

**THE CITY OF SAN DIEGO
OFFICE OF THE CITY TREASURER
TRANSIENT OCCUPANCY TAX REGULATION**

REGULATION CLARIFYING ADMINISTRATIVE REMEDIES AND APPEALS

REFERENCE: San Diego Municipal Code (SDMC) Chapter 3, Article 5, Division 1

AUTHORITY: SDMC § 35.0136

PURPOSE

This regulation provides clarification on Transient Occupancy Tax (TOT) administrative remedies and appeals.

BACKGROUND

The Office of the City Treasurer is responsible for the administration of TOT in accordance with the SDMC, Chapter 3, Article 5, Division 1. The SDMC outlines Operators' rights regarding administrative remedies and appeals for the tax amount assessed. In general, these rights include:

- A hearing before a board made up of specific City officials,
- An opportunity to offer evidence regarding the assessment, and
- Ability to request a further appeal to an independent hearing officer

Additionally, the Office of the City Treasurer is responsible for conducting audits of TOT in accordance with SDMC § 35.0121. During an audit, it is the Operator's responsibility to provide all records necessary to determine the amount of tax due to the City.

CITY TREASURER REGULATION

1. The only evidence the appeal board and/or hearing officer may consider is the evidence that was lawfully provided to the City Treasurer during an audit in accordance with SDMC § 35.0121 which states:

The City Treasurer and authorized deputies or agents in the exercise of duties imposed by the Article shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City. It shall be unlawful to refuse to allow or to permit such audit to be conducted after a lawful demand therefore by the City Treasurer, or the City Auditor when so requested by the City Treasurer.

Records not provided during the audit shall not be considered as evidence during the appeal.

2. Appeals/hearings are not open to the public; per SDMC § 35.0114 (h), all returns and payments submitted by each Operator shall be treated as confidential.
3. Hearing officers are appointed by the City Manager¹; however, it is the City Manager's intent to guarantee the impartiality of Enforcement Hearing Officers by restricting contact between the Hearing Officers and City department staff and/or appellants and their representatives, and to clearly establish Hearing Officers' authority.
4. Failure of the appellant to appear or send a representative to the hearing shall be deemed a waiver of the right to a hearing, provided that proper notice of the hearing (as determined by the Hearing Officer) has been given by the City. In the event that appellant (or appellant's representative) has failed to appear, the Hearing Officer shall issue an order stating that appellant has waived its right to a hearing and decided in the City's favor. Written declarations, signed under penalty of perjury, may be accepted by the Hearing Officer in lieu of personal appearance and testimony.

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¹ Effective 1/1/06, the City Manager is the Mayor; section 206 of the City Charter.