**Title 3 – Revenue & Finance**

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 **3.18.010 Title and Purpose.** **(a) Title**. This chapter shall be known as the “Transient occupancy Tax ordinance of the City of Thorne Bay, Alaska.” **(b) Purpose and Intent**. It is the purpose and intent of the council that there be imposed on transient occupants of hotel rooms in the city a tax, the proceeds of which are to be paid as provided in Section 3.18.130. This ordinance shall be implemented on the 1st day of January following its passage.

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

**(a) “Collected”** means the time at which the rent is earned if the operator uses the accrual basis of accounting, or the time at which the rent is received if the operator uses the cash basis of accounting. The same basis of accounting normally used for keeping the books and records shall be used for reporting and remitting the tax levied by this chapter.

**(b) “Hotel”** means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes and is held out as being used or available for such purpose to the public regardless of whether it is specifically referred to as a hotel, and shall include a bed and breakfast**,** lodge, cabin, guest room or similar facility. “Hotel” does not mean any hospital, convalescent home, sanitarium or home for aged people licensed as such by the state.

**(c) “Occupancy”** means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

**(d) “Operator”** means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his 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 principal or the managing agent shall, however, be considered to be compliance by both.

**(e) “Person”** means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any-other group or combination acting as a unit.

**(f) “Rent”** means the consideration charged for the occupancy of space in a hotel as well as for such equipment as rollaway beds, cribs, television sets, etc., valued in money, whether to be received in money, credits, credit card charges, goods, labor, property and services of any kind or nature without any deduction therefrom whatsoever.

**(g) “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 and apportioned to rent for determination of the transient occupancy tax under Section 3.18.030 shall be the same charge made for rent when not a part of a package plan.

**(h) “Transient”** means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of not more than sixty consecutive calendar days, counting portions of days as full days; provided, however, the day a transient checks out shall not be included in determining the thirty day period if the transient is not charged rent for that day. Any person who in fact exercises occupancy or in fact is entitled to occupancy for a period of more than sixtyconsecutive days shall be deemed not to have been a transient from the date of commencement of such consecutive period for days of occupancy or entitlement to occupancy if the transient possesses a legally written lease or rental agreement for a period of sixty or more consecutive days.

 **3.18.030 Tax Imposed.** For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of four percent, in addition to city sales tax, of rent charged by the operator for the privilege of said occupancy. If the bed rent is considered to be part of a package price then it is up to the hotel to determine the value of their bed, which is not to be less than 1) the current rate of United States Government per diem, or 2) bed rent as advertised or collected separately in non-package transactions; whichever is greater. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time such transient ceases to occupy space in the hotel; provided, however, if the rent is paid in installments, a proportionate share of the tax shall be paid with each installment, and the remaining unpaid tax shall be due upon the transient’s ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the revenue collector may require that such tax shall be paid by the transient directly to the revenue collector or may collect such tax directly from the operator.

 **3.18.040 Exemptions.** No tax shall be imposed where: **(a)** The rent is at the rate of three dollars a day or less. The exemption in this subsection applies only where the total rent charged for a room is three dollars a day or less, or where the accommodations rented are in a dormitory and the rent for each transient is three dollars a day or less;

**(b)** Any person pays for lodging on a monthly basis with a legal signed lease or rental agreement, irrespective of the number of days in the month;

**(c)** Any person who rents a private single-family dwelling unit, vacation cabin or like facility from any owner who rents the structure or facility incidental to his own use thereof and on a casual and isolated basis not done in the regular course of business;

**(d)** The gross receipts are derived from rentals of hotel rooms, bed and breakfast or other transient occupancy to the United States government, the State of Alaska, or a municipality, when payment is made by such governmental organization directly to the provider by purchase order or by other means of direct payment. The revenue collector may require such verification of direct payment to the provider by the governmental organization as deemed necessary.

 **3.18.050 Operator’s Duties.** Each operator shall collect the tax imposed by this chapter to the same extent and at the time as the rent and sales tax is collected from every transient. If the operator fails to collect the tax imposed by this chapter for any reason, the operator shall be liable for the tax jointly and severally with the transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. A duplicate of this receipt shall be kept by the operator in accordance with section 3.18.090. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax rent, or that, if added, any part will be refunded. Each operator shall account separately and maintain separate monthly summary totals, for both taxable and nontaxable rents and for taxes collected. Taxable rents are those defined in section 3.18.020.

 **3.18.060 Registration**. Within thirty days after the effective date of this chapter, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the revenue collector.

 **3.18.070 Tax to be paid quarterly.** **(a)** The tax levied under this chapter shall be due and payable quarterly in conjunction with city sales tax. Each operator shall make and file with the revenue collector on forms prescribed and furnished by the revenue collector, a return, prepared under oath, setting forth the amount of all rents charged, whether exempt or not, and the amount of tax collected for transient occupancy and such other information as the revenue collector may require on such forms. The completed and executed return, together with remittance in full for the total amount of the tax due, shall be transmitted to the revenue collector on or before the last day of the calendar month following the close of each calendar quarter.

 **(b)** Each operator shall file a return even though no tax may be due. This return shall show why no tax is allegedly due, or, if the business has been sold or otherwise transferred, the person to whom it was transferred, the date it was transferred, and the address and telephone number of the person to whom it was transferred.

 **(c)** Each operator, upon cessation of business, shall, on or before the same day of the next month following cessation of business, or on the last day of the month if no corresponding day exists, make a return to the revenue collector on forms provided by him of the total rents charged and the amount of tax collected or due for transient occupancies, and shall, upon request, make his books and records available for audit. At the time the return is filed, the full amount of the tax collected or due shall be remitted to the revenue collector. Returns filed and taxes remitted and actually received by the revenue collector on or before the same day of the next month following the cessation of business, or on the last day of the month is no corresponding day exists, shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 3.18.080.

 **(d)** Returns filed and taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the revenue collector, has sufficient postage and bears a United States postmark prior to midnight on the last day for reporting and remitting without penalty; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 3.18.080.

 **(e)** The revenue collector may establish shorter reporting periods for any operator if deemed necessary in order to insure collection of the tax and may also require further and additional information in the return. All taxes collected by the operator pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the revenue collector.

 **(f)** Returns shall be accompanied by proof, satisfactory to the revenue collector, as to claimed exemptions, or exceptions from the tax herein imposed. The burden of establishing any tax exemption is upon the claimant. In the absence of such proof, the rentals or occupancies shall be deemed to have been taxable.

 **3.18.080 Penalty and interest on delinquent taxes.**  **(a)** **Original Delinquency**. In the event an operator fails or neglects to file a return when due, or fails to remit taxes collected by him, or which should have been collected by him, in a timely manner as required by this chapter, then such return and tax is delinquent and the revenue collector shall add thereto penalties as follows:

 If Payment made: Additional penalty

(1) Within 30 days after delinquency date 15% of tax

(2) Within 60 days after delinquency date 20% of tax

(3) More than 60 days after delinquency date 25% of tax

 **(b) Interest**. Interest on delinquent taxes shall accrue from the date of delinquency to the date of payment at the rate of one-half of one percent per month. All remedies available to the revenue collector to collect taxes, penalties, and interest plus collection costs, shall commence thirty days after the date of delinquency.

 **(c) Audit Deficiency**. If, upon audit, an operator is found to be deficient in his return or his remittance or both, the amount deficient shall be deemed a delinquency under subsection (a) of this section and the revenue collector shall immediately invoice the operator for the amount of the net deficiency, plus a penalty as provided in subsection (a) of this section computed from the date the amount should have been paid, plus accrued interest. Interest shall be deemed to have commenced to accrue at the rate provided in subsection (a) from the date such tax should have been paid.

**3.18.085 Occupancy tax liens. (a)** The occupancy tax, interest, and penalties imposed by this chapter, and the administrative costs under subsection (f) of this section, shall constitute a lien in favor of the city upon all of the real and personal property of every person making taxable occupancies subject to this chapter.

**(b)** The lien imposed by this section arises and attaches at such time as payment becomes delinquent under Section 3.18.080 and continues until the entire amount is satisfied.

**(c)** If delinquent occupancy taxes, including interest and penalties, are not paid within ten

days from the mailing of notice and demand for payment thereof, a notice of lien may be recorded in the office of the district recorder. Upon recordation, the occupancy tax lien has priority over all other liens except; **(1)** liens for property taxes and special assessments; **(2)** liens that were perfected before the recording of the occupancy tax lien for amounts actually advanced before the recording of the occupancy tax lien; **(3)** mechanics, and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the occupancy tax lien.

**(d)** An action to foreclose a lien created by this section shall be commenced and pursued in the manner provided for the foreclosure of liens in AS 09.45.170-09.45.220.

**(e)** The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to the revenue collector to collect the occupancy taxes, penalties and interest due under this chapter.

**(f)** Fees for the administrative costs of filing on notices of liens, and releasing of liens shall be:

 **(1)** Filing of notices of lien: twenty-five dollars plus recorder's office filing fee.

 **(2)** Release of liens: twenty-five dollars plus recorder's office filing fee.

**(g)** If administrative costs for the filing of notices of liens and releasing of liens are

imposed and have been collected by the City of Thorne Bay on delinquent sales taxes, including penalties and interest, no additional administrative costs shall be collected under subsection (f) of this section.

 **3.18.090 Duty to keep books-Investigation.** **(a)**  Every operator shall keep and preserve full and complete records of all rentals or occupancies made by him, and such other books or accounts as may be necessary for the revenue collector to determine the amount of tax hereunder and the operator shall keep and preserve said records for a period of not less than two years in the city. All of said records shall be made available for inspection by the revenue collector, city administrator, and his or their designee upon request at any reasonable time.

 **(b)** For the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax collected or which should have been collected by any person, the city administrator, or his designee may hold investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records, or memoranda of any such person, and may require the attendance of such person, or any officer or employee of such person. The city administrator or his designee shall have the power to administer the oaths and affirmations to such persons, and if any such person, being first duly sworn, refuses to answer any questions put to him by the administrator or his designee, the administrator may apply to the superior court for an order requiring the person to answer the questions. The city administrator may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any person refuses to obey-any such subpoena, the city administrator may apply to the superior court for an order requiring the person to comply therewith. The city administrator is authorized to make arrangements with the Ketchikan Gateway Borough, authorizing the borough to collect the taxes and conduct the investigations and hearings provided herein, and to exercise all the powers created in this chapter.

 **(c)** In the event the revenue collector is unable to ascertain the tax due to be remitted by an operator by reason of the failure of the operator to keep accurate books, allow inspection, failure to file a return, falsification of records, or for any other reason, the revenue collector may make an estimate of the tax due based upon all of the information available. Notice of the estimate of taxes due and penalties and interest shall be furnished by certified mail to the operator and said-amount of tax shall become final for the purposes of determining liability of the operator to the city upon the expiration of thirty days unless the operator supported by satisfactory earlier files and accurate return, supported by satisfactory records, indicating a lesser liability.

 **3.18.100 Actions to collect.** Any tax required to be paid under the provisions of this chapter shall be deemed a debt owed jointly and severally by the transient and the operator and recoverable by the city in an action brought against the transient, or the operator, or against the transient and operator jointly. Any taxes collected by an operator pursuant to this chapter which have not been paid to the city, shall be deemed to be funds held in trust for the account of the city.

 **3.18.110 Violations.** Any operator who fails to collect or remit all or any portion of the tax provided for in this chapter, or fails or ref uses to comply with the provisions of this chapter, or remits or rebates to a transient or other person whether directly or indirectly and by whatsoever means, all or any part of the tax levied under this chapter, or makes in any form of advertising, verbally or otherwise, any statement which implies that the operator is absorbing the tax, or paying the tax for the transient by an adjustment of prices of in any manner whatever, and any person who under the terms of this chapter, and any person who otherwise violates any provision of this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or imprisonment for not more than thirty days, or both such fine and imprisonment. Each act of violation and every day upon which any such violation occurs shall constitute a separate offense.

 **3.18.120 Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid or unenforceable such shall not affect the validity of the remaining provisions of this chapter or any part thereof. The city council hereby declares it would have passed each section, subsection, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or unenforceable.

 **3.18.130 Utilization of revenues.** **(a)** The tax revenue collected pursuant to this chapter shall be deposited into the transient occupancy tax fund which is created. **(b)** Moneys expended from the transient occupancy tax fund shall be allocated accordingly:

(1) 20% for the promotion of tourism in Thorne Bay

(2) 30% for the maintenance and improvement of Thorne Bay harbors

(3) 30% for EMS and fire related expenses

(4) 10% for the City of Thorne Bay general funding.

(5) 10% for community cleanup and park enhancement.

 **3.18.140 Revenue collector’s regulations.** The revenue collector may adopt reasonable rules, regulations, and forms to implement the provisions of this chapter.

 **3.18.150 Sale of business-Final return-Liability of purchaser.** **(a)** If any operator sells or otherwise transfers his business to another person, such seller or transferor shall make a final transient occupancy tax return within five days after the date of sale or other transfer of the business and the purchaser, transferee, successor, successors, or assigns, shall withhold a sufficient portion of the purchase money or other consideration to pay the amount of transient occupancy taxes, penalties and interest due and unpaid to the city until such time as the selling or transferring operator produces a receipt from the revenue collector showing that all taxes, penalties and interest have been paid or produces a tax clearance certificate from the revenue collector stating that no tax, penalty, or interest is due.

 **(b)** If the seller or transferor does not present a receipt or tax clearance certificate within thirty days after such successor commences to conduct business, the transferee shall deposit the withheld amount with the revenue collector pending settlement of the account of the seller or transferor.

 **(c)** Not later than fifteen days after receipt of a written request from the transferee for a tax clearance, the revenue collector shall either issue the certificate of mail notice to the transferee at the address stated in the request of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate.

 **(d)** If the transferee of to the business fails to withhold a portion of the purchase price as herein required, such transferee shall be liable for the payment of the amount required to be withheld.

 **(e)** Not later than ten days prior to close or completion of any sale or transfer, the buyer or transferee and the seller or transferor shall send to the revenue collector, by registered first-class United States mail, postage prepaid, a copy of the notice referred to in AS 45.06.105 which statute is made a part of this chapter, and such notice shall be so sent regardless of whether such notice would have otherwise been required to have been made and sent under the provisions of AS 45.06.101, et seq., Uniform Commercial Code-Bulk Transfers.

**3.18.160 Appeal.** An operator or other person aggrieved by a decision of the revenue collector or the city administrator may appeal the said decision of the city council by filing with the city clerk a written notice of appeal setting forth in detail the facts upon which such appeal is based not later than fifteen days after the date of such decision. In the event no appeal is filed within the time and in the manner as provided herein, said decision shall become final and conclusive.