

JAN 11 2005

BUDGET & FINANCE

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

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Councilmember 8th District

SECONDED BY

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