



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Tell and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Bruce Moe, Finance Director
Robert V. Wadden Jr., City Attorney

DATE: July 17, 2007

SUBJECT: Discussion of Loss of Transient Occupancy Taxes As a result of Hotel Bookings Through On-Line Travel Companies

RECOMMENDATION:

Staff recommends that the City Council discuss and provide direction.

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action. However, using estimates provided by the law firm retained by several other large cities in this matter, we have conservatively estimated our annual losses at \$55,000 per year and growing.

BACKGROUND:

Recently, the League of California Cities advised its members of an issue regarding potential losses of transient occupancy taxes (TOT) as a result of travelers booking hotel rooms on-line via such services as Travelocity, Hotels.com, Expedia, etc. These firms, known as on-line travel companies (OTC), are collecting TOT, but not remitting the entire amount to cities.

DISCUSSION:

OTC's make a profit by purchasing hotel rooms at wholesale prices, marking them up and reselling the rooms at a higher rate, and charging a service fee of 2% or more for each transaction. When the OTC purchases a block of rooms from a hotel, they pay the hotel the prevailing TOT rate on the wholesale price paid. Then, when they resell the room at the higher rate, they collect the TOT from the traveler based upon the room rate the traveler pays (the traveler is required to prepay the entire amount in advance to the OTC in order to book the stay). The difference between what the OTC collects in TOT and what was remitted to the city through the hotel operator, has apparently been pocketed by the OTC's as added profit, even though that additional TOT rightful belongs to the city, and was presented to the traveler as a TOT, not added profit or service fees for the OTC.

As a result of this business practice by the OTC's, the City of Los Angeles retained the law firm of Kiesel, Boucher & Larson (KBL) and filed a class action lawsuit on December 30, 2004, seeking

collection of those lost revenues (estimated to be \$100 million statewide). At the time of this report, the court has not granted the class action status. However, presuming such status is attained, the City of Manhattan Beach will automatically be included as a plaintiff and be represented by KBL, unless we opt out. Such representation is based on a contingent fee.t

The date City of Los Angeles filed (December 30, 2004) is important because it preceded legislation that became effective January 1, 2005 that places a four-year statute of limitation on collection of delinquent TOT. Because of the timing of the filing, there is no limitation in place. Further, by filing the class action suit, the old statute was frozen for all cities in this matter.

While we believe the likelihood of class action status is favorable, if the court does not grant class action status, we would then need to take action against the OTC's ourselves. Such action will include issuing letters to all seventeen OTC defendants, and conducting audits of local hotels' sales to OTC's. The firm of KBL has offered to represent cities on a contingent basis in that event.

Staff recommends that Council discuss this issue and provide direction.