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WASCO COUNTY

2010 SEP -1 P 1:41

KAREN LEBRETON COATS
COUNTY CLERK

IN THE BOARD OF COUNTY COMMISSIONERS
OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF ESTABLISHING AN ORDINANCE LEVYING AN ONE (1) PERCENT TRANSIENT LODGING TAX; PROVIDING FOR THE ADMINISTRATION AND COLLECTION OF THE TAX; AND PROVIDING PENALTIES.	)	ORDINANCE #10-005

THE PEOPLE OF THE COUNTY OF WASCO COUNTY, OREGON, ORDAINS AS FOLLOWS:

SECTION 1. TITLE.

This Ordinance shall be known as the Transient Lodging Tax Ordinance of Wasco County, Oregon.

SECTION 2. DEFINITIONS.

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

(1) "Accrual accounting" means a system of accounting which the operator enters the rent due from a transient on his records when the rent is earned, whether or not it is paid.

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(2) "Cash accounting" means a system of accounting in which the operator does not enter the rent due from a transient on his records until the rent is paid.

(3) "Board" means the Board of County Commissioners of Wasco County, Oregon.

(4) "Hotel" means any structure or portion of any structure which is occupied, intended for transient occupancy, or designed for transient occupancy for 30 days or less, for dwelling, lodging, or sleeping purposes. "Hotel" includes any hotel, inn, motel, studio hotel, bed and breakfast, resort, lodge, guest ranch, cabin, RV sites in RV parks or campgrounds, and tent sites and yurts in private and public campgrounds.

(5) "Occupancy" means the use or possession, or the right to use or possession of any room or rooms in a hotel, and recreational vehicle park for lodging or sleeping purposes.

(6) "Operator" means the person who is proprietor of a hotel in any capacity. Where the operator performs his character other than an employee, the managing agent functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Ordinance and shall have the same duties and liabilities as his principal. Compliance with the

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provisions of this Ordinance by either the principal or the managing agent shall be considered to be compliance by both.

(7) "Person" means any individual, partnership, corporation, or association, or other legal entity.

(8) "Rent" means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

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

(10) "Tax administrator" means the Treasurer of Wasco County, or his designee.

(11) "Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(12) "Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days, or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the 30-day period if the transient is

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not charged rent for that day by the operator. Any such individual so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

SECTION 3. TAX IMPOSED.

For the privilege of occupancy in any hotel, on and after the effective date of this Ordinance, each transient shall pay a tax in the amount of one percent (1%) of the rent charged by the operator. One percent (1%) of the Transient Lodging Tax collected shall be allocated for the retirement of the bond indebtedness at the Columbia Gorge Discovery Center, which Wasco County is responsible to pay. Upon retirement of the debt or upon receipt of adequate revenue to retire the debt, whichever comes first, the Transient Lodging Tax Ordinance shall become null and void. If alternate funding is identified, the Board of County Commissioners may declare the Ordinance null and void at any time prior to the retirement of the full debt. The tax constitutes a debt owed by the transient to the County which is extinguished only by payment to the operator or to the County. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected, if the operator keeps his records on the cash accounting basis, and when earned, if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to

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the operator with each installment. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the County. 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, accommodations, and parking space in recreational vehicle parks or campgrounds.

SECTION 4. COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION.

(1) Every operator renting rooms in this County, the occupancy of which is not exempted under the terms of this Ordinance, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the County.

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

(3) Under the supervision of the County Administrative Officer, the tax administrator shall enforce the provision of this Ordinance and shall have the power to adopt rules and regulations not inconsistent with this Ordinance as may be necessary to aid in the enforcement.

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SECTION 5. OPERATOR'S DUTIES.

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

SECTION 6. EXEMPTIONS.

No tax imposed under this Ordinance shall be imposed upon:

(1) Any occupant for more than 30 successive calendar days.

(2) Any person who pays for lodging on a monthly basis, irrespective of the number of days in such month.

(3) Any occupant whose rent is of a value less than $2.00 per day.

(4) Any person who rents a private home, vacation cabin or like facility from any owner who rents the facility incidentally to his own use thereof.

(5) Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or home for aged people.

(6) An employee of the federal government, while on federal business, whose room is procured and paid for directly by the federal government, through a purchase order or other form of procurement and with a government check. If the federal

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employee pays for a room personally, the employee is not exempt and the tax must be paid, even if the employee is in Wasco County on federal business.

(7) Non-profit or charitable organizations which provide a voucher for temporary housing assistance.

SECTION 7. REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION; CERTIFICATION OF AUTHORITY.

Every person engaging or about to engage in business as an operator of a hotel in this County shall register with the tax administrator on a form provided by him. Operators engaged in business at the time this Ordinance is adopted must register not later than 20 calendar days after passage of this Ordinance. Operators starting business after this Ordinance is adopted must register within 20 calendar 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 the tax, regardless of registration. The registration shall set forth the name under which an 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 may require. The registration shall be signed by the operator. The tax administrator shall, within 20 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 for each registrant. Certificates shall be non-assignable

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and nontransferable 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 so as readily to be seen and come to the notice of all occupants and person seeking occupancy.

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

(1) The name of the operator.

(2) The address of the hotel.

(3) The date upon which the certificate was issued.

(4) "This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Lodging Tax Ordinance of Wasco County, Oregon, by registration with the tax administrator for the purpose of collecting from transients the lodging tax imposed by said County 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 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 County or

Incorporated Cities. This certificate does not constitute a permit."

SECTION 8. DUE DATE; RETURNS AND PAYMENTS.

(1) The tax imposed by this Ordinance shall be paid by the transient to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the tax administrator on a quarterly basis on the fifteenth day of the month following the end of the quarter for the preceding quarter; and are delinquent on the last day of the month in which they are due. The exception to this requirement is for operators of privately owned camping or recreational vehicle spaces. The taxes collected by these operators are due and payable to the tax administrator as required by ORS 320.347.

(2) On or before the fifteenth day of the month following each quarter of collection by an operator, he shall file a return for the preceding quarter's tax collections with the tax administrator. The return shall be filed in such form as the tax administrator may prescribe.

(3) Returns shall show the amount of tax collected or otherwise due for the period for which the return is filed, the total rentals upon which tax was collected or otherwise due, gross receipts of operator amounts, and the amount of rents exempt, if any.

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(4) The person required to file the return shall deliver the return, together with payment of the amount of the tax due, to the tax administrator at his office, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of deliver.

(5) For good cause, the tax administrator may extend the time for filing any return or making payment of any tax, for a period not to exceed one (1) month. No further extension shall be granted, except by the Board of County Commissioners. Any operator to whom an extension is granted shall pay interest at the rate of one (1) percent per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension of time granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this Ordinance.

(6) The tax administrator, if he deems it necessary in order to insure payment or facilitate collection by the County of the amount of taxes in any individual case, may require the filing of returns and the payment of the taxes owed on a periodic basis other than the quarterly basis provided for in this Ordinance.

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SECTION 9. PENALTIES AND INTEREST.

(1) Original delinquency. Any operator who has not been granted an extension of time for delivery of return and payment of tax due, and who fails to remit any tax imposed by this Ordinance prior to delinquency, shall pay a penalty of ten (10) percent of the amount of the tax due in addition to the amount of the tax.

(2) Continued delinquency. Any operator who has not been granted an extension of time for delivery of return and payment of tax due, and who has failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen (15) percent of the amount of the tax due, plus the amount of the tax and the ten (10) percent penalty first imposed.

(3) Fraud. If the tax administrator determines that the nonpayment of any remittance due under this Ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in (Subsections (1) and (2) of this Section).

(4) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Ordinance shall pay interest at the rate of one (1) percent per month or fraction

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thereof, without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(5) Penalties merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

(6) Petition for waiver. Any operator who fails to deliver the return and pay the tax herein levied within the time herein stated shall pay the penalties herein stated; provided, however, the operator may petition the Board of County Commissioners for waiver and refund of the penalty or any portion thereof, and the Board may, if a good and sufficient reason is shown, waive all or a portion of the penalty, and direct that the entire penalty or a portion thereof be refunded to the operator.

SECTION 10. DEFICIENCY DETERMINATIONS; FRAUD; EVASION; OPERATOR DELAY.

(1) Deficiency determination. If the tax administrator determines that a tax return required by this Ordinance is incorrect, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return, or upon the basis of any relevant information within his possession or that may come into his possession. One or more deficiency

determinations may be made of the amount due for one or more periods, 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 9.

(a) In making a deficiency determination, the tax administrator may offset overpayment, if any, which may have been previously made, against any underpayment for a subsequent period or periods, or against penalties, and interest, on the underpayment. The interest on underpayments shall be computed in the manner set forth in Section 9.

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

(c) Except in the case of fraud, intent to evade this Ordinance 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 deficiency is proposed to be determined, or within three (3) years after the return is filed, whichever period expires the later.

(d) Any deficiency determination shall become due and payable immediately upon service of notice and shall become final within 20 days after the tax administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

(2) Fraud; refusal to collection; evasion. If any operator shall fail or refuse to collect said tax or to make, within the time provided in this Ordinance, any report and/or remittance of tax or any portion thereof required by this Ordinance, or makes a fraudulent return or otherwise willfully attempts to evade this Ordinance, the tax administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the tax administrator has determined the tax due that is imposed by this Ordinance from any operator who has failed or refused to collect the same and to report and remit said tax, he shall

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proceed to determine and assess against such operator the tax, interest and penalties provided for by this Ordinance. In case such determination is made, the tax administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the tax administrator of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file a required return. Any determination shall become due and payable immediately upon delivery of notice and shall become final within 20 days after the tax administrator has given notice thereof; provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

(3) Operator delay. If the tax administrator believes the collection of any tax or any amount of tax required to be collected and paid to the County will be jeopardized by delay, or if any determination will be jeopardized by delay, he 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 operator shall immediately pay the determined amount to the tax

administrator after service of notice thereof. The operator may, however, petition, after payment is made, for redemption and refund of the determination, if the petition is filed within 20 days from the date of service of notice by the tax administrator.

SECTION 11. REDETERMINATIONS.

(1) Any person against whom a determination is made under Section 10 or any person directly interested in the determination may petition for a redetermination and redemption and refund within the time required in Section 10 hereof. If a petition for redetermination and refund is not filed within the time required in Section 10, the determination becomes final at the expiration of the allowable time.

(2) 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 petition, shall grant the person an oral hearing and shall give him 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.

(3) The tax administrator may decrease or increase the amount of the determinations as a result of the hearing; and if an increase is determined, such increase shall be payable immediately after the hearing.

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(4) The order or decision of the tax administrator upon a petition for determination and redemption and refund becomes final 20 days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the Board of County Commissioners within the 20 days after service of such notice.

(5) No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

SECTION 12. SECURITY FOR COLLECTION OF TAX.

(1) The tax administrator, whenever he deems it necessary to insure compliance with this Ordinance, may require any operator subject thereto to deposit with him such security in the form of cash, bond or other security as the tax administrator determines. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such manner as the tax administrator deems proper, or $5,000.00, whichever amount is the lesser. The amount of the security may be increased or decreased by the tax administrator, subject to the limitations herein provided.

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(2) 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 an action in the courts of this state, or any other state, or of the United States, in the name of the County, to collect the amount delinquent, together with penalties and interest.

SECTION 13. REFUNDS.

(1) Operator's refunds. Whenever the amount of any tax, penalty or interest imposed under this Ordinance has been paid more than once, or has been erroneously or illegally collected or received by the tax administrator, it may be refunded, provided a verified claim in writing therefore, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three (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 amounts then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded him or his personal representative or assigns.

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SECTION 14. COLLECTION FEE.

Every operator subject to the provisions of this Ordinance may withhold five (5) percent of the net tax due to cover his expense in the collection and remittance of the tax being imposed by this Ordinance.

SECTION 15. ADMINISTRATION.

(1) Crates Point Debt Service Fund. The Crates Point Debt Service Fund will be used to deposit the money received from the Transient Lodging Tax.

(2) Records required from operators, etc; form. Every operator shall keep guest records of room or space rentals, and accounting books and records of the room or space rentals. All these records shall be retained by the operator for a period of three (3) years and six (6) months after they come into being.

(3) Examination of records; investigations. The operator shall be required to submit to the tax administrator an accounting from their auditor of the number of nights of lodging provided annually. If no return is made by the operator, to ascertain and determine the amount required to be paid the tax administrator or any person authorized in writing by him may examine, during normal business hours, the books, papers and records relating to room or space rentals of any operator after notification to the operator liable for the tax.

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(4) Confidential character of information obtained; disclosure unlawful. Neither the tax administrator nor any person having an administrative or clerical duty under the provisions of this Ordinance shall disclose in any manner any information concerning the business affairs and operations of an operator obtained through an investigation of any person subject to the provisions of this Ordinance, or disclose the amount or source of income, profits, losses, expenditures or any particulars thereof, set forth in any statement or application, or permit any statement or application or financial record to be examined by any person. Provided that nothing in this subsection shall be construed to prevent:

(a) The disclosure to or the examination of records and equipment by another County official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this Ordinance or collecting taxes imposed hereunder.

(b) The disclosure after the filing of a written request to that effect, to the taxpayer himself, receivers, trustees, executors, administrators, assigns and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that

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such disclosure be consistent with legislation concerning inspection of public records.

(c) The disclosure of the names and addresses of any persons to whom a transient occupancy registration certificate has been issued.

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

SECTION 16. APPEALS TO BOARD OF COUNTY COMMISSIONERS.

Any person aggrieved by any decision of the tax administrator may appeal to the Board of County Commissioners of Wasco County by filing a notice of appeal with the tax administrator within 20 days of the delivery of the tax administrator's decision. The tax administrator's decision can be served personally or by mail. Personal service shall be considered complete on the date of delivery. Service by mail shall be considered complete at the time of deposit in the United States Post Office. The tax administrator shall transmit said notice of appeal, together with the file of said appealed matter, to the Board of County Commissioners which shall fix a time and place for hearing such appeal. The Board shall give the appellant not less than 20 days' written notice of the time and place of hearing of said appealed matter.

SECTION 17. SEVERABILITY.

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be

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unconstitutional (or otherwise invalid), such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof.

The Board hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or paragraphs be declared unconstitutional (or otherwise invalid).

SECTION 18. VIOLATIONS.

It is unlawful for any operator or other people 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 Ordinance

SECTION 19. PENALTIES.

Any person willfully violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and shall be punishable therefore by a fine of not more than $500.00, or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

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SECTION 20. EFFECTIVE DATE.

This Ordinance shall become effective **on January 1, 2011** upon receiving the approval of the electors of Wasco County, Oregon, at the November 2, 2010, General Election.

Regularly passed and adopted by a vote of 2 to 1 by the Board of County Commissioners for the County of Wasco, State of Oregon, this 1st day of September, 2010.

ATTEST:

Kathy McBride
Executive Assistant

APPROVED AS TO FORM:

Eric J. Nisley, District Attorney

WASCO COUNTY BOARD OF COUNTY COMMISSIONERS

Dan Ericksen, Chair of Commission

Sherry Holliday, County Commissioner

Bill Lennox, County Commissioner

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