

CHAPTER 38. – SALEM TOURISM PROMOTION AREA

Sec. 38.010. - Title; Purpose.

This chapter shall be known and may be cited as the "Tourism Promotion Area Code of the City of Salem." The Tourism Promotion Area, or "TPA," is intended to provide supplemental funding for tourism promotion above and beyond what is currently provided.

Sec. 38.020. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Booking agent means any person that provides a means through which a host or other operator may offer transient lodging for occupancy, usually, though not necessarily, via an online platform that allows a host or other operator to advertise transient lodging through a website and that provides a way for potential users to arrange transient lodging occupancy and payment, regardless of whether the transient pays rent directly to the host or to the booking agent. Booking agents include, but are not limited to:

- (1) Online booking sites which are involved in listing and booking transient lodging and handle any aspect of the resulting financial transaction;
- (2) Online booking sites for transient lodging where advertisements of transient lodging are displayed;
- (3) A hosting or other online site that provides a means through which an operator may offer transient lodging for occupancy;
- (4) Any person who lists commercial transient lodging for occupancy;
- (5) Any person who directly or indirectly accepts, receives or facilitates payment, whether or not the person is the ultimate recipient of the payment, including through Application Programming Interfaces (APIs) or other computerized devices where third-party providers receive information about a transaction and collect funds for the transient lodging occupancy from a transient; or
- (6) Any transient lodging provider, transient lodging intermediary, or transient lodging tax collector as defined in ORS 320.300.

Destination Marketing Organization ("DMO") means a non-profit organization that is responsible for the promotion of Salem on a year-round basis; manages tourism-related economic development plans, programs, and projects targeting the visitor industry including leisure visitors, corporate travelers, conventions, groups, and sports, and represents the interests of tourism-related businesses.

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 transient lodging.

Operator means:

- (1) Any person that is a proprietor of transient lodging in any capacity; or
- (2) Any person that provides transient lodging for occupancy to the public for compensation. The provision of transient lodging can be done through employees, contractors, agents, or any other person allowed to process reservations and accept payment for the transient lodging on behalf of the transient lodging provider;
- (3) Any person who facilitates the reservation of transient lodging and collects payment for the transient lodging reservation;
- (4) A booking agent as defined by this chapter; or
- (5) A transient lodging intermediary as defined in ORS 320.300.

A “host” or “hosting platform” as defined by SRC chapter 37 is not an operator as defined by this section.

Rent means the full consideration paid or payable by a transient for the right to occupy transient lodging, valued in money, goods, labor, gift cards, credits, property, or other consideration of value, without any deduction.

Transient means any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive calendar days or fewer, counting portions of calendar days as full days. The day a transient checks out of the transient lodging shall not be included in determining the period of occupancy if the transient is not charged rent for that day by the operator. Any such individual so occupying space in transient lodging shall be deemed to be a transient until a 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 and the occupancy actually extends for more than 30 consecutive calendar days. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

Transient lodging or *transient lodging facility* means any structure or premises, or any portion of a structure or premises, which is used, occupied, intended, or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes, but is not limited to, any hotel, motel, inn, studio hotel, boutique hotel, bed and breakfast, tourist home, vacation home, single family dwelling, duplex, condominium, cabin, accessory short-term rental, short-term rental, manufactured dwelling, lodging house, rooming house, apartment house, public or private dormitory, hostel, fraternity, sorority, public or private club, corporate housing, houseboat, space in a mobile home park, space in a trailer park, space in a campground, or similar premises or portions thereof so occupied, provided such occupancy is for a period of 30 days or less.

Sec. 38.030. - Administration; rulemaking.

The City's Finance Officer shall administer and enforce the provisions of this chapter, have the authority to render written and oral interpretations, conduct audits, and adopt administrative rules that are consistent with, and otherwise implement, the terms of this chapter.

Sec. 38.040. – TPA Formation; Dissolution.

- (a) Prior to the formation of a Tourism Promotion Area;
- (1) The City Council shall conduct a public hearing to determine whether; 1) to undertake the economic improvement activities allowed under this chapter; 2) whether the businesses benefitted under the activities should bear all or a portion of the cost of the activities; 3) the amount of the TPA fee, and; 4) consider any objections of persons subject to the proposed TPA fee. The public hearing shall be conducted in accordance with City Council rules for legislative proceedings in non-land use matters.
 - (1) **Notice.** Public notice of the hearing shall be by first class mail to all operators as defined by section 38.020.
 - (2) **Mailed Notice.** The mailed notice shall be provided as follows:
 - (A) The City shall mail notice of the public hearing not less than 30 days prior to the public hearing. An affidavit of mailing shall be prepared and made part of the file.
 - (B) Mailed notice shall include the amount of the TPA fee being considered, and the date, time, and place of the hearing at which affected persons may appear to provide testimony.
 - (3) **Remonstrance.** The TPA shall not be imposed if written objections are received prior to the conclusion of the public hearing from more than 33 percent of persons within the TPA that are subject to the proposed TPA fee.
- (b) **Dissolution.** Within 60 days the receipt of a petition for dissolution of the TPA, signed by more than 33 percent of persons within the TPA that are subject to the TPA fee, the TPA shall be dissolved. Upon the dissolution of the TPA, all remaining funds, less any City administrative costs, shall be disbursed to the DMO to be used for purposes consistent with this chapter.

Sec. 38.050. - TPA Boundaries.

For the financing and administration for the promotion of tourism as set forth in this chapter, the Tourism Promotion Area is hereby designated as the territorial boundaries of the city. Whenever territory is annexed to the city, that territory shall be added to the geographical area of the TPA.

Sec. 38.060. - TPA Registration Required.

- (a) *License Required.* All operators within the District shall register for a transient lodging business license covering each license year, or if application is made after the beginning of a license year, then for the balance of the license year.
- (1) *One license per facility.* Only one person needs to register for each transient lodging facility or short-term rental in the TPA. The license fees

prescribed herein are for the privilege of engaging in the activity of providing transient lodging or short-term rentals in the TPA, and the revenues collected will be used as provided herein. The payment of a license fee required hereunder and the acceptance of such fee shall not entitle a licensee to engage in any activities not in compliance with any other requirement of this Code, and all other applicable laws.

- (b) *License Transfer.* Transfer or assignment of a license shall be allowed only as provided in this subsection. The City shall allow transfer of a license for the balance of its term to a successor or transferee who agrees to assume the obligations and duties as a licensee under this chapter. Any transfer shall be reported to the City in writing or on a form provided by the City and shall not be effective until the City consents to the transfer. The transferor and transferee shall be jointly and severally liable for any license fees due and owed prior to the City's consent; and the transferee shall be responsible for any license fee installments which become payable after the City's consent.
- (c) *License Term.* A license issued under the chapter shall remain valid for so long as the licensee continues to operate transient lodging, unless terminated or revoked as provided by this chapter.

Sec. 38.070. - Tourism Promotion Area License Fee; Rate.

- (a) Each person required to obtain a license under this chapter shall be assessed an annual license fee in an amount as calculated by this section. The license fee shall not be subject to state and local taxes. Each person required to obtain a license under this chapter shall owe the fee regardless of whether they have obtained a license.
- (b) The license fee shall be calculated as follows:
 - (1) Gross rent charged by the operator;
 - (2) Less rent received from any occupant for 30 or more consecutive calendar days (rent paid for lodging on a monthly basis, irrespective of the number of days in such month, shall also be subtracted);
 - (3) Less rent received from any occupant whose rent is paid for a hospital room or to a health care facility, long-term care facility, or any other residential facility that is licensed, registered, or certified by the Oregon Department of Human Services or the Oregon Health Authority;
 - (4) Less rent received from an employee of the federal government or an instrumentality of the federal government traveling on official business, provided documentation of official travel authorization is presented to the operator;
 - (5) Less rent received from a foreign diplomat upon presentation of a valid diplomatic tax exemption card; and

- (6) Less rent received from any person housed through an emergency shelter or disaster program where the rent is paid with government assistance funds;
- (7) Multiplied by .02 (two percent).

Sec. 38.080. - Due Date; Returns and Payments.

- (a) The fee imposed by this chapter is due and payable on or before the last day of the following month for the preceding month. If the due date falls on a Saturday, Sunday or legal holiday as defined by ORS 187.010, amounts are delinquent on the last business day of the month. Payments and returns received before the close of the finance office on the last business day of the month will be deemed to have been received on the due date.
- (b) On or before the last day of the month following each month of collection, a return for the preceding month's fee on a form prescribed by the Finance Officer must be filed. The Finance Officer may provide a form for a combined return for payment of the fee due under this chapter, and payment of the tax due under SRC chapter 37.
- (c) Returns must show the amount of fee owed for the period. The Finance Officer may require returns to include additional information to explain the fee calculation.
- (d) The operator required to file the return shall cause to be delivered the return, together with the remittance of the amount due, to the Finance Division at its office, either by personal delivery or by mail. If the return is mailed, the return and remittance must be received in the finance office by the last business day of the month for determining delinquencies.
- (e) For good cause shown, the Finance Officer may extend the time for making any return or payment of the amount due for one month. No further extension will be granted, except by the Finance Officer. Any person granted an extension will pay interest at the rate of 1.00 percent per month on the amount of the amount due without proration for a portion of a month or reduction for any prepayments or credits available. If an extension is granted and the amount due and interest due are not paid by the end of the extension granted, then the interest will be added to the amount due for computation of penalties and additional interest designated elsewhere in this chapter.
- (f) Any Booking Agent or transient lodging intermediary (as defined by ORS 320.300) who collects and remits the Transient Occupancy Tax imposed under SRC chapter 37, shall also provide an operator the option for the Booking Agent or transient lodging intermediary to collect and remit the fee imposed by this chapter.

Sec. 38.090. - Special fund; records.

- (a) *Special revenue fund.* The Finance Officer shall deposit all money collected pursuant to this chapter to the credit of the Tourism Promotion Area Fund. The Finance Officer shall report the status of the Tourism Promotion Area Fund as of June 30 of each year no later than December 31 of that same year.
- (b) *Records required from operators.* Every operator shall keep appropriate records, including but not limited to registration forms, accounting and bank records, supporting documentation for all claimed exemptions, and any other documentation necessary to support the returns filed or required to be filed pursuant to this chapter. All records shall be retained by the operator for a period of three years and six months after the filing of the associated return, amended return, or payment of the fee, whichever is later.
- (c) *Examination of records; investigations.* Subject to subsection (d) of this section, the Finance Officer or any person authorized in writing by the Finance Officer may examine, during normal business hours, the registration forms, accounting and bank records, supporting documentation for all claimed exemptions, and any other documentation relating to the returns filed or required to be filed pursuant to this chapter of any operator after notification to the operator liable for the fee. The Finance Officer or the Finance Officer's designee may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid. To assist in this process, the Finance Officer or the Finance Officer's designee may request certified copies of annual federal and state income tax returns covering the operator.
- (d) *Confidential financial information.* Except as otherwise required by law, it shall be unlawful for the Finance Officer or any elected official, employee, or agent of the City to release, divulge, or make known in any manner any financial information submitted or disclosed to the City under the provisions of the chapter. Nothing in this subsection shall be construed to prohibit:
 - (1) The disclosure to, or the examination of records and equipment by another City official, employee, or agent for the sole purpose of administering or enforcing any of the provisions of this chapter, or collecting fees, penalties, or interest imposed hereunder;
 - (2) The disclosure after the filing of a written request to that effect, to the operator or receivers, trustees, executors, administrators, assignees, or guarantors of the operator, if directly interested, of information as to any paid fee, any unpaid fee or amount of the fee required to be collected, or interest, and penalties; further provided, however, that the City Attorney shall approve each such disclosure and that the Finance Officer may refuse to make any disclosure pursuant to this subsection when in the opinion of the Finance Officer the public interest would suffer thereby;

- (3) The disclosure of the names and addresses of any person to whom a license has been issued; or
- (4) The disclosure of general statistics regarding the amount collected or business done in the city.

Sec. 38.100. - Penalties and interest.

- (a) *Original Delinquency.* Any licensee who has not been granted an extension of time for remittance of the fee due and who fails to remit any amount imposed by this chapter on or before the due date will pay a late penalty of 10 percent of the amount of the amount due in addition to the amount due. There is no grace period between the due date and the imposition of any penalty and interest; the day following the due date is considered to be the delinquent date.
- (b) *Continued Delinquency.* Any licensee who fails to pay in full on or before the due date of an original delinquency notice will pay a second delinquency penalty of 15 percent of the amount of the amount due plus all penalty and interest imposed at the time of the continued delinquency calculation.
- (c) *Fraud.* If the Finance Officer determines that the nonpayment of any amount due under this chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the amount due shall be added in addition to the late penalties stated in subsections (a) and (b) of this section and interest stated in subsection (d) of this section. This penalty is calculated on the entire amount due, including any penalties and interest previously assessed at the time of the calculation.
- (d) *Interest.* In addition to the penalties imposed above, any licensee that fails to file or pay any amount imposed by this chapter will pay interest at the rate of one percent per month or fraction thereof without proration for portions of a month, on the amount of the amount due from the first day following the original due date. Interest shall be compounded monthly until the amount due is paid in full.
- (e) *Penalties and interest merged with assessment.* Every penalty imposed and such interest as accrues under the provisions of this section will be merged with and become a part of the amount required to be paid. If delinquency continues, requiring additional penalty and interest calculations, previously assessed penalty and interest are added to the amount due. This amount becomes the new base for calculating new penalty and interest amounts. This merging continues each month until the full balance is paid.
- (f) *Petition for Waiver.* An operator may petition the Finance Officer for waiver and refund or credit of all or part of the penalty assessed, and the Finance Officer may, if a good and sufficient reason is shown, waive some or all of the penalty assessed.

Sec. 38.110. - Appeals.

Any person aggrieved by any order or decision of the Finance Officer may appeal the order or decision to the City's hearings officer as set forth in SRC 20J.220. The hearing on the appeal shall follow the contested case procedures as set forth in SRC chapter 20J. Failure of any person to appeal the order or decision of the Finance Officer in the manner provided in SRC 20J.220 shall constitute a waiver of all right to administrative or judicial review of the order or decision.

Sec. 38.120. - Violations and penalties.

- (a) *Violations.* It shall be unlawful for any operator or other person so required to fail or refuse to obtain a license as required herein, or to fail to furnish any return required to be made, or to fail to pay the amount due, or to fail or refuse to furnish a supplemental return or other data required by the Finance Officer 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 as required by this chapter. A violation of this subsection is an infraction.
- (b) Notwithstanding subsection (a) of this section, the City Attorney, in addition to other remedies permitted by law, may commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the amount imposed by this chapter. Should the City prevail in any legal proceedings in any state or federal court to collect the fee, penalties and interest assessed in accordance with this chapter, the City shall be entitled to its costs and the reasonable value of its attorneys' fees.
- (c) *Civil penalty.* In addition to, but not in lieu of, any other remedy provided by law, a civil penalty as provided in SRC chapter 20J, not to exceed \$2,000.00 per violation, may be imposed on any person who fails to comply with any of the requirements of this chapter. Each day that a violation continues shall constitute a separate violation.
- (d) *Civil penalty against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, shall likewise be subject to a civil penalty.

Sec. 38.130. - Application of payments. Payments made under this chapter, or as part of a combined return of the amount required by this chapter and the tax required by SRC chapter 37, shall be applied as follows:

- (a) The tax due as provided by SRC chapter 37, then
- (b) Any delinquency penalties, interest accrued, and any civil penalties due as provided by SRC chapter 37, then
- (c) The amount due as provided by this chapter, and then

- (d) Any delinquency penalties, interest accrued, and any civil penalties due as provided by this chapter.

Sec. 38.140. - Distribution of moneys from Tourism Promotion Area Fund.

- (a) The Finance Officer shall distribute moneys from the Fund as follows:
 - (1) Up to five percent of the total annual assessment due to cover the City's administrative costs ("administrative costs" include the City's reasonable personnel and material costs directly associated with administering the TPA, including audit, enforcement and collection costs, and bank fees), then;
 - (2) Remaining net receipts from the Fund shall be distributed to the City's Destination Tourism Marketing Organization, which shall:
 - (A) Enter into and maintain an Agreement with the City concerning the management of TPA funds;
 - (B) Prepare and submit to the City, and make available to operators, an annual report on expenditures and activities;
 - (C) Manage funds in accordance with the provisions of this chapter; and
 - (D) Not be considered a public entity for any purposes.
- (b) Revenues shall be used only for programs which promote overnight tourism and improve the lodging business environment. Programs shall be designed to benefit operators of transient lodging and that are subject to the TPA fee. Programs may include:
 - (1) Internet, radio, television, and print advertising;
 - (2) Branding efforts;
 - (3) Sales promotions;
 - (4) Sponsorship of special events which attract out-of-town visitors; and
 - (5) Other programs designed to, or have the effect of, increasing overnight stays at transient lodging facilities.
- (c) Distributions from the Fund shall be made to the DMO on or before the 20th day of the second month following the close of a month's collections (e.g. July collections paid by September 20th)

Sec. 38.150. - TPA periodic review.

- (c) On or before [5th anniversary of the effective date of this ordinance], and every five years thereafter, the City Council shall conduct a public hearing to determine whether the TPA should be terminated. Prior to the first such hearing in 2024 and each fifth year thereafter, the Finance Officer shall mail notice of the hearing to all licensed operators within the district. The renewal, and hearing and notice procedures, shall conform to the requirements of Sec. 38.040. In the event that the TPA is terminated, all remaining funds, less any City administrative costs, shall be disbursed to the DMO to be used for purposes consistent with this chapter.

Sec. 37.190. - Violations and penalties.

- (a) Violations. It shall be 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 to fail to pay the tax collected, or fail or refuse to furnish a supplemental return or other data required by the Finance Officer 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 as required by this chapter. A violation of this subsection is an infraction.
- (b) Notwithstanding subsection (a) of this section, the City Attorney, in addition to other remedies permitted by law, may commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the tax imposed by this chapter. Should the City prevail in any legal proceedings in any state or federal court to collect the taxes, penalties and interest assessed in accordance with this chapter, the City shall be entitled to its costs and the reasonable value of its attorneys' fees.
- (c) Civil penalty. In addition to, but not in lieu of, any other remedy provided by law, a civil penalty as provided in SRC chapter 20J, not to exceed \$2,000.00 per violation, may be imposed on any person who fails to comply with any of the requirements of this chapter. Each day that a violation continues shall constitute a separate violation.
- (d) Civil penalty against agents. Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, shall likewise be subject to a civil penalty.

Sec. 37.200. - Application of payments. Payments made under this chapter, or as part of a combined return of the tax required by this chapter and the fee required by SRC chapter 38, shall be applied as follows:

- (a) The tax due as provided by SRC chapter 37, then
- (b) Any delinquency penalties, interest accrued, and any civil penalties due as provided by SRC chapter 37, then
- (c) The amount due as provided by SRC chapter 38, and then
- (d) Any delinquency penalties, interest accrued, and any civil penalties due as provided by SRC chapter 38.