

ORDINANCE NO. 08-2023

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 3.08 REGARDING UNIFORM TRANSIENT OCCUPANCY TAX

WHEREAS, Elk Grove Municipal Code (“EGMC”) Chapter 3.08 provides for the levy of a transient occupancy tax applicable to short term occupancies in the City, such as hotel stays; and

WHEREAS, any operator of a hotel within the City is obligated to pay the transient occupancy tax collected to the City, all as provided in EGMC Chapter 3.08; and

WHEREAS, the City Council seeks to provide additional remedies to the City to aid in the collection of transient occupancy tax by the City.

NOW, THEREFORE, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose

The purpose of this ordinance is to amend Elk Grove Municipal Code Chapter 3.08 Uniform Transient Occupancy Tax to provide additional remedies to the City for the collection of transient occupancy taxes. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7.

Section 2: California Environmental Quality Act (CEQA)

Finding: Adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”).

Evidence: CEQA requires environmental review of discretionary government agency projects which have “a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines § 15378.) This ordinance amends the EGMC to provide additional remedies to the City for collection of transient occupancy taxes. Adoption of the ordinance will not result in a physical change in the environment. Therefore, adoption of the ordinance does not constitute the approval of a project under CEQA and is exempt from CEQA review. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15378(a)).

Section 3: Amendments.

EGMC Chapter 3.08 is hereby amended as provided in Exhibit A, incorporated herein by this reference.

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 6: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and effect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 7: Effective Date and Publication


This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE: **08-2023**
INTRODUCED: April 12, 2023
ADOPTED: April 26, 2023
EFFECTIVE: May 26, 2023


BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: April 27, 2023

Exhibit A

Municipal Code Amendments

Additions are shown in underlined text.

Sections 3.08.160 and 3.08.170 are added to the EGMC to read as follows:

3.08.160 Lien – Recordation of Certificate; Notice of Pendency of Action

A. If any amount to be paid to the city under this chapter is not paid when due, the tax and license collector, upon expiration of the continued delinquency period referenced in Section 3.08.090, may, within four years after the amount is due, record in the office(s) of the county recorder(s) of any county in the state of California a certificate specifying the amount of tax, the name and address of the operator liable for the same, and the fact that the tax and license collector has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of recording, the amount required to be paid shall constitute a lien upon any and all real property in any county in the state of California owned by the operator or thereafter acquired by the operator. The lien shall have the force, effect, and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the certificate, unless sooner released or otherwise discharged, or extended by a renewed certificate. Any renewed certificate shall also have a ten (10) year term and shall otherwise have the same force, effect, and priority as the initial certificate.

B. In any judicial proceedings brought by the city to collect any amounts due under this chapter, the city may file with the court and record in the office of the county recorder a notice of pendency of action (lis pendens).

3.08.170 Successor Liability

A. 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 or other transferee, or other person or entity attempting to obtain ownership of the hotel, shall notify the tax and license collector of the date of transfer at least thirty days prior to the date of the sale 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.

B. The successor operator, assignee, purchaser, transferee, or other person or entity who obtains ownership of the hotel shall satisfy any transient occupancy tax liability associated with the property owed to the city. Failure to do so for the benefit of the city will result in being personally liable to the city for the full amount of the tax liability, which includes interest and penalties.

C. The successor operator, assign, purchaser, transferee, or other person or entity who obtains ownership of the hotel shall be deemed to have complied with the requirements of this section 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 and license collector provides a "transient occupancy tax clearance certificate" showing that the tax liability has been paid in full and stating that no tax liability is due through the date of transfer.

D. The tax and license collector, within ninety (90) 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 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 and license collector 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 (90) days after the date that the records were made available, the tax and license collector 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 and license collector may rely on the facts and information available to estimate any transient occupancy tax liability associated with the property. The tax and license collector may issue a tax clearance certificate stating the amount of the tax liability, if any, based on such facts and information available. 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.

E. Nothing herein shall relieve any operator, assignor, seller, transferor, or other person or entity who transfers ownership of the hotel from any liability under this chapter or as otherwise provided by law.

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 08-2023**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on April 12, 2023, and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on April 26, 2023, by the following vote:

AYES: **COUNCILMEMBERS:** *Singh-Allen, Spease, Brewer, Robles, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*

A summary of the ordinance was published pursuant to GC 36933(c) (1).



**Jason Lindgren, City Clerk
City of Elk Grove, California**