

MEMORANDUM

TO: Dan Atchison, City Attorney for the City of Salem

FROM: Heather Martin, Special Counsel *Hem*

SUBJECT: Transient Occupancy Tax Usage Analysis

DATE: August 15, 2025

*******Confidential Attorney-Client Privileged Communication*******

You asked for analysis of whether City of Salem (“City”) transient occupancy tax (TOT) revenue can be used for funding a minimum revenue guarantee for commercial airline service under City and state law.

Considering the way the City’s Code and Charter are worded in conjunction with applicable state laws regarding TOTs, I agree with your initial assessment that they cannot be used as a minimum revenue guarantee for commercial airline service.

Under the Salem Municipal Code (“SMC”) Section 37.165(a)(4) (which language is also consistent with Section 56 of the Charter), TOT revenue is allowed to be used for:

“Activities performed directly by the City or through contracts which promote use of Salem for conventions, conferences, seminars, or for general tourism.”

Neither tourism promotion, nor promotion of general tourism, are defined in the SMC or the Charter, but, as you noted, are defined by the State.

Under state law, TOT revenue can be used for tourism promotion and 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.

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.”

Making direct payments to an airline does not fit under any of these categories to qualify as tourism promotion either under state law or under the City’s Code and Charter (as stated in more detail in your memo). I believe the City could enter into a contract with an airline to cover costs to advertise, publicize, or distribute info about the airline’s direct service to Salem in order to encourage visitors to the City, because that would be considered “tourism promotion” under state law, as well as under the SMC and the Charter. However, direct revenue payments to the airlines with no restrictions on how those funds are used, would likely violate state law, the SMC, and Charter.

Other localities appear to provide a more direct funding mechanism to encourage airlines to locate in their city, or to add more direct flights. Grand Junction, CO has very specific language in their Code that allows the use of TOT for direct payments to airlines. For example, under Section 3.08.040 of the Grand Junction Code, the City’s lodging tax is collected, retained and spent to “fund promotion and marketing for travel and tourism-related activities, such as and including, but not limited to: [\(i\)](#) Marketing, travel and tourism-related activities that support destination marketing of the area; [\(ii\)](#) Marketing, supporting, and/or arranging for additional direct airline service to and from Grand Junction; and [\(iii\)](#) Marketing, promoting, and sponsoring sporting activities, events, tournaments, competitions and exhibitions.”

Grand Junction got approval from its voters to allow 3% of the TOT revenue to be used on those items listed in Section 3.08.040; this went into effect in 2019. The new revenue stream has been used for incentives to add new flights and cities to Grand Junction’s airport.

Loudon County, Virginia has taken a broader approach with language (under Section 878.02 of its code), which allows its lodging tax to be “designated and spent for promoting tourism, travel or **business** that generates tourism or travel in the locality.” (Emphasis mine). By allowing the funds to go to businesses that generate tourism or travel, they could conceivably directly pay airlines that generate tourism/travel to the area.

In the end, I was not able to find any localities that offer incentives for airlines (akin to what the City is proposing) that had regulations similar to Salem (or Oregon). Instead, the localities that do offer those incentives have regulations/laws that were drafted in such a way to explicitly (Grant Junction) or more broadly (Loudon County) allow payments to airlines. I did not do a more expansive search of applicable Colorado and Virginia law, but presumably those states allow TOT language as adopted by Grand Junction and Loudon County, respectively.

As noted above, I do think the City could use its TOT revenue to provide advertising and promotion for airlines. Then the City could, for example, provide directly, or contract for, promotion of the airport and its flights in and out of Salem, as a way to attract tourism.

To conclude, because state law expressly limits how the City can use TOT funds, the City does not have the option, like the other out-of-state entities, to amend the SMC or Charter to use the funds as a minimum revenue guarantee. Rather, there would need to be an amendment to state law before being able to do so.