

DENALI BOROUGH, ALASKA
ORDINANCE NO. 13-09
INTRODUCED BY: MAYOR CLAY WALKER

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

BE IT ENACTED by the Denali Borough Assembly, 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 Chapter 3.25 in its entirety to read as follows:

Chapter 3.25
Overnight Accommodations Tax

3.25.010 Definitions

- 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 chapter or in otherwise enforcing any provision of this chapter.
- B. "Commencing operations" means the act of offering overnight accommodations to individual occupants.
- C. "Operator" means a person who furnishes, offers for rent or otherwise makes available an overnight accommodation, whether acting directly or through an agent or employee.
- 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 or sleeping accommodation. The term includes hotels, apartment hotels, motels, tourist homes, houses or trailers, lodging houses, inns, rooming houses, youth hostels, bed and breakfasts, 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 may include campgrounds, tent sites, or motorhome facilities.
- E. "Permanent resident" means an individual occupant who has or shall have the right of occupancy of any individual overnight accommodation for more than thirty (30) consecutive days.
- F. "Quarter" means the three-month periods ending on March 31st, June 30th, September 30th, and December 31st.
- G. "Rack rate" means the price a hotel charges for a room before any discount has been taken into account.
- H. "Rent" means the consideration received by an operator 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 an operator to an individual occupant. Rent includes all monetary consideration payable as a condition of obtaining overnight accommodation, regardless of whether the consideration entitles the individual occupant to services other than overnight accommodation (for example, meals) where the consideration is payable regardless of whether the individual occupant uses such other services.

I. "Rental" means the permitting of use or occupancy of overnight accommodation for consideration.

3.25.020 Purpose and Intent

It is the purpose and intent of the tax levied under this chapter to raise revenues. To that end, the scope of the tax levied shall be broadly interpreted and exemptions shall be allowed only when the overnight accommodation rental clearly falls within an exemption defined in DBC 3.25.050.

3.25.030 Imposition of overnight accommodations tax

The borough levies a tax on the use and privilege of renting overnight accommodations within the borough equal to seven percent (7%) of the daily rate charged for each overnight accommodation rented for each 24-hour period, or any portion of that period. This tax is imposed upon all overnight accommodation rentals unless the rental is specifically exempted per DBC 3.25.050. Rentals which are up to thirty (30) consecutive days shall be subject to the tax even if the overnight accommodations were originally taken with the intent to use or occupy for more than thirty (30) or more consecutive days.

3.25.040 Administration of tax

The Borough Mayor, or his designee, is responsible for the administration of overnight accommodations tax procedures.

3.25.050 Tax Exemptions

- A. The tax will not be imposed upon rent paid directly to the operator using a purchase order or other means of direct payment by a federal, state, or local government. Government employees traveling on a reimbursement basis and paying with a personal instrument (i.e., cash, check, credit card) are not exempt from taxation and shall be charged overnight accommodations tax. The burden of proving an exemption is on the person claiming the exemption.
- B. The tax will not be imposed upon rent paid by foreign diplomats with a tax exempt card issued by the U.S. Department of State.
- C. 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.

3.25.060 Registration required.

- A. It is unlawful to engage in business as an operator without obtaining a certificate of registration under this section. Failure to comply will result in penalties per DBC 3.25.130.
- B. Every operator offering rentals shall file with the borough a registration application on a form prescribed by the borough no later than January 1st of each year of operation or no later than ten (10) days after the date of commencing operations of an established overnight accommodation business.
- C. Overnight accommodation registration forms are prescribed by the borough, and shall contain the following information:
 - 1. Dates of operation
 - 2. Number and type of accommodations
 - 3. Preferred audit period per DBC 3.25.120
 - 4. Point of contact.
- D. Upon receipt of a properly executed application, the borough shall issue a certificate of registration authorizing said operator to collect the tax. The certificate shall also state the

address of the overnight accommodation to which it is applicable and dates of operation. The certificate must be prominently displayed at the regular place of business named therein.

E. The certificate of registration is not assignable and nontransferable. The operator shall promptly surrender the certificate to the borough when the operator permanently ceases to do business at the location named on the certificate. An operator shall submit a new or updated application for other changes, such as business name changes, owner/operator changes, change in business organization, and/or primary contact person. If the business is continued at the same location but there is a change in its name or form of organization, the operator making such change shall, in addition to submitting a new application, surrender his old certificate to the borough.

F. The borough may revoke a certificate of registration if an operator fails to comply with any of the provisions of this chapter.

G. An operator shall not rent an overnight accommodation subject to the tax imposed in this chapter if the operator does not possess a valid certificate of registration, or has had its certificate of registration revoked. An operator making overnight accommodation rentals subject to this tax without a valid certificate of registration, or under a revoked registration, is subject to penalties and/or actions provided in DBC 3.25.130, DBC 3.25.140 and DBC 3.25.150.

3.25.070 Title to taxes.

Title to taxes collected pursuant to this chapter shall vest in the borough upon collection. Pending transmittal to the borough, every operator has a fiduciary duty to the borough for these taxes. Every operator shall segregate and identify the tax funds on its books and records as being held in trust for the borough.

3.25.080 Collection of overnight accommodation tax.

A. Every operator making a rental subject to taxation under this chapter shall collect the tax imposed by this chapter from the occupant no later than the time at which the rental is complete. Taxes not collected when due are delinquent.

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

C. A rental is complete and tax is due when:

1. An individual occupant has registered or "checked in" with an operator 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
2. An individual occupant who has paid rent in advance fails to register or "check in" with an operator at the appointed time, and the operator retains all or any part of the prepaid rent. Tax is due on the amount of prepaid rent retained by the operator; or
3. A tour operator pays rent on behalf of an individual occupant whether or not the individual occupant 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 an individual occupant shall be deemed paid by the individual occupant; or
4. A tour operator who has purchased the right to occupy an overnight accommodation for use by an individual occupant who is a member of a tour pays rent even though the overnight accommodation is not in fact occupied. Rent paid by a tour operator in such circumstances shall be deemed paid by the individual occupant.

3.25.090 Duty to file tax return and to transmit taxes to the borough.

A. Overnight accommodation tax return forms are prescribed by the borough, and will be available at the borough office and website, and shall contain the following information:

1. Total gross rental sales,
2. The amount of tax due thereon under this chapter,
3. The amount of tax actually collected thereon, and
4. Such other information and documentation as the borough may require.

B. Every operator making a rental of an overnight accommodation in the borough in any quarter shall file a return and remit taxes due on or before the last day of the month following the end of the quarter. Should that day fall on a day the borough office is not open, the deadline will be extended to the next borough business day. Returns and taxes not received or postmarked by the due date will be deemed delinquent and subject to penalties per DBC 3.25.130. An operator who makes no taxable rentals in a given quarter for which they have registered shall nonetheless file a return with the borough establishing that no taxable rentals were made.

C. On or before the due date of the return for each quarter, every operator shall transmit the taxes due on rentals completed during that quarter to the borough. Regardless of whether a return has been filed, taxes due for a given quarter which are not transmitted on or before the due date of the return for that quarter are delinquent.

D. An operator may deduct and retain each quarter, two percent (2%) of the amount of taxes due to be transmitted for that quarter not to exceed \$200 for any month or \$600 for any quarter, provided they have complied with all provisions of this chapter during each of the preceding four quarters.

E. Tax will be considered timely only when received in the borough office or postmarked on or before the date on which the taxes are due. Taxes and returns are considered timely and/or filed only when the taxes and/or returns are actually received in the borough office, or placed in the U.S. mail 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.

3.25.100 Estimated Taxes.

If the borough is unable to ascertain the amount of tax due from an operator in any quarter because the operator has failed to file a return as required, or has filed a false, inaccurate, or incomplete return, or because the operator 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 treasurer shall mail or deliver to the operator 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 operator to the borough unless the operator files an accurate return and transmits the taxes due as shown thereon to the treasurer, not later than thirty (30) days after the date on which the treasurer mails or delivers the notice. A notice is sufficient under this section if it is either actually delivered to the operator, or if it is mailed to the operator by certified mail, return receipt requested, at the operator's most current address as contained in the borough's tax records.

3.25.110 Confidentiality

A. Except as provided below, all returns filed with the borough for the purpose of complying with the terms of this chapter 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 operator affected consents in writing.

- B. In the course of a criminal or civil action to enforce any provision of this chapter, 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 an operator 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.

3.25.120 Overnight Accommodations Tax Audits

- A. Record keeping required. Every operator 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 operator is liable hereunder. Each operator shall permit the borough or its agent to examine, inspect, and copy said records, books, and accounts at any reasonable time, at the operator's place of business within the borough or the borough office, whichever is more convenient for the operator.
- B. Standard audits. The borough may conduct audits during two periods each calendar year; June 1 through June 15th, inclusive, or October 1st through October 15th, inclusive. Borough requests for books, accounts or copies of specific records shall be in writing to the operator and the operator shall have thirty 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 send notice of intent to audit no later than April 1 of the year the audit is to take place for the audit period June 1 through June 15th; and no later than August 1 for the audit period October 1 through October 15th.
- C. Special audit. The borough or its agent, upon thirty days' written notice, shall be permitted to examine and inspect said records, books, and accounts at the operator's place of business within the borough, or at the borough office. In the event of a special audit, the operator shall be notified in writing of 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 operators do not meet requirements of this chapter, or that the operator or its records will not be available during the regular audit periods. 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.
- D. Failure to comply with audit. Any operator who fails to comply with the provisions set forth in this section may be subject to penalties per DBC 3.25.130. 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 operator, the mayor or his agent may hold audits, investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records, accounts or memoranda of any such operator, 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.

3.25.130 Penalties and interest.

- A. Operating without a valid registration is subject to a penalty of one-half the rack rate of the operator's total units of overnight accommodation per annual incident.
- B. Any failure to file a timely return and to transmit tax to the borough as required by this chapter shall be considered delinquent. A delinquent account shall be subject to:
1. A penalty of twelve percent (12%) of taxes due.
 2. Interest on unpaid taxes shall be assessed at the statutory rate set forth in AS 45.45.010.

- C. Penalties and interest are due immediately upon accrual and are delinquent thereafter.
- D. The operator's discount provided in DBC 3.25.090(D) will not be available to any operator who has not complied with all provisions of this chapter during any of the preceding four quarters.
- E. Taxes delinquent for ninety (90) days are subject to an additional penalty of one-half of the taxes due.
- F. Failure to comply with audit provisions in this chapter may be assessed a penalty of \$150 per day commencing thirty one (31) days after receiving notice of intent to audit, or upon a specified audit date, whichever is later until provisions have been satisfied.
- G. Any tax or penalty assessed that is delinquent for more than ninety (90) days is subject to civil action per DBC 3.25.150.

3.25.140 Violations.

Any operator who fails to collect or remit all or any portion of the tax provided for in this chapter, or fails or refuses to comply with the provisions of this chapter, or remits or rebates to an individual occupant or other person whether directly or indirectly and by whatsoever means, all or any part of the tax levied under this chapter, or makes in any form of advertising, verbally or otherwise, any statement which implies that the operator is absorbing the tax, or paying the tax for the individual occupant by an adjustment of prices or in any manner whatever, and any person who makes any false statement or misrepresents any fact for the purpose of securing a tax exemption under the terms of this chapter, and any person who otherwise violates any provision of this chapter, is guilty of a violation.

3.25.150 Civil action authorized.

- A. The borough may institute a civil action, pursuant to AS 29.25.070, to enjoin an operator from engaging in the rental of overnight accommodations in the borough until the operator has registered. The borough may also recover from the operator the civil penalty imposed by this section and the borough's administrative costs of collection incurred in enforcing this section.
- B. The borough may institute a civil action against an operator to recover taxes which the operator failed to collect, or which the operator collected and failed to transmit to the borough, together with the penalties, interest, and administrative costs of collection imposed by DBC 3.25.130. In any such action, a tax return or estimated tax under DBC 3.25.100 shall constitute prima facie evidence of the amount of tax which was, or should have been, collected.
- C. The borough may institute a civil action against an operator who fails timely to file a return in order to recover the penalties and administrative costs of collection imposed by this section.
- D. Pursuant to AS 29.25.070, the borough may institute a civil action against any person who violates a provision of this chapter. In addition to injunctive and compensatory relief, the borough may recover its administrative costs of collection and a civil penalty. 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 chapter continues constitutes a separate violation.

3.25.160 Tax lien.

A. The tax, penalty, administrative costs of collection, and interest imposed by this chapter shall constitute a lien in favor of the borough upon all the operator'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 through 40.19.050 as they currently exist or may be subsequently amended. AS

40.19.010 through 40.19.050 apply to the tax liens arising under this chapter, and are incorporated by reference as if fully set forth.

B. When recorded as provided in subsection A of this section, 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.

3.25.170 Sale of business.

If any operator sells his overnight accommodation business to another person or entity, the operator shall file a final tax return and transmit all tax due within thirty (30) days after the closing date of the sale.

3.25.180 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 chapter.

3.25.190 Severability.

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

3.25.210 Appeal.

A. A person aggrieved by the application or interpretation of any provision of this chapter shall appeal to the Board of Review per DBC 5.20.120.

B. A person aggrieved by the final action of the borough may appeal to the superior court in the manner provided in DBC 5.20.130.

Section 3. Effective Date. This ordinance becomes effective on January 1, 2014 and upon adoption of the Denali Borough Assembly and signature of the Mayor.

DATE INTRODUCED: June 12, 2013

FIRST READING: June 12, 2013

PUBLIC HEARING: July 10, 2013

PASSED AND APPROVED by the Denali Borough Assembly this 9th day of October 2013.


CLAY WALKER, MAYOR

ATTEST: 
GAIL PIEKNIK, BOROUGH CLERK



AYES: *Passed Unanimously*
ABSENT: *Rusty LASELL*