

RESOLUTION NO. 14-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TUSTIN, 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 SECTIONS 2702 AND 2703 OF CHAPTER 7 OF ARTICLE 2 OF THE TUSTIN CITY CODE PERTAINING TO THE UNIFORM TRANSIENT OCCUPANCY TAX TO BE CONSOLIDATED AND HELD IN CONJUNCTION WITH THE GENERAL MUNICIPAL ELECTION ON TUESDAY, NOVEMBER 4, 2014, 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 7, Article 2 of the Tustin City Code, the City of Tustin currently imposes and collects a Uniform Transient Occupancy Tax of six percent (6%), which is paid by occupants of hotels and other transient lodgings within the City of Tustin to hotel operators for the privilege of occupancy; and

WHEREAS, the Uniform Transient Occupancy 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; and

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; and

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; and

WHEREAS, a consolidated General Municipal Election on Tuesday, November 4, 2014 has been called; and

WHEREAS, the City Council of the City of Tustin also desires to submit to the voters at the General Municipal Election a City Council-initiated ballot measure related to increasing the existing Uniform Transient Occupancy 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 TUSTIN, 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 Tustin, California, on Tuesday, November 4, 2014, 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 Sections 2702 and 2703 of Chapter 7, Article 2 of the Tustin Municipal Code to increase the amount of the City's Uniform Transient Occupancy Tax from 6% to 10% and clarify the scope and manner of the application of the Uniform Transient Occupancy 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:

<p>“Shall an ordinance amending the Tustin Municipal Code to increase the Uniform Transient Occupancy Tax from 6% to 10% and to clarify the scope and manner in which the Uniform Transient Occupancy 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?”</p>	<p>YES</p> <hr/>	<hr/>
	<p>NO</p>	<hr/>

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 4, 2014.

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. The election will be held and conducted in accordance with the provisions of law regulating the statewide election.

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 Tustin recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

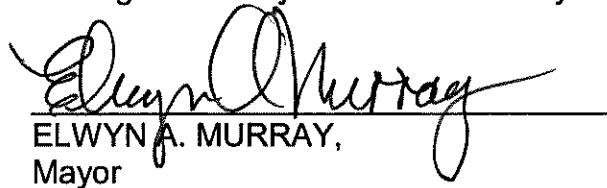
SECTION 15. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the Orange County Registrar of Voters, together with the attached ballot measure.

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. This Resolution replaces and supersedes Resolution 14-51 adopted by the City Council on July 15, 2014.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Tustin held on the 5th day of August, 2014.


ELWYN A. MURRAY,
Mayor

ATTEST:


JEFFREY C. PARKER,
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF TUSTIN)

I, Jeffrey C. Parker, City Clerk and ex-officio Clerk of the City Council of the City of Tustin, California, do hereby certify that the whole number of the members of the City Council of the City of Tustin is five; that the above and foregoing Resolution No. 14-52 was duly passed and adopted at a regular meeting of the Tustin City Council, held on the 5th day of August, 2014, by the following vote:

COUNCILMEMBER AYES:	<u>Murray, Puckett, Nielsen, Gomez,</u>	
	<u>Bernstein</u>	(5)
COUNCILMEMBER NOES:	<u>None</u>	(0)
COUNCILMEMBER ABSTAINED:	<u>None</u>	(0)
COUNCILMEMBER ABSENT:	<u>None</u>	(0)



JEFFREY C. PARKER,
City Clerk

EXHIBIT A

ORDINANCE NO.

AN ORDINANCE OF THE PEOPLE OF THE CITY OF TUSTIN,
AMENDING SECTIONS 2702 AND 2703 OF CHAPTER 7 OF
ARTICLE 2 OF THE TUSTIN CITY CODE CONCERNING THE
UNIFORM TRANSIENT OCCUPANCY TAX

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

SECTION 1. The People of the City of Tustin find and determine as follows:

- A. That the Uniform Transient Occupancy Tax was adopted by the City Council in 1978 and has remained unchanged at 6% since that time.
- B. That Tustin's Uniform Transient Occupancy Tax is the lowest of any city in Orange County that has such a tax and that twenty Orange County cities have a tax of at least 10% and as much as 15%.
- C. That changes in circumstances since 1978 require clarifying language in the Uniform Transient Occupancy Tax ordinance.

SECTION 2. Code Amendment. Section 2702 of Chapter 7 of Article 2 is hereby amended to add or amend the following definitions to read in their entirety as follows:

2702 DEFINITIONS

Except where the context otherwise requires, the definitions given in this section shall govern the construction of this chapter.

"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 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.

"Person" – the term 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.

"Hotel" – the term hotel shall mean any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients

for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, hostel, bed and breakfast, time-share project rental unit, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

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

"Transient" – the term 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 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 an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any break of 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 this chapter 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.

"Rent" – the term 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 and property and services of any kind or nature, without any deduction therefrom whatsoever.

"Operator" – the term operator shall mean 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.

"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 3. Code Amendment. Section 2703 of Chapter 7 of Article 2 is hereby amended to read in its entirety as follows:

2703 TAX IMPOSED

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten percent (10%) of the rent charged by the operator. The tax constitutes a debt owned 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 in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the City Treasurer may require that such tax shall be paid directly to the City Treasurer.

The foregoing ordinance was PASSED, APPROVED and ADOPTED, by the People of the City of Tustin voting on the 4th day of November, 2014, which vote was certified by the City Council on the ____ day of _____, 2014.

ELWYN A. MURRAY,
Mayor

JEFFREY C. PARKER,
City Clerk

APPROVED AS TO FORM:

DAVID E. KENDIG,
City Attorney