STAFF REPORT

Meeting Date:	October 21, 2014
To:	Honorable Mayor & City Council
From:	Megan Roach, Marketing & Economic Sustainability Manager
Subject:	Request from Councilmember Mirisch to Review Transient Occupancy Tax (TOT) Policy for Funding Tourism and Marketing Programs
Attachments:	1. FY 2014-15 Tourism and Marketing Budget and Programs 2. April 22, 2010 Staff Report (includes 1994 Staff Report and Ordinance) 3. April 22, 2010 City Council Meeting Minutes 4. 1996 TOT Measure

INTRODUCTION

This request from Councilmember Mirisch is to review the City Council's policy to provide 2% of annual Transient Occupancy Tax (TOT) to fund Tourism and Marketing Programs.

DISCUSSION

For approximately twenty years, the City has maintained a policy of funding its Tourism and Marketing Programs from a specific allocation of TOT, known informally as "2% TOT for Marketing." The City collects fourteen percent (14%) TOT based on gross room sales from the City's hotels. Two of the fourteen percent (14%) or 1/7 of the total TOT, has been the basis of calculating funding for tourism and marketing in Beverly Hills.

In the early 1990's the City Council took a number of actions that increased the TOT from eleven percent (11%) to twelve percent (12%) and from twelve percent (12%) to fourteen (14%). These actions were taken first by the adoption of two ordinances, and subsequently ratified via a ballot measure. The history of TOT decisions by the City Council are as follows:

1986 – City Council increased TOT from 7% to 11% by ordinance and ratified by a ballot measure in 1988.

1991 – City Council increased TOT from 11% to 12% by ordinance.

Both the 1986 and 1991 increases were for General Fund budget purposes.

1994 – City Council increased the TOT from 12% to 14% by ordinance. The stated purpose of the 1994 increase, as outlined in the January 18, 1994 staff report, was to

provide additional funding for "...an advertising program promoting Beverly Hills and the major hotels as a travel destination." This increase was supported and recommended by a consortium of hotels, businesses, Chamber of Commerce and City Council members who were working together to look at ways to enhance funding to market Beverly Hills as a tourism and travel destination.

1996 – A ballot measure was approved that ratified both the 1991 and the 1994 increases. The measure was approved as a General Tax, not a Special Tax – which would have otherwise required a four-fifths majority. As such, the language of the ballot measure did not memorialize the City Council's approved direction as outlined in the 1994 staff report to utilize the additional tax specifically for marketing. However, the City Council has continued to make tourism and marketing budget allocations based on the 1994 policy.

In years past the City Council has also utilized Tourism and Marketing funding to cover budget shortfalls in critical areas impacting the community. For example, in Fiscal Year 2010-2011, a portion of the 2% TOT marketing funding was reallocated to Community Assistance Grant Funded programs and the City Library. In Fiscal Years 2011-2012 and 2012-2013, a portion of the 2% TOT marketing funding was again reallocated for Community Assistance Grant Funded programs.

For many of the last twenty years, TOT revenue rose steadily allowing a commensurate expansion of City-funded tourism and marketing programs, in addition to the work of the Beverly Hills Conference and Visitors Bureau. Attachment No. 1 outlines the Fiscal Year 2014-2015 Tourism and Marketing Budget and Programs.

FISCAL IMPACT

The City's Finance Department projected $35,500,000 in TOT revenue for the 2014-2015 Fiscal Year, which results in a Tourism and Marketing budget of $5,167,344. This amount includes $95,915 in budgetary carryover from Fiscal Year 2013-2014. The funding is budgeted in the Tourism and Marketing Program account 0101311.

RECOMMENDATION

Staff recommends that the City Council review the information on the City Council's policy to provide 2% of annual Transient Occupancy Tax (TOT) to fund Tourism and Marketing Programs and provide direction to staff as appropriate.

CF

Cheryl Friedling

Approved By

Attachment 1

Tourism and Marketing Budget and Programs
2014-2015 Budget & Funding Requests

TOT Base Budget (1/7 of $35,500,000 TOT estimate)	$5,071,429
Carryover from FY 13/14	95,915
Available to spend in FY14/15	**$5,167,344**

Funding Requests

Annual Buffer/Reserve to Cover TOT Revenue Reductions	200,000
City Administrative Costs (Partial Costs of 2 City Staff)	0
Contingency Programs	26,490
Concerts on Canon Expansion	50,000
Intellectual Property Legal Services (trademark violations, etc)	100,000
Holiday Décor/Special Events	623,510
Conference & Visitors Bureau	3,300,000
Rodeo Drive Committee*	867,000
Funds remaining to be allocated	344
Total Funding Requests	**$5,167,344**

**City/RDC funding agreement is $1,002,000 due to additional carryover funding for Baccarat installation*

Attachment 2

CITY OF BEVERLY HILLS
STAFF REPORT

Meeting Date:	April 22, 2010
To:	Honorable Mayor & City Council
From:	Alison Maxwell, Director Economic Development and Marketing
Subject:	Transient Occupancy Tax (TOT) Policy for Funding Tourism and Marketing Programs.
Attachments:	1994 Staff report and Ordinance

INTRODUCTION

This item provides City Council with an opportunity to review its current policy regarding the allocation of Transient Occupancy Tax (TOT) for the purposes of funding tourism and marketing programs.

DISCUSSION

For approximately sixteen years, the City has maintained a policy of funding its tourism and marketing programs from a specific allocation of the TOT, known informally as "2% TOT for Marketing." The City collects a total of fourteen percent (14%) TOT based on gross room sales from the City's hotels. Two (2) of the fourteen percent (14%) i.e. one seventh of the total TOT, has been the basis of calculation for funding for tourism and marketing in Beverly Hills – hence, "2% TOT for Marketing".

This report will provide City Council with a synopsis of the history to this policy. It will also provide information on the current tourism and marketing budget, as well as the 2010-2011 projected tourism and marketing budget and predicted expenditure demands on that funding.

City Council is being asked to review its current TOT policy and provide direction to Staff on whether to retain the current policy or modify it as part of the upcoming budget adoption process. This will enable staff to better prepare budget presentations for the range of programs currently funded from the "2% TOT for Marketing."

History

In the early 1990's the City Council took a number of actions that increased the TOT from eleven percent (11%) to twelve percent (12%) and from twelve percent (12%) to fourteen (14%). These actions were taken first by the adoption of two ordinances, and subsequently ratified via a ballot measure. The recent history of TOT decisions by City Council are as follows:

1986 – City Council increased TOT from 7% to 11% by ordinance and ratified by a ballot measure in 1988.

1991 – City Council increased TOT from 11% to 12% by ordinance.

Both the 1986 and 1991 increases were for General Fund budget purposes.

1994 – City Council increased the TOT from 12% to 14% by ordinance. The stated purpose of the 1994 increase, as outlined in the January 18, 1994 staff report, was to provide additional funding for "...an advertising program promoting Beverly Hills and the major hotels as a travel destination." This increase was supported and recommended by a consortium of hotels, businesses, Chamber and Council members who were working together to look at ways to enhance funding to market Beverly Hills.

1996 – A ballot measure was approved that ratified both the 1991 and the 1994 increases. The measure was approved as a General Tax, not a Special Tax – which would have otherwise required a four-fifths majority. As such, the language of the ballot measure did not memorialize the Council's approved direction as outlined in the 1994 staff report to utilize the additional tax specifically for marketing. However, the City Council has continued to make tourism and marketing budget allocations based on the 1994 policy.

Prior to the adoption of the 1994 ordinance, funding for CVB destination marketing program had been approximately $580,000 and was provided by the General Fund. The new funding from the "2% TOT for Marketing" provided approximately an additional $1,444,000 for marketing and promotional programs.

For many of the last sixteen years, TOT revenue rose steadily allowing a commensurate expansion of City-funded tourism and marketing programs, in addition to the work of the CVB. However, fiscal year 2008-2009 saw a dramatic reduction in TOT revenue which caused reductions in base funding for tourism and marketing programs in 2009-2010. For 2010-2011, TOT revenues are expected to decline another 6.6%. Naturally, this will affect not just the tourism and marketing budget, but the City budget as a whole.

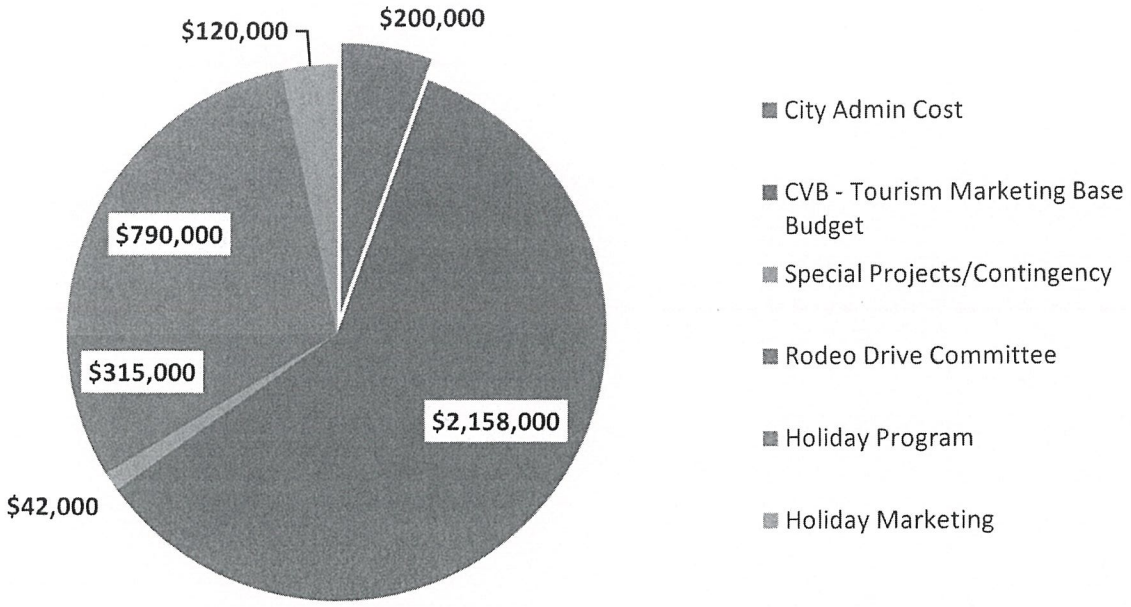
As such, before proceeding to develop budget presentations for funding recipients (CVB, Rodeo Drive, Holiday Program etc), staff is requesting Council to take an opportunity to affirm or modify its 1994 policy on the "2% TOT for Marketing" prior to final presentation of the City's budget in May.

Following is a chart of the current 2009-2010 tourism and marketing approved budget and program allocations. Also, outlined below is a chart of the projected tourism and marketing budget that would be incorporated into the City's budget barring different direction from City Council. For the purposes of this presentation, the chart assumes a straight line reduction in all programs of 6.6%. However, staff anticipates bringing recommendations from the Marketing Strategic Plan to the City Council in May along with the CVB 2010 work plan. At this point Council may opt to make strategic funding decisions that would affect these programs. Therefore, the 6.6% reduction per program is offered as a place holder to represent the decrease in anticipated TOT revenue.

Meeting Date: April 22, 2010

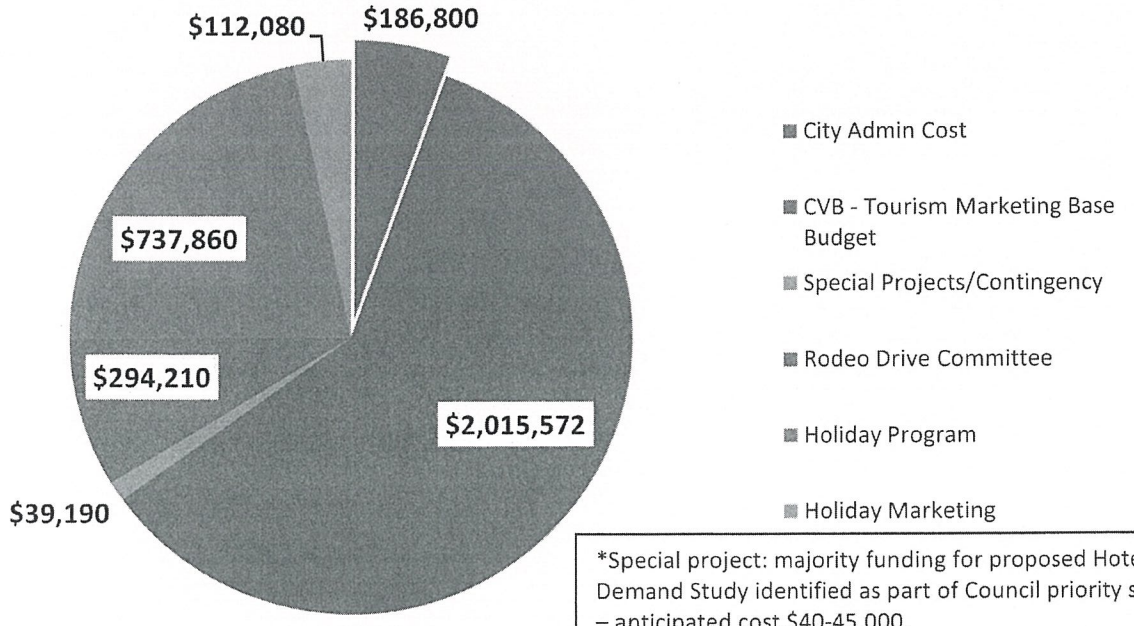
Current 2009-2010 Tourism and Marketing TOT Budget and Program Allocations

Total 2% TOT Budget: $3,625,000



Draft 2010-2011 Tourism and Marketing Budget and Possible Program Allocations – Using straight line 6.6% reduction to match revenue projections

Total 2% TOT Budget Anticipated: $3,385,712



*Special project: majority funding for proposed Hotel Demand Study identified as part of Council priority setting – anticipated cost $40-45,000.

Meeting Date: April 22, 2010

FISCAL IMPACT

2009-2010 - revenue projections: as of March 2010, the City's Administrative Services Department is predicting lower TOT revenues than were anticipated at the start of the fiscal year. The City's 2009-2010 adopted budget assumed TOT revenue of $25,375,000 (tourism and marketing portion - $3,635,000). Current projections are assuming total TOT revenue of $23,200,000 (tourism and marketing portion - $3,314,286). If current projections hold true, which will not be known until the final whole-year TOT revenues are received in late summer 2010, the City may find it has spent approximately $310,714 in excess of the "2% TOT for Marketing" policy. At this time, there is approximately $35,000 remaining un-encumbered in the tourism and marketing program, which could be held toward reducing that possible delta.

From a recent historical perspective, total TOT revenues have been as follows:

2007-2008 Adopted Budget: $23,495,500 Actual: $29,101,920

2008-2009 Adopted Budget: $29,677,700 Actual: $24,001,879

2010-2011 - revenue projection: At the time of printing, the total projected TOT is anticipated to be $23,699,984 of which tourism and marketing funding would be $3,385,712 (representing one seventh of the total projected TOT). If Council elects to continue its policy of allocating 2% of the gross hotel revenues (one seventh of actual TOT collected) to fund tourism and marketing programs, this amount would be included in the City budget. Staff would bring back recommendations for funding individual programs during the budget deliberation period.

It should be noted that during the budget adoption process for 2009-2010, the City Council directed that approximately $200,000 of tourism and marketing funds (Holiday Program) be re- allocated to the Community Assistance Grant Program, which had been reduced.

In determining the TOT tourism and marketing budget, it is important to keep in mind that organizations such as the CVB are 100% funded by the City and have base operating obligations continuing from July 1st. So it is generally anticipated that funding direction from council and subsequent contracts are completed by mid-June to ensure that payroll and other such operational costs can be met on time. Staff will be making presentations on these programs in late May or early June.

RECOMMENDATION

1. Staff requests City Council to review and affirm, or modify, its policy of providing 2% of the hotel gross receipts provided through TOT (or one seventh of total TOT received) for funding tourism and marketing programs.

Alison Maxwell

Alison Maxwell, Director Economic Development and Marketing

Approved By

Attachment 1

CITY OF BEVERLY HILLS
CITY COUNCIL
AGENDA STATEMENT

ITEM NO: D-1
MEETING DATE: 1/18/94

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS INCREASING THE TRANSIENT OCCUPANCY TAX FROM TWELVE PERCENT TO FOURTEEN PERCENT AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE

SUBMITTING DEPARTMENT: Office of the City Manager

ATTACHMENTS: Ordinance

STAFF RECOMMENDATION: It is recommended that the City Council adopt the ordinance.

MS
CITY MANAGER APPROVAL

INTRODUCTION

This is to request City Council adoption of the ordinance increasing the Transient Occupancy Tax (TOT) from 12% to 14%. The ordinance goes into effect upon adoption.

BACKGROUND

Representatives from the City Council, Chamber of Commerce, Visitors Bureau and major local hotels have been meeting this past year to develop the concept and funding options for an advertising program promoting Beverly Hills and the major hotels as a travel destination. The group agrees on the need for positive promotion and recommends that the City increase TOT from 12% to 14% to fund the program.

State law allows the City to increase TOT and do so without a vote of the public as long as the money is being collected for a general public purpose. However, the City can express an intent to identify resources annually for this type of promotion, with the actual allocation of General Fund revenues (which includes the TOT funds) being made one year at a time. Representatives of the major hotels in the City support this proposal and request

that the City endorse the use of the funds to promote the hotels as a destination.

The hotel representatives have also asked that a Steering Committee, composed as follows, be established by the City Council to oversee the planning and implementation of this advertising campaign:

- General Managers of the four largest Beverly Hills hotels
- One other hotel General Manager on an annual rotating basis
- Mayor and Vice Mayor
- President of the Chamber of Commerce
- President of the Visitors Bureau
- Two other members at-large selected by the Committee (Fred Hayman and Warren Ackerman have agreed to serve in this role)
- The City Manager and Manager of the Visitors Bureau would serve the Committee as ex officio members

The Executive Committee of the Chamber has endorsed this concept.

Upon adoption of the ordinance, the Steering Committee is prepared to come forward with a recommendation on selecting professionals to design the campaign. The Steering Committee will review the alternatives and recommend a full program, with budget and schedule. Final approval of the budget would be necessary annually by the City Council.

FINANCIAL ANALYSIS

A total of $6,867,143 Million in TOT (at 12%) is projected for Fiscal Year 1993-94. That equates to over $572,000 for each percent of TOT. Assuming there is no price sensitivity, a two percent increase would generate an additional $1,144,000 in TOT over the first year. By increasing the overall promotion budget, is also likely that "coop" advertising will be available from private travel-related companies. Funding will also increase

when the Beverly Hills and L'Ermitage (now Lowell) Hotels re-open.

RECOMMENDATION

It is recommended that the City Council adopt the ordinance, appoint the Steering Committee and endorse the approach for selection of the promotion profession.

ORDINANCE NO. 94-O-2189

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS INCREASING THE TRANSIENT OCCUPANCY TAX FROM TWELVE PERCENT TO FOURTEEN PERCENT AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES ORDAIN AS FOLLOWS:

Section 1. Section 3-1.303 of Article 3 of Chapter 1 of Title 3 of the Beverly Hills Municipal Code is amended to read as follows:

"Sec. 3-1.303. Tax imposed.

For the privilege of occupancy in any hotel, each transient shall be subject to and shall pay a tax in the amount of fourteen percent (14%) of the rent charged by the operator. Such tax shall constitute a debt owed by the transient to the City, which debt shall be extinguished only by payment to the operator or to the City. 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 paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Director of Finance Administration may require that such tax shall be paid directly to the City."

Section 2. The City Clerk shall cause this ordinance to be published at least once in a newspaper of general circulation printed and published in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption and publication of this ordinance, and shall cause this ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

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Section 3. Pursuant to Government Code Section 36937, ordinances relating to taxes for the usual and current expenses of the City may take effect immediately. This ordinance shall go into effect at 12:01 a.m. on February 1, 1994.

ADOPTED: January 18, 1994

MAXWELL HILLARY SALTER
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
JEAN M. USHIJIMA
City Clerk

APPROVED AS TO FORM:

GREGORY W. STEPANICICH
City Attorney

APPROVED AS TO CONTENT:

for MARK SCOTT
City Manager

DONALD OBLANDER
Director of Finance
Administration

12/17/93

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Attachment 3

CITY OF BEVERLY HILLS
CITY COUNCIL
AND
PARKING AUTHORITY
April 22, 2010

The Joint Adjourned Regular Meeting of the City Council and the Special Parking Authority Meeting was held in the Council Chambers at 7:00pm.

A. ROLL CALLS

Present: Mirisch, Brien, Krasne, Brucker, and Delshad
Absent: None

Roll call was taken for the City Council and Parking Authority.

B. PRESENTATIONS

1. RECOGNITION - The Beverly Vista Junior Girl Scout Troop 10825

Mayor Delshad, along with Councilmembers Mirisch and Krasne, presented badges and certificates to the members of the Girl Scout Troop for their service to the community.

CONTINUED ITEMS FROM THIS AFTERNOON'S STUDY SESSION:

Item A-5 Discussion of Consolidation of Design Review and Architectural Commissions

Director of Community Development Susan Healy Keene reported the consolidation was recommended in the Matrix Management Study that was performed several years ago. She spoke about the efforts by staff to

streamline the processes to support both Commissions (Architectural and Design Review) and noted staff is not recommending a consolidation at this time. It was the consensus of the Council not to consolidate the commissions and reduce the number of Commissioners on the Architectural Commission from 7 to 5. Staff will return at a later date with minor code adjustments. It was noted the Liaison Committee will determine the staggering of the reappointments for the Design Review Commission and return to the Council for approval.

Item A-6 Review of City Council Policy on Allocation of TOT Marketing Funds

Director of Economic Development and Marketing Alison Maxwell explained this is an opportunity to review the history of the TOT program and provide the City Council with an opportunity to modify, leave as it or even disband the policy. Following discussion, it was the consensus of the Council to remain supportive of the 2% TOT with some hold back after budget discussions, if necessary.

Speaking:

1. Gaby Alexander, speaking on behalf of the Canon Drive Association, urged the Council to continue the full allocation of 2% of the TOT toward targeted, effective marketing and outreach for the City.

2. Councilmember Mirisch read a letter into the record from representatives from the Beverly Hills Conference & Visitors Bureau, Beverly Hills Chamber of commerce and the Rodeo Drive Committee asking the Council to retain the 2% of TOT to fund the tourism and marketing programs.

Item A-3 Presentation of the Community Services Department's Management and Organizational Analysis by Arroyo Associates, Inc. - will be rescheduled.

The Study Session was adjourned at 8:35pm.

C. *ORAL COMMUNICATIONS*

1. ***TELEPHONE CALL-IN (310.285.1020)*** (Members of the public are invited to place telephone calls to comment on issues that do not appear on the evening's agenda. The City Council/Parking Authority will take up to three telephone calls per meeting. Comments on the evening's agenda must be made in person as the item comes before the City Council/Parking Authority.)

None

Attachment 4

CITY ORDINANCE OF PROPOSITION C

AN ORDINANCE OF THE CITY OF BEVERLY HILLS VALIDATING, RATIFYING AND APPROVING THE ADOPTION OF A THREE PERCENT INCREASE TO THE TRANSIENT OCCUPANCY TAX

THE PEOPLE OF THE CITY OF BEVERLY HILLS DO ORDAIN AS FOLLOWS:

Section 1. Validation, Ratification and Approval of Transient Occupancy Tax Increase. The adoption of Ordinance No. 91–0–2125 which increased the rate of the transient occupancy tax from 11% to 12% and the adoption of Ordinance No. 91–0–2189 which increased the rate of the transient occupancy tax from 12% to 14% are hereby validated, ratified and approved.

Section 2. Adoption and Re–Enactment of Transient Occupancy Tax Increase. Section 3–1.303 of Article 3, Chapter 1, Title 3 of the Beverly Hills Municipal Code is amended to read as follows:

Sec. 8–3.03. Tax imposed.

For the privilege of occupancy in any hotel, each transient shall be subject to and shall pay a tax in the amount of fourteen (14%) percent of the rent charged by the operator. Such tax shall constitute a debt owed by the transient to the City, which debt shall be extinguished only by payment to the operator or to the City. 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 paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Director of Finance Administration may require that such tax shall be paid directly to the City.

Section 3. Findings. The City Council of the City of Beverly Hills find as follows:

(a) On September 3, 1991 the City Council adopted Ordinance No. 91–0–2125 which increased the rate of the transient occupancy tax from 11% to 12%. On January 18, 1994, the City Council adopted Ordinance No. 94–0–2189 which increased the rate of the transient occupancy tax from 12% to 14%. The City Council did not submit either of these two enactments to the voters for approval because a number of appellate courts, including the Court of Appeal in City of Woodlake v. Logan, 230 Cal.App.3d 1058 (1991), had previously held that the voter approval requirements of Proposition 62 for general taxes violated the California Constitution and were therefore unenforceable. On September 28, 1995, the California Supreme Court disapproved Woodlake in Santa Clara County Local Transportation Authority v. Guardino, 11 Cal.4th 220 (1995), even though the Supreme Court had previously declined to hear Woodlake or the other cases which had been decided similarly. This ordinance is being submitted to the voters for approval in order to validate the past collection of the transient occupancy tax at rates greater than 11% and to authorize the future collection of this tax at a rate of 14%.

(Continued on next page)

(b) This Ordinance was proposed by the City Council of the City of Beverly Hills by the adoption of Resolution No. 95–R–C by the affirmative votes of not less than four of its members as required by Government Code Section 53724(b).

Section 4. Intent. It is the intent of Section 1 of this Ordinance to authorize the continued collection of the transient occupancy tax at a rate of 14% of the rent charge for a hotel room and to validate and ratify the taxes previously collected pursuant to Ordinance Nos. 91–0–2125 and 94–0–2189. It is the intent of Section 2 of this Ordinance to amend Section 3–1.303 of the Beverly Hills Municipal Code and to authorize the collection of the transient occupancy tax at a rate of 14% from and after the adoption of this Ordinance in the event that Section 1 of this Ordinance is determined by a court of competent jurisdiction to be insufficient to do so.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The City Council hereby declares that it would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable. Without in any way limiting the foregoing, in the event that Section 1 of this Ordinance is declared invalid or unenforceable by a court of competent jurisdiction, Section 2 of this Ordinance shall be considered severable and valid and shall remain in full force and effect.

Section 6. The Mayor is hereby authorized to attest to the adoption of this Ordinance by signing where indicated below in the event that this Ordinance is approved by a majority of the voters voting on the ordinance at the March 26, 1996 municipal election.

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF PROPOSITION C

The ballot proposition submitted to the voters seeks to validate two past increases in the City's transient occupancy tax that were approved by the City Council. These increases consisted of a 1% increase approved by the Council in 1991 and a 2% increase approved by the Council in 1994.

The transient occupancy tax is a tax on the privilege of occupying a hotel room in the City. The current rate is 14% of the rent charged by the operator of the hotel to a guest for the occupancy of a room. The proposed proposition would not change the rate of the tax, but simply validate the existing rate of 14%.

This ballot proposition is proposed in response to a recent California Supreme Court decision. When the transient occupancy tax was increased in 1991 and 1994, courts had ruled that general taxes could be adopted by the City Council without a vote of the electorate. General taxes are taxes devoted to general city services (such as police, fire, and park maintenance) and are not restricted to a special or limited purpose. The California Supreme Court recently overturned those earlier decisions, holding that general taxes require voter approval under the provisions of a statewide voter initiative approved in 1986 known as Proposition 62. The City Council has proposed this proposition to allow the voters to validate the three percent increase in the tax adopted without voter approval since 1986.

A yes vote on the ballot question ratifies the past collection of the 3% increase in the transient occupancy tax described above and authorizes the continued collection of the tax at the rate of 14%. A no vote will result in a reduction of the transient occupancy tax to 11% and a possible liability to the City for the past collection of the tax increases approved in 1991 and 1994. The difference between an 11% and a 14% tax rate is more than $2,100,000 in tax revenues per year for the City.

The above statement is an impartial analysis of Proposition C. If you desire a copy of the Ordinance being proposed by Proposition C, please call the City Clerk's office at (310)285–2400 and a copy will be mailed at no cost to you.

GREGORY W. STEPANICICH
City Attorney
City of Beverly Hills

ARGUMENT IN FAVOR OF PROPOSITION C

We urge your "yes" vote on Proposition C which would continue the Transient Occupancy Tax ("T.O.T.") at the 14% rate. **Transient Occupancy Tax is paid by hotel visitors, not City residents.** T.O.T. is a general tax of the City which is levied on hotel room rates.

Need for Voter Approval

Voter approval is now necessary for T.O.T. to continue at the 14% rate based upon a recent State Supreme Court decision regarding Proposition 62 which impacts tax increases imposed after 11–4–86.

History of Tax

- Prior to 11–4–86, T.O.T. was increased to 11% with an 80% approval by the voters, effective 10–16–86.
- Effective 10–01–91, T.O.T. increased from 11% to 12%.
- On 2–1–94, T.O.T. increased to the current rate of 14%, the same as the City of Los Angeles.

Potential Impacts if Not Adopted

In total, T.O.T. at 14% provides approximately $10 Million in revenues to the City annually. Failure to approve Proposition C may result in T.O.T. reverting to 11% (a 3% reduction) with an annual loss of approximately $2,100,000.

Of the $2,100,000 at issue, $1,200,000 is budgeted for hotel promotions which more than pays for itself by providing additional revenues to the City as a result of higher hotel occupancies. The remaining $900,000 provides for the support of general City services.

In perspective, $900,000 is equivalent to:

- 4.8% of the Police Department, or
- 8.5% of the Fire Department, or
- 11.5% of the Recreation and Parks Department, or
- 18.4% of Library and Community Services Department.

(Continued on next page)

ARGUMENT IN FAVOR OF PROPOSITION C (Continued)

T.O.T. requires visitors who stay in our City to contribute to services provided to them as tourists and for the overall well being of City. Reducing T.O.T. could impact the positive benefits afforded by tourism, especially as it relates to City services.

ALLAN ALEXANDER
Mayor

TOM LEVYN
Vice Mayor

VICKI REYNOLDS
Councilmember

MERALEE GOLDMAN
Councilmember

LES BRONTE
Councilmember

NO ARGUMENT AGAINST THIS PROPOSITION WAS SUBMITTED

TITLE: FOUR RESOLUTIONS PROVIDING FOR A SPECIAL MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION ON A MEASURE TO VALIDATE, RATIFY AND APPROVE A TRANSIENT OCCUPANCY TAX INCREASE AND A RESOLUTION APPROPRIATING FUNDS THEREFOR

SUBMITTING DEPARTMENT:	City Attorney
ATTACHMENTS:	Four Resolutions for Election Appropriating Resolution
STAFF RECOMMENDATION:	City Attorney recommends adopting the four resolutions.

INTRODUCTION

Four resolutions have been submitted to the Council for approval which would call for the holding of a special municipal election to be consolidated with the statewide primary election on March 26, 1996. The purpose of the special municipal election would be to submit to the voters a measure which would validate, re-enact and approve the past increases in the transient occupancy tax (hotel bed tax) from 11% to the current rate of 14%. The transient occupancy tax is imposed on hotel guests for the privilege of occupying a hotel room in the City. The tax is imposed upon the rate charged by the hotel for the rental of a room.

BACKGROUND

On November 4, 1986, the voters in California adopted a statewide statutory initiative known as Proposition 62. The proposition added Sections 53720 to 53730 to the Government Code to require that all new local taxes be approved by the voters. The statute provides that all local taxes are either general taxes or special taxes. General taxes are imposed for general governmental purposes. Special taxes are imposed for specific purposes only. Under Proposition 62, general taxes may not be imposed by local

government unless approved by a four-fifths vote of the entire legislative body and a majority of the voters voting on the proposed general tax. Special taxes may not be imposed by local government unless approved by a majority of the entire legislative body and by two-thirds of the voters voting on the special tax. The special tax provision simply carries out the mandate of Proposition 13. However, the general tax provision closes the local tax voter approval gap left open by the California Supreme Court in City and County of San Francisco v. Farrell, 32 Cal.3d 47 (1982) which held that the voter approval requirement of Prop. 13 only applied to special taxes.

Soon after Proposition 62 was adopted by the voters, legal challenges to taxes adopted contrary to its provisions were filed. In a series of cases, the appellate courts held the voter approval requirements of Proposition 62 to be invalid. City of Westminster v. County of Orange, 204 Cal.App.3d 623 (1988) (review declined by Supreme Court); Schopflin v. Dole, 208 Cal.App.3d 617 (1989) (opinion depublished by Supreme Court); City of Woodlake v. Logan 230 Cal.App.3d 1058 (1991) (review declined by Supreme Court). When the California Supreme Court refused to review Woodlake, which held that the voter approval requirements of Proposition 62 were unconstitutional, it was generally accepted by public agencies and tax advocacy groups throughout the state that general taxes could be adopted by the governing body of a public agency without voter approval. Thereafter many new taxes were adopted and existing taxes were increased.

Relying on the final appellate court decision in Woodlake, the City Council adopted two increases to the transient occupancy tax without voter approval. On September 3, 1991, the Council adopted Ordinance No. 91-O-2125 which increased the tax rate from 11% to 12%. On January 18, 1994, the City Council adopted Ordinance No. 94-O2189 which increased the tax rate from 12% to

the current rate of 14%. These increased taxes have been imposed and collected without protest since their adoption by the Council.

A recent California Supreme Court decision, entitled Santa Clara County Local Transportation Authority v. Guardino (September 25, 1995) has cast doubt on the validity of these two transient occupancy tax increases. In Guardino, the Supreme Court disapproved the Woodlake decision and held that the voter approval requirements of Proposition 62 are valid. Although this decision applied to a sales tax adopted by a transportation special district, there is no reason to believe that the reasoning of the court would not apply to general taxes adopted by cities. Since the tax in Guardino had never been collected, the court did not address the key question as to whether the decision will be applied retroactively to taxes adopted by cities in reliance upon the Woodlake decision.

Santa Clara County has petitioned the Supreme Court for a rehearing. The court has extended the time to consider this petition under December 27, 1995.

At this time, we do not know whether the voter approval requirements of Proposition 62 will apply to the increase in the City's transient occupancy tax from 11% to 14%. Either the courts or the State Legislature have the power to apply Guardino prospectively only to taxes adopted or increased after the decision becomes final. Further, it is unclear whether Proposition 62 applies to new taxes only or to both new taxes and increases to existing taxes. In order to avoid any uncertainty as to the validity of the three percent increase in the transient occupancy tax rate from 11% to 14%, the City Council has requested that this increase be submitted to the voters for validation, ratification and approval. The proposed measure would validate and ratify the past collection of this tax at a

rate higher than 11% and approve the future collection of the tax at a rate of 14%.

In order to submit this matter to the voters for approval, the following four resolutions are being presented to the Council for approval:

1. The first resolution calls a special election to be consolidated with the statewide primary election to be held on March 26, 1995. This resolution sets forth the question to be submitted to the voters which is the following:

Shall an ordinance of the City of Beverly Hills be adopted to validate, re-enact and approve the increase in the transient occupancy tax from 11% to the current rate of 14% of the rent charge for a hotel room?

In addition, the measure to be approved by the voters is attached to the resolution.

2. The second resolution requests the Board of Supervisors of Los Angeles County to consolidate the election and to direct County staff to perform specified election services for the City.

3. The third resolution authorizes the five Councilmembers to submit arguments in favor of the measure and directs the City Attorney to prepare an impartial analysis to be included in the ballot materials.

4. The fourth resolution authorizes the filing of rebuttal arguments to be included in the ballot materials.

FINANCIAL ANALYSIS

The cost of the special election is estimated to be approximately $25,000 and a resolution appropriating those funds is provided.

RECOMMENDATION

The City Attorney recommends adopting the four election resolutions and appropriating resolution submitted to the City Council.

CITY MANAGER APPROVAL

Adopted 12/12/95

E-4 95-R-9296
E-5 95-R-9297
E-6 95-R-9298
E-7 95-R-9299
E-8 95-R-9300