



2023-2024 GRAND JURY REPORT EL DORADO COUNTY MARCH 4, 2024 – CASE #24-04

TRANSIENT OCCUPANCY TAX: TRANSPARENCY MATTERS

The County's use of Transient Occupancy Taxes has come under considerable scrutiny. While the funds are being used and distributed in accordance with the law, greater transparency could alleviate public frustration and lack of trust.

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SUMMARY

Summary

The El Dorado County Civil Grand Jury (GJ) received a complaint about the Transient Occupancy Tax (TOT) program's allocation of funds by the Chief Administrative Officer (CAO) and the El Dorado County Board of Supervisors (BOS). The complaint stated that the BOS was not using the TOT funds for its intended purpose, in support of economic development and/or tourism within the county, but rather using the funds as a 'slush fund' for pet projects. Additionally, the complaint stated that there was no transparency for the allocation of TOT funds, nor a formal process for requesting TOT funds by the various chambers of commerce and/or groups to support local economic development and tourism.

On October 6, 2023, the Mountain Democrat ran an article ([link](#)) on the TOT fund allocations, again, questioning the discretionary spending of the TOT funds by the BOS. The article's focus was on how to allocate the "discretionary" funds from the Transient Occupancy Tax, approximately \$216,000. There was discussion on either distributing the funds to each chamber or focusing on requests received for TOT funds. After careful review of multiple documents and interviews, the Grand Jury determined that the BOS generally followed current guidelines for the use and allocation of TOT funds. There is still a public perception that TOT funds are not explicitly allocated for economic development and tourism. The Grand Jury has recommendations to provide transparency to the process that precedes the allocation of funds to alleviate public mistrust.

Methodology

- Interviews
 - Complainant
 - El Dorado County CAO
 - District 5 Supervisor
 - El Dorado County Treasurer/Tax Collector
- Reviewed relevant documents associated with TOT.
 - TOT related press articles
 - The 2004 TOT voter approved measure
 - Measure (S) from 2022 ([link](#))
 - Resolution Number 063-2022 ([link](#))
 - The County Budget Policy (B-16)
 - The 2022 Hotel/Motel Ballot Measure description ([link](#))
 - 2022-2023 and 2023-2024 CAO Recommended Budget Book

DISCUSSION

Discussion

During the Grand Jury’s TOT investigation, we spoke with several individuals, including the complainant, County Supervisors, the County Chief Administrative Officer (CAO) and the County Treasurer/Tax Collector.

We obtained multiple documents, including:

- The TOT voter-approved measure from 2004 imposing a 10% tax on short-term rentals (e.g., hotels, motels, Airbnb, etc.), to offset the impacts of tourism and promote economic development.
- The 2022 voter-approved Measure S imposing 4% additional tax to support road maintenance and snow removal in South Lake Tahoe.
- Resolution Number 063-2022: clarified that TOT funds “may be used for any general government purpose.”

The County Budget Policy B-16 revised on April 18, 2023, modified the original Budget Policy adopted May 15, 2015.

The TOT measure in 2004 (collecting 10% on short-term rentals throughout the county) was to promote economic development and offset the impacts of tourism, including to roads and other infrastructure. The definition of “economic development and tourism” was not sufficiently clear. This left the public confused and distrustful, and caused frustration among some of the chambers of commerce who felt they should have received an appropriate percentage of these funds.

Since 2022 El Dorado County defined TOT ([link](#)) in its description of a Hotel/Motel Ballot Measure as follows:

“Because the Measure was passed as a General Tax, the use of funds is not legally restricted and can be used for general governmental purposes at the discretion of the Board of Supervisors. That Board set a policy that TOT revenue ‘shall be directed toward the

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impact of tourism and economic development, with consideration for support of tourism and promotion activities within the County and for continued support for grant fund allocations to support Veteran programs within the County’.”

Measure S passed in 2022, provided a 4% increase for the South Lake Tahoe (SLT) area to offset road maintenance and snow removal. An oversight committee was created to allocate SLT Measure S funds. It is important to note that while Measure S passed for the SLT area, it failed approval for the Western Slope.

Resolution 063-2022 in April 2022 further clarified that the funds could be used for any general government purpose anywhere in the county. Even though the TOT allocations are now completely discretionary, the County’s general plan has been compliant in recent years with the original intent of TOT funds.

TOT funds are distributed (except for Measure S funds) across the various chambers of commerce within the county, and other recipients at the discretion of the BOS. The term “... *shall be directed towards the impact of tourism and economic development...*” is vague enough to support that the allocations to the various chambers and groups can and are supporting local tourism and economic development.

The County Budget Policies and Resolutions noted above provide a framework for budgetary decision making regarding the use of County funds (including TOT funds), to ensure prudent County fiscal management, and to direct the CAO in the development and management of the County Budget.

Policy B-16 (April 2023, see Appendix) states that the TOT Tax revenue, excluding the voter approved (Measure S) Tahoe area-specific revenue, “*shall be directed toward the impact of tourism and economic development, with consideration for support of tourism and promotion activities within the County and for continued grants to fund support for Veteran programs within the County.*” The current focus of TOT fund allocations is to look at impact first for

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tourism, and then growth/economic development. This helps to offset road maintenance and emergency calls related to tourism.

The El Dorado County Treasurer and Tax Collector's Office (TTC) is responsible for the collection of TOT funds. TTC staff work closely with Airbnb to collect TOT taxes. To support the collection of TOT revenue, they utilize a software application that 'scrapes' short-term rental websites to identify illegal rentals. Generally, short-term rental companies collect TOT taxes from the host/owner of the rental property and deliver them to the county tax collector. There is no mechanism currently in place to verify that taxes owed and collected by the TTC, whether from hotels and Airbnb, et al., are accurate.

Recipients of BOS TOT allocations report annually on their use of the funds. If the funds are not fully utilized, they generally roll-over to the next fiscal year. The allocation of TOT funds to support Veterans programs is determined by the BOS based on recommendations from the Veterans committee.

The TOT budget is discussed in April and finalized in June. July through October, the previous fiscal year's books are closed. The CAO is required to set aside a 6% TOT budget surplus for emergency purposes.

Prior to any allocation of TOT funds, monies are taken out to pay for the Economic Development Department staff, Treasurer and Tax Collector operations that manage TOT revenues, and contractual agreements with the various chambers. This funding is taken off the top prior to any other TOT allocations. The remaining TOT funds go into the county-wide general fund.

Excerpts from the County budget detail for the 2023-2024 fiscal year include \$1.345M for Professional and Specialized Services, \$250K for Special Department expenses, and \$447K as an Intra-Fund Transfer to the Treasurer and Tax collector for the collection of TOT fund management. Whether these expenditures support economic development and/or tourism may be interpreted differently by others.

DISCUSSION

The TOT annual expected revenue in 2023/2024 fiscal year is approximately \$9 million. This is a small percentage of the county's annual budget of \$1.1 billion. The various county chambers and/or groups work with the BOS to get TOT funding. There is no formal process or policy for the chambers or other public entities on how to obtain a portion of the TOT funds. There are no guidelines on equitable distribution of TOT funds across the chambers or other groups because the BOS has full discretion to determine allocations.

Sixty-five percent of the TOT revenue is generated in the Tahoe basin and there is a great deal of frustration among those local residents and groups that a much smaller percentage is allocated back to that area. TOT taxes are critical to support South Lake Tahoe's economic development and tourism. Like other general fund revenues, TOT funds do not have to be spent in proximity to the areas where they are collected, like property taxes. Greater transparency of TOT allocations and rules might ease the concerns of citizens engaged in this issue.

TOT continues to be a controversial issue, despite it being a small portion of the county budget. The frustration stems from ambiguity of terms and lack of transparency that the Grand Jury believes can be easily remedied. A brief recap of the law and policies surrounding TOT along with definitions of terms could greatly ease confusion and frustration.

TOT funding for fire, police, or other emergency services can only be used for one-time expenses that don't require future unbudgeted funding, such as staff to run the equipment (such as fire trucks and ambulances). TOT is a variable funding source which cannot be counted on to fund an on-going expense such as salaries. This has also caused some frustration in limiting fund use for valid projects. A notable exception was made for the Economic Development staff, however.

Veterans Affairs receives a consistent allocation of TOT funds annually. The justification of this allocation should be better clarified to alleviate concerns about that allocation. Furthermore, despite 65% of TOT revenue coming from the Tahoe basin, no allocation is made to the Tahoe Veterans' groups.

FINDINGS

Findings

F1 – The BOS is currently following the TOT Measure’s intent for the use of revenues/funds. Budget Resolution Number 063-2022 clarifies that TOT funds utilized by the BOS are the same as Sales and Property tax, meaning that the BOS has 100% discretionary authority to allocate TOT funds.

F2 – There is no formal or consistent process for the various chambers or groups to request TOT funds, or transparency on how decisions are made to allocate funds.

F3 – There is no compliance process to ensure the collection of all TOT revenues from short-term rental companies like Airbnb.

F4 – The definition of ‘tourism and economic development’ is vague to the public and the source of misperception.

RECOMMENDATIONS

Recommendations

R1 – The BOS should develop and implement a plan by January 1, 2025, to improve the transparency of the TOT funds request and allocation process, such as a TOT page on their website or a media campaign to alleviate public perception of misuse of funds.

R2 – To clarify that the funds are discretionary, Board Policy B-16 (see Appendix) should be updated in the latest CAO Budget Book, and everywhere else relevant, to properly set public expectations and reduce controversy.

R3 – The County Tax Collector should implement a compliance plan to ensure that all TOT taxes are identified and collected.

REQUEST FOR RESPONSES

Request for Responses

A Civil Grand Jury report details a single investigation. Each report lists FINDINGS and RECOMMENDATIONS. The responsible organization is notified and is required to respond to the report.

The California Penal Code § 933(c) specifies response times.

- **PUBLIC AGENCIES.** The governing body of any public agency (also referring to a department) must respond within 90 days from the release of the report to the public.
- **ELECTIVE OFFICERS OR AGENCY HEADS.** All elected officers or heads of agencies/departments are required to respond within 60 days of the release of the report to the public.
- **FAILURE TO RESPOND.** Failure to respond, as required to a Jury report, violates California Penal Code Section 933.05 and is subject to further action that may include additional investigation on the subject matter of the report by the Jury.

The following responses are required pursuant to Penal Code § 933 and § 933.05:

From the following governing body:

- Board of Supervisors
 - All Findings and Recommendations
- CAO
 - All Findings and Recommendations
- County Tax Collector
 - F3 and R3

For more information refer to How to Respond to an El Dorado County Grand Jury Report available on the El Dorado County Grand Jury webpage.

APPENDIX AND RELATED INFORMATION

Appendix and Related Information

COUNTY OF EL DORADO, CALIFORNIA BOARD OF SUPERVISORS POLICY

Subject:
BUDGET POLICIES
Policy#:
B-16
Date Adopted: 04/18/2023
Effective Date: 04/18/2023

NOTE – Excerpt from Policy B-16 related to TOT

Section II.

13. Discretionary Transient Occupancy Tax: Transient Occupancy Tax revenue, excluding voter approved Tahoe area-specific revenue, shall be directed toward the impact of tourism and economic development, with consideration for support of tourism and promotion activities within the County and for continued support for grant fund allocations to support Veteran programs within the County.

APPENDIX AND RELATED INFORMATION

Chief Administrative Office

TRANSIENT OCCUPANCY TAX DETAIL

Description	Recommended Budget
Revenues	\$ 14,000,000
Fund Balance	\$ 5,000,000
Transient Occupancy Taxes	\$ 9,000,000
Professional & Specialized Services	\$ 1,344,589
Broadband Grant Match	\$ 329,730
Broadband & Biomass	\$ 1,014,859
Special Department Expense	\$ 250,000
Wet Lab Economic Development Project	\$ 250,000
Contribution to a Non-Governmental Agency	\$ 10,000
Tahoe Fund Billboard Campaign	\$ 10,000
Contribution to a Non-County Governmental Agency	\$ 1,293,813
County Fire Tourism Response	\$ 121,081
Georgetown Fire	\$ 17,232
Lake Valley Fire	\$ 621,410
North Tahoe / Mecks Bay Fire	\$ 264,090
South Tahoe Transit	\$ 270,000
Operating Transfers Out to Non-General Fund Departments	\$ 6,264,310
Accumulative Capital Outlay - Chili Bar	\$ 250,000
Veterans House Council	\$ 15,000
Veterans' Building Repairs	\$ 25,000
Veterans Affairs Commission	\$ 175,000
Airport Study	\$ 50,000
Transportation Tahoe-Area Road Maintenance	\$ 870,000
Transportation Tahoma Sleeping Quarter Design	\$ 500,000
Transportation Pioneer Trail Repair & Maintenance	\$ 1,300,000
Transportation Countywide Road Maintenance	\$ 1,379,040
Transportation EDA Broadband Project	\$ 270,270
Transportation Bike Path Snow Removal	\$ 50,000
Transportation Snow Removal Equipment	\$ 1,380,000
Intrafund Transfer to General Fund Departments	\$ 4,337,288
Treasurer-Tax Collector Collection of TOT	\$ 446,500
Veterans Services Position	\$ 90,700
Planning & Building Sr. Development Technician	\$ 85,500
Community Planning	\$ 350,000
Economic Development Division	\$ 1,597,088
Code Enforcement VHR Officer	\$ 102,500
Sheriff Search & Rescue & Helicopter Operations	\$ 665,000
Parks - Diamond Springs Community Park	\$ 1,000,000
Designate Funding for Tahoma Replacement	\$ 500,000

2023-2024 TOT funding details