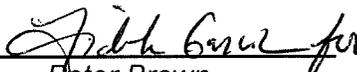


STAFF REPORT
COUNCIL MEETING DATE:
September 10, 2012

ITEM FOR COUNCIL CONSIDERATION:

Options for disseminating information related to Measure E-2012, the City Services Support Measure.

City Attorney


Peter Brown

City Manager


Dave Durlfinger

ACTION ITEM X; NON-ACTION ITEM

STAFF RECOMMENDATION: Direct staff to proceed pursuant to the public information plan described.

SAMPLE MOTION: I move to direct staff to take steps as necessary to provide the public with information concerning Measure E2012, pursuant to the plan described.

I. BACKGROUND

At its regular meeting of June 11, 2012, the City Council authorized placing the question of a hotel bed tax rate increase before voters on the November 6, 2012 General Election. Measure E2012 would increase the City hotel bed tax, also known as the Transient Occupancy Tax (TOT), from 10% to 12% of the room rate paid.

The purpose of this agenda matter is to review what information is available to voters in order to learn about Measure E2012, and to allow the City to determine what, if any, additional efforts should be made to disseminate information about the Measure to the voting public.

II. DISCUSSION

The Voter's Pamphlet (a part of the Sample Ballot available to voters) includes the City Attorney's Impartial Analysis and the Argument in Favor¹ of Measure E2012, and is scheduled to be mailed by County Elections to registered Carpinteria voters sometime shortly after September 27, 2012.

Also, the City developed information and analysis related to Measure E2012, including the reasons why the City determined to proceed with bringing the ballot measure to voters, which is a part of various staff reports and presentations made during City Council meetings. These staff reports and related information, the City Attorney's Impartial Analysis, and the Argument in Favor are all available on the City's website. The City Council may elect to develop additional materials and/or conduct additional activities aimed at informing the public about Measure E2012.

As discussed below and in the Legal section of this report, in California city public information efforts concerning ballot initiatives are not uncommon and serve a unique purpose that is different than campaigning for and against an initiative. The following is an outline of a public information plan that could be implemented should the Council direct staff to prepare additional information.

Public Information Plan Outline

Purpose: Measure E2012 asks voters to decide on an important City revenue matter and the City has an interest in insuring that voters are aware of the Measure and have access to factual, impartial information about the proposal.

Audience: The City is wishing to inform all potential voters in the City of Carpinteria for the November 6, 2012 election.

Content: The City's interest is in providing impartial, factual information to voters. The City can do this by using information it has already developed. The City may also choose to develop additional information and/or undertake additional means of reaching out to the public. Staff believes that information already developed through various staff reports and a Frequently Asked Questions flyer (attached) can be referenced for the additional outreach efforts should such efforts be determined appropriate by the City Council.

Reaching the Audience: Through the normal avenues of communication that are used by the City, e.g., website, GATV Channel 21 scroll, monthly and quarterly

¹ An argument against Measure E2012 was not submitted and will therefore not appear in the Voter Pamphlet, and this will also mean that there will be no rebuttal arguments provided to voters either For or Against the Measure.

newsletters, the public will either be provided information about the Measure directly or linked through the City's website to existing information such as the City Attorney's Impartial Analysis.

Other means for disseminating information such as direct mailings and/or public forums could also be used; however, given the uncomplicated nature of the measure, the cost, and the legal considerations discussed in the following section, staff is not recommending their use in this instance.

III. LEGAL CONSIDERATIONS

Government agencies may not use public funds to take sides in a campaign to advocate the passage or defeat of a ballot measure.² However, the courts have taken care to distinguish permissible informational activities from impermissible campaign expenditures.

There is no bright line rule about where the line is drawn between informational activities and campaigning. However a recent California Supreme Court decision (*Vargas v. City of Salinas*) clarified the circumstances under which a public agency pursues a proper informational role. In that case, the Court found that a city did not violate the prohibition against using public resources for campaign purposes when it disseminated information about a tax-relief initiative through a series of staff reports and presentations analyzing the effects of the lost revenue. The Court also found the following to be permissible informational activities: posting the staff reports, presentations and meeting minutes analyzing the measure on the City website, sharing the City's analysis in the City's regular newsletter, and distributing a flyer about the budget cuts that would likely occur if the measure passed. The Court found these activities to be informational even though the measure's proponents disagreed with the city's analysis about the effect of the measure.

One factor the *Vargas* Court considered in its evaluation of whether the communication constituted permissible information or prohibited advocacy was the channel of communication used. If a city's publications are disseminated through its typical channels, such as in staff reports and meeting minutes, on its newsletter or website, it is more likely to be considered informational. Also, when information about a ballot measure is shared in a forum that is open to the public, such as a city meeting or workshop, it allows all sides to express their views, so the court is more likely to find the communication informational. In contrast, if the city uses atypical channels or one-way modes of communication that are commonly associated with campaigning, such as bumper stickers, posters, advertising floats, television and radio spots and billboards, it is more likely to be considered advocacy.

² Note that the restrictions that apply to local agencies vary based on their underlying authority. For example, in *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Association of Governments*, 167 Cal. App. 4th 1229 (2008), the court of appeal found that SBCAG is authorized by statute to formulate and sponsor ballot measures.

Another factor the Vargas court considered is the content of the communication. If express advocacy language is utilized, such as "vote for," "elect," "support," "cast your ballot," "vote against," "defeat," "reject," or other equivalent language, it will be considered campaigning. If the publication or communication is factual, balanced and relevant then it will be considered informational. While a city should avoid advocacy statements, the Vargas decision clarified that it is permissible for an agency to inform the public of its opinion on the merits of a pending ballot measure and of the impact that passage or defeat of the measure is likely to have.

Based on these guidelines established by the courts, when the City undertakes its public education efforts, it should take care to emphasize the facts about Measure E2012, avoid statements that urge a particular result in the election, and use regular agency channels of communication and/or channels that are open to all views.

IV. ATTACHMENTS

Measure E2012 Frequently Asked Questions

Frequently Asked Questions
Measure E2012
The City Services Support Measure
August 2012

1. What is Measure E2012? Measure E2012 will appear on the November 6, 2012 ballot, asking voters whether or not the City's Hotel Bed Tax should be increased from its current 10% to 12% of the room rate. Here is an example of how the change in the rate would apply to a hotel room rate:

	Current Hotel Bed Tax 10%	Proposed 12% rate
Room Rate	\$100	\$100
Regional Tourism Assessment	\$1	\$1
CITY HOTEL BED TAX	\$10.10	\$12.10
Total	\$111.10	\$113.10

2. What is a Hotel Bed Tax? The hotel bed tax, technically titled a Transient Occupancy Tax (TOT), is a General tax required to be paid by the occupant of a room(s) in a hotel, motel, or other lodging facility. The tax is collected from hotel guests by the operator of the hotel along with the other room charges. Hotel operators then pass along the bed tax to the City on a monthly basis.

Pursuant to California law, cities may impose the hotel bed tax on persons staying up to 30 days at a lodging facility. Rates are set at a city's discretion and may include a specific amount as well as a percentage.

Over 400 California cities and 55 counties impose a hotel bed tax. The most common rate is 10%, but rates range from 3.5% to 19%. In 2008, 47 other cities in California had a hotel bed tax rate at 12% and 17 others were greater than 12%.¹ The current hotel bed tax rate in the City of Carpinteria is 10% of the nightly room rate. The City of Santa Barbara's rate is already 12%. This November 6, voters in the Cities of Goleta, Solvang and Buellton will also decide if the hotel bed tax in their respective cities should be increased from 10% to 12%.

3. How long has the City had a hotel bed tax? The hotel bed tax was established in Carpinteria through an ordinance adopted by the County of Santa Barbara in 1963. Thus, the hotel bed tax was already in existence at the time the City of Carpinteria incorporated in 1965. The tax was initially charged at a rate of 4% of the nightly room rate. The City increased the tax to 5% in 1968, to 6% in 1971, to 8% in 1978, and to 10% in 1991, each time following the trend established for the rate in the region. It has been 21 years since the rate was last changed.

4. How much revenue would be generated by this change in the hotel bed tax rate? The City has estimated that an increase in the hotel bed tax rate from 10 to 12% would raise approximately \$250,000 in additional bed tax revenue annually. Total City hotel bed tax revenue declined approximately 10% in recent years from \$1,452,709 in 2007 to \$1,306,033 in 2011. Meanwhile, costs for providing services to visitors, including law enforcement services and street, park, beach, and public parking and restroom maintenance, have increased. Revenue from Measure E2012 would be unrestricted and could be used to support maintenance of streets, parks and facilities, law enforcement, tourism promotion, or any other public service provided by the City of Carpinteria.

¹ Includes information from The California Municipal Revenue Sources Handbook, 2008 Edition, League of California Cities