

CLERK'S OFFICE

APPROVED

Date:.....

7-15-03

Submitted by:

Chair of the Assembly at the
request of the Mayor

Prepared by:

Department of Finance

For reading:

June 24, 2003

ANCHORAGE, ALASKA

AO NO. 2003-102

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 12.20, HOTEL-MOTEL ROOM TAX, TO CLARIFY OPERATOR RESPONSIBILITIES; PROVIDE ASSURANCE THAT TAXES COLLECTED BY OPERATORS WILL BE REMITTED TO THE MUNICIPALITY; INCREASE THE SEVERITY OF CONSEQUENCES FOR FAILURE TO COMPLY WITH REQUIREMENTS; AND REVISE TERMINOLOGY FOR PRECISION AND CONSISTENCY.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. The title of Anchorage Municipal Code Chapter 12.20 is hereby amended to read as follows:

Chapter 12.20 [HOTEL-MOTEL] ROOM TAX

Section 2. Anchorage Municipal Code subsection 12.20.010 is hereby amended to read as follows:

12.20.010 Definitions.

Hostel dormitory means a lodging room, containing four or more beds and a minimum of 30 square feet of total floor area per bed, used exclusively as non-private communal sleeping quarters generally for unrelated persons and having a daily fee per person which is no higher than that which is promulgated by the International Youth Hostel Federation [YOUTH HOSTEL INTERNATIONAL] or its successor organization in the international hostelling industry.

Operator means a person who owns, operates or controls any facility in which there is rented or offered for rent more than three rooms, the rent for which is, or absent an exemption under this chapter would be, taxable under this chapter.

Exempt operator is an operator who has qualified for an exemption under and has fulfilled the requirements of section 12.20.025.

2. Persons misrepresenting themselves to the public as being an operator under this chapter shall be subject to and comply with all the duties and responsibilities of an operator as set forth in this chapter.

(The remainder of this subsection is not affected by this ordinance and is therefore not set out.)

Section 3. Anchorage Municipal Code subsection 12.20.022A.5. is hereby amended to read as follows:

12.20.022 **Tax exemptions.**

A. The following rents are exempt from the tax levied by section 12.20.020:

5. Rent paid to an exempt operator, provided the operator collecting the rent has established its exemption in accordance with section 12.20.025. [; AND]

Section 4. Anchorage Municipal Code subsection 12.20.025A. is hereby amended to read as follows:

12.20.025 **Operators exempt from collecting the tax and/or other specified requirements.**

- A. When qualified for exemption in accordance with this subsection, an operator exempt from federal income taxation under 26 USC § 501(c)(3), whose income from [HOTEL-MOTEL] room rents is not unrelated business taxable income under 26 USC § 512, is exempt from collecting the tax levied by this chapter.

Section 5. Anchorage Municipal Code section 12.20.030. is hereby amended adding new subsections to read as follows:

12.20.030 **Operator's certificate of registration.**

- E. An applicant applying for a certificate of registration under this chapter shall obtain a surety bond in accordance with section 12.20.035. A copy of the surety bond shall be submitted to the department with the application.

- F. The department may refuse to issue a certificate of registration if there is reasonable cause to believe that the applicant has structured its business organization to avoid payment of delinquent taxes, penalties, interest, or costs due under this chapter; has willfully withheld information requested to determine the applicant's eligibility to receive a certificate; or there is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

Section 6. Anchorage Municipal Code chapter 12.20 is hereby amended adding a new section to read as follows:

12.20.035 **Security for fiduciary performance.**

- A. Guarantee required. To ensure that an operator performs its fiduciary responsibility to timely collect, account for, safeguard, and remit taxes levied by this chapter, the operator shall provide a guarantee by one or more of the methods specified in this section. The amount of the guarantee shall be in an amount that the chief fiscal officer determines to be 8% of the estimated average annual room rental revenues for the registered facility, or \$5,000,

1 whichever is higher. Except as specified in subsection C. of this section, the requirement for
2 a guarantee shall remain in force for the entire period the applicant is registered as an
3 operator in accordance with section 12.20.030. A certificate of registration shall be
4 automatically revoked when the operator's required guarantee lapses, is not renewed, expires,
5 is modified without the written consent of the chief fiscal officer, is cancelled, or is otherwise
6 terminated. In the event the municipality exercises a claim against the guarantee, the
7 operator shall provide an additional guarantee, in an amount equal to the amount of the paid
8 claim, no later than 30 days after the date such claim was paid or its certificate of registration
9 shall be automatically revoked.

10
11 B. Methods. The operator shall include one or more of the following methods to guarantee
12 performance of its fiduciary responsibilities at the time of application for a certificate of
13 registration:

14
15 1 Surety bond. The operator may elect to provide a surety bond, in an amount defined
16 in subsection A. of this section, from a company authorized to do such business in
17 the state. The bond shall be in a form acceptable to the municipal attorney. The bond
18 shall be payable to the municipality and shall be conditioned upon payment in full of
19 the tax, including penalties and interest due and to become due and owing to the
20 municipality by said operator during the effective period of the bond under the
21 provisions of this chapter. The surety may terminate this bond, except as to any
22 liability already incurred or accrued, and may do so upon giving the operator and the
23 chief fiscal officer written notice to that effect. The surety shall provide written notice
24 to the chief fiscal officer not less than thirty days before the expiration, non-renewal,
25 lapse, termination, or other similar event affecting such surety bond. Thirty days after
26 receipt by the chief fiscal officer of such notice or upon a later date specified in the
27 notice, or upon the filing and acceptance of a new bond, the existing bond shall
28 terminate and be of no more force and effect, except as to any liabilities or
29 indebtedness incurred or accrued thereunder as of the date of termination.

30
31 2. Deposit in escrow. The operator may elect to deposit a cash sum, in an amount
32 defined in subsection A. of this section, either with the municipality or in escrow
33 with a responsible financial institution authorized to do such business in the state. In
34 the case of an escrow account, the operator shall file with the municipality an escrow
35 agreement which includes the following terms:

36
37 a. Funds of the escrow account shall be held in trust until released by the
38 municipality and may not be used or pledged by the operator as security in
39 any matter during that period other than payment of the tax, penalties, and
40 interest due and to become due and owing to the municipality under this
41 chapter.

42
43 b. In the case of a failure on the part of the operator to remit taxes due under this
44 chapter by the required due date, the institution shall immediately make all
45 funds in such account available to the municipality for use in satisfying those
46 taxes due, along with any related penalties and interest as provided for in this
47 chapter.

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
3. Letter of credit. The operator may elect to provide, from a bank or other responsible financial institution authorized to do such business in the state, a letter of credit in a form acceptable to the municipal attorney. Such letter shall be filed with the municipality and shall certify the following:
- a. That the financial institution irrevocably guarantees funds in an amount defined in subsection A. of this section.
- b. That in the case of failure on the part of the operator to remit taxes due under this chapter by the required due date, the financial institution shall pay to the municipality immediately and without further action such funds as are necessary to satisfy those taxes due, along with any related penalties and interest as provided for in this chapter, up to the limit of credit stated in the letter.
- C. Once an operator has filed a tax return and remitted the full amount of taxes due under this chapter, by the due date prescribed by this chapter, for each of eight consecutive calendar quarters, the operator may submit a written request to the chief fiscal officer for a waiver of the requirement for the operator to post a guarantee. Except as listed below, the chief fiscal officer shall provide written approval of such request, stating the date the requirement for a guarantee shall expire.
- 1 The chief fiscal officer shall not approve the operator's request and the requirement for a guarantee shall not expire when the operator has had any certificate of registration previously issued under this chapter revoked by the department.
2. The chief fiscal officer shall not approve the operator's request and the requirement for a guarantee shall not expire when the department has reasonable cause to believe that the operator is a related party or related entity to another operator or prior operator whose certificate of registration has previously been revoked under this chapter.
- D. The agreement or contract and other evidence of a guarantee under this section is subject to inspection by the department.

39 **Section 7.** Anchorage Municipal Code section 12.20.040 is hereby amended to read as follows:

40
41 **12.20.040 Tax receipts segregated and held in trust for the Municipality.**

42
43 Title to taxes collected pursuant to this chapter shall vest in the Municipality upon collection. [AND
44 SHALL] The operator has a fiduciary duty to the Municipality for these taxes. The taxes shall be
45 segregated from the operator's funds, at least by book account [BY THE OPERATOR] , and held in
46 trust for the exclusive benefit of the Municipality until remitted to the Municipality.
47

1 Section 12.20 Anchorage Municipal Code chapter 12.20 is hereby amended by adding a new section to read
2 as

3
4 **12.20.053** **Amended tax returns.**

5
6 Any tax return filed under sections 12.20.050A. or 12.20.050C. may be amended by the operator.
7

8
9 Section 12.20.070 Anchorage Municipal Code subsection 12.20.070A. is hereby amended to read as follows:
10

11 **12.20.070** **Maintenance and inspection of records.**
12

13 A. It shall be the responsibility of the operator to obtain and preserve evidence sufficient to
14 support all claimed exemptions from [EITHER] payment, collection, or remittance of the
15 room taxes or [AND] other room rental transactions subject to this chapter. Specification in
16 this chapter of the records to be kept by an operator shall not relieve the operator of its
17 responsibility to keep sufficient records. An operator shall keep and preserve in the
18 Municipality at least the following minimum records for two calendar years after the end of
19 the year in which created:
20

21 ***

22 2. Evidence relied upon by an operator to support the operator's decision to not collect
23 the tax required by this chapter including as a minimum, but not limited thereto, the
24 following:
25

26 a. All the information and records required under subsection A.1. of this section;
27

28 b. A record of the method of payment when the exemption is claimed for a
29 [HOTEL-MOTEL] room; and
30

31 ***

32 *(The remainder of this subsection is not affected by this ordinance and is therefore not set out.)*
33
34

35 **Section 12.** Anchorage Municipal Code section 12.20.090 is hereby amended to read as follows:
36

37 **12.20.090** **Tax lien.**
38

39 A. Taxes due and not paid on the date required by this chapter, together with all interest,
40 penalties and administration costs accruing thereafter, [IMMEDIATELY AFTER THE
41 DATE SUCH TAXES BECOME DUE AND UNPAID] shall immediately become a lien in
42 favor of the Municipality upon all of the operator's [TAXPAYER'S] real and personal
43 property including rights to such property. Such lien shall continue until all taxes, penalties,
44 interest and administration cost due the Municipality have been paid or the lien released in
45 whole or in part.
46

1 1 A separate notice of such lien shall be given each operator [TAXPAYER] liable for
2 the taxes by [CERTIFIED] mail, to the address provided in the application for
3 certificate of registration, and shall be recorded in the Anchorage Recording District,
4 Third Judicial District, State of Alaska and any other recording district the
5 department may choose.

8 *(The remainder of this subsection is not affected by this ordinance and is therefore not set out.)*

11 **Section 13.** Anchorage Municipal Code section 12.20.095 is hereby amended to read as follows:

13 **12.20.095 Collection of taxes.**

15 Taxes, interest, penalties, and administration costs due under this chapter and unpaid may be
16 collected by a civil action for the collection of a debt, by executing a claim against security provided
17 under section 12.20.035, [OR] by foreclosure of the tax lien in accordance with AS 09.45.170
18 through 09.45.220 or similar statutes in substitution thereof, or by any combination of the above [OR
19 BY BOTH].

22 **Section 14.** Anchorage Municipal Code section 12.20.100 is hereby amended by adding subsections to
23 read as follows:

25 **12.20.100 Prohibited acts.**

- 29 C. No operator shall deny the chief fiscal officer, subsequent to identification during normal
30 business hours, access to the operator's required records for purposes of inspection under this
31 chapter.
- 32 D. No person or operator shall charge or collect in excess of the proper amount of tax due under
33 this chapter.

36 **Section 15.** Anchorage Municipal Code section 12.20.110 is hereby amended to read as follows:

38 **12.20.110 Penalties.**

- 40 A. An operator who fails to file a tax return within seven calendar days following its due date
41 shall automatically incur a civil penalty for each tax return not filed equal to 10% [SIX
42 PERCENT] of the taxes actually due the Municipality. An operator who fails to remit the full
43 amount of any tax due within seven calendar days following its due date shall incur and pay a
44 civil penalty of 10% [SIX PERCENT] of the actual amount of taxes due but remaining
45 unpaid after such date. If a person fails to pay the full amount of the tax due or [AND/OR]
46 file a tax return or report required under this chapter within 16 calendar days after its due
47 date, each of the aforementioned civil penalties shall be increased from 10% to 25%. [THE

SIX PERCENT PENALTIES INCURRED ABOVE SHALL BE INCREASED AUTOMATICALLY TO 15 PERCENT.]

C. The department may revoke a certificate of registration issued under this chapter for any violation of this chapter. If an operator fails to remit substantially all (at least 95%) of the taxes due under this chapter within 45 calendar days of the due date, the department shall revoke the operator's certificate of registration issued under this chapter and the operator shall incur a civil penalty up to and including an amount equal to the unpaid delinquent taxes.

D. A managing member, officer, director, and owner of an enterprise engaged in business as an operator without a certificate of registration issued under this chapter is personally liable for all taxes which should have been collected and remitted to the Municipality plus a penalty equal to 25% [10%] of the tax which should have been collected in addition to all costs, taxes, interest and other penalties due under this chapter. The municipal attorney may petition the court for injunctive relief against a person engaged in business as an operator without a certificate of registration issued under this chapter.

G. Any person who violates any provision of this chapter shall be liable for a civil penalty of up to \$1,000.00 [\$50.00] for each separate violation. Where multiple instances of the same violation occur, each instance shall constitute a separate violation.

Section 16. Anchorage Municipal Code section 12.20.110 is hereby amended by adding a new subsection to read as follows:

12.20.110 Penalties.

H. An operator that has failed to file a tax return or remit the taxes due to the Municipality by the due date for three consecutive quarters may be required by the department to file tax returns and remit taxes due at the end of each month within 30 days after the end of the month being reported. If the operator subsequently files tax returns and remits taxes due for 12 consecutive months without incurring penalties and interest, the department may allow the operator to resume filing tax returns and remitting taxes quarterly.

Section 17. Anchorage Municipal Code section 12.20.130 is hereby amended by adding a new subsection to read as follows:

12.20.130 Refunds.

- C. If an operator discovers that it has miscalculated the tax, and the person who rented a room paid more tax than should have been collected, the operator shall refund to the renter the excess amount collected. If the operator is not able to locate the renter, the excess tax shall be remitted to the Municipality pursuant to section 12.20.050.

Section 18. This ordinance shall become effective on July 1, 2003.

PASSED AND APPROVED by the Anchorage Assembly this 15th day of July, 2003.

Dick

ATTEST:

Beth S. Gruenke

Municipal Clerk

PI

AC

cu

co

co

This ordinance will have a negative economic impact on new operators and existing operators that are acquiring additional facilities, changing the name of the business, or making other changes which require the operator to apply for a new certificate of registration under AMC Chapter 12.20 if they do not have a 2-year history of compliance with that code. Due to the recent expansion of lodging facilities in Anchorage, Finance does not expect many additional new transient lodging facilities opening in Anchorage in the near future.

Cc

no

(va

valu

Eve

unc

ordi

fisc

The

ope

requ

ec



MUNICIPALITY OF ANCHORAGE ASSEMBLY MEMORANDUM

No. AM 542-2003

Meeting Date: June 24, 2003

From: Mayor

Subject: Providing security for the collection of hotel-motel taxes.

AO 2003-102 amends Anchorage Municipal Code Chapter 12.20, Hotel-Motel Room Tax, by requiring posting of a surety bond by all newly registered operators, and any previously registered operators whose certificates of registration have been revoked for lack of compliance with code requirements. Recent experience has shown that some local operators authorized to collect hotel-motel taxes from their customers, the taxpayers, have failed to hold those monies in trust for the Municipality as required by AMC Chapter 12.20. When the due date for remitting those taxes to the Municipality arrives, the tax dollars are gone. If such operator is a corporation, the owners may have been unjustly enriched at the taxpayers' expense and will be sheltered with limited liability for paying the taxes due. Actions prescribed in this ordinance are advisable as a means of ensuring that the Municipality will not suffer the loss of tax dollars already paid by taxpayers due to neglect by an operator.

The fiduciary nature of the relationship between the operators and the Municipality is recognized in the ordinance and accordingly, penalties for breach of fiduciary duty to collect, report, and remit room taxes have been increased and expanded to reflect the higher standards of performance expected of this fiduciary responsibility. Operators that have posted the surety bond will not be required to retain this security after they have established a two-year record of compliance with filing tax returns and remitting taxes due.

AO 2003-102 provides detrimental consequences that are totally avoidable by compliant operators and should be a substantial deterrent to an operator considering to convert Municipal tax dollars for business or personal uses. New personal penalties levied against directors and officers may be a deterrent to neglect or non-compliance by corporate entities.

It is estimated that this ordinance will substantially reduce risk of loss of Municipal tax dollars that otherwise would be written off as uncollectible. Municipal personnel costs will not be reduced, but personnel formerly involved in collection efforts against delinquent operators will be able to focus efforts on other delinquent taxpayers.

The title of AMC Chapter 12.20 is being amended so that operators of lodging facilities other than hotels and motels, who might otherwise assume that this chapter does not apply to their particular businesses, will not neglect to read the chapter when scanning the Municipal Code for chapters applicable to their situation.

APPROVAL OF AO 2003-102 IS RECOMMENDED.

Prepared by: Kate Giard, Chief Fiscal Officer

Concurrence: Harry J. Kieling, Jr., Municipal Manager

Respectfully submitted: George P. Wuerch, Mayor

Content Information

402003-102

Content ID : 000305

Title: Providing Security for the Collection of Hotel-Motel Taxes, Finance Dept.

Author: pruittns

Initiating
Dept: FinanceKeywords: ordinance, municipal code, hotel-motel room tax, taxes collected, operators, surety bond,
'chapter 12.20Date
Prepared: 10/14/02 3:52 PMDirector
Name: Kate GiardMayor
Review?: YesM.O.A.
2003 JUN 16 PM 1:43
CLERKS OFFICE

Workflow History

Workflow Name	Action Date	Action	User	Security Group	Content ID
AllOrdinanceWorkflow	10/14/02 4:16 PM	Checkin	pruittns	Public	000305
Finance_SubWorkflow	10/15/02 11:35 AM	Approve	giardkh	Public	000305
AllOrdinanceWorkflow	10/15/02 2:13 PM	Reject	frascacl	Public	000305
AllOrdinanceWorkflow	10/15/02 3:31 PM	Checkin	pruittns	Public	000305
AllOrdinanceWorkflow	10/16/02 11:27 AM	Checkin	pruittns	Public	000305
Finance_SubWorkflow	10/23/02 12:06 PM	Approve	giardkh	Public	000305
OMB_SubWorkflow	10/25/02 3:41 PM	Approve	frascacl	Public	000305
AllOrdinanceWorkflow	12/23/02 10:49 AM	Reject	wheelerda	Public	000305
AllOrdinanceWorkflow	1/3/03 3:54 PM	Checkin	pruittns	Public	000305
AllOrdinanceWorkflow	1/9/03 5:04 PM	Reject	giardkh	Public	000305
AllOrdinanceWorkflow	1/9/03 5:06 PM	Checkin	pruittns	Public	000305
Finance_SubWorkflow	1/12/03 2:16 PM	Approve	giardkh	Public	000305
AllOrdinanceWorkflow	1/13/03 11:06 AM	Reject	leblancdc	Public	000305
AllOrdinanceWorkflow	5/14/03 9:47 AM	Checkin	pruittns	Public	000305

Finance_SubWorkflow	5/20/03 1:25 PM	Approve	giardkh	Public	000305
AllOrdinanceWorkflow	5/20/03 4:27 PM	Reject	leblancdc	Public	000305
AllOrdinanceWorkflow	5/21/03 2:12 PM	Checkin	pruittns	Public	000305
Finance_SubWorkflow	5/27/03 3:34 PM	Approve	giardkh	Public	000305
OMB_SubWorkflow	5/28/03 5:35 PM	Approve	leblancdc	Public	000305
Legal_SubWorkflow	6/4/03 4:37 PM	Approve	wheelerda	Public	000305
MuniManager_SubWorkflow	6/12/03 3:49 PM	Approve	kielinghj	Public	000305
Mayor_SubWorkflow	6/16/03 11:20 AM	Approve	wuerchgp	Public	000305
MuniMgrCoord_SubWorkflow	6/16/03 11:47 AM	Approve	katkusja	Public	000305

INTRODUCTION

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects - General Government

AO Number: 2003-102

Title: Providing Security for Collection of Taxes under
 AMC 12.20 – Room Tax.

Sponsor: Mayor

Preparing Agency: Department of Finance **Others Impacted:** None

CHANGES IN EXPENDITURES AND REVENUES: (Thousands of Dollars)

ITEM	FY03	FY04	FY05	FY06	FY07
Operating Expenditures					
1000 Personal Services					
2000 Supplies					
3000 Other Services					
4000 Debt Service					
5000 Capital Outlay					
TOTAL DIRECT COSTS:	0	0	0	0	0
6000 IGCs	0	0	0	0	0
FUNCTION COST:	0	0	0	0	0
REVENUES:	150,000	150,000	150,000	150,000	150,000
CAPITAL:	0	0	0	0	0
POSITIONS: FT/PT and Temp.	0	0	0	0	0

PUBLIC SECTOR ECONOMIC EFFECTS:

AO 2003-102 makes provisions to provide a substantial reduction in risk of loss of Municipal tax dollars. Risk of loss is inherent when tax dollars are collected from transient guests by local lodging businesses - including hotels, motels, inns, and bed & breakfasts – on behalf of the Municipality, but the monies remain under the control of the businesses until they are remitted to the Municipality. Under AMC Chapter 12.20, title to the taxes vests in the Municipality upon collection, therefore room taxes are not an expense of the lodging business; they are a fiduciary liability of the business until remitted to the Municipality.

As of March 31, 2003, six local lodging facilities have, for a period of several years, failed to remit over \$450,000 in room taxes, penalties, and interest because the tax dollars collected from guests were not available to be remitted to the Municipality when due. The businesses operating four of these facilities are currently under the protection of the bankruptcy court and lawsuits have been or are being filed by the Municipality against the other two businesses. These taxes, required by the code to be safeguarded by the businesses and held in trust for the Municipality, may not ever be collected by the Municipality.

The attached ordinance is expected to increase tax collections by approximately \$150,000 per year and substantially reduce costs otherwise associated with collection efforts by MOA against delinquent operators. These expectations will be accomplished through the ordinance provisions for the Municipality to file a claim against a surety, or exercise against other security, for taxes, penalties, and interest in the event the operator fails to protect Municipal monies and is unable to remit them when due.