

CITY ATTORNEY UPDATE

APRIL 4, 2012

Disclosing Confidential Taxpayer Information in the Convention Center Expansion Vote

The City Attorney's Office has received a number of California Public Records Act (CPRA) requests asking us to produce tax-related documentation for hotels that will be voting on the Convention Center expansion, to see how much influence each hotel might have in the election.

While we would like to have the documentation released, the City is prohibited by law from voluntarily doing so without a court order.

The City Council voted 7-1 on January 24, 2012 to establish the election and by ordinance instructed the City Clerk to protect the confidentiality of the ballots because "the number of votes assigned to each Hotel may be considered to contain proprietary commercial information."

Further, Deputy City Attorney Brant Will provided a five-page [Memorandum of Law](#) showing that the documents requested could not be released without a court order. The documents would disclose tax information and proprietary information that the city is prohibited from voluntarily disclosing under the law.

At our office's request, outside counsel Orrick, Herrington & Sutcliff (which was retained to work on the expansion vote) reviewed the Memorandum of Law. They issued a written opinion concurring with the memorandum.

That being said, there are at least three ways to estimate the number of votes that certain hotels and chains have in this election using publicly available data. While this will only provide an estimate, it is enough to discern how much "weight" certain hotels or chains have to throw around in the election.

In the election, hotel properties have been assigned a number of weighted votes based upon the amount of money their properties would generate from the tax and their proximity to the Convention Center. In effect, each hotel gets one vote for each dollar they would have raised in tax revenue in the preceding 12 months if the tax had been in effect. That's why there are nearly 27 million votes in play here.

Method 1:

Some of the hotels are publicly traded entities. They list certain revenue information in their annual Form 10-Ks required by the Securities and Exchange Commission. For example, Host Hotels' Form 10-K can be found [here](#). An estimate of Hosts' vote allocation can be figured by using this formula:

Average Revenue Per Available Room (RevPAR) X the number of rooms X 365 X 0.03 = Hosts' total number of votes.

Method 2:

The San Diego Convention and Visitors Bureau lists weekly RevPAR information [here](#). This information can be added up and averaged over the last 12 months to supply an estimated RevPAR for hotels in certain areas of the city, which can then be inserted into the formula above.

Method 3:

The Port of San Diego keeps precise hotel revenue data for hotels on public tidelands. Although this information is not available on its website, it can be obtained by contacting the Port directly.

In February, our office distributed an [update](#) describing how this taxing structure and voting method is legally untested. If the hoteliers approve the tax, we will bring a validation action to the courts, as discussed in the update.

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