

ORDINANCE NO. 97-1

AN ORDINANCE TO ESTABLISH A TAX IMPOSED UPON LODGING, THE CITY COUNCIL OF THE CITY OF ORR DOES ORDAIN AS FOLLOWS:

Section 1. RECITALS. The Minnesota Legislature has authorized the imposition of a tax upon lodging at a hotel, motel, rooming house, tourist court or other use of space by a transient. The City Council finds that the imposition of such a tax would provide funding to promote the City as a tourist business community.

Section 2. DEFINITIONS. For the purpose of this Ordinance, the following terms, phrases and words, and their derivations shall have the meanings given herein.

Subd. 1. The term "tax administrator" means the Orr City Clerk.

Subd. 2. The term "municipality" means the City of Orr.

Subd. 3. The term "lodging" means the furnishing for a consideration of lodging by a hotel, motel or rooming house, except where such lodging shall be for a continuous period of 30 days or more to the same lodger(s). The furnishing of rooms by religious, educational or non-profit organizations shall not constitute "lodging" for the purposes of this ordinance.

Subd. 4. The term "operator" means a person who provides lodging to others or any officer, agent or employee of such person.

Subd. 5. The term "person" means any individual, corporation, partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate or any other combination of individuals. Whenever the term "person" is used in any provision of this chapter prescribing and imposing a penalty, the term as applied to a corporation, association or partnership, shall mean the officers, or partners thereof as the case may be.

Subd. 6. The term "rent" means the total consideration valued in money charged for lodging whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.

Subd. 7. The term "lodger" means the person obtaining lodging from an operator.

Section 3. IMPOSITION OF TAX. There is hereby imposed a tax of three percent on the rent charged by an operator for providing lodging to any person after January 1, 1998. The tax shall be stated and charged separately and shall be collected by the operator from the lodger. The tax collected by the operator shall be a debt owed by the operator to the municipality and shall be extinguished only by payment to the municipality. In no case shall the tax imposed by this section upon an operator exceed the amount of tax which the operator is authorized and required by this chapter to collect from a lodger.

Section 4. COLLECTIONS. Each operator shall collect the tax imposed by this ordinance at the time the rent is paid. The tax collections shall be deemed to be held in trust by the operator for the municipality. The amount of tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a receipt of payment from the operator.

Section 5. EXEMPTIONS. An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the municipality to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected and such a claim shall be made in writing and under penalty of perjury on forms provided by the tax administrator. All such claims shall be forwarded to the tax administrator when the returns and collections are submitted as required by this ordinance.

Section 6. ADVERTISING NO TAX. It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent or that, if added, it or any part thereof shall be refunded. In computing the tax to be collected, amounts of tax less than one cent shall be considered an additional cent.

Section 7. PAYMENT AND RETURNS. The taxes imposed by this ordinance shall be paid by the operator to the tax administrator quarterly, not later than 20 days after the end of the quarter in which the taxes were collected. At the time of payment the operator shall submit a return upon such forms and containing such information as the tax administrator may require. The return shall contain the following minimum information:

1. The total amount of rent collected for lodging during the period covered by the return.
2. The amount of tax required to be collected and due for the period.
3. The signature of the person filing the return or that of his agent duly authorized in writing.
4. The period covered by the return.
5. The amount of uncollectible rental charges subject to the lodging tax.

The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this ordinance previously paid as a result of any transaction the consideration for which became uncollectible during such reporting period, but only in proportion to the portion of such consideration which became uncollectible.

Section 8. EXAMINATION OF RETURN, ADJUSTMENT, NOTICES AND DEMANDS. The tax administrator shall, after return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid. If the tax due is found to be greater than that paid, such excess shall be paid to the tax administrator ten days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the tax shall be refunded to the person who paid the tax to the tax administrator ten days after determination of such refund.

Section 9. REFUNDS. Any person may apply to the tax administrator for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one year after such tax was paid, or within one year from the filing of the return, whichever period is the longer. The tax administrator shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice

thereof by registered mail to such person at the address stated upon the return. If such claim is allowed in whole or in part, the tax administrator shall credit the amount of the allowance against any taxes due under this ordinance from the claimant and the balance of said allowance, if any, shall be paid by the tax administrator to the claimant.

Section 10. FAILURE TO FILE A RETURN.

Subd. 1. If an operator required by this ordinance to file a return shall fail to do so within the time prescribed, or shall make, willfully or otherwise, an incorrect, false or fraudulent return, the operator shall, upon written notice and demand, file such return or corrected return within five days of receipt of written notice and shall at the same time pay any tax due on the basis thereof. If such person shall fail to file such return or corrected return, the tax administrator shall make a return or corrected return, for such person from such knowledge and information as the tax administrator can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by such return) shall be paid upon within five days of the receipt of written notice and demand for such payment. Any such return or assessment made by the tax administrator shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 2. If any portion of a tax imposed by this ordinance, including penalties thereon, is not paid within 30 days after it is required to be paid, the Prosecuting Attorney for the municipality may institute such legal action as may be necessary to recover the amount due plus interest, penalties, the costs and disbursements of any action.

Subd. 3. Upon a showing of good cause, the tax administrator may grant an operator one thirty (30) day extension of time within which to file a return and make payment of taxes as required by this ordinance provided that interest during such period of extension shall be added to the taxes due at the rate of 10 percent per annum.

Section 11. PENALTIES.

Subd. 1. If any tax imposed by this ordinance is not paid within the time herein specified for the payment, or any extension thereof, there shall be added thereto a specific penalty equal to 10 percent of the amount remaining unpaid.

Subd. 2. In case of any failure to make and file a return within the time prescribed by this ordinance, unless it is shown that such failure is not due to willful neglect, there shall be added to the tax in addition to the 10 percent specific penalty provided in Subd. 1 above, 10 percent if the failure is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. If the penalty as computed does not exceed \$10, a minimum penalty of \$10 shall be assessed. The amount so added to any tax shall be collected at the same time and the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

Subd. 3. If any person willfully fails to file any return or make any payment required by this ordinance, or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat any such a tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50 percent of any tax (less any amounts

paid on the basis of such false or fraudulent return) found due for the period to which such return related. The penalty imposed by this subdivision shall be collected as a part of the tax, and shall be in addition to any other penalties provided by this ordinance.

Subd. 4. All payments received shall be credited first to penalties, next to interest, and then to the tax due.

Subd. 5. The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the maximum rate per annum as prescribed by Minn. Stat. Sec. 270.75 from the time such tax should have been paid until paid. Any interest and penalty shall be added to the tax and be collected as part thereof.

Section 12. ADMINISTRATION OF TAX. The tax administrator shall administer and enforce the assessment and collection of the taxes imposed by this ordinance. The tax administrator shall cause to be prepared blank forms for the returns and other documents required by this ordinance and shall distribute the same throughout the city and furnish them on application, but failure to receive or secure them shall not relieve any person from any obligation required of him under this ordinance.

Section 13. EXAMINE RECORDS. The tax administrator and those persons acting on behalf of the tax administrator authorized in writing by the tax administrator or the municipality may examine the books, papers and records of any operator in order to verify the accuracy of a return made, or if no return was made, to ascertain the tax as provided in this ordinance. Every such operator is directed and required to give to the said person authorized to examine the books, papers and records, the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

Section 14. VIOLATIONS. Any person who shall willfully fail to make a return required by this ordinance, or who shall fail to pay the tax after written demand for payment, or who shall fail to remit the taxes collected or any penalty or interest imposed by this ordinance after written demand for such payment or who shall refuse to permit the tax administrator or any duly authorized agents or employees to examine the books, records and papers under his or her control, or who shall willfully make any incomplete, false or fraudulent return shall be guilty of a misdemeanor.

Section 15. USE OF PROCEEDS. Five percent of the proceeds obtained from the collection of taxes pursuant to this ordinance shall be paid to the tax administrator for costs of collection. Ninety-five percent of the proceeds obtained from the collection of taxes pursuant to this ordinance shall in accordance with Minnesota Statutes Section 477A.018, and will be used to advertise and promote Orr as a tourist and business community.

Section 16. APPEALS.

Subd. 1. Any operator aggrieved by any notice, order or determination made by the tax administrator under this ordinance may file a petition for review of such notice, or determination detailing the operator's reason for contesting the order or determination. The petition shall contain the name of the petitioner, the petitioner's address and the location of the lodging subject to the order, notice or determination.

Subd. 2. The petition shall be filed with the tax administrator within ten days after the notice, order or determination for which review is sought has been mailed or served upon the person requesting review.

Subd. 3. Upon receipt of the petition the tax administrator shall set a date and time for a meeting with the petitioner and shall give the petitioner at least five days prior written notice of the date, time and place of the meeting.

Subd. 4. At the meeting, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn. If the meeting does not result in the matter being resolved to the satisfaction of the petitioner, the petitioner may appeal to the Orr City Council.

Subd. 5. A petitioner seeking to appeal a decision to the City Council must file a written notice of appeals with the City Council, in care of the City Clerk, within ten days after the tax administrator's decision following the Subd. 4 meeting has been mailed to the petitioner. The matter will thereupon be placed on the Council agenda as soon as is practical. At least five days prior to the hearing before the City Council, the tax administrator shall prepare and serve on the petitioner a Memorandum of Proposed Findings of Act and Conclusions of Law. A copy of the Memorandum shall be presented to the City Council at the time of the appeal hearing. The Council shall then review the proposed Findings of Act and Conclusions to determine whether they are correct. Upon a determination by the Council that Findings and Conclusions are incorrect, the Council may modify, reverse or affirm the decision of the tax administrator based upon an application of the sections of this ordinance and the evidence presented.

Section 17. EFFECTIVE DATE. This ordinance shall take effect and be enforced from and after passage, adoption and publication, but no earlier than January 1, 1998.

Passed by motion of Councilor TOAD GABRIELSON and supported by Councilor MARC MANKUS on the 15TH day of October, 1997 by the following vote.

Ayes: GABRIELSON, MANKUS, FRANCES NOVAK
Nays: NONE

APPROVED

David Chaud
MAYOR

ATTEST

Rosemary Hoffer
CITY CLERK/TREASURER

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