

RESOLUTION NO. 2018-65

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY PLACING BEFORE THE VOTERS AN ORDINANCE OF THE CITY OF FOSTER CITY INCREASING, ON A STEPPED BASIS, THE CITY'S TRANSIENT OCCUPANCY TAX ON RENT CHARGED TO HOTEL GUESTS FROM NINE AND ONE-HALF PERCENT (9.5%) TO ELEVEN PERCENT (11%) FOR SIX MONTHS (JANUARY 1 - JUNE 30, 2019), AND THEN TO TWELVE PERCENT (12%) COMMENCING ON JULY 1, 2019 AND CONTINUING THEREAFTER; AND AUTHORIZING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

CITY OF FOSTER CITY

WHEREAS, the City Council approved City Resolution No. 2018-46 calling and giving notice of the holding of a General Municipal Election to be held on November 6, 2018 for the election of two members of the City Council as required by the provisions of the laws of the State of California relating to general law cities; and

WHEREAS, California Constitution Article XIII C, Section 2, provides that no local government may increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote, and that a measure proposing to adopt a general tax must be consolidated with a regularly scheduled General Municipal Election for members of the City Council; and

WHEREAS, the City Council desires, on its own motion, to amend Foster City Municipal Code Chapter 3.24, particularly Section 3.24.030, to increase the Transient Occupancy Tax ("TOT") rate and to make other changes, with the funds to be deposited in the City's General Fund and to be used for unrestricted general revenue purposes and services including but not limited to offset the City's costs of police, fire, parks, and infrastructure maintenance; and

WHEREAS, the Foster City City Council is authorized by California Elections Code Section 9222 to place measures before the voters; and

WHEREAS, California Government Code Section 53724(b) authorizes the City Council to place such a tax measure before the voters subject to a two-thirds vote of all members of the legislative body; and

WHEREAS, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney:

a. The City Attorney shall prepare an impartial analysis of the measure not exceeding 500 words showing the effect of the measure on the existing law and the operation of the measure.

b. The analysis shall include a statement indicating that the measure was placed on the ballot by the governing body of the City.

c. The impartial analysis shall be filed by August 17, 2018.

WHEREAS, this measure shall be designated by letter by the County Elections Office. The City requests that the County Elections Office set forth in the voter information portion of all sample ballots to be mailed to the qualified electors of the City the full text of the Ordinance and to mail with the sample ballots to the electors printed copies of the full text of the Ordinance as set forth below, together with the primary arguments and rebuttal arguments (if any) for and against the measure; and

WHEREAS, the City Clerk is authorized, instructed and directed to work with the County Elections Office as needed to properly and lawfully conduct the election on the measure. The ballots to be used in the election shall be in the form and content as required by law. The County Elections Office is authorized to canvass the returns of the General Municipal Election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections; and

WHEREAS, the Board of Supervisors is requested to instruct the County Elections Office to provide such services as may be necessary for the holding of the consolidated election. The election shall be held in all respects as if there were only one election. The City acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418. The City recognizes that the County will incur additional costs because of this consolidation and agrees to reimburse the County for those costs. The City Manager is hereby authorized and directed to expend the necessary funds to pay for the City's cost of placing the measure on the election ballot; and

WHEREAS, the City Clerk is directed to file certified copies of this Resolution with the Board of Supervisors and the Elections Office of the County of San Mateo, together with the attached ballot measure; and

WHEREAS, the City Clerk is hereby directed to cause notice of the measure to be published once in an official newspaper of general circulation for the City of Foster City, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code; and

WHEREAS, the approval 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 tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the

required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required; and

WHEREAS, it is desirable that the General Municipal Election be consolidated with the other county and state elections to be held on the same date, that within the city, precincts, polling places and election offices of the two elections to be the same, that the County Election Department of the County of San Mateo canvass the returns of the General Municipal Election, and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Foster City that the City Council does hereby declare, determine and order as follows:

- A. That the City Council, pursuant to its right and authority, does order submitted to the voters at the November 6, 2018 General Municipal Election the following question:

MEASURE _____

To provide funding for vital city services such as police, fire, parks, and infrastructure maintenance, and for unrestricted general revenue purposes, shall the City of Foster City adopt an ordinance increasing the transient occupancy tax paid by hotel guests from the current 9.5% to 11% effective January 1, 2019 through June 30, 2019, increasing to 12% July 1, 2019, providing between approximately \$924,000 and \$981,000 annually, until repealed or amended by voters?	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>

- B. If Measure ___ carries, The City of Foster City Municipal Code shall be amended by amending Section 3.20.030, as indicated by interlineation below, to read as follows:

3.20.010 Short title.

This chapter shall be known as the uniform transient occupancy tax.

3.20.020 Definitions.

- A. "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, lodginghouse, roominghouse, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof. "Hotel"

does not mean any of the following: Any hospital, sanitarium, medical clinic, convalescent home, rest home, home for aged people, foster home, or other similar facility operated for the care or treatment of human beings; any asylum, jail, prison, orphanage or other facility in which human beings are detained and housed under legal restraint, any housing owned or controlled by any educational institution and used exclusively to house students, faculty or other employees, and any fraternity or sorority house or similar facility occupied exclusively by students and employees of such educational institution and officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by any organization having qualifications for exemption from property taxes under the laws of California; any housing owned by a governmental agency and used to house its employees or for governmental purposes; any camp as defined in the Labor Code or other housing furnished by an employer exclusively for employees.

B. "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.

C. "Operator" means the person 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 functions through a managing agent of any type or character other than an employee the managing agent of any type or character is an operator for the purposes of this chapter and shall have the same duties and liabilities as his 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.

D. Except as used in subsection G of this section, "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.

E. "Rent" means the consideration charged, 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 deductions therefrom whatsoever.

F. "Tax administrator" means the city treasurer.

G. "Transient" means any individual who exercises occupancy or is entitled to occupancy of a specific room by reason of concession, permit, right of access, license, or other agreement for a period of thirty consecutive

calendar days or less, counting portions of calendar days as full days. Any such individual so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing providing for a longer period of occupancy of the room. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered.

3.20.030 Tax imposed.

For the privilege of occupancy in any hotel each transient is subject to and shall pay a tax in the amount of nine and one-half percent of the rent charged by the operator. Commencing January 1, 2019 and continuing through June 30, 2019, the amount of the tax shall be eleven percent (11%) of the rent charged by the operator. Effective July 1, 2019, and continuing thereafter, the amount of the tax shall be twelve percent (12%) of the rent charged 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 the tax be paid directly to the tax administrator.

3.20.040 Exemptions.

A. No tax shall be imposed upon:

1. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax provided in this chapter;
2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

B. No exemption shall be granted except upon a claim therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

3.20.050 Operator's duties.

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or

indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner provided in this chapter.

3.20.060 Registration.

Within thirty days after the effective date of this chapter, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the tax administrator and obtain from him a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- A. The name of the operator.
- B. The address of the hotel.
- C. The date upon which the certificate was issued.

D. This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the uniform transient occupancy tax ordinance by registering with the tax administrator for the purpose of collecting from transients the transient occupancy tax and remitting said tax to the tax administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in any unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. The certificate does not constitute a permit.

3.20.070 Reporting and remitting.

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. Returns and payments are due immediately upon cessation of business 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.

3.20.080 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 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 thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.

C. Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent 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 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. Interest shall be imposed on penalties from thirty days after an operator is notified of a delinquency.

E. 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 required to be paid by this chapter.

3.20.090 Determination of tax by city.

If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax administrator procures such facts and information as he 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 to make such report and remittance, he shall proceed to determine and assess against the 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 last known place of address. The operator may, within ten days after the serving or mailing of the 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 in this section to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for the tax, interest and penalties. At the hearing, the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed. After the 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 in this section of such determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 3.20.100.

3.20.100 Appeals.

Any operator aggrieved by any decision of the tax administrator with respect to the amount of the tax, interest and penalties, if any, may appeal to the council by filing a notice of appeal with the city clerk within fifteen days of the serving or mailing of the determination of tax due. The council shall fix a time and place for hearing the appeal, and the city clerk shall give notice in writing to the operator at his 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 3.20.090 for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3.20.110 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 the tax as he 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. Such records shall be maintained at the operator's premises or shall be available for delivery to the tax administrator within one week after request. The records shall include at least the following:

- A. Daily summaries of room occupancies.
- B. A record of each occupancy charge for which an exemption is claimed, including the name of the individual occupying the room, dates of occupancy, and reasons for exemption.

C. Lists of bad debts claimed for exemption, including names and addresses of debtor and amount of room rent unpaid.

3.20.120 Refunds.

A. 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 therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within three years of the date of payment. The claim shall be on forms furnished by the tax administrator.

B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient 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 transient directly to the tax administrator, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

3.20.130 Actions to collect.

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient 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 under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

3.20.140 Imposition of lien.

If any amount required to be paid to the city under this chapter is not paid when due, the tax administrator may, within three years after the amount is due, file for record in the office of the county recorder a certificate specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the tax administrator of the operator liable for the same and the fact that the tax administrator has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid together with penalties and interest constitutes a lien upon all real property in the county owned by the operator or afterwards and before the lien expires acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for ten years from the time of filing of the certificate unless sooner released or otherwise discharged.

3.20.150 Priority of lien.

A. The amounts required to be paid by any operator under this chapter with penalties and interest shall be satisfied first in any of the following cases:

1. Whenever the person is insolvent;
2. Whenever the person makes a voluntary assignment of his assets;
3. Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased;
4. Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this chapter are levied upon by process of law.

B. This chapter does not give the city a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

C. The preference given to the city by this chapter shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

3.20.160 Warrant for collection.

At any time within three years after any operator is delinquent in the payment of any amount required in this chapter to be paid or within three years after the last recording of a certificate of lien under Section 3.20.140, the tax administrator may issue a warrant for the enforcement of any liens and for

the collection of any amount required to be paid to the city under this chapter. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The tax administrator may pay or advance to the sheriff, marshal or constable, the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution. The tax administrator, and not the court, shall approve the fees for publication in a newspaper.

3.20.170 Seizure and sale of property.

At any time within three years after any operator is delinquent in the payment of any amount, the tax administrator may forthwith collect the amount in the following manner: The tax administrator shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect occupancy taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

3.20.180 Successor to withhold part of purchase price.

If any operator liable for any amount under this chapter sells out his business or quits the business, his successor or assignee shall withhold enough of the purchase price to cover such amount until the former owner produces a receipt from the tax administrator showing that it has been paid or a certificate stating that no amount is due.

3.20.190 Liability of purchaser—Release therefrom.

If the purchaser of a hotel fails to withhold purchase price as required in Section 3.20.180, he shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty days after receiving a written request from the purchaser for a certificate, or within sixty days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than ninety days after receiving the request, the tax administrator shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the tax administrator of the amount that must be paid as a condition of issuing the certificate. Failure of the tax administrator to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the operator sells his business or at the time that the

determination against the operator becomes final, whichever event occurs the later.

3.20.200 Violations—Misdemeanor.

A. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars or by imprisonment for a period of not more than six months or by both such fine and imprisonment.


B. Any operator or other person who fails or refuses to register as required in this chapter, 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.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the Regular Meeting held on the 16th day of July, 2018, by the following vote:

- AYES: Councilmembers Bronitsky, Mahanpour, Perez, Pollard and Mayor Hindi
- NOES: None
- ABSENT: None
- ABSTAIN: None



 SAM HINDI, MAYOR

ATTEST:


 PRISCILLA TAM, CITY CLERK