



**AGENDA**  
**Special Meeting**  
**February 7, 2018 at 6:00 p.m.**  
**Payette Lakes Middle School**  
**(Common Area)**  
**111 S. Samson Trail**

**OPEN SESSION**

**COMMUNITY CONVERSATION – LOCAL OPTION TAX**

- **Review of the Local Option Tax to go before the voters in May 2018**

**EDUCATION PRESENTATION**

- **What is the Local Option Tax?**
- **Who can legally receive Local Option Tax revenue?**
- **What can Local Option Tax Fund?**

**BREAKOUT SESSIONS**

- **What does the community want funded with the 3% Occupancy Local Option Tax?**

**WRAP UP**

- **What did we learn?**

**ADJOURN**

American with Disabilities Act Notice: The City Council Meeting room is accessible to persons with disabilities. If you need assistance, please contact City Hall at 634-7142 at least 48 hours prior to the meeting.

# 2018 Local Option Tax Renewal

Reshaping Purposes of use  
for Local Option Tax Funds



**City of McCall**

Wednesday, February 7<sup>th</sup>

# What is the Resort Tourism Local Option Tax?

A Local option tax exist for a small portion of Idaho cities: resort towns with a population of fewer than 10,000 residents.

Thirteen cities in Idaho have this resort or tourism tax, such as Hailey, Ketchum, Sun Valley and McCall.

The idea is to use revenue from visitors to develop and maintain adequate infrastructure and services.



# ...More on the Local Option Tax

Idaho Code allows for an occupancy tax upon hotel, motel, and other sleeping accommodations rented or leased for a period of thirty (30) days or less.

The intent of the Idaho Legislature to allow resort cities to collect a local non-property tax was to **mitigate the affects of tourism on a small city that the general fund could not accommodate.**



# Local Option Tax SAVES CITY TAXPAYERS

## MCCALL DEPENDS ON TOURISM

McCall derives a major portion of its economic well-being from businesses catering to the recreational needs of travelers.

## VISITORS ADD COSTS

While tourism stimulates the local economy, the influx of visitors also inflates the number of people the city taxpayers provide services for.

## L.O.T. RELIEVES TAXPAYERS

This local option, non-property tax is an opportunity for McCall to offset the cost impacts and avoid having to raise property taxes.



# How does this L.O.T. benefit the community?

Allows for major projects to continue without raising property taxes.



Gives funding to major projects that may not happen otherwise.



Funds community restoration projects caused by large population spikes.



# Who pays this Local Option Tax?

Paid by Staying  
Guests

Collected by  
Accommodation  
Providers

Those paying for sleeping accommodations rented or leased for a period of thirty (30) days or less within the City of McCall.

“Occupancy or Accommodation Tax”



# What is changing in the ordinance?

- In an effort to maintain the integrity of the intent of the Local Option Tax to mitigate the effects of tourism and comply with the state constitution, the City's Attorney, per the request of the Council, has developed the recommended changes to the Ordinance that will go to the voters in May 2018.
- In addition to the recommended changes to the ordinance, the City Attorney has provided Application Instructions for anyone who may want to apply for funds.



# Funding Requirements

These must be in place in order to obtain Local Option Tax funding

- The offer of goods or services must provide a considerable contribution to the citizens at-large

“the contract has a public purpose”



- A binding contract must be established with any private entity providing the goods or services in exchange for funding

“public funds remain under the control of the governing body of the public agency”



- There must be a clear structure and outline as to what the public receives in exchange for funding.

“the public agency receives adequate consideration for any benefits conferred on a private entity”



# The Law & Local Option Tax

It is **Lawful** to use local option tax funds

to mitigate (lessen) affects of tourism on small towns

to Use Funds for reinvestment into infrastructure repairs

to offset the cost-impacts of these visitors on the City's infrastructure

in exchange for goods or services that provide a public purpose from a private entity

It is **Unlawful** to use Local Option Tax funds

to support private entity tourism or advertising efforts without direct public purpose

to raise money, make donations or loan credit to any private entity.

to provide aid of any amount to any individual, association or corporation without the exchange for public use

to fund incidental (minor) goods or services even if available to the public



# Public Opinion On Allowable Uses

The local option non-property tax revenue derived from and collected under this Chapter shall be used for direct costs to collect and enforce the tax and only for the following municipal purposes:

City streets, sidewalks and pathways, pedestrian crosswalks, and public transportation

Construction and maintenance of City cultural and recreational facilities, including the McCall Municipal Golf Course and McCall Municipal Library

Services for City recreational and cultural activities including but not limited to library, community art, recreational and cultural events and programs

City parks maintenance, development, and beautification

Sheltering and or spade and/or neutering of stray animals found in the City limits

City Local housing program as recommended in the McCall Housing Strategy

Services for City marketing, advertising, tourism development and City event promotion.

What would you add?

What would you remove?

Based on a previous survey the Council had determined that the new **LOT length would be 10 years and would remain at 3%** on occupancy of 30 days or less.



# BREAK OUT DISCUSSION



- Join City Council and staff at one of five (5) tables to discuss, ask questions and give opinion on allowable uses.
- Thank you for being a part of the discussion and guiding the Council in the decision making process.



## MEMORANDUM

To: Bill Nichols  
From: Brian O'Bannon  
Date: 5/31/17  
Re: City of McCall/LOT Revenues

### Question

What limitations are placed on the use of Local Option Tax (LOT) revenues by Article VIII, § 4 and Article XII, § 4 of the Idaho Constitution?

### Brief Answer

Under the Idaho Constitution LOT revenues, like all public funds, may only be expended for a public purpose. Donations that place public funds under the control of private entities violate the constitution, but contracts with private entities for goods or services with adequate consideration are acceptable.

### Facts

The City of McCall has adopted two local option taxes in accordance with I.C. §§ 50-1044 to 50-1047. The revenues from one tax are applied to streets projects. The revenues from the second tax may be used for various purposes set forth in § 4.12.5 of the city code, including streets and sidewalks, cultural and recreational facilities, recreational and cultural activities, parks maintenance, animal shelters, and tourism development. Community groups and city departments can submit proposals for projects to be funded by LOT revenues. These proposals are reviewed by an advisory committee that makes recommendations to the city council. The city council determines which proposal will be funded. The LOT funds have been used to pay for animal shelter services provided by McPaws, and have been used to pay the Chamber of Commerce for Fourth of July fireworks.

### Discussion

The Idaho Constitution prohibits both donation of the credit of a municipality to a private enterprise, and the donation of funds, goods or services for the benefit of a private enterprise. Article VIII, § 4 of the Idaho Constitution provides:

No county, city, town, township, board of education, or school district, or other subdivision, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to or in aid of any individual, association or corporation, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this state.

Article XII, § 4 provides:

No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association: provided, that cities and towns may contract indebtedness for school, water, sanitary and illuminating purposes: provided, that any city or town contracting such indebtedness shall own its just proportion of the property thus created and receive from any income arising therefrom, its proportion to the whole amount so invested.

The case law construing these sections of the constitution distinguishes between donations or loans of public credit or public resources, which are prohibited, and contracts with private entities for goods or services, which are constitutionally acceptable.

A. Donations of Credit or of Public Funds to Private Entities

Early cases indicate that these constitutional provisions were adopted due to concern that private entities such as railroad companies would gain control of public funds or that public agencies would take on debt for the benefit of private businesses. In *Atkinson v. Board of Commissioners*, 18 Idaho 282, 108 P. 1046 (1910), the Idaho Supreme Court held that the establishment of railroad districts to build railroads at public expense for the use of private railroad companies was a violation of the constitution.

The case law indicates that a “donation” occurs when public property or resources are given or loaned to private enterprises without adequate consideration, or when public funds are placed under the control of private entities. The donation of public funds to a private entity is prohibited even if the entity uses the funds for a purpose that benefits the public. One of the concerns that led to the adoption of Article VIII, § 4 and Article XII, § 4 was that public funds would be put under the control of private entities. In *Fluharty v. B’d of Comm’rs of Nez Perce County*, 29 Idaho 203, 158 P. 320 (1916), the Nez Perce County commissioners voted to expend \$2500 from the current expense fund to assist a private nonprofit association (the Northwest Livestock Association) with expenses for the county fair. Such expenditures were authorized by a statute. The court held this violated Article XII, § 4:

Were such donation or appropriation made, it would place county funds donated or appropriated to such corporation under the control of the corporation and its officers, which funds would be appropriated to, and expended for, other purposes than the legitimate current expenses for the lawful administration of the government of the county, and by individuals not officers of the county or amenable to the laws authorizing the expenditure of public moneys.

*Fluharty*, 29 Idaho at 208-09.

Incidental public benefits also do not justify a donation of public funds, goods or services or a lending of credit for the benefit of a private entity. Direct public assistance to a private entity in the form of donations of money, goods or services or lending of credit cannot be

justified on the grounds that such assistance results in incidental benefits to the public such as job creation or economic development. In *Village of Moyie Springs, Idaho v. Aurora Manufacturing Co.*, 82 Idaho 337, 353 P.2d 767 (1960), the court held that a proposal of a municipality to issue municipal bonds to finance the construction of an industrial plant to be operated by a private business violated the constitution. The court rejected the justification that the project would benefit the economy: “we do not agree that an incidental or indirect benefit to the public can transform a private industrial enterprise into a public one, or imbue it with a public purpose.” *Id.* at 346, 776.

Donations to private entities are prohibited whether the private entity is a for-profit or a non-profit entity. The key distinction is between public and private, not “for-profit” and “charitable” entities. Non-profit and charitable entities are in competition with other non-profit and charitable entities for donations, and the constitution does not allow government entities to favor one non-profit or charity over another with public money or public resources, including employees. An opinion of the Idaho Attorney General’s Office found that using state employees to assist with fundraising for a charitable organization violated the constitution because it was a donation of government resources to a private entity. Idaho Attorney General Opinion No. 95-07 (1995).

B. Contracts with Private Entities to Sell or Lease Goods or Services

While donations and gifts of credit to private entities violate the Idaho Constitution, the constitutional provisions are not intended to prohibit public entities from contracting with private entities for goods and services that will be used for a public purpose. The case law indicates that contracts with private entities are acceptable provided that (1) the contract has a public purpose, (2) public funds remain under the control of the governing body of the public agency, and (3) the public agency receives adequate consideration for any benefits conferred on a private entity. Just as incidental benefits to the public do not justify gifts of credit or donations to private entities, incidental benefits to private entities do not make contracts between public agencies and private entities illegal.

In *Idaho Falls Consolidated Hospitals v. Bingham County Board of Comm’rs*, 102 Idaho 838, 642 P.2d 553 (1982), the court considered whether a county’s contract with a hospital to provide medical services to indigent persons violated the constitution. The court noted:

[I]t is apparent that the framers of the Idaho Constitution were primarily concerned about private interests gaining advantage at the expense of the taxpayer. However, that particular evil is not presented by the payment to hospitals for the treatment of indigents because, as shown below, this fund remains within the effective control of the municipality. Remaining within the control of the municipality helps insure that private interests will not gain advantage at the expense of the taxpayer.

*Id.* at 841. Because the funds for treatment of indigents remained within the control of county officials and services were received in exchange for the funds the contract did not violate the constitution.

In *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 703 P.2d 714 (1985) the mayor of Idaho Falls refused to sign a ground lease and power sales contract approved by the city council, claiming they were unconstitutional under Article VIII § 4 and Article XII § 4. Under the contracts with UP&L, the city would construct a hydroelectric plant and sell power not needed by the city to UP&L. UP&L would lease land to city for the project. The court found that the project had a public purpose to supply energy for the city's future needs and that UP&L was paying adequate consideration for the power it would receive under the contract. It noted that "the accrual of incidental benefits to a private enterprise will not invalidate an otherwise constitutional transaction," and held that the contracts did not violate the constitution. *Id.* at 955, 719.

In *Hansen v. Kootenai County Bd. of County Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970), the court considered Kootenai County's lease of a portion of the county fairgrounds for use by a race track corporation. It found that the lease did not interfere with public use of the property and that the county received adequate consideration for the use of the property by the lessee, so the lease did not violate the constitution.

C. Use of McCall LOT revenues under McCall City Code § 4.12.5

The use of LOT revenues to contract with private entities for purposes set forth in § 4.12.5 of the McCall City Code is acceptable under Articles VIII, § 4 and XII, § 4 of the Idaho Constitution if the funds are used for a public purpose, the determination of how to use the funds remains under the control of the city council, and the City receives adequate consideration in the form of goods or services from private entities that receive the funds.

The use of LOT revenue for the contract with McPaws for animal shelter services is acceptable because it fits within the category of contracts with a private entity for goods or services. The contract has a public purpose (picking up stray animals found on public streets), the city council has control over the funds and makes the determination to enter into the contract with McPaws and the amount that will be expended on the contract, and the City receives animal shelter services in exchange for payments made to McPaws. This is similar to the facts in *Idaho Falls Consolidated Hospitals v. Bingham County Board of Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982).

The legality of the payments to the Chamber of Commerce depends on whether the City is entering into an enforceable contract with the Chamber in exchange for specified services or whether it is simply donating money to the Chamber to support an event sponsored by the Chamber. If the City simply donates money to the Chamber to support Fourth of July fireworks displays sponsored by the Chamber this would be a violation of Article XII, § 4 for the same reason that the donation of funds to the Northwest Livestock Association was a violation in *Fluharty*: public funds cannot be placed under the control of a private entity which can use them at its discretion; they must remain under the control of public officials accountable to the public. If the City has an enforceable contract with the Chamber to provide fireworks and receives adequate consideration in exchange for its payments this would be an acceptable use of public funds.

# Section 4 – Idaho State Legislature

---

 [legislature.search.idaho.gov/isysquery/6e825bbf-55e8-430b-ae73-99f22f9cebd7/3/part/0-1000000](https://legislature.search.idaho.gov/isysquery/6e825bbf-55e8-430b-ae73-99f22f9cebd7/3/part/0-1000000)

## Idaho Constitution

### CONSTITUTION OF THE STATE OF IDAHO

#### ARTICLE XII CORPORATIONS, MUNICIPAL

Section 4. Municipal corporations not to loan credit. No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association: provided, that cities and towns may contract indebtedness for school, water, sanitary and illuminating purposes: provided, that any city or town contracting such indebtedness shall own its just proportion of the property thus created and receive from any income arising therefrom, its proportion to the whole amount so invested.

[How current is this law?](#)

[Search the Idaho Statutes and Constitution](#)

© 2017 Idaho State Legislature. | Maintained By: [isoweb@iso.idaho.gov](mailto:isoweb@iso.idaho.gov)

[Site Disclaimer](#)

## Idaho Code

Certain Idaho cities and counties are authorized to collect local option nonproperty taxes. For cities, the relevant portions of Idaho Code are §§50-1044 through 50-1049, portions of which are reproduced below.

**50-1044. AUTHORITY FOR RESORT CITY RESIDENTS TO APPROVE AND RESORT CITY GOVERNMENTS TO ADOPT, IMPLEMENT, AND COLLECT CERTAIN CITY NONPROPERTY TAXES.** The voters of any resort city with a population not in excess of ten thousand (10,000) according to the most recent census within the state of Idaho, organized under the general laws of the state, special charter, or a general incorporation act, are hereby given the freedom to authorize their city government to adopt, implement, and collect one or more local-option nonproperty taxes as provided herein. A resort city is a city that derives the major portion of its economic well-being from businesses catering to recreational needs and meeting needs of people traveling to that destination city for an extended period of time. The corporate authorities of any such resort city are hereby given the freedom and authority to adopt, implement, and collect one or more local-option nonproperty taxes as provided herein, if approved by the required majority of city voters voting in an election as provided herein. No local-option nonproperty tax proposal may be presented to resort city voters for approval or modification for a period of one (1) year after an election to approve or disapprove such tax. The election may be a special election conducted for the exclusive purpose of approving or disapproving such tax, or may be conducted as a part of any other special or general city election.

**50-1045. CITY PROPERTY TAX RELIEF FUND.** Any resort city may establish a city property tax relief fund into which may be placed all or any portion of revenues received from any nonproperty tax levied in accordance with the provisions of this act and such nonproperty tax revenues may be used to replace city property taxes in the ensuing fiscal year by the amount of nonproperty tax revenues placed in the city property tax relief fund if city voters have approved of such use of nonproperty tax revenues in the election authorizing such city nonproperty tax. Any resort city that receives more revenues from any local-option nonproperty tax than such city has budgeted shall establish a city property tax relief fund into which shall be placed all revenues received in excess of the budget amount and such excess revenues shall be used to replace city property taxes in the ensuing fiscal year by the amount of all excess revenues placed in said city property tax relief fund.

50-1046. CITY LOCAL-OPTION NONPROPERTY TAXES PERMITTED BY SIXTY PER CENT MAJORITY VOTE. A sixty per cent (60%) majority of the voters of any resort city voting on the question may approve and, upon such approval, any city may adopt, implement, and collect, subject to the provisions of this act, the following city local-option nonproperty taxes: (a) an occupancy tax upon hotel, motel, and other sleeping accommodations rented or leased for a period of thirty (30) days or less; (b) a tax upon liquor by-the-drink, wine and beer sold at retail for consumption on the licensed premises; and (c) a sales tax upon part or all of sales subject to taxation under chapter 36, title 63, Idaho Code.

50-1047. GENERAL PROVISIONS. Any ordinance assessing a tax pursuant to this act shall contain a finding by the local governing body of the city based upon evidence presented to it that the condition set forth in section 50-1044, Idaho Code, exists and shall provide the methods for reporting and collecting taxes due. Taxes collected pursuant to any such ordinance shall be remitted to the city official designated in such ordinance or other such official contracting, pursuant to this act, with the city to provide collection services, and shall constitute revenue of the city available for any lawful corporate purpose approved by city voters subject to the provisions of this act. In any election, the ordinance submitted to city voters shall: (a) state and define the specific tax to be approved; (b) state the exact rate of the tax to be assessed; (c) state the exact purpose or purposes for which the revenues derived from the tax shall be used; and (d) state the duration of the tax. No tax shall be redefined, no rate shall be increased, no purpose shall be modified, and no duration shall be extended without subsequent approval of city voters. An ordinance adopting any local-option nonproperty tax authorized by this act may provide for separate identification of taxes as may be appropriate. The city clerk of any city adopting an ordinance pursuant to this act shall, immediately following approval of such ordinance, or any amendment thereto, forward a copy of said ordinance or amendment to the chairman of the state tax commission, and the chairman of the state board of tax appeals.