

Denali Borough, Alaska
Ordinance 05-18

INTRODUCED BY: Mayor David Talerico

AN ORDINANCE AMENDING THE DENALI BOROUGH CODE OF ORDINANCES, TITLE III,
CHAPTER 3.25, TITLED OVERNIGHT ACCOMMODATIONS TAX

BE IT ENACTED by the Assembly of the Denali Borough, Alaska that:

Section 1. Classification. This ordinance is of a general and permanent nature.

Section 2. Purpose. The purpose of this ordinance is to amend the Denali Borough Code of Ordinances 3.25.

CHAPTER 3.25

OVERNIGHT ACCOMMODATIONS TAX

Sections:

- 3.25.010 Definitions.
- 3.25.020 Imposition of Overnight Accommodations Tax.
- 3.25.030 Collection of Overnight Accommodations Tax.
- 3.25.040 Registration Required.
- 3.25.050 Title to Taxes.
- 3.25.060 Duty to File Tax Return and Transmit Taxes to the Borough.
- 3.25.070 Estimated Taxes.
- 3.25.080 Confidentiality.
- 3.25.090 Record Keeping Required.
- 3.25.100 Penalties and Interest.
- 3.25.110 Civil Action Authorized.
- 3.25.120 Tax Lien.
- 3.25.130 Prohibition of Making Rentals without Registering.
- 3.25.140 Sale of Business.
- 3.25.150 City Sales Tax.
- 3.25.160 Violations a Misdemeanor.
- 3.25.170 Severability.
- 3.25.180 Special Provisions for Pre-existing Contracts
- 3.25.190 Appeal.

3.25.010 Definitions.

For purposes of this ordinance, the following words shall have the meanings set forth below.

A. "Administrative costs of collection" means the actual amount of attorney's fees, litigation costs, and other expenses incurred by the Borough in collecting any taxes, interest, and/or penalties due under this ordinance or in otherwise enforcing any provision of this ordinance.

B. "Guest" means an individual, corporation, partnership, association, or other entity which pays monetary or other consideration for the right to occupy an overnight accommodation.

C. "Merchant" means an individual, corporation, partnership, association, or other entity which operates an overnight accommodation and any person who performs, or is under a duty to perform, any of the following actions on behalf of an operator:

1. Exercise custody and control of taxes collected under this ordinance; or
2. Pay such taxes to the Borough; or
3. File a tax return with the Borough; or
4. Keep records required by this ordinance.

An owner of an overnight accommodation who contracts with a third party to operate the overnight accommodation for the benefit of the owner is also a merchant. However, a landlord who leases an overnight accommodation to a third party to operate the accommodation for the third party's benefit is not a merchant.

D. "Overnight accommodation" means any structure or portion of a structure, permanent or temporary, fixed or mobile, in which a person for money or other consideration, may obtain lodging, dwelling or sleeping accommodation. The term includes hotels, apartment hotels, motel, tourist homes, houses or trailers, lodging houses, inns, rooming houses, youth hostels, bed and breakfast, dormitories, construction camps, and any other facility, structure, or room of whatever name a space for lodging, dwelling or sleeping may be secured for consideration. Overnight accommodations includes camp grounds, motor home facilities or mobile home parks.

E. "Quarter" means the three month periods ending on March 31, June 30, September 30, and December 31.

[E.] F. "Rent" means the consideration received by a merchant for the right to occupy an overnight accommodation valued in money, whether received in money or otherwise, including all receipts, cash, credits, property or services of any kind or nature, and any amount for which credit is allowed by a merchant to a guest. "Rent" does not include the cost of food or entertainment, nor does it include the cost of banquet, conference, or other similar facilities not occupied for dwelling, lodging, or sleeping purposes.

[F.] G. "Rental" means the act of purchasing the right to occupy an overnight accommodation. A rental is complete and tax is due thereon when:

- a. A guest has registered or "checked in" with a merchant and paid rent in cash, by credit card, or otherwise, regardless of whether the rent is paid in advance, at the time of registration, or at a later date; or
- b. A guest who has paid rent in advance fails to register or "check in" with a merchant at the appointed time, and the merchant retains all or any part of the prepaid rent. Tax is due on the amount of prepaid rent retained by the merchant; or
- c. A tour operator pays rent on behalf of a guest whether or not the guest has registered or "checked in", and regardless of whether the rent is paid in advance, at the time of registration, or at a later date. Rent paid by a tour operator on behalf of a guest shall be deemed paid by the guest; or
- d. A tour operator who has purchased the right to occupy an overnight accommodation for use by a guest who is a member of a tour operated by the tour operator, pays rent even though the overnight accommodation is not in fact occupied by such a guest. Rent paid by a tour operator in such circumstances shall be deemed paid by a guest.

- i. Tax may be due under 1, 2, 3, and/or 4 for rental of the same overnight accommodation to more than one guest for the same period of time. The act of making a reservation to occupy an overnight accommodation in the future is not a completed rental for which tax is due.

[G.] H. "Tour Operator" means an individual, corporation, partnership, association, or other entity which purchases the right to occupy one or more overnight accommodations for the purpose of re-selling the right to occupy the overnight accommodations to one or more guests who will participate in a vacation travel package or other similar tour operated by the tour operator. When paying rent as provided under subparagraphs F 3 or 4 above, a tour operator is a guest.

[H.] I. "Permanent Resident" means any occupant who has or shall have the right of occupancy of any room or rooms in the same overnight accommodation for at least thirty (30) consecutive days during the calendar year unless such residence is in a man-camp, or other construction camp in which case the tax shall be paid in full.

3.25.020 Imposition of Overnight Accommodations Tax.

The Borough levies a tax on the use and privilege of renting overnight accommodations within the Borough equal to 7% of the daily rate charged for each overnight accommodation rented for each twenty four hour period, or any portion of that period. This tax is imposed upon all overnight accommodation rentals unless the rental is specifically exempted by other applicable law. The tax will not be imposed upon a permanent resident of a facility offering overnight accommodations or upon a person who works and lives in the same facility which offers overnight accommodations.

3.25.030 Collection of Overnight Accommodations Tax.

A. Every merchant making a rental subject to taxation under this ordinance shall collect the tax imposed by this ordinance from the guest not later than the time at which the rental is complete. Taxes not collected when due are delinquent.

B. Every merchant shall state the amount of tax due under this ordinance separately from all rent and other charges on any invoice or receipt given to a guest.

C. A merchant shall not advertise or hold out or state to the public or to any guest, directly or indirectly, that the tax or any part thereof imposed by this ordinance will be assumed or absorbed by the merchant or that it will not be added to the rent, or that it will be refunded. A merchant shall not assume, absorb or fail to add the tax or any part thereof to the rent, or refund the tax or fail to separately state the tax to the guest.

3.25.040 Registration Required.

A. Every merchant shall file with the Borough Clerk an application for a certificate of registration on a form prescribed by the Clerk not later than ten days after the date of commencing operation of an overnight accommodation or opening an additional place of business as an overnight accommodation.

B. Upon receipt of a properly executed application, the Clerk shall issue without charge to the merchant, a certificate of registration stating the address of the overnight accommodation to which it is applicable and authorizing such merchant to collect the tax. The certificate must be prominently displayed at the regular place of business named therein.

3.25.050 Title to Taxes.

Upon collection by a merchant of taxes imposed by this ordinance, title to and ownership of the collected taxes shall vest in the Borough. Pending transmittal to the Borough, every merchant shall hold the tax funds in trust for the use and benefit of the Borough. Every merchant shall segregate and identify the tax funds on its books and records as being held in trust for the Borough.

3.25.060 Duty to File Tax Return and to Transmit Taxes to the Borough.

A. Every merchant making a rental of an overnight accommodation in the Borough in any [month] quarter shall make out a return for that [month] quarter and file the return with the Borough Clerk on or before the last day of the following month. Should that last day fall on a closed Borough business day, the deadline will be extended to the next Borough business day. A return which is not timely filed is delinquent. The return shall be made out upon forms furnished by the Borough and shall contain the following information:

1. The amount of all rents received from rentals of overnight accommodations completed during the [month] quarter.
2. The amount of tax due thereon under this ordinance.
3. The amount of tax actually collected thereon.
4. Such other information and documentation as the Clerk may require.

A merchant which makes no taxable rentals in a given [month] quarter shall[, if the merchant made a taxable rental during any of the preceding three months,] nonetheless file a return with the Clerk establishing that no taxable rentals were made.

B. On or before the due date of the return for each [month] quarter, every merchant shall transmit the taxes due on rentals completed during that [month] quarter to the Clerk. Regardless of whether a return has been filed, taxes due for a given [month] quarter which are not transmitted to the Clerk on or before the due date of the return for that [month] quarter are delinquent.

C. As compensation for collecting the tax, a merchant may deduct and retain each [month] quarter two percent (2%) of the amount of taxes due to be transmitted to the Borough for that [month] quarter, if the merchant has:

5. Timely transmitted all taxes due under this ordinance during each of the preceding [twelve months] four quarters; and
6. Timely completed and filed all returns required by this ordinance during each of the preceding [twelve months] four quarters; and
7. Complied with all other provisions of this ordinance during each of the preceding [twelve months] four quarters.

Provided however, that the amount deducted and retained by a merchant under this subsection shall not exceed two hundred dollars (\$200.00) for any [month] quarter.

D. For purposes of this section, taxes and returns are timely transmitted and/or filed only when the taxes and/or returns are actually received in the office of the Borough Clerk, or placed in the U.S. Mail properly addressed to the Clerk, with proper postage affixed and postmarked, on or before the date on which the taxes are due to be transmitted and/or the return is due to be filed.

3.25.070 Estimated Taxes.

If the Borough is unable to ascertain the amount of tax due from a merchant in any [month] quarter because the merchant has failed to file a return as required, or has filed a false, inaccurate, or incomplete return, or because the merchant has failed to keep accurate books and records as required, or has falsified records, the Borough may make

an estimate of the amount of tax due based on any evidence in its possession. The Clerk shall mail or deliver to the merchant written notice of the amount of the estimate, and this amount shall be presumed to correctly state the amount of the tax due from the merchant to the Borough unless the merchant files an accurate return and transmits the taxes due as shown thereon to the Clerk, not later than thirty days after the date on which the Clerk mails or delivers the notice. A notice is sufficient under this section if it is either actually delivered to the merchant, or if it is mailed to the merchant by certified mail, return receipt requested, at the merchant's most current address as contained in the Borough's tax records.

3.25.080 Confidentiality.

A. Except as provided below, all returns filed with the Borough for the purpose of complying with the terms of this ordinance and all data obtained from such returns are confidential and shall be kept from inspection of all persons except officers, agents, and employees of the Borough. Provided however, that such returns and/or information obtained therefrom may be discussed by the assembly in public session if the merchant affected consents in writing.

B. In the course of a criminal or civil action to enforce any provision of this ordinance, the Borough may allege, prove, publish, and produce for any purpose any return and/or information previously filed with the Borough. The Borough may deliver to a merchant or his authorized representative a copy of any return filed by him or on his behalf. The Borough may also publish statistics concerning the information contained in returns, if the publication is done in such a manner that the information contained in a particular return cannot be identified.

C. It is unlawful for any person to divulge to another any return or any information obtained from a return filed with the Borough except as provided in this section.

3.25.090 Record Keeping Required.

A. Every merchant shall keep and preserve for a period of three years records of all rentals completed, the amount of rent received, the amount of taxes collected, and such other books or accounts as may be necessary to determine the amount of tax for which the merchant is liable hereunder. Each merchant shall permit the Borough or its agent to examine, inspect, and copy said records, books, and accounts at any reasonable time, at the merchant's place of business within the Borough or the Borough office, whichever is more convenient for the merchant, within thirty (30) days after request.

Each merchant shall permit the Borough or its agent, upon (30) days written notice, to examine and inspect said records, books, and accounts at the merchant's place of business within the Borough or at the Borough office. No audit shall take place between June 15th and October 1st in any year unless special circumstances require that a special audit take place during that period. In the event of a special audit, the Borough shall notify the Merchant with thirty (30) days written notice of the date of the audit and shall specify the reasons compelling the special audit. Such audits may be conducted by the Borough if it has reason to believe that the reporting practices of the Merchants do not meet requirements of this ordinance or that the Merchant or its records will not be available during the regular audit periods.

Borough requests for books, accounts or copies of specific records shall be in writing to the Merchant and the Merchant shall have thirty (30) days to respond. All

audits shall be performed by a professional auditor licensed as a Certified Public Accountant in the State of Alaska and retained for that purpose.

The Borough shall conduct audits during two (2) periods each calendar year and they shall remain the same for each successive year unless changed by a vote of the Assembly. Such audits periods shall be June 1st through June 15th inclusive and October 1st through October 15th inclusive. The merchant shall have thirty (30) days from the date of the letter to elect one of the two specified audit periods, on a form provided and in a manner prescribed by the Borough.

New businesses subject to this ordinance shall have thirty (30) days from commencing operations within the Borough (defining as collecting their first monies for rent subject to this ordinance) to contact the Borough and elect their audit period. Should the Merchants under either of these circumstances fail to elect an audit period, then the Borough may assign one at its discretion.

In any given year that the Borough determines to conduct an audit on any specific Merchant, then those Merchants who elected an audit period of June 1st through June 15th, the Borough shall send a "Notice of Intent to Audit" no later than April 1st of the year in which the audit is to take place. For those Merchants who have selected an audit period of October 1st through October 15th, the Borough shall send a Notice of Intent to Audit no later than August 1st of the year in which the audit is to take place.

Any Merchant who fails to comply with the request set by this ordinance will be assessed a penalty of \$150.00 per day until that request has been satisfied.

B. For the purpose of ascertaining the correctness of any return, or determining the amount of tax collected or which should have been collected by any merchant, the Mayor or his agent may hold audits, investigations and hearings concerning any matters covered by this ordinance, and may examine any relevant books, papers, records, accounts or memoranda of any such merchant, and may require the attendance of any person through issuance of a subpoena which shall be enforced under the Alaska Rules of Civil Procedure in the same manner as subpoenas issued by an officer or agency of the state.

3.25.100 Penalties and Interest.

A. A merchant who fails timely to file a return as required by this ordinance shall pay to the Borough a penalty of fifty percent of the tax shown or which should have been shown on the return, but the penalty shall not exceed one thousand dollars. Provided however, that if the return is filed more than thirty days after it is due, then the merchant shall pay a penalty of one thousand dollars. In addition the merchant shall pay the Borough's administrative costs of collection incurred in enforcing the requirement to file a return. Penalties and administrative costs of collection are due immediately upon accrual and are delinquent thereafter.

B. A merchant who fails timely to transmit the tax required by this ordinance shall pay a penalty of five percent of the taxes owed for each [month] quarter or portion thereof during which the taxes are delinquent, but the penalty shall not exceed twenty-five percent of the amount of the delinquent taxes or one thousand dollars whichever is less. This penalty shall be paid in addition to the penalty provided in subsection A for failure to file a return. In addition the merchant shall pay the Borough's administrative costs of collection and interest at the rate of fifteen percent per year on all delinquent taxes, not including penalties and administrative costs of collection, from the due date until paid in full. Penalties, interest, and administrative costs of collection are due immediately upon accrual and are delinquent thereafter.

C. The Borough shall apply payments received on a delinquency first to the payment of penalties, then to the payment of administrative costs of collection, then to the payment of interest, and then to the payment of delinquent taxes.

3.25.110 Civil Action Authorized.

A. The Borough may institute a civil action against a guest to collect taxes due but not paid, the Borough's administrative costs of collection, and the civil penalty provided below. The Borough may institute a civil action against a merchant to recover taxes which the merchant failed to collect, or which the merchant collected and failed to transmit to the Borough, together with the penalties, interest, and administrative costs of collection imposed by section 11. In any such action, a tax return or estimated tax under section 8 shall constitute prima facie evidence of the amount of tax which was, or should have been, collected.

B. The Borough may institute a civil action against a merchant who fails timely to file a return to recover the penalties and administrative costs of collection imposed by section 11.

C. Pursuant to AS 29.25.070, the Borough may institute a civil action against any person who violates a provision of this ordinance. In addition to injunctive and compensatory relief, the Borough may recover its administrative costs of collection and a civil penalty not to exceed one thousand dollars (\$1,000) for each violation. The Borough may bring an action to enjoin a violation or to recover a civil penalty notwithstanding the availability of any other remedy. Each day that a violation of this ordinance continues constitutes a separate violation.

3.25.120 Tax Lien.

A. The tax, penalty, administrative costs of collection, and interest imposed by this ordinance shall constitute a lien in favor of the Borough upon all the merchant's real and personal property. The lien arises upon delinquency and continues until the liability for the amount is satisfied or the property is sold at foreclosure sale. The lien is not valid as against a mortgagee, pledgee, purchaser or judgment creditor until notice of the lien is filed in the office of the recorder in the district in which the property is located in the manner provided for federal tax liens in AS 40.19.010 - .050 as they currently exist or may be subsequently amended. AS 40.19.010 - .050 apply to the tax liens arising under this ordinance, and are incorporated by reference as if fully set forth.

B. When recorded as provided in subsection A, such a lien has priority over other liens except as provided in AS 29.45.650 as it currently exists or may be subsequently amended.

C. Sales tax liens on property shall be enforced by foreclosures conducted as provided by law for enforcement of judgment liens.

3.25.130 Prohibition of Making Rentals Without Registering.

A. A merchant who is required to register shall not engage in the rental of overnight accommodations within the Borough if the merchant has not previously registered in the manner required by section 5.

B. The Borough may institute a civil action, pursuant to AS 29.25.070, to enjoin a merchant from engaging in the rental of overnight accommodations in the Borough until the merchant has registered. The Borough may also recover from the merchant the civil penalty imposed by Section 12 and the Borough's administrative costs of collection incurred in enforcing this section.

3.25.140 Sale of Business.

If any merchant sells his overnight accommodation business to another person or entity, the merchant shall file a final tax return within fifteen days after the closing date of the sale. The purchaser shall withhold a sufficient portion of the purchase money to pay the taxes due on the final return, and any other taxes, penalties, interest, and administrative costs of collection which may be due or past due from the merchant, and shall pay this amount to the Clerk on or before the due date of the final return. If the purchaser of an overnight accommodation business fails to withhold and pay these amounts as provided above, the purchaser shall be personally liable to the Borough for the payment of these amounts as if the purchaser had been a merchant at the time the amounts initially became due. The Borough may collect these amounts in the manner provided in this ordinance for the collection of taxes, penalties, interest, and administrative costs of collection.

3.25.150 City Sales Tax.

The Borough hereby authorizes the City of Anderson to levy and collect a sales tax on sources and transactions other than those taxed under this ordinance.

3.25.160 Violations a Misdemeanor.

A person who violates a provision of this ordinance is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or imprisonment for not more than ninety days or both.

3.25.170 Severability.

If a court of competent jurisdiction determines that any provision of this ordinance or any application thereof to any person or circumstance is invalid, the remainder of this ordinance and its application to other persons or circumstances shall not be affected thereby.

3.25.180 Special Provisions for Pre-existing Contracts.

A. This section applies only to taxes levied on rentals occurring during calendar year 1991 under a contract between a merchant and a tour operator which was fully executed on or before December 7, 1990. If such a contract covers more than one year, this section applies only to rentals occurring under said contract during 1991, and not to rentals occurring in subsequent years. This section only applies if a merchant has registered in the manner prescribed in this section. All other rentals are governed by the other provisions of this ordinance and not by this section.

B. Upon the request of a merchant, the mayor may but is not required to permit the merchant to register to transmit to the Borough, in the manner prescribed in this section, taxes levied on rentals occurring under pre-existing contracts to which this section applies. Such registration shall be separate and in addition to the registration otherwise required by Section 5 of this ordinance. The merchant shall apply for registration under this section on a form prescribed by the Clerk. The application shall contain the following information and shall be accompanied by a one hundred dollar (\$100) non-refundable application fee.

1. The name and address of the parties to the pre-existing contract and the dates on which each party signed the contract.

2. The number of motel rooms, campground spaces, or other overnight accommodations covered by the contract during 1991.
3. The number of days for which each overnight accommodation is rented under the terms of the contract during 1991.
4. The dollar amount of the daily rent to be received by the merchant under the contract during 1991 for each such overnight accommodation.
5. Proof satisfactory to the mayor that the information contained in items 1-4 is accurate, i.e. a copy of the contract.
6. Any other information required by the mayor.

In addition the mayor may impose as conditions of registration, such other requirements as he deems necessary to protect the legal interests of the Borough. The provisions of Section 9 shall apply to the information required by this subsection.

C. Section 4 C shall not apply to taxes levied on rentals occurring under pre-existing contracts to which this section applies.

Every merchant registered under this section shall file a monthly tax return in the manner provided in Section 7. The tax return shall include both taxes levied on rentals occurring under pre-existing contracts, and all other taxes. In addition to the information required by Section 7, the tax return shall also contain the following.

D. The amount of all rents received from rentals completed during the month, which occurred under pre-existing contracts.

E. The amount of tax due on those rentals.

Notwithstanding any other contrary provision of this ordinance, every merchant registered under this section shall transmit to the Borough the taxes levied on rentals occurring under a pre-existing contract to which this section applies, not later than March 31, 1992. If taxes are not timely transmitted to the Borough by that date, in the manner required by Section 7, they are delinquent.

The provisions of Section 7 C shall not apply to taxes levied on rentals occurring under pre-existing contracts to which this section applies. The amount of said taxes shall not be included when calculating the credit due to a merchant under Section 7 C.

F. Except as otherwise provided in this section, all other provisions of Ordinance 91-05, including but not limited to those sections which impose liability for penalties, interest, and the Borough's administrative costs of collection, as well as those sections authorizing the Borough to enforce this ordinance, apply to merchants registered under this section and to the taxes levied on rentals occurring under pre-existing contracts to which this section applies.

3.25.190 Appeal.

A. A person aggrieved by the application or interpretation of any provision of this ordinance shall present his complaint in writing to the mayor not later than thirty days after the grievant knew, or should have known, of his complaint. The mayor shall investigate the matter and respond in writing to the grievant within a reasonable time. The mayor may either deliver or mail his response to the grievant. If mailed, the response shall be sent to the grievant by certified mail, return receipt requested, at the address contained in the grievance.

B. If the grievant is not satisfied with the mayor's response, the grievant shall file his complaint in writing with the Borough Clerk not later than thirty days after the date on which the mayor mailed or delivered his response to the grievant. The assembly shall hold a hearing on the grievance at which the grievant and the mayor may appear and give evidence, within a reasonable time after the grievance is filed with the Clerk. The

assembly shall determine whether this ordinance has been properly interpreted and applied to the grievant and shall grant such relief as may be appropriate in the circumstances. The assembly shall deliver or mail its decision to the grievant and to the mayor, in the manner provided above for the mayor's response, within a reasonable time following termination of the hearing. The assembly's decision shall be the final action of the Borough on the matter. In its discretion, the assembly may appoint a hearing officer to take evidence and report to the assembly, or to hear and decide the matter.

C. A person aggrieved by the final action of the Borough may appeal to the Superior Court in the manner provided in the Alaska Rules of Appellate Procedure for appeals from administrative agencies.

Section 3. Effective Date. This ordinance becomes effective upon adoption by the Denali Borough Assembly and signature of the Mayor.

DATE INTRODUCED: December 14, 2005

FIRST READING: January 11, 2006

PUBLIC HEARING: January 11, 2006

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this 8th day of February, 2006.



Mayor

ATTEST:



Borough Clerk

