



18

COUNTY OF SAN MATEO
Inter-Departmental Correspondence

County Manager's Office

DATE: July 17, 2001

BOARD MEETING DATE: July 31, 2001

TO: Honorable Board of Supervisors

FROM: Paul T. Scannell, Assistant County Manager *by Jim Saew*

SUBJECT: Introduction of Ordinance Submitting Proposal to the Voters to Continue the Transient Occupancy Tax at the Current Rate of Ten Percent (10%) of Rent Charged by Hotel Operators in Unincorporated San Mateo County and Declaring Emergency in Connection Therewith

Recommendation

Introduce an ordinance submitting a proposal to the voters to continue the Transient Occupancy Tax at the current rate of ten percent (10%) of rent charged by hotel operators in unincorporated San Mateo County and declaring an emergency in connection therewith.

Background

For many years, the County has imposed and collected a tax on transient occupancy of hotels and similar lodging facilities in the unincorporated area of San Mateo County. The tax is authorized by Revenue and Taxation Code section 7280. In 1990, the Board increased the tax from eight percent (8%) to ten percent (10%) of rent charged. This measure was not submitted to a vote of the people under the view that a vote was not required.

Proposition 62, passed by the electorate in 1986, and established a requirement that general taxes be submitted to a vote of the electorate. The reach of Proposition 62, however, was not clear at the time that the County last amended its transient occupancy tax in 1990, and the general view of local governments was that the amendment of such a tax was not subject to Proposition 62's voting requirement. It has since become evident that such a tax is subject to the voting requirement. The County had amended its transient occupancy tax without legal challenge, however, and the statute of limitations had run as to any challenge to its adoption.

On June 4, 2001, the California Supreme Court held for the first time, in the case of Howard Jarvis Taxpayers' Association v. City of La Habra, that a new statute of limitations begins to run each time that a tax is actually imposed and collected. Because of this holding, it is necessary to submit the current transient occupancy tax to the electorate to remove any doubt as to the continuing legality of the current rate.

If the voters choose not to continue the ten percent (10%) rate, the transient occupancy tax would revert to the eight percent (8%) rate established in 1978. Because this rate was

established before Proposition 62 was adopted, it would not require validation by the voters.

Fiscal Impact

If the current ten percent (10%) rate is validated, there will be no impact to the general fund. If the current rate is invalidated, the reversion to an eight percent (8%) rate will result in a reduction of revenues into the general fund of about \$160,000 per year based on the figures for FY 2000-2001. When San Francisco Airport reopens its major hotel in 2005, the negative impact to the County could be an additional \$300,000 annually.

ORDINANCE NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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AN ORDINANCE SUBMITTING TO A VOTE OF THE ELECTORATE A PROPOSAL TO CONTINUE THE TRANSIENT OCCUPANCY TAX AT A RATE OF TEN PERCENT (10%) OF RENT CHARGED BY HOTEL OPERATORS IN UNINCORPORATED SAN MATEO COUNTY AND DECLARING AN EMERGENCY UNDER ARTICLE XIII.C., SECTION 2 OF THE CALIFORNIA CONSTITUTION

The Board of Supervisors of the County of San Mateo, State of California, ordains as follows:

SECTION 1. A. Article XIII.C., Section 2 of the California Constitution, and Government Code section 53723 authorize the County to impose, extend or increase a general tax upon a majority vote of the population.

B. Revenue and Taxation Code section 7280 authorizes the County to levy a tax on hotels, inns, tourist homes, motels, or other lodging for the privilege of occupying a room or rooms.

C. Pursuant to Elections Code section 9140, the Board may submit to the voters, without petition, an ordinance for the repeal, amendment, or enactment of any ordinance.

D. In 1978, the Board amended the San Mateo County Ordinance Code to establish a transient occupancy tax in the amount of eight percent (8%) of the rent charged by the operator of any hotel or similar structure designed for transient occupancy.

E. In 1990, the Board amended the San Mateo County Ordinance Code to increase the transient occupancy tax to ten percent (10%) of the rent charged by the operator of any hotel or similar structure designed for transient occupancy.

F. On June 4, 2001, in the case of *Howard Jarvis Taxpayers Assn. v. City of La Habra*, the California Supreme Court held, for the first time, that under Proposition 62, adopted by the electorate in 1986, the continued imposition and collection of a general tax starts a new statute of limitations period for legal challenge to the tax that is collected.

G. In order to ensure that the County's transient occupancy tax is legally sound, the Board desires to submit the current transient occupancy tax to a vote of the people to determine whether the current transient occupancy tax of ten percent (10%) of rent should be continued. If the current rate is not continued, it would revert to the rate of eight percent (8%) established in 1978.

SECTION 2. The Board of Supervisors hereby submits the proposed amendment to the San Mateo County Ordinance Code set forth in Sections 5, 6, and 7 to the qualified electors of the County of San Mateo at the election to be held on Tuesday, November 6, 2001.

SECTION 3. The Clerk of the Board shall be, and he is hereby, authorized and directed to publish a copy of this ordinance, as required by general law, in a newspaper of general circulation published in the County of San Mateo. The County Clerk shall publish a notice of this election not less than 90 days not more than 120 days before the Election in accordance with the Elections Code section 12115(a).

SECTION 4.

- a. The Election shall be held and conducted, the returns canvassed, and the result declared in the manner as provided by law for general elections.
- b. The Election will be held on November 6, 2001, from the hour of 7:00 a.m. to the hour of 8:00 p.m., during which period of time the polls will remain continuously open. At 8:00 p.m., the polls will be closed, except as provided in section 14401 of the Elections Code.
- c. The County Clerk shall prepare and mail to each eligible voter in the County a sample ballot and a voter's pamphlet containing the complete text of the proposed revision.
- d. The County Clerk shall establish election precincts, designate the polling places, and provide election officers for each precinct at the election in accordance with the election laws of the State of California.
- e. The Election on the proposed measure shall be consolidated with any and all other elections to be held on November 6, 2001.

SECTION 5. The following Measure for the extension of an existing provision of the San Mateo County Ordinance Code shall be submitted to the electorate on November 6, 2001.

“Shall Ordinance No. 3268 adopted by the San Mateo County Board of Supervisors on October 2, 1990, which increased from 8% to 10% the transient occupancy tax charged to persons for the privilege of occupancy in any hotel, or similar structure occupied or intended or designed for occupancy by transients, in the unincorporated area of San Mateo County, be continued in

full force and effect?”

SECTION 6. The complete text of the San Mateo County Ordinance Code provision proposed to be extended is as follows:

“Section 5.136.020. **Tax Imposed.** For the privilege of occupancy in any hotel, effective October 2, 1990, each transient is subject to and shall pay a tax in the amount of ten percent (10%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the county which is extinguished only by payment to the operator or to the County. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. 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.”

SECTION 7. The manner in which the proposed Measure shall appear on the ballot is as follows:

“Shall Ordinance No. 3268, adopted by the San Mateo County Board of Supervisors on October 2, 1990, which increased from 8% to 10% the transient occupancy tax charged to persons for the privilege of occupancy in any hotel, or similar structure occupied or intended or designed for occupancy by transients, in the unincorporated area of San Mateo County, be continued in full force and effect?”

SECTION 8. The Board of Supervisors further declares that an emergency exists, under the provisions of Section 2(b) of Article XIII.C. of the California Constitution in that the case of *Howard Jarvis Taxpayers Association v. City of La Habra* has cast doubt on the ability of the County to continue to collect a transient occupancy tax at the current rate of ten percent (10%) of rent paid without a vote of the electorate. An immediate vote of the electorate is necessary to remove such doubt.

SECTION 9. Pursuant to the provisions of Government Code section 25123, this ordinance calling an election shall become effective immediately upon its adoption by this Board of Supervisors.

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