

## MEASURE K

### CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE K

This ballot measure would amend Sunnyvale Municipal Code Chapter 3.16 to increase the City's transient occupancy tax ("TOT") rate from 10.5% to 12.5%, effective January 1, 2019. The TOT is frequently called the "hotel tax." As the proceeds of the TOT will be used for general governmental purposes it is considered a "general tax." Under state law, any increase in a general tax requires a simple majority vote of the electorate (50% plus one) at a general municipal election of the City.

The City's TOT was first adopted by ordinance in 1965 and became operative in 1968. The last time the City's voters approved a TOT rate increase was in 2013, increasing the rate from 9.5% to 10.5%. Sunnyvale currently has thirty-five (35) hotels operating within the City that pay the tax. As defined in the ordinance, "hotels" includes all types of transient lodging establishments. The tax is assessed by the operator on behalf of the City to guests who occupy hotels or other lodging establishments for thirty (30) days or less. The tax is based on the room rate charged and is collected by the operators and remitted to the City. For example, if the base room rate is \$100, the total amount charged to the guest under the new rate would be \$112.50, with \$12.50 remitted to the City as tax.

TOT rates vary around the County of Santa Clara from a low of 9% to a high of 14%. If additional special hotel tax districts are included, such as the San Jose Convention Center Facility District, the range is from 9% to 18%.

Sunnyvale's Department of Finance estimates that a 2% increase in TOT from 10.5% to 12.5% would result in approximately \$2,900,000 in additional annual revenue or approximately \$82 million over a twenty (20) year period based on current inflation-adjusted long-term revenue projections. Revenues from the tax are placed in the City's General Fund to support infrastructure and City services including police and fire, public works, street and sidewalk maintenance, parks and recreation, library services, and economic development efforts.

A "YES" vote is a vote to amend the Sunnyvale Municipal Code to increase the City's TOT rate from 10.5% to 12.5%, effective January 1, 2019.

A "NO" vote is a vote to retain the current TOT rate of 10.5%.

/s/ John A. Nagel  
City Attorney

## COMPLETE TEXT OF MEASURE K

The provisions of the Sunnyvale Municipal Code proposed to be deleted are printed in ~~strike-out~~ type, and the new provisions are printed in underlined type.

ORDINANCE NO. \_\_\_\_\_

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND SECTION 3.16.040 ("IMPOSITION—RATE—PAYMENT") OF THE SUNNYVALE MUNICIPAL CODE TO INCREASE THE TRANSIENT OCCUPANCY TAX

WHEREAS, by Resolution No. 888-18, adopted July 17, 2018, the City Council of the City of Sunnyvale submitted a measure to the electors of the City of Sunnyvale proposing an amendment to Section 3.16.040 of the Sunnyvale Municipal Code increasing the Transient Occupancy Tax as set forth in Section 1 of this ordinance; and

THE PEOPLE OF THE CITY OF SUNNYVALE DO ORDAIN  
AS FOLLOWS:

SECTION 1. SECTION 3.16.040 AMENDED. Section 3.16.040 of Sunnyvale Municipal Code is hereby amended to read as follows:

#### **Section 3.16.040. Imposition—Rate—Payment.**

(a) For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator through June 30, 1995, and eight and one-half percent of the rent charged by the operator on or after July 1, 1995.

(b) Commencing January 1, 2007, and continuing through December 31, 2008, the amount of the tax shall be nine percent of the rent charged by the operator. Effective January 1, 2009, the amount of the tax shall be nine and one-half percent of the rent charged by the operator, provided, however, that the average citywide hotel/motel occupancy rate from January 1 through September 30, 2008, as determined by the director of finance, is at least sixty percent. If the average occupancy rate during this period is less than sixty percent, the increase in the amount of the tax shall be deferred until January 1, 2010. In any event, the amount of the tax on and after January 1, 2010, shall be nine and one-half percent of the rent charged by operator.

(c) Commencing January 1, 2014, and continuing thereafter, the amount of the tax shall be ten and one-half percent of the rent charged by the operator.

(d) Commencing January 1, 2019, and continuing thereafter, the amount of the tax shall be twelve and one-half percent of the rent charged by the operator.

(de) Said 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, or any person paying rent on the transient's behalf, 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

## COMPLETE TEXT OF MEASURE K-Continued

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.

**SECTION 2. CEQA-EXEMPTION.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

**SECTION 3. EFFECTIVE DATE.** Pursuant to California Election Code Section 9217, this ordinance shall be effective only if approved by a majority of the voters and shall be considered adopted upon the date that the City Council of the City of Sunnyvale certified the election results and shall go into effect 10 days after that date.

**SECTION 4. POSTING AND PUBLICATION.** The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

## ARGUMENT IN FAVOR OF MEASURE K

Measure K provides funds for important city services at no cost to Sunnyvale residents. Vote YES.

Sunnyvale's Transient Occupancy Tax (TOT), commonly called the "hotel tax," is paid for by visitors and tourists who stay in Sunnyvale's hotels. Unlike most other taxes, TOT is collected locally, meaning the State cannot take this revenue away from Sunnyvale. TOT proceeds stay right here in our community!

Sunnyvale's current 10.5% rate is below the countywide average of 11% and well below the 14% rate charged by San Jose and Palo Alto. This measure would increase Sunnyvale's TOT rate to 12.5%.

Sunnyvale has a strong, balanced budget. The city has been a good steward of your tax dollars through a budget process that continuously looks ahead 20 years.

But there are risks to Sunnyvale's fiscal sustainability and ability to provide services that residents demand. Sales Tax revenues have declined significantly from previous forecasts. And even with a number of proactive steps the city has taken, including establishing a two-tier pension system and creating a pension trust, Sunnyvale's pension costs continue to rise.

The proposed TOT increase of 2%-just a few dollars on the average hotel bill-will generate an estimated \$2.9 million each year for city services. Measure K lets the city benefit from visitors staying in Sunnyvale hotels, including new hotels expected to open in the next several years.

This is a very small change that makes a very big difference to the city services that we need and want. Sunnyvale can use this revenue to hire additional public safety officers, to improve parks, and to repair our roads.

We respectfully urge you to vote YES on Measure K.

/s/ Glenn Hendricks  
Sunnyvale Mayor

/s/ Larry Klein  
Sunnyvale Vice Mayor

/s/ Gustav Larsson  
Sunnyvale Councilmember

/s/ Russ Melton  
Sunnyvale Councilmember

/s/ Tony Spitaleri  
Former Sunnyvale Mayor

**NO ARGUMENT AGAINST MEASURE K WAS SUBMITTED**