

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING VARIOUS PROVISIONS OF SECTION 3-61 (TRANSIENT OCCUPANCY TAX) OF DIVISION IX (TAXES) OF ARTICLE II (TAXATION) OF CHAPTER III (FINANCE AND TAXATION), CLARIFYING AND RESTATING HOSTING PLATFORMS' RESPONSIBILITY TO COLLECT AND REMIT TRANSIENT OCCUPANCY TAXES.

WHEREAS, judicial decisions have consistently affirmed local governments' authority to regulate or prohibit vocational rental uses; and

WHEREAS, existing law authorizes the City to collect transient occupancy taxes ("TOTs") for vacation rental and home-sharing activities; and

WHEREAS, existing law obligations both hosts, rental agencies and hosting platforms to collect and remit TOTs to the City; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES ORDAIN AS FOLLOWS:

Section 1: Section 3-61 (TRANSIENT OCCUPANCY TAX) of Division IX (TAXES) of Article II (TAXATION) of Chapter II (FINANCE AND TAXATION) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

3-61 - TRANSIENT OCCUPANCY TAX. 3-61.1 - Title.

This section shall be known as the Uniform Transient Occupancy Tax Regulations of the City of Alameda.

3-61.2 - Definitions.

As used in this section:

Booking transaction shall mean any reservation or payment service provided by a person, who facilitates a home-sharing or vacation rental transaction between a prospective transient user and a host.

Home-Sharing. An activity, whereby the residents host visitors in their homes, for compensation, for periods of thirty consecutive days or less, while at least one of the dwelling unit's primary residents lives on-site, in the dwelling unit, throughout the visitors' stay.

Host. Any person who is an owner, lessee, or sub-lessee of a residential property or unit offered for use as a vacation rental or home-share. Host also includes any person who offers, facilitates, or provides services to facilitate, a vacation rental or home-share, including, but not limited to, insurance, concierge services, catering, restaurant

bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit regardless of whether the person is an owner, lessee, or sub-lessee of a residential property or unit offered for use as a vacation rental or home-share. Any person, other than an owner, lessee, or sub-lessee, who operates home-sharing or vacation rental activities exclusively on the Internet shall not be considered a host.

Hosting Platform shall mean a person who participates in the home-sharing or vacation rental business by collecting or receiving a fee, directly or indirectly through an agent or intermediary, for conducting a booking transaction using any medium of facilitation.

Hotel shall mean 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, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

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

Person shall mean 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 shall mean 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.

Tax Administrator shall mean the Treasurer of the City of Alameda.

Transient shall mean 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-one (31) 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-one (31) 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 this section may be considered.

3-61.3 - Tax Imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten (10%) percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City the Transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be 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. In the event that the Transient Occupancy Tax is not paid, prior to becoming delinquent, a penalty of ten (10%) percent on the unpaid tax or any a portion thereof, shall be assessed. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. An additional penalty of fifteen (15%) percent shall accrue if the tax remains unpaid on the 90th day following the date of the original delinquency. Interest shall accrue at the rate of one and one-half of one (1 1/2%) percent a month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty shall become part of the tax.

3-61.4 - 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 Federal or State of California officer or employee when on official business.
- c. Any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.
- d. Active military personnel and their immediate and dependent family.

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 the Tax Administrator.

3-61.5 – Hosting Platform's and Operator's Duties.

Each operator shall collect the tax imposed by this section 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.

Hosting platforms shall be responsible for collecting all applicable taxes imposed by this Section. The hosting platform shall be considered an agent of the host for purposes of tax collections and remittance responsibilities, and shall have the same responsibilities as an operator as set forth in this Section.

3-61.6 - Registration.

Within thirty (30) days after commencing business, 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 Regulations by registering with the Tax Administrator for the purpose of collecting from transients the transient occupancy tax and remitting the 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.

3-61.7 - 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/her, 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/she deems it necessary in order to insure collection of the tax and he/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 section shall be held in trust for the account of the City until payment thereof is made to the Tax Administrator.

3-61.8 - Failure to Collect and Report Tax; Determination of Tax by Tax Administrator.

If any operator shall fail or refuse to collect the tax and to make, within the time provided in this section, any report and remittance of the tax or any portion thereof required by this section, 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 shall procure such facts and information as he/she is able to obtain upon which to base the assessment of any tax imposed by this section 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 against such operator the tax, interest and penalties provided for by this section. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by postage prepaid, addressed to the operator so assessed at his/her last known place of address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in subsection 3-61.9.

3-61.9 - 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 (15) 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/her 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.

3-61.10 - Records.

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

3-61.11 - 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 section it may be refunded as provided in paragraphs b. and c. of this subsection provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.
- 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 paragraph a. of this subsection, 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 subsection unless the claimant establishes his right thereto by written records showing entitlement thereto.

3-61.12 - Actions to Collect.

Any tax required to be paid by any transient under the provisions of this section 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 section shall be liable to an action brought in the name of the City of Alameda for the recovery of such amount.

3-61.13 - Penalties and Interest.

- a. *Original Delinquency.* Any operator who fails to remit any tax imposed by this section within the time required shall pay a penalty of ten (10%) 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 (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10%) percent of the amount of the tax in addition to the amount of the tax and the ten (10%) percent penalty first imposed.
- c. *Fraud.* If the Tax Administrator determines that the nonpayment of any remittance due under this section is due to fraud, a penalty of twenty-five (25%) percent of the

amount of the tax shall be added thereto in addition to the penalties stated in paragraphs a. and b. of this subsection.

- d. *Interest* . In addition to the penalties imposed, any operator who fails to remit any tax imposed by this section shall pay interest at the rate of one-half of one (.5%) 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 subsection shall become a part of the tax herein required to be paid.

3-61.14 - Violations; Misdemeanor.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred (\$500.00) dollars or by imprisonment for a period of not more than six (6) months or by both such fine and imprisonment.

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

Section 2: DECLARATORY OF EXISTING LAW

The provisions of this Ordinance are intended to clarify certain provisions of the underlying ordinance consistent with its purpose and intent. Accordingly, the City Council finds and declares that the provisions of this Ordinance do not constitute a change in, but are declaratory, of existing law.

Section 3: IMPLIED REPEAL

Any provision of the Alameda Municipal Code inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

Section 4: CEQA DETERMINATION

The City Council finds and determines that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).

Section 5: SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 6: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ___ day of _____, 2019, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ___ day of _____, 2019.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda