



*The City of St. Helena will conduct city affairs
on behalf of our citizens using an open and creative process.*

July 28, 2009

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

FILED

OCT 30 2009

Clerk of the Napa Superior Court
By: C. Berman
Deputy

Dear Members of the Napa County Grand Jury:

Thank you for your efforts in reviewing and commenting on the local tax revenue source that TOT brings to the Napa Valley and Municipalities. The City of St. Helena, like the Grand Jury, does understand and value the importance of this primary revenue source to fund our community operations.

The City has been requested to respond to recommendations 1, 2, 3, 4, 6, 7, 8, and 9 as outlined in the report.

The City provides the following comments related to the Grand Jury findings, specifically as follows:

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

This is likely to be the case. However, the findings do not indicate that they made this determination in the case of the City of St. Helena.

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

The City records show that all operators provided timely submittals on the City provided forms back to the City. The City has had the same operators due to a cap placed on the number of rooms as stated in the report. The City is able to provide personal training for new operators when needed. The Finance Director and staff make regular contact with the operators to ensure compliance.

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

We believe this may be an oversight on the part of the Grand Jury to include St. Helena in this reference as the Finance Department. The licensing department in St. Helena are one and the same. The City does not have a separate Business licensing function.

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

The City respectfully disagrees. The procedures allow for flexibility on the final determination of applicable penalties and interest. The City believes this is appropriate as there may be mitigating circumstances. If the Grand Jury is recommending that there be no discretion in the administration of penalties and interest and that full penalties and fines be levied for any violation at all, that would be a separate issue.

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.

We believe this may be an oversight on the part of the Grand Jury to include St. Helena in this reference. All establishments are current on their TOT payments.

Finding 7. Internal audits or contingency audits should be conducted with regularity.

We believe this may be an oversight on the part of the Grand Jury to include St. Helena in this reference. The City Finance staff audits records on a monthly, quarterly and annual basis. The City also has an out side auditor conduct a financial audit annually.

Finding 8. Most local government agencies do not have an adequate record of how many rooms are available for transient occupancy.

As this finding says "most", we are not sure if this is meant to include St. Helena. If this finding is meant to be applied to the City of St. Helena the City respectfully disagrees. The City completes monthly reporting which includes the total rooms and room nights on our reporting forms. Due to a cap on Hotel rooms placed by Council the City knows precisely how many rooms there are. Currently there are 260 rooms in St. Helena.

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

The City last conducted an audit in 2003 at a cost of \$8,400. The Audit results were summarized in a single quote in the report: "Moreover, in reviewing the returns for the past three years, we found not a single instance of mis-computation that had gone undetected, which is truly remarkable."

All establishments were assessed as "fair" to "superlative" in their record keeping. A minor deficiency related to the exemption from taxation due to a single bookkeeping error resulted in less than \$700 in additional taxes.

With the results of the previous audit, the City respectfully disagrees that revenues have been lost. The City does agree that TOT audits are due and will insure that more regular audits are performed in the future.

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

The City does not know enough about the information obtained by the Grand Jury to agree or disagree with this finding. In the case of the City we know that the uncollected TOT averages less than one percent (1%) based on the last audits completed.

The City response to the Grand Jury recommendations is as follows:

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.

The City agrees with this recommendation. The City already takes this action, however documentation that the information is provided could be tightened and improved upon. Audit reviews show regular compliance with and use of the City provided forms.

This implementation has previously been recommended but the City will send out additional copies of the applicable ordinance, various forms, and a copy of the Grand Jury report by July 31, 2009 to all properties.

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

The City disagrees with this recommendation. For clarification purposes though, this recommendation does not appear germane to the City of St. Helena. The City Finance Department issues the business licenses, issues and processes the initial registration of TOT paperwork, manages the monthly reporting and accounting for the receipt of collection of TOT payments, and coordinates the management of the TOT audit process. There is no other licensing department involved in the issue of license or permits related to TOT other than the Finance Department.

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

The City agrees with this recommendation, but with the understanding and recognition that it is appropriate that the process include a review and appeal process. The goal of the City is to collect the appropriate TOT revenue in the first place and not to generate additional revenue through what is often called bureaucratic use of penalties and interest. The City of St. Helena believes there needs to be reasonable flexibility as outlined in the municipal code to determine when to assess and collect penalties and interest. A property who submits their collection one day late with a good payment history is a very different situation from a property which is thirty days late in payment. This recommendation will be implemented subject to the understanding that a review and appeal process is appropriate and it may be appropriate to not always assess maximum penalty provisions.

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

City does not disagree with this recommendation. The City notes that the Finance Director currently provides accounting reports on TOT collections which are provided to

the City Council. Consideration of waiver of fee's or interest can be included in such reports.

This recommendation has already been implemented and will continue to be implemented by the City as is noted by above comments.

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

City agrees with this recommendation. A provision will be added to the ordinance section 3.28 to include the cost of auditing if the operator does not have adequate records.

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

City agrees with this recommendation. The City Finance staff audits records on a monthly, quarterly, and annual basis. The City also has an out side auditor conduct a financial audit annually.

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

The City agrees with this recommendation. Once the ordinance is updated to include this provision the City will pass on costs of the audit only to those who do not maintain adequate records.

Recommendation 9. Each local government improve its oversight and enforcement of the TOT.

The City neither agrees nor disagrees with this recommendation. The City agrees with what we believe to be the Grand Jury's recommendation that TOT management should be a high priority and focus. This is the case in St. Helena as TOT revenue is a significant General Fund revenue source. The City notes that we actively look for and prosecute violators of non licensed establishments. The City welcomes additional comments or recommendations on how it can improve.

This recommendation has been implemented. The Interim City Manager/Finance Director has reviewed the Grand Jury results and recommendations and will continue to proactively manage and enforce the TOT provisions.

These comments are respectfully submitted for the City of St. Helena, as approved by the St. Helena City Council at their regular meeting of July 28, 2009.

Please contact me if the Grand Jury has any questions or needs additional information from the City of St. Helena. Thank you for the opportunity to comment upon your report.



Karen Scalabrini
Interim City Manager