

TO: Thomas Frutchey, City Manager

FROM: Jim Throop, Administrative Services Director

SUBJECT: Second Reading of a Proposed Ordinance to Clarify and Make Consistent Certain Provisions Related to Transient Occupancy Tax and Business Improvement District Assessments

DATE: April 19, 2016

NEEDS: For the City Council to hold second reading and adopt an ordinance to update and make consistent certain provisions in the Transient Occupancy Tax (TOT) ordinance and the Tourism and Lodging Promotions Business Improvement District ordinance.

FACTS:

1. The last major update for the Transient Occupancy Tax (TOT) sections of the municipal code was in 1998.
2. The Tourism and Lodging Promotions Business Improvement District (BID), was created by ordinance in 2009, and authorizes an additional 2% assessment over the TOT that is dedicated to the promotion of tourism.
3. The corresponding sections of the municipal code are not entirely consistent. Over the past several years it has become clear that certain sections of the code should be modified to clarify and ensure consistency in the implementation of the TOT and BID assessments.
4. The proposed ordinance makes certain technical changes to ensure that the definitions and collection process for both the TOT and BID assessments are consistent and aligned and to avoid confusion. There is no change proposed for the amount of the TOT (which would require a vote of the people) or BID assessments, (which would require a majority agreement of the hoteliers).
5. There are no substantive changes in the proposed ordinance since first reading. A summary of the proposed ordinance approved by the City Attorney was published in a newspaper of general circulation.

ANALYSIS &

CONCLUSION: The City's Transient Occupancy Tax last major update was in 1998 and the City's Business Improvement District (BID) was created by ordinance in 2009. The two ordinances are similar in nature and should be consistent in terms of such matters as remittance requirements, definitions, applicable exemptions, late fees, etc. The proposed ordinance is intended to accomplish that purpose.

POLICY

REFERENCE: Economic Strategy.

FISCAL

IMPACT: The proposed ordinance may result in a minimal increase in funding to both the General Fund and BID fund. This would primarily be from the refinement of the definition of "rent" and the alignment of the approved exceptions for TOT and BID assessment. .

- OPTIONS:
- a. Hold second reading and Ordinance No. XXX Amending Chapter 3.22 and Chapter 5.06 of the Paso Robles Municipal Code; or
 - b. Amend the foregoing option; or
 - c. Refer back to staff for additional analysis or modification; or
 - d. Take no action

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
AMENDING CHAPTER 3.22 AND CHAPTER 5.06
OF THE EL PASO DE ROBLES MUNICIPAL CODE**

WHEREAS, the Paso Robles Tourism and Lodging Promotions Business Improvement District (BID) was formed via Ordinance 952 N.S. by the City Council of the City of El Paso de Robles (City) in December 2008, and the BID became effective January 16, 2009; and

WHEREAS, after undergoing the necessary hearings and public review of the BID's Draft Annual Report(s), the City Council has approved annual renewals of the BID levy since 2009; and

WHEREAS, the Tourism and Lodging Promotions Business Improvement District (BID) is now known as the Travel Paso Robles Alliance (TPRA); and

WHEREAS, Chapter 3.22 of the Municipal Code levies an assessment on transient lodging establishments, as defined in Chapter 3.22, within the BID; and

WHEREAS, pursuant to California Revenue and Taxation Code §§ 7280 *et seq.*, the City has adopted a transient occupancy tax (TOT) upon the privilege of occupying a hotel, as defined in the Chapter 5.06 of the El Paso de Robles Municipal Code, for a period of 30 days or less; and

WHEREAS, Chapter 3.22 provides that operators required to remit the BID assessment should do so in the same manner an operator remits the TOT; and

WHEREAS, the City desires to make certain clarifying changes to ensure that certain provisions and procedures applicable to the BID assessment are consistent and uniform with the provisions and procedures applicable to the levy and collection of the TOT; and

WHEREAS, the City Council, in adopting this Ordinance, is clarifying certain provisions concerning the collection of the TOT but is not increasing the TOT or the District assessment or modifying the boundaries of the District in any way; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals. The recitals set forth above are true and correct and are incorporated as though fully set forth herein.

Section 2. Section 3.22.030 is amended to read in full as follows:

3.22.030 - Levy of assessment.

An assessment shall be imposed and levied monthly against all tourist lodging establishments within the district boundaries to pay for the improvements and activities of and within the district. As used in this chapter, "tourist lodging establishments" shall mean hotels, as defined in Section 21.08.250 of the El Paso de Robles Municipal Code, but not bed and breakfast establishments, as defined in Section 21.15.220 of the El Paso de Robles Municipal Code, nor campgrounds or recreational vehicle parks.

The amount of the assessment shall be two percent of the rent charged by all existing and new tourist lodging establishments per room per night for all transient occupancies. As used in this chapter, the terms "rent" and "transient" shall have the same meanings as set forth in Section 5.06.020. No assessment shall be imposed on a transient occupant who is exempt under Section 5.06.040. Assessments levied pursuant to this chapter shall not be included in gross room rental revenue for the purpose of determining the amount of the transient occupancy tax. The levy shall begin on July 1, 2008.

Section 3. Section 3.22.040 is amended to read in full as follows:

3.22.040 - Reporting and remitting of assessment.

Assessments shall be collected monthly, or in such other installments as determined by the city council, based upon the total room rental revenues of the previous month and paid to the city's tax administrator. Each operator of a tourist lodging establishment shall on or before the last day of each month report to the city's tax administrator the total gross room rental revenue charged in the previous month. At the same time, the operator shall remit to the city the assessment in the amount of two percent of the gross room rental revenue charged per room per night for all transient occupancies not otherwise exempted under this article. Both the return for the previous month and the assessment for the previous month must be received by the tax administrator on or before the last day of each month. Operators shall report the total gross room rental revenue charged and remit the assessment due in the same manner as the operator reports and remits the Transit Occupancy Tax, per Chapter 5.06 of the El Paso de Robles Municipal Code, to the extent possible.

All assessments shall be held by the city in a separate account established for the district.

Section 4. Section 3.22.050 is amended to read in full as follows:

3.22.050 – Penalty for delinquent payment.

Any operator who fails to remit any assessment imposed by this chapter within the time required shall be subject to the same penalties and interest set forth in Section 5.06.080.

Section 5. The definition of "Rent" in Section 5.06.020 is amended to read as follows:

"Rent" means the gross amount of 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. "Rent" shall include all charges to the transient associated with the occupancy of space in a hotel, including room rental rates, booking fees, cleaning charges, resort fees, and other similar costs.

Section 6. Section 5.06.070 is amended to read in full as follows:

5.06.070 - Reporting and remitting.

Each month, each operator shall make a return to the tax administrator, on a form provided by the tax administrator, of the total rents charged and received and the amount of tax collected for transient occupancies for the previous month. At the time the return is filed, the operator shall remit the full amount of the tax collected for the previous month to the tax administrator. Both the return and the remittance for the previous month must be received by the tax administrator on or before the last day of

each month. The tax administrator may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator.

Section 7. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The People of the City of El Paso de Robles hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 8. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

Section 9. Publication. The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California and cause the same to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Government Code section 36933.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 19th day of April, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Steven W. Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk

APPROVED AS TO FORM:

Iris P. Yang, City Attorney