

Bill # 274

CITY OF FERNLEY
ORDINANCE # _____

AN ORDINANCE MODIFYING TITLE 26 TAXATION, CHAPTER 3 TRANSIENT LODGING TAX OF THE FERNLEY MUNICIPAL CODE FOR ASSESSMENT OF A TRANSIENT LODGING TAX, THE COLLECTION AND DISTRIBUTION THEREOF; AND OTHER MATTERS PROPERLY RELATED THERETO.

THE CITY OF FERNLEY CITY COUNCIL DOES HEREBY ORDAIN:

Fernley Municipal Code is hereby amended by adding Title 26, Chapter 3 to read as follows:

TRANSIENT LODGING TAX ORDINANCE

Sec. 26.03.01. - Definitions.

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

City means the City of Fernley, Lyon County, State of Nevada.

Lessee means any person renting accommodations from a licensee.

Licensee means the person, partnership, firm, corporation or other body corporate operating a rental business.

Occupancy means the use or possession, or the right to the use or possession of any sleeping room/space or portion thereof, in transient lodging for dwelling, lodging, or sleeping purposes.

Occupant means any person who, for rent, uses, possesses or has the right to possess any sleeping room/space in transient lodging.

Package means any aggregation of rights to room(s), food, refreshments, merchandise, entertainment, services, and/or other items grouped as a single unit and sold for a single price.

Permanent resident means any individual occupant who has or shall have the right of occupancy for the same sleeping room/space in transient lodging for 31 consecutive days or more.

Person means corporations, firms, partnership, associations and individuals, and also includes executors, administrators, trustees, receivers or other representatives appointed according to law.

Rent means the amount charged for a sleeping room/space in transient lodging, but does not include the amount charged for any food or beverage service or for personal services rendered to the occupant, such as but not limited to concierge services, clothes cleaning services, massage, or physician services.

Rental business means the operation of a premises kept as, used as, maintained as, or held out to the public to be, a place where sleeping, rooming or camping accommodations are furnished to the transient public, whether with or without meals, and includes any hotel, motel, auto court, motor lodge, lodge, lodging house, ranch resort, resort, dude ranch, bed and breakfast, inn, rooming house, guest house, tourist camp, recreational vehicle park, camper court, camper park, cabin, tent or other tourist or transient (meaning nonpermanent) lodging accommodations having three or more rooms, spaces or other units for rental, and shall be deemed to include a lodging house or rooming house or other premises where transient (meaning nonpermanent) trade is solicited, whether by advertising or otherwise.

Rental business and room.

- (1) The term "rental business" means the operation of any hotel, motel, auto court, motor court, lodge, lodging house, apartment, apartment house, apartment house hotel, rooming house, guest house, trailer court, trailer park, tourist camp, ranch resort, guest ranch, cabin or other accommodation having four or more rooms for rental.
- (2) The term "room," "rooms," or "room rentals" means any accommodation rented by the operator of any facility described in the definition of "rental business."

Transient guest means any person who has or shall have the right of occupancy to any sleeping room/space in transient lodging for 30 consecutive days or less.

Transient lodging means any facility, structure, or portion of any structure which is occupied or intended or designed for occupancy primarily by transient guests who pay rent for dwelling, lodging, or sleeping purposes, and includes any hotel, resort hotel, condo hotel, motel, residential hotel or motel, time-share project, vacation trailer park, campground, park for recreational vehicles, and any other similar structure, facility, or portion thereof.

Transient lodging tax means all taxes levied pursuant to this chapter. The term "transient lodging tax" is also known as "room tax."

(Prior Code, § 4.02.01)

Sec. 26.03.02. - Tax on transient lodging.

There is hereby fixed and imposed on every licensee operating a transient lodging rental business within the city a transient lodging tax in the total amount of ~~nine~~-eleven percent to be collected as follows:

- (1) NineEleven percent of the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals. Complimentary transient

lodging (transient lodging which is provided at no cost to the occupant) is nontaxable. To be considered complimentary transient lodging, the transient lodging must be provided on an individual basis and not as part of any established package, advertised or otherwise, which includes other products or services. Transient lodging included in promotional packages is taxable. The taxable amount for such transient lodging is computed by obtaining the percentage that the transient lodging rack rate bears to the retail value of the package and multiplying that percentage by the package cost to the occupant, or the actual amount charged for the transient lodging, whichever is greater.

Example. Transient lodging with an established rack rate of \$50.00 is included in the following package, which is sold for \$40.00.

Food credit \$20.00

Coins \$10.00

Show or event ticket \$20.00

Drink tokens \$10.00

Rack rate \$50.00

Retail value of package \$100.00

- (2) The rack rate equals 50 percent of the retail value of the package. Therefore, 50 percent of the package cost, or \$20.00, must be allocated to transient lodging and included in taxable revenue.

(Prior Code, § 4.02.02; Ord. No. 2010-013)

Sec. 26.03.03. - License required.

- (a) It shall be unlawful for any person, either for himself or herself or for another person, to commence or to carry on any transient lodging rental business without first having procured a license from the city clerk so to do.
- (b) The city clerk shall, upon receipt of an application for a license, issue a license to such applicant who shall keep the same posted in his or her place of business in a conspicuous place.

(Prior Code, § 4.02.03)

Sec. 26.03.04. - Exemptions and exceptions.

There shall be, and hereby is, exempted from the license tax on transient lodging:

- (1) Rent paid for the use or occupancy of the same sleeping room/space by the same person after the 30th consecutive day of occupancy. Such persons are deemed to be permanent residents after the 30th consecutive day of occupancy;
- (2) Rent paid directly by the federal government of the United States, the State of Nevada, a federally-chartered credit union, the American Red Cross, or foreign diplomats properly registered with the State Department of the United States;
- (3) Complimentary rooms wherein there is no rent paid to the operator in conjunction with the occupancy;
- (4) The cost of or rent paid for a room in transient lodging that is not used for sleeping, such as a meeting or storage room.

(Prior Code, § 4.02.04)

Sec. 26.03.05. - Transient lodging tax to be collected from lessee.

Each licensee is, and shall be, required to add the amount of the transient lodging tax onto the amount of the transient lodging rentals due from each lessee. The amount of the tax shall be displayed separately from the price of the transient lodging rent on the registration card or other record of the licensee.

(Prior Code, § 4.02.05)

Sec. 26.03.06. - Display of notice.

Each licensee shall prominently display in each room, space or other accommodation rented or at the option of the licensee, in the lobby at or in the immediate vicinity of the registration desk, a sign reading substantially as follows:

NOTICE

This business is required by law to collect a ~~nine~~-~~eleven~~ percent transient lodging tax on any rental of transient lodging of less than 30 days.

The Management

(Prior Code, § 4.02.06; Ord. No. 2010-003)

Sec. 26.03.07. - Licenses.

Licenses required by this chapter shall be issued by the city clerk. Such licenses may be issued by the city clerk on an annual calendar year basis. All licenses issued shall be valid for the period of time specified in such license. No licenses issued hereunder shall

be transferable. There shall be no additional charge to the business license fee made to the licensee for any license issued hereunder.

(Prior Code, § 4.02.07)

Sec. 26.03.08. - Authority to collect tax.

The city clerk is hereby authorized and empowered to collect the proceeds of this transient lodging tax, together with any and all interest and penalties in connection therewith, and to enforce by all appropriate and lawful means the provisions of this chapter, and to bring suit therefor as well as to proceed by any appropriate criminal action. The city clerk is also hereby authorized and empowered to collect information related to daily occupancy and average daily rate; however, such information shall be deemed confidential pursuant to NRS 268.490 (records; confidentiality).

(Prior Code, § 4.02.08)

Sec. 26.03.09. - Payment of tax, interest and penalties.

Every licensee shall pay the transient lodging tax to the city clerk on or before the tenth day of the month (should the tenth day of the month fall on a weekend or recognized holiday, the return will be due the next regular business day) when such tax shall accrue. Payment of the transient lodging tax shall become delinquent if not paid by the 10th day of the month. ~~on the 20th day of the month. Should the 20th day of the month fall on a weekend or recognized holiday, the grace period will be extended to the next regular business day.~~ Such tax becomes payable to the city clerk by the licensee pursuant hereto.

(Prior Code, § 4.02.09; Ord. No. 2011-009)

Sec. 26.03.10. - Receipt of payment.

Payments by hand-delivery to the city clerk or by metered mail must be received by the city clerk on or before the final date allowed for payment in order to avoid penalties being assessed. A payment postmarked by the U.S. Postal Service on or before the final due date shall be considered to be timely payment and no penalty shall be incurred because it is actually received by the city clerk after the payment due date.

(Prior Code, § 4.02.10)

Sec. 26.03.11. - Failure to file tax report or return; penalty.

- (a) It is unlawful for any licensee to fail, neglect or refuse to file any monthly report or return required by the city clerk, whether or not said licensee shall have paid over the taxes due to the city clerk and whether or not there shall have been any taxes due the city clerk.
- (b) In the event of any such failure, neglect or refusal to file such report or return on the tenth day of ~~each the~~ month the licensee ~~will be granted a grace period until the 20th day of the month. If the licensee shall not comply with the requirement to file within the ten-day grace period, he or she~~ shall pay a penalty of \$100.00 ~~for the first month for which no such report or return was filed.~~
- (c) In the event of any such failure, neglect or refusal which shall continue for a second month, on the 1st of the following month, the licensee shall pay an additional \$250.00 ~~for the second month~~ and shall pay an additional \$250 for each month thereafter until such report or return is filed and taxes paid.
- (d) In the event of any such failure, neglect or refusal which shall continue for a third month, the city council shall give notice to said licensee to appear at a time and place certain to show cause why his or her rental business license should not be revoked for such failure, neglect or refusal, the notice thereof to be given by certified mail to the address listed on the license and said notice to be posted with the United States post office at least 15 days prior to the date of the hearing.
- (e) Payment of the penalty does not relieve the licensee from the duty to collect and pay over the accommodations tax as provided in this chapter.

(Prior Code, § 4.02.11; Ord. No. 2011-009)

Sec. 26.03.12. - Examination of books and records.

The city clerk and his or her duly authorized agent are empowered to examine and audit the books, papers and records of any licensee or person operating a transient lodging rental business and to make investigations in connection therewith.

(Prior Code, § 4.02.12)

Sec. 26.03.13. - Records to be kept by operator of transient lodging.

- (a) Each operator shall maintain for a period of at least three years, daily records and monthly summaries that properly reflect the following minimum information:
 - (1) Total rooms available and occupied;
 - (2) Total rental revenue;
 - (3) Total rental revenue that is not subject to the taxes and documentation to support such exemptions;

- (4) Guest folios or registration cards, including at a minimum, the occupant's name, room number, dates of occupancy; rent and taxes collected;
 - (5) Total taxes collected as imposed by this chapter;
 - (6) The number and dollar value of nonrevenue or complimentary rooms; and
 - (7) The number of rooms included in package or promotional offerings, the total dollar value of the package, and the total dollar value allocated to room charges.
- (b) Acceptable methods of maintaining the above required information include guest folios or registration cards, daily transaction reports, general ledgers, cash journals, and similarly accepted books of accounting maintained by a reasonable business person. In addition, operators may be required to provide copies of bank statements, financial statements (audited, if available) prepared by their independent accountant, tax returns and similar documents that can be used to support rental revenue and exemptions.
- (c) The calculation used to determine the cost of any package offered to include the value assigned to each component of the package.
- (d) Each and every operator shall make the records noted in this section available during business hours for audit by the city clerk or his or her designee for the collection of the taxes imposed by this chapter.

(Prior Code, § 4.02.13)

Sec. 26.03.14. - Records to be kept by administrator; confidential.

The city clerk will keep proper records of the transient lodging taxes herein fixed and imposed which become due and which are collected, including, without limiting the generality of the foregoing, records of delinquent taxes, interest thereon and penalties therefrom. These records shall be deemed confidential and shall not be revealed in whole or in part to anyone except in the necessary administration of this chapter or as otherwise provided by law.

(Prior Code, § 4.02.14)

Sec. 26.03.15. - Forms and costs.

The city clerk is hereby empowered and authorized to designate the form of and have prepared or printed all stationery, supplies, records, notices, receipts, licenses and other forms that the city clerk deems necessary or advisable in connection with the collection, administration and disbursement of the proceeds of this transient lodging tax, and to obtain all supplies, records and other property and equipment deemed necessary by the city clerk in connection with the collection, administration, use and disbursement of the said transient lodging tax proceeds. All costs, expenses, charges and debts incurred by

the city, or by the city clerk under the provisions of this chapter, in connection with the imposition, collection, administration, use and disbursement of this transient lodging tax and the proceeds thereof shall be paid out of the park and recreational fund provided for in this chapter.

(Prior Code, § 4.02.15)

Sec. 26.03.16. - Allocation and use of transient lodging tax funds.

The transient lodging tax in the total amount of ~~nine-eleven~~ percent of the gross income actually received, excluding the lodging tax, by each licensee for transient lodging rentals pursuant to this chapter shall be allocated and used by the city on the following percentages under the following categories. The transient lodging tax allocation shall be reviewed annually by the city council.

- (1) One percent of the transient lodging tax shall be distributed as follows:
 - a. Three-eighths shall be paid to the department of taxation for deposit with the state treasurer for credit to the fund for the promotion of tourism.
 - b. Five-eighths shall be deposited with the county to be used to advertise the resources of the county and city related to tourism, including available accommodations, transportation, entertainment, natural resources and climate, and to promote special events related thereto.
- (2) The remaining ~~eight-ten~~ percent of the transient lodging tax shall be deposited in a special revenue fund-transient lodging tax of the city. Distribution of the funds collected from the transient lodging tax shall be by resolution of the city council.
- (3) The proceeds of any portion of the transient lodging tax imposed pursuant to NRS 268.096 may not be used, unless otherwise specifically provided by state law or this Code:
 - a. As additional security for the payment of, or to redeem, any general obligation bonds issued pursuant to NRS ch. 244A.
 - b. To defray the costs of collecting or administering the tax incurred by the county fair and recreation board.
 - c. To operate and maintain recreational facilities under the jurisdiction of the county fair and recreation board.
 - d. To improve and expand recreational facilities authorized by NRS 244A.597 to 244A.655, inclusive.

(Prior Code, § 4.02.16)

Sec. 26.03.17. - Uses and purposes of transient lodging tax proceeds.

The city council shall use the proceeds of the transient lodging tax provided by this chapter for the following use, uses, purpose or purposes, or any one or more thereof, at such times, in such amounts and in such manner as they shall determine, from time to time:

- (1) Promotion of tourism on transient lodging tax fund.
 - a. Three-eighths of the first one percent of all proceeds of the tax must be paid to the department of taxation for deposit with the state treasurer for credit to the fund for the promotion of tourism.
 - b. Five-eighths of the first one percent of all proceeds of the tax must be deposited with the county to be used to advertise the resources of the county and city related to tourism, including available accommodations, transportation, entertainment, natural resources and climate, and to promote special events related thereto.
- (2) Civic facilities.
 - a. Operating and maintaining facilities under the jurisdiction of the city council.
 - b. Improving, extending and bettering such facilities.
 - c. Constructing, purchasing or otherwise acquiring such facilities.
 - d. To establish, construct, purchase, lease, rent, acquire by gift, grant, bequest, devise, or otherwise acquire, reconstruct, improve, extend, better, alter, repair, equip, furnish, regulate, maintain, operate and manage facilities within or without the city, including personal property, real property, lands, improvements and fixtures thereof, property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years.
 - e. To accept contributions, grants or other financial assistance from the federal government or any agency or instrumentality thereof, corporate or otherwise, the state or any of its political subdivisions, or from any other source, for or in aid of any recreation facility within the area of operation of the city council, and to comply with such conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable.
 - f. To use such funds to pay the necessary expense of imposition, collection and expenditure of this transient lodging tax and the proceeds thereof.
 - g. To use such proceeds to repay any loans, debts or bonded indebtedness that the city council may incur in connection with such facilities, and that in that connection to pledge this transient lodging tax and the proceeds thereof as security for the repayment of any such loans, debts, obligations secured by bond, bonds, and other indebtedness which may be incurred in connection with such recreation facilities.
 - h. For marketing and/or promotion of services serving the city.

(Prior Code, § 4.02.17)

Sec. 26.03.18. - Refund.

Any person aggrieved by the provisions contained herein shall present his or her claim to the city council prior to seeking any other form of administrative relief or judicial relief, except as otherwise required by law. The city council shall have the authority to grant any appropriate relief from the provisions of this chapter, to include the authority to refund, with interest if appropriate, to any licensee, any transient lodging tax improperly collected by the city council or the city clerk from such licensee and to include the authority to grant relief to any person who is determined by the city council to have been adversely affected by any retroactive amendments to this chapter.

(Prior Code, § 4.02.18)

Sec. 26.03.19. - Enforcement.

The city clerk is charged with the enforcement of the provisions of this chapter and may employ such accountants, auditors, investigators, assistants and clerks as he or she may deem necessary for the efficient administration of this chapter.

(Prior Code, § 4.02.19)

PROPOSED THIS _____ day of _____, 2019.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2019, by the following vote of the Council:

Ayes: _____ Nays: _____ Abstentions: _____ Absent: _____

FERNLEY CITY COUNCIL

By: _____
Roy Edgington, Mayor

Date: _____

Attest:

Kimberly Swanson, City Clerk

Date: _____