subparagraphs** A and B of this section.

~~D.~~

C. In addition to the penalties imposed ~~by this section, an operator~~**, any Operator** who fails to remit ~~the required~~**any** tax **imposed by this chapter** shall pay interest at the rate of one percent **(1%)** per month~~, without proration for portions of a month,~~ **or fraction thereof** on the **amount of the** tax ~~due~~, exclusive of penalties, from the date on which the ~~tax~~**remittance** first became delinquent until paid.

~~E. Each~~

D. **Every** penalty imposed**,** and ~~the~~**such** interest ~~accrued~~**as accrues** under **the** provisions of this section**,** shall ~~be merged with and~~ become **a** part of the tax required to be paid.

F. An ~~operator~~**Operator** who fails to remit the tax within the required time may petition the **city** council for waiver and refund of the penalty or a portion of it. The council may, if good cause is shown, direct a refund of the penalty or a portion of it. ~~(Ord. 1707 §1(part), 1994).~~ **Any such hearing will be conducted under the procedures described in section 3.24.210.**

3.24.090 Deficiency determinations.

A.~~-~~ If the ~~tax administrator determines that the returns are incorrect, the tax administrator may compute and~~**Director** determine ~~the amount required to be paid on the basis of the facts contained in the~~ **that a** return **is incorrect, that required reports** or returns ~~or upon the basis of~~

~~any information within the tax administrator's possession or that may come into his or her possession.~~

~~B. A deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately on service of notice, after which the determined amount is delinquent. Penalties on deficiencies shall be applied as provided in Section 3.24.080.~~

~~C. In making a determination, the tax administrator may offset overpayments that~~ have **not** been ~~made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in Section 3.24.080.~~

~~D. A determination becomes payable immediately on receipt of notice and becomes final within fifteen days after mailing. However, the operator may petition for redemption and refund by filing a petition before the determination becomes final. (Ord. 1707 §1(part), 1994).~~

~~3.24.100 Fraud--Refusal to collect--Evasion--Determination.~~

~~A. If an operator fails or refuses to collect the tax, make the~~ **filed, that a** report ~~or remit the tax, or makes a~~ **is** fraudulent ~~return~~**,** or **that an Operator has** otherwise ~~wilfully attempts~~**failed** to ~~evade~~**comply with** the ~~tax payment~~**terms of this chapter**, the ~~tax administrator~~**Director** shall **proceed in such manner as deemed best to** obtain facts and information on which to base ~~an~~**the** estimate of ~~the tax due. After determining the tax due and the interest and penalties, the tax administrator shall give notice of the total amount due.~~**tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any Operator, the Director shall proceed to determine and assess against such Operator the tax, interest and penalties provided for by this chapter.**

~~B. Determination and notice shall be made and mailed within three years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately on receipt of notice and becomes final fifteen days after mailing.~~

~~C. The operator may petition for redemption and refund if the petition is filed before the determination becomes final.~~

~~D. The tax administrator shall give the operator written notice of the determination. If notice is mailed it shall be addressed to the operator at the address that appears on the records of the tax administrator, and service is complete when the notice is deposited in the mail.~~

~~E. Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within three years after the last day of the month following the close of the quarterly period for which the determination has been made or within three years after the return is filed, whichever is later. (Ord. 1707 §1(part), 1994).~~

~~3.24.110 Operator delay.~~

~~If the tax administrator believes that collection of the tax will be jeopardized by delay, or if a determination will be jeopardized by delay, the tax administrator shall determine the tax to be collected and note facts concerning the delay on the determination. The determined amount is payable immediately after service of the notice. After payment has been made, the operator may petition for redemption and refund of the determination if the petition is filed within fifteen days from the date of mailing of notice by the tax administrator. (Ord. 1707 §1(part), 1994).~~

~~3.24.120 Redetermination.~~

~~A. An operator against whom a determination is made under Section 3.24.090, 3.24.100 or 3.24.110, or a person directly interested, may petition for a redetermination, redemption and refund within fifteen days from the date the notice was mailed. If a petition for redetermination and refund is not filed within the time required, the determination is final on 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 operator requested a hearing in the petition, shall grant the hearing and give the operator fifteen days notice of the time and place of the hearing. The tax administrator may continue the hearing if necessary.~~

~~C. The tax administrator may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing.~~

~~D. The decision of the tax administrator on a petition for redetermination becomes final fifteen days after mailing of notice on the petitioner unless appeal of the decision is filed with the council within fifteen days after notice is mailed.~~

~~E. A petition for redetermination or an appeal is not effective unless the operator has complied with the payment provisions. (Ord. 1707 §1(part), 1994).~~

B. In case such determination is made, the Director shall give a written notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the Operator so assessed at the last known place of address. Any deficiency is due and payable 10 days after the Director serves its written notice. The Operator may appeal such determination as provided in section 3.24.210 within 10 days of service of the deficiency notice. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

C. Except as provided herein, every deficiency determination shall be made and notice mailed within 3 years after a return was originally filed or subsequently amended, whichever period expires later. In the case of the filing of a false or fraudulent return with the intent to evade this chapter, a failure to file a required return, or willful refusal to collect and remit the tax, a deficiency determination may be made, or a proceeding for the collection of such deficiency may be commenced, at any time.

3.24.130 Security for collection of tax.

A. The ~~tax administrator~~**Director** may require an ~~operator~~**Operator** to deposit security in the form of cash, bond or other security. The amount of security shall be fixed by the ~~tax administrator~~**Director** and shall not be greater than twice the ~~operator's~~**Operator's** estimated average quarterly liability for the period for which the ~~operator~~**Operator** files returns or five thousand dollars, whichever amount is less.

B. Within three years after the tax becomes payable or within three years after a determination becomes final, the ~~tax administrator~~**Director** may bring an action in the name of the city in the courts of this state, another state or the United States to collect the amount delinquent and penalties and interest.

3.24.140 Liens.

After a determination of taxes owing has become final, such taxes, together with all applicable interest and penalties, shall become a lien on the real property used in the operation of the ~~hotel. The tax administrator~~**transient lodging facility. The Director** shall cause the lien to be recorded in the city's lien docket, and the lien may thereafter be foreclosed in the same manner as in the case of liens for local improvements, as set forth in Oregon Revised Statutes 223.505 to 223.595.

3.24.150 Refunds issued by ~~city to operator~~City.

~~When~~**A. Whenever** the **amount of any** tax, ~~penalty or~~ interest **or penalty** has been **overpaid or** paid more than once**,** or has been erroneously or illegally collected or received by the ~~tax administrator~~**City under this chapter**, it may be refunded ~~if~~**as provided in subparagraphs (B) and (C) of this section, provided** a ~~written verified~~ claim **in writing therefore,** stating **under penalty of perjury** the specific ~~reason for~~**grounds upon which** the claim is **founded, is** filed **with the Director** within three **(3)** years ~~from~~**of** the date of payment. The claim **must be on forms furnished by the Director.**

B. An Operator may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Director that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be ~~submitted on forms provided by~~**allowed unless the amount of** the tax ~~administrator. If the claim is approved, the excess amount may be~~**so collected has either been** refunded to the ~~operator~~**transient** or ~~it may be~~ credited to ~~an amount~~ **rent subsequently** payable by the ~~operator and any balance refunded. (Ord. 1707 §1(part), 1994).~~**transient to the Operator.**

~~**3.24.160 Refunds by city to**~~ **C. A** transient~~.~~

~~If the tax has been collected by the operator and deposited with the tax administrator and it is later determined that the tax was~~ **may obtain a refund of taxes overpaid or paid more than once, or** erroneously or illegally collected or received by the ~~tax administrator, it may be refunded to the~~ **City, by filing a claim in the manner provided in subparagraph (A) of this section, but only when the tax was paid by the transient directly to the Director, or when the** transient ~~if a written verified claim stating the specific reason for the claim is filed~~

~~with~~**having paid the tax to the Operator, established to** the ~~tax administrator within three years~~**satisfaction of the Director that the transient has been unable to obtain a refund** from the ~~date of payment.~~**Operator who collected the tax.**

D. No refund shall be paid under the provisions of this section unless the claimant establishes that right hereto by written records showing entitlement thereto.

3.24.170 Refunds by ~~operator~~Operator to transient.

If the tax has been collected by the ~~operator~~**Operator** and it is later determined that the transient occupied the hotel for a period exceeding ~~twenty-seven~~**thirty (30)** days without interruption, the ~~operator~~**Operator** shall refund the tax to the transient. The ~~operator~~**Operator** shall account for the collection and refund to the ~~tax administrator.~~**Director.** If the ~~operator~~**Operator** has remitted the tax prior to refund or credit to the transient, the ~~operator~~**Operator** shall be entitled to a corresponding refund.

3.24.180 Records required from ~~operators~~Operators--Examination.

A. It shall be the duty of every ~~operator~~**Operator** liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years and six months, all records, books, reports, income tax reports and other matters required by this chapter as may be necessary to determine the amount of such tax as the ~~operator~~**Operator** may have been liable for the collection of and payment to the city, which records the ~~tax administrator~~**Director** shall have the right to inspect at all reasonable times as set forth below. Every ~~operator~~**Operator** shall maintain guest records of room rents, accounting books and records of income. The ~~operators~~**Operators** must, at a minimum, include a daily room rental register, a room billing/revenue daily journal, a cash receipt and deposit journal, and a cash disbursements journal/check register for all authorized deductions. These records and books shall reconcile to the transient room tax reports and be auditable. They shall also reconcile to the ~~operator's~~**Operator's** income tax reports. If the ~~tax administrator~~**Director** finds the books and records of the ~~operator~~**Operator** are deficient in that they do not provide adequate support for transient room tax reports filed, or the ~~operator's~~**Operator's** accounting system is inauditable, it shall be the responsibility of the ~~operator~~**Operator** to improve their accounting system to the satisfaction of the ~~tax administrator~~**Director**.

B. During normal business hours and after notifying the ~~operator~~**Operator**, the ~~tax administrator~~**Director**, or an authorized representative, may examine books, papers and accounting records ~~related to room rentals~~**, including the Operator's federal and state income tax returns,** to verify the accuracy of a return or, if no return is made, to determine the amount to be paid.

3.24.190 Confidentiality.

The ~~tax administrator~~**Director** or a person having an administrative or clerical duty under the provisions of this chapter shall not make known in any manner the business affairs, operations or information obtained by an investigation of records and equipment of a person required to file a return or pay a transient occupancy tax or a person visited or examined in the discharge of official duty; or the amount or source of income, profits, losses or expenditures contained in a statement or application; or permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

A. Disclosure to or examination of records and equipment by a city official, employee or agent for collecting taxes for the purposes of administering or enforcing the provisions or collecting the taxes imposed by this chapter;

B. Disclosure, after filing a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected, or interest and penalties. However, the city attorney shall approve each disclosure, and the ~~tax administrator~~**Director** may refuse to make a disclosure referred to in this subsection when, in the ~~tax administrator's~~**Director's** opinion, the public interest would suffer;

C. Disclosure of names and addresses of persons making returns;

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

E. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim for amount due the City under this chapter; or

F. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or

G. The disclosure of records related to a business' s failure to report and remit the tax when the report or tax is in arrears for over six months or the tax arrearage exceeds $5,000.00. The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

3.24.200 Disposition and use of transient room tax funds.

All revenues received by the city from the tax shall be deposited in the general fund.

3.24.210 Appeals to the city council.

A. ~~A person~~**Any Operator** aggrieved by ~~a~~**any** decision of the **Director with respect to the amount of such** tax ~~administrator~~**, interest and penalties, if any,** may appeal to the city council by filing a notice of appeal with the ~~tax administrator~~**Director** within fifteen **(15)** days of mailing of the notice of a decision. The city manager shall fix a time and place for hearing the appeal, as prescribed by the city council, and shall give the appellant fifteen days written notice of the time and place of the hearing before the city council. ~~At such hearing, the council may take any action it deems necessary regarding the matters before it at the hearing, and action on the appeal shall be by resolution passed by a majority of the council members present at the meeting where the appeal is considered.~~

B. The appellant shall pay a nonrefundable appeal fee to facilitate the appeal. Appeal Fees shall be set at $150 for each decision appealed, and may be adjusted by Resolution of the city council.

C. The parties shall be entitled to appear personally and by counsel and to present such facts, evidence and arguments as may tend to support the respective positions on appeal.

D. The city council shall afford the parties an opportunity to be heard at an appeal hearing after reasonable notice. The city council shall take such action upon the appeal it sees fit. The city council shall at a minimum:

1) At the commencement of the hearing, explain the relevant issues involved in the hearing, applicable procedures and the burden of proof.

2) At the commencement of the hearing place on the record the substance of any written or oral ex parte communications concerning any relevant and material fact in issue at the hearing which was made outside the official proceedings during the pendency of the proceeding. The parties shall be notified of the substance of the communication and the right to rebut the communication. Notwithstanding the above, the parties are prohibited from engaging in ex parte communications with the members of the city council.

3) Testimony shall be taken upon oath or affirmation of the witnesses.

4) The city council shall ensure that the record developed at the hearing shows a full and fair inquiry into the relevant and material facts for consideration for the issues properly before the hearings officer.

5) Written testimony may be submitted under penalty of false swearing for entry into the record. All written evidence shall be filed with the City recorder no less than (5) five working days before the date of the hearing.

6) The city council shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination.

7) Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.

F. The action of the Director shall be stayed pending the outcome of an appeal properly filed pursuant to this section.

G. Failure to strictly comply with the applicable appeal requirements, including but not limited to the required elements for the written notice of appeal, time for filing of the notice of appeal, and payment of the applicable appeal fee, shall constitute jurisdictional defects resulting in the summary dismissal of the appeal.

H. The findings of the city council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3.24.220 ~~Penalties and violations~~Violations.

A. It is unlawful for any ~~operator~~**Operator** or any 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 the supplementary return or other data required by the ~~tax administrator~~**Director** or to enter a false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this chapter.

~~**3.24.230 Penalties--Collection.**~~

B. Violation of any provision of this chapter of this code shall be punishable by the general penalty. Every day in which the violation is caused or permitted to exist constitutes a separate infraction, and the punishment therefor shall be in addition to any other penalty, interest, sum or charge imposed by this code or this chapter. Delinquent taxes and fees, penalty and interest imposed by this chapter and this code may be collected in a civil action.

C. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

3.24.230 Actions to Collect

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the City. Any such tax collected by an Operator which has not been paid to the City shall be deemed a debt owed by the Operator to the City. Any person owing money to the City under the provisions of this ordinance shall be liable to an action brought in the name of the City of Central Point for the recovery of such amount. In lieu of filing an action for the recovery, the City, when taxes due are more than

30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars or fifty percent of the outstanding tax, penalties and interest owning.

SECTION 2. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word Ordinance may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

SECTION 3. Effective date. The Central Point City Charter states that an ordinance enacted by the council shall take effect on the thirtieth day after its enactment. The effective date of this ordinance will be the thirtieth day after the second reading.

Passed by the Council and signed by me in authentication of its passage this 9th day of October, 2014.

Mayor Hank Williams

ATTEST:

City Recorder