



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Ben Harvey, City Manager
MEETING DATE: June 16, 2016.
SUBJECT: Admissions Tax Ordinance
CEQA: Does not constitute a "Project" under California Environmental Quality Act (CEQA) Guidelines Section 15378.

RECOMMENDATION

1. Discuss the implementation of a proposed admissions tax ordinance
2. Provide direction to staff related to a proposed ballot measure for the November 2016 General Election

DISCUSSION

At the May 3, 2016 meeting, the City Council directed the City Manager to bring back an agenda report regarding a proposed admissions tax ordinance.

What is an admissions tax?

An admissions tax (or attendance tax) is imposed on a consumer for the privilege of attending a show, performance, display, or exhibition. The tax rate is generally based on either one or more flat rates per ticket or on a percentage of the admission price. The tax is included in the price of the ticket, collected by the ticket seller, and remitted by the seller to the city. It is somewhat analogous to the imposition and collection of transient occupancy taxes from hotel guests by hotel and motel operators.

The source of authority to levy an admissions tax for a charter city is the city's general home rule powers and the city's charter. Cal Const art XI, §5.

The following businesses and types of activities are likely subject to a proposed admissions tax:

1. Aquarium
2. Movie Theatre
3. Concert
4. Sporting event
5. Special event
6. Tour

7. Golf Course

Based upon this list of businesses and types of activities, a conservative assumption for the total estimated ticket sales and revenues for all venues in Pacific Grove would be 1,000,000 tickets at a total price of \$40,000,000.

California municipalities with admissions taxes

As of Fiscal Year 2013-2014, there were at least eleven California municipalities that had admissions tax ordinances. Tax rates vary by municipality, but generally the tax is either applied as a per ticket amount charge, or as a percentage of the entry price. The table below provides Fiscal Year 2013-2014 data by municipality:

Admission Tax Revenues FY2013-14			
City	Admissions Tax Revenue	Rate	Percent of General Revenues
San Francisco	\$2,413,555	50¢/ticket \$25&under \$1.50/ticket over \$25	0.09%
Santa Cruz	\$2,274,117	5% of entry price	4.11%
Indian Wells	\$2,244,120	10% of entry price	16.45%
San Fernando	\$770,051	30¢ per entry	6.11%
Fairfield	\$507,735	\$5/person -golf courses	0.70%
Avalon	\$549,968	4% of entry price	7.39%
Pasadena	\$448,264	5% max 50¢	0.30%
Inglewood	\$237,180	10% of entry price	0.35%
Pomona	\$219,586	2¢ per carnival ride	0.30%
Irwindale	\$24,431	3% of entry price	0.15%
Azusa	\$8,408	50¢ per entry	0.04%

Source:

CaliforniaCityFinance.com
computations from FY13-14
data reported to the California
State Controller.

What activities are subject to an admissions tax?

The scope of activities subject to an admissions tax would be dependent, in part, on the definitions that the City would choose to adopt. For example, a community pancake breakfast event would likely **not** be subject to an admissions tax as payment is collected for the meal, not for attendance. Any person can be seated if they do not choose to pay. (A different result would occur if there were a door charge required to be paid by all attendees, irrespective of their

consumption.) Thus if “Taste of PG” were held within the City, and if an admissions tax were in effect, it would be imposed on those who purchase admission tickets, even if they do not consume food.

Constitutional Considerations

In applying an admissions tax, it is important to make sure the tax does not interfere with First Amendment rights.

Some recent cases have struck down admissions taxes borne primarily by activities protected by the First Amendment. (*United Artists Communications, Inc. v City of Montclair* (1989) 209 CA3d 245, cert denied (1989) 493 US 918; *Festival Enters., Inc. v City of Pleasant Hill* (1986) 182 CA3d 960.) These cases suggest a city must have substantial businesses or events that do not involve First Amendment rights that would bear a significant portion of the tax burden to enact an admissions tax, or demonstrate a compelling interest, other than the mere need to raise revenue, if a tax targets First Amendment businesses. *Sacramento Cable Television v City of Sacramento* (1991) 234 CA3d 232. *Minneapolis Star v. Minnesota Comm'r of Rev.*, 460 U.S. 575 found a tax to not be permissible because it only appeared to apply to a broad range of businesses, but in reality its burden fell disproportionately upon businesses engaged in protected speech: two theaters and two adult book stores with viewing booths. In *Fox Bakersfield Theatre Corp. v City of Bakersfield* (1950) 36 C2d 136, the court upheld an admissions tax imposed on motion picture theatres. The trial judgment was affirmed on appeal as the main and general purpose of the measure was a tax on amusement businesses.

In addition, the City would need to ensure equal protection is afforded to all like events. (Still, the taxpayer bears the burden of demonstrating a tax classification oppressively discriminates against a particular person or class, and *Times Mirror Co. v. City of Los Angeles* (1987) 192 Cal.App.3d 170 , held the government may subject the press to generally applicable economic regulations and taxes.)

Examples of potential types of admissions tax for Pacific Grove

Based upon those California municipalities with existing admissions taxes, two proposals are presented for City Council consideration:

1. A per ticket admissions tax, with a suggested rate of either \$.50 or \$1.00; or
2. A percentage of entry price tax, with a suggested rate of either 1% or 4%.

Estimated potential annual revenue for Pacific Grove

Using these two proposals, the City could potentially expect to recoup the following revenue (assuming voter approval and successful admissions tax implementation):

	Type of Tax	Rate/Charge	Estimated potential annual revenue*
1.	Per ticket	\$.50	\$500,000
2.	Per ticket	\$1.00	\$1,000,000
3.	Percentage	1%	\$400,000
4.	Percentage	4%	\$1,600,000

*Assumptions: 1,000,000 tickets at a total price of \$40,000,000

NEXT STEPS

1. Determine whether to place a measure on the ballot for voter consideration of an admissions tax.
2. Decide upon the proposed rate of admissions tax for voter consideration.
3. Direct staff to return on July 20, 2016 with an agenda item providing proposed ballot language for voters to consider a proposed admissions tax.
4. Direct staff to prepare a resolution placing a proposed admissions tax on the ballot for voter consideration at the November 8, 2016 general election.

To place a proposed tax measure on the general election ballot to give the City’s electorate an opportunity to vote on the measure, a Resolution and the first reading of the Ordinance must be approved by the City Council at a regularly scheduled meeting and sent to the County’s Elections Department no later than August 3, 2016. The Resolution calls for an election and asks the County to consolidate with the November 8, 2016 election.

ELECTION PROCESS TIMELINE

- August 3 Last date (regularly scheduled City Council meeting) for the City Council to take action to file a Notice of Election and Resolution requesting a measure to appear on the ballot
- August 19 Primary Arguments Due
- August 29 Rebuttal Arguments and City Attorney’s Impartial Analysis Due

Please note that the City Council will meet only once more, July 20, 2016, prior to the County Election Department deadline.

OPTIONS

Take no action. Please note that taking no action at this junction could prohibit any proposed admissions tax measure from eligibility for potential inclusion on the ballot at the November 8, 2016 general election due to timing constraints.

FISCAL IMPACT

1. Preliminary estimated costs for adding a ballot measure within a general election is approximately \$75,000.

ATTACHMENTS

RESPECTFULLY SUBMITTED:

Ben Harvey

Ben Harvey
City Manager