



TUALATIN CITY COUNCIL

Monday, FEBRUARY 26, 2018

JUANITA POHL CENTER

8513 SW Tualatin Road

Tualatin, OR 97062

WORK SESSION begins at 6:00 p.m.

BUSINESS MEETING begins at 7:00 p.m.

Mayor Lou Ogden

Council President Joelle Davis

Councilor Robert Kellogg
Councilor Paul Morrison

Councilor Frank Bubenik
Councilor Nancy Grimes

Councilor Jeff DeHaan

Welcome! By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified a time for your comments on its agenda, following Announcements, at which time citizens may address the Council concerning any item not on the agenda or to request to have an item removed from the consent agenda. If you wish to speak on a item already on the agenda, comment will be taken during that item. Please fill out a Speaker Request Form and submit it to the Recording Secretary. You will be called forward during the appropriate time; each speaker will be limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the City website at www.tualatinoregon.gov/meetings, the Library located at 18878 SW Martinazzi Avenue, and on file in the Office of the City Manager for public inspection. Any person with a question concerning any agenda item may call Administration at 503.691.3011 to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact Administration at 503.691.3011. Notification thirty-six (36) hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Council meetings are televised *live* the day of the meeting through Washington County Cable Access Channel 28. The replay schedule for Council meetings can be found at www.tvctv.org. Council meetings can also be viewed by live *streaming video* on the day of the meeting at www.tualatinoregon.gov/meetings.

Your City government welcomes your interest and hopes you will attend the City of Tualatin Council meetings often.

PROCESS FOR LEGISLATIVE PUBLIC HEARINGS

A **legislative** public hearing is typically held on matters which affect the general welfare of the entire City rather than a specific piece of property.

1. Mayor opens the public hearing and identifies the subject.
2. A staff member presents the staff report.
3. Public testimony is taken.
4. Council then asks questions of staff, the applicant, or any member of the public who testified.
5. When the Council has finished questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either *approve*, *deny*, or *continue* the public hearing.

PROCESS FOR QUASI-JUDICIAL PUBLIC HEARINGS

A **quasi-judicial** public hearing is typically held for annexations, planning district changes, conditional use permits, comprehensive plan changes, and appeals from subdivisions, partitions and architectural review.

1. Mayor opens the public hearing and identifies the case to be considered.
2. A staff member presents the staff report.
3. Public testimony is taken:
 - a) In support of the application
 - b) In opposition or neutral
4. Council then asks questions of staff, the applicant, or any member of the public who testified.
5. When Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either *approve*, *approve with conditions*, or *deny the application*, or *continue* the public hearing.

TIME LIMITS FOR PUBLIC HEARINGS

The purpose of time limits on public hearing testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony. All persons providing testimony **shall be limited to 3 minutes**, subject to the right of the Mayor to amend or waive the time limits.

EXECUTIVE SESSION INFORMATION

An Executive Session is a meeting of the City Council that is closed to the public to allow the City Council to discuss certain confidential matters. An Executive Session may be conducted as a separate meeting or as a portion of the regular Council meeting. No final decisions or actions may be made in Executive Session. In many, but not all, circumstances, members of the news media may attend an Executive Session.

The City Council may go into Executive Session for certain reasons specified by Oregon law. These reasons include, but are not limited to: ORS 192.660(2)(a) employment of personnel; ORS 192.660(2)(b) dismissal or discipline of personnel; ORS 192.660(2)(d) labor relations; ORS 192.660(2)(e) real property transactions; ORS 192.660(2)(f) information or records exempt by law from public inspection; ORS 192.660(2)(h) current litigation or litigation likely to be filed; and ORS 192.660(2)(i) employee performance of chief executive officer.



OFFICIAL AGENDA OF THE TUALATIN CITY COUNCIL MEETING FOR FEBRUARY 26, 2018

A. CALL TO ORDER

Pledge of Allegiance

B. CITIZEN COMMENTS

This section of the agenda allows anyone to address the Council regarding any issue not on the agenda, or to request to have an item removed from the consent agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

C. CONSENT AGENDA

The Consent Agenda will be enacted with one vote. The Mayor will ask Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. If you wish to request an item to be removed from the consent agenda you should do so during the Citizen Comment section of the agenda. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under, Items Removed from the Consent Agenda. The entire Consent Agenda, with the exception of items removed from the Consent Agenda to be discussed, is then voted upon by roll call under one motion.

1. Consideration of Approval of the Minutes for the Work Session and Regular Meeting of February 12, 2018
2. Consideration of Approval of Liquor License Renewals for 2018
3. Consideration of **Resolution No. 5356-18** Authorizing Changes to the Adopted 2017-2018 Budget

D. GENERAL BUSINESS

If you wish to speak on a general business item please fill out a Speaker Request Form and you will be called forward during the appropriate item. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

1. Consideration of **Ordinance No. 1408-18** Implementing a Two and One-Half Percent (2.5%) Transient Lodging Tax; Creating Tualatin Municipal Code Chapter 9-9; And Adding New Provisions

E. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

F. COMMUNICATIONS FROM COUNCILORS

G. ADJOURNMENT



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Nicole Morris, Deputy City Recorder

DATE: 02/26/2018

SUBJECT: Consideration of Approval of the Minutes for the Work Session and Regular Meeting of February 12, 2018

ISSUE BEFORE THE COUNCIL:

The issue before the Council is to approve the minutes for the Work Session and Regular Meeting of February 12, 2018.

RECOMMENDATION:

Staff respectfully recommends that the Council adopt the attached minutes.

Attachments: [City Council Work Session Minutes of February 12, 2018](#)
[City Council Regular Meeting Minutes of February 12, 2018](#)



Present: Mayor Lou Ogden; Councilor Frank Bubenik; Council President Joelle Davis; Councilor Nancy Grimes; Councilor Paul Morrison; Councilor Jeff DeHaan; Councilor Robert Kellogg

Staff Present: City Manager Sherilyn Lombos; City Attorney Sean Brady; Police Chief Bill Steele; Deputy City Recorder Nicole Morris; Assistant to the City Manager Tanya Williams; Assistant City Manager Alice Cannon; Management Analyst II Kelsey Lewis; City Engineer Jeff Fuchs; Project Engineer Dominique Huffman; IS Director Bates Russell

CALL TO ORDER

Mayor Ogden called the meeting to order at 6:00 p.m.

1. **2019-2028 Capital Improvement Plan.**

Management Analyst Kelsey Lewis and Public Works Director Jeff Fuchs presented the 2019-2028 Capital Improvement Plan (CIP). Analyst Lewis stated projects are broken into five project categories including facilities equipment, parks and recreation, technology, transportation, and utilities. Analyst Lewis added projects are prioritized by staff based on the following criteria: council goals, health and safety, regulatory requirements, master plans, and service delivery needs. Funding sources for these projects include system development charges, water, wastewater, and storm rates, gas taxes, the general fund, and grants and donations. This year's CIP projects total roughly \$5 million dollars. Analyst Lewis briefly reviewed the project list by category. She noted the CIP is a planning tool to help guide the annual budgeting process. The public involvement process was reviewed and main areas of interest were shared.

Mayor Ogden asked why it costs so much to clean water tanks. Director Fuchs explained the cleaning and treatment process.

2. **Council Meeting Agenda Review, Communications & Roundtable.**

Councilor Grimes would like the Council to looking into lowering speed limits on residential streets. Public Works Director Fuchs stated the reduced speed limit legislation only applies to the City of Portland. He stated ODOT regulates speed limits and it would require Tualatin going through a long legislative process to accomplish something like that. Council reached consensus to further explore the idea.

ADJOURNMENT

The work session adjourned at 6:16 p.m.

Sherilyn Lombos, City Manager

_____ / Nicole Morris, Recording Secretary

_____ / Lou Ogden, Mayor



OFFICIAL MINUTES OF THE TUALATIN CITY COUNCIL MEETING FOR FEBRUARY 12, 2018

Present: Mayor Lou Ogden; Councilor Frank Bubenik; Council President Joelle Davis; Councilor Nancy Grimes; Councilor Paul Morrison; Councilor Jeff DeHaan; Councilor Robert Kellogg

Staff Present: City Manager Sherilyn Lombos; City Attorney Sean Brady; Police Chief Bill Steele; Finance Director Don Hudson; Deputy City Recorder Nicole Morris; Teen Program Specialist Julie Ludemann; Assistant to the City Manager Tanya Williams; Assistant City Manager Alice Cannon; City Engineer Jeff Fuchs; Project Engineer Dominique Huffman; IS Director Bates Russell

A. CALL TO ORDER

Pledge of Allegiance

Mayor Ogden called the meeting to order at 7:00 p.m.

B. ANNOUNCEMENTS

1. Tualatin Youth Advisory Council Update for February 2018

Members of the Youth Advisory Committee (YAC) presented a PowerPoint on their latest activities and upcoming events. Three YAC members will attend the National League of Cities, March 11-14, where they will learn about civic engagement, leadership development, and networking. Members are finishing preparations for Project FRIENDS to be held on April 20. YAC members attended the Oregon Youth Summit on February 9. They met with youth councils, the Governor, and other elected officials. YAC members discussed the potential of a Transient Lodging Tax (TLT) in Tualatin per the request of Council. The YAC supports the use of a TLT tax to improve programs and events.

2. Employee Promotions- Brian Struckmeier, Police Captain and Seth Ceciliani, Police Sergeant

Chief Bill Steel introduced newly promoted employees Police Captain Brian Struckmeier and Police Sergeant Seth Ceciliani. The Council congratulated them.

C. CITIZEN COMMENTS

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None.

D. CONSENT AGENDA

The Consent Agenda will be enacted with one vote. The Mayor will ask Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. If you wish to request an item to be removed from the consent agenda you should do so during the Citizen Comment section of the agenda. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under, Items Removed from the Consent Agenda. The entire Consent Agenda, with the exception of items removed from the Consent Agenda to be discussed, is then voted upon by roll call under one motion.

MOTION by Council President Joelle Davis, SECONDED by Councilor Nancy Grimes to adopt the consent agenda.

Aye: Mayor Lou Ogden, Councilor Frank Bubenik, Council President Joelle Davis, Councilor Nancy Grimes, Councilor Jeff DeHaan, Councilor Paul Morrison, Councilor Robert Kellogg

MOTION CARRIED

1. Consideration of Approval of the Minutes for the Work Session and Regular Meeting of January 22, 2018
2. Consideration of **Resolution No. 5353-18** Adopting the February 2018 Update to the Public Works Construction Code

E. SPECIAL REPORTS

1. Tualatin Tomorrow Advisory Committee Annual Report

Assistant to the City Manager Tanya Williams and Tualatin Tomorrow Advisory Committee (TTAC) Member Daniel Bachhuber presented the TTAC annual progress report. Assistant Williams stated the Tualatin Tomorrow Vision Plan was adopted in 2014 and is a compilation of what citizens want Tualatin to be in the future. The plan includes 100 action items with eight focus areas and 18 broad community goals. She stated in 2017 the committee met monthly and hosted two partner events including recognition of the Tualatin's America's Best Community team and a social services partner event and panel. Manager Williams added in the three years since the update 92 out of 100 actions have been completed or initiated. She thanked the committee for their hard work. She noted upcoming actions include evaluating the action plan and areas that still need to be addressed, partner recruitment and retention, and beginning preparations for the next phase of the plan.

Councilor Kellogg asked if the committee will be holding a spring partner event. Manager Williams stated the committee has not discussed the next event as they will be working on the evaluation of the plan.

2. General Update from NW Natural

NW Natural Government and Community Affairs Consultant Nina Carlson spoke to the Council regarding NW Natural's Low Carbon Pathway project. She stated the objectives of the project include: a long term goal of deep decarbonization, near-term actions that take advantage of the natural gas infrastructure already in place, and then leading the way on natural gas innovations. She spoke to specific goals to reach the objectives.

Mayor Ogden asked what the targets are set forth by the house bill. Ms. Carlson stated they have targeted an 80% reduction from the 1990 levels.

F. GENERAL BUSINESS

If you wish to speak on a general business item please fill out a Speaker Request Form and you will be called forward during the appropriate item. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

1. Consideration of **Resolution No. 5354-18** Referring to the Electors of the City of Tualatin the Question of Authorizing \$20,000,000 of General Obligation Bonds for Traffic Congestion and Safety Improvements

Assistant City Manager Alice Cannon stated Council gave staff direction to prepare a bond measure for traffic congestion and safety improvements for the May 2018 election. She noted the prepared ballot title and explanatory statement are attached to the resolution. City Manager Lombos stated the prepared information meets all the constraints set forth by the Secretary of State's Office.

PUBLIC COMMENT

Susan Novak, Chair of the Tualatin Area Aging Task Force, advocated in favor of the measure. She stated the committee unanimously agreed to support the measure.

Tualatin Chamber of Commerce Director Linda Moholt stated they conducted a survey on the measure. She stated respondents who responded where in favor of a local solution but were unsure on the funding. She encouraged Council to move forward with a lower rate.

Daniel Bachhueber asked how decisions were made on the selected projects. Manager Cannon stated the list was created from Council and citizen feedback.

COUNCIL QUESTIONS/DELIBERATION

Councilor Davis noted a grammatical change in the resolution.

Councilor Kellogg presented concerns with the wording of the caption, he would like to see the word "relief" used. City Attorney Brady explained using different words has different impacts on how the money can be spent.

Councilor Morrison stated he is satisfied with the way the measure is written.

City Manager Lombos stated staff has spoken with the bond council on how the measure is presented. She noted if changes are made they would have to go back to the bond council for approval and the Council would need to then call a special

meeting for consideration of the changes.

Councilor Grimes asked if the length of repayment should be included in the summary. City Manager Lombos stated there is no legal requirement and it would constrain the city's ability to refinance the money in the future.

Councilor DeHaan asked if changes could be made to the language after the meeting tonight. Manager Cannon stated the resolution contains all the language necessary to proceed.

Councilor Morrison asked if the City is bound to the project list as worded. Manager Cannon stated the language allows for flexibility in the list.

MOTION by Councilor Paul Morrison, SECONDED by Council President Joelle Davis to adopt Resolution No. 5354-18 referring to the Electors of the City of Tualatin the question of authorizing \$20,000,000 of General Obligation Bonds for traffic congestion and safety improvements.

Aye: Mayor Lou Ogden, Councilor Frank Bubenik, Council President Joelle Davis, Councilor Nancy Grimes, Councilor Jeff DeHaan, Councilor Paul Morrison, Councilor Robert Kellogg

MOTION CARRIED

2. Consideration of Resolution No. 5355-18 to Adopt Council Rules

Mayor Ogden thanked the Council and staff for their hard work on this document as it works towards a more efficient and better process.

Council President Davis thanked everyone for their work on the document. She stated she feels there is a piece missing on a complaint process. She plans to bring an amendment forward in the future.

Councilor Kellogg stated he will be bringing forward a future amendment regarding the recording of both the work session and council meetings.

MOTION by Council President Joelle Davis, SECONDED by Councilor Frank Bubenik to adopt Resolution No. 5355-18 to adopting council rules.

Aye: Mayor Lou Ogden, Councilor Frank Bubenik, Council President Joelle Davis, Councilor Nancy Grimes, Councilor Jeff DeHaan, Councilor Paul Morrison, Councilor Robert Kellogg

MOTION CARRIED

G. COMMUNICATIONS FROM COUNCILORS

Councilor Bubenik stated he participated in the selection process for the Community Development Block Grant program. He announced Tualatin won a grant in the amount of \$211,000 for the Sagert Street connection project. He added final dollar amounts will be released on April 9. In addition to participating in the grant selection process he attended the Regional Water Consortium meeting. He noted Cornelius will be joining the consortium. Dues for City will be reduced to \$17,000 this year.

Councilor Morrison attended the Tualatin High School Booster Club event at Stickman Brewery where they raised \$15,000.

H. ADJOURNMENT

Mayor Ogden adjourned the meeting at 8:03 p.m.

Sherilyn Lombos, City Manager

_____ / Nicole Morris, Recording Secretary

_____ / Lou Ogden, Mayor



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Nicole Morris, Deputy City Recorder

DATE: 02/26/2018

SUBJECT: Consideration of Approval of Liquor License Renewals for 2018

ISSUE BEFORE THE COUNCIL:

The issue before the Council is to approve liquor license renewal applications for 2018. Copies have not been included with this staff report but are available at the City Offices for review.

RECOMMENDATION:

Staff respectfully recommends that the Council approve endorsement of the liquor license renewals for 2018 as listed in Attachment A.

EXECUTIVE SUMMARY:

Annually, the Oregon Liquor Control Commission (OLCC) requires that all liquor licenses are renewed. According to the provisions of City Ordinance No. 680-85, establishing procedures for liquor license applicants, applicants are required to fill out a City application form, from which a review by the Police Department is conducted according to standards and criteria established in the Ordinance. The liquor license renewal applications are in accordance with all ordinances and the Police Department has conducted reviews of the applications.

According to the provisions of Section 5 of Ordinance No. 680-85 a member of Council or the Public may request a public hearing on any of the liquor license renewal requests. If such a public hearing request is made, a hearing will be scheduled and held on the license. It is important that any request for such a hearing include reasons for said hearing.

FINANCIAL IMPLICATIONS:

A renewal fee of \$35 has been paid by each applicant.

Attachments: [Attachment A- Liquor License Renewals 2018](#)

Liquor License Renewals 2018

76 of Tualatin
Applebee's
Baja Fresh
Big eddy tap house
Boones Ferry Chevron
Buffalo wild wings
Bushwhackers
C.I. Bar and Grill
Café Yumm
Chipotle Mexican Grill
Claim Jumper Restaurant
Covey Ridge Vineyard DBA:Woven
Wine works
Dotty's
El Sol De Mexico
Famous Daves BBQ
Fiorano
Fred Meyer #393
Fuddruckers
G-Man Brewery
G-Man Sports Bar (Hot Seat)
G-Man Tap Room (Birra Deli)
Grampy's
Hayden's Lake Front Grill
Industry
Interrobang
Jacksons #533
Lakeside Bistro
Lee's Kitchen
Marinepolis Sushiland
Marquis Community Center
Millers Homestead
Native Foods Café
New Season's Market
Nicolli's Grill and Sports Bar
Non La
Oregon Wine Service's
Outback Steak House
Pastini Pastaria
PF Changs China Bistro
Pieology Pizzeria
Plaid Pantry #160
Qdoba Mexican Frill
Red Robin
Rosie's Kitchen

Royal Panda
Safeway #1047
Saint Irene's
Shari's #242
Sharky's Woodfired Mexican Grill
Stafford Hills Club
Stars Cabaret
Stickman Brewing Co.
Sushi Hana 9
Sushi Train
Sushiville Tualatin
Thai Cuisine
The Grand Hotel - Bridgeport
Three Mermaids Public House
Tiny Wolf Brewing
Tualatin Chevron
Tualatin Country Club
Tualatin Food Store
Tualatin Gas and Food
Tualatin Indoor Soccer
Tualatin Island Grill
Tualatin Liquor
Tualatin Valley Elks Lodge #2780
Ugly Fish
Vino Rai
Walden Selections
Walgreens #09625
Whole Foods Market



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Don Hudson, Finance Director

DATE: 02/26/2018

SUBJECT: Consideration of **Resolution No. 5356-18** Authorizing Changes to the Adopted 2017-2018 Budget

ISSUE BEFORE THE COUNCIL:

Whether or not to approve changes to the adopted 2017–2018 budget.

RECOMMENDATION:

Staff recommends adopting the attached Resolution.

EXECUTIVE SUMMARY:

Occasionally, it becomes necessary after the budget is adopted to make changes for occurrences unforeseen when the budget was adopted. Oregon Revised Statutes (ORS) 294.471 dictates the process for a supplemental budget when an occurrence or condition which had not been ascertained at the time of the preparation of the current budget requires a change in financial planning.

During FY 2017-2018, there were instances of additional revenues that were not anticipated when the budget was adopted in June 2017.

The adjustments found in Exhibit A are to allocate a donation given to the Juanita Pohl Center that is being used to supplement an existing kitchen renovation project, additional funding from the Washington County Cooperative Library System to be used to fund replacement of furniture that was projected to occur in FY 18/19 and additional sidewalk/street tree revenue in the Road Utility Fee Fund to supplement the existing program.

All proposed changes to the adopted budget are included in Exhibit A, attached to the Resolution that follows.

FINANCIAL IMPLICATIONS:

The net effect in each fund is zero, as the resolution appropriates expenditures that are offset by increases in revenue.

Attachments: [Resolution No 5356-18](#)

RESOLUTION NO. 5356-18

RESOLUTION AUTHORIZING CHANGES TO THE ADOPTED 2017 - 2018
BUDGET

WHEREAS after the budget process for the 2017-2018 fiscal year was completed, an occurrence or condition arose which had not been ascertained at the time of the budget preparation; and

WHEREAS in order to lawfully comply with the requirements of Local Budget Law, increases in budgeted resources and requirements are necessary; and

WHEREAS Oregon Revised Statutes (ORS) 294.471 allows for the preparation and adoption of a supplemental budget.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Council wishes to comply with Local Budget Law, and authorize spending of additional resources; and

Section 2. Increased resources and requirements should be made as detailed in Exhibit A to this Resolution.

INTRODUCED AND ADOPTED this 26th day of February, 2018.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM:

ATTEST:

BY _____
City Attorney

BY _____
City Recorder

**City of Tualatin
Fiscal Year 2017 - 2018
Budget Changes, February 2018**

Appropriation of Increased Revenues:

<u>Increase - Revenue</u>		<u>Amount</u>	<u>Increase - Expenditure</u>		<u>Amount</u>	<u>Notes</u>
Road Utility Fee Fund						
Sidewalk/Tree Program	216-00-00-44501	\$ 22,500	Sidewalk/Tree Program	216-50-55-56435	\$ 22,500	Additional Revenue Allocated to Program
General Fund						
Donations - Assorted	100-00-00-46406	\$ 7,600	Equipment & Furnishings - JPC	100-40-40-57001	\$ 7,600	Donation used for JPC Kitchen Renovation
Library Revenue - Washington County	100-00-00-43801	\$ 27,205	Equipment & Furnishings - Library	100-40-41-57001	\$ 27,205	Additional WCCLS Revenue to fund furniture replacement



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Don Hudson, Finance Director

DATE: 02/26/2018

SUBJECT: Consideration of **Ordinance No. 1408-18** Implementing a Two and One-Half Percent (2.5%) Transient Lodging Tax; Creating Tualatin Municipal Code Chapter 9-9; And Adding New Provisions

ISSUE BEFORE THE COUNCIL:

Whether or not to adopt Ordinance 1408-18

RECOMMENDATION:

Staff recommends adoption of the attached Ordinance

EXECUTIVE SUMMARY:

Beginning in 1974, Washington County has had a Transient Lodging Tax (TLT) that has been charged on rentals of hotel rooms in the County. TLT revenue collections are allocated between the County and the City for rentals in Tualatin, per the Washington County Code. As part of the Intergovernmental Agreement with the County for them to collect the tax and distribute it to the City, there was a clause that preempted the City from passing a local TLT rate without forfeiting our share of the county-wide tax. Within the last year, the cities within Washington County and the County negotiated an agreement allowing cities to pass a local TLT rate that would stack on top of the County's 9% rate, with no loss of existing funds. Since that time, Hillsboro, Beaverton, Forest Grove and Tigard have all passed a local TLT rate.

At the September 25, 2017 City Council Work Session, staff sought feedback from the City Council about whether or not the City of Tualatin wanted to consider a local TLT rate to be charged on rentals within the city. Council directed staff to conduct outreach efforts to the local hotels, as well as other concerned parties. Staff met with the Tualatin Chamber of Commerce, Washington County Visitors Association, Oregon Restaurant and Lodging Association, the Grand Hotel and the Century Hotel. A phone conversation was held with Roamer's Rest RV Park. The other registered hotels in Tualatin were contacted, with no response.

After the outreach efforts were completed, Staff presented the results of the outreach to the Council in their January 8, 2018 Work Session and asked for further direction. After discussion that evening, the City Council asked staff to return at a future meeting with an Ordinance to impose a 2.5% Local Transient Lodging Tax.

OUTCOMES OF DECISION:

If Council adopts the attached Ordinance this evening, the local tax rate would be effective May 1, 2018. Staff will return at the March 26, 2018 Council Meeting with an Intergovernmental Agreement (IGA) with Washington County to collect the Local TLT and remit the collections to the City. There is a current IGA in place to collect and remit the City's portion of the Countywide TLT.

FINANCIAL IMPLICATIONS:

The local tax rate is projected to raise \$300,000 of revenue, of which 70% will be set aside for tourism related promotion and activities.

Attachments: Ord No. 1408-18 - TLT Ord

ORDINANCE NO. 1408-18

AN ORDINANCE IMPLEMENTING A TWO AND ONE-HALF PERCENT (2.5%) TRANSIENT LODGING TAX; CREATING TUALATIN MUNICIPAL CODE CHAPTER 9-9; AND ADDING NEW PROVISIONS.

WHEREAS, a local transient lodging tax is a tax imposed by a local government on the sale, service, or furnishing of transient lodging;

WHEREAS, transient lodging includes hotel, motel, inn, and other dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or houses, cabins, condominiums, apartment units, or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy;

WHEREAS, ORS 320.350 authorizes the Council to impose a new local transient lodging tax if at least seventy percent (70%) of the net revenue is used to fund tourism promotion or tourism related facilities or certain debt related expenses and no more than thirty percent (30%) of net revenue is used for city services;

WHEREAS, the City wishes to require online travel companies and short-term rental hosting platforms that accept, receive, or facilitate the payment of rent directly from occupants to be responsible for collecting and remitting the tax to the city; and

WHEREAS, the Council wishes to impose a 2.5% transient lodging tax.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. Tualatin Municipal Code (TMC) Chapter 9-9 is created to establish a transient lodging tax. TMC 9-9 is created to read as follows.

9-9-010 Purpose. The purpose of this Chapter is to establish and impose a transient lodging tax on an occupant of transient lodging within the City.

9-9-020 Administrative Rules and Regulations.

(1) The City Manager must administer and enforce the provisions of this Chapter and may adopt rules and regulations to aid in its administration and enforcement.

(2) Prior to the adoption of administrative rules and regulations, the City Manager must:

(a) give public notice of the intent to adopt rules and regulations;

(b) provide copies of the proposed rules and regulations to interested persons; and

(c) provide not less than 15 calendar days for persons to submit data or written comments on the proposed administrative rule.

(3) Data or comments received from persons must be considered by the City Manager prior to adopting the administrative rule.

(4) Upon final adoption of the administrative rule, public notice must be given and the adopted rules must be filed with the City Recorder.

(5) Copies of current rules and regulations must be made available to the public on the City's website and upon request.

9-9-030 Definitions. Unless the context provides otherwise, the following words and phrases mean:

(1) "Accrual accounting" means the transient lodging tax collector enters the rent due from a transient on records when the rent is earned, whether or not it is paid.

(2) "Cash accounting" means the transient lodging tax collector does not enter the rent due from a transient on records until the rent is paid.

(3) "City" means the City of Tualatin.

(4) "City Council" means the City of Tualatin City Council.

(5) "City Manager" means the City Manager, or the City Manager's designee.

(6) "Collection reimbursement charge" means the amount a transient lodging tax collector may retain as reimbursement for the costs incurred by the transient lodging tax collector in collecting and reporting a transient lodging tax, and in maintaining transient lodging tax records.

(7) "Conference center" means a facility that:

(a) is owned or partially owned by a unit of local government, a governmental agency, or a nonprofit organization; and

(b) meets the current membership criteria of the International Association of Conference Centers.

(8) "Convention center" means a new or improved facility that:

(a) is capable of attracting and accommodating conventions and trade shows from international, national, and regional markets requiring exhibition space, ballroom

space, meeting rooms, and any other associated space, including without limitation banquet facilities, loading areas, and lobby and registration areas;

(b) has a total meeting room and ballroom space between one-third and one-half of the total size of the center's exhibition space;

(c) generates a majority of its business income from tourists;

(d) has a room-block relationship with the local lodging industry; and

(e) is owned by a unit of local government, a governmental agency, or a nonprofit organization.

(9) "Evade" or "Evasion" means a person fails or refuses to collect the transient lodging tax or to make, within the time provided in this Chapter, any report or remittance of the transient tax or any portion thereof, makes a fraudulent return, or otherwise willfully attempts to evade this Chapter.

(10) "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 transient lodging.

(11) "Rent" means any consideration rendered for the sale, service, or furnishing of transient lodging.

(12) "Tourism" means economic activity resulting from tourists.

(13) "Tourism promotion" means any of the following activities:

(a) advertising, publicizing, or distributing information for the purpose of attracting and welcoming tourists;

(b) conducting strategic planning and research necessary to stimulate future tourism development;

(c) operating tourism promotion agencies; and

(d) marketing special events and festivals designed to attract tourists.

(14) "Tourism promotion agency" includes:

(a) incorporated nonprofit organization or governmental unit that is responsible for the tourism promotion of a destination on a year-round basis;

(b) a nonprofit entity that manages tourism-related economic development plans, programs, and projects; or

(c) a regional or statewide association that represents entities that rely on tourism-related business for more than 50 percent of their total income.

(15) "Tourism-related facility" means:

(a) a conference center, convention center, or visitor information center; and

(b) the improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.

(16) "Tourist" means a person who, for business, pleasure, recreation, or participation in events related to the arts, heritage, or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from and unrelated to the person's community of residence, and that trip:

(a) requires the person to travel more than 50 miles from the community of residence; or

(b) includes an overnight stay.

(17) "Transient" means any person who exercises occupancy or is entitled to occupancy in transient lodging for a period of less than 30 consecutive calendar days, counting portions of calendar days as full days. The day an individual checks out of the transient lodging is not included in determining the 30-day period if the individual is not charged rent for that day. Any such individual so occupying or entitled to occupy space in transient lodging is a "transient" for purposes of this Chapter until the period of 29 days has expired, unless there is an agreement in writing between the transient lodging tax collector and the transient 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 the ordinance codified in this Chapter may be considered. A human being who pays for lodging on a monthly basis, irrespective of the number of days in such month, is a "transient."

(18) "Transient lodging" means:

(a) hotel, motel, and inn dwelling units that are used for temporary overnight human occupancy;

(b) spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or

(c) houses, cabins, condominiums, apartment units, or other dwelling units, or portions of any of these dwelling units, used for temporary human occupancy.

(19) “Transient lodging intermediary” means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and charges for occupancy of the transient lodging.

(20) “Transient lodging provider” means a person who furnishes transient lodging, and includes a person who operates a transient lodging facility, whether in the capacity of owner, managing agent, lessee, sublessee, mortgagee in possession, licensee, concessionaire, or any other capacity.

(21) “Transient lodging tax collector” means a transient lodging provider or a transient lodging intermediary.

(22) “Visitor information center” means a building, or a portion of a building, the main purpose of which is to distribute or disseminate information to tourists.

9-9-100 Tax Rate and Computation; Total Retail Price.

(1) For the privilege of occupancy in any transient lodging within the corporate limits of the City, each transient must pay a tax of two and one-half percent (2.5%) of the rent. The transient lodging tax imposed is in addition to, and not in lieu of, any state or other local transient lodging tax collected within the corporate limits of the City.

(2) The transient lodging tax must be computed on the total retail price, including all charges other than taxes, paid by a person for occupancy of the transient lodging. The total retail price paid by a person for occupancy of transient lodging that is part of a travel package may be determined by reasonable and verifiable standards from books and records kept in the ordinary course of the transient lodging tax collector’s business.

(a) If a separate fee is charged for a service and the service is optional, that fee is not subject to the transient lodging tax imposed.

(b) If a separate fee is charged for a service and the service is not optional, or if the value of a service is included in the normal lodging rate, the amount allocated to the service is subject to the transient lodging tax imposed.

(c) If the provider offers a lodging package that includes something that is not associated with the actual lodging or is provided by a third party, only the regular lodging rate that would have been charged absent the package item is subject to the transient lodging tax imposed.

(d) Any allocation made for the City’s local transient lodging tax should be consistent with the allocation for the State of Oregon transient lodging tax.

(3) The transient lodging tax constitutes a debt owed by the transient to the City. The transient must pay the transient lodging tax to the transient lodging tax collector at the time the rent is paid or pay directly to the City.

9-9-110 Tax Exemptions.

(1) The following are exempt from the transient lodging tax:

(a) a dwelling unit in a hospital, health care facility, long term care facility, or any other residential facility, that is licensed, registered or certified by the Department of Human Services or the Oregon Health Authority;

(b) a dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;

(c) a dwelling unit that is used by members of the general public for temporary human occupancy for fewer than 30 days per year;

(d) a dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;

(e) a dwelling unit at a charitable nonprofit camp, charitable nonprofit conference center, or other charitable nonprofit facility;

(f) a dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:

(i) all dwelling units occupied are within the same facility; and

(ii) the person paying consideration for the transient lodging is the same person throughout the consecutive period.

(2) A dwelling unit leased for a consecutive period of 30 days or more during the year by one person but occupied by one or more other persons for a consecutive period of less than 30 days is not exempt from the tax imposed under this Chapter during each person's occupancy that is for a consecutive period of less than 30 days.

9-9-120 Use of Funds.

(1) The City Manager must deposit all money collected pursuant to this Chapter in accordance with State Local Budget Law.

(2) All net revenue from the tax, following reductions attributed to collection reimbursement charges, must be used as follows:

(a) At least 70 percent of the net revenue from the transient lodging tax must be used to:

(i) fund tourism promotion or tourism-related facilities; or

(ii) finance or refinance the debt of tourism-related facilities and pay reasonable administrative costs incurred in financing or refinancing that debt; provided:

(1) the net revenue may be used for administrative costs only if the City provides a collection reimbursement charge; and

(2) upon retirement of the debt, the City reduces the tax by the amount by which the tax was increased to finance or refinance the debt.

(b) No more than 30 percent of net revenue from the transient lodging tax may be used to fund City services.

9-9-130 Collection of Transient Lodging Tax; Collector Reimbursement.

(1) The transient lodging tax must be collected by the transient lodging tax collector who receives the consideration rendered for occupancy of the transient lodging. If, for any reason, the transient lodging tax due is not paid by the transient to the transient lodging tax collector, the City Manager may require the transient lodging tax be paid by the transient directly to the City.

(2) In all cases of credit or deferred payment of rent for transient lodging, the payment of transient lodging tax to the transient lodging tax collector may be deferred until the rent is paid. A transient lodging tax collector is not liable for the transient lodging tax until credits are paid or deferred payments are made. The deferral allowed by this subsection does not excuse a transient lodging tax collector from liability for any failure to collect the tax due.

(3) The transient lodging tax collector may withhold a collection reimbursement charge of five percent (5%) of the transient lodging tax amount collected.

9-9-200 Registration of Transient Lodging Tax Collector.

(1) Every person who engages or wishes to engage in business as a transient lodging tax collector of a transient lodging in the City must register with the City on a form provided by the City Manager.

(2) The person registering with the City must provide the name under which the transient lodging tax collector transacts or intends to transact business, the location of the place or places of business, and such other information to facilitate the collection of the tax as the City Manager may require. The transient lodging tax collector must sign the registration.

(3) After the submittal of a completed registration form, the City Manager will issue a certificate of authority, at no charge, to each registrant to collect the transient lodging tax.

(a) Certificates are nonassignable and nontransferable and must be surrendered immediately to the City Manager upon the cessation of business at the location named or upon its sale or transfer.

(b) Each certificate and duplicate must state the place of business to which it is applicable and must be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

(4) The certificate of authority must state the following:

(a) the name of the transient lodging tax collector;

(b) the address of the transient lodging;

(c) the date upon which the certificate was issued; and

(d) a certificate number as assigned by the City Manager.

9-9-210 Transient Lodging Tax Collection Records.

(1) The amount of transient lodging tax must be separately stated upon the transient lodging tax collector's business records, including lodging receipts provided to transients.

(2) The transient lodging tax collector must enter the transient lodging tax on the transient lodging tax collector's records when rent is collected if the transient lodging tax collector keeps records on the cash accounting basis or, if the transient lodging tax collector keeps records on the accrual accounting basis, when rent is earned. If rent is paid in installments, the transient must pay a proportionate share of the transient lodging tax to the transient lodging tax collector with each installment.

(3) The transient lodging tax collected or accrued by the transient lodging tax collector, or which should have been charged by the transient lodging tax collector, constitutes a debt owing by the transient lodging tax collector to the City.

(4) A transient lodging tax collector must not collect, report, or remit amounts of the transient lodging tax in amounts smaller than one cent. Fractions of cents calculated as an amount of tax that is collectable, reportable, or remittable may be ignored.

(5) The transient lodging tax collector must keep records, render statements, and comply with rules adopted by the City Manager. The records and statements required must be sufficient to show whether there is a tax liability and the transient lodging tax collector must retain all records for a period of at least 42 months from the end of the month in which the record was originally created.

9-9-220 Audit and Inspection; Certain Records Exempt from Public Disclosure.

(1) The City Manager may examine, inspect, audit, and make copies of the books, papers, and accounting records relating to room rentals of any transient lodging tax collector. The City Manager may investigate the business of the transient lodging tax collector to verify the accuracy of any return made, or if no return is made by the transient lodging tax collector, to ascertain and determine the amount required to be paid.

(a) The City Manager must notify the transient lodging tax collector of the intent to inspect prior to the inspection.

(b) All inspections must be conducted during normal business hours.

(2) Records, reports, or returns submitted to the City Manager are exempt from disclosure to the full extent provided by Oregon Public Records laws. However, nothing in this subsection prohibits:

(a) the disclosure to, or the examination of, financial records by City officials, employees, or agents for the purpose of administering or enforcing the terms of this Chapter, or collecting taxes imposed under the terms of this Chapter, or collecting City business license fees;

(b) the disclosure to the taxpayer, or the taxpayer's authorized representative, of financial information, including amounts of transient lodgings taxes, penalties, or interest, after filing of a written request by the taxpayer or the taxpayer's authorized representative and approval of the request by the City Manager;

(c) the disclosure of the names and addresses of any persons to whom a transient occupancy tax collector registration certificate has been issued;

(d) the disclosure of general statistics in a form that prevents the identification of financial information regarding any particular taxpayer's return or application; or

(e) the disclosure of financial information to the City Attorney or other legal representatives of the City, to the extent the City Manager deems disclosure or access necessary for the performance of the duties of advising or representing the City.

9-9-230 Due Date of Payment to City; Returns; Payments and Collection Charges.

(1) The transient lodging tax collected by a transient lodging tax collector are due and payable to the City on a monthly basis on the tenth day of the month for the preceding month. All taxes not remitted to the City on the last day of the month in which they are due are delinquent.

(2) Along with payment of the transient lodging tax, the transient lodging tax collector must file the preceding month's tax return. The returns must be filed on forms prescribed by the City.

(a) The returns must show the amount of transient lodging tax collected or otherwise due for the period covered by the return.

(b) The City Manager may require returns to show the total rentals upon which the transient lodging tax was collected or otherwise due, gross receipts of the transient lodging tax collector for such period and an explanation in detail of any discrepancy between such amounts, the amount of rents exempt, if any, and such other information as may otherwise be necessary for the administration of this Chapter.

(3) The transient lodging tax collector must deliver the return, together with the transient lodging tax due, to the City by personal delivery, mail, or other method authorized by the City Manager. If the return is mailed, the postmark is considered the date of delivery.

(4) For good cause shown, the City Manager may extend, for a period not to exceed one month, the time for making any return or payment of the transient lodging tax. Any transient lodging tax collector granted an extension must pay interest at the rate of one percent per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the transient lodging tax and interest due is not paid by the end of the extension, then the interest becomes a part of the transient lodging tax for computation of penalties under this Chapter.

9-9-240 Penalties and Interest; Lien.

(1) A transient lodging tax collector who fails to remit the full amount of the tax imposed and due prior to delinquency must pay a late payment penalty of 10 percent of the amount of the portion of the tax that is unpaid as of the delinquency date, in addition to the amount of the tax due.

(2) If the transient lodging tax collector does not pay the delinquent amount of transient lodging tax due and the 10 percent late payment penalty within 30 days following the delinquency date, the transient lodging tax collector must pay a second late payment penalty of 15 percent of the portion of the transient lodging tax that remains unpaid as of the date that is 30 days following the delinquency date in addition to the remaining unpaid amount of the transient lodging tax and first late payment penalty.

(3) If the City Manager determines that the nonpayment is on account of fraud or intent to evade the provisions of this Chapter, or any rules or regulations adopted pursuant to this Chapter, a penalty of 25 percent of the amount of the transient lodging tax due must be added thereto in addition to the penalties stated in this section.

(4) In addition to the penalties imposed, a transient lodging tax collector who fails to remit a transient lodging tax imposed by this Chapter must pay interest at the rate of one percent per month or a fraction thereof without proration for portions of a month, on the amount of the transient lodging tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(5) Every penalty imposed and such interest as accrues under the provisions of this section merge and become a part of the transient lodging tax required to be paid.

(6) Within 10 days of notice of the imposition of a late payment penalty, a transient lodging tax collector may petition the City Manager for waiver or refund of any penalty or portion thereof. The City Manager may, if a good and sufficient reason is shown that such failure is not due to willful neglect, waive or refund the penalty in full or in part.

(7) The City may record a lien in the City's lien docket against any real property owned by the transient lodging tax collector in the City as to any delinquent remittances by the transient lodging tax collector.

9-9-250 Alternative Remittance of Receipts from Tax on Camping and Recreational Vehicle Spaces.

(1) A transient lodging tax collector who collects tax on rental of privately owned camping or recreational vehicle spaces may hold the tax collected until the amount of money held equals or exceeds \$100.00, regardless of the schedule established by the City for payment of the tax.

(2) Once the amount held by a transient lodging tax collector equals or exceeds \$100.00, or by December 31st of each year if the \$100.00 threshold is not met, the transient lodging tax collector must remit the transient lodging tax collected at the next following reporting period established by the City for payment of the tax.

(3) No penalty or interest will be assessed against a transient lodging tax collector who withholds payments pursuant to this section.

9-9-300 Deficiency Determination.

(1) The City Manager may investigate any act, or failure to act, to determine the correct amount of the transient lodging tax due and payable to the City, including but not limited to the following:

(a) if the City Manager determines that a transient lodging tax collector's return or remittance of the transient lodging tax is missing, incomplete, or otherwise incorrect, the City Manager may compute and determine the amount of the transient lodging tax due based upon the facts contained in the transient lodging tax collector's return, if any, or any other source of information.

(b) if a transient lodging tax collector fails to collect, report, or remit the transient lodging tax required to be collected and paid to the City pursuant to this Chapter, or submits a fraudulent return, or commits fraud or willful intent to evade, or otherwise violates or attempts to violate this Chapter, the City Manager may estimate the transient lodging tax due, and calculate the amount owing from the transient lodging tax collector for tax remittance, interest, and penalties.

(2) Upon making a deficiency determination, the City Manager must send notice of the deficiency to the transient lodging tax collector. Any deficiency in the payment of the transient lodging tax due is due and payable immediately upon delivery of a notice of the deficiency from the City Manager to the transient lodging tax collector, at which time the deficiency amount owed is also delinquent. The City Manager will apply any penalty and interest relating to the deficiency amount owed as set forth in this Chapter.

(3) In making a deficiency determination, the City Manager may offset any overpayment the transient lodging tax collector has against any deficiency, penalty or interest the transient lodging tax collector owes.

(4) The City Manager must deliver the transient lodging tax collector a written notice of any deficiency determination within three years after the last day of the month following the end of the month for which the amount is proposed to be determined or within three years after the return is filed, whichever period is later. However, in the case of fraud or willful intent to evade this Chapter, or the rules and regulations adopted pursuant to this Chapter, every deficiency determination must be made and notice of the deficiency determination delivered to the transient lodging tax collector within 10 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 10 years after the return is filed, whichever period is later.

(5) The deficiency determination is final 10 days after receipt of the notice of deficiency, unless a timely petition for redetermination and refund is received by the City Manager, as provided in TMC 9-9-310.

9-9-310 Petition for Redetermination and Refund.

(1) A transient lodging tax collector who receives a notice of deficiency determination from the City Manager may petition for redetermination and refund of any overpayment by filing a petition for redetermination and refund with the City Manager within 10 days of the transient lodging tax collector's receipt of the notice of a deficiency determination.

(2) The petition for redetermination and refund must include full payment of all transient lodging taxes, penalties, and interest determined by the City Manager to be due.

(3) Filing a petition for redetermination and refund is a prerequisite to seeking judicial review and the determination is final if a petition for redetermination and refund is not timely filed.

9-9-320 Hearing on Petition for Redetermination and Refund.

(1) If a petition for redetermination and refund is filed within the allowable period, the City Manager must reconsider the determination, and, if the petitioner requests, must grant the petitioner an oral hearing and provide at least 10 days' notice of the time and place of the hearing, unless the City Manager and petitioner agree otherwise. The City Manager may continue the hearing from time to time as may be necessary.

(2) The City Manager may decrease or increase the amount of the original determination as a result of considering the petition and evidence and argument presented at the hearing.

(3) After considering the petition for redetermination and refund and all available information, the City Manager must issue a redetermination decision and mail the decision to the petitioner. If the City Manager increases the amount of the original determination, such increase is due upon delivery of a written notice of the increase to the petitioner.

9-9-330 Refunds to Transient Lodging Tax Collector.

(1) If a transient lodging tax collector concludes the transient lodging tax collector has paid more tax, penalty or interest than is due, the transient lodging tax collector may file a claim in writing stating the facts upon which the claim is based. The claim must be filed with the City Manager within one year from the date of payment.

(2) If the claim is approved by the City Manager, the excess amount paid must be credited against any amounts then due and payable from the transient lodging tax collector and the balance refunded to the transient lodging tax collector within 14 business days of the date the City Manager concludes that the refund is due.

(3) The transient lodging tax collector has the burden of proving the facts that establish the basis for a refund. This section is not applicable to any amount determined by the City Manager to be due pursuant to the deficiency determination provisions of TMC 9-9-310.

9-9-340 Refunds to Transient.

(1) If a transient concludes the transient paid more tax than is due, the transient may file a claim in writing stating the facts upon which the claim is based. The claim must be filed with the City Manager within one year from the date of payment.

(2) If the claim is approved by the City Manager, the excess amount collected must be refunded to the transient within 14 business days of the date the City Manager concludes that the refund is due.

(3) The transient has the burden of proving the facts that establish the basis for a refund.

9-9-350 Compromise of Tax. The City Manager may adjust, or enter into a settlement of, any amount believed to be due if, as a result of a bankruptcy filing, foreclosure, bona fide legal or factual dispute, or similar circumstance, when it is in the best interest of the City to do so.

9-9-360 Security for Collection of Tax. To ensure compliance with this Chapter, the City Manager may require any transient lodging tax collector deposit security in the form of cash, bond, or other security acceptable to the City Manager. The amount of the security must be fixed by the City Manager, but cannot be greater than five times the transient lodging tax collector's estimated average monthly tax liability for the period for which the transient lodging tax collector files returns, determined in such manner as the City Manager deems proper, or \$5,000, whichever is less. The amount of the security may be increased or decreased by the City Manager subject to the limitations of this section.

9-9-400 Limitations Period on City Enforcement of Collection.

(1) The City may bring legal action to collect any amounts owed to the City under this Chapter within three years after any tax or any amount of tax required to be collected becomes due and payable, or at any time within three years after any determination becomes final, whichever is later.

(2) Notwithstanding subsection (1), in the case of fraud or willful intent to evade this Chapter or the rules and regulations adopted pursuant to this Chapter, the City may bring legal action to collect any amounts owed to the City under this Chapter within 10 years after any tax or any amount of tax required to be collected becomes due and payable, or at any time within 10 years after any determination becomes final, whichever is later.

9-9-410 City Manager Review. Any determination made by the City Manger under this Chapter is a quasi-judicial decision and is not appealable to Council. Appeals from any determination made by the City Manager are solely and exclusively by writ of review to the Circuit Court of Washington County, as provided in ORS 34.010 to 34.100.

9-9-500 Violations; Penalties.

- (1) Any person who violates any provision of this Chapter commits a civil infraction and is subject to a fine of up to \$1,000. Each violation, and each day that a violation continues, is a separate civil infraction.
- (2) Each transient lodging transaction for which tax, penalty, or interest otherwise due is not paid is a separate civil infraction.
- (3) Each day a person fails to register as a transient lodging tax collector is a separate civil infraction.
- (4) A finding that a person has committed a civil infraction in violation of this Chapter does not act to relieve the person from compliance with the provisions of this Chapter.
- (5) If a court finds that a transient lodging tax collector collected the tax imposed by this Chapter and intentionally failed to remit the tax proceeds to the City when required by this Chapter, the amount of penalty may be increased up to 10 times.
- (6) The civil infraction procedures in Tualatin Municipal Code Chapter 7-01 apply to the prosecution of any violation of this Chapter.

9-9-510 Evidence of Amounts of Tax Collected. For purposes of enforcement of this Chapter, including any civil infraction under TMC 7-01, all amounts listed as room tax on bills or invoices issued by the transient lodging tax collector are considered tax collected by the transient lodging tax collector, unless the transient lodging tax collector received no payment on the bill or invoice.

9-9-520 Remedies Cumulative. Any fines issued under authority of this Chapter are in addition to, and not in lieu of, any other civil, criminal, or administrative penalty, sanction, or remedy otherwise authorized by law.

Section 2. Transient Lodging Tax Collector Registration Deadline. A transient lodging tax collector must register, as provided in TMC 9-9, not later than 30 calendar days after the effective date of this ordinance.

Section 3. Effective Date. This ordinance is effective May 1, 2018.

Section 4. Severability. Each section of this ordinance, and any part thereof is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance remains in full force and effect.

Adopted by the City Council this ____ day of _____, 2018.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST

BY _____
City Attorney

BY _____
City Recorder