

# 1994 Municipal Code of Dayton, Oregon

## CHAPTER 3 - BUSINESS REGULATIONS

- 3.1 Enacting Ordinance.** Unless otherwise indicated in a section, Chapter 3 of Dayton Code is enacted by Dayton City Ordinance #484 adopted 10/03/94, and effective 11/03/94; and revised by Ordinance #505, adopted and effective 5/04/98.
- 3.2 Definitions.** As they are used in Chapter 3 of Dayton Code, the following terms are defined:
- (1) **"Amusement device"** means any mechanical, electronic, mechanical-electronic or non-mechanical mechanism which is designed for the amusement of the player or operator and is complete in itself having as its purpose the production or creation of a game of chance.
  - (2) **"Bingo or Lotto"** means a game played with cards bearing lines of numbers, in which the player covers or uncovers a number selected from a container or other means, and which is won by a player who is present during the game and who first uncovers the selected numbers in a designated combination, sequence or pattern. *(Added by Ordinance #505, 5/4/98 – Effective 5/4/98)*
  - (3) **"Business"** means any enterprise in which more than one consumer pays currency or exchanges personal property for information, goods or services, excluding garage sales and enterprises conducted by individuals under 18 years of age. For the purpose of this chapter of Dayton Code, associated enterprises are a single business entity only if the single business entity files one federal income tax return for income of all the associated enterprises. For the purpose of this chapter of Dayton Code, the term "consumer" means an individual who intends to acquire information, goods or services for household use and does not include a merchant who deals in information, goods, or services of the kind or otherwise by occupation purports to have knowledge or skill peculiar to the information, goods, or services involved in the transaction. *(Renumbered ORD 505 – Effective 5/4/98)*
  - (4) **A business is "conducted within the City"** whenever an owner or agent of the entity or individual conducting the business is physically within the city limits for the purpose of advertising or conducting business. *(Renumbered ORD 505 – Effective 5/4/98)*
  - (5) **"Charitable, fraternal or religious organization"** means any person that is organized and existing for charitable, benevolent, eleemosynary, humane, patriotic, religious, philanthropic, recreational, social, educational, civic, fraternal, or other non-profit purposes and is exempt from payment of federal income taxes because of its charitable, fraternal or religious purposes. *(Added by Ordinance #505, 5/4/98 – Effective 5/4/98)*
  - (6) **"Gambling"** means that a person stakes or risks something of value upon the outcome of a game of chance or a future contingent event not under the influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling **does not** include the following: *(Amended ORD 505– Effective 5/4/98)*
    - (a) Bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to, contracts of indemnity or guaranty and life, health, or accident insurance.
    - (b) Social games if conducted pursuant to a valid license issued in accordance with Section 3.6 of this Code or otherwise qualifies as a social game as defined by Section 3.2(12) of this Code.
    - (c) Bingo, lotto, lotteries or raffles operated by an organization which has complied with State laws and has been licensed by the Department of Justice, pursuant to Chapter 167 of the

Oregon Revised Statutes.

- (d) Wagers placed at any event licensed by the Oregon Racing Commission, pursuant to Chapter 462 of the Oregon Revised Statutes.
- (e) Video lottery or other games operated by the Oregon Lottery Commission, or under the authority of the Oregon Lottery Commission.
- (7) **"Game of chance"** means any contest, game, gaming scheme or gaming mechanism or other amusement device in which the outcome depends in a material degree upon an element of chance as opposed to an element of knowledge, expertise, physical ability or other skill of the user. A social game is not a game of chance. *(Renumbered ORD 505 – Effective 5/4/98)*
- (8) **"Game of skill"** means any contest, game, gaming scheme or gaming mechanism in which the outcome depends upon an element of knowledge, expertise, physical ability or other skill of the user which may affect the outcome in a material way, notwithstanding that chance may also be a factor. Video games, billiards, pool and snooker are examples of games of skill. Carnival games are not games of skill. *(Renumbered ORD 505 – Effective 5/4/98)*
- (9) **"Garage Sale"** means a display to the public, for no longer than 96 hours at a time, of items, outside or inside a structure, for the purpose of selling the item(s). When an enterprise meeting this definition is conducted at the same location more than four times in any 12-month period, it shall be considered a retail enterprise, subject to zoning ordinances. *(Renumbered ORD 505 – Effective 5/4/98)*
- (10) **"Lottery"** means a game in which the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and the winning chances are to be determined by a drawing or some other method; and the holders of the winning chances are to receive something of value. *(Amended ORD 505 – Effective 5/4/98)*
- (11) **"Raffle"** means a lottery operated by a charitable, fraternal or religious organization wherein the players pay something of value for chances, represented by numbers or combinations thereof or by some other medium, one or more of which chances are to be designated the winning ones or determined by a drawing and the player holding the winning chance is to receive something of value. *(Amended ORD 505 – Effective 5/4/98)*
- (12) **"Social game"** means:
  - (a) a game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income from the operation of the social game; and
  - (b) a game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the social game. Definitions of terms used to define social game are the same definitions of terms found in ORS chapter 167. *(Renumbered ORD 505 – Effective 5/4/98)*
- (13) **"Something of Value"** means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein. *(Added ORD 505 – Effective 5/4/98)*

**3.3 Business Registration.** No individual or entity may conduct business within the City without registering annually with the City Recorder. Business registrations expire on December 31st of each year and must be renewed annually. *(Amended ORD 615- Effective 11/06/13)*

**3.3.1 Procedure for Registration.** An individual, or an agent of an entity, intending to conduct business shall first submit a completed Business Registration Form and annual fee to the City Recorder, either in person during regular business hours at City Hall or by mail.

**3.3.2 Interpretation.** Registration pursuant to Dayton Code section 3.3 does not mean that the City authorizes any business activity or that any legal requirements have been met, other than registration pursuant to this section.

**3.3.3 Violation.** A violation of any provision of section 3.3 of Dayton Code shall be a Class B violation. *(Amended ORD 505 – Effective 5/4/98)*

**3.4 Gambling Prohibited.** It is unlawful for any person to participate or engage in any gambling activity as a player, or for any person to frequent or remain at any place where gambling is being conducted. *(Added ORD 505 – Effective 5/4/98)*

**3.4.1 Violation.** A violation of any provision of section 3.4 of Dayton Code shall be a Class A violation.

*3.5 (License for Game of Skill-Repealed ORD 591, passed 11/2/09 and adopted 12/2/09)*

**3.6 Social Games.**

**3.6.1 Social Game License.** No person or entity shall operate or allow a social game in an area under his, her or its control that is open to the public, unless a current Social Game License, issued by the City Council is prominently displayed. Social Game Licenses expire on December 31st each year, and must be renewed annually to be current. Any individual operating or allowing an unlicensed social game in an area under his or her control that is open to the public shall be guilty of a Class A violation. *(Amended ORD 505 – Effective 5/4/98)*

**3.6.2 Application for Social Game License.** The initial application for a social game license and the associated non-refundable investigation fee must be submitted to the City Recorder at least 30 days prior to the date council will conduct the hearing to determine initial eligibility for the license. The initial application shall include the following items, and any additional information needed for clerical purposes: *(Amended ORD 615- Effective 11/06/13)*

- (a) Complete names, addresses, dates of birth and social security numbers of all individuals with any financial interests in the business or enterprise that will be operating or allowing the social game on its premises;
- (b) Detailed description of all business enterprises conducted by the entity or individual who will be operating or allowing the social game on his or her premises;
- (c) Complete history of criminal convictions of all individuals with financial interests in the business or enterprise that will be operating or allowing the social game on its premises;
- (d) Fingerprints and photographs of all individuals with financial interest in the business or enterprise that will be operating or allowing the social game on its premises;
- (e) Consent, signed by all individuals with financial interests in the business or enterprise that will be operating or allowing the social game on its premises, authorizing city staff to confirm all information contained in the application and authorizing third parties to release confidential information to city staff; and
- (f) Exact location where social game will be conducted.

**3.6.3 Eligibility.** City Council shall find that the applicant is eligible to be licensed or receive a renewal of his or her license, upon payment of the annual Social Game License fee, unless following hearing on the matter City Council finds one or more of the following situations:

- (a) An individual with a financial interest in the business, that will be operating or allowing the social game on its premises, has been convicted of a federal, state or local gambling or gaming violation or crime, within the last ten years;
- (b) False or misleading information was supplied on the application; or information requested was omitted from the application;
- (c) Any premises under the control of the business that will be operating or allowing the social game on its premises has been the site of more than one intentional physical injury to an individual within the past five years; or
- (d) An individual with a financial interest in the business that will be operating or allowing the social game on its premises, has been convicted of a federal, state or local violation or crime pertaining to alcohol, or has been found in noncompliance with an Oregon Liquor Control Commission administrative rule, within the last five years.

**3.6.4 License Fee.** An annual Social Game License fee shall be required according to the City's Fee Schedule. The annual fee may be prorated when first issued, if issued for a remaining portion of a year. *(Amended ORD 615- Effective 11/06/13)*

**3.6.5 Revocation of License.** City Council may conduct a hearing at any time during the year, following a 30-day notice to a Social Game Licensee, to determine if any of the situations defined in section 3.6.3 or 3.6.6 exists. If City Council finds that such a situation exists, it shall revoke the license. No portion of the annual license fee shall be refunded when a Social Game License is revoked.

**3.6.6 Social Game Regulations.** No person shall operate a social game in which any of the following situations occur:

- (a) A bet is greater than \$2.00, a three-raise limit has been exceeded, or there has been a back-up bet;
- (b) A door leading into a room in which a social game is being conducted has been locked or a police officer has been hindered in his or her attempt to inspect the premises;
- (c) An individual or an agent of an individual with a financial interest in the business or entity, that operates or allows the social game on its premises, participates in a social game; procures a player for a social game; backs, farms out, assigns or sublets a social game;
- (d) A social game can be seen from the street;
- (e) A person under the age of 21 years is present in a room where a social game is being conducted;
- (f) A charge is collected from a player for the privilege of participating in a social game;
- (g) A participant in a social game is charged a price for a consumer good, regularly offered by the business or entity operating or allowing the social game on its premises, that is different from the price charged to non-participants;
- (h) An individual or entity extends credit to a participant in a social game for the purpose of betting; or
- (I) An individual participating in the game of 21 (Black Jack) is denied the right to deal.

Any individual operating a social game, in which any of the situations defined in this section occurs, shall be guilty of a Class A violation. *(Amended ORD 505 – Effective 5/4/98)*

**3.7 Marijuana Tax.** *(Added ORD 621- Effective 11/05/14)*

**3.7.1 Purpose.** For the purpose of this chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Dayton is exercising a taxable privilege. The purpose of this section is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

**3.7.2 Definitions.** When not clearly otherwise indicated by the context, the following words and phrases are used in this section have the following meanings:

- 1) **“Director”** means the City Recorder for the City of Dayton or his/her designee.
- 2) **“Gross Taxable Sales”** means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.
- 3) **“Manager”** means the City Manager of the City of Dayton.
- 4) **“Marijuana”** means all parts of the plant of the Cannabis family Moracea, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as then currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, Oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- 5) **“Oregon Medical Marijuana Program”** means the office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.364, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.
- 6) **“Marijuana-infused Products”** means any product with marijuana in it.
- 7) **“Person”** means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
- 8) **“Purchase or Sale”** means the retail acquisition or furnishing for consideration by any person of marijuana within the City and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.
- 9) **“Registry identification cardholder”** means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.
- 10) **“Retail sale”** means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.

- 11) **“Seller”** means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.
- 12) **“Tax”** means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.
- 13) **“Taxpayer”** means any person obligated to account to the Director for any tax liability, taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

### **3.7.3 Levy of Tax.**

- (a) Every seller exercising the taxable privilege of selling marijuana or marijuana-infused products as defined in this chapter is subject to and must pay a tax for exercising that privilege.
- (b) The amount of tax levied is as follows:
  - (1) Zero percent of the gross taxable sale amount paid to the seller of marijuana and marijuana-infused products by a person who is a registry identification cardholder.
  - (2) Ten percent of the gross taxable sale amount paid to the seller of marijuana and marijuana infused products by persons who are purchasing marijuana and marijuana-infused products but are not doing so under the provisions of the Oregon Medical Marijuana Program.

### **3.7.4 Deductions.** The following deductions are allowed against sales received by the seller providing marijuana:

- (a) Refunds of sales actually returned to any purchaser;
- (b) Any adjustments in sales that amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana, medical marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

### **3.7.5 Seller Responsible for Payment of Tax.**

- (a) Every seller must, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Director may establish shorter reporting periods for any seller if the seller or Director deems it necessary in order to ensure collection of the tax. Alternative reporting periods must be documented and signed by the seller and the Director. The Director may require further information in the return relevant to payment of the tax. A return is not considered filed until it is actually received by the Director.
- (b) At the time the return is filed, the seller must remit to the Director the full amount of the tax collected. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

- (c) The City will apply non-designated payments in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax.
- (d) If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any seller if the Director deems it necessary in order to ensure collection of the tax. Alternative reporting periods must be documented and signed by the seller and the Director. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. Sellers must hold in trust all taxes collected pursuant to this chapter for the City's account until the seller makes payment to the Director. A separate trust bank account is not required in order to comply with this provision.
- (e) Every seller required to remit the tax imposed by this chapter is entitled to retain five percent of all taxes due to the City to defray the costs of bookkeeping and remittance as long as the return and payment are filed by the due date.
- (f) Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the seller and such other books or accounts as the Director may require. Every seller must keep and preserve for a period of three years all such books, invoices and other records. The Director has the right to inspect all such records during any and all hours of operation.

### **3.7.6 Penalties and Interest.**

- (a) Any seller who fails to remit any portion of any tax imposed by this chapter within the time required must pay a penalty of 10 percent of the amount of the tax, in addition to the amount of the tax.
- (b) If any seller fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, the seller must pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- (c) If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax will be added thereto in addition to the penalties stated in subparagraphs A and B of this section.
- (d) In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter must pay interest at the rate one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (e) Every penalty imposed, and any interest as accrues under the provisions of this section, becomes a part of the tax required to be paid.
- (f) All sums collected pursuant to the penalty provisions in paragraphs A and C of this section will be distributed to the City's General Fund.
- (g) Waiver of Penalties. Penalties for certain late tax payments may be waived or reduced pursuant to policies and processes adopted by the Finance Department. However, the

Finance Department is not required to create a penalty waiver or reduction policy. If the Finance Department does not create a policy for waivers or reductions, no waivers or reductions are allowed.

### **3.7.7 Failure to Report and Remit Tax –Determination of Tax by Director.**

- (a) If any seller fails to make any report of the tax required by this chapter within the time provided in this chapter, the Director will proceed to obtain facts and information on which to base the estimate of tax due. The Director may be assisted by a law enforcement officer in procuring such facts and information. As soon as the Director procures such facts and information upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director will determine and assess against such seller the tax, interest, and penalties provided for by this chapter.
- (b) If the Director makes a determination as outlined in subsection A, the Director must give notice to the seller of the amount assessed. The notice must be personally served on the seller or deposited in the United States mail, postage prepaid, addressed to the seller at the last known place of address.
- (c) The seller may appeal the determination as provided in section 3.7.8. If no appeal is timely filed, the Director's determination is final and the tax, penalties, and interest assessed is immediately due and payable.

### **3.7.8 Appeal.**

- (a) Any seller aggrieved by any decision of the Director with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the City Manager or his or her designee.
- (b) The seller must file the appeal within 30 calendar days of the City's serving or mailing of the determination of tax due. The seller must file using forms provided by the City.
- (c) Upon receipt of the appeal form, the City Manager will schedule a hearing to occur within 30 calendar days. The Manager will give the seller notice of the time and date for the hearing no less than seven days before the hearing date. At the hearing the City Manager or his or her designee will hear and consider any records and evidence presented bearing upon the Director's determination of amount due and make findings affirming, reversing or modifying the determination. The City Recorder (or his or her designee) and the appellant may both provide written and oral testimony during the hearing. The findings of the City Manager or his or her designee are final and conclusive. The City will serve the findings upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.

### **3.7.9 Refunds.**

- (a) The City may refund to the seller any tax, interest or penalty amount under any of the following circumstances:
  - (1) The seller has overpaid the correct amount of tax, interest or penalty; or
  - (2) The City has erroneously collected or received any tax, interest or penalties.
- (b) The City may not issue a refund under this subsection unless the seller provides to the Director a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the Director. The seller must file the



claim within one year from the date of the alleged incorrect payment to be eligible for a refund.

- (c) The Director has 20 calendar days from the date of the claim's receipt to review the claim and make a written determination as to its validity. After making the determination, the Director will notify the claimant in writing of the determination by mailing notice to the claimant at the address provided on the claim form.
- (d) If the Director determines the claim is valid, the claimant may either claim a refund or take as credit against taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the City. The claimant must notify the Director of the claimant's choice no later than 20 days following the date the Director mailed the determination and the claimant must do so in a manner prescribed by the Director.
- (e) If the claimant does not notify the Director of claimant's choice within the 20 day period and the claimant is still in business, the City will grant a credit against the tax liability for the next reporting period. If the claimant is no longer in business, the City will mail a refund check to claimant at the address provided in the claim form.
- (f) The City will not pay a refund unless the claimant establishes by written records the right to a refund and the Director acknowledges the claim's validity.

**3.7.10 Actions to Collect.** Any tax required to be paid by any seller under the provisions of this chapter is a debt owed by the seller to the City. Any tax collected by a seller that has not been paid to the City is a debt owed by the seller to the City. Any person owing money to the City under the provisions of this chapter is liable to an action brought in the name of the City of Dayton for the recovery of the amount owing. In lieu of filing an action for the recovery, the City, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the City has complied with the provisions set forth in ORS 697.105, if the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of \$50.00 or 50 percent of the outstanding tax, penalties and interest owing.

**3.7.11 Violation Infractions.**

- (a) All violations of this chapter are punishable according to the City's Fee Schedule. It is a violation of this chapter for any seller or other person to:
  - (1) Fail or refuse to comply as required herein;
  - (2) Fail or refuse to furnish any return required to be made;
  - (3) Fail or refuse to permit inspection of records;
  - (4) Fail or refuse to furnish a supplemental return or other data required by the Director;
  - (5) Render a false or fraudulent return or claim; or
  - (6) Fail, refuse or neglect to remit the tax to the city by the due date.
- (b) The remedies provided by this section are not exclusive and do not prevent the City from exercising any other remedy available under the law.
- (c) The remedies provided by this section do not prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City

ordinance.

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

- (a) The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or
- (b) The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- (c) Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or
- (d) The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- (e) The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or when the tax exceeds \$5,000. The City Council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

**3.7.13 Audit of Books, Records or Persons.** The City may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due. All books, invoices, accounts and other records must be kept on premises and be made available and open at any time during regular business hours for examination by the Director or an authorized agent of the Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Dayton Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination. The City and any of its agents or representatives may be assisted by law enforcement officers in examining books, accounts and other pertinent records.

**3.7.14 Forms and Regulations.**

- (a) The Director is authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the marijuana tax and to provide for:
  - (1) A form of report on sales and purchases to be supplied to all vendors;
  - (2) The records that sellers providing marijuana and marijuana-infused products must keep concerning the tax imposed by this chapter.

**3.8 TRANSIENT LODGING TAX** *(Added ORD 631- Effective 01/07/16)*

**3.8.1 Title.** This section is known as the transient room tax ordinance of the City of Dayton.

**3.8.2 Definitions.** Except where the context otherwise requires, the following terms are defined as follows:

- 1) “**Accrual Accounting**” means rent is due to operator from a transient on hotel records when the rent is earned, whether or not it is paid.
- 2) “**Cash Accounting**” means the operator does not enter the rent due from a transient on hotel records until the rent is paid.
- 3) “**Hotel**” means any structure, or any portion of any structure occupied or intended or designed for transient occupancy for thirty days or less for dwelling, lodging, or sleeping purposes. It includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, public or private club, and also means space in mobile home or trailer parks (including recreational vehicle, tent trailer and tent camping parks), or similar structures or space or portions thereof so occupied, for occupancy less than for 30-days.
- 4) “**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 park, or portion thereof.
- 5) “**Operator**” means the proprietor of the hotel in any capacity. Where the operator performs as a managing agent other than an employee, the managing agent is an operator for the purposes of this section and has the same duties and liabilities as the principal. Compliance with the provisions of this section by either the principal or the managing agent is compliance by both.
- 6) “**Person**” means any individual, corporation, partnership, joint venture, association, social club, fraternal organization, public or private dormitory, joint stock company, corporation, estate, oration, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.
- 7) “**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. It does not include charges to a condominium unit owner for cleaning or maintenance of such unit or personal use or occupancy by such owner.
- 8) “**Rent Package Plan**” means the consideration charged for both food and rent where a single rate is charged for both. The amount applicable to rent for determination of the transient room tax under this section is the same as the charge for rent when food is not a part of the package plan. The amount for rent is the amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package and the charge for rent when the space is rented separately and not part of a package plan.
- 9) “**Tax**” means the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which collections are required to be reported.
- 10) “**Transient**” means any individual who occupies 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 is not included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any individual so occupying space in a hotel is a transient until the 30-day period expires 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 the effective date of this section may be considered. A person who pays for lodging on a monthly basis is not a transient.

### **3.8.3 Tax Imposed**

- (a) Effective April 1, 2016, each transient must pay a tax of eight percent of the rent charged by the operator for the privilege of occupancy in any hotel. For a recreational vehicle, tent trailer and tent camping with self-pay slots, the tax is increased and assessed to the closest twenty-five-cent interval. The tax is a debt owed by the transient to the city and is extinguished only by payment by the operator to the city
- (b) Each transient must pay the tax to the operator of the hotel at the time the 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, the transient must pay a proportionate share of the tax to the operator with each installment. Rent paid or charged for occupancy excludes the sale of any goods, services and commodities.
- (c) The City will dedicate net revenue from the transient room tax per the provisions of ORS 320.350(6).

### **3.8.4 Collection of tax by Operator**

- (a) Every operator renting rooms or space for lodging or sleeping purposes in this City not exempted under this section must collect a tax from the occupant. The tax collected or accrued by the operator is a debt owed by the operator to the city.
- (b) In cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid.
- (c) The City Manager has authority to enforce this section and may delegate authority to adopt rules and regulations consistent with this section to aid in enforcement.
- (d) The operator is permitted to deduct and keep five percent of the amount of taxes actually collected to compensate the operator for administrative expenses in collecting the taxes.

### **3.8.5 Operators' Duties**

- (a) Each operator must collect the tax imposed by this section at the same time as the rent is collected from each transient.
- (b) The amount of tax must be separately stated in operators' records and receipts.
- (c) No operator may advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that the tax will not be added to the rent, or that, when added, any part will be refunded except as provided by this section.

### **3.8.6 Exemptions.** The tax imposed by this section does not apply to:

- (a) Any occupant for more than 30 successive calendar days with respect to any rent imposed for the period commencing after the first 30 days of such successive occupancy.
- (b) Any person who rents a private home, vacation cabin, or like facility from any owner who rents out such facilities for less than 30 days per calendar year.
- (c) Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or similar facility.

### **3.8.7 Registration of Operator**

- (a) Every person who is an operator of a hotel in this City must register with the City Manager on a form provided by the City. Operators engaged in business at the time this section takes effect must register no later than 30 calendar days after this section takes effect. Operators starting business after this section takes effect must register within 15 calendar days after commencing business.
- (b) Delay in registration does not relieve any person from the obligation of payment or collection of the tax. The registration must state the name under which the operator conducts business, the business location and other information as the City Manager may require. The operator must sign the registration. Within 10 days of registration, the City Manager will issue a certificate of authority to each registrant to collect the tax. Certificates are not assignable or transferable and must be surrendered to the City Manager upon the cessation of business at the location named or upon its sale or transfer of the business. Each certificate will state the place of business to which it is applicable and must be prominently displayed to be seen and recognized by all occupants and persons seeking occupancy. Each certificate will state:
  - 1) The name of the operator;
  - 2) The address of the hotel;
  - 3) The date the City issued the certificate; and
  - 4) This Transient Occupancy Registration Certificate signifies that the operator named has fulfilled the requirements of the Transient Lodging Tax Ordinance of the city by registration with the City Manager to collect the transient lodging taxes imposed by the city and remitting them to the City Manager. 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 compliance with all local applicable laws."

### **3.8.8 Due date--Returns and Payments**

- (a) The transient must pay the tax imposed by this section to the operator at the time rent is paid. All taxes collected by any operator are due and payable to the City Manager on a quarterly basis on or before the last day of the month following the end of each calendar quarter, reporting the amount of the tax due during the quarter. Taxes due are delinquent on the last day of the month in which they are due. For example, for the calendar quarter of January, February, and March, Transient Lodging Taxes are due by April 30<sup>th</sup>.
- (b) On or before the last day of the month following each quarter of collection, each operator must file with the City Manager a return for the preceding quarter's tax collections. The operator must file the return in such form as prescribed by the City Manager.
- (c) Returns must state the amount of tax collected or otherwise due for the related period. The City Manager may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of such amounts, and the amount of the rents exempt, if any.
- (d) The City Manager may extend, for a period not to exceed one month, the time for making any return or payment of tax for good cause. The City Manager may not grant any further extensions unless authorized by City Council.
- (e) The operator must deliver the return, together with the tax amount due, to the city manager either by personal delivery or by mail. If the operator files by mail, the postmark will be considered the date of filing for determining delinquencies.

### **3.8.9 Penalties and Interest**

- 3.8.9.1 **Original Delinquency.** Any operator that has not been granted an extension of time for remittance of tax due and fails to remit any tax imposed by this section prior to delinquency must pay a penalty equal to 10 percent of the tax amount due in addition to the tax amount.
- 3.8.9.2 **Continued Delinquency.** Any operator that has not been granted an extension of time for remittance of tax due and which fails to pay any delinquent remittance within 30 days following the date the remittance first became delinquent, must pay a second delinquency penalty of 15 percent of the tax amount due in addition to the tax amount due and the 10 percent penalty first imposed.
- 3.8.9.3 **Fraud.** If the City Manager determines that the nonpayment of the any remittance or tax due under this section is due to fraud or an intent to evade this section's provisions, the City Manager will impose a penalty of 25 percent of the tax amount due in addition to the penalties imposed under subsections (a) and (b).
- 3.8.9.4 **Interest.** In addition to penalties imposed, any operator that fails to remit any tax imposed by this section must pay interest on delinquent taxes at the rate of one percent per month on the amount of the tax due from the date on which the remittance first became delinquent until paid. Penalties that are owed are not included for the purpose of calculating interest. Interest may be on a fraction of a month if the delinquency is for less than 30 days.
- 3.8.9.5 **Penalties Merged with Tax.** Every penalty imposed and all accrued interest will be merged with and become a part of the tax required to be paid.
- 3.8.9.6 **Petition for Waiver.** Any operator that fails to remit the tax within the time stated must pay the penalties. However, the operator may petition the City Manager for waiver and refund of the penalty or any portion thereof and the City Manager may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

### **3.8.10 Deficiency Determination**

- (a) If the City Manager determines that returns are incorrect, the manager 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 submitted to the City or any additional information obtained by the City Manager.
- (b) One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount determined is due and payable immediately upon service of notice that the amount determined is delinquent. Penalties on deficiencies are applied under Section 3.8.080.

### **3.8.11 Overpayment and Deficiency**

- 3.8.11.1 **Adjustments.** In making a determination the city manager may offset tax overpayments, if any, previously made or against penalties and interest on underpayments. Interest on underpayments will be computed under Section 3.8.9.
- 3.8.11.2 **Notice of Deficiency.** The City Manager will give to the operator a written notice of deficiency determination. The notice may be served personally or by mail. If by mail, the notice will be addressed to the operator at the address in city records. For service by mail of any notice required by this section, notice is served by mailing by certified mail, postage prepaid, return receipt requested.

3.8.11.3 **Expiration Period.** Except in the case of fraud or intent to evade this section or adopted rules, the City must make every deficiency determination and mail the appropriate notice within three years after the last day of the month following the close of the monthly period for which the amount became due, or within three years after the return is filed, whichever period expires later.

3.8.11.4 **Payable Upon Receipt.** Any deficiency determination becomes due and payable immediately upon receipt of notice and becomes final within 20 days after the City Manager gives notice. However, the operator may petition for refund if the petition is filed before the determination becomes final.

**3.8.12 Failure to Collect Tax.** Fraud, Refusal to Collect, Evasion. If any operator fails or refuses to collect the tax or to make any report or tax remittance required by this section, or makes a fraudulent return or otherwise willfully attempts to evade this section, the city manager may take any action deemed best to obtain the facts and information on which to base an estimate of the tax due. As soon as the city manager determines tax is due from any operator who has failed or refused to collect, report and remit the tax, the city manager will determine and assess against the operator the tax, interest and penalties provided in this section. The City Manager will give a notice of the amount assessed. Any determination by the city manager becomes due and payable upon receipt of notice and becomes final within 20 days after the notice. The operator may petition the City Manager for refund if the petition is filed before the determination becomes final.

### **3.8.13 Redeterminations**

- (a) Any person against whom a determination is made may petition for a redetermination and refund within the time required in Section 3.8.11. If a petition for redetermination and refund is not filed within the time required in Section 3.8.11, 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 City Manager will reconsider the determination by an oral hearing and the City Manager will give 20 days' notice of the time and place of the hearing. The City Manager may continue the hearing from time to time as may be necessary.
- (c) The City Manager may decrease or increase the amount of the determination because of the hearing and if an increase is determined, the operator must pay that increase within three days after the hearing.
- (d) The written decision of the City Manager upon a petition for redetermination or refund becomes final 20 days after service upon the petitioner of notice by the city, unless appeal of the operator files the order or decision with the City Council within 20 days of the service of the notice. No petition for determination or refund or appeal is effective for any purpose unless the operator has first complied with all payment requirements.

### **3.8.14 Security for Collection of Tax**

- (a) The City Manager may require an operator to deposit with the city such security in the form of cash, bond or other security as the manager may determine is sufficient to protect the city's interests. In no event may the amount of the security be greater than twice the operator's estimated average monthly liability determined in such a manner, as the City Recorder deems proper, or \$5,000, whichever amount is less. The City Manager may increase or decrease the amount of security subject to these limitations.

- (b) The City Attorney may bring any legal action in the name of the City to collect the amount delinquent together with penalties and interest.

### **3.8.15 Lien**

- (a) The tax imposed by this section together with the interest and penalties and any direct collection costs which may be incurred after delinquency become and remain a lien until paid from the date of its recording. After the lien is recorded, notice of the lien may be issued by the City Recorder whenever:
  - 1) The operator is in default in the payment of the tax, interest and penalty, and
  - 2) A copy is sent to the delinquent operator.
- (b) The personal property subject to such lien seized by the city may be sold at public auction.

### **3.8.16 Refunds**

- 3.8.16.1 **Refunds by the City to the Operator.** Whenever the amount of any tax, penalty or interest is paid more than once or has been erroneously collected or received by the City Manager, the City Manager may refund it. The operator must file a verified claim in writing with the City Manager stating the specific reason for the claim, and the operator must do so no later than three years from the date of payment. The operator must make the claim on forms provided by the City Manager. If the City Manager approves the claim, the city manager may either refund the excess amount collected or paid, or provide a credit on any amount then due and payable by the operator, and the City Manager may refund the balance to the operator.
- 3.8.16.2 **Refunds by City to Transient.** Whenever an operator has collected a tax required by this section, and the operator has deposited that tax with the City Manager, and the City Manager later determines that the amount was erroneously collected or received by the City Manager, the City Manager may refund the incorrect amount to the transient. The operator must file a verified claim in writing with the City Manager stating the specific reason for the claim no later than three years from the date of payment.

### **3.8.17 Administration**

- (a) **Disposition and Use of Transient Room Tax Funds.** All proceeds derived by the city from the transient room tax funds will deposited in the General Fund of the city.
- (b) **Records Required from Operators.** Every operator must keep guest records of room sales and accounting books and records of the room sales. The operator must retain all records for at least three years.
- (c) **Examination of Records; Investigations.** The city manager, or any person authorized in writing by the city manager, may examine, during normal business hours, the books, papers and accounting records relating to room sales of any operator liable for the tax, and may investigate the business to verify the accuracy of any return made, or if no return is made to ascertain and determine the amount required to be paid.

### **3.8.18 Confidentiality**

- 3.8.18.1 **Confidential Character of Information Obtained.** No person enforcing the provisions of this section may disclose 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 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 other document for enforcement of this section.

3.8.18.2 Section 3.8.18.1 does not prevent:

- 1) The disclosure to, or the examination of records and equipment by another city official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this section or collecting taxes imposed,
- 2) The disclosure, after the filing of a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, or information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest and penalties,
- 3) The disclosure of the names and addresses of any person to whom Transient Occupancy Registration certificates have been issued; and
- 4) The disclosure of general statistics regarding taxes collected in the city

3.8.18.3 The City Manager may refuse to make any disclosure referred to in this subsection when the public interest would suffer thereby.

**3.8.19 Appeals to the City Council.** Any person aggrieved by any decision of the City Manager may appeal to the City Council by filing notice of appeal with the city recorder within 20 days of the serving or the mailing of the notice of the decision. The Council will give the appellant not less than 20 days' written notice of the time and place of a hearing on the appealed matter. Action by the Council on appeals is final.

### **3.8.20 Violations**

- (a) It is unlawful for any operator or other person to fail or refuse to:
  - 1) Register as required under this section;
  - 2) File any return required to be made; or
  - 3) File a supplemental return or other data required by the City Manager or to make a false or fraudulent return.
- (b) No person required to make, render, sign or verify any report may make any false or fraudulent report, with intent to defeat or evade the determination of any amount due or required by this section.
- (c) Violation of this section is a Class A Violation under the Dayton Municipal Code.