

RESOLUTION NO. 99 – 2020

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EAST PALO ALTO

CALLING AND ORDERING THE SUBMISSION TO THE ELECTORS OF THE CITY OF EAST PALO ALTO A MEASURE IMPOSING AN INCREASE TO THE CITY'S TRANSIENT OCCUPANCY TAX RATE OF TWELVE PERCENT (12%) BY A ONE PERCENT (1%) INCREASE ON JANUARY 1, 2022, AND ANOTHER ONE PERCENT (1%) ON JANUARY 1, 2023, FOR A TOTAL RATE OF FOURTEEN PERCENT (14%) AND AUTHORIZING THE BALLOT QUESTION

WHEREAS, pursuant to Section 7280 of the California Revenue and Taxation Code, the legislative body of a city may levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging for a period of 30 days or less; and

WHEREAS, the current transient occupancy tax ("TOT") throughout the City of East Palo Alto, as established by Chapter 3.68 of the East Palo Alto Municipal Code, is twelve percent (12%); and

WHEREAS, the TOT is paid only by transient guests staying at hotels and other short-term overnight accommodations in the City of East Palo Alto, and not by City residents who are not staying in such short-term accommodations; and

WHEREAS, the City Council desires to put before the voters a proposal to increase the percent of TOT gradually to a total of fourteen percent (14%); and

WHEREAS, the increased percentage will be devoted to affordable housing, in particular the rehabilitation and maintenance of affordable housing units throughout the City and efforts to limit the displacement of renters; and

WHEREAS, this measure will also update and clarify provisions of the existing ordinance, as well as add new provisions; and

WHEREAS, this measure will authorize the City Council to amend various aspects of the TOT provisions without subsequent voter approval, provided such amendment does not increase the amount of tax paid by any taxpayer in excess of the rate set forth in the measure or change the allowed use for the tax revenues; and

WHEREAS, the City Council is authorized by California Elections Code Section 9222 to submit to the voters propositions for the enactment or amendment of any ordinance, including tax measures; and

WHEREAS, a Consolidated General Municipal Election on Tuesday, November 3, 2020 has been called by Resolution Nos. 76 and 77 adopted on June 16, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO THAT:

SECTION 1. Abbreviated Statement. The City Council pursuant to its authority and Election Code section 13247, does order to be submitted to the voters, at the Consolidated General Municipal Election on November 3, 2020, the following question:

MEASURE ____ TRANSIENT OCCUPANCY TAX INCREASE FROM 12% TO 14% BY 2023 TO SUPPORT AFFORDABLE HOUSING

<p>“Shall a measure to impose an increase to the City’s current Transient Occupancy Tax rate of 12%, paid by a person who rents a hotel room, by a 1% increase on January 1, 2022, and another 1% on January 1, 2023, for a total rate of 14%, estimated to raise \$195,000 the first year, and \$390,000 annually thereafter, for affordable housing development, acquisition and rehabilitation activities, which shall continue unless repealed by the voters, be adopted?”</p>	YES
	NO

SECTION 2. Full Text. The full text of the proposed measure submitted to the voters is attached as **Exhibit A** to this Resolution, which is incorporated herein by this reference.

SECTION 3. Election. The City Council hereby requests the San Mateo County Registrar of Voters to provide all services necessary to conduct the Election and to conduct and canvass the results of the Election. The City will reimburse San Mateo County for the actual cost incurred in conducting the election when the work is completed and upon receipt of a bill stating the amount due as determined by the elections official. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 4. Notice. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time for and in a manner as required by law. The hours during which the polling places for the Election shall be open shall be the hours established for the Consolidated Municipal Election.

SECTION 5. Necessary Acts. The City Clerk is hereby directed to do all things required by law to effectuate the Consolidated General Municipal Election, and to present the measure submitted herein to the electorate, including, but not limited to, required publications, postings, noticing and filings.

SECTION 6. Impartial Analysis. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of this Resolution to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within fifteen (15) days of the adoption of this Resolution.

SECTION 7. Argument. Arguments for and against, not to exceed 300 words in length, may be filed consistent with Elections Code section 9282 requirements. The City Council declines, pursuant to the provisions of Elections Code section 9385, to permit rebuttal arguments.

SECTION 8. Certification. The City Clerk is hereby directed to file a certified copy of this Resolution with the San Mateo County Board of Supervisors and the San Mateo County Registrar of Voters.

SECTION 9. CEQA. The City Council hereby finds that the adoption and implementation of the proposed TOT Ordinance is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000 et seq., “CEQA,” and 14 Cal. Code Regs. Sections 15000 et seq., “CEQA Guidelines”) because it can be seen with certainty that there is no possibility the adoption

and implementation of the Ordinance may have a significant effect on the environment, and accordingly the adoption of the Ordinance is not subject to CEQA pursuant to CEQA Guidelines Section 15061(b)(3); additionally, the Ordinance involves the creation of a government funding mechanism which does not involve any commitment to any specific project which may result in a potentially significant impact on the environment and thus is not a project subject to the requirements of CEQA pursuant to CEQA Guidelines Section 15378 (b)(4).

PASSED AND ADOPTED this 21st day of July 2020, by the following vote:

AYES: Abrica, Gauthier, Moody, Romero, and Wallace-Jones

NOES:

ABSENT:

ABSTAIN:



Regina Wallace-Jones, Mayor

ATTEST:



Walfred Solorzano, City Clerk

APPROVED AS TO FORM:



Rafael E. Alvarado Jr., City Attorney

ORDINANCE NO. XX – 2020

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF EAST PALO ALTO**

**IMPOSING AN INCREASE TO THE CITY’S TRANSIENT OCCUPANCY TAX RATE
OF TWELVE PERCENT (12%) BY A ONE PERCENT (1%) INCREASE ON JANUARY 1, 2022,
AND ANOTHER ONE PERCENT (1%) ON JANUARY 1, 2023,
FOR A TOTAL RATE OF FOURTEEN PERCENT (14%)**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO, SUBJECT
TO VOTER APPROVAL, DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1. Findings and Declarations.

- A. Pursuant to Section 7280 of the California Revenue and Taxation Code, the legislative body of a city may levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging for a period of 30 days or less; and
- B. The current transient occupancy tax (“TOT”) throughout the City of East Palo Alto, as established by Chapter 3.68 of the East Palo Alto Municipal Code, is twelve percent (12%); and
- C. The TOT is paid only by transient guests staying at hotels and other short-term overnight accommodations in the City of East Palo Alto, and not by City residents who are not staying in such short-term accommodations; and
- D. The City Council desires to put before the voters a proposal to increase the percent of TOT gradually to a total of fourteen percent (14%); and
- E. The increased percentage will be devoted to affordable housing, in particular the rehabilitation and maintenance of affordable housing units throughout the City and efforts to limit the displacement of renters; and
- F. This measure will also update and clarify provisions of the existing ordinance, as well as add new provisions; and
- G. This measure will authorize the City Council to amend various aspects of the TOT provisions without subsequent voter approval, provided such amendment does not increase the amount of tax paid by any taxpayer in excess of the rate set forth in the measure or change the allowed use for the tax revenues.

Section 2. Amendment to Chapter 3.68 of the East Palo Alto Municipal Code.

Subject to voter approval, East Palo Alto Municipal Code Title 3 (Revenue and Finance), Chapter 3.68 (Transient Occupancy Tax), is amended to read as follows (with text in ~~strikeout~~ indicating deletion and underlined text indicating addition) and this amendment shall be codified in the Municipal Code:

Chapter 3.68 - TRANSIENT OCCUPANCY TAX

3.68.010 - Title.

The ordinance codified in this chapter will be known as the uniform transient occupancy tax of the city. The ordinance codified in this chapter may also be known as the hotel room tax.

3.68.020 - Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

“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, rooming house, apartment-house, dormitory, public or private club, condominium, townhouse, 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.

“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.

“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/her 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 chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

“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.

“Rent” means the consideration ~~charged~~ paid by a transient, whether or not received by the operator, 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.

“Rental agent” means a person other than an operator who collects rent from a transient for the transient’s occupancy of a hotel.

“Tax administrator” means the city manager or designated representative thereof.

“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 individual 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 the ordinance codified in this chapter may be considered. For the purposes of this chapter, an individual is deemed to be a physical person only as opposed to a legal person or organization.

3.68.030 - Tax imposed.

- A. 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 paid by the transient. The revenue collected by the tax imposed pursuant to this subsection shall be allocated in the manner proscribed by Section 3.68.150. The 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.
- B. Beginning January 1, 2022, for the privilege of occupancy in any hotel, each transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the rent paid by the transient. This additional tax shall increase on January 1, 2023 to two percent (2%) of the rent paid by the transient and shall remain two percent (2%) thereafter. The revenue collected by the additional tax imposed pursuant to this subsection shall be in addition to, and separated from, the revenue generated from the tax imposed pursuant to subsection A above and shall only be used for the specific purposes and in the manner proscribed by Section 3.68.160.
- C. The taxes imposed pursuant to this section constitute a debt owed by the transient to the city which is extinguished only by payment to the operator, rental agent, or city. The transient shall pay the tax to the operator of the hotel or the rental agent 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 the tax is not paid to a rental agent, it must be paid to the operator before the transient has ceased occupancy in the hotel. If for any reason the tax due is not paid to the operator of the hotel or the rental agent, the tax administrator may require that such tax shall be paid directly to the tax administrator.

3.68.040 - 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 or rental agent 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 fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, 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 chapter 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 chapter. 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. An operator may, within twenty (20) calendar 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 ten calendar days written notice in the manner prescribed in this chapter to the operator to show cause at a time and place fixed in the notice why the amount specified should not be fixed for such tax, interest and penalties. At the hearing the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed. After the 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 in this chapter of the determination and the amount of the tax, interest and penalties. The amount determined to be due is payable after twenty (20) calendar days unless an appeal is taken as provided in Section 3.68.100.~~

3.68.050 – Operators and Rental Agents—Collection duties.

Each operator and each rental agent shall collect the tax imposed by this chapter 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 or rental agent. No operator of a hotel or rental agent 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 rental agent, 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.

3.68.060 - Operators—Registration.

Within thirty (30) days after the effective date of the ordinance codified in this chapter as to the hotel operators commencing business after the effective date of the ordinance codified in this chapter, each operator of any hotel renting occupancy to transients shall register the 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. The certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued;
- D. "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."

3.68.070 - Reporting and remitting.

- A. Each operator and each rental agent who received over one hundred thousand dollars (\$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 and each rental agent who received between five thousand dollars (\$5,000) and ninety-nine thousand nine hundred ninety-nine dollars (\$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 and each rental agent who received under five thousand dollars (\$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.

3.68.080 - Penalties and interest.

- A. Original Delinquency. Any operator or rental agent who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of twenty-five percent (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 chapter is due to fraud, a penalty of fifty percent (50%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsection A of this section.
- C. Interest. In addition to the penalties imposed, any operator or rental agent who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent 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 required in this chapter to be paid.

3.68.090 – Failure to collect and report taxes—Assessment by tax collector.

- A. If any operator or rental agent shall fail or refuse to collect the tax ~~and~~ or to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, 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 chapter and payable by any operator or rental agent who has failed or refused to collect the same ~~and~~ or to make such report and remittance, he/she shall proceed to determine and assess against such operator or rental agent the tax, interest, and penalties provided for by this chapter. In case such determination is made, the tax administrator shall give a notice of the amount assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator or rental agent assessed at ~~his/her~~ its last known place of address. The operator or rental agent may, within ten 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 or rental agent 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 by the operator or rental agent on whom it is assessed. If such application is made, the tax administrator shall give not less than five days written notice in the manner prescribed in this ~~chapter-section~~ to the operator or rental agent to show cause at the time and place fixed in the notice why said amount specified therein should not be fixed for such tax, interest, and penalties. At the hearing the operator or rental agent may appear and offer evidence why the specified tax, interest, and penalties should not be so fixed.

After the 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 in this ~~chapter~~ section of the determination and the amount of the 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 3.68.100. The tax administrator may assess the full amount of any unremitted taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent.

- B. Security for Collection of Tax. Whenever any operator or rental agent has failed to report or remit the transient occupancy tax as required by Section 3.68.070, and such failure results in a continued delinquency as defined under Section 3.68.080(B), the tax administrator may require such operator or rental agent to deposit with him/her forthwith such security in the form of cash, bond, or other security as the tax administrator may determine. The amount of the security is fixed by the tax administrator, but for the reporting period applicable to the operator or rental agent. The estimated average liability is 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 established.

- C. Withdrawals from Security Deposit. Whenever any operator or rental agent fails to remit any delinquent remittance due under this chapter on or before the period designated in subsection A above, the tax administrator may notify the operator or rental agent that the amount due and owing to the city from the operator or rental agent for the tax, interest and penalty as imposed by this chapter, or any portion of them, shall be transferred for use as provided under ~~Section~~ Sections 3.68.150 and 3.68.160.

The tax administrator may notify the operator or rental agent that he/she is required to redeposit forthwith the amount deducted from the deposit.

3.68.100 - Appeals—Board of review.

- A. Any operator or rental agent 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")~~ city manager 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~~ city manager or his/her designee shall fix a time and place for hearing such appeal; and ~~the board of review~~ shall give notice in writing to the operator or rental agent by serving the notice personally or by depositing it in the United States mail, postage prepaid, at his/her the appellant's last known place of address. Following the hearing, The the decision and findings of the city manager or his/her designee ~~board of review~~ will be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.

- ~~A. Composition. A board of review consisting of the city manager, the director of 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 chapter, and for which the procedure in subdivision A of this section does not apply, may appeal therefrom in writing to the city manager ~~board of review~~ within twenty (20) calendar days from the date of ~~notification of such ruling or finding.~~ The city manager or his/her designee ~~board of review~~ in individual cases may, in its ~~his/her~~ exercise of reasonable discretion in administering the provisions of this chapter, enlarge the twenty (20) calendar day period in which to file an appeal. The city manager or his/her designee shall fix a time and place for hearing such appeal and shall give notice in writing to the appellant by serving the notice personally or by depositing it in the United States mail, postage prepaid, at the appellant's last known address. The city manager or his/her designee ~~board~~ shall hold a hearing and make findings of fact in support of its ~~his/her~~ decision on appeal. The decision and findings of the city manager or his/her designee shall be served upon the appellant in the manner prescribed above for service of notice of hearing. The city manager or his/her designee ~~board~~ shall exercise its ~~his/her~~ reasonable discretion in administering the provisions of this chapter 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 of the city manager or his/her designee becomes final~~ is served.

- C. Extension of Time for Filing and Payment. On written application showing good cause, the city manager or his/her designee ~~board of review or its chairperson~~ may, with or without hearing, by written order filed with the tax administrator, extend for not more than twenty (20) calendar days the time period in this chapter 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 claim may be resolved by employing the administrative remedies provided by this ~~section~~ chapter 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~~ city manager or his/her designee may, ~~on motion of any one of its members,~~ on his/her own authority hold a hearing ~~to ascertain its position~~ regarding any transient occupancy tax ruling. The city manager or his/her designee ~~board~~ may affirm, modify, or reverse such ruling as necessary or advisable to effectuate the purposes of this chapter. The ~~board of review's~~ decision of the city manager or his/her designee on such ruling shall have only prospective effect.

3.68.110 - Records.

It is the duty of every operator or rental agent liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three 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 collector shall have the right to inspect at all reasonable times. The rental agent must provide the operator with copies of all records necessary for the operator to comply with its obligations under this chapter.

3.68.120 - 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 chapter, it may be refunded as provided in subsections 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 one years~~ one year of the date of payment. The claim shall be on forms furnished by the tax administrator.
- B. An operator or rental agent 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 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 subsection 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 or rental agent, establishes to the satisfaction of the tax administrator that the transient cannot obtain a refund from the operator or rental agent 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/her right thereto by written records showing entitlement thereto.

3.68.130 – Collection of tax.

- A. Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator or rental agent which has not been paid to the city shall be deemed a debt owed by the operator or rental agent to the city. Any person owing money to the city under provisions of this chapter is liable to an action brought in the name of the city for the recovery of such amount.
- B. 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 nonpayment of the transient occupancy tax must be commenced within three years of the date the penalty accrues. The tax administrator may assess the full amount of any unremitted taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent.
- C. The amount of transient occupancy tax, penalty and interest imposed under the provisions of this chapter is 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.

3.68.140 - 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 the notice 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 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 the 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 twelve percent (12%) per year from the date of recordation to the date of lien, an administrative charge of fifty dollars (\$50.00) and a release of lien filing fee in an amount equal to the amount charged by the San Mateo County recorder's office.

Thereafter, the assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and is subject to the same penalties and the same procedure of sale as provided for delinquent ordinary municipal taxes. The assessment liens shall not be subordinate to liens except for those of state, county and municipal taxes with which it will 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.

3.68.150 – Use of revenues.

Except as provided hereinafter, all revenues collected pursuant to ~~this chapter~~ Section 3.68.030(A) shall be placed in the general fund and shall be available for appropriation to any legitimate municipal purpose.

- A. Dedication of Ten Percent of Revenues to Children, Youth and Family Services, Including Senior Citizens.
 - 1. Notwithstanding the foregoing provision, not less than ten (10) percent of the revenues collected annually pursuant to Section 3.68.030(A) ~~this chapter~~ shall be dedicated to and used exclusively for children, youth and family services, including senior citizens, residing in the city. It is the intent of this subsection to support comprehensive, integrated and community-based systems of services and support systems for children, youth and their families and senior citizens, so as to promote individual and community health, recreation and cultural arts.
 - 2. Funds shall be used exclusively for grants or loans to non-profit service providers headquartered in East Palo Alto or for which a majority of clients served are East Palo Alto residents.
 - 3. At such time as funds become available, the city council shall annually establish priorities and direct the city manager to develop funding criteria, which shall be approved by the council, and to solicit proposals from eligible non-profit service providers headquartered in East Palo Alto. Funding proposals shall be reviewed by the community services commission and/or such other bodies as directed by the council, the membership of which shall be subject to conflict of interest

regulations, which shall make recommendations to the council in a timely fashion so as to allow funding decisions to be made in conjunction with adoption of the city's annual budget.

- B. Dedication of Ten Percent of Revenues to Affordable Housing. Notwithstanding the foregoing provisions, not less than ten (10) percent of the revenues collected annually pursuant to Section 3.68.030(A) ~~this chapter~~ shall be dedicated to and used exclusively for affordable housing development, acquisition and/or rehabilitation. Affordable housing is defined as housing affordable to ~~low and moderate income~~ households of extremely low (35% AMI), very low, low, and median income (as specified in Health and Safety Code section 50050 et seq.) persons and families residing in East Palo Alto and includes, but is not limited to, single-family, and multi-family style dwellings ~~and as further defined in Ordinance No. 247 (the city's below-market rate regulations)~~. The city council may use such funds to leverage other funds, or in partnership with other public, private or non-profit agencies, or as the developer, as long as the objective is the acquisition, development and/or rehabilitation of affordable housing. It is the intent of this section that, over time and in general, funds be used for housing at a full range of levels of affordability.

3.68.160 – Use of special tax revenues.

All revenues collected pursuant to Section 3.68.030(B) shall be deposited into a special fund in the City treasury and appropriated and expended exclusively for affordable housing development, acquisition, and/or rehabilitation, including but not limited to, acquiring at-risk or vacant properties, rehabilitating deteriorating units, preventing displacement and creating more affordable rental and homeownership opportunities. Affordable housing is defined as housing affordable to households of extremely low (35% AMI), very low, low, and median income (as specified in Health and Safety Code section 50050 et seq.) persons and families residing in East Palo Alto and includes, but is not limited to, single-family, and multi-family style dwellings. A maximum of 15% of the revenue shall be used for staff and overhead costs.”

3.68.170 – Annual Report.

Each year the Finance Director shall submit a report to the City Council that states the funds collected under this Chapter, the expenditure of funds collected under this Chapter, and the expenditure of any funds collected under Section 3.68.030 for the purposes specified in Section 3.68.160.

3.68.160 180 - Violations.

Any operator, rental agent, or other person who fails or refuses to register as required in this chapter, 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 a misdemeanor 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 chapter to be made, is guilty of a misdemeanor and is punishable as aforesaid.

3.68.190 – Amendment by city council.

The city council may amend this chapter in any manner that does not increase the amount or rate of tax paid by any taxpayer or which would otherwise constitute a tax increase for which voter approval would be required by Article XIII A or Article XIII C of the California Constitution.

Section 3. Effective Date.

Pursuant to Elections Code Section 9217, this Ordinance shall be in full force and effect ten (10) days after the certification by the City Council of the election returns indicating passage of the Ordinance in the election of November 3, 2020, as required by law.

Section 4. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of East Palo Alto hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 5. Required Vote.

The City Council shall levy the special tax provided for herein upon approval of two-thirds of the votes cast by qualified voters of the City voting on this measure in the election.