

ORDINANCE NO. 17.18

AN ORDINANCE OF THE PEOPLE OF THE
CITY OF MOUNTAIN VIEW AMENDING CHAPTER 18
OF THE MOUNTAIN VIEW CITY CODE REGARDING
BUSINESS REGISTRATION AND LICENSE TAX

THE PEOPLE OF THE CITY OF MOUNTAIN VIEW DO HEREBY ORDAIN AS
FOLLOWS:

Section 1. Chapter 18 of the Mountain View City Code is hereby repealed as of
October 1, 2019 and replaced in its entirety, to read as follows:

“Article I. - Business Licenses.

SEC. 18.1. - Purpose.

This chapter is enacted for the purpose of registering those persons operating a
business in the city and to generate revenues to provide critical services and
infrastructure for the benefit of the business and residential communities within the city
through a business license tax.

Sec. 18.2. - Definitions.

For the purposes of this chapter, the following words and phrases shall have the
meaning respectively ascribed to them by this section unless the context plainly
requires otherwise:

Appeals hearing board. The city manager or any person or body he or she may
appoint to hear one (1) or more appeals under this chapter.

Business. Any commercial or industrial enterprise, trade, profession,
occupation, vocation, calling or livelihood, but not including the services rendered by
an employee to his/her employer. Independent contractors, the self-employed and sole
proprietors are also engaged in a business as defined here.

Business operator. A person who transacts, maintains, manages, operates,
controls, engages in, conducts, carries on and/or owns a business regulated under this
chapter.

CPI Index. The Consumer Price Index-All Urban Consumers for All Items for
the San Francisco-Oakland-Hayward Area or any successor to that index designated by
the federal Bureau of Labor Statistics or the city council.

Employee. Any person who works for or under the direction of, or on behalf of
or as an agent of a business operator.

Fixed place of business. The premises occupied for the particular purpose of
operating a business.

Manager. Any person who, as agent of the business operator, is in charge of the
operation of a business. The manager shall serve as the city's contact person for the
business.

Owner. Every person having more than a ten percent (10%) interest, legal,
equitable or otherwise, in any business or business premises.

Person. Any natural individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, receiver, syndicate or other group or combination acting as a unit and includes the plural as well as the singular number.

Tax administrator. The finance and administrative services director of the City of Mountain View, or successor position or his or her designee.

SEC. 18.3 - Registration and license application procedures.

a. All licenses required by this chapter shall be subject to the procedures of this chapter and administrative guidelines promulgated by the tax administrator consistent with this chapter.

b. All applications for licenses shall be accompanied by the business license tax, as set forth in this chapter.

SEC. 18.4. - Exemptions.

a. Except as may be otherwise specifically provided in this chapter, the terms hereof shall not be deemed or construed to apply to qualified nonprofit organizations, institutions, corporations or associations; persons or entities exempt from city taxation under state or federal law; or any person when imposition of the tax upon that person would violate the Constitution of the United States or that of the State of California. The burden of proof of exempt status is on the person claiming the exemption. Acceptable documentation must be provided to support the claimed exemption.

b. No public utility making franchise payments to the city shall be subject to the provisions of this chapter.

c. Business operators whose annual gross receipts from such business operations in the city are five thousand (\$5,000) dollars or less. Acceptable documentation must be provided to support the claimed exemption.

SEC. 18.5. - Application.

a. Every business operator required to have a license under the provisions of this chapter shall submit an application to the tax administrator and register his or her business on a form established by the tax administrator that contains or is accompanied by the following information:

(1) The type of ownership of the business, i.e., whether individual, partnership, a corporation or otherwise. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation;

(2) The name under which the business is to be conducted;

(3) The primary address of the business and the addresses of all business locations operating in the city;

(4) The name, address and contact information of the manager of the business;

(5) Number of employees of the business;

(6) Business license tax due; and

(7) Such other information as the tax administrator deems necessary.

b. Each applicant for a license shall properly fill in one (1) of such applications, sign the same and certify, under penalty of perjury, that the contents thereof are true and correct. The completed application shall be submitted to the tax administrator, who shall verify the proper amount of the business license tax due and shall issue the appropriate license on payment of such amount.

c. An application shall not be deemed complete until all the information required by this section has been provided to the tax administrator and the business license tax has been paid.

SEC. 18.6. - Denial, suspension or revocation.

An application for a license may be denied and a license issued pursuant to this chapter may be suspended or revoked by the tax administrator upon any of the following grounds identified herein:

(1) A false statement of fact or omission of a fact required to be revealed in an application for the license, or in any amendment or report or other information required to be made thereunder;

(2) The premises in which the licensed activity will occur or the proposed use for which the license is sought is in violation of any building, zoning, health, safety, fire, police or other provision of this code or of county, state or federal law which substantially affects the public health, welfare or safety;

(3) Violation of the terms and conditions of the license, or other requirements of this chapter or the Mountain View city code.

SEC. 18.7. - Notice of decision.

a. Upon determining the existence of any of the grounds for denial, suspension or revocation of a license in accordance with Sec. 18.6, the tax administrator may issue to the licensee a notice of decision to deny, suspend or revoke the license.

b. The notice of decision shall state all the grounds and reasons upon which the denial, suspension or revocation is based.

c. The notice of decision shall advise that the denial, suspension or revocation shall become final unless the applicant or licensee files a written request for hearing before the tax administrator within the time period specified in Sec. 18.26 (Procedure for hearing before the tax administrator).

d. The notice of decision shall specify the effective date of the denial, suspension or revocation of such license.

SEC. 18.8. - Issuance; Contents.

It shall be the duty of the tax administrator to prepare and issue a license under this chapter for every person liable to pay such business license tax, the period of time covered thereby, the name of the person to whom issued, the business licensed and the location or place where such business is to be operated.

SEC. 18.09. - Expiration date.

Unless otherwise established by resolution of the council, all business licenses shall expire on December 31 of each year.

SEC. 18.10. - Time and manner of payment.

The annual business license taxes shall be due and payable to the city on the first (1st) day of January of each year, unless otherwise established by resolution of the city council. All business license taxes under this chapter shall be paid by the due date in the legal currency of the United States at the office of the tax administrator.

SEC. 18.11. - Renewal of license.

No license may be renewed unless:

- a. An application for renewal of the business license, together with the payment of the applicable annual business license tax, is filed with the tax administrator prior to the expiration date of the current license; and
- b. The licensee meets all of the requirements of this chapter.
- c. If such application for renewal is not filed, or the annual business license tax is not paid prior to the expiration date of a license, the license shall be deemed suspended until such time as the application for renewal is filed, the annual business license tax and, if applicable, penalties paid and a new license has been issued.

SEC. 18.12. - Penalty for late renewal.

- a. **Original delinquency.** Any person who is subject to the business license tax who fails to remit any amount imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the business license tax owed in addition to the amount due.
- b. **Continued delinquency.** Any person who is subject to the business license tax 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 percent (10%) of the amount of the business license tax owed in addition to the amount of the tax and the ten percent (10%) 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 (25%) of the amount of the business license 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 person engaged in a business who fails to remit any business license tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the business license 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 business license tax herein required to be paid.

SEC. 18.13. - Exhibition of license.

Every person shall keep any license issued pursuant to this chapter exhibited in a public and readily accessible place and shown to any police officer, city inspector or other person upon request while business is operated in the city under that license.

SEC. 18.14. - Transferability.

a. If a licensed business moves to another location, the original license shall be presented to the tax administrator, together with a statement of such proposed relocation. The tax administrator may approve the transfer of the license to the new location.

b. No license granted or issued under any provisions of this chapter shall be in any manner transferred or assigned or authorize any person other than is therein mentioned or named to do business. Rather, a new application for license in the name of the proposed transferee shall be presented to the tax administrator, who shall consider the application as provided in this chapter.

SEC. 18.15. - Issuance of duplicates; Errors.

The tax administrator shall charge for each duplicate license issued to replace any license issued under the provisions of this chapter which has been lost or destroyed. Such charge shall be in an amount set from time to time by resolution of the city council. In no case shall any error in stating the amount of the business license tax prevent or prejudice the collection by the city of what shall be actually due from anyone carrying on a business subject to a license under this chapter.

SEC. 18.16. - License tax imposed; Method of calculation.

a. From and after the date specified in paragraph c. of this section below, unless otherwise specifically provided for in this chapter, every business operator in the city shall pay an annual business registration and license tax based on the average number of employees of the business in the city, in the most recent four (4) quarters completed before the date the payment as set forth herein. The average number of employees of the business shall be the number of employees reported to the Employment Development Department. The average number of employees of the business may also be disclosed in a manner as approved by the tax administrator.

Number of Employees	Authorized Maximum Business Registration and License Tax
1	\$75
2-25	\$75 + \$5/employee for each employee over 1
26-50	\$195 + \$10/employee for each employee over 25
51-500	\$445 + \$75/employee for each employee over 50 employees
501-1,000	\$34,195 + \$100/employee for each employee over 500 employees
1,001-5,000	\$84,195 + \$125/employee for each employee over 1,000
5,001 +	\$584,195 + \$150/employee for each employee over 5,000

b. The provisions of this chapter shall apply to business operators having no fixed place of business within the city whose employees come into the city for the purpose of conducting a business or rendering services when such employees come into the city for these purposes six (6) or more days during any calendar year. The business tax payable by such business operators shall be the business registration and license tax, as apportioned in the table below.

For purposes of this paragraph b., "operating a business in the city" shall include every person entering into a contract with the city, including, without limitation, contracts for public works, consultant services and franchise agreements.

Out-of-Town Businesses		
Business Registration and License Tax		
6-64 days	65-129 days	130+ days
25%	50%	100%

c. The due date of the business registration and license tax under this section shall be as follows:

(1) Persons operating businesses with fifty (50) employees or less shall pay the business registration and license tax owed in subsections a. and b. above beginning January 1, 2020;

(2) Persons operating businesses with fifty-one (51) employees or more shall pay a phased-in tax as follows:

i. January 1, 2020: One-third (1/3) of the total business registration and license tax owed (rounded up to the nearest whole dollar) in subsections a. and b. above;

ii. January 1, 2021: Two-thirds (2/3) of the total business registration and license tax owed (rounded up to the nearest whole dollar) in subsections a. and b. above; and

iii. January 1, 2022 and thereafter: The full amount of the business registration and license tax owed in subsections a. and b. above.

(3) Business operators who apply for a new business license between October 1, 2019 and December 31, 2019 shall pay a prorated business license tax based on the tax that was in effect as of January 1, 2019.

SEC. 18.17. - Annual adjustments for inflation.

Subject to approval of the city council, the business license tax may be adjusted annually, commencing on January 1, 2021 and every year thereafter, if the cost of living in the city has increased over the preceding base period as shown by the CPI Index. The CPI Index will be set in December of each year or as established in the administrative guidelines promulgated by the tax administrator in accordance with this Chapter.

SEC. 18.18. - Refunds and proration.

a. All licenses shall be issued from the date set forth in the license and no licensee shall be entitled to the refund of any portion of the tax paid by reason of the termination of such licensed activity before the license expires.

b. Any business required to cease activity within the city as the result of public acquisition of the premises by any governmental agency shall be entitled to a refund of an amount prorated as to the time remaining under the license when the business activity ceases. Such licensee shall file a verified claim with the tax administrator stating the date of and reason for cessation of business activity.

c. The business license tax may be prorated in accordance with the administrative guidelines promulgated by the tax administrator.

SEC. 18.19. - Collection of taxes by court action.

The amount of any business license tax imposed by this chapter shall be deemed a debt to the city, and any business operating without having a license from the city so to do shall be liable to an action in the name of the city in any court of competent jurisdiction for the amount of the business license tax imposed on such business, together with all penalties and interest then due thereon in any such action, and any cost the city reasonably incurs to collect the tax, including attorneys' fees which, if judgment is recovered, shall be included and assessed as recoverable costs in such action.

SEC. 18.20. - Powers and duties of tax administrator.

The tax administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter. The tax administrator shall have the power to promulgate administrative guidelines consistent with the provisions of this chapter for the purpose of carrying out and enforcing the provisions of this chapter. A copy of any such administrative guidelines shall be on file and available for public examination in the tax administrator's office and posted to the city's website.

SEC. 18.21. - Enforcement of chapter.

All city enforcement officers and enforcement officials, including, but not limited to, police officers and code enforcement officers, are hereby appointed inspectors of licenses and are hereby authorized to examine all places of business and persons in the city liable to pay a business license tax to see that such business licenses are taken out; and shall have and exercise the following powers and duties:

- a. To issue citations for the violation of any of the provisions of this chapter.
- b. To enter free of charge, at any time, any place of business for which a license is required by this chapter and to demand the exhibition of such license for the current term by any person engaged or employed in the transaction of such business, and if such person shall then and there fail to exhibit such license, such person shall be liable for the penalties provided by this code and other applicable law for a violation of this chapter.

SEC. 18.22. - Liability of permittee or licensee.

- a. The licensee shall be liable for every violation of the requirements of this chapter committed by the licensee, or the licensee's manager or employee.
- b. In the case of a violation of a requirement of this chapter by an employee, the tax administrator shall have the discretion to take enforcement action against the licensee, the employee of the licensee, the manager who was present at the premises at the time the employee committed the violation or against any combination of them.
- c. In the case of a violation of a requirement of this chapter by a manager, the city shall have the discretion to take enforcement action against the licensee, the manager or both.

SEC. 18.23. - Cumulative remedies.

This chapter provides for administrative enforcement of its provisions, which are in addition to all other legal remedies, administrative, criminal or civil, which may be pursued by the city to address any violation of this chapter provided only that the city may not recover any sum due under this chapter more than once.

SEC. 18.24. - Procedure for hearing before the tax administrator.

With regard to a license issued by the tax administrator:

- a. The written request for a hearing before the tax administrator must be received by the tax administrator within ten (10) calendar days of the date of service of the notice of decision to deny, suspend or revoke the license.
- b. The tax administrator shall schedule a hearing which shall be held no later than sixty (60) calendar days after receipt of a timely request for hearing.
- c. The tax administrator shall serve a notice of hearing on the applicant or licensee not later than ten (10) calendar days prior to the scheduled date of the hearing.
- d. At the hearing before the tax administrator, the applicant or licensee shall be given the opportunity to present witnesses and documentary evidence.
- e. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence which the tax administrator deems reliable, relevant and not unduly repetitious may be considered.

SEC. 18.25. - Decision of the tax administrator.

- a. Within thirty (30) calendar days after the hearing, the tax administrator shall serve a written decision sustaining, reversing or modifying his or her decision on the applicant or licensee. If the licensed business involves expressive conduct protected by the First Amendment to the United States Constitution and comparable provisions of state law, the decision shall be rendered within five (5) business days of the hearing.
- b. The decision by the tax administrator after hearing shall become final unless the applicant or licensee files an appeal before the appeals hearing board within the time period specified in Sec. 18.26.

SEC. 18.26. - Appeal to appeals hearing board.

- a. If an applicant or licensee is dissatisfied with the written decision of the tax administrator, he or she may file an appeal to the appeals hearing board.
- b. The appeal must be in writing on a form provided by the appeals hearing board and received by the appeals hearing board within fifteen (15) calendar days of the date of the tax administrator's decision.
- c. The appeal hearing shall be conducted in accordance with the rules and regulations of the appeals hearing board as set forth in the administrative guidelines.
- d. The written decision of the appeals hearing board shall be final when served on the appellant and shall be the final decision of the city, subject to judicial review pursuant to Code of Civil Procedure Sec. 1094.5.

SEC. 18.27. - Audit.

The tax administrator shall have the right to audit records of the businesses subject to the business license tax to ensure compliance with this chapter. Businesses shall retain records pertaining the business license tax for a period of three (3) years from the end of each calendar year, and shall allow the city access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this chapter. Where a business does not maintain or retain adequate records documenting the number of its employees or does not allow the city reasonable

access to such records, the city's calculation of the number of employees of the business shall be presumed to be accurate, absent clear and convincing evidence otherwise.

SEC. 18.28. - Constitutionality and legality; Gann limit.

a. This tax is intended to be applied consistently with the United States and California Constitutions, state law and the city charter. The tax shall not be applied so as to cause an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California, to constitute a special tax, or to cause a violation of any other provision of applicable law.

b. Pursuant to California Constitution, Article XIII B, the appropriation limit for the city is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax."

Section 2. Amendment of Ordinance. This Ordinance may be repealed or amended by the City Council without a vote of the People in any manner which does not constitute a tax increase as that term is defined in Government Code Section 53750. In particular, and without limitation, the City Council may adopt a lower tax rate or amount under this ordinance and raise it again to the level authorized by this Ordinance without further voter approval.

Section 3. Severability. If any section, sentence, clause, phrase, or portion of this Ordinance is held to be invalid or unenforceable by a court of competent jurisdiction for any reason, the remaining sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The People of the City of Mountain View hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one (1) or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 4. General Tax. The tax imposed by this Ordinance is a general tax for general governmental purposes. The proceeds from the tax imposed by this Ordinance shall be for unrestricted general revenue purposes of the City and shall be accounted for in the General Fund of the City. Nothing in this Ordinance shall constitute the tax imposed under this Ordinance as a special tax, or bind the City to use the proceeds for any specific purpose or function; the City Council shall retain discretion to expend the proceeds of the tax for any lawful purpose of the City.

Section 5. Majority Approval and Effective Date. If a majority of voters casting votes on the question are in favor of the ballot measure regarding this Ordinance, this Ordinance shall be adopted upon the date the vote therefor is declared by the City Council and shall go into effect October 1, 2019. Upon the effective date of this Ordinance, the Tax Administrator shall record in a separate account all revenue raised by this Ordinance. A yearly independent audit of the funds collected pursuant to this Ordinance will be conducted.

Section 6. California Environmental Quality Act Requirements. The tax imposed by this Ordinance is a general tax which may be used for any legitimate governmental purpose, including funding future unspecified projects. The City is not committed to undertake any specific project, however. The tax in this context is not a project within the meaning of CEQA because it involves "government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment" (CEQA Guidelines Section 15378(b)(4)). If revenue from the tax were

used for a future project that would have such effect, the City would undertake the required CEQA review for the particular project at that time.

Section 7. Execution of Ordinance. The People of the City of Mountain View hereby authorize the Mayor and City Clerk of the City to execute this Ordinance to reflect its adoption at the November 6, 2018 election.

I hereby certify that the foregoing Ordinance was adopted by the voters of the City of Mountain View at the November 6, 2018 election.

LEONARD M. SIEGEL
MAYOR

ATTEST:

LISA NATUSCH
CITY CLERK