

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 15, 2016

Order \_\_\_ Ordinance X Resolution \_\_\_ Motion \_\_\_ Information \_\_\_  
No. No. 2016-2806 No.

**SUBJECT: An Ordinance Amending The Newberg Municipal Code Regarding The Transient Lodging Tax Hotel Definition, Clarifying Exemptions, And Declaring An Emergency**

Contact Person (Preparer) for this Motion: Jeanne Schuback/Truman Stone  
Dept.: Legal Dept  
File No.:

HEARING TYPE: LEGISLATIVE

## RECOMMENDATION:

Adopt Ordinance No. 2016-2806 amending the Newberg Municipal Code for the Transient Lodging Tax (TLT).

## EXECUTIVE SUMMARY:

### A. SUMMARY:

- Adds Important Exemptions to the TLT that are permitted under State Law.
- Adds Bed and Breakfast entities, Rooming Houses and Lodging Houses to the definition of Hotel to clear up any ambiguity for the purposes of collecting TLT.
- Adds to the Exemption of TLT, a limit on the number of rental days per year and requires exempt entities to not advertise as rental entities.

### B. SYNOPSIS:

Amend NMC to: 1) comply with important exemptions to TLT that are permitted under ORS 320.308; and 2) allow the City to collect TLT on non-traditional hotel/motel entities such as those found on AirBnB and Vacation Rental By Owner (VRBO).

There are several important exemptions listed under ORS 320.308 that are not included in our code. These exemptions include rentals for: hospital/healthcare purposes; substance abuse or mental health treatment and emergency/temporary shelters. To conform to the State allowed exemptions, these exemptions should be included in NMC.

The definition for Hotel lists tourist homes or houses, but does not specifically use the term “Bed and Breakfast.” Furthermore the current exemption of rentals incidental to the owner’s use NMC 3.10.050(D) is too vague. Under the current definition for Hotel and the exemption for rentals incidental to the owner’s use, there is some uncertainty regarding collection of TLT on non-traditional hotel/motel entities such as those found on AirBnB and VRBOs. This amendment would limit the number of days per year a tax-exempt rental is permitted to be rented and exclude from the tax exemption entities that advertise.

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**C. ANALYSIS:**

**EXEMPTIONS ALLOWED UNDER ORS 320.308:**

NMC currently does not provide an exemption for the TLT in several situations where the State allows an exemption. ORS 320.308 lists the following exemptions:

- (1) a dwelling unit in a hospital, healthcare 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;
- (2) A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;
- (3) \*\*\*
- (4) 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.

These situations are such that the City of Newberg would not want to impose TLT. For that reason, these exemptions should be listed in NMC.

**DEFINING ENTITIES SUBJECT TO TLT:**

Hotel is defined under the NMC as: any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less or dwelling, lodging, or sleeping purposes, and includes any hotel, inn, *tourist home or house*, motel, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in a mobile home or trailer park, or similar structure or portion of a structure so occupied, provided the occupancy is for less than a 30-day period. NMC 3.10.010

This definition for Hotel does not specifically use the term “Bed and Breakfast” or include a private home that rents out rooms. There is some uncertainty what the terms tourist home or house mean.

Some cities and counties include in their code a definition for Hotel that specifically includes Bed and Breakfast. Other cities have explicitly excluded Bed and Breakfast entities from any TLT exemption. Many cities have listed Rooming House and Lodging House in their definition for Hotel thereby including private homes that rent out rooms.

City/County	Includes BnB in Hotel definition	Specifically excludes BnB from exemption	Includes Rooming House and Lodging House in Hotel definition
Portland	Defines BnB separately from Hotel	X	X
Hood River	X		X
Nehalem	X		
Keizer	X		
Cannon Beach	X		X
West Linn		X for those which rent 3 or more rooms	
Roseburg	X		
Clackamas County	X		
Lebanon	X		
The Dalles	X		

St. Helens	X		
Sweet Home	X		
Lake Oswego	X		
Florence			X
Garibaldi			X
Hermiston			X
Sandy			X
Scappose			X
Springfield			X
The Dalles			X
Albany			X
Baker City			X
Coos Bay			X
Corvallis			X
Fairview			X

A Rooming and Lodging House is commonly defined as a private house in which rooms are rented for living or staying temporarily. The goal is to capture in the definition for Hotel all entities that rent space for transient occupancy regardless of whether the entity is formally called a Bed and Breakfast or not. For this reason, the current definition for Hotel should be amended to include Bed and Breakfast Entities, Rooming Houses and Lodging Houses.

**DELETING VAGUE TLT EXEMPTION:**

NMC 3.10.050 allows for specific exemptions where no TLT is imposed. These exemptions include: rentals for occupancy for more than 30 consecutive days NMC 3.10.050(A); rentals paid on a monthly basis irrespective of the number of days in a month NMC 3.10.050(B); rentals of \$10.00 per day or less NMC 3.10.050(C) and property owned by George Fox University. NMC 3.10.050(E)

Currently, NMC 3.10.050(D) exempts from paying TLT, any person who rents a private home, vacation cabin, or like facility from any owner who rents the facility incidentally to the owner’s own use. The term ‘incidentally’ does not define the length each rental period or number of days a year the rental is rented. With this exemption, TLT is not clearly applicable to non-traditional hotel/motel entities such as VRBOs (Vacation Rental by Owner).

Furthermore, individual rooms for rent within a private home are not explicitly covered in the definition of hotel. Therefore, TLT is not applied to any person who rents a room within an owner’s home for less than 30 days at a time without regard of how often the room is rented per year.

In order to apply TLT to these non-traditional entities, some cities and counties have placed limits on the TLT exemption of rentals that are incidental to the owner’s occupancy in two different ways. First, to be exempted from TLT, the rental may be rented for a limited number of rental days in a calendar year. The number of days permitted under an exemption from TLT range from 7 to less than 30 days per year. Second, the exemption applies to rentals that do not advertise as a rental.

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City/County	Limit on Rental Days for Exemption from TLT	Not Advertised as Rental
Bend	Fewer than 30 days total per year	
Portland	Private/vacation home may only rent for 7 or less days in a calendar year	
Lincoln City	home, vacation cabin or like rented for a total of less than 15 days per year	Does not advertise for rent or list with agent as vacation rental
Medford	Lodging in a private residence rented for less than a total of 30 days per year	
Wilsonville	Private/vacation home or like rented for 7 days or less per year	
Central Point	Lodging in private residence rented less than 30 days per year	

The proposed amendment will deny exemption from the TLT to entities that advertise as rentals or with an agent. Further the proposed amendment will limit the number of days in a year that a rental may be rented to 15 days per year.

**FISCAL IMPACT:**

The exact fiscal impact is not known at this time. As the City moves forward to work with operators who are not currently paying the TLT, more information and additional revenue should be obtained. Also unknown at this time is whether or not the non-participating operators are paying the TLT through third-party intermediaries, such as Priceline, Orbitz, etc. The City does receive payments from these third-party intermediaries, but no detail is currently provided regarding which operators are using the services of the third-party intermediaries. The proposed code change will clear the way for City staff to begin reaching out to non-participating operators to educate and gain the required participation from all operators in the City. The chart below illustrates known operators within the City limits, both participating and non-participating.

**ATTACHMENTS:**

Ordinance 2016-2806  
 Exhibit “A”: Proposed Transient Lodging Tax Text Amendment

**CITY OF NEWBERG HOTEL/MOTEL/VACATION RENTALS**

<b>Hotel-Motel</b>	<b>Pays TLT</b>	<b>VRBO's</b>	<b>Pays TLT</b>	<b>VRBO's</b>	<b>Pays TLT</b>	<b>VRBO's</b>	<b>Pays TLT</b>
The Allison Inn & Spa	Y	University House of Newberg	Y	Chehalem Knoll	N	Debby Thomas	N
2525 Allison Lane		401 N Meridian Street		3035 Knoll Dr		733 S Garfield	
Newberg, Oregon 97132		Newberg, Oregon 97132		Newberg, Oregon 97132		Newberg, Oregon 97132	
Pierre Zreik		Leigh Wellikoff		David & Jane Campbell		Private Apartment	
503-554-2525		503-538-8438					
Best Western Newberg Inn	Y	The Dwelling Place	Y	The Downtowner Newberg	N	Wimsey Book Cellar	N
2211 Portland Road		1713 Villa Road		110 S College Street		1014 Charles Street	
Newberg, Oregon 97132		Newberg, Oregon 97132		Newberg, Oregon 97132		Newberg, Or 97132	
Champak Patel		Ruth Schrempp		Lori Petersen		Timothy & Sandra Olmstead	
503-516-4443		503-537-0217		503-502-5145			
Newberg Shilo Inn	Y	Lions Gate Inn	Y	Nondice's Inn (B & B)	N		
501 Sitka Avenue		401 N Howard Street		609 E. Columbia Street			
Newberg, Oregon 97132		Newberg, Oregon 97132		Newberg, Oregon 97132			
Mal Krisoff		LLP Properties LLC c		Nondice McFall			
503-783-5222		503-537-0217					
Town & Country Motel	Y	The Painted Lady-Cottage	Y	Anne Beals - vacation rental	N		
1864 Portland Road		205 College Street		1978 N Carol Avenue			
Newberg, Oregon 97132		Newberg, Oregon 97132		Newberg, Oregon 97132			
Champal Patel		Jessica Bagley		Upstairs Apt 1-room rental			
503-516-4443		503-538-3850					
Travelodge Suites	Y	Newberg Bungalow	Y	Pete & Krista Miller	N		
2816 Portland Road		214 N Washington Street		135 Lauren Court			
Newberg, Oregon 97132		Newberg, Oregon 97132		Newberg, Oregon 97132			
Chempel Patel		Life Style Properties		Upstairs - 3 room rental			
503-516-4443		971-832-3399					
		VaCasa Rentals/Moore Farmhouse	Y	Mary & Christopher Czarnecki	N		
		520 Wynooski Street		209 E 5th Street			
		Newberg, Oregon 97132		Newberg, OR 97132			
		VaCasa Rentals - 503-854-6856		Cozy room rental			



# ORDINANCE No. 2016-2806

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**AN ORDINANCE AMENDING THE NEWBERG MUNICIPAL CODE REGARDING THE TRANSIENT LODGING TAX HOTEL DEFINITION, CLARIFYING EXEMPTIONS, AND DECLARING AN EMERGENCY**

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**RECITALS:**

**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. Effective July 1, 2016, the Transient Lodging Tax (TLT) increases to nine percent of the rent collected by the operator.
2. Newberg Municipal Code does not provide important exemptions to TLT that are allowed under State Law.
3. Newberg Municipal Code is vague as to how it applies to non-traditional rental entities.

**THE CITY OF NEWBERG ORDAINS AS FOLLOWS:**

1. The Council finds that amending the Newberg Municipal Code to clarify the exemptions to the Transient Lodging Tax is in the best interest of the City. The Council adopts the amendments to the Newberg Municipal Code as shown in Exhibit "A". Exhibit "A" is hereby adopted and by this reference incorporated.
2. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect immediately upon passage by the council and signature of the mayor.

➤ **EFFECTIVE DATE** of this ordinance is the adoption date, which is: August 15, 2016.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 15th day of August, 2016, by the following votes: **AYE:**      **NAY:**      **ABSENT:**      **ABSTAIN:**

\_\_\_\_\_  
Sue Ryan, City Recorder

**ATTEST** by the Mayor this \_\_\_\_\_ day of August, 2016.

\_\_\_\_\_  
Bob Andrews, Mayor

Note: Existing text is shown in regular font.  
Added text is shown in double underline.  
Deleted text is shown in ~~strike through~~.

**Section 1.** Section 3.10.010 is amended to read as follows:

**3.10.010 Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**"Agent"** ~~includes, but is not limited to, an on-line or internet based booking service (Craigslist, AirBnB, VRBO, HomeAway, FlipKey, VactionHomeRentals, Roomorama, as examples), a travel intermediary, or a person licensed by the Oregon Real Estate Agency.~~

**"City council"** means the city council of the City of Newberg, Oregon.

**"Hotel"** means any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less or dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, rooming house, lodging house, bed and breakfast, sleeping space in a private residence, accessory dwelling unit, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in a mobile home or trailer park, or similar structure or portion of a structure so occupied, provided the occupancy is for less than a 30-day period.

**"Occupancy"** means the use or possession, or the right to use or possession, for lodging or sleeping purposes, of any room in a hotel, or space in a mobile home or trailer park, or portion of any room in a hotel, or space in a mobile home or trailer park.

**"Operator"** means the person who is proprietor of a hotel and motel in any capacity and, where the operator performs their functions through a managing agent other than an employee, the managing agent who shall have the same duties and liabilities as their principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

**"Person"** means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

**"Rent"** means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, whether or not valued in money, without any deduction.

“**Rent package plan**” means the consideration charged for both food and rent where a single rate is made for the total for both. The amount applicable to rent for determination of the transient lodging tax under NMC [3.10.020](#) shall be the same charge made for rent when not a part of a package plan.

“**Tax administrator**” means the finance director or designee of the City of Newberg.

“**Transient**” means any individual who exercises occupancy or is entitled to occupancy in a hotel, motel, or other establishment that is not said individual’s legal residence.

**Section 2.** Section 3.10.050 is amended to read as follows:

**3.10.050 Exemptions.**

No tax may be imposed upon:

- A. Any occupancy for more than 30 successive calendar days;
- B. Any person who pays for lodging on a monthly basis, irrespective of the number of days in the month;
- C. Any occupant whose rent is of a value less than \$10.00 per day;
- D. Any person who rents a room, private home, vacation cabin, or like facility from any owner who rents the facility incidentally to the owner’s own use. Incidentally to an owners use means that the rental is rented for a total of less than 15 days per calendar year and the rental is not advertised for rent or listed with an Agent as a rental;
- E. Any exempt property owned and operated by George Fox University;
- F. Any occupancy 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;
- G. Any occupancy in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;
- H. An occupancy, 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.
- I. Any Federal Government employee traveling on official government business, who presents an official Government Exemption Certificate or official travel authorization.