AGENDA ITEM NO. 9.d.

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:

Matthew J. Fertal

From:

Thomas F. Nixon

Dept:

City Manager

Dept:

City Attorney

Subject:

PROPOSED ORDINANCE

Date:

July 28, 2009

RELATING TO HOTEL VISITORS

OBJECTIVE

To recommend that the City Council approve an amendment to the Hotel Visitors Tax ordinance expressly requiring payment of any tax assessment prior to seeking judicial review.

BACKGROUND

Pursuant to the authority granted to cities by Revenue and Taxation Code §7280, the City has imposed a hotel visitors tax. The City's Hotel Visitors Tax Ordinance requires that hotel operators collect from each transient a tax in the amount of thirteen percent of the rent charged by the operator and remit the tax amount to the City. If a hotel operator does not remit the appropriate tax amount to the City, the City may issue a tax assessment.

In its current form, the City's Hotel Visitors Tax Ordinance does not expressly require a hotel operator to remit to the City the amount of a tax assessment prior to pursuing judicial review of the assessment. While it is the City's position that the current ordinance is intended to require payment of a tax assessment prior to litigation, the proposed ordinance would amend Chapter 12 of Title 3 of the Garden Grove Municipal Code to include an express provision requiring that a hotel operator pay all tax, interest, and penalties as a condition precedent to seeking judicial review of any hotel visitors tax liability, thereby eliminating potential ambiguity on the issue.

DISCUSSION

Section 32 of Article XIII of the California Constitution includes an express "pay first, litigate later" rule for taxes due to the State. This rule requires that all taxes due to the State be paid before seeking judicial review of a tax assessment. The "pay first, litigate later" rule allows revenue collection to continue during litigation so that a taxpayer may not withhold funds upon which the government relies for essential public services. Without

PROPOSED ORDINANCE RELATING TO HOTEL VISITORS TAX July 28, 2009 Page 2

application of the rule, any legal action or defense seeking prepayment tax adjudication by the courts could effectively prevent the collection of taxes by creating long delays.

The City's municipal code does not include an express "pay first, litigate later" provision. Without an express provision in the City's Hotel Visitors Tax Ordinance, the City cannot be sure that a judge will apply the "pay first, litigate later" concept in judicial review of a tax assessment. Adoption of the proposed ordinance is designed to clarify that the "pay first, litigate later" rule applies to all hotel visitors tax assessments.

FINANCIAL IMPACT

The proposed ordinance will have no impact on the overall amount of revenue generated by the hotel visitors tax.

RECOMMENDATION

It is recommended that the City Council:

J. Aixon

• Conduct the first reading of and introduce the ordinance adding section 3.12.145 to the Garden Grove Municipal Code to require payment of hotel visitor taxes prior to litigation of an assessment of such taxes.

Thomas F. Nixon

City Attorney

Attachment: Proposed Ordinance

ORDINANCE NO.	

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ADDING SECTION 3.12.145 TO CHAPTER 12 OF TITLE 3 OF THE GARDEN GROVE MUNICIPAL CODE RELATING TO HOTEL VISITORS TAX

City Attorney's Summary

This ordinance adds a provision to the Garden Grove Municipal Code to (1) prohibit enjoining the collection of a hotel visitors tax and (2) require that a hotel operator remit to the City the amount of a hotel visitors tax assessment prior to pursuing judicial review of the assessment.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 3.12.145 shall be added to Chapter 12 of Title 3 of the Garden Grove Municipal Code to read as follows:

"Section 3.12.145: Enjoining Collection Forbidden

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the city or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to this chapter and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability."

Section 2. If any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.