RESOLUTION NO. 16-60

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN CALLING AND GIVING NOTICE OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016, REQUESTING CONSOLIDATION OF THAT ELECTION WITH THE STATE GENERAL ELECTION, AND REQUESTING SERVICES FROM THE PLACER COUNTY CLERK WITH RESPECT TO THAT ELECTION; NOTICE OF CITY OFFICER ELECTIONS AND NOTICE OF THE SUBMISSION OF MEASURES TO THE VOTERS

WHEREAS, a statewide general election shall be held on November 8, 2016; and,

WHEREAS, the general municipal election of the City of Auburn is scheduled for November 8, 2016; and

WHEREAS, the interests of efficiency call for the consolidation of that election with the state general election to be held that same date; and

WHEREAS, the City Council requests services from the Placer County Clerk for the conduct of that election.

WHEREAS, Article XIII C, Section 2 of the California Constitution, and Government Code Section 53723 authorize the City Council of the City of Auburn to impose, extend, or increase a general tax upon a majority vote of the voters; and,

1   **WHEREAS**, Revenue and Taxation Code Section 7280 authorizes the
2   City to levy a tax on the privilege of occupying a room or rooms, or other living
3   space, in a hotel, inn, tourist home or house, motel, or other lodging; and,

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5   **WHEREAS**, Auburn Municipal Code Section 33.187 currently establishes
6   an eight percent tax for the privilege of occupancy in any hotel by a transient
7   within the City; and,

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9   **WHEREAS**, currently the transient occupancy tax is collected from hotel
10 proprietors pursuant to Auburn Municipal Code Section 33.186; and,

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12 **WHEREAS**, should the Transient Occupancy Tax ballot measure not
13 receive a majority vote, Auburn Municipal Code Section 33.186 shall remain
14 unchanged without further action by the Auburn City Council.

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16 **WHEREAS**, the office of City Clerk is currently an elective office; and,

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18 **WHEREAS**, Government Code Section 36508 authorizes the City Council
19 to submit to the electors the question whether the city clerk shall be appointed
20 by the City Council; and,

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22 **WHEREAS**, the City Council may submit to the voters, without a
23 petition, an ordinance for the repeal, amendment, enactment of any ordinance
24 pursuant to Elections Code Section 9222; and,

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NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

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

SECTION 2. Pursuant to the California Elections Code, there is hereby called and ordered to be held in the City of Auburn, California, on Tuesday, November 8, 2016, a general election for the purpose of electing municipal officers to fill the vacancies that will arise with the expiration of the terms of the following municipal officers:

William Kirby	Councilmember	Regular Term
Keith Nesbitt	Councilmember	Regular Term
Stephanie Snyder	City Clerk	Regular Term
George Williams	City Treasurer	Regular Term

SECTION 3. The City Council hereby declares its intent to consolidate this general election with the Statewide General Election to be held on November 8, 2016. This resolution shall constitute the request for consolidation required by Elections Code Section 10403 and the City Clerk shall forward a certified copy of this resolution to the Placer County Office of Elections not later than July 6, 2016.

SECTION 4. That the ballots to be used at the general election shall be in form and content as required by law.

SECTION 5. 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. That in all particulars not recited in this resolution, the general election shall be held and conducted as provided by law.

SECTION 7. The City Clerk is hereby authorized, instructed and directed to procure and furnish (or cause to be procured and furnished) any and all official ballot notices, printed matter and all other supplies, equipment and paraphernalia that may be necessary to prepare and lawfully conduct the election.

SECTION 8. Officeholders for the City of Auburn are elected "At Large" as there are no divisions in the City; all voters within the City vote for all candidates.

SECTION 9. The City of Auburn determined the following election particulars with respect to elections for offices:

The length of each Candidate Statement shall not exceed **200** words, the cost of each Candidate Statement shall be paid by the **candidate** and in case of a tie vote, the election shall be determined by **lot**. If by close of candidate filing, the number of qualified candidates does not exceed the number of seats to be filled in a particular office, the City Council may, in accordance with Election Code Section 10229(a): appoint to the office the person(s) who has been nominated or appoint to the office any eligible elector if no one has been nominated or hold the election, if either no one or only one person has been

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nominated. The City Council shall make that determination by resolution adopted after the City Clerk certifies that no more than one candidate has qualified for the ballot for each office.

SECTION 10. The Auburn City Council hereby proposes the ordinances attached hereto as "Exhibit A" and "Exhibit B" to amend Auburn Municipal Code Chapter 33.186 to expand the applicability of the Transient Occupancy Tax, raise the Transient Occupancy Tax rate, and to make the office of City Clerk appointive.

SECTION 11. The Auburn City Council hereby submits the ordinances and proposed tax to the electorate for approval, and requests that this election be consolidated with the statewide general election to be held on November 8, 2016. This resolution shall constitute the request for consolidation required by Elections Code section 10403 and the City Clerk shall forward a certified copy of this resolution to the Placer County Office of Elections not later than July 6, 2016.

SECTION 12. The Transient Occupancy Tax is a general tax imposed upon transients for the privilege of occupying defined hotels located within the city limits of Auburn. If approved by a majority of the electorate voting on the measure, the ordinance attached to this resolution as Exhibit A will raise the rate of the tax, and amend the definition of "operator" so that the tax must be collected and remitted by all persons receiving revenue from the rental of a hotel room, including on-line hotel brokers and vacation rental agencies. If the ordinance is passed, the definition of operator will be amended. If the ordinance is not passed, the definition will remain unchanged and the tax will not be collected from on-line hotel brokers and vacation rental agencies.

1 **SECTION 13.** The Transient Occupancy Tax imposed by the ordinance is a

2 general tax within the meaning of Government Code Section 53721 and Article

3 XIII C, Section 1(a) of the California Constitution. The revenue generated by

4 this general tax is available for general governmental purposes.

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6 **SECTION 14.** If approved by a majority of the electorate voting on the

7 measure, the ordinance attached to this resolution as Exhibit B will make the

8 office of City Clerk appointive rather than elective.

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10 **SECTION 15.** The full text of the ordinances attached to this resolution as

11 Exhibits A and B are hereby ordered to be printed in the sample ballot

12 pamphlet provided to the registered voters of the County.

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14 **SECTION 16.** The questions to be submitted to the City voters at said election

15 shall be:

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| TRANSIENT OCCUPANCY TAX INCREASE | Yes |
| Shall an ordinance be adopted to amend the Auburn Municipal Code to amend the definition of "operator", so the tax is collected by all persons receiving consideration from the rental, including on-line hotel brokers and vacation rental agencies and shall the rate of the TOT be increased to 10%? | No |

| APPOINTMENT OF CITY CLERK | Yes |
| Shall the office of city clerk be appointive? | No |

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2 **SECTION 17.** The City Clerk shall transmit a copy of the measures to the

3 Auburn City Attorney in accordance with California Elections Code 9280.

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5 **SECTION 18.** The Auburn City Attorney is directed to prepare impartial

6 analyses of the measures pursuant to Elections Code Section 9280. The

7 analyses may not exceed 500 words in length each and shall be filed with the

8 City Clerk no later than 4:00 p.m. on August 12, 2016.

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10 **SECTION 19.** Arguments in favor of and in opposition to the ballot measures

11 and rebuttal arguments shall be permitted. The City hereby adopts the

12 provisions of California Elections Code Sections 9282 through 9287 regarding

13 the acceptance of arguments relating to ballot measures. Any arguments for

14 and against the measure shall be filed in accordance with this resolution and

15 applicable provisions of law. Arguments for and against shall be submitted no

16 later than 4:00 p.m. on August 12, 2016. Rebuttal arguments shall be

17 submitted no later than 4:00 p.m. on August 22, 2016.

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19 **SECTION 20.** The City Council finds that the Transient Occupancy Tax

20 Measure is not a project under the California Environmental Quality Act by

21 virtue of the State CEQA Guidelines, 14 Code of California Regulations section

22 15378, subdivision (b)(3) and, therefore, no environmental impact assessment

23 is necessary.

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25 **SECTION 21.** The City Clerk is hereby authorized to utilize the services of the

26 Placer County Clerk for the conduct of the general election. The City of Auburn

27 hereby agrees to pay the costs of those services as outlined by current policy

28 of the Placer County Elections Division.

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SECTION 22. The City Clerk is authorized to canvass the returns of the Election and to certify the same to City Council at the time and in the manner provided by law.
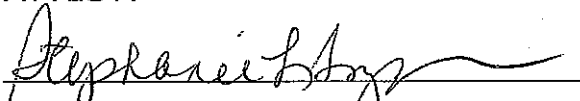
SECTION 23. There have been no City boundary changes since our last election, but the City Council understands that the Placer County Public Works Mapping Division will verify our City boundary lines prior to the election.

SECTION 24. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

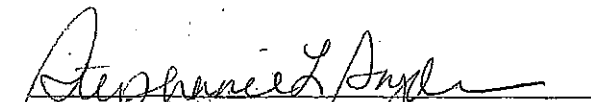PASSED, APPROVED AND ADOPTED this 27th day of June, 2016.

Matthew Spokely, Vice Mayor

ATTEST:

Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 27th day of June, 2016 by the following vote on roll call:

Ayes: Nesbitt, Berlant, Powers, Spokely
Noes:
Abstain:
Absent: Kirby

Stephanie L. Snyder, City Clerk

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EXHIBIT "A"

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PROPOSED ORDINANCE

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ORDINANCE NO._____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF AUBURN AS

APPROVED BY THE CITY'S QUALIFIED ELECTORS AT THE GENERAL

MUNICIPAL ELECTION HELD ON NOVEMBER 8, 2016 AMENDING THE

AUBURN MUNICIPAL CODE DEFINTION OF OPERATOR TO CHARGE THE

TRANSIENT OCCUPANCY TAX ON ALL PERSONS RECEIVING REVENUE

FROM HOTEL OCCUPANCY (SUCH AS ON-LINE HOTEL BROKERS AND

VACATION RENTAL AGENCIES) AND INCREASING THE RATE TO 10%

The People of the City of Auburn do ordain as follows:

SECTION 1. CODE AMENDMENT

The definition of "Operator" contained in Section 33.186 of the Auburn Municipal Code is hereby set forth for voter approval to read as follows:

OPERATOR.

(1) possessing or having an ownership interest in a hotel, or who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity;

(2) engaged in the business of operating a hotel; or

(3) receiving any consideration for the rental of a hotel room for sleeping accommodations, including, without limitation, any broker, service provider, or other intermediary:

    (i) with which a hotel has contracted to arrange for the rental of a hotel room for sleeping accommodations; or

    (ii) that has acquired any hotel room for subsequent rental from the hotel for sleeping accommodations.

Where the operator performs his or her 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 or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent, however, shall be considered to be compliance by both.

SECTION 2. CODE AMENDMENT

Section 33.187 of the Auburn Municipal Code is hereby amended to read as follows:

A.) For the privilege of occupancy in any hotel or lodging establishment, each transient shall be subject to and shall pay a tax in the amount of 10% of the rent charged by the operator.

SECTION 3. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). Pursuant to CEQA Guidelines Section 15378(b) (4), adoption of this ordinance as a government funding mechanism is not a project subject to the requirements of CEQA. Prior to commencement of any project that may result from the expenditure of revenues from this tax increase, any necessary environmental review required by CEQA shall be completed.

SECTION 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

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SECTION 5. ELECTION. Voter approval of this ordinance shall have the effect of making the change to the definition of "Operator". If the measure is defeated, the Municipal Code remains unchanged.

SECTION 6. ADOPTION. If a majority of qualified electors vote in favor of the ballot measure regarding this Ordinance, this Ordinance shall be adopted upon the date the vote therefor is declared by the City Council.

SECTION 7. EFFECTIVE DATE. If approved by a majority of qualified electors vote in favor of the ballot measure regarding this Ordinance, the amendment to Section 33.186 as specified in Section 1, above, shall be effective January 1, 2017.

SECTION 8. EXECUTION. The People of the city of Auburn hereby authorize the Mayor and City Clerk of the city to execute this Ordinance to reflect its adoption at the November 8, 2016 election.

I hereby certify that the foregoing ordinance was duly adopted by a majority of the voters of the City casting votes on the question on November 8, 2016.

_____   _____
, Mayor   (date)

ATTEST:

_____   _____
, City Clerk   (date)

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EXHIBIT "B"

PROPOSED ORDINANCE

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ORDINANCE NO._____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF AUBURN AS APPROVED BY THE CITY'S QUALIFIED ELECTORS AT THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 8, 2016 TO MAKE THE OFFICE OF CITY CLERK APPOINTIVE

The People of the City of Auburn do ordain as follows:

SECTION 1. The city clerk shall hereby be appointed by the City Council.

SECTION 2. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 3. ELECTION. Voter approval of this ordinance shall have the effect of making the office of city clerk appointive rather than elective. If the measure is defeated, the Municipal Code remains unchanged.

SECTION 4. ADOPTION. If a majority of qualified electors vote in favor of the ballot measure regarding this Ordinance, this Ordinance shall be adopted upon the date the vote therefor is declared by the City Council.

SECTION 5. EFFECTIVE DATE. If approved by a majority of qualified electors vote in favor of the ballot measure regarding this Ordinance, the amendment to Section 33.040 as specified in Section 1, above, shall be effective January 1, 2017.

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SECTION 6. EXECUTION. The People of the city of Auburn hereby authorize the Mayor and City Clerk of the city to execute this Ordinance to reflect its adoption at the November 8, 2016 election.

I hereby certify that the foregoing ordinance was duly adopted by a majority of the voters of the City casting votes on the question on November 8, 2016.

_____   _____
                , Mayor   (date)

ATTEST:

_____   _____
                , City Clerk   (date)

CERTIFIED AS A TRUE COPY

[signature]

DEPUTY CITY CLERK

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