



**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
Department No.: 012
For Agenda Of: 01/19/10
Placement: Set Hearing
Estimated Tme: 45 mins on 01/26/10
Continued Item: No
If Yes, date from:
Vote Required: 4/5 for Resolutions

TO: Board of Supervisors

FROM: Department Michael F. Brown, County Executive Officer
Director(s)
Contact Info: Michael F. Brown, County Executive Officer

SUBJECT: Transient Occupancy Tax Rate

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

1. That the Board of Supervisors set a public hearing on the departmental agenda for January 26, 2010 to consider the following actions:
2. On January 26, 2010, that the Board of Supervisors:
 - a. Receive and consider a report from staff regarding a possible vulnerability related to the Board's 1990 two percent (2%) transient occupancy tax increase.
 - b. Approve and adopt a Resolution Proposing to Continue the Transient Occupancy Tax Rate at Its Current Level of Ten Percent (10%), Submitting the Proposed Language for Continuation to the Electorate for Approval, and Requesting and Ordering Consolidation with the June 8, 2010 General Election on Said Tax Rate Continuation; OR
 - c.
 - i. Introduce the first reading of an Ordinance Amending Section 32-12 of the Santa Barbara County Code to Decrease the Transient Occupancy Tax Rate from Ten Percent (10%) to Eight Percent (8%) of the Rent Charged and Repealing Ordinance No. 3889 (the Decrease and Repeal Ordinance); AND
 - ii. Set a hearing for February 2, 2010 as the second reading to approve and adopt the Decrease and Repeal Ordinance; AND

- iii. Set a hearing for February 2, 2010 to approve and adopt a Resolution Proposing to Increase the Transient Occupancy Tax Rate from Eight Percent (8%) to Ten Percent (10%), Submitting the Proposed Language for Increase to the Electorate for Approval, and Requesting and Ordering Consolidation with the June 8, 2010 General Election.

Summary Text:

Background:

Staff recently discovered a potential vulnerability related to a portion of the County's transient occupancy tax, (also referred to as the hotel tax), specifically the two percent (2%) tax increase from 1990. Revenue and Taxation Code Section 7280 authorizes the County to levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist homes or house, motel, or other lodging.

In 1978, the Board of Supervisors amended the Santa Barbara County Code to set a transient occupancy tax in the amount of eight percent (8%) of the rent charged by the operator of any hotel or similar structure designed for transient occupancy.

In 1986, the voters approved Proposition 62, which provides that no local government may impose any general tax unless the tax is submitted to the electorate of the local government and approved by a majority vote of the voters voting in an election on the issue. Based upon case law, many attorneys and officials believed that Proposition 62 was unconstitutional. A 1991 appellate court decision supported that conclusion.

In 1990, the Board of Supervisors amended the Santa Barbara County Code to increase the transient occupancy tax to ten percent (10%) of the rent charged by the operator of any hotel or similar structure designed for transient occupancy, based on the belief that Proposition 62 was unconstitutional. At that time, County Counsel was of the opinion that the Board of Supervisors could increase the transient occupancy tax.

While subsequent judicial decisions did not specifically address tax increases, they upheld the voter approval requirements of Proposition 62. The California Supreme Court subsequently held that the continued imposition and collection of a general tax starts a new statute of limitations period for Proposition 62 legal challenges to the tax that is collected.

In order to ensure that the County's transient occupancy tax is legally sound, the Board could submit the transient occupancy tax rate to a vote of the people to determine whether the current transient occupancy tax of ten percent (10%) of rent should be continued. If the current rate is not continued by the voters, then the transient occupancy tax would revert to the rate of eight percent (8%) established in 1978 (prior to Proposition 62).

Alternatively, the Board could enact an ordinance decreasing the transient occupancy tax rate from ten percent (10%) to eight percent (8%) and repealing the 1990 two percent (2%) TOT increase ordinance (Ordinance No. 3889). Additionally, the Board could submit the increase from eight percent (8%) to ten percent (10%) to the voters for approval.

Performance Measure:

Fiscal and Facilities Impacts: The 2009-10 budget assumes the receipt of approximately \$1.3 million in revenue attributable to the 1990 2% transient occupancy tax increase. The County received approximately \$4 million in revenue from the 1990 transient occupancy tax 2% increase in the most recent three years, FY 2006-07 through FY 2008-09. If the Board directive is to suspend the 2% in February the County would lose approximately \$450,000 this year between February 2010 and June 2010 (FY 2009-10). If the voters decline to restore the 2% tax in June, the loss in FY 2010-11 revenue would be \$1.2 million ongoing.

Budgeted: Select_Budgeted **Fiscal Analysis:**

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund	\$ 450,000.00	\$ 1,200,000.00	NA
State			
Federal			
Fees			
Other:			
Total	\$ 450,000.00	\$ 1,200,000.00	NA

Staffing Impacts:

Legal Positions:

FTEs:

Special Instructions:

1. If the Board adopts the Resolution Proposing to Continue the Transient Occupancy Tax Rate at Its Current Level of Ten Percent (10%), Submitting the Proposed Language for Continuation to the Electorate for Approval, and Requesting and Ordering Consolidation with the June 8, 2010 General Election on Said Tax Rate Continuation, the Clerk of the Board shall forward a copy of it to the County Clerk-Recorder-Assessor.
2. The Clerk of the Board shall publish the Decrease and Repeal Ordinance.
3. If the Board adopts the Resolution Proposing to Increase the Transient Occupancy Tax Rate from Eight Percent (8%) to Ten Percent (10%), Submitting the Proposed Language for Increase to the Electorate for Approval, and Requesting and Ordering Consolidation with the June 8, 2010 General Election, the Clerk of the Board shall forward a copy of it to the County Clerk-Recorder-Assessor.

Attachments:

Resolution Proposing to Continue
Decrease and Repeal Ordinance
Resolution Proposing to Increase

Authored by:

Anne Rierson, Deputy County Counsel
Michael F. Brown, County Executive Officer

cc:

Bernice James, Treasurer-Tax Collector
Robert Geis, Auditor-Controller
Dennis Marshall, County Counsel
Terri Maus-Nisich, ACEO
Jason Stilwell, ACEO/Budget Director
William Boyer, Communications Director