



CITY COUNCIL AGENDA REPORT

MEETING DATE: February 17, 2004

ITEM NUMBER:

SUBJECT: CONSIDERATION OF POTENTIAL NEW REVENUE SOURCES

DATE: FEBRUARY 10, 2004

FROM: FINANCE DEPARTMENT/ADMINISTRATION

PRESENTATION BY: MARC R. PUCKETT, DIRECTOR OF FINANCE

FOR FURTHER INFORMATION CONTACT: MARC R. PUCKETT (714)754-5243

RECOMMENDED ACTION:

Provide direction to staff regarding potential new revenue sources.

BACKGROUND:

At the June 16, 2003, City Council meeting, Council directed staff to prepare a report regarding potential new revenue sources to be presented to Council at a study session. Specific, potential, new revenue sources mentioned at that time included the business license tax, transient occupancy tax and sanitation franchise fee.

Council members had also expressed interest in initiating conversations with the business community regarding consideration of a new business license tax structure and/or an increase in the existing business license tax structure. In addition, Council had expressed interest in moving forward with a ballot measure that would place an increase in the transient occupancy tax on the ballot.

Further, Council had requested that representatives of the Sanitary District Board, the Costa Mesa Convention and Visitors Bureau, and the Chamber of Commerce be invited to the Study Session to be available to respond to Council questions regarding the potential new revenue sources.

Staff presented the report at the December 5, 2003, study session. Included in the study session presentation were other potential new revenue sources for Council's consideration and review. These two additional potential new revenue sources were the FireMed subscription fee and the local sales tax provided for under SB 566.

ANALYSIS:

Each potential new revenue source is summarized herein. For each of the potential new revenue sources discussed herein, a description of the revenue source, taxing authority, overview of the fee, and estimated revenue collections are included.

Any increase in the business license tax, transient occupancy tax or the sales tax would require a vote of the people. Whether the ballot measure requires a simple majority (50% + 1 vote) or a super majority (two-thirds of those voting in the affirmative) depends upon the ballot language and whether the question is placed upon the ballot as a general tax increase or a special tax increase. In making these determinations, there are a number of decisions that Council must make to place the matter before the voters. These issues were discussed in length with Council and thoroughly detailed by the City Manager in his July 7, 2000, memo to Council preceding the placement of the Transient Occupancy Tax question on the November, 2000, ballot. A copy of the City Manager's memo is attached (Attachment 1) and referenced herein with respect to the requirements of placing a ballot measure before the voters.

On page two of the memo, the City Manager discusses the five decisions that Council must make and the four ways that the ballot measure may appear before the voters on the ballot. These same decisions apply to each of the potential new revenue sources discussed herein requiring voter approval prior to implementation. The attachments to the City Manager's memo from the City Attorney's Office and the Finance department further delineate matters that need to be considered with respect to placing a ballot measure before the voters. It is suggested that these requirements be reviewed in detail with respect to issues concerning placement of a ballot measure before the voters as a general tax increase or a specific tax increase.

According to the Deputy City Clerk, cost estimates for placing a "stand-alone" local ballot measure before the voters is approximately \$95,000 to \$100,000. Costs for placing a local ballot measure on a "consolidated" ballot are currently estimated at approximately \$25,000 to \$32,000.

Business License Tax:

Description: The Business License Tax is a general tax on businesses for the privilege of conducting business within the City. As a general tax, use of revenues derived from the issuance of business licenses is unrestricted.

Authority: The authority to levy this tax is granted pursuant to the Government Code, sections 37101, et seq.

Overview: The Business License Tax is a type of excise tax imposed on businesses for the privilege of conducting business within the City. The tax is most commonly based on gross receipts or levied at a flat rate, but is sometimes based on the quantity of goods produced, number of employees, number of vehicles, square footage of the businesses or some combination of factors. Rates are set at each City's discretion but may not be discriminatory or confiscatory.

Cities may levy this tax for both regulatory and revenue-raising purposes. However, regulatory fees may only be levied to cover the costs of regulation.

Any increase in the Business License Tax will require voter approval.

Based upon the last available survey approximately five years ago, over 440 cities (93 percent of all cities) collect a business license tax as a general tax. Some of those that do not collect a business license tax, collect a business license fee based on cost recovery for licensing and processing or for other services provided.

During the last fiscal year ended June 30, 2003, the Business License Tax revenue collections equaled approximately \$854,000. The current fee schedule has remained unchanged for over 18 years. The business license tax is not now a major revenue stream for the City. However, for many cities, it is a major revenue stream. A copy of the business license tax survey prepared and included in the Budget Study Session Workbook is attached (Attachment 2).

As noted in the survey, 27 out of 34 cities (80%) in Orange County levy a business license tax. Of those that levy a business license tax, 16 cities have variable rate structures and nine cities collect more revenue than Costa Mesa. Further, 24 of the 27 cities that levy a business license tax impose a tax structure that is higher, and in most cases significantly higher, than Costa Mesa.

If desirable, in order for Costa Mesa to generate a significant increase in business license taxes, the City would need to move to a fee based on a fixed percentage of gross receipts, say for example, between .4% and .8%. A fee based on a fixed percentage of sales such as this would maintain uniformity and equity for all businesses, small and large alike. Pursuant to the Government Code, rates are set at each City's discretion but may not be discriminatory or confiscatory.

With a tiered fee structure, businesses falling within the lower portion of the "range" would effectively pay more in tax on a proportional basis to gross sales than those businesses at the upper end of the range.

Potential rate structures were discussed with the president of the Chamber of Commerce, Ed Fawcett. Mr. Fawcett expressed his understanding of the City's need to consider new revenue sources in light of the economic climate, the condition of the cities budget and the state budget deficit condition. As such, he prepared and proposed a continuation of the tiered rate structure with upward adjustments made to each of the rates and the banding of each range. He has indicated that he supports and would advocate for increases in the business license tax as outlined in his proposed fee schedule. Per his estimates, he believes that the increases in the ranges as he has proposed (Attachment 3) will result in an increase in business license tax revenue of approximately \$1 million. These estimates were based upon a review of the sales for the Top 20 business categories in the quarterly sales tax reports over the last four quarters. Gross receipts information for all businesses is not readily available in such a format that would allow staff to accurately estimate the revenue collections based upon Mr. Fawcett's proposed business license tax schedule. However, it should be noted that staff did review his methodology and it does appear reasonable.

Transient Occupancy Tax:

Description: The Transient Occupancy Tax is a general tax imposed on occupants for the privilege of occupying room(s) in a hotel, motel, or inn. Use of the revenues are unrestricted. However, some cities budget a portion of the revenues for tourism and business development purposes. Costa Mesa levys a 2% Business Improvement Assessment for the benefit of the Costa Mesa Convention and Visitors Bureau to assist that organization in promoting tourism travel to the area. The current TOT rate of 6% has remained unchanged for over 22 years.

Authority: The authority to levy this tax is promulgated from the State Government Revenue and Taxation Code being sections 7280 and 7281.

Overview: Cities may impose the transient occupancy tax on persons staying 30 days or less in a room(s) in a hotel, motel, inn, tourist home, non-membership campground or other lodging facility. Cities may also levy a tax on the privilege of renting a mobile home located outside a mobile home park, unless such occupancy is for more than 30 days or unless the tenant is an employee of the owner.

According to a 1989 survey by the League of Cities, rates ranged from 4 to 12 percent. The average rate was 7.6% with 8% being most typical. Nearly two-thirds (65.7 percent) of cities reported using their revenue for general fund purposes.

Currently, more than 80 percent of cities collect a transient occupancy tax.

Although Costa Mesa has one of the higher concentrations of available hotel rooms in the county, the transient occupancy tax levied is the lowest in the County. A copy of the transient occupancy tax survey prepared and included in the Budget Study Session Workbook is attached (Attachment 4). During the current fiscal year, it is estimated that the City will collect \$3.8 million in transient occupancy taxes. This revenue estimate is \$800,000 less than the actual revenue collections for fiscal year 2000-2001. Transient Occupancy Taxes, while finally on the upswing again, have not returned to the level of revenue collections prior to the 9-11 event.

Based upon a revenue estimate of \$4 million, each 1% increase in the transient occupancy tax would generate approximately \$665,000. A 2% increase in the Transient Occupancy Tax would generate approximately \$1,330,000.

Benefits of considering an increase in the Transient Occupancy Tax include placement of a portion of the tax burden to provide city services on transient visitors to the community. Residents benefit from this spreading of the costs of services over a larger tax base including those visiting the community, therefore lowering the cost of services to residents.

Sanitation Franchise Fee:

Description: The Sanitation Franchise Fee is a fee that may be imposed upon exclusive or non-exclusive franchisees for the purposed of residential and commercial solid waste handling services within the City. Generally, a franchise fee is a fee paid to a municipality from a franchisee for "rental" or "toll" for the use of city streets and rights-of-way. Use of revenues generated from a Sanitation Franchise Fee are unrestricted and could be used for any purpose.

Authority: The authority to enter into such franchise agreements is found within the Public Resources Code sections 49520 through 49523. Further, adoption of a Sanitation Franchise Fee Ordinance would be necessary to set forth specific requirements for prospective franchisees.

Overview: Of the 34 cities in Orange County, 31 have Sanitation Franchise Fees. The most predominant form is a non-exclusive franchise agreement. Such franchise agreements allow the trash haulers to set their own rates without any controls by the City, thus preserving their free market system. Further, a non-exclusive franchise fee would provide for a means of monitoring the waste hauler rates to determine if in fact, waste hauler rates in Costa Mesa were indeed higher or lower than other communities with Sanitation Franchise Fees. A Sanitation Franchise Fee may be imposed upon residential, commercial and industrial waste haulers.

Based upon the attached survey (attachment 5), it is estimated that the Sanitation Franchise Fee may generate approximately \$1 million in new revenues to the City.

FireMed Subscription Fee:

Description: The Fire Medical Subscription Fee is a voluntary membership program that is intended to improve the quality of emergency medical services. An annual membership fee is charged on a per household basis that covers all the people who live at the residence.

Overview: Generally speaking, the FireMed voluntary subscription service would fund all of the paramedic positions in the City, life saving equipment and advanced medical emergency training. FireMed covers everyone in the household for paramedic and fire department emergency ambulance services while they are within the City's borders. Membership includes an umbrella coverage for visitors when they suffer an emergency medical incident at a FireMed household.

Typically, the subscription fee is billed with water services and paid monthly. However, the subscription service can be billed in any number of ways. If paid separately from the utility bill, the subscription fee has usually been billed annually.

Use of Funds – The funds received from the FireMed subscription fee have generally been restricted in use to be used solely for EMS-related expenses. This is critical in order to justify the program, and to increase membership (i.e., must continually let the members know how their contributions are improving the City's EMS system and "saving lives").

In other cities utilizing FireMed subscription programs, the quality of the service improved after implementation of the program. Key features of these subscription programs in other Orange County cities are noted below:

HUNTINGTON BEACH FIRE DEPARTMENT (HBFD) – FireMed Program

- **COST** – \$60.00/year per household, or \$30.00/year for qualified low-income households.
- **PEOPLE COVERED** – Everyone residing in the household, and any visitors.
- **SERVICES COVERED** – All fire department EMS responses (ALS and BLS) within the city borders, and all emergency ambulance transports to an appropriate hospital within or outside of the city.
- **PAYMENT** – \$5.00/month if placed on Municipal Services Bill. Otherwise, an annual charge will be billed via a separate invoice. Renewal statements are mailed 1 month prior to expiration date.
- **CURRENTLY ENROLLED** – 26,753 households (37%).
- **REVENUE EXAMPLE** – Last fiscal year: \$906,071
- **PAYS FOR** – 1 EMS Coordinator position, 32 Paramedic positions, 4 ambulances, 24 full-time EMT Ambulance Operators, EMS equipment and supplies, EMS training, CPR training for FireMed members.
- **MISCELLANEOUS:**
 - FireMed bills member's insurance company and accepts whatever his/her current insurance provider pays for the response and transport as payment in full, even if there is a deductible, co-pay, partial payment, or denial.

- FireMed members without health insurance to cover the response and transport will receive a discount of 20% of the total bill. Discounts for EMS responses and transports are *not* given to non-FireMed members.
- All members of a FireMed household receive free American Heart Association CPR training.
- The program was begun by the passage of a City Ordinance that authorized specific user fees for ALS, BLS, and voluntary FireMed membership services.

ANAHEIM FIRE DEPARTMENT – Paramedic Membership Program

- COST – \$36.00/year per household.
- PEOPLE COVERED – The member and “those residing with the member,” and visitors. Bedridden patients of a Senior Care Facility which maintains a business membership are covered, but not ambulatory patients.
- SERVICES COVERED – Excludes ambulance (Care Ambulance bills separately).
- PAYMENT – On utility bill, at \$3.00/month.
- CURRENTLY ENROLLED – 60%

FULLERTON FIRE DEPARTMENT – Paramedic Subscription Program

- COST – \$30.00/year per household.
- PEOPLE COVERED – Only permanent residents of a member’s household.
- SERVICES COVERED – Excludes ambulance services (billed separately by ambulance company).
- PAYMENT – Fee shows up on water bill in May and June. To enroll or renew, include fee with bill. If decide not to enroll or renew, deduct the fee from the bill and pay the difference.

NEWPORT BEACH FIRE DEPARTMENT – Fire Medics Program

- COST – \$48.00/year.

SANTA ANA FIRE DEPARTMENT

- COST – \$36.00/year.
- PEOPLE COVERED – Only permanent residents of a member’s household.

CITY OF ORANGE FIRE DEPARTMENT

- COST – \$36.00/year.
- PEOPLE COVERED – “Everyone at the address.”
- REVENUE EXAMPLE – Last fiscal year: \$517,146.79
- MISCELLANEOUS: Insurance is billed.

The FireMed Subscription Program has a myriad of benefits that warrant a more in depth discussion but it should suffice to say that it is believed to be a superior system from a service delivery and revenue generation standpoint.

As additional background information, attached (Attachment 6) are frequently asked questions (FAQs) related to the FireMed Paramedic Subscription Program posted on Huntington Beach’s website. Huntington Beach has been held out as a model FireMed program emulated by other Fire agencies.

Local Sales Tax:

Senate Bill 566 was passed on October 8, 2003 and authorized cities to seek voter approval to levy a transactions and use tax in multiples of 0.25%. There are two sections under the Senate bill authorizing cities to seek either a general purpose (simple majority to pass) tax increase or a special purpose (2/3 of those voting in the affirmative) tax increase at its discretion. This bill becomes effective on January 1, 2004.

Description: The sales tax is a tax imposed on the total retail price of any tangible personal property, unless specifically exempted.

Authority: The authority to levy a local sales tax is derived from SB 566 effective January 1, 2004 and the California constitution, Article XIII, subsection 29.

Overview: The sales tax is imposed on retailers for the privilege of selling tangible personal property. The use tax is imposed on the user of a product purchased out-of-state and delivered for use in California. Before 1955, cities and counties administered local sales tax ordinances. Those ordinances included varying tax rates and ordinances. In 1955, the legislature passed the Bradley-Burns Uniform Local Sales and Use Tax law. That law authorized the Board of Equalization to collect a 1 percent sales and use tax for all California cities and counties. By 1967, all cities and counties in California had contracted with the Board to collect sales and use taxes on their behalf. Consequently, for the first time, the local sales and use tax was the same for all cities and counties throughout California.

SB566 becomes effective January 1, 2004 and essentially makes it possible for cities to seek voter authorization to impose a local sales and use tax without first obtaining special legislation from the state.

The sales tax is the City's single largest source of revenue. It is estimated that the City will receive \$37.5 million in sales tax during fiscal year 2003-2004. Imposition of a local sales tax in an increment of .25% would generate \$9.375 million.

The key benefit of imposition of a local sales tax in Costa Mesa is the strength of the City's commercial and retail tax base. As a result of the sales tax benefits derived from the South Coast Plaza area and the Harbor Boulevard of cars, the majority of the City's sales tax revenues are derived from transient shoppers. Imposition of a local sales tax would shift a significant portion of the burden to fund local programs and services to the transient shoppers thereby reducing the tax burden on city residents.

Further, increasing the total sales tax rate from 7.75% to 8% would match the sales tax rate charged currently in Los Angeles County. An increase of .25% in the sales tax rate would amount to \$.0025 per dollar of taxable sales. On \$40,000 of taxable sales, an increase of .25% would amount to \$100 of additional sales tax.

CONCLUSION:

There are several options available to the City to generate new revenues to meet the variety of community needs for which the revenues could be justifiably approved. The City is extremely accommodative to business. The business license tax and transient occupancy tax have remained unchanged for approximately twenty years. Further, 31 of 34 cities in Orange County currently assess a sanitation franchise fee.

During each Budget Study Session for the past three years, staff has noted that the guiding principles used to develop the operating and capital improvement budget were to maintain current programs and services at existing levels. This direction and philosophy is consistent with decreased budgetary flexibility with respect to how service delivery is funded. Staff has also discussed with Council a proposed policy related to new or expanded programs and services. Staff noted that there is a finite limit to programs and services that can be offered within existing resources and recommended that no new programs or services be added without first identifying a new revenue source.

The budget conditions that predicated this discussion still exist. Without the addition of a new revenue source, staff will need to consider reprioritizing existing service delivery to address any budgetary shortfalls.

It is recommended that Council provide direction regarding identification of potential new sources of revenue. Staff is available at your convenience to provide additional information if you have any questions.

Marc R. Puckett
Director of Finance

- Attachment 1: TOT Agenda Report regarding Ballot Measure
- Attachment 2: Business License Survey
- Attachment 3: Business License Fees
- Attachment 4: Transient Occupancy Tax & Utility Use Tax Survey
- Attachment 5: Sanitation Franchise Fee Survey
- Attachment 6: FireMed Paramedic Subscriber Program FAQ
- Attachment 7: HDL Companies – City Trans

Copy to: City Manager
Department Directors

Business License Fee

(5)
0
50
100
150
200
250
300
350
400
450
500

City of Costa Mesa - Current Fee Schedule

Fee	Annual Gross Receipts	Cost vs. Gross Receipts
\$ 0.00	\$ 0.00 to \$ 1,000	
\$ 25.00	\$ 1,000.01 to \$ 25,000	2.5% - 0.1%
\$ 35.00	\$ 25,000.01 to \$ 40,000	0.14% - 0.0875%
\$ 45.00	\$ 40,000.01 to \$ 75,000	0.125% - 0.6%
\$ 60.00	\$ 75,000.01 to \$200,000	0.08% - 0.03%
\$100.00	\$200,000.01 to \$500,000	0.05% - 0.02%
\$200.00	over \$500,000 - 1M 1M - 2M 2M - 2.5M	0.04% >

Double
854
+
100 - 200k

1.8 - 1.9M
4,272

This results in approximately \$854,000 annually to the City.

Proposed Fee Schedule (A)

Fee	Annual Gross Receipts	Cost vs. Gross Receipts
\$ 0.00	\$ 0.00 to \$ 1,000	
\$ 50.00	\$ 1,000.01 to \$ 25,000	5.0% - 0.2%
\$ 100.00	\$ 25,000.01 to \$ 100,000	0.4% - 0.1%
\$ 200.00	\$ 100,000.01 to \$ 250,000	0.2% - 0.08%
\$ 275.00	\$ 250,000.01 to \$ 500,000	0.11% - 0.055%
\$ 350.00	\$ 500,000.01 to \$ 1 million	0.07% - 0.035%
\$ 500.00	\$ 1,000,000.01 to \$ 4 million	0.05% - 0.0125%
\$1,000.00	\$ 4,000,000.01 and up	0.025% >

Comparison of Schedules

Current Fee	Annual Gross Receipts	Proposed Fee
\$ 0.00	\$ 0.00 to \$ 1,000	\$ 0.00
\$ 25.00	\$ 1,000.01 to \$ 25,000	\$ 50.00
\$ 35.00	\$ 25,000.01 to \$ 40,000	\$ 100.00
\$ 45.00	\$ 40,000.01 to \$ 75,000	\$ 100.00
\$ 60.00	\$ 75,000.01 to \$200,000	\$ 100-\$200
\$100.00	\$200,000.01 to \$500,000	\$ 200-\$275
\$200.00	over \$500,000	\$ 350-\$1000

BUSINESS LICENSE SURVEY

APRIL 2003

City	Method of Charging Tax	Revenue FY 02	Minimum	Maximum	Comments
Allso Viejo					Not required
Anaheim	G, F, O	\$5,462,486	\$60.00	No Max	\$.095 per \$1,000
Brea	G, F	664,262	\$30.00	\$500	\$.20 per \$1,000
Buena Park	G, F, O	672,449	\$37.50	No Max	\$.45 per \$1,000
Costa Mesa	G, F	842,838	\$0.00	\$200	
Cypress	G, F	900,000	\$40.00	No Max	\$.26 per \$1,000
Dana Point					(1)
Fountain Valley	G, F, O	472,463	\$50.00	No Max	\$25.00 Application fee
Fullerton	G, F, O	1,048,750	\$25.00	No Max	\$.10 per \$1,000
Garden Grove	G, F	1,933,523	\$42.50	\$2,550	\$25.00 Processing fee
Huntington Beach	F, O	1,910,562	\$100.00	No Max	\$4.00 per employee
Irvine	F	715,772	\$25.00	\$25	
La Habra	G, F	379,128	\$35.00	\$500	\$.25 per \$1,000
La Palma	G, F, O		\$35.00	No Max	\$.42 per \$1,000
Laguna Beach	G	665,611	\$60.00	\$1,650	
Laguna Hills					Not required
Laguna Niguel					Not required
Laguna Woods					Not required
Lake Forest					Not required
Los Alamitos	O	369,361	\$151.00	\$1,508	5% annual increase
Mission Viejo					Not required
Newport Beach	F	2,470,856	\$101.00	\$1,000	(2)
Orange	G, F	2,080,000	\$35.00	No Max	
Placentia	G	719,341	\$33.00	No Max	\$.55 per \$1,000
Rancho Santa Margarita					Not required
San Clemente	G	906,095	\$55.00	No Max	
San Juan Capistrano	F		\$22.00	No Max	\$5.00 per employee
Santa Ana	G, F	7,110,272	\$102.00	No Max	\$.66 per \$1,000
Seal Beach	G, F	823,076	\$153.00	\$153	Tied to CPI
Stanton	F		\$50.00	\$750	\$4.00 per employee
Tustin	G	273,490	\$25.00	\$100	
Villa Park	G, F	31,859	\$25.00	\$5,000	\$.20 per \$1,000
Westminster	G	142,786	\$50.00	\$50	
Yorba Linda	G	511,335	\$25.00	No Max	\$.30 per \$1,000

G = Gross Receipts

F = Flat Fee

O = Other Method

(1) - Business Registration Program only - No fee.

(2) - \$.55/employee if business generates sales tax (\$500 maximum); \$10/employee if no sales tax is generated (\$1,000 maxi

Sanitation Franchise Fee 2003 Survey

Agency	Franchise	Contractor Required Franchise Fee	Total Revenue Collection
City of Aliso Viejo			
City of Anaheim	Yes	Approx. 1%-\$48,000 Into Sanitation Fund Only	\$1.7 million approx.
City of Brea	Yes	10%-\$496,000(25% Into General Fund, 75% Slurry Seal)	\$550,000
City of Buena Park	Yes	\$.82 per month/residential/5% for commercial	\$261,565
City of Costa Mesa	No	N/A	
Costa Mesa Sanitary District	Yes	N/A	
City of Cypress	Yes	8%-\$120,000 Residential, \$235,480 Commercial / Goes Into General Fund	\$405,000
City of Dana Point	Yes	5%-\$67,000 Goes Into General Fund	
City of Fountain Valley	Yes	Yes/5%	
City of Fullerton	Yes	Proposed-Not Adopted Yet	
City of Garden Grove	Yes	8.5% Residential 2.5% Commercial**	\$668,238.85 (administrative fees)
City of Huntington Beach	Yes	Commercial Only 3%-\$360,000 Goes Into The General Fund	\$215,809.00
City of Irvine	Yes	5%-\$250,000: 60% General Fund/40% Waste Management Recycling Fund	
City of La Habra	Yes	3%-Residential/7% Ind.& Commercial Goes Into The General Fund	Sewer: \$70,376.56 Refuse: \$276,657.11
City of La Palma	Yes	5%-\$70,000 Goes Into The General Fund	\$74,136.00
City of Laguna Beach	Yes	10%-Commercial Only; \$120,000 General Fund	
City of Laguna Hills	Yes	\$100,000 Goes Into The General Fund	
City of Laguna Niguel	Yes	5%-\$161,000 Goes Into The General Fund	\$0.00
City of Laguna Woods	No	N/A	
City of Lake Forest	Yes	5% of Yearly Gross Revenue	has no info to give
City of Los Alamitos	Yes	8% to General Fund	\$175,000.00

Sanitation Franchise Fee 2003 Survey

Agency	Franchise	Contractor Required Franchise Fee	Total Revenue Collection
Midway City Sanitary District	Yes	7%-\$228,000 Goes Into The General Fund	
City of Mission Viejo	Yes	5%-\$339,000 Goes Into The General Fund	\$339,242
City of Newport Beach	No	N/A	
City of Orange	Yes	No	\$6,639,679.00 (sanitation and sewer combined)
City of Placentia	Yes	\$197,500 Goes Into The General Fund	\$331,376.00
City of Rancho Santa Margarita	County of Orange		
City of San Clemente	Yes	5%-\$185,000 Goes Into The General Fund	
City of San Juan Capistrano	Yes	5%-\$81,000 Goes Into The General Fund	refuse: \$109,000 sewer: \$105,000
City of Santa Ana	Yes	12.8%- \$1,279,344 Commercial Indust./ Goes Into The General/NPDES Funds	\$7.5M (this includes other fees like graffiti, etc)
City of Seal Beach	Yes	7.5%: \$88,000.00 Goes Into The General Fund	\$145,778.50
City of Stanton	Yes	Yes	\$960,000.00
City of Tustin	Yes	2% on Commercial	0 (not collected)
City of Villa Park	Yes	5%-\$24,000 Goes Into The General Fund	\$30,000 from V.P. Disposal
City of Westminster	Yes	7%	do not receive
City of Yorba Linda	Yes	5%-\$160,000 Goes Into The General Fund	\$230,520 from Y.L. Disposal



CITY COUNCIL AGENDA REPORT

MEETING DATE: July 10, 2000

ITEM NUMBER:

SUBJECT: POTENTIAL INCREASE IN THE TRANSIENT OCCUPANCY TAX (T.O.T.) FOR PARK AND OPEN SPACE ACQUISITION AND DEVELOPMENT

DATE: JULY 7, 2000

FROM: CITY MANAGER'S DEPARTMENT

PRESENTATION BY: ALLAN L. ROEDER, CITY MANAGER

FOR FURTHER INFORMATION CONTACT: ALLAN L. ROEDER, CITY MANAGER (714) 754-5327

RECOMMENDED ACTION:

Review and comment.

BACKGROUND:

The City Council adopted Community Objective 01-C3 in January 2000. The Community Objective, requested by Council Member Joe Erickson, requests that the City Council consider placement of a measure on the June 2000 Primary Ballot to increase the Transient Occupancy Tax (TOT) by 2% to be dedicated to the acquisition and development of Park and Open Space. The Objective goes on to request that the matter be discussed with the Costa Mesa Tourism & Promotion Council as well as with the Newport Mesa Unified School District (NMUSD). The later direction related to consideration as to when the NMUSD would place its bond measure for school repairs before the voters. That measure was voted on in June 2000 and received the required two-thirds voter approval.

As of this date, the majority of the City Council Members have attended at least one meeting with the Costa Mesa Tourism & Promotion Council where the subject of the proposed increase was discussed. The Tourism Council, comprised of the seven largest hotels in Costa Mesa, has expressed concern with the concept of a 2% increase in the TOT on the basis that it may impact their ability to remain competitive in the marketplace. A 1% increase appears to be much more acceptable to the hotels although no official position has been taken on an increase in the TOT by either the Tourism Council or the other hotels/motels in the community.

ANALYSIS:

While there are several detailed steps required in placing this issue before the voters, there are five (5) decisions that require City Council consideration and action. Those topics are as follows:

- Does the City Council choose to obtain voter approval for a "General Tax" requiring a simple majority or a "Special Tax" which requires two thirds voter approval?
- If a Special Tax is requested, to what use should the funds be restricted?
- When should the issue be placed before the electorate?
- How should the election be funded?
- Does the City Council desire to submit a ballot argument in favor of the measure and who shall sign the argument?

Attachment A, prepared by the City Attorney's Office, responds to the relevant issues involved in the first decision. Basically, should the City Council choose to restrict the use of the proceeds from an increase in the TOT, a two thirds approval will be required from those voters casting ballots in the subject election. Should use of the proceeds be unspecified, a simple majority approval is required. In either event, a two thirds approval of the City Council is required to place the matter on the ballot.

There are at least four different ways in which the matter may appear on the ballot:

1. The City Council may simply request voter approval to increase the TOT by a specified percentage without designating the use of the proceeds from the tax increase.
2. The City Council may request approval of an increase in the TOT to a specified level with the proceeds to be designated for a limited use.
3. The City Council may request voter authorization to increase the TOT to a specified level. In so doing, the City Council would retain the authority to increase the TOT from its current level of 6% up to the specified level or any point in between.
4. The City Council may place a two-part measure on the ballot. The first part would request voter authorization to increase the TOT to a specified level. The second measure would request voter preference as to the use of the proceeds from the tax increase. Please refer to Attachment B as prepared by the Finance Director for further details on this option.

In terms of the second issue pertaining to a Special Tax, the request of Council Member Erickson is that the proceeds be limited to the acquisition and development of Park and Open Space. Clearly, the City Council retains the authority to specify

the use of the tax proceeds as it so chooses. Staff believes it is important to provide an operational definition for whatever request is placed before the voters so there is a clear understanding as to what the tax proceeds may and may not be used for should voter approval be obtained.

In terms of Council Member Erickson's request, staff would offer the following as a starting point for defining the use of the tax proceeds, if approved:

- A. Acquisition of real property for the exclusive purpose of providing park, open space and recreation facilities. This includes the purchase of property from private parties, surplus property declared by the Newport Mesa Unified School District, County of Orange, State of California, Federal Government or other public entities.
- B. Development of property under the ownership, leasehold or other control of the City of Costa Mesa for park and recreation purposes. This shall include any and all improvements as identified in Table 11 of the City's adopted Parks, Open Space and Recreational Facilities Master Plan (see Attachment C). Development related expenses eligible shall include real property appraisals, preparation of environmental documents, project design, construction and project management services.
- C. Development of open space shall include parkways and medians under the control of the City of Costa Mesa. Said improvements may include construction of curb, gutter and sidewalk, only where such improvements are needed to provide for additional landscaping.
- D. Proceeds from an increase in the TOT may not be used for park, open space or recreational facility maintenance, repair or operation. No proceeds from the TOT increase may be used for development, maintenance or operation of park, open space and recreational facilities exclusively for private use or to supplant landscape, open space or related requirements on a new development.

The next date available for this matter to be placed before the voters is the November General Election. While the City Council does not have the option to call for a Special Election on this matter pursuant to State law, the measure may be placed on any subsequent Statewide Primary, General or regularly scheduled local election. In order for the measure to be placed on the November General Election, the City Council simply needs to adopt a resolution calling for the placement of the matter on the ballot by August 11, 2000. In order for this matter to appear on the November ballot, City Council action would be required at either the July 17, 2000 or August 7, 2000 regular City Council meetings. Adoption of the resolution may be accomplished following a Public Hearing should the City Council so desire. Placement of the matter on the City Council Agenda as a Public Hearing would

require that this matter appear on your August 7, 2000 agenda to meet posting and noticing requirements.

The cost to place this matter on the November General election ballot is approximately \$5,000. This is simply the cost to place the matter on the ballot and does not include the cost of providing public information materials on the measure or related expenses. Attachment A addresses the limitations as to what the City may or may not expend public funds on in terms of providing informational material on the ballot measure.

Should the City Council direct that the matter be put before voters in the November Election, staff would recommend that the above expense be funded by way of an appropriation from the Net Revenue "Special Projects" allocation which is reserved for requested studies, projects and requests of the City Council.

The City Council does have the option to submit a ballot argument in favor of the proposed measure. The ballot argument must be submitted to the County Registrar of Voters within 10 days following action to place the measure on the ballot and no later than August 21, 2000. The argument may be signed by up to four individuals. Rebuttals to the ballot argument must be filed within 10 days following the submission of the argument in favor.

FISCAL REVIEW:

As noted previously, the City's existing TOT is 6%. At this rate, the TOT generates almost \$4 million dollars per year to the City of Costa Mesa. Each 1% TOT generates approximately \$650,000 per year. The requested increase of 2% would therefore be expected to generate revenue in excess of \$1 million per annum. As hotel room rates increase and/or as new hotel rooms are added, this amount will increase.

Attachment D depicts the current TOT percentages for all Orange County Cities in relationship to Costa Mesa's 6% levy. It is important to keep in mind that the City's 6% TOT does not include the 2% collected along with the TOT as a Business Improvement Assessment and subvented to the Tourism & Promotion Council which consists of the 7 major hotels in Costa Mesa. Therefore, the effective levy on customers at the 7 major hotels is 8% with 6% going to the City and 2% going to the Tourism Council. A 2% increase in the TOT as proposed in Community Objective O1-C3 would place Costa Mesa at a total levy of 10%.

LEGAL REVIEW:

Attachment A provides the legal review as it relates to the requirements for ballot measures. In the event the City Council desires that an actual ballot measure be drafted and adopted by resolution, the City Attorney and City Manager will see that such a measure is prepared along with the accompanying documents required.

CONCLUSION:

The TOT has not been increased in over 20 years and is well below the Orange County market and will remain below the County average even with the requested increase of 2%. While respectful of arguments from the hotel industry that an increase in the TOT will make Costa Mesa hotels "less competitive" in the Orange County marketplace, there simply is no factual evidence to support that contention. Indeed, the 7 major hotels in Costa Mesa have not substantiated any adverse impacts from the recently enacted 1% addition to the Business Improvement Assessment in January 2000. This is not to say that the TOT should be increased without respect to its economic impacts on the industry and tourism generally. However, staff simply has not been able to identify any factors that would suggest that an increase in the range suggested will adversely impact Costa Mesa hotel properties.


There are a number of very important community needs and interests to which this increase in revenue could be justifiably approved. Besides the suggested Acquisition and Development of Park, Open Space and Recreation Facilities, valid arguments can also be made for the increase to be allocated to Street Maintenance, Traffic Improvements, increased Public Safety, upgrading Public Infrastructure such as utility undergrounding, expansion of the Police Facility or construction of new/additional library facilities and even for local government operating needs. All are important to some degree to all members of the community. Staff believes there are some unique attributes that can be attributed to allocating the funds as requested in Community Objective O1-C3 that require notation:

- The opportunity to secure Open Space and Parkland is increasingly limited. As demand for real property continues to increase, the cost and opportunity to secure parcels of a size that can be of value to the community continues to shrink. As those opportunities do appear – be it through private sale or the disposition of public property – the City must have in place a financial means to take advantage of land availability. The City does not enjoy the ability to simply reduce the General Fund Budget, cut programs/services or borrow whenever such opportunities arise.
- With the exception of the recently enacted Proposition 12 – which the City will receive a one time \$1.2 million dollar allocation early next year – the opportunities for outside funding for the acquisition and development of Park, Open Space and Recreation facilities are limited. While a good deal of creative work has been done in the area of private and corporate sponsorship in this area, it is not nearly enough to support the level of demand in the community for these amenities. At the same time, there has been extremely limited resident support or interest in the establishment of assessment districts to fund these amenities, even though the practice is commonplace in many communities throughout California. Finally, voter support for local bond measures – which has historically funded much of the acquisition and development of

Public Open Space such as the 1974 Costa Mesa Park & Open Space Measure - has been virtually non-existent for many years. Given the collective implications of the preceding, it is clear that an additional revenue source must be developed if the City is to expand in this area to any significant degree in the near future.

- Acquisition and development of Public Open Space can clearly improve the overall appearance and add value to the community. The availability of Park and Recreational Facilities can be important factors not only for families but adults and senior community members as well. Development of Parkway and Median Landscape areas in commercial, industrial and residential areas adds to property values and is one of the more defining features of newer communities. Development of recreation facilities offers positive outlets for young members of the community, and hopefully a deterrent to entrance into the Juvenile Justice System, compounding cost for greater investment in Public Safety.

City staff is prepared to take the necessary steps to enable the City Council to place this matter before the voters for the November General Election or at any subsequent election date as deemed appropriate.


ALLAN L. ROEDER, CITY MANAGER

ALR/ch

ATTACHMENTS: A - Legal Review
B - TOT Ballot Measure
C - Community Center and Park Improvement Costs
D - Transient Occupancy Tax Survey

DISTRIBUTION: City Attorney
Deputy City Clerk
Administrative Services Director
Finance Director
Public Services Director

**CITY OF COSTA MESA
CITY ATTORNEY'S OFFICE
MEMORANDUM**

**CONFIDENTIAL / ATTORNEY-CLIENT PRIVILEGE
ATTORNEY WORK PRODUCT**

TO: Allan L. Roeder, City Manager
FROM: Marianne Reger, Deputy City Attorney
DATE: June 26, 2000
SUBJECT: TOT Ballot Measure

QUESTIONS PRESENTED

1. What is the legal process and/or what action must the City Council take to place a measure on the ballot for the November General Election?
2. If the proceeds from the increase in the Transient Occupancy Tax ("TOT") are specified for a specific use or for a few specific uses, would the increase be deemed a general or special tax?
3. What is the requirement for voter approval of general versus special taxes?
4. Does the law require voter approval of a specific tax increase, or may the voters approve an "adjustable" and/or maximum tax increase, leaving the actual tax increase/decrease to the discretion of the City Council?
5. What, if any, are the legal restrictions regarding expenditure of public funds for the ballot measure?

SHORT ANSWERS

1. The ordinance or resolution proposing the tax must be approved by a two-thirds vote of the City Council and must also meet specific statutory requirements discussed below. A public hearing is not required, although the Council may elect to hold a public hearing on the matter.
2. The answer is dependent on the wording of the measure. If strictly advisory, the measure would likely be deemed a general tax.
3. A general tax requires a majority vote of the electorate while a special tax requires a two-thirds vote of the electorate.

4. Both a general or special tax may state a range of rates or amounts. There are restrictions if the tax is based on a percentage calculation as discussed below.
5. The City is prohibited from using public funds to assist in the passage or defeat of a ballot measure, but may use public funds to educate and inform voters.

BACKGROUND FACTS

The City is considering placing two ballot measures on the ballot for the next November General Election. One ballot measure will be to increase the TOT. The information on the other ballot is varying. Marc Puckett has indicated in a separate memo that the second measure would be "advisory" and merely ask voters to express their preference as to how the new tax revenue would be spent. You have indicated in your memo that the second ballot measure would be specific in directing the spending of the tax increase to the development of parks, open space and landscaping. Depending on how the second ballot measure is worded, (i.e., advisory or specific uses), will have a direct impact on if the tax increase, if approved, will be labeled a general or special tax as well as the voter requirements, as will be discussed below.

ANALYSIS

1. What is the legal process and/or what action must the City Council take to place a measure on the ballot for the November General Election?

The process for placing either a general or special tax on the ballot is set forth in Gov't Code §53720 et seq and more particularly in Gov't Code §53724. This statute requires that:

1. Any general or special tax shall be proposed by an ordinance or resolution of the Council. The ordinance or resolution proposing the tax must include the type of tax, the rate of tax, the method for collection of the tax, the date upon which an election shall be held on the tax, and if a special tax is proposed, the purpose or service for which the special tax is sought.
2. The ordinance or resolution proposing the tax, whether general or special, must be approved by a two-thirds vote of the Council.
3. The election on the proposed tax must be consolidated with a statewide primary, general or regularly scheduled local election at which all electors of the city are entitled to vote.

Once the above special provisions regarding a new general or special tax are met, any other regular provisions for placing a measure on a ballot would apply. Please note that no public hearings are required for either a general or special tax. However, public hearings may be held and many cities are following the notice and hearing requirements for levying assessments.

In general, the last day to submit a ballot measure, summary and arguments to the Registrar of Voters for the November general election is August 11, 2000. Therefore, if the Council wishes to have a tax measure on the November ballot, they would need to vote on the ordinance or resolution no later than August 7, 2000. However, if the Council chose to hold a public hearing

on the matter, then the notice and posting requirements would need to be calculated into the time frame. If the measure is submitted by the August 11th deadline, the last day to submit rebuttal arguments is August 21, 2000 or if the measure is adopted before August 11th, the deadline for rebuttal arguments is 10 days after the direct arguments are submitted.

2 If the proceeds from the increase in the Transient Occupancy Tax ("TOT") are specified for a specific use or for a few specific uses, would the increase be deemed a general or special tax?

There answer to this question is dependent first, on how specific the wording would be stated in Measure A, and second on whether the specific uses stated are truly advisory or if in fact, would be binding on the City Council in expending the revenue derived from the increase.

Pursuant to Prop 218 amendments, the California Constitution Art. XIII C (a) and (d) were amended to redefine general and specific taxes. A "general tax" is now defined as "any tax imposed for general governmental purposes. A "special tax" is now defined as "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." However, the designation of general versus special tax is still open to some debate as discussed herein below.

In a pre Prop 218 case Coleman v. County of Santa Clara, 64 Cal.App.4th 662 (1998), the court addressed a very similar question to that posed here. In the Santa Clara case, the county had two measures on the ballot. The first measure was an advisory measure that stated in part "This measure is not a tax. It is an advisory measure that states Santa Clara County voters' intent that any new sales tax funds be spent on [a list of] transportation improvements . . ." The second measure stated in part that "This measure authorizes the enactment of a 1/2 cent retail transaction and use (sales) tax for general county purposes." The court held that even though Measure A listed several projects for which the tax increase could be used, because Measure A did not require that the tax increase only be used for those listed projects, and the revenue from the tax went into the general fund making the funds available for general governmental purposes, the tax was a general tax.

In a more recent case, Rider v. County of San Diego, 1 Cal.4th 1, 2 Cal.Rptr.2d 490 (1992), the court held that despite the county agency's designation of the proposed tax increase as a "general tax" which was deposited in the agency's general fund, the tax was designated for "the purpose of financing the construction and operation of criminal detention and/or courthouse facilities . . ." and was therefore a special tax.

Since Prop 218 redefined the definition of a "special tax" the Measure A/Measure B strategy of combining a general tax with an advisory measure is not without risk of challenge. In fact, Howard Jarvis Taxpayers Assoc.'s ("HJTA") Annotated version of Prop 218's definition of Special tax, sent to the League of California Cities, December 6, 1996 states:

"(d) "Special tax" means any tax imposed for specific purposes including taxes imposed for specific purposes which are placed into a general fund.

[Annotation: This reinforces language of Rider v. San Diego dealing with special taxes. The key is the purpose of the funding, not the name of the bank account. A number of analyses

of Proposition 218 prepared by local governments have stated that the revised transportation tax in Santa Clara County (proposing "dual" measures on the ballot) would be illegal under this definition.]"

Although one must consider the source of the annotation, it gives us a clear idea of how HJTA may view any "dual" ballot measure proposed by the City under Prop 218.

Therefore, the answer to this question is tied very closely to how the "advisory" ballot measure is worded. If the ballot measure specifies that any proceeds from the increased tax would be used only for a few specified projects, it would likely be deemed a special tax subject to the supermajority vote. However, if the measure is worded so that it is strictly advisory, (i.e., not binding on the City Council), even if it listed some areas for expenditures, such as development of parks, open space and landscaping, it would likely be deemed a general tax as the City Council would still have discretion to designate the final expenditures.

3. What is the requirement for voter approval for requirement for general versus special taxes?

Under Prop 218, the imposition, extension or increase of general taxes requires a majority vote of the electorate voting in an election on the tax. (See Cal. Const. art. XIII C, §2(b)). The imposition, extension or increase of a special tax requires a two thirds vote of the electorate voting in an election on the tax. (See Cal. Const. Art. XIII C, §2(d)).

4. Does the law require voter approval of a specific tax increase, or may the voters approve an "adjustable" and/or maximum tax increase, leaving the actual tax increase/decrease to the discretion of the City Council?

A proposed tax, either general or special, may state "a range of rates or amounts." If a range of rates is approved, the governing body may impose up to the maximum amount approved. See Gov't Code § 53739. A proposed tax, either general or special, may also provide for inflationary adjustments to the rate or amount, unless the tax is to be determined by using a percentage calculation. If a tax is to be determined on a percentage basis, inflationary adjustments cannot be used. Furthermore, the ordinance or resolution must clearly identify the formula for adjustments.

The HJTA annotation (referred to above) concurs that "the ballot language could incorporate future increases and if the ballot measure is approved, then the government would not have to go back to the voters for those increases. The City Council could initially levy a lower tax than the maximum approved by the voters and could then later raise the tax to the maximum tax as approved by the voters.

5. What, if any, are the legal restrictions regarding expenditure of public funds for the ballot measure?

The City is prohibited from using public funds to assist in the passage or defeat of a ballot measure. (See generally, Miller v. California Commission on the Status of Women, 198 Cal.Rptr. 877 (1984). Notwithstanding, the City may spend public monies to educate and inform voters about the consequences of a particular measure. Any information disseminated must be objective and impartial. It is very important that any information disseminated by the City not be construed as advocating voter approval or rejection. There is a fine line between

educating the public and advocating a position, it is recommended that this office review any information disseminated to the general public before distribution.

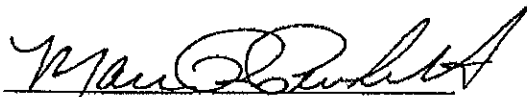
CONCLUSION

I hope that the information provided herein has addressed your questions. If I can be of any further assistance regarding these issues, please contact me at ext. 5289.

c: Jerry Scheer, City Attorney
Tom Wood, Asst. City Attorney

It is my belief that we should pursue this Measure A/ Measure B strategy for the TOT ballot measure to eliminate the supermajority requirement for a specific tax and most importantly, to maintain flexibility in terms of how the new revenue may be spent. While there are a number of Parks projects that have been discussed as uses for this new revenue, there may be other projects, from time to time, which are deemed a higher priority when the budget document is developed for the ensuing fiscal year. Maintaining maximum flexibility within our revenue stream is critical to our ability to address changing priorities as they occur. Regardless of the direction we ultimately decide to pursue, a TOT ballot measure should receive supermajority approval whether it is considered a specific or general tax increase.

As an aside, the representative from Richards, Watson & Gershon offered to provide "free" legal assistance to any City that was considering preparing a ballot measure of this type to ensure that the chances of any challenges from a group such as the Howard Jarvis Taxpayers Association were minimized. It sounded a little like a sales pitch but I thought it was worth mentioning. Let me know if you would like to discuss this matter further.



MARC R. PUCKETT
Director of Finance

Attachment

**TRANSIENT OCCUPANCY TAX (TOT)
UTILITY USER TAX (UUT) SURVEY ***

CITY	TOT CURREN RATE	PRIOR RATE	Revised Since	UUT CURRENT RATE	COMMENTS
Anaheim	15.00%			none	used to have UUT @ 2% but had sunset clause
Brea	10.00%		1987	none	
Buena Park	12.00%			3.00%	UUT for gas and electric only
Costa Mesa	6.00%			none	TOT plus 2% for Business Improvement Area (BIA)
Cypress	10.00%			none	
Dana Point	10.00%		1989	none	
Fountain Valley	9.00%			none	
Fullerton	10.00%	8.00%	1989	none	had UUT before but subsequently abolished
Huntington Beach	10.00%	6.00%	1988	5.00%	UUT for all utilities
Garden Grove	10.00%				
Irvine	8.00%	6.00%	1983	1.50%	in the process of forming BIA to increase TOT by 2%; UUT charged
La Habra	none			6.00%	UUT for all utilities
La Palma	none			5.00%	UUT for all utilities
Laguna Beach	12.00%	8.00%	1993	none	2% goes to Business Improvement District
Laguna Niguel	8.00%			none	
Laguna Hills	10.00%			none	
Lake Forrest	10.00%		1991	none	
Los Alamitos	8.00%			6.00%	currently, 4.5% temporary UUT for electric until Jan 2003; UUT in the ballot for Nov 2002
Mission Viejo	8.00%		1988		
Newport Beach	10.00%	9.00%	1993	none	1% TOT goes to visitor service fee
Orange	10.00%	8.00%	early 90's	none	
Placentia	10.00%			3.50%	UUT for all utilities
San Clemente	10.00%	8.00%	1991		
San Juan Capistrano	10.00%	8.00%	1991	none	
Santa Ana	9.00%			6.00%	
Seal Beach	10.00%		1990	11.00%	UUT for all utilities
Stanton	8.00%	11.00%	2001	5.00%	reduced TOT based on La Habra decision; UUT approved by voters 2001
Tustin	6.00%		1979	none	
Westminster	8.00%			4.00%	UUT for all utilities
Yorba Linda	10.00%			none	

**CITY OF COSTA MESA
TRANSIENT OCCUPANCY TAX SURVEY
APRIL 2000**

City	Transient Occupancy Tax Rate	Comments
Anaheim	15%	
Brea	10%	
Buena Park	12%	
Cypress	10%	
Dana Point	10%	
Fountain Valley	9%	
Fullerton	10%	
Garden Grove	10%	
Huntington Beach	10%	
Irvine	8%	
La Habra	0%	No T.O.T.
La Palma	0%	In lieu fee of 7% - only 1 hotel
Laguna Beach	10%	
Laguna Hills	10%	
Laguna Niguel	8%	
Lake Forest	10%	
Los Alamitos	8%	
Mission Viejo	8%	
Newport Beach	10%	
Orange	10%	
Placentia	10%	
San Clemente	10%	
San Juan Capistrano	10%	
Santa Ana	9%	
Seal Beach	9%	
Stanton	12%	
Tustin	6%	
Villa Park	0%	No Hotels
Westminster	8%	
Yorba Linda	10%	
COSTA MESA	6%	Plus 2% business improvement rate

SURVEY AVERAGE RATE - CURRENT

8.65%



(909) 861-4335

ISSUE UPDATE

November 17, 2003

www.hdlcompanies.com

TO: ALL CLIENTS

SUBJECT: CITY TRANSACTIONS AND USE TAX AUTHORIZED

On October 8, the governor approved SB566 (Scott) which authorizes cities to seek voter approval to levy a transactions and use tax in multiples of 0.25%. The following is an overview of the tax and its process.

BACKGROUND

The authority to impose special transactions and use taxes was initially provided to counties and countywide special districts in 1969. The first voter approved district tax was the San Francisco Bay Area Rapid Transit District to finance construction of the BART system. Several transportation districts in other counties followed and eventually, the use of district taxes was expanded to fund schools, open space protection, hospitals, county services and public libraries. There are currently 24 countywide districts imposing voter approved transactions and use taxes.

In addition, 22 cities have successfully gone to the California Legislature for special legislation to impose a district transactions and use tax. Of these, ten ultimately won voter approval. These are: Clearlake, Clovis and Placerville (public safety); Calexico and Avalon (hospitals); Truckee and Willits (road repairs); Woodland (capital improvements) and Sebastopol and West Sacramento (general purposes).

As with other taxes, a transactions and use tax district must obtain a majority vote if for general purposes and two-thirds vote if for special purposes. However, a 1988 court decision found a Santa Clara County District that specified that the revenue could be spent for general county purposes required only a majority vote despite the passage of a related advisory measure stating the voters intent that the revenues be spent on specific projects (Coleman vs. County of Santa Clara (64 Cal. App 4th 662)).

With the exception of certain goods sold to operators of common carrier aircraft, the transactions and use tax is imposed on the same goods and merchandise as the local sales and use tax. However, where the Bradley Burns Sales and Use Tax is generally allocated to the jurisdiction where the sale is negotiated or order taken, the transactions and use tax is allocated to the district where the goods are delivered or placed into use.

- For “walk-in” retail stores and restaurants, the Board of Equalization generally assumes that the merchandise will be used within the district where the store is located, unless the retailer is asked to ship the merchandise outside the district as part of the sale.
- Sellers or lessors of vehicles, vessels or licensed aircraft are required to collect the transactions tax (if any), only for the district where the conveyance is to be registered.
- For sales contracts that require shipment of the merchandise, the transactions tax is levied for the district to where the merchandise is shipped if that district has a transactions tax.

Thus, for sales other than “walk-in” stores, the transactions and use tax is imposed only on consumers located within the district. In projecting revenues, cities who serve a regional market for vehicles or merchandise to be delivered-elsewhere such as contractor materials or industrial equipment and goods, will find that their transactions and use tax is proportionally lower than their sales tax revenues. A city whose residents and businesses must shop outside the city for vehicles and business and construction related goods, will find that their transactions and use tax receipts are proportionally higher than their sales tax revenues.

Retailers are only required to collect a transactions tax for sales in a specific district if they have nexus in that district. Nexus is established by having any kind of representative operating in the district for purposes of taking orders, making sales, delivery or installation, leasing tangible personal property within the district and selling vehicles that require registration. If the retailer has no nexus within the district and is therefore not required to collect the tax, the buyer is responsible for paying a corresponding use tax.

SB566

SB566 becomes effective January 1, 2004 and essentially makes it possible for cities to seek voter authorization to impose a tax without first obtaining special legislation from the State. The pertinent provisions of the Revenue and Taxation Code are:

- Section 7258.9 authorizes cities to impose a general purpose transactions tax and use tax in increments of 0.25% if the ordinance proposing the tax is approved by a two-thirds vote of the council and by a majority of the voters.
- Section 7285.91 authorizes cities to impose a special transactions and use tax in 0.25% increments for specific purposes if the ordinance proposing that tax is approved by a two-thirds vote of the city council and by two-thirds of the voters.
- Section 7251.1 provides that the combined city and county transactions and use tax districts in any county cannot exceed 2% (for a total sales, transactions and use tax rate of 9.25%). A table showing current rates in each county is attached.

The tax is authorized for citywide or countywide districts only. Proposals for districts with otherwise modified boundaries such as just part of a city, or a city plus a sphere of influence, still require special enabling legislation from the State Legislature.

PROCESS ISSUES

Cities and counties are required to contract with the State Board of Equalization for administration of the ordinance imposing the tax. There are two contracts. One is for setting up the tax, the second is for ongoing administration. Additionally, as the transactions and use tax is separate and distinct from the local sales and use tax, a separate *Resolution of Confidentiality* for access to the allocation data is required.

Cities contemplating a transactions and use tax should begin by contacting the State Board of Equalization's Local Revenue Allocation Section. A team has been established to assist cities with the preparatory functions for placing a proposal on the ballot including proper wording of the ordinance and subsequent contracts. The specific advisors are currently Cleveland Turner (916) 324-1386 and Debby Nelson (916) 324-1334. In addition, Board Publication 28, *Tax Information for City and County Officials* and Publication 44, *Tax Tips for District Taxes* contain related information and can be downloaded from www.boe.ca.gov.

Finally, California Constitution Article XIII C should be reviewed with the City Attorney to determine whether or not the specific tax proposal being contemplated falls under the requirements for consolidation with a regularly-scheduled general election for members of the governing body.

**Combined Sales, Use and Transactions Tax Rates
As of October 1, 2003**

(Maximum allowed under SB 566 is 9.25%)

<u>County</u>	<u>Rate</u>	<u>County</u>	<u>Rate</u>
Alameda	8.25%	Nevada	7.375%
Alpine	7.25%	Town of Truckee	7.875%
Amador	7.25%	Orange	7.75%
Butte	7.25%	Placer	7.25%
Calaveras	7.25%	Plumas	7.25%
Colusa	7.25%	Riverside	7.75%
Contra Costa	8.25%	Sacramento	7.75%
Del Norte	7.25%	San Benito	7.25%
El Dorado	7.25%	San Bernardino	7.75%
City of Placerville	7.50%	San Diego	7.75%
Fresno	7.875%	San Francisco	8.50%
City of Clovis	8.175%	San Joaquin	7.75%
Glenn	7.25%	San Luis Obispo	7.25%
Humboldt	7.25%	San Mateo	8.25%
Imperial	7.75%	Santa Barbara	7.75%
City of Calexico	8.25%	Santa Clara	8.25%
Inyo	7.75%	Santa Cruz	8.00%
Kern	7.25%	Shasta	7.25%
Kings	7.25%	Sierra	7.25%
Lake	7.25%	Siskiyou	7.25%
City of Clearlake	7.75%	Solano	7.375%
Lassen	7.25%	Sonoma	7.50%
Los Angeles	8.25%	City of Sebastopol	7.625%
City of Avalon	8.75%	Stanislaus	7.375%
Madera	7.75%	Sutter	7.25%
Marin	7.25%	Tehama	7.25%
Mariposa	7.75%	Trinity	7.25%
Mendocino	7.25%	Tulare	7.25%
City of Willits	7.75%	Tuolumne	7.25%
Merced	7.25%	Ventura	7.25%
Modoc	7.25%	Yolo	7.25%
Mono	7.25%	City of West Sacramento	7.75%
Monterey	7.25%	City of Woodland	7.75%
Napa	7.75%	Yuba	7.25%



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Frequently Asked Questions

1. How do I pay for the membership?

If you already receive a Huntington Beach Municipal Services Statement, you may have the FireMed staff add the monthly \$5 charge to the bill. The monthly charge still totals to the annual membership fee of \$60, and will remain on your bill until you notify the FireMed staff to remove it. If you do not receive this statement, (or if you choose to pay for the membership separately), then you must pay the annual fee of \$60 on a separate invoice. Renewal statements are mailed approximately one month prior to the membership expiration date.

2. What does the membership fee cover?

FireMed membership protects insured members from any out-of-pocket expenses related to paramedic treatment and emergency ambulance transportation for situations that occur in the City of Huntington Beach. If you have insurance, we will bill for the services rendered, but will accept whatever is paid as 'payment in full' (i.e. if your insurance denies the entire bill or any part of it, you will not be responsible for the unpaid balance). Those members without insurance at the time of the emergency incident will receive a 20% discount on the total bill. (discounts are not given to non-FireMed members).

3. Do I get a member identification card once I join the FireMed Program?

No. Early in the development of the FireMed Program we realized that using a card would cause problems in emergencies when someone might attempt to find the card before requesting help. Your FireMed membership is confirmed by your home address, either as the location of the situation, or as your mailing address. We will confirm your membership in the FireMed office when we receive the paramedic report forms one to two days after the emergency.

4. Who do I call if I have a medical emergency?

9-1-1 is always the number to call in an emergency. The FireMed office phone number is for administrative questions only.

5. Your brochure refers to "emergency paramedic or ambulance service within the City of Huntington Beach". Does that mean that you will only take me to a hospital in Huntington Beach?

No. "Within Huntington Beach" refers to the service provided at the incident location, not the hospital destination. Your FireMed

membership allows emergency transport to local area hospitals including those that are not within city boundaries. We frequently transport emergency patients to hospitals in Fountain Valley, Newport Beach, Santa Ana, Los Alamitos, Anaheim, Long Beach and other nearby communities.

6. What happens if I'm not a FireMed member and I use the paramedic service?

Whether or not you are a FireMed member, you will always receive the highest level of emergency treatment and transportation. As a non-FireMed member, however, you will be billed for the services. You may give the bill to your insurance company but will be responsible for any unpaid balance. Keep in mind that there is no guarantee that your insurance will pay in full for the treatment that you received.

7. What if someone gets hurt at my house?

Your FireMed membership extends to guests at your household, and will cover anyone who is injured or sick at your property. The paramedics will note the address of the incident on their report, and the location match as a FireMed household will allow that person to be covered by your membership (your guest's own health insurance will be billed, or, if uninsured, your guest will receive a 20% discount on the total bill).

8. Does the FireMed Program cover transportation from my house to my doctor's office, or trips such as from a hospital to my home, or from a hospital to another hospital?

Your FireMed membership is for emergency transports only, from a Huntington Beach location to an emergency receiving hospital. The types of non-emergency transports such as those stated in the question can be provided by any ambulance company provider, but will not be covered by your FireMed membership.

9. Why do I need to join if I already have medical insurance?

When the Huntington Beach Fire Department charges for treatment and transportation, there is no guarantee that your insurance company will cover the charges. The charges may be denied or only partially paid, or your deductible or cap limit may result in an unpaid balance for which you are responsible. As a FireMed member with insurance, you don't have those worries since you are not responsible for any out-of-pocket costs. Also, keep in mind that your FireMed membership covers your guests, who may not have the same insurance as you do and may need that extra financial protection in an unexpected emergency. Belonging to FireMed gives you peace of mind in not having to worry whether your insurance will pay the medical bill. The \$60 annual fee is only a fraction of most insurance companies' deductibles. More importantly, the high level of service that we receive in Huntington Beach is due to the increased funding available through the FireMed Program. Supporting the FireMed Program means that the paramedics respond quicker with better equipment and training, and more lives are saved.

10. Why does FireMed bill my insurance plan?

The FireMed Program is not an insurance company – we are a provider of services. In order to provide the current level of emergency service to the community we must attempt to recover the costs associated with the treatment and transportation. Through the monies collected through treatment and transportation charges, and membership fees, the current system of pre-hospital emergency services in our community is greatly enhanced beyond General Fund support. The FireMed Program currently supports 32 of the Department's 48 paramedic positions, four fire department ambulances with ambulance personnel, an Emergency Medical Services Coordinator to ensure quality standards, and additional equipment, training and supplies. The monies collected from membership and insurance allow us to have a better emergency medical services system, and a healthier community.

11. Why do we need a FireMed Program in Huntington Beach?

The Huntington Beach Fire Department instituted the FireMed Program in June of 1990 in order to attain the goal of faster paramedic response times for medical emergencies. At the time the Program began, paramedic responses were achieved within five minutes for only 50% of all medical aid incidents. With FireMed revenues, additional personnel could be hired so that a paramedic response time of five minutes could be achieved for 80% of the medical incidents. This five minute response standard was developed to comply with the City's Growth Management Committee's recommendation made to the City Council during the late 1980's, and is based on clinical studies that show significant reductions in mortality if specific Advanced Life Support treatments are administered within this time period. Since its inception in 1990, the FireMed Program has subsidized over \$20 million dollars in emergency medical services within the City, and more lives have been saved.

12. If I decide not to join the FireMed Program, what are the charges for paramedic and emergency ambulance service?

The actual cost of paramedic treatment and ambulance transportation varies, but can range anywhere from \$500 to at least as much as \$1,200. Our transportation charges coincide with the fees authorized by the County of Orange Emergency Medical Services Agency and the Orange County Board of Supervisors.

13. Do you have a discounted membership rate?

A low-income rate is available to anyone whose annual income qualifies under the current Housing and Urban Development (HUD) Neighborhood Enhancement Program, and is based on the number of persons living in the household and the total household income. A Statement of Eligibility is required to qualify for the reduced rate of \$30 per year. To qualify, the total household income must not exceed these limits:

Number of Persons

Total Household

<u>Living in Household</u>	<u>Income Cannot Exceed</u>
1	\$26,450
2	\$30,250
3	\$34,000
4	\$37,800
5	\$40,800
6	\$43,850

Contact the FireMed Office for more information.

14. What if I belong to a paramedic membership program in another city?

The Huntington Beach Fire Department FireMed Program does not have reciprocity with programs of other cities.

15. How do I take a free CPR class available to FireMed members?

The FireMed Program offers free CPR classes certified by the American Heart Association. Taught in the Huntington Beach area, classes are offered twice each month. You only need to attend one class to receive your Heartsaver certification card, and registration is simple. Click below to review the current class schedule and to start the registration process.

Business License Fee

(B)
0
50
70
90
120
160
200
250
300
350

City of Costa Mesa - Current Fee Schedule

Fee	Annual Gross Receipts	Cost vs. Gross Receipts
\$ 0.00	\$ 0.00 to \$ 1,000	
\$ 25.00	\$ 1,000.01 to \$ 25,000	2.5% - 0.1%
\$ 35.00	\$ 25,000.01 to \$ 40,000	0.14% - 0.0875%
\$ 45.00	\$ 40,000.01 to \$ 75,000	0.125% - 0.6%
\$ 60.00	\$ 75,000.01 to \$200,000	0.08% - 0.03%
\$100.00	\$200,000.01 to \$500,000	0.05% - 0.02%
\$200.00	over \$500,000 - 1M 1M - 2M	0.04% >

Double
854
+
100-200k
1.8 - 1.9M
4,377

This results in approximately \$854,000 annually to the City.

Proposed Fee Schedule (A)

Fee	Annual Gross Receipts	Cost vs. Gross Receipts
\$ 0.00	\$ 0.00 to \$ 1,000	
\$ 50.00	\$ 1,000.01 to \$ 25,000	5.0% - 0.2%
\$ 100.00	\$ 25,000.01 to \$ 100,000	0.4% - 0.1%
\$ 200.00	\$ 100,000.01 to \$ 250,000	0.2% - 0.08%
\$ 275.00	\$ 250,000.01 to \$ 500,000	0.11% - 0.055%
\$ 350.00	\$ 500,000.01 to \$ 1 million	0.07% - 0.035%
\$ 500.00	\$ 1,000,000.01 to \$ 4 million	0.05% - 0.0125%
\$1,000.00	\$ 4,000,000.01 and up	0.025% >

Comparison of Schedules

Current Fee	Annual Gross Receipts	Proposed Fee
\$ 0.00	\$ 0.00 to \$ 1,000	\$ 0.00
\$ 25.00	\$ 1,000.01 to \$ 25,000	\$ 50.00
\$ 35.00	\$ 25,000.01 to \$ 40,000	\$ 100.00
\$ 45.00	\$ 40,000.01 to \$ 75,000	\$ 100.00
\$ 60.00	\$ 75,000.01 to \$200,000	\$ 100-\$200
\$100.00	\$200,000.01 to \$500,000	\$ 200-\$275
\$200.00	over \$500,000	\$ 350-\$1000