

DATE ISSUED: November 2, 2001

REPORT NO. 01-240

ATTENTION: Rules, Finance and Intergovernmental Relations Committee Agenda of
November 7, 2001

SUBJECT: ...Potential Transient Occupancy Tax Ballot Proposals for the March 2002 Ballot

SUMMARY

Issue – Should the City Council approve pursuing a March 2002 ballot measure to address the proposed ballot initiative - The San Diego Taxpayers Protection Act of 2000?

Manager's Recommendation – 1) Pursue a March 2002 ballot measure amending the City Charter to require a two-thirds vote of the electorate for the adoption of any matter which itself would require a two-thirds vote of the electorate, and 2) Continue to work with key stakeholders to determine if a consensus for a Transient Occupancy Tax (TOT) rate increase proposal at a later date can be achieved.

Other Recommendations – None.

Fiscal Impact – None.

BACKGROUND

During the Rules, Finance & Intergovernmental Relations Committee meeting of September 26, 2001, the City Manager was directed to provide a report at the Committee's October 10, 2001 meeting regarding a proposal by the International Association of Firefighters Local 145 to increase the City of San Diego's TOT rate for Fiscal Year 2003 and beyond. The City Manager returned to the Committee on October 10, 2001 with a report regarding proposed increases to the TOT rate. At that meeting the Committee voted 5-0 to reject the Firefighters proposal.

The Committee also voted 5-0 to direct the City Manager to work with the groups affected by a potential change to the TOT rate to see if there is consensus on the City Attorney's alternatives to the proposed ballot initiative and to discuss visitor industry marketing efforts and to report back at the Committee meeting of November 7, 2001.

The San Diego Taxpayers Protection Act of 2000, if adopted, would amend the City Charter to require a two-thirds vote of the electorate for "any increase in an existing *general* tax or imposition of a new *general* tax proposed by the San Diego City Council". This proposed ballot measure would increase the approval requirement established by Proposition 218, approved by California voters in November 1996. Proposition 218 stipulates that increases to a *general* tax require approval by a majority vote while *special* tax increases require a two-thirds voter approval. A tax is considered a *general* tax if its revenues may be used for any

governmental purpose while a tax is considered a *special* tax if its revenues are used for specific purposes. If this proposal is approved by the voters, then any *general* tax increases including TOT rate increases would require a two-thirds approval of the electorate.

DISCUSSION

Subsequent to the October 10, 2001 Committee meeting, the City Manager's Office met with TOT key stakeholders including the San Diego Regional Chamber of Commerce, San Diego Convention & Visitors Bureau (ConVis), Commission for Arts and Culture and other arts organizations, San Diego Convention Center Corporation, San Diego Regional Economic Development Corporation, San Diego County Taxpayers Association, International Association of Firefighters Local 145, American Federation of State, County and Municipal Employees Local 127, and Police Officers' Association representatives. Representatives from the Hotel Motel Association and Municipal Employees Association were invited but did not attend.

At those meetings, options for proposed ballot measures were discussed. Three of the potential ballot measures discussed were:

1) Two-thirds vote requires two-thirds vote

Amend the City Charter to require a two-thirds vote of the electorate for the adoption of any matter which itself would require a two-thirds vote of the electorate.

2) Incorporate Proposition 218 language into City Charter

Amend the City Charter to incorporate the local government taxation portion of the California Constitution article known as Proposition 218. This would define all taxes as either *general* taxes or *special* taxes and stipulate that increases to a *general* tax be submitted to the electorate and approved by a majority vote and increases to a *special* tax be submitted to the electorate and approved by a two-thirds vote. The City Charter would then be consistent with the State Constitution with regards to local government taxation.

3) Require a majority vote for approval of TOT rate increase

Amend the City Charter to maintain a majority vote requirement for future TOT rate increases consistent with Proposition 218.

The general consensus from the meetings is that some of the organizations are suggesting they may oppose the proposed ballot initiative and are supportive of options that would compete with that measure. Overall concern with the proposed ballot initiative included concern that it would remove more flexibility for the City of San Diego to manage its operations and negatively impact its credit rating. Most of the organizations we met with were supportive of the ballot measure requiring a two-thirds vote of the electorate for the adoption of any matter which itself would require a two-thirds vote of the electorate. However, the San Diego County Taxpayers Association expressed concerns regarding this ballot measure.

It is the City Attorney's opinion that, in order for this amendment to apply to another measure

appearing on the same ballot, the intent of the electorate to that effect must be clear. The two-thirds for two-thirds measure would require a majority vote to pass. If this measure passes, the proposed ballot initiative would require a two-thirds approval of the electorate to pass.

A ballot measure incorporating some of the Proposition 218 language into the City Charter received less support from the organizations than the two-thirds for two-thirds proposal. The San Diego County Taxpayers Association felt that they would most likely support the codification of Proposition 218 since they supported this measure at the State level. Several organizations did not support Proposition 218 in 1996 and; therefore, might feel obliged to oppose this measure as well. This measure directly competes with the proposed ballot initiative and so, according to the City Attorney's Office, would require more votes than the proposed ballot initiative to win.

The potential ballot measure to amend the City Charter to maintain TOT rate increases requiring a majority vote was only supported by a few organizations. While several organizations were supportive of considering an increase to the TOT rate, they felt that there was not sufficient time to work with all the key stakeholders to develop a viable proposal for the March 2002 ballot. These organizations are willing to work with the City in developing a TOT rate proposal for a subsequent election.

The positions of individual organizations with respect to the potential ballot measures and other related issues are included in letters written by these organizations and are attached to this report.

Another topic of discussion at these meetings was the state of the local visitor industry and the impact of the overall economic downturn as well as the tragic events of September 11, 2001. Most of the organizations discussed reduced room occupancy rates, fewer patrons at numerous restaurants, and adverse impacts on other visitor-related industries.

Over the past several years, ConVis has implemented a Supplemental Marketing Program. For the current fiscal year, the \$4 million program was modified in response to the tragic events of September 11 and their aftermath. A new, short-term marketing campaign focuses more on the Western United States and less, for the time being, on the international and national marketplace. "Rediscover Yourself in San Diego", which will run from November through February and promote discount packages, also includes a component geared towards San Diegans.

Council Policy 100-03 limits future TOT increases to a rate no greater than the average rate, excluding the highest and lowest rate cities, of the following 15 major cities: Atlanta, Boston, Chicago, Denver, Honolulu, Houston, Las Vegas, Los Angeles, Miami Beach, New Orleans, New York, San Francisco, Santa Fe, Seattle, and Washington D.C. This currently translates into a TOT rate cap of 13.2%. The last increase to the City's TOT rate, which took effect in

August 1994, set the rate at 10.5%. The TOT rate has not been increased in several years, and this could be done without the City losing its competitive edge in the industry.

A TOT rate increase should be considered in the future in order to better enable the City of San Diego to address increasing operational costs and competing priorities within General Fund programs. General deferred maintenance and infrastructure improvements remain largely unfunded and will only grow with the City's existing tax base. Meanwhile, TOT revenue will continue to provide financial support to those projects, such as the Balboa Park/Mission Bay Park Improvements and the Trolley Extension, where financial commitments of the City are in place through Special Promotional Programs. Also, support for the City's cultural amenities and natural attractions and other visitor-related facilities as well as public safety enhancements will remain priorities.

It is recommended that the two-thirds requirement for a ballot measure be submitted for the March 2002 ballot requiring, if approved, that the proposed ballot initiative get approval of two-thirds of the electorate to pass. The City Manager will continue to closely monitor economic indicators and work with the key TOT stakeholders to develop plans to consider increasing the TOT rate to a more competitive rate as well as help to support the tourism industry during this difficult period. At a future point in time, the City may want to consider putting another item on the ballot which may effect changes to the local government tax change requirements.

ALTERNATIVES

- 1) Place the two-thirds requirement and the Proposition 218 proposal on the March 2002 ballot.
- 2) Place a TOT rate increase proposal on the March 2002 ballot.
- 3) Do not place any measure on the March 2002 ballot.
- 4) Should the proposed ballot initiative pass, place a measure on a subsequent ballot which would require only a majority vote for a TOT rate increase.

Respectfully submitted,

Lisa Irvine... .. Approved: Michael T. Uberuaga
Financial Management Director..... City Manager

Note: The attachments are not available in electronic format. Copies of the attachments are available for review in the Office of the City Clerk.

- Attachments: 1. Letter from the San Diego Convention & Visitors Bureau
2. Letter from the Commission for Arts and Culture