



# Transient Occupancy Tax

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# Transient Occupancy Tax General Background

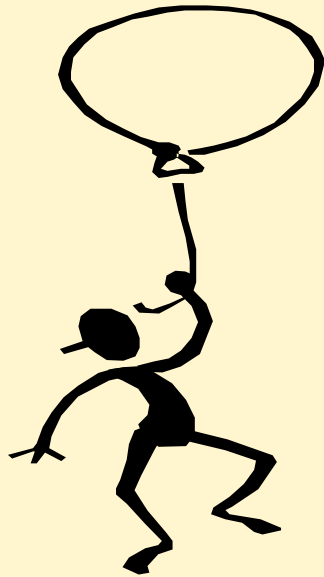


- Originally to compensate local government
- Currently a stable source of general fund monies
- To date, no cap
- Any new or increased TOT requires a vote

# Revenue and Taxation Code 7280

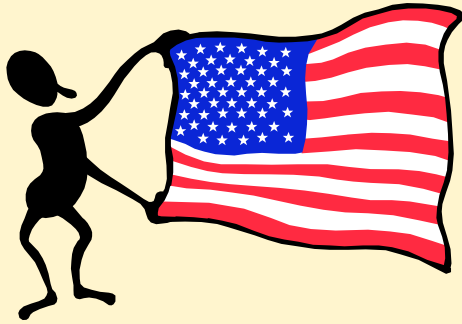


- Authorizes general law city to tax
- TOT adopted by a charter city is not preempted
- Authority to tax 30 days or less in hotels



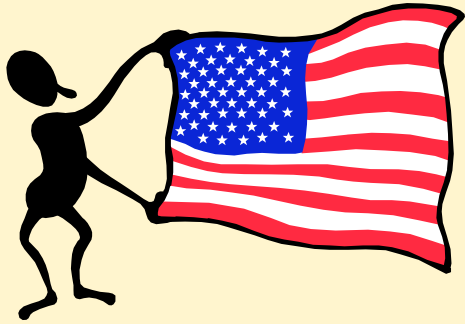
## Exceptions to TOT

- Prohibits TOT on a “time-share estate”
- No tax on state park campsites
- TOT *applies* to state employees, not federal



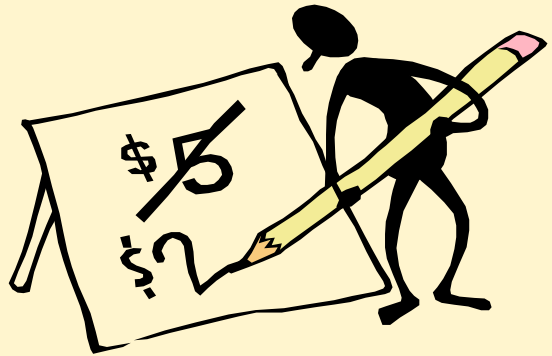
## Voter Approval Required\_

- TOT General Tax
- *New TOT or increase* needs vote
- Requires majority vote



# Voter Approval Required

- TOT Special Tax
- Requires 2/3 vote



## TOT as a Percentage Hotel Room Rate

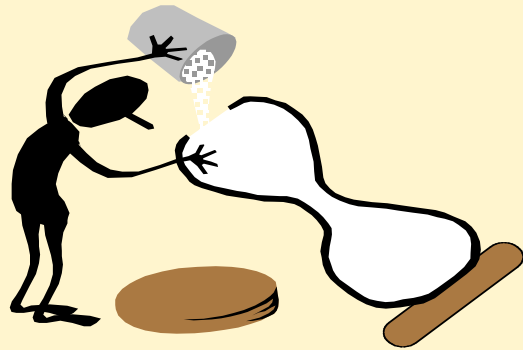
- TOT as a percentage
- Set TOT as a cap
- TOT cap is not a tax increase
- No vote required



**TOT has been called a  
“painless” tax**

- Opponents are the owners and operators of hotels and motels

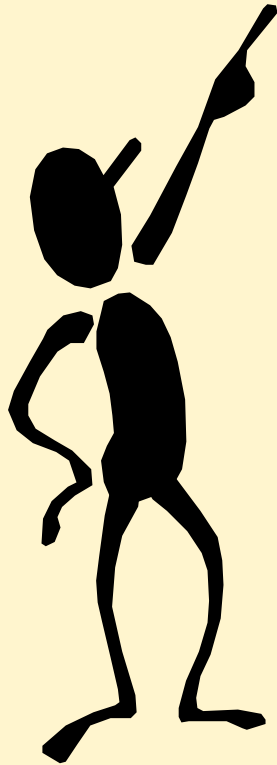




# TOT and Time-Share Rentals

- Although generally excluded, TOT may include “Time-share Projects”

# Recent TOT Ordinance Challenges



- Vagueness
- Recordkeeping
- Subpoenas

*Britt v. City of Pomona*  
223 Cal.App.3d 265 (1990)



- Court holding: Must distinguish between transients and persons in residence



*City of San Bernardino  
Hotel/Motel Assn v. City of San  
Bernardino,  
59 Cal.App.4th 237(1997)*

- Invalidated because the definition of “transient” was confusing
- 90-day versus 30-day time limit was vague



*Patel v. City of Gilroy*  
97 Cal.App.4<sup>th</sup>483 (2002).

- Does not have any conflicts
- Only applies to “transients” as defined

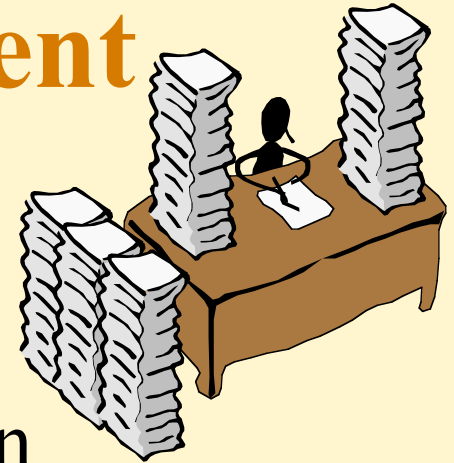
# City's Authority to Collect TOT



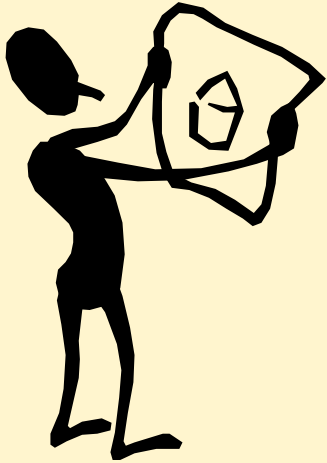
- Power to impose TOT includes collection

# City's TOT Ordinance Recordkeeping Requirement

- Keep records for 3 years
- Records available for inspection
- Use an auditor

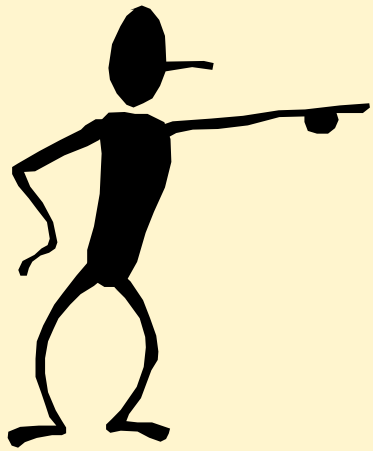


# Recordkeeping Constitutional Requirements



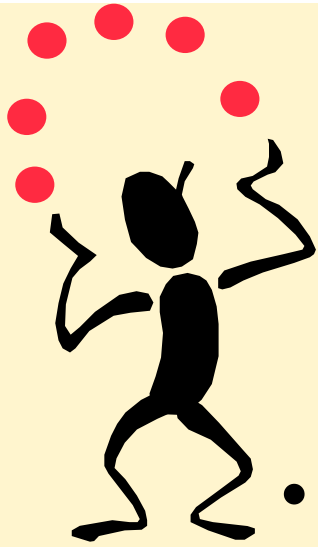
- power to regulate;
- rational relationship; and
- the burdens are reasonable





# City's Subpoena Power to Obtain TOT Records

- General law city has the power to issue subpoenas
- Charter city has authority pursuant to California Constitution



# TOT Subpoena Procedures

- Government Code governs
- Signed by the Mayor and issued by City Clerk
- Service is governed by Code of Civil Procedure and Government Code

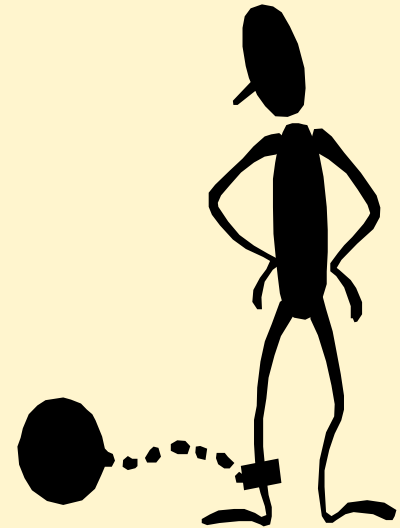


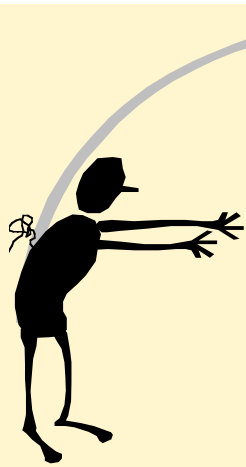
# TOT Subpoena Enforcement

- Cities do not have independent authority to enforce
- Superior court determines the validity
- Court will issue an attachment
- Judge has jurisdiction to issue contempt order

# TOT Subpoena Enforcement

- Punishment is civil contempt
- City of Vacaville judge opted for an Order to Show Cause Hearing

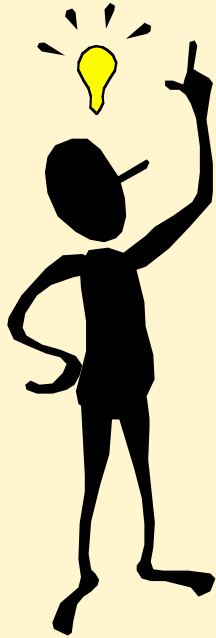




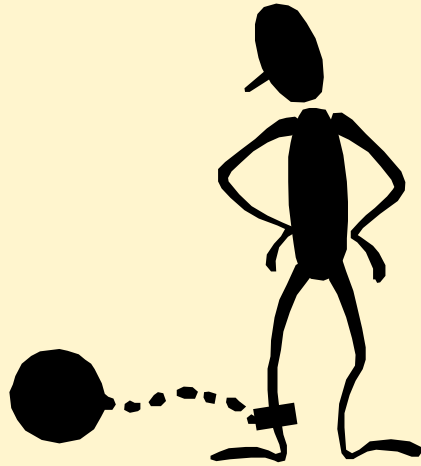
# TOT Collection

- Civil lawsuit
- Unfair Business Practices
- Tax as a lien
- Criminal prosecution

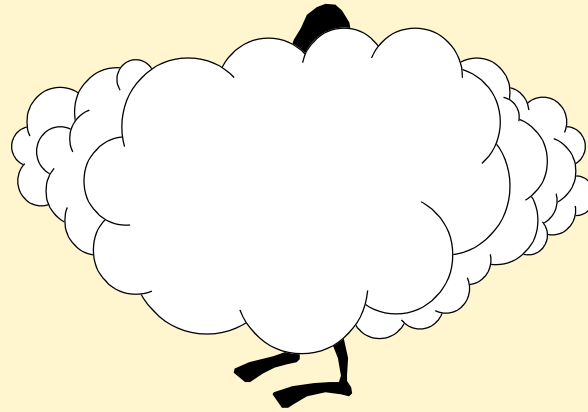
# Suggested Changes to Older TOT Ordinances



# Remove the Criminal Enforcement Section

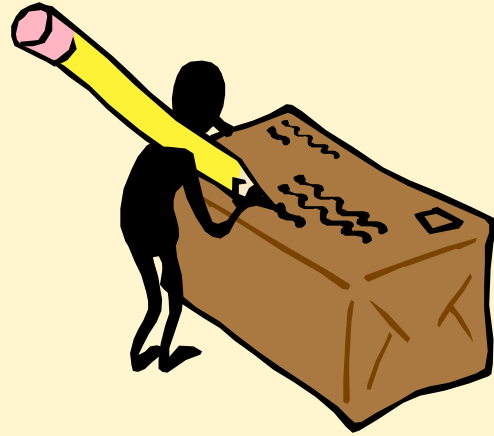


# Clarify the Exemption Section





# Clarify Written Agreement



City Attorneys Department Spring Meeting  
League of California Cities  
May 5-7, 2004

**Jolie Houston**  
**Berliner Cohen**  
**10 Almaden Boulevard, 11<sup>th</sup> Floor**  
**San Jose, CA 95113**

**TRANSIENT OCCUPANCY TAX**  
**TRANSIENT OCCUPANCY TAX**

## **I. Transient Occupancy Tax - General Background**

Transient occupancy tax (“TOT”) is levied on the privilege of using a hotel accommodation. The tax was originally designed to compensate local government for the increased public service costs incurred by serving local tourists. TOT is currently recognized as a stable source of general fund monies to cities. To date, there is no cap on the tax rate under the state enabling legislation applicable to general law cities; however, any new or increased TOT now requires a vote of the electorate. Cal. Const. art. XIII C, § 1 subd.(a) and § 2 subd.(b).

## **II. City’s Authority to Tax**

- A. All cities whether general or charter law, have the power to tax. Cal. Const. art. XI § 5 (charter cities); Govt. Code 37100.5 (general law).

California Constitution, article XI, section 5(a) provides:

“It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.”

A charter city has coequal powers of taxation with the state, and is limited only by its charter and the state and federal constitutions in the exercise of this power. Cal. Const., art. XI, §5; *Gowens v. City of Bakersfield* 193 Cal.App.2d 79, 13 Cal.Rptr. 820 (1961). The power of a city operating under a home rule charter to levy taxes for city purposes is a municipal affair. *City of Glendale v. Trondsen* (1957) 48 Cal.2d 93, 99; *City of San Bernardino Hotel/Motel Assn v. City of San Bernardino*, 59 Cal.App.4th 237, 242, 69 Cal.Rptr.2d 97 (1997).

- B. Revenue and Taxation Code section 7280 (“Section 7280”).

Revenue and Taxation Code 7280 authorizes general law cities to impose a transient occupancy tax, and a transient occupancy tax adopted by a charter city is not preempted. *City of San Bernadino, supra*, 59 Cal.App.4<sup>th</sup> 237, 243. Section 7280 provides the authority for cities to tax a person staying 30 days or less in hotels, motels and similar lodgings including mobile homes.

Section 7280 states:

“The legislative body of any city or county may levy a tax on the privilege of occupying a room or rooms or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for any period of more than 30 days. The tax when levied by the legislative body of a county shall apply only to the unincorporated areas of the county.”

C. Exceptions to TOT Pursuant to Section 7280.

Section 7280 prohibits the imposition of TOT on a “time-share estate” after May 1, 1985.

In addition, cities may not levy tax on the privilege of occupying campsites in a state park system. Rev. & Tax Code § 7280(b) and (c).

TOT does *not* apply to federal employees traveling on business, even if their room charges are paid directly by the employee and reimbursed by the federal government. *California Credit Union League v. City of Anaheim* 95 F.3d 30 (9<sup>th</sup> Cir. 1996). However, TOT does apply to state employees traveling on business even if their room charges are paid directly by the governmental employer. *See* 75 Ops.Cal.Atty.Gen. 86 (1992); 46 Ops.Cal.Atty.Gen. 16 (1965).

### III. Voter Approval Required

By law the city council must submit any new TOT or increase in an existing TOT to the voters for approval.

A. TOT as a General Tax.

For TOT imposed for general government purposes, such tax is required to be submitted to the electorate and approved by a majority of the electorate voting in the election on the tax. Cal. Const. art. XIIC, § 1 subd.(a) and § 2 subd.(b).

➤ *Sample Resolution of the City Council Calling a Special Election for the Submission to the Voters a Question Relating to an Increase in TOT from 9% to 10% is attached.*

➤ *Sample Ordinance Amendment to Increase TOT from 9% to 10% is attached.*

B. TOT as a Special Tax.

For TOT imposed for special purposes, including taxes imposed for specific purposes and placed into a general fund, such tax is submitted to the electorate and approved by a 2/3 vote of the electorate voting in the election on the tax. Cal. Const. art. XIIC, §1 subd.(d) and § 2(b).

C. TOT as a Percentage of Hotel Room Rate.

Most cities set the rate of their TOT as a percentage of the hotel room rate. Generally, TOT percentages range from 8 to 14%. Some cities have set it as a cap, for example, 12% or at any lesser rate that the city council shall determine by resolution. The benefit of a voter approved TOT cap or inflation rate is that it is not considered a tax increase, and therefore does not require subsequent voter approval. Govt. Code §§ 53739, 53750.

➤ *Suggested ballot measure language for a TOT with an inflation rate:*

Shall an ordinance be approved to amend section \_\_\_ of the City of \_\_\_\_\_ Municipal Code to increase the Transient Occupancy Tax to an amount not to exceed twelve percent (12%)?

TOT has been called a “painless” tax because it is paid by the out-of-town tourists and not by local residents. The only opponents of the tax are the owners and operators of hotel and motel properties, who claim the tax is unfair because it singles them out, taxing them and not others. They also claim that it is expensive, difficult to collect, and gives hotels from neighboring communities a competitive advantage. Without public understanding of TOT and support from the local visitor bureau and/or Chamber of Commerce, TOT ballot measures often fail.

➤ *See City of Sonoma’s February 2004 survey regarding TOT.*

**IV. Special TOT Tax**

A. TOT as Special Tax.

In addition to the standard TOT adopted as a general tax, some cities have adopted a related special tax of 1% to help promote local tourism. For example, a hotel guest would pay a 10% TOT on their hotel room with an additional 1% to be used by a local conference and visitors council to promote tourism. This additional tax is considered a special tax and requires a 2/3 vote of the electorate voting in the election on the tax. Cal. Const. art. XIII C, §1 subd.(d) and § 2(b).

➤ *Suggested ballot measure language for a Special TOT:*

Shall the City of \_\_\_\_\_ adopt an ordinance amending section \_\_\_ of the Municipal Code by imposing a special one percent (1%) tax charged to guests of hotels and motels under the City’s Transient occupancy Tax Ordinance for the purpose of protecting the local economy by continuing tourism promotion?

B. TOT and Time-Share Rentals.

The City of Newport Beach imposes a TOT of 9% (and a Visitor Service Fee of 1%) of the rental rate on hotel guests during the first 30 days of their stay. The City of Newport Beach also includes in its TOT collection time-share rentals for less than 30 days.

Although Section 7280(b) generally excludes an *owner* of a time-share estate in a room or rooms in a time-share project from the definition from the term “privilege of occupying a room or rooms, or other living space, in a hotel, in a tourist home or house, motel, or other lodging,” the City of Newport Beach has included “Time-share Projects” within their definition of a “hotel.” The ordinance also defines the term “Time-share Interests,” which means either a Time-share Estate or a Time-share Use (as defined in section 11003.5 of the Business & Professions Code) and any similar form of ownership involving a right in perpetuity, for life, or for a term of years, to occupy any room, space or area in a time-share project.” “Time-share Owner” is also defined, and means any person or entity that owns a Time-share Interest. “Time-share Project” means a structure or real property (including air space) in which a time-share has been sold.

For purposes of the Newport Beach Ordinance, the term “transient” does *not* include any person who occupies any room, space or area in a Time-share Project pursuant to a Time-share Interest and *without paying rent* including: (a) a Time-share Owner; (b) a member of the family or guest of the Time-share Owner; (c) any person who is entitled to occupy pursuant to any Time-share exchange program or any similar program; and (d) any person entitled to occupancy pursuant to any exchange or incentive program involving or sponsored by the operator of the Time-share Project.

V. **Recent TOT Ordinance Challenges**

A. *Britt v. City of Pomona*, 223 Cal.App.3d 265, 272 Cal.Rptr. 724 (1990).

The City of Pomona enacted its TOT Ordinance in 1965, which assessed a tax on persons living in qualifying structures for specified short periods of time. In 1987, the TOT Ordinance was amended and the time limitations were deleted, making all of the residents of hotels subject to the tax regardless of the duration of their occupancy. In 1988, the ordinance was amended and changed the name of the tax to an occupancy tax, and changed the term “transients” to “lodgers,” and also exempted any person residing in the qualifying structures under a tenancy contract.

The Court of Appeal held that the tax ordinance violated equal protection requirements, since it taxed persons who resided only in certain designated types of shelter but not persons who resided in others, and payment of the tax did not depend on who was a true transient. It also held that the ordinance violated due

process requirements, since its terms were too vague to be understood and applied by persons of common intelligence.

➤ *Specific ordinance language:*

The court in *Britt* found that the City of Pomona’s TOT Ordinance failed to distinguish between transients and persons in residence. “Transient,” as defined by the ordinance, applied to anyone who “occupied” a “hotel” without any reference to an occupancy time limitation. “Hotel” was defined as any structure which was occupied by “transients” for “dwelling, lodging or sleeping purposes.” “Occupancy” was defined as the use or possession of any “hotel” for “dwelling, lodging or sleeping purposes.” This ordinance did not clearly state to whom it applied. For example, the ordinance would apply to both transients and residents; thus, the court’s conclusion that the ordinance was circular was well founded.

B. *City of San Bernardino Hotel/Motel Assn v. City of San Bernardino*, 59 Cal.App.4th 237, 69 Cal.Rptr.2d 97 (1997).

A hotel association brought an action to challenge the validity of a TOT adopted by a charter city. The ordinance imposed a 10% tax on transients for occupancy in a hotel in the city, and a violation of any provision of the ordinance was a criminal misdemeanor.

The Court of Appeal held that the city’s TOT was not preempted by Revenue & Taxation Code section 7280.<sup>1</sup> The court held that under the California Constitution, article XI, section 5, subd. (a), a charter city’s ability to impose revenue taxes can be curtailed only by the charter itself or when in direct and immediate conflict with a state statute or statutory scheme. In this case, there was no actual conflict with Revenue & Taxation Code section 7280, which authorizes general law cities to impose a TOT.

However, the court further held that the ordinance violated due process of law under the U.S. Constitution, 5th Amendment since its definitional sections were too vague to be the basis for a criminal statute.

➤ *Specific ordinance language:*

In *San Bernardino*, the City’s TOT Ordinance was invalidated because the definition of “transient” was confusing. The definition of “transient” had a 90-day occupancy time limit while the definition of “hotel” had a 30-day occupancy time limit. The vagueness was based on the conflict of the 90-day versus 30-day occupancy time limit for “transients” who would be occupying a hotel room.

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<sup>1</sup> The court also held that Civil Code sections 1940, 1940.2, Code of Civil Procedure section 1161, Penal Code section 602, and Health & Safety Code section 50519 did not compel the conclusion that the Legislature intended to preempt local TOT.

The San Bernardino TOT Ordinance was also defective for failure to distinguish which time limit applied to “transient” because the definition of “hotel” stated that it was for “occupancy” by “transients” for “lodging or sleeping purposes” for 30 days. “Occupancy” was defined as the use or possession of any room in any “hotel” for “dwelling, lodging or sleeping purposes.” The definition of “hotel” included “occupancy” by a “transient” for “lodging or sleeping purposes” but not for “dwelling.” Thus, the court’s conclusion that the ordinance was circular and confusing was well founded.

C. *Patel v. City of Gilroy*, 97 Cal.App.4<sup>th</sup>483, 118 Cal.Rptr. 354 (2002).

Motel and hotel owners, who had been found liable for tax delinquencies under the City of Gilroy’s TOT Ordinance, filed a petition for a writ of mandate against the city and sought declaratory and injunctive relief, challenging the validity of the ordinance on constitutional grounds. The trial court entered judgment for the city, finding the tax ordinance was valid and constitutional.

The Court of Appeal held that the ordinance was not unconstitutionally vague under the due process clauses (U.S. Const. amends. XIV, V and Cal. Const., art. I, § 7), since it gave fair notice of its collection and reporting requirements and provided reasonably adequate standards to guide enforcement. The tax clearly applied solely to those who occupied a hotel or motel for a period of 30 consecutive calendar days or less. Thus, it was clear what the ordinance prohibited, and the ordinance was valid in its intended applications.

➤ *Specific ordinance language*

The City of Gilroy’s TOT Ordinance does not have any conflicts between the use of “hotel,” “occupancy” or “transient” as seen in the ordinances invalidated in the *Britt* or *San Bernardino* cases. Gilroy’s TOT Ordinance applies to “transients” which includes any person who exercises “occupancy” for a period of 30 days or less. Gilroy’s TOT Ordinance includes the terms “hotel” and “occupancy” within the definition of “transient.” The effect is that a “transient” includes any person who uses or possesses or has the right to use or possess any room or rooms or portions thereof in any hotel for “dwelling, lodging or sleeping purposes” for a period of 30 consecutive calendar days or less.

Gilroy’s TOT Ordinance does not contain the same circularity or confusion among the definitions as found in *Britt* or *San Bernardino* Ordinances.

## VI. City’s Authority to Collect TOT

With the power of cities to impose TOT is the corollary power to use reasonable means to effect collection, which includes having others collect the tax and remit it to the city. *Eastern Mun. Water Dist. v. City of Moreno Valley*, 31 Cal.App.4<sup>th</sup> 24, 36 Cal.Rptr. 823 (1994) (general law cities); *City of Modesto v. Modesto Irrigation Ditch*, 34 Cal.App.3d 504, 508; 110 Cal.Rptr. 111 (1973) (charter



cities). In *City of Modesto* the court held that “it is basic that the power to tax carries with it the corollary power to use reasonable means to effect its collection; otherwise the power to impose a tax is meaningless.” *Id.* at p.508.

## **VII. City’s TOT Ordinance Recordkeeping Requirement**

### **A. TOT Ordinance Recordkeeping Requirements.**

A part of any city’s TOT collection procedure is the requirement that the hotel operator maintain TOT records and have them available for the city’s review.

TOT Ordinances generally require that the operator who is liable for the collection and payment of the tax to the city to keep and preserve for a period of 3 years all records necessary to determine the amount of such tax. TOT Ordinances require that records be available for inspection by a city at reasonable times, and cities usually use an independent auditor to request and review such records.

### **B. TOT Ordinance Recordkeeping Must Comply with Federal and State Constitutions.**

Statutory and regulatory recordkeeping and reporting requirements must comply with both federal [*People v. Hutchins*, 69 Cal.App. 3d Supp. 33, 36, 138 Cal.Rptr.485 (1977); *Shapiro v. United States*, 335 U.S. 1, 32-35 (1948)], and state constitutions [*Wilson v. California Health Facility Com.*, 110 Cal.App.3d 317, 322-325, 167 Cal.Rptr. 801 (1980)]. State and federal constitutions require that no person be deprived of life, liberty or property without due process of law. U.S. Const. amend. XIV; Cal. Const. art, I § 7. Substantive due process protects an individual’s liberty and property interest against unreasonable governmental action.

The principal constitutional substantive due process challenge to TOT recordkeeping and reporting ordinances involves violation of the prohibition against unreasonable searches and seizures.

Substantive due process challenges to recordkeeping and reporting statutes may be brought; however, these challenges have very little success because statutes and rules that involve social and economic regulation and/or public health and safety, are exercises of the state’s police power. The statute or ordinance must only be rationally related to the governmental purpose as discussed below.

### **C. Constitutional Test for TOT Ordinance Recordkeeping Requirements.**

A statute requiring reports on, or records of, regulated activities will pass constitutional muster if it meets all of the following criteria: (1) the government has the power to regulate or forbid the activity concerned; (2) there is a rational relationship between the recordkeeping or reporting requirement and the government’s objective; and (3) the burdens of compliance are reasonable. *California Bankers Assn v. Shultz*, 416 U.S. 21, 45-50 (1974); *Wilson v.*

*California Health Facility Com.*, 110 Cal.App.3d 317, 322-325; 167 Cal.Rptr. 801 (1980); *Blinder v. Division of Narcotics Enforcement*, 25 Cal.App.3d 174, 179-184, 101 Cal.Rptr. 635 (1972).

D. TOT Ordinances Recordkeeping Requirements Meet the Constitutional Test.

The only way that cities are able to obtain the needed information regarding TOT is by the TOT Ordinance's recordkeeping requirement. There is no doubt that a TOT Ordinance's recordkeeping requirement bears a rational relationship to a legitimate city purpose, which is to enable the city to assess and to collect TOT. The burden of complying with this requirement is not unduly oppressive or costly since it is only a matter of maintaining the records for 3 years and having them available for inspection by a city at reasonable times. In addition, these are also the very same business records that the hotel operators must maintain to comply with their reporting and remittance requirements.

**VIII. City's Subpoena Power to Obtain TOT Records**

A. City's Subpoena Power.

A general law city has the power to issue subpoenas requiring attendance of witnesses or production of documents in proceedings pending before it. Government Code §§ 37104-37109; *Connecticut Indemnity Company*, 23 Cal.4th 807, 98 Cal.Rptr.2d 221 (2000). A charter city has the independent authority to issue subpoenas pursuant to the powers contained in the California Constitution. Cal. Const. art. XI, §§ 3 subd.(a). Charter cities may also have the subpoena power included within their city charter. *Brown v. City of Berkeley*, 57 Cal.App.3d 223, 236 (1976).

When a hotel operator refuses to submit to a TOT audit, a city has the express power to issue administrative subpoenas for the records. The only condition precedent for an administrative subpoena is that an investigation or proceeding be under way and it must further a legitimate purpose of the legislative body. "There are, of course, limits on the use of legislative subpoenas. We agree with the United States Supreme Court that issuance of such a subpoena is proper only if (i) it is authorized by ordinance or similar enactment, (ii) it serves a valid legislative purpose, and (iii) the witness or material subpoenaed are pertinent to the subject matter of the investigation." *Connecticut Indemnity Company, supra*, 23 Cal.4th at p.814; *Wilkinson v. United States*, 365 U.S. 399, 408-409 (1961).

B. TOT Subpoena Procedures.

Government Code section 37105 governs the procedural requirements for issuing a subpoena. The subpoena must be signed by the Mayor and issued by the City Clerk. The service of the subpoena is governed by Code of Civil Procedure section 1987 and Government Code section 37105.

➤ *City of Gilroy's administrative subpoena attached.*

C. TOT Subpoena Enforcement.

A city has no independent authority to enforce the failure to comply with a subpoena but is required to report the violation of the subpoena to the superior court within its jurisdiction. The superior court then determines both the validity of the subpoena and whether it has been violated. Govt. Code §§ 37105-37109. This superior court review is necessary before discipline can be imposed for failure to comply. Failure to provide a mechanism by which a request for records can be judicially reviewed may have constitutional implications. *See Pinney v. Phillips*, 230 Cal.App.3d 1570; 1586-1588; *See v. Seattle*, 387 U.S. 541, 544-545 (1967); *California Restaurant Assn. V. Henning*, 173 Cal.App.3d 1069, 1075, 219 Cal.Rptr.630 (1985).

The superior court will then issue an attachment, directed to the sheriff of the county where the witness was required to appear or produce documents, commanding the appearance of the person to court. Govt. Code § 37107. On the return of the attachment and production of the witness, the judge has jurisdiction to issue a contempt order. Govt. Code § 37108. The punishment for disobedience of a subpoena issued under section 37104 is the same as if contempt had been committed in a civil trial in superior court. Govt. Code § 37109.<sup>2</sup>

- D. The issue of criminal penalties for failure to provide TOT records is being challenged in court at this time. The City of Vacaville's subpoena for TOT records is being challenged by attorney Frank Weiser.

**IX. TOT Collection**

There are various methods for collection, with a civil lawsuit being most common.

- A. The basis for the civil lawsuit is that the TOT Ordinance declares that the tax is deemed to be a debt owed to the city, for which the operator is liable to the city.
- B. Unfair Business Practices under Business and Professions Code section 71200 *et seq.* are possible. Attorneys fees are not available under the Business and Professions Code.
- C. Some cities collect the delinquent tax as a lien on the real property owned by the hotel operator and follow the standard lien procedures.
- *City of Santa Clara's TOT Ordinance language is attached.*
- D. Another alternative remedy for failure to collect and/or remit the tax is to enforce it as a violation of the operator's business license with the possibility of business license revocation. This only applies to a city that has a "regulatory" business license that provides for revocation for any violation of its city code.

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<sup>2</sup> Note: In the City of Vacaville administrative subpoena case, the judge opted for an Order to Show Cause Hearing instead of the attachment proceeding.

- E. Criminal prosecution for failure to collect and/or remit the tax. This is not as common because of the difficult burden of proof.

**X. Suggested Changes to Older TOT Ordinances**

- A. Remove the Criminal Enforcement Section.

Older TOT Ordinances have a standard enforcement section, which states that a “violation of any provision of this chapter or article” is a misdemeanor (or infraction). A challenge to a TOT Ordinance’s recordkeeping and reporting requirement on due process vagueness grounds may trigger a stricter review by the court if the ordinance prescribes criminal penalties for violations. *Kolender v. Lawson* 461 U.S. 352, 358, fn.8 (1983) (Where a statute imposes criminal penalties, the standard of certainty is higher.)

- B. Clarify the Exemption Section.

Many TOT Ordinances have the exemption that the tax will not be imposed on “any person as to whom, or any occupation as to which, is beyond the power of the city to impose the tax.”

This ordinance provision is confusing as to whom the exemption applies, and as the court noted in the City of Gilroy case, the “Exemptions’ provision, ... is hardly a model of clarity.” The TOT exemptions section should be amended to provide exemptions for *federal* employees, for example, federal credit union employees, who stay at hotels for official business or by means of a federal contract. *California Credit Union League v. City of Anaheim* 95 F.3d 30 (9<sup>th</sup> Cir. 1996). Some cities now provide exemption forms for federal employees and/or require written documentation of the employee’s official business.

Many cities include an exemption for “Any federal or state employee when on official business.” However, state employees are *not* exempt under the Attorney General’s opinions, and the *California Credit Union* case was limited to federal employees only. See 75 Ops.Cal.Atty.Gen. 86 (1992); 46 Ops.Cal.Atty. Gen. 16 (1965).

➤ *Suggested language:*

No tax shall be imposed upon:

1. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.
2. Any federal officer or employee when on official business.

No exemption shall be granted except upon a claim therefor made at the time the rent is collected, and under penalty of perjury, upon a form prescribed by the director of finance.

- *City of Corona's exemptions claim form with summary of remittance process is attached.*

C. Clarify Written Agreement.

Some cities use a standard form that must be filled out prior to occupancy in order to qualify for the 30-day exemption. Using a standard form or a “qualifying rental agreement” will make the TOT audits easier.

- *City of San Jose's form is attached.*

**This is the end of this presentation. Click any where to return to the main menu.**