

**CITY OF SAN DIEGO
OFFICE OF THE CITY CLERK
MEMORANDUM
(619) 533-4000**

DATE: June 2, 2014
TO: Maureen Kantner, Economic Development and Intergovernmental Relations
Committee Consultant
FROM: Elizabeth Maland, City Clerk
SUBJECT: Ballot Proposal for Rules Committee Review

Attached are three ballot proposals filed with my office on June 2, 2014 for placement on an upcoming Economic Development and Intergovernmental Relations Committee meeting agenda pursuant to Council Policy (CP) 000-21:

- (1) Five (5%) Hotel Accommodation Transient Occupancy Tax (TOT) Replacement Based upon Gross Room Receipts;
- (2) CEQA level review of downtown Convention Center Expansion Alternatives including multiple-purpose NFL Stadium and Convention Center Expansion sites ignored in the Final EIR;
- (3) Move CEQA and NEPA project level Planning, Engineering, and Construction of both the San Diego Unified Port District and San Diego Airport Authority to SANDAG, our State and Federally Mandated Municipal Planning Organization (MPO).

The proponent is Katheryn Rhodes. Through CP 000-21, a proposal receives Committee review and comment, and may be forwarded to the Council for consideration and possible placement on the ballot.

The Clerk's Office has established June 3, 2014 as the deadline for submitting such ballot proposals for the November 4, 2014 ballot, and anticipates that the Committee will review the proposals at its June 11, 2014 meeting. Ballot proposals which are referred to the full City Council will be listed under Public Notice on the Council Docket of June 16, 2014, and docketed for consideration by Council June 23, 2014. My office will keep a copy of the ballot proposal and re-submit it to you after the June 3, 2014.



Elizabeth Maland
City Clerk

Attachment

cc: Diana JuradoSainz, Legislative Coordinator

Jenkins, Denise

RECEIVED
CITY CLERK'S OFFICE

From: rhodes@laplayaheritage.com
Sent: Saturday, May 31, 2014 1:32 PM
To: Maland, Elizabeth; CLK City Clerk; Mayor Kevin Faulconer; Councilmember Todd Gloria; CouncilMember Marti Emerald; CouncilMember Lorie Zapf; Councilmember Ed Harris; Councilmember Sherri Lightner; CouncilMember David Alvarez; Councilmember Myrtle Cole; Councilmember Mark Kersey; Councilmember Scott Sherman; Gustafson, Craig; Awbrey, Matt; Bernal, Anthony; Stone, Bonnie; Jenkins, Denise; Bradley, Catherine; Dugard, Prescilla; BukalovaD@sandiego.gov
Subject: Three Amended Ballot Propositions for November 4, 2014 election.
Attachments: 20140531_SD_Ballot_5%_Replacement_TOT_Gross_Receipts_Stadium_SANDAG_MPO.pdf

14 JUN -2 AM 8:10

SAN DIEGO, CALIF.

Hello City of San Diego,

Attached and linked below please find the latest revision of our 3 Ballot proposals for the November 4, 2014 election. Please forward to the City Attorney and IBA for legal and financial analysis, before consideration to the full City Council.

<http://tinyurl.com/20140531a>

Regards,

Katheryn Rhodes
619-523-4350 rhodes@laplayaheritage.com

----- Forwarded message from "Maland, Elizabeth" <EMaland@sandiego.gov> -----

Date: Mon, 13 Jan 2014 16:59:23 +0000
From: "Maland, Elizabeth" <EMaland@sandiego.gov>
Reply-To: "Maland, Elizabeth" <EMaland@sandiego.gov>
Subject: RE: Ballot Propositions
To: "rhodes@laplayaheritage.com" <rhodes@laplayaheritage.com>, CLK City Clerk <CityClerk@sandiego.gov>

Kathryn -

Thank you for your e-mail; however, it was received at 2:23 pm. The deadline for potential ballot propositions to be considered as part of the Council Policy 000-21 process at the January 15, 2014 Economic Development & Intergovernmental Relations Committee was Friday, January 10, 2014 by 10 am.

This deadline was publicly noticed beginning in early November and is consistent with past deadlines for this process. I'm sorry that I will not be able to forward your proposed ballot propositions for docketing; however, you can, or course, attend the meeting and speak during the non-agenda public comment portion of the meeting.

Please feel free to contact me or my Deputy Director, Bonnie Stone, with any questions.
Liz

Elizabeth Maland, City Clerk
City of San Diego
emaland@sandiego.gov
619-533-4080

Follow me on Twitter:
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-----Original Message-----

From: rhodes@laplayaheritage.com [<mailto:rhodes@laplayaheritage.com>]
Sent: Friday, January 10, 2014 2:23 PM
To: CLK City Clerk; Maland, Elizabeth
Subject: Ballot Propositions

The following are proposed Ballot Language for an alternative waterfront Convention Center Expansion and NFL Chargers Stadium.

Ballot Question.

Shall the People of the City of San Diego authorize CEQA level review of an alternative waterfront multi-purpose Convention Center Phase III Expansion and NFL Stadium on public Tidelands, Contiguous and west of the existing Convention Center?

Shall the City of San Diego increase the Transient Occupancy Tax (TOT) by 5% from the existing 10.5% to a maximum of 15.5% for Infrastructure, Tourism Marketing, and Penny for the Arts? The 5% increase would be in place of the illegal 2% TMD and up to 3% Special Tax.

Shall the CEQA project level Planning, Engineering, and Construction of both the San Diego Unified Port District and San Diego Airport Authority move to SANDAG, our State and Federally Mandated Municipal Planning Organization (MPO)? Currently there are three Administrations that do the same Regional Planning. Moving CEQA projects to SANDAG would allow Port and Airport funds to be used for the Region.

Regards,

Katheryn Rhodes
371 San Fernando Street, San Diego, CA 92106
619-523-4350
rhodes@laplayaheritage.com

May 31, 2014

Mayor Faulconer, City Council, and City Clerk
City of San Diego
202 C Street, San Diego, California 92101

RECEIVED
CITY CLERK'S OFFICE

14 JUN -2 AM 8:19

SAN DIEGO, CALIF.

Subject: Three Ballot Propositions for the November 4, 2014 Gubernatorial Election.

1. Five (5%) Hotel Accommodation Transient Occupancy Tax (TOT) Replacement Based upon Gross Room Receipts.
2. Authorize CEQA level review of downtown Convention Center Expansion Alternatives including multiple-purpose NFL Stadium and Convention Center Expansion sites ignored in the Final EIR.
3. Move CEQA and NEPA project level Planning, Engineering, and Construction of both the San Diego Unified Port District and San Diego Airport Authority to SANDAG, our State and Federally Mandated Municipal Planning Organization (MPO)

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

Thank you for the opportunity to present Three (3) ballot propositions for consideration on the November 4, 2014 Gubernatorial Election. After review by the City Attorney and Independent Budget Analyst (IBA), please forward our ballot language to the full City Council for approval.

1. Shall the City of San Diego supersede the effective 15.5% Hotel Accommodation Transient Occupancy Tax (TOT) by replacing a legal 5% TOT increase for the legally-challenged private 2% TMD and up to 3% Special Convention Center Taxes, for Infrastructure and Capitol Improvements (3%), Penny for the Arts and Neighborhoods (1%), and Homeless and Affordable Housing Trust Fund (1%); with a minimum of 1% of the existing 10.5% for Tourism Marketing?

San Diego is leaving \$82.5 million plus of Hotel TOT Revenue on the table in order to comply with the wishes of the local private tourism board instead of the public taxpayers. According to Mayor Faulconer's proposed FY-2015 Budget, each 1 percent (1%) of the existing 10.5% TOT creates \$16.5 million in new Revenue, or a total of \$174 million annually. A 5% Replacement Tax for the same maximum effective TOT rate of 15.5% would increase legal revenues by approximately \$82.5 million, to a total of \$255.75 million for use on Infrastructure and Capitol Improvement (3%), Penny for the Arts and Neighborhoods (1%), and Homeless and Affordable Housing Trust Fund (1%), with a minimum of 1% of the existing 10.5% for Tourism Marketing?

San Diegans have had only three opportunities to vote to increase Hotel Accommodation Transient Occupancy Tax (TOT). Once in 1965, which passed, and twice in 2004 which failed. It has been 10 years since San Diegans had the opportunity to increase the current 10.5 TOT and change wording to force Online Travel Agencies (OTA) to remit the full effective 15.5% tax [TOT/TMD/Special] on gross room receipts instead of discounted rates. Currently, through City Council approvals, only the local Hoteliers were allowed to vote to increase Hotel taxes by 5% in 2012.

Two months ago the State of California Superior Court ruled that San Diego's TOT ordinance created in 1973 did not take into account TOT rates paid by Online Travel Agents (OTA), or third parties. Therefore based upon the Plain Language of the San Diego Ordinance, the OTA and Hoteliers won. The only solution to receive the full 15.5% gross receipt TOT requires a 2/3 affirmative public vote to specifically change the TOT Ordinance to include Online Travel Agents (OTA) and reselling of hotel rooms.

The attached Appendix A includes the 2004 City of Chicago Hotel Accommodations Tax Ordinance which finally allowed full gross taxes on hotel rooms to be pay by national and international OTAs after a public vote. Appendix B includes our April 15, 2013 Ballot proposition for a 5% TOT increase and the history of TOT in San Diego. In 1965 Tourism Marketing was allocated 60% of the original 4%, or up to 2.4% of the existing 10.5% based upon matching revenue with private Hotelier funds the County Board of Supervisors. In order to provide certainty, we recommend 1% minimum (@ annual \$16.5 million), and up to 2.4% maximum based on Matching funds for Tourism Marketing.

<http://www.reedsmith.com/California-Tax-Developments-05-19-2014/>

"On March 27, 2014, a California Court of Appeal filed its opinion in In re Transient Occupancy Tax Cases.² The issue was whether, under San Diego's transient occupancy tax ("TOT") ordinance, various online travel companies ("OTCs") were responsible for collecting and remitting the TOT on service fees and markups that they charge for reserving hotel rooms through their websites. San Diego's TOT ordinance reads as follows: "For the privilege of Occupancy in any Hotel located in the City of San Diego, each Transient is subject to and shall pay a tax in the amount of six percent (6%) of the Rent charged by the Operator."³ The Court of Appeal stated that the ordinance imposed tax on the amount charged by the hotel operator. Focusing its analysis on the plain language of the statute and its prior decisions on whether OTCs were liable for transient occupancy taxes in other cities,⁴ the court held that OTCs are not hotel operators. OTCs purchase blocks of rooms at a wholesale price. They then sell those rooms at a price higher than the wholesale price, with at least a portion of the difference being attributable to a service fee charged to the purchaser. Since the OTCs are not operators, those markups and service fees collected by them are not subject to the TOT."

In summary, the only solution to create a legal 15.5% maximum TOT rate and collect Hotel taxes on gross room receipts by OTAs is a 2/3 public voter approval. There are no other solutions.

2. Shall the City of San Diego Authorize SANDAG to conduct CEQA level review of downtown Convention Center Expansion alternatives including multiple-purpose NFL Stadium and Convention Center Expansion sites and projects ignored in the EIR including analyzing a contiguous waterfront site onto Embarcadero Marina Park South [La Playa Plan], the East Village MTS bus maintenance site, and the Tenth Avenue Marine Terminal (TAMT) site, amongst others?

Since only the private Hoteliers were allowed to vote on the up to 3% Special Tax for the Convention Center Financing District (CCFD), Hoteliers blocked alternative downtown locations for a multi-purpose NFL Stadium and Convention Center Phase 3 Expansion during the EIR and CEQA process. If the 5% Hotel Accommodation TOT Replacement passes, the 3% for Infrastructure and Capitol Improvement can pay for the downtown Convention Center Expansion after full CEQA analysis of ignored alternative sites and multi-purpose projects.

3. Shall the CEQA project level Planning, Engineering, and Construction of both the San Diego Unified Port District and San Diego Airport Authority move to SANDAG, our State and Federally Mandated Municipal Planning Organization (MPO)?

Currently there are three Administrations that do the same Regional Planning. Moving CEQA projects to SANDAG would allow hundreds of millions in Port and Airport Revenue funds to be used for the Regional transportation, water security, and Urban Storm Drain Runoff, without increasing taxes.

Regards,

Katheryn Rhodes

371 San Fernando Street, San Diego, CA 92106. 619-523-4350 rhodes@laplayaheritage.com

Online Travel Agents (OTA) and TOT

<http://www.travelweekly.com/Travel-News/Online-Travel/OTAs-lose-Chicago-judgment-of-occupancy-tax-dispute/>

Posted on: June 24, 2013

OTAs lose ruling on occupancy tax in Chicago

By Danny King

A Chicago judge late last week ruled that online travel agencies (OTAs) such as Expedia, Priceline and Orbitz owe the city for what the judge said were underpaid back taxes stemming from hotel room bookings. The ruling is at least the third in the past nine months that has favored a municipality over the OTAs. Cook County Circuit Judge Robert Lopez Cepero ruled that the OTAs are responsible for occupancy taxes on gross hotel receipts, and not just on the amount marked up by the agencies.

The decision makes clear that they must collect and remit taxes on the gross amount paid by customers for hotel rooms in Chicago going forward, as well, said Chicago lead counsel Carol V. Gilden of Cohen Milstein Sellers & Toll, one of three firms representing the city in the case, in a June 21 statement.

Travel Tech (formerly the Interactive Travel Services Association, or ITSA), the Washington-based trade group representing the OTAs, said it would challenge the ruling, calling it "a basic misunderstanding of fact." "Aside from the definition of a hotel operator, this case serves as an outlier as most courts nationwide have ruled decisively in favor of [the agencies]," Travel Tech said in a June 21 statement.

The ruling is notable because Chicago is the third-largest U.S. hotel market. The city's 108,000 rooms trail only Las Vegas' 169,000 and Orlando's nearly 119,000, according to Smith Travel Research (STR). The decision is also noteworthy because it's at least the third in the past nine months to favor the municipalities after most of the approximately two dozen similar cases filed during the previous few years had almost exclusively favored the OTAs.

In April, U.S. District Judge Orlando Garcia ruled on a class-action case first filed in May 2008, saying that Priceline, Orbitz and Travelocity are among OTAs that owe 172 Texas cities, including Dallas, Austin and San Antonio, more than \$55 million in back taxes. Travel Tech said at the time that it would appeal that decision as well.

And last September, Washington, D.C., won a court ruling against the OTAs, marking what had been the highest-profile legal victory by a municipality in the five-plus years that local taxing authorities and the OTAs have been fighting over the issue.

Overall, more than two dozen municipalities have taken on the OTAs in court because the giant online agencies typically pay about 25% less per room than they charge their customers, leaving millions of dollars' worth of occupancy taxes in dispute. Municipalities that have taken on the OTAs in court and lost include Houston; Philadelphia; Anaheim, Calif. (home to Disneyland); and Branson, Mo. Notably, a 2010 ruling that awarded the city of San Diego \$2.2 million was overturned in September 2011.

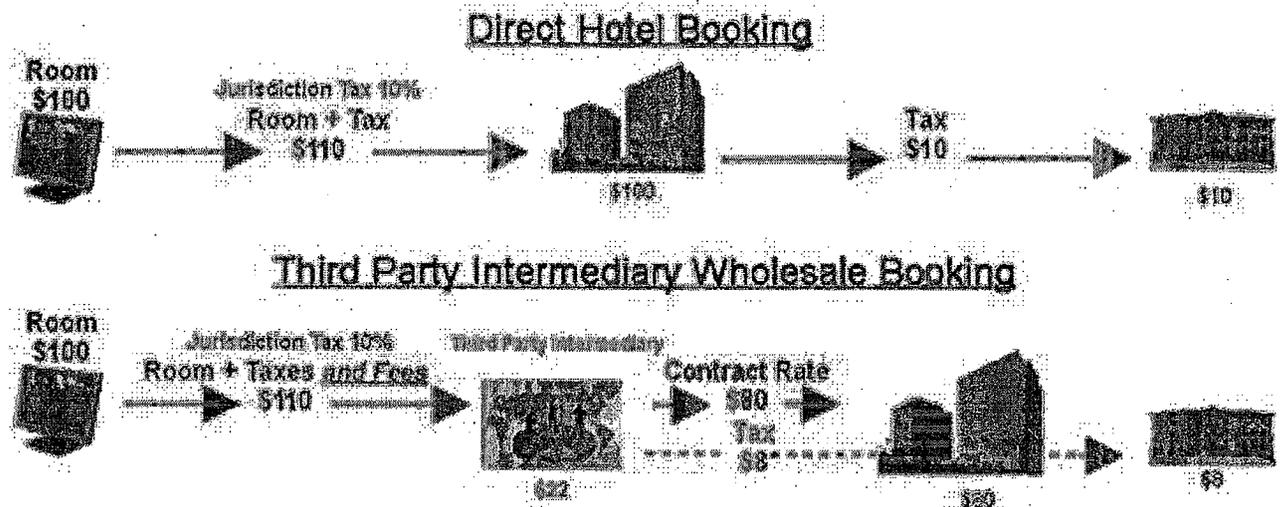
<http://www.hotelnewsnow.com/Article/4863>

Occupancy tax battle heats up January 31 2011

The OTAs will likely redouble their lobbying efforts in the shadows of the midterm elections, in which Republicans made considerable gains in both the U.S. House and the Senate.

By Patrick Mayoek Editor-in-Chief patrick@hotelnewsnow.com

The debate between online travel agencies and local municipalities over hotel occupancy taxes is heating up again, and hoteliers remain at risk of being caught in the crosshairs. The central sticking point is whether OTAs collect and remit occupancy taxes on the rate paid by consumers or the wholesale rate passed along to hotels. The former yields a larger cut for the municipality; the latter means less tax collected for the same room on the same night. If a room sells for US\$100, for example, and the hotel occupancy tax is 10%, the local municipality would collect US\$10 in taxes. If that same room is sold on an OTA, however, the OTA might charge a 20% facilitation fee and pass along US\$80 in the wholesale rate to the hotel, leaving the municipality with only US\$8 in taxes. Faced with dwindling tax revenues, industry leaders fear municipalities will turn to hoteliers to make up the difference, raising existing occupancy taxes and putting an undue burden on an industry struggling with recovery.



The arguments OTAs argue the facilitation fee is an additional charge that in no way relates to the rental and operation of hotel rooms. Therefore, they should not be subjected to an occupancy tax, said Andrew Weinstein, spokesperson for the Interactive Travel Services Association. Expedia declined to comment on the subject of pending litigation and proposed legislation. Travelocity, Orbitz and Priceline also declined to be interviewed. "The issue at question is whether that fee, and by extension all of the fees charged by intermediates in the hotel industry ... should be treated as if they were part of the cost of the hotel room. We would argue that the common sense answer to this and the legal answer to this are the same. They're not the cost of the hotel room," Weinstein said. OTAs are intermediaries in much the same way local travel agents are, he argued. They perform a service to sell the room and should not be subjected to a tax based on the occupancy of that room.

The American Hotel & Lodging Association takes a starkly different viewpoint. “Currently, traditional travel agents book rooms for guests, the guest then stays at a hotel and pays the retail room rate plus the tax based on that rate. The hotel then passes on that tax to the jurisdiction. The hotel pays the agent an agreed-upon commission to the agent after the guest checks out.

This business model has been used for years and is not being questioned,” said Shawn McBurney, senior VP of governmental affairs for the AH&LA. “That model is distinct from the (OTA) model of advertising a retail rate plus ‘taxes and fees’—which happen to be virtually the same as tax on the retail amount advertised would be—charging their customer immediately when the reservation is made, holding the entire amount of money paid by their customer until the customer checks out. Once the guest checks out, the (OTA) will then forward to the hotel the agreed-upon wholesale rate, which is significantly less than the retail rate advertised, plus the tax which they choose to base on the wholesale rate, and keep the balance.” It’s like a department store selling a pair of pants, said Marty Morris, chief director of legislation affairs for the Federation of Tax Administrators, a group which represents local municipalities on the issue. When Macy’s sells a pair of pants, they don’t charge a “facilitation fee” and then only collect sales tax on the wholesale rate that is passed back to the manufacturer of those pants. Macy’s collects and remits sales tax based on the price charged to consumers.

Court decisions ongoing Merit-based court decisions are inconsistent thus far. Some find in favor of the local municipality, while others side in favor of the OTAs. (Others remand based on procedural claims.) The different results are often a matter of local ordinances. Most vary by municipality and the resulting interpretations differ wildly. They aren’t apples to apples, McBurney said of different court decisions. Further complicating matters are the movement of some localities to change ordinances to more accurately spell out what should and shouldn’t be collected and remitted by OTAs. In Washington, D.C., for example, the city council voted to hold OTAs liable for taxes on the full retail rate. The result is what Weinstein calls an “impenetrable web of overlapping, contradicting tax policies” that could make it “impossible for participants in the travel industry to continue to sell hotel rooms.” The OTAs responded by calling for a federal standard that would pre-empt them from remitting any taxes to the local municipality. They’ve lobbied Congress aggressively during the past few years to enact that legislation, though there exists no official language for the proposed federal “standard.” “I have a number of drafts that they were going to try to have added to other legislation as an amendment and then hopefully avoid all the hearings and things like that,” Morris said. “... The versions I’ve seen are so confusing that it would take a lot of litigation just to clarify what it is the proposals are saying. ... It could in fact be that there’s a complete exception for all hotel taxes for these companies.” The OTAs likely will redouble their lobbying efforts in the shadows of the midterm elections, in which Republicans made considerable gains in both the U.S. House of Representatives and the Senate, Morris added.

The hotel industry responds In response to the scrambling by OTAs on Capitol Hill, the AH&LA began its own proactive campaign to educate politicians and hoteliers in an attempt to block any proposed federal legislation, McBurney said. The group kicked off things during December 2009, when it sent a drafted petition to various congressmen and women. During the association’s annual Legislative Action Summit the following year, it held a panel to educate members and then canvassed the Hill with attendees. Executives with the AH&LA and members continued to visit Congress during the past two years to educate and let their position be heard. While McBurney focuses much of his attention in D.C., he urged hoteliers throughout the country to begin their own grassroots campaigns and speak with their area representatives. “We strongly encourage (hoteliers) to visit our website and learn about the issue,” he said. “And then we have a template, a form letter that they can send to their own members of Congress. “(This issue is) not going away, so keep an eye on it.” See more at: <http://www.hotelnewsnow.com/Article/4863#sthash.Kbgiwstm.dpuf>

Municipal Code of Chicago

TITLE 4 - REVENUE AND FINANCE
CHAPTER 3-24 - CHICAGO HOTEL ACCOMMODATIONS TAX

CHAPTER 3-24

CHICAGO HOTEL ACCOMMODATIONS TAX

- 3-24-010** Title.
- 3-24-020** Definitions – Construction.
- 3-24-030** Tax imposed.
- 3-24-040** Tax to be borne by tenant.
- 3-24-050** Hotel to secure tax from tenant.
- 3-24-060** Tax return to be filed.
- 3-24-070** Records to be kept.
- 3-24-090** Proceeds to be paid to city treasury.
- 3-24-110** Severability.
- 3-24-120** Application of uniform revenue procedures ordinance.

3-24-010 Title.

This chapter shall be known and cited as the “Chicago Hotel Accommodations Tax Ordinance” and the tax herein imposed shall be known and cited as the “Chicago Hotel Accommodations Tax”.

3-24-020 Definitions – Construction.

A. For the purpose of this chapter, whenever any of the following words, terms or definitions are used herein, they shall have the meaning ascribed in this section:

1. “City” means the City of Chicago.
2. “Comptroller” means the comptroller of the City of Chicago.
3. “Department” means the department of finance of the City of Chicago.
4. “Hotel accommodations” means, except as otherwise provided in this paragraph, a room or rooms in any building or structure kept, used or maintained as or advertised or held out to the public to be an inn, motel, hotel, apartment hotel, lodging house, bed-and-breakfast establishment, vacation rental, as defined in Section 4-6-300, dormitory or place, where sleeping, rooming, office, conference or exhibition accommodations are furnished for lease or rent, whether with or without meals. The term “hotel accommodations” shall not include (i) an accommodation which a person occupies, or has the right to occupy, as his domicile and permanent residence; (ii) any temporary accommodation provided in any building or structure owned or operated, directly or indirectly, by or on behalf of a not-for-profit medical institution, hospital, or allied educational institution; or (iii) an accommodation in a bed-and-breakfast establishment that is subject to licensing under Section 4-6-290.

5. “Operator” means any person who has the right to rent or lease hotel accommodations to the public for consideration. This term includes, but is not limited to, persons engaged in the business of selling or reselling to the public the right to occupy hotel accommodations, whether on-line, in person, or otherwise.

6. “Person” means any natural person, receiver, administrator, executor, conservator, assignee, trust in perpetuity, trust, estate, firm, copartnership, joint venture, club, company, business trust, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. Whenever the term “person” is used in any clause prescribing and imposing a penalty, the term as applied to associations shall mean that the owners or part-owners thereof, and as applied to corporations, the officers thereof.

THE DEPARTMENT OF REVENUE AND FINANCE
 CHAPTER 3-24 CHICAGO HOTEL ACCOMMODATIONS TAX

CHAPTER 3-24
CHICAGO HOTEL ACCOMMODATIONS TAX

B. Construction. In this chapter, unless the text otherwise requires, words in the singular number include the plural and in the plural include the singular; words of the masculine gender include the feminine and the neuter; and when the sense so indicates, words in the neuter gender may refer to any gender.

3-24-030 Tax imposed.

There is hereby imposed and shall immediately accrue and be collected a tax, as herein provided, upon the rental or leasing of any hotel accommodations in the City of Chicago at the rate of four and one-half percent of the gross rental or leasing charge.

3-24-040 Tax to be borne by tenant.

The ultimate incidence of and liability for payment of said tax shall be borne by the lessee or tenant of any such hotel accommodations. The tax herein levied shall be in addition to any and all other taxes. It shall be the duty of every owner, manager or operator of hotel accommodations to secure said tax from the lessee or tenant of said hotel accommodations and pay over to the department said tax under rules and regulations prescribed by the comptroller and as otherwise provided by this chapter.

3-24-050 Hotel to secure tax from tenant.

The tax herein levied shall be secured by the hotel owner, manager or operator from the lessee or tenant when collecting the price, charge or rent to which it applies. Every lessee or tenant shall be given a bill, invoice, receipt or other statement or memorandum of the price, charge or rent payable upon which the hotel accommodations tax shall be stated, charged and shown separately. The hotel accommodations tax shall be paid to the person required to collect it as trustee for and on behalf of the City of Chicago.

3-24-060 Tax return to be filed.

A. Every owner, manager, or operator of hotel accommodations within the City of Chicago shall file a sworn tax return on a monthly basis with the department of revenue showing tax receipts received with respect to hotel accommodation space rented or leased during the preceding monthly period, upon forms prescribed by the comptroller. At the time of filing said tax return, the owner, manager or operator of hotel accommodations shall pay to the department all taxes due for the period to which the tax return applies. The remittance and return shall be due on the last day of the month following the month for which the return and remittance is made.

B. Notwithstanding any other provision of this chapter, for all periods beginning on or after January 1, 2000, (1) all tax returns shall be filed with the department on an annual basis on or before August 15 of each year in accordance with Sections 3-4-186 and 3-4-189 of this Code, (2) all tax remittances shall be made in accordance with either Section 3-4-187 (payment of actual tax liabilities) or Section 3-4-188 (payment of estimated taxes), and (3) the provisions of Sections 3-4-186, 3-4-187, 3-4-188 and 3-4-189 shall control over any contrary provisions in this chapter regarding the subjects covered by those sections.

TITLE 3 REVENUE AND FINANCE
CHAPTER 3-24 CHICAGO HOTEL ACCOMMODATIONS TAX

**CHAPTER 3-24
CHICAGO HOTEL ACCOMMODATIONS TAX**

3-24-070 Records to be kept.

Every owner, manager or operator of hotel accommodations in the City of Chicago shall keep books and records showing the prices, rents or charges made or charged, and occupancies taxable under this ordinance. The comptroller, or his designate, shall at all reasonable times have full access to said books and records.

3-24-090 Proceeds to be paid to city treasury.

All proceeds resulting from the imposition of the tax under this chapter, including penalties, shall be paid into the treasury of the City of Chicago and shall be credited to and deposited in the corporate fund of the city.

3-24-110 Severability.

If any provision, clause, sentence, paragraph, section, or part of this chapter, or application thereof to any person, firm, corporation, public agency or circumstance, shall for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons, firms, corporations, public agencies or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation, public agency, or circumstances involved. It is hereby declared to be the legislative intent of the city council that this chapter would have been adopted had such unconstitutional or invalid provision, clause, sentence, paragraph, section, or part thereof not been included.

3-24-120 Application of uniform revenue procedures ordinance.

Whenever not inconsistent with the provisions of this chapter or whenever this chapter is silent, the provisions of the uniform revenue procedures ordinance, Chapter 3-4 of the Municipal Code of Chicago, as amended, shall apply and supplement this chapter.

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April 15, 2013

APPENDIX Page B-1

Mayor Bob Filner and City Council
City of San Diego
202 C Street
San Diego, California 92101

Subject: Public Vote for a 5 % Transient Occupancy Tax (TOT) ^{Replacement} Increase to 15.5% Maximum.
Item S-400 of Monday's City Council Hearing of April 15, 2013.
First Amendment to the Operating Agreement Between the City of San Diego and the
San Diego Tourism Authority (SDTA) for the Tourism Marketing District (TMD).

Dear City of San Diego:

The City of San Diego is leaving an annual \$85 million (5% ^{Replacement} increase) on the table because of a refusal to allow the public to vote on Increasing Hotel taxes as required by our California Constitution. 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 Public Taxes up to \$3.2 Billion, plus all Incremental TOT to create wealth for the few, at the expense of the public.

Irrespective of today's City Council hearing, on a parallel track the City Council should put the issue of increasing Hotel taxes to a public vote, in order to save taxpayer money and an additional 2 years of courtroom drama. The City, Hoteliers, and the SDTA employees can get certainty immediately after a public vote.

The first opportunity to put a 5% legal Hotel Tax ^{Replacement} increase before the public for a vote would be as part of the Special Election for City Council District 4 scheduled for Tuesday May 21, 2013. A public vote would get rid of the need for the private 2% TMD and 3% Special Tax for the Convention Center Financing District (CCFD), and all expensive lawsuits. The private Hoteliers, City Council, the Independent Budget Analyst (IBA), and City Attorney Goldsmith have all pre-approved a 5% TOT increase from the existing 10.5% TOT to a Maximum effective rate of 15.5%. Therefore the Hoteliers' complaints that a maximum effective 15.5% Hotel Tax rate would hurt the tourism industry in San Diego, can be ignored.

The effects of the City Council's approval of today's TMD Agreement and the Convention Center Financing District (CCFD) will cause a domino ^{replace} effect on a range of development possibilities for the San Diego Region. Without a public vote to increase hotel taxes by 5%, the City of San Diego and the NFL Chargers would not have the option of a multi-purpose Olympic Stadium and Contiguous Convention Center Expansion on our public waterfront. Without a multi-use structure in downtown, the City of San Diego will not have the opportunity to Redevelop our public QUALCOMM Stadium site in Mission Valley, and our public Sports Arena in the Midway District. 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.

In 1965, approximately 48 years ago, was the first and only time the citizens of San Diego voted to increase our local Transient Occupancy Tax (TOT) on Hotel Visitors. [February 16, 1965. Proposition C. – 4 % Transient Occupancy Tax (TOT). Section 35.0116 Utilization of Revenue.] From the 4% TOT, an Annual contribution of 60 % maximum to the San Diego Convention and Tourist Bureau (CONVIS), renamed the San Diego Tourism Authority (SDTA). TOT Match up to 40% with private funds and TOT Match up to 20% from County of San Diego Board of Supervisor’s funds. For a potential maximum of 2.4% of the original 4% to SDTA/CONVIS based upon Matching funds acquired. See Appendix A for excerpts from the original 1965 Ballot Pamphlet.

From 1968 to 1994 the San Diego City Council increased our TOT rates through City Council Ordinances with associated changes to our Municipal Code (see Table 1) from the original 4% to the current 10.5% Hotel Tax rate. No public votes to increase Hotel taxes occurred since 1965.

Table 1 - HOTEL TAX History for the City of San Diego 1965 to 2013.

Transient Occupancy Tax (TOT) Rates and Approvals <http://docs.sandiego.gov/municode/MuniCodeChapter03/Ch03Art05Division01.pdf>

Effective Year	TOT Rate (%)	TOT Increase Approved By:	Effective Date / Municipal Code / Ordinance
1965	4%	Public Vote	June 9, 1965 / MC 35.0103 / O-9033
1968	5%	City Council	April 1, 1968 / MC 35.0103 / O-9767
1973	6%	City Council	June 5, 1973 / MC 35.0103 / O-11077
1985	7%	City Council	January 1, 1985 / MC 35.0104 / O-16286
1988	8%	City Council	August 1, 1988 / MC 35.0105 / O-17108
1989	9%	City Council	June 1, 1989 / MC 35.0106 / O-17154
1994	10.5%	City Council	August 1, 1994 / MC 35.0108 / O-18078

In 1996, in order to close legal loopholes, Proposition 218 passed which requires a 2/3 Public Voter approval in order to raise any local “Special Taxes,” such as local Transient Occupancy Taxes (TOT) in California. Proposition 218 reaffirmed the need for a 50% Public Voter approval for any new local General Fund tax increases.

http://ballotpedia.org/wiki/index.php/California_Proposition_218_Voter_Approval_Required_Before_Local_Tax_Increases_%281996%29

In 2004, two ballot measures to increase San Diego’s TOT Rate by 1.5% to an effective 13.0% were rejected by voters. The March 2, 2004 Proposition C asked voters to increase Special Taxes on visitors to benefit CONVIS, Police, and Fire at the expense of the public, failed with only 62% voter approval. Subsequently, on November 2, 2004 Proposition J, the proposed General Fund Tax increase failed with 42%, due primarily from opposition from the private Hoteliers and CONVIS. Private CONVIS and the San Diego Regional Chamber of Commerce marketed Proposition J as a "Pension Tax" into the City's General Fund with no benefits for Hoteliers or tourist interests. Hoteliers stated that ANY increase in TOT would make San Diego less attractive for conventions and business travel. SDTA / CONVIS are self-serving.

In 2007 in order to get around 1996's Proposition 218 which requires voter approval to raise taxes, private San Diego Hoteliers contracted Sacramento lawyer/consultant John Lambeth founder and president of Civitas Advisors who created a statewide legal loophole to increase local Hotel taxes without public votes. They named their new legal schemes Tourism Marketing Districts (TMD) and/or Tourism Business Improvement Districts (TBID).

On May 30, 2007, the San Diego City Council approved the State's first private, temporary, two percent (2%) TMD tax through Ordinance O-19622, and new Municipal Code Sections 61.2501 to 61.2527. This new TMD created a legal loophole around 1996's Proposition 218. The Five Year legal experiment to get around required voter approvals started January 1, 2008 and Expired December 31, 2012. Since 2008 local governments have created a total of 59 new TMD/TBID in California for the maximum five year time increments, without the required public vote.

The San Diego Tourism Authority and TMD contracted Mr. Lambeth to provide private legal advice on Corporation Code, and contracted new separate monthly general consulting fees through his Civitas Advisors. *"In all, the Tourism Marketing District has paid Lambeth and his firm a total of \$547,016 and counting."* – Dorian Hargrove in The Reader, March 27, 2013. <http://www.sandiegoreader.com/weblogs/news-ticker/2013/mar/27/tmd-consultant-and-his-firm-has-collected-nearly-5/>

In 2010 in order to close the much copied TMD legal loopholes created in San Diego, and to stop hidden taxes by local governments, California voters approved Proposition 26 sponsored by the California Chamber of Commerce which requires a public vote to raise taxes, with Exceptions for Special Benefits Assessment Districts, and limited Business Improvement Districts (BID).

In 2012 to 2013, by trying to EXTEND the expired 5-year temporary 2% TMD and creating the up to 3% Special Tax for the Convention Center Financing District (CCFD), the City of San Diego is acting as the guinea pigs for California taxpayers while violating our Constitutional Right to vote on Tax increases, like Hotel Taxes, TOT, and TMDs. The City Council of San Diego is abusing their discretion and misusing taxpayer dollars in order to substantiate and make legal Mr. Lambeth and Civitas Advisors' nationwide personal consulting business scheme.

How much public money in City Council time and public hearings has been used to create legal loopholes to our State Constitution? As City Attorney Goldsmith has stated, these Validation and legal claims will take YEARS before settlements through the appellate courts. The City Council has been creating unnecessary drama by refusing to allow the public a vote in the matter of increasing Hotel taxes.

We recommend that the Howard Jarvis Tax Association and our State Attorney General Kamala Harris be contacted to and ask to submit Amicus Briefs in these shady TMD and CCFD lawsuits of statewide significance.

"Coupal, from the Howard Jarvis Taxpayers Association, said he wasn't so sure about that hotel 'fee' either. "I don't see how they can do this without voter approval," he said. Join the club." http://www.voiceofsandiego.org/government/article_f47a5f22-9806-11e2-8c61-0019bb2963f4.html?TNNNoMobile

Regards,

Katheryn Rhodes and Conrad Hartsell MD
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1.0 CURRENT CONDITIONS AND THE CITY COUNCIL'S TOT SLUSH FUND.

Please note that since no public vote has taken place since 1965, based upon Matching Private and County funding requirements, the private San Diego Tourism Authority (SDTA) can apply for up to a 2.4% MATCH of the existing 10.5% TOT, subject to City Council approval.

Our current City Council Policy 100-3 on Transient Occupancy Taxes (TOT) was approved on September 12, 2005. The 10.5 % Transient Occupancy Tax (TOT) breakdown includes:

- 1.0% for any purpose.
- 5.5 % for our General Fund.
- 4.0% to "**Promotion**" of the City (can be waived by the City Council O-19875, July 2, 2009.)
[1% to Balboa Park and Mission Bay Park Improvements, and 1% to Arts and Museums.]

In written Ballot Arguments Against Proposition C, the original 4% TOT on hotel visitors approved by the citizens of the City of San Diego on February 16, 1965, detractors stated that the new 4 % hotel tax on visitors would be a "**Slush Fund**" that can be used for whatever the City Council decides is the definition of "**Promotion**" of the City .

*"Adopted by a gullible Council, this ordinance is designed to create a half million dollar promotional **"slush fund"** to be spent as the Council directs. **"Promotion"** means whatever City Officials want it to mean. Recently, trips to Washington, Florida, Mexico, Peru, and other excursions, at taxpayers' expense, were designated **promotional**.... Vote NO on "C" and curtail wasteful, frivolous spending under guise of **"Promotion**. ... Ballot Wording Deliberately Conceals Use of Funds. Note description of "C" on Ballot fails to reveal revenues **must be used solely for promotion**.... Now City Hall proposes to tax visitors, brought here by private dollars, to build a **slush fund** for bureaucrats to spend as they choose. Though well intentioned, uncontrolled **slush fund** spending inevitably leads to favoritism and corruption. Don't let bureaucratic red tape strangle San Diego's third largest industry. Vote "NO" on C."*

Therefore any legal claims by the SDTA and Terzi that 60 % of the existing 10.5 % TOT, or a **minimum of 6.3 %**, should be given to the former CONVIS for advertising and destination marketing, instead of the City of San Diego's General Fund, should be challenged based upon lack of evidence.

The City Council approval of the 2% TMD and up to 3% Special Tax over 40 years translates to a giveaway of public taxpayer funds totaling a minimum of **\$3.2 BILLION**. Another hidden fact is the City Council has already given away all Incremental Tax revenue from the existing 10.5 percent TOT from the 2012 Base Year. Therefore even though 3 new hotels with 650 additional rooms are planned for Liberty Station, the City of San Diego will not receive any additional revenue into our General Fund. Instead the City Council has already agreed to use the Incremental Tax to pay the remainder of the Convention Center expansion costs over the \$525 million price tag from the CCFD.

Online comments on the TMD story from Hoteliers and SDTA workers shows the Tourism Industry thinks that since a 60% MATCH was agreed to in 1965, at a minimum 6.3% of the existing 10.5%, should be given to the SDTA/CONVIS for advertisement, destination marketing, and promotion of San Diego. This is not correct. The SDTA/CONVIS could get UP TO 60% of the 4%, which equates to a maximum of 2.4%. The numbers could be higher or lower as decided by the City Council on a yearly basis.

2.0 EFFECTIVENESS OF MARKETING BY THE SAN DIEGO TOURISM AUTHORITY (SDTA):

Appendix B included statistics on the San Diego Tourism Authority's (SDTA) Effectiveness by Smith Travel Research (STR). Joe Terzi of the San Diego Tourism Authority (SDTA) has claimed for the month of February 2013, in the California Lodging Report the San Diego Regional Hotel Occupancy Rate decreased 1 %, due to lack of the annual \$30 million (2%) in TMD funds yet to be released by Strong Mayor Filner. What Terzi forgets to mention is that Year to Date ending February 28, 2013, San Diego's Hotel Occupancy Rate actually Increased +3.2 %. Therefore, there is NO correlating evidence that increase TMD Destination Marketing and Advertisement spending has a direct effect on TOT Revenues or Occupancy, and "Heads in Beds."

SMR should be consulted for their expert opinion if the annual \$30 million in taxpayer money spent by the SDTA is a good value compared to other cities. Later this week STR should be publishing the March 2013 California Lodging Report for Year to Date ending March 31, 2013. STR's California Lodging Reports and statistics presented in Appendix B should be reviewed by the City Council and our Independent Budget Analysts (IBA).

A Voice of San Diego article calls the claims by the San Diego Tourism Authority (SDTA) leaders that the lack of advertising and marketing for spring and summer visitors has affected the tourism industry for the month of February 2013b "**Misleading.**"
http://www.voiceofsandiego.org/fact/article_cba3a64c-a073-11e2-bbda-0019bb2963f4.html?utm_source=twitterfeed&utm_medium=twitter
<http://industry.visitcalifornia.com/Research/> "*Kerri Kapich, the agency's vice president for marketing, claimed on Twitter that hotel occupancy in San Diego was down significantly in March "due to no advertising" — a reference to an ad campaign that became a casualty of the fight. The problem: The Tourism Authority itself projected hotel room occupancy would be down due to other factors long before it knew the ad campaign was held up. Kapich gets a Misleading verdict. We concur.*"

Joe Terzi of the San Diego Tourism Authority (SDTA) has been using cherry pick statistics to imply the Hotel Occupancy levels have decreased in the City of San Diego due to failure of the City of San Diego to release the annual \$30 million in TMD taxes for advertisement and promotion of San Diego as a tourist destination. Opining if only the City released the TMD funds San Diego's Hotel Occupancy would increase. This is not correct or accurate. Year to date ending February 28, 2013, San Diego's Occupancy Rate increased +3.2%. True for the month of February 2013 San Diego Hotel Occupancy decreased by 1 %. Also as seen in the attached graph by Smith Travel Research (STR) for December 2012 at the time the TMD was still operating and spending taxpayer funds, San Diego's Hotel Occupancy decreased by -2 %, while every other California region's Hotel Occupancy increased up to +8 %. A -10% negative difference at the same time the annual \$30 million was spent by the private TMD, with negative results.

Appendix B includes excerpts from the Smith Travel Research presentation at the SDTA Annual Meeting on February 14, 2013. Interesting graphs show that even with the spending of an annual \$30 million, the San Diego region's Hotel Occupancy Percent Change was lower than the United States statistics in 2009 and 2011. More revealing are the graphs that compare the San Diego regional market to other cities. For example for the 5 years the TMD was in existence (2008-2012), San Diego did much worse on tourism metrics including Average Daily Rate Percent Changes and Demand Percent Change. For 2008-2012 both Los Angeles and Seattle beat San Diego's efforts all 5 years. Anaheim and San Francisco similarly beat San Diego efforts for Increasing Heads in Beds for 4 of the 5 years studied.

Another part of this multi-faceted scam includes moving Convention Center booking to the private SDTA starting July 1, 2012. The private Hoteliers stated they want to move the lucrative medical conventions from our public convention to private hoteliers. A major Conflict-of-Interest.

3.0 CITY ATTORNEY GOLDSMITH'S LEGAL MEMORANDUMS AND OPINIONS.

Appendix C includes three Legal Memorandums from City Attorney Goldsmith including opinions on the legality of TMDs dated July 27, 2012, March 28, 2013, and April 9, 2013. City Attorney Goldsmith's legal opinions on all the issues of increasing Hotel Taxes recommends a public vote as required by our State Constitution. Excerpts from Goldsmith's Legal Memorandums include:

*"Prop 26 allows the City to impose a new business-based assessment without voter approval only if the program of improvements and activities to be funded by the assessment can be limited to benefits or services provided directly to the charged businesses and not to other who are not charged. Many of the improvements and activities of business-based assessment district historically provided may be difficult to justify under Prop 26's new, seemingly more stringent standards... Therefore, the City's existing business-based assessments are not converted to taxes under Prop 26 unless the assessment is increased or **EXTENDED**, as those terms are defined... However, since the passage of Prop 26, unless the City can identify an applicable exception, the City may be prohibited from levying any new or increased business-bases assessment without voter approval... In fact, the Legislative Analyst's impartial analysis of Prop 26 specifically identified business-based assessments as meeting the definition of a tax requiring voter approval. Absent clear direction from the courts or legislature, this Office advises that the City should not impose a new business-based assessment without voter approval unless the program of improvements and activities to be funded by the assessment can be limited to benefits or services provided directly to the charged businesses and not to others who are not charged... Due to the Risks associated with Assessment Districts to the City, this Office suggests that interested property owners and Businesses consider forming private associations to implement the improvements activities desired. The current legal landscape with respect to both business-based and property-based assessments districts is treacherous... If the City attempts to form a new business based assessment district, the City must be cautious to not impose an assessment without voter approval unless the program of improvements and activities to be funded by the assessment can be limited to benefits or services provided directly to the charged businesses and not to others who are not charged. Many of the improvements and activities that historically have been provided by the BIDs may be difficult, if not impossible, to justify under Prop 26's definition of a tax. The City will not know how the Courts will apply Prop 26 to business-based assessments until a case is actually litigated and finally decided, **which could take years.***

The City could pursue several options to protect its General Fund pending the outcome of the Lawsuits. Anything short of withholding all of the TMD assessment funds would necessarily involve some exposure to risk for the City and its General Fund. A surety bond or some other instrument securing the TMD Corporation's indemnification obligations under the Operating Agreement would likely provide the next best level of protection for the City.

The Amendment does not change our opinion as to the legality of the assessment... Whether the TMD has met the high standard we outline in the memorandum will be up to the courts. There is a substantial risk that a court will overturn the assessment as an illegal tax in violation of Proposition 26... The Amendments does not strengthen protections for the City in the event the assessment is overturned and the City is ordered to repay funds collected. The Amendment weakens protections, but allows for release of funding. [The] most sure-fire way to protect the City's General Fund is for the City to hold all of the assessment funds and not disburse any such funds to the TMD Corporation pending the outcome of the Lawsuits.

PROPOSED PROPOSITIONS TO RATIFY AMENDMENTS TO THE CITY CHARTER AND AN ORDINANCE AMENDING CHAPTER III OF THE SAN DIEGO MUNICIPAL CODE BY ADDING THERETO A PROVISION IMPOSING A 4% TRANSIENT OCCUPANCY TAX [TOT], TOGETHER WITH ARGUMENTS. To Be Submitted to the Qualified Voters of The City of San Diego at the SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, FEBRUARY 16, 1965.

February 16, 1965. Proposition C - 4 % Transient Occupancy Tax (TOT).

Section 35.0116 Utilization of Revenue.

From 4% TOT, Annual contribution to San Diego Convention & Tourist Bureau (CONVIS) 60 percent Maximum = 60% of 4% = Maximum of 2.4%.

40% Match with Private Funds + 20% Match from San Diego County Funds

between submitting of initiative petitions and certification of qualification, the present code at this very time guarantees that no more than six months can elapse between the qualification of an initiative and the date of an election. But on the other hand the code as it presently exists guarantees an earlier vote unless a regular election is already scheduled.

This proposed Charter Amendment gives the people no rights that they do not now have, but on the other hand takes some of those rights away from them.

San Diego Citizens will not be deceived by such chicanery and will vote NO on Proposition "B".

CITIZENS COMMITTEE TO PRESERVE RIGHT TO VOTE

DALLAS G. WILBORN

JACK D. CHILDRES

President, San Diego Patriotic Society

C. ASHLEY JOHNSON

JOHN L. STENNETT, Attorney

PROPOSITION C

(THIS PROPOSITION WILL APPEAR ON THE BALLOT IN THE FOLLOWING FORM)

PROPOSITION C: Shall the Ordinance No. 9033 (New Series) of the Ordinances of the City of San Diego, adopted by the Council on June 9, 1964, which imposes upon transients a tax of four per cent (4%) of the room rent, be approved?	YES	
	NO	

This proposition, which is Ordinance No. 9033 (New Series), adds sections to the San Diego Municipal Code providing for a Transient Occupancy Tax and is submitted for approval pursuant to referendum petition. Ordinance No. 9033 (New Series) reads as follows:

SEC. 35.0113 ACTIONS TO COLLECT

Any tax required to be paid by any transient under the provisions of this Article shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this Article shall be liable to an action brought in the name of The City of San Diego for the recovery of such amount.

SEC. 35.0114 VIOLATIONS, MISDEMEANOR

Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the City jail for a period of not more than six months or by both such fine and imprisonment.

Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the City Treasurer, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes a false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this Article to be made, is guilty of a misdemeanor and is punishable as aforesaid.

SEC. 35.0115 SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Article or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

SEC. 35.0116 UTILIZATION OF REVENUES

(a) All revenues collected by the City under this Article and remaining after payment of the costs incurred to the administration of this Article shall be used solely for the purpose of promoting the City of San Diego.

(b) The total amount of the City's annual contribution to the San Diego Convention and Tourist Bureau, except as affected by Subsection (c), below, shall be determined as follows:

(1) Revenue collected under this Article shall be used to match dollar for dollar the amount raised by the San Diego Convention and Tourist Bureau from private sources during the preceding fiscal year provided the amount so used shall not exceed forty per cent (40%) of the revenue collected in any single fiscal year under this Article.

(2) Revenue collected under this Article shall be used to match dollar for dollar the amount appropriated by the County of San Diego as its annual contribution to the San Diego Convention and Tourist Bureau provided the amount so used shall not exceed twenty per cent (20%) of the revenue collected in any single fiscal year under this Article.

(c) The amount of the City's annual contribution to the San Diego Convention and Tourist Bureau shall be not less than \$100,000.00 regardless of the provisions of Subsection (b), above.

(d) Any remaining revenues shall be used to support any program, including but not limited to programs of the San Diego Convention and Tourist Bureau, designed to promote the City as the Council may direct.

Section 2. This ordinance shall take effect thirty-one (31) days from and after the date of its passage.

ARGUMENT AGAINST PROPOSITION C

CH/HS (BE WARY) Many misrepresentations have been made about this scheme to finance City Hall operations since responsible citizens reading this cleverly drafted ordinance will vote NO because:

1. "C" Creates Promotional Slush Fund.

Initiated by City Manager, adopted by a gullible Council, this ordinance is designed to create a half million dollar promotional "slush fund" to be spent as the Council directs. "Promotion" means whatever City Officials want it to mean. Recently, trips to Washington, Florida, Mexico, Peru, and other excursions at taxpayers' expense, rate designated "promotional." Vote NO on "C" and neutral wasteful frivolous spending under guise of "Promotion."

2. "C" Cannot Affect Property Tax Rate.

A flagrant misrepresentation by promoters is that this ordinance affects property tax rates. This is absolutely false. The District Court of Appeal ruled this ordinance had no effect on property tax rates. If voters approve ordinance, ALL revenues MUST go in "promotional slush fund." If they disapprove, no slush fund and no promotional spending.

3. Ballot Wording Deliberately Conceals Use Of Funds.

Note description of "C" on Ballot fails to reveal revenues must be used solely for promotion although the City Attorney stated such disclosure was required by law. Voters will ponder the reason for this deliberate attempt to deceive.

4. Tourist Industry Hindered, Not Helped by City Hall Slush Fund.

San Diego's tourist industry spends 1.5 million private dollars annually promoting tourism. Visitor spending last year reached an equal \$240 million. Now City Hall proposes to tax visitors brought here by private dollars to fund a "slush fund" for bureaucrats to spend as they choose. Though well intentioned, uncontrolled slush fund spending inevitably leads to favoritism and corruption. Don't let bureaucrats take a bite out of San Diego's third largest industry. Vote "NO" on "C."

COMMITTEE FOR ECONOMIC IN-CITY GOVERNMENT

- GEORGE HAWLEY
Past President, Junior Chamber of Commerce
- CHARLES W. BORGERDING
- PAUL H. NOISAT
Captain, United States Navy, Retired
- WALTER W. MERRILL
Food Services Executive Association
- WILLIAM J. GLOVEY

- EDMUND L. FLOOD
Past President, Junior Chamber of Commerce
- JOHN E. ALLEN
Member, Chamber of Commerce
- REGGIE C. JENSEN
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Member, Chamber of Commerce