



Legislation Text

File #: 2024-0736, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): County Administrator's Office

Staff Name and Phone Number: McCall Miller, 707-565-2431

Vote Requirement: 4/5th

Supervisory District(s): Countywide

Title:

Transient Occupancy Tax Ordinance - First Reading

Recommended Action:

- A) Conduct a public meeting to introduce and discuss an ordinance amending Section 12-10 of the Sonoma County Code to make certain definitional changes. If the ordinance is adopted at the July 23, 2024, Board meeting, it will be placed on the ballot at the November 5, 2024 general election and will become effective if it is approved by a majority of the voters voting on the measure.
- B) Adopt a Resolution introducing, reading the title of, and waiving further reading of the proposed ordinance.

Executive Summary:

The County's Transient Occupancy Tax (TOT) Ordinance (Ordinance), codified in Sonoma County Code (SCC) Chapter 12, requires all Operators within the unincorporated County to collect and remit TOT on the total amount of rent paid for occupancy in any lodging. The current TOT rate is 12%, which was last increased by 3% in 2016. This proposed Ordinance amendment includes definitional changes to SCC Section 12-10 to update and modernize the Ordinance to align with current practice in the tourism industry related to overnight stays and to encompass the expansion in operators and lodging booked through online marketplaces, which did not exist when the Ordinance was initially drafted. These proposed changes not only modernize the Ordinance, but ensure that TOT applies to all Operators, including online travel companies, within the unincorporated County.

This amendment does not increase the current TOT rate. Rather, it updates definitions to explicitly define online travel companies (defined in the Ordinance as Accommodations Intermediary) as Operators who must collect and remit TOT and expands/clarifies all charges that constitute Rent that are subject to TOT, including service fees charged by the online travel companies (Accommodations Intermediary).

Additional definitional updates include adding the term Accommodations Provider, replacing the definition of Operator, and adding the term Vacation Rental, which is declaratory of existing law, to align with current terminology used elsewhere in the SCC, and adds that term to the definition of Lodging.

Because this amendment seeks to explicitly include the online marketplaces as Operators to be subject to TOT and expands definitions under the current Ordinance, voter approval is required pursuant to Proposition 218. If the Board adopts the resolution introducing, reading the title of, and waiving further reading of the

proposed Ordinance today, the Ordinance will come back to the Board for adoption on July 23, 2024. If the Ordinance is adopted and submitted to the voters at the November 5, 2024 election, a simple majority vote will be required for the Ordinance amendment to pass.

Discussion:

Transient Occupancy Tax Funding

Transient Occupancy Tax (TOT) is authorized under California Revenue and Taxation Code Section 7280 as an additional source of non-property tax revenue to local government. TOT can be either a general tax, where the revenue is available for all general government purposes, or a special tax, where the revenue is required to be spent on specific purposes. Sonoma County's TOT is a general tax.

TOT is levied at a current rate of 12% in unincorporated Sonoma County, a rate established in 2016 by the voter-approved Measure L. Currently, the first 9% of the TOT rate, which was in place prior to Measure L, is allocated 33% to the General Fund and 67% to the Community Investment special revenue fund; and the last 3% is allocated to the Measure L fund. The Community Investment Fund utilizes TOT to fund various grant programs to encourage economic development, community engagement, and enhance culture through grants to community non-profits for advertising and economic development, events, and advertises the county as a visitor destination with the goal of advancing economic growth through tourism.

Additionally, the program provides grants to address impacts on safety due to tourism and to enhance community services throughout the county, in addition to providing funding to the Regional Parks Department, the Economic Development Department, and a number of other county department activities. Measure L funds pay for fire services, road repair and improvement, affordable housing and more.

Proposed Changes to Ordinance

This Ordinance amendment seeks definitional changes only. Specifically, it:

1. Updates the definition of Operator to mean either an a) Accommodations Intermediary or an b) Accommodations Provider.
2. Adds the definitions of Accommodations Intermediary, which is broad enough to include any online marketplace, online travel company, online vacation rental site or marketplace or internet-based platform that directly or indirectly facilitates the rental or booking of lodging, and Accommodations Provider, which is distinguished from the former in that it includes all other owners, operators, managers, and providers of lodging.
3. Expands/clarifies the definition of Rent to include a non-exhaustive list of fees and charges subject to TOT, including services fees and facilitation fees.
4. Adds the definition of Vacation Rental, which is declaratory of existing law, and consistent with the intent of modernizing the ordinance, and adds this term to the definition of Lodging.

Because online travel companies, rental sites or marketplaces, or internet-based platforms facilitating rental or booking of lodging (online travel companies et al.) were not in existence when the TOT ordinance was initially adopted, they are not explicitly listed as Operators. Further, fees are oftentimes charged by Operators for Lodging that are not explicitly listed in the Ordinance, such as service fees. This update will explicitly include the online travel companies as Operators and expands/clarifies that those fees are included in rent and subject to TOT.

Effect of Ordinance Amendment on Voluntary Collection Agreements

The County currently has voluntary collection agreements (VCAs) with both Airbnb and HomeAway, Inc. Contractually, both Airbnb and HomeAway, Inc. have voluntarily agreed to be Operators and collect and remit TOT per the terms of the respective VCAs. Because the agreements are voluntary, they can be terminated by either party. If this Ordinance amendment is approved by the voters, the VCAs will be null and void as of the operative date of the Ordinance, as both Airbnb and HomeAway, Inc. would explicitly be Operators required to collect and remit TOT. Therefore, the VCAs would no longer be necessary.

Stakeholder and Community Outreach

Staff from the County Administrator's Office, Auditor-Controller-Treasurer-Tax Collector, and County Counsel have conducted several meetings with various stakeholder and community groups, including:

- Accommodations Intermediaries (online travel companies et al.) currently in voluntary collection agreements with the County - Airbnb and HomeAway Inc.
- Sonoma County Tourism
- Sonoma County Hospitality Association
- Lower Russian River Municipal Advisory Council (meeting on May 9, 2024)

Conversations with Airbnb and HomeAway Inc. will continue throughout this amendment process and into the implementation of the Ordinance, if approved by the voters.

Administrative Considerations, Including Audit and Reporting Provisions

If this Ordinance is approved by a majority of the voters casting ballots at the November election, staff will return with a second Ordinance update in 2025 (2025 Update) to make administrative and clean up changes only, which do not require voter approval. The reason for this two-step ordinance amendment process is because many of the administrative changes that will occur in the 2025 Update will depend on if this Ordinance amendment with definitional changes is approved.

Importantly, if this Ordinance amendment is approved by the voters, all Accommodations Intermediaries and Accommodations Providers will be deemed Operators under the Ordinance who must comply with all the provisions in the Ordinance, including the Reporting and Audit provisions. If the 2025 Update is necessary because this Ordinance is approved at the November election, staff will continue to work with stakeholder and community groups throughout any administrative changes to the Ordinance as needed.

Potential Use of New Revenue

Because the TOT is a general tax, the Board of Supervisors can allocate the funds for any general governmental purpose. The Board of Supervisors has adopted the Community Investment Fund Policy described above for the allocation of TOT revenue. While it is difficult to approximate the amount of increased revenue this Ordinance amendment will generate, a conservative estimate of \$1,500,000 has been provided by Granicus, a County vendor who assists with ongoing monitoring of short-term rental websites.

Timeline

If the Board approves the recommended action presented today of adopting a resolution introducing, reading the title of, and waiving further reading of the proposed ordinance, staff will return to the Board on July 23,

2024 with an item to adopt the Ordinance and to adopt a resolution calling for an election and to submit to the Ordinance to the voters of Sonoma County.

If the Ordinance is approved by a majority of the voters voting at the November 5, 2024 election, the Operative date of the Ordinance will be July 1, 2025. This will allow time for all Operators to be able to comply with the Ordinance and additionally will allow for the 2025 Update to be brought to the Board for any desired administrative changes.

Strategic Plan:

N/A

Racial Equity:

Was this item identified as an opportunity to apply the Racial Equity Toolkit?

No

Prior Board Actions:

11/28/2023: The Board rejected an Ordinance to amend the Transient Occupancy Tax Ordinance and directed staff to conduct additional stakeholder outreach prior to returning to the Board.

10/4/2022: The Board adopted Ordinance No. 6391 amending the Transient Occupancy Tax Ordinance. This amendment did not change the tax rate.

8/9/2016: The Board adopted Ordinance No. 6173 amending the Transient Occupancy Tax Ordinance. This amendment included a tax rate change from 9% to 12%.

1/6/2009: The Board adopted Ordinance No. 5823 amending the Transient Occupancy Tax Ordinance. This amendment did not change the tax rate.

FISCAL SUMMARY

Expenditures	FY 24-25 Adopted	FY 25-26 Projected	FY 26-27 Projected
Budgeted Expenses			
Additional Appropriation Requested	\$675,794- \$1,126,324		
Total Expenditures	\$675,794- \$1,126,324		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance	\$675,794- \$1,126,324		
General Fund Contingencies			
Total Sources	\$675,794- \$1,126,324		

Narrative Explanation of Fiscal Impacts:

The costs of the election are estimated to be between \$675,794 and \$1,126,324. A number of factors may influence and alter this amount, such as the number of other measures that are on the November ballot. If successful, the proceeds of the tax can cover the costs associated with this measure. Current estimates of Community Investment Fund Balance are anticipated to be sufficient to cover the costs of the measure if unsuccessful.

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment A - Proposed Ordinance

Attachment B - Resolution introducing, reading the title of, and waiving further reading of the proposed ordinance.

Attachment C - Current Ordinance Redline

Attachment D - PowerPoint Presentation

Related Items "On File" with the Clerk of the Board:

None