



J City of Anaheim, Anaheim Hotel Tax

Shall the City’s existing Transient Occupancy Tax, which is a tax on persons occupying hotel/motel rooms, be updated to require online and other travel companies to collect and remit taxes on the full rate charged to guests for accommodations, generating up to \$3 million annually to be used for general City services, such as police, fire and emergency response, street maintenance, youth/senior services and parks, until ended by the voters?

What your vote means

YES	NO
<p>A “yes” vote on Measure J would update the Anaheim Municipal Code to require online travel companies and other room sellers and resellers to collect and remit to the TOT to the City on the full rate charged to hotel guests for accommodations, and would explicitly place in the TOT Code items such as parking, resort fees and WIFI/ internet charges that accompany a hotel room and are therefore subject to TOT.</p>	<p>A “no” vote on the Measure would maintain the current definition of operator such that online travel companies and other room sellers/resellers would not be obligated to remit TOT to the City, and would not explicitly delineate the additional items of rent in the TOT Code.</p>

For and against

FOR	AGAINST
<p>Stephen Faessel Anaheim Council Member</p> <p>Jose Duran President, Anaheim Police Association</p> <p>Rob Lester President, Anaheim Firefighters Association</p>	<p>No argument against this measure was submitted.</p>



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Full Text of Measure J City of Anaheim

AN ORDINANCE OF THE CITY OF ANAHEIM AMENDING SECTION 2.12.005 (DEFINITIONS) OF CHAPTER 2.12 (TRANSIENT OCCUPANCY TAX) OF THE ANAHEIM MUNICIPAL CODE TO INCLUDE ONLINE AND OTHER TRAVEL COMPANIES AS OPERATORS REQUIRED TO COLLECT AND REMIT TRANSIENT OCCUPANCY TAX ON THE FULL AMOUNT PAID BY HOTEL GUESTS FOR ACCOMMODATIONS AND TO MAKE OTHER RELATED AND/OR CLARIFYING CHANGES (MEASURE J)

BE IT ORDAINED by the People of the City of Anaheim at the November 8, 2022 consolidated general election that section 2.12.005 (Definitions) of Chapter 2.12 (Transient Occupancy Tax) of the Anaheim Municipal Code is hereby amended as follows (underlining showing additions and strike-through showing deletions):

Section 1: TEXT OF AMENDMENT TO ANAHEIM MUNICIPAL CODE.

2.12.005 DEFINITIONS.

For purposes of this chapter, the following words, terms, phrases, and the derivations and variants thereof, shall have the meanings given herein:

.010 "Accommodation(s)" means any room or other space in a hotel used for lodging or sleeping purposes, as well as other items or services provided to a transient as part of or accompanying the room or space upon which rent is charged pursuant to this chapter.

.020 "Accommodations Intermediary" means any person, corporation, entity, trust or partnership (other than an accommodations supplier) that directly or indirectly (i) facilitates the rental of accommodation(s) in a hotel, and (ii) charges, collects or receives rent in connection with such rental, which may include, without limitation, a facilitation fee. "Accommodations intermediary" includes, without limitation, a travel or booking agent, a room seller or reseller, an on-line room seller or reseller, and an on-line travel agent or company of any type or nature whatsoever, but does not include employees of an accommodations intermediary or accommodations supplier.

.030 "Accommodations Supplier" means any person, corporation, entity, trust or partnership which operates or provides accommodations in a hotel, whether in the capacity of owner, proprietor, lessee, sublessee, managing agent, mortgagee in possession, debtor in possession, licensee or any other capacity, other than as an employee of an accommodations intermediary or accommodations supplier. "Accommodations supplier" does not mean an accommodations intermediary.

~~.0410~~ "Anaheim" or "City" means the City of Anaheim.

.050 "City Auditor" means the Audit Manager of the City. ~~-.021 "Direct Payment" means the payment of rent from a transient directly to an operator who collects the rent directly from the transient, and shall include where the transient's rent payment directly to the operator is made or processed using cash, check, credit card, debit card, or any other direct in-person or electronic payment and collection method, but shall exclude the Indirect Payment of rent from a transient to a third party who then remits the rent, in whole or in part, to the operator.~~

.060 "Discount Room Charge" means the total consideration charged by an accommodations supplier to an accommodations intermediary, or an affiliate thereof, for furnishing accommodation(s) in a hotel.

.070 "Facilitation Fee" means the total consideration charged by an accommodations intermediary to a transient for accommodation(s), minus the discount room charge, if any, provided that the facilitation fee shall not be less than \$0.

~~.08025-~~ "Fiscal Year" means the period commencing July 1 of one calendar year through June 30 of the immediately subsequent calendar year.

~~.0930~~ "Homeless person" means any person who lived or resided in Anaheim immediately prior to being provided shelter in a hotel by a Qualifying Nonprofit Service Organization.

~~.100040~~ "Hotel" means any structure or portion thereof, which is occupied by persons for lodging or sleeping purposes for periods of less than thirty consecutive days including, without limitation, any hotel, bachelor hotel, motel, lodging house, rooming house, bed and breakfast inn, short-term rental, apartment house, dormitory, vacation ownership resort, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof, and any space, lot, area or site in any trailer court, camp, park, or lot which is occupied or intended or designed for occupancy by a tent, trailer, recreational vehicle, mobilehome, motorhome, or other similar conveyance, where such structure, space, lot, area or site is occupied by persons for lodging or sleeping purposes for periods of less than thirty consecutive days. ~~.045 "Indirect Payment" means the payment of rent from a transient directly to a third party who collects the rent directly from the transient and who then remits the rent, in whole or in part, to the operator, and shall include where the transient's rent payment directly to the third party is made or processed using cash, check, credit card, debit card, or any other direct in-person or electronic payment and collection method, but shall exclude the Direct Payment of rent from the transient to the operator.~~

~~.05110~~ "Operator" means an accommodations supplier or accommodations intermediary. ~~any person, corporation, entity, or partnership which is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, debtor in possession, licensee or any other capacity. Where the operator performs its functions through a managing agent of any type or character other than as an employee, the managing agent shall also be deemed an operator and shall have the same duties and liabilities as its principal. Compliance with the provisions of this chapter by either the principal or managing agent shall constitute compliance by both. For purposes of the notice and appeal provisions of this chapter only, "operator" shall also include any managing employee or employee of an accommodations supplier or accommodations intermediary in charge of the hotel.~~

~~.120060~~ "Qualifying Nonprofit Service Organization" means any nonprofit service organization which ~~(1a)~~ is a member of the Anaheim Human Services Network, ~~(2b)~~ directly pays the cost of sheltering homeless persons in a hotel and ~~(3e)~~ does not directly or indirectly further any religious purpose by providing such shelter.

~~.130070~~ "Qualifying Rental Agreement" means and is limited to a written contract signed by both the landlord and tenant, legally enforceable by either party, for a rental period of not less than thirty consecutive days. "Qualifying Rental Agreement" shall expressly exclude: (1) any agreement regardless of length of the rental term which is terminated for any reason by either party or by mutual consent prior to the thirtieth consecutive day of the tenancy, or (2) any agreement regardless of the length of the rental term which is for occupancy of lodging or sleeping space which is not the legal residence or principal dwelling place of the occupant, or (3) any agreement which would be unlawful or constitute a violation of law.

~~.140080~~ "Rent" means the total consideration charged by an operator for accommodation(s) in a hotel; without any deduction therefrom whatsoever, including without limitation the discount room charge and/or facilitation fee, if any, as well as any (1) transaction fees, service fees, booking fees, processing fees, retail markups, commissions, cancellation fees, California Tourism Marketing Assessments, unfunded advance reservation or other rental deposits, ~~or~~ (2) separate charges levied for items or services which are part of or accompany such accommodations including, but not limited to charges for overnight parking, furniture, fixtures, appliances, linens, towels, non-coin-operated safes, spa or fitness center usage or access, resort usage or access (commonly referred to as resort or destination fees), internet access, housekeeping or room cleaning, pet occupancy



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or pet-related cleaning, additional guests/transients, and/or partial days or early or late arrival or departure, (3) consideration or value received by an operator from an award or reward program, including the redemption of award/reward points, incentives or bonuses, or (4) charges reasonably attributable to any of the foregoing taxable items that are part of a special package (as defined in 2.12.020) that includes accommodation(s) and maid service. "Rent" shall not include any charge, billing, or account or portion thereof which the operator finds to be worthless or uncollectible and charged off for tax purposes. If any such worthless or uncollectible rent is thereafter collected, the amount shall be considered rent in the month collected and the tax collected shall be included in the next monthly payment to Anaheim by the operator. "Rent" shall also not include any amount upon which a sales or use tax is imposed pursuant to Chapter 2.04 of this Code if the imposition of a tax pursuant to this Chapter 2.12 would be deemed to constitute an additional sales and use tax conforming to all of the conditions set forth in subdivision (b) of Section 7203.5 of the Revenue and Taxation Code of the State of California.

.150 "Short-term Rental" means a residential dwelling or a portion thereof that is rented by an operator to another person or group of persons for occupancy, dwelling, lodging or sleeping purposes for a period of less than thirty (30) consecutive calendar days. For purposes of this definition, residential dwelling means a building, or portion thereof, designed exclusively for residential purposes, including single-family and multiple-family dwellings.

~~.016090~~ "Tax" (where such term is not capitalized) means the amounts imposed pursuant to Section 2.12.010 of this chapter; "Tax" (where such term is capitalized) means (1) the tax and (2) any applicable interest and penalties imposed by this chapter and (3) any amount collected by an operator under a representation that it is a tax which is not refunded in accordance with this chapter.

~~.1700~~ "Transient" means any person who exercises occupancy, or is entitled to occupancy, of any room, space, lot, area or site in any hotel by reason of concession, permit, right of access, license or other agreement whether written or oral. Any such person shall be deemed to be a transient until the thirtieth consecutive day (counting partial days as full days) of such occupancy or right of occupancy, and the tax imposed by this Chapter shall be due upon all rent collected or accruing prior to said thirtieth consecutive day unless the occupancy is pursuant to a Qualifying Rental Agreement.

Section 2: AUTHORITY OF CITY COUNCIL TO AMEND CODE

The City Council of the City of Anaheim is hereby authorized to amend Chapter 2.12 of the Anaheim Municipal Code in any manner that does not increase the rate of any tax or otherwise constitutes a tax increase for which voter approval is required by Article XIII C of the California Constitution, including adopting exemptions, waivers, or reductions of the tax.

Section 3: BALLOT DESCRIPTION.

As provided in Government Code section 34458.5, the following ballot description is included in this proposed ordinance amending section 2.12.005 of the Anaheim Municipal Code:

This ordinance would amend section 2.12.005 of the Anaheim Municipal Code to: i) expressly include online travel companies and other travel companies/room sellers and resellers in the definition of an "operator" obligated to collect and directly remit transient occupancy tax to the City of Anaheim, ii) make clear that the full amount paid by a hotel guest for accommodations in a hotel is taxable, iii) specifically list in the Code certain charges delineated in the City's Transient Occupancy Tax Guidelines, such as overnight parking, resort and internet/WIFI charges which are part of or accompany a hotel room, that fall within the existing definition of "rent" in the Code; and iv) delete provisions mandating that online travel companies require hotel guests to directly pay hotels for accommodations. This amendment does not give the City Council power to raise its compensation or that of other City officials without voter approval.

Section 4: SEVERABILITY.

It is the intent of the people that the provisions of this ordinance are severable and that if any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this ordinance which can be given effect without the invalid provision or application.



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Impartial Analysis City of Anaheim Measure J

Overview:

Measure J updates the City of Anaheim's existing Transient Occupancy Tax ("TOT") Code, which imposes a tax on hotel and motel guests in the City, to define online travel companies, other travel companies, and all room sellers and resellers as "operators" required to collect and remit TOT to the City on the full rate paid for accommodations by hotel guests. The City's current TOT Code does not consider online travel companies and other room sellers/resellers to be operators, and therefore does not obligate them to remit TOT to the City.

In addition, Measure J clarifies the TOT Code's definition of "rent" upon which TOT is charged by specifically listing items like parking, resort fees, and WIFI/internet charges that were not common charges when the TOT Code was adopted. It also specifies that all service fees, booking fees, and other transaction fees charged to hotel guests are part of rent and therefore trigger TOT.

Impact on Existing Law:

For thirty years, Anaheim has charged TOT (hotel tax) to guests of hotels in the City. The current voter-approved TOT rate is 15%, which Measure J does not change. The City's TOT Code requires operators of hotels and similar properties in the City to collect and remit the tax to the City. Because the City's TOT Code was adopted before online travel companies (such as Expedia, Orbitz and Travelocity) were involved in the booking of hotel rooms, these companies were not considered in the Code's definition of operator. Measure J was placed on the ballot by the Anaheim City Council to fill this gap and update the TOT Code to reflect the role of online travel companies in booking accommodations in the City. Measure J also specifically adds to the TOT Code items that fall within the definition of rent in the Code, but were not specifically listed because they were not common charges when the TOT Code was adopted.

Summary:

A "yes" vote on Measure J would update the Anaheim Municipal Code to require online travel companies and other room sellers and resellers to collect and remit to the TOT to the City on the full rate charged to hotel guests for accommodations, and would explicitly place in the TOT Code items such as parking, resort fees and WIFI/internet charges that accompany a hotel room and are therefore subject to TOT. A "no" vote on the Measure would maintain the current definition of operator such that online travel companies and other room sellers/resellers would not be obligated to remit TOT to the City, and would not explicitly delineate the additional items of rent in the TOT Code.

Dated: July 26, 2022

s/ Robert Fabela
City Attorney, City of Anaheim

The above statement is an impartial analysis of Measure J. If you desire a copy of the measure, please call the election official's office at (714) 765-5166 and a copy will be mailed, emailed, or provided at no cost to you. You can also visit www.anaheim.net/elections for a copy.



Argument in Favor of Measure J

Vote **YES** on Measure J

Measure J **UPDATES** the language in the City of Anaheim's current hotel tax code so that online and other travel booking companies pay the full share of hotel tax that is due.

Measure J would **NOT** create a new tax or a tax increase.

The **Anaheim City Council was unanimous** in putting the Measure J on the ballot so that Anaheim residents get their **FULL SHARE** of hotel tax revenue.

The existing voter-approved Transient Occupancy (Hotel) Tax generates \$167 million dollars each year from visitors to our Anaheim hotels and motels. This tax is paid solely by guests at Anaheim hotels, not by Anaheim residents or businesses.

The hotel tax generates funds for the City's General Fund revenue which pays for:

- **PUBLIC SAFETY** like **Fire** and **Police** Services
- Public facilities such as **PARKS, COMMUNITY CENTERS** and **LIBRARIES**
- Services such as **YOUTH PROGRAMS** and **SENIOR SERVICES**

The current hotel tax section has language that is outdated, and creates a gap which has allowed online and other travel companies to pay tax on only the wholesale room rate paid to hotels, rather than on the final hotel bill they are charging visitors. Measure J would update the language in the tax code to remove any question about this or other areas where the tax applies. It would assure that Anaheim receives its full share of hotel tax revenue. This could generate an additional **\$3 Million per year for the Anaheim General Fund.**

Vote **YES** on Measure J

s/ Stephen Faessel
Anaheim Council Member

s/ Jose Duran
President, Anaheim Police Association

s/ Rob Lester
President, Anaheim Firefighters Association

No argument against this measure was submitted.