REPORT TO THE COMMITTEE ON PUBLIC SERVICES AND SAFETY
TRANSIENT OCCUPANCY TAX INCREASE -
AGENDA OF FEBRUARY 18, 1987

BACKGROUND

In November 1986, representatives of the Holiday Bowl Committee proposed that the City Council consider a 1 cent per dollar increase in the Transient Occupancy Tax for purposes of promoting certain municipal events and programs. Subsequently, the City Manager issued his report no. 87-37 which alluded to potential legal issues which this office raised regarding the proposal.

These questions involve our concern about the applicability of Sections XIIIA and XIIIB of the State Constitution and a newly adopted initiative statute approved by the voters in November 1986 as Proposition 62. At your meeting of January 15, 1987 you request our written view on these matters.

APPLICABILITY OF
SECTION XIIIA - STATE CONSTITUTION
(Proposition 13)

As we all know so very well by now, this constitutional amendment precludes the imposition of any new special tax without a 2/3 voter approval. Some exceptions to this general rule have been allowed by the courts. One exception is that set forth in City and County of San Francisco v. Farrell, 32 Cal.3d 47 (1982) which holds that if the proceeds of the new tax are not specifically allocated by the taxing ordinance but are directed to the City's general fund to be used for any authorized purpose, then the new tax is not a special tax and not subject to the constitutional restriction. (See City Attorney Opinion No. 83-6 of August 10, 1983, copy attached.)

Thus, if the proposal is to be construed as suggesting that there be no legal and binding commitment to utilize the funds as suggested by the Holiday Bowl Committee, then one can argue that the Farrell exception applies.

APPLICABILITY OF
PROPOSITION 62

This initiative proposition was before the voters in November 1986. Among other things, it purports to restrict the application of the Farrell exception which we discussed above. However, it proposes to accomplish this by a statutory revision to the Revenue and Taxation Code, not a constitutional amendment. Upon review the Attorney General and the Legislative Analyst both

concluded that, in their view, the measure was inapplicable to charter cities such as San Diego and placed comments to that effect in their analysis for the sample ballot prepared for the November election. Mr. Howard Jarvis, a major proponent of the measure, filed an action of mandamus in the Superior Court of Sacramento County seeking to delete these comments in the sample ballot. Following a hearing in August 1986, the Superior Court denied the writ on the grounds that the subject matter of the initiative (taxation and elections) was a "municipal affair" and as a statutory enactment could not apply to charter cities.

We have reviewed the analysis by the Attorney General and the pleadings before the Court. We believe they fully support the ruling by the Superior Court and now are prepared to advise you that we do not believe Proposition 62 is applicable to San Diego as a charter city. The cases of A.B.C. Distributing Co. v. City and County of San Francisco, 15 Cal.3d 566 (1975)and Sonoma County Organization of Public Employees v. County of Sonoma, 23 Cal.3d 296 (1979) are of particular significance as a basis for our views.

APPLICABILITY OF
SECTION XIIIB - STATE CONSTITUTION
(Proposition 4 - Gann Limitation)

Although, we were not asked specifically about our views on the City Manager's comments with respect to the applicability of this constitutional provision, let us say that in our view any tax imposed would clearly be subject to the limitation provisions of the Section.

Respectfully submitted,
JOHN W. WITT
City Attorney

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RC-87-4
Attachment