



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: Nov. 7, 2017

Agenda Item 6-R
Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney SS
Finance JV

Department: Finance & Administrative Services
Prepared By: Erik Sund, Assistant City Manager

Subject: *AUTHORIZATION TO FILE TAX LIENS TO COLLECT DELINQUENT TRANSIENT OCCUPANCY TAX.*

Fiscal Impact: Yes. Tax Liens will enhance the City's collection efforts to recover delinquent Transient Occupancy Taxes (TOT).

Summary: To improve collection efforts for delinquent transient occupancy taxes, staff is recommending the use of property tax liens, as provided under Chapter 3.24 of the City's Municipal Code.

Background: The number of active Short Term Lodging Units (STLU's) has grown significantly over the past ten years. The City committed additional resources to regulate these properties and enforce the collection of transient occupancy taxes. STLU's that fail to file returns and remit taxes are being assessed by the City's Finance division, but collection is difficult. Filing property tax liens will increase the likelihood of collection of TOT tax assessments.

Discussion: There are approximately 200 permitted STLU's that are required to file TOT returns on a quarterly basis. The Finance division has developed processes to track these permitted properties, review returns, audit, and to assess transient occupancy taxes for properties that fail to file returns or grossly understate the rental revenue. Unpermitted STLU properties also operate within the City. When identified, staff assesses transient occupancy taxes and will utilize property tax liens to collect unpaid taxes.

Staff has worked with the City Attorney to develop a process to enforce the city's Ordinance, which requires the property owner (or operator) to file quarterly returns and remit taxes. The process provides for:

- certified notification of the requirement to file returns by the owner/operator,
- notification and assessment of late filing penalties,
- assessment of transient occupancy taxes, penalties, and interest for failure to comply, and
- filing of a property tax lien

This process allows the property owner/operator to request an Administrative Hearing to appeal any tax assessment. Property tax liens will be filed, if upheld, following the determination by the Administrative Hearing officer.

Collection of delinquent transient occupancy taxes has proven difficult. While the City's existing Ordinance provided for the filing of tax liens for delinquent taxes, the process of legal notifications and an appeal process by the property owners was not addressed specifically within the Ordinance. The City Attorney conducted research on the subject matter and has assisted staff in developing this new process, which is compliant with both local and State laws.

Staff is recommending the adoption of the attached Resolution to authorize the Finance and Administrative Services Director to file property tax liens against properties that fail to pay outstanding TOT assessments.

Recommended

Action: STAFF RECOMMENDS THAT the City Council Adopt Resolution No._____ titled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ACKNOWLEDGING AUTHORITY OF THE FINANCE AND ADMINISTRATIVE SERVICES DIRECTOR TO IMPOSE TAX LIENS TO COLLECT DELINQUENT TRANSIENT OCCUPANCY TAX."

Attachments: 1. Resolution

Notification: None

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ACKNOWLEDGING AUTHORITY OF THE FINANCE AND ADMINISTRATIVE SERVICES DIRECTOR TO IMPOSE TAX LIENS TO COLLECT DELINQUENT TRANSIENT OCCUPANCY TAX

WHEREAS, the City Council has authority under California Revenue and Tax Code section 72870, subdivision (a), to “levy a tax on the privilege of occupying a room” for a period of 30 or fewer days (hereafter, “transient occupancy tax” or “TOT”); and

WHEREAS, since 1967 the City has levied a transient occupancy tax as authorized by statute; and

WHEREAS, since 2010, with the adoption of Ordinance No. 1508, the Finance and Administrative Services Director has been authorized to “file for and record in the office of the county recorder a notice of lien specifying the amount of [TOT], [tax] penalties, and interest due” (now codified in section 3.24.290 of the municipal code); and

WHEREAS, the timely collection of delinquent TOT benefits the City’s finances and the City as a whole.

NOW, THEREFORE, The City Council of the City of San Clemente does hereby resolve as follows:

Section 1. The City Council hereby directs the Finance and Administrative Services Director to act in his existing authority under SCMC section 3.24.290 to file tax liens when the Director deems them to be appropriate and potentially helpful in timely collecting delinquent TOT, including tax penalties and interest arising from delinquent payment.

Section 2. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

[Continued on next page]

PASSED AND ADOPTED this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney

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