RESOLUTION NO. 18-025

AMENDED
RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PACIFIC GROVE
SUBMITTING TO THE ELECTORS A MEASURE
TO AMEND CHAPTER 6.09 OF THE MUNICIPAL CODE
TO INCREASE THE UNIFORM TRANSIENT OCCUPANCY TAX

WHEREAS, the City Council determines and declares 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 would like to clarify 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 resolution 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

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WHEREAS, the City Council requests consolidation of election precincts, polling places and voting booths be the same as for the General Statewide Election, and further that the form of a ballot used within the City of Pacific Grove specify this tax measure and/or measures that may hereafter qualify for the ballot; and

WHEREAS, the City Council further requests the Monterey County Board of Supervisors order the County Registrar of Voters prepare and mail sample ballots with this tax measure on the ballot to the qualified electors of the City; obtain appropriate precincts locations and trained precinct workers; prepare and count the ballots on Election Night or thereafter; and certify the election results, in the manner provided by law; and

WHEREAS, pursuant to Elections Code Section 10002, the Registrar of Voters is authorized to bill the City, on a prorated basis, for costs associated with this General Election; and

WHEREAS, the City Clerk shall be authorized to publish a copy of this Resolution in a newspaper of general circulation once within fifteen (15) days after the adoption of this Resolution, and provide services and supplies in connection with the election as required by law; and

WHEREAS, the City Council shall, in accord with Elections Code Section 9282, exercise its right to author and sign ballot arguments and rebuttal arguments regarding the measure, and delegates that power to the Mayor.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. This resolution shall become effective immediately following passage and adoption thereof.

SECTION 3. The City Council requests the Board of Supervisors permit the Monterey County Elections Department provide any and all services necessary for conducting the election and agrees to pay for said services.

SECTION 4. The ordinance submitted to voters as provided by this Resolution shall take effect if and only if it is approved by a majority of the electors casting ballots at the November 6, 2018 election, and if so, said ordinance shall immediately amend 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.

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SECTION 5. The text of the ballot measure is referenced below between Sections 6 and 7 and symbol * as noted below. The text of the measure shall be printed in the ballot materials; a copy of the measure shall be available for public inspection in the City Clerk's office at 300 Forest Avenue, Pacific Grove and on the City's website at www.cityofpacificgrove.org/about-city/city-clerk. If not provided in the voter guide, upon request, copies will be sent at the expense of the City.

SECTION 6. The City Council of the City of Pacific Grove does hereby submit to the voters at the next election, an ordinance, which reads as follows:

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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 (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.

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"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 ~~10~~ ***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.

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SECTION 7. All tax proceeds deriving from the provisions of Chapter 6.09 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.

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SECTION 8.   The ballot format for the proposal to authorize amendment of Chapter 6.09 of the Pacific Grove Municipal Code shall be substantially as follows:

CITY MEASURE (   )

Shall the measure amending the Pacific Grove Municipal Code be adopted to increase the City of Pacific Grove's Transient Occupancy Tax (TOT), effective July 1, 2019, imposed on occupants of short-term rentals such as hotel rooms, from 10% to 12%, and apply TOT to total rent paid by a guest for the short-term rental, including online travel companies, which is anticipated to raise $1,135,000 annually and will continue until repealed by City Council or City voters?

Yes (_____)
No (_____)

SECTION 9. If any provision, section, paragraph, sentence, clause, or phrase of this measure, 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.

SECTION 10. The City Attorney shall provide an abbreviated statement of the ballot measure, and on or before August 16, 2018, shall submit an impartial analysis of no more than 500 words as to each ballot measure pursuant to section 9203 of the California Elections Code.

SECTION 11. The last day to submit arguments (300 words) for or against the proposed measure shall be August 16, 2018. Submittals are to be delivered to the City Clerk on or before 5:00 p.m.

SECTION 12. The last day to submit rebuttal arguments (250 words) for the proposed measure shall be August 23, 2018. Submittals are to be delivered to the City Clerk on or before 5:00 p.m.

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PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 1ˢᵗ day of August 2018, by the following vote:

AYES: Mayor Kampe, Councilmembers Cuneo, Fischer, Garfield, Huitt, Peake, and Smith.

NOES: None.

ABSENT: None.

APPROVED:

Bill Kampe

BILL KAMPE, Mayor

ATTEST:

Sandra Kandell

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

David C. Laredo

DAVID C. LAREDO, City Attorney

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