

GOVERNMENT & ADMINISTRATION COMMITTEE

Measure Z

Citizen Complaint #C35-02/03

Reason for the Report

The complaint stated that Measure Z was added to generate additional revenue from the Transient Occupancy Tax (TOT) for the City of South Lake Tahoe. It was voted on by the public on November 5, 2002 to go into effect no later than December 5, 2002. The City Council did not implement this measure until January 1, 2003 thereby losing revenue that the City needed.

Scope of the Investigation

The Grand Jury interviewed the following persons:

- The Complainant;
- County Counsel, El Dorado County;
- City Attorney, City of South Lake Tahoe;
- Supervisor Board Member, District 5, El Dorado County;
- Two current City Council members, City of South Lake Tahoe;
- A former City Council member, City of South Lake Tahoe.

The Grand Jury also reviewed the following items:

- City of South Lake Tahoe Ordinance No. 924 and No. 925;
- November 22, 2002, Measure Z Notice was sent to all motel, hotel and vacation home owners;
- December 3, 2002 Press Release “Measure Z Takes Effect December 5”;
- December 10, 2002 Staff Report to City Council members from the City Attorney re. Implementation of Measure Z;
- December 11, 2002 Measure Z Amended Notice sent to all motel, hotels and vacation home owners ;
- Tapes of City of South Lake Tahoe Council Meetings from the Office of the City Clerk regarding the estimated TOT revenue loss for Measure Z.

Background

The City of South Lake Tahoe voters passed Measure Z on November 5, 2002. The new ordinance would add a \$1 fee to the already existing Transient Occupancy Tax (TOT) that should be collected by all motel, hotel and vacation rentals. The City Manager mailed an announcement to all owners or managers of motel, hotel, and vacation rentals that the measure would become effective on December 5. At the December 10 meeting of the South Lake Tahoe City Council, council members voted unanimously that these tax monies collected between December 5, 2002 and January 1, 2003 would not be audited. This vote allowed the lodging industry to retain, refund, or pay the tax for the 26 days not being audited.

The ballot measure once voted and approved should have gone into effect within 30 days according to election laws. Due to current budget problem within the State, the City should collect correctly the amounts owed on all TOT measures.

Findings

No Board of Supervisors response required.

- F1. The City of South Lake Tahoe voters passed Measure Z on November 5, 2002 to add an additional \$1 dollar tax to the already existing TOT collection
- F2. The City Manager mailed an announcement to all owners or managers of motel, hotel, and vacation rentals that the measure would become effective on December 5, 2002.
- F3. The South Lake Tahoe City Council members unanimously voted on December 10, 2002 that these additional tax monies that were collected between December 5, 2002 and January 1, 2003 would not be audited.
- F4. The Council vote allowed the lodging industry to retain, refund, or pay the tax for the 26 days that were not being audited.
- F5. The City of South Lake Tahoe incurred an estimated loss of approximately \$22,038 as a result of the above action.

Recommendations

No Board of Supervisors response required.

- R1 The City Council should follow the “six P’s”: Proper Prior Planning Prevents Poor Performance.
- R2 The ballot measure, once voted and approved, should have gone into effect within 30 days according to election laws.

Responses Required for Findings

F1 through F5

South Lake Tahoe City Council
South Lake Tahoe City Manager

South Lake Tahoe City Attorney

Responses Required for Recommendations

R1 through R2

South Lake Tahoe City Council
South Lake Tahoe City Manager
South Lake Tahoe City Attorney

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TO: Honorable Jerald M. Lasarow, Supervising Grand Jury Judge
El Dorado County Superior Court
1354 Johnson Blvd.
South Lake Tahoe, CA 96150

FROM: City Council, City of South Lake Tahoe

DATE: September 23, 2003

SUBJECT: Grand Jury Investigation C35-02/03 – Measure Z

The City of South Lake Tahoe responds to the Final Report of the 2002-2003 El Dorado County Grand Jury as follows:

Grand Jury Finding

F1. The City of South Lake Tahoe voters passed Measure Z on November 5, 2002, to add an additional \$1 dollar tax to the already existing TOT collection.

Response to Finding

Agree.

Grand Jury Finding

F2. The City Manager mailed an announcement to all owners or managers of motel, hotel and vacation rentals that the measure would become effective on December 5, 2002.

Response to Finding

Disagree. The City Attorney issued the notice.

Grand Jury Finding

F3. The South Lake Tahoe City Council members unanimously voted on December 10, 2002, that these additional tax monies that were collected between December 5, 2002 and January 1, 2003 would not be audited.

Response to Finding

Agree. The Council certified the election December 10th, with an effective date of December 20th; therefore, no Measure Z payments were owed for the period between December 5th and December 20th. The Council made Measure Z TOT payments auditable effective January 1st, because the *during-the-month* billing change – especially at the industry's busiest time of the year – created significant implementation problems for lodging operators.

Grand Jury Finding

F4. The Council vote allowed the lodging industry to retain, refund, or pay the tax for the 26 days that were not being audited.

Response to Finding

Disagree. The Council vote allowed the lodging industry to retain, refund, or pay any taxes collected for the fifteen (15) days between December 5th and December 20th. No taxes were owed during that period, but the noticing confusion may have resulted in some being collected by lodging operators. The Council required the industry to pay any Measure Z TOT collected between December 20th and January 1st.

Grand Jury Finding

F5. The City of South Lake Tahoe incurred an estimated loss of approximately \$22,038 as a result of the above action.

Response to Finding

Disagree. Forty-Six Thousand Nine Hundred Fifty-Five Dollars (\$46,955) was actually collected for Measure Z TOT in December of 2002, which is about twice the average annual rate of TOT collections in an eleven (11) day period. In consideration of the practical difficulties of implementation on a date other than the first of the month, the City Council believes the City collected the correct amount of TOT for the period in question.

Grand Jury Recommendation

R1. The City Council should follow the "six P's": *Proper Prior Planning Prevents Poor Performance*.

Response to Recommendation

Agree, with the further note that this platitude may equally apply to any problem in the conduct of human affairs, including the investigation and preparation of a Grand Jury report.

Disagree that it is wholly applicable to the Measure Z implementation: Given that the Council had not yet declared the election results, the announcement setting the December 5th effective date was sent prematurely, which was an error. From

a prior planning standpoint, the effective date of the ordinance should have been a specific first of month date, because lodging properties report on a calendar month basis; however, neither the Council, City Staff, measure supporters, or the affected lodging properties observed this problem in the original drafting of the Measure. In addition, lodging properties discovered computer programming problems, which took time and expense to resolve, with the \$1 per room night form of the tax. (Standard lodging billing computer programs are based on a percentage applied to the room charge.) By its action of December 10th, the Council made allowance for the reasonable resolution of implementation problems.

Grand Jury Recommendation

R2. The ballot measure, once voted and approved, should have gone into effect within 30 days according to election laws.

Response to Recommendation

Disagree, The Measure Z ordinance, not election laws, governed the effective date of the ballot Measure. Further, the Grand Jury report incorrectly states that Measure Z was not implemented by the Council until January 1, 2003. Measure Z became effective on December 20, 2002, ten (10) days after the certification of the election results, as provided in the Ordinance which was approved by the voters.

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MINUTE ORDER CITY OF SOUTH LAKE TAHOE CITY COUNCIL

REGULAR MEETING OF TUESDAY, AUGUST 19, 2003, 9:00 A.M.
CITY COUNCIL CHAMBERS, 1900 LAKE TAHOE BLVD.,
SOUTH LAKE TAHOE, CALIFORNIA

BY THE ORDER OF THE CITY OF SOUTH LAKE TAHOE CITY COUNCIL:

NEW BUSINESS:

- c) **Proposed Response to the 2002-2003 El Dorado County Grand Jury Report ("Measure Z")**

Recommended Action: Approve Proposed Response and Forward to the Supervising Judge of the El Dorado County Grand Jury

Councilmember Upton suggested the following revisions to the proposed responses:

F2: Disagree. The City Attorney issued the notice;

F3: Agree. The Council certified the election December 10th, with an effective date of December 20; therefore, no Measure Z payments were owed for the period between December 5 and December 20. The Council made Measure Z TOT payments auditable effective January 1, because the during-the-month billing change, especially at the industry's busiest time of the year, created significant implementation problems for lodging operators.

Mayor Brown asked if anyone in the audience wanted to speak on the matter. No one appeared in order to be heard.

Councilmember Upton continued with the suggested revisions:

F4: Disagree. The Council vote allowed the lodging industry to retain, refund, or pay any taxes collected for the 15 days between December 5 and December 20. No taxes were owed during that period, but the noticing confusion may have resulted in some being collected by lodging operators. The Council required the industry to pay any Measure Z TOT collected between December 20 and January 1.

NEW BUSINESS: (Continued)

F5: Disagree. \$46,955 was actually collected for Measure Z TOT in December, which is about twice the average annual rate of TOT collections in an 11 day period. In consideration of the practical difficulties of implementation on a date other than the first of the month, the City Council believes the City collected the correct amount of TOT for the period in question.

R1: Agree, with the further note that this platitude may equally apply to any problem in the conduct of human affairs, including the investigation and preparation of a Grand Jury report.

Disagree that it is wholly applicable to the Measure Z implementation: Given that the Council had not yet declared the election result, the announcement setting the December 5 effective date was sent prematurely, which was an error. From a prior planning standpoint, the effective date of the ordinance should have been a specific first of month date, because lodging properties report on a calendar month basis; however, neither the Council, City staff, measure supporters, or the affected lodging properties observed this problem in the original drafting of the Measure. In addition, lodging properties discovered computer programming problems, which took time and expense to resolve, with the \$1 per room night form of the tax. (Standard lodging billing computer programs are based on a percentage applied to the room charge.) By its action on December 10, the Council made allowance for the reasonable resolution of implementation problems.

R2: Disagree. The Measure Z ordinance, not election laws, governed the effective date on the ballot Measure. Further, the Grand Jury Report incorrectly states that Measure Z was not implemented by the Council until January 1, 2003. Measure Z became effective on December 20, 2002, ten (10) days after the certification of the election results, as provided for in the ordinance which was approved by the voters.

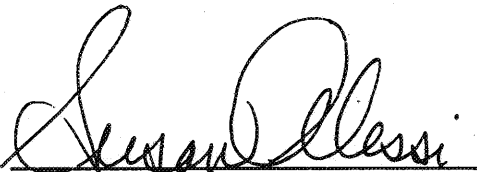
Brief discussion was held.

Minute Order
August 19, 2003 City Council Meeting
New Business (c)
Page 3

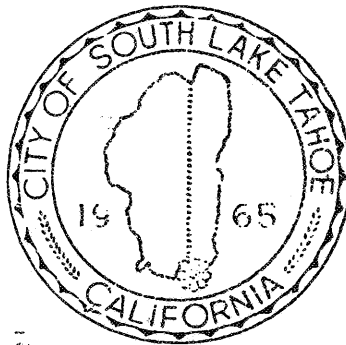
IT WAS MOVED BY COUNCILMEMBER DAVIS, SECONDED BY
COUNCILMEMBER COLE AND UNANIMOUSLY CARRIED TO APPROVE THE
RESPONSES AS AMENDED BY COUNCILMEMBER UPTON AS OUTLINED
ABOVE.

I, Susan Alessi, City Clerk for the City of South Lake Tahoe, do hereby
certify that the above is a true and correct excerpt of the August 19, 2003
Regular City Council meeting minutes.

Dated: September 3, 2003.



Susan Alessi, City Clerk
City of South Lake Tahoe



City of South Lake Tahoe

10-02-03A11:07 RCVD

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**TO: Honorable Jerald M. Lasarow, Supervising Grand Jury Judge
El Dorado County Superior Court
1354 Johnson Blvd.
South Lake Tahoe, CA 96150**

FROM: Catherine L. DiCamillo, City Attorney

DATE: September 23, 2003

SUBJECT: Grand Jury Investigation C35-02/03 – Measure Z

The Grand Jury has requested that I respond to Findings 1-5 and Recommendations 1 and 2 of their report of Investigation C35-02/03.

Grand Jury Finding

F1. The City of South Lake Tahoe voters passed Measure Z on November 5, 2002, to add an additional \$1 dollar tax to the already existing TOT collection.

Response to Finding

Agree.

Grand Jury Finding

F2. The City Manager mailed an announcement to all owners or managers of motel, hotel and vacation rentals that the measure would become effective on December 5, 2002.

Response to Finding

Disagree. The City Attorney issued and mailed the notice (See attached Notice dated November 22, 2002.)

Grand Jury Finding

F3. The South Lake Tahoe City Council members unanimously voted on December 10, 2002, that these additional tax monies that were collected between December 5, 2002 and January 1, 2003 would not be audited.

Response to Finding

Agree.

Grand Jury Finding

F4. The Council vote allowed the lodging industry to retain, refund, or pay the tax for the 26 days that were not being audited.

Response to Finding

Disagree. The Council vote allowed the lodging industry to retain, refund, or pay taxes collected between December 5th and 20th, a period of fifteen (15) days. (See attached Minutes from December 10, 2002, meeting).

Grand Jury Finding

F5. The City of South Lake Tahoe incurred an estimated loss of approximately \$22,038 as a result of the above action.

Response to Finding

Disagree. Forty-Six Thousand Nine Hundred Fifty-Five Dollars (\$46,955) was actually collected for Measure Z transient occupancy tax in December of 2002.

Grand Jury Recommendation

R1. The City Council should follow the "six P's": *Proper Prior Planning Prevents Poor Performance*.

Response to Recommendation

Agree.

Grand Jury Recommendation

R2. The ballot measure, once voted and approved, should have gone into effect within 30 days according to election laws.

Response to Recommendation

Disagree. The Measure Z ordinance, not election laws, governed the effective date of the ballot Measure. Further, the Grand Jury report incorrectly states that Measure Z was not implemented by the Council until January 1, 2003. Measure Z became effective on December 20, 2002, ten (10) days after the certification of the election results, as provided in the Ordinance which was approved by the voters. (See attached Notice dated December 11, 2002.)

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November 22, 2002

MEASURE Z IMPORTANT NOTICE

To All Motel and Vacation Home Owners:

Measure Z was approved by the voters on November 5, 2002 and becomes effective December 5, 2002. Beginning at midnight on December 5, 2002, you are required to collect \$1.00 per occupied room night, whether or not the reservation was made prior to December 5th.

Catherine L. DiCamillo, City Attorney
City of South Lake Tahoe

Please detach the form below and remit the form and \$1.00 per room night to the City of South Lake Tahoe, Attention: Revenue Division, 1052 Tata Lane, South Lake Tahoe, CA 96150, together with your December Transient Occupancy Tax remittance (due on January 10, 2003) and preprinted Transient Occupancy Tax Return.

✂ _____

(PLEASE PRINT)

Name of Owner: _____

Name of Motel (if applicable): _____

Property Address: _____

Total number of occupied room nights from Dec. 6th – 31st: _____

multiplied (x) \$1.00: _____

= \$ _____
Total

City Council/South Tahoe Redevelopment Agency
Meeting Minutes

Tuesday, December 10, 2002

City Council Chambers, 1900 Lake Tahoe Blvd.
South Lake Tahoe, California 96150

1:30 p.m.
2:30 p.m.
6:00 p.m.

Employee Service Awards
CLOSED SESSION
Inaugural Ceremony & Regular City Council Meeting

XII. CC UNFINISHED BUSINESS: (Continued)

- b) A Resolution Setting Forth the Permit Fee to Charge Vacation Home Rental Owners

City Attorney DiCamillo's staff report dated December 3, 2002 recommending that the City Council adopt the aforementioned resolution, was noted.

Councilmember Upton requested that staff have an opportunity to review the work load model before taking action on this item.

Brief discussion was held.

IT WAS MOVED BY COUNCILMEMBER UPTON, SECONDED BY COUNCILMEMBER COLE AND UNANIMOUSLY CARRIED TO CONTINUE THE RESOLUTION ESTABLISHING FEES FOR VACATION RENTAL PERMITS TO THE JANUARY 21, 2003 REGULAR MEETING TO ALLOW STAFF TIME TO REVIEW THE WORK LOAD ASSOCIATED WITH THIS ITEM.

1020/1033

V. NEW BUSINESS: (Continued)

- b) Implementation of Measure Z

City Attorney DiCamillo's staff report dated December 4, 2002 recommending that the City Council provide direction to the City Attorney regarding the implementation date, was noted.

City Attorney DiCamillo presented the staff report. Brief discussion was held. The City Attorney responded to questions.

IT WAS MOVED BY COUNCILMEMBER UPTON, SECONDED BY COUNCILMEMBER DAVIS TO MAKE THE IMPLEMENTATION DATE FOR MEASURE Z DECEMBER 20, 2002.

1010/1020

Discussion was held on the motion on the floor.

Mayor Brown opened the meeting to public comment on the issue.

City Council/South Tahoe Redevelopment Agency
Meeting Minutes

Tuesday, December 10, 2002

City Council Chambers, 1900 Lake Tahoe Blvd.
South Lake Tahoe, California 96150

1:30 p.m.

Employee Service Awards

2:30 p.m.

CLOSED SESSION

6:00 p.m.

Inaugural Ceremony & Regular City Council Meeting

V. NEW BUSINESS: (Continued)

The following persons spoke:

1. Dennis Crabb, Attorney at Law, representing the South Lake Tahoe Lodging Association, noted that they supported December 20, 2002 as a "soft start" with the understanding that the tax must be fully implemented by January 1, 2003, and any money collected between December 5 through December 20 be accounted for at the discretion of each lodging property with the option of an appeal available. He added that the Lodging Association also requested that they are given 60-day advance notice and an advisory committee formed prior to the additional fifty cents tax increase being implemented.

2. Duane Wallace, SLT Chamber of Commerce, agreed with Mr. Crabb's recommendations. He also explained the concerns expressed by the lodging properties regarding a mid-month implementation date, due to reporting, adapting their computer software programs and customer relations. Mr. Wallace added that they fully supported Measure Z and, in good faith, assuming that the tax would not go into effect until the first of the year.

3. Craig Morris, Lake Tahoe Accommodations, suggested that the City update and maintain a more accurate database of all TOT reporting entities, to provide a more extensive use of the City's web page and to keep the TOT entities informed.

4. Jim Morris, Lake Tahoe Accommodations, noted that, in his opinion, the TOT should not be retroactive in order to be fair.

No one else appeared in order to be heard.

THE MOTION ON THE FLOOR WAS UNANIMOUSLY CARRIED.

RECESS: Mayor Brown recessed the meeting from 10:00 p.m. to 10:05 p.m.

c) **BMP Retrofit Program and EIP Implementation Plan**

Community Development Director Jamin's staff report dated November 26, 2002, with the following attachments: "A" – *City of South Lake Tahoe BMP Retrofit Program*; "B" – *Units of Enhancement – EIP Projects (Proposed)*; and, "C" – *Allocation Performance*

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December 11, 2002

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PLEASE NOTE THE NEW EFFECTIVE DATE

MEASURE Z AMENDED NOTICE

To All Motel and Vacation Home Owners:

Measure Z was approved by the voters on November 5, 2002. On December 10th, the City Council determined that the ballot measure will become effective

December 20, 2002.

Beginning at 12:01 a.m. on December 20, 2002, you are required to collect \$1.00 per occupied room night, whether or not the reservation was made prior to December 20th.

Handwritten signature of Catherine L. DiCamillo in cursive.

Catherine L. DiCamillo, City Attorney
City of South Lake Tahoe

Please detach the form below and remit the form and \$1.00 per room night to the City of South Lake Tahoe, Attention: Revenue Division, 1052 Tata Lane, South Lake Tahoe, CA 96150, together with your December Transient Occupancy Tax remittance (due on January 10, 2003) and preprinted Transient Occupancy Tax Return.

✂

(PLEASE PRINT)

Name of Owner: _____

Name of Motel (if applicable): _____

Property Address: _____ Certificate No.: _____

Total number of occupied room nights from Dec. 20th – 31st: _____

multiplied (x) \$1.00: _____

= \$ _____

Total

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TO: Honorable Jerald M. Lasarow, Supervising Grand Jury Judge
El Dorado County Superior Court
1354 Johnson Blvd.
South Lake Tahoe, CA 96150

FROM: David Jinkens, City Manager

DATE: September 23, 2003

SUBJECT: Grand Jury Investigation C35-02/03 – Measure Z

I concur with the responses of the City Council.

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**TO: Honorable Jerald M. Lasarow, Supervising Grand Jury Judge
El Dorado County Superior Court
1354 Johnson Blvd.
South Lake Tahoe, CA 96150**

FROM: Judy Brown, Mayor for the City of South Lake Tahoe

DATE: September 23, 2003

SUBJECT: Grand Jury Investigation C35-02/03 – Measure Z

I concur with the responses of the City Council.

grandjury\measurez\responseJBmmo091903