1. 10:00 A.M. Agenda

   Documents:

   2024-04-02 Finance Committee Agenda.pdf

2. Meeting Material

   2024-02-Financial-Report-Council

   2024-02-Fund-Balances-And-Contract-Exp

   2024-02-Financial-Report-Debt-Services

   2024-02-Financial-Report-FUNDS-100-150-660-670

   2024-02-Financial-Report-General-Fund

   Documents:

   Administrative_Policy_20_Fiscal_Management_Debt_Capital_Improvements.pdf
   OCCUPANCY TAX Ch. 3.08.Pdf
   PREPARED FOOD AND BEVERAGE TAX Ch. 3.12.Pdf

CITY OF YACHATS
FINANCE COMMITTEE WORK SESSION MEETING
Tuesday April 2, 2024 at 10:00am
To Be Held Via Zoom & In Person Located at:
Commons Building, Civic Meeting Room 1
441 Hwy 101 N., Yachats OR 97498

Join Zoom Meeting
https://us02web.zoom.us/j/86120535365
Meeting ID: 861 2053 5365

I. Meeting Called to Order

II. Announcements and Correspondence

III. Citizens' Concerns (limited to items not on the agenda, 5-minute limitation per person)

VI. New Business
- a. Administrative Policy Review
  - i. *Admin Policy 20 Link*
- b. Budget Review

VII. Ongoing Business
- a. Tax Collection Code Amendment
  - i. *Link to Chapter 3.12*
- b. Vacation Rental Code Amendment
  - i. *Link to Chapter 3.08*

VIII. Other Business
- a. From Staff
- b. From Staff

The Yachats City meetings are open to the public and being held via Zoom. These are open meetings under Oregon law. Meetings are audio recorded. The meeting are accessible to persons with disabilities. For accommodations, please call (541) 547-3565, or Oregon Relay 1-800- 735-2900 TDD) two days in advance. City of Yachats does not discriminate on the basis of race, color, religion, creed, gender, national origin, age, disability, marital or veteran status, sexual orientation, or any other legally protected status. Sign language or foreign language interpreter
may be available, with advance notice. Call City Hall at 541-547-3565 or Oregon Relay 1-800-735-2900 (TDD) two days in advance.
POSTED 03/26/24 By: Kimmie Jackson, Deputy City Recorder

ADMINISTRATIVE POLICY NO. 20
FISCAL POLICIES FOR MANAGEMENT OF DEBT AND CAPITAL IMPROVEMENTS

OBJECTIVES

The purpose of this policy is to provide an effective management tool for debt and capital improvement financing. This policy establishes limits on the debt program while providing sufficient flexibility to enable the City Council to respond to unforeseen circumstances and new opportunities that may benefit the jurisdiction. The debt program sets forth the parameters for issuing debt and managing the debt portfolio while providing guidance to decision makers regarding the timing and purposes for which debt may be issued and types and amounts of permissible debt.

POLICIES

1. Long-term borrowing will not be used to finance current operations or normal maintenance.
2. The city will make every effort to repay all debt issued within a period not to exceed the expected useful life of the improvement.
3. The city will not issue tax or revenue anticipation notes.
4. The city will not issue bond anticipation notes with maturities in excess of the time required to construct the project and sell the bonds, or two years.
5. For any enterprise fund (water and sewer) the rates will be reviewed annually to ensure that the rates are sufficient to meet the debt service requirements and support the operations.
6. The city will use pay-as-you-go financing for capital improvements that may be completed within one fiscal year.
7. The city will not issue bonds more frequently than once every two fiscal years, unless there is an emergency situation.
8. The city will get authorization from the voters for all bonds issues, including revenue bonds.
9. The city will maintain its total general obligation bonded debt at a level not to exceed 3% of the assessed valuation of taxable property within the city.
10. The city will ensure that its annual general obligation bonded debt service does not exceed 10% of total city resources.
11. The city will ensure that its annual general obligation bonded debt service does not exceed 10% of total city expenses.
12. The city will maintain a general fund contingency fund at a level not less than 7% and will strive for 12%
13. The city will maintain appropriate capital improvement reserve fund.
14. The city will maintain a five-year capital improvement plan that will be updated annually. The capital improvement plan will be used as the basis for formal fiscal year appropriations during the annual budget process.

CHAPTER 3.08
OCCUPANCY TAX

§ 3.08.010. Definitions.

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

"Accrual accounting" means the lodging tax collector enters the rent due from a registered guest on his or her records when the rent is earned, whether or not it is paid.

"Cash accounting" means the lodging tax collector does not enter the rent due from a registered guest on his or her records until rent is paid.

"City Council" means the City Council of the City of Yachats.

"Lodging facility" means any structure, or any portion of any structure which is occupied or intended or designed for short-term occupancy for dwelling, lodging or sleeping purposes, and includes any hotel, motel, inn, condominium, vacation home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, or similar structure or space or portions thereof so occupied, provided such occupancy is for less than a 30 day period.

"Lodging intermediary" means a person other than an operator that facilitates the retail sale of lodging facilities and: (a) charges for occupancy of the lodging facility; (b) collects the consideration charged for occupancy of the lodging facility; or (c) receives a fee or commission and requires the operator to use a specified third-party entity to collect the consideration charged for occupancy of the transient lodging.

"Lodging tax collector" means an operator or a lodging intermediary.

"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 lodging facility, or portion thereof.

"Occupancy Tax Review Committee" means the City Council or, if it so elects, a Committee composed of five persons appointed by the City Council and may be owners or operators of a lodging facility.

"Operator" means a person that furnishes lodging in a lodging facility. Where the operator performs his or 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 or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

"Person" means any individual, 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 entity, group or combination acting as a unit.

"Registered guest" means any individual who exercised occupancy or is entitled to occupancy in a lodging facility for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a registered guest checks out of the lodging facility shall not be included in determining the 30 day period if the registered guest is not charged rent for that day by the lodging tax collector. Any individual so occupying space in a lodging facility shall be deemed to be a registered guest 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 registered guest, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter 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 registered guest. An owner of a condominium unit, or any other person residing in the same, who is required to pay any consideration for the use of the unit, shall be deemed a registered guest.

"Rent" means the total consideration charged, including all charges other than taxes, paid by a person, whether or not received by the operator or lodging intermediary, for the occupancy of space in a lodging facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction, but shall not include charges to a condominium unit owner which are solely for cleaning or maintenance of such unit so long as the charges are made in connection therewith for space occupancy.

"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 occupancy tax under this chapter shall be the same charge made for rent when consideration is not a part of the package plan. The amount applicable to rent for determination of occupancy tax under this chapter shall be that amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package and taking into consideration the charge for rent when the space is rented separately and not included in a package plan.

"Tax" means either the tax payable by the registered guest or the aggregate amount of taxes due from an operator or lodging intermediary during the period for which he or she is required to report his or her collections.

"Tax Administrator" means the City Recorder of the City of Yachats or designee.

"Visitor amenities" shall include items such as, but not limited to, public restrooms, informative signage, trash receptacles, parks and trails, visitor information center, and any other items that have substantial benefit to visitors, as determined by City Council.
(Ord. 59 § 1, 1976; Ord. 228, 2002; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.020. Tax imposed.

For the privilege of occupancy in any lodging facility, which is in the City of Yachats, on or after November 1, 1976, each registered guest shall pay a tax in the amount of 6% of the rent charged by the lodging tax collector. Effective January 1, 2016 each registered guest shall pay a tax in the amount of 9% of the rent charged by the lodging tax collector. The tax constitutes a debt owed by the registered guest to the City which is extinguished only by payment by the lodging tax collector to the City. The registered guest shall pay the tax to the lodging tax collector of the lodging facility at the time the rent is paid. The

lodging tax collector shall enter the tax on his or her records when rent is collected if the lodging tax collector keeps his or her records on the cash accounting basis and when earned if the lodging tax collector keeps his or her records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the registered guest to the lodging tax collector 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 and accommodations.
(Ord. 59 § 2, 1976; Ord. 145 § 1, 1991; Ord. 228, 2002; Ord. 327, 2014; Ord. 339, 2015; Ord. 351 § 1, 2018)

§ 3.08.030. Collection of tax—Rules for collection.

A. Every lodging tax collector renting lodging facilities in this City, the occupancy of which is not exempted under the terms of this chapter, shall collect a tax from the registered guest. The tax collected or accrued by the lodging tax collector constitutes a debt owing by the lodging tax collector to the City.

B. In all cases of credit or deferred payment of rent, the payment of tax to the lodging tax collector may be deferred until the rent is paid, and the lodging tax collector shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectables.

C. The Tax Administrator 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.

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

(Ord. 59 § 3, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.040. Lodging tax collector duties.

Each lodging tax collector shall collect the tax imposed by this chapter at the same time as the rent is collected from every registered guest. The amount of tax shall be separately stated upon the lodging tax collector's records, and any receipt rendered by the lodging tax collector. No lodging tax collector of a lodging facility shall advertise that the tax or any part of the tax will be assumed or absorbed by the lodging tax collector, 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.
(Ord. 59 § 4, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.050. Exemption.

No tax imposed under this chapter shall be imposed upon:

A. Any occupant for more than 30 successive calendar days with respect to any rent imposed for the period commencing after the first 30 days of such successive occupancy;

B. Any occupant whose rent is of a value less than $2 per day;

C. Any occupant whose rent is paid to a health care facility, including hospitals, medical clinics, convalescent homes, homes for the aged people, and long-term care facilities.

D. Any occupant whose rent is paid to a public institution owned and operated by a unit of the government.

E. Any occupant whose rent is paid to a facility providing treatment for drug or alcohol abuse or providing mental health treatment.

F. Any occupant whose rent is funded through a contract with a government agency and the purpose of such occupancy is to provide emergency or temporary shelter.

G. Any occupant whose rent is paid to a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility.

H. Any occupant whose rents a private home, vacation cabin, or similar residential facility from any lodging operator who rents such facility incidentally to the lodging operator's own personal use thereof, and where the total number of rental days for the facility are less than 30 days per year.

I. Any occupant who is a Federal employee on official Federal government business.

(Ord. 59 § 5, 1976; Ord. 148 § 7, 1992; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.060. Registration of operator—Certification of authority.

Every person engaging or about to engage in business as an operator in this City shall register with the Tax Administrator on a form provided by him or her. Operators engaged in business at the time the ordinance codified in this chapter is adopted must register not later than 30 calendar days after passage of said ordinance. Operators starting business after said ordinance is adopted must register within 15 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 sets forth the name under which the operator transacts or intends to transact business, the location of his or her place or places of business and such other information to facilitate collection of the tax as the Tax Administrator may require. The registration shall be signed by the operator. The Tax Administrator shall, within 10 days after registration issue without charge a certificate of authority to each registrant to collect the tax from the registered guest, 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.

The certificate shall, among other things, state the following:

A. The name of the operator;

B. The address of the lodging facility;

C. The date upon which the certificate was issued;

D. "This Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Occupancy Tax Ordinance of the City of Yachats, Oregon, by registration with the Tax Administrator for the purpose of collection from registered guests, the occupancy 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 lodging facility 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 Yachats, Oregon. This certificate does not constitute a permit."

(Ord. 59 § 6, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.070. Due date—Returns and payments.

A. The tax imposed by this chapter shall be paid by the registered guest to the lodging tax collector at the time that rent is paid. All amounts of such taxes collected by any lodging tax collector are due and payable to the Tax Administrator on a quarterly basis on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) and are delinquent on the first day of the month following (in the months of May, August, November and February). Commencing July 1, 2002 and for each three month quarter thereafter, the quarters shall be consistent with the City's fiscal year (e.g., October 1, January 1 and April 1 of each fiscal year). The Tax Administrator has authority to classify and/or district the lodging tax collectors for determination of applicable tax periods, and shall notify each lodging tax collector of the due and delinquent dates for the lodging tax collector's returns.

B. On or before the last 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 lodging tax collector liable for payment of tax.

C. The returns shall show the total rent and fees for each month in the quarter on a separate line, with a total for the quarter.

D. The person required to file the return shall remit the amount of the tax due, to the Tax Administrator at his or her office, either by personal delivery or by mail before the last day of the month following each quarter of collection.

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 Occupancy Tax Review Committee. Any lodging tax collector to whom an extension is granted shall pay the delinquent fees unless waived by the

Occupancy Tax Review Committee.

F. The Tax Administrator, if he or she 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.

(Ord. 59 § 7, 1976; Ord. 228, 2002; Ord. 327, 2014; Ord. 334, 2015; Ord. 351 § 1, 2018)

§ 3.08.080. Penalties.

A. Original Delinquency. Any lodging tax collector 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 pay 10% of the amount of the tax due and a delinquency fee of $100 in addition to the amount of the tax.

B. Continued Delinquencies. Any lodging tax collector who has not been granted an extension of time for remittance of tax due, and who fails to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay an additional 10% for each 30 day period the tax remains delinquent.

C. Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Penalties Merged With Tax. Every penalty imposed under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

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

(Ord. 59 § 8, 1976; Ord. 327, 2014; Ord. 334, 2015; Ord. 351 § 1, 2018)

§ 3.08.090. Deficiency determinations—Evasion, lodging tax collector delay.

A. Deficiency Determinations. If the Tax Administrator determines that the returns are incorrect, he or she 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 or her possession or that may come into his or her possession. One or more deficiency determinations 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 3.08.080.

1. In making a determination the Tax Administrator may offset over-payments, 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 3.08.080.

2. The Tax Administrator shall give to the lodging tax collector or occupant a written notice of his or her determination. The notice may be served personally or by mail. If by mail the notice shall be addressed to the lodging tax collector at his or her address as it appears on the records of the Tax Administrator. In case of service by mail, any notice required by this chapter shall be served by mailing such notice by registered mail, postage prepaid, return receipt requested.

3. Except in the case of fraud or intent to evade this chapter 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 20 days after the Tax Administrator has given notice thereof; provided, however, the lodging tax collector 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 lodging tax collector shall fail or refuse to collect the tax or to make within the time provided in this chapter any report or remittance of the tax or any portion thereof required by this chapter, or makes a fraudulent return or otherwise willfully attempts to evade this chapter, the Tax Administrator shall proceed in such manner as he or she may deem best to obtain the 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 chapter from any lodging tax collector who has failed or refused to collect the same and to report and remit the tax, he or she shall proceed to determine and assess against such lodging tax collector the tax, interest and penalties provided for by this chapter. 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 of the discovery by the Tax Administrator of any fraud, intent to evade or failure or refusal to collect the tax, or failure to file return. Any determination shall become due and payable upon receipt of notice and shall become final within 20 days after the Tax Administrator has given notice thereof, provided, however, the lodging tax collector may petition for redemption refund if the petition is filed before the determination becomes final as herein provided.

C. Lodging Tax Collector 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 or she 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 lodging tax collector shall immediately pay such determination to the Tax Administrator after service of notice thereof; provided, however, the lodging tax collector may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within 20 days from the date of service of notice by the Tax Administrator.

(Ord. 59 § 9, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.100. Redeterminations.

A. Any person against whom a determination is made under Section 3.08.090 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 3.08.090. If a petition for redetermination and refund is not filed within the time required in Section 3.08.090, 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 or her petition, shall grant the person an oral hearing and shall give him or her 20 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 each 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 20 days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the Occupancy Tax Review Committee within 20 days after the service of such notice.

E. No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the lodging tax collector has first complied with the payment provisions hereof.

(Ord. 59 § 10, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.110. Security for collection of tax.

A. The Tax Administrator, whenever he or she deems it necessary to insure the compliance with this chapter, may require the lodging tax collector subject thereto to deposit with him or her 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 lodging tax collector's estimated average quarterly liability for the period for which he or she files returns, determined in such a manner as the Tax Administrator deems proper, or $5,000, whichever amount is lesser. The amount of security may be increased or decreased by the Tax Administrator subject to limitations herein provided. The lodging tax collector has a right to appeal to the Occupancy Tax Review Committee any decision of the Tax Administrator made pursuant to this section. The lodging tax collector's right to appeal is pursuant to Section 3.08.170.

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 any 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, and reasonable rattorney's fees, to be determined by the court, together with court costs.

(Ord. 59 § 11, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.120. Lien.

Any deficiency for occupancy room taxes identified in a final deficiency determination shall become a lien against the real property used for the lodging facility upon which the occupancy tax has been assessed. The Tax Administrator shall cause a lien to be entered in the lien docket of the City.

In addition to other remedies provided in this chapter, any deficiency for occupancy taxes identified in a final deficiency determination shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Yachats for the recovery of such amount. In lieu of filing an action for the recovery, the City may submit deficiencies to a collection agency. In the event the City turns over a deficient tax account to a collection agency, the City may add to the amount owing an amount equal to the collection agency fees, not to exceed 25% of the outstanding tax owing. The City shall provide notice as may be required by state law.

(Ord. 59 § 12, 1976; Ord. 307, 2011; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.130. Refunds.

A. Refunds by the City to the Lodging Tax Collector. 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 chapter, 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 amount then due and payable from the lodging tax collector from whom it was collected or by whom paid and the balance may be refunded to such lodging tax collector, his or her administrators, executors or assignees.

B. Refunds by City to Registered Guest. Whenever the tax required by this chapter has been collected by a lodging tax collector, and deposited by lodging tax collector 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 registered guest, 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 Lodging Tax Collector to Tenant. Whenever the tax required by this chapter has been collected by the lodging tax collector and it is later determined that the tenant occupies the lodging facility for a period exceeding 30 days without interruption, the lodging tax collector shall refund to such tenant the tax previously collected by the lodging tax collector from that tenant as a registered guest. The lodging tax collector shall account for such collection and refund to the Tax Administrator. If the lodging tax collector has remitted the tax prior to the refund or credit to the tenant, he or she shall be entitled to a corresponding refund under this section.

(Ord. 59 § 13, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.140. Collection fee.

Every lodging tax collector liable for collection and remittance of the tax imposed by this chapter may withhold 5% of the net tax herein collected, to cover the lodging tax collector's expense in collection and remittance of the tax.
(Ord. 59 § 14, 1976; Ord. 60 § 1, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.150. Administration.

A. Not less than 30% of the occupancy tax received by the City shall be allocated to visitor amenities each year. No more than 50% of that amount shall be allocated to a visitor information center.

B. Records Required From Lodging Tax Collectors—Form. Every lodging tax collector shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the lodging tax collector for a period of three years and six months after they come into being.

C. Examination of Records—Investigations. The Tax Administrator, or any person authorized in writing by him or her, may examine during normal business hours the books, papers and accounting records relating to room sales of any lodging tax collector, after notification to the lodging tax collector liable for the tax, and may investigate the business of the lodging tax collector in order to verify the accuracy of any return made, or if no return is made by the lodging tax collector, to ascertain and determine the amount required to be paid.

D. Confidential Character of Information Obtained—Disclosure shall follow the Public Records Laws of the State of Oregon.

(Ord. 59 § 15, 1976; Ord. 69 § 1, 1978; Ord. 59A, 1983; Ord. 228, 2002; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.160. Occupancy Tax Review Committee—Appeal rules and procedure.

An Occupancy Tax Review Committee is created to be composed of five persons. The City Council may elect not to provide for the Occupancy Tax Review Committee. The Committee shall select from its members a chair 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 keep its files in his or her 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 City Council and shall serve four year terms.

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

A. 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 20 days thereafter and shall thereupon become due and payable, subject to interest penalties, and enforceable by the Tax Administrator in like manner as an order or decision of the Tax Administrator;

B. To approve, modify or disapprove all forms, rules and regulations prescribed by the Tax Administrator in the administration and enforcement of this chapter and such forms, rules and regulations adopted or promulgated after November 1, 1976;

C. 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;

D. 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;

E. To make such investigations as it deems advisable regarding the imposition and administration of the occupancy tax and report its findings to the Board of Commissioners; to act in an advisory capacity to the legislative body on matters pertaining to the occupancy tax and enforcement problems and to recommend to the Board of Commissioners the adoption, amendment or repeal of legislation pertaining thereto.

(Ord. 59 § 16, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.170. Appeal to Occupancy Tax Review Committee.

Any person aggrieved by any decision of the Tax Administrator may appeal to the Occupancy Tax Review Committee by filing notice of appeal with the Tax Administrator within 20 days of the serving or mailing of the tax 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 Occupancy Tax Review Committee in its rules and regulations and shall give the appellant 20 days' written notice of the time and place of hearing.
(Ord. 59 § 17, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.180. Appeals to City Council.

Any person aggrieved by any decision of the Occupancy Tax Review Committee may appeal to the City Council by filing notice of appeal with the Tax Administrator within 20 days of the serving or the mailing of the notice of the decision given by the Occupancy Tax Review Committee. The Tax Administrator shall transmit the notice of appeal together with the file of the appealed matter to the City Council, who shall fix a time and place for hearing such appeal from the decision of the Occupancy Tax Review Committee. The City Council shall give the appellant not less than 20 days' written notice of the time and place of hearing of the appealed matter. Action by the City Council on appeals shall be decided by a majority of the members of the City Council present at the meeting where such appeal is considered.
(Ord. 59 § 18, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.190. Violations.

It is unlawful for any 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 chapter.
(Ord. 59 § 20, 1976; Ord. 327, 2014; Ord. 351 § 1, 2018)

§ 3.08.200. Penalties.

Any person who violates any of the provisions of this chapter commits a Class A civil infraction and shall be subject to the procedures and penalties of Chapter 1.12, as now constituted or hereafter amended, revised or repealed.
(Ord. 59 § 1, 1976; Ord. 185 § 1, 1996; Ord. 327, 2014; Ord. 351 § 1, 2018)

CHAPTER 3.12
PREPARED FOOD AND BEVERAGE TAX

§ 3.12.010. Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section unless from the context a different meaning is intended.

"Caterer" means a person who prepares food at a business site, for compensation, for consumption off the business premises but within the corporate limits of the City.

"Combination facility" has the same meaning as defined in Oregon Administrative Rule 333-150-000(8) which the State of Oregon Department of Agriculture licenses or inspects under Oregon Administrative Rule 333-158-000.

"Recorder" means the City Recorder of the City of Yachats, or designee.

"Food" includes all meals and beverages, excluding alcoholic beverages, served in a restaurant including "takeout," "to go" or delivered orders. For purposes of a restaurant that is a grocery store, market, convenience store or deli section of any store, food is all prepared food and beverage which has been altered (other than solely by cooling) by preparing, combining, dividing, heating or serving, so that the food or beverage is available and intended for immediate human consumption, such as hot foods, operator prepared sandwiches and salads, and fountain drinks, whether the food is prepared by the operator onsite or at the specific direction of the operator at an off-site location controlled by the operator.

"Operator" means the person who is proprietor of the restaurant, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator is a corporation, the term operator shall also include each and every member of the board of directors of such corporation for the time involved.

"Restaurant" means any establishment required to be licensed as a restaurant, mobile unit or pushcart by the State of Oregon Health Division and includes any establishment where food or beverage is prepared or available for consumption by the public or any establishment such as a grocery store, market, convenience store or deli section of any store where the public obtains food or beverage prepared on or off premises in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where served or purchased, and also includes establishments which prepare food or beverage in consumable form for service outside the premises where prepared. The term restaurant also includes establishments where such food or beverage is prepared in a combination facility. The term restaurant does not include a restaurant licensed by the State of Oregon Health Division as a limited service restaurant.
(Ord. 262, 2006; Ord. 293, 2010; Ord. 305, 2011)

§ 3.12.020. Tax imposed.

A. The City imposes and levies, in addition to all other taxes, fees and charges of every kind, a tax upon:

1. Unless specifically exempt under Section 3.12.030 below, all food and

beverages sold by restaurants located within the City to the public, except for whole cakes, pies, and loaves of bread if purchased for consumption off premises, and for alcoholic beverages;

2. All food and beverages, except alcoholic beverages, sold by a caterer for an event located within the City; and

3. The following items sold by combination facilities:

   a. Salads from salad bars,

   b. Dispensed soft drinks and coffee, and

   c. Sandwiches or hot prepared foods ready for immediate consumption.

   d. The following items, including toppings or additions, scooped or otherwise placed into a cone, bowl or other container for immediate consumption whether or not they are consumed within the confines of the premises where scooped or placed: any frozen dessert regulated by the Oregon State Department of Agriculture under ORS 621.311 and any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under this subsection, however, on any item whose volume exceeds one-half gallon.

   e. Any other food mixed, cooked or processed on the premises in form or quantity for immediate consumption whether or not it is consumed within the confines of the premises where prepared.

4. The following items sold by combination facilities that are bakeries:

   a. All those items listed in paragraphs A.3.a through d of this section;

   b. All bakery products sold for consumption on the premises; and

   c. All "takeout" or "to go" orders of bakery products prepared on the premises except for whole cakes, pies, and loaves of bread and any order consisting of six or more bakery products.

B. Such tax shall be imposed at a rate of 5% on the total amount charged by the seller for the food and beverages, or for the meal. In the computation of this tax any fraction of one-half cent or more shall be treated as one cent.

C. All taxes collected by the City under this chapter shall be used for financing of improvements to the sanitary or storm sewer systems or the water system.

D. The Council may increase the rate of the tax described in subsection A of this section after a public hearing. Notice of the hearing shall be given by publication in a newspaper of general circulation in the City at least 10 days prior to the date of the public hearing.

(Ord. 262, 2006; Ord. 293, 2010)

§ 3.12.030. Exemptions.

The tax levied by Section 3.12.020 shall not be collected or assessed on food or beverages:

A. Sold by public or private schools or colleges, except that food sold by independent contractor operators at such schools or colleges shall be subject to the tax imposed by this chapter.

B. Provided by hospitals.

C. Provided by bed and breakfast establishments and motels to their guests, if the package is taxed in its entirety through the occupancy tax code in Chapter 3.08.

D. Sold in vending machines.

E. Sold in temporary restaurants including food stands, booths, street concessions and similar type operations, operated by Yachats community based non-profit organizations or service clubs.

F. Served in connection with overnight or residential facilities—including, but not limited to, convalescent homes, nursing homes, retirement homes—if the food and beverage are provided as part of the cost of sleeping accommodations.

G. Provided by Yachats community based nonprofit tax-exempt organizations.

H. Sold for resale to the public.

I. Sold in bulk to the public for non-immediate consumption off the premises such as ice cream packed in a container that exceeds one-half gallon.

J. Which are candy, popcorn, nuts, chips, gum or other confections but not including ice cream, frozen yogurt, cakes, pies or other desserts.

K. Food or beverages in grocery stores, markets and the like which is not defined under Section 3.12.010.D or F as prepared foods or beverages.

(Ord. 262, 2006; Ord. 293, 2010)

§ 3.12.040. Operator's duties.

Each operator shall collect the tax imposed by this chapter, to the same extent and at the same time as the amount for the food or beverage is collected from every purchaser. The amount of tax need not be separately stated from the amount of the food or beverage. Every operator required to collect the tax imposed in this chapter shall be entitled to retain 5% of all taxes collected to defray the costs of collections and remittance.
(Ord. 262, 2006; Ord. 329 § 1, 2014)

§ 3.12.050. Reporting and remitting.

A. On or after July 1, 2007 (fiscal year 2007-2008) every operator shall make a return to the Recorder on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January). Returns are delinquent on the first day of the month following (in the months of May, August, November and February). The returns shall be on forms provided by the City, specifying the total sales for each month in the quarter on a separate line, with a total for the quarter.

B. The person required to file the return shall remit the amount of the tax due, to the tax administrator at his or her office, either by personal delivery or by mail before the last day of the month following each quarter of collection.

C. A return shall not be considered filed until it is actually received by the Recorder. Payments received by the Recorder for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions which are not prejudicial to the interest of the City. A condition which is considered prejudicial is the imminent expiration of the statute of limitations for a period or periods. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax.

D. The Recorder, when in the Recorder's discretion determines that it will be in the best interest of the City, may specify that a different order of payment credit should be followed with regard to a particular tax or factual situation. The Recorder may establish shorter reporting periods for any operator if the Recorder deems it necessary in order to insure collection of the tax and the Recorder may require further information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason.

E. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Recorder. A separate trust bank account is not required in order to comply with this provision.

(Ord. 262, 2006; Ord. 335, 2015)

§ 3.12.060. Penalties.

A. Any operator who fails to remit any portion of any tax imposed by this chapter within the time required, shall pay a penalty of 10% of the amount of the tax and a delinquency fee of $100, in addition to the amount of the tax.

B. Any operator who fails to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay an additional 10% for each 30 day period the tax remains delinquent.

C. If the Recorder determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Every penalty imposed under the provisions of this section shall become a part of the tax required to be paid.

E. Notwithstanding Section 3.12.020(C), all sums collected pursuant to the penalty provisions in subsections A, B and C of this section shall be used for financing of improvements to the sanitary or storm sewer systems or the water system.

(Ord. 262, 2006; Ord. 335, 2015)

§ 3.12.070. Failure to collect and report tax.

If any operator should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Recorder shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Recorder shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any operator, the Recorder shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Recorder shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the last known place of address. Such operator may make an appeal of such determination as provided in Section 3.12.080. If no appeal is filed, the Recorder's determination is final and the amount thereby is immediately due and payable.

(Ord. 262, 2006)

§ 3.12.080. Appeal.

Any operator aggrieved by any decision of the Recorder with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of appeal with the Recorder within 30 days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing such appeal, and the Recorder shall give five days' written notice of the time and place of hearing to such operator at the last known place of address. The Council shall hear and consider any records and evidence presented bearing upon the Recorder's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the Council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

(Ord. 262, 2006)

§ 3.12.090. Records.

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three years, all such records as may be necessary to determine the amount of such tax. The Recorder shall have the right to inspect all records at all reasonable times.

(Ord. 262, 2006)

§ 3.12.100. Refunds.

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in subsection B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Recorder within one year of the date of payment. The claim shall be on forms furnished by the Recorder.

B. The Recorder shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Recorder shall notify the claimant in writing of the Recorder's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Recorder to be a valid claim, an operator may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received in a manner prescribed by the Recorder. The operator shall notify recorder of claimant's choice no later than 15 days following the date recorder mailed the determination. In the event claimant has not notified the Recorder of claimant's choice within the 15-day period and the operator is still in business, a credit will be granted against the tax liability for the next reporting period, if the operator is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Recorder acknowledged the validity of the claim.

(Ord. 262, 2006)

§ 3.12.110. Lien and actions to collect.

Any tax required to be paid by any operator under the provisions of this chapter shall be deemed a debt owed by the operator to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Yachats for the recovery of such amount.

If no appeal is filed within 30 days of serving or mailing a tax deficiency notice, the deficiency for taxes identified shall become a lien against the real property used as a restaurant by the operator. The Recorder shall cause a lien to be entered in the lien docket of the City.

In addition to other remedies provided in this chapter, the City may submit deficiencies to a collection agency. In the event the City turns over a deficient tax account to a collection agency, the City may add to the amount owing an amount equal to the collection agency fees, not to exceed 25% of the outstanding tax owing. The City shall provide notice as may be required by state law.

(Ord. 262, 2006; Ord. 306, 2011)

§ 3.12.120. Violations—Infractions.

Any operator or other person who fails or refuses to comply as required herein, or to furnish any return required to be made, or fails or refuses to furnish a supplemental return or other data required by the Recorder, or who renders a false or fraudulent return or claim, or who fails, refuses or neglects to remit the tax to the City by the due date, is guilty of a Class A infraction under Section 1.12.070 of the Yachats Municipal Code.
(Ord. 262, 2006)

§ 3.12.130. Confidentiality.

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

A. The disclosure of the names and addresses of any person(s) who are operating a restaurant; or

B. The disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual operator; or

C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of a claim by the Recorder or an appeal from the Recorder for amount due the City under this chapter.

(Ord. 262, 2006)

§ 3.12.140. Examining books, records, or persons.

The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by it for that purpose, any books, papers, records, or memoranda, including copies of operator's State and Federal income tax return, bearing upon the matter of the operator's tax return.
(Ord. 262, 2006)

§ 3.12.150. Effective date—Tax collection.

This chapter shall take effect on the 30th day after adoption, as provided in the 2005 Yachats Charter. Collection of taxes shall not commence, however, until July 1, 2007, the first day of the 2007-2008 fiscal year, payable as set forth in Section 3.12.050 of this chapter.
(Ord. 262, 2006)