MEETING DATE: 11/28/05

AGENDA ITEM: Appeal by LAX Plaza Hotel from the Tax Administrator's Transient Occupancy Tax Determination of November 10, 2005.

ATTACHMENTS

97 'ULVER BOULEVARD CULVER CITY, CA 9023 07 www.culvercity.org

Attachment # 1

October 13, 2005

CONFIDENTIAL

Hidebumi Minagawa
Urban Hotels Inc., dba LAX Plaza Hotel
6333 Bristol Parkway
Culver City, CA 90230

VIA
HAND DELIVERY

Culver CITY

SUBJECT: Notice of Transient Occupancy Tax Assessment

Dear Mr. Minagawa:

Your business has failed to remit Transient Occupancy Taxes (TOT), for which our office has communicated with you on numerous occasions. On August 24, 2005, you also received communication from the City Attorney on this same issue. Your business collected the TOT on behalf of the City of Culver City for each of the following periods, for which no tax filing or remittance was delivered:

October, 2003

other months redacted
11/22/05

through August, 2005

Pursuant to Culver City Municipal Code Section 11.02.135, I have assessed your business to owe in Transit Occupancy Taxes for the above-listed months. In addition, the interest and penalties caused by these delinquencies are . The total amount your business is being assessed is $639,388, a breakdown of which is shown on the enclosed spreadsheet, and is an extrapolation based on prior payments.

Pursuant to the aforementioned code section, you may, within 10 days of the serving or mailing of this notice, apply in writing to the Tax Administrator for a hearing on the amount which has been assessed against your business. If you don't make such application within 10 days of the serving or mailing of this notice, the tax, interest and penalties assessed via this notice shall become final and conclusive and immediately due and payable.

If you do make such an application, you should address your written application to the undersigned at the above address. Upon receipt of such application, we will notify you of a hearing date for this application. Note that pursuant to Culver City Municipal Code Section 11.02.145, as operator of the hotel, you have the duty to keep and preserve all records as may be necessary to determine the tax, and that the Tax Administrator shall have the right to

CRYSTAL C. ALEXANDER CITY TREASURER
CITY TREASURER'S OFFICE TEL 310.253.5865 FAX 310.253.5880

CONFIDENTIAL

inspect these records.

Your prompt attention to this matter is advisable. An online version of the Culver City Municipal Code is available at www.amlegal.com/culvercity_ca/

Sincerely,

Crystal C. Alexander

Crystal C. Alexander, CCMT
Tax Administrator

Copy Shashi Poudyal, Property Manager
Blanca Romero, Controller

Mayor Vera & Members of the City Council
Jerry Fulwood, CAO
Carol Schwab, City Attorney
Susan Evans, Community Development Director
Nagam Rao, Treasury Manager

Enclosure Tax, Penalty and Interest Assessment

LAX Plaza TOT Assessment

Enclosure not distributed with this attachment #1 due to the confidentiality of the contents.
N Rao
11/22/2005

Attachment #2

CRYSTAL ALEXANDER
City Treasurer

OFFICE OF THE CITY TREASURER

CITY OF CULVER CITY

9770 CULVER BOULEVARD, CULVER CITY, CALIFORNIA 90232-0507

(310) 253-5865
•
FAX (310) 253-5880

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October 27, 2005

H.A. Solomon, Controller
Urban Hotels Inc., dba LAX Plaza Hotel
6333 Bristol Parkway
Culver City, CA 90230

Certified Mail and Via Facsimile

SUBJECT: Notice of Hearing Regarding Transient Occupancy Tax Assessment

Hearing Date: November 8, 2005
Hearing Time: 10:00 am
Hearing Location: City Hall, First Floor, Conference Room 1 B

Dear Mr. Solomon:

We are in receipt of your letter dated October 24, 2005. The City has interpreted this letter to serve as your business' application for a hearing, pursuant to the provisions of Section 11.02.135 of the Culver City Municipal Code (CCMC), regarding the City's Transient Occupancy Tax (TOT) assessment dated October 12 (mailed) and October 13, 2005 (hand delivered.)

In response to this application for hearing, we have scheduled a hearing, pursuant to the provisions of Section 11.02.135 of the CCMC, to show cause why the amount specified in the City's assessment should not be fixed as your business' TOT, interest and penalties owed to the City. **That hearing has been set for November 8, 2005 at 10:00 am.** You have the right to appear at that hearing to offer evidence why the tax, interest and penalties contained in the City's TOT assessment should not be so fixed. If you fail to appear at that hearing, your business' TOT assessment will be fixed at the amount shown on the TOT assessment: $639,388.

Further, the City has the right to inspect your business' TOT records at all reasonable times pursuant to Section 11.02.135 of the CCMC. In preparation for the cause hearing noted above, the City will be exercising its right to inspect your business' TOT records on November 3, 2005 at your business site at 6333 Bristol Parkway, Culver City. Both City staff and a representative of the City's outside audit firm, Lance, Soll & Lunghard, will be present for the inspection. Please make sure that all of your TOT records,

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including but not limited to the records identified in the attachment, are made available for the City's inspection at that time.

If you have questions regarding procedural aspects of the hearing, please contact me or Roland Miranda, Deputy City Attorney.

Sincerely,

Crystal C. Alexander, CCMT
Tax Administrator

Attachment

Copy Hidebumi Minagawa, President
Shashi Poudyal, Property Manager

Carol Schwab, City Attorney
Roland Miranda, Deputy City Attorney
Nagam Rao, Treasury Division Manager
Michael Chu, Partner, Lance, Soll & Lunghard, LLP

Document2

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CRYSTAL ALEXANDER
City Treasurer

CONFIDENTIAL

OFFICE OF THE CITY TREASURER

CITY OF CULVER CITY

9770 CULVER BOULEVARD, CULVER CITY, CALIFORNIA 90232-0507

(310) 253-5865
FAX (310) 253-5880

Attachment to Notice of Hearing Regarding Transient Occupancy Tax Assessment

(1) Monthly Statements of Gross Room Revenues, Tax Exemptions, and adjustments, for the months under review i.e. October 2003, to August 2005. months redacted 11/22/

(2) Daily Room Revenue and Transient Occupancy Tax collected for the months under review.

(3) Hotel Room Charges.

(4) Additional Room Charges.

(5) Details of any Special Packages that the Hotel may be operating which may impact the room rates.

(6) Hotel's written Policy on exemption from the City of Culver City Transient Occupancy Tax.

(7) Any Rewards Program that they may be operating or participating in, and if they are reimbursed for the same.

(8) No Show, Attrition or Cancellation Policy.

(9) City of Culver City Tax Exemption Forms in support of the Tax Exemptions being claimed.

(10) Qualifying Rental agreements in cases where long term residents have been granted tax exemptions from day 1.

(11) If Meals are offered, then documentation to show that the Transient Occupancy Tax and the Sales Tax components are not co-mingled in the billing process.

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Attachment # 3

Mr. H.A. Solomon
Controller
LAX Plaza Hotel
6333 Bristol Parkway
Culver City, CA 90230

CONFIDENTIAL

November 10, 2005

Delivered Via Hand Delivery, Certified Mail and Facsimile

Culver CITY

SUBJECT: Notice of Fixing of Transient Occupancy Tax Assessment: Transient Occupancy Tax Assessment of $506,095.16 Due in Full on or Before Monday, November 28, 2005

Dear Mr. Solomon:

On October 12 and 13, 2005, pursuant to provisions of Culver City Municipal Code (CCMC) Section 11.02.135 concerning the failure to report and remit the collection of transient occupancy tax (TOT) I, as Tax Administrator, issued a notice of TOT assessment in the amount of $639,388.

On October 24, 2005, I received a letter from you, which was construed to be a request for hearing on the amount assessed. Accordingly, on October 27, 2005 I sent you a notice of hearing regarding the assessment, to schedule the hearing for November 8, 2005. Said notice also instructed you that representatives of the City would visit the hotel premises on November 3, 2005, to inspect the TOT records, pursuant to CCMC Section 11.02.145.

A hearing was held in the City Council Chambers on November 8, 2005 from 10:00 am to 12:15 pm. Witnesses presenting evidence at the hearing included Mr. Nagam Rao, Treasury Manager (representing the City) and Mr. Don Kaaukai, Managing Partner, and yourself (representing LAX Plaza Hotel.)

You were advised at the commencement of the hearing that its primary purpose was for hotel representatives to show cause why the $639,388 assessed by the City should not be fixed as the amount owned by LAX Plaza Hotel for its TOT, plus related interest and penalties.

Mr. Rao entered items into evidence (Exhibits 1 through 25), which consisted of correspondence and related paperwork. You entered into evidence one item (Exhibit A) of related paperwork. All of these items are now included in the file of record from the hearing, as there were no objections from either party on any item concerning their entry into the record.

CRYSTAL C. ALEXANDER CITY TREASURER

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My major findings of fact from the hearing are as follows:

1) Mr. Kaaukai are Mr. Solomon stipulated they were the authorized representatives of the hotel for the purposes of the hearing.

2) Per City Exhibits 1 through 7, from a time period of February 16, 2004 through August 24, 2005, the City (both the City Treasurer's and City Attorney's Offices) had corresponded with the hotel regarding the hotel's delinquency in paying the TOT. Mr. Rao testified that no written response was received from hotel representatives in response to any of this correspondence and that, further, the only verbal conversations on the matter were always initiated by Mr. Rao. Mr. Kaaukai and Mr. Solomon did not dispute this.

3) Mr. Kaaukai and Mr. Solomon stipulated to receipt and knowledge of the contents of City Exhibit 14. This exhibit is the City's October 27, 2005 Notice of Hearing Regarding Transient Occupancy Tax Assessment. This notice included an attachment, which outlined the TOT records that were to be examined on November 3, 2005.

4) Mr. Rao and Mr. Shirish Patel, Audit Manager of the City's outside audit firm, Lance, Soll & Lunghard, examined TOT records at the hotel premises on November 3, 2005. Mr. Patel was unable to attend the hearing, but submitted a memo (City Exhibit 23) regarding the records review that was conducted.

5) As a result of the TOT records examination noted above, representatives of the City and the hotel attempted to reconcile differences between the City's assessment, which was an estimate, and the hotel's calculation of the amount that it claimed was due the City for taxes, interest and penalties, based on actual records examined. City Exhibit 24 explains the methodology for the recalculation of the tax (inclusive of penalties and interest) due.

6) Mr. Rao, Mr. Kaaukai and Mr. Solomon agreed that the gross revenue, for the time periods for which the LAX Plaza did not file tax returns and pay remittances, is the total figure shown in City Exhibit 24-A, column 2, which is $.

7) Mr. Solomon, being familiar with the calculations behind the figures in City Exhibit 24-A, is also in agreement with the penalties and interest calculations. However, Mr. Solomon disputed total disallowment of the exemptions claimed, which total $338,443.12, per column 3 of City Exhibit 24-A. However, Mr. Solomon failed to produce any records supporting the exemptions claimed,

Based on the findings noted above, which are based on testimony provided at the hearing and items entered into evidence at the hearing, I have determined that:

- **The $338,443.12 in exemptions claimed by the hotel but unsupported by required documentation will be disallowed.**
- **The LAX Plaza Hotel owes the City of Culver City a total of $506,095.16.**
- **This amount must be paid in full, on or before Monday, November 28, 2005.**

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- **Pursuant to CCMC section 11.02.140, if the LAX Plaza Hotel is aggrieved by this decision and chooses to appeal this determination to the City Council, it must file a notice of appeal with the City Clerk within fifteen (15) days of the service or mailing of the this determination of tax due.**

If you have questions regarding this determination, please contact me or Roland Miranda, Deputy City Attorney.

Sincerely,

Crystal C Alexander

Crystal C. Alexander, CCMT
Tax Administrator

Copy City:
Jerry Fulwood, CAO
Carol Schwab, City Attorney
Roland Miranda, Deputy City Attorney
Nagam Rao, Treasury Manager

LAX Plaza Hotel:
Hidebumi Minagawa, President
Don Kaaukai, Managing Partner
Shashi Pouydal, Property Manager

LAX Plaza Hearing Determination

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