



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Counsel



DATE: February 7, 2012
BOARD MEETING DATE: February 14, 2012
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Four-Fifths

TO: Honorable Board of Supervisors

FROM: John C. Beiers, County Counsel

SUBJECT: Introduce an Ordinance Increasing the Transient Occupancy Tax Imposed on Hotel Rooms located in the Unincorporated Area of the County from Ten Percent (10%) to Twelve Percent (12%)

RECOMMENDATION:

Introduce an ordinance amending Chapter 5.136 of the San Mateo County Ordinance Code to increase the transient occupancy tax ("TOT") imposed on transients occupying hotel rooms in the unincorporated area of the County from ten percent (10%) to twelve percent (12%) of the rent charged by the hotel operator.

BACKGROUND:

On January 31, 2012, your Board discussed the advisability of increasing the TOT from the current ten percent (10%) to twelve percent (12%) of the rent charged by each hotel operator in the unincorporated area. At that meeting, your Board directed staff to prepare, for your Board's consideration, an ordinance to increase the TOT to twelve percent (12%).

As noted, the County presently imposes a TOT at the rate of ten percent (10%) of the rent charged by the hotel operator, while the TOT rate imposed by other jurisdictions in the County ranges from ten to twelve percent, a majority of jurisdictions, including the City of San Mateo, Half Moon Bay, Burlingame, San Bruno, East Palo Alto, Brisbane, and Millbrae, impose the tax at a rate of twelve percent. Information developed by the County Manager's Office indicates that two percent increase in the TOT would generate approximately \$200,000 in additional general fund revenue each year based on current annual receipts of approximately \$1 million at the ten percent level.

DISCUSSION:

Section 7280 of the California Revenue and Taxation Code vests counties with the authority to impose a TOT. While the County may adopt a TOT for the purpose of generating general fund revenues, Proposition 218, incorporated as Articles XIII C and D of the California Constitution (and related provisions of the California Government Code)

provide that, because it is a general tax, it may be imposed only if it is approved by a majority vote of the County electorate in an election consolidated with a regularly scheduled general election for members of the Board of Supervisors. Therefore, in order to increase the TOT rate from ten to twelve percent, the matter must be presented to the County electorate at a general election for a vote. The Government Code provides that a local governmental agency may not present a proposal for a general tax to the electorate unless the agency's governing board has approved, by a two-thirds vote, an ordinance or resolution proposing the tax. Consequently, any proposal to increase the TOT rate to twelve percent (12%) would need to be approved by no fewer than four members of this Board before it may be submitted to the County electorate.

Under California law, ordinances must be adopted at a regular meeting of this Board taking place at least five days after the ordinance is first introduced. We are therefore recommending that an ordinance increasing the TOT rate to twelve percent (12%) be introduced at the Board's February 14, 2012 meeting. The Board can then adopt the ordinance at its meeting of February 28, 2012, which is the last regular meeting that is at least eighty-eight days before the June 5, 2012 election. (The Election Code requires that an election be called at least eighty-eight days before the scheduled election date.) If the Board determines to adopt the ordinance at its meeting of February 28th, it can also adopt a resolution at that time calling for an election to submit the tax to a vote of the electorate in June. My office will have a form of resolution calling for such an election ready for the Board's consideration.

The adoption of this Ordinance amendment contributes to the Shared Vision 2025 Outcome of a Collaborative Community by providing additional funding for the County's programs and services.

FISCAL IMPACT:

As noted, an increase in the TOT rate from ten percent (10%) to twelve percent (12%) is expected to generate an additional \$200,000 in general fund revenues annually. However, the actual amount of revenue generated would depend on the occupancy and room rates in hotels located in the unincorporated area of the County.

The cost of placing one measure on the June 2012 ballot, as required by Proposition 218, is estimated at \$200,000, and each additional measure would cost \$40,000. Your Board is considering three tax measures for the ballot: this increased TOT; a business license tax on commercial parking; and a business license tax on vehicle rentals. If the Board approves all three proposed measures, each will cost approximately \$93,333; if the Board approves just two measures, each will cost approximately \$120,000; if the Board approves only this measure, it will cost approximately \$200,000. These amounts would not be recoverable with respect to measures that fail.

ORDINANCE NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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AN ORDINANCE AMENDING CHAPTER 5.136 OF THE SAN MATEO COUNTY
ORDINANCE CODE TO INCREASE THE TRANSIENT OCCUPANCY TAX
("TOT") IMPOSED ON HOTEL ROOMS IN THE UNINCORPORATED AREA OF
THE COUNTY FROM A RATE OF TEN PERCENT (10%) TO TWELVE
PERCENT (12%) OF THE RENT CHARGED BY THE HOTEL OPERATOR

The Board of Supervisors of the County of San Mateo, State of California,

ORDAINS as follows

SECTION 1. The Board of Supervisors of the County of San Mateo declares the following:

- A. Section 7280 of the California Revenue and Taxation Code authorizes the Board of Supervisors of any County to impose what is commonly known as a "transient occupancy tax," which is a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging located within the unincorporated area of the County, unless the occupancy is for a period of more than 30 days. Pursuant to Chapter 5.136 of the San Mateo County Ordinance Code, the County of San Mateo presently imposes such a transient occupancy tax at the rate of ten percent (10%) of the rent charged by operators of such lodging within the unincorporated area.
- B. Section 2 of Article XIIC of the California Constitution, and section 53723 of the California Government Code, authorize the County to impose a general tax upon a majority vote of the electorate.
- C. Pursuant to section 9140 of the California Elections Code, this Board may submit to the voters, without petition, a measure relating to the enactment of any ordinance.
- D. This Board deems it appropriate to adopt an ordinance, pursuant to the County's taxing authority, to amend Chapter 5.136 of the San Mateo County Ordinance Code to increase the rate of tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging located within the unincorporated area of the County from ten percent (10%) to twelve percent (12%) of the rent charged by operators of such lodging within the unincorporated area, in order to generate additional revenue that will be placed in the general fund to support general County services and functions.

SECTION 2. The Board of Supervisors hereby submits the proposed amendment to the San Mateo County Ordinance Code set forth in Sections 3, 4, and 5 of this ordinance to the qualified electors of the County of San Mateo at the election to be held on June 5, 2012.

SECTION 3. The following measure for addition of a provision to the San Mateo County Ordinance Code shall be submitted to the electorate on June 5, 2012.

“Shall Chapter 5.136 of the San Mateo County Ordinance Code be amended to increase the rate of tax, imposed on occupants of lodging within the unincorporated County who reside in such lodging for thirty consecutive calendar days or less, from ten percent (10%) to twelve percent (12%) of the rent charged by operators of such lodging?”

SECTION 4. Section 5.136.020 of Chapter 5.136 of Title 5 of the San Mateo County Ordinance Code is hereby amended in its entirety as follows:

“Chapter 5.136 Transient Occupancy Tax

5.136.020 Tax Imposed.

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. Said tax constitutes a debt owed by the operator to the County which is extinguished only by payment to the operator or to the County. The transient 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 due upon the transients ceasing to occupy space in the hotel.”

SECTION 5. All other sections of Chapter 5.136 shall remain unchanged and in force.

SECTION 6. The increase in the rate of transient occupancy tax provided for in this ordinance shall be imposed on July 1, 2012; provided however, that this ordinance and the increase in the transient occupancy tax imposed hereby shall not become effective unless the proposal to increase the transient occupancy tax receives a majority vote of the electorate in the general election to take place on June 5, 2012. If such a majority vote is not received, no amendment shall be made to Chapter 5.136 of the San Mateo County Ordinance Code and the rate of transient occupancy tax presently set forth in Chapter 5.136 of the San Mateo County Ordinance Code shall remain unchanged at ten percent (10%).

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