



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** June 6, 2019

**From:** Clay Holstine, City Manager

**Subject:** Resolution Calling for a Special Municipal Election to be Consolidated With the General Election on November 5, 2019 Increasing the Transient Occupancy Tax From 12% to 14%

### Community Goal/Result

Fiscally Prudent

### Purpose

Ensure the City has a diverse tax base in order to provide necessary services to the Community.

### Recommendation

Adopt Resolution 2019-28 calling for the election and establishing other election procedures in connection therewith for the purpose of increasing the transient occupancy tax from 12% to 14%.

### Background

At the general election in November 2009 Brisbane voters approved a uniform transient occupancy tax ("TOT") of 12% of the "rent" that "transients" pay for the privilege of occupying "hotels" in the City. For example, if a typical hotel room costs \$150/night, a person staying at the hotel would pay \$18 as the TOT. The tax is paid to the hotel that in turn remits the tax to the City. Moreover, the term "hotel" is broadly defined in the ordinance to include just not hotels or motels but also tourist homes, such as an AirBnb or Vacation Rental by Owner (VRBO) rental. Although the amount of the tax collected varies year by year due to the influx of visitors to the City, typically the City receives around \$2.7 million annually via the TOT.

### Discussion

This ballot measure would increase the TOT from 12% to 14%, resulting in an increase of about \$200,000 annually. This percentage is similar to what is charged by other cities in San Mateo County (as well as in San Francisco) so increasing the tax will not put the City hotels at an economic disadvantage.

Because this tax is for general municipal purposes, under Proposition 218, adopted by the voters in 1996, any increase in the tax is subject to approval by a majority of the voters voting

on the proposed increase at a regularly scheduled election at which members of the Brisbane City Council are elected. The next regularly scheduled election for Council members is November 5, 2019.

The attached resolution calls for a special election to be consolidated with the municipal election on November 5, 2019 to increase the TOT from 12% to 14%. If a majority of the voters voting on the ballot measure approve it, it will go into effect.

The attached resolution also outlines the procedures for drafting and submitting arguments, rebuttals and an impartial analysis and establishes time frames for so doing as follows:

Arguments in favor or against: August 15, 2019

Rebuttal arguments: August 25, 2019

Impartial Analysis: August 25, 2019

The attached resolution authorizes a Council committee to draft the "Argument for" the ballot measure. All five of the Council may sign the Argument or the committee members and three members of the community, as chosen by the committee could sign the Argument. The resolution also authorizes a separate Council committee to draft a "Rebuttal" argument in the event there is an argument against the measure. Again, all five Council members could sign the Rebuttal or the committee members, along with three members of the community could sign. The resolution also authorizes the City Attorney to draft an impartial analysis of the measure.

### **Fiscal Impact**

If this ballot measure is approved, it is anticipated that the City will receive \$ 3.1 million annually in TOT, an increase of \$ \$400,000.

### **Measure of Success**

If the voters approve the Ordinance, City revenues will increase \$400,000, to be used for general municipal purposes.

### **Attachments:**

1. Resolution 2019-28 calling for a Special Election on November 5, 2019 to allow the voters to decide whether to increase the Transient Occupancy Tax



Clay Holstine, City Manager



Stuart Schillinger, Administrative Services Director

## ATTACHMENT 1

## RESOLUTION 2019-28

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE, CALIFORNIA CALLING A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE GENERAL ELECTION ON NOVEMBER 5, 2019, FOR SUBMISSION TO THE VOTERS OF A PROPOSED ORDINANCE TO INCREASE THE UNIFORM TRANSIENT OCCUPANCY TAX**

WHEREAS, the City has established a uniform transient occupancy tax, as set forth in Chapter 3.24 of the Brisbane Municipal Code, and Section 3.24.030 of the Brisbane Municipal Code imposes on transients such tax in the amount of 12% of the rent charged by the hotel operator ; and

WHEREAS, the City Council desires to place a ballot measure before the voters at the November 5, 2019 election to increase the tax to 14% in order to provide additional revenue for general municipal expenses; and

WHEREAS, the City's uniform transient occupancy tax is a general tax and any increase thereof is subject to approve of a majority of the voters voting upon the proposed increase at a regularly-scheduled election at which members of the Brisbane City Council will be elected; and

WHEREAS, November 5, 2019 is the next regularly scheduled election at which members of the Brisbane City Council will be elected and it is desirable to consolidate this special election with that general election.

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

## SECTION 1. ELECTION CALLED

The City Council of the City of Brisbane hereby calls a special municipal election, to be consolidated with the general election on Tuesday, November 5, 2019, at which there shall be submitted for approval by the voters of the City of Brisbane a proposed ordinance amending Chapter 3.24 of the Brisbane Municipal Code by amending Section 3.24.030 to increase the uniform transient occupancy tax.

## SECTION 2. FULL TEXT OF PROPOSED ORDINANCE

The complete text of the proposed ordinance shall read as follows:

**“AN ORDINANCE OF THE CITY OF BRISBANE TO AMEND SECTION 3.24.030 OF THE BRISBANE MUNICIPAL CODE TO INCREASE THE TRANSIENT OCCUPANCY TAX”**

The People of the City of Brisbane hereby ordain as follows:

Section 1. Section 3.24.030 of the Brisbane Municipal Code is amended to read as follows:

“Section 3.24.030 Tax imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of fourteen percent (14%) of the rent charged by the operator. The tax is also applicable to the rent of hotel rooms by businesses on a long term basis for temporary use by their clients or employees. Such tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city. The transient shall pay the tax 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 to occupy space or rent space for potential occupancy in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator.”

#### A. TEXT OF BALLOT MEASURE

The proposed ordinance to increase the uniform transient occupancy tax shall be presented for approval by the voters as the following ballot measure:

To pay for general municipal expenses, shall the City increase the uniform transient occupancy tax, payable by transients for the privilege of occupying a hotel room, to fourteen percent (14%) of the rent?

The ballot measure shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure, as provided in California Election Code Section 13116.

### SECTION 3. REQUEST TO CONSOLIDATE, CONDUCT ELECTION AND CANVASS RETURNS

The Board of Supervisors of the County of San Mateo is hereby requested to authorize the County Clerk;/Registrar of Voters to render all services necessary and proper for the conduct of the special municipal election called by the Resolution. Pursuant to California Elections Code Section 10403, the City Council hereby requests that the San Mateo County Board of Supervisors consolidate that election with the election to be held on November 5, 2019, and order the special municipal election to be conducted by the Registrar of Voters. The San Mateo County Elections Department is authorized to canvass the returns of the special election.

The City Clerk’s Office is authorized, instructed and directed to work with the County Elections Division as needed in order to properly and lawfully conduct the election. The ballots to be used in the election shall be in the form and content as required by law. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

## SECTION 5: PUBLICATION OF MEASURE

The City Clerk's Office is directed to cause notice of the measure to be published once in accordance with Section 12111 of the State Elections Code.

## SECTION 6: REQUIRED VOTER APPROVAL AND EFFECTIVE DATE

If a majority of the voters voting upon the ballot measure vote in its favor, the proposed ordinance shall become a valid and binding ordinance of the City of Brisbane. The ordinance shall be considered as adopted on the date that the vote is declared by the City Council and shall go into effect on that date or such other date as may be specified by the City Council.

## SECTION 7: PROCEDURE FOR ARGUMENTS AND REBUTTALS

As provided in Elections Code, section 9285, the City Council authorizes, on behalf of the City Council, a committee of the City Council to file a written Argument For the measure, and a committee of the City Council to file a Rebuttal argument (should an Argument Against the measure be filed) and other Council members may sign such Argument/Rebuttal. Any individual voter who is eligible to vote on the measure or bona fide association of citizens or combination of voters and associations may also submit a written argument for or against the measure. Such argument, whether For or Against, shall not exceed 300 words and be accompanied by the printed name(s) and signature(s) of the person(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, in accordance with Article 4, Chapter 3, Division 9 of the Election Code of the State of California. Primary arguments For or Against the measure must be submitted to the City Clerk by August 15, 2019. The Rebuttal arguments must be submitted to the City Clerk by August 25, 2019 and shall not exceed 250 words.

## SECTION 8: IMPARTIAL ANALYSIS

Pursuant to Elections Code Section 9280, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney, and directs the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The analysis shall be printed preceding the arguments For and Against the measure. The analysis shall not exceed 500 words in length. The impartial analysis shall be filed by the date set by this resolution for the filing of primary arguments.

## SECTION 9: FULL TEXT OF ORDINANCE

The full text of the Ordinance shall be printed in the Voter Information Pamphlet.

## SECTION 10: CONDUCT OF ELECTION

The election on said ballot measure shall be consolidated with the general municipal election to be held on November 5, 2019.

## SECTION 11. CEQA

The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code Sections 21000 et seq., "CEQA," and 14 Cal Code

Reg. Sections 15000 et seq., "CEQA Guidelines"). The tax to submitted to the voters is a general tax that can be used for any legitimate 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 impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project. Therefore, Guidelines Section 15060 review under CEQA is not required.

SECTION 12:           PASSAGE OF THIS RESOLUTION

This business license tax is a general tax requiring the approval of a majority of qualified electors casting votes. This Resolution must be approved by a two-thirds vote of the Council.

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Madison Davis, Mayor

I hereby certify that the foregoing Resolution No. 2019-28 was duly and regularly adopted at the meeting of the Brisbane City Council on June 6, 2019 by the following vote:

AYES: Councilmembers

NOES:

ABSENT:

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Ingrid Padilla, City Clerk