



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 7/31/2018

Agenda Placement: 10B

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: Mary Booher for Minh Tran - County Executive Officer
County Executive Office

REPORT BY: Silva Darbinian, Deputy County Counsel IV - 259-8250

SUBJECT: Second Reading of Ordinance proposing to increase the Transient Occupancy Tax (TOT) and Resolution placing proposed Ordinance on the November 6, 2018 Ballot

RECOMMENDATION

County Executive Officer and County Counsel recommend the following actions regarding the proposal to increase the Transient Occupancy Tax (TOT):

1. Second reading and adoption of an Ordinance proposing to increase the TOT from 12% to 13% and requiring any funds generated as a result of the imposition of this increase in the TOT to be treated as the proceeds of a special tax and spent on workforce and affordable housing programs and services;
2. Adoption of a resolution ordering that a special election be conducted on November 6, 2018, to enable the voters to approve or reject the above-referenced ordinance increasing the TOT rate from 12% to 13% and requiring the proceeds of that incremental 1% increase in the tax rate to be spent for workforce and affordable housing programs and services. The tax increase would not be effective unless and until adopted by two thirds vote of the voters; and
3. Discussion and possible action regarding the submission of ballot arguments for the proposed TOT Ordinance.

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable. Additionally, it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable [14 CCR 15061(b)(3)].

EXECUTIVE SUMMARY

An ordinance increasing the TOT rate by 1% in the unincorporated area is presented today for second reading and adoption. The Board conducted a first reading of the Ordinance on July 10, 2018 and waived the balance of the

reading of the ordinance. If the Board adopts the proposed Ordinance, it must be placed on the ballot for approval by two thirds vote of the voters before the Ordinance becomes effective, per Government Code Section 53722, as it is considered a special tax. The Ordinance, which will be known as "Measure I," increases the TOT rate by 1% and authorizes the funds generated as a result of the imposition of the increased 1% to be restricted for the purpose of workforce and affordable housing purposes. The attached Resolution places the proposed Ordinance on the November 6, 2018 ballot for approval or rejection by the voters.

PROCEDURAL REQUIREMENTS

1. Open Public Hearing.
2. Staff reports.
3. Public comments.
4. Close Public Hearing.
5. Clerk reads the Ordinance Title.
6. Motion, second, discussion and vote to adopt the ordinance.
7. Motion, second, discussion and vote to adopt the resolution.
8. Motion, second, discussion and vote to submit an argument concerning the proposed Ordinance/Measure.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	Should the voters approve the proposed increase in the TOT rate, the incremental funds anticipated to be generated are currently estimated at around \$1.3 million for the first full year the tax is in effect. There will be an approximate \$10,000-\$15,000 cost to hold the election, including costs for noticing, printing, and translating.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	This item is discretionary in that there is no mandate to increase the Transient Occupancy Tax. The recommended action would increase the Transient Occupancy Tax by 1% with all funds generated going to workforce and affordable housing programs and services. Housing is a critical need in Napa County and additional funds will increase and preserve the affordable housing stock.
Is the general fund affected?	Yes
Future fiscal impact:	If approved by the voters, the revenue source would continue in perpetuity.
Consequences if not approved:	If this item is not approved, the voters will not have the opportunity to vote on whether to increase the Transient Occupancy Tax by 1% with revenues dedicated to workforce and affordable housing programs.
Additional Information:	

ENVIRONMENTAL IMPACT

The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable. Additionally, it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable [14 CCR 15061(b)(3)].

BACKGROUND AND DISCUSSION

Background

The Board of Supervisors has discussed the possibility of increasing the Transient Occupancy Tax (TOT) for the unincorporated area from 12% to 13% in a number of past meetings. In 2017, Supervisors Pedroza and Gregory were appointed to a subcommittee to discuss the future of the Special Projects Funds, particularly in terms of redirecting funding previously committed to tourism marketing to support housing for the County's workforce. This committee returned to the Board of Supervisors with a revised policy that was subsequently adopted. The new Special Projects Fund policy allocates 20% (approximately \$340,000) to the Affordable Housing Fund for the support of the lodging industry workforce.

At the Board of Supervisors meeting on April 24, 2018, Supervisor Pedroza reported that the discussions with Visit Napa Valley had led to the idea to explore a 1% increase in the Transient Occupancy Tax in the form of a tax for workforce housing. On May 8, 2018, the Board of Supervisors received a presentation from Visit Napa Valley and appointed Supervisors Gregory and Pedroza to continue to engage in conversations with Visit Napa Valley and the other jurisdictions on the possibility of increasing the Transient Occupancy Tax in each jurisdiction by 1% with the proceeds being treated as a special tax.

Transient Occupancy Tax

Transient Occupancy Tax ("TOT") is levied on the privilege of using a hotel accommodation. The tax was originally designed to compensate local governments for the increased public service costs incurred by serving visitors. TOT is generally recognized as a stable source of funds for local governments. To date, there is no statutory cap on the tax rate under the state enabling legislation, however, any new or increased TOT now requires a vote of the electorate.

Revenue and Taxation Code 7280 authorizes the levying of TOT on hotels, inns, tourist homes and houses, motels or other lodging businesses unless the occupancy is for more than 30 days. The tax, when levied by the County, only applies to the unincorporated area of the county. The County may not pass a countywide TOT that applies to the cities and town in Napa County. However, each of the cities and town are authorized to levy and increase the TOT that would apply within their jurisdictional limits. Each of the cities and town in Napa County have moved through their process to place a ballot measure on the November 2018 ballot to increase the TOT on lodging facilities in the incorporated areas by 1% with the 1% dedicated to workforce and affordable housing programs and services.

The TOT can be levied as a general tax or a special tax. A general tax is used for general fund purposes and requires approval by the majority of the electorate voting in the election. A special tax is imposed for a specific purpose and requires a two thirds vote of the electorate voting in the election.

Napa County's Transient Occupancy Tax

In November 2004, Napa County's voters approved a general tax TOT increase for the unincorporated area from 10.5% to 12%. While the tax is a general purpose tax, the Board of Supervisors has adopted a policy to appropriate

the 1.5%, approximately \$1.8 million annually, for Parks and Open Space, Visitor Management (transitioning to workforce housing for lodging industry employees in Fiscal Year 2018-2019) and Arts and Culture. The Board of Supervisors has the ability to redirect these funds for any purpose at any time.

Today's proposed ordinance increases the TOT from 12% to 13% and authorizes the funds generated as a result of the imposition of the increased 1% to be restricted for workforce and affordable housing purposes. It is expected the proposed increase will generate approximately \$1.3 million annually.

The Board of Supervisors conducted a first reading of the ordinance on July 10, 2018. The proposed ordinance is presented today for a second reading and adoption. The ordinance will not become effective unless and until approved by two thirds vote of the voters. If approved by the voters, the tax increase in the TOT will commence on January 1, 2019.

Resolution Calling the Election

State law, including but not limited to sections 53722 et seq. of the Government Code and Article XIIC of the California Constitution (more commonly known as Proposition 218), provides that no local government may impose a special tax unless and until such special tax is submitted to the electorate and approved by a two-thirds vote of the voters. The accompanying resolution places the proposed ordinance on the November 6, 2018 ballot for voter approval or rejection.

Elections Code section 9160(c) authorizes the Board to order the County Auditor to prepare a fiscal analysis to be included as a part of the official ballot materials. That fiscal analysis is limited in content and length: "(c) Not later than 88 days prior to an election that includes a county ballot measure, the board of supervisors may direct the county auditor to review the measure and determine whether the substance thereof, if adopted, would affect the revenues or expenditures of the county. He or she shall prepare a fiscal impact statement which estimates the amount of any increase or decrease in revenues or costs to the county if the proposed measure is adopted. The fiscal impact statement is "official matter" within the meaning of Section 13303, and shall be printed preceding the arguments for and against the measure. The fiscal impact statement shall not exceed 500 words in length."

This requirement is discretionary. The proposed Resolution calling the election does not require the preparation of a fiscal analysis. However, should the Board opt to have one prepared, the requirement can be added to the Resolution.

Ballot Arguments

Elections Code section 9162 provides that the Board of Supervisors, or any member or members of the Board authorized by the Board, may file a written argument for or against any county measure. Any such argument cannot exceed 300 words in length.

Section 9166 provides that any argument submitted by the Board has priority over any other arguments that may be submitted. If the Board chooses not to submit an argument, but authorizes an individual member or members of the Board to file an argument, Section 9166 provides that any such argument has priority over other arguments that may be submitted. If the Board does not act, a single argument from a voter or voter group is selected to be included in the official ballot materials in accordance with the priority established by Section 9166. In the event of equal priority, the Elections Code does not identify which argument should be selected to be included in the official ballot materials. In such a case, the historical practice of the Registrar of Voters is to select the argument that was filed the earliest.

If the Board wishes to develop an argument for or against the TOT, it has two choices:

- a. The Board may direct staff to prepare an argument for or against the TOT to be presented to the Board on August 14, 2018 (deadline to submit arguments to the Registrar of Voters is August 17, 2018); or
- b. The Board may authorize a member or members of the Board to prepare and file an argument for or against the TOT to be filed with the Registrar of Voters on or before 4:30 p.m. on August 17th.

SUPPORTING DOCUMENTS

- A . Resolution
- B . Ordinance

CEO Recommendation: Approve

Reviewed By: Helene Franchi