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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINN

OREGON RESTAURANT AND LODGING ASSOCIATION, an Oregon nonprofit corporation; and PHOENIX INNS, L.L.C., OF OREGON, an Oregon limited liability company,

Plaintiffs,

v.

CITY OF ALBANY, an Oregon Municipality,

Defendant.

Case No. 23CV49429

**COMPLAINT  
(Declaratory Judgment; Injunction)**

NOT SUBJECT TO MANDATORY ARBITRATION

Amount Claimed: Equitable Relief  
FEE AUTHORITY: \$281.00  
ORS 21.135(2)(a)

For their Complaint, Plaintiffs allege:

1.

Plaintiff Oregon Restaurant and Lodging Association (“ORLA”) is an Oregon nonprofit corporation with its principal place of business located in Wilsonville, Oregon. ORLA is a trade organization for the foodservice and lodging industry in Oregon, formed for the purposes of promoting the common business interests of its membership and to improve business conditions of the foodservice and lodging industry. ORLA has over 3,000 members, including 33 restaurant members and six lodging members located in and doing business in Albany, Linn County, Oregon.

2.

Plaintiff Phoenix Inns, L.L.C., of Oregon (“Phoenix”) is an Oregon limited liability company with its principal place of business in Salem, Oregon. Phoenix owns a hotel in Albany, Linn County, Oregon. Phoenix is a member of ORLA.

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1 3.

2 Defendant City of Albany (“Defendant” or the “City”) is an Oregon municipal corporation  
3 located in Linn County, Oregon.

4 4.

5 Historically, and at all relevant times, Defendant, in accordance with Albany Municipal Code  
6 Section 3.14, has imposed and collected a transient lodging tax (“TLT”) from members of the local  
7 lodging industry operating in the City, including from members of ORLA, such as Phoenix.<sup>1</sup>

8 5.

9 In 2003, the Oregon Legislature passed House Bill 2267, Or Laws 2003, ch. 818 § 11, which  
10 is now codified at ORS 320.300, *et. seq.* The statutes regulate, among other things, local transient  
11 lodging taxes.

12 6.

13 ORS 320.350(1) and (2) prohibit local jurisdictions from imposing new TLTs, or increasing  
14 existing TLTs, after July 2, 2003.

15 7.

16 ORS 320.350(3) provides:

17 A unit of local government that imposed a local transient lodging tax on July 1, 2003,  
18 may not decrease the percentage of total local transient lodging tax revenues that are  
19 actually expended to fund tourism promotion or tourism-related facilities on or after  
20 July 2, 2003. A unit of local government that agreed, on or before July 1, 2003, to  
increase the percentage of total local transient lodging tax revenues that are to be  
expended to fund tourism promotion or tourism-related facilities, must increase the  
percentage as agreed.

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23 \_\_\_\_\_  
24 <sup>1</sup> The City’s Municipal Code refers to the tax as a “Transient Room Tax.” In Oregon statutes, and on  
25 the City’s website (and in public documents), it is described as a “transient lodging tax.” The  
26 acronyms “TRT” for “Transient Room Tax,” “TLT” for “Transient Lodging Tax,” and “TOT” for  
“Transient Occupancy Tax,” are often used interchangeably to refer to the same thing. For ease of  
reference, “TLT” is used herein.

8.

ORS 320.350(4) provides:

Notwithstanding subsections (1) and (2) of this section, a unit of local government that is financing debt with local transient lodging tax revenues on November 26, 2003, must continue to finance the debt until the retirement of the debt, including any refinancing of that debt. If the tax is not otherwise permitted under subsection (1) or (2) of this section, at the time of the debt retirement:

(a) The local transient lodging tax revenue that financed the debt shall be used as provided in subsection (5) of this section; or

(b) The unit of local government shall thereafter eliminate the new tax or increase in tax otherwise described in subsection (1) or (2) of this section.

9.

ORS 320.350(5) provides:

Subsections (1) and (2) of this section do not apply to a new or increased local transient lodging tax if all of the net revenue from the new or increased tax, following reductions attributed to collection reimbursement charges, is used consistently with subsection (6)<sup>2</sup> of this section to:

(a) Fund tourism promotion or tourism-related facilities;

(b) Fund city or county services; or

(c) Finance or refinance the debt of tourism-related facilities and pay reasonable administrative costs incurred in financing or refinancing that debt, provided that:

(A) The net revenue may be used for administrative costs only if the unit of local government provides a collection reimbursement charge; and

(B) Upon retirement of the debt, the unit of local government reduces the tax by the amount by which the tax was increased to finance or refinance the debt.

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<sup>2</sup> ORS 320.350(6) provides: “At least 70 percent of net revenue from a new or increased local transient lodging tax shall be used for the purposes described in subsection (5)(a) or (c) of this section. No more than 30 percent of net revenue from a new or increased local transient lodging tax may be used for the purpose described in subsection (5)(b) of this section.”

1 10.

2 Upon information and belief, in 1995 the City issued “Hotel/Motel Tax Revenue Bonds,  
3 Series 1995” (the “Bonds”); and the funds were “intended for a partnership with Linn County to  
4 construct and equip [the] new Linn [County] Fair and Expo Center. [‘Expo Center’].”

5 11.

6 After the Bonds were issued, the Expo Center was constructed and equipped, and the City  
7 collected TLTs to service the bond debt.

8 12.

9 The Expo Center is a “tourism-related facility” as that term is defined in ORS 320.300(9).

10 13.

11 Upon information and belief, the City’s 2003-04 TLT budget included \$500,600.00 in TLT  
12 revenue, a portion of which was expended for “[d]ebt service requirements” of \$242,100.00 for  
13 repayment of the Bonds. In 2003-2004, the City expended \$223,000 of TLT revenue on events  
14 constituting “tourism promotion” as that phrase is defined in ORS 320.300(7).

15 14.

16 Upon information and belief, the City’s 2003-04 expenditure of TLT revenue on “tourism  
17 promotion” and debt servicing related to the Expo Center comprised more than 70% of the City’s  
18 total TLT revenue.

19 15.

20 On July 2, 2003, the City’s expenditure of TLT revenue to service debt related to the Bonds  
21 was not an impermissible tax subject to ORS 320.350(4), and was not a new or increased tax subject  
22 to ORS 320.350(5).

23 16.

24 Based on the foregoing, ORS 320.350(1) through (3) prohibits the City from decreasing the  
25 percentage of TLT revenues spent to fund tourism promotion and tourism-related facilities to less  
26 than the percentage expended for such purposes on or after July 2, 2003.

1 17.

2 Nevertheless, in violation of ORS 320.350, the City has spent less than the percentage amount  
3 expended as of July 2, 2003, of the City’s TLT revenue to fund tourism promotion and tourism-  
4 related facilities as set forth herein.

5 18.

6 Upon information and belief, the City has failed every year since at least the date upon which  
7 the Bonds for the Expo Center were paid off, and possibly as far back as the 2003-04 fiscal year, to  
8 expend at least the percentage amount expended as of July 2, 2003, of the City’s TLT revenue to fund  
9 tourism promotion and tourism related facilities.

10 19.

11 Despite repeated requests from ORLA and ORLA members, such as Phoenix, the City has  
12 refused, and continues to refuse, to expend at least the amount expended as of July 2, 2003, of its  
13 TLT revenue on tourism promotion and tourism-related facilities, in violation of Oregon law.

14 **FIRST CLAIM FOR RELIEF**

15 **(Declaratory Judgment)**

16 20.

17 Plaintiffs re-allege paragraphs 1 through 19 as if fully restated herein.

18 21.

19 ORS 28.020 provides that:

20 Any person interested under a deed, will, written contract or other writing constituting  
21 a contract, or whose rights, status or other legal relations are affected by a constitution,  
22 statute, municipal charter, ordinance, contract or franchise may have determined any  
23 question of construction or validity arising under any such instrument, constitution,  
24 statute, municipal charter, ordinance, contract or franchise and obtain a declaration of  
25 rights, status or other legal relations thereunder.

24 22.

25 A justiciable controversy exists insomuch as, upon information and belief, the City contends  
26 that it is only obligated to expend a maximum of 44.5% of TLT revenue on tourism promotion or

1 tourism-related facilities (excluding the Bonds debt servicing), whereas Plaintiffs contend that the  
2 City is required to expend no less than the amount expended as of July 2, 2003, of its TLT revenue on  
3 tourism promotion and tourism-related facilities (excluding the Bonds debt servicing).

4 23.

5 ORLA has standing to bring this action because ORS 320.350 and the City's expenditure of  
6 TLT revenue affects ORLA's rights, status or legal relations. The City's interpretation of ORS  
7 320.350 and decrease in the percentage of TLT revenue that has been and will be expended on  
8 tourism promotion and tourism-related facilities affects ORLA's legally recognized interest in  
9 promoting the common business interests of its members located in Albany, because the City has  
10 improperly diverted and will continue to improperly divert its TLT revenues from tourism promotion  
11 and tourism-related facilities in violation of Oregon law.

12 24.

13 ORLA's alleged harm is real and probable: the City has failed to expend TLT revenue on  
14 tourism promotion and tourism-related facilities in an amount required by ORS 320.350. A  
15 declaration by this Court requiring the City to comply with ORS 320.350 will have a practical effect  
16 on the rights that ORLA has been formed to protect and advance.

17 25.

18 Plaintiffs have standing to bring this action because ORS 320.350 and the City's expenditure  
19 of TLT revenue affects Plaintiffs' rights, status or legal relations. The City's interpretation of ORS  
20 320.350 and decrease in the percentage of TLT revenue expended on tourism promotion and tourism-  
21 related facilities has improperly diverted and will continue to improperly divert the City's TLT  
22 revenues from tourism promotion and tourism-related facilities in violation of Oregon law, negatively  
23 affecting patronage of Plaintiffs' establishments.

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1 26.

2 Plaintiffs’ harm is real and probable, because the City has failed to expend TLT revenue on  
3 tourism promotion and tourism-related facilities in an amount required by ORS 320.350. A  
4 declaration by this Court requiring the City to comply with ORS 320.350 will have a practical effect  
5 on Plaintiffs’ rights.

6 27.

7 Pursuant to ORS 28.020, Plaintiffs are entitled to a judgment declaring that the City is  
8 required to, pursuant to ORS 320.350, expend no less than the percentage amount expended as of July  
9 2, 2003 of its TLT revenue on tourism promotion and tourism-related facilities.

10 **SECOND CLAIM FOR RELIEF**

11 **(Permanent Injunction)**

12 28.

13 Plaintiffs re-allege paragraphs 1 through 27 as if fully restated herein.

14 29.

15 Since 2004, and every year that after, the City has violated ORS 320.350, and, upon  
16 information and belief, will continue to do so.

17 30.

18 In the absence of injunctive relief, Plaintiffs will continue to suffer irreparable harm, including  
19 but not limited to the negative affect on patronage of Phoenix’s establishments.

20 31.

21 Plaintiffs have no adequate remedy at law and are likely to prevail on the merits of their first  
22 claim for relief.

23 32.

24 The public interest weighs in favor of granting Plaintiffs the injunctive relief they seek.

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26 ///

1 33.

2 Pursuant to ORS 28.080, this Court should permanently enjoin the City from expending no  
3 less than the percentage amount expended as of July 2, 2003 of its TLT revenue on tourism  
4 promotion and tourism-related facilities.

5 **THIRD CLAIM FOR RELIEF**

6 **(Accounting)**

7 34.

8 Plaintiffs re-allege paragraphs 1 through 27 as if fully restated herein.

9 35.

10 Upon information and belief, the City has expended less TLT revenue on tourism promotion  
11 or tourism related facilities than is required by ORS 320.350, but the exact amount expended by the  
12 City of TLT revenue on tourism promotion or tourism related facilities is unknown and cannot be  
13 ascertained by Plaintiffs without an accounting by City of TLT revenue.

14 36.

15 The City should be required to account for all TLT expenditures since 2003-04.

16 37.

17 Plaintiffs have no adequate remedy at law.

18 38.

19 As further relief, Plaintiffs seek a judgment ordering that the record in this case remain open  
20 pending completion of the accounting and providing Plaintiffs the opportunity to seek supplemental  
21 relief pursuant to ORS 28.080.

22 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- 23 1. Declaring that the City's is required to, pursuant to ORS 320.350, expend no less than  
24 the amount expended as of July 2, 2003 of its TLT revenue on tourism promotion and  
25 tourism-related facilities;

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