

May 2017 City Referred Measures

Measure 26-189: Auditor Charter Changes

Ballot Title Caption: Amends Charter: Increases Auditor's independence from audited agencies, adds duty.

Documents:

[Resolution No. 37265, text of charter amendments](#) (passed by Council)

[Ballot Title](#) (via City Auditor)

[Explanatory Statement](#) (via City Auditor)

[Notice of measure election; county filing documents](#) (via Multnomah County Elections)

Status:

2/1/17 - Resolution no. 37265 passed by City Council to refer measure to May 16, 2017 special election ballot

2/2/17 - Resolution filed with City Elections Officer. Ballot title challenge period begins: qualified voters may petition for review of [ballot title](#) in Multnomah County Circuit Court no later than 5:00pm February 13th, 2017

2/14/17 - Challenge period ends; no ballot title challenges filed

2/27/17 - Notice of Measure Election and other filing forms submitted to Multnomah County Elections Division. County certifies measure to the ballot and assigns measure number 26-189

5/16/17 - Election held, measure approved by voters. See results [here](#).

Measure 26-194: Transient Lodgings Tax Charter Amendment

Ballot Title Caption: Amends Charter: Authorizes Council to Change Scope of Transient Lodgings Tax Obligations

Documents:

[Resolution No. 37268, text of charter amendments](#) (passed by Council)

[Final Ballot Title](#) as amended (Multnomah County Circuit Court Judge Bushong)

[Explanatory Statement](#) (via Commissioner Nick Fish)

[Notice of Measure Election](#) (via Auditor's Office)

Additional Ballot Title Documents:

Original [Ballot Title](#) (via City Attorney)

[Ballot Title challenge](#) (via petitioner)

Status:

2/15/17 - Resolution 37268 passed by City Council and filed with City Elections Officer to refer measure to May 16, 2017 Special Election. Ballot title challenge begins; qualified voters may petition for review of the ballot title in Multnomah County Circuit Court no later than 5:00pm February 27, 2017

2/27/17 - Ballot title challenge filed in Multnomah County Circuit Court. Read the challenge [here](#)

3/15/17 - Multnomah County Circuit Court Judge Bushong [issues final amended ballot title](#)

3/16/17 - [Notice of Measure Election and other filing forms](#) submitted to Multnomah County Elections Division. County certifies measure to the ballot and assigns measure number 26-194

5/16/17 - Election held, measure approved by voters. See results [here](#).



May 16, 2017 Special Election – City of Portland Results Summary

Measure 26-189

Ballot title caption: Amends Charter: Increases Auditor’s independence from audited agencies, adds duty.

Vote	Multnomah	Clackamas	Washington	Total	%
Yes	107,770	119	179	108,068	86.41%
No	16,928	25	38	16,991	13.59%
TOTAL	124,698	144	217	125,059	100.00%

Measure 26-194

Ballot title caption: Amends Charter: Authorizes Council to change scope of transient lodgings tax obligations.

Vote	Multnomah	Clackamas	Washington	Total	%
Yes	80,252	79	136	80,467	62.44%
No	48,226	72	96	48,394	37.56%
TOTAL	128,478	151	232	128,861	100.00%

Note: Under and over votes are not included in the total ballots cast for a measure or office



Measure 26-189: Auditor Charter Changes

RESOLUTION No. 37265 As Amended

Refer Charter amendment to protect Auditor's independence to voters at the May 16, 2017 Special Election. (Resolution)

WHEREAS, robust oversight is a cornerstone of good public sector governance; and

WHEREAS, Portland's elected Auditor is responsible for carrying out the City's oversight work, which includes audits and investigations; and

WHEREAS, City Charter provisions related to the Auditor's Office are outdated and do not reflect the changes in the Auditor's oversight responsibilities over the last 30 years; and

WHEREAS, City Charter provisions do not contain adequate safeguards to protect the independence of the Auditor's oversight work; and

WHEREAS, best practices and professional standards call for the Auditor's Office to be structurally independent from the agencies that are subject to the Auditor's oversight; and

WHEREAS, voter-enacted protections in City Charter are necessary to provide the Auditor's Office with the needed independence and are particularly critical in a commission form of government where the Mayor and Commissioners have dual legislative and executive responsibilities; and

WHEREAS, the City Charter amendment protects the Auditor's independence by allowing the Auditor to seek advice from independent legal counsel and making the Auditor responsible for staffing decisions and procurements; and

WHEREAS, the City Charter amendment provides a more independent budget process for the Auditor's Office but respects City Council's fiduciary responsibilities; and

WHEREAS, the City Charter amendment requiring the Auditor to establish internal controls and arrange for periodic external reviews will provide more transparent and comprehensive accountability than currently exists; and

WHEREAS, the Auditor's Office will remain in the City's overhead model, allowing the Auditor's Office to continue to use the City's subject matter and technical expertise; and

WHEREAS, the Auditor is committed to maintaining consistency with City rules, policies and practices, except where those rules and policies impair the Auditor's independence; and

WHEREAS, in 2001 the City Council, by ordinance, established the Office of the Ombudsman to receive and investigate the public's complaints against City agencies; and

WHEREAS, the Office of the Ombudsman is not explicitly described in the City Charter along with other core duties of the City Auditor; and

WHEREAS, the Office of the Ombudsman provides a unique benefit to the community by safeguarding the rights of individuals and promoting fairness and justice in the provisions of City services; and

WHEREAS, adding the Office of the Ombudsman to the City Charter will protect the independence of its investigations and reflects a best practice; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council will submit a Measure for an Act, amending the City of Portland Charter, Chapters 2 and 4, attached as Exhibit A, to the voters of the City of Portland in Multnomah County, Clackamas County, and Washington County at the May 16, 2017 Special Election in the City of Portland; and

BE IT FURTHER RESOLVED, that the City Council submits the ballot title, which includes the caption, question and summary, to be contained in the May 16, 2017 Special Election Ballot, as shown in Exhibit B; and

BE IT FURTHER RESOLVED, that the City Council directs the Auditor to publish the ballot title, as shown in Exhibit B, in accordance with City Code; and

BE IT FURTHER RESOLVED, that the Auditor may submit an explanatory statement for publication in the voters' pamphlet; and

BE IT FURTHER RESOLVED, that the Auditor is directed to forward to the County Elections Office all material necessary to place this measure on the May 16, 2017 Special Election Ballot;

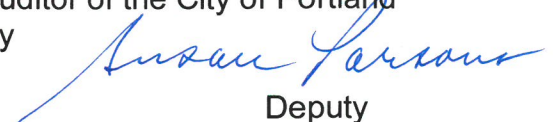
BE IT FURTHER RESOLVED, that the Auditor of the City of Portland is hereby authorized to incur expenses necessary and incident to the conduct of such Special Election; and

BE IT FURTHER RESOLVED, that if the City's voters approve the measure at the May 16, 2017 Special Election, it may be necessary to amend City Code and administrative rules to implement the Charter change.

Adopted by the Council: FEB 01 2017

Auditor Mary Hull Caballero
Prepared by: Margie Sollinger
Date Prepared: January 17, 2017

Mary Hull Caballero
Auditor of the City of Portland
By


Deputy

CHARTER OF THE CITY OF PORTLAND, OREGON

CHAPTER 2

GOVERNMENT

ARTICLE 5. THE AUDITOR.

Section 2-501. Office of the Auditor. To ensure an open and accountable City government, the Office of the Auditor is established. The Office shall be under the supervision and control of the Auditor of the City of Portland.

Section 2-5012. Qualifications and Restrictions on Other City Candidacy. There shall be an Auditor of the City of Portland who shall possess the same qualifications required of a Commissioner, and in addition, shall at the time of filing a declaration of candidacy, or a nominating petition for the office of Auditor be a Certified Public Accountant, Certified Internal Auditor, or Certified Management Accountant and remain certified as such throughout the term of office, if elected. The Auditor shall be elected at the general municipal election and shall serve for a term of four (4) years. If an Auditor shall be elected without such qualifications or shall cease to have the same, the office shall immediately become vacant. The Auditor shall not run for election to any other City office during his or her term. The act of filing for another City office will be the same as a resignation, which shall be effective as of the date of such filing.

Section 2-503. Independent Authority. The Auditor and the Office of the Auditor are administratively independent of the Mayor, City Council, and City departments, bureaus and other administrative agencies in the exercise of the Auditor's duties under this Charter.

Section 2-5024. Salary. Effective January 1, 2019, ~~t~~The salary of the Auditor shall be fixed by the Council the same as a City Commissioner.

Section 2-505. Budget. The Auditor shall prepare a requested budget and any budget cycle reports and submit them to the Mayor and City Council in accordance with state law and on a schedule consistent with the City's budget process. The Auditor's requested budget and budget cycle reports are not subject to review by a City department, bureau or other administrative agency prior to their submission to the Mayor and City Council. After their submission, the Mayor or City Council may consult with a department, bureau or other administrative agency about the Auditor's requested budget and budget cycle reports. The Mayor or City Council may modify the Auditor's budget. In doing so, the Mayor and Council should consider the Auditor's priorities and duties.

Section 2-506. Administrative Powers.

- (a) Administrative Authority. The Auditor may establish such rules for the Office of the Auditor as the Auditor determines necessary to carry out the duties of the Auditor under this Charter. Prior to the adoption, amendment or repeal of any rule, the Auditor shall provide reasonable public notice and opportunity for comment. The Auditor may adopt interim rules without prior notice upon finding that failure to act promptly will result in prejudice to the public interest and shall be effective for a period of not more than 180 days.
- (b) ~~Section 2-503.~~ Deputies and Employees. The Auditor may appoint and remove one chief deputy who shall serve at the pleasure of the Auditor. In addition, the Auditor may deputize other staff in the Auditor's Office to perform duties required by the Council or the Charter. ~~The deputies shall have power to do and perform any act or duty required of the Auditor, and the Auditor shall be responsible for their conduct. The compensation to be paid to all of the Auditor's Office staff shall be determined by Council as part of the City's general compensation plan.~~ The Auditor may appoint employees and establish their compensation. The Auditor may determine the number of employees necessary for the efficient and economic performance of the Office of the Auditor, subject to funding by Council. Employees may perform any act or duty required by the Auditor, and the Auditor shall be responsible for their conduct. The Auditor shall establish and administer human resources policies and rules for the Office of the Auditor that are consistent with City human resource policies and rules, including classification and compensation, except where the Auditor determines in writing that a City human resources policy or rule impairs the Auditor's independence or ability to carry out the Auditor's duties under this Charter. The Auditor's human resource policies and rules shall provide functionally equivalent protections as the Classified Service, including for-cause disciplinary review procedures for all Auditor's Office employees with the exception of the Chief Deputy Auditor, Ombudsman, and Audits Director; employees hired under Section 2-507(a)(6) of this Charter who are designated by Council as at-will; and employees subject to a collective bargaining agreement.
- (c) Internal Controls and Periodic Review. The Auditor shall ensure that the Office of the Auditor has adequate internal controls, complies with all applicable laws, and operates efficiently. The Auditor shall contract periodically, but no less than every four years, with outside service providers to conduct organizational efficiency and compliance assessments, the results of which shall be made public.
- (d) Procurement. The Auditor has all authority granted to a contracting agency under state law to procure or supervise the procurement of goods, services

and personal services the Auditor finds necessary for the proper functioning of the Office. The Auditor shall adopt administrative rules governing the Auditor's procurement practices and procedures that are consistent with City procurement policies and rules, except where the Auditor determines in writing that a City procurement policy or rule impairs the Auditor's independence or ability to carry out the Auditor's duties under this Charter.

- (e) Legal Services. The Auditor may obtain legal advice and representation from the City Attorney or may retain or employ independent legal counsel. If the Auditor retains or employs independent legal counsel, the Office of the Auditor shall be the client and is entitled to the benefits and privileges thereof.
- (f) The Auditor may obtain advice, services and assistance from any City department, bureau, administrative agency, officer, employee or agent in the performance of the Auditor's duties under this Charter or as may be prescribed by ordinance.

Section 2-5047. Duties in General.

- (a) The Auditor shall be ~~is~~ responsible for the following activities:
1. ~~Performance of~~ Performing financial and performance audits of the City, including audits of its boards and commissions, franchises and contracts as provided in Section 2-5058 of this Charter;
 2. ~~Supervision of~~ Supervising City elections as provided by state law and Chapter 3 of this Charter;
 3. ~~Maintenance of~~ Maintaining all official records, including records of the various bureaus, records regarding the City Charter and City Code, and all other records regarding City business;
 4. ~~Provision of~~ Providing official certifications as required by this Charter; and
 5. Investigating the actions of a City department, bureau or other administrative agency, and the official conduct of any City officer, employee or agent as provided in Section 2-509 of this Charter; and
 56. Other duties as prescribed by this Charter or as may be assigned by the Council with the consent of the Auditor, ~~or as prescribed by Charter.~~
- (b) ~~The Auditor may delegate, s~~Subject to the Auditor's supervision, the Auditor may delegate any of these duties to other City officials or may contract with

outside service providers. The Auditor shall remain responsible for the ~~provision of these services~~ performing the duties. The Council shall provide staffing, funding, and facilities for the Auditor to carry out these duties.

Section 2-5058. Audits.

- (a) The Auditor shall conduct financial and performance audits of City government in accordance with generally accepted governmental auditing standards, and shall appoint, coordinate and monitor the annual audit of the City's financial statements by an independent licensed public accountant.
- (b) The Auditor shall appoint and may remove the Audits Director.
- ~~(b)~~(c) City ~~bureau managers~~ departments, bureaus and administrative agencies shall respond to audit recommendations made by the Auditor, through the Commissioner In Charge, to the Auditor, in writing within the time specified by the Auditor. All audit reports and responses shall be made available to the public. The Auditor shall retain workpaper files concerning all audit reports issued for at least six years.
- ~~(c)~~(d) The Auditor shall make the final determination of acceptability and legitimacy of all claims for payment made against the City.
- ~~(d)~~(e) The Auditor may require at any time that any or all demands upon the City for payment of money out of the treasury be presented to the Auditor before it can be paid in order to determine whether the money is legally due and payable, and the fund from which it should be paid. Any ordinance or resolution of the City Council providing for the payment of any demand out of the treasury, whether from public funds or private funds shall be construed as allowing the auditing of the demand by the Auditor, either before payment or as part of the financial audit. The Auditor shall keep an official record of all demands audited by the Auditor showing the number, date, amount, name of the payee, the appropriation if any against which it was drawn and the fund from which it was paid.
- ~~(e)~~(f) Subject to collective bargaining obligations to the City's recognized bargaining units, tThe Auditor shall have timely access to all employees, information and records required to conduct an audit or otherwise perform audit duties, including confidential and legally privileged information and records so long as privilege is not waived as to third parties. The Auditor shall maintain the confidentiality of all confidential and legally privileged information and records except as required by state law or authorized by the City Council.

Section 2-509. Office of the Ombudsman.

- (a)** The Office of the Ombudsman is established within the Office of the Auditor. The Office of the Ombudsman shall be under the supervision and control of the Auditor, who is solely responsible for its operation and management. The purpose of the Ombudsman is to provide an impartial office, readily available to the public, that is authorized to investigate the administrative acts of City departments, bureaus and other administrative agencies, issue reports and recommend changes with the goals of safeguarding the rights of persons and promoting high standards of fairness, competency, efficiency and justice in the provision of City services.
- (b)** The Auditor shall appoint and may remove the Ombudsman.
- (c)** The Office of the Ombudsman shall be guided by generally accepted standards for government ombudsmen offices serving the public.
- (d)** Pursuant to a complaint or on the Ombudsman's own initiative, the Ombudsman is authorized to investigate any administrative act of a City department, bureau or other administrative agency, including the Office of the Auditor; recommend changes to City policy, practice or procedures; and issue public reports.
- (e)** The Ombudsman shall not investigate the acts of an elected official or the official's personal staff, matters currently in litigation, matters subject to collective bargaining agreement grievance procedures, or a discrimination complaint from an employee or applicant for employment.
- (f)** Subject to collective bargaining obligations to the City's recognized bargaining units, the Ombudsman shall have timely access to all employees, information and records required to investigate or otherwise perform the Ombudsman's duties, including confidential and legally privileged information and records so long as privilege is not waived as to third parties. The Ombudsman shall maintain the confidentiality of any confidential or legally privileged information and records except as required by state law or authorized by the City Council.
- (g)** A City department, bureau and agency director or manager shall respond in writing to Ombudsman recommendations within the time specified by the Ombudsman.
- (h)** The powers and duties of the Ombudsman may be further prescribed by ordinance in consultation with the Auditor. The powers and duties of the Ombudsman shall not be exercised in contravention of any collective bargaining obligations of the City.

Section 2-50610. Auditor's Duties as Clerk of the Council. The Auditor shall serve as the Clerk of the Council and shall maintain a journal of its proceedings and all of the public records in connection with the Council's official business. The Auditor shall produce an agenda for all formal meetings of the Council; maintain a record of the Council's actions; and make the records available for public inspection as provided by the State Public Records laws. As Clerk of the Council, the Auditor shall maintain and make available current versions of the City Charter and Code and maintain a record of Charter and Code revisions.

Section 2-50711. Charter Arrangement and Corrections. Subject to Council approval, the Auditor shall have authority to rearrange, renumber, reletter, capitalize, punctuate and divide provisions of this Charter, and to correct clerical errors and omissions and insert captions in accordance with the meaning and intent of the provisions of this Charter, from time to time, and may delete provisions which have become inoperative or any provision ruled invalid by a court of competent jurisdiction. The Auditor may substitute any current title of an officer, bureau, department, or commission in lieu of the title originally appearing in the Charter provision, in accordance with the changes of title or duties subsequently made by law.

Section 2-50812. Deletion of Charter Terms Referring to Masculine or Feminine Gender. Future amendments to the City Charter shall require the use of terms which are neither masculine nor feminine, unless the context of such Charter provision shall require otherwise.

The City Auditor, with approval of the City Attorney, shall be authorized to change the provisions of the City Charter to delete use of terms which are masculine or feminine, unless the context of such Charter provisions shall require otherwise.

Section 2-50913. Official Oaths and Certifications and Custodian of the City Seal.

- (a) The Auditor, and each of the Auditor's deputies, are authorized to administer an oath and certify any acknowledgement authorized or required to be taken by City ordinance, or law of this State, and the Auditor may require any person presenting for settlement an account or claim of any kind against the City to be sworn before him or her regarding such account or claim, and when so sworn, to answer orally or in writing as to any facts relative to the merits or justice of such account or claim.
- (b) The Auditor shall cause his or her signature to be affixed to all warrants, contracts, bonds, and other official documents of the City as affirmation that the document and the action it represents have been duly authorized as required by this Charter and that the signatures of the other City officials on the document are true and duly authorized.
- (c) The Auditor shall be the custodian of the City's seal.

CHARTER OF THE CITY OF PORTLAND, OREGON

CHAPTER 4**CIVIL SERVICE****ARTICLE 2. MERIT SYSTEM.**

Section 4-201. Merit System. Consistent with all applicable federal and state laws, the City Council shall provide by ordinance for the establishment, regulation, and maintenance of a merit system governing personnel policies and rules necessary for effective administration of the employees of the City's offices, bureaus, and agencies, other than the Office of the Auditor, including but not limited to classification and pay plans, recruitment, examinations, disciplinary actions, types of appointments, relationships with employee organizations, and appeals and hearings. Such ordinances shall be consistent with the merit principles in Article 1. Employees in the Office of the Auditor shall be subject to the policies and rules established by the City Auditor under Chapter 2, Article 5 of this Charter.

ARTICLE 3. CLASSIFIED SERVICE.

Section 4-301. Classified Service. The classified service in the City shall consist of all positions in the government of the City except all officers chosen by popular election or by appointment by the City Council, all administrative staff of each City Council member, ~~the Chief Deputy City Auditor,~~ employees in the Office of the Auditor, the deputies of the City Attorney, members of all boards and commissions, and all bureau directors hired after December 31, 2000. In addition, at the recommendation of the person responsible for administration of personnel issues, and with approval of Council by ordinance, employees may be excluded from classified service if they are in a classification with a major role in the formulation of policy that requires the exercise of independent judgment and are hired after the effective date of such ordinance.

The Mayor shall appoint and may remove the Chief of Police.

BALLOT TITLE

CAPTION:

Amends Charter: Increases Auditor's independence from audited agencies, adds duty.

QUESTION:

Shall Charter be amended to increase City Auditor's independence from audited agencies and include Auditor's authority to investigate City agencies?

SUMMARY:

The measure changes Charter provisions regarding the elected City Auditor, which were last updated in 1994. The Auditor's responsibilities have expanded since then to include more oversight functions, such as the ombudsman and lobbyist registration. Currently, the Auditor relies on and sometimes must seek permission from City agencies subject to the Auditor's oversight for legal, personnel, procurement, and budget services.

The measure increases the Auditor's independence by: allowing the Auditor to seek advice from independent legal counsel, giving the Auditor more autonomy over staffing decisions, designating the Auditor as a contracting agency, and authorizing the Auditor to submit budget requests directly to the City Council without review by an audited City agency. The measure requires periodic external reviews of the Auditor's Office.

The measure also establishes in Charter the Auditor's ombudsman function, which conducts impartial investigations into the public's complaints against City agencies. Currently, the ombudsman operates under authority granted in code. It has been in the Auditor's Office since 2001 and is a core component of the Auditor's oversight responsibilities.

Other provisions.

Notice of Measure Election

City

26-189

SEL 802

rev 01/16 ORS 250.035, 250.041, 250.275, 250.285, 254.095, 254.465

Notice

Date of Notice 02/27/2017	Name of City or Cities City of Portland	Date of Election 5/16/2017
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Final Ballot Title The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

Caption 10 words which reasonably identifies the subject of the measure.

See attached

Question 20 words which plainly phrases the chief purpose of the measure.

See attached

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

See attached

RECEIVED
17 FEB 27 PM 2:52
TIM SCOTT
DIRECTOR OF ELECTIONS

Explanatory Statement 500 words that impartially explains the measure and its effect.

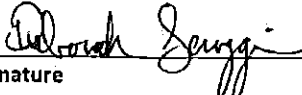
If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:
→ any measure referred by the city governing body; or
→ any initiative or referendum, if required by local ordinance.

Explanatory Statement Attached? Yes No

Authorized City Official Not required to be notarized.

Name Deborah Scroggin	Title City Elections Officer
Mailing Address 1221 SW 4th Ave. Rm 320 Portland, OR 97204	Contact Phone 503-823-3546

By signing this document:
→ I hereby state that I am authorized by the city to submit this Notice of Measure Election; and
→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.


Signature

2/27/17
Date Signed

FEB24 05:14 PM

AUDITOR

37265
EXHIBIT B

BALLOT TITLE

CAPTION:

Amends Charter: Increases Auditor's independence from audited agencies, adds duty.

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The measure increases the Auditor's independence by: allowing the Auditor to seek advice from independent legal counsel, giving the Auditor more autonomy over staffing decisions, designating the Auditor as a contracting agency, and authorizing the Auditor to submit budget requests directly to the City Council without review by an audited City agency. The measure requires periodic external reviews of the Auditor's Office.

The measure also establishes in Charter the Auditor's ombudsman function, which conducts impartial investigations into the public's complaints against City agencies. Currently, the ombudsman operates under authority granted in code. It has been in the Auditor's Office since 2001 and is a core component of the Auditor's oversight responsibilities.

Other provisions.

Measure Explanatory Statement for County Voters' Pamphlet

Important! Please read all instructions before completing this form. This form is to be used when filing a 'Measure Explanatory Statement for County Voters' Pamphlet' with your County Elections office. If a local government is located in more than one county, the county clerk of the county in which the city hall of the city or the administrative office of the local government is located shall be the filing officer for the 'Measure Explanatory Statement for County Voters' Pamphlet'.

Filing Information

Election: Primary 20____ General 20____ Special May 16, 2017 Measure # 26 - 189

Ballot Title Caption

Amends Charter: Increases Auditor's independence from audited agencies, adds duty.

Name of Person responsible for content of 'Explanatory Statement' (as it should appear in the Voters' Pamphlet):

Portland City Auditor Mary Hull Caballero

Name of Jurisdiction/Organization Person is authorized to represent (as it should appear in the Voters' Pamphlet):

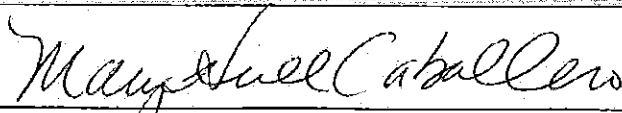
City of Portland

CONTACT INFORMATION

Phone: Cell: (503) 388-1251 Work: _____ Home: _____

E-Mail: PDXcharter2017@gmail.com

SIGNATURE



Signature of person responsible for content of 'Explanatory Statement'

RECEIVED
17 FEB 27 PM 2:53
DMS
DIRECTOR OF ELECTIONS

MEASURE EXPLANATORY STATEMENT

See attached for 'Measure Explanatory Statement' (500 word/number MAX).

For Office Use only:

County: Multnomah

Signed? Yes No

'Measure Explanatory Statement' attached?

Yes No

Intake Staff Initials:



Word Count (500 max):

Digital copy? Yes No

Review Staff Initials:



Explanatory Statement

Portland's elected City Auditor is responsible for ensuring an open and accountable City government. This measure would amend the City's Charter to increase the independence of the Auditor from the City agencies the Auditor is responsible for auditing and investigating.

Background

The Auditor's responsibilities have expanded over the last several decades to include more oversight functions, such as performance audits, investigations of the public's complaints against City agencies, and enforcement of the City's lobbyist registration program. Charter provisions related to the City Auditor were last updated in 1994.

Currently, the City Auditor relies on and sometimes must seek permission from City agencies subject to the Auditor's oversight for legal, personnel, procurement, and budget services. This arrangement may lead to the perception that there is a conflict of interest and that the City Auditor's audits and investigations are not completely objective or independent.

The City Auditor proposed this measure after researching other jurisdictions and collecting information from a variety of sources. The City Council unanimously voted to refer the measure to the ballot.

What does the measure do?

The measure increases the Auditor's independence from City agencies it is responsible for auditing and investigating by:

- Allowing the Auditor to seek advice from independent legal counsel;
- Giving the Auditor more autonomy over staffing decisions, such as hiring, compensation and assignment of work (subject to collective bargaining obligations);
- Designating the Auditor's Office as a contracting agency so that it may conduct procurements without going through a City agency; and
- Authorizing the Auditor to submit budget requests directly to the City Council.

The measure contains checks on the Auditor's increased independence by:

- Requiring periodic external reviews of the Auditor's Office, the results of which will be made public;
- Requiring the Auditor to notify the public and provide an opportunity to comment before adopting or changing any administrative rules;

- Requiring the Auditor to adopt policies and rules consistent with the City's workplace and procurement policies, except where the City's policies impair the Auditor's independence; and
- Continuing the City Council's role of monitoring and setting the Auditor's budget.

The measure also adds the Auditor's ombudsman function to the list of the Auditor's duties under Charter. The ombudsman has been in the Auditor's Office since 2001 and is responsible for conducting impartial investigations into the public's complaints against City agencies. Currently, the ombudsman operates under authority granted in code.

The measure establishes the ombudsman function in Charter by:

- Providing in Charter the basic duties and powers of the ombudsman to investigate City agencies, including the power to access any information and records required to investigate a complaint; and
- Requiring a vote of the people to remove the ombudsman function, rather than a vote of the City Council.

Submitted by:

Auditor Mary Hull Caballero
City of Portland

Explanatory Statement

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- Allowing the Auditor to seek advice from independent legal counsel;
- Giving the Auditor more autonomy over staffing decisions, such as hiring, compensation and assignment of work (subject to collective bargaining obligations);
- Designating the Auditor's Office as a contracting agency so that it may conduct procurements without going through a City agency; and
- Authorizing the Auditor to submit budget requests directly to the City Council.

The measure contains checks on the Auditor's increased independence by:

- Requiring periodic external reviews of the Auditor's Office, the results of which will be made public;
- Requiring the Auditor to notify the public and provide an opportunity to comment before adopting or changing any administrative rules;

- Requiring the Auditor to adopt policies and rules consistent with the City’s workplace and procurement policies, except where the City’s policies impair the Auditor’s independence; and
- Continuing the City Council’s role of monitoring and setting the Auditor’s budget.

The measure also adds the Auditor’s ombudsman function to the list of the Auditor’s duties under Charter. The ombudsman has been in the Auditor’s Office since 2001 and is responsible for conducting impartial investigations into the public’s complaints against City agencies. Currently, the ombudsman operates under authority granted in code.

The measure establishes the ombudsman function in Charter by:

- Providing in Charter the basic duties and powers of the ombudsman to investigate City agencies, including the power to access any information and records required to investigate a complaint; and
- Requiring a vote of the people to remove the ombudsman function, rather than a vote of the City Council.

Submitted by:

Auditor Mary Hull Caballero
City of Portland

FEB 21 05:41 PM

AUDITOR

37265
EXHIBIT B

BALLOT TITLE

CAPTION:

Amends Charter: Increases Auditor's independence from audited agencies, adds duty.

QUESTION:

Shall Charter be amended to increase City Auditor's independence from audited agencies and include Auditor's authority to investigate City agencies?

SUMMARY:

The measure changes Charter provisions regarding the elected City Auditor, which were last updated in 1994. The Auditor's responsibilities have expanded since then to include more oversight functions, such as the ombudsman and lobbyist registration. Currently, the Auditor relies on and sometimes must seek permission from City agencies subject to the Auditor's oversight for legal, personnel, procurement, and budget services.

The measure increases the Auditor's independence by: allowing the Auditor to seek advice from independent legal counsel, giving the Auditor more autonomy over staffing decisions, designating the Auditor as a contracting agency, and authorizing the Auditor to submit budget requests directly to the City Council without review by an audited City agency. The measure requires periodic external reviews of the Auditor's Office.

The measure also establishes in Charter the Auditor's ombudsman function, which conducts impartial investigations into the public's complaints against City agencies. Currently, the ombudsman operates under authority granted in code. It has been in the Auditor's Office since 2001 and is a core component of the Auditor's oversight responsibilities.

Other provisions.

Measure 26-194: Transient Lodgings Tax Charter Amendment

RESOLUTION No. 37268

Refer amendments to the City of Portland Charter, Chapter 7, Finance, to the May 16, 2017 Special Election Ballot to authorize Council to interpret and administer provisions of the Transient Lodgings Tax (Resolution)

WHEREAS, the City of Portland has Charter authority by ordinance to impose and levy a tax on lodging at hotels, motels, apartment or lodging houses, mobile homes or trailer park or court, or any other place in the City where space designed or intended for lodging occupancy is rented by any person or persons for any period less than monthly; and

WHEREAS, the City of Portland passed ordinances beginning in the early 1970s to exercise this tax authority on lodging that is commonly referred to as “transient lodging”; and

WHEREAS, when the Charter was written, renting a room at a “hotel” was done directly with the owner/operator of the hotel by telephone or in person at the location; and

WHEREAS, both technology and time have changed how transient lodging businesses are operated, the types of structures and situations that offer transient lodgings and how persons wishing to rent transient lodgings can obtain and pay for those lodgings; and

WHEREAS, both reservations and payments for transient lodgings are no longer required to be done directly with the owner or traditional operator of the space intended for lodging occupancy as in the past now that there are dozens of online companies that advertise a variety of hotel types and locations and are able to accept both room reservations and deposits or full payments for a variety of lodging options; and

WHEREAS, Portland’s City Council has exercised its Charter authority in the past by passing ordinances that define terms for administration of the transient lodgings tax; and

WHEREAS, since time, technology and business models have changed over the last 50 years, it is appropriate to clarify City Council’s authority to update Charter definitions, through legislation, to reflect these changes by adopting new or expanded terms through the City’s ordinance process.

NOW, THEREFORE, BE IT RESOLVED, that the City Council will submit a Measure for an Act, amending the City of Portland Charter, Section 7-113, Transient Lodging Tax, attached as Exhibit A, to the voters of the City of Portland at the May 16, 2017 Special Election in the City of Portland, Multnomah County, Clackamas County and Washington County; and

BE IT FURTHER RESOLVED, that the City Council submits the question, ballot title and summary to be contained in the May 16, 2017 Special Election, as contained in Exhibit B; and

BE IT FURTHER RESOLVED, that the City Council directs the Auditor of the City of Portland to publish the ballot title, shown in Exhibit B, in accordance with City Code; and

BE IT FURTHER RESOLVED, that the sponsoring elected official may submit an explanatory

statement to the Auditor of the City of Portland for publication in the voters' pamphlet; and

BE IT FURTHER RESOLVED, that the Auditor of the City of Portland is directed to forward to the County Elections Office all material necessary to place this measure on the May 16, 2017 Special Election Ballot; and

BE IT FURTHER RESOLVED, that the Auditor of the City of Portland is hereby authorized to incur expenses necessary and incident to the conduct of such Special Election.

Adopted by the Council: FEB 15 2017

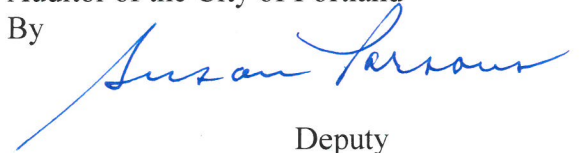
Commissioner Fish

Prepared by: Terri Williams, Ken McGair

Date Prepared: February 7, 2016

Mary Hull Caballero
Auditor of the City of Portland

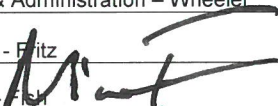





By

A handwritten signature in blue ink, appearing to read "Susan Parsons", is written over the word "By".

Deputy

Agenda No.
RESOLUTION NO. 37268
 Title

Refer amendments to the City of Portland Charter, Chapter 7, Finance, to the May 16, 2017 Special Election Ballot, (Resolution)
to authorize Council to interpret and administer provisions of the Transient Lodgings Tax

<p>INTRODUCED BY Commissioner/Auditor: FISH</p>	<p>CLERK USE: DATE FILED <u>FEB 07 2017</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance & Administration – Wheeler</p> <p>Position 1/Utilities - Fritz </p> <p>Position 2/Works - Fish </p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Eudaly</p>	<p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By:  Deputy</p>
<p>BUREAU APPROVAL</p> <p>Bureau: Bureau of Revenue & Financial Services Bureau Head: Tom Ringhart, CAO Ken Rust, CFO  Thomas Lannon, Revenue Director </p> <p>Prepared by: Terri Williams Date Prepared: 2/7/2017</p>	<p>ACTION TAKEN:</p>
<p>Impact Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances</p>	
<p>City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan </p>	
<p>Council Meeting Date 2/15/2017</p>	

AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input checked="" type="checkbox"/></p> <p>Total amount of time needed: 15 minutes (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz <input checked="" type="checkbox"/>	
2. Fish	2. Fish <input checked="" type="checkbox"/>	
3. Saltzman	3. Saltzman <input checked="" type="checkbox"/>	
4. Eudaly	4. Eudaly <input checked="" type="checkbox"/>	
Wheeler	Wheeler <input checked="" type="checkbox"/>	

AN ACT

A Measure, amending the City of Portland Charter, Chapter 7-113, Transient Lodgings Tax.

BE IT ENACTED BY THE PEOPLE OF THE
CITY OF PORTLAND, OREGON

Section 1. Chapter 7-113 of the Charter of the City of Portland, Oregon is amended to read as follows:

1. The Council may by ordinance impose and levy a tax not exceeding five percent on gross amounts of money, credit or other things of value paid to or received for lodging by the owner or operator, of any hotel, motel, apartment or lodging house, mobile home or trailer park or court, or any other place in the City where space designed or intended for lodging occupancy is rented by any person or persons, for any period less than monthly. This tax shall not apply to hospitals, convalescent or nursing homes, or public institutions, or permanent occupancy as defined by ordinance. Minimum rentals to which the tax shall apply may be fixed by ordinance. The tax imposed shall be collected by the owner or operator, of the rental space in addition to the rental charge, at the time of payment of rent. City revenues from such taxes shall be credited to the General Fund of the City and used for general City purposes, as the Council may find appropriate, which may include provision for and the acquisition, construction, operation and maintenance of recreational, cultural, convention or tourist-related facilities or services.
2. In addition to any other tax authorized by this Section of the Charter the Council shall by ordinance impose and levy a tax of one percent on gross amounts of money, credit or other things of value paid to or received for lodging by the owner or operator, of any hotel, motel, apartment or lodging house, mobile home or trailer park or court, or any other place in the City where space designed or intended for lodging occupancy is rented by any person or persons, for any period less than monthly. This tax shall not apply to hospitals, convalescent or nursing homes, public institutions, or permanent occupancy as defined by ordinance. Minimum rentals to which the tax shall apply may be fixed by ordinance. The tax imposed shall be collected by the owner or operator, of the rental space in addition to the rental charge, at the time of payment of rent. City revenues from such one percent tax increase, after providing for the cost of administration and any refunds or credits authorized by ordinance, shall be used exclusively as provided hereinafter for the promotion, solicitation, procurement, and service of convention business and tourism in the City. Notwithstanding any other provision of this Charter, the City from time to time for periods not to exceed five (5) years, subject to annual review, shall negotiate contracts with a non-profit corporation or with non-profit corporations

organized under the laws of Oregon, whose primary purpose during the term of the contract or contracts is the promotion, solicitation, procurement and service of convention business and tourism in the City, for that corporation or corporations to expend revenues collected pursuant to this subsection for the purposes set forth in the subsection. In entering into the contract or contracts, the Council shall consider the recommendations of the persons subject to the tax imposed by this subsection. The Council shall in its sole discretion determine the portion of such revenues to be allocated between convention business and tourism. [Add. Dec. 14, 1971; Am. Nov. 7, 1978; am. May 18, 1994.]

3. In addition to any other authority granted under this Charter, the City Council shall have power and authority to provide for the administration of, and interpretation of the terms in, this Section 7-113 by ordinance as legislative action, as the Council may deem necessary and appropriate.

BALLOT TITLE (10 words)

AMENDS CHARTER: AUTHORIZES CITY COUNCIL TO INTERPRET TRANSIENT LODGINGS TAX.

QUESTION: (17 words)

Shall City Council be authorized to interpret and administer provisions of the Transient Lodgings Tax by ordinance?

SUMMARY: (65 words)

City voters have previously authorized a tax on rentals of any place in the City of Portland of space designed or intended for lodging of less than 31 days, commonly called the Transient Lodgings Tax. This measure amends the City Charter Section 7-113 to provide the City Council authority to administer and interpret provisions of the City's Transient Lodgings Tax, by ordinance as legislative action.

Notice of Measure Election

SEL 802

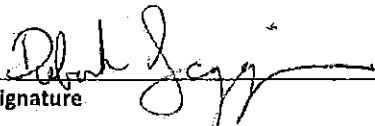
City

26 194

rev 01/16 ORS 250.035, 250.041, 250.275, 250.285, 254.095, 254.465

Notice		
Date of Notice 3/16/2017	Name of City or Cities City of Portland	Date of Election May 16, 2017
Final Ballot Title The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.		
Caption 10 words which reasonably identifies the subject of the measure. See attached		
Question 20 words which plainly phrases the chief purpose of the measure. See attached		
Summary 175 words which concisely and impartially summarizes the measure and its major effect. See attached		
Explanatory Statement 500 words that impartially explains the measure and its effect. If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for: → any measure referred by the city governing body; or → any initiative or referendum, if required by local ordinance.		
		Explanatory Statement Attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Authorized City Official Not required to be notarized.		
Name Deborah Scroggin	Title City Elections Officer	
Mailing Address 1221 SW 4th Ave, Rm 310 Portland OR 97204	Contact Phone 503-823-3546	
<i>By signing this document:</i> → I hereby state that I am authorized by the city to submit this Notice of Measure Election; and → I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.		

RECEIVED
 17 MAR 16 PM 3:42
 TIM SCOTT
 DIRECTOR OF ELECTIONS


Signature

3/16/2017
Date Signed

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

SHELBY BENNETT,

Petitioner

v.

CITY COUNCIL OF THE CITY OF
PORTLAND,

Respondent.

Case No. 17CV08736

GENERAL JUDGMENT

This matter came before the Court on March 14, 2017, on a "Petition for Review of Ballot Title" filed by Shelby Bennett pursuant to ORS 250.296 and Section 2.04.120 C. of the Portland City Code directed to the Ballot Title prepared by respondent following adoption of City Council Resolution No. 37268 on February 15, 2017. Petitioner Shelby Bennett appeared by and through her attorneys, Rachel C. Lee and Per A. Ramfjord. Respondent City Council for the City of Portland, Oregon, appeared through their attorneys Linly F. Rees and Kenneth A. McGair, Sr. Deputy City Attorneys. The Court reviewed the memoranda filed by the parties and heard statements of counsel. Now, being fully advised,

IT IS HEREBY ORDERED that the following ballot title adopted following City Council Resolution No. 37268 is hereby certified to the elections officer for the City of Portland:

CAPTION1: AMENDS CHARTER: AUTHORIZES
COUNCIL TO CHANGE SCOPE OF TRANSIENT
LODGINGS TAX OBLIGATIONS

QUESTION: Shall City Council be authorized to impose
Transient Lodgings Tax obligations on online businesses and
others without further voter approval?

1 The court does not count the words "Amends Charter" in the 10-word limit for the caption, consistent with ORS 250.035(2)(a) ("Amends Constitution" not included in word limit for caption for measure that amends the Oregon Constitution), and *Portland Police Assn. v. Civil Service Board*, 292 Or 433, 440 (1982) ("A city's charter is, in effect, the city constitution").

SUMMARY: In City Charter Section 7-113, adopted in 1971, city voters authorized City Council to impose a Transient Lodgings Tax on amounts paid "for lodging" in hotels or other short-term rental spaces. The "owner or operator" of rental space is required to collect and remit this tax to the City. Recently, a federal court ruled that Charter Section 7-113 does not authorize the City to collect the Transient Lodgings Tax from a business that operates websites that connect tourists and other renters with homeowners and others seeking to make property available for short-term rentals. By authorizing new definitions and interpretations of Section 7-113, this measure authorizes Council to change the scope of Transient Lodgings Tax obligations and, among other things, (1) impose the tax obligations on businesses that facilitate short-term rentals but may not fit the 1971 definition of "owner or operator"; and (2) tax payments that may not fit the 1971 definition of payments "for lodging." Council could make such changes by ordinance without any additional voter approval. This measure does not change tax rates.

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IT IS FURTHER ADJUDGED that no costs or disbursements or attorneys' fees will be assessed against any party.

IT IS FURTHER ADJUDGED that this General Judgment fully and finally resolves all requests for relief by Petitioner in this action.

Presented by:

/s/ Kenneth A. McGair

Kenneth A. McGair, OSB #990148

Measure Explanatory Statement for County Voters' Pamphlet

Important! Please read all instructions before completing this form. This form is to be used when filing a 'Measure Explanatory Statement for County Voters' Pamphlet' with your County Elections office. If a local government is located in more than one county, the county clerk of the county in which the city hall of the city or the administrative office of the local government is located shall be the filing officer for the 'Measure Explanatory Statement for County Voters' Pamphlet'.

Filing Information

Election: Primary 20____ General 20____ Special May 16, 2017 Measure # 26 - 194

Ballot Title Caption

AMENDS CHARTER: AUTHORIZES COUNCIL TO CHANGE SCOPE OF TRANSIENT LODGINGS TAX OBLIGATIONS

Name of Person responsible for content of 'Explanatory Statement' (as it should appear in the Voters' Pamphlet):

Nick Fish

Name of Jurisdiction/Organization Person is authorized to represent (as it should appear in the Voters' Pamphlet):

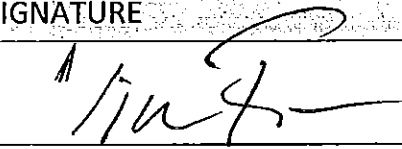
City of Portland

CONTACT INFORMATION

Phone: Cell: _____ Work: (503) 823-3589 Home: _____

E-Mail: NickFish@portlandoregon.gov

SIGNATURE



Signature of person responsible for content of 'Explanatory Statement'

RECEIVED
17 MAR 16 PM 3:43
TIM SCOTT
DIRECTOR OF ELECTIONS
Date 3/16/17

MEASURE EXPLANATORY STATEMENT

See attached for 'Measure Explanatory Statement' (500 word/number MAX).

For Office Use only:

County: _____

Signed? Yes No

'Measure Explanatory Statement' attached?

Yes No

Intake Staff Initials: _____

Word Count (500 max): _____

Digital copy? Yes No

Review Staff Initials: _____

Explanatory Statement (up to 500 words)

The "Transient Lodgings Tax" is the tax a guest pays when they stay in a hotel, motel, vacation rental or any other short-term rental in the City of Portland.

This measure amends Portland's City Charter (Section 7-113 Transient Lodging Tax) to clarify that City Council, by adopting an ordinance, can ensure that transient lodging taxes are collected and remitted from all short-term lodging rentals in the City of Portland.

City Charter Section 7-113 was enacted in 1971 to impose a Transient Lodgings Tax on amounts paid "for lodging" to the "owner or operator" of any hotel or other space in Portland that is intended for short-term lodging. At that time, the only way to make a reservation at a lodging establishment was by phone or in person and the types of spaces designed for short-term lodging did not include the technologies available today.

A federal court recently ruled that the City Charter does not currently authorize the City Council to require online businesses to collect and remit Transient Lodgings Taxes because they are not the "owner or operator" of lodging space, as those terms were understood in 1971. And the Charter does not apply to new technologies that help travelers book and pay for lodging.

Technology changes over the past 45 years have increased the number of ways a guest can reserve and pay for a hotel, motel or other short-term rental. Additionally, the types of lodging structures and locations that now offer transient lodging occupancy have changed over this time period. Both reservations and payments for transient lodging are no longer required to be done directly with the owner or traditional operator of the hotel or space intended for lodging occupancy as in the past. Today, there are dozens of online companies that advertise a variety of lodging types and locations and are able to accept both room reservations and deposits or full payments for a variety of lodging options. Some online businesses collect and remit the Transient Lodgings Tax. Others do not.

Adding this provision allows the City Council, through legislative action following a public hearing, to define terms to match the current ways transient lodging occupancy is offered and reserved. It would ensure that transient lodging taxes are properly collected from guests in the same manner for all types of transient lodging rentals.

The Measure does not increase the tax rates. Revenues from the city's 5% Transient Lodgings Tax are credited to the city's General Fund and used for fire, police and other basic City services. Additionally, revenues from a 1% Transient Lodgings Tax are credited to a non-profit corporation dedicated to the promotion, solicitation, procurement, and service of convention business and tourism in the City.

Submitted by:

Nick Fish

Portland City Council

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

SHELBY BENNETT,
Petitioner

Case No. 17CV08736

GENERAL JUDGMENT

v.

CITY COUNCIL OF THE CITY OF
PORTLAND,
Respondent.

This matter came before the Court on March 14, 2017, on a “Petition for Review of Ballot Title” filed by Shelby Bennett pursuant to ORS 250.296 and Section 2.04.120 C. of the Portland City Code directed to the Ballot Title prepared by respondent following adoption of City Council Resolution No. 37268 on February 15, 2017. Petitioner Shelby Bennett appeared by and through her attorneys, Rachel C. Lee and Per A. Ramfjord. Respondent City Council for the City of Portland, Oregon, appeared through their attorneys Linly F. Rees and Kenneth A. McGair, Sr. Deputy City Attorneys. The Court reviewed the memoranda filed by the parties and heard statements of counsel. Now, being fully advised,

IT IS HEREBY ORDERED that the following ballot title adopted following City Council Resolution No. 37268 is hereby certified to the elections officer for the City of Portland:

1 **CAPTION¹: AMENDS CHARTER: AUTHORIZES**
2 **COUNCIL TO CHANGE SCOPE OF TRANSIENT**
3 **LODGINGS TAX OBLIGATIONS**

4 **QUESTION:** Shall City Council be authorized to impose
5 Transient Lodgings Tax obligations on online businesses and
6 others without further voter approval?

7 **SUMMARY:** In City Charter Section 7-113, adopted in 1971,
8 city voters authorized City Council to impose a Transient
9 Lodgings Tax on amounts paid “for lodging” in hotels or other
10 short-term rental spaces. The “owner or operator” of rental
11 space is required to collect and remit this tax to the City.
12 Recently, a federal court ruled that Charter Section 7-113 does
13 not authorize the City to collect the Transient Lodgings Tax
14 from a business that operates websites that connect tourists and
15 other renters with homeowners and others seeking to make
16 property available for short-term rentals. By authorizing new
17 definitions and interpretations of Section 7-113, this measure
18 authorizes Council to change the scope of Transient Lodgings
19 Tax obligations and, among other things, (1) impose the tax
20 obligations on businesses that facilitate short-term rentals but
21 may not fit the 1971 definition of “owner or operator”; and (2)
22 tax payments that may not fit the 1971 definition of payments
23 “for lodging.” Council could make such changes by ordinance
24 without any additional voter approval. This measure does not
25 change tax rates.

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22 ///

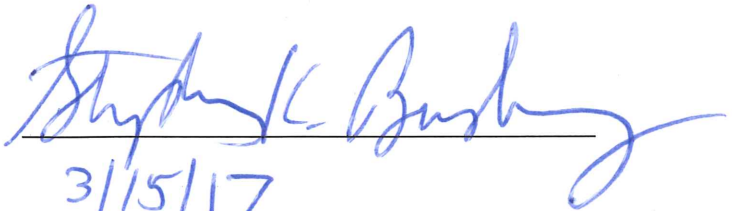
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25 ¹ The court does not count the words “Amends Charter” in the 10-word limit for the caption, consistent with
26 ORS 250.035(2)(a) (“Amends Constitution” not included in word limit for caption for measure that amends the
 Oregon Constitution), and *Portland Police Assn. v. Civil Service Board*, 292 Or 433, 440 (1982) (“A city’s
 charter is, in effect, the city constitution”).

1 IT IS FURTHER ADJUDGED that no costs or disbursements or attorneys' fees will
2 be assessed against any party.

3 IT IS FURTHER ADJUDGED that this General Judgment fully and finally resolves
4 all requests for relief by Petitioner in this action.

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8 3/15/17
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10 Presented by:

11 /s/ Kenneth A. McGair
12 Kenneth A. McGair, OSB #990148
13 Sr. Deputy City Attorney
14 Email: ken.mcgar@portlandoregon.gov

15 /s/ Linly F. Rees
16 Linly F. Rees, OSB #945098
17 Sr. Deputy City Attorney
18 Email: linly.rees@portlandoregon.gov
19 Of Attorneys for Respondent
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21
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1 **CERTIFICATE OF COMPLIANCE WITH UTCR 5.100**

2 I hereby certify that I served the foregoing GENERAL JUDGMENT on:

3 Rachel C. Lee
4 Stoel Rives LLP
5 760 SW Ninth Avenue, Suite 3000
6 Portland, OR 97205

7 Per A. Ramfjord
8 Stoel Rives LLP
9 760 SW Ninth Avenue, Suite 3000
10 Portland, OR 97205

11 *Attorneys for Petitioner*

12 on March 15, 2017, which is less than 3 days prior to submission to the court for a represented
13 party or which is less than 7 days prior to submission to the court for a self-represented party
14 and was accompanied by notice of the time period to object, by causing a full, true and correct
15 copy thereof, addressed to the last-known address (or fax number) of said attorney, to be sent by
16 the following method(s):

- 17 **Electronic service** - UTCR 21.100 (1)(a)
18 **Mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal Service.
19 **E-mail** (courtesy copy)
20 **Hand delivery** by **Facsimile transmission**.

21 This proposed order or judgment is ready for judicial signature because:

- 22 1. Each opposing party affected by this order or judgment has stipulated to the order
23 or judgment, as shown by each opposing party's signature on the document being submitted.
24 2. Each opposing party affected by this order or judgment has approved the order or
25 judgment, as shown by signature on the document being submitted or by written confirmation of
26 approval sent to me or by an accompanying stipulation by opposing counsel that no objection
exists as to the judgment or order.
3. I have served a copy of this order or judgment on all parties entitled to service and:
a. No objection has been served on me.
b. I received objections that I could not resolve with the opposing party
despite reasonable efforts to do so. I have filed a copy of the objections I
received and indicated which objections remain unresolved.
c. After conferring about objections, Rachel C. Lee and Per A. Ramfjord,
Attorneys for Petitioner, agreed to independently file any remaining
objections.

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- 4. The relief sought is against an opposing party who has been found in default.
- 5. An order of default is being requested with this proposed judgment.
- 6. Service is not required pursuant to UTCR 5.100(3), or by statute, rule, or otherwise.
- 7. This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by UTCR 5.100(4).

DATED: March 15, 2017

/s/ Linly F. Rees
 LINLY F. REES, OSB No. 945098
 Senior Deputy City Attorney
 Email: linly.rees@portlandoregon.gov
 Of Attorneys for Respondent

1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that I served the foregoing CERTIFICATE OF SERVICE on:

4 Rachel C. Lee
5 Stoel Rives LLP
6 760 SW Ninth Avenue, Suite 3000
7 Portland, OR 97205

8 Per A. Ramfjord
9 Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Attorneys for Petitioner

10 on March 15, 2017, by causing a full, true and correct copy thereof, addressed to the last-known
11 address (or fax number) of said attorney, to be sent by the following method(s):

- 12 **Electronic service** - UTCR 21.100 (1)(a)
13 **Mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal Service.
14 **E-mail** (courtesy copy)
 Hand delivery by **Facsimile transmission**.

15 DATED: March 15, 2017

16
17
18 /s/ Linly F. Rees
19 LINLY F. REES OSB #945098
20 Senior Deputy City Attorney
21 Email: linly.rees@portlandoregon.gov
22 Fax: (503) 823-3089
23 Of Attorneys for Respondent
24
25
26

Explanatory Statement (up to 500 words)

The “Transient Lodgings Tax” is the tax a guest pays when they stay in a hotel, motel, vacation rental or any other short-term rental in the City of Portland.

This measure amends Portland’s City Charter (Section 7-113 Transient Lodging Tax) to clarify that City Council, by adopting an ordinance, can ensure that transient lodging taxes are collected and remitted from all short-term lodging rentals in the City of Portland.

City Charter Section 7-113 was enacted in 1971 to impose a Transient Lodgings Tax on amounts paid “for lodging” to the “owner or operator” of any hotel or other space in Portland that is intended for short-term lodging. At that time, the only way to make a reservation at a lodging establishment was by phone or in person and the types of spaces designed for short-term lodging did not include the technologies available today.

A federal court recently ruled that the City Charter does not currently authorize the City Council to require online businesses to collect and remit Transient Lodgings Taxes because they are not the “owner or operator” of lodging space, as those terms were understood in 1971. And, the Charter does not apply to new technologies that help travelers book and pay for lodging.

Technology changes over the past 45 years have increased the number of ways a guest can reserve and pay for a hotel, motel or other short-term rental. Additionally, the types of lodging structures and locations that now offer transient lodging occupancy have changed over this time period. Both reservations and payments for transient lodging are no longer required to be done directly with the owner or traditional operator of the hotel or space intended for lodging occupancy as in the past. Today, there are dozens of online companies that advertise a variety of lodging types and locations and are able to accept both room reservations and deposits or full payments for a variety of lodging options. Some online businesses collect and remit the Transient Lodgings Tax. Others do not.

Adding this provision allows the City Council, through legislative action following a public hearing, to define terms to match the current ways transient lodging occupancy is offered and reserved. It would ensure that transient lodging taxes are properly collected from guests in the same manner for all types of transient lodging rentals.

The Measure does not increase the tax rates. Revenues from the city’s 5% Transient Lodgings Tax are credited to the city’s General Fund and used for fire, police and other basic City services. Additionally, revenues from a 1% Transient Lodgings Tax are credited to a non-profit corporation dedicated to the promotion, solicitation, procurement, and service of convention business and tourism in the City.

Submitted by:

Nick Fish

Portland City Council

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

SHELBY BENNETT, an individual,

Petitioner,

v.

CITY COUNCIL OF THE CITY OF
PORTLAND,

Respondent.

No.

NOTICE TO CITY ELECTIONS
OFFICER OF PETITION FOR REVIEW
OF BALLOT TITLE

Pursuant to ORS 250.296(2), Petitioner hereby gives notice in writing to the elections officer of the City of Portland that on February 27, 2017, Petitioner filed the attached Petition for Review of Ballot Title with the Multnomah County Circuit Court.

DATED: February 27, 2017.

STOEL RIVES LLP



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Attorneys for Petitioner

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

SHELBY BENNETT, an individual,
Petitioner,
v.
CITY COUNCIL OF THE CITY OF
PORTLAND,
Respondent.

No. _____
PETITION FOR REVIEW OF BALLOT
TITLE
Expedited consideration requested per
ORS 250.296(3)
Not Subject to Mandatory Arbitration
Fee Authority: ORS 21.135(1), (2)(a)

NATURE OF ACTION

1.

This is a petition for review of the ballot title prepared by Respondent City Council of the City of Portland (“City Council”) for a proposed amendment to Section 7-113 of the City of Portland’s Charter (“Transient Lodgings Tax Charter Amendment”). This petition for review (“Petition”) is brought pursuant to ORS 250.296(1) and Section 2.04.120 C of the Portland City Code and is supported by a memorandum of law and the Declaration of Rachel C. Lee in Support of Petition for Review of Ballot Title and exhibits thereto filed concurrently herewith.

PARTIES

2.

Petitioner Shelby Bennett is an Oregon elector who is registered to vote in Multnomah County and who resides within the city limits of the City of Portland (“City”).
///

1 Petitioner is dissatisfied with the ballot title prepared by Respondent for the Transient
2 Lodgings Tax Charter Amendment and seeks a different ballot title.

3 3.

4 Respondent City Council is the governing body of the City. Respondent City Council
5 prepared the ballot title for the Transient Lodgings Tax Charter Amendment.

6 **JURISDICTION**

7 4.

8 This Court has jurisdiction to review the ballot title for the Transient Lodgings Tax
9 Charter Amendment pursuant to ORS 250.296(1).

10 **FACTS**

11 5.

12 Section 7-113 of the City’s charter (“Charter”) authorizes the City Council to require
13 the “*owner or operator*” of a hotel or other lodging space to collect a tax based on a
14 percentage of the amount paid to or received by the owner or operator of the rental space “*for*
15 *lodging.*” (Emphases added.) Section 7-113 of the Charter provides:

16 “1. The Council may by ordinance impose and levy a
17 tax not exceeding five percent on gross amounts of money,
18 credit or other things of value *paid to or received for lodging*
19 *by the owner or operator* of any hotel, motel, apartment or
20 lodging house, mobile home or trailer park or court, or any
21 other place in the City where space designed or intended for
22 lodging occupancy is rented by any person or persons, for any
23 period less than monthly. * * * *The tax imposed shall be*
24 *collected by the owner or operator of the rental space* in
25 addition to the rental charge, at the time of payment of rent.
26 * * *

“2. In addition to any other tax authorized by this
Section of the Charter the Council shall by ordinance impose
and levy a tax of one percent on gross amounts of money,
credit or other things of value *paid to or received for lodging*
by the owner or operator of any hotel, motel, apartment or
lodging house, mobile home or trailer park or court, or any
other place in the City where space designed or intended for
lodging occupancy is rented by any person or persons, for any

1 period less than monthly. * * * *The tax imposed shall be*
2 *collected by the owner or operator of the rental space in*
3 *addition to the rental charge, at the time of payment of rent.*
4 * * *”

5 (Emphases added.) A true and correct copy of Charter Section 7-113, with
6 relevant portions highlighted, is attached as Exhibit 1 to this Petition and is
7 incorporated by reference herein.

8 6.

9 The voters approved subsection (1) of Charter Section 7-113 in 1971. In January
10 1972, the City Council imposed a tax on the rent charged to travelers by hotel operators. The
11 City Council defined “operator” as either the proprietor of the hotel or a managing agent that
12 performs the proprietor’s functions. The City Council defined the taxable “rent” as the
13 consideration charged for occupancy of space in a hotel. A true and correct copy of City
14 Ordinance No. 133899 (Jan. 6, 1972) is attached as Exhibit 2 to this Petition and is
15 incorporated by reference herein.

16 7.

17 In addition to imposing the Transient Lodgings Tax, the City Council has also
18 administered the tax since 1972. The City Council by ordinance provides for registration of
19 hotel operators, due dates for tax returns and remitting the tax collected, audits, penalties,
20 interest, a procedure for issuing deficiency notices, an administrative appeal process, and
21 refunds.

22 8.

23 The City Council’s power to administer the tax authorized by Charter Section 7-113
24 derives from Charter Section 2-105, which grants City Council authority “to exercise any
25 power or authority granted to the City * * * by this Charter, and * * * do any other act
26 necessary * * * to carry out such authority.”

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9.

It is well established under Oregon law that a city’s ordinance “cannot * * * enlarge * * * the express substantive provisions of its charter.” *Portland Police Assn. v. Civil Service Board*, 292 Or 433, 440 n 4, 639 P2d 619 (1982) (internal quotation marks and citation omitted). Nevertheless, in January 2015, the City Council attempted to expand the City’s transient lodgings tax to another type of businesses, a “Booking Agent,” which was defined to include “any person that provides a means through which a Host may offer a Short-Term Rental for transient lodging occupancy.” A true and correct copy of City Ordinance No. 186985 (Jan. 21, 2015), with relevant portions marked, is attached as Exhibit 3 to this Petition and is incorporated by reference herein.

10.

In 2015, the City took the position that certain online businesses were “Booking Agents” that were required to collect and remit the transient lodgings tax, and it sued them in the United States District Court for the District of Oregon. In response, those businesses moved to dismiss the City’s “Booking Agent” claims on the ground that the City lacked authority under Charter Section 7-113 to tax businesses that are not the “owner or operator” of the lodging.

11.

The federal court ruled that when a court is asked to apply Charter Section 7-113, the court’s “task is to discern what the voters intended” the word “operator” to mean, independent of how the City Council may have subsequently defined the term “operator” in its ordinances. *City of Portland v. HomeAway.com, Inc. and HomeAway, Inc.*, No. 3:15-cv-01984-MO, Opinion and Order at *12 (D. Or. June 7, 2016) (citation omitted). The federal court ruled that the City Council had acted *ultra vires* when it attempted to impose tax collection obligations on an online travel business that is not within the meaning of the term “operator” as the City voters intended the term. A true and correct copy of excerpts from the

1 federal court’s Opinion and Order in *City of Portland v. HomeAway.com, Inc. and*
2 *HomeAway, Inc.*, No. 3:15-cv-01984-MO (D. Or. June 7, 2016), with relevant portions
3 highlighted, is attached as Exhibit 4 to this Petition and is incorporated by reference herein.

4 12.

5 Despite the federal court’s ruling, on December 21, 2016, the City Council
6 nevertheless adopted an even more expansive definition of the term “Operator” in its
7 transient lodgings tax ordinance. The expanded definition of “Operator” in the City
8 ordinance now classifies all Booking Agents as “Operators.” See Portland City Code
9 § 6.04.010 J(4). Thus, the City Council’s definition of “Operator” now encompasses
10 businesses that the City voters did not intend the Section 7-113 phrase “owner or operator” of
11 lodging to cover, including “[o]nline travel booking sites for Short-Term Rental transient
12 lodging occupancy where advertisements of Short-Term Rental transient lodging occupancy
13 rentals are displayed.” Portland City Code § 6.04.010 B(2). A true and correct copy, with
14 relevant portions marked, of City Ordinance No. 188170 (Dec. 21, 2016) (codified at
15 Portland City Code chapter 6.04) is attached as Exhibit 5 to the Petition and is incorporated
16 by reference herein.

17 13.

18 On February 15, 2017, the City Council decided to refer the Transient Lodgings Tax
19 Charter Amendment to the voters of the City of Portland at the May 16, 2017 special
20 election. A true and correct copy of City Resolution No. 37268 (Feb. 15, 2017), with
21 relevant portions marked, is attached as Exhibit 6 to the Petition and is incorporated by
22 reference herein.

23 14.

24 A true and correct copy, with relevant portions highlighted, of a transcript of the
25 proceedings before the City Council on February 15, 2017 regarding City Resolution No.
26 37268 is attached as Exhibit 7 to the Petition and is incorporated by reference herein.

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15.

On February 15, 2017, the Director of the City Revenue Division testified to City Council about the terms “owner” and “operator” in Charter Section 7-113:

“In a recent U.S. District Court ruling, the Court ruled that the traditional dictionary definition of those terms does not encompass the short-term rental industry operating on websites such as Airbnb, Home Away, and others; and in essence finding that they are not owners or operators.

“The ruling also called into question the City Council’s authority to define those terms as it [has] done in numerous code amendments over the years, most recently in December of 2016.”

16.

The Director of the City Revenue Division also testified to City Council that the proposed Transient Lodgings Tax Charter Amendment “is intended to modernize the Charter by expressly allowing the City Council to define Charter terms by city ordinance.”

17.

The “Impact Statement” that accompanied City Resolution No. 37268 stated:

“Purpose of proposed legislation and background information: Charter Section 7-113 was enacted in the early 1970s when the only way to make a reservation at a lodging establishment was by phone or in person. Additionally, the types of lodging establishments at the time were hotels and motels. After 50 years, both the types of lodging establishments and how potential guests can make and pay for reservations has changed substantially. The City Council can exercise its legislative authority to administer the Transient Lodging Tax, and define Charter terms by passing ordinances to reflect the changing times, technology and lodging structures that are encompassed by the City’s Transient Lodging Tax.”

A true and correct copy of the Impact Statement, with relevant portions marked, is attached as Exhibit 8 to this Petition and is incorporated by reference herein.

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1 18.

2 During the City Council’s discussion of City Resolution No. 37268, the sponsor of
3 the resolution, City Commissioner Nick Fish, acknowledged that some online travel
4 businesses “claim they aren’t subject to the City Charter.” He also admitted that “[o]ur
5 charter language dates to the 1970s and needs to be updated.” In his view, the City Council
6 was “required to take these actions” to amend the Charter because the City Council should
7 not be prevented from providing “extrapolation of our Charter.” He explained that the
8 proposed Charter amendment would “allow Council to interpret it broadly in the future, to
9 cover new and innovative ideas that come into the marketplace.”

10 19.

11 On February 15, 2017, the City Council approved City Resolution No. 37268. The
12 City Council found that “since time, technology and business models have changed over the
13 last 50 years, it is appropriate to clarify City Council’s authority to update Charter
14 definitions, through legislation, to reflect these changes *by adopting new or expanded terms*
15 *through the City’s ordinance process.*” (Emphasis added.)

16 20.

17 The Transient Lodgings Tax Charter Amendment would amend Section 7-113 of the
18 Charter by adding the following subsection:

19 “3. In addition to any other authority granted under this
20 Charter, the City Council shall have power and authority to
21 provide for the administration of, and interpretation of the
22 terms in, this Section 7-113 by ordinance as legislative action,
23 as the Council may deem necessary and appropriate.”

24 21.

25 In City Resolution No. 37268, the City Council prepared a ballot title in the form
26 attached as an exhibit to the resolution.

26 ///

1 22.

2 On February 15, 2017, the City filed the measure and ballot title for the Transient
3 Lodgings Tax Charter Amendment with the City Elections Officer. The website of the City
4 Auditor, at <https://www.portlandoregon.gov/auditor/article/626701>, posts the ballot title and
5 states that “qualified voters may petition for review of the ballot title in Multnomah County
6 Circuit Court no later than 5:00 pm February 27, 2017.” A true and correct copy of the ballot
7 title as published on the website of the City Auditor is attached as Exhibit 9 to this Petition
8 and is incorporated by reference herein.

9 23.

10 The ballot title prepared by the City Council for the Transient Lodgings Tax Charter
11 Amendment is:

12 “**BALLOT TITLE** (10 words)
13 **AMENDS CHARTER: AUTHORIZES CITY COUNCIL TO**
14 **INTERPRET TRANSIENT LODGINGS TAX.**

15 “**QUESTION:** (17 words)
16 Shall City Council be authorized to interpret and administer
17 provisions of the Transient Lodgings Tax by ordinance?

18 “**SUMMARY:** (65 words)
19 City voters have previously authorized a tax on rentals of any
20 place in the City of Portland of space designed or intended for
21 lodging of less than 31 days, commonly called the Transient
22 Lodgings Tax. This measure amends the City Charter Section
23 7-113 to provide the City Council authority to administer and
24 interpret provisions of the City’s Transient Lodgings Tax, by
25 ordinance as legislative action.”

26 24.

Monday, February 20, 2017, was a holiday observed by the State of Oregon and the
City of Portland and was not a business day.

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1 25.

2 Because this Petition is filed no later than seven business days after the ballot title for
3 the Transient Lodgings Tax Charter Amendment was filed with the City Elections Officer, it
4 is timely pursuant to ORS 250.296(1) and Portland City Code § 2.04.120 C.

5 26.

6 As required by ORS 250.296(2), not later than 5:00 p.m. on Tuesday, February 28,
7 2017, Petitioner will give written notice to the City Elections Officer that this Petition has
8 been filed.

9 27.

10 The Caption prepared by Respondent for the ballot title for the Transient Lodgings
11 Tax Charter Amendment does not comply with the requirements of ORS 250.035(1)(a)
12 because it does not reasonably identify the subject of the measure. The subject of the
13 Transient Lodgings Tax Charter Amendment is giving the City Council authority to *expand*
14 the City’s transient lodgings tax by adopting ordinances that define the terms in Charter
15 Section 7-113 to include businesses and charges that are not within the scope of those terms
16 as originally intended by City voters. Respondent’s Caption inaccurately describes the
17 subject of the Transient Lodgings Tax Charter Amendment as being merely to “interpret” the
18 City’s transient lodgings tax. That nonspecific and strategically bland phrasing fails to give
19 notice to the voters of the principal substantive choice that the measure presents. The
20 practical consequence of the Transient Lodgings Tax Charter Amendment is that the City
21 Council would gain authority to expand the City’s transient lodgings tax to new businesses,
22 such as Airbnb and HomeAway.com, Inc., and to charges other than charges for lodging—
23 without returning to the voters for additional taxing authority. Respondent’s Caption is
24 misleading because it conceals from the voters that the subject of the measure is granting the
25 City Council additional taxing authority to expand the tax beyond the current scope of
26 Charter Section 7-113.

1 28.

2 The Question prepared by Respondent for the ballot title for the Transient Lodgings
3 Tax Charter Amendment does not comply with the requirements of ORS 250.035(1)(b)
4 because it does not plainly phrase the chief purpose of the measure in two respects.

5 29.

6 First, Respondent’s Question fails to state the measure’s chief purpose. The City
7 Council currently lacks the power under Oregon law to expand the meaning of the terms of
8 Section 7-113 beyond what the voters originally intended when they approved those terms in
9 1971. The chief purpose of the measure is to circumvent that lack of power and grant the
10 City Council authority to expand the transient lodgings tax beyond the current limits of
11 Charter Section 7-113 merely by adopting ordinances that redefine the terms in Charter
12 Section 7-113, without returning to the voters for additional taxing authority. Specifically,
13 the City Council intends to use the authority granted by the Transient Lodgings Tax Charter
14 Amendment to tax online businesses, such as Airbnb and HomeAway.com, Inc., that are not
15 lodging owners or operators within the meaning of Charter Section 7-113 as originally
16 adopted by City voters. Respondent’s Question, which uses only the abstract and nonspecific
17 phrase “interpret and administer provisions of the Transient Lodgings Tax,” does not disclose
18 to voters this purpose of expanding the City Council’s authority to tax. In particular, it fails
19 to disclose the loss of voters’ right to control the contours of the City’s taxing authority going
20 forward.

21 30.

22 Second, Respondent’s Question misstates existing law by implication. Respondent’s
23 Question implies that the City Council currently lacks authority to administer the Transient
24 Lodgings Tax. But the City Council has that authority under Charter Section 2-105, which
25 authorizes the City Council to do any act necessary to carry out the taxing authority granted
26 by Charter Section 7-113.

1 31.

2 The Summary prepared by Respondent for the ballot title for the Transient Lodgings
3 Tax Charter Amendment does not comply with the requirements of ORS 250.035(1) because
4 it is not a concise and impartial statement summarizing the measure and its major effect in
5 two respects.

6 32.

7 First, Respondent’s Summary fails to summarize the Transient Lodgings Tax Charter
8 Amendment and its major effect. The major effect will be that the City Council will be
9 authorized under Charter Section 7-113 to expand the City’s Transient Lodgings Tax to
10 apply to businesses and charges that are outside the scope of the current Charter Section 7-
11 113, by ordinance, without returning to the voters for additional taxing authority.
12 Respondent’s Summary does not inform voters of this major effect.

13 33.

14 Second, Respondent’s Summary misstates existing law by implication. Respondent’s
15 Summary implies—incorrectly—that the City Council currently lacks authority to administer
16 the Transient Lodgings Tax.

17 34.

18 For the reasons stated in Paragraphs 27-33 above, the ballot title for the Transient
19 Lodgings Tax Charter Amendment prepared by Respondent also does not comply with ORS
20 250.296(1) because it is insufficient, not concise, and/or unfair.

21 35.

22 Petitioner proposes the following ballot title, which will meet the requirements of
23 ORS 250.035(1):

24 **CAPTION: AMENDS CHARTER: AUTHORIZES CITY**
25 **COUNCIL TO EXPAND TRANSIENT LODGINGS TAX.**
26 (10 words)

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QUESTION: Shall City Council be authorized to interpret Charter Section 7-113 to expand the Transient Lodgings Tax without further voter approval? (20 words)

SUMMARY: In City Charter Section 7-113, City voters previously authorized City Council to impose a transient lodgings tax on amounts paid “for lodging” to the “owner or operator” of any hotel or other space in Portland that is intended for short-term lodging. But a court recently ruled that City Charter Section 7-113 does not currently authorize the City Council to impose the Transient Lodgings Tax on any business that is *not* the “owner or operator” of lodging space. It also does not currently authorize taxing any charges unless they are paid “for lodging.” This measure amends City Charter Section 7-113 to authorize City Council to pass ordinances that interpret the existing words in City Charter Section 7-113 to expand the Transient Lodgings Tax to short-term rental websites or other businesses that may not fit the traditional meaning of an “owner or operator” of lodging and to charges that might not fit the traditional meaning of “for lodging.” City Council would be able to expand the tax without any further voter approval. (170 words)

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for a judgment certifying to the City Elections Officer of the City of Portland a ballot title for the Transient Lodgings Tax Charter Amendment in the form set out in Paragraph 35 of this Petition.

DATED: February 27, 2017.

STOEL RIVES LLP

/s/ Rachel C. Lee
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Charter, Code and Policies

City of Portland

GENERAL INFORMATION: 503-823-4000 EMAIL: cityinfo@portlandoregon.gov
More Contact Info (<http://www.portlandoregon.gov/citycode/article/15472>)



Section 7-113 Transient Lodgings Tax.

1. The Council may by ordinance impose and levy a tax not exceeding five percent on gross amounts of money, credit or other things of value paid to or received for lodging by the owner or operator of any hotel, motel, apartment or lodging house, mobile home or trailer park or court, or any other place in the City where space designed or intended for lodging occupancy is rented by any person or persons, for any period less than monthly. This tax shall not apply to hospitals, convalescent or nursing homes, or public institutions, or permanent occupancy as defined by ordinance. Minimum rentals to which the tax shall apply may be fixed by ordinance. The tax imposed shall be collected by the owner or operator of the rental space in addition to the rental charge, at the time of payment of rent. City revenues from such taxes shall be credited to the General Fund of the City and used for general City purposes, as the Council may find appropriate, which may include provision for and the acquisition, construction, operation and maintenance of recreational, cultural, convention or tourist-related facilities or services.

2. In addition to any other tax authorized by this Section of the Charter the Council shall by ordinance impose and levy a tax of one percent on gross amounts of money, credit or other things of value paid to or received for lodging by the owner or operator of any hotel, motel, apartment or lodging house, mobile home or trailer park or court, or any other place in the City where space designed or intended for lodging occupancy is rented by any person or persons, for any period less than monthly. This tax shall not apply to hospitals, convalescent or nursing homes, public institutions, or permanent occupancy as defined by ordinance. Minimum rentals to which the tax shall apply may be fixed by ordinance. The tax imposed shall be collected by the owner or operator of the rental space in addition to the rental charge, at the time of payment of rent. City revenues from such one percent tax increase, after providing for the cost of administration and any refunds or credits authorized by ordinance, shall be used exclusively as provided hereinafter for the promotion, solicitation, procurement, and service of convention business and tourism in the City. Notwithstanding any other provision of this Charter, the City from time to time for periods not to exceed five (5) years, subject to annual review, shall negotiate contracts with a non-profit corporation or with non-profit corporations organized under the laws of Oregon, whose primary purpose during the term of the contract or contracts is the promotion, solicitation, procurement and service of convention business and tourism in the City, for that corporation or corporations to expend revenues collected pursuant to this subsection for the purposes set forth in the subsection. In entering into the contract or contracts, the Council shall consider the recommendations of the persons subject to the tax imposed by this subsection. The Council shall in its sole discretion determine the portion of such revenues to be allocated between convention business and tourism. [Add. Dec. 14, 1971; Am. Nov. 7, 1978; am. May 18, 1994.]

ORDINANCE NO. 133899

An Ordinance adding a new title relating to special taxes and a new chapter in said title relating to transient lodgings tax, to the Code of the City of Portland, Oregon, so as to impose a five percent city tax on rentals for transient lodging in the city, providing for definitions, exemptions, refunds, establishing a review board, providing for forms, rules and regulations, and other matters relating to collection of such tax pursuant to charter authorization approved by the voters on December 14, 1971, effective February 1, 1972, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds that Section 7-110, relating to a transient lodgings tax, was added to the Charter of the City of Portland by a majority vote of the electors of the city at the special election held December 14, 1971; that said section authorizes the Council by ordinance to impose and levy a tax not exceeding five percent on gross rentals of lodging occupancy within the city; that said charter provision permits the City to provide for exemptions, minimum rentals to which the tax shall apply, and to fix other rules and regulations relating to the accounting, collection and other details of the tax and its imposition; now, therefore, the Code of the City of Portland, Oregon, hereby is amended by adding thereto a new title, and chapter and sections under such title, which title, chapter and sections shall be numbered, entitled and shall read as follows:

Title 6

SPECIAL TAXES

Chapter 6.04

TRANSIENT LODGINGS TAX

6.04.010 DEFINITIONS.

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

(a) "Hotel" means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for thirty days or less for dwelling, lodging, or sleeping 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, and also means space in mobile home or trailer parks, or similar structure or space or portions thereof so occupied, provided such occupancy is for less than a thirty day period.

(b) "City Council" means the City Council of the City of Portland, Oregon.

(c) "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 a hotel, or space in a mobile home or trailer park or portion thereof.

(d) "Operator" means the person who is proprietor of the hotel in any capacity. Where the operator performs his 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 provisions of this ordinance by either the principal or the managing agent shall be considered to be compliance by both.

(e) "Person" means any 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 any other group or combination acting as a unit.

(f) "Cash accounting" means the operator does not enter the rent due from a transient on his records until rent is paid.

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

(h) "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.

(i) "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 room tax under this ordinance shall be the same charge made for rent when consideration is not a part of a package plan.

(j) "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.

(k) "Tax administrator" means the Revenue Director of the City of Portland.

(l) "Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of thirty 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 thirty-day period if the transient is 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 thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than thirty consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this ordinance may be considered. 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.

(m) "Transient Lodgings Tax Review Committee" means a committee composed of an accountant, an attorney, an operator and two laymen appointed by the Mayor and approved by the Council of the City of Portland.

6.04.020 TAX IMPOSED.

For the privilege of occupancy in any hotel, on and after February 1, 1972, each transient shall pay a tax in the amount of five percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the City which is extinguished only by payment by the operator to the City. 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 the operator with each installment. 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 space occupancy in mobile home parks or trailer parks.

6.04.030 COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION.

(a) Every operator renting rooms or space for lodging or sleeping purposes in this city, 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 owing by the operator to the City.

(b) 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. Adjustments may be made for uncollectibles.

(c) The tax administrator shall enforce provisions 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.

(d) For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.

6.04.040 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 of a hotel 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.

6.04.050 EXEMPTIONS.

No tax imposed under this ordinance shall be imposed upon:

(a) Any occupant for more than thirty successive 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);

(b) Any occupant whose rent is of a value less than two dollars per day;

(c) Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his own use thereof;

(d) Any occupant whose rent is paid for 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 government.

6.04.060 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 city 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 thirty calendar days after passage

of this ordinance. Operators starting business after this ordinance is adopted must register within fifteen 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 tax regardless of registration. 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 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 non-assignable and non-transferable 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 therein so as to be seen and come to the notice readily of all occupants and persons 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 Lodgings Tax Ordinance of the City of Portland by registration with the tax administrator for the purpose of collecting from transients the lodgings tax imposed by said city 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 City of Portland. This certificate does not constitute a permit."

6.04.070 DUE DATE; RETURNS AND PAYMENTS.

(a) 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 following month for the preceding three months; and are delinquent on the last day of the month in which they are due. The tax administrator has authority to classify and/or district the operators for determination of applicable tax periods, and shall notify each operator of the due and delinquent dates for the operator's returns. The initial return under this ordinance may be for less than the three months preceding the due date; thereafter returns shall be made for the applicable quarterly period.

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

(c) Returns shall show the amount of tax collected or otherwise due for the related period. The tax administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

(d) The person required to file the return shall deliver the return, together with the remittance 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 delivery for determining delinquencies.

(e) For good cause, the tax administrator may extend for not to exceed one month the time for making any return or payment of tax. No further extension shall be granted, except by the Transient Lodgings Tax Review Committee. Any 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 pro-ration 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 granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this ordinance.

(f) The tax administrator, if he deems it necessary in order to insure payment or facilitate collection by the City of the amount of taxes in any individual case may require returns and payment of the amount of taxes for other than quarterly periods.

6.04.080 PENALTIES AND INTEREST.

(a) **Original Delinquency.** Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this ordinance prior to delinquency shall pay a penalty of ten percent of the amount of the tax due in addition to the amount of the tax.

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

(c) **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 percent of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs (a) and (b) of this section.

(d) **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 half of one percent per month or fraction thereof without pro-ration 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.

(e) **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.

(f) **Petition for Waiver.** Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated, provided, however, the operator may petition the Transient Lodgings Tax Review Committee for waiver and refund of the penalty or any portion thereof and the Transient Lodgings Tax Review Committee may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

6.04.090 DEFICIENCY DETERMINATIONS; FRAUD, EVASION, OPERATOR DELAY.

(a) **Deficiency Determination.** If the tax administrator determines that the returns are incorrect, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information within his possession or that may come into his possession. One or more deficiency determination may be made of the amount due for one, or more than one, period, 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 6.04.080.

(1) In making a determination the tax administrator may offset overpayments, if any, which may have been previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in Section 6.04.080.

(2) 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 on the records of the tax administrator. In case of service by mail or any notice required by this ordinance, the service is complete at the time of deposit in the United States Post Office.

(3) Except in the case of fraud or intent to evade this ordinance or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(4) Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten 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.

(b) **Fraud, Refusal to Collect, 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 remittance of said tax or any portion thereof required by this ordinance, or makes a fraudulent return or otherwise wilfully 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 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 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 return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten 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.

(c) **Operator Delay.** If the tax administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the City 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 such determination to the tax administrator after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within ten days from the date of service of notice by the tax administrator.

6.04.100 REDETERMINATIONS.

(a) Any person against whom a determination is made under Section 6.04.090 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 6.04.090. If a petition for redetermination and refund is not filed within the time required in Section 6.04.090, the determination becomes final at the 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 person has so requested in his petition, shall grant the person an oral hearing and shall give him ten 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.

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

(d) The order or decision of the tax administrator upon a petition for redetermination of redemption and refund becomes final ten days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the Transient Lodgings Tax Review Committee within the ten days after service of such notice.

(e) 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.

6.04.110 SECURITY FOR COLLECTION OF TAX.

(a) 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 may determine. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the operator's estimated average quarterly liability for the period for which he files returns, determined in such manner as the tax administrator deems proper, or five thousand dollars, 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.

(b) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three 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 City to collect the amount delinquent together with penalties and interest.

6.04.120 REFUNDS.

(a) Refunds by City to Operator. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator under this ordinance, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three 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 to such operator, his administrators, executors or assignees.

(b) Refunds by City to Transient. Whenever the tax required by this ordinance has been collected by the operator, and deposited by the operator with the tax administrator, and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded by the tax administrator to the transient, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the tax administrator within three years from the date of payment.

(c) Refunds by Operator to Tenant. Whenever the tax required by this ordinance has been collected by the operator and it is later determined that the tenant occupies the hotel for a period exceeding thirty days without interruption, the operator shall refund to such tenant the tax previously

collected by the operator from that tenant as a transient. The operator shall account for such collection and refund to the tax administrator. If the operator has remitted the tax prior to refund or credit to the tenant, he shall be entitled to a corresponding refund under this section.

6.04.130 ADMINISTRATION.

(a) **Records Required from Operators, etc.; Form.** Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for a period of three years and six months after they come into being.

(b) **Examination of Records; Investigations.** The tax administrator, or any person authorized in writing by him, may examine during normal business hours the books, papers and accounting records relating to room sales of any operator, after notification to the operator liable for the tax, and 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.

(c) **Confidential Character of Information Obtained; Disclosure Unlawful.** It shall be unlawful for the tax administrator or any person having an administrative or clerical duty under the provisions of this ordinance to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate, or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person; provided that nothing in this subsection shall be construed to prevent:

(1) The disclosure to, or the examination of records and equipment by another City of Portland 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, or collecting City business license fees.

(2) The disclosure, after the filing of a written request to that effect, to the taxpayer himself, receivers, trustees, executors, administrators, assignees, 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 the

City Attorney approves each such disclosure and that the tax administrator may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;

(3) The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration Certificates have been issued.

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

**6.04.140 TRANSIENT LODGINGS TAX REVIEW COMMITTEE;
APPEAL; RULES; PROCEDURE.**

A Transient Lodgings Tax Review Committee is hereby created to be composed of an accountant, an attorney, who may be a City employee, an operator, as herein defined, and two lay members. The committee shall select from its members a chairman who shall serve at its pleasure. Three members of the committee shall constitute a quorum. The committee shall keep a record of its transactions. The committee shall be deemed to be in the office of the tax administrator and shall meet and keep its files in his office. The members of the committee shall not, at any time, receive any compensation as such members or acting members for their services on the committee. The committee shall be appointed by the Mayor and shall serve four-year terms, except the accountant, the attorney and the operator appointed to the first committee after the adoption of this ordinance shall serve three-year terms. Thereafter, all terms shall be four years.

The committee shall have power and it shall be its duty:

(1) To hear and determine appeals of orders or decisions of the tax administrator made upon petitions for redetermination of tax. The committee may affirm, modify, or reverse such orders or decisions or dismiss the appeals therefrom, as may be just, and shall prescribe such forms, rules and regulations relating to appeals as it may deem necessary. In the review of the tax administrator decision or order, the committee may take such evidence and make such investigation as it may deem necessary. It shall give notice of its determinations in the manner prescribed for service of notice of a tax administrator's decision and shall file a copy of each such determination with the tax administrator with certification thereon of the date of service thereof. Such determination shall become final ten days thereafter and shall thereupon become due and payable, subject to interest and penalties, and enforceable by the tax administrator in like manner as an order or decision of the tax administrator.

(2) To approve, modify, or disapprove all forms, rules and regulations prescribed by the tax administrator in the

administration and enforcement of this ordinance and such forms, rules, and regulations adopted or promulgated after July 1, 1972, shall be subject to, and become effective only on, such approval.

(3) To hear and determine in such manner as shall be just, any protest which may be made by any person who may be interested, to any form, rule, or regulation approved or prescribed by the committee.

(4) To grant for good cause, applications for extensions of time in excess of one month, for making any return or payment of tax, and to prescribe rules therefor.

(5) To make such investigations as it deems advisable regarding the imposition and administration of the transient lodgings tax and report its findings to the City Council; to act in an advisory capacity to the legislative body on matters pertaining to the transient lodgings tax and enforcement problems and to recommend to the Council the adoption, amendment, or repeal of legislation pertaining thereto.

6.04.150 APPEAL TO TRANSIENT LODGINGS TAX REVIEW COMMITTEE.

Any person aggrieved by any decision of the tax administrator may appeal to the Transient Lodgings Tax Review Committee by filing a notice of appeal with the tax administrator within ten days of the serving or mailing of the notice of a decision given by the tax administrator. The tax administrator shall fix a time and place for hearing such appeal as prescribed by the Transient Lodgings Tax Review Committee in its rules and regulations and shall give the appellant ten days written notice of the time and place of hearing.

6.04.160 APPEALS TO CITY COUNCIL.

Any person aggrieved by any decision of the Transient Lodgings Tax Review Committee may appeal to the City Council by filing a notice of appeal with the tax administrator within ten days of the serving or the mailing of the notice of the decision given by the Transient Lodgings Tax Review Committee. The tax administrator shall transmit said notice of appeal, together with the file of said appealed matter to the Council, who shall fix a time and place for hearing such appeal from the decision of the Transient Lodgings Tax Review Committee. The Council shall give the appellant not less than ten days' written notice of the time and place of hearing of said appealed matter. Action by the Council on appeals shall be decided by a majority of the members of the Council present at the meeting where such appeal is considered.

ORDINANCE No.

6.04.170 VIOLATIONS.

It is 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 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.

6.04.180 EFFECTIVE DATE.

This ordinance shall become effective at 12:01 a.m. on February 1, 1972.

Section 2. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the city of Portland in this: In order that the transient lodging tax approved by the voters may become effective without delay, to alleviate current City financial needs, therefore an emergency hereby is declared to exist and this ordinance shall be in force and effect from and after its passage by the Council.

Vertical stamp: RECEIVED BY THE CITY OF PORTLAND JAN 11 1972

Order of Council

Passed by the Council, JAN - 6 1972

MCR:jw

JAN 13 1972

Signature of Mayor of the City of Portland

Attest:

Signature of Auditor of the City of Portland

Order of Council MCR:jw 1/3/72

(Sub)

Calendar No. 56

ORDINANCE No. 133899

Title

An Ordinance adding a new title relating to special taxes and a new chapter in said title relating to transient lodgings tax, to the Code of the City of Portland, Oregon, so as to impose a five percent city tax on rentals for transient lodging in the city, providing for definitions, exemptions, refunds, establishing a review board, providing for forms, rules and regulations, and other matters relating to collection of such tax pursuant to charter authorization approved by the voters on December 14, 1971, effective February 1, 1972, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Anderson	1	
Goldschmidt	1	
Ivancie	1	
McCready	1	
Schrunk	1	

FOUR-FIFTHS CALENDAR	
Anderson	
Goldschmidt	
Ivancie	
McCready	
Schrunk	

Filed JAN - 6 1972

GEORGE YERKOVICH

Auditor of the CITY OF PORTLAND

By Richard Croell
Deputy

INTRODUCED BY
Order of Council

DRAWN BY
MCR:jw
Date January 3, 1972

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities
Works

City Attorney <u>MR</u>

NOTED BY THE CITY AUDITOR
<u>GC</u>

APPROVED
Date
By
City Engineer
Date
By

ORDINANCE NO. 186985 As Amended

Amend Transient Lodgings Tax to add definitions and clarify duties for Operators of short-term rental locations (Ordinance; amend Code Chapter 6.04)

The City of Portland Ordains:

Section 1. Council finds:

1. The City has made amendments to the Additional Use & Development Regulations in Title 33 of the Portland City Code to allow certain short-term rentals in residentially-zoned areas.
2. The City is aware that even with these amendments, there are many short-term rentals that are still out of compliance with registration and/or permitting requirements. Many Short-Term Rental Hosts (“Hosts”) have not registered with the Revenue Division and are not collecting and/or remitting the appropriate transient lodging or business license (income) taxes. Many Short-Term Rental Hosts have not registered with the Bureau of Development Services and have not received the required code compliance review or paid the required permit fee.
3. The City has determined that finding these non-compliant Hosts and properties is difficult as they are often rented or “booked” through online agents (“Booking Agents”) that refuse to provide the short-term rental location address or contact information of the Host, or to remit transient lodging taxes on behalf of the Hosts. Booking Agents include but are not limited to online travel booking sites with booking models that often obscure exact property locations and Hosts, making tax and code enforcement difficult.
4. The City believes that compelling Booking Agents to provide Host information will raise compliance, permit fees and transient lodging tax revenue. It will also prevent non-compliant operators from obtaining an unfair advantage over compliant operators.
5. The City believes that, to the extent Booking Agents are booking rooms and accepting payments on behalf of their Hosts, they should also collect and remit the City transient lodging tax on behalf of their Hosts.
6. The Revenue Division anticipates there may be 1,000 or more new Hosts associated with one or more Booking Agents that do not collect room rent on behalf of the Host. One additional position will be required to administer these accounts after the Division receives location and contact information from Booking Agents. When Host information is received from Booking Agents, the Division may request budget appropriation for the new position.

NOW, THEREFORE, the Council directs:

a. Amend PCC **6.04.010 Definitions** as follows:

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter.

- A. “Accrual accounting”** means the eOperator enters the rent due from a transient on his/her records when the rent is earned, whether or not it is paid.
- B. “Bed and Breakfast Home”** means a home where a resident individual or family rents out guest bedrooms (no more than two) in their house, which is continually occupied as their primary residence.
- C. “Bed and Breakfast Inn”** means a home where a resident individual or family rents out guest bedrooms (between three and six) in their house, which is continually occupied as their primary residence.
- D. “Booking Agent”** means an Operator or any person that provides a means through which a Host may offer a Short-Term Rental for transient lodging occupancy. This service is usually, though not necessarily, provided through an online platform and generally allows a Host to advertise the Short-Term Rental through a website provided by the Booking Agent’s hosting platform and provides a means for potential users to arrange transient lodging occupancy and payment, whether the transient pays rent directly to the Host or to the Booking Agent. Booking Agents include, but are not limited to:
1. Online travel booking sites which are involved in the process of listing and booking Short-Term Rental transient lodging occupancies and handle any aspect of the resulting financial transaction; and/or
 2. Online travel booking sites for Short-Term Rental transient lodging occupancy where advertisements of Short-Term Rental transient lodging occupancy rentals are displayed; and/or
 3. A hosting or other online site that provides a means through which an Operator, Host or agent may offer a Short-Term Rental unit for transient lodging occupancy.
- D. E. “Bureau”** means the Bureau of Licenses Revenue Division of the Bureau of Revenue and Financial Services of the City of Portland.
- E. F. “Bureau Director”** means the director of the Bureau of Licenses Revenue Division, or his/her designee.
- F. G. “Business License Appeals Board”** means a Board composed of five representatives appointed in the manner set forth in Section 7.02.295 of this Code.
- G. H. “Cash Accounting”** means the operator does not enter the rent due from a transient on his/her records until rent is paid.
- H. I. “City Council”** means the City Council of the City of Portland, Oregon.
- J. “Host”** means the owner or person who resides at the Short-Term Rental or has been designated by the owner or resident to manage the Short-Term Rental and who rents out the Short-Term Rental for transient lodging occupancy either directly or through the use of a Booking Agent.

- I. **K. "Hotel"** means any structure, or any portion of any structure, which is occupied or 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, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, house, duplex, condominium, multi-dwelling structure, trailer home, houseboat, public or private dormitory, fraternity, sorority, public or private club, and also means space or portion thereof so occupied, provided such occupancy is for less than a 30-day period.
- J. **L. "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 a hotel, or space in a mobile home or trailer park or portion thereof.
- K. **M. "Operator"** means the person who is proprietor of the hotel in any capacity. Where the operator performs his/her functions through a managing agent of any type or character other than as employee, the managing agent shall also be deemed as operator for the purposes of this Chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this Chapter by either the principal or managing agent shall be considered to be compliance by both.
- L. **N. "Person"** means any individual, firm, partnership, joint venture, association, host, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- M. **O. "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.
- N. **P. "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 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.
- Q. **"Short-Term Rental"** means a house, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling where a person rents guest bedrooms for transient lodging occupancy. Generally, a Short-Term Rental is zoned as residential property.
- O. **R. "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/she is required to report his/her collections.
- P. **S. "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 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, or the tenancy actually extends more than 30 consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this Chapter may be considered.

b. Amend PCC **6.04.040 Operator's Duties** as follows:

- A.** Each eOperator shall collect the tax imposed by this Chapter 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 of a hotel 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 Chapter.
- B.** An Operator or Booking Agent that directly or indirectly accepts, receives or facilitates payment, including through Application Programming Interfaces (APIs) or other computerized devices where third party providers receive information about a transaction and collect funds that may or may not be transmitted to the operator, owner or other person offering a Short-Term Rental, for the transient lodging occupancy from a transient is required to collect, report and remit transient lodging taxes to the City of Portland in accordance with this Chapter.
- C.** Additionally, upon request of the Bureau for any regulatory or tax administration purpose, Operators, which include Booking Agents, must provide all physical addresses of transient lodging occupancy locations within Portland city limits and the related contact information, including the name and mailing address, of the general manager, agent, owner, or Host for the location. Any location and related contact information provided under this subsection is considered confidential and is not subject to public disclosure due to personal privacy concerns.

c. Amend PCC **6.04.170 Violations** as follows:

It is unlawful for any eOperator or 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 a supplemental return or any other data required by the Bureau 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 Chapter. The Bureau Director may impose a civil penalty of up to \$500.00 for each violation of this Chapter. A violation includes, but is not limited to:

- A.** Failure to file any required Transient Lodgings Tax payment and/or report, including any penalties and interest, within 60 days of the due date;
- B.** Filing a false or fraudulent report;
- C.** Failure to register a hotel or Short-Term Rental with the Bureau as described in Section 6.04.060; and
- D.** Failure to maintain a separate account for the transient lodgings tax collected when required by the Bureau;-
- E.** Failure to provide any data or other information requested by the Bureau, including but not limited to, the physical address of a transient lodging occupancy location within Portland and the related contact information;

- F. Failure to obtain an Accessory Short-Term Rental permit, provide the Type A Permit Number or Type B Conditional Use case file number in advertising or other listing services, or post this number in the rental unit; and
G. Failure by a Booking Agent to prominently display the Accessory Short-Term Rental permit or case file number.

Passed by the Council: JAN 21 2015

Mayor Charlie Hales
Prepared by: Terri Williams, Scott
Karter
Date Prepared: 12/2/2014

Mary Hull Caballero
Auditor of the City of Portland
By



Deputy

~~1293~~ - ~~1334~~
~~55~~ - ~~92~~

✓140

Agenda No.
ORDINANCE NO. 186985 **As Amended**
 Title

Amend Transient Lodgings Tax to add definitions and clarify duties for operators for short-term rental locations (Ordinance; amend Code Chapter 6.04)

INTRODUCED BY Commissioner/Auditor: HALES	CLERK USE: DATE FILED <u>DEC 05 2014</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Hales <i>[Signature]</i> Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Novick	LaVonne Griffin-Valade Auditor of the City of Portland By: <i>[Signature]</i> Deputy
BUREAU APPROVAL Bureau: Mayor's Office Prepared by: Terri Williams Date Prepared: 11/30/2014 Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	ACTION TAKEN: DEC 11 2014 <i>RESCHEDULED TO DEC 18 2014 3:30PM TIME CERTAIN</i> DEC 18 2014 PASSED TO SECOND READING AS AMENDED JAN 14 2015 10:45 AM TIME CERTAIN
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	JAN 14 2015 PASSED TO SECOND READING <i>As Amended</i> JAN 21 2015 9:30 A.M.
City Auditor Office Approval: required for Code Ordinances <i>Toni</i>	
City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>KAM</i>	
Council Meeting Date 12/11/14	

AGENDA

TIME CERTAIN
 Start time: 3:45

Total amount of time needed: 30 minutes
 (for presentation, testimony and discussion)

CONSENT

REGULAR
 Total amount of time needed: _____
 (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		✓
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Novick	4. Novick	✓	
Hales	Hales	_____	_____

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

CITY OF PORTLAND,

Plaintiff,

No. 3:15-cv-01984-MO

OPINION AND ORDER

v.

**HOMEAWAY.COM, INC. and
HOMEAWAY, INC.,**

Defendants.

MOSMAN, J.,

When new technologies are developed, there is often a tension between those new technologies and efforts to regulate them within a framework built around older technologies. This case is an illustration of that tension. Plaintiff City of Portland sued Defendants HomeAway.com, Inc. and HomeAway, Inc. (collectively “HomeAway”) for failure to comply with various provisions of the Portland City Code collectively known as the “Transient Lodgings Tax.” HomeAway moves to dismiss the City’s complaint. I GRANT HomeAway’s Motion to Dismiss [7] and DENY injunctive relief.

I. BACKGROUND

HomeAway operates an online vacation rental marketplace where people interested in making their homes available for short-term rental may advertise their property. Travelers interested in renting a property can access HomeAway’s websites to search for and find available properties. HomeAway puts the traveler in contact with the owner or lessee of the property to sort out the details of the lodging arrangement. HomeAway has property listings located all over the world, including in Portland.

In 1972, the City of Portland enacted a Transient Lodgings Tax Ordinance, Portland City Code (“PCC”) § 6.04.010, *et seq.* (“the Ordinance”), providing in part that “[e]very [hotel] operator renting rooms or space for lodging or sleeping purposes in this City . . . shall collect a tax from the transient” to be remitted to the City. PCC § 6.04.030(A). The Ordinance applies to hotel “Operators,” defined by the Ordinance as “the person who is proprietor of the hotel in any capacity. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator” PCC § 6.04.010 (M). The Ordinance authorizes the City to levy fines against Operators that do not comply with the Ordinance. *See, e.g.*, PCC § 6.04.170.

On January 21, 2015, the Portland City Council passed amendments to the Ordinance that took effect on February 20, 2015. The apparent goal of the City Council in passing the amendments was to extend the Ordinance to cover “Booking Agents.” The Ordinance defines “Booking Agent” as “an Operator or any person that provides a means through which a Host may offer a Short-Term Rental for transient lodging occupancy. This service is usually, though not necessarily, provided through an online platform and generally allows a Host to advertise the Short-Term Rental through a website” PCC § 6.04.010 (D). The Ordinance expressly lists “[o]nline travel booking sites” as examples of “Booking Agents.” *Id.*

After the City Council passed the 2015 amendments to the Ordinance, the City sent HomeAway notices in which the City contended that HomeAway was in violation of various provisions of the Ordinance. (*See* Compl. [1], Exs. 3-8.) Included in these notices was an assessment of \$2,540,106 in presumptive taxes, penalties, and interest. (*See* Compl. [1], Ex. 7.) HomeAway refused to pay the assessment, claiming it was not in violation of the Ordinance because it was not an Operator or Booking Agent and therefore did not fall under the Ordinance’s terms. On October 21, 2015, the City filed this

lawsuit against HomeAway seeking a declaratory judgment that HomeAway is an Operator or a Booking Agent, a reduction of fines to judgment, a reduction of presumptive taxes to judgment, and an injunction enjoining HomeAway's operations in Portland.

On May 17, 2016, I held oral argument. From the bench, I issued a ruling GRANTING HomeAway's Motion to Dismiss [7] and DENYING injunctive relief. The purpose of this Opinion and Order is to further clarify my rulings.

II. LEGAL STANDARD

When reviewing a motion to dismiss, the court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Knieval v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). A court need not accept legal conclusions as true because "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To survive a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A pleading that offers only "labels and conclusions" or "'naked assertion[s]' devoid of 'further factual enhancement'" will not suffice. *Id.* (quoting *Twombly*, 550 U.S. at 555, 557). While a plaintiff does not need to make detailed factual allegations at the pleading stage, the allegations must be sufficiently specific to give the defendant "fair notice" of the claim and the grounds on which it rests. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam) (citing *Twombly*, 550 U.S. at 555).

III. DISCUSSION

The City's claims all depend on HomeAway being either an Operator or a Booking Agent as defined under the Ordinance. HomeAway contends that the City's complaint fails to allege that

HomeAway is either an Operator or a Booking Agent and therefore all claims should be dismissed. I find the City has failed to allege HomeAway is an Operator. I further find the Portland City Charter does not grant the City the authority to tax HomeAway as a Booking Agent, and the City has not sufficiently alleged enough facts to tax HomeAway as a Booking Agent under the alternative authority of the relevant Oregon statute. Finally, I find the Ordinance does not place any duties and responsibilities on Booking Agents and, accordingly, I decline to reduce to judgment any fines assessed against HomeAway as a Booking Agent. I set forth my reasoning for these findings below.

A. HomeAway's Form 10-K Filing

In its Response to HomeAway's Motion to Dismiss, the City makes numerous factual allegations based on information contained in HomeAway's Form 10-K filing with the Securities Exchange Commission. HomeAway objects to my consideration of any facts included in the Form 10-K filing and not contained in or attached to the City's complaint and argues that the City has mischaracterized the company's disclosures. Therefore, as a threshold matter, I must determine whether it is appropriate in this case to consider a defendant company's Form 10-K filing when the company contests the facts contained in the filing. I find it inappropriate.

As a general rule, "a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). In fact, Rule 12(b)(6) mandates that if "matters outside the pleading are presented to and not excluded by the court, the motion *must* be treated as one for summary judgment" rather than a motion to dismiss. FED. R. CIV. P. 12(d) (emphasis added). There are, however, two exceptions to the requirement. The first exception is "a court may consider material which is properly submitted as part of the complaint If the documents are not physically attached to the complaint, they may be considered if the documents' authenticity . . . is not contested and the plaintiff's complaint necessarily

conclusory allegations that HomeAway is in violation of PCC Chapter 6.04. However these allegations are insufficient to defeat a 12(b)(6) motion to dismiss. The City also alleges in its complaint that

[t]hrough third parties, HomeAway offers several ancillary products and services that include credit card merchant processing and eChecks which allows payment by accepting, receiving, or facilitating payments for rentals, insurance products, and tax return services which help their listing owners comply with applicable tax regulations.

(Pl. Comp. [1] at 11, ¶ 27.) Allegations that HomeAway, through third parties, offers various products and services to its customers falls well short of alleging that HomeAway exercises judgment and discretion in performing the functions of a hotel proprietor. I therefore find that the City has not sufficiently alleged that HomeAway is a managing agent. Accordingly, I DISMISS claims two, four, and six because HomeAway is neither a proprietor of a hotel nor a managing agent and therefore cannot be an Operator under the Ordinance. The City may, however, be able to amend its complaint to allege that HomeAway exercises discretion and judgment such that HomeAway is a managing agent and therefore an Operator.

C. HomeAway as a “Booking Agent”

In addition to the requirements imposed by the Ordinance on Operators, the 2015 Amendments to the Ordinance also impose various requirements on Booking Agents. The City’s first, third, and fifth claims all allege that HomeAway has not complied with those Booking Agent requirements.

Specifically, the City’s first claim seeks a declaratory judgment that HomeAway is a Booking Agent; its third claim seeks to reduce fines imposed against HomeAway for various regulatory violations to judgment; and its fifth claim seeks to reduce presumptive taxes against HomeAway to judgment.

HomeAway argues that it is not subject to any taxing provisions in the Ordinance as a Booking Agent because the Portland City Charter does not grant the City the authority to impose tax collection obligations on Booking Agents. HomeAway further argues that it does not qualify as a Booking Agent, but even if it did, the specific regulatory Ordinance provisions HomeAway has allegedly violated do not

actually impose any requirements on Booking Agents. While I do not agree with all of HomeAway’s arguments, I ultimately agree with both of HomeAway’s conclusions and dismiss the City’s first, third, and fifth claims.

1. The City’s Authority to Impose Tax Collection Obligations on Booking Agents

HomeAway argues the City exceeded the authority granted to it by the Portland City Charter when it passed the January 2015 amendment regulating Booking Agents. The Charter states, in relevant part:

The Council may by ordinance impose and levy a tax . . . on gross amounts of money, credit or other things of value *paid to or received for lodging by the owner or operator* of any hotel, motel, apartment or lodging house, mobile home or trailer park or court, or any other place in the City where space designed or intended for lodging occupancy is rented by any person or persons, for any period less than monthly. . . . *The tax imposed shall be collected by the owner or operator of the rental space* in addition to the rental charge, at the time of payment of rent.

Portland City Charter § 7-113(1) (emphasis added). The City argues the Charter grants it authority to impose tax collection obligations on Booking Agents because Booking Agents are “operators” under the Charter. HomeAway argues the Charter limits the City’s ability to impose tax collection obligations on only “owners” and “operators,” and since HomeAway is not an Operator under the Ordinance, it cannot be taxed as an operator under the Charter.² HomeAway contends that allowing the City to pass an ordinance that taxes Booking Agents in addition to Operators would allow the City to act outside of the authority granted to it through the Charter. *See Watkins v. Josephine Cty.*, 243 Or. App. 52, 60, 259 P.3d 79 (2011) (“A municipal charter bears the same relationship to the municipality’s ordinances that a state or federal constitution bears to those respective bodies’ legislation: It defines what is and is not within the entity’s legislative authority.”). HomeAway seeks to superimpose the definition of operator found in

² Neither party contends that the tax collection obligations imposed on Booking Agents under the Ordinance are imposed because they are “owners” under the Charter; rather the obligations are imposed on Booking Agents because the City alleges it is acting under its authority to impose such obligations on “operators” under the Charter.

the Ordinance onto the Charter—since HomeAway is not an Operator under the Ordinance, the City cannot tax HomeAway under the Charter because the City’s authority to tax is limited to taxing owners and operators, not Booking Agents. While I agree that the Charter does not grant the City authority to tax HomeAway, I reject HomeAway’s argument.

HomeAway’s argument assumes the terms “operator” under the Ordinance and under the Charter are identical. While HomeAway appears to argue these terms lend themselves to an apples-to-apples comparison, in reality the comparison is one between apples and oranges. The Portland City Charter was adopted by the Portland voters. *See* OR. CONST., Art. XI, § 2 (“The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon [.]”). In contrast, the Ordinance provision at issue was enacted by the Portland City Council. HomeAway’s argument assumes that because I have held that HomeAway falls outside the City Council’s definition of Operator as contained in the Ordinance, I must necessarily find that it also falls outside the voters’ definition of operator as contained in the Charter. This is clearly not true. A well-recognized canon of construction states that a word or phrase is presumed to bear the same meaning throughout a text. *See, e.g., Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932). However, no such canon exists stating that a word or phrase is presumed to bear the same meaning in different texts drafted by different actors in different contexts. Accordingly, my finding that HomeAway is not an Operator under the Ordinance does not necessarily preclude the City from imposing tax collection obligations on HomeAway as a Booking Agent under the Charter.

The issue remains, however, whether the Charter grants the City authority to impose tax collection obligations on Booking Agents. This depends on whether “operator” in the Charter is defined broadly enough to include Booking Agents. The Charter does not define operator. The City argues that

since the term is undefined in the Charter, the City Council is empowered to define the term by ordinance and it did so when it defined Operator and Booking Agent in PCC § 6.04. The City’s argument is flawed. While I owe the City Council deference when interpreting ambiguous terms in the City’s ordinances, *Cascade Broadcasting Co. v. Groener*, 51 Or. App. 533, 537, 626 P.3d 386 (1981), I do not owe the City Council any deference in interpreting terms in the City’s Charter.³ Rather, “[b]ecause the charter provision was adopted by the voters, [my] task is to discern what the voters intended . . . , which [I] derive by first looking to the text and context of the provision, taking into account any history of the measure that illuminates the voters’ intent.” *Brown v. City of Eugene*, 250 Or. App. 132, 136, 279 P.3d 298 (2012) (internal quotation omitted). Therefore, to decipher the intent of the voters, I will first look at the ordinary meaning of the term “operator” in the context of the Portland City Charter. *See Medford Sch. Dist. 549C*, 232 Or. App. at 47 (“In the absence of a definition in the statute itself, we assume that the legislature intends a statutory term to be given its ordinary meaning. To ascertain the ordinary meaning of such terms, courts typically look to dictionary definitions.”) (citing *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or. 606, 859 P.2d 1143 (1993)).

The City offers what it labels “the ordinary, dictionary definition of ‘operator.’” (Pl. Resp. [18] at 22). The City proposes the following definition: “a person who actively operates a business . . . whether as owner, lessor, or employee.” (*Id.* at 22–23 (quoting WEBSTER’S THIRD NEW INT’L DICTIONARY 1581).) I agree with the City that this definition reasonably reflects the ordinary meaning of

³ The deference Oregon courts afford to a local government’s construction of an ordinance is a matter of pragmatism. For example, in *Cascade Broadcasting Co. v. Groener*, the court explained that it deferred to the county’s interpretation of an ordinance “because the county has the duty of administering the ordinance and is its legislative source, and, therefore, the County is in a better position than [the court] to determine the legislative intent.” 51 Or. App. 533, 536-37, 626 P.3d 386 (1981) (citing *Bienz v. City of Dayton*, 29 Or. App. 761, 776, 566 P.2d 904 (1977)). Extending this deference to a city interpreting its own charter, however, would not have the same benefit; the City is in no better position than the court to determine what the voters’ intent was when it passed the Charter.

Furthermore, even if I deferred to the City’s definition of operator, the City asks me to look at the definition provided in the Ordinance which, as discussed above, does not fit HomeAway. What the City really seeks is to define “operator” in the Charter the same way it defines “Booking Agent” in the Ordinance. The City is trying to do through the back door of conflating terms what it should have done through the front door of defining terms.

operator in the context of the Charter and adopt this definition as a reflection of the voters' intent. In other words, applying the City's proposed definition of operator to the language of the Charter, I find the Charter grants the City authority to impose tax collection obligations on people and entities that actively operate a hotel or motel business⁴ whether as owner, lessor, or employee.

There are two reasons why HomeAway, even if it is a "Booking Agent," falls outside this definition and therefore outside of the City's authority granted to it by the Charter to impose tax collection obligations. First, applying the City's definition of operator, the Charter only allows the City to impose tax collection obligations on people and entities that "actively operate" a hotel or motel.⁵ The City has not alleged that HomeAway actively operates a hotel. While not alleged in the complaint, at oral argument, the City proposed viewing HomeAway as an active operator of a virtual hotel. To adopt this view would be inconsistent with the purpose of ascertaining an appropriate dictionary definition of "operator" in the first place, which I have done here by adopting the City's own definition. The purpose of referring to the dictionary is to understand what the voters who passed the Charter likely took operator to mean. While the City's definition that I have adopted defines an operator as someone who "actively operates" a hotel as either "owner, lessor, or employee," there is no doubt the voters who passed the Charter in 1971 did not understand operators of hotels to include operators of virtual hotels. Second, the City's definition applied to the Charter only allows the City to impose tax collection obligations on people and entities who are hotel operators as either "owner, lessor, or employee."⁶ The City has not alleged that HomeAway owns, leases, or is an employee of a hotel. Therefore, I find the

⁴ Section 7-113(1) of the Charter also lists apartments, lodging houses, mobile homes or trailer parks or courts, "or any other place in the City where space designed or intended for lodging occupancy is rented by any person or persons, for any period less than monthly." Portland City Charter § 7-113(1).

⁵ The City's definition of Booking Agent, as defined in the Ordinance, is much broader than this, including within it "any person that provides a means through which a Host may offer a Short-Term Rental for transient lodging occupancy[.]" whether the person actively operates the hotel or not. See PCC § 6.04.010(D) (emphasis added).

⁶ Once again, the City's definition of Booking Agent is broader than the authority granted to it by the Charter, including within the definition people that neither own, lease, or are employed by a hotel or motel business.

City Council acted *ultra vires* when it attempted to impose tax collection obligations on HomeAway under the authority granted to it by the Charter.

Regardless of any limitation placed on it by Section 7-113(1) of the Charter, the City argues Oregon state statutes provide an alternate source of authority to impose tax collection obligations on HomeAway. Section 2-106 of the Charter authorizes the City Council to “exercise any power or authority granted by Oregon statute to municipal corporations at any time and also to cities of a class which includes the City of Portland,” and Oregon state law expressly authorizes Oregon cities to impose a transient-lodgings tax. *See* OR. REV. STAT. ANN. § 320.345 *et seq.* (West 2015). Citing various provisions in the definitions section of the statute, the City contends that “[s]uch a tax may be imposed on any person who ‘facilitates the retail sale of transient lodging and charges for occupancy of the transient lodging’ or on any ‘person that furnishes transient lodgings.’” (Pl. Resp. [18] quoting Or. Rev. Stat. Ann §320.300(12), (13), (14).) Assuming, without deciding, that ORS Chapter 320 authorizes the City to tax those who facilitate the retail sale of or furnish transient lodgings, the City has not sufficiently alleged in its complaint that HomeAway does either of those activities. It is entirely possible, however, if given a chance to amend its complaint, the City may sufficiently allege that HomeAway facilitates the sale of or furnishes transient lodging. The burden is on the City to do so.

Accordingly, since the City does not have the authority to impose tax collection obligations on Booking Agents under the Charter and since it has not sufficiently alleged that HomeAway facilitates the sale of or furnishes transient lodging, I DISMISS the City’s fifth claim that seeks to reduce presumptive taxes to judgment.

2. Regulations Imposed on Booking Agents by the Ordinance

My finding that the City may not impose tax collection obligations on HomeAway as a Booking Agent under the City’s allegations in its current complaint does not necessarily preclude it from regulating Booking Agents and fining HomeAway for not complying with those regulations. The City’s

file number . . . in all advertising and other listing services.” PCC § 6.04.060(D). Section 6.04.170(G) does not contain any of this information. Even assuming the City has sufficiently alleged that HomeAway is a Booking Agent, a non-Operator Booking Agent in HomeAway’s position would rightfully believe the requirements and details of section 6.04.060(D) does not apply to it because the provision only applies to “Operators.” Therefore, I decline to reduce to judgment any penalties imposed against HomeAway as a Booking Agent under sections 6.04.060(D) and 6.04.170(G).

In summary, I find the Ordinance fails to impose any duties or responsibilities on HomeAway as a Booking Agent. I therefore decline to reduce any fines assessed against HomeAway to judgment and DISMISS the City’s third claim in its entirety. Because I find that the Ordinance does not impose any duties or responsibilities on HomeAway as a Booking Agent and because I find, as discussed above, the City has not alleged enough facts that HomeAway can be taxed as a Booking Agent, I also DISMISS the City’s first claim which asks me to declare that HomeAway is subject to the Ordinance as a Booking Agent.

D. Injunctive Relief

The City’s seventh claim asks that I issue an injunction to enjoin HomeAway from continuing to conduct allegedly unlawful activities. Because I have found the City insufficiently alleged HomeAway’s conduct is unlawful under the Ordinance, I decline to issue an injunction at this time. Accordingly, I DISMISS the City’s seventh claim.

IV. CONCLUSION

For the reasons explained above, I GRANT Defendant HomeAway’s 12(b)(6) Motion to Dismiss [7]. I find that Plaintiff City of Portland has not sufficiently alleged that HomeAway is an Operator under the Ordinance, and I accordingly DISMISS the City’s second, fourth, and sixth claims. I also find that the Portland City Charter does not grant the City authority to impose tax collection obligations on

Booking Agents nor has the City sufficiently alleged that HomeAway falls under the City's authority to impose tax collection obligations on Booking Agents under the relevant Oregon state statutes; accordingly, I DISMISS the City's fifth claim. Furthermore, I find the Ordinance does not impose any regulatory duties or responsibilities on HomeAway as a Booking Agent and therefore DISMISS the City's third claim. Because the City's third and fifth claims are dismissed, I also DISMISS the City's first claim. Finally, I decline to issue an injunction at this time and therefore DISMISS the City's seventh claim.

DATED this 7th day of June, 2016.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
Chief United States District Judge

ORDINANCE No. 188170

Clarify definitions, administrative authority and make housekeeping changes to the Transient Lodgings Tax Code (Ordinance; amend Code Chapter 6.04)

The City of Portland ordains:

Section 1. The Council finds:

1. During proceedings by the City of Portland against HomeAway, Inc. to enforce provisions of the Transient Lodgings Tax Code, the U.S. District Court identified ambiguities in the Portland City Code that highlight the difficulties in applying older language to newer economies. The City of Portland filed an amended complaint in July, 2016. Much of the Code was originally written many years ago and does not adequately capture the City Council's intent that certain definitions and other language should include the expectation that short-term rental operations in the "sharing economy" such as HomeAway, Airbnb and others are subject to the City Code for regulatory and taxation purposes.
2. Certain definitions have not been updated in more than two decades and do not reflect the changing nature of the hospitality industry, especially the proliferation of online technologies that connect guests to transient lodging accommodations. The code needs to be updated to reflect both the changing accommodation types and how a guest reserves and pays for all short-term stay options.
3. Numerous housekeeping changes are required to the Transient Lodgings Tax code to modernize archaic language, use gender neutral terminology, capitalize defined terms and make other housekeeping corrections.
4. Some Operators have been confused by certain aspects of due dates and delinquency dates, and especially the timing of the delinquency date. Changing the due date to the last day of the month and the delinquency date to the first day of the month that follows will simplify these two concepts and help Operators make timely tax payments.
5. To assist with collecting unpaid Transient Lodgings Taxes, clarification around the Revenue Division's authority to make a "presumption" about the tax amount owed if an Operator fails to file required returns is needed.

NOW, THEREFORE, the Council directs:

- a. Portland City Code Chapter 6.04 is amended as provided in Exhibit A to this Ordinance.

Passed by the Council: DEC 21 2016

Mayor Hales

Mary Hull Caballero
Auditor of the City of Portland
By

Susan Parsons
Deputy

188170

Prepared by: T. Williams, T. Lannom
Date Prepared: November 15, 2016

Deputy

1403 1440 -

Agenda No.
ORDINANCE NO. 188170

Title

Amend Chapter 6.04 to clarify definitions, administrative authority and make housekeeping changes to the Transient Lodgings Tax Code (Ordinance; amend Code Chapter 6.04)

INTRODUCED BY Commissioner/Auditor:	CLERK USE: DATE FILED <u>DEC 06 2016</u>
COMMISSIONER APPROVAL	Mary Hull Caballero Auditor of the City of Portland
Mayor—Finance and Administration - Hales	By: <u>[Signature]</u> 12-12-16 Deputy
Position 1/Utilities - Fritz	
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	
Position 4/Safety - Novick	
BUREAU APPROVAL	ACTION TAKEN: DEC 14 2016 PASSED TO SECOND READING DEC 21 2016 9:30 A.M.
Bureau: Revenue & Financial Svcs Bureau Head: Ken Rust, CFO Fred Miller, CAO Revenue Division: Thomas Lannom	
Prepared by: Terri Williams Date Prepared: 11/21/2016	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter	
Council Meeting Date 12/7/2016	

AGENDA
TIME CERTAIN <input type="checkbox"/>
Start time: _____
Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input checked="" type="checkbox"/>
Total amount of time needed: 30 min for both 6.04 and 6.05 amendments (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz ✓	
2. Fish	2. Fish ✓	
3. Saltzman	3. Saltzman <u> </u>	
4. Novick	4. Novick ✓	
Hales	Hales ✓	

6.04.010 Definitions.

(Amended by Ordinance Nos. 162647, 186985 and 187339, effective October 16, 2015.) Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter.

A. “Accrual Accounting” means the Operator enters the ~~€~~Rent due from a ~~€~~Transient on his/her their records when the ~~€~~Rent is earned, whether or not it is paid.

B. “Bed and Breakfast Home” means a home where a resident individual or family rents out guest bedrooms (no more than two) in their house, which is continually occupied as their primary residence.

C. “Bed and Breakfast Inn” means a home where a resident individual or family rents out guest bedrooms (between three and six) in their house, which is continually occupied as their primary residence.

~~DB.~~ “Booking Agent” means ~~an Operator or any p~~Person that provides a means through which a Host may offer a Short-Term Rental for transient lodging occupancy. This service is usually, though not necessarily, provided through an online platform and generally allows a Host to advertise the Short-Term Rental through a website provided by the Booking Agent’s hosting platform and provides a means for potential users to arrange transient lodging occupancy and payment, whether the transient pays rent directly to the Host or to the Booking Agent. Booking Agents include, but are not limited to:

1. Online travel booking sites which are involved in the process of listing and booking Short-Term Rental transient lodging occupancies and handle any aspect of the resulting financial transaction; ~~and/or~~
2. Online travel booking sites for Short-Term Rental transient lodging occupancy where advertisements of Short-Term Rental transient lodging occupancy rentals are displayed; ~~and/or~~
3. A hosting or other online site that provides a means through which an Operator, Host or agent may offer a Short-Term Rental unit for transient lodging occupancy; or
4. Any Person who lists commercial Hotel rooms or long-term rentals for transient lodging occupancy; or
5. Any Person who directly or indirectly accepts, receives or facilitates payment, whether or not they are 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.

EC. “Division” means the Revenue Division of the Bureau of Revenue and Financial Services of the City of Portland.

FD. “Division Director” means the director of the Revenue Division, or his/her designee.

GE. “Business License Appeals Board” means a the Board composed of five representatives appointed in the manner set forth in Section 7.02.295 of this Code.

HF. “Cash Accounting” means the eOperator does not enter the rRent due from a tTransient on his/her their records until rRent is paid.

I. “City Council” means the City Council of the City of Portland, Oregon.

JG. “Host” means the owner or person who resides at the a Short-Term Rental or has been designated by the owner or resident of the Short-Term Rental to manage the Short-Term Rental and who rents out the Short-Term Rental for transient lodging occupancy either directly or through the use of a Booking Agent.

KH. “Hotel” means any structure, or any portion of any structure which is used, occupied, or 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, inn, tourist home or house, motel, studio hotel, bachelor boutique hotel, lodging house, rooming house, apartment house, single family house or any portion of such house, duplex, condominium, bed and breakfast facility, vacation home, multi-dwelling structure, accessory dwelling unit, trailer home, houseboat, public or private dormitory, hostel, fraternity, sorority, public or private club, corporate housing or executive housing space or facility, and also means space in a mobile home or trailer park or portion thereof so occupied, provided such occupancy is for less than a 3031-day period. All Hotels must comply with all local codes applicable to their location and use, including but not limited to zoning and building codes.

LI. “Occupancy” means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any rRoom, or rRooms or portion thereof in a hHotel as defined above, or space in a mobile home or trailer park or portion thereof.

MJ. “Operator” means: the person who is proprietor of the hotel in any capacity. Where the operator performs his/her 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 Chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this Chapter by either the principal or managing agent shall be considered to be compliance by both.

1. Any Person who provides one or more Rooms for Occupancy for periods of 30 days or less to the general public for compensation. Furnishing accommodations can be done via employees, contractors, agents or any other person the Hotel consents to allow to process reservations and accept payments from the Transient on behalf of the Hotel; or

2. Any Person that facilitates the reservation of an accommodation and collects the payment for the Room reservation from the Transient; or

3. Any Transient Lodging Provider, Transient Lodging Intermediary or Transient Lodging Tax Collector as defined in ORS 320.300; or

4. A Booking Agent as defined in this Chapter.

There may be more than one Operator for a Hotel and each Operator is independently responsible for compliance with this Chapter though the tax will only be collected once. Operators include, but are not limited to, the Hotel owner and/or management, online travel companies, Booking Agents or other online travel facilitators, travel agents or companies, contracted management companies or any other Person that secures the right to occupy a Room on behalf of the Transient and receives payment from the Transient for that right whether or not the Operator is the ultimate recipient of the payment.

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

OL. "Rent" means the full consideration charged to the Transient for the right to occupy a Room, whether or not received by the operator, for the occupancy of space in a Hotel, valued in money, goods, gift cards, labor, credits, property or other consideration of valued in money, without any deduction. Rent is considered to be the total amount represented to the Transient by an Operator as the consideration charged for the Occupancy including any accommodation fees, commissions or similar amounts paid to or withheld by a Person that facilitates the reservation of a Room.

PM. "Rent pPackage pPlan" 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 room tax under this Chapter ~~shall be~~ is considered the same charge made for ~~Rent~~ of the identical room when it is not a part of a package plan.

N. "Room" means each portion of a Hotel which may be rented or is intended to be rented to a separate transient lodger or lodging party, other than rooms containing no sleeping accommodations and intended to be used for purposes other than sleeping and living accommodations, such as meetings, recreation, education, business or other purposes. In rooms with multiple beds where each bed may be rented or is intended to be rented to a separate transient lodger, such as bunk or dormitory style rooms, each bed is counted as a room.

OO. "Short-Term Rental" means a house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling where a person rents guest bedrooms for transient lodging occupancy. Generally, a Short-Term Rental is zoned as residential property or has a building occupancy that only allows for residential use.

RP. "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/she~~ the Operator is required to report ~~his/her~~ their collections.

SQ. “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~~ is not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel ~~shall be~~ is 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, ~~or~~ and the tenancy actually extends more than 30 consecutive days. ~~In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this Chapter may be considered.~~

6.04.020 Tax Imposed.

For the privilege of occupancy in any hotel, each transient shall pay a tax in the amount of 6 percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the City, which is extinguished only by payment by the operator to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator ~~shall~~ must enter the tax on his/her their records when rent is collected if the operator keeps his/her their records on the cash accounting basis and when earned if the operator keeps his/her their records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax ~~shall~~ must be paid by the transient to the operator with each installment. In all cases, the rent paid or charged for occupancy ~~shall~~ may exclude the sale of any goods, services and commodities, other than charges associated with the furnishing of rooms, including but not limited to cleaning fees, non-refundable deposits, reservation or service fees accommodations, and space occupancy in mobile home parks or trailer parks.

6.0.025 Administrative Authority.

A. The Revenue Division administers this Chapter. Nothing in this Chapter precludes the disposition of a controversy by stipulation or agreed settlement, through correspondence or a conference with the Director.

B. The Director may implement procedures, forms and written policies for administering the provisions of this Chapter.

C. The Director may adopt rules relating to matters within the scope of this Chapter or to obtain compliance with this Chapter.

D. Before adopting a new rule, the Director must hold a public hearing. Prior to the hearing, the Director must mail notice of the public hearing to each Operator currently registered with the Division at the last known mailing address provided or post the rule on the City of Portland website. The notice must be mailed not less than 10 nor more than 30 days before the hearing. Such notice must include the place, time and purpose of the public hearing, a brief description of

the subjects covered by the proposed rule and the location where copies of the full text of the proposed rule may be obtained.

E. At the public hearing, the Director must accept oral or written testimony concerning the proposed rule. The Director will either adopt the proposed rule, modify it or reject it, taking into consideration the testimony received during the public hearing.

6.04.030 Collection of Tax by Operator; ~~Rules for Collection.~~

(Amended by Ordinance No. 187339, effective October 16, 2015.)

~~A. Every~~ Operators renting rooms or space for lodging or sleeping purposes in this City, the occupancy of which is not exempted under the terms of this Chapter, shall must collect a ~~€Tax~~ from the ~~€Transient. The~~ €Tax collected or accrued by the ~~€Operator constitutes a debt owing by the~~ €Operator to the City.

~~B. 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 is made. Adjustments may be made for uncollectibles~~ Rent where appropriate.

~~C. The Division shall enforce provisions of this Chapter and shall have the power to adopt rules and regulations not inconsistent with this Chapter as may be necessary to aid in the enforcement. Prior to the adoption of rules and regulations, the Division shall give public notice of its intent to adopt rules and regulations, provide copies of the proposed rules and regulations to interested parties, and conduct a public hearing on the proposed rules and regulations. Public notice shall be given when rules and regulations have been finally adopted. Copies of current rules and regulations shall be made available to the public upon request. It is a violation of this Chapter to violate rules and regulations duly adopted by the Division.~~

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

6.04.040 Operator's Duties.

(Amended by Ordinance Nos. 186985 and 187339, effective October 16, 2015.)

~~A. Each~~ Operators must shall collect the ~~€Tax imposed by this Chapter at the same time as the~~ €Rent is collected from every ~~€Transient. The amount of~~ €Tax shall must be separately stated upon the ~~€Operator's records, and any receipt rendered by the~~ €Operator. If a single amount is stated on the Operator's records or receipts without a breakout between Rent and Tax, the ~~Division will deem the entire amount is Rent and Tax will be calculated on the total amount. No imputation of Tax is permitted. No~~ €Operator of a hotel shall may 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 Chapter.

~~B. An Operator or Booking Agent that directly or indirectly accepts, receives or facilitates payment, including through Application Programming Interfaces (APIs) or other computerized devices where third party providers receive information about a transaction and collect funds that may or may not be transmitted to the operator, owner or other person offering a Short Term Rental, for the transient lodging occupancy from a transient is required to collect, report and remit transient lodging taxes to the City of Portland in accordance with this Chapter.~~

~~CB. Additionally, u~~Upon request of the Division for any regulatory or tax administration purpose, Operators, ~~which include Booking Agents,~~ must provide all physical addresses of transient lodging occupancy locations within Portland city limits and the related contact information, including the name and mailing address, of the general manager, agent, owner, ~~or Host or other responsible Person~~ for the location. Any location and related contact information provided under this Subsection is considered confidential and is not subject to public disclosure due to personal privacy concerns.

6.04.050 Exemptions.

(Amended by Ord. No. 162647; Jan. 4, 1990.) No tax imposed under this Chapter shall be imposed upon:

~~A. Any occupant for more than 30 successive calendar days (a p~~Person who pays for lodging on a ~~monthly~~ calendar month basis, irrespective of the number of days in such a month, shall not be deemed a ~~t~~Transient);

~~B. Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his own use thereof, except Bed and Breakfast Homes and Inns;~~

~~CB. Any occupant in a hospital room, medical or mental health facility, convalescent home, home for aged people skilled nursing facility, assisted living facility, foster home, rehabilitation center;~~ or a government owned and operated public institution.

~~DC. Any p~~Person housed through an emergency shelter or disaster program where the ~~r~~Rent is paid with government assistance funds;

~~ED. Any Federal Government employee traveling on official government business, who presents an official Government Exemption Certificate or official travel authorization. An exemption may also be granted for direct bills to a Federal Government department, agency or instrumentality. An exemption may not be granted for Rents paid by contractors of the Federal Government, even if the Occupancy was for a Federal Government employee on official business, and notwithstanding the fact that such Rents may be reimbursed by the Federal Government or paid under the contract with the Federal Government.~~

6.04.060 Registration of Operator; Form and Contents; ~~Execution;~~ Certification of Authority.

(Amended by Ordinance Nos. 186736 and 187339, effective October 16, 2015.)

A. ~~Every p~~Persons engaging or about to engage in business as an ~~o~~Operator ~~of a hotel~~ in this City shall must register with the Division on a form provided by the Division. Operators starting business must register within 15 calendar days after commencing business. ~~The privilege of registration after the date of imposition of such tax shall~~ failure to register with the Division does not relieve any pPerson from the obligation of payment or collection of ~~t~~Tax ~~regardless of registration.~~ Registration shall ~~set forth~~ must state the name under which an ~~o~~Operator transacts or intends to transact business, any affiliated companies or brands that are associated with the registration, the location of ~~his~~ the place of business and such other information necessary to facilitate the collection of the ~~t~~Tax as the Division may require. The Operator must sign registration shall be signed by the operator registration form.

B. Within 10 days after registration, ~~F~~the Division shall, ~~within 10 days after registration,~~ will issue ~~without charge~~ a ~~e~~Certificate of ~~a~~Authority and establish an account to each registrant to collect the tax from the Transient occupant, together with a duplicate thereof for each additional place of business of each registrant. Certificates of Authority shall ~~be~~ are non-assignable and non-transferable and shall will be ~~surrendered immediately returned~~ to the Division upon the cessation of business or business sale or transfer at the location ~~named or upon the business sale or transfer listed on the certificate, if applicable.~~ Each eCertificates of Authority and duplicate shall state the place of business to which it is applicable and shall must be prominently displayed ~~thereon~~ so as to be seen by and come to notice readily of all occupants and persons seeking occupancy. If the Rent transaction is facilitated online, the Certificate of Authority must be able to be viewed by the Transient by clicking on link to the Certificate of Authority at a reasonable place during the payment transaction.

C. ~~Said certificate shall, among other things, state~~ The Certificate of Authority will include at least the following:

1. The name of the ~~o~~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 has fulfilled the requirements of the Transient Lodgings Tax Chapter of the City of Portland for the purpose of collecting and remitting the lodgings tax. This certificate does not authorize any ~~p~~Person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a ~~h~~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 City of Portland. This certificate does not constitute a permit.”

D. Hosts of Type A and Type B Accessory Short-Term Rentals must comply with the requirements of Chapter 33.207. In addition, all Operators of Type A and Type B accessory sShort-~~t~~Term ~~r~~Rentals as described in ~~Section~~ Chapter 33.207 must include prominently display

their Type A Permit Number or Type B Conditional Use case file number, as applicable, in all advertising and other listing services. No ~~person~~ Operator will ~~shall~~ advertise or otherwise represent that an accessory ~~sShort-tTerm rRental has received approval~~ is available for Occupancy unless all applicable legal requirements allowing the Occupancy of a Short-Term Rental has been met and the Operator has registered with the Division as required above ~~that person holds a current, valid permit or Conditional Use case file.~~ Additionally, this Permit Number, ~~or~~ Conditional Use case file number or other number issued directly by the Division must shall be prominently displayed in the rental unit so as to be seen by all short-term occupants.

6.04.070 Due Date; Returns and Payments.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

A. The tax imposed by this Chapter ~~shall~~ must be paid by the ~~t~~Transient to the ~~o~~Operator at the time that ~~r~~Rent is paid. All amounts of such taxes collected by any ~~o~~Operator are due and payable to the ~~Tax Administrator~~ Division on or before the 15th last day of the following month for the preceding 3 months; and are delinquent on the last day of the month in which they are due. If the ~~last day of the month~~ due date falls on a holiday or weekend Sunday or legal holiday as defined by ORS 187.010, amounts are delinquent on the first business day that follows.

Payments and returns received or postmarked before the first business day that follows will be deemed to have been received on the due date. The Division has authority to classify and/or ~~district the operators~~ Operators for determination of applicable tax periods, and ~~shall~~ will notify each ~~o~~Operator of the due and delinquent dates for the ~~operator's~~ returns. ~~The initial return under this Chapter may be for less than 3 months preceding the due date; thereafter returns shall be made for the applicable quarterly period.~~

B. On or before the ~~15th~~ last day of the month following each quarter of collection, or month of collection if an Operator is required or elects to file monthly returns, a return for the preceding ~~quarter's period's~~ tax collections shall must be filed with the Division. The return ~~shall~~ must be filed in such form as the Division may prescribe ~~by every operator liable for payment of the tax.~~

C. Returns ~~shall~~ must show the amount of tax collected or otherwise due for the related period. The Division may require returns to include additional information to explain the tax calculation ~~show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.~~

D. The ~~p~~Person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the Division at its office, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

E. For good cause, the Division may extend for ~~not to exceed~~ 1 month the time for making any return or payment of tax. No further extension ~~shall~~ will be granted, except by the ~~Division~~ Director. Any ~~o~~Operator to whom an extension is granted ~~shall~~ will pay interest at the rate of

1.25 percent per month on the amount of tax due without proration for a portion of a month or reduction for any prepayments or credits available. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted period, then the interest ~~shall~~ will be added to the tax due for computation of penalties and additional interest described elsewhere in this Chapter.

F. The Division, if deemed necessary in order to ~~insure~~ ensure payment or facilitate collection by the City of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than quarterly periods. If an Operator is required to report on a more frequent basis, the Division will provide a schedule showing the tax periods, due dates and delinquent dates.

6.04.080 Penalties and Interest.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

A. Original delinquency. Any ~~o~~Operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Chapter ~~prior to delinquency shall~~ on or before the due date will pay a penalty of 10 percent of the ~~amount of the tax due in addition to the amount of the tax.~~ There is no grace period between the due date and the assessment of a penalty and interest; the day following the due date is considered to be the delinquent date.

B. Continued delinquency. Any ~~o~~Operator who ~~has not been granted an extension of time for remittance of tax due, and who failed~~ to pay in full on or before the due date of an original delinquency notice will ~~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 15 percent of the amount of the tax due plus all penalty and interest assessments at the time of the continued delinquency calculation ~~the amount of the 10 percent penalty first imposed.~~

C. Fraud. If the Division determines that the nonpayment of any ~~remittance amount~~ amount due under this Chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the ~~amount of the tax shall~~ will be added ~~thereto~~ in addition to the penalties stated in paragraphs A and B of this Section and interest stated in paragraph 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 calculations.

D. Interest. In addition to the penalties imposed above, any ~~o~~Operator who fails to ~~remit~~ file or pay any tax imposed by this Chapter ~~shall~~ will pay interest at the rate of 1 percent per month or fraction thereof without proration for portions of a month, on the amount of the tax due from the first day following the original due date ~~date on which the remittance first became delinquent until paid.~~ Interest ~~shall~~ will be compounded monthly until the amount due is paid in full.

E. Penalties and interest merged with tax. Every penalty imposed and such interest as accrues under the provisions of this Section ~~shall~~ will be merged with and become a part of the tax ~~herein~~ required to be paid. If delinquency continues, requiring additional penalty and interest

calculations, previously assessed penalty and interest are added to the tax 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. Any ~~o~~Operator who fails to ~~remit~~ pay the tax ~~herein levied~~ within the time ~~herein stated~~ shall must pay the tax, penalties and interest assessed; herein stated, provided, however, the ~~o~~Operator may petition the ~~Division~~ Director for waiver and refund or credit of ~~the~~ all or part of the penalty assessed or any portion thereof and the ~~Division~~ Director may, if a good and sufficient reason is shown, waive ~~and direct a refund~~ some or all of the penalty assessment or any portion thereof. Interest will not be waived except by written policy.

6.04.090 Deficiency Determination; Fraud, Evasion, Operator Delay.

(Replaced by Ordinance No. 184772; amended by Ordinance No. 187339, effective October 16, 2015.)

A. Deficiency determinations. If the Division determines that a return is incorrect, that required reports or returns have not been filed, or that an ~~o~~Operator has otherwise failed to comply with the terms of the Code, it may compute and determine or estimate the amount required to be paid based on the facts contained in the return or returns or any other information reasonably within its possession. Once a deficiency determination is made, the amount is due and payable within ten days ~~after service of a deficiency notice from the Division.~~ The Division may ~~also determine and~~ assess penalties and interest as set forth in Section 6.04.080.

1. In making a deficiency determination, the Division may offset overpayments, if any, which may have been previously made ~~for a period or periods~~ against any deficiency for a subsequent period or periods, or against penalties and interest on the deficiency.

2. The Division ~~shall~~ must give to the ~~o~~Operator or ~~t~~Transient (in the case of a refund request) a written notice of its deficiency determination. The notice may be served personally or by mail. If by mail, the notice ~~shall~~ will be addressed to the ~~o~~Operator at ~~his/her~~ the address as it appears on the records of the Division or as the Division can best determine if the ~~o~~Operator has not provided that information to the Division. In case of service by mail or any notice required by this Chapter, the service is complete at the time of deposit with the United States Post Office.

3. Any deficiency is due and payable within 10 days ~~after the Division serves its written notice.~~ The ~~o~~Operator or ~~t~~Transient (in the case of a refund request) may petition for a redetermination if the petition is filed within 10 days of service as provided in Section 6.04.100. Nothing prohibits the Division from extending the time for petition beyond 10 days at its sole discretion.

4. ~~Except as provided herein,~~ every deficiency determination ~~shall~~ must be made and notice mailed within ~~3~~ 5 years after a return was originally filed, ~~or subsequently amended,~~ or the tax was paid, 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 and is not subject to the 5 year limitation above.

B. Operator delay. If the Division believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or if any deficiency determination will be jeopardized by delay, the Division may make a deficiency determination of the tax or amount of tax required to be collected, noting the fact upon the deficiency determination. The amount so determined ~~as herein provided shall be~~ is immediately due and payable, and the ~~Operator shall will~~ immediately pay such determination to the Division after service of notice thereof; provided, however, the ~~Operator~~ may petition, after payment has been made, for a redetermination of the Division's assessment, if the petition is filed within 10 days from the date of the written notice from the Division.

6.04.100 Redeterminations.

(Amended by Ordinance Nos. 184772 and 187339, effective October 16, 2015.)

A. Any ~~p~~Person against whom a deficiency determination is made under Section 6.04.090 or civil penalties assessed under Section 6.04.170 ~~any person directly interested~~ may petition for a redetermination ~~and redemption and refund~~ within the time required in Section 6.04.090. ~~t~~ The deficiency determination becomes final at the expiration of the allowable time.

B. If a petition for redetermination ~~and refund~~ is filed within the time provided in Subsection 6.04.090 A.3. allowable period, the ~~Division~~ Director shall will reconsider the deficiency determination or civil penalties, and, if ~~the person has so~~ requested in his/her the petition, shall will grant the person an oral hearing and shall give him/her 10 days notice of the time and place of the hearing. The ~~Division~~ Director may continue the hearing from time to time as may be necessary.

C. The ~~Division~~ Director may ~~decrease or increase~~ adjust the amount of the deficiency determination as a result of the hearing and, if an increase is determined, such increase shall will be payable immediately after the hearing.

D. The Director's order or decision of the Division Director upon a petition for redetermination of redemption and refund becomes final 10 days after service upon the petitioner ~~of notice thereof~~, unless an appeal of such order or decision is filed with the Business License Appeals Board or Hearings Officer, if applicable, within ~~the~~ 10 days after service ~~of such notice~~.

E. No petition for redetermination, ~~redemption or refund~~ or other appeal shall will be accepted and no petition or appeal is effective for any purpose unless the ~~Operator~~ has first complied with the payment provisions ~~hereof~~ and has paid in full the amount determined to be due in the deficiency determination or civil penalty that is being appealed by the decision appealed from.

6.04.110 Security for Collection of Tax.

(Amended by Ordinance Nos. 162647 and 187339, effective October 16, 2015.) The Division, whenever deemed necessary to ~~insure~~ ensure compliance with this Chapter, may require any ~~Operator~~ subject thereto to deposit ~~with it~~ such security in the form of cash, bond, or other security as the Division may determine. The amount of the security ~~shall~~ will be ~~fixed~~ determined by the Division but ~~shall~~ will not be greater than twice the ~~Operator's~~ estimated average largest quarterly liability ~~for the period for which he files returns~~, determined in such manner as the Division deems proper. No interest will accrue on any security required by the Division. ~~The amount of the security may be increased or decreased by the Division subject to the limitation herein provided.~~

6.04.120 Credits or Refunds.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

A. Refunds Credits by City to ~~Operator~~. Whenever the amount of any tax, penalty, or interest has been paid ~~more than once or has been erroneously or illegally collected or received by in~~ error to the Division under this Chapter, it may be ~~refunded~~ credited to the Operator's account, provided a verified claim in writing ~~therefor~~, stating the specific reason upon which the claim is founded, is filed with the Division within 3 years from the date of payment. ~~The claim shall be made on forms provided by the Division.~~ If the claim is approved by the Division, the excess amount collected or paid may be ~~refunded or may be~~ credited against any current or future ~~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 to such operator, his/her administrators, executors, or assignees.~~ If there is no future liability, the Division may issue a refund.

B. Refunds by City to ~~Transient~~. Whenever the tax required by this Chapter has been collected by the ~~Operator~~, and ~~deposited~~ paid by the ~~Operator~~ with to the Division, and it is later determined that the tax was erroneously ~~or illegally collected or received by the Division~~ Operator, it may be refunded by the Division to the ~~Transient~~ or the party who paid the tax if different from the Transient, provided a verified claim in writing ~~therefor~~, stating the specific reason on which the claim is founded, is filed with the Division within 3 years from the date of payment. Prior to any refund, the Division will audit the Operator's records to determine that the tax was collected and paid to the City.

C. Refunds by ~~Operator~~ to ~~tenant~~ Transient. Whenever the tax required by this Chapter has been collected by the ~~Operator~~ and it is later determined that the ~~tenant occupies the hotel for a period exceeding 30 days without interruption~~ tax was collected in error, the ~~Operator~~ shall will refund to ~~such tenant~~ the Transient the tax previously collected by the operator from that tenant as transient. The ~~Operator~~ shall will account for such collection and refund to the Division. If the ~~Operator~~ has remitted the tax prior to refund ~~or credit~~ to the Transient, the Operator may request a credit for the refunded tax when the next report is filed with the City ~~tenant, he shall be entitled to a corresponding refund under this Section.~~

6.04.130 Administration and Recordkeeping.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

A. Records required from ~~an~~ Operator, ~~et cetera~~; form. Every ~~an~~ Operator shall ~~must~~ keep guest appropriate records, including but not limited to registration forms or logs, accounting and bank records, supporting documentation for all deductions taken and any other documentation necessary to support the tax report filed or required to be filed ~~of room sales and accounting books and records of the room sales.~~ All records shall must be retained by the operator for a period of 3 5 years and 6 months after the filing of the tax return, amended return or payment of the tax, whichever is later ~~they come into being.~~

B. Examination of records; investigations. The Division, or any person authorized in writing by it, may examine during normal business hours the books, papers and accounting records relating to ~~room sales of tax returns filed by any~~ ~~an~~ Operator, after notification to the ~~an~~ Operator liable for collecting and remitting the tax, and may investigate the business of the ~~an~~ 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.

C. Should the City institute 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 reasonable costs and attorneys' fees.

~~D~~C. At any time within 3 5 years after any tax or any amount of tax required to be collected becomes due and payable or at any time within 3 5 years after any determination becomes final, in the case where no tax returns have been filed, the Division may bring an action in the courts of this State, or any other state, or of the United States in the name of the City to collect the tax amount delinquent due, together with all penalties and interest amounts assessed under this Code.

~~E~~D. Confidential financial information. Except as otherwise required by law, it ~~shall be~~ is unlawful for the Division, ~~the Auditor,~~ or any elected official officer, employee, or agent, to divulge, release, or make known in any manner any financial information submitted or disclosed to the Division under the terms of Chapter 6.04, Transient Lodgings Tax. Nothing in this subsection ~~shall be construed to prohibit:~~

1. The disclosure to, or the examination of, financial records by City officials, employees or agents for the purpose of administering or enforcing the terms of this Chapter, or collecting taxes imposed under the terms of this Chapter, or collecting City permit fees or business license taxes fees; or
2. The disclosure to the Operator taxpayer or his/her an authorized representative of financial information, including amounts of transient lodgings taxes, penalties, or interest, after filing of a written request ~~by the taxpayer or his/her authorized representative~~ and approval of the request by the Division Director Manager; or
3. The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration-Certificates of Authority have been issued; or

4. The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular ~~taxpayer's~~ Operator's return or application; or
5. The disclosure of financial information to the City Attorney or other legal representatives of the City, to the extent the Division deems disclosure or access necessary for the performance of the duties of advising or representing the Division.
6. The disclosure of financial information or unpaid tax balances, including penalty and interest assessments, to an outside collection agency on contract with the City to provide collection services.

6.04.140 Business License Appeals Board; Hearings Officer; Appeal; Rules.

(Replaced by Ordinance No. 184772; amended by Ordinance No. 187339, effective October 16, 2015.) ~~The Business License Appeals Board shall have power and it shall be its duty:~~

- A. Except as provided herein, the Business License Appeals Board has authority to hear and determine appeals of orders or decisions of the Division or ~~Division~~ Director made upon petitions for redetermination ~~of tax~~. The Board may affirm, modify, or reverse such orders or decisions or dismiss the appeals and prescribe such forms, rules, and regulations relating to appeals as it may deem necessary. In the review of the Division or ~~Division~~ Director's decision or order, the Board may take such evidence and make such investigation as it may deem necessary. It ~~shall~~ will give notice of its determinations in the manner prescribed for service of a notice of the Division or ~~Division~~ Director's decision and ~~shall~~ will file a copy of each such determination with the Division. Such determination ~~shall~~ will become final after 10 days and any increase to the determination becomes due and payable once final, subject to interest and penalties, and enforceable by the Division ~~in like manner~~ as an order or decision of the Division or ~~Division~~ Director.
- B. For an amount in controversy greater than \$10,000 and less than \$50,000, an appellant may request a hearing by an appointed Hearings Officer instead of a hearing by the Business License Appeals Board.
- C. An appeal involving an amount in controversy greater than \$50,000 ~~shall~~ will be heard by a Hearings Officer instead of a hearing by the Business License Appeals Board. The Hearings Officer ~~shall~~ will be appointed by the City Attorney, ~~shall~~ will be a member of the Oregon State Bar and ~~shall~~ will not be a City employee.
- D. In appeal hearings held before a Hearings Officer, the appellant and the City's representative ~~shall~~ will each have the right to appear in person and be represented by legal counsel, to receive notice, to respond to and present evidence, to call and cross-examine witnesses under oath and to present argument on all issues involved. Subject to the provisions herein, the City Attorney may promulgate supplementary rules and procedures for the conduct of the hearing, the forms of notice and proceedings, and the preparation and submission of the record.
- E. The record in a proceeding before the Hearings Officer ~~shall~~ will include:

1. All pleadings, motions, and intermediate rulings;
 2. Evidence received or considered;
 3. Stipulations;
 4. A statement of matters officially noticed;
 5. Questions and offers of proof, objections, and rulings thereon;
 6. Proposed findings and exceptions; and
 7. Any proposed, intermediate, or final order prepared by the Hearings Officer.
- F.** The Hearings Officer ~~shall have~~ has the power to compel attendance of witnesses by deposition or at hearing and the production of documents by subpoena to any party upon showing of general relevance and subpoena in accordance with civil law.
- G.** The formal rules of evidence do ~~shall~~ not apply and any relevant evidence that is the sort of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of serious business affairs ~~shall be~~ is admissible. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Hearsay evidence may be considered by the Hearings Officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The Hearings Officer ~~shall~~ will give effect to the rules of privilege recognized by law.
- H.** The Hearings Officer may take notice of judicially recognizable facts, and the Hearings Officer may take official notice of general, technical, or scientific facts within the specialized knowledge of City employees.
- I.** A verbatim, written, mechanical, or electronic record ~~shall~~ will be made on all motions, rulings, and testimony if requested by any party. The record ~~shall~~ will be transcribed for the purposes of court review. If the City prevails on such review, the reasonable costs of preparing the transcript ~~shall~~ will be allowed as a part of the City's costs in such action.
- J.** The Hearings Officer is authorized to rule upon issues of law or fact and to determine the amount of the tax, penalty or interest due in accordance with the Transient Lodgings Tax Law. The Hearings Office ~~shall~~ does not have any jurisdiction to waive, mitigate or suspend the collection of any tax, penalty or interest assessment found to be duly imposed.
- K.** The decision of the Hearings Officer ~~shall~~ will be issued in writing in a final order. The final order ~~shall~~ becomes final on the date specified in the order, which date ~~shall~~ will be within 30 days after the conclusion of the hearing. The decision ~~shall be~~ is the final administrative remedy of the appellant. Any amounts due ~~shall be~~ are payable to the ~~City Treasurer~~ City of Portland within 10 days of the order becoming final. The Hearings Officer ~~shall~~ will notify the parties to

a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

6.04.150 Appeal to Business License Appeals Board, Hearings Officer.

(Replaced by Ordinance No. 184772; amended by Ordinance No. 187339, effective October 16, 2015.) Any ~~o~~Operator or ~~t~~Transient aggrieved by a decision of the ~~D~~ivision Director made pursuant to Section 6.04.100 may appeal to the Business License Appeals Board or Hearings Officer as allowed in Section 6.04.140 by filing a notice of appeal with the ~~D~~ivision Director within 10 days of the service of the notice of a Director's decision. Any hearing ~~shall~~ will be scheduled by the Business License Appeals Board or Hearings Officer in accordance with rules pertaining to such appeals.

6.04.155 Appeal of Penalty or Interest Assessments. Appeals of penalty and/or interest assessments are not subject to the appeals process or timeline outlined in Section 6.04.140 or 6.04.150 above. The Operator must follow the "Redetermination" procedures under Section 6.04.100. The decision of the Director regarding penalty and interest assessments is final.

6.04.160 Appeals to City Council.

(Repealed by Ordinance No. 184772, effective August 26, 2011.)

6.04.165 Presumptive Tax for Failure to Register or File Returns.

A. The Director may impose a presumptive tax upon any Person failing or refusing to register as an Operator or file tax returns as required under this Chapter.

B. In calculating the presumptive tax amount when imposed under this Section, the Division will determine:

1. The number of rooms that the Operator controlled for each day that it was not registered; and
2. The room rental rate, based upon the best available information, including comparable operations by a similarly situated Operator; or
3. Use any other reasonable method available to the Division to impose a presumptive tax, including but not limited to tax returns filed by similarly situated Operators.

C. Any presumptive tax issued under this section will include penalty and interest assessments based on when the registration or tax returns were originally due, following the rules established within this Chapter.

D. Presumptive taxes are not intended to approximate actual taxes that may be due and nothing prohibits the Division from assessing excessive tax amounts due based on reasonable assumptions and calculation methods.

6.04.170 ~~Violations~~ Civil Penalties for Violations of this Chapter.

(Amended by Ordinance Nos. 186985 and 187339, effective October 16, 2015.) It is unlawful for any Operator or other ~~p~~Person so required to fail or refuse to register ~~as required herein~~, or to ~~furnish~~ fail or refuse to file any return required ~~to be made~~, or to fail or refuse to furnish file a

supplemental return or any other data required by the Division, or to render a false or fraudulent return, or to fail to perform any of the duties required in Chapter 6.04. No person required to make, render, sign, or verify any report shall will make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this Chapter. In addition to any presumptive taxes assessed under Section 6.04.165, the Division Director may impose a civil penalty of up to \$500 for each violation of this Chapter. Violations may be assessed as frequently as necessary to achieve compliance with this Chapter, up to and including daily. A violation includes, but is not limited to:

- A. Failure to file any required Transient Lodgings Tax payment and/or report, including any penalties and interest, within 60 days of the due date;
- B. Filing a false or fraudulent report;
- C. Failure to register a ~~h~~Hotel or Short-Term Rental, or failure to register as an Operator with the Division as described in Section 6.04.060;
- D. Failure to maintain a separate account for the transient lodgings tax collected when required by the Division;
- E. Failure to provide any data or other information requested by the Division, including but not limited to, the physical address of a transient lodging occupancy location within Portland and the related contact information;
- F. Failure by a Host to obtain an Accessory Short-Term Rental permit, or failure by any Operator to prominently display provide the Type A Permit Number, ~~or~~ Type B Conditional Use case file number or Revenue Division issued advertising number in advertising or other listing services, or failure by the Host to post this the number in the Short-Term Rental unit; and
- G. Failure by an Operator Booking Agent to prominently display the Accessory Short-Term Rental permit number, ~~or~~ case file number or other number issued by the Division in all advertisements and/or in the Short-Term Rental.
- H. Failure by an Operator to maintain records required in Subsection 6.04.130 A.

RESOLUTION No. 37268

Refer amendments to the City of Portland Charter, Chapter 7, Finance, to the May 16, 2017 Special Election Ballot to authorize Council to interpret and administer provisions of the Transient Lodgings Tax (Resolution)

WHEREAS, the City of Portland has Charter authority by ordinance to impose and levy a tax on lodging at hotels, motels, apartment or lodging houses, mobile homes or trailer park or court, or any other place in the City where space designed or intended for lodging occupancy is rented by any person or persons for any period less than monthly; and

WHEREAS, the City of Portland passed ordinances beginning in the early 1970s to exercise this tax authority on lodging that is commonly referred to as “transient lodging”; and

WHEREAS, when the Charter was written, renting a room at a “hotel” was done directly with the owner/operator of the hotel by telephone or in person at the location; and

WHEREAS, both technology and time have changed how transient lodging businesses are operated, the types of structures and situations that offer transient lodgings and how persons wishing to rent transient lodgings can obtain and pay for those lodgings; and

WHEREAS, both reservations and payments for transient lodgings are no longer required to be done directly with the owner or traditional operator of the space intended for lodging occupancy as in the past now that there are dozens of online companies that advertise a variety of hotel types and locations and are able to accept both room reservations and deposits or full payments for a variety of lodging options; and

WHEREAS, Portland’s City Council has exercised its Charter authority in the past by passing ordinances that define terms for administration of the transient lodgings tax; and

WHEREAS, since time, technology and business models have changed over the last 50 years, it is appropriate to clarify City Council’s authority to update Charter definitions, through legislation, to reflect these changes by adopting new or expanded terms through the City’s ordinance process.

NOW, THEREFORE, BE IT RESOLVED, that the City Council will submit a Measure for an Act, amending the City of Portland Charter, Section 7-113, Transient Lodging Tax, attached as Exhibit A, to the voters of the City of Portland at the May 16, 2017 Special Election in the City of Portland, Multnomah County, Clackamas County and Washington County; and

BE IT FURTHER RESOLVED, that the City Council submits the question, ballot title and summary to be contained in the May 16, 2017 Special Election, as contained in Exhibit B; and

BE IT FURTHER RESOLVED, that the City Council directs the Auditor of the City of Portland to publish the ballot title, shown in Exhibit B, in accordance with City Code; and

BE IT FURTHER RESOLVED, that the sponsoring elected official may submit an explanatory

statement to the Auditor of the City of Portland for publication in the voters' pamphlet; and

BE IT FURTHER RESOLVED, that the Auditor of the City of Portland is directed to forward to the County Elections Office all material necessary to place this measure on the May 16, 2017 Special Election Ballot; and

BE IT FURTHER RESOLVED, that the Auditor of the City of Portland is hereby authorized to incur expenses necessary and incident to the conduct of such Special Election.

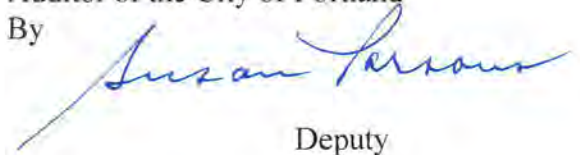
Adopted by the Council: FEB 15 2017

Commissioner Fish

Prepared by: Terri Williams, Ken McGair

Date Prepared: February 7, 2016


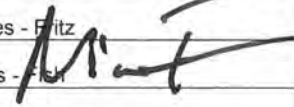


Mary Hull Caballero
Auditor of the City of Portland
By



Deputy

Agenda No. **RESOLUTION NO. 37268**
Title

Refer amendments to the City of Portland Charter, Chapter 7, Finance, to the May 16, 2017 Special Election Ballot, (Resolution)
to authorize Council to interpret and administer provisions of the Transient Lodgings Tax

INTRODUCED BY Commissioner/Auditor: FISH	CLERK USE: DATE FILED <u>FEB 07 2017</u>
COMMISSIONER APPROVAL	Mary Hull Caballero Auditor of the City of Portland By:  Deputy
Mayor—Finance & Administration – Wheeler	
Position 1/Utilities - Fritz	
Position 2/Works - 	
Position 3/Affairs - Saltzman	
Position 4/Safety - Eudaly	ACTION TAKEN: 
BUREAU APPROVAL	
Bureau: Bureau of Revenue & Financial Services Bureau Head: Tom Ringhart, CAO Ken Rust, CFO Thomas Lannon, Revenue Director	
Prepared by: Terri Williams Date Prepared: 2/7/2017	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan 	
Council Meeting Date 2/15/2017	

AGENDA
TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input checked="" type="checkbox"/> Total amount of time needed: 15 minutes (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz ✓	
2. Fish	2. Fish ✓	
3. Saltzman	3. Saltzman ✓	
4. Eudaly	4. Eudaly _____	
Wheeler	Wheeler ✓	

AN ACT

Tax. A Measure, amending the City of Portland Charter, Chapter 7-113, Transient Lodgings

BE IT ENACTED BY THE PEOPLE OF THE
CITY OF PORTLAND, OREGON

Section 1. Chapter 7-113 of the Charter of the City of Portland, Oregon is amended to read as follows:

1. The Council may by ordinance impose and levy a tax not exceeding five percent on gross amounts of money, credit or other things of value paid to or received for lodging by the owner or operator, of any hotel, motel, apartment or lodging house, mobile home or trailer park or court, or any other place in the City where space designed or intended for lodging occupancy is rented by any person or persons, for any period less than monthly. This tax shall not apply to hospitals, convalescent or nursing homes, or public institutions, or permanent occupancy as defined by ordinance. Minimum rentals to which the tax shall apply may be fixed by ordinance. The tax imposed shall be collected by the owner or operator, of the rental space in addition to the rental charge, at the time of payment of rent. City revenues from such taxes shall be credited to the General Fund of the City and used for general City purposes, as the Council may find appropriate, which may include provision for and the acquisition, construction, operation and maintenance of recreational, cultural, convention or tourist-related facilities or services.
2. In addition to any other tax authorized by this Section of the Charter the Council shall by ordinance impose and levy a tax of one percent on gross amounts of money, credit or other things of value paid to or received for lodging by the owner or operator, of any hotel, motel, apartment or lodging house, mobile home or trailer park or court, or any other place in the City where space designed or intended for lodging occupancy is rented by any person or persons, for any period less than monthly. This tax shall not apply to hospitals, convalescent or nursing homes, public institutions, or permanent occupancy as defined by ordinance. Minimum rentals to which the tax shall apply may be fixed by ordinance. The tax imposed shall be collected by the owner or operator, of the rental space in addition to the rental charge, at the time of payment of rent. City revenues from such one percent tax increase, after providing for the cost of administration and any refunds or credits authorized by ordinance, shall be used exclusively as provided hereinafter for the promotion, solicitation, procurement, and service of convention business and tourism in the City. Notwithstanding any other provision of this Charter, the City from time to time for periods not to exceed five (5) years, subject to annual review, shall negotiate contracts with a non-profit corporation or with non-profit corporations

organized under the laws of Oregon, whose primary purpose during the term of the contract or contracts is the promotion, solicitation, procurement and service of convention business and tourism in the City, for that corporation or corporations to expend revenues collected pursuant to this subsection for the purposes set forth in the subsection. In entering into the contract or contracts, the Council shall consider the recommendations of the persons subject to the tax imposed by this subsection. The Council shall in its sole discretion determine the portion of such revenues to be allocated between convention business and tourism. [Add. Dec. 14, 1971; Am. Nov. 7, 1978; am. May 18, 1994.]

3. In addition to any other authority granted under this Charter, the City Council shall have power and authority to provide for the administration of, and interpretation of the terms in, this Section 7-113 by ordinance as legislative action, as the Council may deem necessary and appropriate.

BALLOT TITLE (10 words)

AMENDS CHARTER: AUTHORIZES CITY COUNCIL TO INTERPRET TRANSIENT LODGINGS TAX.

QUESTION: (17 words)

Shall City Council be authorized to interpret and administer provisions of the Transient Lodgings Tax by ordinance?

SUMMARY: (65 words)

City voters have previously authorized a tax on rentals of any place in the City of Portland of space designed or intended for lodging of less than 31 days, commonly called the Transient Lodgings Tax. This measure amends the City Charter Section 7-113 to provide the City Council authority to administer and interpret provisions of the City's Transient Lodgings Tax, by ordinance as legislative action.

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Portland City Council
February 15, 2017
Wednesday AM Session
Agenda Item No. 152

1 MAYOR WHEELER: Last item.

2 COMMISSIONER FRITZ: Item 152. Refer
3 amendments to the City of Portland Charter, Chapter
4 7, Finance, to the May 16, 2017, Special Election
5 Ballot to authorize Council to interpret and
6 administer provisions of the Transient Lodgings Tax.

7 THOMAS LANHAM: Good morning,
8 Council. I'm Thomas Lanham.

9 COMMISSIONER FISH: Just let me --
10 let me tee up first.

11 THOMAS LANHAM: Certainly.

12 COMMISSIONER FISH: And I -- I'm the
13 placeholder on this, but only because we need to
14 have somebody to get it on the agenda. The
15 resolution before us today asks voters to approve a
16 commonsense update to our City Charter concerning
17 the Transient Lodgings Tax, specifically as it
18 relates to the new so-called sharing economy.

19 The Transient Lodgings Tax is a tax
20 on all hotels and motels in the City of Portland.

21 **Our charter language dates to the 1970s and needs to**
22 **be updated to reflect the growth in short-term**
23 **rentals,** which we understand is anything below a
24 one-month's stay.

25 At present, any guest staying at a

1 traditional brick-and-mortar hotel pays a 6 percent
2 City of Portland Transient Lodgings Tax collected by
3 the hotel. When it comes to short-term rentals,
4 however, the rules are being treated very
5 differently.

6 Most of the companies in the
7 short-term-rental business are currently following
8 the law, collecting taxes directly from their
9 website. A handful of companies have taken a
10 different position and claim they aren't subject to
11 the City Charter, so they don't even bother to
12 collect local taxes.

13 As my colleagues know, this is -- one
14 of these issues is currently in litigation. This
15 not only reduces revenues owed to the City, but
16 impacts our ability to provide basic services, but
17 also creates an unfair advantage for certain
18 short-term rentals.

19 The City believes it's time to make
20 sure that everyone plays by the same rules. And
21 Thomas Lanham and Scott Modey are here to provide a
22 concise presentation on why we should refer this to
23 the voters in May.

24 Welcome.

25 THOMAS LANHAM: Thank you,

1 Commissioner. And I should have said good
2 afternoon.

3 I'm Thomas Lanham, the Revenue
4 Division Director, and this is Scott Modey, joining
5 me from the City Attorney's Office. Before you
6 today is a resolution referring to the May 16th,
7 2017, Special Election Ballot asking voters to amend
8 the Portland City Charter, Section 7-113, Transient
9 Lodging Tax, also known as the Hotel-Motel Tax.

10 This change is housekeeping in nature
11 and is intended to modernize the Charter by
12 expressly allowing the City Council to define
13 Charter terms by city ordinance to reflect today's
14 Hotel-Motel and internet-related short-term rental
15 marketplace.

16 The bulk of the current lodgings tax
17 language in the Charter was written in 1971, and
18 therefore uses terms such as "operator" and "owner"
19 in the description of the proprietors of traditional
20 brick-and-mortar hotel operations. It is these
21 owners and operators who are responsible for
22 collecting and remitting the hotel in tax among
23 other allegations.

24 In a recent U.S. District Court
25 ruling, the Court ruled that the traditional

1 dictionary definition of those terms does not
2 encompass the short-term rental industry operating
3 on websites such as Airbnb, Home Away, and others;
4 and, in essence, finding that they are not owners or
5 operators.

6 The ruling also called into question
7 the City Council's authority to define those terms
8 as it is done in numerous code amendments over the
9 years, most recently in December of 2016. This

10 Charter Amendment is necessary to level the playing
11 field in the industry and insuring that all hotel
12 and short-term-rental guests in Portland pay a
13 uniform tax and that the City collects all the tax
14 revenue it is entitled to under the Charter.

15 So I'll stop there and entertain any
16 questions you may have.

17 COMMISSIONER FISH: Thomas, I have a
18 couple. Do you recall offhand currently what
19 percentage of short-term rentals are in compliance
20 with our basic consumer safety rules?

21 THOMAS LANHAM: Approximately
22 20 percent of the listings that we can see online
23 are in compliance with our -- with our code.

24 COMMISSIONER FISH: And that could be
25 solved very easily, as I understand it, if the folks

1 who run these internet portals simply refuse to
2 allow anyone to advertise that didn't establish that
3 they had a valid business license?

4 THOMAS LANHAM: That's correct.

5 COMMISSIONER FISH: Okay. And
6 colleagues, we -- we are aware of other legal
7 challenges, which have been brought in the past to
8 various aspects to the sharing economy and to claims
9 that the companies involved don't actually provide
10 the service that is advertised.

11 They are just a broker. They're
12 just, in essence, a glorified app. That argument
13 has been used to seek to shield them from federal
14 civil rights laws, local consumer laws, a whole host
15 of things. I honestly wish we didn't spend so much
16 time having to fight this from a defensive posture.

17 I wish these companies were better
18 corporate citizens, but we are required to take
19 these actions. And the reason I strongly urge us to
20 act on this today is that we cannot anticipate today
21 or tomorrow where technology is taking us, and we
22 should not be hamstrung in -- in providing
23 commonsense extrapolation of our Charter to cover
24 new technology.

25 This change would allow Council to

1 interpret it broadly in the future, to cover new and
2 innovative ideas that come into the marketplace. It
3 seems like a commonsense and straightforward thing
4 to do, and it's without prejudice to the view we've
5 taken, that we will continue to take in court that
6 we are -- that our Charter currently actually does
7 cover the underlying economic activity.

8 MAYOR WHEELER: Any further Council
9 questions?

10 Is there any public testimony on this
11 item?

12 Come on up. Can you do it in two
13 minutes?

14 LINDA GARDNER: Good afternoon, Mayor
15 Wheeler and Commissioners. I'm Linda Gardner. I'm
16 a lobbyist, and I represent Expedia. Expedia is an
17 American travel company located in the Pacific
18 Northwest. It owns and operates several online
19 travel brands including short-term platform vacation
20 rental sites, such as Home Away and VRBO.

21 Expedia urges you to vote no on the
22 referral of the amendment to the Transient Lodgings
23 Tax provisions of the Portland City Charter.
24 Expedia believes that it is ill-advised. It has the
25 appearance of being an attempt to expand taxing

1 authority.

2 This is a responsibility, as you
3 know, reserved for the voters of Portland, and we're
4 concerned that this -- that this measure could be
5 seen as circumventing that right. And as you also
6 know, you also have a great deal of authority under
7 Article 1, Section 2 of the Charter and Section
8 13-201 to enact ordinances and also to administer
9 the authority that is given you under the Charter.

10 I want to also use this opportunity
11 to let you know that Expedia feels that we can do
12 much more working together cooperatively to achieve
13 your goals of collecting more of the Transient
14 Lodgings Taxes to which you are entitled. If we
15 have a productive dialogue about how we can develop
16 precesses and procedures that both meet your goals
17 and fit with our business model.

18 Expedia is committed to working
19 cooperatively with the City, and we hope that the
20 City is also willing to work cooperatively. We
21 think we can accomplish much more that way. And I
22 do have to say that I heard a lot of what you said,
23 and I think that a lot of the differences in
24 compliance are based upon different business models.
25 And some people collect and some people don't

1 collect the revenues.

2 And that I don't -- I'm not prepared
3 to talk about your litigation or anything like that
4 because I'm not even involved in it and actually
5 have been fairly recently hired. Is that my dinger?
6 Sorry. But -- but I think that if we have an
7 opportunity to talk about this -- and thank you.
8 Mayor Wheeler, a couple of your staff members have
9 mostly kindly agreed to meet with us next week.

10 MAYOR WHEELER: We look forward to
11 it.

12 LINDA GARDNER: We look forward to
13 it.

14 COMMISSIONER FISH: We don't view
15 them as mutually exclusive if there's -- if there's
16 a way to enter into a negotiated agreement where
17 Expedia which -- or Home Away or VRBO or any number
18 of parties want to comply with the law, I think we
19 should always be open to that. But regrettably,
20 we're in court. And as you know, at least one of
21 these lawsuits was not initiated by the City, but
22 thank you for being here.

23 LINDA GARDNER: It's regrettable to
24 us, as well.

25 MAYOR WHEELER: We appreciate it.

1 Thank you for your testimony.

2 Is there any other public testimony?

3 Please call the roll.

4 COUNCIL CLERK: Fritz.

5 COMMISSIONER FRITZ: Well, thank you,
6 Ms. Gardner, for your patience in staying so under
7 the agenda. I appreciate that. And I agree with
8 Commissioner Fish; the two things are not mutually
9 exclusive. I think that this does clarify more
10 cleanly, and I'm happy to support it.

11 Thank you, Mr. Lanham.

12 Aye.

13 COUNCIL CLERK: Fish.

14 COMMISSIONER FISH: I sincerely hope
15 that we don't spend as much time in the future as we
16 have in the past engaging our friends in the sharing
17 economy in this way, Mayor. I'm all for technology
18 and change, and there are members of my family that
19 love using the sharing economy and the convenience
20 that it offers.

21 But let's be clear, this Council has
22 consistently said that we have an obligation to make
23 sure the rules apply to everybody. We collect a
24 modest tax, which is then used to provide basic
25 services. If we don't collect the tax, it just

1 shifts the burden to other parties or reduces the
2 level of services we provide.

3 And we have said that the law should
4 apply to everyone and that we have established some
5 basic consumer safety in protection rules to protect
6 Portlanders and guests. And in my eight years on
7 the council, I have -- I have never witnessed
8 anything quite like this.

9 And, again, I -- I hope this is not a
10 preview of where the new economy is taking us. And
11 we know there's a lot of very smart people,
12 particularly in Silicon Valley, coming up with
13 innovative and creative ideas to capture the power
14 of the Internet and harness it going forward.

15 But the bottom line is we're talking
16 about collecting a modest tax on the lodging and
17 making sure that community standards apply so that
18 anyone who engages in this transaction knows that
19 they have a safe unit.

20 And by safe unit -- because we've
21 been accused of overregulating, let's be clear.
22 We're talking about making sure there's a working
23 smoke detector, that there is an inspection, and
24 that there's a basic egress and ingress that is
25 required of any place of -- of domicile.

1 So these are not -- these are not
2 cutting-edge issues; they're not unique issues. But
3 what we have seen consistently from this industry is
4 an unwillingness by some -- not all, but by some, to
5 flout community standards and to not be particularly
6 good corporate citizens.

7 And I regret that we have to take
8 these actions. I regret that we're in court. I
9 regret that Thomas Lanham spends as much time as he
10 does having to send sharply-worded letters. But --
11 but we have an obligation. We have met our
12 obligation. It is time for this industry to step up
13 and meet its obligation. Aye.

14 COUNCIL CLERK: Councilman.

15 COMMISSIONER SALTZMAN: Aye.

16 COUNCIL CLERK: Wheeler.

17 MAYOR WHEELER: Aye. The resolution
18 is adopted. Before we adjourn, I just want to
19 clarify. So we're adding Item 141 from the consent
20 agenda to the beginning of the regular agenda?

21 COMMISSIONER FISH: Correct. And
22 we'll have an amendment at that point.

23 MAYOR WHEELER: Okay. Great. We're
24 adjourned. Thank you, everybody.

25 (AM Session Adjourned.)

C E R T I F I C A T E

I, Holly Goodwin, a Shorthand Reporter for Oregon and Notary Public, certify that I reported in stenotype the Portland City Council Agenda Item No. 152 captioned herein.

I further certify that my stenotype notes were reduced to transcript form by computer-aided transcription under my direction.

And I further certify that pages 1 through 12 contain a full, true, and accurate record of my stenotype notes, to the best of my ability.

Witness my hand at Portland, Oregon, this 23rd day of February, 2017.



Holly Goodwin

Holly Lynn Goodwin
Notary for the State of Oregon
Notary No. 943103
My Commission expires: 09/22/19

IMPACT STATEMENT

Legislation title: Refer amendments to the City of Portland Charter, Chapter 7, Finance, to the May 16, 2017 Special Election Ballot. (Resolution)

Contact name: Terri Williams, Tax Division Manager

Contact phone: x5-2469

Presenter name: Thomas Lannom, Revenue Division Director and Ken McGair, City Attorney's Office

Purpose of proposed legislation and background information:

Charter Section 7-113 was enacted in the early 1970s when the only way to make a reservation at a lodging establishment was by phone or in person. Additionally, the types of lodging establishments at the time were hotels and motels. After 50 years, both the types of lodging establishments and how potential guests can make and pay for reservations has changed substantially. The City Council can exercise its legislative authority to administer the Transient Lodging Tax, and define Charter terms by passing ordinances to reflect the changing times, technology and lodging structures that are encompassed by the City's Transient Lodging Tax.

The proposed measure adds the following section to Charter Section 7-113:

3. In addition to any other authority granted under this Charter, the City Council shall have power and authority to provide for the administration of, and interpretation of the terms in, this Section 7-113 by ordinance as legislative action, as the Council may deem necessary and appropriate.

Financial and budgetary impacts:

This Charter amendment is necessary to ensure that the City is able to collect the appropriate amount of Transient Lodging Taxes from all entities that provide lodging occupancy for a period less than monthly, or accept reservations and payments for lodging occupancy less than monthly, within the City of Portland; this includes "sharing economy" short-term rentals. The Charter amendment is expected to increase (and preserve) City of Portland Housing Investment Fund revenues but there is no current estimate of how much this would be.

If passed, this would be the second proposed Charter amendment on the Special Election Ballot and will therefore add only incremental expenses since the majority of expenses for the measure are already budgeted in the Auditor's Office General Fund budget (e.g., already incurred fixed printing and distribution of ballots being a primary component of the expense). Estimated costs for the Special Election for both proposed amendments are not expected to exceed \$150,000. These costs would be evenly split between the City Auditor's budget and the Revenue Division's budget; both are General Fund expenditures so there is very little net impact to the General Fund (fiscal year 2017-2018 beginning balance will ultimately cover the total expense). The Revenue Division budget will likely need to be adjusted in the Spring BMP as resources are not currently available to cover this expenditure.

Community impacts and community involvement:

Additional Transient Lodging Tax revenues may become available to the Housing Investment Fund.

Budgetary Impact Worksheet

Does this action change appropriations?

- YES: Please complete the information below.
- NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

BALLOT TITLE (10 words)

AMENDS CHARTER: AUTHORIZES CITY COUNCIL TO INTERPRET TRANSIENT LODGINGS TAX.

QUESTION: (17 words)

Shall City Council be authorized to interpret and administer provisions of the Transient Lodgings Tax by ordinance?

SUMMARY: (65 words)

City voters have previously authorized a tax on rentals of any place in the City of Portland of space designed or intended for lodging of less than 31 days, commonly called the Transient Lodgings Tax. This measure amends the City Charter Section 7-113 to provide the City Council authority to administer and interpret provisions of the City's Transient Lodgings Tax, by ordinance as legislative action.

STOEL RIVES LLP
760 SW Ninth Avenue, Suite 3000, Portland, OR 97205
Main 503.224.3380 Fax 503.220.2480

CERTIFICATE OF SERVICE

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I hereby certify that I served the foregoing NOTICE TO CITY ELECTIONS OFFICER OF PETITION FOR REVIEW OF BALLOT TITLE on the following named person(s) on the date indicated below by

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- overnight delivery
- email
- eService via Odyssey File & Serve (if registered)

to said person(s) a true copy thereof, contained in a sealed envelope if by mail, addressed to said person(s) at his or her last-known address(es) indicated below.

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Attorney for Respondent

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2 City of Portland, Oregon
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3 Portland, OR 97204
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deborah.scroggin@portlandoregon.gov
5
6 City Elections Officer

8 DATED: February 27, 2017.

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10 

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