



STAFF REPORT

SAUSALITO CITY COUNCIL

MEETING DATE: July 31, 2018

AGENDA TITLE: Consideration of Ballot Measures Related to
Transient Occupancy Tax and Business License Tax

LEAD DEPARTMENT: Administration

RECOMMENDED MOTIONS:

1. Transient Occupancy Tax:

- a) Introduce, give first reading and read by title only an Ordinance of the City Council of the City of Sausalito amending Section 3.12.030 of the Sausalito Municipal Code to increase the Transient Occupancy Tax (Hotel Tax) by two percent (2%).
- b) Adopt a resolution of the City Council of the City of Sausalito Establishing November 6, 2018 as the Date for a Municipal Election on a Proposed Ballot Measure Seeking Voter Approval to Increase the City's Existing Transient Occupancy Tax for General Fund Purposes by two percent (2%), Establishing Policies and Procedures in Connection with Such an Election, and Requesting that the Marin County Registrar of Voters Conduct Such an Election, and Requesting that the City Attorney Prepare and File an Impartial Analysis of the Proposed Ballot Measure .

2. Business License Tax:

- a) Introduce and read by title only an Ordinance of the City Council of the City of Sausalito Amending Chapter 5.04 (Business Licenses) of the Sausalito Municipal Code to Streamline, Simplify and Update the Business License Tax Ordinance of the City of Sausalito
 - b) Adopt a resolution of the City Council of the City of Sausalito Establishing November 6, 2018 as the Date for a Municipal Election on a Proposed Ballot Measure Seeking Voter Authorization to Amend the City's Existing Business License Tax for General Fund Purposes, Establishing Policies and Procedures in Connection with Such an Election, Requesting that the Marin County Registrar of Voters Conduct Such an Election, and Requesting that
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SUMMARY

At the City Council Meeting held on July 17, 2018, the Council received a report on various revenue enhancement options. These options were designed to maintain and preserve the current level of City services.

The Council directed staff to work with the Finance Committee and return on July 31st with more information on three of the options presented by the City Staff and discussed by the City Council. With the recommendation of the Finance Committee staff is recommending that the Council adopt resolutions to place two of these revenue measures on the November 6th ballot. One of the proposed measures is to increase the Transient Occupancy Tax (Hotel Tax) in the City by two percent (2%).

The other is to update the City's Business License Tax ordinance to simplify the business license tax process, reduce inconsistencies and promote equitable treatment of businesses and industries. This includes reducing the number of business license tax categories from 22 to 4, reducing the business license tax amount by 13% for businesses in the Retail and General category and updating the license categories and amounts.

BACKGROUND

On June 26, 2018, the City Council adopted the FY2018-20 Resources Allocation Plan. This plan included the City Budget for the next two fiscal years (2018-19 and 2019-20) and provided a plan to allocate resources to fund City Services and Capital Improvement Projects.

As a separate agenda item, the Council received a report and staff recommended that the Council take action to adjust the parking rate schedule to increase revenues to augment the actions taken to decrease departmental expenses and a suspension of contributions to the vehicle replacement program. These actions brought the budget into balance for the 2018-19 fiscal year.

As the Council is aware additional revenue enhancement options need to be implemented based on the fiscal forecast for FY 2019-20 through FY 2023-24. The amount of the additional revenue enhancements needed are a minimum of \$475,000 per year in FY 2019-20 and an additional \$275,000 per year in FY 2020-21 and following years.

On July 17th the Council received a report on these additional revenue options and designated an ad hoc committee of two Councilmembers, to work with staff on 1) ballot language and other details of the revenue measures, 2) work with the Finance Committee to further analyze the demand parking, transient occupancy tax increase and business license tax streamlining, simplification and update, and return to the City

Council on July 31 with recommendations for action. The Finance Committee met on July 20th to further consider these options.

DISCUSSION/ANALYSIS

Transient Occupancy Tax

Transient Occupancy Tax (TOT) (also known as a Hotel Tax) is charged as a percentage of a room rate to persons who occupy a hotel, motel, inn or other form of transient lodgings for thirty (30) days or less. The tax is collected by the lodging operator and is remitted to the City by the lodging operator. It is a revenue that has been used to fund City services throughout California and has been adopted in 430 of the 482 cities in the State.

The City's TOT was established in 1966. In 2004 the Sausalito voters approved a measure authorizing the City Council to increase the TOT by 2% from the then applicable rate up to the current 12% rate. In 2005 the Council adopted Resolution No. 4754 and increased the TOT rate to 12%. In 2009 the Sausalito Municipal Code was amended to make administrative changes to reflect changes in State law. The applicable rate of 12% was included at that time.

Other communities in the region have established TOT rates ranging from 10% to a high of 16% (City of Healdsburg). The cities of Oakland and San Francisco, each presently have TOT rates of 14%.

In the upcoming November 2018 election, 11 Bay Area cities are proposing to increase their TOT rates with the most common proposal being an increase from 12% to 14% (See **Attachment 1**)

The City of Sausalito is projected to receive \$1.6 Million in TOT Revenues during the current 2018-19 fiscal year. If voters authorize an increase of 2%, an additional \$300,000 in revenue could be realized by the City in the first year of the new TOT rate. Attached as **Attachment 2**, is the draft ordinance increasing the TOT in Sausalito by 2%. Attached as **Attachment 3** is the draft resolution calling for the Election and Seeking Voter Approval to Increase the City's Existing Transient Occupancy Tax for General Fund Purposes from Twelve Percent (12%) to Fourteen Percent (14%)

If any part of the TOT tax is earmarked for a special purpose, such as tourism promotion, then the tax becomes a special tax that requires a two-thirds vote of the electorate. The current TOT tax, as well as the proposed ballot measure, does not include such an earmark for a special purpose. This makes it a General Revenue measure to address a variety of core General Fund services relied upon by our community, only requiring a majority vote of the electorate voting at the election for passage.

Business License Tax Equity Measure

Business License Tax (BLT) is charged to anyone doing business in a City. It is a common revenue used to fund City services throughout California with over 450 of the 482 cities in California levying a BLT. The BLT recognizes the link between City services and infrastructure and the use of these by local businesses.

The City of Sausalito established its Business License tax ordinance in 1968. Since that time, it has been updated several times by action of the City Council. Over the years the Sausalito BLT Ordinance has become quite complex and is now in need of simplification, streamlining and an update.

Earlier this year, the City enlisted the assistance of industry leader HdL Companies to analyze and update the existing provisions of the City's Business License Tax (BLT) ordinance. Attached (**Attachment 4**) is a report from HdL dated which:

1. Reviews Sausalito's current revenues and fee structures, and those of comparable jurisdictions;
2. Reviews the City's current BLT Ordinance language and highlights potential modifications the City may wish to consider implementing;
3. Recommends simplifying and streamlining the BLT Ordinance including a reduction of business categories from 22 to 4;
4. Recommends changes to the BLT rate structure that includes a 13% reduction in the taxes charged to Retail and General Businesses and an update to other business rate categories; and
5. Analyzes potential changes to the tax structure and how those scenarios might impact the City and the business community.

Recommendation From Finance Committee

At the Finance Committee meeting held on July 20, 2018, the committee received reports from the Lew Edwards Group, HdL Companies and City Staff on the proposed Business License Tax Equity Measure and directed:

Replace Multiple Categories with a Single Gross Receipts Tax

The highlights of this proposal are:

1. **Streamline and Modernize** the Sausalito Business License Tax (BLT) Ordinance.
 - a. Reduce the number of categories in the Sausalito BLT Ordinance from 22 to 5.
 - b. Establish \$125 as the minimum BLT payment.
 2. **General/Retail category (includes restaurants and small business):** Lower the BLT rate by 30% from \$1.13 per thousand of gross receipts to 80 cents per thousand of gross receipts.
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3. **Services and Professionals:** Separate into two separate categories: a Service BLT rate of \$2 per thousand of gross receipts and a Professional BLT rate of \$3 per thousand of gross receipts.
4. **Rental or Lease of Commercial Property:** No longer exempt from the BLT Ordinance. Businesses in this category will pay a BLT rate of \$2 per thousand of gross receipts which will also apply to the rental of Residential Property (covered under the current BLT).
5. **Contractors:** will pay a BLT rate of \$1.50 per thousand of gross receipts.
6. **Subcontractors:** No longer exempt from the BLT Ordinance. Would pay the contractors BLT rate of \$1.50 per thousand of gross receipts.
7. **Effective Date:** The effective date of the proposed BLT Ordinance will be July 1, 2019. This will provide time for an educational outreach program for the local business community. The outreach program will include a mailing to all businesses in the Sausalito BLT database that explains the new Ordinance and how it compares to the BLT rate they pay today.
8. **Rate Comparisons:** HdL will be asked to make additional rate comparisons:
 - a. Hair and Nail Salon
 - b. Residential Rental Property (1 unit, \$5,000 per month rent)
 - c. Commercial Rental Property (\$0 in current ordinance)
 - d. Hotels
 - e. Service Business
 - f. Professional Business/Architect
 - g. Subcontractor (\$0 in current ordinance)
 - h. Landscaping
 - i. Accounting
 - j. Financial Services
 - k. Insurance Services
 - l. Real Estate
 - m. Medical Services

The addendum to the HdL report provided in **Attachment 5** reflects the recommendations of the Finance Committee.

Attached as **Attachment No. 6** is the draft ordinance making the changes to Chapter 5.04 described above. The changes are shown in redline format. Attached as **Attachment 7** is the draft resolution Calling for the Election and Seeking Voter Approval to Update the City's BLT Ordinance.

The proposed Business License Tax Equity Ordinance (See Section 5.04.230)

1. Reduces the number of business categories from 22 to 4
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2. Establishes a \$125 minimum Business License Tax for all businesses
3. Levies an annual Business License Tax of \$1, \$2 or \$3 per thousand of gross receipts based on the 4 business categories set forth in the ordinance.
 - Category 1 - General / Retail / Hotel - \$1 per thousand
 - Category 2 - Rental Units (Commercial & Residential) - \$2 per thousand
 - Category 3 - Service & Professional - \$3 per thousand
 - Category 4 - Contractors - \$2 per thousand

Additional clarifying changes include:

- Updating the definition of “Collector” to be the Administrative Services Director or designee (Section 5.04.020 C)
- Removing the exemption for subcontractors from the definition of gross receipts (Section 5.04.020 D 6)
- Adding language to provide that paying the business license tax does not authorize anyone to conduct an illegal business and that a business license is a requirement, not a permit, to conduct, manage or carry on any business activity within the city (Section 5.04.030)
- Removing the provision which allows for paying one tax when operating from multiple locations (Section 5.04.050)
- Removing the provisions that provides an exemption for gross receipts taxed in another jurisdiction (Section 5.04.270)
- Removing the provisions regarding license revocation because the business license is merely a receipt for payment of the tax, not a regulatory mechanism, there are other enforcement provisions in the ordinance and other manners to regulate the use such as the Zoning Ordinance (Section 5.04.280)

Voter approval and adoption of the proposed Business License Tax (BLT) Equity Measure will result in a streamlined, simplified and updated ordinance. Some businesses (such as small businesses and restaurants in Category 1) will see a BLT rate reduction while others will see a rate increase. The BLT measure is estimated to result in an additional \$896,750 per year in revenue to the City.

Election Information

Both the Transient Occupancy Tax and Business License Tax are general taxes that requires a 2/3 majority vote of the Council to be placed on the ballot and a simple majority vote of the electorate to pass. By law, general taxes may only be placed on the ballot when there is a City Council election except in cases of emergency declared by a unanimous vote of the City Council. California Constitution Article XIII C Section 2(b). This requirement restricts the placement of such a measure on the ballot to two-year intervals. The next opportunity after 2018 to place a general tax on the ballot would be November 2020.

Calling for Consolidation of Election

Separate resolutions (drafts provided in **Attachment 3 and 7**) are necessary to call for the election and to place the measures on the ballot for the November 2018 election. The resolutions must be adopted by the City Council and submitted to the Marin County Board of Supervisors and Registrar of Voters no later than 5 PM on August 10, 2018. Each draft resolution calls for an election on the proposed measure and requests its consolidation with the other elections being held on the same date. The draft resolution contains the wording of the measure as it will appear on the ballot. The City recognizes that additional costs will be incurred by the County of Marin by reason of this consolidation and agrees to reimburse the County for any costs.

Submission of Ballot Arguments

Arguments for or against the measure must be submitted by 5 PM on August 20, 2018 to the City Clerk. Arguments may not exceed three hundred (300) words and cannot be signed by more than five (5) persons. The deadline for submission of rebuttals to the City Clerk is August 27, 2018.

Rebuttals may be authored by the original signers of the argument, or anyone they designate on the Signature Release Form. The new signer does not have to be a registered voter or live in the City. Rebuttals are limited to 250 words.

Preparation of Argument in Support of Measure

Under Elections Code section 9282, a ballot argument on each of these city council-sponsored measures may be submitted by the City Council, or a member or members of the Council authorized by the City Council, or an individual voter who is eligible to vote on the measure, or bona fide association of citizens, or a combination of voters and associations. The argument may not exceed three hundred (300) words.

While this is certainly an option for the City Council, the City's communications experts have advised City staff that best practices in other jurisdictions are to allow community members to submit arguments on measures similar to these. As the City Council is already taking action to place these measures on the ballot, doing so would allow a community voice to be featured as part of this process.

Impartial Analysis

The City Attorney will prepare an impartial analysis of each measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit the impartial analysis to the Elections Division August 20, 2018.

Roles and Limitations during Ballot Measure Campaign Period

The City can provide educational materials to the public, informing them about the measures. But the City cannot expend any time, money or effort advocating a position supporting passage of the ballot measures. Council members and staff can volunteer on the campaign on their own time and at their own expense, provided it is made clear that they are doing so on their own time and not with City resources.

Ballot Questions

The proposed ballot question on TOT is:

“City of Sausalito Hotel Tax/Tourism Mitigation Measure. To address the effects of tourism by improving traffic enforcement for pedestrian, cyclist and driver safety; managing the number of bikes, buses, taxis; reinvesting in local businesses; and other essential city services, shall an ordinance raising the transient occupancy tax rate charged to hotel guests to 14% be adopted until ended by voters, providing additional \$300,000 annually, with all funds used locally in Sausalito?”

The proposed ballot question on BLT is:

“City of Sausalito Business Tax Equity Measure. To maintain city services, including police protection; fixing streets, sidewalks, and storm drains; supporting local businesses; and other general services, shall an ordinance simplifying Sausalito’s business license ordinance for fairness to businesses of all sizes, be adopted until ended by voters, updating business license rates to \$125 per business and between \$1-\$3 per \$1,000 of gross receipts, generating approximately \$1,519,750 annually, requiring audits and all funds used locally?”

FISCAL IMPACT AND BENEFITS TO THE SAUSALITO PUBLIC

Voter approval and adoption of the proposed Transient Occupancy Tax Measure will increase the TOT tax rate from 12% to 14%. This will result in an additional \$300,000 per year in revenue to the City.

Voter approval and adoption of the proposed Business License Tax (BLT) Equity Measure will result in a streamlined, simplified and updated ordinance. Some businesses will see a BLT rate reduction while others will see a rate increase. The BLT measure is estimated to result in an additional \$896,750 per year in revenue to the City.

These revenues are vital to the City’s continued objective of long-term fiscal sustainability, self-sufficiency, and maintenance of core services our residents and stakeholders have said are important, including services such as:

- ✓ Maintaining streets and roads
- ✓ Providing police protection, neighborhood crime prevention, and traffic enforcement to protect the safety of pedestrians, cyclists and drivers

- ✓ Providing traffic and congestion improvements
- ✓ Maintaining storm drains to prevent pollutants, garbage, and sediment from entering the Bay

As voter-approved revenue mechanisms, revenue generated by these measures are locally-controlled and not subject to seizure by Sacramento. Most importantly, these measures do NOT increase taxes for Sausalito residents who are not business proprietors or hotel guests. Only those conducting business in our community or staying in hotel rooms in Sausalito will pay for this measure. Sausalito homeowners and residents are not taxed.

While tourism is critical for Sausalito's economy and long-term sustainability, the effects of tourism on our local quality of life, must be addressed. These measures help ensure visitors to Sausalito continue to pay their fair share, while re-investing back into programs and services that help support and sustain our valued local businesses.

Approval and adoption of these measures, along with the proposal for changes in Demand Parking rates will provide sufficient new revenues to the City to bring the 2019-20 City Budget in balance. If these measures are not approved and adopted, the City will need to explore other ways to balance the budget starting in the 2019-20 fiscal year.

STAFF RECOMMENDATIONS

1. Transient Occupancy Tax:

- a) Introduce, give first reading and read by title only an Ordinance of the City Council of the City of Sausalito amending Section 3.12.030 of the Sausalito Municipal Code to increase the Transient Occupancy Tax by 2%.
- b) Adopt a resolution of the City Council of the City of Sausalito Establishing November 6, 2018 as the Date for a Municipal Election on a Proposed Ballot Measure Seeking Voter Approval to Increase the City's Existing Transient Occupancy Tax for General Fund Purposes Two Percent (2%), Establishing Policies and Procedures in Connection with Such an Election, and Requesting that the Marin County Registrar of Voters Conduct Such an Election, and Requesting that the City Attorney Prepare and File an Impartial Analysis of the Proposed Ballot Measure .

2. Business License Tax:

- a) Introduce and read by title only an Ordinance of the City Council of the City of Sausalito Amending Chapter 5.04 (Business Licenses) of the Sausalito Municipal
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Code to Streamline, Simplify and Update the Business License Tax Ordinance of the City of Sausalito

- b) Adopt a resolution of the City Council of the City of Sausalito Establishing November 6, 2018 as the Date for a Municipal Election on a Proposed Ballot Measure Seeking Voter Authorization to Amend the City's Existing Business License Tax for General Fund Purposes, Establishing Policies and Procedures in Connection with Such an Election, Requesting that the Marin County Registrar of Voters Conduct Such an Election, and Requesting that the City Attorney Prepare and File an Impartial Analysis of the Proposed Ballot Measure

ATTACHMENTS

Attachment 1 – Bay Area Cities Considering a November 2018 TOT (Hotel Tax) Ballot Measures

Attachment 2- Draft Ordinance Amending Section 3.12.030 of the Sausalito Municipal Code to Increase the Transient Occupancy Tax by 2%

Attachment 3 – Resolution of the City Council of the City of Sausalito Establishing November 6, 2018 as the Date for a Municipal Election on a Proposed Ballot Measure Seeking Voter Approval to Increase the City's Existing Transient Occupancy Tax for General Fund Purposes by two percent (2%), Establishing Policies and Procedures in Connection with Such an Election, and Requesting that the Marin County Registrar of Voters Conduct Such an Election, and Requesting that the City Attorney Prepare and File an Impartial Analysis of the Proposed Ballot Measure .Resolution Calling for the Election and Seeking Voter Approval to Increase the City's Existing Transient Occupancy Tax for General Fund Purposes by Two Percent (2%)

Attachment 4 – HdL Report on Business License Tax Equity

Attachment 5 – Addendum to Report on Business License Tax Equity

Attachment 6 - Draft Ordinance Amending Chapter 5.04 of the Sausalito Municipal Code to Update the Business License Tax

Attachment 7 – Resolution of the City Council of the City of Sausalito Establishing November 6, 2018 as the Date for a Municipal Election on a Proposed Ballot Measure Seeking Voter Authorization to Amend the City's Existing Business License Tax for General Fund Purposes, Establishing Policies and Procedures in Connection with Such an Election, Requesting that the Marin County Registrar of Voters Conduct Such an Election, and Requesting that the City Attorney Prepare and File an Impartial Analysis of the Proposed Ballot Measure

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