



# CITY of NAPA

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August 19, 2009

The Honorable Raymond A. Guadagni  
Presiding Judge  
Superior Court of the State of California  
County of Napa  
8825 Brown Street  
Napa, CA 94559

**FILED**

**AUG 26 2009**

Clerk of the Napa Superior Court  
By: *C. Brennan*  
Deputy

**Re: *Napa Valley Transient Occupancy Tax***

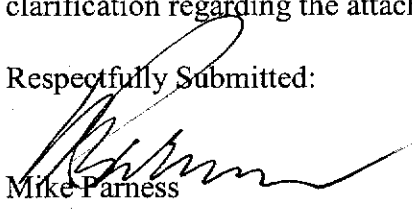
Dear Judge Guadagni:

The City of Napa has received and reviewed the 2008-2009 Napa County Grand Jury Final Report on Napa Valley Transient Occupancy Tax.

The City Council unanimously approved the responses, as included herein, in open public session on August 18, 2009.

The staff and elected officials of the City wish to recognize the effort put into the report by the Grand Jury members. We took their recommendations seriously and dedicated many staff hours in order to formulate responses. We hope that the Grand Jury members will find this information helpful and that they will consider contacting us if they need clarification regarding the attached response.

Respectfully Submitted:

  
Mike Parness  
City Manager

Enclosure

Cc: William F. Trautman, Grand Jury Foreperson  
Finance Director  
City Clerk

Received  
Napa Superior Court

**AUG 21 2009**

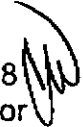
Court Executive Office

**CITY OF NAPA CITY COUNCIL  
AGENDA REPORT**

Admin I Calendar  
Agenda Item No. 5C  
Date: August 18, 2009

To: Honorable Mayor and Members of City Council

From: Mike Parness, City Manager

Prepared by: Carole Wilson, Finance Director, 258-7888  
Pam Edwards, Interim Revenue Supervisor 

Subject: Response to Napa County Grand Jury Final Report on Napa Valley  
Transient Occupancy Tax

**ISSUE STATEMENT:** Approve the City response to the 2008-2009 Napa Grand Jury Report on Napa Valley Transient Occupancy Tax.

**DISCUSSION:**

Following are the Grand Jury findings and recommendations along with proposed City responses. The responses contained in this report are provided as required and in accordance with section 933c of the California Penal Code.

**Finding 1:** The most recurring items of noncompliance were the lack of acceptable records and the underreporting of gross receipts by the operators.

**City Response to Finding 1:** The City respectfully disagrees with that portion of the finding as it relates to the City's lack of acceptable records. The transient occupancy tax return provides all the necessary information needed to determine that the tax calculations are done correctly. As to the lack of acceptable records and underreporting of gross receipts by the operators, we cannot agree or disagree as TOT audits have not been conducted. The City will be contracting for transient occupancy tax audits beginning this fiscal year.

**Finding 2:** Not every local governmental agency provides adequate information to a new operator.

**City Response to Finding 2:** The City partially agrees with this finding. TOT requirements are communicated in advance by City staff to new operators during both the planning/zoning approval and business license processes. The business license process triggers the TOT introductory package containing the ordinance, instructions and forms. A review of the Finance Department's TOT introductory package process found that the TOT ordinance has not always been included in the package. From now on it will consistently be part of the package.

**Finding 3:** There is a lack of communication between the Finance Departments and the licensing departments of the local governmental agencies.

**City Response to Finding 3:** The City partially disagrees with this finding. We believe this may be an oversight on the part of the Grand Jury to include Napa in this reference as the Finance Department and business licensing department here are one and the same. As an additional control, the Community Development Department is preparing a process which would provide notification to the Finance Department when a certificate of occupancy is issued for a new or modified transient occupancy establishment verifying the number of rooms available for let for cross reference purposes.

**Finding 4:** Provisions in the municipal codes/ordinances for interest and penalties are not being executed.

**City Response to Finding 4:** The City respectfully disagrees with this finding. To cite one example, the City filed litigation against an illegal operator who failed to comply with the City's TOT ordinance (Napa Municipal Code Chapter 3.20), and in 2007 the City obtained a judgment requiring a penalty payment from the offending operator. The City is actively investigating allegations of violations, and the City will take appropriate actions to enforce the TOT ordinance.

**Finding 5:** The tax administrator has sole discretion to waive TOT and/or interest and penalties due local governmental agencies.

**City Response to Finding 5:** The City respectfully disagrees with this finding. The City Council has delegated limited authority to the City Manager to determine whether taxes, interest, or penalties have been imposed improperly, and to make corrections accordingly, pursuant to Napa Municipal Code Section 3.04.080, and City Council Policy Resolution No. 16.

**Finding 6:** Audits provided by the Cities and the County of Napa show past due TOT has not been collected from 2005 to the present.

**City Response to Finding 6:** The City neither agrees nor disagrees with this finding. While City records indicate operators have remitted payments in full on a regular basis, individual operator audits have not been conducted to determine if underreporting has taken place which may result in past due TOT.

**Finding 7:** The City of Napa does not have an adequate method of tracking its TOT revenue, relying in part on an out-of-date manual accounting system.

**City Response to Finding 7:** The City partially disagrees with this finding. While the current tracking system is entirely staff and spreadsheet driven, it does provide all

needed data and does not negatively affect collection efforts, nor do they pose security issues, as suggested by the Report. The City agrees that more modern systems are available for use in tracking TOT and will evaluate these systems when resources are available.

**Finding 8:** Most local governmental agencies do not have an accurate record of how many rooms are available for transient occupancy.

**City Response to Finding 8:** The City partially agrees with this finding. The number of rooms is reported by the lodging establishment at the time of establishing the account and is reported monthly on the TOT calculation form. Additionally, the Community Development Department is preparing a process which would provide notification to the Finance Department when a certificate of occupancy is issued for a new or modified transient occupancy establishment verifying the number of rooms available for let for cross reference purposes.

**Finding 9:** The Cities and County do not conduct audits with any degree of frequency or regularity.

**City Response to Finding 9:** The City agrees with this finding and is preparing a Request for Proposal to address the need for audit services.

**Finding 10:** Potential revenue from uncollected TOT, interest, and penalties in the millions of dollars is being lost throughout the county.

**City Response to Finding 10:** The City can neither agree nor disagree with this finding since no basis for the Grand Jury's conclusion was provided in their report.

**Recommendation 1:** Local governmental agencies provide an operator with a copy of the local ordinance/municipal code and all forms needed to file and remit TOT.

**City Response to Recommendation 1:** This recommendation has been implemented and has been for sometime. However, a review found that the practice has not been followed consistently. All staff has received refresher training to ensure that internal guidelines are consistently followed.

**Recommendation 2:** Licensing departments alert local Finance Departments when issuing new licenses to TOT applicants indicating number of rooms for transient occupancy.

**City Response to Recommendation 2:** This recommendation has been implemented. The Business License and TOT functions are both conducted in the Finance

Department and this information sharing has been occurring for many years and is made part of the lodging operator's master file in the Finance Department.

**Recommendation 3:** Local governmental agencies follow the municipal code/local ordinance in assessing penalties and interest.

**City Response to Recommendation 3:** As to the City, the recommendation has already been implemented. The City's practice is to assess and notify operators of penalties and interest within days of delinquency providing a small grace period to allow for delays which may occur due to the U.S. Post.

**Recommendation 4:** Tax administrator to notify City Council or BOS of all past TOT, interest and penalties considered for waiver.

**City Response to Recommendation 4:** As to the City, TOT is not waived at any time. A small grace period delays the levying penalties and interest to allow for a late payment which may occur due to the U.S. Post. This practice may result in a minimal loss of penalties and interest which would not cover the administrative cost of levying and collecting them.

**Recommendation 5:** City of Napa establish adequate methods for tracking TOT, including past due amounts, and consider purchase of software specifically designed to facilitate accounting for this tax.

**City Response to Recommendation 5:** The current method of tracking TOT are considered adequate. As resources become available in the future, updated software will be considered.

**Recommendation 6:** Local governmental agencies expand the municipal code to include the cost of auditing if the operator does not have adequate records.

**City Response to Recommendation 6:** As to the City of Napa, the recommendation has already been implemented. Operators are required to keep records pursuant to NMC Section 3.20.100. If adequate records are not kept, it is a violation of that NMC Section, for which penalties and recovery of costs of enforcement (including an audit) may be recovered by the City per NMC Sections 1.16.010 and 1.16.050.

**Recommendation 7:** Internal audits or contingency audits should be conducted with regularity.

**City Response to Recommendation 7:** This recommendation is being implemented. A Request for Proposal for TOT audits is about to be issued and a contract is expected to be awarded in August 2009.

**Recommendation 8:** Enforce the provision in the municipal code assessing the cost of auditing to an operator who does not have adequate records.

**City Response to Recommendation 8:** This Napa Municipal Code requirement is in place and will be enforced should an audit find an operator without adequate records.

**Recommendation 9:** Each local governmental agency improve its oversight and enforcement of the TOT.

**City Response to Recommendation 9:** This recommendation is being implemented as indicated in the responses to the previous recommendations.

**FINANCIAL IMPACTS:**

None

**CEQA:**

The City Manager has determined that the recommended action described in this report is not subject to CEQA, pursuant to CEQA guidelines

**DOCUMENTS ATTACHED:**

None – A copy of the Grand Jury Report is available at the City Clerk's office for public review.

**RECOMMENDED ACTION:**

City staff recommends that the City Council move, second and approve each of the actions set forth below, in the form of the following motion stated as:

- Move to approve the City's response to the 2008-2009 Grand Jury Report "Final Report on Napa Valley Transient Occupancy Tax" findings and recommendations (as outlined above, and incorporating any changes made to the responses by the City Council during the meeting), and direct the City Manager to submit the response on behalf of the City Council, the City Manager and other City officials as required, to the presiding judge of the Superior Court.

**CITY MANAGER**

