

## **Title 3**

### **REVENUE AND FINANCE**

#### **Chapters:**

- 3.04 Surveyor and Survey Fees**
- 3.08 Public Land Corner Preservation Fund**
- 3.12 Acceleration of Redemption and Imposition of Fines for Properties Subject to Waste and Abandonment**
- 3.16 Transient Room Tax**
- 3.20 Damage Claims for Livestock**



**Chapter 3.04****SURVEYOR AND SURVEY FEES****Sections:****3.04.010 Fees and deposit.****3.04.010 Fees and deposit.**

- A. Whenever the Surveyor is required to mark a plat as provided under ORS 271.230, the County Clerk shall collect a fee as set from time to time by resolution and order of the Clatsop County Board of Commissioners.
- B. All of the fees collected by the County Clerk pursuant to this chapter shall be deposited into the Clatsop County general fund. (Ord. 95-26 § 3; Ord. 86-18 § 3)

## Chapter 3.08

### PUBLIC LAND CORNER PRESERVATION FUND

#### Sections:

- 3.08.010**     **Definitions.**
- 3.08.020**     **Fund.**
- 3.08.030**     **Fund created.**

#### **3.08.010**     **Definitions.**

“Corner” means a point determined by the surveying process.

“County Surveyor” means an individual appointed or elected to the office of the County Surveyor and who is responsible for performing the duties of such office as described by law.

“Deputy County Surveyor” means an individual appointed by the County Surveyor to the office of Deputy County Surveyor.

“Existent corner” means one whose position can be identified by verifying the evidence of the monument or its accessories, by reference to the description in the field notes, or located by an acceptable supplemental survey record, some physical evidence, or testimony.

“Lost corner” means a point of a survey whose position cannot be determined, beyond reasonable doubt, either from traces of the original marks or from acceptable evidence or testimony that bears upon the original position, and whose location can be restored only by reference to one or more interdependent corners.

“Monument” means any permanent material object or collection of objects, either natural or man-made, which indicates the position on the ground of a survey station, public land survey corner or accessories, or a land boundary corner established by a qualified surveyor.

“Obliterated corner” means one at whose point there are no remaining traces of the monument, or its accessories, but whose location has been perpetuated, or the point for which may be recovered beyond reasonable doubt by the acts and testimony of the interested landowners, competent surveyors, other qualified local authorities, or witnesses, or by some acceptable record evidence.

“Public land survey corner” means a section corner, one-quarter section corner, donation land claim corner, meander corner, witness corner or any other corner established by the general land office or its successor. (Ord. 91-12 § 3; Ord. 85-26 § 3)

#### **3.08.020**     **Fund.**

- A. The Clatsop County Clerk shall collect, in addition to any other fees, a fee of ten dollars for and upon the recording of all instruments under ORS 205.130(2).
- B. Moneys in the public land corner preservation fund shall be used only to pay expenses incurred and authorized by the County Surveyor in the establishment, reestablishment and maintenance of corners of government surveys under ORS 209.070(5) and (6). (Ord. 05-01 § 7; Ord. 95-20; Ord. 91-12 § 3; Ord. 85-26 § 3)

**3.08.030 Fund created.**

A public land corner preservation fund shall be created and used for the purposes stated in 3.08.020. All moneys collected and any interest accrued in this fund shall be deposited and credited to a fund entitled the public land corner preservation fund. The treasurer is authorized to invest fund balances.

## Chapter 3.12

### ACCELERATION OF REDEMPTION AND IMPOSITION OF FINES FOR PROPERTIES SUBJECT TO WASTE AND ABANDONMENT

#### Sections:

- 3.12.010 Purpose.**
- 3.12.020 Definitions.**
- 3.12.030 Forfeiture for waste—Penalty.**
- 3.12.040 Acceleration of redemption period authorized.**
- 3.12.050 Hearing required.**
- 3.12.060 Notice of hearing.**
- 3.12.070 Conduct of hearing.**
- 3.12.080 Board order—Findings and conclusions.**
- 3.12.090 Judicial review.**
- 3.12.100 Tax collector’s deed.**
- 3.12.110 Removal of occupants.**
- 3.12.120 Fines.**

#### **3.12.010 Purpose.**

The Clatsop County Board of Commissioners (“Board”) has determined that the County is in need of a remedy to prevent the hazards, detrimental effects, and devaluation of property sold to Clatsop County in tax foreclosure actions that is subjected to waste and abandonment. This chapter is enacted under the authority of ORS 312.122 to provide such a remedy, through acceleration of the tax foreclosure redemption process and imposition of fines for waste of such properties. (Ord. 03-06 § 7)

#### **3.12.020 Definitions.**

“Abandonment” occurs when property is not occupied by the owner or any person or entity that appears in the records of the County to have a lien or other interest in the property for a period of six consecutive months, and the property has suffered a substantial depreciation in value or will suffer a substantial depreciation in value if not occupied.

“Board” means the Clatsop County Board of Commissioners.

“Former owner” means the person or entity who appears in the records of the County and who, by a judgment and decree issued by a Circuit Court pursuant to the foreclosure process foreclosing delinquent taxes under ORS Chapter 312, sold property to the County for the amount of the delinquent taxes stated in the judgment and decree. “Former owner” includes any person or entity rightful in possession of the property, and any person or entity acting under the permission or control of such former owner.

“Owner” means Clatsop County for all properties shown in a judgment and decree executed by the Clatsop County Circuit Court in a proceeding to foreclose delinquent taxes under ORS Chapter 312.

“Parties,” when used in the context of the public hearing provided for in this chapter, means Clatsop County and any person or entity entitled to notice of that public hearing.

“Property” means the property of the former owner listed in a judgment and decree executed by the Clatsop County Circuit Court in a proceeding to foreclose delinquent taxes under ORS Chapter 312.

“Record of the County” has that meaning given in ORS 312.125(7).

“Tax collector” means the Clatsop County tax collector.

“Waste” means any act with the potential to adversely affect the property’s condition or value, whether caused by the former owner or by anyone acting under the former owner’s permission or general control. “Waste” includes, but is not limited to, deterioration, destruction or material alteration of land or improvements, removal of agricultural or mineral assets, the creation of any nuisance as defined in Chapter 8.04 of the Clatsop County Code or violation of any rule appearing in a state or local building code. (Ord. 03-06 § 7)

**3.12.030 Forfeiture for waste—Penalty.**

Any waste of property, as defined in this chapter, shall forfeit to the County the former owner’s right to possession of the property during the redemption period, and in addition, the former owner shall be punished as provided in this chapter. (Ord. 03-06 § 7)

**3.12.040 Acceleration of redemption period authorized.**

- A. If the County determines, after the hearing provided for by this chapter, that either the property is subject to waste resulting in a forfeiture to the County of the former owner’s right to possession of the property during the redemption period, or the property is subject to abandonment, the Board shall:
1. Provide that any rights of possession the former owner may have in the property are forfeited to the County;
  2. Direct that the redemption period on the property will end 30 days after the date of the Board’s decision; and
  3. Direct that after the expiration of the accelerated redemption period, the property shall be deeded to the County by the tax collector if the former owner or anyone else having a right to redeem under ORS Chapter 312 has not redeemed it.
- B. All rights of redemption held by any person or entity who appears in the records of the County to have a lien or other interest in the property shall terminate on the execution of the deed to the County. (Ord. 03-06 § 7)

**3.12.050 Hearing required.**

- A. Whenever the Board determines that real property sold to the County under ORS 312.100 may be subject to waste resulting in a forfeiture to the County of the former owner’s right to possession of the property during the redemption period, or may be subject to abandonment, the Board shall set a date, time and place within the County for a hearing to determine whether the property should be deeded to the County.
- B. The former owner and any person or entity that appears in the records of the County to have a lien or other interest in the property shall be given an opportunity to be heard at the hearing. (Ord. 03-06 § 7)

**3.12.060 Notice of hearing.**

- A. Not less than 30 days prior to the hearing, the County shall direct notice of the hearing to the former owner, the current occupants, and any person or entity appearing in the records of the County to have a lien or other interest in the property. The notice of hearing shall contain the following information:

1. The date, time and place of the hearing;
  2. The date of the judgment and decree issued pursuant to ORS 312.100;
  3. The normal date of expiration of the period of redemption under ORS 312.120;
  4. The legal description and tax account number of the property;
  5. The name of the former owner as it appears on the latest tax roll;
  6. A warning that if the County determines that the property is subject to waste or abandonment, the redemption period associated with the tax foreclosure will be shortened to 30 days from the date of the County's decision, and if the property is not redeemed before the end of this accelerated redemption period, the property shall be deeded to the County by the tax collector and every right or interest of any person in the property will be forfeited forever to the County;
  7. A warning that if the County determines that the former owner or persons acting under the former owner's permission or control have committed waste on the property, the former owner will be subjected to a fine of not less than twice the value so wasted; and
  8. A warning that any persons or entities remaining on the property after the property is deed to the County may be subject to civil or criminal prosecution for trespass or to other lawful action that would remove the persons or entities from the property.
- B. The required notice shall be given in any manner reasonably calculated, under all the circumstances, to apprise the former owner and other interested persons of the existence and pendency of the action and to afford them a reasonable opportunity to appear and be heard. This shall always include mailing of the notice to the interested persons' last known address by both certified mail and by regular first class mail. The required notice shall be directed to interested parties using the following guidelines:
1. Notice to Former Owners. Notice sent to a former owner shall be addressed to the former owner or former owners, as reflected in the County records of deeds, at the true and correct address of the former owner(s) appearing on the instrument of conveyance under ORS 93.260 or as furnished under ORS 311.555, or as otherwise ascertained by the Clatsop County tax collector pursuant to ORS 311.560; and
  2. Notice to Other Financially Interested Persons. Notice sent to persons or entities other than the former owner who have a recognized interest in the property shall be addressed to that person or entity at the address which the County knows or after reasonable inquiry, has reason to believe, is the address at which such person or entity will most likely receive actual notice.
  3. Notice to Corporations or Limited Partnerships. If a person or entity with a right to notice is a corporation or limited partnership, the notice shall be mailed to the registered agent or last registered office of the corporation or limited partnership, if any, as shown by the records on file in the office of the Oregon Corporation Commissioner. If the corporation or limited partnership is not authorized to transact business in Oregon, then notice shall be mailed to the principle office or place of business of such corporation or limited partnership, if known.
  4. Notice to Occupants. Notice to the occupant(s) of the property shall be addressed to "Occupants" at the property address, and if reasonably possible, shall also be posted on the property. (Ord. 03-06 § 7)

**3.12.070 Conduct of hearing.****A. Statement of Rights.**

1. The Board shall open the public hearing by informing the parties about the following matters:
  - a. A general description of the hearing procedure, including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burdens of proof or burdens of production of evidence;
  - b. That a record shall be made of the proceedings and the manner of making the record and its availability to the parties;
  - c. The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal of the Board's decision;
  - d. That the parties have a right to be represented by an attorney at their own expense; and
  - e. That the Board's decision may be appealed pursuant to ORS Chapter 34, and that the appellant shall pay all costs on appeal, including costs for preparation of a transcript.
2. The failure to give notice of any item specified in subsection (A)(1) of this section shall not invalidate any decision of the Board unless on review a court finds that the failure affects the substantive rights of one of the parties. In the event of such a finding, the court shall remand the matter to the Board for a reopening of the hearing and shall direct the Board as to what steps shall be taken to remedy any prejudice toward the rights of any party.

**B. Witness and Testimony.**

1. After the Board opens the public hearing, the tax collector, or the tax collector's designee, shall be placed under oath and shall present evidence or testimony relevant to explain the County's position on the following:
  - a. What information indicates that the property is subject to waste or abandonment and should therefore be deeded to the County; and
  - b. If the property is subject to waste, how the value so wasted should be quantified, including, when appropriate, the approximate anticipated cost the County will incur in cleaning up the property.
2. Adverse parties shall have the right to cross-examine the tax collector or the tax collector's designee.
3. If there are additional witnesses present to testify in support of the County's position, they shall be placed under oath, one at a time, and shall present evidence or testimony relevant to the questions listed in subsections (B)(1)(a) and (b) of this section. Adverse parties shall have the right to cross-examine these witnesses.
4. Following testimony by the tax collector or the tax collector's designee and all other witnesses testifying in support of the County's position in the matter, the Board shall allow any person or entity entitled to notice to be placed under oath in order to present or challenge evidence or testimony. Evidence presented must be relevant to one of the following two questions:
  - a. Has the property been subject to waste or abandonment? and
  - b. If the property is subject to waste, how can the Board quantify the value so wasted?

5. The tax collector or the tax collector's designee shall have the right to cross-examine the other parties who testify.
6. The parties may present rebuttal evidence, if any.
7. The Board shall have the right to question any witness at any time.
8. The Board may set reasonable time limits for oral presentation and testimony and shall exclude or limit cumulative, repetitious or immaterial evidence.
9. After all parties have been given the opportunity to present evidence, and to respond and reply to one another's evidence, the Board shall close the hearing and return the matter to the table for deliberation and decision.

C. Procedure in Hearings.

1. In hearings held under this chapter, the County must prove the allegations by a preponderance of the admissible evidence.
2. If the only party who appears at the hearing is the County, a default order may only be issued upon a prima facie case made on the record before the Board.
3. Testimony shall be taken upon oath or affirmation of the witnesses. Any member of the Board may administer oaths or affirmations to witnesses.
4. The Board members presiding over the hearing shall place on the record a statement of the substance of any written or oral ex parte communications made on a fact in issue during the pendency of the proceedings. The Board members shall notify the parties of the communications and of their right to rebut such communications.
5. The record of the hearing shall include, if applicable:
  - a. Proof that notice was appropriately given under this chapter;
  - b. Motions and intermediate rulings;
  - c. Evidence received;
  - d. Stipulations;
  - e. Questions and offers of proof objections and rulings thereon;
  - f. A statement of any ex parte communications on a fact in issue made to a member of the Board during the pendency of the proceedings;
  - g. A Board order in accordance with the provisions of this chapter.
6. A verbatim, written or mechanical record shall be made on all motions, rulings, and testimony. The record need not be transcribed unless requested for purposes of court review. The Board shall charge the party requesting transcription the cost of a transcript, and shall require that party to pay a deposit in advance to cover the approximate cost in advance. Failure to pay the advance deposit or transcription fees shall constitute a separate ground for denial of review of the decision of the Board.

D. Rules of Evidence.

1. All evidence, including hearsay evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs, will be admissible.

2. Irrelevant, immaterial or unduly repetitious evidence shall be excluded at the discretion of the Board, and objections to such evidence may be sustained. Erroneous rulings on evidence shall not preclude action by the Board unless shown on the record to have substantially prejudiced the rights of a party.
  3. The Board shall give effect to the rules of privilege recognized by law.
  4. All evidence offered but not objected to, will be received, subject to the Board's power to exclude irrelevant or unduly repetitious evidence.
  5. Evidence objected to may be admitted at the discretion of the Board. Rulings on the admissibility or exclusion of evidence will be made at hearing or at the time the order is issued.
  6. The Board may take notice of judicially recognizable facts, and the Board may take official notice of general, technical, or scientific facts within the specialized knowledge of County employees. Parties shall be notified at any time during the proceeding but in any event prior to the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.
- E. Recording the Proceedings. The proceedings shall be electronically recorded. The recording shall be retained for two years after the date of the Board's order. (Ord. 03-06 § 7)

**3.12.080 Board order—Findings and conclusions.**

- A. The Board's order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Board's order. If the Board concludes that the property is subject to waste or abandonment and should be deeded to the County, the Board shall adopt an order so finding. The order shall state:
1. That any rights of possession the former owner may have in the property are forfeited to the County;
  2. That the former owner, or any person or entity that then appears in the records of the County to have a lien or other interest in the property, may redeem the property; and
  3. That if the property is not redeemed before the expiration of 30 days from the date of the order:
    - a. The tax collector shall deed the property to the County; and
    - b. All rights of redemption shall terminate upon execution of that deed to the County.
- B. If the Board concludes that the former owner, or those under the former owner's permission or control, have committed waste on the property as described in ORS 312.180, the Board shall adopt an order so finding. The order shall state:
1. That a fine of not less than twice the value so wasted must be imposed under ORS 312.990;
  2. That the fine is intended, in part, to reimburse the County for the expenses associated with notice and hearing under this chapter;
  3. What method is being used to quantify the value so wasted, and what evidence was presented to support the value relied upon by the Board;
  4. That a fine is imposed in the amount of twice the value so wasted;

3.12.090

5. That if the property is redeemed before the expiration of the accelerated redemption period, a lien in the amount of the fine shall attach to the property, unless and until the fine is paid; and
  6. That if the former owner owns any other real property, a lien in the amount of the fine shall also attach to those other parcels, unless and until the fine is paid.
- C. The Board shall notify the parties of the final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to the parties or, if applicable, the parties' attorneys. A final order shall be issued by the Board within 14 days of the conclusion of the hearing. A final order shall become effective when signed by the chair of the Board. (Ord. 03-06 § 7)

**3.12.090 Judicial review.**

Review of the Board's decision shall be by writ of review, pursuant to ORS Chapter 34. (Ord. 03-06 § 7)

**3.12.100 Tax collector's deed.**

Upon failure of any party having the right of redemption to redeem the subject property within 30 days after adoption of the Board order, the tax collector shall issue a deed to the County, which shall terminate all redemption rights and cancel all taxes and special assessments. (Ord. 03-06 § 7)

**3.12.110 Removal of occupants.**

After issuance of a deed pursuant to this chapter, the County may remove in any manner provided by law any persons still in possession of the property. (Ord. 03-06 § 7)

**3.12.120 Fines.**

The commission of waste by the former owner, or anyone under the permission or control of the former owner, on property sold to the County pursuant to ORS Chapter 312 is punishable, upon conviction, by a fine of not less than twice the value so wasted. (Ord. 03-06 § 7)

## Chapter 3.16

### TRANSIENT ROOM TAX

**Sections:**

- 3.16.010**     **Definitions.**
- 3.16.020**     **Tax imposed.**
- 3.16.030**     **Collection of tax by operator.**
- 3.16.040**     **Operator’s duties.**
- 3.16.050**     **Exemptions.**
- 3.16.060**     **Registration of operator—Certification of authority.**
- 3.16.070**     **Due date—Returns and payments.**
- 3.16.080**     **Tax deficiency determination.**
- 3.16.090**     **Fraud—Refusal to collect—Evasion.**
- 3.16.100**     **Operator delay.**
- 3.16.110**     **Redeterminations.**
- 3.16.120**     **Security for collection of tax.**
- 3.16.130**     **Records maintained by operator—Administrator examination.**
- 3.16.140**     **Confidential character of information—Disclosure prohibited.**
- 3.16.150**     **Appeal to Board of County Commissioners.**
- 3.16.160**     **Refunds by County to operator.**
- 3.16.170**     **Refunds by County to transient.**
- 3.16.180**     **Refunds by operator to tenant.**
- 3.16.190**     **Distribution of tax proceeds.**
- 3.16.200**     **Tax penalties and interest.**
- 3.16.210**     **Liens.**
- 3.16.220**     **Attorney fees and costs.**

**3.16.010**     **Definitions.**

For the purposes of this chapter except where the context requires otherwise:

“Accrual accounting” means an accounting method whereby the operator enters the rent due from the transient on the records when the rent is earned, whether or not it is paid.

“Board” means the Board of County Commissioners of Clatsop County, Oregon.

“Cash accounting” means an accounting method whereby the operator does not enter the rent due from the transient on the records until rent is paid.

“Hotel” means any structure, or any portion of any structure, which is occupied or intended or designed for transient occupancy for 30 days for dwelling, lodging, or sleeping purposes, and including any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, condominium, public or private dormitory, fraternity, sorority, public or private club, and also means space in mobile home or trailer parks, campgrounds, RV parks or similar land structure or space or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

“Occupancy” means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any room, rooms, or space in a hotel as defined herein.

### 3.16.020

“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 considered an operator for the purposes of this chapter and shall have the same duties and liabilities as the principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

“Persons” 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.

“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 package plan” means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this chapter shall be the same charge made for rent when not a part of a package plan.

“Tax” means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which the operator is required to report collections.

“Tax administrator” means the County Assessor.

“Transient” means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel shall be considered to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than 30 consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to January 1, 1991, may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in any month, shall not be considered a transient.

“Unincorporated areas of Clatsop County” means all territory outside of the corporate limits of any city or town. (Ord. 90-7 § 2)

#### **3.16.020 Tax imposed.**

For the privilege of occupancy in any hotel in the unincorporated areas of Clatsop County, Oregon, on or after January 1, 1991, each transient shall pay a tax in the amount of nine and one-half percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the County which is extinguished only by payment by the operator to the County. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his or her records when rent is collected if the operator keeps records on the cash accounting basis, and when earned if the operator keeps records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities, other than the furnishings of the rooms, accommodations and space occupancy in mobile home parks or trailer parks. (Ord. 14-04 § 6; Ord. 90-7 § 3)

**3.16.030 Collection of tax by operator.**

- A. Every operator renting rooms or space for lodging or sleeping purposes in this County, the occupancy of which is not exempted under the terms of this chapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owing by the operator to the County.
- B. In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectibles.
- C. The tax administrator shall enforce the provisions of this chapter. The Board of County Commissioners shall have the power to adopt rules not inconsistent with this chapter as may be necessary to aid in enforcement.
- D. For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.
- E. Beginning on October 1, 1991, the operator may withhold not more than five percent of the tax collected to cover the cost of the operator of collecting and remitting the tax. (Ord. 91-14 § 2; Ord. 90-7 § 4)

**3.16.040 Operator's duties.**

Each operator shall collect the tax imposed by this chapter at the same time the rent is collected from each transient. The amount of tax shall be separately stated upon the operator's records and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this chapter. (Ord. 90-7 § 5)

**3.16.050 Exemptions.**

- A. Any occupant for more than 30 successive calendar days;
- B. Any person who pays for lodging on a monthly basis, irrespective of the number of days in any month;
- C. Any occupant whose rent is of a value of less than two dollars per day; or
- D. Any occupant of a facility operated completely by a public benefit corporation as defined in ORS 65.001; or
- E. Any occupant of a hospital, nursing home, convalescent home, home for the aged or public institution owned and operated by a unit of government. (Ord. 04-02)

**3.16.060 Registration of operator—Certification of authority.**

- A. Every person engaging or about to engage in business as an operator of a hotel in Clatsop County shall register with the tax administrator on a form provided by the administrator. Operators engaged in business on December 2, 1990, must register not later than December 17, 1990. Operators starting business after December 2, 1990, must register within 15 calendar days after commencing business.
- B. The privilege of registration after the date of imposition of the transient room tax ordinance shall not relieve any person from the obligation of payment or collection of tax regardless of registration.
- C. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his or her place or places of business and such other information as the tax administrator may require to facilitate the collection of the tax. The registration shall be signed by the operator.

3.16.070

- D. The tax administrator shall, within ten days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, with a duplicate for each additional place of business of each registrant.
- E. 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.
- F. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed there so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.
- G. The certificate shall, among other things, state the following:
  - 1. The name of the operator;
  - 2. The address of the hotel;
  - 3. The date upon which the certificate was issued; and
  - 4. “This TRANSIENT OCCUPANCY REGISTRATION CERTIFICATE signifies that the person named on the face hereof has fulfilled the requirements of the TRANSIENT ROOM TAX ORDINANCE of CLATSOP COUNTY, OREGON, by registration with the tax administrator for the purpose of collecting from transients the lodging tax imposed by said county and remitting said tax to the tax administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all applicable local laws, including but not limited to those requiring a permit from any board, commission, department or office of Clatsop County. This certificate does not constitute a permit.” (Ord. 90-7 § 7)

**3.16.070 Due date—Returns and payments.**

- A. The tax imposed by this chapter shall be paid by the transient to the operator at the time that rent is paid. All taxes collected by any operator are due and payable to the tax administrator on a quarterly basis on the 15th day of the following month for the preceding three months, and are delinquent on the last day of the month in which they are due. The tax administrator shall notify each operator of the due and delinquent dates for the operator’s return. The initial return under this chapter may be for less than the three months preceding the due date; thereafter, returns shall be made for the applicable quarterly period.
- B. On or before the 15th day of the month following each quarter of collection, a return for the preceding quarter’s tax shall be filed with the tax administrator. The return shall be filed in such form as the tax administrator may prescribe by every operator liable for payment of the tax.
- C. Returns shall show the amount of tax collected or otherwise due for the related period. The tax administrator may require returns to show the total rentals upon which tax was collected or otherwise due, the gross receipts of the operator for the period, an explanation in detail of any discrepancy between those amounts, and the amount of rents exempted by this chapter, if any.
- D. The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the tax administrator at his or her office, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

- E. For good cause, the tax administrator may extend, for a period not to exceed one month, the time for making any return or payment of tax. Any operator to whom an extension is granted shall pay interest at the rate of one and one-half percent per month on the amount of tax due without proration for a fraction of a month. If a return is not filed and the tax and interest due is not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties described in Section 3.16.200.
- F. If the tax administrator considers it necessary in order to insure payment or facilitate collection by the County of the amount of taxes in any individual case, he or she may require returns and payment of the amount of taxes for other than quarterly periods. (Ord. 90-7 § 8)

### **3.16.080 Tax deficiency determination.**

- A. 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, 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, after which the amount determined is delinquent. Penalties on deficiencies shall be applied under Section 3.16.200.
- B. In making a determination the tax administrator may off-set overpayments, if any, which may have been previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed under Section 3.16.200.
- C. The tax administrator shall give to the operator 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 operator at his or her address as it appears on the records of the tax administrator. In case of service by mail or any notice required by this chapter the service is complete at the time of deposit in the United States post office.
- D. Except in the case of fraud or intent to evade this chapter or authorized rules, 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 later.
- E. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten days after the tax administrator has given notice; provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final. (Ord. 90-7 § 9)

### **3.16.090 Fraud—Refusal to collect—Evasion.**

If any operator shall fail or refuse to collect the tax or make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, or makes a fraudulent return or otherwise wilfully attempts to evade this chapter, the tax administrator shall proceed in such a manner as he or she considers best to obtain facts and information on which to base an estimate of the tax due. As soon as the tax administrator has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect it and to report and remit the tax, he or she shall proceed to determine and assess against the operator the tax, interest and penalties provided by this chapter. If that determination is

### 3.16.100

made, the tax administrator shall give notice in the manner provided in Section 3.16.080 of the amount assessed. The determination and notice shall be made and mailed within three years after discovery by the tax administrator of any fraud, intent to evade or failure or refusal to collect the tax, or failure to file a return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten days after the tax administrator has given notice; provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final. (Ord. 90-7 § 10)

#### **3.16.100 Operator delay.**

If the tax administrator believes that the collections of any tax acquired to be collected and paid to the County will be jeopardized by delay or if any determination will be jeopardized by delay, he or she shall determine the amount of tax required to be collected, noting the fact upon the determination. The amount so determined shall be immediately due and payable, and the operator shall immediately pay the determination to the tax administrator after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of the determination, if the petition is filed within ten days from the date of service of notice by the tax administrator. (Ord. 90-7 § 11)

#### **3.16.110 Redeterminations.**

- A. Any person against whom a determination is made under Section 3.16.080 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 3.16.080. If a petition for redetermination and refund is not filed within that time, 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 ten days notice of the time and place of the hearing. The tax administrator may continue the hearing from time to time as may be necessary.
- C. The tax administrator may decrease or increase the amount of the determination as a result of the hearing and if an increase is determined the increase shall be payable immediately after the hearing.
- D. The order or decision of the tax administrator upon a petition for redetermination and refund becomes final ten days after service upon the petitioner of notice, unless appeal of the order or decision is filed with the Board of County Commissioners within the ten days after service of notice.
- E. No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provision of this chapter. (Ord. 90-7 § 12)

#### **3.16.120 Security for collection of tax.**

- A. The tax administrator, whenever he or she considers it necessary to insure compliance with this chapter, may require any operator 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 operator's estimated average quarterly liability for the period for which he or she files returns, determined in such manner as the tax administrator considers proper, or \$5,000.00, whichever is less. The amount of the security may be increased or decreased by the tax administrator subject to the limitations of this subsection.

- B. At any time within three years after any tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the tax administrator may bring an action in the courts of this state, or any other state, or of the United States in the name of the County to collect the amount delinquent together with penalties and interest. (Ord. 90-7 § 13)

**3.16.130 Records maintained by operator—Administrator examination.**

- A. Every operator shall keep guest records of room sales on accounting books and records of the room sales. All records shall be retained by the operator for a period of three years and six months after they come into being.
- B. The tax administrator, or any person authorized in writing by him or her, may examine, during normal working hours, the books, papers and accounting records relating to room sales of any operator, after notification to the operator liable for the tax, and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid. (Ord. 90-7 § 14)

**3.16.140 Confidential character of information—Disclosure prohibited.**

- A. It shall be unlawful for the tax administrator or any person having an administrative or clerical duty under the provisions of this chapter to make known in any manner whatsoever the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a transient occupancy registration certificate or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth in any statement or application, or to permit any statement or application or copy of either or any book containing any abstract or particulars thereof to be seen or examined by any person.
- B. Nothing in subsection A of this section shall be construed to prevent:
  1. The disclosure to, or examination of records and equipment to another Clatsop County official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter including the collection of taxes.
  2. The disclosure, after the filing of written request to that effect, to the taxpayer him or herself, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested in information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, or penalties; provided, however, that the County counsel approves each disclosure and that the tax administrator may refuse to make any disclosures when, in his or her opinion, the public interest would suffer thereby.
  3. The disclosure of the names and addresses of any persons to whom transient occupancy registration certificates have been issued.
  4. The disclosure of general statistics regarding taxes collected or business done in the County.
  5. Any information regarding a delinquency required to be disclosed by ORS 192.502(18). (Ord. 90-7 § 15)

**3.16.150 Appeal to Board of County Commissioners.**

Any person aggrieved by any decision of the tax administrator may appeal to the Board of County Commissioners by filing a notice of appeal with the tax administrator within ten days of the serving or mailing of the notice of a decision made by the tax administrator. The tax administrator shall fix a time and place for hearing the appeal as prescribed by the Board of County Commissioners and shall give the appellant ten days written notice of the time and place of hearing. (Ord. 90-7 § 16)

**3.16.160 Refunds by County to operator.**

Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, it may be refunded; provided a verified claim in writing, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three years from the date of payment. The claim shall be made on forms provided by the tax administrator. If the claim is approved by the tax administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to the operator, his or her administrator, executors or assignees. (Ord. 90-7 § 17)

**3.16.170 Refunds by County to transient.**

Whenever the tax required by this chapter has been collected by the operator and deposited by the operator with the tax administrator, and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the transient, provided a verified claim in writing, stating the specific reason on which the claim is founded, is filed with the tax administrator within three years from the date of payment. (Ord. 90-7 § 18)

**3.16.180 Refunds by operator to tenant.**

Whenever the tax required by this chapter has been collected by the operator and it is later determined that the tenant occupies the hotel for a period exceeding 30 days without interruption, the operator shall refund to the tenant the amount previously collected by the operator from that tenant as a transient. The operator shall account for the collection and refund to the tax administrator. If the operator has remitted the tax prior to refund or credit to the tenant, he or she shall be entitled to a corresponding refund under Section 3.16.160. (Ord. 90-7 § 19)

**3.16.190 Distribution of tax proceeds.**

The tax administrator shall:

- A. Deposit 73.68% of the revenues collected to the credit of the Clatsop County general fund;
- B. Deposit 7.90% of the revenues collected to the credit of a separate account in the general fund to be disbursed at the direction of the Board of Commissioners for the purpose of making public road and drainage improvements, primarily within the Arch Cape Rural Community boundary;
- C. Deposit 18.42% of the revenues collected to the credit of a separate account to be disbursed at the direction of the Board of Commissioners for the purpose of tourism promotion and tourism related activities, as defined in ORS 320.300. (Ord. 14-04 § 6; Ord. 90-7 § 20)

**3.16.200 Tax penalties and interest.**

- A. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this chapter prior to delinquency shall pay a penalty of ten percent of the amount of the tax due in addition to the amount of the tax.
- B. Any operator who has not been granted an extension of time for remittance of tax due and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the re-

mittance first became delinquent, shall pay a second delinquency penalty of 15% of the amount of the tax in addition to the ten percent penalty first imposed.

- C. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade its provisions, a penalty of 25% of the amount of the tax shall be added to the penalties stated in subsections A and B of this section.
- D. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent per month or fraction thereof without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax required to be paid.
- F. Any operator who fails to remit the tax levied within the time required by this chapter shall pay the penalties; provided, however, the operator may petition the Board for waiver and refund of the penalty or any portion thereof, and the Board may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof. (Ord. 90-7 § 21)

### **3.16.210 Liens.**

- A. The tax imposed by this chapter together with the interest and penalties herein provided, which may be incurred when same became delinquent as set forth in this chapter, shall be and, until paid, remain a lien against any and all real and personal property belonging to the hotel and used within Clatsop County, and may be foreclosed upon and sold as necessary to discharge said lien. Notice of lien may be issued by the tax administrator or his/her deputy whenever the operator is in default in the payment of said tax, interest and penalty and shall be recorded with the County Clerk and a copy sent to the delinquent operator. The personal property subject to such lien seized by any deputy or employee of the tax administrator may be sold at public auction after ten days' notice, which shall mean one publication in a newspaper of general circulation published within Clatsop County.
- B. Any liens for taxes as shown on the records of the proper County official shall, upon the payment of all taxes, penalties and interest thereon, be released by the tax administrator when the full amount determined to be due has been paid to the County and the operator or person making such payment shall receive a receipt therefor stating that the full amount of taxes, penalties and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied. (Ord. 90-7 § 22)

### **3.16.220 Attorney fees and costs.**

In any action to enforce the provisions of this chapter or to collect any tax, penalty or interest or to foreclose any lien the County shall be entitled to collect its attorney fees and costs, including but not limited to litigation reports, accountant fees, witness fees, filing fees, service fees, publication fees and mailing expenses, from the operator. Such fees and expenses shall be a lien against the real and personal property of the operator as provided in Section 3.16.210. (Ord. 90-7 § 24)

**Chapter 3.20**

**DAMAGE CLAIMS FOR LIVESTOCK**

**Sections:**

**3.20.010 Purpose.**

**3.20.020 Limitation on damages paid pursuant to ORS 609.180.**

**3.20.010 Purpose.**

Clatsop County has a dog control program pursuant to ORS Chapter 609. ORS 609.170 provides that the owner of any livestock killed, wounded, chased, or injured by any dog may present a claim to the Clatsop County Board of Commissioners for damages arising from the incidents. ORS 609.180 provides that if the Board determines that the livestock has been so damaged, then the County shall compensate the owner for the damages out of the County dog fund. This is a substantial and potentially unfunded liability for the dog fund. ORS 609.015 authorizes the County to modify the provisions of ORS 609.101 to 609.190. The purpose of this chapter is to eliminate the County's liability for payments pursuant to ORS 609.170 and 609.180. (Ord. 94-15 § 2)

**3.20.020 Limitation on damages paid pursuant to ORS 609.180.**

Regardless of the actual damages claimed or proven by an owner of any livestock killed, wounded, chased, or injured by any dog, the provisions of ORS 609.170 and ORS 609.180 relating to claims made, determined and paid by Clatsop County shall not apply or be part of Clatsop County's dog control program. Clatsop County shall have no responsibility and shall not conduct a hearing as described in ORS 609.180 or pay damages as described therein; nor shall the livestock owner be required to file a claim pursuant to ORS 609.170 as a condition precedent to recovering damages directly from the dog owner. (Ord. 94-15 § 3)