

MEASURE R

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE R

The City of Milpitas currently imposes a transient occupancy tax ("TOT"), also generally known as a "hotel" tax, at the rate of ten percent (10%) 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 \$12,693,000 annually to the General Fund to pay for general City services and programs.

Measure R was placed on the ballot by the Milpitas City Council and, if approved by a majority of Milpitas voters, will amend the Municipal Code to increase the maximum TOT rate from ten percent (10%) to fourteen percent (14%) of the rent paid by guests to a hotel operator in order to occupy a room or space in a hotel. The tax rate set by Measure R 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 \$5.1 million in estimated new revenues.

Measure R 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 (over 50%) of the City's voters voting at an election.

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

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

The above statement is an impartial analysis of Measure R. If you desire a copy of the ordinance or measure, please call the City Clerk's office at (408) 586-3001 and a copy will be mailed at no cost to you.

/s/ Christopher J. Diaz
City Attorney

COMPLETE TEXT OF MEASURE R

REGULAR

NUMBER: _____

TITLE: **AN ORDINANCE OF THE PEOPLE OF THE CITY OF MILPITAS, CALIFORNIA, ADDING SECTION III-13-3.01 TO CHAPTER 13, AND AMENDING SECTION III-13-3.00 OF CHAPTER 13 OF TITLE III OF THE MILPITAS MUNICIPAL CODE INCREASING THE MAXIMUM RATE OF THE CITY'S TRANSIENT OCCUPANCY (HOTEL) TAX FROM 10% TO 14%**

HISTORY: This Ordinance was approved by the voters at the general election on November 6, 2018.

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

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

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

SECTION 1. Chapter 13 of Title III of the Milpitas Municipal Code is hereby amended by adding Section III-13-3.01 and amending Section III-13-3.00 to read as follows:

"III-13-3.00 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 ~~ten (10)~~ ***fourteen (14)*** percent of the rent charged by the operator. 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 shall pay the tax to the operator of the hotel 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 a hotel. If, for any reason, the tax due is not paid to the operator of the hotel the License Tax Collector may require that such tax shall be paid directly to the city."

"III-13-3.01—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

COMPLETE TEXT OF MEASURE R-Continued

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 maximum rate or methodology of the tax levied pursuant to this Chapter. The People of the City of Milpitas affirm that the following actions shall not constitute an increase of the maximum rate or methodology of the tax requiring subsequent voter approval:

- A. The upward adjustment of the tax rate, provided the rate does not exceed the 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 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."***

SECTION 2. Pursuant to Article XIII B of the California Constitution, the appropriation limit for the City of Milpitas 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 Ordinance 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 XIII C §(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 Milpitas 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

COMPLETE TEXT OF MEASURE R-Continued

results of the General Municipal Election by resolution and the passage thereof shall be published at least once in a newspaper of general circulation published and circulated in the City of Milpitas, County of Santa Clara.

ARGUMENT IN FAVOR OF MEASURE R

As our city strives to provide a high level of public services, costs to fund important city services like police, fire, parks, senior and youth programs, and street maintenance continue to go up. Passage of Measure R will ensure that those who visit our city and enjoy all the benefits our community has to offer will pay their fair share towards the cost of city services.

Measure R will increase the City's Transit Occupancy Tax above its current 10% level on the cost of hotel and motel rooms in Milpitas. Visitors who rent these rooms within the City of Milpitas pay these taxes. Milpitas residents will not pay this tax, unless they rent a hotel or motel room within our city.

Based on City needs, and considering impacts on our local economy, passage of this measure will allow the City Council to set this tax anywhere from its current 10% level up to 14%, but no higher than that without voter approval and provides additional yearly revenue of \$5.2 million to \$7.2 million by 2023.

The additional revenue generated by Measure R will go into the City's general fund, providing much needed revenue for vital city services. And Milpitas' hotels and motels will continue to be competitive with other nearby cities as the new rate will be comparable with most cities in our area.

Please join us in voting yes on Measure R, which will help our city improve and maintain services without a new tax on all Milpitas residents.

/s/ Marsha Grilli
Milpitas Vice Mayor

/s/ Robert Livengood
Former Mayor of Milpitas

/s/ Bob Nunez
Councilperson City of Milpitas

/s/ Silvia Dias
Milpitas Council PTA President

/s/ Craig Solis
Vice President Milpitas Police Offc. Assoc.

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE R

Those in favor of the proposed Transient Occupancy Tax want you to feel like the other guy will pay for it. Except Milpitas residences WILL pay this tax.

- This tax affects those who utilize third party services like airBnB to rent out spare rooms trying to make ends meet.
- This tax affects the many family run restaurants who benefit from those visiting.
- When city residents need to rent a hotel or motel room within the city they live in it is not out of luxury or vacation but usually out of need.

Why punish these situations with more taxes when \$5 million can just as easily be found by the city exercising fiscal responsibility.

Milpitas is a town built on welcoming our friends and family not taxing them.

Expect more accountability from the City of Milpitas and vote NO on Measure R.

For more information go to www.sccplp.org.

/s/ Jennifer Imhoff
Chair, Libertarian Party of Santa Clara County

/s/ Mark Hinkle
President, Silicon Valley Taxpayers Association

ARGUMENT AGAINST MEASURE R

The City of Milpitas wants to raise the Transient Occupancy Tax (TOT) from 10% to 14% for the cost of temporary lodging. Milpitas is a proud family town-not a tourism spot like San Francisco-which means your taxing friends and family NOT executives or tourists.

The proponents want you to think this will "attract and retain local business" and it will fund a list of needed infrastructure. Don't be fooled. Why would visitors pay a higher TOT tax here then in any of our neighboring cities? If they are not staying in Milpitas then they are not shopping or dining in Milpitas. Raising the tax on guests will **hurt local business** not attract it.

Currently Transient Occupancy Tax near us are:

San Jose 10%,
Sunnyvale 10.5%
Santa Clara 11.5%
Fremont 10%.

The ONLY cities in the Bay Area that charge 14% are San Francisco and Oakland.

This increase isn't even enough to cover the grand plans of increasing emergency response, roads, Libraries, AND parks. The increase goes to the General Fund which means they have **no obligation** to spend this money on roads or safety and instead can be diverted to **pet projects and raises** with little oversight. The expected revenue of this proposed tax can just as easily be found by improving current spending habits instead of driving away our guests to our neighboring cities.

Expect more accountability from the City of Milpitas and vote NO on Measure R.

For more information go to www.sccip.org and www.svtaxpayers.org

/s/ Jennifer Imhoff
Chair, Libertarian Party of Santa Clara County

/s/ Mark Hinkle
President, Silicon Valley Taxpayers Association

REBUTTAL TO ARGUMENT AGAINST MEASURE R

The out of town opponents of Measure R are making false claims about who pays the Transient Occupancy Tax. They claim that it is only paid by "friends and family" of Milpitas residents, not tourists or business travelers. Nothing could be further from the truth. With the opening of Levi's stadium just a couple miles from our border, thousands of tourists attending events at Levi's stadium have been staying in Milpitas hotels, eating in Milpitas restaurants, and shopping at McCarthy Ranch and The Great Mall. Voting Yes on Measure R won't change that, and will make sure that those visitors pay their fair share of costs for city services they use, like roads and police services.

These out of town opponents of Measure R further argue that no business travelers pay the transient occupancy tax either. The fact that these opponents live in San Jose and Morgan Hill explains how they could be so wrong about this. As a dynamic part of Silicon Valley, Milpitas is the home to dozens of Fortune 500 companies that regularly have business travelers staying in Milpitas hotels and as a result, pay the Transient Occupancy Tax. The claims that only "friends and family" of Milpitas residents pay this tax convinces us that nothing said by the non-Milpitas residents can be trusted.

Don't be misled by out of town gadflies. Join Milpitas leaders and residents in voting Yes on Measure R so visitors to our City pay their fair share of taxes for city services.

/s/ Marsha Grilli
Vice Mayor, Milpitas

/s/ Bob Nunez
City Councilperson, Milpitas