



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 15-0231, Version: 1

REPORT TO COUNCIL

SUBJECT

Appeal of City Manager's Decision Determining Penalty and Interest Due from Sundowner/Days Inn Hotel on its Transient Occupancy Tax (TOT) Payment for the Month of August 2014

BACKGROUND AND PROCEDURAL STATUS

This is an appeal by Shah Enterprises, Inc., operator of the Sundowner/Days Inn Hotel, of the City Manager's decision affirming the tax administrator's determination of penalty and interest owed for a late Transient Occupancy Tax (TOT) payment made for the month of August 2014.

Sunnyvale Municipal Code (SMC) Chapter 3.16 imposes a transient occupancy tax of 10 ½ percent on transient hotel stays in the City. It is the duty of each hotel operator to collect the tax imposed and to remit the tax to the City each month. Pursuant to SMC Section 3.16.080, the tax payment is due and "must be received by the tax administrator on or before the last day of the month following the applicable reporting period. A postmark is insufficient." SMC Section 3.16.090, subdivision (a), provides that "any operator who fails to remit any tax imposed by this chapter within the time required shall be required to pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax, unless waived for good cause by the tax administrator." SMC Section 3.16.090, subdivision (d), further provides that "in addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall be required to pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid unless waived for good cause by the tax administrator."

Under these rules, the TOT collected by the Sundowner/Days Inn for the month of August 2014 was due to the Finance Department on or before September 30, 2014. The payment was submitted one day late, on October 1, 2014, and was made in the form of a check that was returned unpaid by the operator's bank. A replacement check was not received until October 7, 2014, making the payment seven days late. Accordingly, a penalty of \$2,780.97 and interest in the amount of \$64.89 was assessed on the operator.

SMC Section 3.16.100 provides that an operator may request a hearing with the tax administrator to show cause for why the assessment should not be imposed. Under SMC Section 3.16.110, the operator may appeal the decision of the tax administrator to the City Manager, and may in turn appeal the City Manager's determination to the City Council. The operator may appear and offer evidence why such specified tax, interest and/or penalties should not be so fixed. The findings of the City Council are final and conclusive. Any amount found to be due shall be immediately due and payable upon service of notice to the operator.

DISCUSSION

Pursuant to these rules, the operator requested a hearing with the tax administrator (the Director of

Finance) through a handwritten note dated October 1, 2014, (Attachment 1). At that hearing, which was held on October 20, 2014, the operator asked that the late penalty and interest be waived, stating that his payment was late because he had been out of the country on a vacation and his return flight was delayed due to circumstances outside his control. Upon consideration, the tax administrator decided not to waive the penalty and interest, citing a history of late payments, including two instances where the previous City Manager waived the penalty and interest for late payments for the month of January 2011 and waived 50% of the penalty and interest assessment for the July 2012 tax payment based on the operator's assurance that he would deliver the payments earlier in order to prevent future late payments. (The prior history and waiver letters are included as Attachment 2; the tax administrator's decision is included as Attachment 3.)

The operator then appealed the tax administrator's decision to the City Manager. The City Manager held a hearing with the operator on January 22, 2015. The City Manager did not waive the penalty and interest, again citing the waivers granted by the City for the two previous late payments in January 2011 and July 2012, and noting that the tax administrator had waived other penalty and interest payments in past years as well. The City Manager pointed out that the most recent waiver granted was noted as one-time only, and determined no additional information was provided by the operator that warranted an additional waiver. (The City Manager's letter is included as Attachment 4.)

APPEAL

The operator requested a hearing with the City Council to appeal the City Manager's decision to uphold the penalty and interest assessment. The purpose of the public hearing tonight is for the operator to appear and offer evidence why such penalty and interest should not be assessed. The operator has provided a letter regarding the tax delinquency for the City Council's consideration which is included as Attachment 5. The City Council may waive or reduce the penalty and interest assessment if it finds good cause for the late payment.

ENVIRONMENTAL REVIEW

No environmental review is required of governmental administrative activities that will not result in any direct or indirect change to the physical environment. (CEQA Guidelines 15061(b)(3); 15378(b)(5).)

FISCAL IMPACT

The amount of the penalty and interest assessment is \$2,845.86.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Find that the operator has not demonstrated good cause for the late payment, uphold the decision of the City Manager, and order that the entire amount of the penalty and interest assessment, \$2,845.86, be due immediately upon service of the City Council's determination.
2. If City Council finds good cause for the late payment, waive all or a portion of the penalty and interest assessed, and order payment of any remaining amount.

STAFF RECOMMENDATION

Alternative 1: Find that the operator has not demonstrated good cause for the late payment, uphold the decision of the City Manager, and order that the entire amount of the penalty and interest assessment, \$2,845.86, be due immediately upon service of the City Council's determination.

Prepared by: Therese Balbo, Treasury Manager

Reviewed by: Grace K. Leung, Director, Finance

Reviewed by: Robert A. Walker, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Letter from Operator dated October 1, 2014 requesting waiver
2. Past letters from City Manager and Tax Administrator
3. Tax Administrator Hearing Decision dated October 22, 2014
4. City Manager Hearing Decision dated January 30, 2015
5. Letter from Operator dated March 5, 2015