

GARDEN GROVE CITY COUNCIL

RESOLUTION NO. 9124-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, CALIFORNIA, CALLING FOR THE HOLDING OF AN ELECTION FOR THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF A CERTAIN MEASURE RELATING TO AMENDING CHAPTER 3.12 OF TITLE 3 OF THE GARDEN GROVE MUNICIPAL CODE PERTAINING TO THE HOTEL VISITORS TAX TO BE CONSOLIDATED AND HELD IN CONJUNCTION WITH THE GENERAL MUNICIPAL ELECTION ON TUESDAY, NOVEMBER 6, 2012, DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS, AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE TO CONSOLIDATE THE ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE

WHEREAS, pursuant to Chapter 3.12 of the Garden Grove Municipal Code, the City of Garden Grove currently imposes and collects a Hotel Visitors Tax of thirteen percent (13%), which is paid by occupants of hotels and other transient lodgings within the city of Garden Grove to hotel operators for the privilege of occupancy;

WHEREAS, the Hotel Visitors Tax is a general tax, the revenues from which are used for general governmental purposes, including the funding of police, fire, and other municipal services to city residents;

WHEREAS, California Constitution Article XIIC, Section 2 provides that no local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote;

WHEREAS, California Constitution Article XIIC, Section 2, further requires that a measure proposing to impose, extend, or increase a general tax must be consolidated with a City's General Municipal Election for Members of the City Council;

WHEREAS, a consolidated General Municipal Election on Tuesday, November 6, 2012 has been called by Resolution No. 9113-12 adopted by the City Council on May 22, 2012;

WHEREAS, the City Council of the City of Garden Grove also desires to submit to the voters at the General Municipal Election a City Council-initiated ballot measure related to increasing the existing Hotel Visitors Tax rate and clarifying application of the Tax; and

WHEREAS, the City Council desires that the election on the proposed measure be consolidated with the General Municipal Election and the Statewide General Election to be held on the same date and that within the city the precincts, polling places, and election officers of these elections be the same, and that the

Orange County Registrar of Voters canvass the returns of the ballot measure election and the election be held in all respects as if there were only one election.

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

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law cities, including Government Code Section 53724 and Elections Code Section 9222, there is called and ordered to be held in the City of Garden Grove, California, on Tuesday, November 6, 2012, an election, for the purpose of submitting to the qualified electors of the city at the General Municipal Election the issue of whether to amend Section 3.12.030(A) of the Garden Grove Municipal Code to increase the amount of the City's Hotel Visitors Tax from 13% to 14.5% and clarify the scope and manner of the application of the Hotel Visitors Tax, as reflected in the proposed Initiative Ordinance attached as Exhibit A.

SECTION 2. That the City Council, pursuant to its right and authority under California law, approves the proposed Initiative Ordinance as set forth on Exhibit A, attached hereto and incorporated herein by reference, and hereby orders submitted to the voters at the General Municipal Election the following question:

Shall an Ordinance amending the Garden Grove Municipal Code to increase the Hotel Visitors Tax from 13% to 14.5% and to clarify the scope and manner in which the Hotel Visitors Tax applies be adopted to help preserve general City services such as police and fire protection, street operations and maintenance, and parks and recreation services?"	YES	
	NO	

SECTION 3. That the full text of the proposed Initiative Ordinance submitted to the voters is attached as Exhibit A.

SECTION 4. That if a majority of the qualified electors voting on the measure votes in favor of the measure, the Initiative Ordinance shall be deemed approved.

SECTION 5. That the proposed type of tax, the rate of the tax, and the method of collection are set forth the proposed Initiative Ordinance.

SECTION 6. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 7. That the City Clerk is authorized, instructed, and directed to coordinate with the County of Orange Registrar of Voters 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.

SECTION 8. That the polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, pursuant to Election Code Section 10242, except as provided for in Section 14401 of the Elections Code of the State of California.

SECTION 9. That in all particulars not recited in this Resolution, the election shall be held and conducted as required by law for holding municipal elections.

SECTION 10. That 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.

SECTION 11. That pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Orange is hereby requested to consent and agree to the consolidation of the election ordered hereby with the Statewide General Election on Tuesday, November 6, 2012.

SECTION 12. That the Orange County Registrar of Voters is authorized to canvass the returns of the 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.

SECTION 13. That the Board of Supervisors is requested to issue instructions to the Orange County Registrar of Voters to take any and all steps necessary for the holding of the consolidated election.

SECTION 14. That the City of Garden Grove 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 15. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the Orange County Registrar of Voters, together with the attached ballot measure.

SECTION 16. The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

SECTION 17. That 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 pursuant to Elections Code Section 9280.

SECTION 18. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

Adopted this 22nd day of May 2012.

ATTEST:

/s/ WILLIAM J. DALTON
MAYOR

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Garden Grove, California, at a meeting held on the 22nd day of May 2012, by the following vote:

AYES: COUNCIL MEMBERS: (5) BEARD, BROADWATER, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

Exhibit A

AN ORDINANCE OF THE PEOPLE OF THE CITY OF GARDEN GROVE AMENDING CHAPTER 3.12 OF TITLE 3 OF THE GARDEN GROVE MUNICIPAL CODE PERTAINING TO THE HOTEL VISITORS TAX

The people of the City of Garden Grove hereby ordain as follows:

Section 1. Code Amendment. Section 3.12.020 entitled "Definitions" of Chapter 3.12 entitled "Hotel Visitors Tax" of Title 3 of the Garden Grove Municipal Code is hereby amended to add or amend the following definitions to read in their entirety as follows:

" "Block Reservation" means an arrangement whereby a person reserves, whether on an exclusive or non-exclusive basis, a room or block/group of rooms for a defined period of time under a written or oral agreement with an operator, intending for such room(s) to be occupied by that person's employees or agents on an intermittent, periodic or "as needed" basis during that defined period of time. A Block Reservation arrangement shall not constitute a Qualifying Rental Agreement."

" "Hotel" means any structure, or any portion of any structure, that 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, hostel, bed and breakfast, apartment house, dormitory, time-share project, public or private club, mobile home, or house trailer at a fixed location, or other similar structure or portion thereof."

" "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, time-share project owner's association, 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 shall, however, be considered to be compliance by both."

" "Recreational vehicle space" means any space set aside in a recreational vehicle park that is intended or designed for the occupancy of a recreational vehicle, including, but not limited to, a camper, van, trailer, motor home, or similar vehicle, that is used for dwelling, lodging or sleeping purposes by transients."

" "Rent" means the total consideration charged, whether or not received, for the occupancy of space in a hotel or of a recreational vehicle space, 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. Rent shall include the total consideration charged by the operator for accommodations, including, but not limited to, any separate charges levied for non-optional items or services that are incidental to occupancy, including, but not limited to, furniture, fixtures, appliances, linens, towels, non-coin-operated safes, utilities (such as energy surcharges), maid service, Internet connection charges, and parking fees."

" "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 thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying or entitled to occupy space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive and uninterrupted days of occupancy has expired, unless there is a Qualifying Rental Agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any break or interruption in occupancy shall start a new thirty (30) day period subject to the tax. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the Ordinance codified herein may be considered."

In the case of a block reservation, a person's employee or agent shall be deemed a transient if that employee or agent exercises or is entitled to occupancy of a room for a period of thirty (30) consecutive calendar days or less, regardless of the duration of any block reservation agreement. By way of example, if a corporation enters into a one-year block reservation agreement with an operator and one of the corporation's employees occupies a room for thirty (30) calendar days, the employee shall be deemed a transient whose occupancy is subject to the tax, notwithstanding the fact that the block reservation agreement has a duration longer than thirty (30) calendar days." "

" "Time-Share Project" means a structure or real property (including airspace) in which either a time-share estate or a time-share use (as those terms are defined in Section 11212 of the Business and Professions Code) and any similar form of ownership involving a right in perpetuity, for life, or for a term of years, to occupy any room, place or area has been sold."

Section 2. Code Amendment. Section 3.12.030 entitled "Tax Imposed" of Chapter 3.12 entitled "Hotel Visitors Tax" of Title 3 of the Garden Grove Municipal Code is hereby amended in its entirety to read as follows:

- "A. For the privilege of occupancy in any hotel or other transient lodgings as defined in this Chapter, each transient is subject to and shall pay a tax in the amount of fourteen and one-half percent (14.5%) of the rent charged by the operator. The tax constitutes a debt owed by the transient and/or owner to the City that is extinguished only by payment to the operator or to the City. The tax shall be paid to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing occupancy. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax be paid directly to the City.

- B. Except as otherwise provided in this Chapter, all provisions relating to hotels shall be applicable to recreational vehicle spaces, and all references to "hotel" or "a room", "rooms", or "space" in a hotel shall be deemed to include recreational vehicle spaces."

Section 3. Code Amendment. Subsections B, C, D, E, and F are hereby added to Section 3.12.050 entitled "Operator's Duties" of Chapter 3.12 entitled "Hotel Visitors Tax" of Title 3 of the Garden Grove Municipal Code to read in their entirety as follows:

- "B. Notwithstanding the provisions of Subsection A, the operator shall not be required to separately state the amount of rent and the amount of the tax on receipts and books of record when room accommodations constitute a portion of a collective group of services, privileges, entitlement or benefits ("Benefits") that include, at a minimum, room accommodations and food and beverage services, or room accommodations and at least one other benefit having an ascertainable fair market value ("Special Packages") offered for one fixed price ("Special Package Rate") provided the operator complies with Subsection C.

- C. The operator shall file with the Tax Administrator a statement of each Special Package on a form Special Package Application, provided by the Tax Administrator. The Special Package Application shall detail the Benefits of the Special Package and an itemization of each portion of the Special Package that is rent and tax. The Tax Administrator shall mark the date of receipt

on the Special Package Application and review the submitted information to determine if sufficient information is provided to verify that the value of the Benefits, rent, and tax. The Operator shall designate a specific name or number to the Special Package Application as part of the Special Package Application. The Special Package Application shall not be accepted unless accompanied by a fee for processing that has been established by City Council Resolution.

1. The name or number designated on the Special Package Application shall appear on all receipts and books of record whenever the Special Package is sold.
 2. If the Special Package Application is deemed incomplete, the Tax Administrator will advise the operator of any required changes within fourteen (14) business days. The operator must either make the required changes and resubmit the Special Package Application or comply with Subsection A.
 3. The Tax Administrator shall approve, conditionally approve, or disapprove the Special Package within fourteen (14) days of receipt of a complete Special Package Application. In the event of disapproval, the Tax Administrator shall give the operator written notice of the reasons for disapproval. The effective date of the Special Package Rate shall be the date on which the Tax Administrator receives a complete Special Package Application that is approved. A new Special Package Application shall be submitted whenever the operator changes the rent or Benefits of any previously approved Special Package.
- D. The tax shall apply only to the amount of rent identified in the Special Package that has been approved by the Tax Administrator.
- E. If the operator fails to either separately state the amount of the tax and the rent in accordance with Subsection A or to obtain approval of a Special Package Rate pursuant to Subsection C, the rent to which the tax is deemed to apply (the "Imputed Rate") shall be the lesser of (1) the amount collected for the total Special Package, or (2) an amount equal to the median average double occupancy room rate for the accommodations as posted in the room pursuant to the requirements of Section 1863 of the Civil Code or any successor statute.

- F. Notwithstanding Subsections C and D, above, if any audit reveals that the gross income to the operator attributable to the rent portion of a Special Package, (the "Audited Rate") is more than ten percent (10%) greater than the rent specified in the Special Package, then the rent for purposes of calculating the tax shall be the Audited Rate. In the event Subsection 3.12.050(E) applies and the Audited Rate is greater than the Imputed Rate, the rent for tax purposes shall be the Audited Rate. The Audited Rate shall be determined by an audit of a sample of the Special Packages sold by the operator within each Special Package category. The Audited Rate shall be the amount of the Special Package Rate remaining after deducting the fair market value of each of the Benefits included in the Special Package Rate other than room accommodations and tax. Where more than one type of Special Package is offered within the audit period, each Special Package shall be audited separately for purposes of determining the applicable Audited Rate, credits, or offsets shall not be allowed between different Special Packages."

Section 4. Repeal, Alteration, Modification. Notwithstanding Section 9217 of the California Elections Code, without a vote of the People, the City Council may amend any of the provisions adopted pursuant to this Ordinance in a manner that does not impose, extend, or increase the rate of the Hotel Visitors Tax.

Section 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Garden Grove hereby declare that they would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

Section 6. Effect of Ordinance. If adopted, this Ordinance will increase the rate of the City's existing Hotel Visitors Tax, which is a general tax of the City, by one and one-half percent (1.5%). This Ordinance was proposed by the City Council of the City of Garden Grove through approval and introduction of the Ordinance and the adoption of Resolution No. _____ with the affirmative vote of at least four Members of the City Council as required by Government Code Section 53724(b). Except as expressly amended by this Ordinance, all provisions of Chapter 3.12 of Title 3 of the Garden Grove Municipal Code shall remain in full force and effect.

Section 7. Effective Date. The City Clerk shall certify as to the passage and adoption of this Ordinance. This Ordinance shall take effect ten (10) days following the date on which the City Council of the City of Garden Grove declares that this Ordinance was adopted by a majority of the voters voting on the measure at the municipal election on Tuesday, November 6, 2012.

The foregoing ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Garden Grove voting on the 6th day November , 2012, which vote was certified by the City Council on the ____ day of _____, 2012.

Mayor

ATTEST:

City Clerk