

MONTEREY COUNTY



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May 10, 2021

Via Hand Delivery

Honorable Stephanie E. Hulsey
Judge of the Superior Court
c/o Office of the County Counsel
Attention: Sandra Ontiveros
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901

Re: Responses to the 2020-2021 Monterey County Civil Grand Jury Final Report entitled
“Vacation Rentals Enforcement in Monterey County: Little Progress despite Years of
Struggle”

Judge Hulsey:

Pursuant to Penal Code § 933.05(b), please find attached the applicable responses from the
Treasurer-Tax Collector’s Office.

Respectfully,

MARY A. ZEEB
Treasurer-Tax Collector
County of Monterey

**THE MONTEREY COUNTY TREASURER-TAX COLLECTOR'S
RESPONSES TO THE 2020 MONTEREY COUNTY
CIVIL GRAND JURY FINAL REPORT**

**“Vacation Rentals Enforcement in Monterey County: Little Progress Despite
Years of Struggle”**

Response to Findings F1-F4, F7 and F8

Finding F1: *Adobe PDF documents are currently used by TTC to enable Vacation Rental Operators to submit TOT Registration applications. TTC must then manually input the data into the necessary software database application. This manual data input process is inefficient and increases the possibility of introducing errors.*

Treasurer-Tax Collector's Response F1: Respondent agrees with this finding. Respondent has been working with the software vendor to implement an online application solution and anticipates completion of this project within six months of the enactment of a Vacation Rental Ordinance.

Finding F2: *Because data on properties which are currently registered and paying TOT is not publicly available on the County website, unnecessary additional email requests for information are received and processed manually by TTC.*

Treasurer-Tax Collector's Response F2: Respondent agrees with this finding. Respondent is working with the software vendor to implement a search function that will be available to the public. Respondent anticipates completion of this project within six months of the enactment of a Vacation Rental Ordinance.

Finding F3: *Current accounting methods and database systems in TTC do not allow Vacation Rental TOT tax revenues to be easily broken out from other TOT classifications such as hotels and B&B's, thereby reducing transparency and limiting data available for management and decision making.*

Treasurer-Tax Collector's Response F3: Respondent partially disagrees with this finding. Existing database systems do allow vacation rental transient occupancy tax (“TOT”) to be broken out from other transient occupancy tax classifications such as hotels and B&B's, however the search function is manual and can be labor intensive. It should be noted that classification of a TOT operation is not required for Treasurer-Tax Collector (“TTC”) decision making as all operators are taxed at the same tax rate and held to the same regulations under Monterey County Code (“MCC”) § 5.40.030. However, it has always been the intent of

Respondent to delineate operators pursuant to the specific host designations once those categories are identified and codified in the Vacation Rental Ordinance adopted by the Board of Supervisors. Respondent anticipates completion of this project within six months of the enactment of a Vacation Rental Ordinance.

Finding F4: Due to current quarterly TOT reporting methods, Vacation Rental occupancy data that is both timely and contains sufficient detail for use in CCD complaint investigation and enforcement activities is not readily available.

Treasurer-Tax Collector's Response to F4: Respondent disagrees with this finding. TOT reporting methods and forms are designed to facilitate the collections of taxes, not to capture occupancy data details to aid in CCD complaint investigation and enforcement activities. TOT returns are reported by operators quarterly, on the or before the last day of the month following the close of each calendar quarter, in accordance with MCC § 5.40.080.

MCC § 5.40.140 provides for the confidentiality of taxpayer information and in accordance with this section of the code, the TTC is not able to disclose detailed information furnished on operator tax returns to aid in routine CCD complaint investigations and enforcement activities. Requiring operators to provide additional data such as visitor dates and number of occupants or rooms rented is not necessary for the computation or collection of taxes owed to the County and as a result is not necessary to collect via the TOT reporting process. Should the county wish to collect this information for complaint investigation and enforcement activities, it would more appropriately be mandated by the permitting process and collected by CCD.

Finding F7: Online public access to complaint information is limited by poor web portal design, the lack of a common database between TTC and CCD, and insufficient internal staff necessary to perform timely processing of Vacation Rental complaints. It is therefore difficult for the general public to determine, with respect to a given property, whether complaints have been registered against that property, how many such complaints have been made, and the disposition of individual complaints.

Treasurer-Tax Collector's Response to F7: Respondent partially disagrees with this finding. While it is true that TTC and CCD do not have a common database the TTC is very responsive to public inquiries and forwards any inquiry or complaint not tax related to CCD or the appropriate department for action.

Pursuant to Government Code ("GC") § 6254(i) and MCC § 5.40.140, TTC is required to protect confidential information furnished on operator tax returns and cannot prudently maintain

taxpayer data in a shared database, nor one that allows for public access to confidential taxpayer information. Respondent will not be implementing this portion of the finding.

TTC does, from time-to-time, receive inquiries from the public seeing to determine whether a property conducting short term rentals has obtained a TOT Certificate. Access to information related to TOT Certificate issuance is not currently available on TTC's website however we are working to implement an online search function to allow this capability to the public. Respondent anticipates completion of this project within six months of the enactment of a Vacation Rental Ordinance.

On occasion, TTC receives inquiries or complaints related to unpermitted vacation rental activity. These are immediately forwarded to CCD, who manages that complaint process. TTC is not able to respond to this finding to the extent it relates to processes and procedures managed by another department.

Finding F8: While the capability exists for TTC to access the Code Compliance database for Vacation Rental zoning information and complaint information, and similarly CCD is able to request TOT registration data from the Tax Collector's office, the Civil Grand Jury could find no evidence that such direct cross checking occurs as a standard practice thereby contributing to the growth of unpermitted Vacation Rentals which are nevertheless registered for TOT.

Treasurer-Tax Collector's Response to F8: Respondent partially disagrees with the finding. TTC's duties with respect to transient occupancy within the county are delineated in MCC § 5.40.065 and are limited to the scope of tax collection¹ and not code enforcement. MCC § 5.40.070 does require operators to register and obtain from the Tax Collector a TOT Certificate within thirty (30) days of commencing business for the limited purpose of signifying to transients that the operator will collect TOT tax from the transient and remit it to the Tax Collector.

Respondent agrees that TTC does not access zoning and complaint information maintained by HCD as a standard practice prior to issuing a TOT Certificate. As noted by the Civil Grand Jury in

¹ MCC § 5.40.065 provides for Tax Collector's Duties and states "The Tax Collector shall:

- (A) Provide to all operators of hotels forms for reporting of the tax;
- (B) Provide information and clarification to any operator concerning the provisions of this Chapter;
- (C) Receive and record all taxes remitted to the County as provided in this Chapter;
- (D) Maintain records of operator reports submitted and taxes collected pursuant to this Chapter;
- (E) Assess penalties and interest to operators whenever reports or tax remittances are delinquent;
- (F) Determine amounts and enforce collection pursuant to § 5.40.100 whenever operators have failed or refused to report or remit taxes;
- (G) Issue refunds as provided in § 5.40.150.

this report, TOT Certificates specifically state: "This certificate does not authorize any person to conduct any unlawful business or conduct any lawful business in an unlawful manner, nor to operate without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this county. This certificate does not constitute a permit to operate."

TTC does respond to requests from county departments for non-confidential TOT Certificate information when received. TTC anticipates that the vacation rental ordinance, once enacted, may contain a requirement that operators obtain a business license from TTC prior to engaging in vacation rental activity. If this becomes the case, TTC will comply with MCC § 7.02.090 (O) which requires all applications for a business license to provide a copy of all applicable permits and licenses required by the County to engage in the business. Respondent anticipates completion of this project within six months of the enactment of a Vacation Rental Ordinance.

TTC is not able to respond to this finding to the extent it relates to processes and procedures managed by another department.

Response to Recommendations R1-R4:

Recommendation R1: The Treasurer-Tax Collectors Department should migrate Vacation Rental TOT registration to an online software service with an electronic database repository to allow applicants to apply and check application status directly through the County website, and which also allows the general public to verify whether a given property is registered and possesses a valid TOT Certificate. (F1, F2) This capability should be operational within six months after the date of enactment of new ordinances.

Treasurer-Tax Collector's Response to R1: The recommendation to allow online submission of TOT applications and a searchable database for TOT Certificates has not yet been implemented but will be implemented and operational within six months after the date of enactment of new ordinances, if not sooner. The searchable database of TOT Certificates will be implemented within the confines of GC § 6254.21 which restricts the posting of certain addresses on the Internet.

Recommendation R2: The Treasurer-Tax Collectors Department should construct an online records system and require Vacation Rental operators to directly enter visitor occupancy data (including specific occupancy dates, number of occupants, number of rooms rented, and revenues received) in near real time, thereby facilitating tax verification and code compliance related activities. (F3, F4) This capability should be operational within six months after the date of enactment of new ordinances.

Treasurer-Tax Collector's Response to R2: This recommendation will not be implemented because it is not warranted or reasonable. Specific occupancy dates, number of occupants, and number of rooms rented in real time does not have a direct correlation to taxation under MCC § 5.40.030 which imposes a tax on the privilege of occupancy in the amount of ten and one-half (10.5%) percent of the rent charged by the operator. The quarterly TOT Tax Return Form does require operators to identify the total number of occupied room nights per quarter as this information is necessary to compute the Monterey County Tourism Improvement District charge. However, it is not warranted or reasonable for tax collection purposes that the rent charged or total number of occupied room nights per quarter be received in near real time. In addition, this would likely place an undue burden on taxpayers to comply with these provisions and could be considered an arbitrary and onerous requirement if not imposed for all TOT operators.

MCC § 5.40.140 requires operators to maintain detailed records for a period of three years and to make records available during reasonable business hours for inspection or audit by the Tax Collector. This allows TTC to inspect additional records, if necessary, for purposes of determining taxes due. However, this information, even if collected, would be considered confidential pursuant to GC § 6254(i) and MCC § 5.40.140.

Recommendation R3: The Treasurer-Tax Collector's Department and Department of Housing and Community Development should implement an online system for direct public access to file complaints and obtain the status of enforcement action and complaint resolution. This system should be implemented in such a way that that [sic] complete, consolidated electronic records including TOT registrations and Vacation Rental zoning permits can be easily maintained, searched, and referenced by street address and APN. (F1, F2, F7, F8) This capability should be operational within six months after the date of enactment of new ordinances.

Treasurer-Tax Collector's Response to R3: The recommendation to provide an online system for direct public access to search for TOT Certificates and to submit TOT registration applications online has not yet been implemented but will be implemented, within the confines of GC § 6254.21, within six months after the date of enactment of new ordinances.

The recommendation that TTC and Housing and Community Development ("HCD") maintain complete, consolidated electronic records that include both TOT registrations and Vacation Rental zoning permits will require further analysis and funding for programming, especially to the extent that it conflicts with TTC's duty to protect confidential taxpayer data pursuant to Business and Professions Code § 16100.1, GC § 6254(i) and MCC 5.40.140. TTC estimates this analysis will occur in tandem with HCD and within six months after the date of enactment of new ordinances.

Recommendation R4: The Treasurer-Tax Collector's Department and Department of Housing and Community Development should implement Internal process changes to ensure future alignment between County departments in the registration, permitting, licensing, and enforcement of vacation rental businesses. (F8, F9). These process changes should be implemented within six months after the date of enactment of new ordinances.

Treasurer-Tax Collector's Response to R4: This recommendation has not been implemented but will be implemented within six months of the enactment of new ordinances, provided the vacation rental ordinance requires operators to obtain a business license. TTC is prepared to request the Board of Supervisors amend MCC Chapter 5.40 and MCC Chapter 7.02 immediately following enactment of new vacation rental ordinances. Once enacted, TTC will comply with MCC § 7.02.090 (O) which requires all applications for a business license to provide a copy of all applicable permits and licenses required by the County to engage in the business.