

MEASURE D

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE D

The City of Los Altos currently imposes a transient occupancy tax ("TOT"), also generally known as a "hotel" tax, at the rate of eleven percent (11%) of rent paid by guests to a hotel operator in order to occupy a room or space in a hotel or similar lodging (referred to herein as a "hotel"). This TOT is imposed upon occupancy of a room or hotel space within the City, for dwelling, lodging, or sleeping purposes, for a period of thirty (30) consecutive days or less. The TOT currently provides approximately \$2.7 million annually to the General Fund to pay for general City services and programs.

Measure D was placed on the ballot by the Los Altos City Council and, if approved by a majority of Los Altos voters, will amend the Municipal Code to increase the maximum TOT rate from eleven percent (11%) to fourteen percent (14%) of the rent paid by guests in order to occupy a room or space in a hotel. The tax rate set by Measure D can be increased or decreased by the City Council, provided it does not exceed the voter-approved maximum rate. It is anticipated that this rate increase will generate an additional \$740,000 in new revenues. Measure D would also clarify that the tax applies to the full rent paid by the hotel guest for occupancy, whether payment is made directly to a hotel operator or to a third-party "rental agent" for booking purposes (i.e., online travel companies and online short term rental companies).

Measure D would be a "general tax". All revenue from this tax would be deposited into the City's General Fund and could be used for general City operations and services, including police enforcement, emergency response, parks, youth and senior services, and street repair. Pursuant to State Law, a "general tax" requires approval by a majority of the City's voters voting at an election.

A "yes" vote on Measure D will approve the TOT tax rate increase.

A "no" vote on Measure D will not approve the TOT tax rate increase.

The above statement is an impartial analysis of Measure D. If you desire a copy of the ordinance or measure, please call the City Clerk's office at (650) 947-2720 and a copy will be mailed at no cost to you.

/s/ Christopher J. Diaz
City Attorney

COMPLETE TEXT OF MEASURE D

AN ORDINANCE OF THE PEOPLE OF THE CITY OF LOS ALTOS, CALIFORNIA, ADDING SECTIONS 3.36.015, 3.36.025 AND 3.36.035 TO CHAPTER 3.36, AND AMENDING SECTIONS 3.36.010 AND 3.36.030 OF CHAPTER 3.36, OF TITLE 3 OF THE LOS ALTOS MUNICIPAL CODE INCREASING THE RATE OF THE CITY'S TRANSIENT OCCUPANCY (HOTEL) TAX FROM 11% TO 14% AND ADDRESSING THIRD PARTY RENTAL AGENT BOOKINGS.

(NOTE: Additions are highlighted in ***bold italics*** and deletions are highlighted in ~~strikeout~~)

NOW THEREFORE, THE PEOPLE OF THE CITY OF LOS ALTOS DO ORDAIN AS FOLLOWS:

SECTION 1. Subject to the approval of a majority of the voters of the City of Los Altos at the scheduled election so designated by the City Council in a resolution placing the proposal on the ballot for such election, Chapter 3.36 of Title 3 of the Los Altos Municipal Code is hereby amended by adding Sections 3.36.015, 3.36.025 and 3.36.035 and amending Sections 3.36.010 and 3.36.020 to read as follows:

"3.36.010-Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

- A. "Hotel" shall mean 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 shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome, or house trailer at a fixed location or other similar structure, or portion thereof.
- B. "Occupancy" shall mean the use or possession, or the right to the use or possession, of any room, or portion thereof, in any hotel for dwelling, lodging, or sleeping purposes.
- C. "Operator" shall mean the person who is the 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 shall also be deemed 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, however, shall be considered to be compliance by both.
- D. "Person" shall mean 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" shall mean the consideration charged, whether or not

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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, property, and services of any kind or nature, without any deduction therefrom whatsoever.

- F. "Tax administrator" shall mean the finance director.
- G. "Transient" shall mean 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) 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 thirty (30) days has expired.
- H. **"Rental agent" shall mean any person other than an operator who collects rent from a transient for the transient's occupancy of a hotel.**

3.36.015 Purpose—General Fund Revenue.

All revenues generated by this tax shall be deposited into the City's general fund and may be spent for unrestricted general revenue purposes.

3.36.020 Tax imposed.

For the privilege of occupancy in any hotel each transient shall be subject to, and shall pay, a tax in the amount not to exceed ~~eleven (11)~~ **fourteen (14)** percent of the rent charged by the operator **payable by the transient in consideration of the transient's occupancy, whether paid to an operator or to a rental agent.** ~~The city council shall have the authority to set the rate at eleven (11) percent or any lesser rate as the council shall determine by resolution.~~ The tax shall constitute a debt owed by the transient to the city which tax shall be extinguished only by payment to the operator, **rental agent** or to the city. The transient shall pay the tax to the operator of the hotel **or to the rental agent**, at the time the rent is paid. If the rent is paid in installments, the 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 **or to the rental agent**, the tax administrator may require that such tax shall be paid directly to the tax administrator.

"3.36.025—City Council Authorization to Adjust Tax Rate and/or Methodology.

This Chapter authorizes a maximum transient occupancy tax rate of fourteen percent (14%). The City Council may, by ordinance, upwardly or downwardly adjust the rate of the tax imposed by this Chapter and may otherwise repeal or amend this Chapter without a vote of the People. However, as required by California Constitution Article XIII C (Proposition 218), voter approval is required for any amendment that would increase the fourteen percent (14%) maximum rate or methodology of the tax levied pursuant to this Chapter. The People of the City of Los Altos affirm that the following actions shall not constitute an increase of the maximum rate or methodology of the tax requiring subsequent voter approval:

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- A. **The upward adjustment of the tax rate, provided the rate does not exceed the fourteen percent (14%) maximum set forth by this voter-approved Chapter;**
- B. **The restoration of the rate of the tax to a rate that is no higher than the fourteen percent (14%) maximum set by this voter-approved Chapter, if the City Council has previously acted to reduce the rate of the tax;**
- C. **An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;**
- D. **The establishment of a class of person or service that is exempt or excepted from the tax or the discontinuation of any such exemption or exception; and**
- E. **Resuming collection of the tax imposed by this Chapter, even if the City had, for some period of time, either suspended collection of the tax or otherwise failed to collect the tax, in whole or in part.**

3.36.035—Third party rental transactions.

- A. **Any transient who pays rent to a rental agent shall, at the time the rent is paid, pay the tax to the rental agent in the manner required by section 3.36.020. If for any reason the tax is not paid to the rental agent, it shall be paid to the operator before the transient has ceased occupancy in the hotel or paid directly to the tax administrator pursuant to section 3.36.020. Any transient seeking a refund under section 3.36.100 of taxes paid to a rental agent must establish that the transient has been unable to obtain a refund from the rental agent who collected the tax.**
- B. **Any rental agent who collects rent shall comply with all obligations of the operator set forth in sections 3.36.030 and 3.36.090 of this chapter. The rental agent shall remit all collected taxes to the operator before the deadline for the operator to remit the taxes to the tax administrator under section 3.36.050, and the rental agent shall provide the operator with copies of all records required to be maintained by the operator pursuant to section 3.36.090 of this chapter, including records necessary for the operator to comply with its obligations under this chapter.**
- C. **If the tax administrator determines that a rental agent has failed to collect, remit, or report any tax, the tax administrator may take any action against the rental agent that he or she may take against an operator under sections 3.36.060 and 3.36.070 of this chapter subject to the requirements of those sections. If the tax administrator assesses unremitted taxes and penalties against the rental agent, the rental agent shall be subject to sections 3.36.070, 3.36.080, 3.36.100 and 3.36.110 of this chapter as if it were an operator. Nothing in this section shall prohibit the tax administrator from assessing the full amount of any**

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unremitted taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent."

SECTION 2. Pursuant to Article XIII B of the California Constitution, the appropriation limit for the City of Los Altos will be increased by the maximum projected aggregate collection authorized by the levy of this general tax, as indicated in Section 1, in each of the years covered by this Ordinance plus the amount, if any, by which the appropriation limit is decreased by law as a result of the levy of the general tax set forth in this Ordinance.

SECTION 3. If any portion of this Ordinance is declared invalid by a court of law or other legal body with applicable authority, the invalidity shall not affect or prohibit the force and effect of any other provision or application of the Ordinance that is not deemed invalid. The voters of the City hereby declare that they would have circulated for qualification and/or voted for the adoption of this Section, and each portion thereof, regardless of the fact that any portion of the initiative may be subsequently deemed invalid.

SECTION 4. This Section shall not be repealed or amended, except by a measure approved by a majority of the electors voting on the issue at a General Municipal Election, or at a special election called for that purpose.

SECTION 5. Pursuant to California Constitution Article XIIC §(2)(b) and California Elections Code §9217, this Ordinance shall take effect only if approved by a majority of the eligible voters of the City of Los Altos voting at a General Municipal Election to be held on November 6, 2018, and shall take effect ten (10) days after the City Council has certified the results of the General Municipal Election by resolution.

SECTION 6. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the People voting thereon on November 6, 2018, by signing where indicated below.

ARGUMENT IN FAVOR OF MEASURE D

Vote Yes on D to allow Los Altos to provide additional city services without increasing taxes paid by local residents and businesses.

With excellent public schools, unique neighborhoods and beautiful natural surroundings, our community is thriving. However, there are many infrastructure and beautification projects the city would like to invest in to improve the city. We would like to make our streets safe for bicyclists, pedestrians, and cars; replant trees in our parks that have been affected by drought; and beautify our local business areas, to attract more shoppers.

Measure D will give the city council the flexibility to raise the tax paid by out of town visitors staying in Los Altos hotels and motels by up to 3%.

The City currently imposes a Hotel Tax of 11%. This measure would allow the City Council to increase the maximum rate up to 14%. Although the city will not necessarily raise the rate, approving this measure gives the city flexibility to raise the rate up to 14%. Raising the hotel tax in Los Altos keeps our city in line with neighboring cities: Palo Alto's hotel tax is at 14% and voters there are considering an increase to 16%. Cupertino, Saratoga and Los Gatos charge 12%. The proceeds of the hotel tax are deposited into the City's general fund to pay for important City services such as police and fire protection, street maintenance, parks and recreation services and general municipal services to the public. Additional annual revenues of up to \$700,000 could be raised through this measure. By law, all funds from Measure D must stay here in Los Altos under local control and cannot be taken away by the State. Please join a unanimous City Council, as well as community and business leaders and vote Yes on Measure D.

/s/ Jean H. Mordo
Mayor

/s/ Lynette Lee Eng
City Council Member

/s/ Jeannie Bruins
Los Altos City Council Member

/s/ Jan Pepper
Los Altos City Council Member

/s/ Mary Prochnow
Los Altos City Council Person

NO ARGUMENT AGAINST MEASURE D WAS SUBMITTED