



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

THROUGH: Richard Thompson, Interim City Manager

FROM: Lindy Coe-Juell, Assistant to the City Manager

DATE: June 15, 2010

SUBJECT: Authorize the Mayor to Sign a Letter Opposing Potential State Legislation to Pre-empt Cities from Fully Collecting Transient Occupancy Tax (TOT) from Online Travel Companies

RECOMMENDATION:

Staff recommends that the City Council authorize the Mayor to sign a letter that expresses opposition for any potential state legislation that would pre-empt cities from fully collecting transient occupancy tax (TOT) from online travel companies (OTC).

FISCAL IMPACT:

There is no fiscal impact associated with the recommended action. However, per our municipal code, the City of Manhattan Beach levies a TOT of 10 percent. And, as staff has examined this issue in the past and used estimates provided by the law firm retained by several large cities related to this matter, we estimated our annual losses under the current practice of the OTCs at approximately \$50,000 annually.

BACKGROUND:

Over the last several years, the League of California Cities has advised its members of an issue regarding losses of TOT as a result of travelers booking hotel rooms on-line through services such as Travelocity, Priceline, Hotels.com, Expedia, etc. These OTCs have followed a practice of purchasing rooms from hotels at a discounted wholesale price and reselling those rooms to the consumer over the internet at a higher retail price. While the online travel companies collect a TOT from the consumer based on the higher rate, they remit only the TOT charged on the lower discounted rate. This practice results in the OTCs retaining the difference in the TOT rate charged to the consumer for their profit thereby shortchanging local governments.

Manhattan Beach had joined a number of other cities in a class action law suit against the major OTC's to attempt to recover the unpaid TOT. However, in 2007, the City of Anaheim had filed suit against the OTCs and an administrative-hearing officer sided with the city, ruling in that Anaheim was owed \$21.3 million back TOT from the OTCs. But, in February of this year, a Los Angeles Superior Court Judge overturned this ruling on the grounds that the Anaheim ordinance did not identify the OTC's as responsible for collecting and paying the tax. The case has been appealed.

However, even if Anaheim should lose its appeal it is possible for cities to amend their TOT ordinances to insure that the tax can be collected (although this may well require voter approval).

DISCUSSION:

Recently the League of California Cities sent notice to its members that the OTCs are pushing for state legislation in the current legislative cycle that would undercut cities authority to fully collect TOT from online hotel sales in an attempt to effectively legalize their current practice. The League has urged its members to let their legislators know that this action would result in rightfully owed local tax dollars being given away at the expense of already strained city budgets.

CONCLUSION:

Staff recommends that the City Council authorize the Mayor to sign a letter of opposition to any potential state legislation that would pre-empt cities from fully collecting TOT from OTCs.

ATTACHMENT:

- A) City of Manhattan Beach Draft Letter of Opposition to State Legislation to Pre-empt Cities from Fully Collecting TOT

June 15, 2010

The Honorable Ted Lieu
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0053

RE: Opposition to Legislation Undermining Local TOT Collection

Dear Assemblymember Lieu:

It has come to our attention that online travel companies are proposing the introduction of legislation that would undermine the ability of cities in California to fully collect local transient occupancy tax (TOT) from online sales. The City of Manhattan Beach is strongly opposed to any such legislation. TOT makes up approximately 5% of our general fund revenue and is an important source of income supporting our city services. Similar to most cities across the state, we already face declining revenues and state budget takeaways and deferrals have only compounded the issue.

On behalf of the City of Manhattan Beach, I am writing to express our opposition to any legislation that would undermine collection of local TOT revenues. The legal dispute over the duty of online companies to remit the full amount of TOT owed to local agencies is already in the courts. That is where the issue should remain.

Thank you for your attention to this important matter.

Sincerely,

Mitch Ward
Mayor

CC: Dan Carrigg, Legislative Director, League of California Cities