

RESOLUTION NO. 110-16 (CM)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE ORDERING A GENERAL MUNICIPAL ELECTION TO BE CALLED ON WHETHER TO AMEND ARTICLE 3 (UNIFORM TRANSIENT OCCUPANCY TAX LAW) TO CHAPTER 6 (TAXATION) OF TITLE 3 (FINANCE) OF THE WATSONVILLE MUNICIPAL CODE; REQUESTING SANTA CRUZ COUNTY ELECTIONS TO CONDUCT THE ELECTION; REQUESTING CONSOLIDATION OF THE ELECTION TO BE HELD ON NOVEMBER 8, 2016; AND DIRECTING THE CITY CLERK TO TAKE STEPS TO PLACE SAID MEASURE

WHEREAS, pursuant to Section 3-6.303 of the Watsonville Municipal Code, the City currently levies a Transient Occupancy Tax which has not changed since 1992; and

WHEREAS, the City Council desires to amend the Transient Occupancy Tax Ordinance to increase the transient occupancy tax which is currently charged on persons who occupy hotel or motel rooms in the City from the current 10% to 11%, and requiring any funds generated as a result to be used for general governmental purposes; and

WHEREAS, pursuant to Elections Code Section 10002, the governing body of any city may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the City relating to the conduct of an election; and

WHEREAS, the resolution of the City Council of the City shall specify the services requested; and

WHEREAS, pursuant to Elections Code Section 10002, the city shall reimburse the county in full for the services performed upon presentation of a bill to the city; and

WHEREAS, pursuant to 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, pursuant to Elections Code Section 10400, such election for cities may be either completely or partially consolidated; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a City, for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the City shall at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of the City Council requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot, acknowledging that the consolidation election will be held and conducted in the manner prescribed in Section 10418. Upon such request, the Board of Supervisor may order the consolidation; and

WHEREAS, pursuant to Elections Code Section 10418, if consolidated, the consolidated election shall be held and conducted, election boards appointed, voting precincts designated, candidates nominated, ballots printed, polls opened and closed, voter challenges determined, ballots counted and returned, returns canvassed, results

declared, certificates of election issued, recounts conducted, election contests presented, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the statewide or special election, or the election held pursuant to Section 1302 or 1303, as applicable; 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, various district, county, state, and other political subdivision elections may be or have been called to be held on November 8, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, AS FOLLOWS:

SECTION 1. That the City Council of the City of Watsonville hereby orders a General Municipal Election be called and consolidated with any and all elections also called to be held on November 8, 2016, insofar as said elections are to be held in the same territory or in territory that is in part of the same as the territory of the City of Watsonville and requests the Board of Supervisor of the County of Santa Cruz to order such consolidation under Elections Code Sections 10401 and 10403 and 10418.

SECTION 2. That the City Council of the City of Watsonville hereby requests the Board of Supervisors to permit the Santa Cruz County Elections Department to provide any and all services necessary for conducting the election if the City agrees to pay for said services.

SECTION 3. That the City Council of the City of Watsonville hereby orders that the Santa Cruz County Elections Department shall conduct the General Municipal Election for the following measure to be voted on at the November 8, 2016: at which election shall be submitted to the qualified electors of the City of Watsonville the following measure:

The ballot measure text will read as follows:

Ballot Question:

To protect the quality of life in Watsonville by limiting further cuts to police, fire, emergency services, parks and recreation, economic development, job creation, and essential city services; shall the City of Watsonville be authorized to levy an additional one percent of Transient Occupancy Tax on people staying at lodging facilities in the City?

Yes _____

No _____

ORDINANCE NO. 1332-16 (CM)

A CODIFIED ORDINANCE BY THE VOTERS OF THE CITY OF WATSONVILLE AMENDING ARTICLE 3 (UNIFORM TRANSIENT OCCUPANCY TAX LAW) TO CHAPTER 6 (TAXATION) OF TITLE 3 (FINANCE) OF THE WATSONVILLE MUNICIPAL CODE AMENDING THE CITY'S UNIFORM TRANSIENT OCCUPANCY TAX (TOT) TO BE DONE SOLELY WITH VOTER APPROVAL

Rescinds Ordinance No.'s 84-64 C-M, 126-66 C-M, 710-86 (CM), 785-88 (CM), and 896-92 (CM)

ELECTION ON NOVEMBER 8, 2016

EFFECTIVE DATE:

**THE PEOPLE OF THE CITY OF WATSONVILLE, CALIFORNIA, DO HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1. ENACTMENT.

Article 3 (Uniform Transient Occupancy Tax) of Chapter 6 (Taxation) of Title 3 (Finance) of the Watsonville Municipal Code is hereby amended by removing Article 3 (Uniform Transient Occupancy Tax) in its entirety and replacing with a new Article 3 (Uniform Transient Occupancy Tax Law) to read in words and figures as follows:

Article 3. Uniform Transient Occupancy Tax Law

Sec. 3-6.301 Title.

This article shall be known as the “Uniform Transient Occupancy Tax Law” of the City.

Sec. 3-6.302 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this article:

(a) “Person” shall mean any individual, firm, partnership, limited liability company, 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.

(b) “Transient Occupancy Facility” shall mean any temporary or permanent structure, motor home, mobile home, modular building or out building or any portion thereof, 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, home, residence, outbuilding, granny unit, accessory unit, duplex, triplex,

fourplex, apartment, motel studio hotel, bachelor hotel, lodging house, rooming house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or any portion thereof.

(c) "Occupancy" shall mean the use or possession, or the right to the use or possession, of any room, or portion thereof, in any transient occupancy facility for dwelling, lodging, or sleeping purposes for any time period.

(d) "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 transient occupancy facility 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 long period of occupancy. In determining whether a person is transient, uninterrupted periods of time extending both before and after the effective date of this article may be considered.

(e) "Rent" shall mean the consideration charged, whether received, for the occupancy of space in a transient occupancy facility 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) "Operator" shall mean the person who is the proprietor of the transient occupancy facility, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, trustee, receiver, or any other capacity including such

arrangements as “Airbnb” or similar. 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 article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent, however, shall be considered to be compliance by both.

(g) “Finance Director” shall mean the City Finance Director.

(h) “Certificate” shall mean the transient occupancy registration certificate as described in WMC 3-6.306.

Sec. 3-6.303 Tax imposed.

For the privilege of occupancy in any transient occupancy facility, each transient shall be subject to and shall pay a tax in the amount of eleven (11%) percent of the rent charged by the operator. Such tax shall constitute a debt owed by the transient to the City which debt shall be extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the transient occupancy facility 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 transient occupancy facility. If for any reason the tax due is not paid to the operator of the transient occupancy facility, the City Finance Director may require that such tax shall be paid directly to the City Finance Director.

Sec. 3-6.304 Exemptions.

No tax shall be imposed upon:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax provided for in this article; or

(b) Any officer or employee of a foreign government who is exempt by reason of an express provision of Federal law or international treaty.

No exemption shall be granted except upon a claim therefor made at the time the rent is collected and under penalty of perjury upon a form prescribed by the City Finance Director

Sec. 3-6.305 Operator’s duties.

Each operator shall collect the tax imposed by the provisions of this article 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 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 article.

Sec. 3-6.306 Registration certificate required.

Within 30 days after the effective date of the ordinance codified in this chapter, or within 30 days after commencing business, whichever is later, each operator of any transient occupancy facility renting occupancy to transients shall register said transient occupancy facility with the City Finance Director and obtain a “transient occupancy registration certificate” to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

(a) The name of the operator;

- (b) The address of the transient occupancy facility;
- (c) The date upon which the certificate was issued;
- (d) The certificate number; and
- (d) The following statement:

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 City Finance Director for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the City Finance Director. This Certificate does not authorize any person to conduct any unlawful business or conduct any lawful business in an unlawful manner, nor to operate a transient occupancy facility 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. This Certificate does not constitute a permit.

Sec. 3-6.307 Registration.

On or before August 13, 1964, or within thirty (30) days after commencing business, whichever is later, each operator of any transient occupancy facility renting an occupancy to transients shall register such transient occupancy facility with the City Finance Director and obtain a "Transient Occupancy Registration Certificate" which shall at all times be posted in a conspicuous place on the premises. Such certificate shall, among other things, set forth the following information:

- (a) The name of the operator;
- (b) The address of the transient occupancy facility;

(c) The date upon which the certificate was issued; and

(d) A statement as follows: "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Law by registering with the City Finance Director for the purpose of collecting from transients the Transient Occupancy Tax and remitting such tax to the City Finance Director. This certificate shall not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a transient occupancy facility 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. This certificate shall not constitute a permit".

Sec. 3-6.308 Certificate number required on all advertisements.

The operator must include the certificate number in all forms of advertisement.

Sec. 3-6.309 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 reporting period which may be established by the City Finance Director, make a return to the City Finance Director, 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 City Finance Director. The City Finance Director 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 shall be due immediately upon cessation of

business for any reason. All taxes collected by operators pursuant to the provisions of this article shall be held in trust for the account of the City until payment thereof is made to the City Finance Director.

Sec. 3-6.310 Failure to file—Penalties.

Any operator who holds a certificate but does not rent the transient occupancy facility during any month is still required under WMC 3-6.308 to file a return on or before the last day of the month following the close of each calendar month. Any operator who fails to file the return as required shall pay a non-filing penalty of \$25.00. The penalty is waived for the first offense in a 12-month period, but shall apply to each subsequent offense.

Sec. 3-6.311 Penalties and interest.

(a) Original delinquency. Any operator who shall fail to remit any tax imposed by the provisions of this article within the time required shall pay a penalty in the amount of ten (10%) percent of the tax in addition to the amount of the tax.

(b) Continued delinquency. Any operator who shall fail to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty in the amount of ten (10%) percent of the tax in addition to the amount of the tax and the ten (10%) percent penalty first imposed.

(c) Fraud. If the City Finance Director shall determine that the non-payment of any remittance due pursuant to the provisions of this article is due to fraud, a penalty in the amount of twenty-five (25%) percent of the amount of the tax shall be added thereto in addition to the penalties set forth in subsections (a) and (b) of this section.

(d) Interest. In addition to the penalties imposed, any operator who shall fail to remit any tax imposed by the provisions of this article shall pay interest at the rate of one-half (1/2) 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.

(e) Penalties merged with tax. Every penalty imposed, and such interest as accrues, pursuant to the provisions of this section shall become a part of the tax required to be paid by the provisions of this article.

Sec. 3-6.312 Failure to collect and report tax: Determination of tax by City Finance Director.

If any operator shall fail or refuse to collect such tax and to make, within the time provided in this article, any report and remittance of such tax, or any portion thereof, required by the provisions of this article, the City Finance Director shall proceed in such manner as he or she may deem best to obtain the facts and information on which to estimate the tax due. As soon as the City Finance Director shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by the provisions of this article and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the City Finance Director shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this article. If such determination is made, the City Finance Director shall give notice of the amount so assessed by serving the notice 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. Such operator may, within ten (10) days after the service or mailing of such notice, apply in writing to the City

Finance Director for a hearing on the amount assessed. If an application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the City Finance Director shall become final and conclusive and immediately due and payable. If such an application is made, the City Finance Director shall give not less than five (5) days' written notice in the manner prescribed in this section to the operator to show cause at a time and place fixed in such notice why the amount specified therein should not be fixed for such tax, interest, and penalties. At such hearing the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed. After such hearing the City Finance Director 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 such tax, interest, and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is filed as provided in Section 3-6.313 of this article.

Sec. 3-6.313 Appeals.

Any operator aggrieved by any decision of the City Finance Director with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen (15) days after the service or mailing of the determination of the tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such 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 this

article for the service of the notice of hearing. Any amount found to be due shall immediately become due and payable upon the service of the notice.

Sec. 3-6.314 Records.

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by the provisions of this article to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the City, which records the City Finance Director shall have the right to inspect at all reasonable times.

Sec. 3-6.315 Refunds.

(a) Whenever the amount of any such tax, interest, or penalty has been overpaid, or paid more than once, or erroneously or illegally collected or received by the City, such amount 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 City Finance Director within three (3) years after the date of payment. The claim shall be on forms furnished by the City Finance Director.

(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 City Finance Director that the person from whom the tax has been collected was not a transient; provided, however, 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, 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 City Finance Director, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the City Finance Director that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid pursuant to the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

Sec. 3-6.316 Actions to collect.

Any tax required to be paid by any transient pursuant to the provisions of this article 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 pursuant to the provisions of this article shall be liable to an action brought in the name of the City for the recovery of such amount.

Sec. 3-6.317 Violation—Revocation.

The City Finance Director may revoke the certificate from any operator or other person who is in violation of the provisions of this article. To revoke the certificate, the City Finance Director shall serve the operator with a notice of revocation of the certificate, with a copy to the Director of Community Development, Police Chief and City Attorney.

SECTION 2. PUBLICATION.

This ordinance shall be published in the Watsonville Register-Pajaronian and/or Santa Cruz Sentinel in compliance with the provisions of the Charter of the City of Watsonville.

SECTION 3. SEVERABILITY.

If any provision of these Sections or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provision or applications of the Article which can be given effect without the invalid provision or application, and to this end the provision of these Sections are severable.

SECTION 4. EFFECTIVE DATE.

This ordinance shall be in force and take effect ten (10) days after the City Council declares the vote of the November 8, 2016, Presidential General Election pursuant to California Election Code Section 9217 and shall become operative and be imposed on January 1, 2017, and shall not apply prior to said date.

SECTION 4. That the Santa Cruz County Elections Department is hereby requested to print the hereinabove measure text exactly as filed or indicated on the filed document in the Voter's Information Pamphlet section of the Sample Ballot for the November 8, 2016, election. Cost of printing and distribution of the measure text will be paid by the City.

SECTION 5. That the City Clerk of the City of Watsonville is hereby ordered and directed to cause to be published a synopsis of the measure to be submitted at the

Special Municipal Election in the time, manner and form required by Section 12111 of the Elections Code of the State of California.

SECTION 6. That the Special Municipal Election hereby called shall be held and conducted and the votes thereat canvassed and the returns thereof made, and the results thereof ascertained and determined as herein provided, and in all particulars not prescribed in this resolution, the Special Municipal Election shall be held as provided for in the Charter of the City, and in all particulars not provided for therein, the election shall be held as provided by law for the holding of special municipal elections in the City of Watsonville and otherwise in accordance with the Elections Code of the State of California.

All persons qualified to vote at municipal elections in the City of Watsonville on the day of the election herein provided for shall be qualified to vote on the measure hereby submitted at the election.

To vote in favor of the measure a voter shall mark the voting square to the right after the word "Yes" on the ballot to the right of such measure, and to vote against the measure a voter shall mark the voting square to the right after the word "NO" on the ballot to the right of such measure. If a majority of the qualified voters voting on the measure vote in favor thereof, such measure shall be deemed ratified.

SECTION 7. That the Board of Supervisors of the County of Santa Cruz is hereby requested to order the County Clerk (1) to set forth on all sample ballots to be mailed to the qualified electors of the City of Watsonville for said consolidated election the text of the ballot measure as set forth hereinabove, arguments (if any) for and against said measure, and other authorized material (if any), and (2) to provide absent

voter ballots for said election for use by the qualified electors of the City of Watsonville who are entitled thereto, in the manner provided by law.

The Board of Supervisors of the County of Santa Cruz is hereby further requested to direct the County Elections Official to canvass, or cause to be canvassed, as provided by law, returns of said special election and to certify such canvass of the votes cast for and against said measure to the City Council of the City of Watsonville.

SECTION 8. That the City Attorney is hereby directed to prepare an impartial analysis for the hereinabove measure.

SECTION 9. That the Administrative Services Director is hereby directed to prepare an impartial fiscal analysis for the hereinabove measure.

SECTION 10. That the City Clerk is directed to take the necessary steps to request the addition of this ballot measure on the November 8, 2016, consolidated general election ballot for the City of Watsonville.

SECTION 11. Written Arguments by Council. The deadline for filing arguments for the ballot measure with the City Clerk shall be August 19, 2016, by 5:00pm., and the argument shall not exceed 300 words in length. Rebuttal arguments shall be filed with the City Clerk by August 26, 2016, by 5:00pm., and shall not exceed 250 words in length. When the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor.

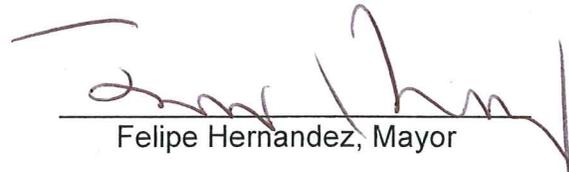
SECTION 12. That the City Clerk is hereby authorized and directed to file a copy of this Resolution with the Board of Supervisors and the County Clerk of Santa Cruz County.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Watsonville, held on the 28th day of June, 2016, by Member Bilicich, who moved its adoption, which motion being duly seconded by Member Hurst, was upon roll call carried and the resolution adopted by the following vote:

AYES: COUNCIL MEMBERS: **Bilicich, Cervantez Alejo, Coffman-Gomez, Dutra, Garcia, Hurst, Hernandez**

NOES: COUNCIL MEMBERS: **None**

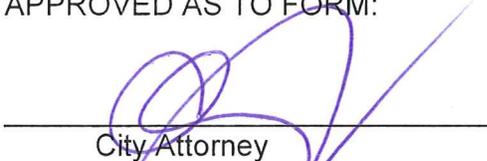
ABSENT: COUNCIL MEMBERS: **None**


Felipe Hernandez, Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

I, Beatriz Vázquez Flores, City Clerk of the City of Watsonville, do hereby certify that the foregoing Resolution No. 110-16 (CM) was duly and regularly passed and adopted by the Watsonville City Council at a meeting thereof held on the 28th day of June, 2016, and that the foregoing is a full, true and correct copy of said Resolution.


Beatriz Vázquez Flores, City Clerk