

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

RESOLUTION NO. 2024-105

IN THE MATTER OF CALLING FOR AND }  
GIVING NOTICE OF THE HOLDING OF }  
A GENERAL MUNICIPAL ELECTION TO }  
BE HELD IN THE CITY OF TURLOCK }  
ON TUESDAY, NOVEMBER 5, 2024, }  
FOR THE PURPOSES OF SUBMITTING }  
TO THE QUALIFIED VOTERS A BALLOT }  
MEASURE AMENDING CHAPTER 3-6 }  
OF TITLE 3 OF THE TURLOCK }  
MUNICIPAL CODE TO INCREASE THE }  
TRANSIENT OCCUPANCY TAX, ADOPT }  
REGULATIONS FOR RENTAL AGENTS }  
AND TO MODERNIZE AND UPDATE }  
OTHER PROVISIONS; REQUESTING }  
CONSOLIDATION THEREOF WITH THE }  
STATEWIDE GENERAL ELECTION TO }  
BE HELD ON THE SAME DATE, AND }  
REQUESTING THE STANISLAUS COUNTY }  
BOARD OF SUPERVISORS TO PERMIT }  
THE STANISLAUS COUNTY REGISTRAR }  
OF VOTERS TO RENDER SPECIFIC }  
SERVICES TO THE CITY OF TURLOCK }  
RELATING TO THE CONDUCT OF THE }  
GENERAL MUNICIPAL ELECTION }

**WHEREAS**, section 1-7-01 of the Turlock Municipal Code provides that the General Municipal Election for the City shall be held on the first Tuesday after the first Monday in November of each even-numbered year; which means that the next General Municipal Election will be held on November 5, 2024; and

**WHEREAS**, pursuant to Elections Code section 1200, the Statewide General Election shall be held on the first Tuesday after the first Monday in November of each even-numbered year; which means that the next Statewide General Election will be held on November 5, 2024; and

**WHEREAS**, pursuant to Part 3 “Consolidation of Elections,” and commencing with Section 10400 of the Elections Code, a municipal election may be either completely or partially consolidated and held on the same day as a Statewide election, upon order of the City Council of the City Turlock; and

**WHEREAS**, Elections Code section 9222 and Government Code section 53724 authorize the City Council, on its own motion, to submit to the voters, without a petition,

a ballot measure for the enactment of a tax to be voted upon at a General Municipal Election; and

**WHEREAS**, the City of Turlock imposes a transient occupancy tax (“TOT”) on transients lodging in hotels in the City which is codified in Chapter 3-6 of Title 3 of the Turlock Municipal Code; and

**WHEREAS**, the TOT is imposed at the rate of 9% of the rent charged by the operator of the hotel; and

**WHEREAS**, the increased use of online travel companies and other third parties (“rental agents”) by transients to rent hotel rooms has resulted in a decrease in TOT revenues because the rent paid by the transient to the rental agent is less than the rent charged by the operator; and

**WHEREAS**, rental agents are not directly required to collect and remit TOT, which hampers the City’s ability to ensure the proper collection of TOT; and

**WHEREAS**, the City Council desires to submit a measure at the General Municipal Election to be held on Tuesday, November 5, 2024, to the voters of the City to amend Chapter 3-6 of Title 3 of the Turlock Municipal Code to require rental agents to comply with the same obligations to collect and remit TOT as hotel operators, to change the measure of the tax to the rent paid by the transient, to increase the rate of the tax to 14%, and to make other revisions to modernize the TOT ordinance and to make the imposition of the tax more consistent; and

**WHEREAS**, the City Council wishes to consolidate the General Municipal Election with the Statewide General Election to be held on Tuesday, November 5, 2024.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TURLOCK RESOLVES AS FOLLOWS:**

**Section 1. Recitals.**

The City Council hereby finds and determines that the foregoing recitals are true and correct.

**Section 2. Calling a General Municipal Election.**

Pursuant to section 1-7-01 of the Turlock Municipal Code the City Council of Turlock calls a General Municipal Election to be held on Tuesday, November 5, 2024.

**Section 3. Consolidation with General Statewide Election.**

Pursuant to Section 10403 of the Elections Code, the City Council requests that the Board of Supervisors of the County of Stanislaus consolidate the General Municipal

Election with the General Statewide Election scheduled for Tuesday, November 5, 2024 to be held, regulated, and conducted in accordance with the provisions of the law.

**Section 4. Acknowledging Application of Elections Code Section 10418.**

The City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in section 10418 of the Elections Code.

**Section 5. Request for County Services.**

Pursuant to section 10002 of the Elections Code, the City Council requests the services of the Board of Supervisors of the County of Stanislaus and the Registrar of Voters of the County of Stanislaus to render such services to the City as requested by the City Clerk. The City will reimburse the County for the costs incurred by the County of Stanislaus Registrar of Voters in conducting the General Statewide Election for the City. The City requests the County of Stanislaus Board of Supervisors to permit the County of Stanislaus Registrar of Voters to prepare the City's election materials. The election services to be performed shall include the preparation, printing and mailing of official ballots and County voter information guides; the establishment of precincts, election ballots, return mail envelopes, ballot drop boxes, vote centers, election officers, and producing such publications as are required by law in connection therewith; the furnishing of ballots, envelopes, and other necessary supplies and materials for voting places; the canvassing of the returns of the election; the furnishing of the results of such canvassing to the City Clerk; and the performance of other election services as may be requested by the City Clerk.

**Section 6. Proposed Ballot Measure.**

Pursuant to Elections Code section 9222 and Government Code section 53724 the City Council hereby submits to the voters at the General Municipal Election an ordinance (hereafter also referred as "the Measure"). The proposed ordinance submitted to the voters is titled "AN ORDINANCE OF THE CITY OF TURLOCK, CALIFORNIA AMENDING CHAPTER 3-6 OF TITLE 3 OF THE TURLOCK MUNICIPAL CODE AND RENAMING THE CHAPTER "TRANSIENT OCCUPANCY TAX." The full text of the ordinance is attached to this Resolution as Exhibit "A" and incorporated by reference. The full text of the proposed ordinance is not required to be printed in the Sample Ballot and Voter Information Pamphlet but shall be made available to the public and to any voter at the County Registrar of Voters Office and the Turlock City Clerk.

**Section 7. Ballot Question.**

The following question for the Measure shall appear on the ballot as follows:

Shall the measure to require online travel companies to collect hotel tax from visitors staying at hotels in the City of Turlock and allowing the Turlock City Council to increase the rate of the hotel tax to up to 14% of the rent paid for lodging, with tax proceeds for general government use, raising approximately \$1.1 million annually, and lasting until ended by voters, be adopted?	YES	
	NO	

**Section 8. Publication of Measure.**

The City Clerk is directed to publish a synopsis of the measure at least one time, not later than one week before the election in accordance with section 12111 of the Elections Code.

**Section 9. Voter Approval.** Under Article XIII C of the California Constitution, the vote requirement for this measure to pass shall be a majority of those casting ballots on the measure (50% plus 1).

**Section 10. City Attorney’s Impartial Analysis.**

Pursuant to Elections Code section 9280, the City Council hereby 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, and transmit such impartial analysis to the City Clerk on or before 5:00 p.m. on August 8, 2024. Because the entire text of the measure will not be printed on the ballot or in the voter information guide, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows: “The above statement is an impartial analysis of Ordinance or Measure \_\_\_\_\_. If you desire a copy of the ordinance or measure, please call the elections official's office at (209) 668-5540 and a copy will be mailed at no cost to you.”

**Section 11. Arguments for and Against the Measure.**

Pursuant to Elections Code section 9281 et. seq., July 29, at 5:00 p.m. shall be the deadline for submission of arguments to the City Clerk in favor of, and arguments against, this measure. Arguments in favor of or against the measure shall not exceed 300 words in length. Each argument shall be signed, filed with the City Clerk, and include the printed name(s) and signature(s) of the author(s) submitting the argument. If more than one argument for or against is received, the priorities established by Elections Code section 9287 shall control.

**Section 12. Rebuttal Arguments.**

Subdivision (a) of section 9285 of the Elections Code shall apply to the election and shall control the submission of any rebuttal arguments for this measure. If an argument in favor and an argument against the measure have been selected to be printed in the voter information guide, the Clerk shall send a copy of the argument in favor of the measure to the authors of the argument against the measure and a copy of an argument against the measure to the authors of the argument in favor of the measure. The rebuttal authors or persons designated by them may prepare and submit rebuttal arguments not to exceed 250 words in length. Rebuttal arguments must be submitted to the City Clerk not later than August 8, 2024, by 5:00 p.m. This Section shall apply only to the election to be held on November 5, 2024, and shall then be repealed.

**Section 13. Certification and Transmittal to the County.**

The City Clerk is hereby authorized and directed to certify to the adoption of this resolution and to transmit a certified copy to the Board of Supervisors of the County of Stanislaus and to the Registrar of Voters of the County of Stanislaus.

**Section 14. Further Authorization for the Clerk.**

The City Clerk is hereby authorized and directed to do all things required by law to hold the General Municipal Election above provided.

**Section 15. General Application of Election Law.**

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

**Section 16. Implementation.**

The City Clerk and City Manager are authorized to take all actions as necessary to effectuate the purposes of this resolution and the election. The City Clerk and City Attorney are authorized to make any typographical, clerical, and non-substantive corrections to this resolution as may be deemed necessary by the Stanislaus County Registrar of Voters.

**Section 17. California Environmental Quality Act.**

The City Council hereby finds and determines that this resolution is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA") and 14 Cal. Code Reg. section 15000 et seq. ("CEQA Guidelines"). The calling and noticing of an election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines section 15378. The tax submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines section 15378 (b)(4), the tax is not a project within the meaning of CEQA because it

creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue generated by the tax were used for a purpose that would have such an effect, the City of Turlock would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

**Section 18. Effective Date.**

This Resolution shall be effective immediately upon adoption.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Turlock this 25<sup>th</sup> day of June, 2024, by the following vote:

AYES:	Monez, Abram, Bixel, Franco	(4)
NOES:	Bublak	(1)
NOT PARTICIPATING:	None	(0)
ABSENT:	None	(0)

SIGNED:



\_\_\_\_\_  
Amy Bublak, Mayor

ATTEST:



\_\_\_\_\_  
Julie Christel, City Clerk

## EXHIBIT A

ORDINANCE NO. \_\_\_\_\_

### AN ORDINANCE OF THE CITY OF TURLOCK, CALIFORNIA AMENDING CHAPTER 3-6 OF TITLE 3 OF THE TURLOCK MUNICIPAL CODE AND RENAMING THE CHAPTER "TRANSIENT OCCUPANCY TAX"

THE PEOPLE OF THE CITY OF TURLOCK DO ORDAIN AS FOLLOWS:

**SECTION 1. CODE AMENDMENT.** Chapter 3-6 of Title 3 of the Turlock Municipal Code is hereby amended to add, delete, and modify sections as set forth below; additions are indicated by underscoring and deletions are indicated by ~~strike-through~~ type; portions of the Chapter not shown in underscoring or strike-through type are not changed.

#### Chapter 3-6 HOTEL/MOTEL TAXES TRANSIENT OCCUPANCY TAX

##### **3-6-01 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)~~ "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.~~

~~(b)~~(a) "Hotel" shall mean means any structure, or any portion of any structure, which is fully or partially 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, accessory dwelling unit, motel, ~~studio hotel, bachelor hotel, lodging house,~~ rooming house, apartment house, flat, dormitory, public or private club, mobile home, ~~or~~ house trailer at a fixed location, or other similar structure, or portion thereof.

~~(c)~~(b) "Occupancy" shall mean means 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.

~~(d) "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the provisions of this chapter may be considered.~~

~~(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)(c) "Operator" shall mean~~ means 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 the managing agent's 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.

~~(d) "Person" means 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" means the total consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether 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. It includes any charge, no matter how characterized, that is required to be paid in order to occupy space in a hotel, such as cleaning fees, convenience fees, extra person or extra bed fees, operating fees, pet fees, processing fees, reservation fees, resort fees, and service fees.~~

~~(f) "Rental agent" means a person other than an operator who collects rent from a transient for the transient's occupancy of a hotel.~~



(g) "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 space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. If a hotel or space in a hotel is rented by a person for more than thirty (30) consecutive days, but is occupied by different persons for periods of thirty (30) days or less each, then the persons actually occupying the hotel or space in the hotel are transients and are subject to the tax imposed by this chapter.

### **3-6-02 Tax imposed.**

For the privilege of occupancy in any hotel, each transient shall be subject to and shall pay a tax in ~~the an amount of up to nine (9%)~~ up to fourteen percent (14%) of the rent charged ~~by to the operator transient~~. Such tax shall constitute a debt owed by the transient to the City, which debt shall be extinguished only by payment to the operator of the hotel, to a rental agent, or to the City. The transient shall pay the tax to the operator of the hotel 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 to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel or rental agent, the Finance Director may require that such tax shall be paid directly to the Finance Office.

### **3-6-03 Exemptions from provisions.**

(a) No tax shall be imposed upon:

(a1) Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax provided for in this chapter;

(b2) Any Federal or State officer or employee when on official business; or

(c3) Any officer or employee of a foreign government, which officer or employee 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 the rent is collected and under penalty of perjury upon a form prescribed by the Finance Director.

### **3-6-04 Operator's and Rental Agent's duties.**

(a) Each operator and each rental agent shall collect the tax imposed by the provisions of 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 or rental agent. No operator of a hotel or rental agent 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 rental agent, 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.

(b) An operator or rental agent who fails or refuses to collect or remit the tax imposed by the provisions of this chapter shall be liable to the City for the amount not collected or remitted as damages for not complying with the provisions of this chapter.

### **3-6-05 Registration.**

(a) Each operator of any hotel renting an occupancy to transients shall register such hotel with the Finance Director and obtain a City of Turlock "Business License Certificate" which shall at all times be posted in a conspicuous place on the premises. Such certificate shall, among other things, set forth the following information:

(a~~1~~) The name of the operator;

(b~~2~~) The address of the hotel;

(c~~3~~) The period for which the certificate was issued; and

(d~~4~~) A statement as follows: "This Business License Tax Certificate signifies that the person named on the face hereof has fulfilled the requirements of the ~~Hotel/Motel Tax Law~~ City of Turlock Transient Occupancy Tax Ordinance by registering with the Finance Office for the purpose of collecting from transients the transient occupancy tax and remitting such tax to the Finance Office. ~~Where approval, clearance, or a permit to conduct a business is otherwise required by the provisions of this Code, issuance of a Business License Tax Certificate does not constitute such approval or clearance~~ This certificate does not authorize any person to conduct any unlawful business, to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from the City.

### **3-6-06 Reporting and remitting.**

(a) Each operator and each rental agent shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Finance Director, make a return to the Finance Office, on forms provided by the Finance Office, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the Finance Office. The Finance Director may establish shorter reporting periods for any certificate holder if ~~he~~ the Finance Director deems it necessary in order to ensure collection of the tax, ~~and he~~ The Finance Director may also require further information in the return. Returns and payments shall be due immediately upon cessation of business for any reason. All taxes collected by operators and rental agents pursuant to the provisions of this chapter shall be held in trust for the account of the City until payment thereof is made to the Finance Office.

(b) Each rental agent shall, on or before January 31st of each year, submit to the Finance Office a report containing the following information for the preceding calendar year:

(1) A list of all hotels in the City for which the rental agent collected rent from transients for staying at those hotels, including the addresses of the hotels and the names, phone numbers, and other contact information of the hotels' operators;

(2) For each hotel listed, the total rent and total tax collected by the rental agent from transients staying at that hotel in the previous calendar year; and

(3) Any other information determined by the Finance Director as needed to ensure the collection and remittance of taxes imposed by this Chapter.

### **3-6-07 Penalties and interest.**

(a) Original delinquency. ~~Any~~ If an operator who shall fail or rental agent fails to report collect and remit any tax imposed by the provisions of this chapter within by the time date such remittance is required, the remittance is delinquent and the operator or rental agent who failed to collect and remit the tax shall pay a penalty in the amount of ten (10%) percent (10%) of the tax in addition to the amount of the tax.

(b) Continued delinquency. Any operator or rental agent ~~who shall fail~~ fails to collect and remit any delinquent remittance on or before a period of

thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty in the amount of ten ~~(10%)~~ percent (10%) of the tax in addition to the amount of the tax and the ~~ten (10%)~~ percent (10%) penalty first imposed.

(c) Fraud. If the Finance Director ~~shall determine~~ determines that the noncollection or nonpayment of any remittance due pursuant to the provisions of this chapter is due to fraud, a penalty in the amount of twenty-five ~~(25%)~~ percent (25%) of the amount of the tax actually owed shall be added thereto in addition to the penalties set forth in subsections (a) and (b) of this section.

(d) Interest. In addition to the penalties imposed, any operator or rental agent who shall fail fails to collect and remit any tax imposed by the provisions of this chapter shall pay interest at the rate of one-half of one ~~(1.05%)~~ percent (1.05%) percent per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

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

### **3-6-08 Failure to collect and report tax: Determination by Finance Director.**

~~If any operator shall fail or refuse to collect such tax and~~ An operator or rental agent who fails or refuses to collect or remit any tax imposed by the provisions of this chapter may be made liable to the City under the procedures in this section for the amount of tax not collected or remitted, including any penalties and interest thereon, as damages for not complying with the provisions of this chapter.

(a) Determination of Tax by the Finance Director. ~~If any~~ an operator or rental agent shall fail fails or refuses ~~refuses to collect such the tax due under this chapter or fails or refuses~~ to make, within the time provided in this chapter, any report and remittance of such tax, or any portion thereof, required by the provisions of this chapter, the Finance Director shall proceed in such manner as ~~he~~ the Finance Director may deem best to obtain the facts and information on which to base ~~his~~ an estimate of the tax due. As soon as the Finance Director ~~shall procure~~ procures ~~such fact~~ facts and information as ~~he~~ the Finance Director is able to obtain upon which to base the assessment of any such tax imposed by the provisions of this chapter and payable by any operator or rental agent who has failed or refused to collect the ~~same~~ tax and to make such report and remittance,

the Finance Director shall proceed to determine and assess against such operator or rental agent the tax, interest, and penalties provided for by the provisions of this chapter. In the event such determination is made, the Finance Director shall give 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 or rental agent so assessed at ~~his~~ its last known place of address. ~~Such, or by email using an email address previously provided to the City by the operator or rental agent.~~

(b) Time for Making a Determination by the Finance Director. Notice of a determination made under subsection (a) concerning the amount of tax reported on a return filed under Section 3-6-06 must be served within three (3) years of the filing of the return. Notice of a determination made under subsection (a) concerning the amount of tax that an operator or rental agent did not collect or remit for occupancy at a hotel registered under Section 3-6-05, but for which no return was filed under Section 3-6-06, must be served within five (5) years of the date the return was due under Section 3-6-06. Notice of a determination made under subsection (a) concerning the amount of tax an operator or rental agent did not collect or remit for occupancy at a hotel that was not registered under Section 3-6-05 and for which no return was filed under Section 3-6-06 must be served within ten (10) years of the date the return was due under Section 3-6-06.

(c) Hearing by the Finance Director. An operator or rental agent may, within ten (10) days after the service or mailing of ~~such a~~ notice of determination under subsection (a) of this section, make an application in writing to the Finance Director for a hearing on the ~~amount assessed determination~~. If an application by the operator or rental agent for a hearing is not made within the time prescribed, the ~~tax, interest, and penalties, if any, determined by~~ determination of the Finance Director shall become final and conclusive and any tax, penalties, or interest due under the determination are immediately due and payable. If such an application is made, the Finance Director shall give not less than ~~five~~ ten (10) days' written notice, in the manner prescribed in ~~this section~~ subsection (a) for serving notice of a determination, to the operator or rental agent of a hearing to show cause at a time and place fixed in such notice why be held within sixty (60) days or as soon thereafter as reasonably practicable on the amount specified therein should not be fixed for such tax, interest and penalties. determination. The hearing will be before the Finance Director or the Finance Director's designee. At such hearing the operator or rental agent may appear and offer evidence why ~~such specified tax, interest, the determination of the Finance Director is incorrect and penalties should not be so fixed. After~~ changed. Within a reasonable time after such hearing the Finance Director, or ~~authorized agent~~ designee, shall ~~determine the proper tax to be remitted and shall thereafter~~ make a

final determination and give written notice of the determination to the person operator or rental agent in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties. The subsection (a) for serving notice of a determination. The Finance Director may, if supported by a finding of good cause supported by substantial evidence, waive some or all of any penalty or interest imposed under Section 3-6-07. Any amount determined to be due shall be payable after fifteen (15) days after service of the final determination unless an appeal is filed as provided in TMC 3-6-09. Section 3-6-10. The Finance Director may assess the full amount of any uncollected or unremitted taxes, penalties, or interest solely against the operator in lieu of assessing some or all of those taxes, penalties, or interest against a rental agent.

(d) Security for Collection of Tax. Whenever any operator or rental agent has failed to collect, report, or remit tax as required by this chapter, and such failure results in a continued delinquency, the Finance Director may require such operator or rental agent to deposit with the Finance Director security in the form of cash, bond, or other security as the Finance Director may so determine and shall be referred to as a "security deposit". The amount of the security shall be fixed by the Finance Director and shall be established by making a determination following the procedure in subsection (a) of this section, which determination is subject to a hearing under subsection (c) and appeal under Section 3-6-10. The Finance Director shall place the security in the City Treasury in a special trust fund to be known as the "Transient Occupancy Tax Security Deposit Fund."

(e) Withdrawals from Security Deposit. Whenever any operator or rental agent fails to collect or remit any tax due under the provisions of this chapter on or before the period designated in Section 3-6-06, the Finance Director may notify the operator or rental agent that the amount due and owing to the City from the operator or rental agent for the tax, interest, and penalty imposed by the provisions of this chapter shall be transferred from the security deposit for use as provided under this section. The Finance Director may notify the operator or rental agent that the operator or rental agent is required to redeposit the amount deducted from the security deposit.

### **3-6-09 Audit.**

(a) The Finance Director may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any operator or rental agent required to collect and/or remit tax pursuant to the provisions of this chapter. The Finance Director shall provide written notice to the operator or rental agent being audited of the initiation of the audit by serving it personally, or by depositing it in the United States mail, postage prepaid, addressed to the operator or rental agent so assessed at its last known

place of address, or by email using an email address previously provided to the City by the operator or rental agent.

(b) Notice of the initiation of an audit of a tax period for which a return was filed under Section 3-6-06 must be provided as required in subsection (a) within three (3) years of the date that the return was filed.

(c) Notice of the initiation of an audit of a tax period for which no return was filed under Section 3-6-06 for occupancy at a hotel registered under Section 3-6-05 must be provided as required in subsection (a) within five (5) years of the date that the return was due to be filed under Section 3-6-06.

(d) Notice of the initiation of an audit of a tax period for which no return was filed under Section 3-6-06 for occupancy at a hotel not registered under Section 3-6-05 must be provided as required in subsection (a) within ten (10) years of the date that the return was due to be filed under Section 3-6-06.

(e) Upon completion of an audit, the Finance Director may make a determination under Section 3-6-08 of any taxes, penalties, and interest determined to be owed and not paid for the audit period. Subsection (b) of Section 3-6-08 does not apply to a determination of tax due following an audit under this section. If an operator or rental agent subject to audit is unable or unwilling to provide sufficient records to enable the Finance Director to verify compliance with this chapter, the Finance Director is authorized to make a reasonable estimate of any deficiency and said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

### **3-6-10 Appeals.**

(a) Any operator-aggrieved, rental agent, or other person whose rights or interests have been directly and adversely affected by ~~any~~ a decision or determination of the Finance Director, including but not limited to any decision or determination with respect to the amount of such tax, interest, and penalties due or owing under Section 3-6-08, may appeal ~~such decision~~ the final decision or determination in writing to the City Manager (or the City Manager's designee) within twenty (20) days from the date of service of such decision or determination.

(b) An appeal may not be made to the City Manager (or the City Manager's designee) regarding a decision or determination by the Finance Director under Section 3-6-08(a) unless the appellant has first requested a hearing before the Finance Director under Section 3-6-08(c) and received a determination following the hearing.

(c) If a timely appeal is filed with the City Manager (or the City Manager's designee), the City Manager (or designee) shall set a hearing to be held within sixty (60) days or as soon thereafter as reasonably practicable. Notice of the hearing shall be served personally, by depositing it in the United States mail, postage prepaid, addressed to the appellant at the appellant's last known place of address, or by email to an email address provided by Chapter 1-4 TMC. to the City by the appellant.

(d) At the hearing, the appellant may present evidence and argument regarding the determination or decision being appealed to show why the determination or decision is incorrect and to show what the determination or decision should be. All parties shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel. The City Manager (or the City Manager's designee) shall not be bound by the formal rules of evidence and may require the presentation of additional evidence of any party involved. The hearing may be continued for a reasonable time for the convenience of a party or witness at the request of the appellant or any other party.

(e) A reasonable time after the close of the hearing, the City Manager (or the City Manager's designee) shall issue a final decision. The City Manager (or the City Manager's designee) shall make findings of fact in support of the decision. The final decision shall be served personally, or by depositing it in the United States mail, postage prepaid, addressed to the appellant at the appellant's last known place of address, or by email to an email address provided to the City by the appellant.

(f) The City Manager may, if supported by a finding of good cause, waive some or all of any penalty or interest imposed under Section 3-6-07.

### **3-6-11 Judicial Review.**

A final decision of the City Manager (or the City Manager's designee) under Section 3-6-10 is subject to judicial review under sections 1094.5 and 1094.6 of the Code of Civil Procedure by a writ petition filed in the appropriate court within ninety (90) days of the service of the written decision.

### **3-6-12 Payment of tax in the event of sale.**

(a) ~~Withholding purchase price~~ Purchase Price. In the event any hotel owner sells or otherwise transfers his ownership in a hotel, his successor or assigns shall withhold sufficient of the purchase price to cover any transient occupancy tax owed to the City and shall continue to withhold such moneys until the former owner produces a written notice from the



Finance Director that the amount owed has been paid or that there is no amount due.

(b) Liability. In the event the purchaser or transferee of a hotel fails to withhold from the purchase price an amount sufficient to ~~defray~~ pay any transient occupancy tax then owed to the City, ~~he~~ the purchaser or transferee of a hotel shall be personally liable for any transient occupancy tax owed to the City to the extent of the purchase price, ~~valued in money or fair market value of the hotel, whichever is greater.~~

(c) Notice of ~~sale~~: Sale and Audit. When ownership of any hotel is transferred, the Finance Director shall be notified in writing by the seller of the transfer of ownership, and the Finance Director shall thereupon cause the books and records of the hotel to be audited within thirty (30) days to determine the amount of transient occupancy tax owed to the City, as of the date of transfer of title.

### **3-6-~~413~~ Records.**

It shall be the duty of every operator and rental agent liable for the collection and ~~payment~~ remittance to the City of any tax imposed by the provisions of this chapter to keep and preserve, for a period of ~~three (3)~~ four (4) years, all records as may be necessary to determine the amount of such tax as ~~he~~ the operator or rental agent may have been liable for the collection of and ~~payment~~ remittance to the City, which records the Finance Director shall have the right to inspect at all reasonable times. The rental agent must provide the operator with copies of all records in its possession that are necessary for the operator to comply with its obligations under this chapter.

### **3-6-~~4214~~ Refunds.**

(a) Whenever the amount of any tax, interest, or penalty has been overpaid, or paid more than once, or erroneously or illegally collected or received by the City pursuant to the provisions of this chapter, such amount may be refunded as provided in subsections (b) and (c) of this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Finance Office within ~~three (3) years~~ one (1) year after the date of payment. The claim shall be on forms furnished by the Finance Office.

(b) Any operator or rental agent may claim a refund in the manner provided in subsection (a) of this section 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 Finance Director 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 has either been refunded to the transient or credited to rent, subsequently payable by the transient to the operator or rental agent.

(c) A transient may obtain a refund of taxes overpaid, paid more than once, or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection (a) of this section but only when the tax was paid by the transient directly to the Finance Office, or when the transient, having paid the tax to the operator or rental agent, establishes to the satisfaction of the Finance Director that the transient has been unable to obtain a refund from the operator or rental agent who collected the tax and remitted it to the City.

(d) A claimant has the right to request a hearing before the Finance Director under Section 3-6-08(c) on a decision by the Finance Director on a request for a refund and the right to appeal the Finance Director's decision under Section 3-6-10.

(e) No refund shall be paid pursuant to the provisions of this section unless the claimant establishes his to the satisfaction of the Finance Director the claimant's right thereto by written records showing entitlement thereto.

### **3-6-~~13~~15 Actions to collect.**

(a) Any tax required to be paid by any transient pursuant to the provisions of this chapter shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator or rental agent which has not been paid remitted to the City shall be deemed a debt owed by the operator or rental agent to the City. Any operator or rental agent who fails to collect tax from a transient as required by Section 3-6-04 shall be liable to the City for the amount of the uncollected tax including penalties and interest as damages for failing to perform its collection duties under this chapter. Any person owing money to the City pursuant to the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount including all applicable penalties and interest.

### **3-6-14 Violations of provisions.**

(b) An action to collect transient occupancy tax must be commenced within four (4) years of either (1) the date of service of a determination by the Finance Director under Section 3-6-08 that becomes final, (2) the date of service of a final decision by the City Manager (or the City Manager's designee) under Section 3-6-08(e) for which timely judicial review is not sought, or (3) a final judgment following judicial review.

### **3-6-16 Violations of provisions.**

(a) Any operator or rental agent or other person who fails or refuses to register as required, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Finance Director, or who renders a false or fraudulent return or claim, or who fails to meet the substantive requirements of any other provision of this chapter shall be guilty of a misdemeanor and punishable as set forth in Chapter 1-2 TMC.

(b) Any person required to make, render, sign, or verify any report or claim and who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by the provisions of this chapter to be made shall be guilty of a misdemeanor and punishable as provided in this section.

(c) Any enforcement action specifically authorized by the provisions of this chapter may be utilized in conjunction with, or in addition to, any other provision of this chapter, and any other statute, code, or regulation. In addition, nothing in the provisions of this chapter shall be interpreted to preclude or limit the City from seeking injunctive or other judicial relief.

### **3-6-17 Confidentiality.**

Information obtained by the City from hotels, hotel operators, or rental agents in the enforcement of the provisions of this chapter shall be deemed confidential and shall not be subject to public inspection to the extent allowed by State and Federal law.

### **3-6-18 - Revenue measure that does not permit business otherwise prohibited.**

The taxes prescribed by the provisions of this chapter are taxes for revenue purposes only and are not regulatory permit fees. The payment, collection, or remittance of any tax required by this chapter and its acceptance by the City does not entitle the person paying, collecting, or remitting the tax to carry on any business or other activity unless they have complied with all of the provisions of this chapter and all other applicable laws including, but not limited to, other applicable provisions of the Turlock Municipal Code.

### **3-6-19 Amendment.**

The City Council is authorized to amend this chapter in any manner, provided that no amendment may increase the rate of the tax above

fourteen percent (14%) of the rent charged to the transient or otherwise implement a tax increase for which voter approval is required by Article XIII C of the California Constitution. Amendments may include the adoption of exemptions, waivers, or reductions of the tax. Any decrease in the tax or any exemption or waiver adopted by the City Council may be later removed or retracted by the City Council and shall not constitute a tax increase and shall not require voter approval.

**SECTION 2. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The people of the City of Turlock hereby declare that they would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**SECTION 3. ENVIRONMENTAL COMPLIANCE.** The City Council hereby finds and determines that this resolution is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq. (“CEQA”) and 14 Cal. Code Reg. section 15000 et seq. (“CEQA Guidelines”). The calling and noticing of an election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines section 15378. The measure submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions.

As such, under CEQA Guidelines section 15378 (b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue generated by the tax were used for a purpose that would have such an effect, the City of Turlock would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

**SECTION 4. EFFECTIVE DATE.** Pursuant to the California Constitution, Article XIII C, section 2(b), and Elections Code section 9217, if a majority of the voters voting in the election on Measure “\_\_\_” vote in favor of the adoption of such measure, this ordinance shall be deemed valid and binding and shall be considered adopted upon the date that the vote is declared by the City Council and shall go into effect ten (10) days after that date.

This Ordinance was approved and adopted by the People of the City of Turlock at the City’s November 5, 2024 statewide general election.

This Ordinance was approved by Declaration of the vote by the City Council of the City of Turlock on June 25, 2024.

SIGNED:

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Amy Bublak, Mayor

ATTEST:

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Julie Christel, City Clerk