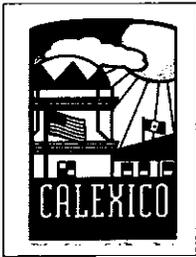


**AGENDA
ITEM**

15



AGENDA STAFF REPORT

DATE: August 1, 2018

TO: Mayor and City Council

APPROVED BY: David Dale, City Manager *DD*

PREPARED BY: Carlos Campos, City Attorney
Miguel Figueroa, Assistant City Manager *MF*

SUBJECT: Placement of Transient Occupancy (Hotel) Tax Measure on November 6, 2018 Election Ballot

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Recommendation:

It is recommended that the City Council consider adopting the following Resolutions:

1. Resolution No. 2018 - 48: Resolution calling for the placement of a general tax measure to be held at the November 6, 2018 general municipal election for the submission to the qualified voters of an ordinance increasing the maximum rate of the City of Calexico's transient occupancy tax on hotel occupancies within the City from 10.00% to 12.00% until ended by voters and updating the City's regulations regarding the transient occupancy tax, and directing the City attorney to prepare an impartial analysis
2. Resolution No. 2018 - 49: Resolution requesting the Board of Supervisors of Imperial County to consolidate a general municipal election to be held on November 6, 2018 with the statewide general election to be held on the same date pursuant to Section 10403 of the Elections Code
3. Resolution No. 2018 - 50: Resolution providing for the filing of primary and rebuttal arguments and setting rules for the filing of written arguments regarding a city measure to be submitted to the qualified voters at the November 6, 2018 general municipal election

Pursuant to Proposition 62, a two-thirds vote of the membership of the City Council is required to adopt these resolutions (4 affirmative votes).

Background and Discussion:



Transient occupancy tax ("TOT") is paid by guests visiting Calexico hotels and is not a tax burden on residents. The current TOT rate is 10.00% of the hotel charges paid by a "transient occupant" (hotel guest) to stay at Calexico hotel. TOT is considered a general-purpose tax collected in the City's general fund and is used for governmental services such as public safety, public works, community activities, resident amenities, and other city services.

The cost of providing governmental services is increasing faster than the underlying revenues currently supporting them. Generating new revenues is essential to maintain the long-term fiscal health of the City.

The City Attorney's Office has prepared the attached Resolutions (Attachments 1 - 3) which would place a measure before Calexico voters proposing a 2% increase in the City's TOT rate – to 12.00% and update the TOT regulations so as to make them current including addressing third party rental transactions. Pursuant to current State law (Proposition 218), a general tax increase requires majority voter approval.

Resolution No. 2018 - 48 is the principal resolution which calls the election and places the measure on the November 6, 2018 ballot. Under California Proposition 218, the upcoming November 6, 2018 Municipal General Election is an appropriate date to place a local tax measure on the ballot.

Resolutions No. 2018 – 49 and No. 2018 - 50 are largely boilerplate resolutions to help set up the election on the measure. One resolution consolidates the measure with the November Statewide General Election, effectively allowing the Imperial County Registrar of Voters to conduct the election on the City's behalf. The other resolution sets deadlines and rules for how and when interested persons may submit arguments for or against the proposed measure.

If approved by Calexico voters, collection at the new tax rate is anticipated to begin January 1, 2019.

Fiscal Impact:

If approved, the new TOT rate is estimated to generate approximately \$39,000.00 in new revenues each year.

Attachments:

1. Resolution No. 2018 - 48
2. Resolution No. 2018 - 49
3. Resolution No. 2018 - 50

RESOLUTION NO. 2018 - 48

RESOLUTION CALLING FOR THE PLACEMENT OF A GENERAL TAX MEASURE TO BE HELD AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF AN ORDINANCE INCREASING THE MAXIMUM RATE OF THE CITY OF CALEXICO'S TRANSIENT OCCUPANCY TAX ON HOTEL OCCUPANCIES WITHIN THE CITY FROM 10.00% TO 12.00% UNTIL ENDED BY VOTERS AND UPDATING THE CITY'S REGULATIONS REGARDING THE TRANSIENT OCCUPANCY TAX, AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

WHEREAS, pursuant to Section 9222 of the California Elections Code, the City Council has authority to place measures/propositions on the ballot to be considered by local voters at a municipal election; and

WHEREAS, pursuant to Chapter 3.24 of Title 3 of the City of Calexico ("City") Municipal Code, the City currently imposes a transient occupancy tax ("TOT") at the rate of ten percent (10.00%) upon guests of hotels and other transient accommodations within the City; and

WHEREAS, the City Council desires to submit to the voters a measure enacting a twelve percent (12.00%) TOT on hotel occupancies within the City; and

WHEREAS, the City Council desires to update the regulations to ensure the collection of the TOT on the full rent paid by a guest for hotel occupancy, whether that occupancy is booked directly between the guest and hotel, or through online travel companies and other third parties which enable guests to purchase occupancy via the Internet, or by similar electronic means; and

WHEREAS, the TOT is a general tax the proceeds of which would be placed in the City's general fund and the general fund pays for important City services such as police services, street operations, improvement and maintenance, parks and recreation services and general municipal services to the public; and

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 218 (California Constitution, Article XIII C), an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be approved by a majority of voters voting at an election called for that purpose; and

WHEREAS, pursuant to Proposition 218, any general tax measure submitted to the voters must be consolidated with a regularly scheduled general election for members of the City Council. The next regularly scheduled general election at which City Council

conduct the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5. Notice of Election. Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 6. Impartial Analysis. Pursuant to California Elections Code §9280, the City Council hereby directs the City Clerk to transmit a copy of the measure as set forth herein to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk not later than end of business on **August 17, 2018**. The impartial analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the Measure is not printed on the ballot, or in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **“The above statement is an impartial analysis of Ordinance or Measure “___”. If you desire a copy of the ordinance or measure, please call the election official’s office at (760) 768-2102 and a copy will be mailed at no cost to you.”**

SECTION 7. Certification. The City Clerk shall certify to the adoption of this Resolution.

SECTION 8. Filing with County. The City Clerk shall, not later than the 88th day prior to the General Municipal Election to be held on Tuesday, November 6, 2018, file with the Board of Supervisors and the County Clerk – Registrar of Voters of the County of Imperial, State of California, a certified copy of this Resolution.

SECTION 9. Public Examination. Pursuant to California Elections Code §9295, this measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the sample ballot. The Clerk shall post notice in the Clerk’s office of the specific dates that the examination period will run.

SECTION 10. Effective Immediately. This Resolution shall take effect immediately.

[signatures on next page]

PASSED, APPROVED and ADOPTED this ____ day of _____, 2018.

Lewis Pacheco, Mayor

ATTEST:

Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney
Best Best & Krieger

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss.
CITY OF CALEXICO)

I HEREBY CERTIFY that the foregoing Resolution No. 2018-___ was duly adopted by the City Council of the City of Calexico at a regular meeting thereof, held on the ___ day of _____, 2018, by the following vote of Council:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Gabriela T. Garcia, City Clerk

Exhibit "A"

ORDINANCE NO. 2018-_____

MEASURE "____"

AN ORDINANCE OF THE PEOPLE OF THE CITY OF CALEXICO, CALIFORNIA, AMENDING CHAPTER 3.24 OF TITLE 3 OF THE CALEXICO MUNICIPAL CODE BY DELETING IT IN ITS ENTIRETY AND ADDING A NEW CHAPTER 3.24 INCREASING THE RATE OF THE CITY'S TRANSIENT OCCUPANCY TAX ON HOTEL OCCUPANCIES WITHIN THE CITY OF CALEXICO FROM TEN PERCENT (10.00%) TO TWELVE (12.00%) AND UPDATING REGULATIONS RELATED TO THE TRANSIENT OCCUPANCY TAX WITHIN THE CITY OF CALEXICO.

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

SECTION 1. Deletion of Chapter 3.24. Chapter 3.24 of the Calexico Municipal Code is hereby repealed in its entirety.

SECTION 2. Addition to Calexico Municipal Code. Chapter 3.24 is hereby added to Title 3 of the Calexico Municipal Code and shall read as follows:

"Chapter 3.24

TRANSIENT OCCUPANCY TAX

Section:

- 3.24.010 Short Title
- 3.24.020 Definitions
- 3.24.030 Tax Rate, Payment
- 3.24.040 Exemptions
- 3.24.050 Operator Duties
- 3.24.060 Registration
- 3.24.070 Third Party Rental Transactions
- 3.24.080 Reporting and Remitting
- 3.24.090 Delinquency, Penalties and Interest
- 3.24.100 Failure to Collect and Report
- 3.24.110 Appeal
- 3.24.120 Records
- 3.24.130 Refunds

- 3.24.140 Debt to City/Actions to Collect
- 3.24.150 Use of Tax Proceeds
- 3.24.160 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure
- 3.24.170 Amendment or Repeal – Adjustment of Taxing Rate or Methodology
- 3.24.180 Violations; Misdemeanor
- 3.24.190 Sunset of Tax
- 3.24.200 Independent Citizens’ Advisory Committee

3.24.010 Short Title.

This chapter shall be known as the City of Calexico Transient Occupancy Tax Ordinance.

3.24.020 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. *Hotel* means any structure, or any portion of any structure, in the City of Calexico, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, 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, even if such structure is also used for other purposes, including residential purposes.
- 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 for dwelling, lodging or sleeping purposes, whether or not the person entitled to the use or possession actually uses or possesses such room or rooms or portion thereof. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or as exhibition, sample or display space shall not be considered "occupancy" unless the person uses or possesses, or has the right to use or possess all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.
- C. *Online Short Term Rental Company* shall mean any person, whether operating for profit or not for profit, which facilitates the connection between transient and operator to purchase occupancy in any hotel via the Internet, or by similar electronic means.
- D. *Online Travel Company* shall mean any person, whether operating for profit or not for profit, which enables transients to purchase occupancy in a hotel via the Internet, or by similar electronic means.

- E. *Operator* means a person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, seller, reseller, or any other capacity. Where the operator performs his functions through a managing agent or booking agent of any type or character, other than an employee, the managing agent or booking agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Full compliance with the provisions of this chapter by either the principal or the managing agent or booking agent shall, however, be considered to be compliance by both.
- F. *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.
- G. *Rent* means the total consideration charged to the transient, including but not limited to, room rates, service charges, parking fees, purchase price, advance registration, block or group reservation charges, assessments, retail markup, commission, processing fees, cancellation charges, attrition fees, or online booking or broker fees, whether charged by an operator or a rental agent, whether or not received, for occupancy in a hotel 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, without any deduction therefrom whatsoever. Nothing in this definition shall be construed to mean that rent is charged directly or indirectly for occupancy in a hotel when a room is provided to the transient as a compliment for the operator and where no consideration is charged to or received from any other person. Further, bona fide charges for food and beverages which are subject to tax under the California Sales and Use Tax Law (Revenue and Taxation Code Sections 6001 et. seq.) shall not be deemed rent subject to the tax imposed by this chapter.
- H. *Rental agent* means any person other than an operator who collects rent from a transient for the transient's occupancy of a hotel, including but not limited to an online travel company or an online short term rental company.
- I. *Tax administrator* means the City director of finance, or his or her designee.
- J. *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 30 consecutive calendar days or less, counting portions of calendar days as full days. The following rules shall apply to this definition:
1. Any such person so occupying or entitled to occupy a room in a hotel shall be deemed to be a transient until the period of 30 calendar days has expired. In the event a person exercises or is entitled to occupancy for a continuous and uninterrupted period of longer than 30 calendar days, he or

she shall be deemed a transient and subject to the tax for only the first 30 calendar days of occupancy and shall cease being a transient and the tax shall not apply on the 31st calendar day of occupancy and following. However, any break or interruption in occupancy shall start a new 30-day period subject to the tax.

2. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered.
3. Any person who exercises or is entitled to occupancy for a period of 30 consecutive calendar days or less shall be deemed to be a transient for that period, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising or entitled to occupancy or by another person. The intent is to tax the person exercising occupancy or having the entitlement to occupancy of a hotel room.

3.24.030 Tax Rate, Payment.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of twelve percent (12%) of the rent payable by the transient in consideration of the transient's occupancy, whether paid to an operator or to a rental agent. This tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator, the City or to a rental agent pursuant to Section 3.24.070. The transient shall pay the tax to the operator or rental agent 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 occupancy. If for any reason the tax due is not paid to the operator or rental agent, the tax administrator may require that such tax shall be paid directly to the tax administrator.

3.24.040 Exemptions.

- A. No tax levied under this chapter shall be imposed upon the following:
 1. Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax.
 2. Any federal or State of California officer or employee when occupying a room while on official government business. For purposes of this section, students, non-employee supporters and volunteers of California public universities and colleges shall not be deemed to be officers or employees of the State of California.

3. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.
- B. No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator. Any federal or State of California officer or employee when on official government business claiming such an exemption shall provide to the operator as conclusive evidence that his or her occupancy is for the official business of his or her employer:
1. Travel orders from his or her government employer; or a government warrant issued by his or her employer to pay for the occupancy; or a government credit card issued by his or her employer to pay for the occupancy; and
 2. proof of his or her governmental employment as an employee or officer as described in paragraph (1) of this subsection B, and proof, consistent with these provisions, that his or her occupancy is for the official business of his or her governmental employer.

It shall be the duty of an operator to keep and maintain for a period of three years written documentation in support of each exemption granted under this section.

3.24.050 Operator Duties.

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 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 chapter.

3.24.060 Registration.

Within 30 days after commencing business, each operator of a hotel renting occupancy to transients shall register the hotel with the tax administrator and obtain from him or her a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. This certificate shall, among other things, state the following:

- A. The name of the operator.
- B. The address of the hotel.
- C. The date upon which the certificate was issued.

- D. That the transient occupancy registration certificate signifies that the person named on the face thereof has fulfilled the requirements of this chapter by registering with the tax administrator for the purpose of collecting from transients the transient occupancy tax and remitting such tax to the tax administrator, and that such 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 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, that such certificate does not constitute a permit and is not transferable to a different operator.

3.24.070 Third Party Rental Transactions.

- A. Any transient who pays rent to a rental agent instead of to an operator shall, at the time the rent is paid, pay the tax to the rental agent in the manner required by section 3.24.030. 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 3.24.030. Any transient seeking a refund under section 3.24.130 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 3.24.050 and 3.24.120 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 3.24.080, and the rental agent shall provide the operator with copies of all records required to be maintained by the operator pursuant to section 3.24.120 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 3.24.090 and 3.24.100 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 the provisions of sections 3.24.100, 3.24.110, 3.24.130 and 3.24.140 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 unremitted taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent.

3.24.080 Reporting and Remitting.

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 administrator shall make a return to the tax administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. If no tax was due or collected during the previous reporting period, the operator shall file a return so stating under penalty of perjury. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to ensure collection of the tax, and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment thereof is made to the tax administrator.

3.24.090 Delinquency, Penalties and Interest.

- A. *Original delinquency.* Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax, in addition to the amount of the tax.
- B. *Continued delinquency.* Any operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax, in addition to the amount of the tax and the ten percent penalty first imposed.
- C. *Fraud or Misrepresentation.* If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to intentional conduct, misrepresentation or fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.
- D. *Interest.* In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the maximum rate allowable by law 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 under this section shall become a part of the tax required to be paid.

3.24.100 Failure to Collect and Report.

If any operator shall fail or refuse to collect the tax imposed pursuant to this chapter and to make, within the time provided in this chapter, any report and remittance of this tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax administrator shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax

imposed by this chapter and payable by any operator who has failed or refused to collect the tax and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. If such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it 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 days after the serving or mailing of such notice make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than ten days' written notice in the manner prescribed in this section to the operator to show cause at a time and place fixed in the 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 tax administrator 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 15 days unless an appeal is taken as provided in 3.24.110.

3.24.110 Appeal.

Under this chapter, any operator aggrieved by a decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Manager by filing a notice of appeal with the City clerk within 15 days of the serving or mailing of the determination of tax due. The City Manager 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 City Manager shall be final and conclusive and shall be served upon the appellant in the manner prescribed in this section for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3.24.120 Records.

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three 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 tax administrator shall have the right to examine and audit at all reasonable times for the purpose of determining the accuracy thereof.

3.24.130 Refunds.

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the

City under this chapter, it 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 tax administrator in compliance with Chapter 1.14. The claim shall be on forms furnished by the tax administrator.

- 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 tax administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected had 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 or 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 tax administrator or when the transient having paid the tax to the operator establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator who collected the tax.
- D. No refund shall be paid under this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

3.24.140 Debt to City/Actions to Collect.

Any tax required to be paid by any transient under this chapter 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 under this chapter shall be liable to an action brought in the name of the City.

3.24.150 Use of Tax Proceeds.

The proceeds arising from the tax imposed by this chapter shall be credited to the general fund of the City.

3.24.160 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.

The City shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted in accordance with this chapter, and properly expended according to applicable municipal law. The verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall

not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed

3.24.170 Amendment or Repeal – Adjustment of Taxing Rate or Methodology.

This chapter may be repealed or amended by the City Council without a vote of the People of the City of Calexico. However, as required by California Constitution Article XIIC (Proposition 218), voter approval is required for any amendment or provision that would increase the maximum rate or methodology of any tax levied pursuant to this chapter. The people of the City of Calexico affirm that the following actions shall not constitute an increase of the rate or methodology of the transient occupancy tax requiring subsequent voter approval:

- A. 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;
- B. 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;
- C. 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 (other than the discontinuation of an exemption or exception explicitly set forth in this chapter); and
- D. 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.

3.24.180 Violations; Misdemeanor.

Any operator or other person who violates any of the provisions of this chapter or who fails or refuses to register as required herein, or to furnish any returns or other data required by the tax administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as provided in this Code.”

SECTION 3. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The People of the City of Calexico hereby declare that they would have adopted this ordinance and each section, sentence, clause or

phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 4. Gann Limit Authorization. Pursuant to Article XIII B of the California Constitution, the appropriation limit for the City of Calexico 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 5. Not a CEQA Project. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 6. Execution and Effective Date. Following certification that Calexico voters have approved this Ordinance, the Mayor shall sign it attesting to its adoption by the People voting thereon at the November 6, 2018 General Municipal Election, and the City Clerk shall cause the same to be entered in the book of original ordinances of said City; and shall cause the same, or a summary thereof, to be published as required by law.

This Ordinance shall take effect only if approved by a majority of the eligible voters of the City of Calexico voting at a General Municipal election to be held on November 6, 2018. Pursuant to California Elections Code Section 9217, this Ordinance shall be deemed valid and binding and shall be considered as adopted upon the date that the vote is declared by the City Council, and shall take effect ten (10) days after that date.

Certificate of Adoption

I certify that the foregoing Ordinance No. _____ (Measure “___”) was duly approved and adopted by the People of the City of Calexico, at an election held for that purpose on November 6, 2018:

Dated _____

Lewis Pacheco, Mayor

Attest: _____
Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney
Best Best & Krieger

RESOLUTION NO. 2018 - 49

RESOLUTION REQUESTING THE BOARD OF SUPERVISORS OF IMPERIAL COUNTY TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE

WHEREAS, a General Municipal Election is to be held in the City of Calexico (“City”) on Tuesday, November 6, 2018; and

WHEREAS, the City Council is submitting to the voters a question related to a transient occupancy tax (“TOT”) on the same date; and

WHEREAS, it is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City the precincts, polling places and election officers of the two elections be the same, and that the Imperial County election department canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Request for Consolidation. Pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Imperial is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on November 6, 2018, for the purpose of submitting to the voters the question relating to the City’s Transient Occupancy (“Hotel”) Tax.

SECTION 2. Measure Language. The Measure is to appear on the ballot as follows:

"Calexico Transient Occupancy (“Hotel”) Tax Measure. To maintain and improve general City services, such as police service levels, street operations and maintenance, as well as parks, community buildings and infrastructure; shall the City of Calexico adopt an ordinance to increase the Transient Occupancy (“Hotel”) Tax from 10.00% to 12.00%, and to modernize its Transient Occupancy Tax regulations, generating approximately \$230,000.00 annually until ended by voters?"	Yes
	No

SECTION 3. Canvass of Returns. The County election department is authorized to canvass the returns and perform all other proceedings incidental to and connected with the General Municipal Election. The Election shall be held in all respects as if there were only one

election, and only one form of ballot shall be used. Pursuant to California Elections Code Sections 10403 and 10418, the election will be held and conducted in accordance with the provisions of law regulating the Statewide General Election.

SECTION 4. Necessary Steps. The Board of Supervisors is requested to issue instructions to the County election department to take any and all steps necessary for the holding of the consolidated election.

SECTION 5. Costs. The City recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 6. Filing of Resolution. The City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the election department of the County of Imperial.

SECTION 7. Certification. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

SECTION 8. Effective Date. The Resolution shall take effect immediately.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2018.

Lewis Pacheco, Mayor

ATTEST:

Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney
Best Best & Krieger

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss.
CITY OF CALEXICO)

I HEREBY CERTIFY that the foregoing Resolution No. 2018-____ was duly adopted by the City Council of the City of Calexico at a regular meeting thereof, held on the ____ day of _____, 2018, by the following vote of Council:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Gabriela T. Garcia, City Clerk

RESOLUTION NO. 2018 - 50

RESOLUTION PROVIDING FOR THE FILING OF PRIMARY AND REBUTTAL ARGUMENTS AND SETTING RULES FOR THE FILING OF WRITTEN ARGUMENTS REGARDING A CITY MEASURE TO BE SUBMITTED TO THE QUALIFIED VOTERS AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION

WHEREAS, a General Municipal Election is to be held in the City of Calexico (“City”) on Tuesday, November 6, 2018, at which there will be submitted to the voters the following measure:

"Calexico Transient Occupancy (“Hotel”) Tax Measure. To maintain and improve general City services, such as police service levels, street operations and maintenance, as well as parks, community buildings and infrastructure; shall the City of Calexico adopt an ordinance to increase the Transient Occupancy (“Hotel”) Tax from 10.00% to 12.00%, and to modernize its Transient Occupancy Tax regulations, generating approximately \$230,000.00 annually until ended by voters?"	Yes
	No

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Primary Arguments. That the City Council authorizes (i) any or all members of the City Council, (ii) any individual voter eligible to vote on the above Measure, (iii) a bona fide association of such citizens or (iv) any combination thereof, to file a written argument in favor of or against the Town Measure, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California, and to change the argument until and including the date fixed below by the City Clerk, after which no arguments for or against the Town measure may be submitted to the City Clerk.

For this election, the City Council specifically authorizes the Mayor and Mayor Pro-Tem to select the author(s) who may prepare and file a written argument in favor of the Measure on behalf of the City Council.

The deadline to submit arguments for or against the City Measure pursuant to this Resolution is declared by the City Clerk to be **Thursday, August 17, 2018, at 5:00 p.m.** Each argument shall not exceed 300 words and shall be filed with the City Clerk, signed, and include the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

SECTION 2. Rebuttal Arguments. Pursuant to Section 9285 of the Elections Code of the State of California, when the City Clerk has selected the primary arguments for and against the City Measure(s) which will be printed and distributed to the voters, the Clerk shall send copies of the primary argument in favor of the Measure(s) to the authors of the primary argument against, and copies of the primary argument against to the authors of the primary argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not later than **Tuesday, August 24, 2018 at 5:00 p.m.** Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument which it seeks to rebut.

SECTION 3. Prior Resolutions. That all previous resolutions providing for the filing of primary and rebuttal arguments related to City measures are repealed.

SECTION 4. November 6, 2018 Election. That the provisions of Sections 1 and 2 shall apply only to the election to be held on November 6, 2018, and shall then be repealed.

SECTION 5. Certification. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

SECTION 6. Effective Date. The Resolution shall take effect immediately.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2018.

Lewis Pacheco, Mayor

ATTEST:

Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney
Best Best & Krieger

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss.
CITY OF CALEXICO)

I HEREBY CERTIFY that the foregoing Resolution No. 2018-____ was duly adopted by the City Council of the City of Calexico at a regular meeting thereof, held on the ____ day of _____, 2018, by the following vote of Council:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Gabriela T. Garcia, City Clerk