



# CITY OF BETHEL

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*Sponsored by: Mayor Phillips  
Introduced: November 11, 1997  
Public Hearing: November 25, 1997  
Action: Adopted  
Vote: Unanimous*

## ORDINANCE NO. 97-22

**AN ORDINANCE OF THE CITY OF BETHEL ADOPTING A TRANSIENT LODGING BUSINESS TAX.**

**BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BETHEL:**

Section 1. Classification. This ordinance is permanent in nature and shall become a part of the Bethel Municipal Code.

Section 2. Addition of new Title. The Bethel Municipal Code is amended by adding a new Chapter 4.14 reading:

### TITLE 4 FINANCE AND REVENUE

#### Chapter 4.14 TRANSIENT LODGING BUSINESS TAX

- 4.14.010 Definitions.
- 4.14.020 Levy, payment, collection and distribution of tax revenues
- 4.14.030 Excluded receipts.
- 4.14.040 Operators exempt from the tax.
- 4.14.050 Tax returns and remittance.
- 4.14.060 Involuntary return.
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- 4.14.080 Application of payments.
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- 4.14.170 Administrative regulations.
- 4.14.180 Refunds.
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#### **4.14.010 Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Department" means the City of Bethel Finance Department.
2. "Director" means the Director of the City of Bethel Finance Department or the Director's designee.
3. "Knowingly" includes the state of mind of a person when the person knows of or is aware of the existence of this chapter or of the tax imposed by this chapter
4. "Operator" means a person who owns, operates or controls any facility in which any transient lodging is offered for occupancy for compensation.
5. "Person" means all persons, both natural and artificial.
6. "Quarter" means one of the four consecutive three-month periods in a calendar year, the first beginning on January 1 each year.
7. "Room" means any room, suite of rooms, facility or structure, or any part thereof, whether temporary or permanent, which is rented or offered for rent for use as a residence, dwelling, sleeping place, place of lodging or other use auxiliary to such residential, dwelling, sleeping or other lodging use and includes bed-and-breakfast operations; provided however, pursuant to BMC 4.14.030 A(2) and (3), "room" does not include any such room used exclusively as part of a substantially different business, such as a hospital room, patient treatment room or a university dormitory room, where the primary purpose of the business is other than providing meals, lodging, adventures, entertainment or recreation.
8. "Tax" means the lodging business tax levied under this chapter.
9. "Tax return" means the quarterly report to be submitted to the department as required by BMC 4.14.050.
10. "Transient lodging" means rooms offered or made available to persons for occupancy on a daily basis or for a shorter or longer period of time, but does not include rooms that are available only for occupancy of 42 or more continuous days under a written rental agreement.

11. "Violates" and "violation" include any failure of a person for any reason to comply with a requirement or duty imposed by this chapter.

#### **4.14.020 Levy, payment, collection and distribution of tax revenues.**

Subject to the provisions of this chapter, there is levied a transient lodging business tax on all operators in an amount equal to three percent of the gross receipts of the operator from the rental of rooms.

#### **4.14.030 Excluded receipts.**

A The receipts from the following occupancies and rentals are excluded in the computation of gross receipts for purposes of the tax:

1. Rental of rooms in facilities of a non-profit, charitable organization when the occupancy is provided as part of a charitable event or function. An entity is not a charitable organization if the charitable benefits are provided primarily to members or on a basis more beneficial to members than to non-members. A charitable, non-profit organization must be registered as a 501(c)(3) organization under the Internal Revenue Code and none of its income from any use of its transient lodging rooms may be unrelated taxable business income.

2. Patient occupancies of hospital or other rooms when the occupancy is required by the health care provider and the room is held, controlled and operated by the health care provider for patient treatment and recovery.

3. Student occupancies of dormitory or other student housing owned and operated by an educational institution accredited or licensed by the State of Alaska when the student is registered in a regular course of classes that leads to a degree, a license or qualification to obtain a license or to take a test for a license and the classes are being taken and attended on substantially a full time basis.

4. Occupancies exclusively by one or more individuals specifically named in a written agreement for an occupancy for a period of 42 or more continuous days where the rent for the initial period is paid in advance and is paid not less frequently than monthly in advance thereafter. This exemption does not include rooms rented by an employer or other persons for use by different individuals over the period of the agreement, nor does it include an occupancy that met the requirement of the first sentence but that is terminated before the end of

the initial 42 day period and the occupant or the person who paid for the room is refunded any part of the pre-paid rent for the part of the occupancy period that follows the termination.

B. An operator whose status entitled them to exempt status under A(1), (2) or (3) of this section shall immediately notify the City of any change in that status. An operator whose operations become taxable because of a loss of exempt status shall pay the tax based on receipts from or allocable to occupancies that occurred after the loss of the status or condition upon which the tax exemption was based.

#### **4.14.040 Operators exempt from the tax.**

A. The following operators are exempt from the tax.

1. State and federal agencies that are exempt from the tax as a matter of state or federal law.
2. Political subdivisions of the State of Alaska or the United States that are exempt from the tax by statute or constitution.
3. Persons that are chartered, incorporated or organized pursuant to state or federal statutes that are exempt from the payment of the tax by statute or constitution.

B. A person who rents or leases a transient lodging facility from an owner or operator who is exempt under BMC 4.14.040A(1), (2) or (3) or enters into a management agreement for the transient lodging facility of such an exempt owner or operator under which the lessee or the manager receives compensation dependent in any way upon the occupancy or income from the facility is not an exempt operator.

C. A person whose status entitled them to exempt status under this section shall immediately notify the City of any change in that status. An operator whose operations become taxable because of a loss of exempt status shall pay the tax based on the receipts from or allocable to occupancies that occurred after the loss of the status or condition upon which the tax exemption was based.

#### **4.14.050 Tax returns and remittance.**

A. Within 10 business days after the end of each calendar quarter, every operator not exempt under this chapter shall deliver to the department a tax return, signed by the operator(s), on a form provided by the department for each registered place of business regardless of whether taxes are due for the quarter. Each operator shall remit therewith the entire amount of the tax due from such operator pursuant to this chapter for the immediately preceding calendar quarter. Tax returns and the tax due under this chapter must be actually received by the department within the time required by this section. A tax or report actually received by the department at any time following the tenth business day of the month following the calendar quarter for which the tax is due is delinquent and subject to penalty and interest under this chapter.

B. The tax return shall set forth or include:

1. The number of transient lodging rooms in each separate facility operated by the operator and the address or location of each facility
2. The gross receipts from each facility, including all receipts that are excluded under BMC 4.14.030A(1), (2) or (3).
3. Receipts from each facility that are exempt under BMC 4.14.030A(1), (2) or (3).
4. Penalties and interest due.
5. Such other relevant information and supporting documents as the department may require.

#### **4.14.060 Involuntary return.**

A. If an operator fails to file a tax return as required by this chapter or if the Director finds that a tax return is not supported by the records required to be submitted with the return or to be maintained under this chapter by the operator filing the tax return, the Director may prepare and file an involuntary tax return on behalf of the operator. Taxes estimated on a tax return filed on behalf of an operator under this section may be premised upon any information that is available to the Director including, but not limited to, comparative data for similar businesses and prior returns of the operator. An operator for whom an involuntary tax return is filed under this subsection shall be liable for the taxes stated on the tax

return, as well as all administrative costs, penalties and interest provided for in this chapter.

B. The department shall notify the operator of determinations made under subsection (A) and include in such notice the basis of the department's calculations determining the operator's liability together with a notice of the operator's rights under section BMC 4.14.160, that payment is due immediately and that interest and penalties on taxes due continue to accrue from the date taxes were originally due under this chapter for each period covered by the involuntary tax return.

C. Unless otherwise determined by the Director in a decision under subsection (A), taxes, costs, interest and penalties due under this section shall be payable immediately.

D. Interest on administrative costs shall accrue from the date the City incurred or paid the cost unless the Director provides as a part of the determination or notice under subsections (A) or (B) for a later date for commencement of interest on administrative costs.

#### **4.14.070 Cessation of doing business.**

Notwithstanding any other provision of this chapter to the contrary, within ten calendar days after ceasing to be an operator, the operator shall:

1. Notify the Director in writing of the date on which, and the name, telephone and address of any person to whom, the transient lodging business has been leased, conveyed or otherwise relinquished or transferred together with the date on which the person ceased doing business as an operator; and

2. File a final tax return for the period subsequent to the operator's last tax return covering the period through the operator's last day of operation together with the tax due and other sums due under this chapter in the manner required for filing tax returns. If the operator who is ceasing business transfers accounts receivables from transient lodging to another person the transferring operator shall include the principal amount of such accounts as his receipts for the purpose of computing the tax under this chapter.

#### **4.14.080 Application of payments.**

Any payment submitted to the department for taxes, interest, penalties or costs due under any tax return, provision of this chapter, or any finding or

determination by the department under this chapter shall be credited first to the payment of all interest due beginning with the oldest quarter for which interest is due, and then similarly to the payment of all penalties, administrative costs, and taxes due, in that order beginning for each category with the oldest quarter for which such expenses are due.

#### **4.14.090 Confidentiality of records.**

A. All tax returns filed under this chapter, all data obtained from such tax returns, and all financial information obtained from an inspection of records in accordance with this chapter are confidential and may not be released except upon court order, when necessary to enforce the provisions of or to collect the taxes due under this chapter and except for inspection by the Manager, the Director, the municipal attorney, the City's auditor in the performance of their official duties, or by a state or federal agency in the enforcement of a state or federal law.

B. Except when necessary to the performance of their official duties to enforce the provisions of or to collect taxes due under this chapter, no person may divulge to another any information, data or financial information of an operator, an operator's records or a tax return filed under this chapter unless the person receiving such information, data or financial information is a person authorized by this chapter or in writing by the operator to inspect the tax return, information, data or financial information.

C. It is the duty of the Director to keep tax returns, all data taken therefrom, and all financial information obtained from an inspection of the operator's records secure from public and private inspection except as provided by this chapter.

D. This section does not prohibit the City from compiling and publishing statistical information concerning the data submitted provided no identification of particular tax returns or operator information, data or financial information is made.

#### **4.14.100 Maintenance and inspection of records.**

A. It shall be the responsibility of the operator to obtain and preserve evidence sufficient to support all taxes owed, returns filed or required to be filed and exclusions or exemptions claimed under this chapter. Specification in this chapter of the records to be kept by an operator does not relieve the operator of its responsibility to keep sufficient records. As a minimum an operator shall keep and preserve in Bethel, Alaska for two calendar years after the end of the calendar year

in which created all occupancy registers and accounting records reflecting the rental and occupancy of each transient lodging room available during each quarter and the rents received therefor including, but not limited to, the following:

1. The room rate charged and room occupied for each guest, as recorded on the guest folio, register or registration card or otherwise;
2. Agreements or other documents or material relied upon by an operator to support the operator's determination that the receipts from an occupancy were not required to be included for purposes of the tax;
3. All reservations and accounting records reflecting the rents collected;
4. Such other records, documents and information as the department may require by regulation or notice to the operator reasonably necessary and convenient to its administration and enforcement of this chapter.

B. During normal business hours, the Director or his designee may, upon presentation of proper identification, inspect the records an operator is required to maintain under subsection (A) of this section, or inspect the records of a person whom the Director has probable cause to believe is an operator to determine whether that person is an operator.

C. Upon notice of the department's intent to inspect records, an operator, and a person the Director has probable cause to believe is an operator, shall retain such records and preserve their availability to the department until released by the department in writing, regardless of whether such retention and preservation continues beyond the two-year period specified in this section.

D. The operator shall make available for inspection within the City, all records required to be kept and preserved by this chapter. The Director may apply to the appropriate court for subpoena duces tecum and the court shall issue the subpoena upon a showing that demand has been made by the City upon an operator to make such records available for inspection and that the operator has failed or refused to do so.

E. If the Constitution of the United States or of the State so requires, the Director shall obtain an administrative search warrant authorizing an inspection and exhibit the warrant to the person in charge of the premises before conducting the inspection. The Director shall apply to the trial courts of the state to obtain an inspection warrant, stating in the application the name and address of the premises

to be inspected, the authority to conduct the inspection, the nature and extent of the inspection, and the facts and circumstances justifying the inspection. Warrants issued under this section shall be returned within ten days.

#### **4.14.105 Administrative costs.**

If, upon an audit or other examination of the books and records of an operator, the Director determines that additional taxes are due, the cost of the audit or examination shall be paid to the City by the operator. If the audit or examination is part of a random audit, the operator shall pay a pro rata share of the audit cost based on the number of operators audited, but not to exceed an amount equal to the amount of tax, interest and penalty found to be owing. If the audit or examination is in connection with a disputed return or a return not filed, or if the auditor determines that the condition or availability of the records of an operator are such that substantially more time to audit the records will be required than should be, the operator shall bear the entire cost of the audit or examination, but not to exceed an amount that is ten times the tax, interest and penalty found owing.

#### **4.14.110 Tax avoidance.**

If the department has reasonable cause to believe that an operator has structured room rentals or occupancy to avoid the inclusion of receipts of an occupancy in the computation of the tax levied under this chapter, the department may so declare. Such a declaration creates a rebuttable presumption that the substance of a specific room rental or occupancy is includable in the computation of the tax under this chapter. The Director shall proceed to determine and collect the tax together with costs, penalties and interest by filing an involuntary return as provided in BMC 4.14.060.

#### **4.14.120 Tax lien.**

A. Taxes due and not paid on the date required by this chapter together with all interest, penalties and administrative costs accruing thereafter, immediately after the date such taxes become due and unpaid shall become a lien in favor of the City upon all of the operator's real and personal property including rights to property. Such lien shall continue until all taxes, penalties, interest and administration costs due the City have been paid or the lien released in whole or in part.

B. A separate notice of such lien shall be given each taxpayer liable for the taxes by certified mail and shall be recorded in the Bethel Recording District,

State of Alaska and any other recording district in which the City finds the operator's property. Upon the filing of the notice, the lien shall be prior and paramount to all subsequently filed liens and liens arising out of subsequently incurred obligations except as otherwise specifically provided in statute. Notice of the lien shall specify the operator(s) liable for payment of the tax, the amount of taxes and the date they were due, a statement of the interest, penalties and administration costs accrued and which may thereafter accrue, the tax period for which the taxes were due and such other information as the department may determine or as may be required by law.

C. No failure of a notice of lien to meet all the requirements of this section, except as to amount if different from the recording thereof, adversely affects the existence or priority of the lien created under this section to the extent of the correct amount which is the same or less than that stated in the recorded lien.

#### **4.14.130 Collection of taxes.**

Taxes, interest, penalties, and administration costs due and unpaid may be collected by a civil action for the collection of a debt or by foreclosure of the tax lien in accordance with AS 09.45.170 through 09.45.220 or similar statutes in substitution thereof or by both.

#### **4.14.140 Interest.**

In addition to any penalties imposed by this chapter, interest at the rate of 15 percent per annum shall accrue and be due from the operator on the unremitted balance of taxes after the date on which their remittance was due and upon administrative costs assessed against the operator.

#### **4.14.150 Penalties.**

A. An operator who fails to file a tax return when due shall incur a civil penalty for each tax return not filed when due equal to six percent of the tax actually due the City. An operator who fails to remit the full amount of tax due by its due date incurs and shall pay a civil penalty of six percent of the actual amount of taxes due but remaining unpaid after such date. If an operator fails to pay the full amount of the tax due or file a tax return or report required under this chapter within 16 calendar days after its due date, the six percent penalties incurred above are increased automatically to 15 percent.

1. The penalty shall be computed on the unpaid balance of the tax liability as determined by the department.

2. Notice of the penalties incurred and to be incurred shall be given to the operator when such tax payment or tax return or report is delinquent for seven calendar days after its due date. Interest and penalties apply and shall accrue whether or not notice in accordance with this subsection A(2) is given.

3. The penalties provided for in this subsection shall be in addition to all other penalties and interest provided for under this chapter.

B. Any person who violates any provision of this chapter shall be liable for a civil penalty of \$50.00 for each separate violation. Where a violation continues for more than one day, each day upon which the violation continues is a separate violation. The Director shall levy the penalty and notify the operator of the penalty.

C. Except an operator who fails to file a tax return and remit taxes when due, but does so within seven calendar days thereafter, a person who knowingly violates any provision of this chapter or who fails to comply with the provisions of this chapter for seven or more calendar days after delivery of written notice to the operator setting out the operator's failure to comply is guilty of a misdemeanor. Each day upon which a violation or failure to comply continues is a separate misdemeanor violation of this chapter.

D. Civil and criminal penalties shall be cumulative and independent remedies. The imposition of a penalty under this chapter shall not relieve an operator of the duties imposed under this chapter or liability for any other penalty or the tax or interest imposed under this chapter.

#### **4.14.160 Remedies for a person aggrieved.**

A. Any person aggrieved by any action or determination of the department or the Director under this chapter may apply to the department and request a hearing before the Director on the department's action or determination if filed within 30 days of the date the department mails notice of the department's action or determination.

1. An application for a hearing must notify the department of the specific action or determination complained of and the amount of tax, interest, cost or penalty contested and the reason for such contest.

2. The uncontested portion of any tax and interest thereon due under this chapter shall be paid when due regardless of any application for a hearing. Payment of the amount contested must be made with the application for a hearing and shall be received by the City as being paid under protest. The Director, for good cause shown, may waive, in part, or in whole, the requirement that the contested amount be paid with the application, but the full amount of the tax and interest contested must be paid by the first scheduled date for the hearing. Failure to pay the contested tax and interest by the date or dates required constitutes a withdrawal of the appeal by the applicant.

3. The uncontested portion of any administrative cost, interest thereon, or penalty due under this chapter shall be paid when due regardless of any application for a hearing. Payment of the amount contested must be made in accordance with the decision of the hearing officer.

B. Upon timely application for a hearing under subsection (A) of this section, the Director, acting as the hearing officer, shall hold a hearing and render a decision or determination in accordance with procedures adopted by the Director to determine whether a correction or reversal of the department's action or determination is warranted.

1. The person aggrieved shall be given access to the unprivileged documents in the department's file in the matter for preparation for the hearing

2. If a person requesting a hearing fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless within seven days after the date scheduled for the hearing the person shows reasonable cause for failure to appear.

C. Hearings before the Director under this chapter may, at the option of the Director, be conducted by an administrative hearing officer designated by the Director. If the Director refers such matter to an administrative hearing officer, the administrative hearing officer shall conduct the hearing and prepare findings and conclusions. These findings and conclusions shall be forwarded to the Director for adoption, rejection or modification and issuance of a final order or decision by the Director.

D. The final order or decision of the Director may assess all or any part of the cost of the hearing against an appellant who does not prevail on all issues raised.

E. Taxes, costs, penalties, and interest declared to be due in the decision of the hearing officer and not previously paid must be paid within 30 days of the date of the decision or a supersedeas bond guaranteeing their payment must be filed with the court in accordance with Alaska Rules of Appellate Procedure if the decision has been appealed to the Superior Court. If not paid or bonded within 30 days of the date of the decision, the total amount due under the decision shall accrue interest at a rate equal to the rate set out in section 140 of this chapter plus five percent.

F. Within 30 days after receipt of the written Director's decision a person aggrieved by the decision may appeal the decision to the Superior Court. The appeal shall be heard on the record made at the hearing before the hearing officer.

#### **4.14.170 Administrative regulations.**

The Director may adopt regulations providing for the application and interpretation of this chapter. The Director may provide methods, and shall provide forms, for reporting and collecting the tax imposed by this chapter.

#### **4.14.180 Refunds.**

A. If the department determines after audit that a remittance exceeds the actual amount due, the department, upon written request by the operator, shall refund the excess amount to the operator without interest.

B. The operator shall apply for a refund in writing not later than two years from the earlier of the date the payment was due or was transmitted to the department. Refund applications shall be made on a form provided by the department. Applications filed after such two year period are forever barred and except for amounts ordered refunded by the Superior Court on an appeal, no refund may be made of any amount paid prior to the expiration of the two year period.

#### **4.14.190 Interpretation.**

The exemptions and exclusions under this chapter from consideration in the computation of the tax levied under this chapter shall be interpreted narrowly.

Section 3. Effective Date. This ordinance becomes effective on January 1, 1998. The tax shall be based on receipts for occupancies on and after January 1, 1998, without regard to the date an occupancy began.

ADOPTED THIS 25TH DAY OF NOVEMBER, 1997.

CITY OF BETHEL

By: Agnes L. Phillips  
Agnes L. Phillips, Mayor

ATTEST:

L.J. Warren  
L.J. Warren, City Clerk