



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: CEO / A-C
Department No.: 012 / 061
For Agenda Of: June 26, 2012
Placement: Departmental
Estimated Tme: 30 Minutes
Continued Item: NA
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Robert W. Geis, Auditor – Controller
Chandra Wallar, County Executive Officer

**STAFF
CONTACT:**

Greg Levin, CPA Auditor – Controller
Advanced and Specialty Accounting Division

SUBJECT: County of Santa Barbara Hotel Incentive Program (HIP)

Robert W. Geis
Chandra Wallar
for Chandra Wallar

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence:

As to form: N/A

Recommended Actions:

Consider the following recommendations:

- a. Consider the introduction (first reading) of the Ordinance Adding Chapter 49 to the County Code, Adopting a Hotel Incentive Program (Attachment A, with a 70% - 20% - 10% split), and waive reading of the Ordinance in its entirety; **OR**
- b. Consider the introduction (first reading) of the Ordinance Adding Chapter 49 to the County Code, Adopting a Hotel Incentive Program (Attachment B, with a 90% - 10% split), and waive reading of the Ordinance in its entirety; and
- c. Set a hearing on the administrative agenda for July 10, 2012 to consider the adoption (second reading) of the Ordinance selected in a or b above; and
- d. Determine that the above actions are not a “project” for purposes of the California Environmental Quality Act (CEQA) pursuant to Section 15378(b)(4) of the CEQA Guidelines, because they involve the creation of government funding mechanisms and fiscal activities which

do not involve any commitment to any specific project which may result in a potentially significant physical effect on the environment.

Summary Text:

The Hotel Incentive Program (HIP) seeks to establish a vehicle for the County Board of Supervisors to actively participate in economic development by offering a rebate based on the Transient Occupancy Tax to developers and operators of new hotel properties in the unincorporated areas of the County and also to existing hotel operators and owners who are seeking to significantly renovate existing hotel properties.

Background:

The HIP was first presented to the Board on March 6, 2012 as an informational item and conceptual proposal. That presentation provided an overview of various programs in place around the state, presented information on the basic format and implementation of a rebate program, and illustrated the potential benefit of the program to County revenues. In response to the presentation, the Board directed staff to return with additional program options for consideration and also encouraged staff to engage the public for input on potential program design elements. Since the March 6, 2012 meeting, staff has provided informational presentations to the members of regional tourism and economic development groups and also a local non-profit involved in community planning policy issues. Specifically, staff met with and provided informational presentations to the Greater Santa Barbara Lodging and Hospitality Association, the Santa Barbara Convention and Visitors Bureau, the Santa Barbara Chamber of Commerce, the South Coast Business Forum and the Santa Barbara County Action Network.

As a result of these meetings, staff has incorporated public feedback received, which included establishing a support mechanism for regional tourism promotion, changing the eligibility criteria, and changing the implementation model. In addition to soliciting and implementing feedback from the public and interested advocacy groups, staff also further evaluated policy considerations identified in the preliminary economic analysis prepared in conjunction with the March 6, 2012 hearing. These policy considerations included the probable application of prevailing wage to participating HIP projects.

The following analysis and discussion details the various elements of the proposal before the Board of Supervisors. It is important to note that in response to direction from the Board, staff has presented two ordinances for consideration by the Board. Staff is requesting that the Board consider and adopt one of the two options provided, not both. While options are being presented at the request of the Board, Staff is recommending that the Board adopt the option identified in recommended action (a.) and notes that due to the prevailing wage issue discussed later in this letter, option (b.) may not provide for an effective incentive.

The difference between the two ordinances is in the amount and duration of the incentive provided. Notwithstanding the differences in incentives, the two ordinances presented have identical program conditions, including application, eligibility and participation covenants. Changes from the original program concept as presented on March 6, 2012 are identified in each section of the analysis and discussion below under a sub-header "Changes from Conceptual Proposal".

HIP Eligibility and Application Process

Application Process

The developer would submit a completed application to the County Executive Officer for review. Upon determination that the owner/operator has met the predetermined criteria for program participation, the County Executive Officer would then cause an implementation agreement to be prepared which provides for execution of covenants between the County and the hotel owner/operator. The completed package would then be presented to the Board of Supervisors for final approval prior to award of participation in the rebate program.

Participation Criteria

The HIP would emphasize the benefits to the community by requiring several criteria to be met by the developer/operator in order to participate in the program. The overarching criteria for incentive participation is outlined in section 49-4 of the proposed ordinance which provides that the Board must make a finding of public benefit in order for a New Hotel or Existing Hotel to participate in the program. A number of factors are provided in the ordinance with regard to the finding of public benefit, these factors are:

- (1) The participating project if constructed or improved will create a meaningful increase in the County's general revenues through the creation of new property tax, transient occupancy tax, or sales tax.
- (2) The Board reasonably believes that the participating project will improve the quality of an Existing Hotel using rating criteria established for hotels by the American Automobile Association, J.D. Power & Associates, or Smith's Travel Research Service, thereby increasing the quality of visitor serving facilities in the County.
- (3) The Board reasonably believes that the participating project will create a new First Class Hotel, thereby increasing the capacity and quality of visitor serving facilities in the County.
- (4) The economic value of the incentive provided is reasonable in relation to the anticipated economic benefits to the community.
- (5) The project will result in the elimination of a distressed property in the County.
- (6) The project will result in significant improvements to the existing community infrastructure or enhance public access to open space and other natural resources of the community.
- (7) The participating project will generate additional revenues to the County sufficient to defray the cost of the program to the County.

Only one of these findings is necessary in order to approve program participation. In addition to a finding of public benefit potential participants must also meet basic criteria for participation which are defined as follows:

Basic Criteria for New Hotel

1. Project is for a first class hotel to be constructed in the unincorporated area of the County after January 1, 2012.
2. Does not include all, or any portion of, or addition to, an existing facility that has operated as a hotel within the last ten years preceding the submission of an application to the County.

Changes from Conceptual Proposal

The minimum project size criterion of \$50,000,000 was eliminated in order to allow for broader program participation.

Basic Criteria for Renovation Projects

1. Project involves property in the unincorporated area of the County that was occupied and used as a hotel within the ten-year period preceding application submission and operating continuously for the three-year period preceding application submission.
2. The property improvement program measurably and demonstrably improves the quality of the hotel through the allowance for increased capacity or ability to charge higher room rates, and enhancements to the hotel's rating by the American Automobile Association, J.D. Power & Associates, or Smith's Travel Research Service.

Changes from Conceptual Proposal

The minimum project size criterion of \$1,000,000 or \$50,000,000 was eliminated in order to allow for broader program participation.

Conditions Imposed Upon Participation

The HIP seeks to emphasize the development of hotel properties that accentuate Santa Barbara's current status as a high end luxury tourism destination with an abundance of outdoor and recreation opportunities as well as a vibrant local arts and entertainment community. The program would include general conditions requiring that participants:

1. Complete the entitlement process, construction and receive all final occupancy clearances within a specified period of time (currently proposed to be four years (new hotel) or three years (renovation) from execution of the Implementation Agreement) to receive the full benefit of the program.
2. The amount of the rebate incentives will be tied to the maintenance of a certain assessed property value (generally construction valuation) for property tax purposes (i.e. if the property taxes decline, so will the rebate given to the operator).
3. Operate the facility in a non-discriminatory manner and in keeping with other covenants as deemed necessary by the Board of Supervisors at the time of approval of the Implementation Agreement by the Board of Supervisors.

HIP Rebate Incentive

The rebate incentive would vary depending on whether or not the project is a new hotel project or a renovation project. A new hotel project is described as a hotel or First Class Hotel that is or was under construction as a hotel after January 1, 2012, and does not include an existing facility that has operated as a hotel within the last ten years preceding the submission of an application to the County. The rebate is limited to the Transient Occupancy Tax levy (rate) of 10%, or the current rate, whichever is lower.

New Hotels

In response to direction from the Board of Supervisors at the March 6, 2012 meeting, staff has developed two separate implementation options for consideration and adoption by the Board. It is staff's intent that the Board would select one or the other and not both options for implementation.

Incentive Option 1: 70% - 20% - 10% Split (Attachment A)

Option 1 provides an incentive to the operator by rebating to the operator an amount equal to 70% of the TOT remitted during the rebate period. This option also identifies an amount equivalent to 10% of TOT generated by participating projects for use in promoting tourism to Santa Barbara and it retains 20% of

the TOT generated by participating projects for use in supporting County General Fund programs. The duration of incentive option 1 is for 15 years. Staff believes that of the two options presented, option 1 presents the more viable option as an incentive.

Staff's recommendation is based on the Staff's belief that:

1. Option 1 provides for the ability for the County to share in TOT generated during the rebate period thus providing some protection against the risk that the TOT projections are underestimated.
2. The longer period enables the enforcement of implementation agreement covenants for a longer time.
3. The longer period provides increased funding for tourism promotion.
4. The longer period enables the developer to potentially mitigate the effect of prevailing wage on the cost of construction because it is expected that annual rebates will be greater toward the end of the rebate period due to the time value of money and the ability to recognize revenue growth through marketing and other business efficiencies and enhancements.

In no case will the rebate period extend more than 19 years (4 years construction plus 15 year rebate period) past the execution of the Implementation Agreement.

Option 1: Changes from Conceptual Proposal

Tourism Set Aside

*The set aside for tourism promotion was the result of input gained from further discussion with the local hospitality and tourism organizations. The intent of this (as envisioned by staff) is to identify funding for tourism promotion activities to mitigate if any, the impacts of competition created from the additional tourist serving facilities incentivized by the program. The funds set aside for Tourism promotion would be held in a separate fund and subject to the annual appropriation by the Board of Supervisors. These funds are envisioned to provide for marketing support of the industry and **are not** intended to provide funding for events and or festivals that may indirectly increase tourism by virtue of attracting visitors who seek to participate in a local event or festival.*

County Revenue Retention

The retention of 20% of TOT generated by each participating project is intended to mitigate the risk to the County that the participating project generates greater TOT revenues (and hence a larger rebate) than was originally anticipated in the economic analysis. By retaining 20% of the TOT funds, the County is able to participate in the taxes generated by the project immediately, thus furthering the economic benefit of the program to the County.

Extension of Term

The term was extended to approximate the economic value as contemplated in the conceptual proposal.

Incentive Option 2: 90% - 10% Split (Attachment B)

Option 2 provides an incentive to the operator by rebating to the operator an amount equal to 90% of the TOT remitted during the rebate period. This option also identifies an amount equivalent to 10% of TOT generated by participating projects for use in promoting tourism to Santa Barbara. The duration of incentive option 2 is for 10 years. In no case will the rebate period extend more than 14 years (4 years construction plus 10 year rebate period) from execution of the Implementation Agreement.

Option 2: Changes from Conceptual Proposal
Tourism Set Aside

The original conceptual proposal did not identify support for tourism promotion as part of the New Hotel incentive plan programs. The rationale for this change is the same as is discussed in Option 1 for the New Hotel Incentive.

Hotel Renovations

A hotel renovation project is described as a significant renovation that will substantially improve an existing and operating hotel property. For hotel renovation projects, the planned rebate is 50% of TOT growth related to the renovation. Additionally, the ordinance also provides for the appropriation of 10% of the TOT growth for support of tourism promotion with the County retaining the remainder in support of County programs.

Renovation Program: Changes from Conceptual Proposal

Tourism Set Aside

The original conceptual proposal did not identify support for tourism promotion in the as part of renovation programs. The rationale for this change is the same as is discussed in Option 1 for the New Hotel Incentive.

TOT growth related to the renovation is defined as annual Transient Occupancy Tax generated by the property (post execution of the Implementation Agreement) applied against the average Transient Occupancy Tax generated by the property over the three years immediately prior to approval for participation in the program.

For example, if the annual Transient Occupancy Tax generated by a property over the three years immediately prior to approval for participation in the program is \$10,000 and the facility generates \$15,000 of Transient Occupancy Tax in first year of the rebate period, then that operator is entitled to a rebate of \$2,500 (50% of \$15,000-\$10,000). The rebate period will be valid for 10 years, but in no cases will the rebate period extend more than 13 years past the date the Board of Supervisors approves the implementation agreement. In no event shall the rebate period be extended beyond 13 years from the date of approval of the implementation agreement and no opportunity to appeal or reapply shall be granted for 13 years.

Other Policy Considerations

Prevailing Wage

While the implementation of State of California prevailing wage law is the responsibility of the program participant it is clear that existing regulatory guidance issued by the California Department of Industrial Relations is strongly suggestive that program participants are subject to the state prevailing wage laws should they decide to participate in the program. Failure of a program participant to comply with prevailing wage laws could result in significant penalties and fines including but not limited to disbarment from participating in the construction of public works for a significant period of time in addition to significant financial penalties. The ordinance includes language notifying program participants that participation may trigger application of prevailing wage to the construction portion of the project.

Legal Validation

Under Govt. Code section 53511, the County may bring a validation action to determine the validity of “bonds, warrants, contracts, obligations, or evidence of indebtedness.” While this language appears to be quite broad, courts have interpreted it very narrowly. As a practical matter, a validation action is not available for the Hotel Incentive Program.

Sunset Provision

New applications for the hotel incentive program will not be accepted after five years after the date of enactment of the ordinance, unless the Board of Supervisors renews the hotel incentive program through an amendment to the ordinance. The sunset provision would only have the effect of preventing new applications, thus previously approved implementation agreements would continue to be in force for the duration of the agreement.

Failure to Construct

The ordinance includes a provision allowing the Board of Supervisors to cancel an operator’s participation in the program in the event that the facilities are not placed into operation within 6 years of the execution of the implementation agreement.

Transfer of Project

The ordinance includes a provision allowing the Board of Supervisors the right to cancel participation in the program in the event of a sale of the property identified in the implementation agreement, unless otherwise identified in the implementation agreement.

Implementation Agreement

The ordinance specifies that in order for an operator to participate in the HIP, the operator must execute an implementation agreement which would then be approved by the Board of Supervisors. The execution of the implementation agreement allows for the crafting of project specific conditions that ensure the public benefit of the participating project. Subject to further review, examples of potential project specific conditions include, but are not limited to:

1. Operator must demonstrate the financial capability to implement the project as entitled, including demonstrating that the necessary financing to complete the project can be obtained.
2. Operator must agree to maintain adequate records of construction and agree to allow for the County to audit such records on an annual basis.

3. Operator must agree to hire a certain portion of its construction workforce locally.

Performance Measure:

The program is designed to stimulate the local economy and provide an overall net positive impact on County revenues by working to increase the assessed value of properties on the County property tax roll. The measure of this would be increases to the assessed property values of participating properties.

Fiscal and Facilities Impacts:

Budgeted: N/A

The potential fiscal impacts of the Hotel Incentive Program were addressed as part of the March 6, 2012 presentation to the Board of Supervisors (Attached). However, it is important to highlight a few key points regarding Transient Occupancy Tax rebates as they pertain to:

New Hotel Projects:

- Incentives of this nature tend to expedite the development of entitled properties, therefore, increasing County revenue while also increasing the likelihood of higher Transient Occupancy Tax revenue in the future.
- Developers are rebated money based on revenue actually generated by the property. Therefore, the Transient Occupancy Tax rebate will be less if the property performs below expectations.

Hotel Renovation Projects:

- The rebate is 50% of the Transient Occupancy Tax growth generated by the renovation, thus substantially preserving the County's revenue stream in operational hotel facilities while providing an additional revenue stream resulting from County's 50% (40% retained, 10% appropriated for Tourism Promotion) share of Transient Occupancy Tax growth related to the renovation.

The program increases the County's revenues and also likely increases future Transient Occupancy Tax revenue by expediting the development of entitled properties. The program provides an additional source of funding for tourism promotion, which has been significantly reduced as compared to prior budget periods.

Special Instructions: The Clerk of the Board shall publish the ordinance in accordance with Cal. Govt. Code Section 25124.

Attachments:

1. Attachment A: Ordinance 70% - 20% - 10% Split
2. Attachment B: Ordinance 90% - 10% Split
3. Attachment C: March 6, 2012 Board Letter on Hotel Incentive Program.

Authored by:

Gregory Levin, CPA, Office of the Auditor – Controller, Advanced and Specialty Accounting Division

cc:

Mike Ghizzoni, Assistant County Counsel
Glen Russell, PhD, Planning Director

BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA, CALIFORNIA

ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 49 TO THE COUNTY CODE, ADOPTING A
HOTEL INCENTIVE PROGRAM

The Board of Supervisors of the County of Santa Barbara, State of California, ordains as follows:

SECTION 1: That Sections 49-1 to 49-12 of Article 1 of Chapter 49 of the County Code are added as follows:

Sec. 49-1. Purpose. The purpose of this chapter is to provide an incentive program for the operation and maintenance of quality hotel facilities which enhance the tourist and travel experience for visitors to the County of Santa Barbara, provide attractive and desirable visitor serving facilities and experiences, and assist the County in achieving its economic development and tourism goals.

In the implementation of this program, the Board of Supervisors finds:

(a) The general welfare and material well-being of the residents of the County of Santa Barbara depend in large measure upon the growth and expansion of the tourism and travel industries in the County.

(b) The operation, maintenance, and expansion of the inventory of first class hotels and renovation of existing hotels to a higher standard in the unincorporated areas of the County of Santa Barbara will create desirable visitor serving facilities that will contribute to the growth and expansion of tourism and travel opportunities in the County, provide employment opportunities for the residents of the County, and promote and enhance the economy of the County.

(c) It is in the best interest of the County of Santa Barbara to induce and encourage the operation and maintenance of first class hotel facilities that would not otherwise exist, and to improve the existing hotel inventory, thereby creating new sources or increased amounts of tax revenues for the County's general fund which supports the public services that the County provides to its residents.

(d) The authority granted and the purposes to be accomplished by this chapter are properly local governmental and public purposes for which public funds can be expended and that the operation, maintenance, and expansion of the inventory of first class hotels and improvement of the existing hotel inventory is of paramount importance to the County of Santa Barbara, its residents, and businesses.

Sec. 49-2. Definitions. For the provisions of this chapter, the following definitions shall apply:

“Current Assessed Valuation” means the assessed valuation net of any exemptions of any Property subject to the Implementation Agreement as determined by the County Assessor each lien date or upon any event, including but not limited to assessment appeal actions, causing a change in assessed valuation between lien dates.

“Existing Hotel” means a property in the unincorporated area of the County that was occupied and used as a hotel within the ten-year period preceding application submission and operating continuously for the three-year period preceding application submission.

“Existing Hotel Rebate Period” is a ten-year period beginning on the earlier of the date that Renovated Facilities are Placed Into Operation or, the end of the Renovation Construction Window. The rebate period for Existing Hotels for which the Renovated Facilities have not been Placed Into Operation by the end of the Renovation Construction Window shall be reduced by the number of days that the Renovated Facilities are non-operational past the end of the Renovation Construction Window. In no event shall the rebate period be longer than 10 years from the date the Renovated Facilities are Placed Into Operation and in no event shall total program participation exceed 13 years (3 years Renovation Construction Window plus 10 year rebate period) from the effective date of the Implementation Agreement.

“First Class Hotel” means a hotel which provides standards of physical features and operational services which meet or exceed the four star or four diamond or equivalent rating criteria established for hotels by the American Automobile Association, J.D. Power & Associates, or Smith’s Travel Research Service.

“First Class Hotel Standard” means standards of physical features and operation which qualify a hotel as a First Class Hotel and which include operation of the hotel with housekeeping services, food and beverage services, room services, banquet and meeting services, concierge and bellman services, and parking services.

“Incentive Program Rebate” means the amount of funds paid by the County annually during either a New Hotel Rebate Period or Existing Hotel Rebate Period to an Operator of a Property included in an Implementation Agreement.

“Implementation Agreement” means an agreement regarding continuing use, maintenance, non-discrimination, public benefit, and such other provisions as the County Board of Supervisors in its sole discretion and upon review of the application for participation may determine are necessary or appropriate to preserve the goals and intent of this chapter, which may but is not required to take the form of a development agreement under Cal. Govt. Code Section 65865(a).

“Initial Assessed Valuation” means the assessed valuation net of any exemptions of a Property as determined by the County Assessor upon the completion of the qualifying new construction project or Qualified Renovation Program subject to the Implementation Agreement.

“New Construction Window” means the four-year period following execution of the Implementation Agreement.

“New Hotel” means a hotel or First Class Hotel that is or was to be constructed in the unincorporated area of the County as a hotel after January 1, 2012. The term “New Hotel” does not include all, or any portion of, or addition to, an existing facility that has operated as a hotel within the last ten years preceding the submission of an application to the County.

“New Hotel Rebate Period” is a fifteen-year period beginning on the earlier of the date that New Hotel is Placed Into Operation or, the end of the New Construction Window. The rebate period for New Hotels that have not been Placed Into Operation by the end of the New Construction Window shall be reduced by the number of days that the hotel was non-operational past the end of the New Construction Window. In no event shall the rebate period be longer than fifteen years from the date the New Hotel is Placed Into Operation and in no event shall total program participation exceed nineteen years from the date of the Implementation Agreement.

“Operator” means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, franchisee, or any other capacity, or the assignee or designee of such proprietor.

“Placed Into Operation” means the operation of the facilities in accordance with the terms identified in the Implementation Agreement.

“Property” means the parcel or parcels identified in the Implementation Agreement and any related improvements.

“Property Assessed Value” means the revised secured property tax assessed value determined subsequent to the completion of construction or renovations identified in the Implementation Agreement plus any annual adjustments made pursuant to California Revenue and Taxation Code Section 51.

“Property Assessed Value Offset” means the reduction to the amount of Incentive Program Rebate for the amount of property tax “loss” due to Current Assessed Valuation(s) subsequent to the Initial Assessed Valuation being lower for any reason than the Initial Assessed Valuation. It is calculated by subtracting the Initial Assessed Valuation from the Current Assessed Valuation and if the result is negative multiplying by the 1% basic tax rate. The Property Assessed Value Offset shall be determined by the County Auditor-Controller and in no event shall the Property Assessed Value Offset result in an increase to the Incentive Program Rebate provided to the Operator.

“Qualified Renovation Program” means a property improvement program undertaken by an Existing Hotel that measurably and demonstrably improves the quality of the hotel through the allowance for increased capacity or ability to charge higher room rates, and

enhancements to the hotel's rating by the American Automobile Association, J.D. Power & Associates, or Smith's Travel Research Service. The property improvement program shall be comprehensively executed in a single renovation project on the Property and be completed within the Renovation Construction Window.

"Renovated Facilities" means the portion of a renovated Property that has been improved subject to the Implementation Agreement.

"Renovation Construction Window" means the three-year period following execution of the Implementation Agreement.

"Tourism Promotion" means efforts to promote the County of Santa Barbara as a destination of choice for recreational tourism and also to promote the County of Santa Barbara as a destination of choice for business conferences and other commercial travel.

"Transient Occupancy Tax Base" means the average of the last thirty-six months of annualized transient occupancy tax owed to the County by an Existing Hotel prior to the commencement of a Qualified Renovation Program.

"Transient Occupancy Tax Increment" means the difference between the Transient Occupancy Tax Base and the amount of transient occupancy tax owed to the County by an Existing Hotel after execution of the Implementation Agreement by the County.

Sec. 49-3. Establishment of Tourism Promotion Fund.

(a) The County hereby establishes a Tourism Promotion Fund.

(b) The balances and receipts of this fund may be used for Tourism Promotion or otherwise, subject to the Board of Supervisors' discretion.

Sec. 49-4. Eligibility for Incentive Program.

(a) The Board of Supervisors must make a finding of public benefit in order for a New Hotel or Existing Hotel to qualify for the hotel incentive program. This finding may be based on any of the following factors, or any other factors as determined by the Board:

(1) The participating project if constructed or improved will create a meaningful increase in the County's general revenues through the creation of new property tax, transient occupancy tax, or sales tax.

(2) The Board reasonably believes that the participating project will improve the quality of an Existing Hotel using rating criteria established for hotels by the American Automobile Association, J.D. Power & Associates, or Smith's Travel Research Service, thereby increasing the quality of visitor serving facilities in the County.

(3) The Board reasonably believes that the participating project will create a new First Class Hotel, thereby increasing the capacity and quality of visitor serving facilities in the County.

- (4) The economic value of the incentive provided is reasonable in relation to the anticipated economic benefits to the community.
- (5) The project will result in the elimination of a distressed property in the County.
- (6) The project will result in significant improvements to the existing community infrastructure or enhance public access to open space and other natural resources of the community.
- (7) The participating project will generate additional revenues to the County sufficient to defray the cost of the program to the County.

(b) In addition to the requirement of Section 49-4 (a) above, to qualify for the hotel incentive program for New Hotels, the Operator of each New Hotel shall:

- (1) Complete and submit to the County Executive Officer, the County's application for the hotel incentive program;
- (2) Execute the Implementation Agreement; and
- (3) Once open and before the end of the first year of the New Hotel Rebate Period, provide independent third-party certification acceptable to the County that the New Hotel is operating to a First Class Hotel Standard as defined in Section 49-2.

(c) In addition to the requirement of Section 49-4 (a) above, to qualify for the hotel incentive program for Existing Hotels, the Operator of each Existing Hotel shall:

- (1) Complete and submit to the County Executive Officer, the County's application for participation in the hotel incentive program, including documentation satisfactory to the County certifying the renovation project for an Existing Hotel as a Qualified Renovation Program; and
- (2) Execute the Implementation Agreement.

Sec. 49-5. Incentive Program.

(a) New Hotels. Subject to annual appropriation by the Board of Supervisors, during the New Hotel Rebate Period, the County shall pay to an Operator of a New First Class Hotel qualified to participate in the hotel incentive program, and with whom the County has entered into an Implementation Agreement, an Incentive Program Rebate in an amount equal to seventy percent (70%) of transient occupancy taxes (exclusive of penalties and interest) remitted by the Operator to the County by September 30 for hotel stays occurring in the fiscal year ended the prior June 30, less any Property Assessed Value Offset as calculated by the County Auditor-Controller.

- (1) For the purposes of this chapter, the rebate is limited to the transient occupancy tax levy (rate) of 10%, or the current rate, whichever is lower.
- (2) Such payments shall be made annually on or before December 30 of each year of New Hotel Rebate Period.

- (3) Such payments shall be reduced by 20% in the event that the affected Property does not receive a revised assessment pursuant to California Revenue and Taxation Code Division 1, Part 0.5 Chapters 3 and 3.5 beginning with Section 70 prior to September 30 of year 1 of the New Hotel Rebate Period.

- A. Amounts retained under (a)(3) above shall be remitted to the Operator upon completion of a revised assessment pursuant to Chapter 3 and Chapter 3.5 of the California Revenue and Taxation Code.

(b) Existing Hotels. Subject to annual appropriation by the Board of Supervisors, during the Existing Hotel Rebate Period, the County shall pay to an Operator of an Existing Hotel qualified to participate in the hotel incentive program, and with whom the County has entered into an Implementation Agreement, and which has successfully completed a Qualified Renovation Program, an amount equal to fifty percent (50%) of Transient Occupancy Tax Increment (exclusive of penalties and interest) remitted to the County by the Operator by September 30 for hotel stays occurring in the fiscal year ended the prior June 30, less the Property Assessed Value Offset as calculated by the County Auditor-Controller.

- (1) For the purposes of this chapter, the rebate is limited to the transient occupancy tax levy (rate) of 10%, or the current rate, whichever is lower.
- (2) Such payments shall be made annually on or before December 30 of each year of Existing Hotel Rebate Period for the prior period ended June 30.
- (3) Such payments shall be reduced by 20% in the event that the affected Property does not receive a revised assessment pursuant to Chapter 3 and Chapter 3.5 of the California Revenue and Taxation Code prior to September 30 of year 1 of the Existing Hotel Rebate Period.

- A. Amounts retained under (b)(3) above shall be remitted to the Operator upon completion of a revised assessment pursuant to Chapter 3 and Chapter 3.5 of the California Revenue and Taxation Code.

(c) Tourism Promotion Credit.

- (1) Subject to appropriation by the Board of Supervisors, for participating New Hotels, the County shall pay into the Tourism Promotion Fund an amount equal to 10% of transient occupancy taxes remitted to the County by the participating Operator during the term of the New Hotel Rebate Period.
- (2) Subject to appropriation by the Board of Supervisors, for participating Existing Hotels, the County shall pay into the Tourism Promotion Fund an Amount equal to 10% of the Transient Occupancy Tax Increment remitted to the County by the participating Operator during the term of the Existing Hotel Rebate Period.

Sec. 49-6. Incentive Program Early Termination.

(a) Unless otherwise provided in an Implementation Agreement, should the Property, assets or facilities identified in the Implementation Agreement not be Placed Into Operation within six years of the execution by the County of the Implementation Agreement, the County Board of Supervisors shall have the option to terminate the Implementation Agreement and the Operator's participation in the hotel incentive program.

(b) Unless otherwise provided in an Implementation Agreement, should the Property sell or otherwise transfer to a new owner, the County Board of Supervisors shall have the option to terminate the Implementation Agreement and the deny the new transferee the right to participate in the hotel incentive program.

Sec. 49-7. Implementation Agreement. Each Operator requesting to participate in the County's hotel incentive program shall execute an Implementation Agreement between the Operator and the County, approved by the County Board of Supervisors. The public purposes and consideration for participation in the program shall be described in the Implementation Agreement.

Sec. 49-8. General Fund Revenues. All transient occupancy tax revenues or Transient Occupancy Tax Increment remitted to the County of Santa Barbara by an Operator of a hotel covered by an Implementation Agreement as provided in this chapter shall be deemed general fund revenues of the County and shall be deposited in the County's general fund.

Sec. 49-10. Prevailing Wage. Work covered by the Implementation Agreement may be a "public work" as defined in Chapter 1 of Part 7 of Division 7 of the California Labor Code, to which Section 1771 may apply. The applicability of prevailing wage requirements shall be addressed in the Implementation Agreement.

Sec. 49-11. Administrative Processes and Applications. Consistent with the intent and goals of this chapter, the County Executive Officer may adopt administrative processes and applications for implementation and furtherance of the requirements of this chapter.

Sec. 49-12. Sunset on New Applications. New applications for the hotel incentive program will not be accepted after five years after the date of enactment of this ordinance, unless the Board of Supervisors renews the hotel incentive program through an amendment to this ordinance.

SECTION 2: If any provision of this ordinance or application thereof is held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The Board of Supervisors hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 3: This ordinance shall become effective 30 days from the date of final passage. Notice shall be published in accordance with Government Code Section 25124.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Chair, Board of Supervisors

ATTEST:

CHANDRA L. WALLER
CLERK OF THE BOARD

By _____
Deputy Clerk

APPROVED AS TO FORM:

APPROVED AS TO ACCOUNTING FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

ROBERT GEIS
AUDITOR-CONTROLLER

By: 
Deputy County Counsel

By: 

BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA, CALIFORNIA

ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 49 TO THE COUNTY CODE, ADOPTING A
HOTEL INCENTIVE PROGRAM

The Board of Supervisors of the County of Santa Barbara, State of California, ordains as follows:

SECTION 1: That Sections 49-1 to 49-12 of Article 1 of Chapter 49 of the County Code are added as follows:

Sec. 49-1. Purpose. The purpose of this chapter is to provide an incentive program for the operation and maintenance of quality hotel facilities which enhance the tourist and travel experience for visitors to the County of Santa Barbara, provide attractive and desirable visitor serving facilities and experiences, and assist the County in achieving its economic development and tourism goals.

In the implementation of this program, the Board of Supervisors finds:

(a) The general welfare and material well-being of the residents of the County of Santa Barbara depend in large measure upon the growth and expansion of the tourism and travel industries in the County.

(b) The operation, maintenance, and expansion of the inventory of first class hotels and renovation of existing hotels to a higher standard in the unincorporated areas of the County of Santa Barbara will create desirable visitor serving facilities that will contribute to the growth and expansion of tourism and travel opportunities in the County, provide employment opportunities for the residents of the County, and promote and enhance the economy of the County.

(c) It is in the best interest of the County of Santa Barbara to induce and encourage the operation and maintenance of first class hotel facilities that would not otherwise exist, and to improve the existing hotel inventory, thereby creating new sources or increased amounts of tax revenues for the County's general fund which supports the public services that the County provides to its residents.

(d) The authority granted and the purposes to be accomplished by this chapter are properly local governmental and public purposes for which public funds can be expended and that the operation, maintenance, and expansion of the inventory of first class hotels and improvement of the existing hotel inventory is of paramount importance to the County of Santa Barbara, its residents, and businesses.

Sec. 49-2. Definitions. For the provisions of this chapter, the following definitions shall apply:

“Current Assessed Valuation” means the assessed valuation net of any exemptions of any Property subject to the Implementation Agreement as determined by the County Assessor each lien date or upon any event, including but not limited to assessment appeal actions, causing a change in assessed valuation between lien dates.

“Existing Hotel” means a property in the unincorporated area of the County that was occupied and used as a hotel within the ten-year period preceding application submission and operating continuously for the three-year period preceding application submission.

“Existing Hotel Rebate Period” is a ten-year period beginning on the earlier of the date that Renovated Facilities are Placed Into Operation or, the end of the Renovation Construction Window. The rebate period for Existing Hotels for which the Renovated Facilities have not been Placed Into Operation by the end of the Renovation Construction Window shall be reduced by the number of days that the Renovated Facilities are non-operational past the end of the Renovation Construction Window. In no event shall the rebate period be longer than 10 years from the date the Renovated Facilities are Placed Into Operation and in no event shall total program participation exceed 13 years (3 years Renovation Construction Window plus 10 year rebate period) from the effective date of the Implementation Agreement.

“First Class Hotel” means a hotel which provides standards of physical features and operational services which meet or exceed the four star or four diamond or equivalent rating criteria established for hotels by the American Automobile Association, J.D. Power & Associates, or Smith’s Travel Research Service.

“First Class Hotel Standard” means standards of physical features and operation which qualify a hotel as a First Class Hotel and which include operation of the hotel with housekeeping services, food and beverage services, room services, banquet and meeting services, concierge and bellman services, and parking services.

“Incentive Program Rebate” means the amount of funds paid by the County annually during either a New Hotel Rebate Period or Existing Hotel Rebate Period to an Operator of a Property included in an Implementation Agreement.

“Implementation Agreement” means an agreement regarding continuing use, maintenance, non-discrimination, public benefit, and such other provisions as the County Board of Supervisors in its sole discretion and upon review of the application for participation may determine are necessary or appropriate to preserve the goals and intent of this chapter, which may but is not required to take the form of a development agreement under Cal. Govt. Code Section 65865(a).

“Initial Assessed Valuation” means the assessed valuation net of any exemptions of a Property as determined by the County Assessor upon the completion of the qualifying new construction project or Qualified Renovation Program subject to the Implementation Agreement.

“New Construction Window” means the four-year period following execution of the Implementation Agreement.

“New Hotel” means a hotel or First Class Hotel that is or was to be constructed in the unincorporated area of the County as a hotel after January 1, 2012. The term “New Hotel” does not include all, or any portion of, or addition to, an existing facility that has operated as a hotel within the last ten years preceding the submission of an application to the County.

“New Hotel Rebate Period” is a ten-year period beginning on the earlier of the date that New Hotel is Placed Into Operation or, the end of the New Construction Window. The rebate period for New Hotels that have not been Placed Into Operation by the end of the New Construction Window shall be reduced by the number of days that the hotel was non-operational past the end of the New Construction Window. In no event shall the rebate period be longer than ten years from the date the New Hotel is Placed Into Operation and in no event shall total program participation exceed fourteen years from the date of the Implementation Agreement.

“Operator” means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, franchisee, or any other capacity, or the assignee or designee of such proprietor.

“Placed Into Operation” means the operation of the facilities in accordance with the terms identified in the Implementation Agreement.

“Property” means the parcel or parcels identified in the Implementation Agreement and any related improvements.

“Property Assessed Value” means the revised secured property tax assessed value determined subsequent to the completion of construction or renovations identified in the Implementation Agreement plus any annual adjustments made pursuant to California Revenue and Taxation Code Section 51.

“Property Assessed Value Offset” means the reduction to the amount of Incentive Program Rebate for the amount of property tax "loss" due to Current Assessed Valuation(s) subsequent to the Initial Assessed Valuation being lower for any reason than the Initial Assessed Valuation. It is calculated by subtracting the Initial Assessed Valuation from the Current Assessed Valuation and if the result is negative multiplying by the 1% basic tax rate. The Property Assessed Value Offset shall be determined by the County Auditor-Controller and in no event shall the Property Assessed Value Offset result in an increase to the Incentive Program Rebate provided to the Operator.

“Qualified Renovation Program” means a property improvement program undertaken by an Existing Hotel that measurably and demonstrably improves the quality of the hotel through the allowance for increased capacity or ability to charge higher room rates, and

enhancements to the hotel's rating by the American Automobile Association, J.D. Power & Associates, or Smith's Travel Research Service. The property improvement program shall be comprehensively executed in a single renovation project on the Property and be completed within the Renovation Construction Window.

"Renovated Facilities" means the portion of a renovated Property that has been improved subject to the Implementation Agreement.

"Renovation Construction Window" means the three-year period following execution of the Implementation Agreement.

"Tourism Promotion" means efforts to promote the County of Santa Barbara as a destination of choice for recreational tourism and also to promote the County of Santa Barbara as a destination of choice for business conferences and other commercial travel.

"Transient Occupancy Tax Base" means the average of the last thirty-six months of annualized transient occupancy tax owed to the County by an Existing Hotel prior to the commencement of a Qualified Renovation Program.

"Transient Occupancy Tax Increment" means the difference between the Transient Occupancy Tax Base and the amount of transient occupancy tax owed to the County by an Existing Hotel after execution of the Implementation Agreement by the County.

Sec. 49-3. Establishment of Tourism Promotion Fund.

(a) The County hereby establishes a Tourism Promotion Fund.

(b) The balances and receipts of this fund may be used for Tourism Promotion or otherwise, subject to the Board of Supervisors' discretion.

Sec. 49-4. Eligibility for Incentive Program.

(a) The Board of Supervisors must make a finding of public benefit in order for a New Hotel or Existing Hotel to qualify for the hotel incentive program. This finding may be based on any of the following factors, or any other factors as determined by the Board:

(1) The participating project if constructed or improved will create a meaningful increase in the County's general revenues through the creation of new property tax, transient occupancy tax, or sales tax.

(2) The Board reasonably believes that the participating project will improve the quality of an Existing Hotel using rating criteria established for hotels by the American Automobile Association, J.D. Power & Associates, or Smith's Travel Research Service, thereby increasing the quality of visitor serving facilities in the County.

(3) The Board reasonably believes that the participating project will create a new First Class Hotel, thereby increasing the capacity and quality of visitor serving facilities in the County.

- (4) The economic value of the incentive provided is reasonable in relation to the anticipated economic benefits to the community.
- (5) The project will result in the elimination of a distressed property in the County.
- (6) The project will result in significant improvements to the existing community infrastructure or enhance public access to open space and other natural resources of the community.
- (7) The participating project will generate additional revenues to the County sufficient to defray the cost of the program to the County.

(b) In addition to the requirement of Section 49-4 (a) above, to qualify for the hotel incentive program for New Hotels, the Operator of each New Hotel shall:

- (1) Complete and submit to the County Executive Officer, the County's application for the hotel incentive program;
- (2) Execute the Implementation Agreement; and
- (3) Once open and before the end of the first year of the New Hotel Rebate Period, provide independent third-party certification acceptable to the County that the New Hotel is operating to a First Class Hotel Standard as defined in Section 49-2.

(c) In addition to the requirement of Section 49-4 (a) above, to qualify for the hotel incentive program for Existing Hotels, the Operator of each Existing Hotel shall:

- (1) Complete and submit to the County Executive Officer, the County's application for participation in the hotel incentive program, including documentation satisfactory to the County certifying the renovation project for an Existing Hotel as a Qualified Renovation Program; and
- (2) Execute the Implementation Agreement.

Sec. 49-5. Incentive Program.

(a) New Hotels. Subject to annual appropriation by the Board of Supervisors, during the New Hotel Rebate Period, the County shall pay to an Operator of a New First Class Hotel qualified to participate in the hotel incentive program, and with whom the County has entered into an Implementation Agreement, an Incentive Program Rebate in an amount equal to ninety percent (90%) of transient occupancy taxes (exclusive of penalties and interest) remitted by the Operator to the County by September 30 for hotel stays occurring in the fiscal year ended the prior June 30, less any Property Assessed Value Offset as calculated by the County Auditor-Controller.

- (1) For the purposes of this chapter, the rebate is limited to the transient occupancy tax levy (rate) of 10%, or the current rate, whichever is lower.
- (2) Such payments shall be made annually on or before December 30 of each year of New Hotel Rebate Period.

(3) Such payments shall be reduced by 20% in the event that the affected Property does not receive a revised assessment pursuant to California Revenue and Taxation Code Division 1, Part 0.5 Chapters 3 and 3.5 beginning with Section 70 prior to September 30 of year 1 of the New Hotel Rebate Period.

A. Amounts retained under (a)(3) above shall be remitted to the Operator upon completion of a revised assessment pursuant to Chapter 3 and Chapter 3.5 of the California Revenue and Taxation Code.

(b) Existing Hotels. Subject to annual appropriation by the Board of Supervisors, during the Existing Hotel Rebate Period, the County shall pay to an Operator of an Existing Hotel qualified to participate in the hotel incentive program, and with whom the County has entered into an Implementation Agreement, and which has successfully completed a Qualified Renovation Program, an amount equal to fifty percent (50%) of Transient Occupancy Tax Increment (exclusive of penalties and interest) remitted to the County by the Operator by September 30 for hotel stays occurring in the fiscal year ended the prior June 30, less the Property Assessed Value Offset as calculated by the County Auditor-Controller.

(1) For the purposes of this chapter, the rebate is limited to the transient occupancy tax levy (rate) of 10%, or the current rate, whichever is lower.

(2) Such payments shall be made annually on or before December 30 of each year of Existing Hotel Rebate Period for the prior period ended June 30.

(3) Such payments shall be reduced by 20% in the event that the affected Property does not receive a revised assessment pursuant to Chapter 3 and Chapter 3.5 of the California Revenue and Taxation Code prior to September 30 of year 1 of the Existing Hotel Rebate Period.

A. Amounts retained under (b)(3) above shall be remitted to the Operator upon completion of a revised assessment pursuant to Chapter 3 and Chapter 3.5 of the California Revenue and Taxation Code.

(c) Tourism Promotion Credit.

(1) Subject to appropriation by the Board of Supervisors, for participating New Hotels, the County shall pay into the Tourism Promotion Fund an amount equal to 10% of transient occupancy taxes remitted to the County by the participating Operator during the term of the New Hotel Rebate Period.

(2) Subject to appropriation by the Board of Supervisors, for participating Existing Hotels, the County shall pay into the Tourism Promotion Fund an Amount equal to 10% of the Transient Occupancy Tax Increment remitted to the County by the participating Operator during the term of the Existing Hotel Rebate Period.

Sec. 49-6. Incentive Program Early Termination.

(a) Unless otherwise provided in an Implementation Agreement, should the Property, assets or facilities identified in the Implementation Agreement not be Placed Into Operation within six years of the execution by the County of the Implementation Agreement, the County Board of Supervisors shall have the option to terminate the Implementation Agreement and the Operator's participation in the hotel incentive program.

(b) Unless otherwise provided in an Implementation Agreement, should the Property sell or otherwise transfer to a new owner, the County Board of Supervisors shall have the option to terminate the Implementation Agreement and the deny the new transferee the right to participate in the hotel incentive program.

Sec. 49-7. Implementation Agreement. Each Operator requesting to participate in the County's hotel incentive program shall execute an Implementation Agreement between the Operator and the County, approved by the County Board of Supervisors. The public purposes and consideration for participation in the program shall be described in the Implementation Agreement.

Sec. 49-8. General Fund Revenues. All transient occupancy tax revenues or Transient Occupancy Tax Increment remitted to the County of Santa Barbara by an Operator of a hotel covered by an Implementation Agreement as provided in this chapter shall be deemed general fund revenues of the County and shall be deposited in the County's general fund.

Sec. 49-10. Prevailing Wage. Work covered by the Implementation Agreement may be a "public work" as defined in Chapter 1 of Part 7 of Division 7 of the California Labor Code, to which Section 1771 may apply. The applicability of prevailing wage requirements shall be addressed in the Implementation Agreement.

Sec. 49-11. Administrative Processes and Applications. Consistent with the intent and goals of this chapter, the County Executive Officer may adopt administrative processes and applications for implementation and furtherance of the requirements of this chapter.

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SECTION 2: If any provision of this ordinance or application thereof is held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The Board of Supervisors hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 3: This ordinance shall become effective 30 days from the date of final passage. Notice shall be published in accordance with Government Code Section 25124.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Chair, Board of Supervisors

ATTEST:

CHANDRA L. WALLER
CLERK OF THE BOARD

By _____
Deputy Clerk

APPROVED AS TO FORM:

APPROVED AS TO ACCOUNTING FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

ROBERT GEIS
AUDITOR-CONTROLLER

By: 
Deputy County Counsel

By: 