

REVENUE AND FINANCE

CHAPTER 3.06

TRANSIENT OCCUPANCY TAX

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3.06.010 TITLE

This Ordinance shall be known and may be cited as the "Transient Occupancy Tax Ordinance.

3.06.020 DEFINITIONS

For the purpose of this chapter, the following words and phrases mean:

1. **HOTEL:** means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for 27 days or less, for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, bed & breakfast, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home or trailer parks, recreational vehicle parks, or similar structure or portions thereof so occupied, provided such occupancy is for 27 days or less.
2. **COMMON COUNCIL:** Means the City Council of the City of Stayton, Oregon.
3. **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 hotel, or space in a mobile home or trailer or Recreational Vehicle (RV) park or portion thereof.
4. **OPERATOR:** Means the person who is proprietor of the hotel in any capacity. Whether the operator performs functions through a managing agent or any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Ordinance and shall have the same duties and liabilities as the principal. Compliance with the provisions of this Ordinance by either the principal or the managing agent shall be considered to be compliance by both.
5. **PERSON:** Means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other entity, group or combination acting as a unit.
6. **CASH ACCOUNTING:** Means the operator does not enter the rent due from a transient on the records until rent is paid.
7. **CITY COUNCIL:** Means the council for the City of Stayton as defined in the City of Stayton Charter.
8. **CITY ADMINISTRATOR:** Means the individual employed by the City of Stayton in the capacity of City Clerk or an assigned agent.
9. **ACCRUAL ACCOUNTING:** Means the operator enters the rent due from a transient on the records when the rent is earned whether or not it is paid.

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10. **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 a deduction.
11. **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 transit occupancy tax under this ordinance shall be the same charge made for rent when consideration is not a part of a package plan.
12. **RETURN:** Means the City's prescribed form for accounting for collected taxes.
13. **TRANSIENT:** Means any person who exercises occupancy of or is entitled to occupancy in a hotel for a period of 27 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 27 day period if the transient is not charged rent for that day by the operator. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of 27 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this ordinance may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.
14. **TAX:** Means a tax upon room rentals, which is either the tax payable by the transient, or the aggregate amount of taxes due from an operator during the period for which reporting collections is required.

3.06.030 TAX IMPOSED

For the privilege of occupancy in any hotel, on and after January 1, 2000, each transient shall pay a tax in the amount of seven percent (7%) of the rent charged by the operator. The 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 the rent is paid. The operator shall enter the tax on appropriate records when rent is collected if the operator keeps records on the cash accounting basis. If operator keeps records on the accrual accounting basis then the tax shall be entered on approved records when earned. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If, for any reason, the tax due is not paid to the operator of the hotel, the City Administrator may require that such tax shall be paid directly to the city. In all cases, the rent paid or charged for occupancy, shall exclude the sale of any goods, service and commodities, other than the furnishing of rooms, accommodations, and parking space in mobile home parks or RV parks or trailer parks.

3.06.040 COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTIONS

1. Every operator renting rooms or space in this city, the occupancy of which is not exempted under the terms of this Ordinance, shall collect a Transient Occupancy tax from the occupant. The tax collected or accrued by the operator constitutes a debt owing by the operator to the city.

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2. 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.
3. The City Administrator shall enforce provisions of this Ordinance and shall have the power to adopt rules and regulations not inconsistent with this Ordinance as may be necessary to aid in the enforcement.
4. For rent collected on portions of a dollar, the first one cent of tax shall be collected on nine cents through 21 cents, inclusive; the second one cent shall be collected on 22 cents through 35 cents, inclusive; the third one cent shall be collected on 36 cents through 48 cents inclusive; the fourth one cent shall be collected on 49 cents through 61 cents, inclusive; the fifth one cent shall be collected on 62 cents through 74 cents inclusive; the sixth one cent shall be collected on 75 cents through 87 cents inclusive; and the seventh one cent shall be collected on 88 cents through \$1 inclusive.

3.06.050 OPERATOR'S DUTIES

Each operator shall collect the tax imposed by this ordinance at the same time as the rent is collected for every 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 Ordinance. The operator shall pay the tax to this City as imposed by this Ordinance.

3.06.060 EXEMPTIONS

No tax established under this Ordinance shall be imposed upon:

1. Any occupant for more than 27 successive calendar days (a person who pays for lodging on a monthly basis, irrespective of the number of days in such a month, shall not be deemed a transient);
2. Any occupant whose rent is of a value less than \$2.00 per day;
3. Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to the owner's own use thereof;
4. Any occupant whose rent is paid for hospital room, rehabilitation center or to a medical clinic, convalescent home, or home for aged people.

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3.06.070 REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION; CERTIFICATION OF AUTHORITY

Every person engaging or about to engage in business as an operator of a hotel in this city shall register with the City Administrator on a form provided by the City. Operators engaged in business at the time this Ordinance is adopted must register not later than 30 calendar days after said adoption. Operators starting business after this Ordinance is adopted must register within 15 calendar days after commencing business. The privilege of registration after the date of imposition of the Transient Occupancy Tax shall not relieve any person from the obligation of payment of collection of the Transient Occupancy Tax regardless of registration. Registration shall set forth the name of the operator, name under which an operator transacts or intends to transact business, the location of the place of business and such other information to facilitate the collection of the tax as the City Administrator may require. The registration shall be signed by the operator. The City Administrator shall, within ten days after registration, issue or cause to be issued, without charge, a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the City 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.

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

- (a) The name of the operator;
- (b) Designated name of business enterprise;
- (c) The address of the hotel;
- (d) The date upon which the certificate was issued;
- (e) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Occupancy Tax Ordinance of the City of Stayton by registration with the City Administrator for the purpose of collection from transients the room tax imposed by said City and remitting said tax to the City Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws including but not limited to those requiring a permit from any board, commission, department, or office of the City of Stayton. This certificate does not constitute a permit or a license.

3.06.080 DUE DATE; RETURNS AND PAYMENTS

1. The tax imposed by this Ordinance shall be paid by the transient to the operator at the time that rent is paid. All amounts of such taxes collected by any operator shall be paid to the City of Stayton on a quarterly basis on the 30th day of the month, immediately following, for the preceding quarter; and are delinquent on the last day of the month in which they are due.
2. 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 City of Stayton. The return shall be filed in such form

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as the City Administrator may prescribe by every operator responsible for collection/or payment of tax.

3. Returns shall show the amount of tax collected or otherwise due for the related period. The City Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.
4. The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the City of Stayton either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.
5. For good cause, the City 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 City Council. Any operator to whom an extension is granted shall pay interest at the rate of one percent (1%) 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 timely paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in the Ordinance.
6. The City Administrator, if deemed necessary in order to secure payment or facilitate collection by the City on the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than quarterly periods.

3.06.090 PENALTIES AND INTEREST

1. Original delinquency. Any operator who has not been granted an extension of time for remittance of tax due under 3.06.080(e) of this Ordinance and who fails to remit any tax imposed by this Ordinance prior to delinquency, shall pay a penalty of ten percent (10%) of the amount of the tax due in addition to the amount of the tax.
2. Continued delinquency. Any operator who has not been granted an extension of time for remittance of tax due under 3.06.080(e) of this Ordinance, and who failed 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 a second delinquency penalty of 15 percent (15%) of the amount of the tax due plus the amount of the tax and the percent (10%) penalty first imposed.
3. Fraud. If the City Administrator determines that the nonpayment of any remittance due under this Ordinance is due to fraud or intent to evade the provisions of this Ordinance, a penalty of 25 percent (25%) of the amount of the tax shall be added thereto, in addition to the penalties described in paragraph (a) and (b) of this section.
4. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Ordinance shall pay interest at the rate of one-half of one percent per month or fraction thereof without

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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.

5. Penalties merged with tax. 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 herein required to be paid.
6. Petition for waiver. Any operator who fails to remit the tax due to be collected within the time herein stated shall pay the penalties herein stated provided, however, the operator may petition the City Council for waiver and refund of the penalty or any portion thereof.

3.06.100 DEFICIENCY DETERMINATIONS; FRAUD, EVASION, OPERATOR DELAY

1. Deficiency determination. If the City Administrator determines that the returns are incorrect, the City Administrator 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 the City Administrator's 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 3.06.090.
 - (a) In making a determination, the City Administrator may resolve overpayments, if any, which may have been previously made for a period or periods by the following:
 - i) Credit overpayments to future billings;
 - ii) Credit against any underpayment for a subsequent period or periods, or against penalties, and interest, on the underpayment. The interest on underpayment shall be computed in the manner set forth in Section 3.06.090.
 - (b) The City Administrator shall give to the operator or occupant a written notice of the determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the operator at the address as it appears in the records of the City Administrator. In case of service by mail or any notice required by this Ordinance, the service is completed at the time of deposit in the United States Post Office.
 - (c) Except in the case of fraud, intent to evade the requirements of this Ordinance or related rules and regulations, may result in a "deficiency determination". 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 monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.
 - (d) Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten days after the City Administrator has given notice thereof, provided, however, the operator may petition the City Council redemption and refund if the petition is filed before the determination becomes final as herein provided.

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2. Fraud, refusal to collect, evasion. If any operator shall fail or refuse to collect the Transient Occupancy Tax or to make, within the time provided in this Ordinance, any report and remittance of collect the Transient Occupancy Tax or any portion thereof required by this Ordinance, or makes a fraudulent return or otherwise willfully attempts to evade this Ordinance, the City Administrator shall proceed in such a manner as the Administrator may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the City Administrator has determined the tax due that is imposed by this Ordinance from any operator who has failed or refused to collect the Transient Occupancy Tax and to report and remit the Transient Occupancy Tax, he or she shall proceed to determine and assess against such operator the tax, interest, and penalties, provided for by this Ordinance. In case such determination is made, the City 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 after discovery by the City Administrator of any fraud, intent to evade or failure or refusal to collect the tax or failure to file the return(s). Any determination shall become due and payable immediately upon receipt of notice and shall become final, within ten (10) days after the City Administrator has given notice thereof; provided, however, the operator may petition the City Council for redemption and refund if the petition is filed before the determination becomes final herein provided.
3. Operator delay. If the City 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, the City Administrator 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 operator shall immediately pay same determination to the City Administrator after service of notice thereof; provided, however, the operator may petition the City Council, after payment has been made, for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the City Administrator.

3.06.110 REDETERMINATIONS

1. Any person against whom a determination is made under Section 3.06.100 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 3.06.100. If a petition for redetermination and refund is not filed within the time required therein, the determination becomes final at the expiration of the allowable time.
2. If a petition for redetermination and refund is filed within the allowable period, the City Council shall reconsider the determination, and, if the person has so requested in the petition, shall grant the person an oral hearing and shall give ten (10) days notice of the time and place of the hearing. The City Administrator may continue the hearing from time to time as may be necessary.
3. The City Administrator may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, such increase shall be payable immediately after the hearing.

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4. The order or decision of the City Administrator, upon a petition for redetermination for redemption and refund, becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the City Council within the ten (10) days after service of such notice.
5. 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 provisions hereof.

3.06.120 SECURITY FOR COLLECTION OF TAX

1. The City Administrator, whenever it is deemed necessary to insure compliance with this Ordinance, may require any operator subject thereto to deposit with the City such security in the form of cash, bond, or other security as the City Administrator may determine. The amount of the security shall be fixed by the City Administrator but shall not be greater than twice the operator's estimated average monthly Transient Occupancy Tax liability for the period of which returns are filed, determined in such a manner as the City Administrator deems proper, or \$5,000, whichever amount is lesser. The amount of the security may be increased or decreased by the City Administrator subject to the limitations herein provided.
2. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable, or at any time within three (3) years after any determination becomes final, the City 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 City of Stayton to collect the amount delinquent together with penalties and interest.

3.06.130 LIEN ON PERSONAL PROPERTY

The tax imposed by this Ordinance together with the interest and penalties herein provided and the filing fees which may be paid to the County Clerk of Marion County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this Ordinance, shall be and, until paid, remain a lien on personal property described, from the date of its recording with the County Clerk of Marion County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator within the City of Stayton and may be foreclosed on and sold as may be necessary to discharge said lien, if the lien has been recorded with the County Clerk of Marion County, Oregon. Notice of lien may be issued by the City Administrator whenever the operator is in default in the payment of said tax, interest and penalty and shall be recorded with the County Clerk of Marion County, Oregon, and a copy sent to the delinquent operator. The personal property subject to such lien seized by any deputy or authorized employee of the City of Stayton may be sold at public auction after ten (10) ten days notice which shall mean one publication in a newspaper of general circulation (including weekly) published in the County of Marion.

Any personal property lien for Transient Occupancy taxes as shown on the records of Marion County shall, upon the payment of all taxes, penalties and interest thereon, may be released by the City Administrator upon petition setting for reasons deemed justified by the City Administrator or when the full amount determined to be due has been paid to the city and the operator or person making such payment shall receive a receipt therefore

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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.

3.06.140 REFUNDS

1. Operators refunds. Whenever the amount of any Transient Occupancy Tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this Ordinance, such portion may be refunded, provided a verified claim in writing thereof, stating the specific reason upon which the claim is founded, is filed with the City within three (3) years from the date of payment. The claim shall be made on forms provided by the City. If the claims are approved by the City 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 such operator, administrators, executors, or assignees. All refunds shall be charged to the Transient Occupancy Tax Account set forth in Section 3.06.160(a).
2. Transient refunds. Whenever the tax required by this Ordinance has been collected by the operator, and deposited by the operator with the City, and it is later determined that the tax was erroneously or illegally collected or received by the City, it may be refunded by the City to the transient, provided a verified claim in writing thereof, stating the specific reason on which the claim is founded, is filed with the City Administrator within three (3) years from the date of payment. All refunds shall be charged to the Transient Occupancy Tax Fund set forth in Section 3.06.160(a).

3.06.150 COLLECTION FEE

Every operator responsible for the collection and remittance of the tax imposed by this Ordinance may withhold 5 percent (5%) of the net tax due to cover the operator's expense in the collection and remittance of said tax.

3.06.160 ADMINISTRATION

1. Special account. The City shall deposit all money collected pursuant to this Ordinance to the credit of the Transient Occupancy Account. The City Administrator shall report to the City Council annually the status of this account on June 30 of each year.
2. Records required from operators, etc. Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for a period of three (3) years and six (6) months after they have come into being.
3. Examination of records; investigations. The City Administrator or any person so authorized in writing may examine, during normal business hours, the books, papers and accounting records specifically relating to room rentals of any operator, after notification to the operator responsible for the tax and may investigate the business of the operator only as it applies to this tax 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

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required to be paid. To assist in this process, the City Administrator may request excerpt copies of the operator's annual tax return which addresses room rentals.

4. Confidential character of information obtained; disclosure unlawful. It shall be unlawful for the City Administrator or any person having an administrative or clerical duty under the provisions of the Ordinance, or employee of the City to make known in any manner whatever the business affairs, operators, 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 financial information, or any particular thereof, as may be 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, provided that nothing in this subsection shall be construed to prevent:
- (a) The disclosure to, or the examination of records and equipment of another City of Stayton official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this Ordinance; or collecting taxes imposed hereunder.
 - (b) The disclosure after the filing of a written request to that effect, to the taxpayer themselves, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided; however, that the City Attorney approves each such disclosure and that the City Administrator may refuse to make any disclosures referred to in this paragraph when the public interest would suffer thereby.
 - (c) The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration Certificates have been issued.
 - (d) The disclosure of general statistics regarding taxes collected or business done in the City.

3.06.170 APPEALS TO THE STAYTON CITY COUNCIL

Any person aggrieved by any decision of the City Administrator may appeal to the City Council of the City of Stayton by filing a notice of appeal with the City Administrator within ten (10) days of the serving or the mailing of the notice of the decision given by the City Administrator. The City Administrator shall transmit said notice of appeal, together with the file of said appeal matter to the City Council who shall fix a time and place for hearing such appeal from the decision of the City Administrator. The City Council shall give the appellant not less than ten (10) days written notice of the time and placed of hearing of said appealed matter. Action by the City Council on appeals shall be by Resolution.

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3.06.180 SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional (or otherwise invalid), such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The Stayton City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional (or otherwise invalid).

3.06.190 VIOLATIONS

1. It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail to pay the tax assessed or collected, or fail or refuse to furnish a supplemental return or other data required by the City Administrator or to render a false or fraudulent report, with intent to defeat or evade the determination of any amount due required by the Ordinance.
2. Notwithstanding paragraph (a) of this section, the City, in addition to other remedies permitted by law, may commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the tax, interest penalties et al imposed.

3.06.200 PENALTIES

Any person willfully violating any of the provisions of this Ordinance shall be punished therefore, as provided in Section 3.06.090. (Ord. 803, August, 1999).