

Ordinance No. 230

**An Ordinance of the City of East Palo Alto
Imposing a Transient Occupancy Tax on the
Occupancy of Hotels and Similar Short-Term
Lodging and Providing For an Election Thereon**

Subject to the approval of the electorate, the City Council of the City of East Palo Alto does ordain as follows:

Section 1. Title. This Ordinance shall be known as the Uniform Transient Occupancy Tax of the City of East Palo Alto. This Ordinance may also be known as the Hotel Room tax.

Section 2. Definitions. Except where the context otherwise requires, the definitions given in this Section govern the construction of this Ordinance:

- (a) Person. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.
- (b) Hotel. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, public or private club, or other similar structure or portion thereof. Excluded from this definition are facilities licensed by the State of California or County of San Mateo as group care or foster care facilities primarily intended for the protection and/or safe care of the occupants and residents thereof.
- (c) Occupancy. "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.
- (d) Transient. "Transient" means any individual who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such individual so occupying space in

a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the individual providing for a longer period of occupancy.

In determining whether an individual is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this Ordinance may be considered. For the purposes of this Ordinance, an individual is deemed to be a physical person only as opposed to a legal person or organization.

- (e) Rent. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.
- (f) Operator. "Operator" means the person who is proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this Ordinance by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (g) Tax Administrator. "Tax Administrator" means the City Manager or designated representative thereof.

Section 3. Tax Imposed. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of twelve percent (12%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator.

Section 4. Exemptions. No tax shall be imposed upon:

- (a) Any transient as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax here provided; or
- (b) Any officer or employee of a foreign or domestic government or domestic corporation that is exempt by reason of express provision of federal law or international treaty, provided billing is made directly to and payment is received from the governmental agency qualifying for this exemption. No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by Tax Administrator.
- (c) Whenever an operator charges a transient rent, and such charges prove to be uncollectible, those amounts are not subject to the tax. However, if these amounts are subsequently collected, the amount of tax shall be included in the amount paid to the City when filing the next return.
- (d) If any operator shall fail or refuse to collect said tax and to make, within the time provided in this Ordinance, any report and remittance of said tax or any portion thereof required by this Ordinance, the Tax Administrator shall proceed in such manner as he/she may deem best to obtain facts and information on which to base his/her estimate of the tax due. As soon as the Tax Administrator has procured such facts and information as he/she is able to obtain upon which to base the assessment of any tax imposed by this Ordinance and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he/she shall proceed to determine and assess against such operator the tax, interest and penalties provided by this Ordinance. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his/her last known place of address.
- (e) Such operator may within twenty (20) calendar days after the serving or mailing of such notice, make application in writing to Tax Administrator for a hearing on amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest

and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made the Tax Administrator shall give not less than ten (10) calendar days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after twenty (20) calendar days unless an appeal is taken as provided in Section 10.

Section 5. Operator's Duties. Each operator shall collect the tax imposed by this Ordinance to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

Section 6. Registrations. Within thirty (30) days after the effective date of this Ordinance as to the hotel operators commencing business after the effective date of this Ordinance, each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Administrator and obtain from him/her a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;

- (4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit."

Section 7. Reporting and Remitting.

- (a) Each operator who received over \$100,000 in gross receipts during the previous calendar year shall on or before the tenth day following each month make a return to the Tax Administrator on forms provided of the total rents charged and submit the amount of tax collected for transient occupancies.
- (b) Each operator who received between \$5,000 and \$99,999 in gross receipts during the previous calendar year shall on or before the last day of the month following the close of each calendar quarter make a return to the Tax Administrator on the forms provided of the total rents charged and submit the amount of tax collected for transient occupancies.
- (c) Each operator who received under \$5,000 in gross receipts during the previous calendar year shall, on or before January 31 of each year, make a return to the Tax Administrator on forms provided of the total rents collected and its amount of tax collected for transient occupancies for the preceding year.

Section 8. Penalties and Interest.

- (a) Original Delinquency. Any operator who fails to remit any tax imposed by this Ordinance within the time required shall pay a penalty of 25% of the amount of the tax in addition to the amount of the tax.

- (b) Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this Ordinance is due to fraud, a penalty of 50% of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraph (a) of this Section.
- (c) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Ordinance shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, inclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (d) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this Section shall become a part of the tax herein required to be paid.

Section 9. Failure to Collect and Report Tax. Determination of Tax by Tax Administrator.

- (a) If any operator shall fail or refuse to collect said tax and to make, within the time provided in this Ordinance, any report and remittance of said tax or any portion thereof required by this Ordinance, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Administrator has procured such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this Ordinance and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this Ordinance. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made

the Tax Administrator shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at the time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed.

After such hearing the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 10.

- (b) Security for Collection of Tax. Whenever any operator has failed to report or remit the Transient Occupancy Tax as required by Section 7 of this Ordinance, and such failure results in a continued delinquency as defined under Section 8 (b) of this, the Tax Administrator may require such operator to deposit with him forthwith such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator, but for the reporting period applicable to the operator. The estimated average liability shall be determined in the same manner as required under subsection (a) of this Section.

The Tax Administrator shall receive the security required by him/her and shall cause the same to be placed in the City Treasury in a special trust fund to be known as the "Transient Occupancy Tax Security Deposit Fund," which fund is hereby established.

- (c) Withdrawals from Security Deposit. Whenever any operator fails to remit any delinquent remittance due under this Ordinance on or before the period designated in subsection (a) above, the Tax Administrator may notify the operator that the amount due and owing to the City from said operator for the tax, interest and penalty as imposed by this Ordinance, or any portion of them, shall be transferred for use as provided under Section 15 of this Ordinance.

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The Tax Administrator may notify the operator that he is required to redeposit forthwith the amount deducted from the deposit.

Section 10. Appeals Board of Review. Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the Taxation and Assessment Board of Review ("Board of Review") by filing a notice of appeal with the Tax Administrator within fifteen (15) days of the serving or mailing of the determination of tax due. The Board of Review shall fix a time and place for hearing such appeal, and the Board of Review shall give notice in writing to such operator at his last known place of address. The findings of the Board of Review shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

- (a) Composition - A Board of Review consisting of the City Manager, the Director Administrative Services, the City Attorney or their designees and two community members nominated by the Mayor and appointed by the Council shall hear and determine appeals of orders or decisions of the Tax Administrator.
- (b) Appeals - Any person whose rights or interests have been directly and adversely affected by a Transient Occupancy Tax ruling or finding of fact made by the Tax Administrator under the authority of this Ordinance may appeal therefrom in writing to the Board of Review within twenty (20) calendar days from the date of notification of such ruling or finding. The Board of Review in individual cases may, in its exercise of reasonable discretion in administering the provisions of this Ordinance, enlarge the twenty (20) calendar day period in which to file an appeal. The Board shall make findings of fact in support of its decision on appeal. The Board shall exercise its reasonable discretion in administering the provisions of this Ordinance in rendering a decision on appealed rulings and findings.

Any tax, penalty, or interest found to be owing is due and payable at the time the Board of Review decision thereon becomes final.

- (c) Extension of Time for Filing and Payment - On written application showing good cause, the Board of Review or its chairperson may, with or without hearing, by written order filed with the Tax Administrator, extend for more than twenty (20) calendar days the time period in this Ordinance for filing of any Transient Occupancy Tax Return or making any payment. For the period of such extension the penalty in regard thereto shall be waived.
- (d) Exhaustion of Remedies - Any person whose case may be resolved by employing the administrative remedies provided by this section must exhaust those remedies before filing suit for refund, rebate, exemption cancellation, amendment, adjustment, or modification of tax, interest or penalty.
- (e) Review of Transient Occupancy Tax Ruling - The Board of Review may, on motion of any one of its members, hold a hearing to ascertain its position regarding any Transient Occupancy Tax ruling. The Board may affirm, modify, or reverse such ruling as necessary or advisable to effectuate the purposes of this Ordinance. The Board of Review's decision on such ruling shall have only prospective effect.

Section 11. Records. It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this Ordinance to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and payment to the City, which records the Tax Administrator shall have the right to inspect at all reasonable times.

Section 12. Refunds.

- (a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this Ordinance, it may be refunded as provided in subparagraphs (b) and (c) of this Section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

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- (b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, or erroneously or illegally collected or received; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.
- (c) A transient may obtain a refund of taxes overpaid or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subparagraph (a) of this Section, but only when the tax was paid by the transient directly to the Tax Administrator, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient cannot obtain a refund from the operator who collected the tax and remitted it to the City.
- (d) No refund shall be paid under the provisions of this Section unless the claimant establishes to the satisfaction of the Tax Administrator his right thereto by written records showing entitlement thereto.

Section 13. Action to Collect Transient Occupancy Tax a Debt.

Any tax required to be paid by any transient under the provisions of this Ordinance shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under provisions of this Ordinance shall be liable to an action brought in the name of the City of East Palo Alto for this recovery of such amount.

An action to collect the Transient Occupancy Tax must be commenced within three years of the date the Transient Occupancy Tax becomes delinquent. An action to collect the penalty for non-payment of the Transient Occupancy Tax must be commenced within three years of the date the penalty accrues.

The amount of Transient Occupancy Tax, penalty and interest imposed under the provisions of this Ordinance is hereby assessed against the business property on which the tax is imposed in those instances where the owner/operator of the business property are one and the same. If the taxes are not paid when due, such tax, penalty and interest shall constitute a special assessment against such business property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record.

Section 14. Notice of Hearing on Lien.

- (a) The Tax Administrator shall file with the City Manager a written notice of those persons against whose property the City will file liens. Upon receipt of such notice the City Manager shall present same to the City Council, and the City Council shall forthwith, by resolution, fix a time and place for a public hearing on such notice.

The Tax Administrator shall cause a copy of such notice to be served upon the owner of the business/business property not less than ten (10) days prior to the time fixed for such hearing. Mailing a copy of such notice to the owner of the business/business property at the address listed in the most recent property ownership records provided to the City by the County Assessor as of the date that the Tax Administrator causes notice to be mailed shall comprise proper service. Service shall be deemed complete at the time of deposit in the United States mail.

- (b) Collection of Delinquent Taxes by Special Tax Roll Assessment. With the confirmation of the report by the City Council, the delinquent transient tax charges contained therein which remain unpaid by the owner/operator of the business/ business property shall constitute a special assessment against said business property and shall be collected at such time as is established by the County Assessor for inclusion in the next property tax assessment.

The Tax Administrator shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent Transient Occupancy Tax charges consisting of the delinquent occupancy taxes, penalties, interest at the rate of 12% per annum from the date of recordation to the date of lien, an administrative charge of \$50.00 and a release of lien filing fee in amount equal to the amount charged by the San Mateo County Recorder's Office.

Thereafter, said assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure of sale as provided for delinquent ordinary municipal taxes. The assessment liens shall be subordinate to liens except for those of state, county

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and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and charges due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to said special assessments.

- (c) Recordation of Lien for Delinquent Charges. Upon confirmation of the report of delinquent transient occupancy tax charges by the City Council, a lien on the Real Property for delinquent transient occupancy tax charges which were assessed will be recorded with the Recorder of the County of San Mateo.

Section 15. Use of Revenues. All revenues collected pursuant to this Ordinance shall be placed in the General Fund and shall be available for appropriation to any legitimate municipal purpose.

Section 16. Violations, Infraction. Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made or who fails or refuses to furnish a supplemental return or other data required by the Tax Administrator, or who renders a false or fraudulent return or claim, is guilty of an infraction and is punishable as provided by law. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with the intent to defeat or evade the determination of any amount due required by this Ordinance to be made, is guilty of an infraction and is punishable as aforesaid.

Section 17. Severability. The provision of this Ordinance shall not apply to any person, association, or corporation, or to any property, as to whom or which it is beyond the power of the City to impose the tax provided in this Ordinance. If any sentence, clause, section or part of this Ordinance is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this Ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this Ordinance. It is declared to be the intention of the City that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included in this Ordinance.

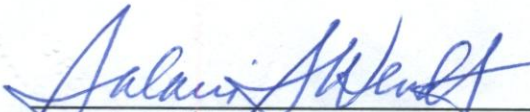
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Section 18. This ordinance, being for the enactment and imposition of a general tax, shall be submitted to a vote of the people at the general municipal election scheduled for November 3, 1998. This ordinance shall become valid and binding if a majority of the voters voting thereon vote in its favor at said election and the results thereof are certified by the City Council.

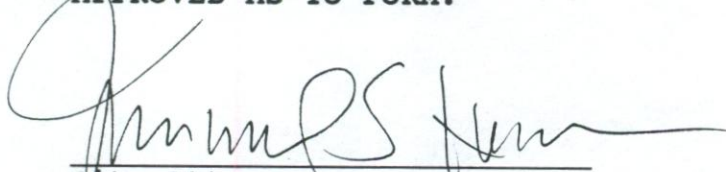
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Pursuant to Article XIIIIC of the California Constitution ("Proposition 218"), submission of this proposed Ordinance to a vote of the electorate on November 3, 1998 was approved by the City Council of the City of East Palo Alto at a meeting held on the 6th day of July, 1998, upon the following vote:

ATTEST:


Deputy City Clerk

APPROVED AS TO FORM:


City Attorney