

**Council Meeting: June 11, 2013**

SUBJECT: Discussion and Possible Action to Adopt a Resolution Calling a General Election for November 5, 2013, for the Purpose of Submitting to the Voters a Measure to Increase the Transient Occupancy Tax Rate from 9.5% to 10.5, to be Consolidated with the General Municipal Election

BACKGROUND

At the May 21, 2013 City Council meeting, Council directed staff to pursue a ballot measure for the November 2013 election to increase the Transient Occupancy Tax (TOT) tax rate from 9.5% to 10.5% (RTC No. 13-127). The TOT is imposed for general government purposes, and is therefore considered a “general tax.” As such, any increase requires a majority vote of the electorate (50%, plus one) at a general municipal election of the City.

The TOT was first adopted by ordinance in 1965 and became operative in 1968. The tax is assessed on behalf of the City on guests who occupy lodging establishments for 30 days or less. Sunnyvale currently has 35 hotels/motels operating within City limits.

Historically, the TOT rate was increased from 5% to 6% in 1978, to 7% in 1989, to 8% in 1990, to 8.5% in 1995, and was last increased in 2005 to a rate of 9.5% (phased in over a four year period [RTC No. 05-191]).

EXISTING POLICY

Council Fiscal Policy 7.1.1 contains several goals and policies that address the City’s revenue base, including, but not limited to the following:

B.1 Revenue Base

B.1.1 - The City will maintain a diversified and stable revenue base, not overly dependent on any land use or external funding source.

B.1.2 - Taxes levied by the City will be used for the purpose of financing services performed for the common benefit.

B.1.3 - Taxes should be held at their lowest possible level, while maintaining Council-approved service levels.

B.1.4 - When considering a new tax or revenue source or an increase in an existing tax or revenue source, the following criteria should be considered:

- Community/voter acceptance
- Competitiveness with surrounding communities
- Efficiency of revenue collection and enforcement
- Effectiveness in generating sufficient revenues in the short and long-term to justify its establishment
- Enhancement of revenue diversity to promote stability and provide protection from downturns in business cycles
- Equity/Fairness in distribution of the revenue burden on various segments of the community

B.1.7 - Revenue should not be targeted for a specific program, unless a revenue source has been established for the sole purpose of financing a particular expenditure.

DISCUSSION

Since the proposed change in the TOT rate results in General Fund revenue to support infrastructure and City services, including Public Safety, Library and Economic Development efforts, it is considered a general tax that requires voter approval at a general election of the City. The next general election will occur on November 5, 2013.

There are several steps to be completed in order to get a ballot measure on this election date, including Council approval of a resolution calling for a ballot measure election. The attached resolution “calls” for a General Election to be held on November 5, 2013, to vote on an increase to the City’s TOT rate (Attachment A). In addition to calling the election, a series of actions are included in the resolution as follows:

1. Approval of the ballot question that will be presented to Sunnyvale voters;
2. Amendments to the Municipal Code to incorporate the proposed tax structure changes;
3. The process for submission of the ballot argument for the measure;
4. Authorizing the City Attorney to prepare the impartial analysis; and
5. Requesting the services of the Register of Voters of Santa Clara County to conduct the election.

The State Elections Code requires the ballot measure to be printed in the ballot pamphlet in the form of a “yes or no” ballot question. The ballot question may not exceed 75 words, and should be presented in clear and concise fashion so that it is clearly understandable to the electorate. The proposed ballot question is as follows:

Shall the Sunnyvale Municipal Code be amended to increase the transient occupancy tax rate (commonly called "hotel tax") charged to persons who occupy hotel or motel rooms in the City for 30 days or less from 9.5% to 10.5% in order to help maintain the City's ability to fund basic services such as public safety, and streets, trees, and sidewalk maintenance, and to keep parity with neighboring cities' hotel tax rates, effective January 1, 2014?

The proposed increase to the TOT would require an amendment to the Sunnyvale Municipal Code. If approved by the voters, the tax rate change would be effective January 1, 2014. The proposed amendment is as follows:

Section 3.16.040 Imposition—Rate—Payment.

(a) For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator through June 30, 1995, and eight and one-half percent of the rent charged by the operator on or after July 1, 1995.

(b) Commencing January 1, 2007, and continuing through December 31, 2008, the amount of the tax shall be nine percent of the rent charged by the operator. Effective January 1, 2009, the amount of the tax shall be nine and one-half percent of the rent charged by the operator, provided, however, that the average citywide hotel/motel occupancy rate from January 1 through September 30, 2008, as determined by the director of finance, is at least sixty percent. If the average occupancy rate during this period is less than sixty percent, the increase in the amount of the tax shall be deferred until January 1, 2010. In any event, the amount of the tax on and after January 1, 2010, shall be nine and one-half percent of the rent charged by operator.

(c) Commencing January 1, 2014, and continuing thereafter, the amount of the tax shall be ten and one-half percent of the rent charged by the operator.

The State elections code provides for the filing of ballot measure arguments. If submitted, one argument “For” and one argument “Against” the measure, of no more than 300 words each, will be printed with the sample ballot. The arguments can be authored by a maximum of five eligible voters. The City Clerk will set a date for the submittal of ballot arguments based on the time reasonably necessary to prepare and print the arguments and sample ballots and to permit the required public examination period. The resolution also provides for rebuttal arguments. Additionally, the State Elections Code provides that the City Attorney may be directed to prepare an impartial analysis of the measure, which is not to exceed 500 words. Direction to prepare such an analysis is included in the resolution.

FISCAL IMPACT

Staff estimates that a 1% increase in TOT would result in approximately \$900,000 in additional annual revenue or approximately \$23 million over a 20 year period based on current long term revenue projections.

The cost associated with placing a ballot measure and requesting the services of the Register of Voters of Santa Clara County to conduct the election on the November 2013 election is approximately \$43,000.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site. Additionally, staff participated with the Chamber of Commerce in conducting a roundtable meeting with industry members to discuss this potential tax increase proposal. Sunnyvale hotels and the Chamber of Commerce were notified about this agenda item and the public hearing tonight.

ALTERNATIVES

1. Adopt a Resolution calling for a General Election to be held on November 5, 2013, of a ballot measure to propose to the voters a 1% increase to the Transient Occupancy Tax effective January 1, 2014.

2. Council takes no action at this time.

RECOMMENDATION

Staff recommends Alternative 1, adopt a Resolution calling for a General Election to be held on November 5, 2013, of a ballot measure to propose to the voters a 1% increase to the Transient Occupancy Tax effective January 1, 2014.

Reviewed by:

Grace K. Leung, Director, Finance
Prepared by: Brice McQueen, Senior Management Analyst

Approved by:

Gary M. Luebbbers
City Manager

Attachments

- A. A Resolution of the City Council of the City of Sunnyvale Calling a General Municipal Election to be Held in the City of Sunnyvale on November 5, 2013, for the Purpose of Submitting to the Voters of the City a Measure Concerning Transient Occupancy Taxes, Requesting Election Consolidation and the Services of the Registrar of Voter

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF SUNNYVALE ON NOVEMBER 5, 2013, FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF THE CITY A MEASURE CONCERNING TRANSIENT OCCUPANCY TAXES, REQUESTING ELECTION CONSOLIDATION AND THE SERVICES OF THE REGISTRAR OF VOTERS

WHEREAS, the City Council is interested in submitting to the voters a measure concerning transient occupancy taxes; and

WHEREAS, whenever two or more elections of any legislative or congressional district, public district, city, county or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, such elections may be either completely or partially consolidated pursuant to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code, and Section 5342 of the Education Code; and

WHEREAS, Elections Code Section 10002 empowers the City Council to request the assistance of the County Registrar of Voters to provide election services to the City and the City Council intends to call a General Municipal Election on November 5, 2013, and for the consolidation of that election;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. GENERAL ELECTION. A General Municipal Election hereby is called to be held in and for the City of Sunnyvale on Tuesday, November 5, 2013, for the purpose of submitting to the voters of the City the below-designated measure.

2. MEASURE. The City Council hereby submits to the voters of the City, at the General Municipal Election called for November 5, 2013, the following measure:

CITY OF SUNNYVALE MEASURE __

Shall the Sunnyvale Municipal Code be amended to increase the transient occupancy tax rate (commonly called "hotel tax") charged to persons who occupy hotel or motel rooms in the City for 30 days or less from 9.5% to 10.5% in order to help maintain the City's ability to fund basic services such as public safety and streets, trees, and sidewalk maintenance, and to keep parity with neighboring cities' hotel tax rates, effective January 1, 2014?

YES _____
NO _____

3. ADOPTION OF MEASURE. In the event a majority of the electors voting on the measure set forth above vote in favor thereof, the Sunnyvale Municipal Code shall be amended to read as set forth in Exhibit "A," attached hereto and incorporated herein, effective upon the date of filing.

4. NOTICE OF ELECTION. Notice of the time and place of holding the election is given, and the City Clerk hereby is authorized, instructed and directed to coordinate with the County of Santa Clara 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.

5. CONSOLIDATION REQUEST. Pursuant to the requirements of Part 3 (Consolidation of Elections; §§10400 et seq.) of Division 10 of the Elections Code, the City Council hereby requests the governing body of any other political subdivision, or any officer otherwise authorized by law, to partially or completely consolidate such elections, and to further provide that, upon consolidation, the consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots opened and returned, returns canvassed, and all other proceedings in connection with the election shall be regulated and done by any body or official authorized to perform such functions and canvass the returns of the elections; and that this City Council consents to such consolidation.

6. REQUEST FOR COUNTY SERVICES. Pursuant to Section 10002 of the California Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to permit the Registrar of Voters to render services to the City of Sunnyvale relating to the conduct of Sunnyvale's Special Municipal Election to be held on Tuesday, November 5, 2013. Services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections including, but not limited to, those certain services set forth in Section 4 hereof.

Subject to the approval of the Board of Supervisors of the foregoing requests, the City Clerk is hereby authorized to engage the services of the Registrar of Voters of the County of Santa Clara to aid in the conduct of the election. Further, the City Director of Finance is authorized and directed to pay the costs of services, provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.

7. BALLOT ARGUMENTS. Arguments for and against may be filed consistent with Elections Code Section 9282, *et seq.*

8. REBUTTAL ARGUMENTS. The City Council adopts the provisions of the Elections Code section 9285 to allow rebuttal arguments for all City of Sunnyvale ballot measures upon the adoption date of this resolution.

9. IMPARTIAL ANALYSIS. Pursuant to Election Code Section 9280, the City Council hereby directs the City Attorney to prepare an impartial analysis of the measure.

10. TRANSMITTAL OF RESOLUTION. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors, the County Registrar of Voters and the County Clerk of the County of Santa Clara.

11. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15061(b)(3) and 15378(a), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

Adopted by the City Council at a regular meeting held on _____, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A" TO RESOLUTION NO. _____

**PROPOSED AMENDMENT TO THE
SUNNYVALE MUNICIPAL CODE**

The City Council of the City of Sunnyvale, on its own motion, submits to the Electors the following amendment to the Sunnyvale Municipal Code. The City Council has called a consolidated general election for the purpose of voting on the amendment to be held on November 5, 2013.

The proposed amendment to the Municipal Code follows the statement of the measure. The provisions of the Municipal Code proposed to be deleted are printed as ~~strike-out~~ type, and the new provisions are printed as underlined type.

CITY OF SUNNYVALE MEASURE ____

Shall the Sunnyvale Municipal Code be amended to increase the transient occupancy tax rate (commonly called "hotel tax") charged to persons who occupy hotel or motel rooms in the City for 30 days or less from 9.5% to 10.5% in order to help maintain the City's ability to fund basic services such as public safety and streets, trees, and sidewalk maintenance, and to keep parity with neighboring cities' hotel tax rates, effective January 1, 2014?

YES _____

NO _____

If Measure ____ carries, the Sunnyvale Municipal Code shall be amended by amending Section 3.16.040 to read as follows:

Section 3.16.040 Imposition—Rate—Payment.

(a) For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator through June 30, 1995, and eight and one-half percent of the rent charged by the operator on or after July 1, 1995.

(b) Commencing January 1, 2007, and continuing through December 31, 2008, the amount of the tax shall be nine percent of the rent charged by the operator. Effective January 1, 2009, the amount of the tax shall be nine and one-half percent of the rent charged by the operator, provided, however, that the average citywide hotel/motel occupancy rate from January 1 through September 30, 2008, as determined by the director of finance, is at least sixty percent. If the average occupancy rate during this period is less than sixty percent, the increase in the amount of the tax shall be deferred until January 1, 2010. In any event, the amount of the tax on and after January 1, 2010, shall be nine and one-half percent of the rent charged by operator.

(c) Commencing January 1, 2014, and continuing thereafter, the amount of the tax shall be ten and one-half percent of the rent charged by the operator.

(~~d~~e) Said 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, or any person paying rent on the transient's behalf, 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 tax administrator may require that such tax shall be paid directly to the tax administrator.