

From: [REDACTED]
To: [REDACTED]
Subject: FW: [EXTERNAL] TOT Tax increase discussion and suggestions
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From: Eric Fraser <[REDACTED]>

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Subject: [EXTERNAL] TOT Tax increase discussion and suggestions

Dear Mr. Alan Anton, Santa Rosa City Council, appointees to boards and commissions, and the public,

The question is whether the Transient Occupancy Tax should be increased, by public vote, this year. This allows us an opportunity to examine and discuss in more detail the patchwork of taxes (including the SRTBIA and SCTBIA “assessments”) which transients (people who occupy overnight spaces for 30 days or less) must pay to stay in Santa Rosa.

There are three bodies of law that dictate these added costs to guests’ stays, and the creation of contingent liability for the property’s owner:

1. Occupancy Taxes are codified in CA Rev & Tax Code sec 7280, and in Santa Rosa are specified within Chapter 3-28 of the City’s Code. Currently that tax is 9% of the total value of a stay of 30 days or less. Revenue from this tax goes into the City’s unrestricted general fund. The question is whether this tax should be increased in 2024 by public vote by another 2%.
2. Santa Rosa Tourism Business Improvement Area (SRTBIA) was established in August 2010 with Ordinance 3946 establishing SR Code 6-56.290. This allowed the monetization of a “public-private partnership” between a department within the City (PED), the Metro Chamber, and the local print media. Currently that tax (“assessment”) is 3% of the total value of a stay of 30 days or less. This tax is the liability of residential property owners if they are hosting transients as defined in by the City’s Occupancy Tax Ordinance. Business Improvement Areas are defined in CA State Streets and Highways sec 36500-36504. BIA programs were (are) required to sunset after 10 years, with renewals allowed every five years, and annual reporting.
3. Sonoma County Tourism Business Improvement Area (SCTBIA) was established in 2004 and is codified under County Code sec 33.5. Currently that tax (“assessment”) is 2% of the total value of a stay of 30 days or less but is only charged by operators who have had \$350,000 in gross revenue in the preceding year. Recently, the Santa Rosa City Council agreed in principle to allow the SCTBIA tax (“assessment”) to extend to all operators regardless of revenue. Sonoma County Tourism has met strong resistance from operators (and

case law) from following through on this tax hike on STR guests.

Issues:

- Who pays (or doesn't pay)? According to law, the property owner is ultimately responsible for paying these taxes. In practice, the taxes are added to the cost of the lodging. Under law, the transient guest can be anyone who for a period of 30 days or less has "the right to the use or possession of any room or rooms". "Rent" means the consideration charged, whether or not received, for the occupancy ... in money, goods, labor or otherwise including all receipts, cash, credits and property and services of any kind in nature..." (SR Code 3-28.010 Definitions.) In 2017, and in any other time of declared evacuation, the TOT and BIA taxes (totaling 12 - 14%) are paid to the City by area residents for these essential and mandated lodging services.
- Who is legally excluded? Oddly, the City's code legally exempts any person whom "is beyond the power of the City to impose the tax herein" perhaps indicating both an indication that the City subjugates itself to CA laws (which this general charter city has a history of ignoring), and the subjective enforcement of Code 3-28. For residential properties with Short Term Rental (STR) permits (even when the owner is in residence aka "hosted" STRs) participation in the booking platforms like AirBNB and VRBO provides for an efficient way to charge guests for these taxes, even though the City has passed on the opportunity to have these taxes submitted by the platform directly to the City's Finance Department (the refusal by the City to collect taxes directly is estimated to have cost the City millions of dollars in the past ten years.) In addition to a very small number of properties with STR permits (now with an est. >90% tax compliance), are thousands of properties who have hosted transient stays at least once a year. These stays have a quid-pro-quo of some sort, especially since the definition of a transient is vast, making up a sizable "gray area" of uncollected TOT taxes. The value of an overnight stay is easy to ascertain using industry data for average daily rate (ADR) per bedroom. It is estimated that around 20% of all bedrooms built in the City's residential housing stock are unoccupied (not including transients) on the average night, which in 2017 (after the fires) indicates over 25,000 empty bedrooms every night!

Solutions:

1. **Send a TOT form yearly to every property owner, with a description of the ordinance, for voluntary compliance. The property owner can decide for themselves whether a quid-pro-quo has been established for any guests they have hosted, or whether they should seek a STR permit (currently, Santa Rosa's STR ordinance is enforced to the smallest violation, e.g a property owner hosting a guest for one night but are detected because of using an online booking platform. In addition, Santa Rosa has enacted a ban on new unhosted STRs, and places onerous costs and requirements on those looking to host guests in their own home even when the owner is in residence.)**

2. **Allow taxes to be paid directly by the booking platforms to the Finance Department.**
3. **Exempt area residents from TOT/BIA during a declared emergency.**

Issues:

The two overlapping Business Improvement Areas (BIA) from the City and County present a very interesting compare-and-contrast opportunity.

- Sonoma County (SCTBIA) has an exemption for operators with less than \$350,000 in gross revenue, but Santa Rosa does not. Why? Did the designation of “business district” within CA State Streets and Highways sec 36500-36504 give the authors of the SCTBIA pause? The City of Santa Rosa in essence declared the entire City a commercial zone or business district in 2010 with the passage of the SRTBIA program. Did the City operate within the law when creating their SRTBIA? Why are the BIAs not subjected to sunset provisions, and voting that asks the entire membership class (including all residential property owners)?
- In Sonoma County more than 60% of the total of TOT revenues are collected from STR permit holders; from hotels, motels and commercial operators less than 40%. In Santa Rosa, STR permit holders are estimated to create less than 20% of the total TOT revenue; with hotels, motels and commercial operators more than 80%. This is due to the concentration of commercial hotels and motels in Santa Rosa (probably more than any other jurisdiction north of San Francisco.) Recent STR restrictions have further eroded STR permit holders as a percentage of total TOT revenue while chasing more transients away from online booking platforms and into the gray area where TOT is rarely collected.
- The duties required on the “public-private partnerships” monetized by BIA taxes (assessments) are to benefit hospitality and tourism businesses, however the emphasis has been on the commercial lodging providers (Hotels, Motels) to the direct and indirect detriment of new and existing STR permit holders. For instance, no STR permit holders are allowed on the SRTBIA “oversight” committee.
- The Santa Rosa BIA partners, whether employed inside Santa Rosa government (aka “Out There Santa Rosa”), or “outside” as in the case of the Metro Chamber, have not been subjected to third-party financial audits, the few people who benefit directly decide how to spend the SRTBIA tax money, and performance reports of the impact of the spending is murky and self-serving. “Tourism Promotion” seems to be a “soft science” that makes everybody a “tourist.” included in local “tourism” statistics, for instance, is how much local residents spend on restaurants and wineries and other hospitality. As discussed, this includes residents reacting to declared (or personal)

emergencies.

- Since the SRTBIA report echoes many of the “accomplishments” of the SCTBIA, it’s hard to find what/how/where the SRTBIA adds value to the taxpayer. It’s difficult enough to ascertain value with the SCTBIA spending, but the SRTBIA is in another world. Impervious to public records requests, the Metro Chamber and their partners (Santa Rosa Planning and Economic Development) has scant details to show the impacts of their spending, the actual amount of self-serving incomes to administrators, and accounting for hundreds of thousands of dollars of assets. (See definition for “Rent Seeking”).
- Does the Metro Chamber provide vacation planning, travel, or other benefits including discounts (“perks”), to elected officials and government employees that are not offered to the general public?
- The Metro Chamber also leads a registered Political Action Committee, and is influential in local politics. Sonoma County Tourism is not also a PAC. Why?

Solutions:

1. **Order an extensive third party audit and report of SRTBIA and SCTBIA programs, including a review of standards for reporting out information as well as overall program scopes.**
2. **Exempt operators (property owners and managers) with less than \$350,000 in gross lodging receipts from the SRTBIA.**
3. **If BIAs apply to operators less than \$350,000, the voting should include the entire membership class of residential property owners (including those not living in the City).**
4. **If BIAs apply to operators less than \$350,000, then a vote of the entire membership would be required to reestablish the SRTBIA district.**
5. **That the renewed SRTBIA sunset after 5 years, but is renewable for one 5 year period.**
6. **Competitive RFQs are solicited from other organizations to run the SRTBIA and SCTBIA funded programs.**

Issues:

- How is the TOT money spent? The proceeds of the TOT tax go into the general fund. Many negative impacts were raised to denigrate property owners who have pursued STR permits in the last couple of years. (See: Santa Rosa’s War on STRs). These (now demonstratively false claims) of widespread negative impacts included affordable housing, housing affordability, school enrollment, emergency preparedness, noise levels, parking, lighting and trash can complaints among others. City planners and other

anti-STR advocates intentionally ignored positive impacts from STRs or impacts from properties without STR permits.

- What are the best practices that jurisdictions use for TOT spending?

Solutions:

1. Utilize some of the TOT funds to study, in good faith, these various alleged impacts (Positive and negative) to neighborhoods caused by transient stays at STRs, as well as untaxed transient occupancies.

Thank you for the opportunity to comment on the important issues raised by TOT and BIA taxes. We will submit another review for the proposed cost increases to STR permit holders from business license requirements, once we understand that proposal's scope.

I look forward to being of service by discussing these issues with you and the public.

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