

Meeting Date: 7/26/16

SUBJECT: TRANSIENT OCCUPANCY TAX BALLOT MEASURE

SUMMARY OF THE MATTER:

Background

On June 28, 2016, the City Council received a presentation from consultants with FM3 and TBWB regarding the results of the 2016 Community Survey. One of the survey's findings indicated potential support for an increase in the transient occupancy tax (TOT) rate to fund a variety of community projects and unmet community needs. At the same City Council meeting, the City Council directed staff to work with the consultants and a City Council subcommittee, comprised of Councilmembers Boyd and Whalen, to draft ballot measure language that proposes an increase in the TOT rate. The City of Laguna Beach currently has a 10% TOT rate that is paid by hotel and motel guests and other transient lodgers for stays of thirty days or less. An ordinance measure that proposes to increase the TOT rate will require four affirmative votes of the City Council to place the measure on the November 2016 ballot. Because proceeds from the tax are treated as general revenue, versus a special tax, a majority vote of the electorate would suffice to pass the measure.

Discussion


Proposed TOT Increase

As directed by the City Council, the City Council subcommittee met with various stakeholders, including hoteliers on the Visit Laguna Beach Board of Directors and Visit Laguna Beach staff, to discuss a potential increase of the TOT rate. After much thought and consideration, the City Council subcommittee recommends a 2% increase in the TOT rate – from 10% to 12% – to go before the voters in this year's General Election to be held on November 8, 2016. Given this direction from the City Council subcommittee, staff recommends all of the logistical actions listed on Page 3 of the Agenda Bill.

RECOMMENDATION: It is recommended that the City Council:

(See Page 3)

Appropriations Requested: (None)

Submitted by: 
Christa Johnson, Assistant City Manager

Fund: N/A

Coordinated with: 
Ryan Hallett, Administrative Analyst

Attachments: Attachment A: Draft Resolution

Coordinated with: 
Gavin Curran, Director of Finance & IT

Approved: 
John Pietig, City Manager

Ballot Measure Preparation

Should the City Council decide to place a TOT measure on the November 8 ballot, and given the deadline of August 12 set by the County of Orange to receive all necessary documents, the following schedule has been prepared to include action items that the City Council should approve on July 26, 2016:

1. Adopt a ballot measure resolution to include the following:
 - a. 75-word ballot question to appear on the November 8 ballot;
 - b. Proposed TOT ordinance increasing the TOT rate from 10% to 12%;
 - c. Instruct the City Attorney to prepare an impartial analysis;
 - d. Authorize the City Manager to prepare a fiscal impact;
 - e. Establish deadlines to receive arguments in favor and against the ballot measure as well as rebuttal arguments pursuant to the Elections Code;
 - f. Authorize the Mayor and/or City Council member(s) to prepare and file written arguments in favor of the ballot measure.
2. Adopt a resolution Calling and Consolidating Elections.
3. Authorize the City Manager to enter into a contract amendment with TBWB Strategies for community information and education services through November 2016.
4. Direct staff to process all other documents required to proceed with the proposed ballot measure.

The following calendar summarizes all action items between now and August 19 to place a TOT measure on the November 8 ballot.

BALLOT MEASURE PREPARATION	
Event	Scheduled Date
1. Ballot measure resolution adoption to include: <ol style="list-style-type: none"> a. Ballot question b. Proposed ordinance c. Direct City Attorney to prepare impartial analysis d. Authorize City Manager to prepare fiscal impact e. Establish deadlines to receive arguments for and against as well as rebuttal arguments f. Authorize City Council member(s) to author arguments 2. Calling and Consolidating election resolutions 3. Amending TBWB Strategies' Contract 4. City Council to direct staff to process all documents required for proposed ballot measure	July 26, 2016
City Clerk to post notice of deadlines for filing for, against, and rebuttal arguments	July 27, 2016
Last day to submit City Attorney's impartial analysis & City Manager's fiscal analysis to City Clerk	August 5, 2016
Last day to submit ballot and counter arguments to City Clerk	August 9, 2016
Public Review Period of Arguments	August 10-August 19, 2016
Resolutions to County of Orange Registrar of Voters	No later than August 12, 2016
Last day to submit rebuttal arguments to City Clerk	August 19, 2016
ELECTION DAY	November 8, 2016

Recommendations

It is recommended that the City Council:

1. Adopt a Resolution that is attached as Attachment A to:
 - a. Submit to the voters a ballot measure to increase the transient occupancy tax (TOT) from 10% to 12% in the General Election to be held on November 8, 2016;
 - b. Direct the City Attorney to prepare an impartial analysis to be filed with the City Clerk on or before August 5, 2016, at 5:30 p.m.;
 - c. Authorize the City Manager to prepare a fiscal analysis to be filed with the City Clerk on or before August 5, 2016, at 5:30 p.m.;
 - d. Authorize the Mayor and/or City Council member(s) to prepare and file written arguments in favor of the ballot measure;
 - e. Establish deadlines for direct arguments for and against the ballot measure to be filed with the City Clerk on or before August 9, 2016, at 5:30 p.m.;
 - f. Establish deadlines for rebuttal arguments for or against the ballot measure to be filed with the City Clerk on or before August 19, 2016, at 5:30 p.m.
2. Direct staff to process all other documents required to proceed with the proposed ballot measure.

ATTACHMENT A

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016 FOR THE SUBMISSION TO THE VOTERS OF A QUESTION RELATING TO A BALLOT MEASURE TO INCREASE THE TRANSIENT OCCUPANCY TAX, AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

WHEREAS, under and as required by the provisions of the laws of the State of California relating to General Law cities, a General Municipal Election shall be held on Tuesday, November 8, 2016, for the submission to the voters of a question relating to a proposed ballot measure to increase the transient occupancy tax imposed by the City of Laguna Beach;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. Pursuant to the requirements of the laws of the State of California relating to General Law cities, there is called and ordered to be held in the City of Laguna Beach, California, on Tuesday, November 8, 2016, a General Municipal Election for the purpose of submitting to the voters of a question, bearing the title "Laguna Beach Vital Services Measure," relating to a proposed ballot measure to increase the transient occupancy tax levied by the City of Laguna Beach.

SECTION 2. The City Council, pursuant to its right and authority, does order the following question to be submitted to the voters at the General Municipal Election:

<p>Laguna Beach Vital Services Measure</p> <p>To provide services and improvements needed to accommodate millions of annual visitors, protect beaches from pollution and provide fire, police protection and emergency response, parking, utility undergrounding to prevent fires and power outages, and other services and improvements, shall City of Laguna Beach adopt an ordinance increasing transient occupancy taxes paid only by hotel and other rental guests from 10% to 12% until ended by voters, providing approximately \$2,000,000 annually, with audits, all funds only for Laguna Beach?</p>	<p>YES</p> <hr/> <p>NO</p>
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1 **SECTION 3.** The proposed complete text of the Ordinance submitted to the City's voters as a
2 ballot measure is attached hereto at Exhibit A and incorporated herein by this reference.

3 **SECTION 4.** The City Clerk is directed to submit a copy of the above described ballot
4 measure to the City Attorney, after which, the City Attorney is directed to prepare an impartial
5 analysis of the proposed ballot measure pursuant to Elections Code section 9280. The impartial
6 analysis of the measure shall show the effect of the measure on the existing law and the operation
7 of the measure. The impartial analysis shall not exceed five hundred (500) words in length and
8 shall be filed with the City Clerk by 5:30 p.m. on August 5, 2016.

9 **SECTION 5.** The City Clerk is directed to submit a copy of the above described ballot
10 measure to the City Manager, after which, the City Manager is authorized to prepare a fiscal
11 analysis of the proposed ballot measure. The fiscal analysis of the measure shall show the
12 estimated amount of any increase or decrease in revenue or cost to the City as a result of the
13 measure. The fiscal analysis shall not exceed five hundred (500) words in length and shall be filed
14 with the City Clerk by 5:30 p.m. on August 5, 2016.

15 **SECTION 6.** In accordance with Section 9282(b) of the Elections Code, relating to measures
16 placed on the ballot by the City Council, the City Council hereby authorizes any City Council
17 member or members to prepare and file a written argument for the ballot measure with the City
18 Clerk on or before August 9, 2016, by 5:30 p.m., which argument shall not exceed 300 words in
19 length.

20 **SECTION 7.** Any person wishing to submit a direct argument for or against the ballot
21 measure shall file such argument with the City Clerk on or before August 9, 2016, by 5:30 p.m.,
22 which argument shall not exceed 300 words in length. Any rebuttal arguments for or against the
23 ballot measure shall be filed with the City Clerk on or before August 19, 2016, by 5:30 p.m. and
24 shall not exceed 250 words in length. Arguments that are selected for printing and distribution to
25 the voters shall be selected in accordance with Sections 9282 and 9287 of the Elections Code.

26 **SECTION 8.** The ballots to be used at the election shall be in form and content as required by
27 law.

28 **SECTION 9.** The City Clerk is authorized, instructed, and directed to procure and furnish any

1 and all official ballots, notices, printed matter and all supplies, equipment, and paraphernalia that
2 may be necessary in order to properly and lawfully conduct the election.

3 **SECTION 10.** The polls for the election shall be open at seven o'clock a.m. of the day of the
4 election and shall remain open continuously from that time until eight o'clock p.m. of the same
5 day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of
6 the State of California.

7 **SECTION 11.** In all particulars not recited in this Resolution, the election shall be held and
8 conducted as provided by law for holding municipal elections.

9 **SECTION 12.** Notice of the time and place of holding the election is given and the City Clerk
10 is authorized, instructed, and directed to give further or additional notice of the election in the
11 time, form, and manner as required by law.

12 **SECTION 13.** The proposed Ordinance is exempt from review under the California
13 Environmental Quality Act pursuant to Section 15061(b)(3) of the State CEQA Guidelines, in that
14 the proposed Ordinance is covered by the general rule that CEQA applies only to project that have
15 the potential for causing a significant effect on the environmental. In this instance, it can be seen
16 with certainty that there is no possibility that the proposed Ordinance may have a significant effect
17 on the environmental and is therefore not subject to CEQA.

18 **SECTION 14.** The City Clerk shall certify to the passage and adoption of this Resolution and
19 enter it into the book of original Resolutions.

20 PASSED, APPROVED AND ADOPTED this 26th day of July 2016.

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Steve Dictorow, Mayor

ATTEST:

Lisette Chel-Walker, City Clerk

EXHIBIT A

ORDINANCE NO. _____

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF LAGUNA BEACH,
CALIFORNIA AMENDING SECTION 5.05.030 OF CHAPTER 5.05 OF
TITLE 5 OF THE LAGUNA BEACH MUNICIPAL CODE TO INCREASE
THE HOTEL-MOTEL ROOM TAX**

THE PEOPLE OF THE CITY OF LAGUNA BEACH DO ORDAIN AS FOLLOWS:

SECTION 1: The People hereby amend Section 5.05.030 (“Tax Imposed”) of Chapter 5.05 (“Hotel-Motel Room Tax”) of Title 5 (“Business – Taxation, Licensing”) of the Laguna Beach Municipal Code to read in its entirety as follows:

5.05.030 Tax imposed. For the privilege of occupancy in any hotel or other transient lodging, each transient as defined herein, except for those residents who are time-share unit owners, is subject to and shall pay a tax in the amount of twelve percent of the rent charged by the operator or in the case of a time-share in the amount payable by the transient as defined below. Transients who are time-share unit owners, or guests of owners using the owner’s annual right to occupancy on a non-fee paying basis, are specifically exempted from the tax herein imposed. All other transient users of a time-share unit, including but not limited to exchange users, rental users, complimentary users and other non-owner users, are subject to the tax. This 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 shall pay the tax to the operator of the hotel at the time the rent is paid, except that in the case of a time-share unit said tax shall be paid to the operator prior to the close of each calendar quarter. If the rent is paid in installments, a proportionate share of the 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 be paid directly to the tax administrator. For purposes of this section, the rental value of a daily occupancy in a time-share unit is determined to be eighty-one dollars and twenty-five cents for the base year of 1990, for which the tax is in the amount of ten percent thereof; and this rental value shall be adjusted annually, beginning January 1, 1992, in accordance with the Consumer Price Index for all urban consumers published for the Los Angeles- Anaheim-Riverside area, or any successor index.

SECTION 2: City Council amendments. Notwithstanding Elections Code Section 9217, without a vote of the People, the City Council may further amend this Ordinance in a manner that does not impose, extend, or increase the rate of the Hotel-Motel Room Tax.

SECTION 3: Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this Ordinance or any part thereof. The People hereby declare that they would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or

more subsections, subdivisions, paragraphs sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

SECTION 4: Effect of Ordinance. If adopted, this Ordinance will increase the rate of the City’s existing Hotel-Motel Room Tax by two percent (2%). This Ordinance was proposed by the City Council of the City of Laguna Beach through approval and introduction of the Ordinance and the adoption of Resolution No. _____ with the affirmative vote of at least 4 members of the City Council as required by Government Code Section 53724(b). Except as expressly amended by this Ordinance, all provision of Chapter 5.05 of Title 5 of the Laguna Beach Municipal Code shall remain in full force and effect.

SECTION 5: Appropriations limit. If necessary, pursuant to Article XIII B of the California Constitution, the appropriations limit for the City of Laguna Beach is increased to the maximum extent over the maximum period of time allowed under the law consistent with the revenues generated by the tax provisions of this Ordinance.

SECTION 6: Effective date. After its adoption by the voters, this Ordinance shall be in full force and effect ten (10) days after the vote is declared by the City Council, pursuant to the provisions of Elections Code Sections 9217 and 15400 and as provided by state law.