

ORDINANCE NO. 18-017

**ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF PACIFIC GROVE
AMENDING CHAPTER 6.09 OF THE MUNICIPAL CODE
TO INCREASE THE UNIFORM TRANSIENT OCCUPANCY TAX**

WHEREAS, the People of the City of Pacific Grove, at the General Election held on November 6, 2018, approved the measure (“Measure U”), by a majority of the electors casting ballots, to increase the transient Occupancy Tax (TOT) from 10% to 12% effective July 1, 2019, amending Chapter 6.09 of the Pacific Grove Municipal Code, but the operative date for the increase to the Uniform Transient Occupancy Tax shall be July 1, 2019.

WHEREAS, the measure by majority vote as declared by Council on December 5, 2018.

WHEREAS, the City Council determined and declared that financial circumstances of the City of Pacific Grove (City) require enactment of measures to increase tax revenue to the City to preserve the public peace, health and safety of the community, to avoid the work stoppage and/or service disruptions that shall result from additional staff cuts and reductions in force, and to avoid permanent impairment of community services provided by the police, museum, recreation and other cultural resources within the City; and

WHEREAS, the City currently imposes a uniform Transient Occupancy Tax (TOT) on visitors who stay overnight in City hotels, motels or short-term rentals for less than thirty days; and

WHEREAS, the City uniform TOT has been set at ten percent; and

WHEREAS, neighboring cities on the Monterey Peninsula and the County have transient occupancy tax rates that range from ten to twelve percent; and

WHEREAS, the City clarified the TOT is calculated based upon the total rent paid by the guest, and not on a discounted rate that may be paid to a hotel operator by online travel companies or other third party booking agents; and

WHEREAS, the transient occupancy tax proposed for enactment by this ordinance shall be enacted solely to raise revenue for any and all municipal purposes, and shall be placed into the City’s General Fund, is not intended for regulation, and shall constitute a “general tax”; and

WHEREAS, the voters of the State of California amended the state constitution, adding Article XIII C, which requires that all new or increased special taxes be submitted to the voters prior to becoming effective, and

WHEREAS, the operative date for the increase to the Uniform Transient Occupancy Tax, if approved by a majority of the voters, shall be July 1, 2019; and

WHEREAS, this Ordinance is exempt from the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment; and

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PACIFIC GROVE DO ORDAIN AS FOLLOWS:

The text set forth in existing Section 6.09.010, Definitions, of Chapter 6.09 of the Pacific Grove Municipal Code shall be changed by the deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

6.09.010 Definitions.

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

“Hotel” means 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, mobile home or house trailer at a fixed location, or other similar structures or portion thereof, except that no lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure shall be deemed a hotel, when less than 10 percent of the annual dollar value of the rentals it earns derives from transient occupancy, and when it does not by signs or other advertising invite transient occupancy.

“Occupancy” means 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.

“Online Travel Company” means any person, whether operating for profit or not for profit, which enables transients to purchase occupancy of space in a hotel via the Internet, or by similar electronic means.

“Operator” means 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 or her functions through a managing agent of any type or character other than an employee, ***including but not limited to an online travel company,*** the managing agent shall also be deemed an operator for the purpose of this chapter and

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

“Person” means 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” means the consideration charged to the transient (including but not limited to, room rates, service charges, retail markup, commissions, processing fees, cancellation charges, attrition fees or online booking fees), 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” means the city clerk.

“Transient” means 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 30 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 30 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 the ordinance codified in this chapter may be considered.

The text set forth in existing Section 6.09.020 of Chapter 6.09 of the Pacific Grove Municipal Code shall be changed, effective July 1, 2019, by the deletion of all text shown in strikeout text (~~strikeout text~~) and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

For the privilege of occupancy in any hotel ***on and after July 1, 2019,*** each transient is subject to and shall pay a tax in the amount of ~~40~~ ***twelve*** percent (***12%***) of the ***total*** rent charged ***paid by the transient*** ~~by the operator~~. The 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 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.
