

**DENALI BOROUGH, ALASKA  
ORDINANCE NO. 24-08  
INTRODUCED BY: MAYOR CHRIS NOEL**

**AN ORDINANCE TO AMEND DENALI BOROUGH CODE CHAPTER 3.25  
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 Denali Borough Code 3.25 Overnight Accommodations Tax.

**Section 3. Procedure.**

**DENALI BOROUGH CODE  
CHAPTER 3.25  
OVERNIGHT ACCOMMODATIONS TAX**

Sections:

- 3.25.010 Definitions.
- 3.25.020 Purpose and intent.
- 3.25.030 Imposition of overnight accommodations tax.
- 3.25.040 Administration of tax.
- 3.25.050 Tax exemptions.
- 3.25.060 Registration required.
- 3.25.070 Title to taxes.
- 3.25.080 Collection of overnight accommodations tax.
- 3.25.090 Duty to file tax return and to transmit taxes to the borough.
- 3.25.100 Estimated tax
- 3.25.110 Confidentiality.
- 3.25.120 Overnight accommodations tax audits.
- 3.25.130 Penalties and interest.
- 3.25.140 Violations.
- 3.25.150 Civil action authorized.
- 3.25.160 Tax lien.
- 3.25.170 Sale of business.
- 3.25.180 City sales tax.
- 3.25.190 Severability.
- 3.25.210 Appeal.

### **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 30 consecutive days.
- F. “Quarter” means the three-month periods ending on March 31st, June 30th, September 30th, and December 31st.
- G. “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.
- H. “Rental” means the permitting of use or occupancy of overnight accommodation for consideration.
- I. “Seasonal” means a period beginning March 1 and ending September 30.

### **3.25.020 Purpose and intent.**

It is the purpose and intent of the tax levied under this chapter to raise revenues. The increase rate of tax levied on overnight accommodations from seven percent of the daily rate to seven and one-half percent of the daily rate was approved by Denali Borough voters with the intention to support local nonprofit organizations, local emergency

services providers, volunteer fire departments, municipal assistance and major school maintenance projects. 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 and one-half percent 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 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 30 or more consecutive days.

**3.25.040 Administration of tax.**

The borough mayor, or their 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, no later than April 1<sup>st</sup> of each year of operation for seasonal overnight accommodation registration, or before commencing operations of a new overnight accommodation business or an established overnight accommodation business that was not registered to operate in the prior year.

C. An operator may apply for a seasonal certificate of registration if that operator rents overnight accommodations after March 1 but before September 30 in a calendar year.

- D. 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. Current contact information including mail, email, physical location and telephone;
  4. The name of the individual who serves as the applicant's primary point of contact.
- E. Upon receipt of a properly executed application and in the absence of monies owed to the borough, the borough shall issue a certificate of registration authorizing said operator to collect the tax. The certificate shall also state the name of the business, the physical address of the overnight accommodation to which it is applicable, period of time the operator is registered to operate, and the certificate expiration date. The certificate must be prominently displayed at the regular place of business named therein.
- F. 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, and/or change in business organization. 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 its existing certificate to the borough.
- G. The borough may revoke a certificate of registration if an operator fails to comply with any of the provisions of this chapter.
- H. 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, 3.25.140 and 3.25.150.
- I. Registration information is public information.

**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 accommodations 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 chapter 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 paid rent in cash, by credit card, or otherwise, to guarantee the right to occupy an overnight accommodation, 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 returns shall be made on the forms prescribed by the borough for that purpose and shall contain the following information:
  - 1. Total gross rental sales;
  - 2. The amount of tax due thereon under this chapter;
  - 3. Such other information and documentation as the borough may require.
- B. The operator shall report and remit taxes on the same accounting basis, cash or accrual, as the operator uses for reporting federal income tax.
- C. 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.

- D. 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 to the borough on or before the due date of the return for that quarter are delinquent.
- E. Taxes and tax returns will be considered to have been timely remitted and/or filed to the borough only when the taxes and returns are electronically transmitted, received in the borough office, or postmarked, on or before the date on which the taxes are due.

### **3.25.100 Estimated tax.**

If the borough is unable to ascertain the tax due from an operator because the operator has failed to file a quarterly return as required under this chapter, to remit collected taxes, to collect taxes, to keep accurate books, to allow inspection, or to maintain the records required by this chapter, has filed a false, inaccurate, or incomplete return, or has falsified records, the borough shall estimate the tax due based on any available evidence. Notice of the borough's estimate shall be mailed to the operator. Unless the operator files an accurate quarterly return covering the time period subject to the borough's estimate or files an appeal within 30 days of the mailing of the borough's estimate, the borough's estimate shall become final for the purpose of determining the operator's tax liability.

### **3.25.110 Confidentiality.**

- A. Registration information is public. Except as otherwise provided herein, 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 their authorized representative a copy of any return filed by the operator or on their 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 does not disclose the identity of any operator who submits a return in accordance with this chapter.
- 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. The borough reserves the right to conduct audits of compliance with borough tax code. In the event of an audit, borough requests for books, accounts or copies of specific records shall be in writing to the operator and the operator shall have 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.

C. 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~~ their 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 \$250 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 \$25 for a return that is filed late or a return that is not filed where a return is expected to be filed.
  - 2. Taxes delinquent for 30 days or less are subject to a penalty of 120 percent of taxes due.
  - 3. Taxes delinquent for more than 30 days are subject to an additional penalty of 15 percent of taxes due.
  - 4. 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. Failure to comply with audit provisions in this chapter may be assessed a penalty of \$150.00 per day commencing 31 days after receiving notice of intent to audit, or upon a specified audit date, whichever is later until provisions have been satisfied.
- E. Any tax or penalty assessed that is delinquent for more than 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 to file a timely 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. In addition to any other remedies and administrative procedures provided under this chapter, the borough may file a civil action against any seller and/or buyer for recovery of any tax, unremitted tax, penalties, interest, costs, and fees, that have



not been paid or remitted when due. The borough must file any such civil action within six years of the date that such tax, unremitted tax, penalties, interest, costs, and fees were due under this chapter.

- B. Any tax, unremitted tax, penalties, interest, costs and fees that this chapter requires a seller and/or buyer to pay or remit shall constitute a lien in favor of the borough upon all assets, earnings, revenue, and property of such seller and/or buyer. This lien arises when any such payment or remittance is not made when due and continues until the payment or remittance is fully satisfied through execution, foreclosure sale, or any other legal means. This lien is not valid as against a mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien is filed in the nearest recorder's office of the nearest recording district. Upon such filing, the lien is superior to all other liens except as otherwise provided by state or federal law.

**3.25.170 Sale of business.**

If any operator sells their overnight accommodation business to another person or entity, the operator shall file a final tax return and transmit all tax due within 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 4. Effective Date.** Effective January 1, 2025 and upon approval by the Denali Borough Assembly, signature of the Denali Borough Mayor.

DATE INTRODUCED: August 14, 2024  
FIRST READING: September 11, 2024  
PUBLIC HEARING: September 11, 2024

PASSED and APPROVED by the Denali Borough Assembly this 11<sup>th</sup> day of September, 2024.

---

CHRIS NOEL, MAYOR

ATTEST: 

---

AMBER RENSHAW, BOROUGH CLERK

*VOTE: unanimous*