

RESOLUTION NO. 21-121 C.S.

A RESOLUTION OF THE COUNCIL OF THE CITY OF MONTEREY

ADDING A MEASURE TO THE BALLOT TO ASK THE VOTERS OF THE CITY OF MONTEREY TO APPROVE AN INCREASE IN THE TRANSIENT OCCUPANCY TAX, AND TO EXPAND THE APPLICATION OF THE TAX TO ONLINE TRAVEL COMPANIES, WITH 16% OF THE REVENUE TO BE USED EXCLUSIVELY FOR THE NEIGHBORHOOD AND COMMUNITY IMPROVEMENT PROGRAM SET FORTH IN CHARTER SECTION 6.6, AND 84% FOR UNRESTRICTED GENERAL PURPOSES

WHEREAS, the City of Monterey became a charter city in 1910;

WHEREAS, 100% of transient occupancy tax is paid by guests of hotels or other lodging facilities. The current rate of transient occupancy tax is 10%, of which 16% is dedicated to the Neighborhood and Community Improvement Program (NCIP), and 84% funds essential City services such as the library, senior and youth recreation programs, police, fire, parks, forestry maintenance, disaster preparedness and more;

WHEREAS, in the November 8, 1988 general election, Measure B was approved by the voters of the City of Monterey to amend the City's charter to establish the Neighborhood and Community Improvement Program. (City Charter section 6.6.) Pursuant to Charter section 6.6, 16% of the annual transient occupancy tax on the rate in effect at that time (10%) is budgeted to fund the Neighborhood and Community Improvement Program;

WHEREAS, there is no indication in Measure B's ballot materials that any future increase in the transient occupancy tax rate would be a special tax subject to Proposition 13's two-third voter approval requirement, or that future increases to the transient occupancy tax could not be adopted without allocating 16% of proceeds to the Neighborhood and Community Improvement Program;

WHEREAS, NCIP funds are dedicated to improve the residential neighborhoods of the City and to provide for capital projects of community-wide benefit. Capital projects include, but are not limited to, streets, storm drains, sewers, sidewalks, lighting, traffic control devices, landscaping and beautification, parks, recreational facilities and other public buildings. Capital Projects do not include ordinary services. (City Charter section 6.6(a) and (c));

WHEREAS, in October 2019, the City of Monterey declared a fiscal emergency. Thereafter, the City of Monterey's budget has been devastated by the COVID-19 (Coronavirus) pandemic. In April 2020, the City Council approved the elimination of 106 positions, of which 82 positions were filled. As of June 1st, 68 filled positions were laid off. Many facilities, such as the Library, Monterey Sports Center, and recreation centers have closed, and a number of services have been eliminated. Despite drastic cuts and revenue enhancements, the City is facing a deficit of \$31 million before the end of fiscal year 2022;

WHEREAS, in order to generate the revenue needed to provide and restore services, restore the NCIP program, maintain infrastructure, and enable financial stability, the City Council of the City of Monterey desires to increase its already-existing transient occupancy tax, which is imposed on persons occupying visitor accommodation facilities in the City of Monterey;

WHEREAS, the City's current transient occupancy tax rate (10%) was established in 1985 and it is the lowest rate in the entire Monterey Peninsula, except for Del Rey Oaks, which does not have hotels;

WHEREAS, on April 21, 2020, the City Council adopted Resolution 20-051, finding and declaring that there are insufficient funds to provide for the ordinary and necessary services in the City due to existing and anticipated economic impacts related to the COVID-19 pandemic, and it de-appropriated \$10,600,000 of CIP and NCIP projects to the General Fund and transferred \$3,000,000 of NCIP funds to the General Fund for ordinary and necessary services and suspended the FY 20/21 NCIP capital projects planning;

WHEREAS, the City Council proposes the adoption of an Ordinance amending the City's Municipal Code to increase the transient occupancy tax by two percentage points, from 10% to 12%, and desires to submit the proposed tax increase as a measure to be placed on the ballot at the November 3, 2020 election;

WHEREAS, the City Council proposes to continue to allocate 16% of this proposed increase in the transient occupancy tax to the NCIP, while retaining the right of the voters in the future to enact future increases to transient occupancy tax as a general tax;

WHEREAS, the City confirms that the transient occupancy tax is calculated on 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 such as Priceline.com, Expedia, Orbitz, Travelocity, etc., or other third party booking agents;

WHEREAS, on June 16, 2020, the City Council adopted Resolutions 20-087 and 20-088 calling and noticing an election, and requesting that the Monterey County Board of Supervisors render services necessary to consolidate and conduct the election, and canvas returns;

WHEREAS, the adoption of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines"). The transient occupancy tax increase submitted to the voters is not a commitment to any particular action or actions. As such, under CEQA Guidelines section 15378(b)(4), the proposed tax increase is not a project within the meaning of CEQA because it would create government funding mechanisms that do not involve any commitment to any specific project(s) that may result in a potentially significant physical impact on the environment.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONTEREY that it hereby declares, determines, and orders as follows:

SECTION 1. RECITALS

The foregoing recitals are true and correct and are hereby adopted by the City Council.

SECTION 2. TAX ORDINANCE

a. The Measure shall be designated by letter by the Monterey County Elections Department. Pursuant to Elections Code section 10400 et seq., the election for this measure shall be consolidated with the established Election

b. Ballot Language

The City Council hereby orders the following question be submitted to the voters at the General Municipal Election:

Measure ____.

Hotel Tax Measure. Shall the measure be adopted to increase transient occupancy tax (hotel tax) from 10% to 12% on the cost of rooms paid by hotel guests, with 16% of proceeds allocated to the Neighborhood and Community Improvement Program, and 84% to essential services such as parks, recreation, library, emergency response, facility rehabilitation, and other unrestricted expenditures, and expanding the tax to apply to online travel companies, providing \$2.8 to \$5.6 million annually, effective until repealed by voters?	YES
	NO

c. Proposed Ordinance

The full text of the ordinance to be approved by the voters is attached to this Resolution as Exhibit A and incorporated by reference. The full text of the ordinance shall be printed in the Voter Information Pamphlet.

d. Passage of the Measure

This measure requires the approval of a two-thirds of qualified electors of the City voting in the election on the issue.

SECTION 4.**a. Publication of the Measures**

The City Clerk is hereby authorized to cause notice of the Measures to be published once in the *Monterey Herald* in accordance with Elections Code section 12111 and Government Code section 6061. The City Clerk is authorized to request that the Monterey County Elections Department prepare and publish the required notice.

b. Impartial Analysis

Pursuant to Elections Code section 9280, the City Council hereby directs the City Clerk to transmit to the City Attorney a copy of the Ordinance, attached to this Resolution as Exhibit "A". The City Attorney shall prepare an impartial analysis of the Ordinance showing the effect on existing law and the operation of the ordinance. The analysis shall not exceed 500 words and shall contain a statement that the Ordinance was placed on the ballot by the City Council. The impartial analysis shall be filed with the City Clerk by August 12, 2020 for conveyance to the County Registrar of Voters.

c. Arguments for the Measures and Deadlines Therefore

1. The last day for submission of primary arguments for the Ordinance shall be by 5:00 p.m. on August 12, 2020.
2. Pursuant to California Elections Code section 9282, subdivision (b), the City Council hereby authorizes the Mayor to prepare and file the primary written argument on behalf of the City Council in support of the Ordinance. At the discretion of the Mayor, the argument may also be signed by other members of the City Council, bona fide associations of citizens, or by individual voters who are eligible to vote on the ordinance.
3. In accordance with Section 9283 of the Elections Code, the printed names and signatures of not more than five authors shall appear with any argument submitted in accordance with this Resolution.
4. In accordance with Section 9282(c) of the Elections Code, any argument written in favor of or against the proposed ordinance described above shall not exceed 300 words for each.

5. Pursuant to California Elections Code section 9285, subdivision (b), the City Council hereby adopts the provisions of California Elections Code section 9285, subdivision (a), relating to rebuttal arguments for the Ordinance only for the November 3, 2020 election, and thereafter this Section 3(f)(5) shall expire.
6. The last day for submission of rebuttal arguments shall be 5:00 p.m. on August 19, 2020. In accordance with Section 9285(a)(3) of the Elections Code, any rebuttal argument shall not exceed 250 words. Pursuant to Elections Code section 9285(a)(2), the author or a majority of authors of an argument may prepare and submit a rebuttal argument or may authorize in writing another person or person to prepare, submit, or sign the rebuttal argument.
7. The City Council hereby authorizes and directs the City Clerk to give preference and priority to any written argument for or against the City ordinance set forth above that includes a member or members of the City Council, and then to other arguments as set forth in Elections Code section 9287.

SECTION 4. IMPLEMENTATION

The City Clerk is directed to file with the Monterey County Board of Supervisors a certified copy of this Resolution, with a copy to the County Registrar of Voters, pursuant to California Elections Code section 10403. The City Clerk is further authorized and directed to perform all other acts necessary or required by law to implement this Resolution and related to the election.

SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this resolution or its application 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 its application to other persons and circumstances. The City Council of the City of Monterey hereby declares that it would have adopted this resolution and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 4th day of August, 2020, by the following vote:

AYES:	5	COUNCILMEMBERS:	Albert, Haffa, Smith, Williamson, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

DocuSigned by:



C. Smith

ED8453A4E62C4AA

City Clerk

DocuSigned by:

Mayor Clyde Roberson

FA4081217DEE4FB...

Mayor

ORDINANCE NO. ____ C.S.

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MONTEREY

APPROVING AN INCREASE IN THE TRANSIENT OCCUPANCY TAX, AND TO EXPAND THE APPLICATION OF THE TAX TO ONLINE TRAVEL COMPANIES, WITH 16% OF THE REVENUE TO BE USED EXCLUSIVELY FOR THE NEIGHBORHOOD AND COMMUNITY IMPROVEMENT PROGRAM SET FORTH IN CHARTER SECTION 6.6, AND 84% FOR UNRESTRICTED GENERAL PURPOSES

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, the City of Monterey became a charter city in 1910;

WHEREAS, 100% of transient occupancy tax is paid by guests of hotels or other lodging facilities. The current rate of transient occupancy tax is 10%, of which 16% is dedicated to the Neighborhood and Community Improvement Program (NCIP), and 84% funds essential City services such as the library, senior and youth recreation programs, police, fire, parks, forestry maintenance, disaster preparedness and more;

WHEREAS, in the November 8, 1988 general election, Measure B was approved by the voters of the City of Monterey to amend the City's charter to establish the Neighborhood and Community Improvement Program. (City Charter section 6.6.) Pursuant to Charter section 6.6, 16% of the annual transient occupancy tax on the rate in effect at that time (10%) is budgeted to fund the Neighborhood and Community Improvement Program;

WHEREAS, there is no indication in Measure B's ballot materials that any future increase in the transient occupancy tax rate would be a special tax subject to Proposition 13's two-third voter approval requirement, or that future increases to the transient occupancy tax could not be adopted without allocating 16% of proceeds to the Neighborhood and Community Improvement Program;

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WHEREAS, in order to generate the revenue needed to provide and restore services, restore the NCIP program, maintain infrastructure, and enable financial stability, the City Council of the City of Monterey desires to increase its already-existing transient occupancy tax, which is imposed on persons occupying visitor accommodation facilities in the City of Monterey;

WHEREAS, the City's current transient occupancy tax rate (10%) was established in 1985 and it is the lowest rate in the entire Monterey Peninsula, except for the cities of Del Rey Oaks and Carmel-by-the-Sea;

WHEREAS, on April 21, 2020, the City Council adopted Resolution 20-051, finding and declaring that there are insufficient funds to provide for the ordinary and necessary services in the City due to existing and anticipated economic impacts related to the COVID-19 pandemic, and it de-appropriated \$10,600,000 of CIP and NCIP projects to the General Fund and transferred \$3,000,000 of NCIP funds to the General Fund for ordinary and necessary services and suspended the FY 20/21 NCIP capital projects planning;

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WHEREAS, the City confirms that the transient occupancy tax is calculated on 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 such as Priceline.com, Expedia, Orbitz, Travelocity, etc., or other third party booking agents;

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WHEREAS, the adoption of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines"). The transient occupancy tax increase submitted to the voters is not a commitment to any particular action or actions. As such, under CEQA Guidelines section 15378(b)(4), the proposed tax increase is not a project within the meaning of CEQA because it would create government funding mechanisms that do not involve any commitment to any specific project(s) that may result in a potentially significant physical impact on the environment.

NOW THEREFORE, the People of the City of Monterey ordain as follows:

SECTION 2: the following definitions set forth in Monterey City Code, Chapter 35, Article 3, Section 35-10 are hereby amended to read as follows:

Sec. 35-10. Definitions.

Visitor Accommodation Facility. Any structure, or any portion of a structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes for periods of thirty (30) days or less, including any inn, residential dwelling unit, motel, or lodging house, bed and breakfast inn, single room occupancy hotel, hostel, rental unit, public or private residential club, mobile home, house trailer at a fixed location, or other structure or portion of a structure. This definition includes Vacation Rentals, such as those marketed by VRBO and Airbnb, whether or not such rentals are permitted to operate within the City of Monterey.

Operator. The person who is proprietor of the visitor accommodation facility, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, manager or any other capacity. Where the operator performs through a managing agent of any type or character other than an employee, or a booking agent other than an employee, including but not limited to online booking agencies such as Expedia or Travelocity, the managing or booking agent shall also be deemed an operator for the purposes of this Article and shall have the same duties and liabilities as the principal. Compliance with the provisions of this Article by either the principal or the agent shall be considered to be compliance by both.

Rent. The consideration charged to the transient, whether or not received, for the occupancy of space in a visitor accommodation facility, 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. Rent includes charges for amenities, including but not limited to movie/DVD fees, mini bar fees, telephone fees, parking fees, resort fees, charges for rollaway beds, cribs, pet fees, and internet fees, in addition to online booking fees and charges.

SECTION 3. Section 35-11 is hereby amended to read as follows:

Sec. 35-11. Tax levied; payment of tax by transient.

For the privilege of occupancy in any visitor accommodation facility, each transient is subject to and shall pay a tax in the amount of 12% of the rent charged by the operator. Such 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 visitor accommodation facility 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 visitor accommodation facility. If, for any reason the tax due is not paid to the operator of the visitor accommodation facility, the Finance Director may require that such tax shall be paid directly to the City. 16% of the tax rate approved by voters on or before November 3, 2020 shall be allocated to the Neighborhood and Community Improvement Program set forth in Charter section 6.6(c).

SECTION 4: Section 35-22.1 is hereby added to read as follows:

This article may be repealed or amended by the City Council without a vote of the people except as required by law, and except for tax increases as that term is defined in Government Code section 53750.

SECTION 5: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 6: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 7: The increased tax imposed by this ordinance is a special tax, dedicating 16% to the Neighborhood and Community Improvement Program, and 84% for unrestricted general fund purposes. If two-thirds of voters casting votes on the question are in favor of the ballot measure regarding this Ordinance, the Ordinance shall be adopted upon the date the vote therefor is declared by the City Council and shall go into effect 10 days thereafter in accordance with California Elections Code section 9217 and Section 2.6 of Article 2 of the Monterey City Charter, or on January 1, 2021, whichever date is latest.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this _____ day of _____, 2020, by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

APPROVED:

ATTEST:

Mayor

City Clerk