



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Ben Harvey, City Manager

MEETING DATE: July 20, 2016

SUBJECT: Resolution Approving a Ballot Measure to Authorize an Admission Tax and Add Chapter 6.13 to the Pacific Grove Municipal Code

CEQA: Does not constitute a "Project" under California Environmental Quality Act (CEQA) Guidelines

RECOMMENDATION

Approve the Resolution to place a Ballot Measure on the November 8, 2016 election to authorize an Admission Tax and Add Chapter 6.13 to the Pacific Grove Municipal Code. The proposed tax shall be enacted and take effect only if a majority of the voters of the City casts ballots in favor of the measure.

DISCUSSION

The City of Pacific Grove (City) is a charter City holding home rule powers necessary and appropriate to a municipal corporation that are not prohibited by the California or federal Constitutions. This includes the authority to impose taxes in accord with Article XI of the California Constitution. The City alternatively has the general authority to levy a tax under California Government Code, section 37101.

The recommended Resolution would place a ballot measure on the November election to create an Admission Tax for attendance at any facility within the City in the amount of five percent (5%) of the price of admission charged by the operator. The attendee would pay the tax to the event operator at the time the admission charge is paid. The tax would apply to all events or facilities for which a price is charged for admission, regardless of whether the activity involves protected speech and regardless of content. For admission privileges included within a membership fee, season ticket/pass, or subscription, the tax would be charged only for admission of a person to a single event, multiplied by the number of persons for which the membership, season ticket/pass or subscription allows. If the privilege of attending an event within the City also includes the privilege to attend events or facilities outside of the City, the full Admission tax would be collected unless the Operator has credible proof the patron did not exercise entry to any facility within the City. In that case, the Admission tax would not be collected.

More than a million individuals visit the City each year. They attend venues such as the Monterey Bay Aquarium, the Pacific Grove Museum, the Pacific Grove Golf Links, the Pacific Grove Triathlon, the Half Marathon, Christmas at the Inns and other events. This affects the City's delivery of emergency services and infrastructure. Visitors also require active management. The majority of visitors use City roads, sidewalks and paths, including the Monterey Bay recreational trail or coastal environment for which the City incurs daily custodial maintenance and capital costs. The City maintains lineal parks along its entire shoreline. These require maintenance (restrooms, trash and debris removal), landscape maintenance (grass, trees and shrubs), management of infrastructure (hardscape, receptacles, lights, picnic facilities, restrooms and shore access points), and fencing and signage. The City must engage in habitat protection such as the seal birthing beach (seasonal and perennial), sea shore maintenance; erosion protection, Coastal Bluff safety; trail maintenance; park maintenance and debris removal. Visitors affect the shore, bay and ocean environments, and require active management to mitigate and remediate impacts, and to provide a safe and attractive venue.

The unique burdens imposed by visitors upon the City exist at the same time the City has a compelling need to raise new revenue as current revenue will not meet expenses projected for public safety demands, including police, fire and emergency services. The City is also compelled to maintain, repair and protect streets, sidewalks, paths and trails, and provide sanitation particularly for casual visitors who do not contribute taxes or fees to the City.

The City acknowledges that many organizations are formed as non-profit entities. Some also are engaged in education or other forms of expression protected by the First Amendment. Nonetheless, Case law demonstrates an Admission tax may be levied provided it is generally applied to all similarly situated businesses, and provided the measure does not impermissibly infringe upon guaranteed rights of free expression.

Disproportionate payment of the tax collected by larger facilities is justified because the number of attendees at larger events correspond to an increased use of City services. The Monterey Bay Aquarium has acknowledged its campus in part, exists within the City of Pacific Grove, and the Aquarium shares the goal of helping the community thrive. Key to the location of the Aquarium is its proximity to the Monterey Bay recreational trail, and access to Monterey Bay habitats.

The proposed Admission tax is intended to be generally applicable to all similarly-situated activities and equally affect all attendees who pay for the privilege of entering, attending, participating or viewing events in the City. The proposed Admission tax is not intended to impose a burden on any organization formed as a not for profit organization as the payee of the Admission tax is the attendee, not the sponsoring organization. Also, the proposed Admission tax is not intended to impermissibly infringe upon guaranteed rights of free expression.

The California State Controller reports that eleven California municipalities presently collect Admission taxes. These include San Francisco, Santa Cruz, Indian Wells, San Fernando, Fairfield, Avalon, Pasadena, Inglewood, Pomona, Irwindale and Azusa.

The Admission tax shall be proposed as a general tax solely to raise revenue for any and all municipal purposes, and to be placed into the City's General Fund. It is not intended for regulation.

The Resolution is exempt from the California Environmental Quality Act (CEQA) as it is not a Project as defined by section 15378 of the CEQA Guidelines, and shall not cause a physical change to the environment.

OPTIONS

1. Take no action. No Admission Tax Measure would be placed on the November 2016 ballot.

FISCAL IMPACT

Previous estimates of revenues which could be generated by an admission tax were based on \$0.50 tax per entrant; this resulted in a projected annual yield approximating \$750,000. The admission tax measure presented in the attached resolution would be based on 5% of the admission price. A tax yield of \$750,000 would require base admission sales of \$30 million dollars.

The cost of the general election in November is set by Monterey County Elections. The County provided all municipalities with its estimated cost for the November election at between \$6.00 and \$8.00 per registered voter. Pacific Grove has 9415 registered voters. Thus, the cost range for the entire election ranges from a low of \$56,490 to a high of \$75,320. The number of measures on the ballot suggests that the elections cost will tend toward the higher range.

If the measure is placed on the ballot and approved by a majority of the voters, it has been suggested that a challenge may be brought against the measure. Such a challenge could result in legal defense expenses, and may also delay the date for receipt of collected any admission tax revenues.

ATTACHMENTS

1. Resolution

RESPECTFULLY SUBMITTED:



Ben Harvey
City Manager

Admission Tax

RESOLUTION NO. 16 -

**A RESOLUTION OF THE CITY OF PACIFIC GROVE APPROVING A
BALLOT MEASURE TO ADD CHAPTER 6.13 TO THE PACIFIC GROVE
MUNICIPAL CODE AND AUTHORIZE ENACTMENT OF AN ADMISSION TAX**

FINDINGS

1. The City of Pacific Grove (City) is a charter City, holding home rule powers necessary and appropriate to a municipal corporation that are not prohibited by the California or federal Constitutions. This includes the authority to impose taxes in accord with Article XI of the California Constitution. The City alternatively has the general authority to levy a tax under California Government Code, section 37101; and
2. Enactment of any tax must be approved by the voters of the City; and
3. More than a million individuals visit the City each year. They attend venues such as the Monterey Bay Aquarium, the Pacific Grove Museum, the Pacific Grove Golf Links, the Pacific Grove Triathlon, the Half Marathon, Christmas at the Inns and other events. This affects the City's delivery of emergency services and infrastructure. Visitors also require active management. The majority of visitors use City roads, sidewalks and paths, including the Monterey Bay recreational trail or coastal environment for which the City incurs daily custodial maintenance and capital costs. The City maintains lineal parks along its entire shoreline. These require maintenance (restrooms, trash and debris removal), landscape maintenance (grass, trees and shrubs), management of infrastructure (hardscape, receptacles, lights, picnic facilities, restrooms and shore access points), and fencing and signage. The City must engage in habitat protection such as the seal birthing beach (seasonal and perennial), sea shore maintenance; erosion protection, Coastal Bluff safety; trail maintenance; park maintenance and debris removal. Visitors affect the shore, bay and ocean environments, and require active management to mitigate and remediate impacts, and to provide a safe and attractive venue; and
4. The unique burdens imposed by visitors upon the City exist at the same time the City has a compelling need to raise new revenue as current revenue will not meet expenses projected for public safety demands, including police, fire and emergency services. The City is also compelled to maintain, repair and protect streets, sidewalks, paths and trails, and provide sanitation particularly for casual visitors who do not contribute taxes or fees to the City; and
5. Case law demonstrates an Admission tax may be levied, provided it is generally applied to all similarly situated businesses, and provided the measure does not impermissibly infringe upon guaranteed rights of free expression; and

6. The proposed Admission tax is generally applicable to all similarly-situated activities and will equally affect all attendees who pay for the privilege of entering, attending, participating or viewing an event; and
7. The proposed Admission tax does not impermissibly infringe upon guaranteed rights of free expression; and
8. The proposed Admission tax does not impermissibly impose a burden on any organization formed as a not for profit organization as the payee of the Admission tax is the attendee, not the sponsoring organization; and
9. Any disproportionate payment of the tax collected by larger facilities is justified because the increased number of attendees at larger events correspond to an increased use of City services; and
10. The California State Controller reports that eleven California municipalities presently collect Admission taxes. These include San Francisco, Santa Cruz, Indian Wells, San Fernando, Fairfield, Avalon, Pasadena, Inglewood, Pomona, Irwindale and Azusa; and
11. The proposed tax shall be enacted as a general tax solely to raise revenue for any and all municipal purposes, and shall be placed into the City's General Fund, and is not intended for regulation; and
12. The Pacific Grove Municipal Code (PGMC) shall be amended and the proposed Admission tax shall be enacted and take effect only if a majority of the voters of the City casts ballots in favor of the ballot measure authorized for that purpose at the election to be held on November 8, 2016; and
13. The proposed amendment to PGMC is exempt from the California Environmental Quality Act (CEQA) it is not a Project as defined by section 15378 of the CEQA Guidelines, and shall not cause a physical change to the environment.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE:

SECTION 1. The City Council adopts each Finding set forth above as though fully set forth in the body of this Resolution.

SECTION 2. A municipal election of the City shall be held in the City on November 8, 2016, at which time there shall be submitted to the voters the Ballot Measure to Amend the City Municipal Code and authorize enactment of an Admission Tax as set forth in this Resolution.

SECTION 3. If approved by a majority of the voters of the City the text set forth entitled "ADMISSION TAX" shall be added to the Pacific Grove Municipal Code, as follows:

Chapter 6.13
ADMISSION TAX

6.13.010 DEFINITIONS.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

“Admission charge” shall mean any charge which affords a Patron or attendee the privilege of entering, attending, participating or viewing an Event as defined by this Section. An Admission charge may be included within a contribution or donation, dues, or membership fee.

“Tax administrator” shall mean the City Manager, or designee.

“Facility” shall mean the physical site, building or area upon or within which the Event takes place and to which an Admission charge is imposed upon a Patron for Entry.

“Event” shall mean all manner and form of entertainment, amusement, recreation, education, or exhibition including, but not limited to attendance at an aquarium, athletic Events, carnivals, concerts, cycling, dances, displays, exhibitions, golf courses, historical exhibitions, lectures, marathons, motion pictures, or museums, musicals, organized running activities, special Events, sporting tournaments, stadia, swimming or bathing pools, theatrical performances, track & field, tours, triathlons, organized walking activities, and/or all other forms and manner of recreation, pastime, diversion or edification, including “cover” charges to such activities, for which an Admission Charge is imposed upon a Patron for the privilege of admittance.

“Operator” shall mean any person conducting, operating or maintaining any Event within any Facility in the City, including but not limited to, the owner or Operator of the Facility or any other person otherwise operating any Event. For purposes of collecting the tax provided for in this chapter, there are two classes of Operators, as follows:

- (a) One who conducts, operates, or maintains an established fixed Facility, wherein Events are held, carried on or conducted in the Operator’s normal course of business, hereinafter referred to as a “fixed Operator”; and
- (b) Any Operator other than a Fixed Operator shall be referred to as a “nonfixed Operator.”

“Patron” shall mean any person or attendee who pays or on account of whom is paid any Admission charge or admission price for the right or privilege of being admitted to or to use any Facility, or to participate in any Event. The term “Patron” shall not include (i) a bona fide employee of the Operator when admission to the Facility is incident to said employee’s duties, and (ii) any employee or official of the state of California, or any agency, instrumentality or

department thereof, the City, or United States Government whose official duty makes it necessary to gain admission to any Event.

“City” shall mean the City of Pacific Grove.

6.13.020 TAX IMPOSED.

(a) For the privilege of attending an Event, each Patron is subject to and shall pay a tax in the amount of five percent (5%) of the price of the admission to the Event charged by the Operator. The tax constitutes a debt owed by the Patron to the City, which is extinguished only by payment to the Operator or to the City. The Patron shall pay the tax to the Operator at the time the admission charge is paid. If for any reason the tax due is not paid to the Operator, the tax administrator may require that such tax shall be paid directly to the tax administrator.

(b) The tax shall apply to all Events or facilities for which a price is charged for admission, regardless of whether the activity involves protected speech and regardless of content.

(c) In the case of an admission charge levied as a membership fee, season ticket/pass, or subscription, the tax required by this chapter shall be levied, assessed, collected and paid based on the price so charged for the admission of a person to a single Event and shall be multiplied by the number of persons to which the membership, season ticket/pass or subscription allows to a single Event.

(d) Should the privilege of attending an Event within the City also include the privilege to attend an Event outside of the City, the full Admission tax required by this chapter shall nonetheless be collected from the Patron and remitted by the Operator, unless the Operator can present credible proof that the Patron did not exercise Entry to any Facility within the City. In that case, the tax required by this chapter shall not be collected.

6.13.030 EXEMPTIONS.

(a) No tax shall be imposed upon:

- (1) Any Patron who is beyond the power of the City to impose the tax required by this chapter;
- (2) Charges for membership or participation in or use of health clubs, martial arts studios, yoga studios and physical fitness facilities, which advance active bodily health and fitness and for which payment is made on an annual, quarterly, periodic, or other advance basis;
- (3) Charges levied as membership fees for memberships in social, fraternal, or nonprofit clubs where annual membership is the exclusive means required to gain admission to that or organization’s facilities;

- (4) Charges for registration or participation in Events held or conducted by a public agency or by an established public or private elementary or high school that meets the requirements of Education Code Sections 33190, 33191 and 48222, and which operates and maintains fixed facilities devoted to educational purposes;
 - (5) Charges levied as tuition fees for the privilege of attendance at a class or lecture or series of classes or lectures of an educational nature, conducted by a public agency or by an established public or private elementary or high school meeting the requirements of Education Code Sections 33190, 33191 and 48222, and which operates and maintains fixed facilities devoted to educational purposes;
 - (6) Admission charges for which a de minimus Admission tax (five cents or less) would otherwise be imposed.
 - (7) Admission charges for which the Operator can present credible proof that the Patron did not exercise Entry to any Facility within the City.
- (b) No exemption shall be granted except upon a claim made to the tax administrator under penalty of perjury upon a form prescribed by the tax administrator.

6.13.040 OPERATOR'S DUTIES.

- (a) Each Operator shall collect the tax imposed by this chapter at the same time the admission charge is collected from every Patron, and each Operator shall give each Patron reasonable notice that the tax levied has been included in his or her bill. The tax administrator shall make detailed regulations for the collection of the tax if Patrons are billed as a group.
- (b) Each Operator shall collect the tax imposed by this chapter from any Patron who pays an admission charge or purchases an admission ticket or season ticket or subscription. Every Operator shall hold the tax imposed by this chapter in trust until the same is remitted to the tax administrator as provided by this chapter.
- (c) It shall be the duty of each fixed Operator to assure that, for each taxable Event that is conducted at the fixed Operator's Facility, the tax imposed by this chapter is collected and remitted to the tax administrator as required. If the Event promoter, whether or not a nonfixed Operator, for any reason fails to either collect or remit the tax, the Operator shall be responsible for doing so and the tax administrator may proceed against the Operator in accordance with this chapter for the Operator's failure to account for and remit the tax.

6.13.050 REGISTRATION.

- (a) Prior to conducting, operating, or maintaining any Event or Facility which is subject to this chapter, each Operator shall register with the tax administrator and obtain from him or her an

admission tax registration certificate to be at all times posted in a conspicuous place on the premises, or on file with the manager of the Facility.

(b) The certificate shall, among other things, state the following:

- (1) The name of the Operator;
- (2) The location of the Facility;
- (3) The date upon which the certificate was issued; and
- (4) If issued to a nonfixed Operator, the period of time during which the Event, or if successive Events on consecutive days, the total period for all Events.

6.13.060 TERM OF CERTIFICATE.

All certificates issued pursuant to this chapter shall be valid for the following periods:

- (1) Certificates issued to fixed Operators shall be valid for a period established by the tax administrator unless otherwise revoked pursuant to this chapter.
- (2) Certificates issued to nonfixed Operators shall be valid for the period of each specific Event for which the certificate is issued. A separate certificate shall be required for each individual Event, except Events scheduled to occur on consecutive days, in which case a single certificate shall be valid for all successive occurrences of the Event.

6.13.070 REVOCATION OF CERTIFICATE.

The tax administrator shall revoke a certificate under this chapter on a finding that:

- (1) The applicant for such certificate or renewal has willfully failed to remit or has expressed intent to fail to remit the tax imposed by this chapter; or
- (2) The applicant for such certificate or renewal has failed to supply the tax administrator with information or records required to be submitted pursuant to this chapter.

6.13.080 NONTRANSFERABILITY.

An admission tax registration certificate may not be transferred or assigned.

6.13.090 REPORTING AND REMITTING.

(a) Each Operator shall, on the date or within the time hereafter prescribed, make a return to the tax administrator, on forms provided by the tax administrator, of the total Admission charges collected and received and the amount of tax collected from Patrons. At the time the return is filed, the full amount of any tax collected and due shall be remitted to the tax administrator. Those amounts not paid shall immediately become delinquent. The tax administrator may

establish special reporting periods for any Operator if the tax administrator deems it necessary to assure collection of the tax, and the tax administrator may require further information to be included in the return. Returns and payments are due and payable immediately upon cessation of business by the Operator 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 tax administrator.

(b) The regular reporting and remittance period shall be as follows:

- (1) For each fixed Operator, on or before the last day of the month following the close of the prior month, or at the close of any shorter reporting period that may be established by the tax administrator; and
- (2) For each nonfixed Operator, not later than ten (10) days after the conclusion of the Event, or within such shorter reporting period established by the tax administrator. The tax administrator shall calculate any additional tax due that exceeds the amount of the nonfixed Operator's deposit, and that amount shall be immediately paid by the Operator to the tax administrator. If reconciliation of the deposit amount with the return indicates a refund is due, it will be refunded to the Operator.

6.13.100 COLLECTION SECURITY.

The tax administrator, whenever he or she deems it necessary to assure faithful compliance with this chapter, may require any Operator subject to the provisions of this chapter to deposit with the tax administrator security for payment of taxes. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the estimated average liability for the period for which accounting and return are required by this chapter. Such security may be in the form of cash, cashiers' check made payable to the City, certified check made payable to the City, or a surety bond inuring to the benefit of the City, which bond shall be executed by a corporation authorized to do business in the state of California.

6.13.110 PENALTIES AND INTEREST.

(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 (10%) 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 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 tax 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 or any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) 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) Interest. In addition to the penalties imposed, any Operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one 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) Excusable Delay. If the tax administrator finds that an Operator's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the Operator's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the tax administrator may waive the penalty provided for in subsection (a) above. Any person seeking to be relieved of the penalty shall file with the tax administrator a statement under penalty of perjury setting forth the facts upon which the claim for relief is based. This request for relief from the first penalty must be filed within thirty days of the date the remittance was due to the City, but no later than ten days of the City's notice to the Operator of the amount past due.

(f) Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

6.13.120 FAILURE TO COLLECT AND REPORT TAX- DETERMINATION OF TAX BY TAX ADMINISTRATOR.

If any Operator shall fail or refuse 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 tax administrator 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 tax administrator 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, interest and penalties provided for by this chapter. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving 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 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 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, 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 pursuant to this chapter.

6.13.130 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 or 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 in section 6.13.120 for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

6.13.140 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, for a period of three years, 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, which records the tax administrator shall have the right to inspect at all reasonable times.

6.13.150 REFUNDS

(a) Filing Claim. 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 chapter it may be refunded as provided in subsections (b) and (c) of this section provided a claim in writing is filed with the tax administrator. The claim shall conform in all respects to the requirements set forth for claims against the City in PGMC Chapter 6.06.

(b) Refund to Operator. An Operator may claim a refund or as a credit against taxes collected and remitted any amount overpaid or erroneously collected when it is established in a manner prescribed by the tax administrator that the person from whom the tax was collected was not a Patron; provided, however, neither a refund nor a credit shall be allowed unless the amount of the tax collected was refunded to the Patron by the Operator.

(c) Refund to Patron. A Patron 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 subsection (a) of this section, but only when the tax was paid by the Patron directly to the tax administrator, or when the Patron having paid the tax to the Operator, establishes to the satisfaction of the tax administrator that the Patron has been unable to obtain a refund from the Operator who collected the tax.

(d) Proof Required. No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

6.13.160 ACTIONS TO COLLECT.

Any tax required to be paid by any Patron under the provisions of this chapter shall be deemed a debt owed by the Patron 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 pursuant to this chapter shall be liable to an action brought in the name of the City for the recovery of such amount and for attorneys' fees reasonably incurred to enforce this chapter, and such fees shall be deemed to be an additional tax.

6.00.170 SUCCESSOR'S AND ASSIGNEE'S RESPONSIBILITY.

If any Operator, while liable for any amount under this chapter, sells, assigns or otherwise transfers the business, whether voluntarily or involuntarily, the Operator's subsequent successor, assign or other transferee, or other person or entity obtaining ownership or control of the business, shall satisfy any admission tax liability owed to the City associated with the business. 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 admission tax liability, which includes interest and penalties.

The successor Operator, assignee, purchaser, transferee, or other person or entity seeking to obtain ownership or control of the business shall notify the tax administrator of the date of transfer at least thirty days prior to the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than thirty days prior to the date of transfer, notice shall be provided immediately.

The successor Operator, assign, purchaser, transferee, or other person or entity who obtains ownership or control of the business shall be deemed to have complied with the requirement of this section to satisfy the unpaid admission tax liability, 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 administrator of finance provides an admission tax clearance certificate showing that it has been paid and stating that no amount is due through the date of transfer.

The tax administrator, within ninety 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 or control of the hotel, may issue an admission 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 administrator may also request financial records from the current or former owner or Operator to conduct an audit of the admission tax that may be due and owing. After completing the audit within ninety days after the date that the records were made available, the tax administrator 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 administrator may rely on the facts and information available to estimate any admission tax liability associated with the property. The tax administrator may issue a tax clearance certificate stating the amount of the tax liability, if any, based on such facts and information available. A written application for a

hearing on the amount assessed on the tax clearance certificate must be made within ten days after the serving or mailing of the certificate. If an application for a hearing is not made within the time prescribed, 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.

6.13.180 ENFORCEMENT.

(a) Any violation of any of the provisions of this chapter is unlawful and may be enforced pursuant to PGMC Chapters 1.16 or 1.19.

(b) 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 chapter to be made, is guilty of a misdemeanor and is punishable as aforesaid.

SECTION 4. If approved by a majority of the voters of the City, the provisions of Chapter 6.13 shall, entitled "ADMISSION TAX", shall be added to the Pacific Grove Municipal Code and take effect on February 1, 2017.

SECTION 5. The proceeds deriving from this chapter shall be a "general tax," the revenue from which shall be placed into the City's General Fund and be available for any and all municipal purposes.

SECTION 6. The ballot question for the Admission Tax Measure shall be substantially as follows:

CITY MEASURE ()

Shall Chapter 6.13 be added to the Pacific Grove Municipal Code to impose a tax at the rate of five percent (5%) of any admission charge to enter, attend, participate or view Events or facilities within the City of Pacific Grove, including but not limited to attendance at an aquarium, sporting or athletic Events, concerts, golf courses, marathons, motion pictures, or museums, organized running or walking activities, in accord with Resolution No. 16 - xxx?

Yes (_____)

No (_____)

SECTION 7. The City Council does hereby determine, in accord with California Elections Code Section 9282 that it wishes to exercise its right to author and sign ballot

arguments and rebuttal arguments regarding this measure, and delegates that power to the Mayor or such other member of the City Council as the Mayor may designate.

SECTION 8. The last day to submit arguments for or against the proposed measure shall be August 19, 2016. Submittals are to be delivered to Monterey County Elections on or before 5:00 p.m. The last day to submit rebuttal arguments for the proposed measure shall be August 29, 2016. Submittals are to be delivered to Monterey County Elections on or before 5:00 p.m.

SECTION 9. On or before August 29, 2016, the City Attorney is directed to submit an impartial analysis, of no more than 500 words, of the proposed measure pursuant to California Elections Code section 9203.

SECTION 10. The City Council shall meet to declare the results of the election called for by this Resolution at their first regular meeting following certification of election results.

SECTION 11. If approved by a majority of the voters of the City, the City Manager, City Attorney and City Clerk are directed to perform all tasks necessary to implement Chapter 6.13. This measure shall cause republication of the Pacific Grove Municipal Code.

SECTION 12. If approved by a majority of the voters of the City, the provisions of Chapter 6.13, entitled "ADMISSION TAX", shall not be amended or rescinded except by a subsequent majority vote.

SECTION 13. If any provision, section, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses, or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 14. This Resolution shall take effect immediately following its adoption.

RESOLVED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 20th day of July, 2016, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney