

# **NOT NECESSARILY IN THE NEWS**

**A Public Policy Newsletter and Commentary July 2, 2024 - Volume 137**

## **Independence Day**

***Independence Day or Fourth of July, is a public holiday in the United States of America that commemorates the adoption of the Declaration of Independence on July 4, 1776. The Declaration of Independence was passed by the Continental Congress and declared the original colonies to be free from British rule. Enjoy and celebrate our freedoms as Americans and honor those who have sacrificed to keep us free.***



**GUEST COLUMN, TAHOE DAILY TRIBUNE,  
JUNE 14, 2024**

### **We need to govern...not Tax**

Dear Editor:

I am writing in response to the article published on May 24, 2024, suggesting that change is needed in governance in South Lake Tahoe. *Changes are needed but not those suggested in the column by Councilmember Scott Robbins.* As the retired city manager of South Lake Tahoe with extensive local

government executive experience, a candidate for City Council, and a long-time resident, I am deeply invested in the future of our city. I support a shift in how local governance and planning are approached in our city. The natural beauty of Tahoe is our greatest asset, yet the stewardship of this environment has become a complex tapestry of regional and federal oversight and conflicting and sometimes stifling regulation. This over regulation has stifled our community's ability to self-govern effectively, particularly in the areas of economic development and housing. In some instances, as well, this conflicting jurisdiction has compromised environmental protection.

The City of South Lake Tahoe does not need the permission of regional agencies to govern. Local officials need to always seek cooperation from regional agencies when we can and when it is in our interest, but not simply capitulate and say there is nothing we can do when the matter involves the health, safety, and welfare of our community.

The ownership of over 1300 acres of land within city limits by federal and state agencies has not only hindered economic growth but has also posed fire risks due to inadequate land maintenance. It is imperative that local officials reclaim their planning and regulatory authority, aligning with environmental thresholds, to ensure both the preservation of our natural resources, the protection of our forested lands, and the prosperity of our economy. It is also important that public and private lands be made fire safe and adequate evacuation routes in the event of fire be developed as a high priority item. *We must ensure that all public and private lands are as safe as possible from the threat of fire.*

## Principles of Government

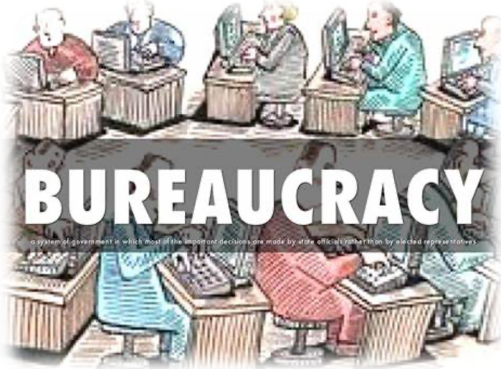
Ever increasing taxation on businesses, homeowners, and visitors does not make a community prosper. In fact, excessive regulations, increasing taxes, and unfriendly and lengthy building permit processes does the exact opposite. It drives businesses and investment out of town and makes the entire community less prosperous, less viable and less affordable. When businesses leave town, there are fewer local jobs. We must do all we can to see that local business stay in business. There are other funding options available to city government in California State law that can be used to meet infrastructure and housing needs without raising taxes. I will ensure that they are used.

Furthermore, the responsibility for affordable housing in the Tahoe Basin should not rest solely on the City of South Lake Tahoe and the taxpayers of the city. A collaborative effort across the Tahoe Basin, involving local governments in both states, public landowners, and large private employers, is essential. The entire Basin agencies must do their job to encourage and support affordable housing efforts and not sit back and expect South Lake Tahoe to do the entire job. Existing affordable housing providers in the city limits want to help and can help, but they need to be included and encouraged to do so.

The role of local government is crucial in fostering economic vitality and job growth when it functions properly. Active engagement in supporting and expanding our economy and regular outreach by city officials to the existing business community is vital. Creating a business-friendly environment will attract investments and encourage entrepreneurship, leading to job creation and economic growth. This is particularly important in a ski resort town like ours, where employment can fluctuate with the seasons.

No, I do not support the proposed unfair and arguably illegal tax on second homeowners contained in the improperly titled and misleading vacancy tax. It is arguably illegal under Federal and state law and the measure will require the creation of a surveillance local government bureaucracy for all property owners in the city limits to ensure that they are not away from their homes more than the allotted time in the measure. If the measure passes, there will be lawsuits and costs for the people of South Lake Tahoe.

In conclusion, I urge our local government to embrace policies that are resident, investor, and business friendly. I urge the city council to budget funds for the highest priorities determined by the public. Streamlining business licensing, making the building permit process easier, ensuring transparent governance, and promoting sustainable practices will create a thriving community where both businesses and residents can prosper. Let us work together to make South Lake Tahoe a model of self-sufficient, environmentally conscious, and economically robust local governance. Let's be creative when addressing issues and not be mentally lazy by thinking more taxes is the answer. Sincerely, David Jinkens



## THE PROPOSED TAX ON YOUR HOME WILL BE A BUREAUCRATIC NIGHTMARE...among other things!

June 17, 2024

RE: **City Council Agenda Item #22, June 18, 2024, Presentation of Elections Code Section 9212 Report for Vacancy Tax Citizens Initiative Petition**

Dear Mayor Bass and Council Members:

I am writing to provide you, staff, and the public with comments and observations about the 9212 Report. This report no doubt generates substantial community interest and concern. The topic is important and deserves scrutiny and caution. *Thank you for bringing the document forward.*

Since there will be great interest in this report, I urge you at the beginning of the City Council meeting to move the agenda item to the top of your agenda so that those present do not have to sit around waiting for it to be heard. Thank you for giving this suggestion your consideration.

I have tried to make my comments as succinct as possible for you and the public's convenience by citing the section of the report for which the comments are made. I understand that the report is predicated on many assumptions, and I am sure staff, and the consultant did the best job they could do in making them. We know that the issue of tax and its implementation generates many important unanswered questions and concerns. Good public policy is made when the answers to important questions are available before a matter is approved or submitted to the voters for consideration.

**The Report -- Page 2:** "An Initiative Measure to Establish a Tax on Owners of Vacant Residential Units in the City of South Lake Tahoe"

**Comment:** It is worth again repeating that it is unfortunate that city officials approved what is an inaccurate description of the measure. Black's Law Dictionary, Eight Edition, defines "vacant" as, "**Empty: unoccupied**" Many of the units covered by the initiative are second homes and are occupied frequently by owners and their families. They are not vacant. The title as written is misleading and incorrect and may have led some people to sign the initiative thinking that the subject houses in all cases are empty, deserted, and unoccupied.

**The Report—Page 3:** "The analysis included in this report covers its fiscal impact, its effect on the use of land, availability of housing and ability of the City to meet its regional housing needs, its impact on funding for infrastructure including transportation infrastructure, and other matters requested by City Council to include a high-level legal analysis,

implementation costs, privacy impacts, market value real estate impact, and best method to determine vacancies.”

**Comment:** Despite repeated past written requests to City officials, the California Department of HCD and TRPA it is still unclear whether California state housing law requires that the city comply with the regional share rules or does TRPA rules apply because South Lake Tahoe is the only California city within the TRPA region. *Thus, the statement suggesting the city has a State requirement to meet its regional needs is misleading at best.*



In fact, neither the City of South Lake Tahoe, the California Department of HCD and TRPA can tell us what the regional housing needs are for each justification in the Basin both in California and Nevada. The fact is that the alleged city fair share of housing is greatly exaggerated because the region is not bearing its fair share of regional affordable housing needs.

In addition, the City Council stated that it would adopt a local preference policy for new affordable housing giving preference to existing working residents and seniors in need. However, the firm doing the screening for the Sugar Pine Project have been given no direction on such a local preference policy, and they are prequalifying all people (resident or not) on the waiting list. *For whom then is affordable housing being built if not primarily for existing locals in need?*

**The Report—Page 3:** “The full text of the Initiative is included as Appendix A of this report. The Initiative is summarized as follows: (1) Beginning on January 1, 2026, every owner of a residential unit in the city would be required to submit an annual declaration of occupancy. (2) The owners of certain residential units that are vacant more than 182 days within a calendar year, would be required to pay annual tax...”

**Comment:** The requirement that every owner of a residential unit in the city would be required to submit an annual declaration of occupancy will be a bureaucratic nightmare to administer and monitor by City staff who already have an enormous workload. Will the monitoring require hiring new staff and the conduct of occupancy audits? Will the requirement lead to neighbors tattling on neighbor, keeping track of neighbors, and reporting neighbors to local government who they perceive are violators? Will the privacy of homeowners be compromised by this intrusive tracking of people?

While said with levity, will the City officials eventually require that owners of properties be implanted with microchips in their head so that government can track them and verify their location for the year? This sounds more like a police state than an American city.

**The Report—Page 4:** Potential Impacts of the Initiative

Fiscal: “City staff anticipates that the annual revenue will also largely depend on the behavior

of the property owners if the tax is adopted. Each owner could:

1. Sell the vacant unit.
2. Reduce the number of days vacant to below the 182 days by renting out for Intermediate term (30 days or longer);
3. Landlords could lower rents to attract full-time tenants to vacant units, though the opportunity cost of lost rental income tax might exceed the tax;
4. Pay tax

**Comment:** It should *never* be the policy of city government to coerce law abiding, reputable, and responsible property owners to sell their properties. Many homeowners have owned properties here for many years and passed their homes down to their children for their use and enjoyment and our community’s benefit, *government should not decide through coercive tactics who owns properties nor through financial threats force people to rent their properties. In fact, I am told that California law forbids the government from forcing people to rent their home by law or coercion of a discriminatory tax.*

**The Report -- Page 6: (2) Effect on the use of land, availability of housing, and ability of the City to meet its regional housing needs**

**Comment:** Not to be repetitive, but in my view, the issue of meeting regional housing needs specified in the document is misleading because there is no clear direction that the Tahoe Region, both in California and Nevada, are required to meet California’s regional requirements. California’s HCD has no jurisdiction over Nevada agencies. Neither State HCD nor TRPA have stated what regional responsibilities the states, counties, and cities in the Tahoe Region have for achieving their share of the regional need. I am being told that South Lake Tahoe’s need numbers are exaggerated to arguably accommodate regional housing needs that they are not required to meet.

Likewise, large regional employers who employ seasonal labor need to step up and be part of the housing solution for the region and not expect South Lake Tahoe taxpayers to pick up the bill. They have to do their part and City and regional officials need to engage them in this regard.

City officials should engage existing affordable housing providers in dialogue to upgrade and improve their available properties to be used for affordable housing. New construction as with Sugar Pine costs **\$800K per unit**. It would be far less cost to work with existing affordable housing providers rather than ignore them and their proposals for a public private partnership. Work with the existing private sector providers who have available units.

Finally, it goes without saying that the 74 units at Motel 6 could be converted into affordable units at a far less cost per unit than new construction. Yet, the City of South Lake Tahoe and the California HCD leadership are allowing these units to be demolished by the CTC

with no requirement that **the entire cost to replace these units** must occur. The funds derived from demolition could then be used elsewhere in the city for new construction or through a collaborative effort with existing providers.

While demolition helps restoration of lands for environmental benefits that are valuable, demolition destroys affordable housing that City and State leaders say is a **top legislative priority** for them without requiring total replacement. This stand is illogical and arguably inconsistent with City and State affordable housing policies and priorities. A better deal should have been made with CTC before allowing them to demolish 74 units of housing. (By the way, City records indicate that this housing is habitable and not in violation of habitation codes.)

### **The Report – Page 9: (4) High-Level Legal Analysis.**

Because vacancy taxes in California are a relatively recent concept, there is no binding appellate case law regarding the authority of local governments to adopt them. There have been several City of South Lake Tahoe Impact Report for Vacancy Tax Initiative June 2024 10 lawsuits challenging vacancy taxes in Canada<sup>1</sup> and Washington, D.C.,<sup>2</sup> but those decisions do not have precedential value here. Thus, this high-level legal analysis does not include a detailed discussion regarding lawsuits outside of California. The only pending lawsuit in California is regarding the City and County of San Francisco's Measure M, which is discussed below. City Council also requested that this legal analysis include a discussion of the materials submitted to City Council by the Lake Tahoe Taxpayers Association on May 7, 2024

**Comment:** **I commend the City Attorney for stating that there is no binding appellate court authority for California cities to adopt vacancy taxes.** She previously cautioned the City Council when the matter came before the City Council prior to the start of the initiative.

The San Francisco case is important as noted, but please remember that San Francisco is a charter city/county, the only such entity in California. Governance there is unique and charter cities have greater authority to govern over what are municipal affairs that are generally decided by courts in litigation and found not to be inconsistent with the California or U.S. Constitution. South Lake Tahoe is a General law city strictly under the guidance of California law. Unlike charter cities, California cities can only govern with powers vested to them by the legislature or the courts.

There is no doubt in my mind that if this initiative is placed on the ballot and passes, that it will be litigated. Litigation will be expensive and protracted. While the City of County of San Francisco's legal arguments in favor of a tax are interesting, I would have hoped that the City's staff analysis would have involved conversation with the plaintiff counsel in that case for their insights. San Francisco leadership or arguments in favor of the tax is not the model I would want to see for South Lake Tahoe on most issues.

***I do not want to see our City government and our taxpayers support any local law that is arguably illegal by violating the Federal constitution, State law or the privacy rights of the people of our City.*** You need to know going into this matter whether the best legal judgment is on the legality of the measure and not wait until later.

I remind the City Council that such an in-depth analysis could have been done over the last several months in anticipation of the initiative qualifying and then used this in-depth legal analysis as a guide for what you do with our taxpayers' dollars and staff time.

**Conclusion:**

As I have indicated to you and staff in the past, I am a strong supporter of affordable housing for resident working families and seniors in need and for housing assistance programs for existing lower income residents and seniors who need to make costly housing repairs. There remain tools in State law that would allow funds to be raised for affordable housing initiatives and infrastructure without tax increases that are not yet being used. I once again offer my assistance in leading a task force to examine these options on a voluntary basis.

It is important as well that people who are most affected by this proposed tax measure be informed of it and not be dissuaded by coercion or disinformation from exercising their right under the law to vote on it.

As you know our city must live within its budget and set budget priorities for the most urgent health, safety, and welfare items to use existing revenues. All of us must live within our budget, and we cannot expect the local taxpayer and business owners to pay ever increasing taxes and survive. Growing our local economy and supporting our business community through sound policies benefits all residents.

Best wishes in your review and consideration in this regard. Sincerely, David Jinkens

**CATASTROPHIC RISK OF FIRE IN THE TAHOE BASIN? - *We can prevent it!***

The following article is an alarming alert to Tahoe Region leaders about the dangers of fire that need to be carefully evaluated by fire professionals and regional leaders. Working together the risk can be addressed, and the risk should be taken seriously.

Guest Column



**Off the Radar — Electrical Fire Risks  
Practical Action Plan to Safeguard Tahoe Basin Communities  
by Julian Gresser\***

Based on our analytic Risk Matrix,<sup>1</sup> there is a 25% risk (Risk=Probability x Damages) of an electrical fire in the greater Lake Tahoe Community over the next three years, with estimated damages of over \$5 billion. As in most

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<sup>1</sup> The Risk Matrix was designed by analyzing a wide range of factors increasing the probabilities of an electrical fire risk times various areas of damage drawing upon the billions of datasets of ChatGPT-4o.

communities, electrical fires are “off the radar” of the Tahoe Regional Planning Agency (TRPA), local municipalities, and fire departments in Tahoe. If present electrical fire risk factors continue to be ignored, our risk estimate will substantially increase.

## Special Hazards of Electrical Fires

Keeping electrical fires off the radar is dangerous for the following reasons:

- **Rapid Spread:** Electrical fires can spread quickly, especially if they ignite flammable grasses and materials like insulation, wood, or paper. The heat generated can also cause nearby materials to ignite, leading to a rapid escalation.
- **Toxic Smoke and Fumes:** Electrical fires often produce toxic smoke and fumes due to the combustion of plastics, insulation, and other synthetic materials. These fumes can be hazardous to health and complicate firefighting efforts.
- **Electrical Hazards and Water Use Restrictions:** Water is commonly used to fight fires, but using water on electrical fires can be dangerous for firefighters. Firefighters must take special precautions and use special equipment, which can slow down emergency response time.
- **Evacuation:** Electrical fires present special challenges for population evacuation. These challenges can complicate evacuation efforts and increase the risk to both evacuees and emergency responders. Exit routes can be blocked off as electrical fires spread rapidly. As power must be turned off, communications will be compromised. At present the existing [All Hazard \(including wildfires\) Evacuation Plan\(s\)](#) in place for the Tahoe Basin do not provide special precautionary and emergency measures for the special challenges of electrical fires.
- **Vulnerable populations:** A recent [simulation](#) forecasts that 120,000 could die in a Tahoe wildfire. Economically disadvantaged communities, minorities, and disabled persons are especially defenseless. They may have no insurance, nor viable means of escape. The endangerment of these communities raises profound questions of social justice and basic human rights of survival, due process and equal protection guaranteed by the U.S. and California Constitutions, and various federal and state statutes.



### A Practical Collaborative Action Plan: Stage I

Fortunately, there are practical steps for collaborating communities across the Lake Tahoe Basin to get ahead of an electrical wildfire catastrophe. Here are the elements of a Plan:



- **Become informed:** Concerned readers can watch BBILAN's [May 20 National Webinar](#) and review the resource links. This will provide an integrated perspective as presented by experts in this field.
- **Identify a local champion** and grassroots leader in your community, like David Jinkens in South Lake Tahoe, who is a powerful advocate for the safety of your community.
- **Find out the special requirements of your local fire department to meet the special challenges of electrical fires** and take practical steps to ensure that these financial requirements are immediately met. Note: in California the budgets of many local fire departments are absurdly being cutback, just as the peak summer wildfire months are upon us.
- Please read our proposed Collaborative [Action Plan](#) and contribute constructive ideas and comments.
- **Collaborate** with TRPA, your municipality, and other groups in your community in preparing an effective Evacuation Plan.
- **Take optimal advantage of [available maps of small cell and macro towers](#) within the Tahoe Region to run AI-based simulations**, supported by existing tools for virtual and augmented reality and scenario planning. These advanced tools will provide Tahoe with vivid alternative pathways for effective evacuation and a means to test critical assumptions.

## Legal Actions

In addition to these collaborative measures there are specific legal actions that will immediately reduce electrical fire risks, **if adopted and effectively implemented and enforced.**

- TRPA and all major cities should adopt the [Malibu Fire Safety Protocol](#) (MFSP) by Ordinance and regulations. The MFSP provides an important precedent now being implemented that establishes a viable framework.
  - Based on the MFSP, local communities can and should adopt specific substantive structural and design standards embodied into specific checklists which telecom applicants must complete and become basic conditions in granting use applications.
  - These regulations will require all cell tower applicants to confirm under penalty of perjury that they are in full compliance with the National Electrical Code; the proposed cell tower must meet all other design and structural codes pertinent to electrical fire safety.
  - Tahoe communities should retain the services of an **independent** electrical engineer with deep electrical fire experience to review and check all applications to ensure full compliance with these codes.

- Local communities must be given timely notice of these applications and a fair and equal opportunity along with the applicants to participate in all public hearings with an explicit right to appeal to the city council and TRPA, and ultimately the courts, on an expedited basis.
- Special provisions in these ordinances should recognize the constitutional and statutory rights protecting the most vulnerable minority and disabled members of these communities to be safe and secure in their homes, workplaces, and environment.

### **Barriers to Collaborative Action**

Tahoe communities can effectively address the substantial risks of electrical fires through effective collaboration and by inspired and compassionate leadership. But there are serious barriers to such collaboration.

- **Required Shift in Habitual Behavior.** As a country, we have become accustomed not to pay attention to risks—perhaps because today there are so many of them. We only join together and collaborate after a catastrophe has happened. The 2023 Maui wildfire is an excellent example. Maui County was consistently forewarned over many years about the flammability of non-native grass species, but it did nothing about it until it was too late. By taking the practical steps proposed, Tahoe has an opportunity to get ahead of a tragedy, to prevent, or substantially mitigate it.
- **Fragmentation of authority.** The regulatory framework in Tahoe, like most communities, is fragmented between various local, state, and interstate jurisdictions. This makes a special case for active and effective collaboration among these diverse communities and with these agencies and municipalities.
- **Public Lands.** About 80% of the Lake Tahoe Basin is public lands, and a large part of Lake Tahoe is within or borders national forests. Public control of these lands further complicates the electric wildfire risk management and evacuation. The fact that the U.S. Forest Service is actively promoting “[Let it Burn](#)” policies and the push to install cell towers in national parks (see [HR 6492](#)) increases electrical fire risks and greatly complicates their management.
- **False Assumptions.** The telecom industry has actively promoted, and TRPA has actively encouraged, the false assumption that cell tower proliferation and densification are critical to support cell phone use as a critical component in wildfire emergency response; moreover, access to cell phones has become a societal addiction. In fact, as noted, power must be turned off as the first step in controlling electrical fires, and therefore many cell phones will not be able to communicate. Local warnings and evacuation plans can be implemented through television and radio, and local fire departments in any event do not depend on cell phones for communication.
- **Special Business Concerns.** Approximately [15 million tourists](#) visit Tahoe each year. Tourists present special challenges during an electrical fire evacuation as

traffic jams during the summer months, even more severe than in Maui, are likely. It is possible Tahoe businesses operating in Tahoe at first may be wary of widely broadcasting the present substantial risks of an electrical wildfire. A far wiser approach is for the tourist sector to become a main contributor to the proposed Collaborative, because one thing is certain: the destruction of a massive electrical fire can wipe out the Tahoe tourist industry for years to come.

## Conclusion

A massive electrical wildfire in the Lake Tahoe Basin is a preventable and manageable catastrophe. Lake Tahoe communities have a choice. They can passively allow a massive electrical wildfire to happen, or they can take reasonable and immediate precautionary actions. It will require an important behavioral shift away from learned helplessness and passivity toward activated civic responsibility, leadership, collaboration, and compassion. The real seismic shift is one of public consciousness: to realize that caring for the larger Tahoe community, especially for its most defenseless members, is the greatest act of self-care and self-preservation. Lake Tahoe communities are the makers of their destinies.

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Julian Gresser is an environmental and public interest attorney and co-founder of the non-profit Broadband International Legal Action Network ([BBILAN](#)) which is supporting various individuals and organizations within Tahoe to restore reasonable balance in the development of its telecommunications infrastructure. BBILAN has established a [special course](#) to equip leaders and advocates with legal templates, along with training and personalized coaching in essential skills of leadership, collaboration, resilient negotiation, supported by innovative uses of AI to meet the challenges described in this article. 100% of the registration funds raised will be used by BBILAN to coordinate the Collaborative on a local Tahoe and national level. 10% of these funds will be allocated to scholarships to enable those who lack financial means to register for the course.

*Espero que todos disfruten de buena salud y buena fortuna.*

**David Jinkens, MPA**  
Good Government Advocate  
**“SI, PODEMOS**

**CANDIDATE FOR SOUTH LAKE  
TAHOE CITY COUNCIL**

**CANDIDATO AL CONCEJO  
MUNICIPAL DE SOUTH LAKE TAHOE**

