ORDINANCE NO. 1532

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CARLOS
AMENDING SAN CARLOS MUNICIPAL CODE CHAPTER 3.24 – UNIFORM TRANSIENT
OCCUPANCY TAX, INCREASING THE TAX RATE BY 2% EFFECTIVE JANUARY 1, 2019
AND AUTHORIZING ADDITIONAL 0.5% INCREASES EACH SUBSEQUENT JANUARY 1 UP
TO A MAXIMUM OF 14%, AND MAKING OTHER CHANGES.

WHEREAS, the proposed increase in the Transient Occupancy Tax ("TOT") if adopted
by the voters, once fully implemented, would generate approximately $850,000 to $1,650,000
per year of additional unrestricted general revenue to the City. The additional revenue can be
used to enhance City streets, traffic circulation, provide public safety, community development
and parks and recreation programs; and

WHEREAS, Ordinance 722 was adopted in 1972, setting the TOT rate at 1%. In 1977,
the TOT rate was increased to 6%. The latest rate increase from 6% to 10% was adopted in
1989. The City’s existing TOT rate has remained at 10% for the last 29 years and ranks as the
lowest rate amongst the cities in San Mateo County; and

WHEREAS, the tax to be submitted to the voters, if approved, would be imposed on the
people using hotels, as defined in the Ordinance; the tax rate would be increased from 10% to
12% of the amount paid for lodging and related services, effective January 1, 2019; the rate
would be increased by 0.5% each January 1 thereafter, to a maximum rate of 14%; the tax
would be collected by hotel operators and remitted to the City; and the tax shall be approved if
the measure receives at least a simple majority of affirmative votes at the November 6, 2018
election; and

WHEREAS, the TOT is not levied against the City’s residents or property owners; rather,
it is levied on guests who occupy a hotel in the City of San Carlos for thirty calendar days or
less; and

WHEREAS, there are currently seven hotels in operation with 378 rooms within the City
limits. This number will increase to 10 hotels and an additional 452 rooms expected by late
2020; and

WHEREAS, the increase in the TOT rate will produce the additional benefit of helping to
recoup costs associated with the impacts travelers and visitors have on the City’s many
amenities, such as but not limited to, police services, traffic circulation, parks and recreation and
public roads. It also will reduce the per capita cost of general municipal program and services
paid by local residents and businesses.

The City Council of the City of San Carlos does ordain as follows:

SECTION 1. The San Carlos Municipal Code is hereby amended by enacting and
adopting Chapter 3.24 as set forth in Exhibit A.

SECTION 2. Use of Tax Revenue. The tax authorized by this Ordinance is a general tax,
revenue from which may be spent for unrestricted general revenue purposes.
SECTION 3. Amendment. This Ordinance may only be amended by a vote of the People of the City of San Carlos, if the amendment would result in the tax being imposed, extended, or increased in a manner not authorized by this Ordinance as originally approved by the People. The City Council may establish rules that are necessary and desirable for implementation of this Ordinance and may amend any aspect of the Ordinance as long as such amendment does not result in an increase in the authorized tax rate or imposition of the tax on someone not previously subject to it.

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.

SECTION 5. Effective Date. This Ordinance shall become effective 10 days after the certification by the City Council of the election returns indicating passage of the Ordinance codified in this article by a majority of the voters casing votes in the November 6, 2018 election.

SECTION 6. Compliance with the California Environmental Quality Act. The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). The Transient Occupancy Tax imposed by the adoption of this Ordinance is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. 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 physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

SECTION 7. City Council Approval. The City Council of the City of San Carlos approved this Ordinance for placement on the November 6, 2018 ballot by Resolution 2018-062 adopted by a four-fifths vote of all members.

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This Ordinance was introduced by the City Council of the City of San Carlos on the 11th day of June, 2018, and was submitted to the People of the City of San Carlos at the November 6, 2018 election. It was adopted by the following vote of the People:

YESES: 11,824
NOES: 3,273

Adopted as an Ordinance of the City of San Carlos at a regular meeting of the City Council held the 10th day of December, 2018, by Declaration of the results of the November 6, 2018, by the following vote of the City Council of the City of San Carlos:

AYES, COUNCILMEMBERS: COLLINS, GROCOTT, JOHNSON, OLBERT, GRASSILLI

NOES, COUNCILMEMBERS: NONE

ABSENT, COUNCILMEMBERS: NONE
APPROVED:

MAYOR of the City of San Carlos

CITY CLERK of the City of San Carlos
Chapter 3.24
UNIFORM TRANSIENT OCCUPANCY TAX

Sections:
3.24.010 Short title.
3.24.020 Definitions.
3.24.030 Tax imposed—Rate.
3.24.040 Collection—Receipt required for payment.
3.24.050 Certificate of registration required—Form—Fee.
3.24.060 Reporting requirements—Form of returns—Payments.
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3.24.110 Debt deemed owed to City.
3.24.120 Appeal procedures.
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3.24.010 Short title.
This chapter shall be known as and may be cited as “The Uniform Transient Occupancy Tax Ordinance of the City of San Carlos.”

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

A. “Hotel” means 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, dormitory, public or private club, short term rental reserved through an online service, mobile home or house trailer at a fixed location, or other similar structure or portion thereof. “Hotel” does not mean any of the following: any hospital, sanitarium, medical clinic, convalescent homes, rest home, home for aged people, foster home or other similar facility operated for the care or treatment of human beings; any asylum, jail, prison, orphanage or other facility in which human beings are detained and housed under legal restraint; any housing owned or controlled by any educational institution and used exclusively to house students, faculty or other employees, and any fraternity or sorority house or similar
facilities occupied exclusively by students and employees of such educational institution, and officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by any organization having qualifications for exemption from property taxes under the laws of the State; any housing owned by a governmental agency and used to house its employees or for governmental purposes; any camp as defined in the Labor Code or other housing furnished by an employer exclusively for employees.

B. “Occupancy” means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any Hotel for dwelling, lodging or sleeping purposes.

C. “Operator” means the Person who is proprietor of the Hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the Operator performs his or her functions through a managing agency 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 agency shall, however, be considered to be compliance by both.

D. “Person” means 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.

E. “Rent” means 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, parking charges and services of any kind or nature, without any deduction therefrom whatsoever.

F. “Tax Administrator” means the Administrative Services Director of the City or his or her designee.

G. “Transient” means 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 consecutive calendar days or less, counting portions of calendar days as full days. Any such Person so occupying space in a Hotel shall be deemed to be a Transient until the period of thirty days has expired. A Person is not a Transient who continues to occupy space beyond the thirty-day period. In determining whether a Person is a Transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.
3.24.030 Tax imposed—Rate.
For the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay a tax in the amount of twelve percent (12%) of the Rent charged by the Operator, effective January 1, 2019. This rate shall automatically increase each January 1 after the effective date at a rate of one-half of one percent (½%) tax per year up to a maximum rate of fourteen percent (14%) of the Rent charged by the Operator. The 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 Rent is paid. If 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 Tax Administrator may require that such tax shall be paid directly to the Tax Administrator.

3.24.040 Collection—Receipt required for payment.
Each Operator shall collect the tax imposed by this chapter to the same extent and at the same time as the Rent is collected from every Transient. The amount of tax shall be separately stated from the amount of the Rent charged, and each Transient shall receive a receipt for payment from the Operator. No Operator of a Hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the Operator, or that it will not be added to the Rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

3.24.050 Certificate of registration required—Form—Fee.
A. Within thirty days after the effective date of the ordinance codified in this chapter, or within thirty days after commencing business, whichever is later, each Operator of any Hotel renting Occupancy to Transients shall register such Hotel with the City Clerk and obtain from her/him a Transient Occupancy Registration Certificate to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

1. The name of the Operator;
2. The address of the Hotel;
3. The date upon which the certificate was issued;
4. The following statement: "This Transient Occupancy Registration Certificate signifies that the Person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the City Clerk of San Carlos for the purpose of
collecting from Transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. The certificate does not authorize any Person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a Hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit."

B. There shall be no fee for such certificate.

3.24.060 Reporting requirements—Form of returns—Payments.
Each Operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Administrator, make a return to the Tax Administrator, on forms provided by her or him, of the total Rents charged and received and the amount of tax collected for Transient occupancies for that calendar quarter or reporting period. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator may establish shorter reporting periods for any certificate holder if he/she deems it necessary in order to insure collection of the tax and he/she may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by Operators pursuant to this chapter shall be held in trust for the account of the City until payment thereof is made to the Tax Administrator. Failure to pay the tax when due shall automatically shorten the time for filing of the return and payment of tax from quarterly to weekly.

3.24.070 Delinquent returns and nonpayment.
A. Late Payment Penalty. Any Operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

B. Second Delinquency Penalty. Any Operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.

C. Penalty for Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.
D. Interest. In addition to the penalties imposed, any Operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalty Part of Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid by this chapter.

F. Recording Certificate—Lien. If any amount required to be paid to the City under this chapter is not paid when due, the Tax Administrator, may within three years after the amount is due, file for record in the office of the County Recorder a certificate specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the Tax Administrator of the Operator liable for the same and the fact that the Tax Administrator has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties and interest, constitutes a lien upon all real property in the County owned by the Operator or afterwards and before the lien expires acquired by it, her or him. The lien has the force, effect and priority of a judgment lien and shall continue for ten years from the time of filing of the certificate unless sooner released or otherwise discharged.

G. Priority and Lien of Tax.

1. The amounts required to be paid by any Operator under this chapter with penalties and interest shall be satisfied first in any of the following cases:

   a. Whenever the Person is insolvent;

   b. Whenever the Person makes a voluntary assignment of his/her assets;

   c. Whenever the estate of the Person in the hands of executors, administrators or heirs is insufficient to pay all the debts due from the deceased;

   d. Whenever the estate and effects of an absconding, concealed or absent Person required to pay any amount under this chapter are levied upon by process of law. This chapter does not give the City a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

2. The preference given to the City by this subsection shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.
H. Warrant for Collection of Tax. At any time within three years after any Operator is delinquent in the payment of any amount required in this chapter to be paid or within three years after the last recording of a certificate of lien under Section 6011(b), the Tax Administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this chapter. The warrant shall be directed to any Sheriff, Marshal or Constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Administrator may pay or advance to the Sheriff, Marshal or Constable, the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution. The Tax Administrator, and not the court, shall approve the fees for publication in a newspaper.

I. Seizure and Sale. At any time within three years after any Operator is delinquent in the payment of any amount, the Tax Administrator may forthwith collect the amount in the following manner: The Tax Administrator shall seize any property, real and/or personal, of the Operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect occupancy taxes due shall be only of the property of the Operator not exempt from execution under the provisions of the Code of Civil Procedure.

J. Successor's Liability—Withholding by Purchaser. If any Operator liable for any amount under this chapter sells out his/her business or quits the business, his/her successor or assignee shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Administrator showing that it has been paid or a certificate stating that no amount is due.

K. Liability of Purchaser—Release. If the purchaser of a Hotel fails to withhold purchase price as required, he/she shall become personally liable for the payment of the amount required to be withheld by him/her to the extent of the purchase price, valued in money. Within sixty days after receiving a written request from the purchaser for a certificate, or within sixty days from the date the former owner's records are made available for audit, whichever period expires later, but in any event not later than ninety days after receiving the request, the Tax Administrator shall either issue the certificate or mail notice to the purchaser at his/her address as it appears on the records of the Tax Administrator of the amount that must be paid as a condition of issuing the certificate. Failure of the Tax Administrator to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the
obligation of the successor may be enforced shall start to run at the time the Operator sells his/her business or at the times that the determination against the Operator becomes final, whichever event occurs later.

3.24.080 Failure to file returns.
If any Operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof required by this chapter, the Tax Administrator shall proceed in such manner as he/she may deem best to obtain facts and information on which to base his/her estimate of the tax due. As soon as the Tax Administrator procures such facts and information as he/she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any Operator who has failed or refused to collect the same to make such report and remittance, she or he shall proceed to determine and assess against such Operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Operator so assessed at his/her last known place of address. Such Operator may within ten days after the serving or mailing of such notice make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the Operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Operator shall first pay the tax as determined by the Tax Administrator. After receipt of the payment, the Tax Administrator shall give not less than five days written notice in the manner prescribed in this chapter to the Operator to show cause at a time and place fixed in such notice why such amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the Operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the Person in the manner prescribed in this chapter of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable within fifteen days unless an appeal is taken as provided in Section 3.24.120 of this chapter.

3.24.090 Recordkeeping.
It shall be the duty of every Operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the
collection of and payment to the City, which records the Tax Administrator shall have the right to inspect at all reasonable times.

3.24.100 Overpayments—Refunds.
A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in subsections B and C of this section, provided a claim in writing therefor, stating under penalty of perjury the specific ground upon which the claim is founded, is filed with the Tax Administrator within three years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

B. An Operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the Person from whom the tax has been collected was not a Transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the Transient or credited to Rent subsequently payable by the Transient to the Operator.

C. A Transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the Transient directly to the Tax Administrator, or when the Transient having paid the tax to the Operator, establishes to the satisfaction of the Tax Administrator that the Transient has been unable to obtain a refund from the Operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes his/her right thereto by written records showing entitlement thereto.

3.24.110 Debt deemed owed to City.
Any tax required to be paid by any Transient under the provisions of this chapter shall be deemed a debt owed by the Transient to the City. Any such tax collectible by an Operator which has not been paid to the City shall be deemed a debt owed by the Operator to the City. Any Person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of San Carlos for the recovery of such amount.

3.24.120 Appeal procedures.
Any Operator aggrieved by a decision of the Tax Administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of
appeal with the City Clerk within fifteen days of the serving or mailing of the determination of tax
due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall
give notice in writing to such Operator at his/her last known place of address. The findings of the
City Council shall be final and conclusive and shall be served upon the appellant in the manner
prescribed above for service of notice of hearing. Any unpaid amount found to be due shall be
immediately due and payable upon the service of notice.

3.24.130 Violation—Penalty.
A. Any Person violating any of the provisions of this chapter is guilty of a misdemeanor and shall
be punishable therefor as provided in Chapter 1.20 of this Code.

B. Any Operator or other Person who fails or refuses to register as required in this chapter, or to
furnish any return required to be made, or who fails or refuses to furnish a supplemental return
or other data required by the Tax Administrator, or who renders a false or fraudulent return or
claim, is guilty of a misdemeanor, and is punishable as provided in Chapter 1.20 of this Code.

C. Any Person required to make, render, sign or verify any report or claim who makes any false
or fraudulent report or claim with intent to defeat or evade the determination of any amount due
required by this chapter to be made, is guilty of a misdemeanor and is punishable as set out in
Chapter 1.20 of this Code.