

GOVERNMENT & ADMINISTRATION COMMITTEE

City of South Lake Tahoe Transient Occupancy Tax (TOT)

Citizen Complaint #C7-02/03

Reason for the Report

The Grand Jury received a citizen's complaint alleging that a City of South Lake Tahoe (SLT) vacation rental agency was not paying the full amount of the Transient Occupancy Tax (TOT) as required by Law. The complainant also raised the possibility that other rental agencies were not paying the full tax as well.

Scope of the Investigation

The Grand Jury interviewed the following persons:

- City Attorney, City of South Lake Tahoe;
- Two current City Council members, City of South Lake Tahoe;
- Senior Accounting Technician, City of South Lake Tahoe;
- Former City Council member, City of South Lake Tahoe;
- Complainant;
- County Counsel, El Dorado County;
- Chief Assistant District Attorney, El Dorado County;
- Auditor-Controller, El Dorado County;
- Former City Manager;
- Former Accounting Manager, City of South Lake Tahoe;
- Revenue Supervisor, City of South Lake Tahoe;
- Private Investigator/Auditor, contracted by the 2002-03 Grand Jury.

The Grand Jury also reviewed the following items:

- South Lake Tahoe City Occupancy/Lodging Code Sections (Chapter 28A et seq.);
- City of South Lake Tahoe Policy and Procedures regarding TOTs;
- Transient Occupancy Tax Code, El Dorado County, California;
- City of South Lake Tahoe & Lodging Association clarification of TOT;
- Transient Occupancy Tax Ordinance, Douglas County, Nevada;
- Videotapes of the City of South Lake Tahoe Council Meeting discussing TOTs;
- Transient Occupancy Tax Report Form;
- Audit report by the Private Investigator/Auditor;
- City of SLT Ordinance Amending Vacation Home Rentals ;
- A letter attempting to define SLT City Code 28A-3, which defines "rent," written by an attorney who represents two of the rental agencies;

- A legal opinion from County Counsel defining “rent” as it pertains to El Dorado County’s Code.

Background

Chapter 28A-3 of the City of South Lake Tahoe’s City Code defining “rent” reads as follows: “‘Rent’ means the consideration charged, whether or not received, for the occupancy of space in a transient lodging facility valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefore whatsoever.”

Exactly what items are considered as “rent” under that code section is an apparent problem within the City. Some vacation home agencies charge Transient Occupancy Tax (TOT) on the extras, such as cleaning fees, booking fees, pet fees, spa maintenance fees, extra cots, etc. Others do not and take the position that “rent” means only the amount paid for the room. This leads to an unequal playing field. In addition, the City is inconsistent as to who owes “rent” and the definition of rent. Hotels and motels that delineate the extra charges are required by the City to pay the TOT of those charges. However, when it comes to rental agencies, that decision is left to the individual rental agencies. Therefore, some pay TOT on the additional charges, and others do not.

It appears that in May 2001 the City of SLT and the South Lake Tahoe Lodging Association arrived at a “clarification” regarding the TOT. This clarification states, in part:

“If a lodging property collects revenue for a room, then TOT tax be charged.” In addition, the “clarification” also states “If a property charges an additional amount for rollaway, refrigerator, utility surcharge, guest amenities, towels, etc., then that charge is taxable.”

The County of El Dorado has a TOT ordinance and the definition of rent is almost identical to that of SLT. At the request of the Grand Jury, County Counsel provided a legal opinion as to the definition of “rent”, as it pertains to the County of El Dorado. The opinion states, in part, “...the definition of taxable “rent”; focuses on what the renter is charged rather than what the facility owner, operator or subcontractor may receive, and it is written to be as broad as possible to capture everything “of any kind or nature” that the renter pays in order to occupy the premises “without any deduction therefrom whatsoever.”

The definition of “rent” pursuant to the SLT City Code, the “clarification” between the city of SLT and the South Lake Tahoe Lodging Association appears to include any revenue generated by the rental of the room is taxable.

However, in late February 2003, because of the inconsistencies in the interpretation of “rent,” this Committee asked the SLT City Attorney for her opinion as to the definition of “rent” and, although one was promised, as of May 31st, it has not been received.

Vacation rentals are private residences that are rented out for less than 30 days. The term also includes motels and hotels. A TOT is collected from all such vacation rentals as well as hotels and

motels. Although the TOT represents a significant portion of South Lake Tahoe's revenue, there has not been an audit of these businesses for many years.

The City began an audit on motels and hotels but declined the Grand Jury's request to reassign or hire an auditor for auditing vacation rentals until the motel/hotel audits were completed. The City Attorney made the suggestion that if the Grand Jury had the funds with which to hire an auditor, they would be happy to assist with the administrative subpoenas.

Based on the City auditor's preliminary reports on the collection of TOT at motels and hotels, it became apparent there was an under-collection of TOTs. These under-collections contribute to the ongoing shortfall of revenues for the City of SLT.

There is an inherent difficulty in determining the full amount of tax to be collected for the rental of vacation homes. An honor system prevails with the owners or their representatives informing the City when a given house has been rented. Most rentals are handled by rental agencies, which collect the rent, pay the TOT, and then forward the difference minus their fee and other costs to the respective owner.

On several occasions this committee requested the El Dorado County Auditor-Controller for assistance in conducting audits of several vacation rental agencies. These requests were denied.

In order to ascertain whether in fact the agencies have been collecting and/or paying the TOT, the Grand Jury had no other recourse but to retain the services of a skilled investigator/auditor. He was retained to conduct an audit on a representative sampling of five agencies doing business in the City of SLT.

In summary, the methodology used by the Investigator included the following steps:

- Met with the person in charge of overseeing the rental of vacation homes to receive an overview of the agency's rental procedures and the collection of TOT. This included identifying which charges the agency subjected to TOT collection and which they did not.
- Reviewed a sampling of rental records from June, July and August 2002 and compared the agency's actual practice with stated procedures. This included reviewing the following records:
 - All rental registration forms and renter bills for one month, of the sample period, to determine if the actual charges were consistent with the agencies stated procedures.
 - Ten percent of the "owner folders," which each agency maintains for the individual properties they represent. This was done to verify the accuracy of the rental activity recorded on the renter bills, to verify that all rental activity was being recorded and to determine if the charges for all rentals occurring in the entire three-month sample period were consistent with the agency's stated practices.

- Property cleaning records to determine if unreported rentals might be occurring.
- Month-end rental recaps to ensure TOT was remitted for all qualifying rentals during the sample period.
- Individual rental records to resolve discrepancies discovered during the review process.
- Records listing the amount of money collected for cleaning, booking and other fees during calendar year 2002.

During the course of the investigation, the Investigator determined that a large number of vacation homes were being rented directly by the owners.

City records reflect that in January 2003, there were a total of 1191 vacation homes registered with the City with 843 being handled by rental agents and 348 being handled by the owners directly. These numbers fluctuate slightly throughout the year as homes are added and removed but remain fairly constant.

One common way owners rent their homes is to advertise them on the Internet.

The Investigator checked Internet listings for “vacation homes in South Lake Tahoe” and located two large and many small Web sites with rental listings. The two largest sources of listings were found at <http://www.vrbo.com> and <http://www.avacationrental.com>.

The <http://www.vrbo.com> site stands for “vacation rentals by owner” and contains approximately 125 separate homes under their SLT listing. The <http://www.avacationrental.com> site stands for “A Vacation Rental” and lists 66 homes in the Lake Tahoe area. These Web sites list homes in the City of SLT, the unincorporated area of El Dorado County, as well as in Alpine County and Nevada.

Usually, an address is not part of the Internet listing so it is necessary to contact the owner to determine where the property is located.

In an attempt to determine how many of these owners collect and remit the required TOT, the Investigator posed as a potential renter and sent emails to 27 properties listed on the <http://www.vrbo.com> Web site. The e-mail requested the address of the home and a breakdown of all charges. The following results were achieved:

- Twenty of the 27 property owners responded to the Investigator’s inquiry:
- Of those 20:
 - 4 did not provide addresses as requested.
 - 11 were located within the City of SLT.
 - 5 were located outside the City of SLT.

- Of the 11 within the City of SLT, City records revealed that:
 - 4 had a history of paying TOT tax.
 - 7 were not remitting TOT.
- Of the 7 not remitting TOT:
 - 3 were also represented by rental agencies.
 - 2 indicated that tax was included in the quoted rate, however, TOT was not remitted to the City.
 - 2 were not registered with the City as vacation rentals as required by City law.

While sampling the rental records at the various rental agencies, the Investigator noted a number of properties with high usage by “guests of the owner.” Rental agency personnel believe that many of these uses were actually rentals booked directly by the owners.

The Investigator selected 12 properties with high “guest” usage and checked City records to determine if the owners were remitting TOT. Only 3 of the 12 of the owners paid TOT during 2002.

It should be noted that the failure to pay TOT by the owners of homes with high “guest” usage might not be improper. Non-renting guests may have used the homes. However, this type of usage most likely involves some amount of tax avoidance and is worthy of more in-depth scrutiny by City staff.

Presently, all homes used as vacation rentals are required to be registered with the City (SLTCC 28A). During 2002, there was no charge to register a home. However, on January 21, 2003, Ordinance No. 928 was adopted by the City Council. This ordinance enacts a \$75 fee to register a vacation home. It also places restrictions on the number of people who can stay in a vacation home, regulates parking and makes owners responsible for the conduct of their renters. City staff mailed a packet of information to all vacation rental property owners and managers in April 2003.

Rental agencies representing vacation homes are required to have a City business license.

Vacation rental agencies collect and remit the TOT for rentals they handle. Individual property owners are responsible for collecting and remitting the TOT for rentals they book on their own.

Vacation home rental agencies are required to remit TOT on a monthly basis. TOT for vacation homes rented directly by the owners is remitted on a quarterly basis. Payments are due by the tenth day of the month following the end of the reporting period. Late payments are subject to penalty and interest charges.

Remittance of TOT by vacation home rental agencies and owners can best be described as being based on the “honor” system. Historically, the remittance of TOT for vacation homes has not been the subject of audit by the City.

The City generates and sends TOT remittance forms to each rental agency and registered homeowner each billing cycle. The same form is used for both types of TOT payments.

The form contains a series of 8 lines that are filled out to calculate the proper amount of TOT. The lines include spaces to list the gross rent, allowable deductions, the tax due and any penalties and/or interest due. A payment envelope is attached to each form.

The rental of vacation homes is big business in the City of SLT. According to City records, there are 1191 vacation homes and over 20 rental businesses registered with the City. There are also a small number of additional homes being rented that are not registered.

TOT collected from all sources amounted to almost \$9 million in fiscal year 2001-02. This is approximately 40 percent of the entire City budget.

It would appear, however, that a substantial portion of TOT is not being collected. This is evident by the under-payment of TOT by most rental agencies based on their interpretation of which charges are subject to TOT collection and the non-payment of TOT by some homeowners who rent their homes without using an agent.

The 5 agencies surveyed for this report handled 426 of the 843 homes registered with the City as being represented by rental agents.

If the fees the 5 surveyed agencies charged for cleaning, booking and hot tub usage are subject to the 10 per cent TOT tax, those 5 agencies should have paid the following additional TOT in 2002:

Agency 1	\$ 7,600
Agency 2	61,327
Agency 3	27,020
Agency 4	360
Agency 5	<u>000</u>

Additional TOT due: \$ 96,307

Note: One of the above agencies, which handled 110 vacation homes, paid TOT on all extra costs. Therefore, the amount of unpaid TOT per home handled by the surveyed agencies is \$374.76 (426 total homes – 110 homes for which total tax was paid = 316 homes for which total tax was not paid. Additional tax owed of \$96,307 divided by 316 homes equals \$304.76 per home.).

The rental agencies not surveyed for this report handled 417 homes. For the purposes of this report, it has been assumed that the rental agencies not surveyed have similar charges to those surveyed, have a rental frequency similar to that of the surveyed agencies and only collect TOT on the daily rental rate. Based on those assumptions, the non-surveyed agencies owe an estimated additional TOT of \$127,085 (\$304.76 per home multiplied by 417 homes).

This makes the estimated additional TOT due from rental agencies \$223,392 (\$96,307 plus \$127,085).

Estimating the amount of tax owed by those owners who rent their homes directly is a difficult area in which to make an accurate estimate because there is no norm to follow and there is little documentation on which to predict the amount of rental activity.

City records reflect 348 vacation rental homes being rented directly by the owners.

City TOT payment records reflect that 201 individual property owners paid a total of \$209,330 in TOT during 2002. This equates to an average of \$1041 per home (\$209,330 divided by 201).

However, City records also disclosed that rental agencies were listed as handling 58 of the 201 properties. Therefore, 59 percent (205 of 348) of the property owners who are registered as handling their own rental bookings did not pay any TOT in 2002.

TOT payments were checked for 12 of the properties with the highest usage and only 3 were remitting TOT. The remaining 9 properties had 64 “guest of owner” uses totaling 479 days during the 3-month sample period.

Given the high level of non-payment in the above two examples, it would not be unrealistic to assume that half of the homeowners who did not remit TOT in 2002 had some unreported rental activity.

A conservative approach to estimating the amount of TOT those homeowners may not have remitted would be to multiply the average TOT paid by individual homeowners in 2002 (\$1041) by a number equal to 40 percent of homeowners who did not pay TOT in 2002 ($205 \times 40\% = 82$). This makes the estimated additional TOT due from individual homeowners \$85,362 ($\1041×82).

Therefore, the total estimated additional TOT due from rental agencies and individual homeowners is \$308,754 ($\$223,392 + \$85,362$).

A survey of 11 homes advertised for rent on the Internet revealed that 7 (64%) were not remitting TOT to the City. If this percentage is even close to actual number of the individual homeowners not remitting TOT, then the City is losing a significant amount of tax revenue. This area is worthy of additional scrutiny by the City.

There is a lack of consistency within the City in collecting delinquent accounts. Pursuant to Chapter 28 A, the City has several options available for this. These include (1) offer a prepayment plan, (2) place a lien on the property, (3) revoke the motel/hotel license or permit, and (4) arrange for the sale of the property to pay for delinquent back taxes. As of this date, options 3 and 4 have not been used.

In one instance, an owner owed the City \$65,000 for delinquent TOT payments and penalties. This party was habitually delinquent in paying the TOTs he collected on behalf of the City. Because of this, the City Attorney placed a lien to be placed on this particular property. Thereafter, the City Attorney met with the owner, who asked the City Attorney to remove the lien in order for him to re-finance that particular property. Although the owner refused to tell the

City Attorney the amount for which he was re-financing the property, she agreed to temporarily remove the lien based on his oral agreement to pay the money owed to the City. After the owner refinanced his property, he did not live up to the oral agreement and only paid \$5,000 towards his delinquent taxes. The City Attorney then placed another lien on the property. To date, the money is still owed.

It should be noted that the councilpersons interviewed stated they were not aware of the above transaction. In addition, one councilperson was under the mistaken impression that the City's lien on property for failure to pay taxes superseded the Mortgage holder of the property. However, all councilpersons interviewed said they would immediately pursue the TOT issues.

During this investigation it was discovered that the City of SLT is using "reserve funds" to cover budget deficits. This has amounted to approximately four million dollars in the past two years. If the City of SLT continues on its present course, the reserve fund will be depleted within the next two years.

Findings:

No Board of Supervisors response required.

- F1. The City of South Lake Tahoe is inconsistent in their collection of TOTs due to the definition as to what is considered "rent."
- F2. At present, the City is not following their own clarification along with the South Lake Tahoe Lodging Association's recommendations as to what is to be considered as "rent."
- F3. City records show there are 1,191 vacation rental homes in SLT.
- F4. Rental agencies handle bookings for 843 of the registered vacation rental homes.
- F5. Individual homeowners account for the remaining 348 registered vacation rental homes.
- F6. Some individual homeowners are renting their property as a vacation home without registering with the City.
- F7. Some individual homeowners are renting their property without collecting TOT.
- F8. TOT collected from all rental sources amounted to almost \$9 million dollars in the fiscal year 2001-02.
- F9. The annual City budget is dependent on TOT revenues.
- F10. For the last two years, the City of SLT has had a budget shortfall in excess of \$ 2 million dollars a year.
- F11. Reserve funds are being used to balance the City's budget.

- F12. About \$ 4 million dollars is left in the City's reserve funds.
- F13. The City of SLT has not filled the Finance Director's position for the last 12 months. The City of SLT as of 5/03 presently has filled the position .
- F14. The City Council is not adequately informed regarding the delinquent TOTs.
- F15. Of the five rental agencies audited for this investigation, the Investigator estimated that nearly \$100,000 underpayment of TOT occurred in 2002.
- F16. It was further estimated that over \$224,000 was underpaid by all rental agencies in 2002.
- F17. Individual homeowners, as distinct from agencies, may have underpaid an additional TOT of approximately \$85,000.
- F18. This year the City hired an individual to audit the motels and hotels regarding payment of TOT.
- F19. In one period, from August 2002 to March 2003, this person found uncollected tax amounting to over \$375,000.
- F20. Motels, hotels, vacation homes, and rental agencies are responsible to pay their TOTs owed on an honor system.
- F21. Although the City has stringent methods of dealing with delinquent TOTs, the prevailing method used is to put a lien on the property.
- F22. There are no written guidelines as to the definition of "rent" as expressed in Chapter 28A-3 of the City Code.
- F23. Some agencies and motels pay TOT on all revenue generated by the rental of the room, and others do not.
- F24. On several occasions, this committee requested the El Dorado County Auditor-Controller for assistance to investigate the initial complaint filed. The requests were denied.

Recommendations

No Board of Supervisors response required.

- R1. The City should immediately define the specific charges that are subject to the collection of TOT and inform the rental community so that all persons renting out properties are subject to the same rules.

- R2. The City should add criminal sanctions to the City Code provision dealing with the non-payment of TOT. Such a sanction would add a tool to be used with flagrant violators, particularly those who collect tax but fail to remit it to the City.
- R3. The City Council should receive monthly reports from the City Manager regarding the amount of TOT delinquencies, the length of time the facility has been delinquent and the efforts being utilized to collect those delinquencies.
- R4. The City Council should become more involved with the City Manager and City Attorney in overseeing and approving legal action against businesses and person's delinquent in their TOT payments, when it is agreed that full payment of the delinquent amount will not be made.
- R5. The City should implement a comprehensive and on-going audit program of vacation rental homes. This program should include the auditing of rental agency practices and records, the monitoring of advertisements on the Internet, in newspapers and in other publications and locations, and on-site checking of rental homes where tax avoidance is suspected.
- R6. The City should require vacation rental agencies to submit with their monthly TOT remittance, a copy of their internal month-end report which lists the specific properties rented, the dates of each rental, a breakdown of the total fees charged, by category, for each rental, and the dates any property was not available because the owner had blocked its use. This would allow City staff to be more proactive in their oversight duties without the need to go to a rental agency to review records. This would not create any additional work for most of the agencies.
- R7. A more in-depth scrutiny by the City staff should be made of high "guest" usage homes to ensure proper collection of TOT.
- R8. The City's TOT remittance form should be changed to allow sufficient space to permit the rental agents to list the total number of units rented each day and for property owners to list the total number of days the unit was rented.

Commendations

As a result of the Grand Jury investigation, the City Council of South Lake Tahoe now appears to be actively pursuing the Transient Occupancy Tax issue.

The Grand Jury members wish to commend the Senior Accounting Technician hired in April 2003 for her outstanding work in auditing hotels and motels of the City of SLT.

Responses Required for Findings

F1 1-2, 6, 10-12, 14, 17, 19, 21-23	City Council of South Lake Tahoe
F2 1-2, 6-7,14-17, 19, 23	City Manager of South Lake Tahoe
F1 and F21	City Attorney of South Lake Tahoe
F24	Auditor-Controller of El Dorado County

Responses Required for Recommendations

R1 through R8	City Council of South Lake Tahoe City Manager of South Lake Tahoe
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Addenda to South Lake Tahoe Transient Occupancy Tax (TOT)
#C7-02/03

Applicable Law

Chapter 28 A of the South Lake Tahoe City Code (SLTCC) regulates when TOT is to be collected.

The applicable sub-sections relating to the collection of TOT when vacation rental homes are involved have been paraphrased below:

28 A-2 G . . . many owners of residential buildings and owners of units in condominiums of community apartment buildings are renting to transients
. . . without accounting to the City for tax imposed by SLTCC 28A-13;

Such rentals compete directly with the transient lodging facilities industry, which is a very substantial factor in the economy of the City;

Transients renting such units should pay the same tax as transients renting commercial units; and,

It is necessary to require rental agents to be accountable for the tax as an operator in order to achieve greater collection of the tax from transients renting such units.

28 A-3 “ Rent” means the consideration charged, whether or not received, for the occupancy of space in a transient lodging facility valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefore whatsoever.

“**Transient**” means any person who exercises occupancy or possession or is entitled to occupancy or possession . . . for a period of 30 consecutive calendar days or less.

“**Transient lodging facility**” means any dwelling, motel, hotel, inn, vacation home rental . . . or other building . . . maintained, advertised or otherwise held out to the public in any manner as a place where sleeping, rooming or any other type of visitor accommodations are furnished to transients.

28 A –13 – Effective December 1, 1988, the taxes to be collected from transients by all transient-lodging facilities within the City . . . shall be as follows:

. . . the amount of 12 percent of rent charged on all newly constructed visitor accommodations within the redevelopment project area and those existing properties within the redevelopment project area which undergo substantial renovation . . . and 10 percent of the rent charged on all other transient lodging facilities within the City.

(Note: In November 2002, the voters passed Measure Z that added an additional TOT of \$1.00 per lodging night on all transient-lodging units. The City Council voted to make collection of the additional dollar effective January 1, 2003.)

Such tax constitutes a debt owed by the transient to the City, which is extinguished only by payment to the operator or the City.

The transient shall pay the tax to the operator of the transient lodging facility at the time the rent is paid.

The unpaid tax shall be due upon the transient's ceasing to occupy space in the transient lodging facility.

28 A-13.1 – Allocation of monies collected under the rates set forth in SLTCC 28A-13 shall be set forth by resolution of the City council.

28 A-14– All lodging operators and/or agents arranging for such lodging shall collect, at the time payment for the accommodations is made, the applicable transient occupancy tax.

28 A-15 – Each transient shall receive a receipt for payment from the operator indicating the room rate and the amount of transient occupancy tax assessed.

No operator of a transient lodging facility shall advertise or state in any manner . . . that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent.

28 A-17– Within 30 days after first acting as a rental agent with respect to a unit of a transient lodging facility within the City, each rental agent shall register with the tax collector.

28 A-19– Each rental agent shall, on or before the tenth day of each month, or at the close of any different reporting period which may be established by the finance director, make a return to the finance department on forms provided by that office showing the total rent charged and received, the amount of tax collected, and the number of rooms occupied during the month or any other reporting period immediately proceeding. At the time the return is filed the full amount of the tax collected shall be remitted to the City.

28 A-20 A– Any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of 10 percent of the amount of the tax, in addition to the amount of the tax.

City of South Lake Tahoe

"making a positive difference now"



Our Mission is:

Working

together to

create the

best future

for our

community

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 C7-02/03
 City of South Lake Tahoe Transient Occupancy Tax (TOT)

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 is inconsistent in their collection of TOT's (sic) due to the definition as to what is considered "rent."

Response to Finding

Disagree as it relates to motels and hotels, the definition of rent is generally understood and consistently followed. The statement is in itself a bit unclear. For the most part, the City is able to collect TOT owed to it. The collection of TOT has been hampered in different respects by different circumstances. The definition of what is counted in rent for purposes of vacation rentals has led some agencies to use different standards. In this sense, there is agreement with this Grand Jury Finding. This issue will be corrected because of the efforts of a Council Committee (Mayor Brown and Council Member Cole) that is working with interested parties to arrive at a commonly accepted definition of "rent" for vacation rentals that is fair to the rental agency and/or individual and one that allows City government to collect what is owed it.

The definition of rent is not the only issue. The collection of TOT by the City has also been hampered by fraud and deception of some parties who have collected dollars in TOT and not paid the City for them. These issues are being addressed now both civilly and criminally and these efforts will continue.

The reorganization of the Finance Department, the appointment of a Director of Finance, the strengthening of the finance function by the addition of an internal

auditor and vacation rental specialist, the work by the City Council to further define and clarify the TOT ordinance, and the emphasis by the City Council on compliance will all contribute to improvement in the collection of TOT and the management of City finances.

Grand Jury Finding

F2. At the present time, the City is not following their own clarification along with the South Lake Tahoe Lodging Association's recommendations as to what is considered "rent."

Response to Finding

Disagree. The City has been following a standard definition for hotel/motels for many years. In recent times, issues have arisen regarding the definition of rent as the term is applied to vacation rentals. A City Council Committee of Mayor Judy Brown and Council Member Hal Cole have been meeting with staff, the Lodging Association, and others to clarify and standardize the definition.

Grand Jury Finding

F3. City records show that there are 1,191 vacation rental homes in SLT.

Response to Finding

Disagree. City records show that we have 1,139 registered vacation rentals.

Grand Jury Finding

F4. Rental agencies handle bookings for 843 of the registered vacation rental homes.

Response to Finding

Disagree. Rental agencies handle 1,002 of the total registered vacation rentals.

Grand Jury Finding

F5. Individual homeowners account for the remaining 348 registered vacation rental homes.

Response to Finding

Disagree. Individual homeowners account for 137 registered vacation rental homes.

Grand Jury Finding

F6. Some individual homeowners are renting their property as a vacation home without registering with the City.

Response to Finding

Agree. The City Finance Department has increased monitoring of advertisements in magazines, and tourist venues to identify unregistered owners. The City Council adopted a comprehensive vacation rental registration and monitoring program that is getting good response and a higher degree of public awareness.

Grand Jury Finding

F7. Some individual homeowners are renting their property without collecting TOT.

Response to Finding

Agree. As with any illegal activity, this is likely true to some extent. The City Council adoption of a comprehensive vacation rental application and monitoring program will minimize these numbers over time.

Grand Jury Finding

F8. TOT collected from all rental sources amounted to almost \$9 million dollars (sic) in the fiscal year 2001-02.

Response to Finding

Disagree. The amount collected was \$9,109,189.

Grand Jury Finding

F9. The annual City budget is dependent on TOT revenues.

Response to Finding

Agree.

Grand Jury Finding

F10. For the last two years, the City of SLT has had a budget shortfall in excess of \$2 million a year.

Response to Finding

Disagree. General Fund balance decreased by \$733,268 and 290,374 in Fiscal Years 2000-2001 and 2001-2002 respectively.

Grand Jury Finding

F11. Reserve funds are being used to balance the City's budget.

Response to Finding

Agree. As stated in F10, our Fund Balance (reserve) decreased by \$733,268 and \$290,374 in Fiscal Years 2000-2001 and 2001-2002 respectively.

Grand Jury Finding

F12. About \$4 million is left in the City's reserve fund.

Response to Finding

Disagree. The City's General Fund balance was \$5,647,451 as of September 30, 2002. Of this amount, \$2,468,483 is considered unreserved. This amount does not take into account money owed to the City by the Redevelopment Agency.

Grand Jury Finding

F13. The City of South Lake Tahoe has not filled the Finance Director's position for the last 12 months. The City of SLT as of 5/03 presently filled the position.

Response to Finding

Disagree. The City of South Lake Tahoe eliminated the position of Director of Finance in October 1993. On October 10, 2002, the City Council unanimously approved a recommendation of the City Manager to reorganize the Finance Department. The vacant position of Accounting Manager was eliminated and a new position of Director of Finance was created. The Finance Department was changed from reporting to the Assistant City Manager to reporting directly to the City Manager. A statewide recruitment to fill the new position was undertaken and the new Finance Director was offered the position on February 20, 2003, and began work on March 31, 2003.

Grand Jury Finding

F14. The City Council is not adequately informed about delinquent TOT.

Response to Finding

Disagree. The City Council is being kept informed about delinquent TOT. The City Attorney, Finance Director, and City Manager keep the City Council informed and involved in issues relating to TOT. Delinquencies are pursued by Finance Department staff with the assistance of the City Attorney's Office as needed. Vigorous collection and enforcement is underway and both civil and criminal venues are used as appropriate. Collection of TOT and other City revenues is a high priority, and the City Council has been very supportive of staff efforts to ensure collection.

Grand Jury Finding

F15. Of the five rental agencies audited for this investigation, the Investigator estimated that nearly \$100,000 underpayment of TOT occurred in 2002.

Response to Finding

Disagree only to the extent that we have not seen the referenced audit report. To our knowledge, the City has never been provided with the investigator's report and therefore cannot verify this statement. The City would welcome receipt of the records and will pursue those persons who have been identified by the audit as not paying or underpaying. The City has an ongoing internal audit function in place and will strengthen the function by supplementing it with an external audit and collection of TOT accounts as needed.

Grand Jury Finding

F16. It was further estimated that over \$224,000 was underpaid by rental agencies in 2002.

Response to Finding

Disagree only to the extent that we have not seen the referenced audit report. To our knowledge, the City has never been provided with the investigator's report. We welcome seeing the full report, the potential violators, and will pursue those who appear to not be complying with City TOT codes. The City has an ongoing internal audit function that will be supplemented with an external audit and collection of TOT accounts as needed.

Grand Jury Finding

F17. Individual homeowners, as distinct from agencies, may have underpaid an additional TOT of approximately \$85,000.

Response to Finding

Disagree only to the extent that the City has not seen the referenced audit report. The City has an ongoing audit program in place that will be supplemented with the use of external auditors as needed. Grand jury information about individual homeowners who reported not paying TOT will be pursued if the contact information is provided.

Grand Jury Finding

F18. This year the City hired an individual to audit the motels and hotels regarding the payment of TOT.

Response to Finding

Disagree. In April 2002, the City hired an employee in the Finance Department to audit motels and hotels. Audits began in August 2002. Prior to that time, the City used an auditing firm to perform audits of TOT. The auditing firm did so under contract. It did not provide collection services to the City which was handled by internal staff. The use of an external auditor began, according to our best information, in the late 1980's.

The creation of a comprehensive vacation rental registration and monitoring program by the City Council this year (2003) and the addition of a full-time staff person in the Department of Finance is also helping with the collection of TOT for vacation rentals because ongoing monitoring and investigation is underway.

Grand Jury Finding

F19. In one period, from August 2002 to March 2003, this person found uncollected tax amounting to over \$375,000.

Response to Finding

Disagree. The Senior Accounting Technician indicates that from the period of August 2002 through March 31, 2003, she collected a total of \$253,560.59 in delinquent TOT.

Grand Jury Finding

F20. Motels, hotels, vacation homes, and rental agencies are responsible to pay their TOT owed on an honor system.

Response to Finding

Disagree. As with other local, State, and Federal laws, compliance by local businesses and owners of properties subject to TOT occurs voluntarily, because most people are honest. However, the City does not rely on honesty or the honor system to ensure payment of debt owed. The City organization has an ongoing program to verify information supplied to us. The City organization has a vigorous program of enforcement in place and is pursuing civilly and criminally, as appropriate, those persons who fail to pay TOT or do not pay the appropriate amount of TOT. A great deal of energy is being expended by City staff on collection with the full support and direction of the City Council.

Grand Jury Finding

F21. Although the City has stringent methods of dealing with delinquent TOTs, the prevailing method used is to put a lien on the property.

Response to Finding

Disagree. The City Council has instructed the City staff to use all remedies that are appropriate including civil and criminal to collect TOT owed to the City of South Lake Tahoe. The City is pursuing all remedies as facts and circumstances in each case warrant.

Grand Jury Finding

F22. There are no written guidelines as to the definition of "rent" as expressed in Chapter 28A-3 of the City Code

Response to Finding

Disagree. The City Code defines rent as "the consideration charged, whether or not received, for the occupancy of space in a transient lodging facility valued in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction there from whatsoever," which is commonly used by cities throughout the state for motels and hotels. Issues have arisen whether certain charges associated with vacation rentals are "for the occupancy of space" or for some other purpose. The City Council Committee headed by Mayor Judy Brown and Council Member Hal Cole is working with the Lodging Association and other interested parties to clarify the definition of "rent" as it is applied to vacation rental units to ensure that all operators apply the transient occupancy tax to the same charges.

Grand Jury Finding

F23. Some of the agencies and motels pay TOT on all revenues generated by the rental of the room, and others do not.

Response to Finding

Agree. The City believes that most motels and hotels use a commonly accepted definition of rent for the payment of TOT. As previously explained, the definition of "rent" as it is applied to vacation rental is under review and scrutiny by a Council Committee and others to ensure uniform understanding to clarify this definition for this particular use.

Grand Jury Recommendation

R1. The City should immediately define the specific charges that are subject to the collection of TOT and inform the rental community so that all persons renting out properties are subject to the same rules.

Response to Recommendation

The recommendation has not been implemented in its entirety. The definition of "rent" is commonly known and used by owners and operators of motels and hotels. The definition of "rent" as it is applied to vacation rentals has been less certain. A Council Committee (Mayor Brown and Council Member Cole) that is working on the matter. The Committee should be able to complete its work with interested community groups and make their findings to the City Council on the issue of the definition of "rent" by December 2003.

The City Council and City staff agrees that it is important for the rental community and City to have a complete understanding of the definition of rent whether applied to hotels, motels or vacation rentals.

Grand Jury Recommendation

R2. The City should add criminal sanctions to the City Code provision dealing with non-payment of TOT. Such a sanction would add a tool to be used with flagrant violators, particularly those who collect tax but fail to remit it to the City.

Response to Recommendation

The recommendation has been implemented. Violations of regulations for payment of TOT under the City's municipal code are misdemeanors. Prosecution of misdemeanor cases filed by the Police Department with the District Attorney requires the support and cooperation of the District Attorney's Office to effectuate. In addition, depending upon the facts and circumstances of each case and the amount of money collected and not paid, the violation could be prosecuted by the District Attorney as a felony under State law. Existing cases of flagrant non-payment of TOT have been turned over to the Police Department for investigation and consultation with the District Attorney's Office for prosecution. Vigorous enforcement of TOT rules and regulations will continue both civilly and criminally as facts and circumstances warrant.

Grand Jury Recommendation

R3. The City Council should receive monthly reports from the City Manager regarding the amount of TOT delinquencies, the length of time the facility has been delinquent and the efforts utilized to collect these delinquencies.

Response to Recommendation

This recommendation has not yet been implemented in the specific manner mentioned in R3 though the specific recommendation can be implemented within thirty (30) days. Reports have been provided by the City Attorney and Director of Finance to the City Council and City Manager on outstanding delinquencies, the length of delinquency and the actions being taken. Because these matters are ones where civil or criminal sanctions may be sought, the reports have been held in Closed Session. Outstanding cases of delinquency are mostly ones that are 1-3 years old. The City Manager believes that monthly reports from the Finance Department and City Attorney on outstanding delinquencies would be helpful to the City Council and City Manager in monitoring this issue.

Grand Jury Recommendation

F4. The City Council should become more involved with the City Manager and City Attorney in overseeing and approving legal action against businesses and person's delinquent in their TOT payments, when it is agreed that full payment of the delinquent amount will not be made.

Response to Recommendation

The recommendation has been implemented. The City Council has made it clear to staff that it wants to provide direction to staff and oversight on whether or not to initiate or suspend legal action against businesses and person's delinquent in their TOT payments. Such discussion occurs in Closed Session and such direction has been given. The City Manager supports full payment of delinquent amounts that are verified and owed to the City.

Criminal investigations for non-TOT payment are handled in the same manner as any other criminal matter, and the City Council, City Manager, and City Attorney supports this independent evaluation by the Police Department. The Police Chief and Police Department personnel are providing *full* cooperation investigating allegations of criminal conduct in the non-payment of TOT.

Grand Jury Recommendation

R5. The City should implement a comprehensive and on-going audit program of vacation rentals homes. This program should include the auditing of rental agency practices and records, the monitoring of advertisements on the Internet, in newspapers and in other publications and locations, and on-site checking of rental homes where tax avoidance is suspected.

Response to Recommendation

This recommendation has not yet been implemented in its entirety, but it will be implemented within sixty (60) days. Vacation rental advertisements are monitored by the City's vacation rental specialist who works in the Finance Department. Under the current program being developed, rental agencies will be audited at least once every two (2) years. Vacation homes where avoidance of TOT payment is suspected will be visited periodically by City staff to interview occupants and compile information to compare to subsequent TOT receipts. City Finance staff has already subpoenaed tax records of suspected violators. The City Manager has authorized the Director of Finance to use the services of independent auditors for special cases of suspected abuse whenever he deems it appropriate.

Grand Jury Recommendation

R6. The City should require vacation rental agencies to submit with their monthly TOT remittance, a copy of their internal month-end report which lists specific properties rented, the dates of each rental, a breakdown of the total fees charged, by category, for each rental, and the dates any property was not available because the owner had blocked its use. This would allow City staff to be more proactive in their oversight duties without the need to review records. This would not create any additional work for most of the agencies.

Response to Recommendation

This recommendation has not been implemented, but it will be implemented within sixty (60) days. Rental agencies will be required to submit a report that includes each of the items recommended in R6. In addition, homeowners who rent their homes themselves will be required to submit a report including dates the property was rented, all fees charged, and dates that the property was used.

Grand Jury Recommendation

R7. A more in-depth scrutiny by the City staff should be made of high "guest" usage homes to ensure proper collection of TOT.

Response to Recommendation

This recommendation needs further analysis and such an analysis can be accomplished within sixty (60) days. Issues that need to be examined relate to existing work load of staff, the definition of what scrutiny entails, evaluation of issues associated with the privacy rights of tenants and the appropriate level of scrutiny permitted by Law. The City's Director of Finance, Police Department and City Attorney's Office will be tasked to undertake this review. A full recommendation will be made to the City Council within sixty (60) days. City staff supports all legal measures to ensure proper collection of TOT.

Grand Jury Recommendation

R8. The City's TOT remittance form should be changed to allow sufficient space to permit the rental agents to list the total number of units rented each day and for the property owners to list the total number of days the unit is rented.

Response to Recommendation

This recommendation has not yet been implemented. It is agreed that the recommendation should be implemented and will be implemented within 30-90 days when new forms will be developed for other anticipated changes in the municipal code relating to TOT.

City of South Lake Tahoe

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community

MINUTE ORDER CITY OF SOUTH LAKE TAHOE CITY COUNCIL

REGULAR MEETING OF TUESDAY, SEPTEMBER 2, 2003, 9:00 A.M.
and
REGULAR MEETING OF TUESDAY, SEPTEMBER 16, 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:

REGULAR MEETING OF TUESDAY, SEPTEMBER 2, 2003, 9:00 A.M.

NEW BUSINESS:

- b) Proposed Response to the 2002-2003 El Dorado County Grand Jury Report ("Transient Occupancy Tax")

Recommendation:

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

City Manager Jinkens reviewed his staff report dated August 28, 2003 which contained responses to the El Dorado Grand Jury's 23 findings and 8 recommendations regarding the transient occupancy tax issue.

Councilmembers provided the following comments:

Jury Findings:

UPTON: F1 Response. After Disagree, add: *as it relates to motels and hotels, the definition of rent is generally understood and consistently followed.*

DAVIS: F18 Response. Add: *the date the outside auditing firm was hired* (prior to the internal auditor)

UPTON: F15, F16, F17 Response. Disagree. Requires further analysis.

IT WAS MOVED BY COUNCILMEMBER UPTON, SECONDED BY COUNCILMEMBER LOVELL AND UNANIMOUSLY CARRIED TO ACCEPT AND APPROVE THE CITY MANAGER'S PROPOSED RESPONSES, WITH THE ABOVE-REFERENCED MINOR COUNCIL AMENDMENTS, AND TO PLACE THE REPORT ON THE SEPTEMBER 16, 2003 CITY COUNCIL AGENDA FOR FINAL APPROVAL AND SUBMITTAL TO THE SUPERVISING JUDGE OF THE EL DORADO COUNTY GRAND JURY. 1013/1020

REGULAR MEETING OF TUESDAY, SEPTEMBER 16, 2003, 9:00 A.M.

UNFINISHED BUSINESS:

- a) Proposed Response to the 2002-2003 El Dorado County Grand Jury Report ("Transient Occupancy Tax")


Recommendation: Approve Responses as Presented or Further Modified; and Authorize Forwarding to the Supervising Judge of the El Dorado County Grand Jury

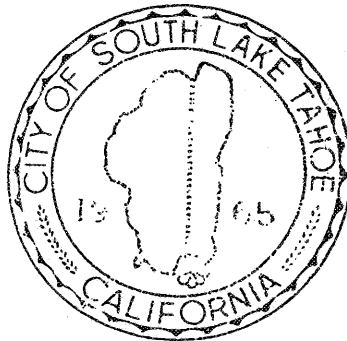
City Manager Jinkens gave a brief recap regarding the item. Jinkens noted that at their last meeting held on September 2, 2003, the City Council requested some modifications to the draft responses submitted at that meeting. Jinkens noted that his staff report dated September 3, 2003 set forth the requested modifications to the responses.

IT WAS MOVED BY COUNCILMEMBER DAVIS, SECONDED BY COUNCILMEMBER UPTON AND UNANIMOUSLY CARRIED TO APPROVE THE RESPONSES AS PRESENTED AND TO AUTHORIZE FORWARDING TO THE SUPERVISING JUDGE OF THE EL DORADO COUNTY GRAND JURY.

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 September 2, 2003 and September 16, 2003 Regular City Council meeting minutes.

Dated: September 18, 2003.


Susan Alessi, City Clerk
City of South Lake Tahoe



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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 C7-02/03
City of South Lake Tahoe Transient Occupancy Tax (TOT)

The Grand Jury has requested that I respond to Findings 1 and 21 of their report of Investigation C7-02/03. My responses are as follows:

Grand Jury Finding

F1. The City of South Lake Tahoe is inconsistent in their collection of TOT's (sic) due to the definition as to what is considered "rent."

Response to Finding

Disagree. The City's Senior Accounting Technician is consistent in her application of what lodging revenue is subject to transient occupancy tax.

Grand Jury Finding

F21. Although the City has stringent methods of dealing with delinquent TOTs, the prevailing method used is to put a lien on the property.

Response to Finding

Disagree. Many different collection methods are used.

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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 C7-02/03
City of South Lake Tahoe Transient Occupancy Tax (TOT)

I concur with the responses of the City Council.

grandjury\measurez\responseDJmmo091903