

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Establishing)
a Transient Room Fee)
_____)

ORDINANCE NO. 92-6

The Board of County Commissioners for Columbia County, Oregon hereby ordains as follows:

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 92-6. Exhibit "A", which is attached hereto and incorporated herein by this reference, shall be known as the "Columbia County Transient Room Fee Ordinance".

SECTION 2. AUTHORITY.

This ordinance is adopted pursuant to ORS 203.035.

SECTION 3. PURPOSE.

The purpose of this ordinance is to establish a transient room fee.

SECTION 4. SCOPE.

This ordinance shall apply throughout all unincorporated areas of Columbia County and within those incorporated areas where any City's governing body or its electors have given their consent.

SECTION 5. ADOPTION.

The "Columbia County Transient Room Fee Ordinance", attached hereto as Exhibit "A", is hereby adopted.

SECTION 6. REFERRAL.

The Board of County Commissioners for Columbia County, Oregon hereby refers this ordinance to the electors of Columbia County at the general election of November 3, 1992.

SECTION 7. SEVERABILITY.

If for any reason any court of competent jurisdiction holds any provision of this ordinance invalid, such provision shall be deemed a separate, distinct and independent provision, and any such holding shall not affect the validity of the remaining provisions thereof.

SECTION 8. EMERGENCY.

This ordinance being immediately necessary to maintain the public health, safety and welfare, an emergency is declared to exist and, subject to the approval of the electors of Columbia County voting at the November 3, 1992 general election, this ordinance shall take effect on January 1, 1993.

REGULARLY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON THIS 24th DAY OF June, 1992.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: John Kirby
Office of County Counsel

Attest:

By: Jae Suenhalgh
Recording Secretary

By: Michael J. Jones
Chairman

By: P. B. Blain
Commissioner

By: John R. Peterson
Commissioner

First Reading: 6/24/92
Second Reading: 6/24/92
Effective Date: 1/1/93

EXHIBIT "A"

COLUMBIA COUNTY

TRANSIENT ROOM FEE ORDINANCE

Adopted by Ordinance No. 92-6 on June 24, 1992.

COLUMBIA COUNTY TRANSIENT ROOM FEE ORDINANCE

SECTION 1. TITLE.

This ordinance shall be known as the "Columbia County Transient Room Fee Ordinance".

SECTION 2. DEFINITIONS.

As used in this ordinance the following terms and definitions shall apply unless the context requires otherwise:

A. "Board" means the Board of County Commissioners for Columbia County, Oregon.

B. "Hotel" means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for thirty (30) consecutive calendar days or less, for dwelling, lodging, or sleeping purposes. Hotel includes any hotel, inn, tourist home or tourist house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, "bed and breakfast" facility, space in mobile home or trailer or similar structure or portions thereof so occupied, provided such occupancy is for thirty (30) consecutive calendar days or less.

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 or space in a hotel.

D. "Operator" means the person who is proprietor of the hotel in any capacity. Where the operator performs 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 or her 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 a system whereby the operator does not enter the rent due from a transient on the records until rent is paid.

G. "Accrual Accounting" means a system whereby the operator enters the rent due from a transient on the 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. "Rent" excludes, however, the sale of any goods, services and commodities, other than the furnishing of rooms or room or space in a hotel.

I. "Rent Package Plan" means a plan where a single rate or charge is made for the total of food and rent. The amount applicable to rent for determination of transient room fee under this ordinance shall be the same charge made for rent when consideration is not a part of a package plan.

J. "Fee" means either the fee payable by the transient, or the aggregate amount of fees due from an operator during the period for which collections must be reported. "Fee" includes the fees imposed by Section 3.

K. "Administrator" means the person designated as such by an order of the Board.

L. "Tourism" means the business of attracting and providing services and accommodations to those persons who are traveling for recreational or cultural purposes.

M. "Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of thirty (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 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. 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.

SECTION 3. IMPOSITION OF FEE.

A. Transient Room Fee. For the privilege of occupancy in any hotel, on and after the effective date of this ordinance, each transient shall pay a fee in the amount of six percent (6%) of the rent charged by the operator.

B. Payment of Fee by Transient.

1. The fees imposed pursuant to this ordinance constitute a debt owed by the transient to the County, which is extinguished only by payment to the operator or to the County.
2. The transient shall pay the fees to the operator of the hotel at the time the rent is paid.
3. If rent is paid in installments, the transient shall pay a proportionate share of the fee to the operator with each installment.
4. If for any reason the fees due are not paid to the operator of the hotel, the Administrator may require that the transient pay such fee[s] directly to the County.

C. Payment of Fee by Operator. The fee collected or accrued by the operator constitutes a debt owing by the operator to the County.

SECTION 4. EXEMPTIONS.

No fee imposed under this ordinance shall be imposed upon:

A. Time Period. Any occupant who pays for lodging on a monthly basis, irrespective of the number of days in such month.

B. Minimum Rent. Any occupant whose rent or cash equivalent there of is less than five dollars (\$5.00) per day;

C. Private Facilities. Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities in addition to such owner's use thereof;

D. Care Facilities. Any occupant whose rent is paid for hospital room or to a medical clinic or convalescent home.

SECTION 5. DISPOSITION OF REVENUE, ADJUSTMENT.

A. For Tourism. Except as provided by Subsection C of this section, all revenues collected from the fees imposed by this ordinance shall be applied to the promotion of tourism within Columbia County, divided equally between developing services and materials for a visitors' center or chamber of commerce, and directing other efforts toward economic development.

B. Adjustment of Fees. Any adjustment of fees, penalties or interest that is necessary to correct a mistake or error in collection or distribution may be made by the Administrator at a

subsequent collection or disbursement or by the procedure set forth in Section 16.

C. Administration Costs and Expenses. The County may use one percent (1%) of the gross revenues raised under this ordinance to meet the costs and expenses of administering the ordinance.

SECTION 6. LOCAL REVENUE SHARING.

A. Policy. To discourage unnecessary duplication of local fees and to permit centralized collection of a logical source of revenue for local governments, the Board shall, by grant or credit, or combination thereof, share with any incorporated city within Columbia County that provides its consent and request, a portion of the fees collected by operators within each such city.

B. Division of Revenues. The County shall retain forty percent (40%) of the net revenues and shall fund from that share the collection and other administrative costs and expenses described in Section 7 below. The remaining sixty percent (60%) of the net revenues shall be disbursed, proportional to the amounts collected at the point of origin, among the participating cities and the County, on behalf of the unincorporated areas.

C. Cities to Participate by Resolution. Any incorporated city within Columbia County may participate under this ordinance and collect its proportionate share of the fee revenues, provided that the city first adopt a resolution or ordinance consistent with the provisions of Section 6D, below.

D. Contents of Resolution. The resolution shall indicate the willingness of the city:

1. To provide reasonable assistance in the collection of the fee imposed by this ordinance;

2. To provide prompt reports of changes in the potential occupancy level within its jurisdiction due to construction, remodeling, or annexation; and

3. To comply with all other applicable provisions of this ordinance.

E. Cities to Share Proportionately. The Board shall insure that all participating incorporated cities of the County receive their proportionate share of grants and credits, or combinations thereof, based on the fees collected from the hotels located within their respective city limits.

SECTION 7. ADMINISTRATION OF ORDINANCE.

A. Board to Appoint Administrator. The Board may appoint a person to administer the provisions of this ordinance and may delegate to any person the powers, rights, duties and authority with respect to collections, refunding and administration of fees imposed under Section 3 of this ordinance.

B. Examination of Records; Investigations. The Administrator or any person so authorized in writing by the Board may examine during normal business hours, the books, papers, and accounting records relating to room rents of any operator after 24-hour, written 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.

SECTION 8. REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION; CERTIFICATION OF AUTHORITY.

A. Registration Required. Every person engaging in, or about to engage in, business as an operator of a hotel in this County shall register with the Administrator on a form provided by the Administrator.

B. Period for Registration.

1. Operators engaged in business at the time this ordinance is adopted must register not later than thirty (30) calendar days after the effective date of this ordinance.

2. Operators commencing business after this ordinance is adopted must register within fifteen (15) calendar days after commencing business.

3. The privilege of registering after the date of commencing business shall not relieve any person from the obligation of payment or collection of the transient room fee from the date of commencing business regardless of the date of registration.

C. Information Required. The operator shall set forth on the registration form the name under which he or she transacts or intends to transact business, the location of the place or places of business and such other information to facilitate the collection of the fee as the Administrator may require. The operator shall sign the registration.

D. Certification. The Administrator shall use his or her best efforts to issue, within ten (10) days of receiving the registration form, a Certificate of Transient Occupancy Registration to the registrant to collect the fee from the occupant, together with a duplicate thereof for each additional place of business of each registrant.

E. Contents of Certificate. At a minimum, the certificate shall state the following information:

1. The name of the operator;
2. The address of the hotel;
3. The date upon which the certificate was issued;
4. The following statement: "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Columbia County Transient Room Fee Ordinance by registration with the Administrator for the purpose of collecting from transients the room fee imposed by Columbia County and remitting said fee to the 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. This certificate does not constitute a permit."

F. Display and Transfer of Certificate.

1. Each Certificate and duplicate shall be prominently displayed in the hotel to which it is applicable so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

2. No operator may assign or transfer the hotel's Certificate, but shall surrender it immediately to the Administrator upon the cessation of business at the named location or upon its sale or transfer.

SECTION 9. COLLECTION OF FEE BY OPERATOR.

A. Operator to Collect Fee from Transient. Unless otherwise exempted by this ordinance, every operator shall collect the fee from the transient at the time the transient pays the rent.

B. Incremental Fee Schedule. For rent collected on portions of a dollar, the fee shall be collected according to the schedule below:

<u>Amount of Incremental Rent</u>	<u>Amount of Incremental Fee</u>
\$0.09 through \$0.24	\$0.01
\$0.25 through \$0.41	\$0.02
\$0.42 through \$0.58	\$0.03
\$0.59 through \$0.74	\$0.04
\$0.75 through \$0.91	\$0.05
\$0.92 through \$1.08	\$0.06

C. Waiving Fee Prohibited. Operators may not advertise or allow that any part of the fee will be assumed or absorbed by the operator, or that it will not be added to the rent or, if added, that any part of it will be refunded, except in the manner provided by this ordinance.

SECTION 10. MONTHLY REPORTING AND PAYMENT; EXTENSION.

A. Report and Payment. On or before the fifteenth day of the month following each calendar month, every operator shall report the rents paid to the operator during the preceding month and pay the amount of fees due on forms prescribed by the Administrator.

B. Returns to be Signed. Returns shall be signed by the operator required to file the return or by his or her authorized agent.

C. Information Required. Returns required under this section shall contain such information as the Administrator deems necessary for the proper administration of this ordinance.

D. Remittance. The operator liable for filing the return required under this section shall deliver the return together with the fee due to Columbia County. Delivery must be in person or by first class mail.

E. Other Reporting and Payment Periods. For the purpose of the administration, payment or collection of the fees imposed under this ordinance, the Administrator may, upon written request, permit or require returns or fee payments on other than a monthly basis; however, no operator may change the reporting system required under this section without the prior written authorization of the Administrator.

F. Extension.

1. The Administrator may, upon written request received on or before the due date of the return or fee, for good cause satisfactory to the Administrator, extend the time for filing the return or paying the fee for a period not to exceed 30 days.

2. Any operator to whom an extension is granted and who pays the fee within the period for which the extension is granted shall pay, in addition to the fee, simple interest at the rate of 10% per annum from the date on which the fee would otherwise have been due.

G. No Exceptions. A report and a fee return are required for each reporting period even though there may be no rents due or payable to the hotel of the operator during the preceding month, nor any fees due.

H. Failure to File Reports. If an operator fails to make a report of the information required by this section within the time and manner prescribed, the Administrator may examine the books, records and files of the operator to determine the fee due on the rents, as provided by this ordinance.

I. Special Determination and Collection: Operator Delay.

1. The Administrator may make a special determination of the fee amount and may make that amount due and payable immediately, provided that:

(a) the Administrator reasonably believes that delay may jeopardize either the collection of any amount of any fee, or the determination of that fee amount; and

(b) the purpose of the collection is noted on the special determination.

2. The Administrator shall serve notice of the special determination to the operator in person or, if by first class mail, at the operator's last known address as shown on the Administrator's records.

3. The operator shall pay the determined amount to the Administrator immediately upon receiving notice of the special determination.

4. After making the required payment but within 14 (fourteen) days of receiving notice of the special determination, the operator may appeal the decision by filing a petition for redetermination with the Administrator, pursuant to Section 16 of this ordinance.

SECTION 11. OPERATOR REQUIRED TO KEEP RECORDS.

A. Separate Accounting. Every operator shall state the fee imposed under this ordinance separately on room receipts and shall account for such fees separately in the hotel's records.

B. Recordkeeping. Every operator liable for the reporting or payment of the fee imposed under this ordinance shall keep such records, receipts and other pertinent documents in such form as the Administrator may require.

C. Three Year Minimum; Exception. Every operator shall keep such records for not less than three years, unless the Administrator issues written authorization to destroy them sooner.

SECTION 12. RECORDS EXEMPT FROM DISCLOSURE.

A. Policy. Pursuant to ORS 192.502(16)(1991 ed.) and except as provided by subsection B, no Columbia County employee or agent, and no employee or agent of cities participating by ordinance or resolution under this ordinance, may disclose the records, reports and returns required by this ordinance to be submitted to or inspected by the County to allow it to determine the amount of any transient fee payable or the amount of such fees paid, to the extent that such information is in a form that would permit identification of the individual concern or enterprise.

B. Authorized Use.

1. Nothing in this section shall limit the use which the County or participating cities may make of such information for regulatory purposes, or the admissibility of such information in any enforcement proceedings.

2. In the event that the payment or delivery of fees imposed under this ordinance is delinquent by more than 60 days, the County shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent more than 60 days in the payment or delivery of the fees;

(b) The period for which the fees are delinquent; and

(c) The actual or estimated amount of the delinquency.

SECTION 13. REFUNDS.

A. Operator's Fee Refunds. Whenever an operator has paid the amount of any fee, penalty or interest more than once, or the Administrator has erroneously or illegally collected or received it under this ordinance, it may be refunded, provided that the operator first files a petition for redetermination and refund with the Administrator, pursuant to Section 16 of this ordinance. In addition to any other requirements imposed by this ordinance, the petitioner shall state the specific reason upon which the claim is founded and file the petition within three years from the date of overpayment. All refunds shall be charged to the General Fund.

B. Transient Fee Refunds. Whenever the fee required by this ordinance has been collected by the operator, and deposited by the operator with the Administrator, and it is later determined that the fee was erroneously or illegally collected or received by the Administrator, it may be refunded by the Administrator to the transient, provided that the transient or the Administrator or other person acting in the transient's behalf, first files a petition for redetermination and refund with the Administrator, pursuant to Section 16 of this ordinance. In addition to any other requirements imposed by this ordinance, the petitioner shall state the specific reason upon which the claim is founded and file the petition within three years from the date of the overpayment. All refunds shall be charged to the General Fund.

SECTION 14. DELINQUENCY.

Unless an operator obtains an extension pursuant to Section 10F., the operator becomes delinquent with respect to this ordinance any time the operator fails:

A. Improper Reporting. To submit his or her reports completely and accurately, on time or as otherwise required by this ordinance; or

B. Improper Payment. To remit his or her fee payment fully, on time, or as otherwise required by this ordinance.

SECTION 15. SANCTIONS.

An operator who is delinquent may be subject to the provisions of the Columbia County Enforcement Ordinance, as amended, and to one or more of the following sanctions:

A. Inadequate or Untimely Reporting. If an operator is delinquent in submitting reports, the Administrator may take one or both of the following measures:

(1) Examine the operator's books, records and files in order to compute the fee due on the rents, as provided for by this ordinance.

(2) Assess the fee at no more than twice the amount estimated to be due and add a penalty of 10% of the amount of the fee assessed. This penalty shall be in addition to all other penalties. The amount of assessment of additional fee and penalty shall depend on the operator's record of past delinquencies.

B. Inadequate or Late Payments. If an operator is delinquent in making fee payments:

(1) The Administrator may assess interest payments on the outstanding fee accounts at a rate of 10% per annum from the date due until the date of payment.

(2) These fees shall operate as a first lien and privilege on the hotel and its personal property, which lien and privilege shall follow the hotel into the hands of third persons whether in good or bad faith, and Columbia County may foreclose that lien along with the other real property taxes.

C. Notice and Payment. Once the Administrator determines that an operator is delinquent and is subject to the sanction or sanctions imposed by Subsections A and B above, the Administrator shall give that operator a written notice of the delinquency.

1. The notice may be served personally or by mail, and if by mail, the notice shall be sent by certified mail and addressed to the operator at the last known address as it appears in the records of the Administrator. In case of service by mail or any notice required by this ordinance, the service is complete at the time of postmark by the United States Post Office.

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

3. The amount stated in the determination shall become due and payable immediately upon receipt of notice; and such determination shall become final unless the operator files a petition for redetermination pursuant to Section 16 of this ordinance.

D. Court Action to Collect Delinquent Amounts. At any time within three years after any fee or any amount of fee required to be collected becomes due and payable or at any time within three

years after any determination becomes final, the 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 County to collect the amount delinquent, together with penalties and interest.

SECTION 16. PETITION FOR REDETERMINATION.

A. Petition for Redetermination. Any operator who receives a notice of determination or delinquency, may petition the Administrator for redetermination. The petitioner may request an oral hearing on the matter by stating this request on the petition.

B. Requirements for Filing. The petition for redetermination allowed under this section must be received by the Administrator no more than 14 days after the Administrator serves the notice of delinquency or determination. It must be on a form supplied by the Administrator or it must state substantially the same information. However, no petition for redetermination shall be effective for any purpose unless the operator has first paid any and all fees and interest due and payable on the account.

C. Hearing. In the event of an oral hearing, the Administrator shall give the petitioner a 10-day written notice of the time and place of the hearing. The Administrator may continue the hearing from time to time, as may be necessary.

D. Redetermination. After reconsidering his or her determination, the Administrator shall prepare a decision in writing and shall serve notice of this decision to the petitioner by first class mail. Service shall be complete at the time of postmark by the United States Postal Service.

E. Amount of Fee Determination Subject to Change. As a result of the redetermination, the Administrator may increase or decrease the amount of the delinquency or determination. If an increase is established, it shall be due and payable immediately after the decision is made. If a decrease is established, the Administrator shall refund the amount or credit it to the operator, or the hotel's assignees or executors.

F. Redetermination is Final; Appeal. The decision of the Administrator upon a petition for redetermination becomes final, unless within 14 days following the service of such notice the petitioner files an appeal of the redetermination with the Board, pursuant to Section 17 of this ordinance.

SECTION 17. APPEALS TO BOARD.

A petitioner affected by the redetermination of the Administrator may appeal to the Board by filing a notice of appeal with the Administrator within 14 days of the service of the redetermination. The Administrator shall transmit the notice of

appeal, together with the file of the appealed matter, to the Board who shall fix a time and place for hearing such appeal. The Board shall give the appellant not less than 10 days written notice of the time and place of hearing. The Board shall consider the matter de novo and may approve, revise or remand the Administrator's redetermination. The Board's decision shall be by written order and shall be subject to Writ of Review proceedings pursuant to ORS 34.010 et seq.