

FRANK T. MARTINEZ  
City Clerk

KAREN E. KALFAYAN  
Executive Officer

When making inquiries  
relative to this matter  
refer to File No.

04-0600-S45

CITY OF LOS ANGELES  
CALIFORNIA



JAMES K. HAHN  
MAYOR

Office of the  
CITY CLERK  
Council and Public Services  
Room 395, City Hall  
Los Angeles, CA 90012  
Council File Information - (213) 978-1043  
General Information - (213) 978-1133  
Fax: (213) 978-1040

HELEN GINSBURG  
Chief, Council and Public Services Division

March 31, 2005

PLACE IN FILES

OCT 18 2005

DEPUTY *✓*

Councilmember Parks  
Councilmember Padilla  
Councilmember LaBonge  
City Attorney  
Chief Legislative Analyst  
City Administrative Officer

RE: TRANSIENT OCCUPANCY TAX LAWSUIT AND REQUEST FOR OUTSIDE COUNSEL

At the meeting of the Council held March 29, 2005, the following action was taken:

Attached report adopted, as amended.....	_____X_____
Attached amending motion (Parks - LaBonge) adopted.....	_____X_____
Attached resolution adopted.....	_____
FORTHWITH.....	_____
Mayor concurred .....	_____
To the Mayor FORTHWITH .....	_____
Motion adopted to approve communication recommendation(s).....	_____
Motion adopted to approve committee report recommendation(s)...	_____
Ordinance adopted.....	_____

*Frank T. Martinez*

City Clerk  
crm



23

TO THE COUNCIL OF THE  
CITY OF LOS ANGELES

Your **BUDGET AND FINANCE** Committee

reports as follows:

Public Comments: Yes No  
X   

BUDGET AND FINANCE COMMITTEE REPORT relative to the Transient Occupancy Tax (TOT) lawsuit and request for outside counsel.

Recommendations for Council action, as initiated by Motion (Parks - Padilla):

1. APPROVE the request of the Office of the City Attorney to enter into a contract with the law firm of Kiesel Boucher & Larson to represent the City in its lawsuit against various Internet hotel-booking companies.
2. NOTE and FILE the joint Chief Legislative Analyst (CLA) and City Administrative Officer (CAO) report relative to the financial impact of the complaint against Internet Hotel sellers inasmuch as the report is submitted for information and no further Council action is required.

Fiscal Impact Statement: The CLA/CAO report that the Fiscal Year (FY) 2004-05 Budget was based on collecting \$3 million for full application of the TOT on Internet-based hotel room sales. Negotiations with Internet-based hotel room providers ceased pending the outcome of a class action complaint filed. Therefore, collection of all, or a significant portion, of the \$3 million estimate now appears doubtful for FY 2004-05. However, the Office of Finance and the CAO report that because hotel room sales are rising, collections of the full TOT revenue budgeted for the current fiscal year is still likely.

(Council may recess to Closed Session, pursuant to Government Code Section 54956.9(a), to confer with its legal counsel relative to retention of outside counsel in the case entitled City of Los Angeles, California, on behalf of itself and all others similarly situated v. Hotels. com., L.P., et al., Los Angeles Superior Court Case No. BC 326693)

SUMMARY

At its meeting of February 15, 2005, the Budget and Finance Committee considered Motion (Parks - Padilla), a CLA/CAO joint report and City Attorney report relative to the TOT lawsuit, its impact on the City's anticipated TOT revenue for FY 2004-05, and request by the City Attorney for approval of outside counsel to represent the City in the lawsuit. The CLA/CAO report that although Motion (Parks - Padilla) indicates that a class action complaint had been filed against the City by Internet-based hotel room sellers, the City of Los Angeles is the plaintiff in the class action, along with all other cities and counties that have enacted uniform transient occupancy taxes. Internet-based hotel room sellers are the defendants in this case.

\*ADOPTED AS AMENDED by Council action of 3-29-05.

This action alleges violations of Uniform Transient Occupancy Tax Ordinances, unfair business practices in violation of California Business & Professions Code, conversion, and imposition of a Constructive Trust against Internet-based hotel sellers including, but not limited to, Hotels.com, Hotwire, Inc., Cheap Tickets, Inc., Expedia, Inc., Priceline.com., Inc., Orbitz, Inc., and Travelocity.com., LP. The class action complaint was filed by Kiesel, Boucher & Larson, LLP and Baron & Budd, P.C., outside counsel, on December 30, 2004, at the direction of the City Attorney.

The complaint alleges that the defendants have sold hotel rooms to the public and collected taxes on those rooms, but have failed to pay the proper amount of taxes due and owing to the City and Plaintiff Class members on such transactions. The tax is paid by the consumer occupants of the hotel rooms and collected on behalf of the City and others by the Internet-based hotel room sellers, who are the operators of the hotels at the time the rent is paid by the consumer. For hotel rooms located within the City of Los Angeles, the TOT is calculated at 14 percent of the retail room rental rate, and paid by the consumer of the hotel room. However, the Internet-based hotel sellers remit TOT to the City calculated at 14 percent of the wholesale (lower) price of the hotel room. Therefore, the TOT remitted to the City is discounted by the percentage difference between the wholesale room price and the retail price of the room.

The CLA/CAO report that in recent years, an increasing percentage of hotel rooms located in Los Angeles have been sold by Internet-based hotel room sellers. Therefore, in order to capture the full amount of TOT revenue legally owed to the City, the FY 2004-05 Budget included a proposal to fully apply the TOT on hotel bookings made through the Internet. It was estimated that full application of the TOT on Internet-based hotel sellers would generate approximately \$3 million during FY 2004-05.

At the time the complaint was filed by the City, the Office of Finance was in the midst of negotiations with many Internet-based hotel room sellers regarding hotel room sales dating back to July 1, 2001. When the complaint was filed, negotiations ceased, pending the outcome of the legal matter. The City Attorney advises that it is likely that the outcome of the complaint will not be determined during the current fiscal year. Therefore, the City will not be paid any of the estimated \$3 million revenue resulting from fully applying the TOT on hotel bookings made by Internet-based hotel room sellers. The CAO and the Office of Finance believe that no adjustments to revenue estimates need to be made at this time, as TOT revenue receipts have been stronger than anticipated in the Adopted Budget, due to improvement in the local economy.

In its report dated February 15, 2005, the City Attorney seeks approval of a contract with the law firm of Kiesel Boucher & Larson to represent the City in its lawsuit against various Internet hotel-booking companies. The representation will be supervised by the City Attorney's Office. The City Attorney reports that the law firm of Kiesel Boucher & Larson has studied this phenomenon and is well qualified to represent the City in the tax, damages calculations, and other legal issues that would be involved in litigation over this matter. The law firm has agreed that its compensation in this representation would be on a contingency basis; the firm would receive attorneys' fees in the amount of fifteen percent of any gross recovery received by the City through settlement, arbitration, court judgment or otherwise. If the City does not recover

under this litigation, there will be no payment to the firm for attorneys' fees. The City would agree to pay litigation costs advanced by the firm (i.e., for expert witnesses) up to an annual cap of \$250,000 and a total cap of \$500,000.

The Budget and Finance Committee discussed this matter in open session and then went into executive session, pursuant to Government Code Section 54956.9(a), to further discuss the matter with its legal counsel. In open session, the Committee recommended that the CLA/CAO report be noted and filed and that the City Attorney's request to enter into a contract with the law firm of Kiesel Boucher & Larson be approved. This matter is now forwarded to the Council for its consideration.

Respectfully submitted,

BUDGET AND FINANCE COMMITTEE

<u>MEMBER</u>	<u>VOTE</u>
PARKS:	ABSENT
MISCIKOWSKI:	YES
CARDENAS:	YES
SMITH:	YES
GARCETTI:	YES

*[Handwritten signatures: Gary Miskowski, Andy Misatouli, Tony Cardenas]*

LB  
#040600.45  
2/16/05

*2pt*  
**ADOPTED**

MAR 29 2005

*\* As Amended*  
**LOS ANGELES CITY COUNCIL**

*see Attached Motion*

**VERBAL MOTION**

I HEREBY MOVE that Council AMEND the Budget and Finance Committee Report (Item No. 23, CF 04-0600-S45) relative to the Transient Occupancy Tax (TOT) lawsuit and request for outside counsel, as follows:

1. REQUEST the City Attorney and outside counsel to report back to the Budget and Finance and Conventions, Tourism, Entertainment Industry and Business Enterprise Committees in two months to discuss the further possible ramifications of the City's action.
2. REQUIRE that the annual cap for litigation costs advanced by the firm be \$250,000 and a total cap of \$500,000.

PRESENTED BY \_\_\_\_\_  
BERNARD C. PARKS  
Councilmember, 8th District

SECONDED BY \_\_\_\_\_  
TOM LABONGE  
Councilmember, 4th District

March 29, 2005

CF 04-0600-S45

*Motion*  
**ADOPTED**

MAR 29 2005

**LOS ANGELES CITY COUNCIL**

COUNCIL VOTE

Mar 29, 2005 11:43:01 AM, #6

ITEM NO. (23) *(Adopt As Revised)*  
Voting on Item(s): 23  
Roll Call

CARDENAS	Yes
GARCETTI	Yes
GREUEL	Yes
HAHN	Yes
LABONGE	Yes
LUDLOW	Yes
MISCIKOWSKI	Yes
PARKS	Yes
PERRY	Yes
REYES	Yes
SMITH	Yes
VILLARAIGOSA	Yes
WEISS	Yes
ZINE	Yes
*PADILLA	Yes

Present: 15, Yes: 15 No: 0

# BUDGET AND FINANCE COMMITTEE NOTIFICATION SHEET

Council File No. 04-0600-545

<input checked="" type="checkbox"/>	Council Districts: <u>CD 8 - CD 7 - CD 4</u>	
<input type="checkbox"/>	Mayor (with file/without)	(Mail Stop 370)
<input checked="" type="checkbox"/>	City Administrative Officer	(Mail Stop 130)
<input checked="" type="checkbox"/>	Chief Legislative Analyst	(Mail Stop 136)
<input checked="" type="checkbox"/>	City Attorney (with blue slip/without)	(Mail Stop 140)
<input type="checkbox"/>	Controller	(Mail Stop 183)
<input type="checkbox"/>	Treasurer	(Mail Stop 750)
<input type="checkbox"/>	Information Technology Agency	(Mail Stop 232)
<input type="checkbox"/>	Department of Building and Safety	(Mail Stop 115)
<input type="checkbox"/>	Office of Finance - Attn: Robert Lee	(Mail Stop 170)
<input type="checkbox"/>	Fire Commission / Department	(Mail Stop 250)
<input type="checkbox"/>	Department of General Services	(Mail Stop 508)
<input type="checkbox"/>	Personnel Department	(Mail Stop 391)
<input type="checkbox"/>	City Clerk -	
<input type="checkbox"/>	Police Commission / Department	(Mail Stop 400)
<input type="checkbox"/>	Board of Public Works	(Mail Stop 465)
<input type="checkbox"/>	Public Works - Bureau of Engineering	(Mail Stop 490)
<input type="checkbox"/>	Department of Transportation	(Mail Stop 725)
<input type="checkbox"/>	Department of Recreation and Parks	(Mail Stop 625)
<input type="checkbox"/>		
<input type="checkbox"/>		

February 15, 2005

TO: Budget and Finance Committee, City of Los Angeles

FR: Leni Isaacs Boorstin, member Executive Committee, Arts for LA

RE: File Number 04-0600-S45 (Motion Parks and Padilla)



On behalf of an 'ad hoc' informally organized group of arts advocates known as Arts for LA, I would like to register the arts community's concern about the threats to revenues generated by the Transient Occupancy Tax.

In 1988, the City created the Arts Endowment Fund, into which an amount of 1% of the Transient Occupancy Tax was deposited to be spent on arts services, facilities, artwork and cultural preservation. Although in most intervening years, additional general funds had been allocated to the Cultural Affairs Department, these funds have been jeopardized by the current City budget crisis.

The proposal for a new Headquarters Hotel at the Convention Center forgives the TOT for 20 years. It has been stated that all other hotels in LA will have increased bookings and overall the TOT will rise. We recognize the importance of a Headquarters Hotel and will monitor the expected increase in overall TOT revenues. Otherwise, it is a concern that the TOT is to be forgiven for such a significant amount of time.

**The TOT Lawsuit/internet hotel sales revenue issue appears to be another threat to the TOT as an identified source of funds for the arts in the City of Los Angeles.**

**As the City evaluates the potential impact of this issue on the City's anticipated Transient Occupancy Tax revenue for the fiscal year 2004-2005, please note the arts' interest:**

- **in the maintenance of (at least) 1% of the full amount of the TOT as a source of funds for the arts in Los Angeles, and**
- **the identification of other public sources of funds for the arts.**

The arts in Los Angeles serve as vital components for economic development, contribute to developing a literate and skilled workforce, help create a safer city through engaging young people in the arts, and attract people to Los Angeles as a dynamic, stimulating place in which to live, work and play. The Mayor's Arts Council Report of 2004 is in the beginning stages of implementation which included the recommendations for increasing the level of financial support for the arts in Los Angeles.

Thank you for your consideration of the arts within your review of the TOT issues.

Leni Isaacs Boorstin  
Home: 4007 Avenida del Sol, Studio City, CA 91604  
Work: Community Affairs Director, LA Philharmonic Association  
Email: [lboorstin@laphil.org](mailto:lboorstin@laphil.org); Phone: 213.972.7297

04-0600-S45  
Submitted in Committee  
#18





Los Angeles Area  
Chamber of Commerce

February 9, 2005

Mayor James Hahn  
Members of the Los Angeles City Council  
City Attorney Rocky Delgadillo  
200 North Spring Street  
Los Angeles, CA 90012

Re: Taxation of Internet Travel Companies

Dear Honorable Officeholders:

On behalf of the Los Angeles Area Chamber of Commerce, I am writing to express serious concerns about the City's recent actions to unfairly tax Internet Travel Companies, which play a significant role in marketing Los Angeles to the world, and in promoting tourism and international trade.

In recent years, the LA Area Chamber has joined the City in its effort to change its image as a "business unfriendly city", and the recent reforms of the City's business taxes was a major step in the right direction towards changing the City's negative image.

However, recent actions concerning Internet Travel Companies do not appear to be consistent with the recent progress of the City to become more "business friendly", and should be reevaluated to ensure that unintended consequences do not occur. Specifically, the City Council adopted an ordinance on May 24, 2004 to redefine in the Los Angeles Municipal Code, the definition of "operator" of a hotel room in an attempt to include Internet Travel Companies. Furthermore, on December 30, 2004 the City Attorney filed a class-action lawsuit against all members of the Internet Travel industry.

Such a policy of the City to collect Transient Occupancy Taxes from Travel Companies—not hotel operators—is new. However, the City should consider returning to its original policy, which is to collect the occupancy tax on the amount charged by the Hotel Operator for the room, and *not* on the services travel companies provide consumers which often occur through interstate commerce.

Any legislation or legal actions that could result in the occupancy tax being levied *on the service* that Internet Travel Companies provide to consumers, would most likely put the City at a significant competitive disadvantage in relation to surrounding cities. More importantly, it could result in a reduction in the total occupancy tax revenue collected by the City.

04-0600-545  
Submitted in Committee  
2/15/05 BAF #18

The region's tourism and convention center industry is competitive, and it has been well established that Los Angeles' ability to attract business to its convention center is largely impaired by a lack of hotel rooms in close proximity to the facility. Raising the tax liability on local hotels will make hotels in neighboring cities more cost-competitive and therefore more desirable to bargain-hunting consumers.

The LA Area Chamber strongly urges the City to immediately rescind changes to the City's Municipal Code which attempted to tax Internet Travel Companies because the changes are not likely to be consistent with legal precedence, and because those changes go against the grain of the City's attempt to change its negative business image. Further, we urge the City to withdraw from all litigation against the industry.

Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in cursive script, reading "Russell J. Hammer". The signature is written in black ink and is positioned below the word "Sincerely,".

Russell J. Hammer  
President & CEO



626 Wilshire Blvd  
Suite 200  
Los Angeles, CA 90017

telephone 213.624.1213  
facsimile 213.624.0858  
www.ccala.org

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Spartan Property Development  
Carol K. Schafer, President & CEO  
Central City Association

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Alyce Fashion Buildings  
AON Corporation  
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Bank of the West  
The Boeing Company  
bp America, Inc.  
Brown, Winfield & Conner  
The California Endowment  
California Hospital Medical Center  
California National Bank  
Canyon-Johnson Urban Fund  
Capital Group Companies  
Castellus Development  
CB Richard Ellis  
Century Housing Corporation  
Chryslis  
CIM Group  
City National Bank  
Commonwealth Partners  
Cushman & Wakefield  
Department of Water & Power  
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Fleishman-Hillard  
Forest City Development  
Fox Investments Company  
Gibson, Dunn & Crutcher LLP  
Greater L.A. African American Chamber of Commerce  
Hines  
Historic Core BID/610 Broadway Associates  
Howard Building Corp.  
IBM  
Jane Wingfield  
Johnson Felt Partners  
Kaiser Permanente  
Kawada Company of America  
Killefer Flemming Architects  
King's Seafood Company  
L & R Investment Company  
LA Inc.  
L.A. Mart  
Latham & Watkins  
Lexus Communities  
Los Angeles Athletic Club  
Los Angeles Dodgers  
Los Angeles Times  
Los Angeles United Investment  
Los Angeles World Airports  
Macias Government Relations  
MaguirePartners  
Marshall, Phelps, & Phillips  
Marsh Risk & Insurance Services  
Mayer, Brown, Rowe & Maw  
Metropolitan Water District  
MJW Investments  
Munger, Teller & Olson  
O'Malley & Myers  
Orthopaedic Hospital Foundation  
Parsons, Brinckerhoff, Quade & Douglas  
Paul, Hastings, Jacoby & Walker  
PCL Construction Services, Inc.  
Piper Rudnick  
Plym Vista Capital  
Port of Los Angeles  
Related Companies of California  
Shannon Group  
Sheppard, Mufson, Kibler & Hampton  
Smith, Brink & Morris  
Southern California Edison  
Southern California Gas Company  
Southwest Airlines  
Staples Center/Los Angeles Arena  
State Farm Insurance Company  
The Walt Disney Company  
Thomas Properties Group  
Transworld Crew Company  
Transamerica Occidental Life Insurance  
Trine Properties, Inc.  
UCLA  
Union Bank of California  
Universal Studios  
University of Southern California  
Univision KMEV TV-34  
Van de Kamp Consulting  
Verizon  
Warner Bros. Entertainment Inc.  
Washington Mutual  
Wells Fargo  
Westin Bonaventure Hotel & Suites  
The Yulfin Company

February 15, 2005

The Honorable Bernard Parks  
Chairman - Budget and Finance Committee  
Los Angeles City Council  
200 North Spring Street  
Los Angeles, CA 90012

Dear Council Member Parks,

Established in 1924, Central City Association (CCA) is business advocacy association whose 450 members employ over 250,000 people in the LA Region. CCA is opposed to any action by the City of Los Angeles that threatens to restrict or deny Internet travel companies from booking hotel space in Los Angeles.

CCA is committed to the rebirth and revitalization of Downtown Los Angeles. Together, the City of Los Angeles and CCA have made great strides towards this goal. However, recent legislation and legal filings by the City directed at taxing the services provided by Internet travel companies threatens to hamper efforts to establish Downtown - and the entire City - as a business and tourist destination. CCA opposes the City's efforts to tax the services provided by Internet travel companies or websites. These companies serve as an integral part of Los Angeles' recent increase in tourism, specifically in Downtown.

The City Council adopted a Transient Occupancy Tax (TOT) Ordinance change in an attempt to allow the taxing of services provided by Internet-based travel companies. Recently, the City Attorney filed a class-action lawsuit against the Internet travel industry in an attempt to collect a TOT based of the services that these companies provide to consumers.

The City currently collects TOT charges on all Internet bookings. The City should continue to collect a TOT on the amount charged by a hotel operator for a room, not on the services travel companies provide consumers. Internet travel companies provide valuable exposure to hotel operators, including several of the boutique independent hotels in Downtown Los Angeles. Downtown hotels continue in their struggle to attract tourists and business travelers through expensive general marketing and advertising campaigns. Internet travel companies can easily and more rapidly market and provide services to a significant amount of potential travelers through a larger audience on the Internet.

04-0600-545  
2/15/05 - Submitted w/  
B+F Committee  
#18

Internet Bookings

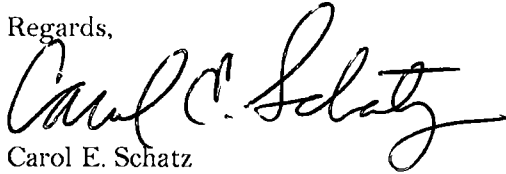
Page 2-2-2-2

The Internet provides a number of benefits to the consumer by allowing consumers to shop for better hotel rates and services. Consumers benefit from "shopping" a number of the many quality hotels in Downtown Los Angeles. Any legislation or legal action that result in TOT being levied on Internet travel companies could diminish the number of internet bookings and cause a *reduction* in total TOT revenue collected by the City. This additional tax would certainly put Los Angeles, specifically Downtown, at a significant disadvantage in relation to other surrounding cities.

With the Council recently approving a memorandum of understanding (MOU) with developers to finance a long-overdue Convention Center Hotel, the City should not inadvertently drive convention or tourism business to other cities by attempting to tax Internet travel services. The convention business is extremely competitive. The slightest increase in the cost of hotel rooms could place Los Angeles at a competitive disadvantage with other cities in the country. Convention planners are very aware of lodging costs, including the TOT amount charged by individual cities. In some cases, planners may provide recommendations based on the TOT charged to travelers.

CCA was a member of the coalition that supported the revising of the City's archaic business tax code. That is a step in the *right* direction. The recent actions by the City related to Internet travel companies are a step in the wrong direction. We respectfully request that the City to rescind the TOT Ordinance changes and to withdraw from litigation against the Internet travel industry.

Regards,

A handwritten signature in black ink, appearing to read "Carol E. Schatz". The signature is fluid and cursive, with a large, stylized "C" at the beginning and a long, sweeping underline.

Carol E. Schatz  
President and CEO

CITY OF LOS ANGELES SPEAKER

ARD

#18

Date

2/15/05

Council File No., Agenda Item, or Case No.

04-0600 545

I wish to speak before the

BUDGET & FINANCE COMMITTEE

Name of City Agency, Department, Committee or Council

Do you wish to provide general public comment, or to speak for or against a proposal on the agenda? ( ) For proposal

☒ Against proposal  
( ) General comments

Name: VICTOR FRANCO, JR.

Business or Organization Affiliation: CENTRAL CITY ASSOC.

Address: 626 WILSHIRE BL STE 200 LA CA 90017  
Street City State Zip

Business phone: 624-1213 Representing:

CHECK HERE IF YOU ARE A PAID SPEAKER AND PROVIDE CLIENT INFORMATION BELOW:

☐

Client Name: Phone #:

Client Address: Street City State Zip

Please see reverse of card for important information and submit this entire card to the presiding officer or chairperson.

CITY OF LOS ANGELES SPEAKER

WARD

18

Date

Council File No., Agenda Item, or Case No.

I wish to speak before the

Budget & Finance Committee

Name of City Agency, Department, Committee or Council

Do you wish to provide general public comment, or to speak for or against a proposal on the agenda? ( ) For proposal

Name: GORDON A. GREENBERG ☒ Against proposal ( ) General comments

Business or Organization Affiliation:

McDonnott Will & Gromley

Address: 2049 Century Park East, LA, CA, 90067

Business phone: 310.557-9398 Representing: Interactive Travel Sources Assoc (ITSA)

CHECK HERE IF YOU ARE A PAID SPEAKER AND PROVIDE CLIENT INFORMATION BELOW:

Client Name: ITSA Phone #:

Client Address: Street City State Zip

Please see reverse of card for important information and submit this entire card to the presiding officer or chairperson.

CITY OF LOS ANGELES SPEAKER

ARD

for the record  
15

Date

2/15/05

Council File No., Agenda Item, or Case No.

04-0600-S45

I wish to speak before the Budget committee  
Name of City Agency, Department, Committee or Council

Do you wish to provide general public comment, or to speak for or against a proposal on the agenda? ( ) For proposal  
( ) Against proposal  
Name: Cheyenne Cook ☒ General comments

Business or Organization Affiliation: LOS ANGELES AREA CHAMBER OF COMMERCE

Address: 350 S Bixel St LA CA 90017  
Street City State Zip

Business phone: 213 580 7520 Representing: \_\_\_\_\_

CHECK HERE IF YOU ARE A PAID SPEAKER AND PROVIDE CLIENT INFORMATION BELOW: ☐

Client Name: \_\_\_\_\_ Phone #: \_\_\_\_\_

Client Address: \_\_\_\_\_  
Street City State Zip

Please see reverse of card for important information and submit this entire card to the presiding officer or chairperson.



**OFFICE OF THE CITY ATTORNEY**

ROCKARD J. DELGADILLO

CITY ATTORNEY

REPORT NO. **R05-0066**  
**FEB 15 2005**

**REPORT RE**  
**APPROVAL OF OUTSIDE COUNSEL FOR**  
**City of Los Angeles, California, on behalf of itself**  
**and all others similarly situated v. Hotels.com, L.P., et al. BC326693**

Honorable Budget and Finance Committee  
City of Los Angeles  
200 North Spring Street  
Room 1010  
Los Angeles, CA 90012

Honorable Members:

This report seeks the Council's approval of a contract with the law firm of Kiesel Boucher & Larson to represent the City in its lawsuit against various Internet hotel-booking companies. The representation will be supervised by the City Attorney's Office.

The City Attorney's Office (the Office) recently became aware of the fact that various Internet-based hotel booking companies were failing to remit to the City the full and proper amount of Transient Occupancy Tax due the City relative to the hotel room occupancies those companies were selling. The companies would pay taxes based on the wholesale rate of the rooms, instead of on the retail rate of the rooms. It was clear that the loss of revenue to the City, based on this shortage, could amount to millions. The Office learned that the law firm of Kiesel Boucher & Larson had studied this phenomenon and was well qualified to represent the City in the tax, damages calculations, and other legal issues that would be involved in litigation over the matter.

The law firm has agreed that its compensation in this representation would be on a contingency basis; the firm would receive attorneys' fees in the amount of fifteen percent (15%) of any gross recovery received by the City through settlement, arbitration, court judgment or otherwise. If the City does not recover under this litigation, there will be no payment to the firm for attorneys' fees. The City would agree





04-0600-245

RECEIVED  
CITY CLERK'S OFFICE

2005 FEB 16 PM 12:18

CITY CLERK  
By [Signature]  
DEPUTY

to pay litigation costs advanced by the firm up to an annual cap of \$250,000 and a total cap of \$500,000.

**Recommendation.** Based on the foregoing, the Office of the City Attorney recommends that you approve, and authorize the City Attorney to enter into, a contract with Kiesel Boucher & Larson.

Very truly yours,

ROCKARD J. DELGADILLO, City Attorney

By   
TERREE BOWERS, Chief Deputy City Attorney

CITY OF LOS ANGELES  
INTER-DEPARTMENTAL CORRESPONDENCE

04-0600-S45

February 1, 2005

WAS No. 05-01-0107

To: Honorable Members of the Budget and Finance Committee

From: Gerry F. Miller *gfm*  
Acting Chief Legislative AnalystWilliam T Fujioka *wtf*  
City Administrative Officer**Motion: Financial Impact of Complaint Against  
Internet Hotel Sellers**

On January 11, 2005, a Motion (Parks - Padilla) C.F. 04-0600-S45, was introduced in City Council and referred to your Committee for consideration. This Motion requested a report back to the Budget and Finance Committee by the City Administrative Officer, Chief Legislative Analyst and the City Attorney, on the impact of a complaint concerning Internet-based hotel room sellers on the City's anticipated Transient Occupancy Tax revenue for FY 2004-05 and related issues.

Although the Motion indicates that a class action complaint had been filed against the City by Internet-based hotel room sellers, the City of Los Angeles is the plaintiff in the class action, along with all other cities and counties that have enacted uniform transient occupancy taxes, with an effective date on or after December 30, 1990. Internet-based hotel room sellers are the defendants in this case (BC326693). This action alleges the following against Internet-based hotel room sellers including, but not limited to, Hotels.com, Hotwire, Inc., Cheap Tickets, Inc., Expedia, Inc., Priceline.com., Inc., Orbitz, Inc., and Travelocity.com. LP:

- (1) Violations of Uniform Transient Occupancy Tax Ordinances;
- (2) Unfair Business Practices in Violation of California Business & Professions Code, §17200 et seq;
- (3) Conversion; and
- (4) Imposition of a Constructive Trust.

The class action complaint was filed by Kiesel, Boucher & Larson, LLP and Baron & Budd, P.C., outside counsel, on December 30, 2004, at the direction of the City Attorney. Use of outside counsel in this matter has not been previously approved by the Council and the Mayor.

The complaint alleges that the defendants have sold hotel rooms to the public and collected taxes on those rooms, but have failed to pay the proper amount of taxes due and owing to the City and Plaintiff Class members on such transactions. The tax is paid by the consumer occupants of the hotel rooms and collected on behalf of the City and others by the Internet-based hotel room sellers, who are the operators of the hotels at the time the rent is paid by the consumer. For hotel

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rooms located within the City of Los Angeles, the Transient Occupancy Tax is calculated at 14% of the retail room rental rate, and paid by the consumer of the hotel room. However, the Internet-based hotel sellers remit Transient Occupancy Taxes to the City calculated at 14% of the wholesale (lower) price of the hotel room. Therefore, the Transient Occupancy Taxes remitted to the City are discounted by the percentage difference between the wholesale room price and the retail price of the room.

### ***Impact on Transient Occupancy Tax Revenue***

In recent years, an increasing percentage of hotel rooms located in Los Angeles have been sold by Internet-based hotel room sellers. Therefore, in order to capture the full amount Transient Occupancy Tax revenue legally owed to the City of Los Angeles, the FY 2004-05 Budget included a proposal to fully apply the Transient Occupancy Tax on hotel bookings made through the Internet. It was estimated that full application of the Transient Occupancy Tax on Internet-based hotel sellers would generate approximately \$3 million during FY 2004-05.

At the time the complaint was filed by the City, the Office of Finance was in the midst of negotiations with many Internet-based hotel room sellers regarding hotel room sales dating back to July 1, 2001. When the complaint was filed, negotiations ceased, pending the outcome of the legal matter. The City Attorney advises that it is likely that the outcome of the complaint will not be determined during the current fiscal year. Therefore, the City will not be paid any of the estimated \$3 million revenue resulting from fully applying the Transient Occupancy Tax on hotel bookings made by Internet-based hotel room sellers. However, the City Administrative Officer and the Office of Finance believe that no adjustments to revenue estimates need to be made at this time, as Transient Occupancy Tax Revenue receipts have been stronger than anticipated in the Adopted Budget, due to improvement in the local economy.

### **STAFF RECOMMENDATION**

That the City Council:

1. RECEIVE and FILE the Motion (Parks - Padilla) C.F. 04-0600-S45, requesting the City Administrative Officer, Chief Legislative Analyst and the City Attorney to report within 14 days on the impact of the Transient Occupancy Tax (TOT) complaint, relative to Internet Hotel Sales, on the City's anticipated TOT revenue for FY 2004-05 and related issues, inasmuch as the subject report provides the information requested.
2. Instruct the City Administrative Officer, with the assistance of the Office of Finance, to continue to monitor Transient Occupancy Tax revenue and to make recommendations for adjustment in future Financial Status Reports including the Year End Report, as may be necessary.
3. Request the City Attorney to report to the Council on the Superior Court case BC 326693, City of Los Angeles, California, on behalf of itself and all others similarly situated v. Hotels.com, L.P., et al., including a request to approve outside counsel in this matter if justified, including the financial terms contained in any proposed contract.

## **FISCAL IMPACT STATEMENT**

The FY 2004-05 Budget was based on collecting \$3 million for full application of the Transient Occupancy Tax on Internet-based hotel room sales. Negotiation with Internet-based hotel room providers ceased pending the outcome of a class action complaint filed. Therefore, collection of all, or a significant portion, of the \$3M estimate now appears doubtful for FY 2004-05.

However, the Office of Finance and City Administrative Officer report that because hotel room sales are rising, collection of the full Transient Occupancy Tax revenue budgeted for the current fiscal year is still likely.

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## MOTION

The FY 2004-05 Budget included a number of options to maximize revenue to the City. One such option was to fully apply the Transient Occupancy Tax on hotel bookings made through the Internet. Each year an increasingly larger percentage of hotel rooms in the City are being sold through on-line services on the Internet, by which reservations are made through third party brokers who buy hotel rooms at a discount and resell the rooms at a price closer to "retail". The Internet brokers pay the City tax based on the "wholesale" price, not the retail price paid by the customer. The Internet broker retains the difference between the tax it remitted to the hotel, calculated upon the wholesale price of the room, and the full tax as measured by the higher "retail" price paid by the consumer. It was estimated that full application of the Transient Occupancy Tax would generate approximately \$3 million annually.

In the interim, a class action complaint has been filed by a coalition of internet based hotel lodging and travel services businesses, alleging the following: violations of the uniform Transient Occupancy Tax ordinances; unfair business practices in violation of California Business and Professions Code § 17200 et seq; conversion; and imposition of a constructive trust. Further, a jury trial has been demanded.

It is imperative that the Council receive a briefing from the City Administrative Officer, Chief Legislative Analyst and City Attorney on the status of this legal action and its potential impact on anticipated revenue to the City.

I THEREFORE MOVE, that the City Council direct the City Administrative Officer, Chief Legislative Analyst and the City Attorney, to report to the Budget and Finance Committee within 14 days on the impact of the Transient Occupancy Tax (TOT) lawsuit, relative to Internet Hotel Sales, on the City's anticipated TOT revenue for FY 2004-05 and related issues.

PRESENTED BY

Tony Cardenas for  
BERNARD C. PARKS  
Councilmember 8<sup>th</sup> District

SECONDED BY

Ally Hill

JAN 11 2005

AP