RESOLUTION NO. 16-016, SERIES 2016

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS CALLING BOTH A GENERAL MUNICIPAL ELECTION FOR THE ELECTION OF THREE COUNCIL MEMBERS AND CALLING A SPECIAL ELECTION FOR THE PURPOSE OF SUBMITTING GENERAL TAX MEASURES WHICH WOULD (1) INCREASE THE CITY’S TRANSIENT OCCUPANCY TAX RATE FROM 10 TO 12 PERCENT AND (2) ESTABLISH A MARIJUANA BUSINESS LICENSE TAX, TO BE HELD ON TUESDAY, JUNE 7, 2016

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a General Municipal Election shall be held on June 7, 2016, for the election of Municipal Officers; and

WHEREAS, the City Council determined to submit to the voters at the election a question relating to increasing the City’s transient occupancy tax (“TOT”) from the existing 10 percent to 12 percent; and

WHEREAS, the City Council also determined to place before the voters a question relating to imposing a general business license tax on the gross receipts of future marijuana businesses that may operate in the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS, CALIFORNIA, DOES RESOLVE AS FOLLOWS:

SECTION 1. Calling of the General Municipal Election. Pursuant to the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Davis, California, on Tuesday, June 7, 2016, a General Municipal Election for the purpose of electing three (3) Members of the City Council for the full term of four (4) years.

SECTION 2. Calling of the Special Election. Pursuant to the laws of the State of California relating to municipal elections consolidated with other elections, there is called and ordered a Special Election to be held in the City of Davis, California, on Tuesday, June 7, 2016, for the purpose of placing on the ballot the following questions:

MEASURE “B”

| Shall Ordinance 2468 be adopted to amend, effective August 1, 2016, Article 15.05 of the Davis Municipal Code to increase the City of Davis’s Transient Occupancy Tax, imposed on occupants of short-term rentals such as hotel rooms, from 10% to 12%, and apply TOT to total rent paid by a guest for the short-term rental, including online travel companies, which is anticipated to raise $240,000 annually and will continue until repealed by City Council or city voters? | YES | NO |
MEASURE “C”

| Shall Ordinance 2469 be adopted to add Article 19.04.100 to the Davis Municipal Code to establish a business license tax on non-medical (recreational) marijuana businesses within the city of no more than 10% of annual gross receipts of the business, which is estimated to raise $200,000 annually if recreational marijuana sales are legalized and the City amends zoning to authorize marijuana businesses within City limits, and which will continue until repealed by City Council or city voters? | YES | NO |

SECTION 3. The proposed complete text of the measures submitted to the voters are attached hereto.

SECTION 4. In all particulars not recited in this Resolution, the election shall be conducted as provided by law for the holding of municipal elections in the City and the consolidation of municipal elections with other elections.

SECTION 5. The City Clerk is authorized, instructed and directed to coordinate with the Yolo County Clerk/Recorder/Assessor 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 6. Resolution No. 06-029 – Establishing the Requirement that a Candidate for City Office Pay for Processing Their Candidate State for City Elections, shall remain in full force and effect during the administration of this election.

SECTION 7. The City Council hereby directs the City Attorney to prepare an impartial analysis of the measures in accordance with §9280 of the Elections Code showing the effect of the measures on existing law and the operation of the measures.

SECTION 8. As the City has requested the consolidation of the general and special elections from Yolo County, the Yolo County Clerk shall fix the dates for submittal of arguments concerning the measure and rebuttal arguments.

SECTION 9. Written arguments may be filed in favor or against the measures pursuant to §9282 of the Elections Code. Rebuttal arguments may be submitted as provided for in §9285 of the Elections Code.
SECTION 10. 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.

PASSED AND ADOPTED by the City Council of the City of Davis this 16th day of February, 2016, by the following vote:

AYES: Davis, Frerichs, Lee, Swanson, Wolk

NOES: None

Daniel M. Wolk
Mayor

ATTEST:

Lee S. Mirabile, CMC
City Clerk
ORDINANCE NO. 2468

AN ORDINANCE OF THE CITY OF DAVIS AMENDING PORTIONS OF ARTICLE 15.05 OF THE DAVIS MUNICIPAL CODE TO INCREASE THE CITY’S TRANSIENT OCCUPANCY TAX RATE FROM 10 PERCENT TO 12 PERCENT, ADDRESS ONLINE TRAVEL COMPANY AND OTHER THIRD PARTY BOOKINGS, AND MAKE OTHER CONFORMING CHANGES SUBJECT TO APPROVAL OF A MAJORITY OF THE ELECTORS VOTING ON THE TAX MEASURE AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, JUNE 7, 2016

WHEREAS, pursuant to California Revenue and Taxation Code §§ 7280 et seq., the City of Davis (“City”) has the authority to levy a transient occupancy tax (“TOT”) upon the privilege of occupying a hotel, as defined in the Article 15.05 of the Davis Municipal Code, for a period of 30 days or less; and

WHEREAS, the TOT is a general tax the proceeds of which are deposited into the City’s general fund. The general fund pays for essential City services such as police protection, fire and paramedic services, street operations and maintenance, library services, parks and recreation services and general municipal services to the public; and

WHEREAS, the City further desires to amend the Davis Municipal Code to allow for the imposition and collection of the TOT on the full retail rent charged to a guest for hotel occupancy, whether the occupancy is booked directly by the guest, through the guest’s employer or agent, or through online travel companies that enable guests to purchase occupancy via the Internet, or by similar electronic means;

WHEREAS, the City wishes to increase its TOT from the existing 10 percent to 12 percent, subject to voter approval, for general purposes;

WHEREAS, the proposed TOT increase to 12% and other proposed TOT amendments will be submitted to the voters at the general municipal election on June 7, 2016.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Code Amendment. Section 15.05.020 of the Davis Municipal Code is hereby amended to read as follows:

15.05.010 Definitions. For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Hotel. 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, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

**Occupancy.** The use or possession, or the right to the use or possession of any room or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

**Operator.** 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 or booking agent of any type or character other than an employee, including but not limited to an online travel company, the managing/booking agent shall also be deemed an operator for the purposes of this article and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this article by either the principal or the managing/booking agent shall, however, be considered to be compliance by both.

**Rent.** The total consideration charged to the transient, (including but not limited to, room rates, service charges, retail markup, commissions, processing fees, cancellation charges, attrition fees or online booking fees), 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.

**Transient.** 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 unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

**Online Travel Company.** Any person, whether operating for profit or not for profit, which enables transients to purchase occupancy of space in a hotel via the Internet, or by similar electronic means.

**15.05.020. Levied – Amount of tax – Payment by transient.** Effective on and after August 1, 2016, 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 paid by the transient. Such 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 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 director of finance may require that such tax shall be paid directly to the director of finance.

SECTION 2. Effective Date. This ordinance relates to the levying and collecting of the City transient occupancy tax ("TOT") and shall take effect only if approved by a majority of the voters voting on the measure at the June 7, 2016 General Municipal Election and shall become effective ten (10) days after the City Council declares and certifies by resolution the results of the election and that the measure was approved by a majority of the voters voting thereon.

SECTION 3. Notice. The City Clerk is hereby directed to publish this ordinance at least once, within fifteen (15) days of its adoption, in a newspaper of general circulation published and circulated in the City of Davis.

PASSED AND ADOPTED by the City Council of the City of Davis this 16th day of February, 2016, by the following vote:

AYES: Davis, Frerichs, Lee, Swanson, Wolk

NOES: None

Daniel M. Wolk
Mayor

ATTEST:

Joe S. Mirabile, CMC
City Clerk
ORDINANCE NO. 2469

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS ADDING SECTION 19.04.100 TO THE CITY OF DAVIS MUNICIPAL CODE RELATED TO MARIJUANA BUSINESS LICENSE TAXES IMPOSED FOR GENERAL MUNICIPAL PURPOSES, SUBJECT TO THE APPROVAL OF A MAJORITY OF THE VOTERS VOTING AT THE GENERAL MUNICIPAL ELECTION HELD ON JUNE 7, 2016

WHEREAS, recently enacted state law, the Medical Marijuana Regulation and Safety Act ("MMRSA"), authorizes and regulates a comprehensive medical marijuana industry, including commercial cultivation, manufacturing, and distribution of medical marijuana; and

WHEREAS, in light of the MMRSA, the City Council recently adopted Ordinance No. 2469 in order to retain local land use control over marijuana uses and authorize and regulate the limited cultivation of medical marijuana by qualified patients and primary caregivers, subject to future review and possible amendment; and

WHEREAS, there are currently numerous proposed and active voter initiatives regarding the legalization, decriminalization and regulation of recreational marijuana use which are being circulated for qualification to appear on the state ballot in the upcoming November 2016 general election; and

WHEREAS, the growing statewide trend toward greater access and regulation of marijuana, both for medical purposes and possible recreational uses, presents a unique opportunity for the City to impose a general tax on future marijuana businesses that may operate in the City; and

WHEREAS, a general business license tax based on the gross receipts derived from such marijuana businesses would generate essential funds for protecting vital City services and facilities and place such businesses on more equal footing with existing City businesses; and

WHEREAS, the City Council is authorized to impose general and special taxes in order to fund municipal services and facilities, subject to requisite voter approval as set forth in Government Code section 53720 et seq.; and

WHEREAS, after a study of the financial issues facing the City, and after extensive efforts to gauge the public’s opinions and priorities, the City Council has determined that the most reasonable and financially prudent action it can take to preserve fiscal stability of the City and to protect vital services and facilities is to place before the voters a ballot measure to impose a general business license tax on the gross receipts of marijuana businesses, in the event such business become legal, permitted, and operational in the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are hereby found to be true and accurate and are incorporated into this Ordinance by this reference.
SECTION 2. Amendment. Section 19.04.100 is hereby added to the City of Davis Municipal Code to read in full as set forth in Exhibit A, attached hereto and incorporated by this reference.

SECTION 3. Voter Approval. Section 19.04.100 shall impose a general tax as defined by Government Code section 53723, and therefore must be approved by a majority of voters voting in an election on the tax. Approval of this Ordinance is therefore subject to and conditioned upon the approval by the voters of the imposition of the general tax imposed by this Ordinance. If a majority of the voters voting in the election do not vote in favor of the imposition of the tax, this ordinance shall not take effect.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 5. Effective Date. The City Clerk shall certify to the adoption of this Ordinance, and the City Clerk shall cause this Ordinance or a summary thereof to be published as required by law. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption, provided, however, that the effective date is subject to and conditioned upon approval by the voters as set forth in Section 3 of this Ordinance.

PASSED AND ADOPTED by the City Council of the City of Davis this 16th day of February, 2016, by the following vote:

AYES: Davis, Frerichs, Lee, Swanson, Wolk

NOES: None

Daniel M. Wolk
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk
EXHIBIT A

19.04.100 Marijuana Businesses.
Every person engaged in a marijuana business shall pay an annual business license tax as follows:

(a) Ten percent (10%) of each dollar of gross receipts shall be due to the City for the reporting period.

(b) Notwithstanding the tax rate imposed in subsection (a), the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may by resolution increase such tax rate from time to time, not to exceed the maximum rate established under subsection (a).

(c) For purposes of this section, the following terms have the following meanings:

(1) “Gross receipts” has the meaning as defined in Section 19.01.010, as it pertains to the marijuana business’ reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products, goods, or services sold or provided by the marijuana business.

(2) “Marijuana” has the same meaning as “Cannabis” as defined in California Business and Professions Code Section 19300.5(f)

(3) “Marijuana business” means a business activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, distributing, providing, or selling wholesale and/or retail sales of marijuana. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent or temporary, but excluding dispensaries that only provide medical marijuana for medical purposes.

(4) “Reporting period” means a year, quarter or calendar month, as determined by the administrator.

(d) The purpose of this tax is to raise revenue to fund general municipal services.

(e) No payment of any tax required under this section shall be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this section implies or authorizes that any activity connected with the cultivation, possession or provision of marijuana is legal unless otherwise authorized and allowed by the State of California and permitted by the City. This section is in addition to any other requirements set forth in this Chapter and is not intended to exempt, substitute, or replace any other requirements necessary for a marijuana business to legally operate in the City.