

*Proposition K: City of Encinitas TOT on Short-Term Rental Properties*

**Board Recommendation:**

**OPPOSE**

**Rationale:**

The City of Encinitas is proposing two targeted tax increases to discourage short-term rentals of private property in response to increased complaints regarding noise, parking and trash violations. This is poor public policy that penalizes those property owners that have law-abiding tenants. It is also uncertain that the tax increase will address the problem the City is attempting to address. The City Council currently has the ability to adopt fines and levies, and should utilize their legislative authority to adopt ordinances which would better address the problem.

**Background:**

In 2005 the City Council attempted to ban the renting of coastal properties, or short-term rental properties, through a zoning ordinance. The city cited an increase in the amount of complaints brought upon by neighbors for noise, parking and trash violations. The Coastal Commission overturned the decision in 2006 claiming the ban would limit the public's access to area beaches.<sup>1</sup>

On February 20, 2008, the Encinitas City Council adopted a resolution which would allow voters to decide if short-term rental properties (rentals 30 days or less) to pay a 10 percent Transient Occupancy Tax (TOT).

Currently all guests staying in hotels, motels and bed and breakfast establishments are required to pay the 10 percent TOT. Eight percent of the TOT is currently deposited into the General Fund while the remaining two percent is allocated to a special fund dedicated to beach sand replenishment and stabilization projects.<sup>2</sup>

Currently 128 short-term rental properties are operating within the City of Encinitas. The municipal code requires these properties to acquire a permit and pay an annual registration fee of \$150 and follow certain guidelines for parking and noise. For fiscal year 2006-2007, the city generated \$21,000 through this process and is expected to receive \$20,000 for fiscal year 2007-2008. Since its inception in 2006, no additional staff has been required to perform this permitting duty. The current ordinance not only mandates property owners pay a \$150 registration fee, but requires owners place signage on the property informing neighbors who to call in case of an emergency or complaint.

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<sup>1</sup> Tucker, Wehtannah. "Council votes to put rental tax initiative on ballot". Wehtannah Tucker. *The Coast News*. February 29, 2008.

<sup>2</sup> City of Encinitas Staff Report. February 20, 2008.

**Ballot Measures:**

Since the tax will be distributed to both the General Fund and a special fund, the tax to be imposed on short-term rental properties has been split into two separate questions.

Proposition F

The question put before voters will read:

“Shall an ordinance be approved to amend Section 3.12.030 of the Encinitas Municipal Code to require guests of short term rental units (for 30 days or less) to pay 8% of the rent charged as a transient occupancy tax effective January 1, 2009?”

Proposition G

The question put before voters will read:

“Shall an ordinance be approved to amend Section 3.12.030 of the Encinitas Municipal Code to require guests of short term rental units (30 days or less) to pay 2% of the rent charged as a special transient occupancy tax for beach sand replenishment and stabilization projects effective January 1, 2009?”

While Proposition F requires a simple majority for passage, Proposition G will require a two-thirds majority for enactment.

**Fiscal Analysis:**

General Fund

Beginning in FY 2008-2009, TOT is projected to increase by three percent annually until FY 2012-2013. Table 1 below outlines the City of Encinitas’ TOT revenues between FY 2004-2005 and projected FY 2008-2009 revenues.

**Table 1**

	<b>FY04-05 Actual</b>	<b>FY05-06 Actual</b>	<b>FY06-07 Estimated</b>	<b>FY07-08 Projected</b>	<b>FY08-09 Projected</b>
<b>TOT Revenues</b>	\$ 790,943	\$ 876,146	\$ 898,000	\$ 919,896	\$ 933,621
<b>Total GF Revenues</b>	\$ 37,804,990	\$ 41,069,758	\$ 43,680,000	\$ 45,905,146	\$ 47,889,521
<b>TOT as Percent of GF</b>	2.1%	2.1%	2.1%	2.0%	1.9%

In 2004, city staff estimated \$472,000 in TOT would be generated annually if the 128 short-term rentals secured renters for 12 weeks of “high season” and 10 weeks of “low season”.<sup>3</sup> In order to achieve this figure, all properties must secure 1,536 weeks of “high season” rentals and 1,280 weeks of “low season” rentals for a total of 2,816 weeks. During the low season, particularly in winter, the lengths of rentals are typically for periods of more than

<sup>3</sup> Ibid.

thirty days. Other periods in which properties are rented on a week-to-week basis include Easter break, Memorial Day and parts of summer.

Another conservative estimate was completed in September 2007 to determine if the cost of an election to place this measure on a ballot would be covered by the collection of the tax. That analysis stated if all 128 permitted rentals would rent for a minimum of one week per year at an average of \$2,603 per week, annual revenues would total \$33,318. The estimated cost of this election will be approximately \$25,000 to \$30,000.<sup>4</sup>

If voters approve Propositions F and G, the ordinance would take effect beginning January 1, 2009. Assuming the staff projections in 2004 and estimates of three percent growth annually are accurate, TOT revenues will total over \$1.4 million for FY 2009-2010.

*Beach Sand Replenishment Fund*

Assuming 2004 estimates, passage of Proposition G would allow the city to collect an additional \$118,000 from short-term rental properties for the sand replenishment and stabilization fund. Expenditures for sand projects from this fund totaled \$93,401 in FY 2006-2007.

**Table 2**

	<b>FY06-07 Actual</b>	<b>FY07-08 Projected</b>	<b>FY08-09 Projected</b>	<b>FY09-10 Projected</b>	<b>FY10-11 Projected</b>
<b>Beach/Sand Revenues</b>	\$ 217,658	\$ 229,974	\$ 234,573	\$ 241,611	\$ 248,859
<b>Revenue Estimates w/ Prop G</b>	\$ -	\$ 229,974	\$ 352,573	\$ 363,151	\$ 374,045

*Enforcement*

Since the inception of the short-term rental registration fee, no additional city staff has been utilized to enforce the ordinance. City staff has been unable to determine if additional resources will be needed to carry out the duties outlined within these measures. The cost for enforcement and monitoring of the ordinance may result in a “net loss” in revenues if conservative estimates for short-term rental properties are accurate. It is apparent through revenue projections and the lack of enforcement that additional TOT revenues will not be used to develop additional on-going programs within the city.

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<sup>4</sup> Ibid.