



CITY OF DEL REY OAKS

Staff Report

DATE: June 25, 2024

TO: Honorable Mayor and City Council

FROM: John Guertin, City Manager

SUBJECT: Resolution Placing a Measure on the November 5, 2024, General Election Ballot to Increase the City's Transient Occupancy Tax Rate

CEQA: This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378 as it is an administrative activity of the City that will not result in direct or indirect physical changes in the environment.

Background

In 2018 when the City implemented the Short-term Rental Ordinance, Del Rey Oaks voters approved a 10% Transient Occupancy Tax (TOT). The tax is a general tax and revenues are retained and used as a General Fund revenue. The TOT currently generates about \$150,000 per year.

In November 2023, the Finance Committee discussed whether to pursue and options for an increase in the City's TOT. On February 27, 2024, the City Council received a report and provided direction. As part of the discussions, the Committee and Council received a comparison of the City's TOT rate versus other adopted rates for Monterey Bay region cities showing that Del Rey Oaks was among the lowest in the region.

TRANSIENT OCCUPANCY TAX BY CITY

Carmel-by-the-Sea	10%
Del Rey Oaks	10%
Monterey	12%
Pacific Grove	12%
Seaside	12%
Sand City	12%
Capitola	12%
Santa Cruz	12%
Watsonville	12%
Marina	14%

The Council directed staff to bring forward for consideration a proposal for placement of a measure on the November 5, 2024 General Election ballot that would increase the City's TOT.

Discussion

This report details the necessary steps required to place a TOT measure on the November 5, 2024 General Election ballot.

The proposed TOT rate increase is a general tax measure that requires approval by a simple majority (50% + 1 vote). If approved by voters, the additional revenue generated would be allocated to the

City's General Fund for general government purposes to maintain and protect essential City services such as public safety response, parks services, maintaining public infrastructure such as streets, sidewalks, parks and facilities.

Per the Revenue and Taxation Code, cities and counties may impose a "transient occupancy tax" ("TOT") on persons staying 30 days or less in hotels, motels and similar lodgings (i.e., short-term rentals). The tax is applied to a customer's rent paid for a room and not on the business that is doing the lodging. Taxes are remitted for all approved lodging operators in the City.

At the June 25, 2024 Council meeting, it is recommended that the City Council consider placing a TOT measure on the November 5, 2024 General Election ballot that would allow increases up to a maximum of 4% (from 10% to 14%) in the TOT rate. The "up to 4%" strategy is designed to allow the Council flexibility to set the rate by City ordinance and adjust it through an ordinance amendment process. This allows the City to act strategically going forward and adjust for market activity.

Should voters approve the measure, it is recommended that the initial TOT increase be set at 2% (from 10% to 12%) and that further increases be established based on economic evaluations that demonstrate any increase would have a favorable revenue outcome while not negatively impacting the industry.

Next Steps

To propose an increase of the TOT, the Council would need to adopt the resolution recommending an ordinance be put to the voters at the November 5, 2024 General Election. The Council must adopt the resolution by a 2/3rd vote per Government Code section 53724(b).

The resolution:

- calls a general election for putting forward the ballot measure;
- directs the city attorney to prepare an impartial analysis;
- establishes deadlines to receive arguments for and against along with rebuttal arguments; and otherwise direct staff to prepare any other appropriate documents.

Ballot Language

The State Elections Code Section 9051 requires that a ballot question not exceed 75 words. The proposed compliant ballot question is as follows:

"Shall the measure to protect city services including police and fire , parks, bicycle and pedestrian safety, roadways and storm drains, by increasing the Transient Occupancy Tax up to 4%, raising up to \$60,000 in additional yearly revenue the State cannot take away, and taxing rent charged to "hotel" guests, including by online travel and short-term rental companies, for transient occupancy, with annual independent audits, until ended by voters, be adopted?"

The revenue projection in the proposed ballot language is based on FY 2023-24 revenue projections. Obviously, based on the rate set by the Council, and market activity, the actual amount of revenue will differ.

Calling of an Election

As required by the State Elections Code, the City Council must adopt a resolution calling an election, requesting consolidation with the Presidential General Election and requesting the Registrar of Voters to provide election services. The attached resolution meets those requirements.

Impartial Analysis by the City Attorney

The State Elections Code Section 9280 authorizes the Council to direct the City Attorney to prepare an impartial analysis of the measure. This authorization is included in the attached resolution.

Ballot Arguments

State Elections Code Section 9282(b) provides for the filing of ballot measure arguments by the following: City Council or any member(s) of the Council authorized by the Council, any individual voter eligible to vote on the measure, bona fide association of citizens or any combination of voters and associations.

The City Council determines whether the Council or members of the Council authorized by the Council will draft the argument supporting the ballot measure or whether it will, instead, allow a third party to do so. The California Elections Code authorizes, but does not require, the City Council to write the argument in support of the ballot measure. If the City Council chooses to write the ballot argument, it should designate a maximum of three Council members to draft the argument. These designees would prepare and sign the argument and submit it to the City Clerk. Alternatively, the Council may designate the Mayor to sign on behalf of the entire Council. A total of five individuals and/or organizations may sign the ballot argument and the Council may designate which individuals or organization fill any available signature slots. If the City Council decides not to draft the argument itself, any registered voter or bona fide association of citizens may submit a proposed argument to the City Clerk. If the City Clerk receives multiple proposed arguments, the City Clerk shall select one of the arguments in adherence to Elections Code Section 9287.

The City's ballot measure resolution is due to the Registrar of Voters by August 9th; with arguments due by August 15th; and rebuttal arguments and impartial analysis due on August 22nd. In order to meet these deadlines, the resolution is being brought forward for Council action on the June 25, 2024 agenda to allow for the required 10-day public review period for arguments and the 10-day public review period for rebuttals that must be completed before submission of the required documents to the Registrar of Voters. As such, in accordance with Elections Code Section 9285(a) the City Clerk as the local Elections Official has set the following deadlines: adoption of the ballot resolution on **June 25, 2024**; arguments due by 5:00 p.m. to the City Clerk's office on **August 1, 2024**; rebuttals due by 5:00 p.m. to the City Clerk's office on **August 15, 2024**. The City Attorney shall draft an impartial analysis on the measure, which is also due on Friday, **August 15, 2024**.

Draft Amendment to the Del Rey Oaks Municipal Code Section 3.20.030

The proposed increase to the TOT requires an amendment to the City of Del Rey Oaks Municipal Code and voter approval. The rate change would not take effect unless and until approved by a vote of at least 50% plus one of the voters voting on the questions at the election.

The proposed amendment is as follows (with old language shown with ~~strike through~~, and new language shown in underline):

Sec. 3.20.030. - Tax imposed.

- A. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax as imposed from time to time by City Council resolution in the amount of ten percent of the rent charged by the operator. Said tax shall be a percentage of the rent charged by an operator to an occupant.

- B. On and as of January 1, 2025, and continuing thereafter until further change by City Council resolution, the amount of the tax imposed is twelve percent of the rent charged by an operator. As approved by voters, any future changes in the amount of tax imposed may be made by City Council resolution up to a cap of fourteen percent of the rent charged by an operator.
- C. Said tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to ~~the~~ an operator or to the city. The transient shall pay the tax to ~~the~~ an operator of the hotel ~~at the time when~~ 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~~ an operator of the hotel, the tax collector may require that such tax shall be paid directly to the tax collector.

Fiscal Impacts

As noted previously, the current TOT rate of 10% generates slightly more than \$150,000 per year. It bears noting that the revenue figures cited are based on normally stable economic times and is a new level of TOT revenue for the city. Additionally, the City recently adopted an amendment to the Short-term Rental Ordinance that implemented a cap of 25 unhosted units in the city. The cap will keep the number of STR units in the city at current levels, meaning that TOT revenues will only increase relative to increases in rental rates.

Based on current projections, it is estimated that a 2 – 4% increase in the TOT rate would generate between \$30,000 and \$60,000 annually in additional revenue.

The estimated cost of the November 2024 election including this potential ballot measure and the 3 vacant seats on the City Council is approximately \$15,000. The costs are included in the FY 2024-25 Budget.

ATTACHMENTS:

- Resolution 2024-09

Respectfully Submitted,

John Guertin
City Manager

RESOLUTION 2024-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL REY OAKS SUBMITTING A MEASURE TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 5, 2024, TO ADOPT AN ORDINANCE TO AMEND TITLE 3 OF THE DEL REY OAKS MUNICIPAL CODE TO INCREASE THE CITY’S TRANSIENT OCCUPANCY TAX

R E C I T A L S

A. Pursuant to Section 3.20.030 of Title 3 of the Del Rey Oaks Municipal Code, the City currently levies a Transient Occupancy Tax.

B. The City Council intends to submit a ballot measure and ballot question, concerning an increase to the transient occupancy tax rate (commonly called the “TOT” or “hotel tax”), as described in this Resolution, to the qualified electors of the City of Del Rey Oaks at such election.

C. A proposed ordinance attached hereto and incorporated herein by reference as Attachment “A” (the “Ordinance”) would implement the proposed revision to the tax.

D. By its Resolution 2024-08, adopted on June 25, 2024, the City Council called a general municipal election for November 5, 2024 (“Election”).

E. Pursuant to Government Code Section 53724 and Election Code Section 9222, the City Council desires to submit the Ordinance to the voters of the City.

F. The City Council finds that under CEQA Guidelines sections 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this action does not constitute a project under CEQA and therefore review under CEQA is not required.

The City Council of the City of Del Rey Oaks RESOLVES as follows:

SECTION 1. Findings. The City Council finds and determines that each of the findings set forth above are true and correct.

SECTION 2. General Tax Election. The City Council proposes to impose the general tax set forth in the Ordinance and to present this proposal to the voters on November 5, 2024.

SECTION 3. Measure. Pursuant to Elections Code Section 9222, the City Council hereby submits the Ordinance to the voters at the Election and orders the following question to be submitted to the voters at the Election:

Shall the measure to protect city services including police and fire , parks, bicycle and pedestrian safety, roadways and storm drains, by increasing the Transient Occupancy Tax up to 4%, raising up to \$60,000 in additional yearly revenue the State cannot take away, and taxing rent charged to “hotel” guests, including by online travel and short-term rental companies, for transient occupancy, with annual independent audits, until ended by voters, be adopted?	YES
	NO

This question requires the approval of a majority of those casting votes.

SECTION 4. Adoption of Measure. The measure to be submitted to the voters is attached to this Resolution as Exhibit A and incorporated herein by this reference.

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

SECTION 6. Impartial Analysis. Pursuant to California Elections Code 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 August 15, 2024.

SECTION 7. Ballot Arguments. Pursuant to Elections Code Section 9286 et. seq., August 1, 2024 at 5:00 p.m. shall be the deadline for submission of arguments in favor of, and arguments against, any local measures on the ballot. If more than one argument for and/or against is received, the priorities established by Elections Code Section 9287 shall control.

SECTION 8. Rebuttal Arguments. The provisions of Elections Code Section 9285 shall control the submission of any rebuttal arguments. The deadline for filing rebuttal arguments shall be August 15, 2024 at 5:00 p.m. This authorization of rebuttal arguments applies only to the election to be held November 5, 2024, and it shall lapse when that election’s results are certified.

SECTION 9. Consolidation Request. The Council of the City of Del Rey Oaks requests the governing body of any other political subdivision, or any officers otherwise authorized by law, to partially or completely consolidate such elections and the City Council consents to such consolidation. The Council requests the Board of Supervisors of the County of Monterey to include on the ballots and sample ballots, all qualified measures submitted by the City Council to be ratified by the qualified electors of the City of Del Rey Oaks. The Council acknowledges that the election will be held and conducted according to procedures in the Elections Code, including Section 10418.

SECTION 10. Request for County Services. Pursuant to Section 10002 of the California Elections Code, the Council of the City of Del Rey Oaks hereby requests the Board of Supervisors of the County of Monterey to permit the Registrar of Voters to render services to the City of Del Rey Oaks relating to the conduct of Del Rey Oaks’ General Municipal Election which is called to be held

on Tuesday, November 5, 2024. The services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections including, but not limited to, checking registrations, mailing ballots, hiring election officers and arranging for polling places, receiving absentee voter ballot applications, mailing and receiving absent voter ballots and opening and counting same, providing and distributing election supplies, and furnishing voting machines.

SECTION 11. Transmittal of Resolution. The City Clerk is hereby directed to submit forthwith a certified copy of this resolution to the County of Monterey Board of Supervisors and to the Registrar of Voters.

PASSED AND ADOPTED this 25th day of June, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:

Scott Donaldson, Mayor

ATTEST:

Karen Minami, City Clerk

ORDINANCE 319

AN ORDINANCE OF THE CITY OF DEL REY OAKS AMENDING SECTION 3.20.030
OF CHAPTER 3.20 OF TITLE 3 OF THE DEL REY OAKS MUNICIPAL CODE
TO INCREASE THE CITY'S TRANSIENT OCCUPANCY TAX RATE

The People of the City of Del Rey Oaks do ordain as follows:

SECTION 1. Subject to the approval of a majority of the voters of the City of Del Rey Oaks at the General Municipal Election so designated by the City Council in a separate resolution placing the proposal on the ballot for such election, Section 3.20.030 of Chapter 3.20 of Title 3 of the Del Rey Oaks Municipal Code is hereby amended as follows:

Chapter 3.20
UNIFORM TRANSIENT OCCUPANCY TAX

3.20.30 Tax Imposed.

- A. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax as imposed from time to time by City Council resolution in the amount of ten percent of the rent charged by the operator. Said tax shall be a percentage of the rent charged by an operator to an occupant.
- B. On and as of January 1, 2025, and continuing thereafter until further change by City Council resolution, the amount of the tax imposed is twelve percent of the rent charged by an operator. As approved by voters, any future changes in the amount of tax imposed may be made by City Council resolution up to a cap of fourteen percent of the rent charged by an operator.
- C. Said tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the an operator or to the city. The transient shall pay the tax to the an operator of the hotel at the time when 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 an operator of the hotel, the tax collector may require that such tax shall be paid directly to the tax collector.
- D. The proceeds of the tax and expenditures of those proceeds shall be subject to an annual independent audit as other city financial records are audited.

SECTION 2. General Tax. Proceeds of the tax imposed by this Ordinance shall be deposited in the general fund of the City and shall be available for any legal purpose.

SECTION 3. Amendment or Repeal. The City Council may repeal Chapter 3.20 of the Del Rey Oaks Municipal Code or amend that Chapter without a vote of the people except that any amendment to Chapter 3.20 that increases the amount or rate of tax due from any Person beyond the amounts and rates authorized by this Ordinance may not take effect unless approved by a vote of the people.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 5. Effective Date. This ordinance shall be effective only if approved by a majority of the voters and shall go into effect immediately after the vote is declared by the City Council.

SECTION 6. Execution. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Del Rey Oaks voting on the 5th day of November, 2024.

ATTEST:

Karen Minami, City Clerk

Scott Donaldson, Mayor

APPROVED AS TO FORM:

APPROVED:

Alex Lorca, City Attorney

John Guertin, City Manager