

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No. _____
Approving and adopting

) **RESOLUTION CALLING FOR AN**
) **ELECTION FOR THE PURPOSE OF**
) **SUBMITTING TO THE QUALIFIED**
) **ELECTORS OF THE COUNTY OF**
) **MONTEREY A COUNTYWIDE MEASURE**
) **TO RAISE THE TRANSIT OCCUPANCY**
) **TAX; DIRECTING THE COUNTY**
) **ELECTIONS OFFICIAL TO CONDUCT THE**
) **ELECTION; AND DIRECTING**
) **CONSOLIDATION OF THE ELECTION**
) **WITH THE REGULAR ELECTION OF**
) **NOVEMBER 5, 2024 (4/5 VOTE REQUIRED)**
)

WHEREAS, pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, visitors are drawn to County of Monterey by its unique natural beauty and historical attractions; and

WHEREAS, the economic impact of tourism is vital to County of Monterey’s economy; and

WHEREAS, balancing the costs and benefits of tourism is essential to the preservation of our communities and our quality of life; and

WHEREAS, a transient occupancy tax is an important part of that balance, as it can help offset certain costs of tourism such as use of the County of Monterey’s infrastructure and services; and

WHEREAS, revenue and Taxation Code section 7280 authorizes a county to levy a tax for the privilege of occupying a room or other living space in a hotel, motel or other lodging, where the lodging is for 30 days or less; and

WHEREAS, the County of Monterey, pursuant to the authority of Revenue and Taxation Code section 7280, has previously enacted County of Monterey Code Chapter 5.40, which imposes a transient occupancy tax of 10.5% in the unincorporated areas of County of Monterey on the rent charged by the operator for the occupancy of hotels, motels, inns or other lodging, with exceptions; and

WHEREAS, a transient occupancy tax rate of four percent (4%) was approved by the voters as a general tax in 1965 and, therefore, may be used for any general government purpose; and

WHEREAS, the tax rate has been raised and lowered throughout the years and was last increased in 1995 from ten percent (10%) to ten and one-half percent (10.5%); and

WHEREAS, the Board of Supervisors desires that the existing 10.5% transient occupancy tax rate in the unincorporated area of the County remain as a general tax and increase by .5% for

hotels, as defined in Chapter 5.40 of the County of Monterey Code, and increase by 5% for short-term vacation rentals; and

WHEREAS, the Board of Supervisors desires that the rate specific to short-term vacation rentals increase by more than other lodging because of the potential impacts short-term rentals can have on County infrastructure and services; and

WHEREAS, specifically, short-term vacation rentals have the potential to impact the character and intensity of an otherwise residential use. These impacts include, posing hazards to public health, safety and general welfare in areas known to have infrastructure limitations; and

WHEREAS, the Board of Supervisors desires that the matter of the increases in the transient occupancy tax rates in unincorporated County of Monterey be submitted to the voters for approval as a general tax; and

WHEREAS, the funds collected from the increase in the transient occupancy tax will be used to provide funding for essential County services, including but not limited to programs to reduce homelessness; enhancement of public safety and emergency services; disaster response, prevention, and recovery; traffic and road safety programs; street maintenance and pothole repair; libraries, parks, and recreation facilities; water and sewer infrastructure maintenance; healthcare; job skill development programs; and

WHEREAS, the increase to the transient occupancy tax will be enacted solely to raise revenue for general governmental purposes of the County and not for purposes of regulation or for raising revenue for regulatory purposes, in that all of the proceeds from the tax shall be placed in the County's general fund and be used for the usual current expenses of the County; and

WHEREAS, subdivision (b) of section 2 of Article XIII C of the California Constitution and section 53723 of the California Government Code require that before the County may impose a general tax, the tax must be submitted to the voters and approved by a majority vote of the voters; and

WHEREAS, subdivision (b) of section 2 of Article XIII C of the California Constitution mandates that an election required by that subdivision be consolidated with a regularly scheduled general election for members of the governing body of the local government, subject to specific exceptions not relevant here; and

WHEREAS, if approved by a majority of voters, the proposed increase to the transient occupancy tax would be accomplished by an ordinance amending Chapter 5.40 of the County of Monterey Code; and

WHEREAS, pursuant to California Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

WHEREAS, pursuant to California Elections Code Section 1000 *et seq.*, various district, county, State, and other political subdivision elections shall be held on November 5, 2024, an established regular election date.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED by the Board of Supervisors as follows:

1) A County election is hereby called to be held throughout the County on the regular election date of November 5, 2024, for the purpose of submitting to the qualified electors of the County of Monterey the following measure:

Measure _____

To fund essential County of Monterey services, including improved public safety and emergency services; traffic enforcement and road safety programs; street maintenance and pothole repair; libraries, county parks, and recreation facilities; water and sewer infrastructure maintenance; public health and healthcare; job skill development programs; and programs to reduce homelessness, shall the County of Monterey increase its existing Transient Occupancy Tax in unincorporated areas from 10.5% to 11% for hotels, and by 5% for short-term vacation rentals, providing approximately \$3,700,000 annually, until ended by voters?

YES ___ NO ___

2) Said County election shall be held and conducted, the votes received and canvassed, the returns thereof made, and the result thereof ascertained and determined in accordance with the law, including but not limited to the provisions of Section 10418 of the Elections Code.

3) Said County election hereby called shall be and hereby is consolidated with any and all elections also called to be held throughout the County on November 5, 2024, in all respects as required by and pursuant to law, including but not limited to the provisions of Section 10418 of the Elections Code.

4) In accordance with the provisions of Section 9160 of the Elections Code, the County Counsel is hereby directed to prepare an impartial analysis of this measure.

5) In accordance with the provisions of Section 9160 of the Elections Code, the County Auditor-Controller-Treasurer-Tax Collector is hereby directed to prepare a fiscal impact statement of this measure.

6) Arguments for and against this measure may be submitted in conformance with Elections Code Section 9161, *et seq.*

7) The Clerk of the Board of Supervisors shall file a copy of this Resolution with the County Clerk.

BE IT FURTHER RESOLVED AND ORDERED THAT the County of Monterey Elections Department is requested to print the proposed ordinance attached hereto as Attachment A in the County Voter Information Guide for the November 5, 2024, election date.

PASSED AND ADOPTED on this _____ day of _____, 2024, by the following vote,
to-wit:

AYES:

NOES:

ABSENT:

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California,
hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors
duly made and entered in the minutes thereof of Minute Book___ for the meeting on
_____.

Dated: _____

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
, Deputy

ATTACHMENT A

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 5.40 OF THE COUNTY OF MONTEREY CODE TO INCREASE THE TRANSIENT OCCUPANCY TAX RATE

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Declarations.

- A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.
- B. Visitors are drawn to County of Monterey by its unique natural beauty and historical attractions.
- C. The economic impact of tourism is vital to County of Monterey's economy.
- D. Balancing the costs and benefits of tourism is essential to the preservation of our communities and our quality of life.
- E. A transient occupancy tax is an important part of that balance, as it can help offset certain costs of tourism such as use of the County of Monterey's infrastructure and services.
- F. Revenue and Taxation Code section 7280 authorizes a county to levy a tax for the privilege of occupying a room or other living space in a hotel, motel or other lodging, where the lodging is for 30 days or less.
- G. The County of Monterey, pursuant to the authority of Revenue and Taxation Code section 7280, has previously enacted County of Monterey Code Chapter 5.40, which imposes a transient occupancy tax of ten and one-half percent (10.5%) in the unincorporated areas of County of Monterey on the rent charged by the operator for the occupancy of hotels, motels, inns or other lodging, with exceptions.
- H. A transient occupancy tax rate of four percent (4%) was approved by the voters as a general tax in 1965 and, therefore, may be used for any general government purpose. The tax rate has been raised and lowered throughout the years and was last increased in 1995 from ten percent (10%) to ten and one-half percent (10.5%).
- I. The Board of Supervisors desires that the existing ten and one-half percent (10.5%) transient occupancy tax rate in the unincorporated area of the County remain as a general tax and increase by one-half percent (.5%) for hotels, as defined in the ordinance, and increase by five percent (5%) for short-term vacation rentals, as defined in the ordinance.

J. The Board of Supervisors desires that the rate specific to short-term vacation rentals increase by more than other lodging because of the potential impacts short-term rentals can have on County infrastructure and services. Specifically, short-term vacation rentals have the potential to impact the character and intensity of an otherwise residential use in numerous residential areas of County of Monterey. These impacts include, but are not limited to, posing hazards to public health, safety and general welfare in areas known to have infrastructure limitations.

K. The Board of Supervisors desires that the matter of the increases in the transient occupancy tax rates in unincorporated County of Monterey be submitted to the voters for approval as a general tax.

SECTION 2. Section 5.40.020 of the County of Monterey Code is hereby amended to read as follows:

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter.

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, motel, time share or condominium conversion facility that is zoned "visitor serving", studio, 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 structure or portion thereof.

All the following are not included in the definition of hotel:

1. Any vacation rental.
2. 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.
3. Any asylum, jail, prison, orphanage or other facility in which human beings are detained or housed under legal restraint.
4. Any housing owned or controlled by an 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.
5. Any housing operated or used exclusively for religious, charitable or educational purposes by an organization having qualification for exemption from property taxes under the laws of California.
6. Any housing owned by a governmental agency and used to house its employees or for governmental purposes.
7. 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 or vacation rental for dwelling, lodging, or

sleeping purposes.

C. "Operator" means the person who is proprietor of the hotel or vacation rental, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Chapter and shall have the same duties and liabilities as a principal. However, compliance with the provisions of this Chapter by either the principal or the managing agent shall be considered to be compliance by both.

If a time share or condominium conversion allows or results in transient occupancy in a facility zoned "visitor serving," an onsite operator must be present. Such onsite operator shall be charged with all duties and responsibilities under this Chapter and shall serve as a single point of contact between transient occupants and the Tax Collector.

D. "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 or vacation rental 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, including but not limited to mandatory facility or grounds fees or mandatory gratuity or administrative fees retained by the operator, without any deduction therefrom whatsoever. Rent includes a nonrefundable deposit or guaranteed no-show fee paid by or on behalf of any person, whether or not the person actually exercises the right to occupancy by using or possessing any room or rooms, or portion thereof, in any hotel or vacation rental for dwelling, lodging, or sleeping purposes.

If a transient is not charged for occupancy of a time share or condominium conversion unit that is zoned "visitor serving," rent shall be based on the then applicable daily rate for a comparable unit in the same facility.

Rent does not include:

1. A non-refundable deposit or guaranteed no-show fee for conferences or other group related activities, regardless of whether all or any portion of that non-refundable deposit or guaranteed no-show fee includes any consideration for rooms reserved. A conference or other group-related activity is defined as rental of a block of five or more rooms for the same or substantially the same time period.

2. The value of paid optional or complimentary products or services offered to guest of a hotel or vacation rental, if the products or services are included in a package rate, provided:

- a. A reasonable allocation of the value of separate optional or complimentary products or services. Such products or service shall be separately identified on the guest receipt; and

- b. No tax pursuant to this Chapter is charged or collected by the operator on the value of products or services.

F. "Tax" means the transient occupancy tax provided for in this Chapter.

G. "Tax Collector" means the County of Monterey Treasurer-Tax Collector.

H. "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 thirty (30) calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel or vacation rental shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

I. "Vacation Rental" means any residential property used for transient lodging where the term of occupancy, possession, or tenancy of the property by the person entitled to such occupancy, possession, or tenancy for a period of thirty (30) consecutive calendar days or fewer, counting portions of calendar days as full days.

SECTION 3. Section 5.40.030 of the County of Monterey Code is hereby amended to read as follows:

For the privilege of occupancy in any hotel, each transient is subject and shall pay a tax in the amount of eleven (11) percent of the rent charged by the operator. For the privilege of occupancy in any vacation rental, each transient is subject and shall pay a tax in the amount of fifteen and one-half (15.5) percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the County which is extinguished only by payment to the operator or to the County.

A. The transient shall pay the tax to the operator of the hotel or vacation rental 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 or vacation rental. If for any reason the tax due is not paid to the operator of the hotel or vacation rental, the Tax Collector may require that such tax shall be paid directly to the Tax Collector.

B. Any tax imposed by this Chapter which is itemized on the guest receipt shall be remitted to the County. The amount allocated to room rental rates, number of rooms rented, tax, and products or services shall be readily identifiable in the operator's accounting records. The allocation to non-rent items shall not exceed the prices normally charged for those items.

C. Any operator offering a package rate must separately identify on the guest receipt of the room portion of the package rate, the transient occupancy tax applicable to the room portion of the package rate, the non-room portion of the package rate, and any transaction and use tax, and sales tax on the non-room portion of the package rate. The operator shall bear the burden of proving that the allocation of taxes between the room portion and the non-room portion of the package rate was properly made and that the proper amounts of taxes were collected and remitted to the appropriate agencies. Allocation of room rents from the package amount shall not be below prevailing room rates for the same area as determined by the Tax Collector or County Auditor-Controller.

SECTION 4. Subsection C of Section 5.40.055 of the County of Monterey Code is hereby amended to read as follows:

C. Travel or other special discounts offered by the hotel or vacation rental;

SECTION 5. Section 5.40.060 of the County of Monterey Code is hereby amended to read as follows:

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 or vacation rental 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 by this Chapter.

SECTION 6. Subsection A of Section 5.40.065 of the County of Monterey Code is hereby amended to read as follows:

- A. Provide to all operators of hotels and vacation rentals forms for reporting of the tax;

SECTION 7. Section 5.40.070 of the County of Monterey Code is hereby amended to read as follows:

Within thirty (30) days after commencing business, each operator of any hotel or vacation rental renting occupancy to transients shall register said hotel with the Tax Collector and obtain from the Tax Collector a transient occupancy registration certificate, to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel or vacation rental;
- 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 Collector for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel or vacation rental 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 County. This certificate does not constitute a permit”.

SECTION 8. Section 5.40.080 of the County of Monterey Code is hereby amended to read as follows:

- A. Each operator, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Collector, shall make a return to the Tax Collector, on forms provided by the Tax Collector, of the total rents charged and the amount of tax imposed thereon by Section 5.40.030. At the time the return is filed, the full amount of such tax shall be remitted to the Tax Collector. The Tax Collector may establish shorter report periods for any certificate holder if he or she deems necessary to ensure collection of the tax and the Tax Collector may require further information than is required in the return. Returns and payments are due immediately upon cessation of business for any reason except as provided in this Section. All taxes collected by operators pursuant to this Chapter shall be considered public monies at the time of collection and separate

property of the County and shall be held in trust for the account of the County until payment thereof is made to the Tax Collector.

B. Whenever any payment, statement, report, request or other communication is due, it must be received by the Treasurer-Tax Collector on or before the final due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the County is open to the public.

C. In the event a federal, state, or local declared disaster affecting the unincorporated area of County of Monterey results in the physical impairment of public infrastructure, including, but not limited to roads, streets, and other highways, and such impairment prevents public access to hotel or vacation rental facilities covered by this Chapter, the Tax Collector may extend the period of time, without penalty, for reporting and remitting taxes. In such instances, the reporting date and payment date shall extend to the end of the month after the next succeeding calendar quarter following the expiration date of the declared disaster.

SECTION 9. SEVERABILITY. If any subsection, sentence, clause or phrase of this Ordinance 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 Ordinance, which shall remain in full force and effect. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional. The courts are hereby authorized to reform the provisions of this Section in order to preserve the maximum permissible effect of each subsection herein.

SECTION 10. EFFECTIVE DATE. This ordinance shall take effect on the thirty-first day following its adoption. This ordinance shall become operative on January 1, 2025 and only if approved by a majority of the voters voting on the tax at the November 5, 2024 election.