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MEMORANDUM

To: City Council
From: Penelope McCarthy, City Attorney
Date: October 6, 2010
Re: Revisions to Room Tax and Business License Codes

On Monday, October 11 at 4 p.m. the City Council will hold a work session to address revisions to the City's Business License and Room Tax Codes. The City Attorney, City Manager and Finance Director began working through revisions to the codes in March 2010. The revised codes were vetted with interested parties including Lee Hardy (Yaquina Bay Property Management), Lill Patrick, Jim Patrick and Loren Joling (Dolphin Realty), Woody Ouderkirk, and Tracy Wiley (Greater Newport Restaurant and Lodging Association). City staff presented the revisions to the Council at their September 20, 2010, meeting and the Council established the work session on October 11th. The revised codes and this memorandum have been posted on the City Attorney page of the City website, as well as Council agenda site.

The primary purpose for updating the codes was to strengthen the City's enforcement powers regarding room tax, particularly as they relate to vacation rentals, and to simplify and make more logical the City's business license tax structure. In the process, other clean-ups and clarifications were made. While separate and distinct, the codes are interrelated, which is why they were revised concurrently and should be considered together. Staff reviewed other jurisdiction's codes in making revisions both for common provisions and sample language. The primary revisions are discussed below.

Of Note: The Council may be interested to know that the Planning Commission is currently reviewing policy considerations related to vacation rentals. In its last meeting, the Commission decided to set up an ad-hoc advisory group to work on a list of desired outcomes for a vacation rental ordinance. The Commission intends to actively engage the public and stakeholders in this process.

Room Tax; chapter 3.05

3.05.010 Definitions. The primary change is adding a definition of Vacation Rental. The very broad definition of “Hotel” previously included only “tourist home or house”. This is not common terminology for a vacation rental and would not readily point out a room tax requirement for an owner renting a house or home on a vacation basis. Included in the new definition of “vacation rental” is that “advertising...is prima facie evidence that the property is a vacation rental.” This language was added to provide the City with greater enforcement power over vacation rentals since many owners advertise their property on the internet. A definition of “Owner” is added which makes it clear (particularly important in the case of vacation rentals) that the responsibility for paying room tax falls on the owner of a property not the operator.

3.05.050 Exemptions. The only substantive change in this section is the addition of subsection G – exempting churches, synagogues or nonprofit tax exempt charitable organizations. This is language common in other municipal codes and reflects our current practice.

3.05.060 Registration of Operator. The primary change in this section is to add an annual registration requirement for each hotel (subsection D). The current code requires a one-time registration of each hotel. This requirement does not assist the City in keeping current and accurate records of “hotels”. An annual registration requirement will allow the City to identify, build and maintain a database of all “Hotel” rentals on a current basis. This section specifically references “vacation rentals”. This section and the new section 3.05.065 will enable staff to more closely and accurately identify properties required to pay room tax and to monitor compliance. This information will also be used by the Community Development Department and the Community Service Officer to monitor compliance with zoning regulations, particularly as they relate to vacation rentals.

3.05.065 Registration Fee. This new section assesses an annual registration for each hotel. Under the current code, a “hotel” (again, which is broadly defined) is required to register under the Room Tax code and to pay room taxes but no registration fee was assessed. Registration fees will be used by the City to identify “Hotels”, build and maintain the City’s room tax database, cover administrative costs and strengthen compliance efforts.

3.05.115 Secured Interest in Personal Property. The Council may want to consider revising this section so that, in the event of delinquency in the payment of room tax, the City has a lien on real property rather than personal property.

3.05.150 Administration. Provisions were added to this section to strengthen the city’s enforcement efforts including listing the type of information which must be maintained by room tax payers and a fuller audit provision.

Business Licenses; chapter 4.05

4.05.010 Definitions. Several definitions have been deleted as a result of changes in the business license fee structure in Section 4.05.015, these include “multiple business/single location”; “occasional”; and “ongoing”.

4.05.015 Business License Taxes and Application Fees. This structure has been simplified. All business license taxes (except for temporary businesses) are now based solely on the number of employees. The per unit fee related to hotels/motels and property managers has been deleted. The “business license application fee (one-time) fee” that is in the current code (Section 4.05.015B) but that did not appear in this table has been added to the table.

The deletion of the per unit fee related to hotels/motels and property managers and other changes in this code will result in a decrease in funds to the General Fund. In part to offset this, staff added the annual registration fee requirement for “hotels” in the room tax code. The annual registration fee requirement will help to replace fees lost by the deletion of the “per unit fee” in the business license code. Staff attempted to but could not accurately assess the decrease in funds as a result of the deletion of the “per unit fee” in the business license code nor could we accurately assess the increase in funds as a result of the new fee requirement in the room tax code. It is believed these fee changes (deletion/addition) will ultimately even out in their effect on the General Fund and that they will not be substantive. The Finance Director will attend the Work Session to address any questions Council may have regarding these calculations.