

Title 3
REVENUE AND FINANCE

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**Chapter 3.05
PURCHASING PROCEDURES**

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3.05.010 Local contract review board.

The common council of the city of Burns is hereby designated and appointed as the local contract review board and with respect to contracting concerns of the city of Burns shall have all powers granted to the State Public Contract Review Board. [Ord. 630 § 1, 1985]

3.05.020 Definitions.

The following words and phrases shall mean:

- (1) Public contract: Any purchase, lease or sale by the city of Burns of personal property, public improvements or services other than agreements for provision of personal services.
- (2) Public improvement: Any construction of improvements on real property by or for the city of Burns.
- (3) Board: The local contract review board as established in BMC 3.05.010, which may be referred to as the local contract review board or the local public contract review board or an acronym made of the first letters of those words. [Ord. 630 § 2, 1985]

3.05.030 Competitive bids – Exemptions.

- (1) All public contracts shall be based upon competitive bids except:
 - (a) Contracts made with, or the cost of which is provided by other public agencies or the federal government.
 - (b) All public contracts as defined in BMC 3.05.020 of a contract value less than \$5,000 shall be exempt from the requirement of competitive bids.
 - (c) Contracts for an item which is available only through one company, firm or individual.
- (2) The contract review board may by resolution exempt other contracts from competitive bidding if it finds:
 - (a) The lack of bids will not result in favoritism or substantially diminish competition in awarding the contract; and
 - (b) The exemption will result in substantial cost savings.

In making such finding, the board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as the board may deem appropriate. [Ord. 754A § 1, 2002; Ord. 630 § 3, 1985]

3.05.040 Bids exceeding city’s cost estimate.

If a project is competitively bid and all responsive bids from responsible bidders exceed the city's cost estimate, the city manager, together with the city engineer or project engineer, if any, may negotiate with the lowest responsive, responsible bidder, prior to awarding the contract, in order to solicit value engineering or other options to attempt to bring the project within the city's cost estimate. A negotiation with the lowest responsive, responsible bidder, pursuant to this section, shall not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal. Notwithstanding any other provision of law, the records of a bidder used in contract negotiation pursuant to this section are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated. [Ord. 754A § 2, 2002]

3.05.050 Emergency contracts.

A contract may also be exempted from competitive bidding by the board, by unanimous vote of a quorum of the board, if the board determines that emergency conditions require prompt execution of the contract. A determination of such an emergency shall be entered into the record of the meeting at which that determination was made. [Ord. 630 § 4, 1985]

3.05.060 Brand name specification in contracts.

(1) Specifications for contracts shall not require any product by any brand name or mark, nor the product of any particular manufacturer or seller, unless the product is exempted from this requirement by the board under this section. However, this section shall not be construed to prevent reference in the specification to a particular product as a description of the type of item required.

(2) The board may by resolution exempt certain products or classes of products upon any of the following findings:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of the contract or substantially diminish competition.

(b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings.

(c) There is only one manufacturer or seller of the product of the quality required.

(d) Efficient utilization of existing equipment or supplies require the acquisition of compatible equipment or supplies. [Ord. 630 § 5, 1985]

3.05.070 Exemption hearing.

Whenever the board is considering an exemption to the requirements for competitive bids or brand name specifications, it shall provide for notice to the public and an opportunity for a public hearing on whether the exemption should be allowed. [Ord. 630 § 6, 1985]

3.05.080 Bid rejection.

The Burns common council or an official designated by the Burns common council may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may reject all bids if it is in the public interest to do so. [Ord. 630 § 7, 1985]

3.05.090 Bidder disqualification.

The Burns common council or an official designated by the Burns common council may disqualify any person as a bidder on a contract if:

(1) The person does not have sufficient financial ability to perform the contract. Evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;

(2) The person does not have equipment available to perform the contract;

(3) The person does not have personnel of sufficient experience to perform the contract; or

(4) The person has previously breached contractual obligations to public or private contract agencies.

[Ord. 630 § 8, 1985]

3.05.100 Appeal of disqualification.

A person who has been disqualified as a bidder may appeal such disqualification to the board as provided in this section.

(1) The person shall, within three business days after receipt of notice of disqualification, in writing notify the manager of the city of Burns that he wishes to appeal his disqualification.

(2) Immediately upon receipt of such written notice of appeal, the manager shall inform the board.

(3) As promptly as reasonably possible after receiving notice of appeal, the board shall notify the person appealing of the time and place of the hearing.

(4) The board shall conduct the hearing according to the provisions of ORS 279.045(2) and (3) and decide the appeal within 10 days after giving notice of the hearing as set out above and shall set forth in writing the reasons for its decision. [Ord. 630 § 9, 1985]

3.05.110 Additional authority of the board.

In addition to the powers and duties established by this chapter, the board shall have such additional powers as authorized by state law. [Ord. 630 § 10, 1985]

3.05.120 Local contract preference – Findings.

(1) The public interest of the city will be best served by encouraging businesses to locate and remain in the city through, among other things, the provision of at minimum a “good faith” preference to local businesses as defined herein in the awarding of public contracts; and

(2) Providing a bid preference for local businesses will benefit the local economy, help attract and retain business within the city, increase local job opportunities, and help generate tax revenue for the city to fund city programs, decrease the amount of vacant commercial retail space, and provide a favorable business climate for those businesses, which already pay fees to the city, which help keep Burns a livable community; and

(3) Competition may be enhanced or forced through a variety of means, including those means whereby businesses with a significant economic presence in the city may become more interested in bidding on public contracts with the city; and

(4) The award of public contracts is a matter of local municipal concern within the meaning of Oregon’s constitutional “home rule.” [Ord. 758, 2002]

3.05.130 Local contract preference – Procedures.

Subject to the preference set forth in subsection (2) of this section, public contracts for the purchase of equipment, materials, supplies, and services shall be awarded to the lowest responsive and responsible bidder.

(1) Definitions. For the purposes of this subsection, the following definitions apply:

(a) Lowest responsive and responsible bidder or highest ranked proposer: the low bidder or highest ranked proposer on a public contract issued after an invitation to bid.

(b) Invitation to bid: a formal bid or solicitation document issued by the purchasing agent, including invitations to bid, requests for proposals and requests for quotes.

(c) Public contract: a contract for the purchase of equipment, materials, supplies, and services, and may include professional and personal services. As used in this subsection, public contract does not include public improvement contracts.

(d) Significant economic presence: any business, which has as its primary place of business operation within the city, or which, though the business does not have the city as its primary place of business operation, has a significant capital investment in the city as demonstrated by fixed offices or distribution points located in the city, employment of not less than three city residents and payment of city real or personal property taxes.

(2) Evaluating Local Bids and Proposals for Preference.

(a) The city manager shall identify the lowest responsive and responsive bids or highest ranked proposals, and where sufficient competition exists that awarding the bid or proposal to a business with a significant economic presence in the city will not result in favoritism or substantially diminished

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competition, shall proceed to make a recommendation for award of the contract according to the preference established under subsection (2)(c) of this section. When the city manager's preliminary analysis of bids or proposals identifies the apparent low bidder or highest ranked proposer as a bidder or proposer with a significant economic presence in the city, the city manager shall proceed according to standard contract award procedures and practices.

(b) When the city manager's preliminary analysis identifies the apparent low bidder or highest ranked proposer as one other than a bidder or proposer with a significant economic presence in the city, the city manager shall evaluate the bids or proposals according to the following factors:

(i) Whether the goods or services can be procured within the city in sufficient quantities and with satisfactory quality such that sufficient competition for the contract would exist;

(ii) Whether a bid or proposal has been submitted by a bidder or proposer with a significant economic presence in the city;

(iii) Whether the lowest bid or highest ranked proposal submitted by the bidder or proposer with a significant economic presence in the city offers the goods or services at an excessive price. For the purposes of this subsection, an "excessive price" is a price which exceeds the lowest responsive and responsible bid or highest ranked proposal by more than five percent; and

(iv) Whether the bid from the bidder or proposer with a significant economic presence in the city offers goods or services which are demonstrably inferior to those offered by other bidders or proposers.

(c) When, after application of the factors set forth in subsection (2)(b) of this section, the city manager determines that selection of the bid from the lowest bidder or highest ranked proposer with a significant economic presence in the city will not result in diminished competition or result in favoritism, the bidder or proposer with a significant economic presence in the city is entitled to accept the contract at the price of the lowest bid or proposed price made by the lowest responsive and responsible bidder or proposer for such products or services. If no bidder or proposer with a significant economic presence in the city meets these factors, the city manager shall propose contract to the lowest responsive and responsible bidder or highest ranked proposer.

(3) Notice of Bid Preference. The city manager shall indicate on all invitations to bid that the bid preference, as set forth in this section, will apply in the evaluation and award of public contracts by the city.

(4) Required Certifications.

(a) Any bidder or proposer claiming to have a significant economic presence in the city shall certify in the response to the invitation to bid that the bidder or proposer has a significant economic presence in the city and that labor used to provide goods and services will be from workers residing predominantly in the city, and that, to the extent practicable, any first-tier subcontracts entered into by the bidder or proposer will be contracts which will be with other businesses with a significant economic presence in the city.

(b) Failure to include the required certifications shall result in a finding that the bid is nonresponsive for purposes of eligibility for the local preference; fraudulent certifications shall result in forfeiture of a percentage of the contract price equal to the amount of the bid preference and disqualification from bidding or submitting proposals on future public contracts with the city for a period of not less than three years.

(c) Any public contract awarded pursuant to the local preference provided by this section shall contain a provision that the bidder or proposer shall indemnify the city for any and all claims, damages, costs, and attorney's fees awarded against the city as the result of fraudulent certification. [Ord. 758 § 1, 2002]

**Chapter 3.10
TRANSIENT ROOM TAX**

Sections:

- 3.10.010 Title.**
- 3.10.020 Definitions.**
- 3.10.030 Tax imposed.**
- 3.10.040 Collection of tax by operator – Rules for collection.**
- 3.10.050 Operator’s duties.**
- 3.10.060 Exemptions.**
- 3.10.070 Registration of operator – Form and contents – Execution – Certification of authority.**
- 3.10.080 Due date – Returns and payments.**
- 3.10.090 Penalties and interest.**
- 3.10.100 Deficiency determinations – Fraud, evasion, operator delay.**
- 3.10.110 Redeterminations.**
- 3.10.120 Security for collection of tax.**
- 3.10.130 Lien and foreclosure.**
- 3.10.140 Refunds.**
- 3.10.150 Administration.**
- 3.10.160 Appeals to city council.**
- 3.10.170 Violations.**
- 3.10.180 Violation – Penalty.**

3.10.010 Title.

This chapter shall be known as the transient room tax chapter of the city of Burns. [Ord. 763 § 1, 2004]

3.10.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

(1) “Accrual accounting” means the operator enters the rent due from a transient on his records when the rent is earned whether or not it is paid.

(2) “Cash accounting” means the operator does not enter the rent due from a transient on his records until rent is paid.

(3) “City council” means the city council of the city of Burns, Oregon.

(4) “Hotel” means any structure, or any portion of any structure, which is occupied or intended or designed for transient occupancy for 30 days or less, for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

(5) “Occupancy” means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in a hotel, or space in a mobile home or trailer park or portion thereof.

(6) “Operator” means the person who is proprietor of the hotel in any capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

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(7) “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 other group or combination acting as a unit.

(8) “Rent” means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel valued in money, goods, labor, credits, property, or other consideration valued in money, without any deduction.

(9) “Rent package plan” means the consideration charged for both food and rent, such as a “bed and breakfast” where a single charge is made for the total of both.

(10) “Tax” means either the tax payable by the transient, or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(11) “Tax administrator” means the city manager of the city of Burns.

(12) “Transient” means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. [Ord. 763 § 2, 2004]

3.10.030 Tax imposed.

For the privilege of occupancy in any hotel, on and after February 14, 2004, each transient shall pay a tax in the amount of nine percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the cash accounting basis and when earned if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the city. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities other than the furnishing of rooms, accommodations, and parking space in mobile home parks or trailer parks. [Ord. 763 § 3, 2004]

3.10.040 Collection of tax by operator – Rules for collection.

(1) Every operator renting rooms in this city, the occupancy of which is not exempted under the terms of this chapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the city.

(2) In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made.

(3) The tax administrator shall enforce provisions of this chapter and shall have the power to adopt rules and regulations not inconsistent with this chapter as may be necessary to aid in the enforcement. [Ord. 763 § 4, 2004]

3.10.050 Operator’s duties.

Each operator shall collect the tax imposed by this chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator’s records, and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this chapter. [Ord. 763 § 5, 2004]

3.10.060 Exemptions.

No tax imposed under this chapter shall be imposed upon:

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(1) Any occupant for more than 30 successive calendar days. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

(2) Any occupant whose rent is of a value less than \$2.00 per day.

(3) Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his own use thereof.

(4) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people. [Ord. 763 § 6, 2004]

3.10.070 Registration of operator – Form and contents – Execution – Certification of authority.

Every person engaging or about to engage in business as an operator of a hotel in this city shall register with the tax administrator on a form provided by him. Operators engaged in business at the time the ordinance codified in this chapter is adopted must register not later than 30 calendar days after January 14, 2004. Operators starting business after the ordinance codified in this chapter is adopted must register within 15 calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment of collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the tax administrator may require. The registration shall be signed by the operator. The tax administrator shall, within 10 days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business for each registrant.

Certificates shall be nonassignable and nontransferable, and shall be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;
- (4) The following:

This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Ordinance of the City of Burns by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by said city and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws including but not limited to those requiring a permit from any Board, Commission, department or office of the City of Burns. This certificate does not constitute a permit.

[Ord. 763 § 7, 2004]

3.10.080 Due date – Returns and payments.

(1) The tax imposed by this chapter shall be paid by the transient to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the tax administrator on a monthly basis on the fifteenth day of the month for the preceding month; and are delinquent on the last day of the month in which they are due.

(2) On or before the fifteenth day of the month following each month of collection, a return for the preceding month's tax collections shall be filed with the tax administrator. The return shall be filed in such form as the tax administrator may prescribe by every operator liable for payment of tax.

(3) Returns shall show the amount of tax collected or otherwise due for the related periods. The tax administrator may require returns to show the total rentals upon which tax was collected or otherwise due,

gross receipts of the operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

(4) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the tax administrator at his office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(5) For good cause, the tax administrator may extend, but not to exceed one month, the time for making any return or payment of tax. No further extension shall be granted, except by the city council. Any operator to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due are not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this chapter.

(6) The tax administrator, if he deems it necessary in order to ensure payment or facilitate collection by the city of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than monthly periods. [Ord. 763 § 8, 2004]

3.10.090 Penalties and interest.

(1) Original Delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this chapter prior to delinquency shall pay a penalty of 10 percent of the amount of the tax due in addition to the amount of the tax.

(2) Continued Delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 15 percent of the amount of the tax due plus the amount of the tax and the 10 percent penalty first imposed.

(3) Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (1) and (2) of this section.

(4) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(5) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

(6) Petition for Waiver. Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated; provided, however, the operator may petition the city council for waiver and refund of the penalty or any portion thereof and the city council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof. [Ord. 763 § 9, 2004]

3.10.100 Deficiency determinations – Fraud, evasion, operator delay.

(1) Deficiency Determination. If the tax administrator determines based upon a reasonable degree of probability that the returns are incorrect, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any reasonably reliable information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one, or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in BMC 3.10.090.

(a) In making a determination the tax administrator may offset overpayments, if any, which may have been previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties, and interest, on the underpayments. The interest on underpayments shall be

computed in the manner set forth in BMC 3.10.090.

(b) The tax administrator shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the operator at his address as it appears in the records of the tax administrator. In case of service by mail or any notice required by this chapter the service is complete at the time of deposit in the United States Post Office, postage prepaid and properly addressed.

(c) Except in the case of fraud, intent to evade this chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(d) Any determination shall become due and payable immediately upon receipt of notice and shall become final within 10 days after the tax administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

(2) Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make, within the time provided in this chapter any report and remittance of said tax or any portion thereof required by this chapter, or makes a fraudulent return or otherwise wilfully attempts to evade this chapter, the tax administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the tax administrator has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect the same and to report and remit said tax, he shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In case such determination is made, the tax administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three years after discovery by the tax administrator of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within 10 days after the tax administrator has given notice thereof; provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

(3) Operator Delay. If the tax administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the city will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay same determination to the tax administrator after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within 10 days from the date of service of notice by the tax administrator. [Ord. 763 § 10, 2004]

3.10.110 Redeterminations.

(1) Any person against whom a determination is made under BMC 3.10.100 or any person directly interested may petition for a redetermination and redemption and refund within the time required in BMC 3.10.100. If a petition for redetermination and refund is not filed within the time required in BMC 3.10.100, the determination becomes final at the expiration of the allowable time.

(2) If a petition for redetermination and refund is filed within the allowable period, the tax administrator shall reconsider the determination, and if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 10 days' notice of the time and place of the hearing. The tax administrator may continue the hearing from time to time as may be necessary.

(3) The tax administrator may decrease or increase the amount of the determination as a result of the hearing and if an increase is determined such increase shall be payable immediately after the hearing.

(4) The order or decision of the tax administrator upon a petition for redetermination of redemption and refund becomes final 10 days after service upon the petitioner of notice thereof unless appeal of such order of a decision is filed with the city council within the 10 days after service of such notice.

(5) No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof. [Ord. 763 § 11, 2004]

3.10.120 Security for collection of tax.

(1) The tax administrator, whenever he deems it necessary to ensure compliance with this chapter, may require any operator subject thereto to deposit with him such security in the form of cash, bond, or other security as the tax administrator may determine. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such manner as the tax administrator deems proper, or \$5,000, whichever amount is the lesser. The amount of the security may be increased or decreased by the tax administrator subject to the limitations herein provided.

(2) At any time 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, the tax administrator may bring an action in the courts of this state, or any other state, or of the United States in the name of the city to collect the amount delinquent together with penalties and interest. [Ord. 763 § 12, 2004]

3.10.130 Lien and foreclosure.

The tax imposed by this chapter, together with the interest and penalties herein provided and any filing fees paid to the clerk of Harney County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this chapter, shall be collectible and, until paid, all such amounts remain a lien from the date of their recording with the clerk of Harney County, Oregon. Such liens shall be superior to all subsequent recorded liens, whether or not recorded on all tangible or intangible personal property used in the hotel of an operator within Burns and may be foreclosed by sale not less than 10 days after public notice by advertisement thereof is given; provided, that the claim of lien setting forth the basis and amount thereof has been recorded. Notice of lien may be issued by the tax administrator or his agent or subordinate whenever the operator is in default in the payment of said tax. The amount, basis, interest and any penalty shall be recorded, and a copy thereof sent to the delinquent operator. The personal property subject to such lien may thereafter be seized by any deputy or employee of the tax administrator and thereafter sold by the department seizing the same at public auction after 10 days' notice. Mailing of the notice of lien to the address of the responsible party not less than 10 days before foreclosure sale, postage prepaid, certified or registered, receipt requested, together with publication of such notice not less than once in a weekly newspaper of general circulation published in the county of Harney, shall satisfy the requirement of advertisement and public notice thereof prior to sale. [Ord. 763 § 13, 2004]

3.10.140 Refunds.

(1) Refunds to Operators. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, it may be refunded, provided a verified claim in writing therefor, stating the specific basis upon which the claim is founded, is filed with the tax administrator within three years from the date of payment. The claim shall be made on forms provided by the tax administrator. If the claim is approved by the tax administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to each operator, his estate administrators, executors or assignees, or in case of an entity, its successor in interest.

(2) Transient Refunds. Whenever the tax required by this chapter has been collected by the operator, and deposited by the operator with the tax administrator, and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the transient, provided a verified claim is made in writing therefor, stating the specific basis on which the claim is founded, and is filed with the tax administrator within three years from the date of payment. [Ord. 763 § 14, 2004]

3.10.150 Administration.

(1) Records Required from Operators, Etc. – Form. Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for a period of three years and six months after they come into being.

(2) Examination of Records – Investigations. The tax administrator or any person authorized in writing by him may examine, during normal business hours, the books, papers, and accounting records relating to room sales of any operator after notification to the operator liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(3) Confidential Character of Information Obtained – Disclosure Unlawful. It shall be unlawful for the tax administrator or any person having an administrative or clerical duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a transient occupancy registration certificate, or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount of source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person; provided, that nothing in this subsection shall be construed to prevent:

(a) The disclosure to or the examination of records and equipment by another city of Burns official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provision of this chapter; or collecting taxes imposed hereunder.

(b) The disclosure after the filing of a written request to that effect, to the taxpayer himself, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the city attorney approves each such disclosure and that the tax administrator may refuse to make any disclosure referred to in this subsection when in his opinion the public interest would suffer thereby.

(c) The disclosure of the names and addresses of any persons to whom transient occupancy registration certificates have been issued.

(d) The disclosure of general statistics regarding taxes collected or business done in the city.

(4) Percentage to Go to Motel/Hotel Operator. Six percent of the total tax collected shall be retained by the motel/hotel operator for costs of administration; the remaining 94 percent of the total tax collected by each operator shall be paid to the city recorder as otherwise provided in this chapter. [Ord. 763 § 15, 2004]

3.10.160 Appeals to city council.

Any person aggrieved by any action of the tax administrator may appeal to the city council of the city of Burns by filing a notice of appeal with the tax administrator within 10 days of the administrator's decision. The tax administrator shall transmit said notice of appeal, together with the file of said appealed matter to, the city council who shall fix a time and place for hearing such appeal. The council shall give the appellant not less than 10 days' written notice of the time and place of hearing of said appealed matters. [Ord. 763 § 16, 2004]

3.10.170 Violations.

It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the tax administrator or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this chapter. [Ord. 763 § 18, 2004]

3.10.180 Violation – Penalty.

Violation of this chapter is punishable by a fine not to exceed \$500.00. [Ord. 763 § 19, 2004]