



# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

NO. AM 607-2012

Meeting Date: October 23, 2012

1 **From:** Mayor

2  
3 **Subject:** AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE  
4 CHAPTER 12.20, ROOM TAX, TO CLARIFY THE DEFINITION  
5 AND EXEMPTION FOR HOSTELS, TO INCREASE THE  
6 GUARANTEE REQUIRED OF OPERATORS, TO REQUIRE  
7 MONTHLY INFORMATIONAL RETURNS FROM LARGE  
8 OPERATORS, TO CLARIFY THE RECORDS REQUIRED FOR  
9 RETENTION AND AUTHORIZE THE CHIEF FISCAL OFFICER TO  
10 ORDER RETENTION UP TO SIX YEARS WHEN JUSTIFIED, TO  
11 CLARIFY THE CRIMINAL PENALTY FOR VIOLATIONS, TO  
12 CLARIFY TIME FOR AND FORM OF REFUNDS, TO IMPROVE  
13 ADMINISTRATIVE EFFECTIVENESS, AND ADAPT TO CURRENT  
14 LODGING INDUSTRY PRACTICES.  
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17 This ordinance has several purposes, all related to administration of the room tax.  
18 First, this ordinance recognizes changes in the hostelling industry during recent  
19 years. The existing code definition of “hostel dormitory” is out of sync with modern  
20 practices in the hostelling industry, as there has been a widespread movement for  
21 hostels to offer semi-private and private rooms. According to Hostelling  
22 International, a non-profit membership organization, large dormitories with many  
23 beds are becoming increasingly rare in the Hostelling International network. Many  
24 network hostels now offer single, twin and four-bedded rooms. In the Municipality,  
25 rooms with fewer than four beds do not meet the existing definition of “hostel  
26 dormitory” in Anchorage Municipal Code (AMC or Code) section 12.20.010.  
27 Consequently, a modern hostel in the Municipality may have a combination of  
28 taxable private rooms, some taxable dormitory-style rooms, and some dormitory-  
29 style rooms that are tax-exempt under the current definition. This circumstance  
30 creates inconsistencies and confusion for the lodging business and its guests, as  
31 well as administrative enforcement efforts that are far from cost-effective.  
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33 Section 1 of this ordinance amends the definition of “hostel dormitory” by reducing  
34 the minimum number of required beds from four to two, in deference to the current  
35 prevailing business model for many hostels. Even though most cities in the United  
36 States with a transient occupancy tax levy such tax on rents collected by hostels  
37 as well as other lodging facilities, this ordinance preserves the existing intent in the  
38 Code to provide tax-exempt status for hostel dormitory rentals. Additionally,  
39 clarification is achieved by adding a new qualification for hostel dormitory beds to

1 be standard beds designed for single-person occupancy, which is consistent with  
2 intent for use in a non-private communal sleeping environment. Nothing in the  
3 ordinance precludes or requires the usage of a stacked (bunk bed) arrangement of  
4 beds within a hostel dormitory.

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6 Because this ordinance maintains the intent established by AO 97-68(s) to exempt  
7 hostels from collecting the room tax, it amends the Code by introducing a definition  
8 of "hostel". The definition also serves to preclude any confusion or misperception  
9 which may arise in various circumstances. For example, a lodging business  
10 offering only one or two rooms with two beds each may choose to call itself a  
11 hostel in order to increase its exposure when in reality it is a different type of  
12 facility, such as a bed and breakfast. Businesses that do not meet the definition of  
13 hostel must register with the Finance Department (Department) and collect the  
14 room tax from their guests. Businesses that meet the definition of hostel must  
15 register with the Department and obtain a certificate of registration under AMC  
16 chapter 12.20, but will be exempt from collecting the room tax from their guests.  
17 These exemptions are clearly indicated by amending the list of exemptions in  
18 Section 2 of the ordinance and by amending the list of exempt businesses in  
19 Section 3 of the ordinance.

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21 The intent for amending the definition of "Room" is to clarify that rentals of less  
22 than 24-consecutive hours are taxable transactions under this code. Such rentals  
23 may include incremental units of a 24-hour period as well as "by-the-hour" rentals  
24 of individual private rooms for sleeping purposes - for example, a new business  
25 model emerging at airports in major cities in the U.S. and around the globe (e.g.  
26 Unique Retreat, LLC).

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28 Section 5 raises the amount of the security for fiduciary performance required from  
29 each hotel operator from the current 8% up to 12% of estimated average annual  
30 taxable room rental revenues of the operator's facility. This ordinance is not  
31 intended to require an increase in the amount of financial guarantee for those  
32 operators meeting the existing requirement for financial guarantee prior to the  
33 effective date of this ordinance.

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35 Section 6 of the ordinance adds a new section requiring informational returns each  
36 month from only the larger hotel operators offering 110 or more rooms for rent.  
37 Room tax revenue is the fourth largest annual revenue stream for the Municipality,  
38 impacting the general fund, contractual funding for Anchorage Convention and  
39 Visitors Bureau and the promotion of local tourism, and funding for debt service  
40 and maintenance of the Denaina Convention Center. An unforeseen revenue  
41 variance can have significant detrimental consequences to all of these entities and  
42 functions. By implementing monthly informational reporting limited to the larger  
43 operators, this ordinance serves the purpose of improving our administrative  
44 capability to more precisely forecast room tax revenues and timely respond to  
45 projected room tax revenue variances. This amendment also improves the

1 administration's ability to provide increased accuracy in certain reports to the  
2 Assembly, consistent with the requirement set forth in AMC 6.40.015.

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4 Currently, only 23 of 246 active operators will be impacted by the new requirement  
5 for monthly informational reporting. Those 23 operators are large, professional  
6 businesses whose remittances approximate 70% of total annual municipal room  
7 tax revenues. It is standard practice among large businesses to perform monthly  
8 closings of the financial records and generate financial reports for internal use,  
9 including monthly revenues earned. As such, reporting monthly gross rentals, and  
10 its components of taxable and non-taxable rents, as information only to the  
11 Municipality should not be a significant burden to these 23 businesses. The  
12 specific contents of individual monthly informational returns will be kept  
13 confidential in accordance with AMC section 12.20.060. The existing code  
14 requirement for these 23 businesses to complete and file a room tax return and  
15 remit room taxes due on a quarterly basis by a specified due date will not be  
16 affected.

17  
18 Sections 8 and 9 of the ordinance introduce expanded authority for the Finance  
19 Department to demand to inspect an operator's records at times when a long-  
20 standing pattern of purposeful non-compliance has been detected. The existing  
21 AMC section 12.20.070 requires an operator of a lodging facility to maintain and  
22 preserve records for only the current year and two prior calendar years. This  
23 limitation should not provide a means to conceal evidence when an inspection of  
24 more current records reveals a pattern indicating a long-term deliberate failure to  
25 comply with code provisions. The intent of this ordinance is to enable the Treasury  
26 Division to examine records up to extent of the six-year state statute of limitations  
27 when facts and circumstances reveal egregious, purposeful, and continued  
28 failures to comply with code requirements.

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30 An additional intent of this ordinance is to provide authority to the Department to  
31 inspect the records of local businesses acting as reservation services for local  
32 lodging businesses. Typically, the lodging facility clients of reservation services  
33 tend to be vacation rentals and bed & breakfasts. The use of reservation services  
34 allows the lodging facilities a significant degree of anonymity and thus some of  
35 these operators are otherwise undetectable to the Department for administering  
36 and enforcing compliance with provisions of AMC chapter 12.20, Room Tax.

37  
38 Section 10 of this ordinance sets forth the maximums for the existing criminal  
39 misdemeanor penalty for violating chapter 12.20 by adding the specific  
40 consequences of imprisonment up to 90 days or a \$2,000 fine, or both. These  
41 consequences are similar to the existing misdemeanor penalty codified in AMC  
42 chapter 12.05, Property Tax Provisions. The intent is to generate an enhanced  
43 deterrent effect and to enable prosecution under appropriate circumstances.  
44 Existing civil penalties remain in place. Room tax is a significant municipal  
45 revenue source and includes a fiduciary responsibility of a lodging business to  
46 safeguard tax dollars collected from customers on behalf of Municipality, to be

1 held in trust for the sole benefit of the Municipality until remitted, as currently  
2 codified in AMC section 12.20.040. Similar to room tax, personal property tax is  
3 premised on self-reporting by businesses. However, both real and personal  
4 property taxes are financial obligations of the property owner, **without** the fiduciary  
5 responsibilities inherent with room taxes. It is appropriate and just that  
6 consequences for breach of fiduciary responsibilities associated with room taxes  
7 are at least as significant as existing consequences attributable to the failure of a  
8 personal obligation for property taxes.

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10 Finally, Section 12 of this ordinance clarifies that a refund request is limited to two  
11 years from the date of the excess payment, and that a refund may be in the form  
12 of payment or of a credit to the operator in the Municipality's accounts.

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14 The remainder of the amendments contained in this ordinance improves  
15 administrative effectiveness and consistency among other chapters in Title 12, and  
16 clarifies authority, requirements, and responsibilities.

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19 **THE ADMINISTRATION RECOMMENDS APPROVAL OF AN ORDINANCE**  
20 **AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 12.20, ROOM TAX,**  
21 **TO CLARIFY THE DEFINITION AND EXEMPTION FOR HOSTELS, TO**  
22 **INCREASE THE GUARANTEE REQUIRED OF OPERATORS, TO REQUIRE**  
23 **MONTHLY INFORMATIONAL RETURNS FROM LARGE OPERATORS, TO**  
24 **CLARIFY THE RECORDS REQUIRED FOR RETENTION AND AUTHORIZE**  
25 **THE CHIEF FISCAL OFFICER TO ORDER RETENTION UP TO SIX YEARS**  
26 **WHEN JUSTIFIED, TO CLARIFY THE CRIMINAL PENALTY FOR VIOLATIONS,**  
27 **TO CLARIFY TIME FOR AND FORM OF REFUNDS, TO IMPROVE**  
28 **ADMINISTRATIVE EFFECTIVENESS, AND ADAPT TO CURRENT LODGING**  
29 **INDUSTRY PRACTICES.**

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31 Prepared by: Daniel Moore, Municipal Treasurer  
32 Approved by: Lucinda Mahoney, CFO  
33 Concur: Dennis A. Wheeler, Municipal Attorney  
34 Concur: George J. Vakalis, Municipal Manager  
35 Respectfully submitted: Daniel A. Sullivan, Mayor  
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