



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 18-0526, Version: 1

REPORT TO COUNCIL

SUBJECT

Adopt a Resolution Calling for a General Municipal Election to be Held in the City of Sunnyvale on Tuesday, November 6, 2018 for the Purpose of Submitting to City Voters a Measure to Increase the Transient Occupancy Tax Rate; Requesting Consolidation with the Statewide General Election and Election Services from Santa Clara County; Directing the City Attorney to Prepare an Impartial Analysis; and Setting Priorities for Ballot Arguments.

BACKGROUND

In October 2017, City Council sponsored a study issue to identify and evaluate new revenue strategies (FIN 17-01). These strategies are intended to help address rising costs and demands for service, balance volatile, declining, and difficult to forecast revenue sources and allow the City to continue delivering the high-quality services expected by the community. As part of the study issue staff held a study session. Council established a preference to focus on two potential general tax increase ballot measures, Transient Occupancy Tax and Real Property Transfer Tax.

Staff contracted with Fairbank, Maslin, Maullin, Metz & Associates (FM3) to conduct voter opinion polling. FM3 conducted polling via landline, cell phone and online survey methods on a sample of 552 registered voters. Results showed high support (74% approval) within the community for a ballot measure to increase the City's Transient Occupancy Tax (TOT) rate from 10.5% to 12.5%. In May 2018, Council reviewed the polling results and directed staff to return with actions needed to place a ballot measure on the November 2018 ballot to increase the TOT rate from 10.5% to 12.5% (RTC No. 18-0425).

EXISTING POLICY

Council Policy, Chapter 7, *Planning and Management*, Policy B.1.1 - The City will maintain a diversified and stable revenue base, not overly dependent on any land use or external funding source.

Council Policy, Chapter 7, *Planning and Management*, Policy B.1.4 - When considering a new tax or revenue source or an increase in an existing tax or revenue source, the following criteria should be considered:

- Community/Voter Acceptance
- Competitiveness with surrounding communities
- Efficiency of revenue collection and enforcement
- Effectiveness in generating sufficient revenues in the short and long-term to justify its establishment
- Enhancement of revenue diversity to promote stability and provide protection from downturns in business cycles
- Equity/Fairness in distribution of the revenue burden on various segments of the community

ENVIRONMENTAL REVIEW

This action is exempt from review under the California Environmental Act (CEQA) in that it involves fiscal and administrative activities that will not result in direct or indirect changes to the environment, and which do not commit the City to any specific project that may result in a potentially significant impact on the environment. (CEQA Guidelines, Section 15378(b)(4) and (b)(5).)

DISCUSSION

Consistent with Council direction, this report details the necessary steps required to place a TOT measure on the November 6, 2018 general election ballot.

The proposed TOT rate increase is a general tax measure that can be approved by a simple majority (50% + 1 vote). If approved by voters, additional revenue generated by the increase would be allocated to the City's General Fund to maintain vital City services and support City infrastructure needs.

The attached draft resolution provides for the following:

1. Approval of the ballot question language to be presented to Sunnyvale voters.
2. "Calling" a General Election to be held on November 6, 2018 and requesting the services of the Registrar of Voters to conduct the election.
3. Direction to the City Attorney to prepare an impartial analysis for the measure.
4. Direction on ballot arguments to the City Clerk to be printed in the Sample Ballot.
5. Approval of a draft amendment to the Municipal Code to incorporate the proposed changes if the measure is approved by voters.

Ballot Question Language

The State Elections Code Section 9051 requires a ballot measure not exceed 75 words and be presented in the form "Shall the ordinance (stating the nature thereof) be adopted?" The proposed ballot question is as follows:

To protect and maintain essential city services, including:

- *Police/fire/911 emergency response;*
- *Pothole, streets, sidewalks, and neighborhood park maintenance/repairs;*
- *Senior/youth/library programs; and*
- *Other services,*

Shall the City of Sunnyvale adopt an ordinance increasing the transient occupancy tax paid only by hotel guests from 10.5% to 12.5%, providing approximately \$2,900,000 additional revenue annually until ended by voters, with independent audits, and all funds used locally? (66 words)

The proposed ballot language reflects projected revenue based on the FY 2018/19 Adopted Budget financial plan projections for TOT revenue, which reflect the latest room rates and occupancy levels.

Calling of an Election

As required by the State Elections Code, the Council must adopt a resolution calling an election, requesting consolidation with the Statewide General Election and requesting the Registrar of Voters to provide election services. The draft resolution provides for these requirements.

Impartial Analysis by the City Attorney

The State Elections Code Section 9280 authorizes Council to direct the City Attorney to prepare an impartial analysis of the measure. The draft resolution provides this direction to the City Attorney.

Ballot Arguments

The State Elections Code Section 9282(b) provides for the filing of ballot measure arguments by the following: City Council or any member(s) of the Council authorized by the Council, any individual voter eligible to vote on the measure, bona fide association of citizens or any combination of voters and associations.

If the Council decides to submit an argument in favor of the ballot measure or authorize certain members to submit an argument, then pursuant to Election Code Section 9287(a) that argument will be given preference over any other argument submitted in favor of the ballot measure. If the Council chooses not to submit an argument, the City Clerk will follow the priorities described in Elections Code Section 9287(a) in selecting an argument to be printed in the Sample Ballot.

The resolution is drafted with three options for the Council's consideration regarding the submission of the argument in favor or against the measure:

- a. Authorize the City Council as a body to submit a written argument [in favor] or [against] the measure;
- b. Authorizes ___[#]___ member(s) of the City Council to submit a written argument [in favor] or [against] the measure: [one or more name(s)]. At [Name(s)] discretion, the argument may also be signed by other members of the City Council, bona fide associations, or individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure [Name(s)] is also authorized to submit a rebuttal argument on behalf of the City Council, which, at [Name(s)] discretion, may also be signed by members of the City Council, bona fide associations, or individual voters who are eligible to vote on the measure. Signatures on the rebuttal argument may be different from those who signed the primary argument, OR
- c. Take no action with regard to authorizing the Council, or member or members of the Council to submit a written argument [in favor] or [against] the measure.

The deadline for submitting arguments for and against the measure will be 14 days from the adoption of the Resolution Calling the Election (Elections Code Section 9286). Rebuttal arguments may then be filed by the author(s) of the primary arguments no later than 10 days after the final filing date for primary arguments (Elections Code Section 9285(4)). If Council selects Option A, a special Council meeting would need to be held for the Council to consider and approve the written argument.

Draft Amendment to Sunnyvale Municipal Code Section 3.16.040

The proposed increase to the TOT requires an amendment to the Sunnyvale Municipal Code and voter approval. The rate change would take effect January 1, 2019. The proposed amendment is as follows (new language shown in underline):

3.16.040. Imposition-Rate-Payment.

- a) For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator through June 30, 1995, and eight and one-half percent of the rent charged by the operator on or after July 1, 1995.
- b) Commencing January 1, 2007, and continuing through December 31, 2008, the amount of the tax shall be nine percent of the rent charged by the operator. Effective January 1, 2009, the amount of the tax shall be nine and one-half percent of the rent charged by the operator; provided, however, that the average citywide hotel/motel occupancy rate from January 1 through September 30, 2008, as determined by the director of finance, is at least sixty percent. If the average occupancy rate during this period is less than sixty percent, the increase in the amount of the tax shall be deferred until January 1, 2010. In any event, the amount of the tax on and after January 1, 2010, shall be nine and one-half percent of the rent charged by operator.
- c) Commencing January 1, 2014, and continuing thereafter, the amount of the tax shall be ten and one-half percent of the rent charged by the operator.
- d) Commencing January 1, 2019, and continuing thereafter, the amount of the tax shall be twelve and one-half percent of the rent charged by the operator.

Election Timing

To place any measure on the November 2018 ballot, action must be taken by Council on or before the July 31, 2018 Council meeting. Once action is taken to place a measure on the ballot, there is a 14-day period to provide written arguments for or against the measure. This is followed by a 10-day period for rebuttal arguments. Election day is November 6, 2018 and results may be available to be ratified and approved by Council at their regular meeting of December 18, 2018.

Community Outreach

Staff invited the Sunnyvale Silicon Valley Chamber of Commerce and hotel operators to an in-person meeting to discuss and gather feedback on the potential measure. Eight (8) hotel operators representing 22% of hotel rooms attended the meeting. Top concerns voiced at the meeting included remaining competitive with Santa Clara (9.5% TOT + 2.0% CFD) and Mountain View (10.0% TOT) and low weekend occupancy rates. Operators were also concerned a higher rate was not needed due to hotel projects in the pipeline which would generate new TOT, or that a higher rate might drive new hotel projects away.

FISCAL IMPACT

Based on updated projections which include hotels in development and short-term rental revenue, Staff estimates a 2% increase in TOT would result in approximately \$2,900,000 in additional annual revenue or approximately \$82 million over a 20-year period based on current long term revenue projections.

The cost associated with placing a ballot measure and requesting the services of the Registrar of Voters of Santa Clara County to conduct the election is approximately \$101,014. The FY 2018/19 Budget includes funding for up to three ballot measures in November.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Adopt a resolution calling for a General Municipal Election to be held in the City of Sunnyvale on Tuesday, November 6, 2018 for the purpose of submitting to City voters a measure to increase the Transient Occupancy Tax rate; requesting consolidation with the Statewide General Election and election services from Santa Clara County; directing the City Attorney to prepare an impartial analysis; and setting priorities for ballot arguments.
2. Do not adopt the resolution placing the Transient Occupancy Tax measure on the ballot, provide further direction to staff, and return with the appropriate actions no later than July 31, 2018 to submit the measure for the November 6, 2018 election.

STAFF RECOMMENDATION

Alternative 1: Adopt a resolution calling for a General Municipal Election to be held in the City of Sunnyvale on Tuesday, November 6, 2018 for the purpose of submitting to City voters a measure to increase the Transient Occupancy Tax Rate; requesting consolidation with the Statewide General Election and election services from Santa Clara County; directing the City Attorney to prepare an impartial analysis; and setting priorities for ballot arguments.

Prepared by: Beth Goodsell, Senior Management Analyst

Reviewed by: Timothy J. Kirby, Director of Finance

Reviewed by: John Nagel, City Attorney

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Draft Resolution