



Office of the City Manager

CONSENT CALENDAR
November 13, 2012

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Michael Caplan, Manager, Office of Economic Development
Subject: Amending BMC Chapter 7.36; Transient Occupancy Tax Ordinance

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 7.36, the Transient Occupancy Tax (TOT) Ordinance, to allow hotel/motel assesseees to pass through the cost of Berkeley Tourism Business Improvement District (BTBID) assessments to their guests without it being subject to TOT.

FISCAL IMPACTS OF RECOMMENDATION

It was never the intention of Visit Berkeley and hotel industry leaders who advocated for the recently adopted BTBID that the assessment itself (1% of room rate) be taxed as TOT. However, staff has recently determined that the existing TOT Ordinance would tax any pass-through of these fees to guests. The proposed Ordinance amendment would allow hotels and motels to pass through the BTBID assessment to guests as a fee that is not subject to City's TOT.

The total amount of TOT that would be foregone by not taxing the assessment is approximately \$45,000 although it is important to note that the TOT itself would remain at the same 12% rate as it has been historically. Staff expects that successful implementation of the BTBID will generate significant increases in City TOT revenues over time as the program's Marketing District Plan is implemented.

CURRENT SITUATION AND ITS EFFECTS

The current TOT Ordinance does not allow hotel operators to pass through BTBID assessment fees to their guests. This means that if hotel operators charge guests separately for BTBID assessment fees, funds are considered additional rent revenue and are then subject to the TOT.

The proposed Ordinance change eliminates this problem by modifying the definition of room rent that so that BTBID assessments passed through to guests are exempt from TOT:

“Rent” means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in

money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever, *except for charges passed through to a Transient to pay for the Berkeley Tourism Business Improvement District established on September 18, 2012, by Resolution 65,899 – N.S., as well as any successor thereof, as long as such charges are: (1) separately stated and identified as such on the bill; and (2) do not exceed the amount of the assessment attributable to that Transient's Occupancy.* [italics indicate amended language]

BACKGROUND

In June of 2012, Visit Berkeley presented the City Clerk with signed petitions representing over 85% of the assessed valuation of the proposed BTBID participants. On July 17, 2012, Council adopted Resolution 65,846-N.S. which declared their intention to establish the BTBID and set the formation process in motion. On September 11, 2012, Council held the public meeting as required by California Government Code Section 54954.6 for the formation of a business based business improvement district. On September 18, 2012, Council conducted a public hearing on the BTBID formation and the City Clerk tallied letters of protest against the proposed BTBID. Protest letters represent 8% of the proposed total assessment value, far below the 50% +1 threshold required by law to block formation of the District. At that September 18, 2012 meeting, Council adopted the Resolution of Formation 65, 899-N.S. which created the BTBID.

During the subsequent process of establishing procedures for collecting the assessments from hotel/motel owners, staff realized that the City's current TOT Ordinance taxes any BTBID assessment that is passed through to guests. Hotel/motel operators expected that they could pass these assessment fees through to guests and not have that additional charge count as room rental income. Staff determined that making a minor change to the definition of room "rent" in the Ordinance would eliminate this problem.

RATIONALE FOR RECOMMENDATION

The community leaders who advocated for the BTBID intended for hotels to pass assessment costs to their guests. They did not realize that the current TOT Ordinance would tax this approach. The Ordinance change would maintain hotel/motel industry support for the BTBID which is expected to raise \$375,000 in additional funds to promote Berkeley as a tourist destination, and, if successful, will increase General Fund revenue from the TOT.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

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Attachments:
1: Ordinance

ORDINANCE NO. #,### - N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 7.36 ON TRANSIENT OCCUPANCY TAX TO EXEMPT PASS-THROUGH OF TOURISM IMPROVEMENT DISTRICT ASSESSMENT CHARGES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That subdivision (E) of Section 7.36.020 of the Berkeley Municipal Code is amended to read as follows:

E. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever, except for charges passed through to a Transient to pay for the Berkeley Tourism Business Improvement District established on September 18, 2012, by Resolution 65,899 – N.S., as well as any successor thereof, as long as such charges are: (1) separately stated and identified as such on the bill; and (2) do not exceed the amount of the assessment attributable to that Transient's Occupancy.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

