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January 1, 2016

Mayor Kevin Faulconer, City Council, and City Clerk
City of San Diego and Economic Development & Intergovernmental Relations (ED&IR) Committee
202 C Street, San Diego, California 92101

Subject: Ballot Propositions for the June 7, 2016 Presidential Primary Election.
Five (5%) Percent Hotel Accommodation Transient Occupancy Tax (TOT) Increase to the General Fund, With the Resulting 15.5% TOT Rate Based upon Gross Room Receipts paid by Visitors.

To the Economic Development & Intergovernmental Relations (ED&IR) Committee:

Thank you for the opportunity to present ballot propositions for consideration on the June 7, 2016 Presidential Primary Election. After review by the City Attorney and Independent Budget Analyst (IBA), please forward our ballot language to the full City Council for approval.

“Shall the City of San Diego increase the Hotel Accommodation Transient Occupancy Tax (TOT) Rate by 5% with Proceeds to the General Fund, on top of the existing 10.5% Rate; and shall the full maximum 15.5% TOT Rate be based upon Gross Room Receipts paid by Visitors and Transients by defining Operator to include Online Travel Agencies (OTA) and Third-Party Agents.”

In order to codify the intent of the voters, additions and revisions to the Municipal Code (MC) are required. Proposed changes to the Municipal Code are Bolded and Underlined, and include the following:

Section 35.0102 Definitions:

“Operator” means the Person who is the proprietor of the Hotel, Recreational Vehicle Park, or Campground, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. “Operator” includes **Online Travel Agencies (OTA), Third-Party Agents,** a managing agent, a resident manager, or a resident agent, of any type or character, other than an employee without management responsibility.

Section §35.0109 Additional Tax Imposed.

Notwithstanding the tax imposed by Sections 35.0103, 35.0104, 35.0105, 35.0106, 35.0107, or 35.0108 and in addition thereto, commencing on August 1, 2016, for the privilege of Occupancy in any Hotel, any Recreational Vehicle Park, or any Campground, each Transient is subject to and shall pay an additional tax in the amount of Five percent (5.0 %) of the Rent charged by the Operator.

§35.0134 Utilization of Revenues From Tax Imposed by Section 35.0109.

All revenues collected pursuant to the tax imposed by the City under Section 35.0109 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council’s appropriation ordinance.

Annually, the City of San Diego is leaving almost +\$165 million Cash Revenue on the Table due to lack of leadership by not allowing the public to vote to redefine Online Travel Agencies (OTA) as Operators; and only allowing the private Hoteliers, not the Public as required by our California Constitution, to vote to increase Visitor Hotel Taxes by + 5% to an Effective Maximum 15.5% TOT Rate.

Leadership by the City Council and Mayor Faulconer would allow the public to vote up or down on a +5% TOT Rate Increase already pre-approved by the private Hoteliers, the Independent Budget Analyst (IBA), and the City Council. Plus clear up all basic wording issues and definitions regarding discounted TOT Rates paid by Online Travel Agencies (OTA). Therefore the Hoteliers' complaints that a maximum effective 15.5% Hotel Tax rate would hurt the tourism industry in San Diego, can be ignored.

Our current City Council Policy 100-3 Transient Occupancy Taxes (TOT) was approved on September 12, 2005. The current 10.5% TOT Rate includes 5.5% to the General Fund, plus +4% for Promotions (can be waived by the City Council O-19875, July 2, 2009.), plus + 1% to Any Purpose. At the City Council's discretion, which usually goes straight into the City's General Fund by default.

This morning it was announced that "The Citizens Plan" Initiative organized by Attorney Cory Briggs will be delayed to the November 8, 2016 Presidential Election. <https://citizensplan.org>
<http://www.sandiegouniontribune.com/news/2015/dec/31/briggs-hotel-tax-initiative-targets-november/>

In addition, Council Member Mark Kersey is putting forth his "Rebuild San Diego" Ballot language for the June 7, 2016 election which states: "... it will preserve half of all new major general fund growth over the next 5 years for infrastructure, formalizing a commitment made by Mayor Faulconer in the last two budgets and current five year budget outlook. Kersey's initiative would require a simple majority vote since it is not a tax increase." <http://www.sandiego.gov/citycouncil/cd5/pdf/newsreleases/2015/151209.pdf>
On December 9, 2015 at the City Council Infrastructure Committee hearing, Mike Zucchet the General Manager of the San Diego Municipal Employees Association (SDMEA) stated support for the 5-year, 50% Incremental Revenue Infrastructure commitment.

According to the City of San Diego's FY-2016 First Quarter Budget Monitoring Report, dated December 14, 2015 (Agenda Item 152), the current Total Revenue Budget for net Transient Occupancy Taxes (TOT) is \$195.0 million. Currently, each 1% in the TOT Rate equals \$18.57 million in Revenue. Based upon the existing 10.5% TOT Rate, and further discounted approximately -25% by Online Travel Agencies (OTA) fees and definitions.

If Gross Room Receipts TOT Rates defined OTA as Operators, then each 1% in the current TOT Rate would increase by +25% which calculates to +\$23.2 million in Revenue, instead of only \$18.57 million. Defining OTAs as Operators with the current 10.5% TOT Rate equal to \$243.7 million in Revenue (additional +\$48.7 million), and the proposed 15.5% TOT Rate calculates to \$359.8 million in Revenue (additional +\$164.8 million).

If Council Member Mark Kersey's "Rebuild San Diego" 5-year Ballot language is approved by voters, 50% or \$82.4 million incremental TOT Revenue will be dedicated for Public Capital Improvement Projects (CIP) and Neighborhood Infrastructure. The dedicated Revenue for Infrastructure could include funding for a Multi-Purpose NFL Stadium and Convention Center Phase III Expansion. Contiguous on the Waterfront, or non-contiguous at the East Village or Mission Valley sites, with only 50% voter approval.

In 2014 the State of California Superior Court ruled that San Diego's TOT Ordinance documented in Municipal Code Sections 35.0101 to 35.0138 did not take into account Gross Room Receipt TOT rates paid by Online Travel Agents (OTA), or Third-Party Agents. Therefore based upon the Plain Language of the San Diego Ordinance, the City Attorney lost the lawsuit against OTA, Hoteliers, and Third-Party Agents. The only solution to receive the full existing 10.5% TOT Rate, or the proposed 15.5% TOT Rate based upon Gross Room Receipts is a majority (50%) affirmative public vote to specifically change the TOT Ordinance definition of Operators to include Online Travel Agents (OTA) and reselling of hotel rooms by Third-Party Agents.

Lawsuits initiated by the City of San Diego and other local jurisdictions estimated the lost TOT Revenue on the existing 10.5% TOT Rate is discounted by -15% to -30%, or an average of -25% by Online Travel Agencies (OTA). Therefore if the City of San Diego changed the Municipal Code by a public vote to include an OTA in the definition of an Operator, instead of the Budgeted \$195.0 million in TOT Revenue for FY-2016, the City of San Diego could be receiving an additional \$48.7 million, for a calculated total of \$243.7 million a year in TOT Revenue without any tax increase.

San Diegans have had only three opportunities to vote to increase Hotel Accommodation Transient Occupancy Taxes (TOT). Once in 1965, which passed, and twice in 2004 which failed. It has been 11 years since San Diegans had the opportunity to increase the current 10.5 TOT Rate. In 2012 the local Hoteliers privately voted to increase the Effective TOT Rate to 15.5% by including an additional +2% Tourism Marketing District (TMD) Fee and +3% Special Tax for the Convention Center Financing District (CCFD). The courts have ruled the private Hoteliers' 3% Special Tax Unconstitutional and Invalid. Therefore the current effective Hotel Room Tax Rate is 12.5%, which consists of the existing 10.5% TOT plus the private 2% TMD.

In 1965 Tourism Marketing (ConVis) was allocated 60% of the original 4% TOT Rate for Promotions, or up to 2.4% of the existing 10.5% based upon Revenue Matching with private Hotelier funds, and Matching Revenue from the County Board of Supervisors. <http://tinyurl.com/20140531a>

The City of San Diego Tourism Marketing District (TMD) Procedural Ordinance is codified in Municipal Code Sections 61.2501 to 61.2526 allows the City Council to lower the TMD Rate from 2% to Zero 0% <http://docs.sandiego.gov/municode/MuniCodeChapter06/Ch06Art01Division25.pdf>

61.2507 (h) ... The district management plan may set forth specific changes in assessments for each year of operation of the district.

61.2509 ... may only change proposed assessments by reducing them...

61.2521 The report may proposed changes, including... the basis and method of levying the assessments...

61,2521 (c) The City Council shall not approve a change in the basis and method of levying assessments that would impair... a Contract

A written Legal Opinion as part of the required City Attorney review of ballot language should confirm or deny that annually the City Council can change the TMD rate from zero to 2%, for a maximum Effective Hotel Tax rate of 15.5% maximum with 0% TMD, instead of 17.5% (15.5% + 2% TMD).

It is time that the City Council put the issue of Increasing Hotel taxes to a public vote and upholds everyone's oath of office to protect our California Constitution from challenges detrimental to the public's interests. Abuse of Discretion in civic affairs includes the City Council's actions in creating statewide legal loopholes to increase public Hotel Taxes without the required public vote. The Hoteliers' ultimate goal is the Privatization of Billions in Public Taxes, plus all Incremental TOT to create wealth for the few, at the expense of the public. Kowtowing to the private Hoteliers and SDTA should not come at a cost of a potential lost our NFL Chargers franchise, and no opportunities to redevelop Qualcomm Stadium and the Sports Arena.

The non-elected Hoteliers and Convention Center executives refuse to allow a discussion on a Contiguous Multi-Purpose NFL Stadium and Convention Center Expansion on the Waterfront in downtown, or Non-Contiguous multi-purpose sites in East Village or Mission Valley. Both non-elected bodies have privately decided that any planned Hotel Tax increase can only be used for a stand alone Convention Center Expansion, instead of a combination. These decisions belong with the City Council. The Hoteliers and Convention Center staff should be forced to work together with the Citizens' Stadium Advisory Group (CSAG), including combining funding sources for both regional projects.

Respectfully submitted,

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“Shall the City of San Diego Increase/Replace the Hotel Accommodation Transient Occupancy Tax (TOT) Rate by +5% with Proceeds to the General Fund, on top of the existing 10.5% Rate; and shall the full Effective Maximum 15.5% TOT Rate be based upon Gross Room Receipts paid by Visitors and Transients by defining “Operator” to include **“Online Travel Agencies (OTA) and Third-Party Agents.”**”

Currently Losing Annual **@ - \$165 MILLION CASH.**

Section 35.0102 Definitions: ...“Operator” includes **“Online Travel Agencies (OTA), Third-Party Agents,”** a managing agent, a resident manager, or a resident agent, of any type or character, other than an employee without management responsibility.

tinyurl.com/20160101a

San Diego's General Fund is Losing an Annual \$50 million CASH in the existing 10.5% TOT due to failure to Redefine "Operator" to include "Online Travel Agencies (OTA)".

In 2004, Los Angeles and San Francisco voted to redefine TOT "Operators" to include "Online Travel Agencies (OTA)". Problem solved by a Public Vote.

Instead of fixing the small wording problem in 2004 like LA/SF, In 2005 the City of San Diego created the State's First Tourism Marketing District (TMD) by private Hoteliers votes. So far 11 Years of Failure to allow the public the right to vote to increase the value of each 1% TOT by +25% or +\$4.63 million. From the current \$18.57 million to a Potential \$23.2 million/1%

Currently Losing Annual @ - \$165 MILLION CASH.

Council Member Mark Kersey “Rebuild San Diego” City Charter Amendment planned for June 7, 2016 election:

“ ... it will preserve half of all new major general fund growth over the next 5 years for infrastructure, formalizing a commitment made by Mayor Faulconer in the last two budgets and current five year budget outlook. Kersey’s initiative would require a simple majority vote since it is not a tax increase.”

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\$195.0 million = Current 10.5% TOT Rate.

\$243.7 million = ~~10.5%~~ 15% TOT Rate + Redefine “Operator.”

15.5%
\$359.8 million = 15% TOT Rate + Redefine “Operator.”

+\$164.8 million Total New Revenue to the General Fund with 50% for CIP Infrastructure.

Maximum Effective 15.5% Hotel TOT Rate Already Pre-Approved
by Mayor Faulconer, City Council, and private Hoteliers =
15.5% = 10.5% + 2% TMD + 3% Convention Center.

Solution: Same Maximum Effective 15.5% Hotel TOT =
15.5% = 10.5% Existing + 5.0% Increase + 0% TMD.

Approved Hoteliers Language allows Lowering 2% TMD Rate from
Zero to 2%.