RESOLUTION NO. 2018-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS, CALIFORNIA, SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF LOS ALTOS AN ORDINANCE/MEASURE INCREASING THE MAXIMUM RATE OF THE CITY'S TRANSIENT OCCUPANCY (HOTEL) TAX FROM 11% TO 14% AND ADDRESSING THIRD PARTY RENTAL AGENT BOOKINGS, AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018, REQUESTING THE COUNTY OF SANTA CLARA TO CONSOLIDATE SAID ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE, AND SETTING RULES FOR ARGUMENTS AND REBUTTALS FOR AND AGAINST THE MEASURE

WHEREAS, pursuant to Section 9222 of the California Elections Code, the City Council has authority to place measures on the ballot to be considered at a Municipal Election; and

WHEREAS, pursuant to Chapter 3.36 of Title 3 of the Los Altos Municipal Code (L.A.M.C. §§3.36.010 through 3.36.110), the City currently imposes a Transient Occupancy Tax (Hotel) Tax ("TOT") at a maximum rate of eleven percent (11%) upon guests of hotels and other transient accommodations within the City; and

WHEREAS, the City Council desires to amend the Los Altos Municipal Code to increase the maximum rate of the TOT from eleven percent (11%) to fourteen percent (14%); and

WHEREAS, the City Council desires to clarify the Los Altos Municipal Code 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 are deposited into the City's general fund. The general fund pays for important City services such as police protection, fire and paramedic services, street operations and maintenance, library services, 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 XIIIC), an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

WHEREAS, the amendments proposed in the attached ordinance which increase the rate of the TOT constitute a tax "increase" subject to Proposition 218; and

WHEREAS, pursuant to Proposition 218 (California Constitution Article XIIIC, §2(b)), any election for the approval of an increase to a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, by adoption of Resolution No. 2018-16, on June 12, 2018 the City Council has called a General Municipal Election for the purpose of electing two members of the City Council, said Election to be consolidated with the Statewide General Election to be held on Tuesday, November 6, 2018; and

WHEREAS, pursuant to Proposition 62 (Government Code §53724), a two-thirds (2/3) vote of the City Council membership is required to place the measure on the November 6, 2018 ballot.

WHEREAS, the City Council also desires to request that the election for this ordinance/ballot measure be consolidated with the Statewide General Election to be held on November 6, 2018; and

WHEREAS, pursuant to California Elections Code Section 9285 and 9286, the City Council further desires to establish rules and regulations for the preparation, submittal and printing of arguments and rebuttals for and against the measure described herein; and

WHEREAS, the specific terms relating to the TOT amendment are provided for in the ordinance to be considered by the qualified voters, attached hereto as Exhibit "A" (the "Ordinance") and by this reference made an operative part hereof, and in accordance with all applicable laws.

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

SECTION 1. Recitals. The City Council of the City hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part hereof.

SECTION 2. Submission of Ballot Measure. The City Council of the City, pursuant to its right and authority as contained in California Propositions 62 and 218 and Elections Code section 9222, **by a two-thirds supermajority vote of its membership**, hereby orders the Ordinance attached hereto as Exhibit A" to be submitted to the qualified voters of the City at the General Municipal Election to be held and consolidated with the Statewide General Election on Tuesday, November 6, 2018. The proposed Ordinance shall be in the form attached hereto as Exhibit "A" to this Resolution and is incorporated by this reference as if fully set forth herein.

SECTION 3. Ballot Measure. The City Council, pursuant to its right and authority, does hereby order that the ballot measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the election to be held at the General Municipal Election to be consolidated with the Statewide General Election on Tuesday, November 6, 2018, in addition to any other matters required by law, there shall be printed substantially the following:

Los Altos Hotel Tax Rate Adjustment Measure. "Shall an ordinance be adopted increasing the maximum Transient Occupancy (Hotel) Tax rate from 11% to 14% of rent paid by a hotel guest for transient occupancy of any hotel/lodging, generating approximately $700,000 annually for unrestricted general revenue purposes, until ended by voters?"	YES	
	NO	

SECTION 4. Election Procedures.

A.   The City Council consents to the consolidation of the election on this measure with all other elections being held in the same territory on November 6, 2018, and to hold and conduct the consolidated election in the manner prescribed in Elections Code Section 10418.

B.   The ballots to be used at the election shall be in the form and content as required by law.

C.   In accordance with Section 10002 of the Elections Code, the Board of Supervisors of Santa Clara County is hereby requested to consent to having the Registrar of Voters render such election services to the City of Los Altos as may be requested by the City Clerk of said City, the County of Santa Clara to be reimbursed in full for such services as are performed.

D.   The election services which the City of Los Altos requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and polling place cards; the establishment or appointment of precincts, polling places, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk of the City of Los Altos; and the performance of such other election services as may be requested by the City Clerk.

E.   The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

F.   The polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

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

H.   Notice of the time and place of holding the election is 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.

I.   All ballots shall be tallied at a central counting place and not at the precincts. Said central counting place shall be at a County center as designated by the Registrar of Voters.

J.   The Santa Clara County Registrar of Voters is hereby authorized to canvass the returns of said election.

K.   The City Clerk of the City of Los Altos shall receive the canvass as it pertains to the election on the measure, and shall certify the results to the City Council, as required by law.

SECTION 5. Direct Arguments and Impartial Analysis.

A.   The City Council authorizes (i) the City Council or any member(s) 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 of voters and associations, to file a written direct argument in favor of or against the City measure, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and may change the direct argument until and including August 10, 2018 after which no direct arguments for or against the measure may be submitted to the City Clerk. Direct arguments in favor of or against the measure shall each not exceed 300 words in length. Each direct argument 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 direct argument.

B.   The City Clerk shall comply with all provisions of law establishing priority of arguments for printing and distribution to the voters, and shall take all necessary actions to cause the selected arguments to be printed and distributed to the voters.

C.   Pursuant to Section 9280 of the Elections Code, the City Council directs the City Clerk to transmit a copy of the measure 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. The City Attorney shall transmit such impartial analysis to the City Clerk, who shall cause the analysis to be published in the voter information guide along with the ballot measure as provided by law. The impartial analysis shall be filed by the deadline set for filing of direct arguments as set forth in subsection (A) above. 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, nor 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 (insert phone number) and a copy will be mailed at no cost to you."

SECTION 6. Rebuttals. That pursuant to Section 9285 of the Elections Code of the State of California, when the City Clerk has selected the direct arguments for and against the measure which will be printed and distributed to the voters, the City Clerk shall send copies of the direct argument in favor of the measures to the authors of the direct argument against, and copies of the direct argument against to the authors of the direct 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 August 20, 2018. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

SECTION 7. Placement on the Ballot. The full text of the Ordinance/measure shall be printed in the voter pamphlet, and a statement shall be printed in the ballot pursuant to Section 9223 of the Elections Code advising voters that they may obtain a copy of this ordinance and/or ballot measure, at no cost, upon request made to the City Clerk.

SECTION 8. Delivery of Resolution to County. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions. The City Council directs the City Clerk to deliver copies of this Resolution, including the Ordinance attached hereto as Exhibit "A", to the Clerk of the Board of Supervisors of Santa Clara County and to the Registrar of Voters of Santa Clara County.
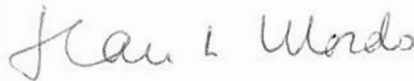
SECTION 9. CEQA. The City Council hereby finds and determines that the ballot measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b)(5).

SECTION 10. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 11. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 12th day of June, 2018 by the following vote:

AYES: BRUINS, LEE ENG, MORDO, PEPPER, PROCHNOW
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

_____
Jean Mordo, MAYOR

Attest:

_____
Jon Maginot, CMC, CITY CLERK

EXHIBIT "A"

ORDINANCE NO. ____

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

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

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

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

"3.36.010 - Definitions.

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

A. "Hotel" shall mean any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging, or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome, or house trailer at a fixed location or other similar structure, or portion thereof.

B. "Occupancy" shall mean the use or possession, or the right to the use or possession, of any room, or portion thereof, in any hotel for dwelling, lodging, or sleeping purposes.

C. "Operator" shall mean the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent, however, shall be considered to be compliance by both.

D. "Person" shall mean any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

E. "Rent" shall mean the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever.

F. "Tax administrator" shall mean the finance director.

G. "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired.

H. *"Rental agent" shall mean any person other than an operator who collects rent from a transient for the transient's occupancy of a hotel.*

3.36.015 Purpose – General Fund Revenue.

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

3.36.020 Tax imposed.

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

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

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

A. *The upward adjustment of the tax rate, provided the rate does not exceed the fourteen percent (14%) maximum set forth by this voter-approved Chapter;*

B. *The restoration of the rate of the tax to a rate that is no higher than the fourteen percent (14%) maximum set by this voter-approved Chapter, if the City Council has previously acted to reduce the rate of the tax;*

C. *An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;*

D. *The establishment of a class of person or service that is exempt or excepted from the tax or the discontinuation of any such exemption or exception; and*

E. *Resuming collection of the tax imposed by this Chapter, even if the City had, for some period of time, either suspended collection of the tax or otherwise failed to collect the tax, in whole or in part.*

3.36.035 – Third party rental transactions.

A. *Any transient who pays rent to a rental agent shall, at the time the rent is paid, pay the tax to the rental agent in the manner required by section 3.36.020. If for any reason the tax is not paid to the rental agent, it shall be paid to the operator before the transient has ceased occupancy in the hotel or paid directly to the tax administrator pursuant to section 3.36.020. Any transient seeking a refund under section 3.36.100 of taxes paid to a rental agent must establish that the transient has been unable to obtain a refund from the rental agent who collected the tax.*

B. *Any rental agent who collects rent shall comply with all obligations of the operator set forth in sections 3.36.030 and 3.36.090 of this chapter. The rental agent shall remit all collected taxes to the operator before the deadline for the operator to remit the taxes to the tax administrator under section 3.36.050, and the rental agent shall provide the operator with copies of all records required to be maintained by the operator pursuant to section 3.36.090 of this chapter, including records necessary for the operator to comply with its obligations under this chapter.*

C. *If the tax administrator determines that a rental agent has failed to collect, remit, or report any tax, the tax administrator may take any action against the rental agent that he or she may take against an operator under sections 3.36.060 and 3.36.070 of this chapter subject to the requirements of those sections. If the tax administrator assesses unremitted taxes and penalties against the rental agent, the rental agent shall be subject to sections 3.36.070, 3.36.080, 3.36.100 and 3.36.110 of this chapter as if it were an operator. Nothing in this section shall prohibit the tax administrator from assessing the full amount of any unremitted taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent."*

SECTION 2. Pursuant to Article XIIIB of the California Constitution, the appropriation limit for the City of Los Altos will be increased by the maximum projected aggregate collection authorized by the levy of this general tax, as indicated in Section 1, in each of the years

covered by this Ordinance plus the amount, if any, by which the appropriation limit is decreased by law as a result of the levy of the general tax set forth in this Ordinance.

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

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

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

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

I hereby certify that the foregoing Ordinance was **PASSED, APPROVED AND ADOPTED** by the people of the City of Los Altos on the 6th day of November, 2018.

_____
Jean Mordo, MAYOR

Attest:

_____
Jon Maginot, CMC, CITY CLERK