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February 18, 2025

File No. 5687-01

VIA FEDEX

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RE: Appeal of Business License Revocation
Holiday Inn Express & Suites Hesperia
License No. BL-50006

To the City Clerk of the City of Hesperia:

We represent HSP Hotels LLC ("Licensee"), the owner of Holiday Inn Express & Suites Hesperia ("Business") and holder of Business License No. BL-50006 ("License"). On February 6, 2025, the City of Hesperia ("City") issued a letter stating that it was revoking the License ("Notice of Revocation"). Pursuant to Hesperia Municipal Code ("HMC") section 5.04.150, the Notice of Revocation informed Licensee that it had 15 days to appeal to the City Council from the date of the Notice of Revocation. Licensee hereby submits its appeal.

The Notice of Revocation cites as the ground for revocation a "failure to remit Transient Occupancy Taxes (TOT) as required by Hesperia Municipal Code (HMC) Section 3.10.050." The TOT is a tax imposed on transients. (HMC § 3.10.030(A).) Transients pay the tax to the "operator," but if that does not occur for some reason, it may be paid directly to the tax collector. (HMC § 3.10.030(B).) "Any tax collected from a transient by an operator pursuant to the provisions of this chapter which has not been paid to the city shall be deemed a debt owed by the operator to the city." (HMC § 3.10.090(B).)

Operators are required to submit quarterly returns to the tax collector stating the amount of tax collected from transients. (HMC § 3.10.050(A).) Returns are due "on or before the last day of the month following the close of the calendar quarter." (HMC § 3.10.050(A).) At the time the return is filed, the operator remits "the full amount of the tax collected" (HMC § 3.10.050(B)), although this most certainly means the full amount of the tax collected *and listed on the return*.

Taxes not remitted to the City with the return immediately incur a ten percent penalty (HMC § 3.10.060(A)) and then a second ten percent penalty after 30 days (HMC § 3.10.060(B)). Taxes not remitted also accrue interest. (HMC § 3.10.060(D).) HMC section 3.10.100,

subdivision (A)(5) purports to make failing to remit taxes a crime punishable by “imprisonment in the county jail for not more than six months.”

The Notice of Revocation fails to cite any ground under Chapter 5.04 of the HMC for revocation of the License. HMC section 5.04.140, subdivision (A) lists ten distinct grounds upon which a business license may be revoked. None of these grounds are identified in the Notice of Revocation, which only states it is because of a “failure to remit Transient Occupancy Taxes (TOT) as required by Hesperia Municipal Code (HMC) Section 3.10.050. This is not a stated ground in HMC section 5.04.140, subdivision (A).

Prior to any business license revocation, the City is required to provide a “notice of the city’s intent to revoke such license and shall state the reasons for such revocation” at least ten days before revocation (“Notice of Intent”). (HMC § 5.04.150(A).) The January 27, 2025 Notice of Intent cited HMC section 5.04.140, subdivision (A)(4) as permitting revocation of a business license “if a licensee commits an unlawful act while conducting business that causes injury or from which a licensee benefits from the unlawful act.” However, it is not possible to ascertain if the Notice of Revocation is based upon the same ground. The Notice of Intent claims, “This failure to remit TOT has caused financial injury to the City and its taxpayers while allowing you to financially benefit unlawfully at their expense.”

Licensee asserts the following grounds for appeal:

1. No TOT remittance was due on January 27, 2025. Quarterly TOT returns for the fourth quarter of 2024 (October through December) were not due until January 31, 2025.

2. Both the Notice of Intent and Notice of Revocation fail to identify any amount owed to the City, thus failing to provide due process to Licensee regarding any alleged violation of the law. Moreover, if the purpose of the Notice of Intent is to provide Licensee with an opportunity to cure any perceived violation of the law, it was impossible to ascertain from the Notice of Intent the remittance amount required to cure any such deficiency.

3. No court has found Licensee to have committed an “unlawful act.” Moreover, no due process to challenge any such determination was given to Licensee before the Notice of Revocation.

4. “Financial” injury is not the kind of “injury” identified in HMC section 5.04.140, subdivision (A)(4).

5. The City and its taxpayers have not suffered any “financial injury” in that if any TOT was not remitted, the application of penalties and interest have fully compensated the City and its taxpayers.

6. Nonpayment of debt is not an “unlawful act.” “A person may not be imprisoned in a civil action for debt or tort, or in peacetime for a militia fine.” (Cal. Const., art. I, § 10.)

7. Licensee has not committed any unlawful act. At the time of the Notice of Intent through to the present, Licensee has not had full access to the funds collected from its customers. Licensee cannot remit what it cannot access.

8. Licensee has not "benefited from the unlawful act." (HMC § 5.04.140(A)(4).)

9. The City may exercise its discretion not to revoke a business license. Licensee is a Manager-managed limited liability company. Licensee's Manager is currently suffering from medical conditions which make the ongoing operation of the Business unsustainable. Licensee is attempting to sell the Business and presently has a contract to do so. Licensee is willing to grant to the City a lien on the proceeds of any such sale in the amount of any outstanding TOT, along with all lawful penalties and interest. However, the revocation of the License would result in the termination of the Business and the likely collapse of the proposed sale. Both events would likely ensure that the City fails to collect any TOT it may be owed.

Pursuant to HMC section 5.04.150, Licensee respectfully requests a hearing on its appeal. Licensee may be contacted through counsel at the address and telephone number above.

Very truly yours,

NOVIAN & NOVIAN, LLP

ATTORNEYS AT LAW



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