

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW AMENDING CHAPTER 33 OF
THE MOUNTAIN VIEW CITY CODE TO ADD ADDITIONAL EFFICIENT MECHANISMS FOR
COLLECTION OF TRANSIENT OCCUPANCY TAX

WHEREAS, pursuant to Chapter 33 of the Mountain View City Code, the City of Mountain View collects Transient Occupancy Tax (TOT) which is collected by hotel operators from transients, as those terms are defined therein, and then paid by the hotel operators to the City; and

WHEREAS, hotel operators may fail to collect TOT from transients or may fail to remit to the City TOT they have collected from transients; and

WHEREAS, the City's sole remedy for collection of uncollected or unremitted and delinquent TOT is to initiate affirmative litigation against the hotel operator, which is a lengthy and costly process; and

WHEREAS, tax clearance certificates are authorized by Revenue and Taxation Code Section 7283.5 and allow for efficient collection of TOT; and

WHEREAS, authorizing the tax administrator to record a lien on real property owned by hotel operators who fail to collect TOT or fail to remit to the City TOT they have collected from their patrons would provide an efficient way for the City to secure payment of uncollected or unremitted TOT.

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 33.12 of Chapter 33 of the Mountain View City Code are hereby amended as set forth below with additions shown in underline and deletions shown by ~~strike through~~:

“ SEC 33.12. – Actions to collect.

a. **Debt Owed.** 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 which has not been ~~paid~~ remitted to the city shall be deemed a debt owed by the operator to the city. An operator who fails to collect any tax owed by a transient under this chapter when collecting rent from the transient shall be liable to the city for the amount of the uncollected tax, including applicable penalties and interest, as damages to the city for failing to fulfil the operator’s collections duties under this chapter. Any person owing money to the ~~€~~City under the provisions of this chapter shall be liable to an action brought in the name of the City of Mountain View for the recovery of such amount. If an action is brought against a transient for

unpaid tax, it must be brought within four years of the date on which the tax was required to be paid by the transient. If an action is brought against an operator for failing to collect or remit any tax, the action must be brought within four years of the date on which the tax was required to be remitted to the city. The time for bringing an action shall be tolled during the pendency of any administrative procedure or audit to assess the amount of uncollected or unremitted tax.

b. **Successor's and Assignee's Responsibility and Liability.** If any operator, while liable for any amount under this chapter, sells, assigns, or otherwise transfers the hotel or quits the hotel, whether voluntarily or involuntarily, the operator's subsequent successor, assign, other transferee, or other person or entity obtaining ownership or control of the hotel, shall satisfy any transient occupancy tax liability owed to the city associated with the property. Failure to do so for the benefit of the city will result in the successor operator, assign, purchaser, transferee, or other person or entity obtaining ownership or control of the hotel being personally liable to the city for the full amount of the transient occupancy tax liability, including interest and penalties.

(1) The successor operator, assign, purchaser, transferee, or other person or entity seeking to obtain ownership or control of the hotel shall notify the tax administrator of the date of transfer at least thirty days prior to the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the hotel was made less than thirty days prior to the date of transfer, notice shall be provided immediately.

(2) The successor operator, assign, purchaser, transferee, or other person or entity who obtains ownership or control of the hotel shall be deemed to have complied with the requirement of this section to satisfy the unpaid transient occupancy tax liability, if that person or entity complies with the requirements of California Revenue and Taxation Code Section 7283.5 by withholding from the purchase price an amount sufficient to cover the tax liability, or by otherwise paying the tax liability until the tax administrator provides a transient occupancy tax clearance certificate showing that it has been paid and stating that no amount is due through the date of transfer.

(3) The tax administrator, within ninety days of receiving a written request from a successor operator, assign, purchaser, transferee, or other person or entity who obtains or attempts to obtain ownership or control of the hotel, may issue a transient occupancy tax clearance certificate stating either the amount of tax liability due and owing for the property, or stating that there is no tax liability due and owing for the property. The tax administrator may also request financial records from the current or former owner or operator to conduct an audit of the transient occupancy tax that may be due and owing. After completing the audit within ninety days after the date that the records were made available, the tax administrator may issue a tax clearance certificate within thirty days of completing the audit, stating the amount of the tax liability owed, if any. If the city determines that the records provided for an audit are insufficient, the tax administrator may rely on the facts and information available to estimate any transient occupancy tax liability associated with the property. The tax administrator may issue a tax clearance certificate stating the amount of the tax liability, if any, based on such facts and information available. A written application for a hearing on the amount assessed on the tax

clearance certificate must be made within ten days after the serving or mailing of the certificate. The hearing provision of Sections 33.8 and 33.9 shall apply. If an application for a hearing is not made within the time prescribed, the tax clearance certificate shall serve as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.

c. **Recording of a Certificate of Lien.** Once the appeal timeframes under Sections 33.8 and 33.9 have elapsed, if any amount required to be paid to the city under the provision of this chapter is not paid when due, the tax administrator may record in the office of the Santa Clara County Recorder a certificate which specifies the amount of tax and penalties due (including interest), the name and address of the operator liable for the same, a statement that the tax administrator has complied with all provisions of this chapter in the determination of the amount required to be paid and a legal description of the real property owned by the operator. From the time of the recording of the certificate, the amount required to be paid together with penalties and interest constitutes a lien upon all real property in the county owned by the operator or thereafter acquired before the lien expires. The lien has the force, effect and priority of a tax lien and shall continue for ten years from the filing of the certificate unless sooner released or otherwise discharged.

d. **Court Order for Collection of Tax.** At any time within four years after the recording of a certificate of lien, the tax administrator may obtain a court order directed to any sheriff or other enforcer for the enforcement of the lien and the collection of any tax and penalties required to be paid to the city under this chapter. The tax administrator may pay or advance to the sheriff or other enforcer such fees, commissions, and expenses for services as are provided by law.

e. **Seizure and Sale.** As an alternative to obtaining a court order, at any time within the four years after an assessment was issued pursuant to Section 33.8 or a certificate of lien was recorded pursuant to Section 33.12(b), the tax administrator may collect the delinquent amount either by seizing or causing to be seized any property, real or personal, of the operator and selling any noncash or nonnegotiable property or a sufficient part of it at public auction to pay the amount of tax due together with any penalties and interest and any costs incurred on account of the seizure and sale, or by placing the amount of the debt due on the assessment roll for that particular property if owned by the operator and that amount shall be collected with all other taxes upon the property. Such amounts shall be collected at the same time and in the same manner as general city taxes are collected and shall be subjected to the same penalties and interest, and the same procedure and sale in event of delinquency as provided for city taxes. All laws and ordinances applicable to the levy, collection and enforcement of city taxes are hereby made applicable. Any seizure made to collect taxes due shall only be of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure."

Section 2. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other

remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. This ordinance is not a project subject to the California Environmental Quality Act ("CEQA") because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment pursuant to CEQA Guidelines Section 15378(b)(5).
