

ORDINANCE NO. 18-2174

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CHAPTER 3.12 OF THE MUNICIPAL CODE TO PROVIDE FOR THE COLLECTION OF TRANSIENT OCCUPANCY TAXES FROM SHORT-TERM RENTALS USING INTERNET-BASED/SOCIAL MEDIA PLATFORMS

WHEREAS, since 1965 transient guests have paid a Transient Occupancy Tax (TOT) on hotel rooms in Cupertino. Like many other California cities, Cupertino uses this funding to provide essential public services through its general fund; and

WHEREAS, the rate of the TOT has been twelve percent (12%) since 2011; and

WHEREAS, all short term rental operators who rent accommodations within the City are subject to the City's TOT ordinance but historically have not paid TOT to the City of Cupertino; and

WHEREAS, the short-term rentals market is increasingly occupied by internet-based/social media platforms, such as Airbnb, HomeAway, FlipKey and VRBO. These businesses operate online marketplaces for owners and/or operators of real property to lease or rent short-term lodging, operating as a broker and receiving fees for booking services; and

WHEREAS, internet-based/social media platforms may be able and willing to collect and remit TOT to the City of Cupertino on behalf of their platform users, including entering into voluntary collection agreements with the City, which would assist the City's collection efforts and increase TOT revenue for the City; and

WHEREAS, the City Council finds that amending the TOT ordinance is appropriate and advisable to define internet-based/social media platforms and provide for the collection of TOT from owners and/or operators of real property who use these platforms to lease or rent short-term lodging for short-term rentals, including the authority for the City to enter into contractual arrangements or voluntary collection agreements with internet-based/social media platforms for collection of TOT revenue.

NOW, THEREFORE, the Council of the City of Cupertino does ordain as follows:

SECTION ONE - Chapter 3.12 of the Cupertino Municipal Code is hereby amended to read as follows:

3.12.010 Short Title.

This chapter shall be known as the "uniform transient occupancy tax ordinance" of the City.

3.12.020 Definitions.

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

A. “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” means any structure, or any portion of any structure, which is occupied or intended or designed for short-term 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, mobile home or house trailer at a fixed location, or other similar structure or portion thereof;

C. “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” means any person 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 consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified herein may be considered. “Transient” includes persons who book accommodations through internet-based/social host platforms;

E. “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 all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever;

F. “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 chapter and shall have the same duties and liabilities as his 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;

G. “Tax Administrator” means the City’s Director of Administrative Services or designee.

H. “Internet-based/social media platform” means a business, such as Airbnb, HomeAway, FlipKey, and VRBO, that operates an online marketplace for owners and/or operators of real property to lease or rent short-term lodging, operating as a broker and receiving fees for booking services.

3.12.030 Imposition.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of twelve percent of the rent charged by the operator. 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 is paid directly to the Tax Administrator.

3.12.050 Operator's Duties.

Each operator 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. 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. For short-term rentals conducted through internet-based/social media platforms, the owners and/or operators of those platforms may be authorized by City to collect and remit taxes, in lieu of the owners and/or operators of the leased property.

3.12.060 Registration.

Within thirty days after the effective date of the ordinance codified herein, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register the hotel with the Tax Administrator and obtain from him 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.

3.12.070 Reporting and Remitting.

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Administrator, make a return to the Tax Administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment thereof is made to the Tax Administrator. Where a transient pays rent in connection with lodging booked via an internet-based/social media platform, the operator of the property may be relieved of the duty to collect taxes only if the internet-based/social

media platform has entered into an agreement with the City for the collection and remittance of transient occupancy taxes.

3.12.080 Penalties and Interest.

A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty often percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.

C. Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs A. and B. of this section.

D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. 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.

3.12.090 Failure to Collect and Report Tax--Determination of Tax by Tax Administrator.

If any operator fails or refuses to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, 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 procures such facts and information as he 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 shall proceed to determine and assess against such operator 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 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 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 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 fifteen days unless an appeal is taken as provided in Section 3.12.100.

3.12.100 Appeal.

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 Council by filing a notice of appeal with the City Clerk within fifteen days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing such appeal, and the City clerk shall give notice in writing to such operator at his last known place of address. The findings of the Council shall be final and conclusive and 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.

3.12.110 Records.

It shall be the duty of every operator 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 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.

3.12.120 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 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 years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the person from whom the tax has been collected was not a transient; 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 paid more than once 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 has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

3.12.130 Actions to Collect.

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 to the City shall be deemed a debt owed by the operator to the City. 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 for the recovery of such amount.

3.12.140 Violation–Penalty.

Any person who violates the provisions of this chapter shall be guilty of an infraction and upon conviction thereof shall be punished as provided in Chapter 1.12.

SECTION TWO - CEQA EXEMPTION.

The City Council finds, based on its own independent judgment, that the proposed amendments to the Cupertino Municipal Code are exempt from requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) in that the proposed amendments are not a project which has the potential for causing a significant effect on the environment. A notice of Exemption will be filed with the County Clerk.

SECTION THREE - INCONSISTENCIES REPEALED.

This Ordinance is intended to be controlling on the authority to approve plans and designs of public improvements, and shall supersede all prior ordinances, resolutions, rules, or regulations that are in conflict herewith. Any provisions of the Cupertino

Municipal Code, or appendices thereto, or any other ordinance of the City inconsistent herewith, are repealed only to the extent of such inconsistencies and no further.

SECTION FOUR - IMPLEMENTATION.

The City Council hereby authorizes and directs the City Manager to take any action and sign any documents necessary to implement this Ordinance.

SECTION FIVE - SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Cupertino hereby declares that they would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION SIX - EFFECTIVE DATE; PUBLICATION.

The City Clerk is directed to post and publish this Ordinance in accordance with law in a newspaper of general circulation printed and published in the County of Santa Clara, or as otherwise required by law. This ordinance shall take effect thirty (30) days after adoption.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 19th day of June, 2018 and ENACTED at a regular meeting of the City Council of the City of Cupertino the _____, by the following vote:

Vote:

Members of the City Council

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Darcy Paul, Mayor, City of Cupertino