

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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RE: *Opposition to Ordinance to Increase Transient Occupancy Tax From 10% to 12% and a Resolution to place a Measure Increasing the Transient Occupancy Tax (Tot) From 10% To 12%*

Dear Mayor Spector and the Los Gatos City Council,

We ask that you not adopt the *Ordinance to Increase Transient Occupancy Tax From 10% to 12% and a Resolution to place a Measure Increasing the Transient Occupancy Tax (Tot) From 10% To 12%* (Ordinance) as it opens the door to new taxes on services rendered by Los Gatos businesses, violates federal law, and creates higher taxes on travelers to Los Gatos.

The Ordinance imposes a new tax on Los Gatos citizens

Today, California does not impose sales tax or lodging tax on service fees charged by travel agents. These service fees compensate travel agents for researching and comparing available hotel options, booking the room, and handling payment to the hotel. The Ordinance could allow tax collectors to impose a new tax on these service fees provided by travel agents and online travel companies, a tax that is passed on to your constituents.

The Ordinance would allow tax collectors to levy their occupancy tax on more than just hotel rooms

Los Gatos travel agents routinely create packages that bundle hotel rooms, food, travel, and events into one price. The Ordinance allows Sacramento tax collectors to impose their occupancy taxes on all kinds of goods and services when included in travel packages:

- taxi from the airport to the hotel
- food served at a hotel restaurant
- tickets to the Bill Mason Carousel
- wine tastings

The Ordinance Would Undermine a Key Benefit of the internet and would likely be Unconstitutional

The Ordinance forces hosting platforms like HomeAway, Airbnb, and VRBO to determine and collect the taxes for a listing posted on their site by a city resident. However, such a requirement is surely unconstitutional as the Ordinance is preempted by federal law.

The internet is an open resource that enables people from all parts of Los Gatos to publish their views and pursue their goals. While some nations discourage user-generated content, the United States created a fertile ground for business models that have transformed the world.

Moreover, this openness is bolstered by Section 230 of the federal Communications Decency Act, which says platforms can't be held strictly liable for content posted *by others*.

However, the Ordinance ignores Section 230. This not only threatens a core tenet of the internet, but is at odds with federal law – resulting in the likely injunction of the Ordinance.

Moreover, because the Ordinance specifically targets “online” for application of these taxes, it would likely violated the Federal Internet Tax Injunction Act which protects online businesses from discriminatory taxes.

We ask that you not deny create new taxes on your local travel agents nor discourage travelers from visiting your city by increasing occupancy taxes.

So while we ask that you not adopt the Ordinance, we welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Sincerely,



Carl Szabo

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NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org