



June 18, 2018

The Honorable City Council  
Palo Alto, California

**Adoption of a Resolution Placing a Measure on the November 6, 2018  
General Election Ballot to Increase the City's Transient Occupancy Tax  
(TOT) by Two Percentage Points**

**From: Joint Report of the City Clerk, City Manager and City Attorney**

**Recommendation**

Staff recommends that the City Council:

1. Adopt the attached Resolution to submit a measure to the voters at the general municipal election on November 6, 2018, to increase the City's transient occupancy tax (TOT) by two percentage points.
2. Direct staff whether to use ballot language conforming to currently-applicable constitutional requirements, or requirements that would become effective if a statewide measure to amend the California Constitution and impose new procedures on local tax measures is adopted by California voters at the November 6, 2018 election.

**Background**

The Council Infrastructure Plan was adopted in June 2014 in response to decades of inadequate funding for maintenance and renewal of Palo Alto's infrastructure assets. Significant progress has been made toward the Plan's implementation, but construction cost escalation, project scope increases, and refined cost estimates have resulted in a current funding gap of approximately \$76 million. At the City Council's direction from January 2018, the Finance Committee has been reviewing the funding gap identified and potential strategies for closing it, including reprioritizing the Council Infrastructure Plan projects, reducing project scopes, reprioritizing projects within the overall capital improvement fund, allocating new revenues, and increasing taxes. The Committee and the City Council met a total of four times to discuss the funding needs for capital investments and directed two rounds of polling for potential revenue generating ballot measures. Staff reports considered by the Committee and the City Council during this process are referenced below. Ultimately on June 4, 2018, the City Council directed staff to return with language for a Transient Occupancy Tax Measure for the November 2018 election.

CMR 8927 (<https://www.cityofpaloalto.org/civicax/filebank/documents/63293>)

CMR 9039 (<https://www.cityofpaloalto.org/civicax/filebank/documents/64128>)

CMR 9107 (<https://www.cityofpaloalto.org/civicax/filebank/documents/64561>)

CMR 9322 (<https://www.cityofpaloalto.org/civicax/filebank/documents/65319>)

On June 4, 2018 (CMR 9322), the Council reviewed results from a refined public opinion survey conducted by Fairbank, Maslin, Maullin, Metz and Associates (FM3 Research). The refined survey tested sample ballot measure language for three potential tax measures: increasing the Transient Occupancy Tax (TOT), increasing the Documentary Transfer Tax, and adopting a new Sugar Sweetened Beverage Tax.

Council directed staff to return with ballot measure language to increase the TOT. Council asked staff to prepare a measure to increase the TOT by two percentage points, from 14% to 16%. Council also asked staff to explore and, if feasible, prepare an alternative consisting of two separate ballot measures: (1) a measure to increase the TOT by one percentage point, from 14% to 15%, and; (2) a separate measure establishing a tax on transients for the privilege of occupancy in any hotel, in the amount of 1% of the hotel rent.

A measure on the statewide ballot may have some bearing on the TOT increase. The California Business Roundtable circulated and qualified a measure for the November 6, 2018 state ballot, called "The Tax Fairness, Transparency, and Accountability Act of 2018" ("the California Business Roundtable Initiative" or "CBRI Initiative"). The CBRI Initiative would amend the California Constitution in a number of ways, including:

- Requiring two-thirds voter approval to raise any and all new local taxes. Currently, local taxes for general purposes may pass by a simple majority vote, while only taxes dedicated to a special purpose require a supermajority vote.
- Requiring that tax ballot measures include specific language describing how revenues can be spent.

The CBRI Initiative states that it applies retroactively to all taxes adopted after January 1, 2018.

The schedule for the November 6, 2018 election is as follows:

- August 10, 2018: Deadline for submitting measure to the County
- August 14, 2018: Deadline for arguments in favor of and against a measure
- August 21, 2018: Deadline for rebuttal arguments and impartial analysis

### **Discussion**

***Adopt Resolution Calling Election on 2% TOT Increase or Provide Other Direction.*** Before Council for adoption is a resolution placing an ordinance on the ballot to increase the TOT rate by two percentage points, from 14% to 16%. In the alternative, Council has the authority to revise the attached resolution and ordinance to reflect a lesser increase.

***Provide Direction on Whether the Ballot Language Should Comply with the CBRI.*** Council should also direct staff whether to use ballot language conforming to currently-applicable

constitutional requirements, or use alternative language that satisfies requirements that would become effective if the CBRI Initiative is adopted by California voters at the November 6, 2018 election.

Following are two potential versions of the ballot language. The first version complies with currently-applicable legal requirements. The second has been adjusted to comply with the terms of the CBRI Initiative. The differences are *italicized and underlined*.

NO CBRI: “To provide funding for vital City services such as ensuring a modern, stable 911 emergency communications network, earthquake safe fire stations, and emergency command center; improving pedestrian and bicyclist safety; ensuring safe routes to schools; maintaining City streets, roads, sidewalks; *and other City services*, shall the City of Palo Alto adopt an ordinance increasing the transient occupancy tax paid by hotel, motel, short-term rental guests by 2%, providing approximately \$3.4 million annually until ended by voters, subject to annual audits?”

WITH CBRI: “To provide funding for vital City services such as ensuring a modern, stable 911 emergency communications network, earthquake safe fire stations, and emergency command center; improving pedestrian and bicyclist safety; ensuring safe routes to schools; maintaining City streets, roads, and sidewalks; *and for unrestricted general revenue purposes*, shall the City of Palo Alto adopt an ordinance increasing the transient occupancy tax paid by hotel, motel, short-term rental guests by 2%, providing approximately \$3.4 million annually until ended by voters, subject to annual audits?”

If the TOT ballot language complies with the CBRI and passes with a two-thirds supermajority, it will be effective even if the CBRI initiative is adopted. If the CBRI language is not used, however, and the CBRI Initiative passes, the TOT increase could be subject to a legal challenge and determined to be unenforceable.

FM3 polled potential voters using both of the above ballot questions. The poll results showed some reduction in support for the TOT increase when the CBRI Initiative language is used.

**1% TOT Plus 1% Visitor Tax Not Feasible.** At Council’s direction, staff explored the feasibility of two separate ballot measures: (1) a measure to increase the TOT by one percentage point, from 14% to 15%, and; (2) a separate measure establishing a tax on transients for the privilege of occupancy in any hotel, in the amount of 1% of the hotel rent. A number of California cities have adopted tourist or visitor’s bureau charges that appear on the hotel bill in addition to a TOT. In most cases, these tourist charges have been established as special assessment districts. Establishing a special assessment district requires procedural and substantive steps that cannot be implemented in the time available before the November 2018 election. Staff considered whether a distinct new tax on temporary visitors may be adopted by voters in a charter city

under the city's constitutional authority to make and enforce ordinances respecting municipal affairs. While theoretically possible, there are a number of concerns that would arise from a separate and new tax that applies to the same activity, in the same way, as the City's existing TOT. The existence of two separate but identical (except for the name) tax ordinances has the potential to create confusion and ambiguity with the public, at the ballot box, in the administration and enforcement of the new tax, and in court if a challenge were filed. For these reasons, staff concluded that the two-tax alternative is infeasible.

### **Resource Impact**

A 2% increase to the TOT is estimated to result in an annual \$3.4 million increase in revenue. A 1% increase to the TOT would result in \$1.7 million annually.

If a 2% increase is approved and the implementation date is January 1, 2019 then the City would earn an estimated \$1.7 million for the 6 month period in FY 2019.

If the City were to leverage against a 2% increase (assumed at 70 percent of the annual estimated revenue), proceeds are estimated to be \$33 million.

The estimated cost of the November 2018 election including this potential ballot measure, 2-3 additional ballot measures, the 3 vacant seats on the City Council, and translation into several languages is approximately \$125,000. The FY 2019 Budget currently includes funding of \$100,000.

### **Environmental Review**

This is not a project under the California Environmental Quality Act.

### **ATTACHMENTS:**

- Attachment A: TOT resolution (PDF)
- Exhibit A to Attachment A: Proposed Ordinance (PDF)

Department Head: Molly Stump, City Attorney



**\*\*NOT YET ADOPTED\*\***

Resolution No \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Submitting a Measure to the Voters at the General Municipal Election on November 6, 2018 to Adopt an Ordinance to Amend Title 2 of the Palo Alto Municipal Code to Increase the City's Transient Occupancy Tax by 2 Percentage Points

R E C I T A L S

A. Pursuant to Section 2.33.020 of Title 2 of the Palo Alto Municipal Code, the City currently levies a Transient Occupancy Tax.

B. The City Council desires to amend the Palo Alto Municipal Code to increase the transient occupancy tax (commonly called the "TOT" or "hotel tax") which is currently charged on persons who occupy hotel or motel rooms in the City for 30 days or less, by two percentage points, from 14% to 16%.

C. A proposed ordinance attached hereto and incorporated herein by reference as Attachment "A" (the "Ordinance") would implement the proposed revision to the tax.

D. By its Resolution No. \_\_\_\_\_, adopted on June 18, 2018, the City Council called a general municipal election for November 6, 2018 ("Election").

E. Pursuant to Government Code Section 53724 and Election Code Section 9222, the City Council desires to submit the Ordinance to the voters of the City.

The City Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. Findings. The City Council finds and determines that each of the findings set forth above are true and correct.

SECTION 2. General Tax Election. The City Council proposes to impose the general tax set forth in the Ordinance and to present this proposal to the voters on November 6, 2018.

SECTION 3. Measure. Pursuant to Elections Code Section 9222, the City Council hereby submits the Ordinance to the voters at the Election and orders the following question to be submitted to the voters at the Election:

<p><i>[insert alternative as directed by Council:]</i></p> <p>To provide funding for vital City services such as ensuring a modern, stable 911 emergency communications network, earthquake safe fire stations, and emergency command center; improving pedestrian and bicyclist safety; ensuring safe routes to schools; maintaining City streets, roads, sidewalks; and other City services, shall the City of Palo Alto adopt an ordinance increasing the transient occupancy tax paid by hotel, motel, short-term rental guests by 2%, providing approximately \$3.4 million annually until ended by voters, subject to annual audits?</p>	YES	
<p><i>[or]</i></p> <p>To provide funding for vital City services such as ensuring a modern, stable 911 emergency communications network, earthquake safe fire stations, and emergency command center; improving pedestrian and bicyclist safety; ensuring safe routes to schools; maintaining City streets, roads, and sidewalks; and for unrestricted general revenue purposes, shall the City of Palo Alto adopt an ordinance increasing the transient occupancy tax paid by hotel, motel, short-term rental guests by 2%, providing approximately \$3.4 million annually until ended by voters, subject to annual audits?</p>	NO	

This question requires the approval of a majority of those casting votes.

SECTION 4. Adoption of Measure. The measure to be submitted to the voters is attached to this Resolution as Exhibit A and incorporated herein by this reference.

SECTION 5. Notice of Election. Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 6. Impartial Analysis. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure 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 the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk on or before August 21, 2018.

SECTION 7. Ballot Arguments. Pursuant to Elections Code Section 9286 et. seq., August 14, 2018 at 5:00 p.m. shall be the deadline for submission of arguments in favor of, and arguments against, any local measures on the ballot. If more than one argument for and/or against is received, the priorities established by Elections Code Section 9287 shall control.

SECTION 8. Rebuttal Arguments. The provisions of Elections Code Section 9285 shall control the submission of any rebuttal arguments. The deadline for filing rebuttal arguments shall be August 21, 2018 at 5:00 p.m.

SECTION 9. Consolidation Request. The Council of the City of Palo Alto requests the governing body of any other political subdivision, or any officers otherwise authorized by law, to partially or completely consolidate such elections and the City Council consents to such consolidation. The Council requests the Board of Supervisors of Santa Clara County to include on the ballots and sample ballots, all qualified measures submitted by the City Council to be ratified by the qualified electors of the City of Palo Alto. The Council acknowledges that the election will be held and conducted according to procedures in the Elections Code, including Section 10418.

SECTION 10. Request for County Services. Pursuant to Section 10002 of the California Elections Code, the Council of the City of Palo Alto hereby requests the Board of Supervisors of Santa Clara County to permit the Registrar of Voters to render services to the City of Palo Alto relating to the conduct of Palo Alto's General Municipal and Special Elections which are called to be held on Tuesday, November 6, 2018. The services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections including, but not limited to, checking registrations, mailing ballots, hiring election officers and arranging for polling places, receiving absentee voter ballot applications, mailing and receiving absent voter ballots and opening and counting same, providing and distributing election supplies, and furnishing voting machines.

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SECTION 11. Transmittal of Resolution. The City Clerk is hereby directed to submit forthwith a certified copy of this resolution to the Santa Clara County Board of Supervisors and to the Registrar of Voters.

INTRODUCED AND PASSED: June \_\_\_\_, 2018

AYES:

NOES:

ABSENT:

ABSENTIONS:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Director of Administrative Services

**“EXHIBIT 1”**

**\*\*NOT YET ADOPTED \*\***

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Chapter 2.33 of Title 2 of the Palo Alto Municipal Code Relating to the Transient Occupancy Tax

The People of the City of Palo Alto do ordain as follows:

**SECTION 1.** Chapter 2.33 of the Palo Alto Municipal Code is hereby amended by amending Chapter 2.33 as follows:

**Chapter 2.33  
TRANSIENT OCCUPANCY TAX**

- 2.33.010 Definitions.
- 2.33.020 Tax imposed.
- 2.33.030 Exemptions.
- 2.33.040 Operator's duties.
- 2.33.050 Registration.
- 2.33.060 Reporting and remitting.
- 2.33.070 Penalties.
- 2.33.080 Failure to collect and report tax; determination of tax by supervisor of revenue collections.
- 2.33.090 Appeal.
- 2.33.100 Records.
- 2.33.110 Refunds.
- 2.33.120 Actions to collect.
- 2.33.130 Violations; misdemeanor.
- 2.33.140 Third party rental transactions.

**2.33.010 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, in the City of Palo Alto 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, morning house, apartment, house, dormitory, public or private

club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof, even if such structure is also used for other purposes, including residential purposes.

(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 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.

(e) "Rent" means the total consideration paid by a transient, for the occupancy of space in a hotel, whether or not received by the operator, including, without limitation, transaction service fees and any unrefunded advance reservation or other rental deposit. For purposes of this definition, rent shall be valued in money, whether it is 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 the 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 or 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 or 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.

(g) "Rental agent" means any person other than an operator who collects rent from a transient for the transient's occupancy of a hotel.

### **2.33.020 Tax imposed.**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ~~fourteen~~ sixteen percent of the rent paid by the transient. 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 or to a rental agent pursuant to section 2.33.140. The transient shall pay the tax to the operator at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be made with each installment. Any unpaid tax shall be due upon the transient's ceasing occupancy in the hotel. If for any reason the tax due is not paid to the operator, the supervisor of revenue collections may require that such tax shall be paid directly to the supervisor of revenue collections.

### **2.33.030 Exemptions.**

No tax shall be imposed upon:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided;

(b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;

(c) Any federal or state of California officer or employee on official business who shall pay rent by warrant or check drawn on the treasury of the United States or the state of California or provides written evidence of such official business on a form approved in advance by the supervisor of revenue collections. Copies of the documentation for each exemption claimed must be submitted to the supervisor of revenue collections with each return made pursuant to Section 2.33.060.

No exemption shall be granted under this section except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the supervisor of revenue collections. Additionally, a copy of such warrant or check and a copy of such claim form shall be submitted with each return made pursuant to Section 2.33.060.

### **2.33.040 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 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.

### **2.33.050 Registration.**

(a) Within ten days after commencing business, each new or unregistered operator of any hotel renting occupancy to transients shall present a valid certificate of occupancy issued by the building official pursuant to Title 16 and apply for registration of said hotel with the supervisor of revenue collections who will issue a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises by such registrant or any operator previously registered. The application shall require such information as the supervisor of revenue collections deems necessary or convenient to the collection of the tax imposed by this chapter. The supervisor of revenue collections may require updating of application information from time to time as he or she deems necessary or advisable. Registration under this section shall lapse with the certificate of occupancy upon which it was issued. 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 Chapter 2.33 of the Palo Alto Municipal Code 'Transient Occupancy Tax' by registering with the supervisor of revenue collections for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the supervisor of revenue collections. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or 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 and is not transferable to a different operator."

### **2.33.060 Reporting and remitting.**

Each operator shall, on or before the last day of the month following the close of the previous calendar month, or at the close of any shorter reporting period which may be established by the supervisor of revenue collections, make a return to the supervisor of revenue collections on forms provided by him or her of the total rents charged to transients and the total rents paid by transients and the amount of tax collected for transient occupancies. If no tax was due or collected during the previous reporting period, the operator shall file a return so stating under penalty of perjury. At the time the return is filed, the full amount of the tax collected shall be remitted to the supervisor of revenue collections. The supervisor of revenue collections may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to ensure collection of the tax, and he or she 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 supervisor of revenue collections.

### **2.33.070 Penalties.**

(a) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax which penalty amount shall be added to the amount of the tax, for purposes of calculating additional penalties.

(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 including the ten percent penalty first imposed.

(c) Fraud or Misrepresentation. If the director of finance, in his or her judgment, determines that the nonpayment of any remittance due under this chapter is due to intentional conduct, misrepresentation or fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(d) Additional Penalty. In addition to the penalties imposed under subsections (a) and (b) of this section, any operator who fails to remit any tax imposed by this chapter shall pay a penalty of one percent per month or fraction thereof, whichever is less, on the amount of the tax from the date on which the remittance first became delinquent until paid.

(e) Penalties Merged with Tax. Every penalty imposed and such additional penalties as accrue under the provisions of this section shall become a part of the tax herein required to be paid.

**2.33.080 Failure to collect and report tax; determination of tax by supervisor of revenue collections.**

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 supervisor of revenue collections shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the supervisor of revenue collections shall procure such facts and information as he or 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 or she shall proceed to determine and assess against such operator the tax and penalties provided by this chapter. In case such determination is made, the supervisor of revenue and collections shall give a notice of the amount so assessed by sending it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his or her last known place of address.

Such operator may within fourteen days after serving or mailing of such notice make application in writing to the supervisor of revenue collections for a hearing on the amount assessed. If application by an operator is not made within the time prescribed, the tax and penalties, if any, determined by the supervisor of revenue collections to be due shall become final and conclusive and immediately due and payable. If such application is made, the supervisor of revenue collections shall give not less than ten 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 and penalties. At such hearing, the operator may appear and offer evidence why such specified tax and penalties should not be so fixed. After such hearing, the supervisor of revenue collections shall determine the proper tax to be remitted and shall thereafter give written notice to the operator in the manner prescribed herein of such determination and the amount of such tax and penalties. The amount determined to be due shall be payable after twenty days of the serving or mailing of such determination unless an appeal is taken as provided in Section 2.33.090.

**2.33.090 Appeal.**

Any operator aggrieved by any decision of the supervisor of revenue and collections with respect to the amount of such tax and penalties, if any, may appeal to the director of finance or his or her designee by filing a notice of appeal with the city clerk within twenty days of the serving or mailing of the determination of tax due. The director of finance or the designee shall fix a time and place for hearing of such appeal, and give notice in writing to such operator at his or her last known place of address. The findings of the director of finance or the designee 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.

### **2.33.100 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 all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the city. Said records shall be kept or made available at one location within the limits of the city for a period of three years. The supervisor of revenue collections and/or city auditor or their designee shall have the right at any and all reasonable times, to examine and audit said records for the purpose of determining the accuracy thereof.

### **2.33.110 Refunds.**

(a) Claim Required. Prior to seeking judicial relief with respect to a dispute regarding the amount of any tax, penalty, or interest collected or received by the city under this chapter, an aggrieved taxpayer, fee payer, operator, transient or any other person must comply with the provisions of section 2.28.230 of this code.

(b) Operators. An operator may claim as an overpayment any tax previously paid which was calculated on the basis of taxable consideration written off by the operator as a bad debt in accordance with generally accepted accounting principles and claimed as a deduction on a federal income tax return in accordance with provisions of the Internal Revenue Code, and regulations issued pursuant thereto. The bad debt claim may be taken as an adjustment to future taxes due the city after the operator's procedure and forms for adjustment of bad debt have been reviewed and approved by the supervisor of revenue collections.

(c) Transients. A transient may only request a refund of taxes under this chapter when the transient, having paid the tax to the operator, establishes that the transient has been unable to obtain a refund from the operator who collected the tax.

### **2.33.120 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.

### **2.33.130 Violations; misdemeanor.**

Any operator or other person who violates any of the provisions of this chapter or who fails or refuses to register as required herein, or to furnish any returns or other data required by the supervisor of revenue collections, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as provided in this code.

### **2.33.140 Third party rental transactions.**

(a) Any transient who pays rent to a rental agent instead of to an operator shall, at the time the rent is paid, pay the tax to the rental agent in the manner required by section 2.33.020. If for any reason the tax is not paid to the rental agent, it shall be paid to the operator before the transient has ceased occupancy in the hotel or paid directly to the supervisor of revenue

collections pursuant to section 2.33.020. Any transient seeking a refund under section 2.33.110 of taxes paid to a rental agent must establish that the transient has been unable to obtain a refund from the rental agent who collected the tax.

(b) Any rental agent who collects rent shall comply with all obligations of the operator set forth in sections 2.33.040 and 2.33.100 of this chapter. The rental agent shall remit all collected taxes to the operator before the deadline for the operator to remit the taxes to the supervisor of revenue collections under section 2.33.060, and the rental agent shall provide the operator with copies of all records required to be maintained by the operator pursuant to section 2.33.100 of this chapter, including records necessary for the operator to comply with its obligations under this chapter.

(c) If the supervisor of revenue collection determines that a rental agent has failed to collect, remit, or report any tax, the supervisor may take any action against the rental agent that he or she may take against an operator under sections 2.33.070 and 2.33.080 of this chapter subject to the requirements of those sections. If the supervisor assesses unremitted taxes and penalties against the rental agent, the rental agent shall be subject to the provisions of sections 2.33.080, 2.33.090, 2.33.110, and 2.33.120 of this chapter as if it were an operator. Nothing in this section shall prohibit the supervisor from assessing 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.

**SECTION 2.** General Tax. Proceeds of the tax imposed by this Ordinance shall be deposited in the general fund of the City and shall be available for any legal purpose.

**SECTION 3.** Amendment or Repeal. The City Council may repeal Chapter 2.33 of the Palo Alto Municipal Code or amend that Chapter without a vote of the people except that any amendment to Chapter 2.33 that increases the amount or rate of tax due from any Person beyond the amounts and rates authorized by this Ordinance may not take effect unless approved by a vote of the people.

**SECTION 4.** Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

**SECTION 5.** Effective Date. This ordinance shall be effective only if approved by a majority of the voters and shall go into effect immediately after the vote is declared by the City Council and the duty of service providers to collect the tax shall commence as provided in California Public Utilities Code Section 799.

**SECTION 6.** Execution. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Palo Alto voting on the 6th day of November, 2018.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Administrative  
Services