



# CITY OF LONG BEACH

# C-10

DEPARTMENT OF CITY CLERK

333 West Ocean Boulevard • Long Beach, California 90802 • (562) 570-6101 • FAX (562) 570-6789

February 12, 2008

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Recommendation to set the date of hearing for Tuesday, February 19, 2008, at 5:00 p.m., to review and consider the report of the Hearing Officer on the revocation of business license for the Club Motel, 426 Lime Avenue. (District 1)

## DISCUSSION

In accordance with Section 2.93.050, of the Long Beach Municipal Code, please find enclosed the final findings and recommendations of the Hearing Officer, from the hearing concluded on January 22, 2008. The Hearing Officer has submitted his report for review. In accordance with Section 2.93.050 (7), the City Council shall set a date of hearing to review and consider the report. All evidence submitted at the evidentiary hearing is available for review by City Council upon request.

## FISCAL IMPACT

None.

## SUGGESTED ACTION:

Approve recommendation

Respectively submitted,

LARRY G. HERRERA  
CITY CLERK

Prepared by:  
Irma Heinrichs

1  
2 ADMINISTRATIVE HEARING  
3 THE CITY OF LONG BEACH  
4

5 THE CITY OF LONG BEACH

6 vs.  
7

8 JAYANTIBHAI PATEL dba THE CLUB  
HOTEL,

9 Licensee.  
10

RECOMMENDED DECISION

Hearing Officer: Ronald J. Sokol

Hearing Date: January 22, 2008

11  
12 **PRELIMINARY STATEMENT**  
13

14 This matter was heard on January 22, 2008, over the course of the better part of one day, for a  
15 determination as to whether or not the business license of the Club Hotel should be revoked for  
16 alleged failure to pay transient occupancy taxes (hereafter "TOT") to the City of Long Beach. Each  
17 side was represented by very fine counsel.

18 Present for the City of Long Beach (hereafter "the City") were its counsel Cristyl Meyers,  
19 Richard I. Bartlett (Business Services Officer for the City), James N. Thompson (outside Auditor for  
20 the City), Jeannine Montoya (Financial Management Officer), and Rita Hooker (Nuisance Abatement  
21 Officer).

22 Present for the Club Hotel (hereafter "the Licensee") were its counsel Frank A. Weiser, as well  
23 as Jayantibhai Patel who does business as the Club Hotel, and his wife Daksha Patel.

24 Witnesses were sworn in for both sides, testimony taken, fifteen documents submitted for  
25 consideration by the hearing examiner, and considerable argument was made by each party on a  
26 variety of issues. Some of the records provided to the hearing examiner, both prior to and at the  
27 hearing, included exchanges between the parties which could be considered compromise proposals  
28 by the Licensee. At the hearing, these compromise proposals, and various intricacies related thereto,

1 were also taken up the parties, without any objection by either side (although opportunity for  
2 objection was explicitly noted and available). For purposes of this Recommended Decision, however,  
3 those records and related information are neither relevant nor admissible in terms of any possible  
4 liability of the Licensee.

5 At the conclusion of the hearing, each side was encouraged by the hearing examiner to resolve  
6 the matter. Otherwise, each side was reminded that the Recommended Decision would be left to the  
7 hearing examiner within a finite period of time. Also, subsequent to the hearing (and in keeping with  
8 discussion there), the hearing examiner submitted a list of issues for the parties to formally address,  
9 as part of their respective closing briefs. Attached hereto at Tab 1, and incorporated herein by this  
10 reference, is a true and correct copy of the list of issues.

11 The parties, having filed their final briefs, the case is therefore submitted to the hearing  
12 examiner for his Recommended Decision.

13 **PRIMARY ISSUE**

14 Did the Licensee show cause as to why its business license should not be revoked for failure to  
15 pay the TOT?

16 **SUPPLEMENTAL ISSUES**

- 17 (a) Is the appointment of the hearing officer proper?  
18 (b) Is the TOT unconstitutional?  
19 (c) Does the hearing examiner have the authority to consider the constitutionality of the TOT?  
20 (d) Did the Licensee waive any arguments made at the hearing (such as supplemental issues "a,  
21 "b" and "c" herein), other than to show cause why its business license should not be revoked for  
22 failure to pay the TOT, because the Licensee did not request a hearing within ten days (or for as  
23 much as a year later) in response to the letter dated June 5, 2006 from the City which indicated the  
24 Licensee owed the TOT as well as penalties, and which set forth "Should you wish to appeal the tax  
25 determination... you may do so by requesting a hearing in writing within ten (10) of the date of this  
26 letter"?

1 (e) Is a finding of "wilfulness" necessary to substantiate revocation (or suspension) of the  
2 Licensee's business license?

3 **FACT FINDINGS**

4 The Club Hotel is located at 426 Lime Avenue, Long Beach, California. It is owned by  
5 Jayantibhai Patel, dba the Club Hotel. Mr. Patel applied for and obtained a business license (number  
6 BU 20146880) from the City of Long Beach for the Club Hotel in or about November 2001, and has  
7 been operating the Hotel since then.

8 The term "hotel" is defined by Long Beach Municipal Code ("LBMC") Section 21.15.1380 as "a  
9 commercial land use for the rental of six (6) or more guest rooms or suites to primarily transient  
10 occupants for a period of not more than thirty (30) consecutive days." The Club Hotel has six or  
11 more guest rooms.

12 Under LBMC SectionS 3.64.010, 3.64.030 and 3.64.035, the TOT is to be paid by a hotel  
13 operator on the room rent collected from a tenant or occupant for a period of not more than thirty  
14 consecutive days. The TOT is 12% of the total collected from each such transient guest at the hotel  
15 (Id.). There is an exception to the TOT with regard to persons who stay continuously at the hotel for  
16 thirty-one or more consecutive days, in which event "the (hotel) operator shall return to such  
17 occupant an amount equivalent to the amount of the tax so collected either in cash or by crediting his  
18 or her account..." (LBMC Section 3.64.055).

19 In or about November 2005, the City's outside auditor, Mr. Thompson, conducted an audit of  
20 the Hotel's records, which ultimately included a review of guest cards, revenue per month, total tax  
21 receipts, and itemized amounts of what was paid as TOT to the City. There was confusion as to  
22 whether or not Mr. Thompson actually spoke with Mr. Patel (the owner of the Hotel) about the audit  
23 when he first visited there, but, as it turns out, Mr. Thompson did converse with Mr. Patel (he simply  
24 did not realize it). Mr. Thompson was told that the Hotel claimed TOT exemption on the basis of  
25 permanent lodger status, and that the Hotel was then operating under a policy of twenty-nine days as  
26 a maximum stay. Mr. Thompson further discovered that the rent being charged by the Hotel did not  
27 separate out TOT from the charges for the room itself, and, if TOT was paid by the Hotel with  
28 regard to any particular occupant -- but he or she actually stayed beyond thirty days -- no money was

1 reimbursed to such person by the Hotel (in turn, apparently no one asked for any payment back from  
2 the Hotel).

3 The records before the hearing examiner show sums paid by the Licensee for TOT to the City  
4 typically in the monthly sum of \$30 (a bit more or a bit less). Total monthly rental revenues to the  
5 Hotel were listed in the vicinity of \$5,000 (some times less). Testimony was provided also that  
6 painted a picture of the Patels as struggling to make ends meet, and that Mr. Patel suffered a serious  
7 stroke requiring major surgery which went forward in his home country of India during material  
8 times after the audit was concluded and the City was communicating its findings to him.

9 Initially, the audit by Mr. Thompson on behalf of the City determined that the sum of \$18,333  
10 was due as TOT, and, with penalties of \$9,166.50, the total due was \$27,499.50. This was conveyed  
11 in a letter to Mr. Patel dated June 5, 2006, from the City of Long Beach, in which the following  
12 statements were set forth: "If payment is not received by June 30, 2006, interest in the amount of  
13 \$275.00 will be added to the balance due on July 1, 2006, and on the first of each month the balance  
14 is not paid. Should you wish to appeal the tax determination to the Director of Financial  
15 Management, you may do so by requesting a hearing in writing within ten (10) days of the date of this  
16 letter. The request should state the grounds for the appeal and be submitted to the undersigned with  
17 a non-refundable filing fee of \$350.00."

18 No actual appeal of the tax determination was forthcoming from the licensee within ten days of  
19 the City's June 5, 2006 letter, or for a long time thereafter, if ever.

20 Follow up written communications were sent by the City to Mr. Patel, on November 6, 2006,  
21 and on May 24, 2007, each addressing the unpaid TOT, as well as interest and penalties. The City's  
22 letter of May 24, 2007 includes the following statement: "Despite this notice (of June 5, 2006), you  
23 failed to timely submit a written request for an appeal hearing regarding the amount assessed. In so  
24 doing, you waived your right to appeal the matter by means of judicial review."

25 The Licensee provided testimony at the hearing, however, not only concerning Mr. Patel's  
26 surgery, and absence for a period of time from the country, but that a voice mail message was left  
27 with the City, and that they were not ignoring the City. The Licensee stressed the difficulties caused  
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1 as a result of Mr. Patel's medical problems, and that the Licensee did in fact seek to communicate  
2 with the City, while at least making some TOT payments.

3 On June 1, 2007, counsel for the Licensee wrote to the City. Therein, he states in part: "As I  
4 indicated to you in our conversations, the reason that Mr. Patel did not appeal the alleged transient  
5 occupancy tax assessment of \$27,499.50 was due to the fact that at the time the assessment was  
6 made, he suffered a severe stroke and was sent to India for medical treatment. Therefore, he could  
7 not and did not make the request for an appeal at such time."

8 At or around the same time as the June 1, 2007 letter of the Licensee's counsel, the City's  
9 outside auditor wrote to the City (on June 6, 2007), and indicated he was "continuing to process the  
10 Transit Occupancy Tax (TOT) on behalf of the City of Long Beach. Based on our calculations, the  
11 total amount due the city (from the Hotel) is \$29,360.52." It is unclear if this letter, or that revised  
12 figure, or the actual letter that Mr. Thompson suggested the City send to the Licensee, was actually  
13 ever sent to the Licensee. What is clear is that the revised figure is no longer based on the years 2002  
14 and 2003, or most of 2004, because that time frame was felt to be subject to the applicable three-  
15 year statute of limitations on tax liabilities herein. The adjusted sum due consists of TOT owing, as  
16 well interest and penalties, for the period of time covering the last quarter of 2004, the years 2005  
17 and 2006, and the first quarter of 2007 only. In each instance, when the Auditor first calculated the  
18 TOT he believed to be due and owing from the Hotel to the City, and subsequently when he revised  
19 the figure, he made certain assumptions he felt were appropriate and supportable, based upon his  
20 years of experience as an outside Auditor for various cities for whom he has conducted many such  
21 audits.

### 22 DISCUSSION OF ISSUES AND EVIDENCE

23 The Supplemental Issues identified above are addressed first.

#### 24 (1) Waiver Argument (Supplemental Issue [d])

25 It is axiomatic that the term waiver is defined as "the intentional relinquishment of a known  
26 right". Public policy, of course, favors determination of cases on the merits.

27 The Licensee did not show genuine vigilance in addressing the June 5, 2006 letter from the City,  
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1 let alone subsequent written communications from the City about the alleged TOT non-compliance.  
2 While Mr. Patel may have been absent from the country for a period of time, his wife and/or sister  
3 was available, at least to an appreciable degree. Further, the hotel continued to function, and rent  
4 continued to be collected.

5 The appearance is that the Licensee was stonewalling, and/or hoping the matter would resolve in  
6 some manner, and/or taking a calculated gamble that its manner of dealing with the TOT would pass  
7 muster, and/or just not focusing on how most appropriately to address the controversy at hand.

8 Nonetheless, the hearing officer cannot say with full assurance that the fact the Licensee did not  
9 timely respond to the City's June 5, 2006 letter, was intended to knowingly waive the Licensee's  
10 ability to contest the TOT on a variety of grounds, including those raised at this hearing and in the  
11 Licensee's closing brief. Further, the City's June 5, 2006 letter does not indicate that if the Licensee  
12 fails to appeal in ten days, then the Licensee has thereby eviscerated many arguments it might make if  
13 and once faced with license suspension or revocation. Nor does the hearing examiner find notice of  
14 such a waiver in the LBMC. To compound things, the amount of TOT and penalties initially claimed  
15 by the City was later recalculated by its Auditor, and a portion of the years in question were  
16 considered to be barred by the applicable statute of limitations. Hence, argument can at least be made  
17 by the Licensee (and was at the hearing) that this "re-triggered" the time frame for the Licensee to  
18 contest the TOT on any and all available grounds. Finally, the importance of hearing and deciding the  
19 matter on the full merits convinces the hearing officer to consider each of the arguments made by the  
20 Licensee.

21 **(2) Threshold Challenges** (Supplemental Issues (a) through (c) above)

22 **A. Challenge to Hearing Officer Appointment** [Supplemental Issued (a)]

23 Perhaps this issue is best addressed below at subsection 2(B), as the hearing examiner was asked  
24 by the Licensee's counsel-- at the commencement of the hearing on January 22 -- to stop the  
25 proceeding because his appointment itself was invalid. The hearing officer declined because he  
26 believes he has no conflict of interest, because he has never heard a matter for the City (in over 29  
27 years of practicing law), and because he has no expectation of being appointed again, or, if he were,  
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1 that he would necessarily accept. For that matter, the hourly rate paid to the hearing examiner by the  
2 City of Long Beach (as he stated at the hearing after this challenge was made), is decidedly less than  
3 he is typically paid on hourly-rate matters in his private practice. In any event, it is questionable that  
4 the hearing officer can decide that the City's appointment process must be struck down; this would  
5 seem, as per subsection 2(B), *infra*, to belong to the Courts.

6 A question also arises as to the timing of the Licensee's objection to the selection process.  
7 Witnesses are present, with counsel, the hearing officer is there, and then for the first time the  
8 Licensee asserts "you cannot go forward". At minimum it would seem appropriate that any such  
9 threshold challenge be raised in sufficient advance of the hearing, with points and authorities and/or a  
10 demonstration as to why the appointment process may not withstand the kind of scrutiny addressed  
11 in the seminal case of Haas v. County of San Bernardino (2002), 27 Cal.4th 1017.

12 In Haas, a massage therapist's business license had been revoked at an administrative hearing,  
13 but the appointment process was later challenged by Writ of Administrative Mandate in Court on the  
14 grounds it created an improper pecuniary interest for the hearing officer (evidently future  
15 appointments depended upon the good will of the County). The Haas court affirmed striking down  
16 the appointment process in that instance, but emphasized there are various ways in which a local  
17 government can eliminate the potential for bias among appointment hearing officers under  
18 Government Code Section 27727.

19 Here, the City of Long Beach has a selection process "by lot". Hearing officers submit  
20 applications to the City (which in this instance advertised for persons who were interested), must  
21 have at least five years experience in civil trial or civil appellate practice, and cannot participate as a  
22 hearing officer once selected for a significant period of time thereafter (ie, until the entire list of  
23 potential hearing officers has been exhausted). In this instance, the hearing officer applied to the City  
24 of Long Beach as much as two years earlier. Further, this matter was set for hearing more than once  
25 with the hearing officer identified, and, indeed, the hearing had been pending for quite some time.  
26 Nonetheless, there was no prior indication by the Licensee that he faults (or faulted) the appointment  
27 process, including no challenge made in advance to the City or to the Superior Court about it.  
28 Finally, the hearing officer on this matter has served as an arbitrator many times, through the



1 American Arbitration Association and the Los Angeles County Courts, as he indicated to the  
2 Licensee at the hearing.

3 Accordingly, the hearing officer continues forward with this Recommended Decision, mindful  
4 that the Licensee has the right to address this matter further, on a *de novo* basis, with the Long  
5 Beach City Council, and that the Courts remain available further on the basis of administrative  
6 mandate, if the Licensee is so inclined.

7 **B. Constitutional Challenges** [Supplemental Issues (b) and (c)]  
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9 The Licensee raised arguments at the hearing, and in his closing brief, that the TOT is  
10 unconstitutional on a number of grounds, including that the City failed to obtain voter approval for  
11 certain definitional changes (and then adopted the amended ordinance in 2005). Each of the legal  
12 authorities cited by the Licensee, however, appears to involve a challenge made in a lower Court  
13 which ultimately found its way to a much higher Court (such as the Court of Appeal, the California  
14 Supreme Court, or the United States Supreme Court). As best as the hearing examiner can  
15 determine, none of those matters involved an administrative hearing officer rendering a decision to  
16 strike down an ordinance or statute. Moreover, California Constitution Article III, Section 3.5  
17 specifically states: "An administrative agency, including an administrative agency created by the  
18 Constitution or an initiative statute, has no power:

19 (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being  
20 unconstitutional unless an appellate court has made a determination that such statute is  
21 unconstitutional;

22 (b) To declare a statute unconstitutional;

23 (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal  
24 law or federal regulations prohibit the enforcement of such statute unless an appellate court has made  
25 a determination that the enforcement of such statute is prohibited by Federal law or Federal  
26 regulations"

27 Thus, the hearing examiner does not believe he has the authority to render a decision on the  
28 constitutional validity or invalidity of the TOT.

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**C. Is a Finding of Willfulness Necessary Here?** [Supplemental Issue (e)]

The Licensee makes argument (and provides citations) that due process requires a finding of “willfulness” to substantiate revocation (or suspension) of a business license. The Licensee submits that the Hotel is a property, and, in reality, a means by which the Patels seek to earn a livelihood. Suspension, and more particularly revocation of the business license, may constitute a forfeiture literally of a means by which they seek to exist.

Of interest is Goat Hill Tavern v. City of Costa Mesa (1992), 6 Cal.App.4th 1519, relied upon in part by the Licensee. There, the Court of Appeal held that an administrative agency must factor in a landowner’s property rights, as well as alternative means of enforcement, before closing a business. In Goat Hill, the business had been in operation for 35 years, and substantial sums of monies had been invested into the business by the owner.

It is of equal significance, however, that this process provides several opportunities for the Licensee to either convince the City that the TOT is not properly calculated, and/or is not due (in whole or in part), or to seek to work things out with the City. As noted above, the next step for the Licensee after this decision is most probably the City Council. Back in June 2006, after the initial letter from the City, the Licensee had the option to appeal the tax determination. Hence, this is not a one-time, “drop dead” proceeding in which the Licensee is limited in his ability to seek to challenge the TOT on any number of grounds and/or to try to resolve the matter with the City.

Bottom line, LBMC Section 3.80.429.1, subsection (A), makes no reference to a required finding of willfulness for suspension or revocation to occur per LBMC Chapter 3.64. It would seem that any modification in the wording therein would be the exclusive province of the appropriate governing body. But, all that aside, if “willfulness” means “volitional conduct”, as opposed to “mistake or inadvertence”, then as discussed more fully below, the hearing examiner would find that the Licensee “willfully” chose not to pay the TOT.

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1           (2) **Did the Licensee Show Cause As To Why the License Should Not be**  
2                   **Revoked (or Suspended) for Failure to Pay the TOT?** (Primary Issue)

3           LMBC Section 3.80.429.1 requires the Licensee to “show cause why his or her license should not  
4 be revoked” for failing to pay the TOT. The Licensee’s burden of proof under California Evidence  
5 Code Section 115 is by a preponderance of the evidence.

6           As indicated and discussed above, the Licensee made many arguments of interest and importance  
7 contesting the validity of the TOT, the validity of this process itself, and even the kind of finding that  
8 must be made to substantiate license revocation (or suspension). What the Licensee did not do to  
9 any persuasive degree, however, is adequately challenge the calculations of the City’s Auditor. The  
10 audit of the Hotel’s records and information was carried out in keeping with LBMC Section 3.64.110.  
11 No expert (or otherwise) testified on behalf of the Licensee that what the Auditor reviewed, how he  
12 came to his determinations, and the final calculations he made, were not competent or adequate.  
13 Some questions were raised about requiring the Licensee to pay TOT when in truth it might be  
14 monies that the Licensee was supposed to pay back to the occupants of the Hotel, but LBMC  
15 Section 3.64.050 provides that the TOT is to be held in trust for the City.

16           Nor was there a persuasive showing that the Licensee had a misunderstanding of the TOT. If  
17 anything, the Licensee showed a real grasp of the TOT by “coming up with” a policy of “no stay  
18 beyond 29 days”. Nonetheless, the rent collected by the Hotel did not distinguish room charges from  
19 the TOT, and, further, no one who stayed past the 30 days was reimbursed the TOT they were  
20 charged, or to have been charged.

21           The hearing examiner therefore finds that the Licensee violated LBMC Sections 3.64.050 and  
22 3.64.055. Under these circumstances, sadly, the Hotel’s license is subject to revocation or  
23 suspension per LBMS Section 3.80.429.1 subsection A.

24   **RECOMMENDED DECISION**

25           The Licensee shall pay the total sum due of \$29,360.52 as follows:

- 26           a. The sum of \$5,872.10 shall be paid to the City by March 10, 2008. If that payment is not made  
27 in good funds by March 15, 2008, the license of the Club Hotel shall be suspended. If the sum is not  
28 then paid in good funds by March 31, 2008, the license of the Club Hotel shall be revoked.

1 b. The sum of \$5,872.10 shall be paid to the City by April 10, 2008. If that payment is not made  
2 in good funds by April 15, 2008, the license of the Club Hotel shall be suspended. If the sum is not  
3 then paid in good funds by April 30, 2008, the license of the Club Hotel shall be revoked.


4 c. The sum of \$5,872.10 shall be paid to the City by May 10, 2008. If that payment is not made in  
5 good funds by May 15, 2008, the license of the Club Hotel shall be suspended. If the sum is not then  
6 paid in good funds by May 30, 2008, the license of the Club Hotel shall be revoked.

7 d. The sum of \$5,872.10 shall be paid to the City by June 10, 2008. If that payment is not made  
8 in good funds by June 15, 2008, the license of the Club Hotel shall be suspended. If the sum is not  
9 then paid in good funds by June 30, 2008, the license of the Club Hotel shall be revoked.

10 e. Finally, the sum of \$5,872.12 shall be paid to the City by July 10, 2008. If that payment is not  
11 made in good funds by July 15, 2008, the license of the Club Hotel shall be suspended. If the sum is  
12 not then paid in good funds by July 30, 2008, the license of the Club Hotel shall be revoked.

13 Nothing contained herein waives, alters, modifies or changes any ongoing obligation(s) the  
14 Licensee has with its operations to be current on any TOT it owes other than as addressed in this  
15 Recommended Decision.

16 DATED: February 6, 2008



18 Ronald J. Sokol

19 Hearing Officer

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**Ronald J. Sokol**  
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January 23, 2008

A781

**VIA FACSIMILE ONLY**

Cristyl Meyers, Esq.  
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Los Angeles, CA 90010

Re: **City of Long Beach/Jay Patel dba The Club Motel**

Dear Counsel:

This letter confirms that you are going to provide briefing to me (and each other) by January 30, 2008 (fax or email are fine for me), and that the decision in the above matter will be rendered by me on February 6, 2008. There were certain topics that I asked you to address, over and above summary, closing argument. Those items include one topic that I did not mention, which I am listing first here:

1. In order for suspension or particularly revocation of the license to be ordered, a finding of "willfulness" is required.

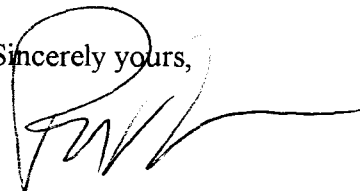
The other items which I addressed with you at the hearing yesterday, and asked you to brief:

2. The argument by Mr. Weiser that the subject code(s) in play on the Transient Occupancy Tax are not constitutional, that the appointment process by which the hearing officer came to this matter is itself improper and/or invalid, that this is the proper venue in which to raise those arguments, and that I have authority to make such determinations.

3. Lastly, that there is a waiver of objections caused by the business licensee not appealing the tax determination to the Long Beach City Director of Financial Management by requesting a hearing within ten days of the June 5, 2006 letter, as set forth therein. The waiver would moot several of the arguments raised at yesterday's hearing as to whether the tax (with interest and penalties) is owed, and instead limit the licensee to showing cause only as to why the license should not be suspended or revoked for failure to pay.

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'RJS', with a long horizontal flourish extending to the right.

Ronald J. Sokol,  
Hearing Officer.

RJS/ad

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 COUNTY OF LOS ANGELES ) ss.

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a  
5 party to the within action; my business address is 1334 Park View Avenue, Suite 100, Manhattan Beach,  
6 California 90266. On the date below I served on the interested parties listed below the foregoing document(s)  
7 described as follows:

8 **RECOMMENDED DECISION**

9 X by placing \_\_ the original X a true copy thereof enclosed in sealed envelopes addressed as follows:

10 Christyl Meyers, Esq.  
11 Deputy City Attorney  
12 Office of the City Attorney  
13 City Hall, Eleventh Floor  
14 333 West Ocean Boulevard  
15 Long Beach, CA 90802  
16 (City Attorney)

17 Frank A. Wesier, Esq.  
18 Attorney at Law  
19 3460 Wilshire Blvd., Suite 1712  
20 Los Angeles, CA 90010  
21 (Counsel for Licensee)

22 X **By Mail** - I placed the envelope for collection and mailing on the date and at the place shown  
23 herein following the firm's ordinary business practices. I am "readily familiar" with the firm's  
24 practice of collection and processing correspondence for mailing. Under that practice it would be  
25 deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at  
26 Manhattan Beach, California in the ordinary course of business. I am aware that on motion of the  
27 party served, service is presumed invalid if postal cancellation date or postage meter date is more  
28 than one day after date of deposit for mailing an affidavit.

X **By Facsimile** - A true and correct copy of the document was transmitted via facsimile to the  
addressee as indicated above.

     **By Federal Express (Overnight Mail)** - I am readily familiar with the business practice of Ronald  
J. Sokol for collection and processing of correspondence for transmitting by Federal Express.  
Under such practice, correspondence would be deposited with the Federal Express pick up box on  
the same day as received in the ordinary course of business. Following such practices, and in the  
ordinary course of business, on the date set forth above, I placed in the Federal Express pick up  
box, the aforesaid sealed envelope.

X (State) I declare under penalty of perjury under the laws of the State of California that the above  
is true and correct.

     (Federal) I declare that I am employed in the office of a member of the bar of this court at whose  
direction the service was made.

Executed on February 6, 2008 at Manhattan Beach, California.

  
Alice Dykeman