

Agenda Report Reviewed by:
City Manager: 

**CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM**

Meeting Date: April 21, 2020

To: Honorable Mayor and City Councilmembers

From: Ana Kwong – Administrative Services Director

Subject: Transient Occupancy Tax (TOT) Payment Deferral Program

Recommendation Consider adoption of resolution to defer the payment and reporting of the Transient Occupancy Tax as an Exercise of Emergency Powers Pursuant to the City Emergency Declaration

Funding: Currently Budgeted: X Yes _____ No _____ N/A
Net General Fund Cost:
If Cost to Other Fund(s),

Account Code/Costs authorized in City Approved Budget AK (verified by Administrative Services Department)

INTRODUCTION:

The item is for the City Council to consider adoption of resolution to defer the payment and reporting of the Transient Occupancy Tax as an Exercise of Emergency Powers Pursuant to the City Emergency Declaration.

BACKGROUND:

The COVID-19 pandemic has created significant and unprecedented financial impacts worldwide. Local businesses and residents in Sebastopol are experiencing economic loss because of the situation. The City of Sebastopol collects transient occupancy taxes (TOT) from hotel, motel, and short-term vacation rental operators within its jurisdiction. The City's TOT rate is equivalent to 12 percent of the cost of a room per night and is a tax imposed on visitors occupying a room in a hotel, motel, inn, or similar establishment. The tax is a debt owned by the transient person to the City. The tax collected is required to be held in trust until remitted. The hotel remits the TOT collected along with a completed monthly TOT return to the City on a monthly basis. TOT payments are due to the City on the last day of the month that follows the collection month. For example, TOT collected for March are due by April 30. Failure to pay TOT by the due date will result in a 10 percent penalty. If payment of the tax is delinquent more than 30 days, an additional 10 percent penalty will be added plus interest at the rate of one-half of one percent (0.5%) per month.

DISCUSSION:

The statewide shelter in place/at home orders have significantly impacted consumer behavior and economic activity as restaurants are serving take-out only, events have been cancelled, schools,

colleges, and businesses remain closed, and consumers stay home to slow the spread of the pandemic. Local hotels are experiencing sharp declines in business with low occupancy rates, a trend that is likely to continue until the statewide or local restrictions are eased and/or lifted. As of the writing of this staff report, the City has received inquiry from one hotel asking for deferral of TOT remittance to the City. The City is only aware of City of Petaluma allowing TOT deferment.

Staff seeks direction from the City Council whether it desires to allow TOT deferrals to assist hotels in Sebastopol through this time. If the City Council supports TOT deferrals, staff recommends the City Council adopt the attached resolution, which authorizes hotel operators, upon written request, to defer their March and April TOT payments as long as payments are made on or before June 30, 2020. Additionally, staff recommends granting authority to the City Manager to defer payment of TOT, upon written request, for months subsequent to April 2020, in two-month increments. For example, if the hotel operator requests deferral of TOT for the months of May 2020 and June 2020, the due date for those months would be August 31, 2020.

With this recommendation, hotels would continue to submit their monthly TOT return to the City on their regular due dates with all applicable information reported, so that the City could book them as receivables due at a later time. The March 2020 return is due by April 30, 2020 and the April 2020 return is due by May 31, 2020. If fully paid by the deferral due date, the City will not impose any penalties or interest on the payments. If the hotel operator fails to make timely and full payment by the due date, the hotel operator will be immediately liable for full amount of taxes, assessments, penalties, and interest prescribed by City ordinance, going back to the dates upon which the original payments were due.

FISCAL IMPACTS:

TOT revenue made up 6% is City's General Fund source. On average, the City receives approximately between \$135,000 to \$175,000 per quarter in TOT revenues from the 2 hotels located within its boundaries. This amount fluctuates based on seasonal tourism months. For Fiscal Year (FY) 2019/20, the City's adopted budget anticipated approximately \$650,000 in TOT revenues. With lower occupancy rates presently being experienced and expected to continue during the COVID-19 pandemic, current and future TOT due to the City will be significantly less than \$650,000 amount. Currently, staff is anticipating an approximate \$100,000 decrease for a total of \$550,000 in TOT revenues through the end of the fiscal year. Given the extreme uncertainty, staff will continue to monitor and revise its forecast as needed as it receives information from the local hotels and industry.

Based on prior year collections, for the initial March and April deferral period, staff anticipates TOT receipts approximately \$75,000. Should City Council approve the resolution, the TOT deferred revenues would be realized by the City at a later date (one to two months later). Given that this is a short-term deferral by one to two months and that TOT is expected to be collected by the deferral due date, the City may be able to absorb delayed payments, assuming no other major interruptions to other major cash flows such as sales tax, property tax and Utility User Tax.

ALTERNATIVES:

The City Council could choose not to allow hotels to defer their transient occupancy tax revenues, and to require them to pay the TOT owed by the scheduled due dates or be subject to penalties and interest. Hotels exhibiting good business practices should be separating their TOT collections from transients and held in trust separately from other income sources. However, the reality may be that some hotels/motels are depending on TOT collections to help with cash flow during this tough economic time. If the City does not provide for this deferral, hotels may experience continued financial hardship.

if other relief is not made immediately available. Although staff cannot predict the specific impact to each hotel, the businesses' staffing and/or operations may be affected.

RECOMMENDATION:

Staff recommends the City Council to consider adoption of resolution to defer the payment and reporting of the Transient Occupancy Tax as an Exercise of Emergency Powers Pursuant to the City Emergency Declaration.

Attachment(s):

Resolution entitled "A Resolution of the Sebastopol City Council Authorizing Hotel Operators to Defer the Payment and Reporting of Transient Occupancy Tax as an Exercise of Emergency Powers Pursuant to the City's Emergency Declaration"

RESOLUTION NO. _____

A RESOLUTION OF THE SEBASTOPOL CITY COUNCIL AUTHORIZING HOTEL OPERATORS TO DEFER THE PAYMENT AND REPORTING OF TRANSIENT OCCUPANCY TAX AS AN EXERCISE OF EMERGENCY POWERS PURSUANT TO THE CITY'S EMERGENCY DECLARATION

WHEREAS, the City of Sebastopol City Council does hereby find, order and resolve as follows:

SECTION 1. Recitals

- A. A severe acute respiratory illness caused by a novel (new) coronavirus, known as COVID-19, has spread globally and rapidly, resulting in severe illness and death around the world. On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic. At the time, WHO officials report that sustained human-to-human transmission of the virus is occurring and that transmission from a symptomatic individuals has been documented.
- B. On March 12, 2020, Governor Gavin Newsom issued a new executive order further enhancing state and local government's ability to respond to COVID-19 Pandemic. On March 13, 2020, the President of the United States, Donald Trump, declared a state of national emergency in response to the COVID-19 outbreak.
- C. The City's Director of Emergency Services, in accordance with the California Emergency Services Act and City of Sebastopol Municipal Code, proclaimed the existence of a local emergency within the City of Sebastopol on March 12, 2020. On March 17, 2020, the City of Sebastopol City Council adopted a resolution ratifying the Proclamation of Local Emergency in response to the Federal, State and local emergency declarations due to the COVID-19 emergency and the State and County Orders to "Shelter-in-Place".
- D. Hotels and motels are allowed to remain open pursuant to the Governor's Executive Order 33-20; however, they have all suffered significant revenue losses as a result of loss of business due to the pandemic.
- E. Hotels in the City are subject to Chapter 3.12 of the Sebastopol Municipal Code, which requires them to collect from hotel guests 12 percent occupancy tax, referred to as the transient occupancy tax ("TOT"), and hold such tax revenue in trust for the City and remit such tax on a scheduled basis to the City.
- F. During this time of economic uncertainty and declining hotel revenues, the City Council finds that it is vital to assist the hotels in the City to remain open and viable businesses so that visitors can stay in hotels during this period of local emergency but also so that they will be able to successfully operate again once all state and local orders are lifted.
- G. The City desires to help hotels continue in business and can do so by allowing for a deferral in the due dates of scheduled TOT payments to the City.
- H. This Resolution is an exercise of the City's emergency powers as provided for under State law and Chapter 2.36 of the Sebastopol Municipal Code, is temporary in nature and is intended to provide temporary financial relief to hotels within the City of Sebastopol during, and immediately following, the City's response to the COVID-19 pandemic.

WHEREAS, the Sebastopol City Council hereby resolves:

SECTION 2. Action

- A. To authorize hotel operators who make a written request with the City to defer payment of the TOT for the months of March and April 2020 to June 30, 2020 and submit a TOT Payment Agreement should they decide to defer payment.
- B. To authorize the City Manager to allow a hotel operator, upon written request, to defer payment of the TOT for months subsequent to April 2020, in two month increments. For example, if the City Manager allows for the deferral of TOT for the months of May 2020 and June 2020, the due date for those months would be August 31, 2020.
- C. If a hotel operator who has requested a deferral does not remit payment and reports required by Chapter 3.12 of the Sebastopol Municipal Code upon the modified due date, the hotel operator shall be subject to the penalties and interest pursuant to Section 3.12.080 with the penalties and interest to apply as of the date that the TOT was originally due, notwithstanding any deferral allowed by this Resolution.
- D. For any hotel operator that has elected to obtain a deferral pursuant to this Resolution, section 3.12.080 of the Sebastopol Municipal Code concerning penalties for failure to remit the TOT when due is hereby suspended, except as provided in Paragraph C and shall be in full force and effect again as set forth in Paragraph E.
- E. For any hotel operator who has elected to obtain a deferral pursuant to this Resolution, section 3.12.070 of the Sebastopol Municipal Code requiring the Tax Collector to take certain actions when an operator fails to remit the TOT collected, including the assessment of penalties and interest, sending notice to the operator, and allowing the operator to have a hearing, is hereby suspended, except as provided in Paragraph C, and shall be in full force and effect again as set forth in Paragraph E.
- F. Upon cessation of the local emergency, all operators who collected the TOT shall remit all payments owed to the City by the end of the following month pursuant to Chapter 3.12. From and after the date the tax is owed, all applicable interest and penalties set forth in Section 3.12.080 shall begin accruing, and the enforcement provisions in Section 3.06.070 may be enforced by the Tax Collector.
- G. Nothing in this resolution shall relieve an operator from collecting from transients the amounts required to be collected, as specified in Section 3.12.030 of the Sebastopol Municipal Code, and all operators shall continue doing so regardless of any deferrals requested under this Resolution. This resolution also does not relieve any operator from its obligation to remit to the City the TOT collected.
- H. Each operator that collects, or has collected, TOT shall continue to comply with Section 3.06.070 of the Sebastopol Municipal Code requiring an operator to report to the City's Tax Collector the total rents charged and received and the amount of tax collected for transient occupancies.

IN COUNCIL DULY PASSED this 21st day of April 2020.

I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the City of Sebastopol City Council by the following vote:

APPROVED: _____
PATRICK SLAYTER
Mayor, City of Sebastopol

VOTE:

AYES:

NOES:

ABSENT:

ABTAIN:

ATTEST: _____
Mary Gourley, MMC, Assistant City Manager/City Clerk

APPROVED AS TO FORM: _____
Larry McLaughlin, City Attorney