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CITY ATTORNEY

REPORT NO. R 22 - 0 4 3 3
DEC 0 6 2022

REPORT RE:

**DRAFT ORDINANCE AMENDING SUBSECTION (f) OF SECTION 21.7.2
OF ARTICLE 1.7 OF CHAPTER II OF THE LOS ANGELES MUNICIPAL CODE
TO PREVENT PRIMARY HOTEL OPERATORS FROM AVOIDING ALL
COLLECTION OBLIGATIONS BY ENTERING INTO A CONTRACT WITH A
SECONDARY OPERATOR**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 22-1090

Honorable Members:

As requested by the City Council, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance would delete the last two sentences of the second paragraph of Section 21.7.2(f) of Article 1.7 of Chapter II of the Los Angeles Municipal Code (LAMC), which currently allow a primary hotel operator to avoid any liability for collecting the transient occupancy tax ("TOT") by entering into a contract with a secondary operator to collect such taxes. By deleting these two sentences, a primary operator will be obligated to collect and remit the owed TOT if the secondary operator fails to do so.

Under LAMC Section 21.7.2, a hotel principal or primary operator has the fundamental responsibility to collect the TOT. (LAMC Section 21.7.5.) The primary operator may have any number of others involved in hotel operations, known as "secondary operators." (LAMC Section 21.7.2(f).) The Code currently allows a primary operator to avoid responsibility for collecting the TOT by entering into a contract under

which a secondary operator agrees to collect the TOT and to indemnify the primary operator for any such collections. (LAMC Section 21.7.2(f).)

This is unusual for trust fund taxes (i.e., taxes collected by a responsible person on behalf of the government, generally sales taxes or employment taxes), which normally require all those involved in an activity to take responsibility for ensuring the collection of taxes. Otherwise, all parties involved have an incentive to shirk their responsibilities and create tax avoidance schemes. Unfortunately the current Code creates such an incentive, which has interfered with the City's tax collection efforts. Some primary operators have created shell corporations lacking any assets to act as the secondary operator of hotels. By entering into indemnification contracts these primary operators have avoided liability for collecting the TOT, making it difficult, if not impossible, for the City to collect these taxes because the secondary operators have few, if any, assets.

This change will not prevent a primary operator from entering into contracts with other entities to rent rooms, collect payments, or otherwise manage parts of hotel operations. Any such relationships would be governed by relevant regulatory laws, not the City's TOT ordinances. This amendment only affects the obligations to collect the TOT should a primary operator enter into contracts with or other entities, as noted above.

Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Office of Finance with a request that all comments, if any, be presented directly to the City Council when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Daniel Whitley at (213) 978-7786. A member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

DM:DMW:mgm
Transmittal