

MEMORANDUM

Legal Department, City of Salem, Rm. 205 City Hall, Phone: (503) 588-6003

To: Keith Stahley, City Manager

From: Dan Atchison, City Attorney

Date: October 21, 2024

Subject: Use of TOT funds as a revenue guarantee for an airline

Keith:

You asked if Transient Occupancy Tax (TOT) funds may be used as a revenue guarantee to incent a prospective airline to locate in Salem.

The short answer is “no.” Section 56 of the Salem Charter limits the use of TOT to three categories, none of which would allow expending TOT funds as a revenue guarantee or direct payment to an airline to provide service to Salem. Further, ORS 320.350(3) prohibits a local government from decreasing the percentage of TOT revenues that are actually expended to fund tourism promotion or tourism-related facilities on or after July 2, 2003.

In this instance, paying an airline (either directly or through a revenue guarantee) to provide service to Salem would arguably increase the number of tourists visiting Salem and therefore increase tourism; directly meeting the intent and goals of the TOT. However, because directly paying an airline to bring tourists to Salem does not “promote” the use of Salem for tourism, using TOT funds in that manner would likely violate ORS 320.350(3).

“Promote” has a variety of meanings; one definition is “to contribute to the growth or prosperity of,” another definition is “to present (merchandise) for buyer acceptance through advertising, publicity, or discounting.” As the term is used in the Salem Charter, it is apparent that “promote” is meant in terms of marketing and advertising. This subsection of Section 56 of the Salem Charter reads in full:

“Revenues from such a tax shall be used for: (4) Activities performed directly by the city or through contracts which promote use of Salem for conventions, conferences, seminars or for general tourism.”

The intent is that the City either by itself, or through contracts (such as with Travel Salem), conduct activities, such as advertising, to market Salem as a destination for conventions or conferences, and general tourism.

Even if the meaning of “promote” in the Salem Charter was simply to “contribute to the growth” of tourism, ORS 320.350(3) would prohibit expending TOT for that use. As noted above, ORS 320.350(3) prohibits local governments from decreasing the percentage of TOT that are spent to fund “tourism promotion” or “tourism-related facilities.”

ORS 320.300(7) defines “tourism promotion” to mean;

- (a) Advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists;
- (b) Conducting strategic planning and research necessary to stimulate future tourism development;
- (c) Operating tourism promotion agencies; and
- (d) Marketing special events and festivals designed to attract tourists.”

This definition is consistent with how “promotion” is used in the Salem Charter and would not include direct payments to an airline to serve Salem.

ORS 320.300(9) defines “tourism-related facility” to mean:

- (a) A conference center, convention center or visitor information center; and
- (b) Other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.”

While an airport could conceivably fit within this definition, direct payments to an airline would not.

Therefore, under ORS 320.350, the City would be prohibited from reducing the percentage of TOT revenue that it spends on its current activities. Even if the City collected more in TOT, the same percentage allocation to tourism promotion and related facilities could not be reduced.

In conclusion, using TOT to pay an airline to serve Salem would be prohibited under the Salem Charter and under ORS 320.350, because that use does not meet the definition of “tourism promotion.”