No. _____

In the Supreme Court of the United States

CITY OF LOS ANGELES,
Petitioner,

v.

NARANJIBHAI PATEL, RAMILABEN PATEL,
LOS ANGELES LODGING ASSOCIATION,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I.

To resolve a split between the Ninth and Sixth Circuits are facial challenges to ordinances and statutes permitted under the Fourth Amendment?

II.

To resolve a spilt between the Ninth Circuit and the Massachusetts Supreme Court, does a hotel have an expectation of privacy under the Fourth Amendment in a hotel guest registry where the guest supplied information is mandated by law and that ordinance authorizes the police to inspect the registry? If so, is the ordinance facially unconstitutional under the Fourth Amendment unless it expressly provides for pre-compliance judicial review before the police can inspect the registry?

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INTRODUCTION

In this case, the Ninth Circuit en banc held 7-4 the City of Los Angeles' hotel guest registry inspection ordinance is facially unconstitutional because it does not provide for pre-compliance judicial review before the register is examined by a police officer. The dissent argued Fourth Amendment facial challenges are advisory opinions, challenges under the Fourth Amendment require "concrete" facts.

In *Warshak v. United States*, 532 F.3d 521 (6th Cir. 2008) (en banc) the Sixth Circuit held 9-5 that facial challenges under the Fourth Amendment are improper because Fourth Amendment challenges require a "concrete" factual context otherwise they are speculative. The majority held the claims were not ripe.

In this case, the Ninth Circuit en banc held 7-4 that hotel operators have an expectation of privacy in their guest registers and as such the City of Los Angeles' ordinance which authorizes police inspections of guest registers is facially unconstitutional under the Fourth Amendment because it does not provide for pre-compliance judicial review.

The Massachusetts Supreme Court in *Commonwealth v. Blinn*, 399 Mass. 126, 503 N.E.2d 25 (1987), unanimously held in an as-applied challenge under the Fourth Amendment that the state's hotel guest registry statute, which is closely analogous to the City of Los Angeles' ordinance, permitted routine warrantless searches of hotel guest registries because hotel operators did not have a reasonable expectation of privacy in the registry.

OPINIONS BELOW

The United States District Court for the Central District of California entered its unpublished findings of fact and conclusions of law on September 5, 2008. Appendix (App.) 49. Judgment was entered on September 5, 2008. App. 58. The United States Court of Appeals for the Ninth Circuit filed its opinion on July 17, 2012, which was published at *Patel v. City of Los Angeles*, 708 F.3d. 1075 (9th Cir. 2012). App. 35. The Ninth Circuit en banc on December 24, 2013, filed its published decision at *Patel v. City of Los Angeles*, 738 F.3d 1058 (9th Cir. 2013) (en banc). App. 1.

JURISDICTION

The Ninth Circuit filed its en banc opinion on December 24, 2013. Jurisdiction is conferred upon this court to review on a writ of certiorari pursuant to 28 U.S.C. § 1254(1).

APPLICABLE CONSTITUTIONAL, STATUTORY, AND ORDINANCE PROVISIONS

The Fourth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Los Angeles Municipal Code § 41.49 pertain to this petition. Pursuant to Supreme Court Rule 14.1(f) these provisions are reproduced verbatim at Appendix D.

STATEMENT OF THE CASE

A. Background

This petition raises "important constitutional questions . . ." *Patel v. City of Los Angeles*, Tallman J., dissenting, App.18. This case under the Fourth Amendment *facially* challenges the constitutionality a

City Los Angeles (City) municipal code section which requires hotels to maintain guest registries and to make those registries subject to police inspection. The Ninth Circuit en banc majority concluded the ordinance was facially unconstitutional because it did not expressly require pre-compliance judicial review before the registry is inspected by police officers. App. 13-14.

The District Court rejected respondents' facial challenge to the ordinance. App. 49-57.

The Ninth Circuit in a 2-1 published decision rejected respondents' facial challenge to the ordinance. App. 46.

The Ninth Circuit after en banc rehearing in a 7-4 published decision reversed the judgment by finding the City's ordinance facially violated the Fourth Amendment. App. 1.

B. Facts

The District Court's findings of fact are simple and undisputed. The only exhibit introduced into evidence during the bench trial was LAMC § 41.49. The District Court found "Plaintiffs have been subject to and continue to be subject to searches and seizures of motel registration records by the Los Angeles Police Department without consent or warrant pursuant to LAMC § 41.49, which permits law enforcement to demand inspection of motel records at any time without consent or warrant." App. 4. The District Court also found the "sole issue" to be decided is whether LAMC § 41.49 is facially unconstitutional under the Fourth Amendment. App. 53.

The Ninth Circuit's en banc opinion summarized the City's ordinance:

> "Section 41.49 requires hotel and motel operators to collect and record detailed information about their guests in either paper or electronic form. The records must contain: the guest's name and address; the number of people in the guest's party; the make, model, and license plate number of the guest's vehicle if the vehicle will be parked on hotel property; the guest's date and time of arrival and scheduled date of departure; the room number assigned to the guest; the rate charged and the amount collected for the room; and the method of payment. L.A. Mun. Code § 41.49(2)(a). For cash-paying and walk-in guests, as well as any guest who rents a room for less than twelve hours, the records must also contain the number and expiration date of the identification document the guest presented when checking in. § 41.49(4). For guests who check in using an electronic kiosk, hotel operators must record the guest's name, reservation and credit card information, and the room number assigned to the guest. § 41.49(2)(b). These records must be 'kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area' for a period of 90 days. § 41.49(3)(a).
>
> "Plaintiffs do not challenge these requirements. But they do challenge § 41.49's warrantless inspection requirement, which states that hotel guest records "shall be made available to any

> officer of the Los Angeles Police Department for inspection," provided that, '[w]henever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.' *Id*. The city stipulated that this provision authorizes police officers to inspect hotel guest records at any time without consent or a search warrant. Failure to comply with an officer's inspection demand is a misdemeanor, punishable by up to six months in jail and a $1000 fine. L.A. Mun. Code § 11.00(m)." Note omitted; App. 4-5.

REASONS FOR GRANTING THE PETITION

Succinctly stated, the Ninth Circuit in a severely divided 7-4 decision and the Sixth Circuit in a likewise severely divided 9-5 decision reached fundamentally different conclusions as to whether a facial Fourth Amendment challenge to an ordinance or for that matter a statute can be asserted. The Ninth Circuit and the Supreme Court of Massachusetts are split as to whether a hotel operator has an expectation of privacy under the Fourth Amendment in a hotel guest registry. The Massachusetts Supreme Court held there is no reasonable expectation of privacy in the guest registry. The Ninth Circuit held there is an expectation of privacy in the registry and since the City's ordinance did not expressly provide for pre-compliance judicial review it facially violates the Fourth Amendment.

Not only is there a multi-tier split of decision by severely divided courts, there is a compelling national interest to decide these issues. Hotel guest registry inspection statutes and ordinances are ubiquitous.

Attached as Appendix E to this petition is a mere representative illustration of these laws. The appendix includes a total of 70 such laws including two state statutes, county and city ordinances from across the country ranging from large cities to small towns representing 26 states. These laws expressly help police investigate crimes such as prostitution and gambling, capture dangerous fugitives and even authorize federal law enforcement to examine these registers, an authorization which can be vital in the immediate aftermath of a homeland terrorist attack. Unless certiorari is granted, the hotel inspection laws within the Ninth Circuit will be facially unconstitutional and the laws throughout the nation will be in jeopardy.

I. THE NINTH CIRCUIT IN *PATEL* IN A 7-4 SPLIT DECISION AND THE SIXTH CIRCUIT IN *WARSHAK* IN A 9-5 SPLIT DECISION ARE IN CONFLICT AS TO WHETHER AN ORDINANCE OR STATUTE CAN FACIALLY VIOLATE THE FOURTH AMENDMENT

A. General Principles to Facially Challenge a Statute

A facial challenge to a law's constitutionality is an effort "to invalidate the law in each of its applications, to take the law off the books completely." *Connection Distrib. Co. v. Holder*, 557 F.3d 321, 335 (6th Cir. 2009) (en banc). In contrast, an as-applied challenge argues a law is unconstitutional as enforced against the plaintiffs before the court; a facial challenge is not an attempt to invalidate the law in a discrete setting, but an effort "to leave nothing standing[.]" *Warshak* at 528. As-applied challenges, however, are the "basic building

blocks of constitutional adjudication." *Gonzales v. Carhart*, 550 U.S. 124, 127 S. Ct. 1610, 1639, 167 L. Ed. 2d 480 (2007).

This court in *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449, 128 S. Ct. 1184; 170 L. Ed. 2d 151 (2008) quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987) said a "plaintiff can only succeed in a facial challenge by establish[ing] that no set of circumstances exists under which the Act would be valid, '*i.e.*, that the law is unconstitutional in all of its applications. To determine whether a law is facially invalid "we must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases. *See United States v. Raines*, 362 U.S. 17, 22, 80 S. Ct. 519, 4 L. Ed. 2d 524 (1960)." A "facial challenge must fail when the statute has a plainly legitimate sweep.'" *Id.*, citation omitted. "Exercising judicial restraint in a facial challenge 'frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes in areas where constitutional application might be cloudy.' *Raines*, *supra*, at 22, 80 S. Ct. 519, 4 L. Ed. 2d 524." *Id.* at 449-450. Likewise, this court in *Sibron v. New York*, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968) called facial challenges "the abstract and unproductive exercise of laying the extraordinarily elastic categories of [N.Y. Code Crim. Proc.] § 180-a next to the categories of the Fourth Amendment in an effort to determine whether the two in some sense are compatible. The constitutional validity of a warrantless search is pre-eminently the sort of question which *can only be*

decided in the concrete factual context of the individual case."[1] Emphasis added.

In *Wash. State Grange*, this court summarized its fundamental dislike for facial statutory challenges:

> "Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of 'premature interpretation of statutes on the basis of factually barebones records.' *Sabri v. United States*, 541 U.S. 600, 609, 124 S. Ct. 1941, 158 L. Ed. 2d 891 (2004) (internal quotation marks and brackets omitted). Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither "'anticipate a question of constitutional law in advance of the necessity of deciding it'" nor "'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" *Ashwander v. TVA*, 297 U.S. 288, 346–347, 56 S. Ct. 466, 80 L. Ed. 688 (1936) (Brandeis, J., concurring) (quoting *Liverpool, New York & Philadelphia S. S. Co. v. Commissioners of Emigration*, 113 U.S. 33, 39, 5 S. Ct. 352, 28 L. Ed. 899 (1885)). Finally, facial challenges threaten to short circuit the democratic process by preventing laws

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[1] Numerous cases have followed this court's "concrete" requirement. *See*, *e.g.*, *Free Speech Coalition, Inc. v. United States*, 677 F.3d 519, 543 (3d Cir. 2012); *United States v. Rundle*, 402 F.2d 701, 704 (3d Cir. 1968); *United States v. Baker*, 78 F.3d 135, 138 (4th Cir. 1996); *United States v. Holloway*, 962 F.2d 451, 454 (5th Cir. 1992); *United States v. $291,828.00 in United States Currency*, 536 F.3d 1234, 1238 (11th Cir. 2008).

> embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that "'[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.'" *Ayotte v. Planned Parenthood of Northern New Eng.*, 546 U.S. 320, 329, 126 S. Ct. 961, 163 L. Ed. 2d 812 (2006)(quoting *Regan v. Time, Inc.*, 468 U.S. 641, 652, 104 S. Ct. 3262, 82 L. Ed. 2d 487 (1984) (plurality opinion)). It is with these principles in view that we turn to the merits of respondents' facial challenge to I-872." *Id.* at 450-451, 128 S. Ct. 1184; 170 L. Ed. 2d 151.

A1. The Majority Opinion Held the City's Ordinance Facially Violated the Fourth Amendment Because There Was No Pre-Compliance Judicial Review

The majority first quickly concluded that a police officer's inspection of a hotel guest registry constituted a search because the City's ordinance authorized a physical intrusion of the hotel's papers and an invasion of the hotel's protected privacy interests citing *Rakas v. Illinois,* 439 U.S. 128, 114, n.12, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978). App. 6-7. The majority reasoned the information contained in the hotel registry implicates the hotel's privacy rights because businesses do not ordinarily disclose "commercially sensitive information" such as customer lists, pricing practices and occupancy rates even though these records are required by law. App. 6-7. The majority in response to the dissent, however, acknowledged that if the records

were "'publically accessible'" then they would not be protected by the Fourth Amendment. [2,3] App. 8.

The majority then turned to whether a search conducted in accordance with § 41.49 is reasonable. The majority *assumed* the ordinance authorized administrative record searches of the guest registry. App. 9-10. Although the majority assumed the ordinance contemplated the inspection take place in the public "'guest reception or guest check-in area of the hotel'" the majority said that it need not decide whether record inspections occurring in a place such as a hotel lobby required an administrative search warrant. App. 10.

The majority held in reliance upon *Marshall v. Barlow's, Inc.* 436 U.S. 307, 321, 98 S. Ct. 1816; 56 L. Ed. 2d 305 (1978) that the City's ordinance was facially

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[2] The majority in reliance upon *United States v. Cormier,* 220 F.3d 1103, 1108 (9th Cir. 2000) and *United States v. Miller,* 425 U.S. 435, 440, 96 S. Ct. 1619, 48 L. Ed. 2d 71 (1976) acknowledged hotel guests lack a privacy interest in their own hotel records. App. 8. There is no assertion in this case that hotel guests have a privacy interest in the guest registry.

[3] Alameda County, California, which includes the large of cities of Oakland and Berkeley, and whose county population is in excess of 1,500,000, has an ordinance which mandates that guest registries in the county "shall at all times be open to public inspection . . ." as does the small town of Tarrant, Ala. (Tarrant, Ala. Code § 12-4 (2013)) *See,* App. 68, 102-103; http://quickfacts.census.gov/qfd/states/06/06001.html (last visited March 21, 2013); (Alameda County, Cal., Code § 3.20.010 (2013); https://data.oaklandnet.com/dataset/Alameda-County-Census-Tract-Results-2010/az9z-tyn9 (last visited March 21, 2014); http://www.ci.berkeley.ca.us/Home.aspx (last visited March 21, 2014).

invalid. App. 11. The party subject to the demand for inspection must be afforded the opportunity of judicial review of the reasonableness of the demand before being subject to penalties for refusal. App. 12, citations omitted. "Section 41.49 lacks this essential procedural safeguard against arbitrary or abusive inspection demands. As presently drafted, § 41.49 provides no opportunity for pre-compliance judicial review of an officer's demand to inspect a hotel's guest records. . . . Hotel operators are thus subject to the 'unbridled discretion of officers in the field, who are free to choose whom to inspect, when to inspect, and the frequency with which those inspections occur. *See Barlow's,* 436 U.S. at 423." App. 12. The majority further said the absence of pre-compliance judicial review for businesses which are not closely regulated[4] renders the ordinance inconsistent with of the Fourth Amendment. App. 12. The majority summarized its holding:

> "We hold that § 41.49's requirement that hotel guest records 'shall be made available to any officer of the Los Angeles Police Department for inspection' is facially invalid under the Fourth Amendment insofar as it authorizes inspections of those records without affording an opportunity to 'obtain judicial review of the reasonableness of the demand prior to suffering the penalties for refusing to comply.' *See* [*v. City of Seattle*] 387 U.S.[, 541] 545[, 87 S. Ct. 1737, 18 L. Ed. 2d 943 (1967)]. Because this procedural deficiency affects the validity of all

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[4] The District Court ruled the evidence on this record was insufficient to establish whether hotels in the City are closely regulated businesses. App. 54-55.

> searches authorized by § 41.49(3)(a), there is no circumstances in which the record inspection provision may be constitutionally applied. *See United States v. Salerno*, 481 U.S. 739, 745 (1987). Facial invalidation of the provision, as plaintiffs have requested, is therefore appropriate. *See Barlow's*, 436 U.S. at 325; [*McLaughlin v.*] *Kings Island*, 849 F.2d [990,] 997 [1988]." App. 13-14.

A2. Judge Tallman Dissented and Joined by Three Additional Judges Concluded Facial Challenges to Legislative Enactments under the Fourth Amendment Require a "Concrete" Factual As-Applied Context Otherwise the Decision Is an Advisory Opinion

There were two dissents, the first by Judge Tallman, joined by judges O'Scannlain, Clifton and Callahan. The second dissent was by Judge Clifton and joined by judges O'Scannlain, Tallman and Callahan. The two dissents took strong exception to the majority's reasoning. The Tallman dissent preliminarily noted from the face of the ordinance when police officers request the guest register the hotel must comply, nothing in the ordinance mentions warrants, consent, exigencies or any other recognized exception to the warrant requirement. App. 15. Judge Tallman said respondents may be correct in an as-applied challenge that their Fourth Amendment rights may be violated, but they inexplicably dropped their as-applied challenge before trial. App. 15. Instead, respondents "ask us to assume the exercise of

analyzing *all* potential searches that *might* be conducted pursuant to the ordinance in order to declare it deficient." App. 15-16, emphasis original. Judge Tallman placed principle reliance upon *Sibron*, 61-62, 88 S. Ct. 1889, 20 L. Ed. 2d 917 where this court rejected a facial Fourth Amendment challenge to a statute; instead this court instructed "'we should confine our review to the reasonableness of the searches and seizures' that have already taken place" and base that review on the concrete facts to which the statute was applied. App. 17. Although as the dissent noted respondents' counsel claimed at argument that searches have taken place no details of those claimed searches were provided. App. 17.

Judge Tallman took pointed exception to the "disconnect" between the language of the ordinance, what the majority concludes, what the ordinance authorizes and the majority's opinion is "rife with assumptions." App. 17. Indeed, for a statute to be facially infirm there must be "'no set of circumstances … under which the [law] would be valid.'" App. 18, quoting *Wash. State Grange,* at 449, 128 S. Ct. 1184; 170 L. Ed. 2d 151. Even assuming respondents were subject to warrantless searches Judge Tallman concluded there were no "concrete facts" to analyze the circumstances of each individual search, but even if those facts were known respondents made the tactical decision to withdraw any challenge to those searches. App. 18-19. Judge Tallman noted the majority's reliance upon *Barlow's* was fundamentally misplaced because *Barlow's* arose in a specific factual context and unlike *Barlow's* where the statute authorized specific government conduct, the ordinance instead imposes the responsibility on the hotelier, "a critical difference."

App. 21. The dissent moreover observed that *Barlow's* did not strike down the statute "altogether," rather on the concrete factual application arising from an as-applied challenge the court held the statute unconstitutional only to the extent it authorized inspections without a warrant or its equivalent. App. 22.

Judge Tallman further said that unlike *Barlow's* this case is

> "totally bereft of facts to support the majority's assumption that the statute is actually being applied in that manner. [Respondents] put forth no evidence at trial demonstrating that they (or any hotelier of that matter) have not had the opportunity to obtain judicial review of any guest registers, nor have they shown *any* hotelier has suffered a penalty for refusing to comply. The majority simply lacks the factual predicate to support its conclusion. [¶] Instead we are left with an *advisory opinion* that engages the folly which *Sibron* warned us to avoid." App. 23. Emphasis added.

At App. 23, n. 2, Judge Tallman said the cases which the majority relies: *Donovan v. Lone Steer, Inc.,* 464 U.S. 408, 104 S. Ct. 769, 78 L. Ed. 2d 567 (1984); *Barlow's*; *See v. City of Seattle* and *Camara v. Mun. Ct.,* 387 U.S. 523, 87 S. Ct. 1727; 18 L. Ed. 2d 930 (1967) all "analyzed whether specific government conduct was unconstitutional, not whether mere language employed in a statute or regulation was invalid. In this case, we do not have specific government conduct to adjudicate."

A3. Judge Clifton Dissented and Joined by Three Additional Judges Concluded the Facial Challenge to the City's Ordinance Failed to Establish There Was an Expectation of Privacy in All Instances and There Was No Basis for the Majority to Require Pre-Compliance Judicial Review in Every Instance

Judge Clifton's dissent said the majority opinion was wrong because it ignores the nature of facial challenges and it ignores the high bar for these challenges. The majority was also wrong because it failed to establish that a search of hotel guest registries would be was unreasonable. App. 25. Although Judge Clifton agreed with the majority that the City's ordinance authorizing an inspection constituted a search under the Fourth Amendment, but the true question which the majority failed to address is whether such a search is reasonable and reasonableness is the "'ultimate measure'" of the Fourth Amendment. App. 26, citations omitted.

Although the majority opinion claimed the balance for reasonableness was already struck, the failure to provide for pre-compliance judicial review was fatal for the ordinance because it is an absolute requirement for constitutionality, but that omission may only preclude the administrative subpoena or inspection exception to the Fourth Amendment. App. 27. Judge Clifton noted pre-clearance is not required for a "'Terry stop,'" a warrantless automobile search or "any other exigent circumstance" exception to the Fourth Amendment. App. 27-28. "The lack of pre-compliance judicial review

does not necessarily make a search unreasonable under the Fourth Amendment. The majority concedes that fact . . ., but the lack of pre-compliance judicial review is all the majority opinion discusses . . ." App. 28.

In contrast to the majority, Judge Clifton noted the District Court examined the "harder question" of whether respondents had a legitimate privacy interest in the hotel registry information such that the ordinance was facially unreasonable. App. 29. Instead the majority "knocked over a straw man" by concluding the ordinance did not qualify for the administrative subpoena exception. App. 29.

Although as Judge Clifton noted the majority conceded there was an expectation of privacy because the guest registry is protected by the Fourth Amendment, the majority failed to establish that a search of the guest registry would be unreasonable in all circumstances. App. 29-30. Although there is no proof in the record that respondents may treat the guest registry as private, on a facial challenge to the ordinance, the subjective views of respondents are of little value, the question is whether the hotel industry generally treats these records as private, but there is no evidence of that in the record. App. 30. Indeed, "there are hotels which voluntarily share information about guests with law enforcement without being served with a warrant and without the duress of this ordinance." App. 31. *See Cormier*, 220 F.3d, at 1106. The majority improperly declared the ordinance unconstitutional based upon the assumption that hotels generally expect information contained in their guest registries to be private.

Likewise, Judge Clifton noted a guest registry may be publically accessible book readily available in a hotel lobby and under these circumstances "[s]ociety likely does not recognize a legitimate expectation of privacy in information kept in a manner so easily accessible to anyone entering a hotel."[5] App. 32, citation omitted.

Judge Clifton concluded his dissent: "[f]or Plaintiffs to prevail, they must demonstrate that the search provided under the ordinance is unreasonable in all circumstances. They have not, and the majority opinion has not, either." App. 34.

A4. The Three Judge Ninth Circuit Panel Split 2-1 to Hold the Hotel Operator Had No Reasonable Expectation of Privacy in the Guest Register

The three judge appellate panel in its published decision affirmed the trial court in a 2-1 decision. The court held the ordinance on its face created no reasonable expectation of privacy for the hotel owner because the information contained in the guest register pertained to the guests and no evidence was presented that either respondents or hotel owners generally treated the information required by the ordinance to be private. App. 39-40. Likewise, the hotel owners presented no evidence that hotel owners generally treat guest registers as a private document. App. 40. The majority observed some hotels may use an old fashioned book left on the hotel counter in the guest reception area which would be accessible to anyone; in this situation society would "unlikely" find a reasonable

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[5] *See*, n. 3, *supra*.

expectation of privacy. App. 41. Respondents thus failed to prove they had an objectively reasonable expectation of privacy in the information contained in the guest register much less proving all hotel operators treated the information as private. App. 42-43.

The court also concluded even if respondents did not have a privacy interest in the guest register and even though the register is "protected paper" within the meaning of the Fourth Amendment, no seizure of property is inherent under the ordinance. App. 43. Nothing in the ordinance precludes the hotel operator from keeping the information available for its own use while simultaneously making it available to the police for inspection. App. 44. The ordinance expressly provides the inspection shall be conducted in a way to minimize business interference. App. 44. Similarly, the inspection is not a physical invasion of the hotel operator's private premises because the register is to be maintained in the public guest reception or check-in area or in an office adjacent to these areas. App. 44. Respondents thus failed to prove the limited intrusion authorized by the ordinance is unreasonable for them or for all hotel operators; the facial challenge to the ordinance fails. App. 44.

The abbreviated dissent essentially said warrantless searches by police officers are per se unconstitutional absent a few specifically defined exceptions. App. 46. The ordinance authorizes the search of hotel records without a warrant and since no recognized exception to the warrant requirement applies to the ordinance it facially violates the Fourth Amendment. App. 47. "The majority opinion conflicts

with long standing and well-established Fourth Amendment jurisprudence." App. 47.

A5. The District Court Ruled There Was Insufficient Evidence to Find the Hotel Industry Had a Reasonable Expectation of Privacy in the Guest Register

The court concluded as a matter of law that § 41.49 was not facially invalid because respondents did not assert they had a privacy interest in the hotel records, but rather they asserted the information contained in the guest register could be used for other purposes which would be protected by the Fourth Amendment. App. 55-56. The District Court ruled "hotel and motel owners may keep the records available for review in a guest check-in or reception area. Hotels and motels are generally open to receive guests at all times. The records subject to the inspection are required by law to be kept. App. 56-57. The District Court said it found no case where hotel owners have a reasonable expectation of privacy in records created pursuant to municipal ordinance. App. 56-57. As such, respondents failed to meet their "high burden" that the ordinance cannot be valid under any circumstances. App. 57.

A6. The Three Widely Varying Judicial Decisions in this Case Coupled with Two Divergent Dissents Manifests the Complexity of the Issues Presented

The City's guest registry ordinance was examined by the District Court and two deeply divided Ninth Circuit panels. The complexity of the issues presented

is manifested by the three distinct approaches taken by the lower courts. These divergent views in this case alone manifest the need for certiorari.

A7. The Sharply Divided 9-5 Split in the Sixth Circuit's *Warshak* Decision Which Held There Can Not Be Facial Challenges to Statutes under the Fourth Amendment Is in Direct Conflict with the Ninth Circuit's Decision in *Patel*

Like the deeply divided Ninth Circuit in *Patel*, the Sixth Circuit was deeply divided when it considered whether there could be a facial challenge to a statute. In direct conflict with the majority in *Patel,* the court in *Warshak,* 532 F.3d 521, 528 held in a split 9-5 decision that 18 U.S.C. § 2703(d) (Stored Communications Act) was not susceptible to a facial challenge under the Fourth Amendment.

The facts of *Warshak* fit a similar template to those in *Patel*. In *Patel*, there were allegations (but no proof) of prior police inspections of guest registries, coupled with the assertion that there will be future inspections. In *Warshak*, the federal government obtained an *ex parte* court order pursuant to 18 U.S.C. § 2703(d) to compel Warshak's internet service provider to produce his emails. Approximately one year later Warshak learned about these orders, he then filed a declaratory relief action to prospectively invalidate § 2703(d) under the Fourth Amendment. In rejecting Warshak's facial challenge to the statute the majority observed "we have no idea whether the government will conduct an *ex parte* search of Warshak's e-mail account in the future and plenty of reason to doubt that it will, making this

a claim that depends on 'contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* at 526, citations omitted. Although Warshak asserted it was "fair to assume" the government would again search his e-mail accounts based on its prior conduct, the majority concluded the assertion was speculative citing *Toilet Goods Ass'n, Inc. v. Gardner*, 387 U.S. 158, 163, 87 S. Ct. 1520, 18 L. Ed. 2d 697 (1967) because it lacked a "'concrete factual context.'" *Id.* at 527.

The court in *Warshak* said challenges to the reasonableness of a search under the Fourth Amendment in the criminal context is a motion to suppress and in the civil context an action either by 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 709, 718, 107 S. Ct. 1492, 94 L. Ed. 2d 714 (1987). *Id.* at 528. In either instance the court looks to "an actual, not a hypothetical search in the context of a developed factual record of the reasons for the search. A pre-enforcement challenge to future e-mail searches, by contrast provides no factual context. The Fourth Amendment is designed to account for unpredictable and limitless range of factual circumstances, and accordingly it generally should be applied after those circumstances unfold, not before." *Id.* Although Warshak asserted the issue presented was a purely a legal question the majority concluded it remained "a purely *speculative* legal question, this case must be answered differently in different settings and a legal question that 'depend[s] . . . on an understanding of' complex factual issues." *Id.*, emphasis original, citation omitted. The majority then observed:

> "Making matters worse, Warshak's complaint sought, and the district court's injunction gave him, pre-enforcement relief not just on behalf of himself but on behalf of *all* e-mail users. The point of this attack on the statute, like all facial challenges, was to leave nothing standing--to prevent § 2703(d) from ever being enforced without a warrant and probable cause, no matter the circumstances, no matter the individual's expectation of privacy, no matter the government's interests in obtaining the information without tipping the suspect off to the investigation." *Id.*, emphasis original.

The court acknowledged Warshak's argument that the Supreme Court issued opinions which in effect invalidated statutes in whole or in part under the Fourth amendment citing, *e.g.*, *Payton v. New York,* 445 U.S. 573, 589-590, 100 S. Ct. 1371, 63 L. Ed. 2d 639 & n.46 (1980); *Torres v. Puerto Rico*, 442 U.S. 465, 471, 474, 99 S. Ct. 2445, 61 L. Ed. 2d 1 (1979), but the Supreme Court reviewed these statutes in "concrete settings. . ." *Id.* at 531. The court noted the Stored Communications Act was in existence for 22 years and there were no successful Fourth Amendment challenges to the Act. The court did not want to "hypothesize how the government might conduct a conjectural search of Warshak's e-mails, then resolve the constitutionality of the search as well as any others the government might conduct under the statute . . ." *Id.* Since there were no "concrete facts" for the court to adjudicate Warshak's claims the majority concluded his action was not ripe, the action was dismissed. *Id.* at 533-534.

A8. The *Warshak* Dissent Would Have Allowed a Facial Challenge to the Statute

Although the dissent primarily focused on the majority's ripeness discussion, Judge Martin speaking for the five dissenters rejected the majority's preclusion of facial Fourth Amendment challenges:

> "History tells us that it is not the fact that a constitutional right is at issue that portends the outcome of a case, but rather what specific right we are talking about. If it is free speech, freedom of religion or the right to bear arms, we are quick to strike down laws that curtail those freedoms. But if we are discussing the Fourth Amendment's right to be free from unreasonable searches and seizures, heaven forbid that we should intrude on the government's investigatory province and actually require it to abide by the mandates of the Bill of Rights. I can only imagine what our founding fathers would think of this decision. If I were to tell James Otis and John Adams that a citizen's private correspondence is now potentially subject to *ex parte* and unannounced searches by the government without a warrant supported by probable cause, what would they say? Probably nothing, they would be left speechless." *Id.* at 538.

A9. Caparison Between *Patel* and *Warshak* Compels the Granting of Certiorari

The comparison between *Patel* and *Warshak* opinions is striking. The four dissenters in *Patel* said facial challenges to the Fourth Amendment are advisory opinions. The nine member majority in *Warshak* said facial challenges to statutes under the Fourth Amendment are unripe. Both the *Patel* dissent and the *Warshak* majority said challenges to legislative enactments under the Fourth Amendment require "concrete facts." The seven member majority in *Patel* and the five *Warshak* dissenters concluded facial challenges under the Fourth Amendment are proper. The *Patel* majority said an inspection of the guest registry in this case requires pre-compliance judicial review and *Warshak* dissent concluded that the government's examination of person's private correspondence required a warrant supported by probable cause.

In these two decisions alone 26 en banc judges adjudicated whether there can be a facial challenge to a legislative enactment under the Fourth Amendment. Eleven judges said facial challenges are available under the Fourth Amendment, 15 judges rejected these lawsuits. Certiorari should be granted to settle, as Judge Tallman said this "important constitutional question[] . . ." App.18.

II. THE NINTH CIRCUIT IN *PATEL* AND THE MASSACHUSETTS SUPREME COURT IN *BLINN* REACHED CONFLICTING CONCLUSIONS AS TO WHETHER A HOTEL OPERATOR HAS AN EXPECTATION OF PRIVACY UNDER THE FOURTH AMENDMENT IN A HOTEL GUEST REGISTRY WHERE THE GUEST SUPPLIED INFORMATION IS MANDATED BY LAW AND THAT LEGISLATIVE ENACTMENT AUTHORIZES THE POLICE TO INSPECT THE REGISTRY

A. The Massachusetts Supreme Court in *Blinn* Holds a Hotel Operator Has No Fourth Amendment Expectation of Privacy in the Guest Register

In *Blinn*, 399 Mass. 126, 503 N.E.2d 25, a state trooper went to a Howard Johnson's motel. While there he asked the motel's manager, Blinn, to produce the guest register for inspection. Blinn refused to comply absent a search warrant. The state trooper left the motel and later returned with a copy of Mass. Ann. Laws ch. 140, § 27 (1984)[6] which required an "innholder" to keep a guest register which "shall be open to the inspection of the . . . police." *Id.* at 126, n.1. Once again Blinn refused to produce the register absent a search warrant. The trooper left, but later returned with two additional troopers; this time Blinn produced the register. The trooper did not obtain a

[6] The current version of the statute, which is essentially the same, is reproduced at App. 67.

search warrant. Blinn was later convicted for failing to produce the register.

Blinn challenged his conviction asserting the trooper's search violated the Fourth Amendment. The Supreme Court rejected Blinn's claims. The court held Blinn had no reasonable expectation of privacy in the guest register because a business has a reduced expectation of privacy, the guest register was required to be kept by statute which placed Blinn on notice that it was subject to police inspection (which is not determinative, but it is a factor) and motel guests were on notice by a sign required by statute which summarized the laws regarding the register. *Id.* at 128. The court also rejected Blinn's claim under state law that the trooper's demand to see the guest register amounted to an illegal administrative search. *Id.* at 129.

A1. *Blinn* Conflicts with *Patel*

The ordinance in *Patel* and the state statute in *Blinn* are fundamentally the same. In both instances: (1) the legislative enactments mandate the hotel operator to maintain a hotel registry; (2) the legislative enactments mandate the hotel operator collect certain information from the hotel guest for placement in the registry; (3) the legislative enactments authorize police officers to inspect the registry; (4) both legislative enactments do not expressly provide for pre-compliance judicial review or obtaining a warrant; and (5) and the hotel operator's failure to comply with a police officer's request for inspection is guilty of a crime.

Although *Blinn* arose in the as-applied context and was not a facial challenge to the state statute it

nevertheless is in conflict with *Patel*. Indeed, if a statute survives an as-applied challenge it cannot be facially unconstitutional. *Patel* concluded the City's ordinance, which is substantively similar to that of the Massachusetts statute, was facially unconstitutional because pre-enforcement judicial review was required, but in *Blinn* the court upheld the warrantless search under the Fourth Amendment.

For a facial challenge to succeed there must be no circumstances whatsoever where the legislative enactment could be constitutional. See *Wash. State Grange*, 552 U.S., at 449, 128 S. Ct. 1184; 170 L. Ed. 2d 151. Yet, in *Blinn* the state statute was constitutional under the Fourth Amendment, but if it was analyzed under *Patel* it would be unconstitutional and *vice versa*. *Patel* is now not only authority to challenge the Massachusetts statute in federal court, its holding now puts in jeopardy hotel register inspection laws across the country and virtually all of these laws as will be momentarily demonstrated authorize police inspections and none of these laws mentions warrants or pre-compliance judicial review.

A2. State Statutes, County and City Ordinances Authorize Police Officers to Inspect Hotel Guest Registries Without Providing for Fourth Amendment Pre-Compliance Judicial Review. These Nationally Ubiquitous Laws Which Provide Law Enforcement with a Critical Tool Are Now in Jeopardy of Being Declared Facially Unconstitutional Thus Compelling That Certiorari Be Granted

Attached to this petition at Appendix E is a compilation of 70 state, county and city statutes and ordinances from 26 states which authorize police inspection of hotel registries. Not one of these laws mentions pre-compliance judicial review.[7]

Numerous cities aside from Los Angeles and at least one county within the Ninth Circuit require hotels to maintain guest registries which are subject to police inspection; none of these registries expressly require either police officers to obtain a warrant or specify that the hotel operator is entitled to pre-enforcement judicial review. *See*, *e.g.*, Alameda County, Cal., App.

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[7] The states, cities and the counties listed at Appendix E are by no means intended to be a comprehensive list of all states, counties or cities which mandate the keeping of hotel guest registries and which also authorize police inspections of those registries. Rather, the appendix is intended simply to be a representative compilation of states, counties and cities, large, medium and small, to illustrate the ubiquitousness of these ordinances.

68; City of Fresno, App. 79-80; City of San Diego, App. 100; City and County of San Francisco, App. 100; City of Las Vegas, App. 85-8; City of Seattle, App. 101-102.

Outside of the Ninth Circuit, not only does the Commonwealth of Massachusetts mandate the keeping of a hotel register which will be subject to inspection by police officers, but so does the state of Maine. App. 66-68.

Cities across the nation outside of the Ninth Circuit have police inspection ordinances similar to the City of Los Angeles. *See*, *e.g.*, City of Atlanta, Ga., App. 70; City of Baton Rouge, La., App. 71-72; City of Columbia, S.C., App. 74-75; City of Denver, Colo., App. 76-77; City of Indianapolis, Ind., App. 85-86; City of Minneapolis, Minn., App. 88; City of Nashville, Tenn., App. 87; City of Oklahoma City, Okla., App. 92; City of Richmond, Va., App. 96-97; City of San Antonio, Tex., App. 98-100; City of Saint Louis, Mo., App. 97-98; City of Wichita, Kan., App. 107.

Hotel guest registries expressly authorize police officers to combat nuisances and prostitution. Supplemental Excerpts of the Record, 98; App. 98 (Salinas Mun. Code § 21-320 (2013)). These ordinances are also expressly intended to combat illegal gambling and assist in the capture of fugitives. App. 98, 106-107 (Salinas Mun. Code § 21-320 (2013); West Milwaukee Mun. Code § 14-506). Other ordinances expressly mandate (as distinguished from inferentially mandate) that guest registers be made available to federal law enforcement to combat federal crimes, which of course would include terrorism especially in the immediate aftermath of a terrorist attack. App. 77, 93, 103 (East

Peoria Mun. Code § 3-15-13 (2013), Perryville Mun. Code § 9.04.300 (2013), Sparks Mun. Code § 5.52.040).

For those cities located within the Ninth Circuit, since none of these ordinances comply with the pre-compliance requirements of the *Patel* decision they will be in effect facially unconstitutional. Millions of people will be without the protection these ordinances provide.[8] At a national level, the state statutes in Massachusetts and Maine as well as the ordinances across the country are now in constitutional jeopardy because of *Patel's* holding which puts millions of people[9] in jeopardy of losing the protection these laws provide.[10]

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[8] The City's population is approximately 4,000,000 people http://quickfacts.census.gov/qfd/states/06/0644000.html (last visited March 21, 2014).

[9] The population of the Commonwealth of Massachusetts alone is almost 7,000,000 people. http://quickfacts.census.gov/qfd/states/25000.html (last visited Mar. 21, 2014)

[10] Including *Blinn*, there is little case law which has directly addressed the legality of hotel registry inspections, which further speaks to the imperative that certiorari be granted. *See City of Strongsville v. Patel*, 2005-Ohio-620 (2005) [although hotel industry closely regulated, conviction of motel operator's refusal to allow warrantless inspection of motel records by police overturned on as-applied Fourth Amendment challenge on the narrow ground the ordinance was not limited in the time for the inspection]; *Jones v. City of Hitchcock*, 2003 Tex. App. 3353 (2003) [Fourth Amendment facial challenge to trailer park ordinance which mandated that trailer parks keep guest registration information which would be available for inspection and use at all times by law enforcement rejected; trailer parks are closely regulated businesses; the ordinance was limited in scope; and the court

CONCLUSION

Predicated on the foregoing, the City of Los Angeles requests that certiorari be granted.

Respectfully submitted,

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rejected the right to privacy and unreasonable search and seizure claims]; *King v. City of Tulsa*, 415 P.2d 606 (Okla. Crim. App. 1966) [defendant's conviction affirmed for refusing to permit police officer to inspect hotel register without a warrant; the court held the ordinance was a proper exercise of the city's police power]; *Allinder v. City of Homewood,* 254 Ala. 525, 49 So. 2d 108 (1950) (state Supreme Court rejected facial challenge by hotel owner to ordinance which required the keeping of a guest register and to make it available for inspection by a police officer; the ordinance was a valid exercise of the city's police power).

APPENDIX

APPENDIX

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-56567
D.C. No. 2:05-cv-01571-DSF-AJW

[Filed December 24, 2013]

NARANJIBHAI PATEL; RAMILABEN PATEL,	)
Plaintiffs-Appellants,	)
v.	)
CITY OF LOS ANGELES, a municipal corporation,	)
Defendant-Appellee.	)

OPINION

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted En Banc
June 24, 2013—Seattle, Washington

Filed December 24, 2013

Before: Alex Kozinski, Chief Judge, and Diarmuid F. O'Scannlain, Raymond C. Fisher, Marsha S. Berzon, Richard C. Tallman, Richard R. Clifton, Consuelo M. Callahan, Milan D. Smith, Jr., Mary H. Murguia, Morgan Christen and Paul J. Watford, Circuit Judges.

Opinion by Judge Watford;
Dissent by Judge Tallman;
Dissent by Judge Clifton

SUMMARY*

Civil Rights

The en banc court reversed the district court's judgment in favor of the City of Los Angeles, and held that Los Angeles Municipal Code § 41.49's requirement that hotel guest records "shall be made available to any officer of the Los Angeles Police Department for inspection" was facially invalid under the Fourth Amendment insofar as it authorized inspections of the records without affording an opportunity to obtain prior judicial review.

Plaintiffs, who are motel owners in Los Angeles, challenged the provision of § 41.49 authorizing warrantless, on-site inspections of hotel guest records by any police officer. The en banc court held that a police officer's non-consensual inspection of hotel guest records under § 41.49 constituted a Fourth Amendment "search." The en banc court also held that even under the more lenient Fourth Amendment principles

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* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

governing administrative record inspections, § 41.49 was facially invalid. The en banc court concluded that in order for the city to comply with the Fourth Amendment, it must afford hotel operators an opportunity to challenge the reasonableness of the police officer's inspection demand in court before penalties for non-compliance were imposed.

Judge Tallman, joined by Judges O'Scannlain, Clifton, and Callahan, dissented. Judge Tallman dissented from the majority's decision to declare invalid *all* potential searches under the city's ordinance, and he would limit the court's review to searches and seizures that actually took place. Because plaintiffs did not raise an as-applied challenge to the ordinance, Judge Tallman would vacate the district court's judgment and remand for dismissal of the facial challenge.

Judge Clifton, joined by Judges O'Scannlain, Tallman, and Callahan, dissented. Judge Clifton wrote that the majority opinion was wrong because it ignored the facial nature of plaintiffs' challenge to the ordinance and the high bar that must be overcome for a facial challenge to succeed, and failed to establish that a search of records under the ordinance would be unreasonable.

COUNSEL

Frank A. Weiser (argued), Law Offices of Frank A. Weiser, Los Angeles, California, for Plaintiffs-Appellants.

Todd T. Leung (argued), Deputy City Attorney; Rockard J. Delgadillo, City Attorney; Laurie Rittenberg, Assistant City Attorney, Office of the City

Attorney, Los Angeles, California, for Defendant-Appellee.

OPINION

WATFORD, Circuit Judge:

Los Angeles Municipal Code § 41.49 requires hotel and motel operators to keep records with specified information about their guests. Plaintiffs, motel owners in Los Angeles, challenge a provision of § 41.49 authorizing warrantless, on-site inspections of those records upon the demand of any police officer. We are asked to decide whether this provision is facially invalid under the Fourth Amendment.

I

Section 41.49 requires hotel and motel operators to collect and record detailed information about their guests in either paper or electronic form. The records must contain: the guest's name and address; the number of people in the guest's party; the make, model, and license plate number of the guest's vehicle if the vehicle will be parked on hotel property; the guest's date and time of arrival and scheduled date of departure; the room number assigned to the guest; the rate charged and the amount collected for the room; and the method of payment. L.A. Mun. Code § 41.49(2)(a). For cash-paying and walk-in guests, as well as any guest who rents a room for less than twelve hours, the records must also contain the number and expiration date of the identification document the guest presented when checking in. § 41.49(4). For guests who check in using an electronic kiosk, hotel operators must record the guest's name, reservation and credit card information, and the room number assigned to the

guest. § 41.49(2)(b). These records must be "kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area" for a period of 90 days. § 41.49(3)(a).

Plaintiffs do not challenge these requirements. But they do challenge § 41.49's warrantless inspection requirement, which states that hotel guest records "shall be made available to any officer of the Los Angeles Police Department for inspection," provided that, "[w]henever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." *Id*.[1] The city stipulated that this provision authorizes police officers to inspect hotel guest records at any time without consent or a search warrant. Failure to comply with an officer's inspection demand is a misdemeanor, punishable by up to six months in jail and a $1000 fine. L.A. Mun. Code § 11.00(m).

Plaintiffs have been and will continue to be subjected to warrantless record inspections under § 41.49. They filed this action under 42 U.S.C. § 1983 seeking declaratory and injunctive relief barring

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[1] Section 41.49(3)(a) provides in full:

> The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

continued enforcement of § 41.49's warrantless inspection provision, on the ground that it is facially invalid under the Fourth Amendment. Following a bench trial, the district court rejected plaintiffs' facial challenge and entered judgment for the City of Los Angeles.

II

The first question raised by plaintiffs' facial challenge is whether a police officer's non-consensual inspection of hotel guest records under § 41.49 constitutes a Fourth Amendment "search." We have little difficulty concluding that it does.

The Fourth Amendment protects the right of the people to be secure in their "persons, houses, papers, and effects" against unreasonable searches and seizures. U.S. Const. amend. IV. A search occurs for Fourth Amendment purposes when the government physically intrudes upon one of these enumerated areas, or invades a protected privacy interest, for the purpose of obtaining information. *United States v. Jones*, 132 S. Ct. 945, 949–51 (2012); *Katz v. United States*, 389 U.S. 347, 360–61 (1967) (Harlan, J., concurring). The "papers" protected by the Fourth Amendment include business records like those at issue here. *See Hale v. Henkel*, 201 U.S. 43, 76–77 (1906).

Record inspections under § 41.49 involve both a physical intrusion upon a hotel's papers and an invasion of the hotel's protected privacy interest in those papers, for essentially the same reasons. "One of the main rights attaching to property is the right to exclude others, and one who owns or lawfully possesses

or controls property will in all likelihood have a legitimate expectation of privacy by virtue of this right to exclude." *Rakas v. Illinois*, 439 U.S. 128, 144 n.12 (1978) (citation omitted). The business records covered by § 41.49 are the hotel's private property, and the hotel therefore has both a possessory and an ownership interest in the records. By virtue of those property-based interests, the hotel has the right to exclude others from prying into the contents of its records, which is also the source of its expectation of privacy in the records. *Cf. Florida v. Jardines*, 133 S. Ct. 1409, 1418–19 (2013) (Kagan, J., concurring). That expectation of privacy is one society deems reasonable because businesses do not ordinarily disclose, and are not expected to disclose, the kind of commercially sensitive information contained in the records—e.g., customer lists, pricing practices, and occupancy rates. The hotel retains that expectation of privacy notwithstanding the fact that the records are required to be kept by law. *See McLaughlin v. Kings Island, Div. of Taft Broad. Co.*, 849 F.2d 990, 995–96 (6th Cir. 1988); *Brock v. Emerson Elec. Co.*, 834 F.2d 994, 996 (11th Cir. 1987).

The hotel's property and privacy interests are more than sufficient to trigger Fourth Amendment protection. As to the property-based rationale for our holding, which is grounded in a century-old line of Supreme Court precedent beginning with *Hale*, 201 U.S. at 76–77, the dissent is in complete agreement. *See* Clifton Dissent at 25. As to the privacy-based rationale, the dissent asserts that plaintiffs were required to prove, as a factual matter, that their business records are subject to a reasonable expectation of privacy. Clifton Dissent at 29, 30–31. We

do not believe business owners are required to prove that proposition, any more than homeowners are required to prove that papers stored in a desk drawer are subject to a reasonable expectation of privacy. So long as a business's records are "private," as the Court held in *Hale*, 201 U.S. at 76, they fall within the scope of the "papers" protected by the Fourth Amendment.

No one contests here that plaintiffs' hotel records are in fact private. If the records were "publicly accessible," as the dissent posits, Clifton Dissent at 31, it is true they would not be protected by the Fourth Amendment, since "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz*, 389 U.S. at 351. But, by the same measure, if the records were publicly accessible, the police of course would not need to rely on § 41.49 to gain access to them.

That the hotel records at issue contain information mainly about the hotel's guests does not strip them of constitutional protection. To be sure, the *guests* lack any privacy interest of their own in the hotel's records. *United States v. Cormier*, 220 F.3d 1103, 1108 (9th Cir. 2000); *see United States v. Miller*, 425 U.S. 435, 440 (1976). But that is because the records belong to the hotel, not the guest, and the records contain information that the guests have voluntarily disclosed to the hotel. *Cormier*, 220 F.3d at 1108. It may be the case, as the dissent speculates, that the hotel in *Cormier* voluntarily consented to an inspection of its guest records. *See* Clifton Dissent at 29. But that does not support the dissent's contention that hotels generally lack an expectation of privacy in such records. Otherwise, the fact that a defendant in one of

our published decisions voluntarily consented to the search of his home would establish that the rest of us lack an expectation of privacy in our own homes.

A police officer's non-consensual inspection of hotel guest records plainly constitutes a "search" under either the property-based approach of *Jones* or the privacy-based approach of *Katz*. Such inspections involve both a physical intrusion upon the hotel's private papers and an invasion of the hotel's protected privacy interest in those papers for the purpose of obtaining information. *See Jones*, 132 S. Ct. at 951 n.5. Whether the officers rifle through the records in paper form, or view the records on a computer screen, they are doing so to obtain the information contained in the records. That the inspection may disclose "nothing of any great personal value" to the hotel—on the theory, for example, that the records contain "just" the hotel's customer list—is of no consequence. *Arizona v. Hicks*, 480 U.S. 321, 325 (1987). "A search is a search, even if it happens to disclose nothing but the bottom of a turntable." *Id.*

III

The question we must next decide is whether the searches authorized by § 41.49 are reasonable. Ordinarily, to answer that question, we would balance "the need to search against the invasion which the search entails." *Camara v. Mun. Court*, 387 U.S. 523, 537 (1967); *see Maryland v. King*, 133 S. Ct. 1958, 1970 (2013). Here, however, that balance has already been struck. The Supreme Court has made clear that, to be reasonable, an administrative record-inspection scheme need not require issuance of a search warrant, but it must at a minimum afford an opportunity for

pre-compliance judicial review, an element that § 41.49 lacks.

We will assume, without deciding, that § 41.49 is in fact intended to authorize administrative record inspections, rather than "searches for evidence of crime," which would ordinarily require a warrant. *Michigan v. Tyler*, 436 U.S. 499, 511–12 (1978). The city defends § 41.49 as a nuisance abatement measure designed to deter drug dealing and prostitution, on the theory that those who would be inclined to use hotels to facilitate their illicit activities will be less inclined to do so if they know that hotel operators must collect—and make available to the police—information identifying each of their guests. Plaintiffs do not contest this characterization of § 41.49, and we need not question it to resolve this case.

We will also assume that § 41.49 is intended to authorize access only to the hotel guest records, rather than to non-public areas of the hotel's premises. When the government seeks access to non-public areas of a business to enforce health and safety regulations, an administrative search warrant is generally required before that greater level of intrusion is permitted. *See Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 414 (1984); *See v. City of Seattle*, 387 U.S. 541, 545 (1967). Section 41.49 could be read as authorizing inspections of hotel guest records, at least in some circumstances, in "an office adjacent to" the guest check-in area. L.A. Mun. Code § 41.49(3)(a). If that office were not open to the public, officers could not insist on conducting the inspection there without an administrative search warrant. *See Lone Steer*, 464 U.S. at 414; *See*, 387 U.S. at 545. As a general rule, however, § 41.49 appears to

contemplate record inspections occurring in the "guest reception or guest check-in area" of the hotel, areas which presumably are open to the public. L.A. Mun. Code § 41.49(3)(a). Given our disposition, we need not decide whether record inspections in an area of a business open to the public, such as a hotel lobby, would require an administrative search warrant.

With these assumptions in mind, which give the city the benefit of the doubt at each turn, we will apply the Fourth Amendment principles governing administrative record inspections, rather than those that apply when the government searches for evidence of a crime or conducts administrative searches of non-public areas of a business. *See Tyler*, 436 U.S. at 511–12; *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320–21 (1978). Even under the more lenient Fourth Amendment principles governing administrative record inspections, § 41.49 is facially invalid.

The government may require businesses to maintain records and make them available for routine inspection when necessary to further a legitimate regulatory interest. *See California Bankers Ass'n v. Shultz*, 416 U.S. 21, 45–46 (1974); *Kings Island*, 849 F.2d at 992–93. But the Fourth Amendment places limits on the government's authority in this regard. *See Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208–09 (1945). The government may ordinarily compel the inspection of business records only through an inspection demand "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *See*, 387 U.S. at 544. Section 41.49 appears to satisfy this Fourth Amendment prerequisite by adequately

specifying (and limiting the scope of) the records subject to inspection. In addition, however, the demand to inspect "may not be made and enforced by the inspector in the field." *Id.* at 544–45. The party subject to the demand must be afforded an opportunity to "obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." *Id.* at 545; *see also Lone Steer*, 464 U.S. at 415.

Section 41.49 lacks this essential procedural safeguard against arbitrary or abusive inspection demands. As presently drafted, § 41.49 provides no opportunity for pre-compliance judicial review of an officer's demand to inspect a hotel's guest records. If the hotel operator refuses the officer's demand, she may be found guilty without more of a misdemeanor, punishable by up to six months in jail and a $1000 fine. *See* L.A. Mun. Code § 11.00(m). Hotel operators are thus subject to the "unbridled discretion" of officers in the field, who are free to choose whom to inspect, when to inspect, and the frequency with which those inspections occur. *See Barlow's*, 436 U.S. at 323. Only by refusing the officer's inspection demand and risking a criminal conviction may a hotel operator challenge the reasonableness of the officer's decision to inspect. *See Camara*, 387 U.S. at 532. To comply with the Fourth Amendment, the city must afford hotel operators an opportunity to challenge the reasonableness of the inspection demand in court before penalties for non-compliance are imposed. *See Lone Steer*, 464 U.S. at 415; *See*, 387 U.S. at 545; *Kings*

Island, 849 F.2d at 996; *Emerson Elec.*, 834 F.2d at 997.[2]

The dissent is certainly correct that "[t]he lack of pre-compliance judicial review does not necessarily make a search unreasonable under the Fourth Amendment." Clifton Dissent at 27. But it *does* render unreasonable the particular searches at issue here—administrative inspections of business records in industries that are not closely regulated. The dissent never refutes that point. It merely notes that pre-compliance judicial review is not required for other types of searches that § 41.49 does not purport to authorize, such as automobile searches or "stop and frisks." *Id.* That observation has no relevance to the Fourth Amendment issue raised by this case.

IV

We hold that § 41.49's requirement that hotel guest records "shall be made available to any officer of the Los Angeles Police Department for inspection" is facially invalid under the Fourth Amendment insofar as it authorizes inspections of those records without affording an opportunity to "obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." *See*, 387 U.S. at 545.

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[2] Unannounced inspections without an opportunity for pre-compliance judicial review may be reasonable in certain closely regulated industries, such as mining and firearms. *See, e.g.*, *New York v. Burger*, 482 U.S. 691, 702 (1987). As the district court correctly concluded, however, no serious argument can be made that the hotel industry has been subjected to the kind of pervasive regulation that would qualify it for treatment under the *Burger* line of cases. *See Barlow's*, 436 U.S. at 313–14.

Because this procedural deficiency affects the validity of all searches authorized by § 41.49(3)(a), there are no circumstances in which the record-inspection provision may be constitutionally applied. *See United States v. Salerno*, 481 U.S. 739, 745 (1987). Facial invalidation of the provision, as plaintiffs have requested, is therefore appropriate. *See Barlow's*, 436 U.S. at 325; *Kings Island*, 849 F.2d at 997.

That conclusion is not undermined by the dissent's observation, *see* Tallman Dissent at 17, that officers may seek to inspect hotel guest records based on a source of authority other than § 41.49. If "exigent circumstances" exist to justify a non-consensual inspection of hotel guest records, for example, officers may conduct such a search in compliance with the Fourth Amendment whether § 41.49 is on the books or not. Nor is it relevant that plaintiffs have not yet "suffered a penalty for refusing to comply." Tallman Dissent at 22. "The forbearance of a field officer in graciously declining to propose a penalty"—thus far—does not cure the constitutional defect in § 41.49's administrative record-inspection scheme. *Emerson Elec.*, 834 F.2d at 997.

REVERSED and REMANDED.

TALLMAN, Circuit Judge, with whom Circuit Judges O'SCANNLAIN, CLIFTON, and CALLAHAN join, dissenting:

The Fourth Amendment to our Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be

violated. . . ." U.S. Const., amend. IV. The Amendment has always prohibited specific government conduct—"unreasonable searches and seizures"—not legislation that could potentially permit such conduct. It is for this reason that the Supreme Court has held that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron v. New York*, 392 U.S. 40, 59 (1968).

The Patels nonetheless ask us to declare facially invalid under the Fourth Amendment a city ordinance that does not address the procedures the police must follow before entering a hotel to request the guest registers that hotels must keep. The ordinance says nothing of warrants, much less consent, exigencies, or any other recognized exception to the warrant requirement. We only know from the face of the statute that when the police do request the register, however they make that request, the hotel owner must provide it.

The Patels may be right in asserting that as a practical matter the Los Angeles Police Department has *applied* the ordinance to undertake searches that violate the Fourth Amendment. In that case, the Patels should have little problem challenging such a search on the facts of a particular search itself. They made such a claim when they filed their lawsuit but dropped it before trial. The district court looked at the city ordinance and saw nothing on its face suggesting it was unconstitutional in all of its applications. Now on appeal, the Patels ask us to assume the exercise of analyzing *all* potential searches that *might be*

conducted pursuant to the ordinance in order to declare it deficient. We should decline the Patels' invitation because the Supreme Court has told us to avoid the exercise altogether. My colleagues, though, have taken the bait and issued what amounts to no more than an advisory opinion. I respectfully dissent.

I

In *Sibron v. New York*, the New York state legislature had enacted a statute allowing a police officer, with "reasonable suspicion," to "stop any person," "demand" explanations, and "search such person for a dangerous weapon." 392 U.S. at 43–44. Two defendants sought suppression of evidence discovered pursuant to such searches, and they asked the Supreme Court to strike down the state statute as facially unconstitutional under the Fourth Amendment. *Id.* at 44. On the same day the Supreme Court established the constitutional standard for "stop-and-frisks" in *Terry v. Ohio*, 392 U.S. 1 (1968), the Court declined to address the facial challenge to the statute in *Sibron*.

The Court explained that federal courts should refuse "to be drawn into what we view as the abstract and unproductive exercise of laying the extraordinarily elastic categories of [a statute] next to the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible." *Sibron*, 392 U.S. at 59. Rather, we should "confine our review instead to the reasonableness of the searches and seizures" that have actually taken place. *Id.* at 62.

The *Sibron* Court reasoned that when a statute's terms "are susceptible of a wide variety of

interpretations," *id.* at 60, we can only determine if the government has violated Fourth Amendment rights by analyzing the concrete facts in which the statute was applied. "The constitutional point with respect to a statute of this peculiar sort . . . is not so much . . . the language employed as . . . the conduct it authorizes." *Id.* at 61–62 (citation and internal quotation marks omitted). Here, although counsel represented at argument that unconstitutional searches have occurred at the Patels' motel, the record is bereft of any details to tell us what happened when the ordinance was invoked.

I am at a loss to understand the Patels' decision to drop the as-applied challenge they raised in their original complaint. But their facial challenge leaves us with insufficient facts regarding the unconstitutional conduct they allege has occurred. It instead asks us to partake in the gymnastics of the hypothetical, focusing on the "language employed" instead of the "conduct [the ordinance] authorizes." *Id.*

The difficulty with this case arises from the disconnect between the language employed in the statute and the conduct the majority concludes the ordinance authorizes. The majority opinion is rife with assumptions about the police conduct that must occur for the ordinance to be applied. To begin, the majority's analysis starts with the assumption that "§ 41.49 authoriz[es] warrantless . . . inspections." Maj. Op. at 4. But it seems plain from the face of the statute that the ordinance would apply to hoteliers with equal force if Los Angeles police officers arrived at a hotel with a legitimate search warrant and the hotelier refused to produce the register. I have always understood the rule

to be that a statute survives a facial challenge if a court can find any circumstance in which it could constitutionally be applied. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (holding that a facial challenge "can only succeed" if "no set of circumstances exists under which the [law] would be valid"). The majority does not even acknowledge this rule of constitutional adjudication.

The plaintiffs went to trial solely on a facial challenge to the statute, which by its nature requires us to consider only the statute's language. But even if, as the majority suggests, *all* searches authorized by the ordinance were without warrant and consent—which the statute clearly does not dictate—the majority has still not accounted for "exigent circumstances" that would allow the police to request the guest register without a warrant *or* consent. *See Kentucky v. King*, 131 S. Ct. 1849, 1858 (2011) ("[W]arrantless searches are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement."). Additionally, the police could request the register under their community care-taking exception; perhaps police might be on the premises to locate a suicidal person whose worried family has asked police to check on his welfare. These would appear to be at least two "set[s] of circumstances . . . under which the [law] would be valid." *Wash. State Grange*, 552 U.S. at 449.

But such important constitutional questions should not rise and fall on the vagaries of judicial imaginations. As in *Sibron*, "[o]ur constitutional inquiry would not be furthered here by an attempt to

pronounce judgment on the words of the statute." 392 U.S. at 62. Even after considering the stipulation that the Patels have been subject to warrantless searches under the ordinance, we have no concrete facts to analyze the circumstances of each individual search. And even if we did have those facts, the Patels have made the tactical litigation decision to withdraw any challenge to those searches. They leave us with no evidence to prove that *all* requests made under the ordinance *must* violate the Fourth Amendment. The majority's decision to nonetheless entertain the facial challenge eschews Supreme Court guidance to the contrary.

II

The majority ignores *Sibron* entirely and takes an improperly narrow view of what the statutory text authorizes. The ordinance, *on its face*, provides only that:

> [The register] shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

L.A. Mun. Code § 41.49(3)(a). According to the ordinance's language, if the police request the guest register, the hotel owner must provide it. The ordinance does not claim to alter the LAPD's constitutional responsibility to adhere to Fourth Amendment safeguards when making any demand for information. We cannot presume that police have

violated the Fourth Amendment without any facts with which to make that determination.

It is clear that when the majority reads the ordinance, it engrafts into it language that is not there:

> [The register] shall be made available to any officer of the Los Angeles Police Department for inspection, ***and the police may conduct such an inspection without a warrant and without consent or any other delineated exception to the warrant requirement.*** Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

I stress again that the majority starts its analysis with the assumption that the ordinance "authoriz[es] warrantless . . . inspections." Maj. Op. at 4. This reading, enhanced by an imaginary judicial graft on the text, raises a critical difference from the ordinance's actual language as currently written. If the ordinance were phrased in a manner that would eliminate the warrant requirement entirely, it would implicate Supreme Court precedent suggesting that a statute may not alter the procedures for obtaining a warrant. Most notably, in *Berger v. New York*, 388 U.S. 41, 56–58 (1967), the Court struck down a New York statute allowing the state to obtain a surveillance warrant without probable cause or even particularity as to what the police expected to obtain with the warrant. The Court held that New York's attempt to alter the procedures for the issuance of a warrant was "offensive" to the Warrant Clause of the Fourth Amendment. *Id.* at 58–59.

The majority instead takes a course similar to the Supreme Court in *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), but it does not account for the critical difference between *Barlow's* and this case. In *Barlow's*, the Court analyzed—in the course of an as-applied challenge based on an actual attempted search—Section 8(a) of the Occupational Safety and Health Act (OSHA), which permitted the Department of Labor:

> (1) *to enter without delay* and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and (2) *to inspect and investigate* during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee.

Id. at 309 n.1 (emphasis added).[1]

Unlike the Patels, the *Barlow's* plaintiff sought to enjoin the statute as it was applied to him—seeking declaratory relief that he did not have to comply with a court order requiring the plaintiff to allow an inspection by an Occupational Safety and Health

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[1] The language of Section 8(a) actually authorizes specific government conduct, unlike the ordinance, which only imposes a responsibility on a hotelier. The majority ignores this critical difference.

officer. *Barlow's, Inc. v. Usery*, 424 F. Supp. 437, 438–39 (D. Idaho 1976). Through the factual development of his as-applied challenge, it became "undisputed that [the officer] did not have any cause, probable or otherwise, to believe a violation existed nor was he in possession of any complaints by any employee of Barlow's, Inc." *Id.* It was also undisputed that the officer did not seek or possess a warrant for the inspection. *Id.* at 438.

Before the Supreme Court, the government did not attempt to argue that it could justify the search of the plaintiff under any exception to the warrant requirement. Instead, it argued that all warrantless searches conducted pursuant to Section 8(a) of OSHA should be deemed reasonable—under a new exception the government asked the Supreme Court to announce in *Barlow's* itself. *Barlow's*, 436 U.S. at 315–16 ("[The Secretary] suggests that only a decision exempting OSHA inspections from the Warrant Clause would give 'full recognition to the competing public and private interests here at stake.'"). Not surprisingly, the Supreme Court declined the government's novel request.

Importantly, the Court did not strike down Section 8(a) of OSHA altogether. Rather, based on the concrete factual situation that arose from the as-applied challenge—specifically, because the government had conceded that no warrant exception existed for the search of the plaintiff's business—the Court held that the statute was unconstitutional "insofar as it purports to authorize inspections *without warrant or its equivalent*. . . ." *Id.* at 325 (emphasis added). As the Court noted, the injunction "should not be understood

to forbid the Secretary from exercising the inspection authority conferred by § 8 pursuant to regulations and judicial process that satisfy the Fourth Amendment." *Id.* at 325 n.23. Therefore, a search under Section 8(a) would still survive if the government obtained a warrant or could meet an exception to the warrant requirement that would serve as a warrant's "equivalent."

The majority appears to believe it is following the lead of *Barlow's* when it strikes down the ordinance "insofar as it authorizes inspections of those records without affording an opportunity to 'obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply.'" Maj. Op. at 12–13. But the record, unlike in *Barlow's*, is totally bereft of facts to support the majority's assumption that the statute is actually being applied in that manner. The Patels put forth no evidence at trial demonstrating that they (or any other hotelier, for that matter) have not had an opportunity to obtain judicial review of any request for guest registers, nor have they shown that *any* hotelier has suffered a penalty for refusing to comply. The majority simply lacks the necessary factual predicate to support its conclusion.

Instead we are left with an advisory opinion that engages in the folly *Sibron* warned us to avoid.[2] The

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[2] "[A]s-applied challenges are the basic building blocks of constitutional adjudication." *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007). It is no surprise, then, that the majority's opinion relies entirely on Supreme Court cases involving them. *See Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 412–14 (1984); *Barlow's*, 436 U.S. at 320–21; *See v. City of Seattle*, 387 U.S. 541, 545–46 (1967); *Camara v. Mun. Ct.*, 387 U.S. 523, 540 (1967). In each of those

majority must begin with an assumption—that the ordinance authorizes only warrantless searches—unsupported by the face of the statute. Then, by cabining its analysis to only whether a search meets one exception for certain administrative inspections, the majority refuses to acknowledge that the ordinance may be "susceptible of a wide variety of interpretations." *Sibron*, 392 U.S. at 60. The majority's ultimate conclusion—that the ordinance is unconstitutional only insofar as it authorizes conduct that the plaintiffs have never proven actually occurred—reveals why "[o]ur constitutional inquiry would not be furthered here by an attempt to pronounce judgment on the words of the statute. We must confine our review instead to the reasonableness of the searches and seizures" that actually took place. *Id.* at 62.

Because the Patels intentionally declined to challenge such actual searches, we should vacate the judgment and remand so the district court may dismiss the facial challenge under *Sibron*. If the Patels are truly subject to searches without a warrant, and the police have no valid reason to circumvent the warrant requirement—which may very well be the case—then the Patels can raise an as-applied challenge to any City attempt to punish them. *See Camara*, 387 U.S. at 540. Because the majority has improperly engaged in this "abstract and unproductive exercise," *Sibron*, 392 U.S. at 59, I respectfully dissent.

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cases, the Court analyzed whether specific government conduct was unconstitutional, not whether the mere language employed in a statute or regulation was invalid. In this case, we do not have any specific government conduct to adjudicate.

CLIFTON, Circuit Judge, with whom Circuit Judges O'SCANNLAIN, TALLMAN, and CALLAHAN join, dissenting:

The majority opinion is wrong in two different ways. First, it ignores the facial nature of Plaintiffs' challenge to the ordinance and the very high bar that must be overcome for a facial challenge to succeed. Second, it fails to establish that a search of records under the ordinance would be unreasonable, the ultimate standard imposed under the Fourth Amendment. Instead, to the extent that it deals with the issue at all, it simply accepts Plaintiffs' assertion to that effect, supported by no evidence whatsoever.

I. The Nature of a Facial Challenge

Judge Tallman is correct that the validity of a warrantless search should generally be decided in the concrete factual context of an as-applied challenge. *See Sibron v. New York*, 392 U.S. 40, 59 (1968). I join his opinion.

Plaintiffs' facial challenge also fails on the merits. A facial challenge is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (explaining that a facial challenge fails unless "the law is unconstitutional in all of its applications"). That the ordinance might operate unconstitutionally under some circumstances is not enough to render it invalid against a facial challenge.

II. The Reasonableness of the Search

The majority opinion starts by concluding that a police officer's inspection of hotel guest records under the ordinance is a "search" for purposes of the Fourth Amendment. I agree.

Prior to the Supreme Court's decision in *Jones v. United States*, __ U.S. ___, 132 S. Ct. 945 (2012), the issues of whether a given intrusion constituted a "search" and whether that intrusion was "unreasonable" were often merged into a single discussion, considering whether there was a reasonable expectation of privacy that deserved protection. *Jones* made clear that the application of the Fourth Amendment was not limited to circumstances involving a reasonable expectation of privacy. *Id*. at 949–51. The Fourth Amendment applies to the intrusion here, based on what the majority opinion has termed the property-based rationale. That is true whether or not hotels have a reasonable expectation of privacy in guest registers.

The conclusion that the Fourth Amendment applies "is the beginning point, not the end of the analysis," however, as the Supreme Court recently reiterated in *Maryland v. King*, __ U.S. ___, 133 S. Ct. 1958, 1969 (2013), a decision handed down after its decision in *Jones*. "[T]he ultimate measure of the constitutionality of a governmental search is 'reasonableness.'" *King*, 133 S. Ct. at 1969 (quoting *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995)); *see also Soldal v. Cook Cnty.*, 506 U.S. 56, 71 (1992) (stating that "reasonableness is still the ultimate standard under the Fourth Amendment") (internal quotation marks omitted). Thus in *King* the Court concluded that the

practice of gathering DNA samples from arrestees by buccal swabs was not unreasonable. It noted that although the Fourth Amendment may often demand that the government have individualized suspicion, a warrant, or both before an intrusion, the Court has imposed "no irreducible requirement[s]" for a reasonable search or seizure. *See King*, 133 S. Ct. at 1969.

The majority opinion appears to agree that it must decide whether the search authorized by the ordinance is reasonable. It even acknowledges, at 9, that "[o]rdinarily" a decision would require a balancing of factors to support the conclusion that the inspection here is unreasonable. But it does not undertake such a balancing in its section III.

Instead, the majority opinion contends, at 9, that the "balance has already been struck." It identifies the absence of pre-compliance judicial review as a fatal flaw in the ordinance because, it asserts, at 9, that pre-compliance judicial review is an absolute requirement for any and all business record inspection systems. Because this ordinance does not provide for pre-compliance judicial review before a hotel will be called upon to make the guest information available, the majority opinion concludes that it must violate the Fourth Amendment.

The majority opinion's reasoning misses an important step. The absence of judicial review establishes only that the ordinance might not qualify for the recognized exception for administrative subpoenas or inspections. *See Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208–09 (1946) (discussing administrative subpoenas); *See v. City of Seattle*, 387

U.S. 541, 544–45 (1967) (discussing administrative inspections); *see also United States v. Golden Valley Elec. Ass'n*, 689 F.3d 1108, 1113, 1115–16 (9th Cir. 2012). That is not the only exception to the warrant requirement recognized under the Fourth Amendment, let alone the only basis for upholding a warrantless search on the ground that it was not unreasonable.

There is, for instance, no provision for a pre-compliance judicial review before a "Terry stop" or a "stop and frisk" under *Terry v. Ohio*, 392 U.S. 1, 22–24 (1968). When a police officer proposes to stop and frisk a suspect, the suspect is not allowed to defer the frisk until after it can be challenged in court. Nor is there such a provision for a warrantless search of an automobile, *United States v. Brooks*, 610 F.3d 1186, 1193–94 (9th Cir. 2010), or any other search under the exigent circumstances exception to the Fourth Amendment's warrant requirement, *Sims v. Stanton*, 706 F.3d 954, 960–61 (9th Cir. 2013).

The lack of pre-compliance judicial review does not necessarily make a search unreasonable under the Fourth Amendment. The majority concedes that fact, at 12, but the lack of pre-compliance judicial review is all the majority opinion discusses to conclude that the a search under the ordinance is always unreasonable.

The majority opinion's reasoning is similar to the following logic: (1) some cars are white, (2) what Mary is driving is not white, (3) therefore, Mary is not driving a car. Put that way, the logical fallacy is obvious – Mary might be driving a red car. And the inspection provided under this ordinance might be reasonable under the Fourth Amendment for reasons

other than the recognized exception for administrative inspections.

The most that the majority opinion has established is that an inspection of guest registry information under the ordinance might not qualify under the established administrative subpoena exception. But that is not the ground upon which the district court concluded that Plaintiffs' facial challenge failed. Instead, it took on the harder question and concluded that the Plaintiffs failed to demonstrate that they and hotel owners in general had a legitimate privacy interest in guest registry information such that the ordinance was facially unreasonable. By concluding that a search under the ordinance is necessarily unreasonable because it does not fit the administrative subpoena exception, the majority opinion has knocked over a straw man.

The harder question of whether a search under the ordinance would be unreasonable in all circumstances requires consideration of the nature of the intrusion, among other things. The majority opinion does not entirely ignore that question, but it discusses it only in answering the easy question – whether an inspection of a guest registry under the ordinance constitutes a search – and not the hard one – whether that search is unreasonable in all circumstances.

The majority opinion asserts, at 7, that Plaintiffs are not required to prove that their business records are necessarily subject to an expectation of privacy, because they are papers protected by the Fourth Amendment. But that, too, answers only the easy question, not the hard one. It does not establish that a

search of those papers under the ordinance would be unreasonable in all circumstances.

Plaintiffs may have a subjective expectation of privacy in their guest registry and may keep that information confidential, as the majority opinion asserts, though there is no proof of that in the record. Plaintiffs have brought a facial challenge, however, so the relevant question is not simply how these individual Plaintiffs treat their guest registry but how that information is treated by hotels generally. The majority opinion cites nothing to support the factual proposition that hotels generally treat such information as private. There is none in the record.

Moreover, even if the Plaintiffs had presented evidence that hotels generally treated their guest registers as confidential, that does not mean that the expectation of privacy is constitutionally protected. Establishing a subjective expectation of privacy does not end the question under the Fourth Amendment. *United States v. Sandoval*, 200 F.3d 659, 660 (9th Cir. 2000). Society must also recognize the expectation of privacy as reasonable. *Id.*; *United States v. Gonzalez*, 328 F.3d 543, 546–47 (9th Cir. 2003). The majority opinion does not discuss that question at all.

We have already held, as the majority opinion acknowledges, at 8, that hotel guests do not have a reasonable expectation of privacy in guest registry information once they have provided it to a hotel operator. *United States v. Cormier*, 220 F.3d 1103, 1108 (9th Cir. 2000). In *Cormier*, we noted that the information at issue there, the guest's name and room number, was not "highly personal information." *Id.* A

guest's information is even less personal to the hotel than it is to the guest.

Nonetheless, the majority opinion asserts, at 7, that guest registry information is "commercially sensitive." Nothing is cited to support that assertion. The majority opinion expects us to accept it because it says so.

But that is obviously not always true. There are hotels that voluntarily share information about guests with law enforcement without being served with a warrant and without the duress of this ordinance. Unlike the majority opinion, I do not require you to take my word for it. Take a look at our description of what happened in the *Cormier* case. A police detective went to a motel "located in a traditionally high-crime area" to "obtain the motel's guest registration records," and he got them. 220 F.3d at 1106. There is no mention of a warrant, and if there had been one, Cormier could not have objected to the seizure of the registration records in the first place, so it is safe to infer that there was none. The motel simply gave the registration records to the police detective.

That does not seem surprising to me, and I suspect that it is not such a rare occurrence. More to the point, though, it contradicts the majority opinion's premise that hotels closely guard their registries to protect "commercially sensitive" information and that an inspection under the ordinance would always be unreasonably intrusive. The record contains no evidence to support either proposition.

The majority opinion answers, at 8, by noting that the hotel in the *Cormier* case is just one hotel, and that its willingness to turn records over to the police does

not establish that hotels generally lack an expectation of privacy. But that answer misses the mark in two different ways. One is that Plaintiffs and the majority opinion cite nothing to support their view – my one beats their none. More importantly, the majority opinion forgets that Plaintiffs have presented a facial challenge. Plaintiffs cannot prevail based on their own personal expectations of privacy. They have to demonstrate that there are no circumstances in which the ordinance would be valid, and if there are hotels that do not view guest registry information as private to themselves, the inspection permitted by the ordinance may not be unreasonable.

There can, in fact, be no support in the record for the majority opinion's assertion because Plaintiffs presented no evidence about the treatment of guest registry information. We cannot simply assume that hotels in general expect information contained in their guest registers to be private. *See Salerno*, 481 U.S. at 745 (explaining that a facial challenge fails unless "no set of circumstances exist under which the Act would be valid"); *see also United States v. Mendoza*, 438 F.3d 792, 795 (7th Cir. 2006) (explaining that "without an affidavit or testimony from the defendant, it is almost impossible to find a privacy interest" to support standing) (internal quotation marks omitted). The majority opinion's construction is missing a foundation.

Under the ordinance, a guest registry may be a publicly accessible book in a publicly accessible hotel lobby. Society likely does not recognize a legitimate expectation of privacy in information kept in a manner so easily accessible to anyone entering a hotel. *See Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 657

(1995) (explaining that "[l]egitimate privacy expectations" are diminished in "[p]ublic school locker rooms" because they "are not notable for the privacy they afford"). In some circumstances, a search under the ordinance – which could entail nothing more than a brief look at a publicly accessible record in a publicly accessible lobby for information in which hotel guests have no privacy interest – may be a minimal intrusion. *See King*, 133 S. Ct. at 1969 (explaining that "[t]he fact that an intrusion is negligible is of central relevance to determining reasonableness, although it is still a search as the law defines that term"). The ordinance narrowly cabins officer discretion by permitting only inspections of the specified guest registry information. *Compare Al Haramain Islamic Found., Inc. v. U.S. Dept. of Treasury*, 686 F.3d 965, 992 (9th Cir. 2012) (discussing authority that a warrant may not be required when "intrusions 'are defined narrowly and specifically in the regulations that authorize them'"), *with See v. City of Seattle*, 387 U.S. 541, 543–44 (1967) (discussing the Fourth Amendment's application to administrative investigations, including "perusal of financial books and records").

Without an evidentiary showing, we cannot conclude that any search pursuant to the ordinance would unreasonably intrude on privacy interests that society recognizes as legitimate. *See King*, 133 S. Ct. at 1978 (explaining that "[t]he reasonableness of any search must be considered in the context of the person's legitimate expectations of privacy"). On review of a proper evidentiary foundation, perhaps we would conclude that the balance weighs in favor of the conclusion that hotels have an expectation of privacy in guest registry information that society recognizes as

reasonable. The majority opinion does not do that review, though, and the existing record does not permit it to do so. It is not nearly enough to assert, as the majority opinion does, at 9, that a "search is a search." That is, as the Court noted in *Maryland v. King*, just "the beginning point, not the end of the analysis." 133 S. Ct. at 1969. Unfortunately, the majority opinion fails to travel the rest of the road.

For Plaintiffs to prevail, they must demonstrate that the search provided under the ordinance is unreasonable in all circumstances. They have not, and the majority opinion has not, either.

I respectfully dissent.

APPENDIX B

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-56567
D.C. No. 2:05-cv-01571-DSF-AJW

[Filed July 17, 2012]

NARANJIBHAI PATEL; RAMILABEN PATEL,	)
Plaintiffs-Appellants,	)
v.	)
CITY OF LOS ANGELES, a municipal corporation,	)
Defendant-Appellee.	)

OPINION

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted
December 6, 2010—Pasadena, California

Filed July 17, 2012

Before: Harry Pregerson, Richard R. Clifton, and Carlos T. Bea, Circuit Judges.

Opinion by Judge Clifton;
Dissent by Judge Pregerson

COUNSEL

Frank A. Weiser, Los Angeles, California, for appellants Naranjibhai Patel and Ramilaben Patel.

Rockard J. Delgadillo, City Attorney, Laurie Rittenberg, Assistant City Attorney, Todd Leung (argued), Deputy City Attorney, Los Angeles, California, for appellee City of Los Angeles.

OPINION

CLIFTON, Circuit Judge:

Plaintiffs Naranjibhai Patel and Ramilaben Patel are owners and operators of motels in Los Angeles. They challenge the constitutionality of Los Angeles Municipal Code (LAMC) § 41.49, which requires operators of hotels in the City to maintain certain guest registry information and to make that information available to police officers on request. Appellants contend that LAMC § 41.49 is facially unconstitutional under the Fourth Amendment because it authorizes unreasonable invasions of their private business records without a warrant or pursuant to any recognized warrant exception. Following a bench trial on stipulated evidence, the district court held that the ordinance was reasonable and granted judgment in favor of the City, concluding that the hotel operators did not establish that they had a privacy interest in the guest registry information.

A facial challenge is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exist under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see Washington State Grange v. Washington State Republican Party,* 552 U.S. 442, 449 (2008) ("*i.e.*, that the law is unconstitutional in all of its applications"). That the ordinance might operate unconstitutionally under some circumstances is not enough to render it invalid against a facial challenge. The Patels have not satisfied that high standard. As a result, this facial challenge to the ordinance fails. We affirm.

I. Background

The facts of this case are simple and undisputed. The only exhibit introduced at the bench trial was the text of LAMC § 41.49. The parties stipulated that the Patels have been and continue to be subjected to searches and seizures of their motel registration records by the police, pursuant to the ordinance, without consent or a warrant. The parties also stipulated that the only issue at trial was the facial constitutionality of LAMC § 41.49.

The ordinance defines "hotel" broadly to cover hotels, motels, inns, rooming houses, and other establishments offering space for overnight accommodations for rent for a period of less than 30 days. It requires that every operator of a hotel record certain information concerning its guests, including name and address; total number of guests; make, type and license number of the guest's vehicle if parked on hotel premises; date and time of arrival; scheduled date of departure; room number; rate charged and collected;

method of payment; and the name of the hotel employee who checked the guest in. The record may be kept in electronic, ink, or typewritten form. LAMC § 41.49(2). The ordinance requires that the record be kept on the hotel premises in the guest reception area or in an adjacent office for at least 90 days after the last entry. It provides specific requirements for the form of the guest register and requires that it must be printable if maintained electronically. LAMC § 41.49(3).

With regard to the authority of the police to require that the registration records be made available, the ordinance provides that:

> The record . . . shall be made available to any officers of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

LAMC § 41.49(3)(a).

Based on the stipulated record, the district court entered judgment in favor of the City. The Patels timely appealed.

II. Discussion

We review interpretations of and constitutional challenges to regulations de novo. *Mapes v. United States*, 15 F.3d 138, 140 (9th Cir. 1994). A district court's grant of summary judgment is reviewed de novo as well. *Hapner v. Tidwell*, 621 F.3d 1239, 1244 (9th Cir. 2010).

[1] The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." Not all intrusions violate the Fourth Amendment — only "unreasonable" ones do. As the Supreme Court has observed, "'reasonableness is still the ultimate standard' under the Fourth Amendment." *Soldal v. Cook County*, 506 U.S. 56, 71 (1992) (quoting *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 539 (1967)).

[2] The Fourth Amendment applies "when government officers violate a person's 'reasonable expectation of privacy.'" *United States v. Jones*, 132 S.Ct. 945, 950 (2012). In addition, the Fourth Amendment embodies "a particular concern for government trespass upon the areas ('persons, houses, papers, and effects') [the Fourth Amendment] enumerates." *Id.*[1] The reasonable-expectation-of-privacy test has been added to, not substituted for, the common-law trespassory test." *Id.* at 952. We will discuss both in turn.

A. Reasonable expectation of privacy

Most applications of the Fourth Amendment focus on an individual's "reasonable expectation of privacy." *See Minnesota v. Carter*, 525 U.S. 83, 88 (1998) ("in

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[1] In *Jones*, the Court held that attachment of a Global Positioning System (GPS) tracking device to a vehicle and subsequent use of that device to monitor the vehicle's movements on public streets was a search within the meaning of the Fourth Amendment. That decision was filed after this case was submitted to our court. We requested and obtained from the parties supplemental briefing on the impact of that decision.

order to claim the protection of the Fourth Amendment, a [person] must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable"). The expectation of privacy must be "one which society accepts as objectively reasonable." *United States v. Thomas*, 447 F.3d 1191, 1196 (9th Cir. 2006).

[3] The information covered by the Los Angeles ordinance principally concerns hotel guests. The information does not, on its face, appear confidential or "private" from the perspective of the hotel operator.

[4] We have already held that hotel guests do not have a reasonable expectation of privacy in guest registry information once they have provided it to the hotel operator. *United States v. Cormier,* 220 F.3d 1103, 1108 (9th Cir. 2000). We noted that the information at issue in that case, the guest's name and room number, was not "highly personal information." *Id*. We also noted that once the guest has voluntarily revealed factual information to the hotel in the process of checking in, he can no longer claim a reasonable expectation of privacy in that information, citing *United States v. Miller*, 425 U.S. 435, 441-43 (1976) (holding that a bank customer did not have a reasonable expectation of privacy in records maintained by the bank). *Cormier,* 220 F.3d at 1108.

[5] The Patels presented no evidence to support their contention that hotel owners and operators, including themselves, have their own expectation of privacy in the information contained in guest registers. It may be true, as they allege, that the information could be used by the hotel operators for other purposes, but that does not mean hotel owners have a reasonable

expectation of privacy in the registers. Just because information can be used by a business does not mean that the business owner desires to keep the information private, or that society would accept such a desire as objectively reasonable. Here, there is no evidence that all hotel owners affected by the regulation even consider the information to be private, let alone that any such expectation is reasonable.

Moreover, the Patels have presented no evidence that hotel owners customarily maintain guest registers in a manner that would support a claim of privacy. As *Miller* and *Cormier* recognized, once information is revealed to others it is unlikely that a reasonable expectation of privacy can be established. An old-fashioned guest register may take the form of a book located on the counter in the guest reception area, a form that would appear to satisfy the ordinance. But it is unlikely society would recognize a reasonable expectation of privacy in information kept in a manner so easily accessible by anyone entering the hotel.

[6] To be clear, we do not hold that a hotel owner or operator can never have a reasonable expectation of privacy in guest register information. To this end, we reject the argument of the City that hotel owners can never have a reasonable expectation of privacy in the guest registries simply because the regulation informs them that the police can inspect the registries on request. An individual's otherwise reasonable expectation of privacy cannot be so easily stripped away merely by the adoption of a regulation authorizing searches of an item or location. To hold otherwise would allow the government to conduct warrantless searches just by announcing that it can.

See United States v. Consol. Coal Co., 560 F.2d 214, 217 (6th Cir. 1977), *vacated and remanded on other grounds*, 436 U.S. 942 (1978), *judgment reinstated*, 579 F.2d 1011 (6th Cir. 1978), *cert. denied* 439 U.S. 1069 (1979) ("Even where a statute requires records to be maintained and authorizes on-premises inspection of them in the normal course, no precedent sanctions direct access to the records without demand in the absence of a search warrant."); *see also McLaughlin v. Kings Island*, 849 F.2d 990, 995 (6th Cir. 1988) ("[T]he concept of 'required records' is not synonymous with the absence of a privacy interest."); *Brock*, 834 F.2d 994, 996 (11th Cir. 1987) (concluding business had a privacy interest in records OSHA required it to keep and make available for inspection).

A customer list, for example, may be entitled to the protection of the Fourth Amendment, like other business records and premises. *See Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978) (discussing historical background of Fourth Amendment and noting that "[a]gainst this background, it is untenable that the ban on warrantless searches was not intended to shield places of business"); *United States v. Burger*, 482 U.S. 691, 699 (1987) ("An owner or operator of a business thus has an expectation of privacy in commercial property, which society is prepared to consider reasonable"). Businesses may have a reasonable expectation of privacy in their information contained in their records. *See G.M. Leasing Corp. v. United States*, 429 U.S. 338, 352 (1977) (seizure of corporate books and records implicated company's privacy interest); *See v. City of Seattle*, 387 U.S. 541, 544 (1967) (Fourth Amendment applies to government's "perusal of financial books and records").

[7] But the Patels have provided no evidence or other basis for us to conclude that they have an objectively reasonable expectation of privacy in the information covered by this ordinance, let alone that all hotel operators do. They cannot meet the standard for a successful facial challenge because they cannot "establish that no set of circumstances exist under which the Act would be valid." *Salerno*, 481 U.S. at 745.

B. The common-law trespassory test

The Patels argue that they may have a valid claim even if they lack a reasonable expectation of privacy in the information at issue because the Fourth Amendment protects interests in addition to privacy. That is true, as confirmed by the Court's recent decision in *Jones*.

But "reasonableness" remains the "ultimate standard" under the Fourth Amendment. *Soldal*, 506 U.S. at 71. *Jones* did not change that. *Jones* did not discuss the "reasonableness" standard in applying what it described as the "common-law trespassory test" because, as the Court specifically held, the government had "forfeited" the argument that the attachment and use of the GPS device was reasonable by failing to make that argument to the court of appeals. 132 S.Ct. at 954.

[8] The Fourth Amendment explicitly protects "papers." The guest register covered by the city ordinance is a protected paper. But the intrusion imposed by the ordinance is limited. The Patels make no claim that they have been or will be physically dispossessed of any property. No "seizure" of property

is inherent under the ordinance, nor is it to be expected. The ordinance is concerned with obtaining access to information and provides several options as to the form in which the hotel operator keeps the information. Nothing in the ordinance provides that the hotel operator cannot keep the information available for its own use at the same time that a police officer may be inspecting it. If it is kept electronically or if duplicate records are maintained, both the hotel operator and the police officer may be able to have access to the information at the same time. The ordinance also specifically provides that any inspection "shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." LAMC § 41.49(3)(a).

Nor does the inspection authorized by the ordinance require a physical invasion of the hotel operator's private premises. The ordinance requires that the register information be maintained in the guest reception or guest check-in area or in an office adjacent to that area. The reception area is by nature public, not private. As the records may be kept and made available for inspection there, the ordinance does not require intrusion into any private space.

[9] The Patels have failed to demonstrate that the limited intrusion authorized under the ordinance is unreasonable in their own particular circumstances, let alone in terms that would support a facial challenge to the ordinance.

C. Plaintiffs' additional arguments

The Patels make additional arguments that we conclude are not persuasive.

[10] The Patels contend that the Supreme Court established certain requirements that must be satisfied for a system of warrantless inspections to be permitted under the Fourth Amendment, citing *United States v. Burger*, 482 U.S. 691 (1987). They argue that the Los Angeles ordinance at issue here does not satisfy those requirements, most importantly because the motel industry is not a "closely regulated" industry.[2] It is certainly true that the Court has recognized that the operator of commercial premises in a "closely regulated" industry has a reduced expectation of privacy, such that warrantless inspection of those premises may be accepted as reasonable under the Fourth Amendment when a similar inspection of different premises would not be permitted. *See id.* at 702. But that assumes that there is a privacy interest protected by the Fourth Amendment in the first place. Because the Patels have failed to establish that they have a reasonable expectation of privacy in the information covered by the ordinance, there is no need to justify the examination of the guest register as a warrantless administrative search under *Burger*.

The Patels also cite our decision in *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 539-42 (9th Cir. 2004), as directly on point in support of their claim. It is not. That case dealt with regulation of abortion clinics. In that context we noted that "the expectation of privacy is *heightened*, given the fact that the clinic provides a

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[2] The district court agreed with the Patels on that point, concluding that the City failed to establish that hotels and motels were closely regulated for the purpose of qualifying for that exception for warrantless administrative searches. Because we resolve the case on another ground, we do not reach that issue.

service grounded in a fundamental constitutional liberty, and that all provision of medical services in private physicians' offices carries with it a high expectation of privacy for both physician and patient." *Id*. at 550. The Patels have not established a reasonable expectation of privacy in the first place.

III. Conclusion

[11] The Patels have not established that all hotel owners have a reasonable expectation of privacy in their guest registers, or even that they themselves do. Nor have they demonstrated that the inspection of guest registers authorized by the ordinance is an unreasonable intrusion. As a result, we conclude that LAMC § 41.49 is not facially unconstitutional.

AFFIRMED.

PREGERSON, Circuit Judge, dissenting:

The Supreme Court has repeatedly held that warrantless searches by police "'are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'" *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)); *see also Mincey v. Arizona*, 437 U.S. 385, 390 (1978) ("[I]t is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'") (quoting *Katz*, 389 U.S. at 357). Today, the majority overlooks this well-established rule.

The majority upholds an ordinance that violates the Fourth Amendment on its face. Los Angeles Municipal Code Section 41.49 authorizes the Los Angeles Police Department to search hotel business records *without a warrant*. To pass constitutional muster, a warrantless search of a business, like any warrantless search, must be based on a "specifically established and well-delineated exception[ ]" to the Fourth Amendment's warrant requirement. *Gant*, 556 U.S. at 338 (internal quotation marks omitted); *see also Marshall v. Barlow's, Inc.*, 436 U.S. 307, 311 (1978) (noting that the Fourth Amendment's warrant requirement applies to "places of business"). What is the "specifically established and well-delineated exception[ ]" put forth by the majority? There is none. Instead, the majority simply declares that the searches at issue are reasonable. Maj. Op. at 8202-03.

The majority concedes that the ordinance authorizes a "search" within the meaning of the Fourth Amendment. *See* Maj. Op. at 8202 ("The Fourth Amendment explicitly protects 'papers.' The guest register covered by the city ordinance is a protected paper."). The majority further concedes that the ordinance authorizes these searches to occur without a warrant. Maj. Op. at 8197.

Thus it is clear that, to comply with the Fourth Amendment, the ordinance must fall within a "specifically established and well-delineated exception[ ]" to the warrant requirement. *Gant*, 556

U.S. at 338 (internal quotation marks omitted). Yet the majority does not offer any exception.[1]

The majority opinion conflicts with long-standing and well-established Fourth Amendment jurisprudence. Accordingly, I dissent.

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[1] I agree with the district court that the exception to the warrant requirement for "closely regulated" industries does not apply. *See New York v. Burger*, 482 U.S. 691, 700-02 (1987) (describing exception to the warrant requirement for "closely regulated" industries). The city has not offered any evidence that hotels in Los Angeles have been subjected to intense regulatory scrutiny. The city cites a handful of state and local laws to establish that hotels are "closely regulated," but most of the laws cited by the city are laws of general applicability, and do not establish that *hotels* are a closely regulated industry. *See Rush v. Obledo*, 756 F.2d 713, 722 (9th Cir. 1985).

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 05-1571 DSF (AJWx)

[Filed September 5, 2008]

NARANJIBHAI PATEL, et al.,

Plaintiffs,

vs.

CITY OF LOS ANGELES, et al.,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AFTER COURT TRIAL

This matter was tried before the Court on April 26, 2008. Having fully considered the submissions of the parties and their oral arguments, the Court now grants judgment in favor of Defendant, and makes the findings of fact and conclusions of law set forth below pursuant to Rule 52 of the Federal Rules of Civil Procedure.

I. FINDINGS OF FACT[1]

1. Los Angeles Municipal Code ("LAMC") Sec. 41.49 is titled "Hotel Registers and Room Rentals" and provides in part:

LAMC Sec.41.49.2. **Hotel Record Information**.

(a) Every operator of a hotel shall keep a record in which the following information shall be entered legibly, either in electronic, ink or typewritten form prior to the room being furnished or rented to a guest:

(1) As provided by the guest in response to an inquiry or by other means:

(I) The name and address of each guest and the total number of guests;

(ii) The make, type and license number of the guest's vehicle if the vehicle will be parked on hotel premises that are under the control of the Operator or hotel management;

(iii) Identification information as required by Subsection 4(a) and (b) of this section.

(2) The day, month, year and time of arrival of each guest;

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[1] The parties agree that there are no disputed issues of fact.

(3) The number or other identifying symbol of location of the room rented or assigned each guest;

(4) The date that each guest is scheduled to depart;

(5) The rate charged and amount collected for rental of the room assigned to each guest;

(6) The method of payment for the room;

(7) The full name of the person checking in the guest.

(b) For a guest checking in via an electronic registration kiosk at the hotel, instead of the information required by Subsection 2.(a), the hotel shall maintain the name, reservation information and credit card information provided by the guest, as well as the identifying symbol of the kiosk where the guest checked in and the room number assigned to the guest.

LAMC 41.49.3 **Maintenance of Hotel Record**. Every operator of a hotel shall comply with the following requirements for maintaining the hotel record:

(a) The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last

entry in the record and *shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business*. (emphasis added.)

(b) No person shall alter, deface or erase the record so as to make the information recorded in it illegible or unintelligible, or hinder, obstruct or interfere with any inspection of the record under this section.

(c) Any record maintained in the form of a book shall be permanently bound, each page shall be sequentially numbered and the book shall be the minimum size of eight by ten inches. No page shall be removed from the book. Any record maintained in the form of cards shall be on cards that are the minimum size of two and one-half inches by four inches and numbered consecutively and used in sequence. Any card numbered within the sequence of utilized cards shall be preserved as part of the record even if it is not used for a room rental. The numbers shall be printed or otherwise indelibly affixed to the cards. If maintained electronically, the record shall be printable.

(d) Nothing in this section absolves the operator from maintaining the record for longer than 90 days in order to comply with any other provision of law, including the obligation to

maintain and produce records for the purpose of paying a transient occupancy tax.

2. Plaintiffs have been subject to and continue to be subject to searches and seizures of motel registration records by the Los Angeles Police Department without consent or warrant pursuant to LAMC Sec. 41.49, which permits law enforcement to demand inspection of motel registers at any time without consent or warrant. (Defs.' Final Pretrial Conference Order 2-3.[2])

3. The parties agree that the sole issue in this action is a facial constitutional challenge to LAMC Sec. 41.49 under the Fourth Amendment. (Id. 3.)

II. CONCLUSIONS OF LAW REGARDING ADMINISTRATIVE SEARCH EXCEPTION

1. The state may conduct warrantless searches of a business under the administrative search exception to the Fourth Amendment if the business is "closely regulated." Tucson Woman's Clinic v. Eden, 379 F.3d 531, 550 (9th Cir. 2004).

2. The "warrantless inspection, even in the context of a pervasively regulated business, will be deemed to be reasonable only so long as three criteria are met. First, there must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the

[2] In light of this admitted fact, the Court finds that Plaintiffs have standing.

inspection is made. Second, the warrantless inspections must be necessary to further the regulatory scheme. . . . Finally, the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant." New York v. Burger, 482 U.S. 691, 702-03 (1987) (internal citations and quotations omitted).

3. Thus, determining whether a business is "closely regulated" is the threshold inquiry under the administrative search analysis.

4. Whether a business is closely regulated is defined by the pervasiveness and regularity of the regulation and the effect of such regulation on an owner's expectation of privacy. Tucson Woman's Clinic, 379 F.3d at 550.

5. The following industries have been determined to be closely regulated: vehicle dismantling, firearms dealers, liquor distribution, and liquefied propane gas retailing. Id. The veterinary drug and stone quarrying/mining industries have also been labeled as closely regulated industries. U.S. v. 4,432 Mastercases of Cigarettes, More or Less, 448 F.3d 1168, 1176 (9th Cir. 2006).

6. Defendant submits no evidence that hotels or motels in California or Los Angeles have been subjected to the same kind of pervasive and regular regulations as other recognized "closely regulated" businesses. For example, unlike the liquor industry, which has been "long subject to

close [federal] supervision and inspection," Burger, 482 U.S. at 700, there is no evidence that the hotel and motel industry have been subject to intense regulatory scrutiny. Therefore, the Court is not persuaded on this record that hotels and motels are closely regulated businesses for purposes of the administrative search exception to the Fourth Amendment.

7. Because of the conclusions set forth below, however, it is not necessary to make a finding on this issue or to analyze the Burger factors to determine the reasonableness of a warrantless inspection under LAMC Sec. 41.49.

III. CONCLUSIONS OF LAW REGARDING REASONABLE EXPECTATION OF PRIVACY IN HOTEL REGISTERS

8. A "facial challenge to a legislative Act is . . . the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." U.S. v. Salerno, 481 U.S. 739, 745 (1987).

9. "[I]n order to claim the protection of the Fourth Amendment, a [person] must demonstrate that he personally has an expectation of privacy in the place searched . . . ." Minnesota v. Carter, 525 U.S. 83, 88 (1998).

10. Hotel guests have no reasonable expectation of privacy in a hotel's guest registration records. U.S. v. Cormier, 220 F.3d 1103, 1107-08 (9th Cir. 2000). (In Cormier, the motel owner voluntarily agreed to provide the guest check-in

register to the police. Id. at 1108. The motel guest unsuccessfully asserted that he had a reasonable expectation of privacy in the guest register. Id.)

11. Here, however, motel owners assert that they have a reasonable expectation of privacy in the guest register. No case cited to or found by the Court suggests that hotel or motel owners have a reasonable expectation of privacy in registers created pursuant to a municipal mandate.

12. In U.S. v. Miller, 425 U.S. 435, 440 (1976), the Supreme Court concluded that a party must be able to assert ownership or possession of a record to claim Fourth Amendment protection. The Court is not convinced that hotel or motel owners have an ownership or possessory interest - or at least not one that gives rise to a privacy right - in the guest registers. The hotel and motel owners must create and maintain these registers in order to comply with the ordinance at issue. They do not contend that the requirement to create and maintain the registers violates their rights. They argue that the registers are business records that they may use for other purposes, but it does not appear that they are prevented from maintaining a separate set of documents containing the same or similar information in another location not subject to inspection.

13. The hotel and motel owners may keep the records available for review in a guest check-in or guest reception area. Hotels and motels are generally open to receive guests at all times. The

records subject to inspection are limited to those that are required by law to be kept. The Court finds the ordinance to be reasonable.

14. Plaintiffs have not met the high burden of showing that LAMC Sec. 41.49 cannot be valid under any circumstances. It can be reasonably interpreted as a measured ordinance meant to discourage and fight crime in hotels and motels.

15. The Court concludes that LAMC Sec. 41.49 is not unconstitutional on its face.

DATED: 9/5/08

/s/ Dale S. Fischer
Dale S. Fischer
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 05-1571 DSF (AJWx)

[Filed September 5, 2008]

NARANJIBHAI PATEL, et al.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
CITY OF LOS ANGELES, et al.,	)
	)
Defendants.	)
	)

JUDGMENT FOR DEFENDANTS
AFTER COURT TRIAL

The Court having conducted a trial of this case, having reviewed the evidence submitted by the parties, and having issued its Findings of Fact and Conclusions of Law After Court Trial, it is ORDERED, ADJUDGED AND DECREED that judgment be entered against plaintiffs and in favor of defendants, that the plaintiffs take nothing, and that defendants recover its costs of suit pursuant to a bill of costs filed in accordance with 28 U.S.C. § 1920.

Dated: 9/5/08

/s/ Dale S. Fischer
Dale S. Fischer
United States District Judge

APPENDIX D

Relevant Constitutional and Statutory Provisions

U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Los Angeles Municipal Code § 41.49 Hotel Registers and Room Rentals.

(Amended by Ord. No. 179,025, Eff. 9/5/07.)

1. **Definitions.** For purposes of this section:

Guest means a person who exercises occupancy or is entitled to occupancy in a hotel by reason of concession, permit, right of access, license or other agreement.

Hotel means any public or private space or structure, including but not limited to, any inn, hostelry, tourist home, motel, lodging house or motel rooming house offering space for sleeping or overnight accommodations in exchange for rent and for a period of less than 30 days. Hotel includes the parking lot and other common areas of the hotel. Hotel does not include living accommodations provided at any governmental or nonprofit institution in connection with the functions of that institution.

Identification document means a document that contains the name, date of birth, description and picture of a person, issued by the federal government, the State of California or another state, or a county or municipal government subdivision or agency, or any of the foregoing, including but not limited to, a motor vehicle operator's license, an identification card, or an identification card issued to a member of the Armed Forces. Identification document also includes a passport issued by a foreign government or a consular identification card, issued by a foreign government to any of its citizens and nationals, which has been approved by the City of Los Angeles as valid identification.

Occupancy means the use or possession, or the right to the use or possession, of any room in any hotel.

Operator means the person who is either the proprietor of the hotel or any other person who has the right to rent rooms within the hotel, whether in the capacity of owner, manager, lessee, mortgagee in possession, licensee, employee or any other capacity.

Record means written documentation of information about a guest. A record may be maintained electronically, in a book or on cards.

Rent means the consideration charged, whether or not received, for the occupancy of a room in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature.

Reservation means a request to hold a room for a potential guest that includes the following information and is documented in writing: (i) The potential guest's name and contact information and (ii) the date and time when the contact was made.

Room means any portion of a hotel, which is designed or intended for occupancy by a person for temporary lodging or sleeping purposes.

Walk-in guest means any guest who did not make a reservation for a room prior to the time that he or she seeks to check in at the hotel

2. **Hotel Record Information.**

(a) Every operator of a hotel shall keep a record in which the following information shall be entered

legibly, either in electronic, ink or typewritten form prior to the room being furnished or rented to a guest:

(1) As provided by the guest in response to an inquiry or by other means:

(i) The name and address of each guest and the total number of guests;

(ii) The make, type and license number of the guest's vehicle if the vehicle will be parked on hotel premises that are under the control of the Operator or hotel management;

(iii) Identification information as required by Subsection 4.(a) and (b) of this section.

(2) The day, month, year and time of arrival of each guest.

(3) The number or other identifying symbol of location of the room rented or assigned each guest.

(4) The date that each guest is scheduled to depart.

(5) The rate charged and amount collected for rental of the room assigned to each guest.

(6) The method of payment for the room.

(7) The full name of the person checking in the guest.

(b) For a guest checking in via an electronic registration kiosk at the hotel, instead of the

information required by Subsection 2.(a), the hotel shall maintain the name, reservation information and credit card information provided by the guest, as well as the identifying symbol of the kiosk where the guest checked in and the room number assigned to the guest.

3. **Maintenance of Hotel Record.** Every operator of a hotel shall comply with the following requirements for maintaining the hotel record.

(a) The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

(b) No person shall alter, deface or erase the record so as to make the information recorded in it illegible or unintelligible, or hinder, obstruct or interfere with any inspection of the record under this section.

(c) Any record maintained in the form of a book shall be permanently bound, each page shall be sequentially numbered and the book shall be the minimum size of eight by ten inches. No page shall be removed from the book. Any record maintained in the form of cards shall be on cards that are the minimum size of two and one-half inches by four inches and numbered consecutively and used in sequence. Any card numbered within the sequence of utilized cards

shall be preserved as part of the record even if it is not used for a room rental. The numbers shall be printed or otherwise indelibly affixed to the cards. If maintained electronically, the record shall be printable.

(d) Nothing in this section absolves the operator from maintaining the record for longer than 90 days in order to comply with any other provision of law, including the obligation to maintain and produce records for the purpose of paying a transient occupancy tax.

4. **Renting of Hotel Rooms.** The operator of a hotel shall not rent a room except in compliance with the following conditions.

(a) A guest who pays all or part of the rent for a room in cash at the time of checking in, and a walk-in guest, shall be required to present an identification document at the time of checking into the hotel.

(b) A room shall not be rented hourly or for less than 12 hours unless an identification document is obtained from the guest when he or she checks into the hotel.

(c) The number and expiration date of the identification document obtained under Subsections 4.(a) or (b) shall be recorded and maintained by the operator in the record for at least 90 days.

5. **Training of employees.** The owner or proprietor of a hotel business shall take all reasonable steps, including but not limited to, providing training regarding this section to ensure that the person who checks a person into the hotel complies with the provisions of this section. A person who has not been

trained shall not be assigned to check persons into the hotel.

6. **Guest obligations.**

(a) No person shall give any assumed, false or fictitious names, or any other name other than his or her true name when checking into a hotel.

(b) No person shall present to any hotel identification that is any way false, altered or counterfeit or belongs to another person.

(c) Subsection 6. shall not apply to law enforcement personnel engaged in an investigation.

APPENDIX E

State Statutes, County and Municipal Ordinances

State Statutes

Me. Rev. Stat. tit. 30-A, § 3821 (2014)

* * *

2. RECORD OF DEPARTURES. The proprietor or the proprietor's agent shall keep and maintain a record showing the date when the occupant of each room surrenders the room. This record may be made a part of the register.

3. AVAILABILITY FOR INSPECTION. Both the register and the record must be kept for 2 years and be available at all reasonable times to the inspection of any lawful agent of the licensing authority or any full-time law enforcement officer as defined in *Title 25, section 2801-A*, subsection 4. The guest register may be "kept," within the meaning of this section, when reproduced on any photographic, microfilm or other process that reproduces the original record.

4. VIOLATION AND PENALTY. Notwithstanding *Title 17-A, section 4-A*, any person who willfully violates this section is guilty of a Class E crime and shall be punished by a fine of not less than $ 100 nor more than $ 500, or by imprisonment for not more than 90 days for each offense, or both.

Mass. Ann. Laws ch. 140, § 27 (1991)

Every innholder, and every lodging house keeper required so to do under section twenty-eight, and every person who shall conduct, control, manage or operate, directly or indirectly, any recreational camp, overnight camp or cabin, motel or manufactured housing community shall keep or cause to be kept, in permanent form, a register in which shall be recorded the true name or name in ordinary use and the residence of every person engaging or occupying a private room averaging less than four hundred square feet floor area, excepting a private dining room not containing a bed or couch, or opening into a room containing a bed or couch, for any period of the day or night in any part of the premises controlled by the licensee, together with a true and accurate record of the room assigned to such person and of the day and hour when such room is assigned. The entry of the names of the person engaging a room and of the occupants of said room shall be made by said person engaging said room or by an occupant thereof, except that when five or more members of a business, fraternal, or social group or other group having a common interest are engaging rooms, they may designate one person to make said entry on their behalf and prior to occupancy. Until the entry of such name and the record of the room has been made, such person shall not be allowed to occupy privately any room upon the licensed premises. Such register shall be retained by the holder of the license for a period of at least one year after the date of the last entry therein, and shall be open to the inspection of the licensing authorities, their agents and the police. Whoever violates any provision of this section shall be punished by a fine of

not less than one hundred nor more than five hundred dollars or by imprisonment for not more than three months, or both.

County Ordinances

Alameda County, Cal., Code § 3.20.010 (2013)

Every person engaged in the business of conducting or operating a hotel, inn, rooming house, lodging house, auto camp or other similar place within the county shall require all guests to register by requiring all guests to sign their names and write their addresses in a book kept for that purpose. Minor children accompanied by a parent need not sign their name or write their address in the book. The book shall at all times be open to public inspection and must be kept for a period of not less than five years after the last registration in the book.

Maui County, Haw., Code § 5.08.010

A. Every owner, keeper or proprietor of any lodginghouse, roominghouse or hotel shall keep a register wherein he shall require all guests, roomers, or lodgers to inscribe their names upon their procuring of lodging or a room or accommodations. The register shall also show the day of the month and year when the name was inscribed, and the room occupied or to be occupied by the lodger, roomer or guest in such lodginghouse, roominghouse or hotel. The register shall at all times be open to inspection by the chief of police or any police officer or detective of the Maui police department, when required.

B. For the purpose of this chapter, "register" means either a permanently bound blank book, sufficient in size to contain all the information herein required to be placed therein, or a series of individual cards with adequate space on each to enter all the information required by this section. All cards thereafter shall be systematically filed and be open to inspection as provided in subsection A of this section.

Municipal Ordinances

Alsip, Ill., Code § 6-407 (2013)

Every person to whom a hotel or motel business license has been issued shall at all times keep a register within the premises, in which shall be written the names of all occupants renting or occupying hotel, motel or dwelling units in such hotel or motel. The register shall be signed by the person renting the unit. The register shall also contain the names of all other persons occupying the room or rooms rented by the person and shall include the date and time when such units were rented. The register shall at all times be open to inspection by the police chief, the fire chief, the commissioner of health, the building inspector, or their authorized representatives.

Arcadia, Cal., Code § 4231.6 (2013)

Such register shall be kept in a conspicuous place, and shall be at all times open to the inspection of any guest of such house or hotel and of any executive or police officer of the City.

Atlanta, Ga., Code § 30-768 (2013)

(a) Any license granted under this division shall be subject to revocation for cause. If any officer or employee of a hotel, lodginghouse or other place having a register containing the names of guests shall fail or refuse to permit a police officer to check the register, it shall be deemed a sufficient cause for revocation of a license. The failure of the applicant, license holder, the property owner or any person acting as an agent for or on behalf of such person to pay property taxes, hotel/motel occupancy taxes or any other taxes required by law to be paid in association with the operation of the business or licensed premises shall constitute grounds for the denial of an application for an original or renewal license and the revocation of a current license to operate the hotel, motel, lodging house, or rooming house.

(b) Whenever in the opinion of the license review board there is cause to revoke a license, a written notice of intention to revoke shall be furnished the holder of the license three days before a regular or called meeting of the license review board, at which time the holder of the license may make such showing as the holder of the license may deem proper. After a hearing, the license review board shall report its recommendation to the mayor, who may revoke the license if in the mayor's discretion it is to the best interest of the peace and good order of the city.

Baton Rouge, La., Code § 13:1062 (2013)

A. Every owner, manager or operator of any hotel or motel shall keep a register in which shall be entered the name and address of each guest. The register shall also indicate the day, month, year and hour of arrival of each guest and the number or other identifying symbol of location of the room, dwelling unit or space rented or assigned each guest and the date that such guest departs. All such registers shall be maintained for a period of three (3) years from and after the date of entry, and shall be available at all times for inspection by any member of the police department. No person shall alter, deface or erase such a register so as to make the information recorded therein illegible or unintelligible.

B. No owner, manager, operator, employee or agent of any hotel or motel shall rent or assign any room, dwelling unit or space in said hotel or motel to any person until such time as the person shall have registered as set forth in subsection A of this section.

C. No owner, manager, operator, employee or agent of any hotel or motel shall rent any guest room or dwelling unit in such hotel or motel more than once within a eighteen-hour period. Under no circumstances shall any room be rented on an hourly basis or for an hourly rate.

D. Any person convicted of violating the provisions of this section, shall be fined not less than three hundred dollars ($300.00) and not more than

five hundred dollars ($500.00) or imprisoned for not more than six (6) months, or both, at the discretion of the court.

Burlington, N.C., Code § 23-41 (2010)

* * *

(e) The register required by this section shall be maintained by the manager of said business for one (1) year of the date of rental and subject to inspection at any reasonable time by the chief of police or his designee, fire chief or his designee, or chief building inspector or his designee while in the performance of his duties.

(f) The guest vehicle parking area of any business licensed the under this section shall be accessible at all times to the chief of police, fire chief, chief building inspector or their designees.

* * *

(i) *Penalty. Any violation of subsections (a) through (h) of this section shall be a misdemeanor, punishable by imprisonment up to thirty (30) days, or a fine of up to five hundred dollars ($500.00) in the discretion of the court.*

Calumet City, Ill., Code § 54-1356 (2013)

Each hotel proprietor, and each operator therein, shall keep or cause to be kept a register of guests as required by state law. Such register or list shall be available for inspection by any member of the police department at any time.

Chesapeake, Va., Code § 19-318 (2013)

(a) Every person operating any hotel shall keep and maintain therein a register containing the name and home address of each person renting or occupying a room therein. Such registered shall be signed by the person renting a room or someone by his or her authority, and the proprietor of such hotel shall thereupon write, opposite such name so registered, the number of the room assigned to and occupied by such guest, together with the time when such room is rented. Until all of the aforesaid entries have been made in such register, in ink, no guest shall be permitted to occupy privately any room in such hotel. In the event a block of more than two rooms are being rented for a convention or industrial development activities, the register may be signed by convention coordinator or sponsoring agency.

(b) When the occupant of a room so rented shall quit and surrender the same, it shall be the duty of the proprietor of the hotel to enter the time thereof, if known, in such register opposite the name of such occupant.

(c) The register required by this section shall be subject to inspection at any and all reasonable times by the chief of police or by any police officer.

(d) A copy of registry information will be supplied by the person having authority for the operation of the hotel to the chief of police or any police officer upon request.

Chino, Cal., Code § 98-06 (1998)

Every operator of any public lodging facility in the city shall at all times keep and maintain a register wherein all guests, roomers or lodgers shall print and sign their names upon their procurement of a room. The operator shall verify the identity of the person procuring the room with a valid driver's license or other reliable photo identification and shall record the driver's license number or identification number next to the person's signature. The operator shall also show the date and time the room was procured, the home address of each guest or person renting or occupying a room or rooms, and the make, year and license number of the vehicle of such person, and the state in which such vehicle is licensed. Until all of the aforesaid entries have been made in such register, no guest shall be permitted to occupy any room in such public lodging facility. The operator of such facility shall write opposite such name or names so registered the number of each room assigned to and occupied by each such guest. The register shall be kept in a conspicuous place in the public lodging facility and shall at all times be open to inspection by any police officer and by any designated representative of the city.

Columbia, S.C., Code § 11-3 (2012)

(a) *Suspicious characters, disorderly conduct, etc., to be reported to police.* All persons renting rooms or furnishing board and lodging as provided in this section shall report to the police immediately any suspicious character who may apply for rooms or board, and also any disorderly persons or disorderly conduct, or report any

suspicious conduct on the part of any person to whom rooms or board may have been supplied.

(b) *Guest register required.* Every person operating a hotel, motel or other place of public accommodation shall keep a register of guests and other persons staying at such place.

(c) *Information to be shown on register.* Every register of guests required by subsection (b) of this section shall show the signature of the guest, written in ink, and the street and home address of each and every guest.

(d) *Tampering with entries in register.* Erasures or alterations on or in the register of guests required by the provisions of this section shall not be permitted or made for any purpose.

(e) *Inspection of register.* Every register of guests required by the provisions of this section shall be open for inspection of the police or any other proper officer at any time.

Crete, Ill., Code § 12-456 (2011)

It shall be unlawful to knowingly permit any fugitive from justice to stay in any rooming house or hotel. Each hotel proprietor shall keep or cause to be kept a register of guests as required by state law, and each operator of a rooming house shall keep a list of all persons staying therein. Such registration or list shall be available for inspection by any member of the police department at any time.

Denver, Colo., Code § 33-17 (2013)

(a) Every person conducting any hotel, lodging house, rooming house or other place where transients are accommodated whatsoever in the city shall, at all times, keep and maintain therein a standard hotel register, in which shall be inscribed in ink or indelible pencil the name and home street and town address of each and every guest or person renting or occupying a room therein. Such register shall be signed by each occupant of a room, or by the person renting same, for themselves or on behalf of such persons for whom the person is renting the same, and the proprietor or person in charge of such hotel, lodging house, rooming house or other place where transients are accommodated, or an agent, shall thereupon write opposite such name so registered, the number of each room assigned to and occupied by each guest, together with the time when such room was rented; and until all of the aforesaid entries shall have been made in such register, no such guest shall be suffered or permitted to occupy privately any room in such house.

(b) When the occupant of each room so rented shall quit and surrender the same it shall be the further duty of the proprietor or person in charge of such hotel or house, or an agent, to enter the time thereof in such register opposite the name of such occupant.

(c) Such register shall be kept at all times open to the inspection of any guest of such hotel, lodging house, rooming house or other place where

transients are accommodated, wherein such register is kept and of any police officer or other public officer of the city.

Downey, Cal., Code § 775 (1984)

Every owner, keeper, or proprietor of any lodging house, rooming house, or hotel shall keep a register wherein he shall require all guests, roomers, or lodgers to inscribe their names and motor vehicle license number, if applicable, upon their procuring lodging or a room or accommodations. Said register shall also show the day of the month and year when said name was so inscribed and the room occupied or to be occupied by said lodger, roomer, or guest. Said register shall be kept in a conspicuous place in said lodging house, rooming house, or hotel and at all times shall be open to inspection by the lodgers, roomers, or guests of said place, and the Chief of Police or any regular policeman or police detective.

East Peoria, Ill., Code § 3-15-13 (2013)

The operator of such hotel or motor court shall keep a register which shall contain the names and addresses of all persons occupying any room or suite of rooms within the hotel or motor court, and the hour and date of arrival and departure of such occupants, and the state automobile license number and license year of the vehicle or vehicles of such occupants. Said register shall be available for examination at all times by members of the city council, officers of the city police department or of state or Federal law enforcement or investigative agencies.

East Point, Ga., Code § 13-2014 (2013)

All registers of any hotel, tourist court or boardinghouse, required by the provisions of section 13-2012, shall be open to the inspection of police officers when so requested at reasonable times, and it shall be the duty of the hotel, tourist court and boardinghouse keepers to exhibit such registers to such police officers when requested to do so.

Elizabeth, N.J., Code § 5.48.030 (2013)

Such register shall be available at all times and shall be produced for inspection on demand of any police officer.

El Monte, Cal., Code § 5.48.030 (2013)

Erasures or alterations on the register required by Section 5.48.020 shall not be permitted or made for any purpose, and it is unlawful to erase a name or names or address or addresses or to permit such an erasure. Such register shall be kept in a conspicuous place, and shall be at all times open to the inspection of any guest of such house or motel and of any executive or police officer of the city.

Emeryville, Cal., Code § 82-08 (1982)

All hotels, motels, lodging houses, rooming houses and other places or establishments in the City of Emeryville where living rooms or sleeping accommodations are rented shall keep a register in which shall be entered in a legible fashion, the following information: the true names and residence address of all persons to be accommodated. The register shall show the day, month and year when such

information was entered, and the room or rooms to be occupied by such persons. It shall be unlawful for any owner, proprietor or lessee of a hotel, motel, lodging house, rooming house or other place or establishment in the City of Emeryville where living rooms or sleeping accommodations are rented, to refuse or neglect to comply with the requirements hereinabove set forth….Such registration shall at all times be open for inspection by the Chief of Police or his authorized representative.

Fremont, Cal., Code § 3-8200 (1990)

No person shall provide sleeping accommodations in any hotel, inn, motel, auto camp, public rooming or lodging house, or other similar place within the city unless the person requesting such accommodation shall have filled out a register with at least the following information: names and home addresses of all persons to be accommodated, the make, type and license number of any automobile, trailer or other vehicle, and the state in which such vehicle or vehicles is or are registered and the year of registration….Such register shall at all times be available for examination by any policeman of the city and by any other duly authorized peace officer or law enforcement officer of the state, federal or any local government.

Fresno, Cal., Code § 9-105 (2013)

(a) Every person within the city who keeps, maintains or controls a hotel or lodging house shall provide, keep and maintain a public register, and shall require every person who rents or occupies a room in such hotel or lodging house to write in said register his name and

place of residence. Such registration shall be made upon a page of such register properly dated with reference to the day of the year, month and week, and at the time the person rents or arranges to occupy a room.

(b) Such hotel or lodging house register so kept shall be open to the public at any and all reasonable hours, and the pages thereof shall, upon demand, be open for inspection or investigation by any member of the Police Department or other peace officer of the city, immediately upon demand having been made by such peace officer. (Orig. Ord. 1076).

Glendale, Cal., Code § 5271 (2001)

Every manager or person in control of any hotel in the city shall keep a register for the registration of transient guests. The guest register shall at all times be open and subject to reasonable inspection by city officials or by any law enforcement officer in the city.

Granite City, Ill., Code § 5.100.060 (2012)

It is unlawful to knowingly permit any fugitive from justice to stay in any rooming house or hotel. Each hotel proprietor shall keep or cause to be kept a register of guests as required by state law, and each operator of a rooming house shall keep a list of all persons staying therein. Such register or list shall be available for inspection by any member of the police department at an time.

Hampton, Va., Code § 16.1-4 (2013)

(a) Every person conducting any hotel in the city, where rooms are let for less than a week, shall at all times keep and maintain therein a guest register, with the name and home address of each guest or person renting or occupying a room therein for less than a week.

(b) Each person renting a room shall sign the register, provide personal identification, and list each person who will at any time visit or occupy the room.

(c) The proprietor of such hotel or his agent, shall thereupon write opposite such names so registered the number of the room assigned to and occupied by such guests, together with the time for which such room is rented. Until all of the aforesaid entries have been made in such register, no guest shall be permitted to occupy privately any room in such hotel.

(d) When the occupant of a room so rented pursuant to this section shall quit and surrender the same, it shall be the duty of the proprietor of the hotel, or his agent, to enter the time thereof in the register kept under this section, opposite the name of such occupant.

(e) The register required by this section shall be kept at all times open to the inspection of any police officer in the course of police business.

(f) No person conducting any hotel in the city shall be guilty of a violation of this section if such person has no knowledge of an undisclosed

occupant, guest or visitor of a room and has complied, in good faith, with the requirements of this section.

Henderson, Nev., Code § 8.28.010 (2014)

Every person within the limits of the city who keeps, maintains or controls any hotel, rooming house or lodging house, shall provide, keep and maintain a public register, and shall require every person who rents or occupies a room in such hotel, rooming house or lodging house to register his name and place of residence. Such registration shall the day of the year, month and week, and the time of day the person rents, or arranges to occupy a room shall also be therein entered.

Such hotel, rooming house or lodging house register so kept shall, upon demand, be open for inspection or investigation by any member of the police force or other peace officer of the city, business license officer or code enforcement officer immediately upon demand having been made by any such member of the police force or other officer.

Hoffman Estates, Ill., Code § 8-8-7 (2013)

A. *Definition.* The term "hotel" when used in this Code shall mean every building, structure or any part thereof used, kept or maintained as or advertised or held out to the public to be an inn, hotel, family hotel, apartment hotel, lodging house, motel, dormitory or other place where sleeping accommodations are furnished or maintained for hire or rent for 20 or more transient persons, whether with or without meals.

B. *License Required.* No person shall conduct, keep, manager or operate, or cause to be conducted, kept manager or operated, a hotel without obtaining a license therefor.

C. *Register.* The proprietor, manager, keeper or clerk of every hotel shall keep a register in which shall be entered the name, and if a transient, the permanent address and license plate number, if any, of every person who becomes a roomer, boarder, lodger or paying guest therein. Such register shall also show the number of the room occupied by such person, the date of his arrival and the period for which the guest engaged board or lodging. The register shall be accessible, without charge, to the Police Chief or any police officer.

D. *Regulations.* Each applicant shall comply with all applicable regulations of the Department of Code Enforcement, Police Department, Fire Department.

Homewood, Ala., Code §§ 14-20 and 14-22 (2013)

§ 14-20

(a) Every person, proprietor, owner, operator or lessee, or agent, conducting any hotel or motel in the city shall at all times keep and maintain at the main or central entrance or office thereof a book or register in which each patron or occupant occupying any room or accommodations therein shall inscribe with ink or indelible pencil the name, age and home address of each patron occupying any such room or accommodations in any such place. Such book or register shall be signed at the main or central entrance or office of any such hotel or motel, and

not elsewhere on the premises, by each patron occupying any room or accommodations of any sort in any of above-named places, and the proprietor, owner, operator or lessee, of any such hotel or motel, or agent, shall thereupon write opposite such name so registered the license number and make of motor vehicle, if any, in which such patron or occupant traveled to such hotel or motel, the date and hour of arrival and the room or quarters rented or assigned to such patron or occupant.

* * *

(d) The book or register of any such hotel or motel shall be open to inspection at all times by the chief of police or any police officer of the city on duty at the time of any such inspection, for a period of two (2) years after the making of each entry in such book or register.

§ 14-22

It shall be the duty of the proprietor, owner, operator or lessee, or agent, of any hotel or motel to keep and preserve the book or register in which the entries are required to be made for a period of two (2) years from the date of each such entry and to keep the same available and open at all times during such period of time for inspection by the chief of police or any duly appointed police officer of the city on duty at the time of such inspection.

Independence, Kan., Code §§ 62-117 and 62-118 (2013)

§ 62-117

The register required by this article shall be kept in the lobby, public room or other office of the hotel, lodginghouse, roominghouse or restaurant and shall be open for inspection to any sheriff, deputy sheriff or police officer at any time of the day or night, upon the request of such sheriff, deputy sheriff or police officer.

§ 62-118

It shall be unlawful for any person to register at any hotel, lodginghouse, roominghouse or restaurant with rooms in connection therewith under an assumed name or give a false or fictitious address. It is unlawful for any person required to keep such register to fail to do so or to fail to request persons registering to give the information required on the register or to fail or refuse to permit the inspection thereof at any time by any sheriff or police officer of the city. Any person who violates this section shall, upon conviction thereof, be punished as provided in section 1-14.

Indianapolis, Ind., Code § 901-4 (2013)

Any person owning, operating or managing any hotel shall keep a permanent record of each guest receiving lodging, which record shall be made available upon demand for inspection by any police officer.

Las Vegas, Nev., Code § 10.36.040 (2013)

(A) Every person within the limits of the City, who keeps, maintains or controls any hotel, roominghouse or lodginghouse, shall provide,

keep and maintain a public register, and shall require every person who rents or occupies a room in such hotel, roominghouse or lodginghouse to write in such register his name and place of residence. Such registration shall be made on a page of the register properly dated with reference to the day of the year, month and week, and the time of day the person rents or arranges to occupy a room shall also be entered.

(B) Such hotel, roominghouse, or lodginghouse register so kept shall be open to the public at any and all reasonable hours, and the pages thereof shall, upon demand, be open for inspection or investigation by any member of the Police Force or other Peace Officer of the City, immediately upon demand having been made by any such member of the Police Force or other Peace Officer.

Longmont, Colo., Code § 6.40.020 (2013)

In all buildings or structures in the city kept, used or maintained as, or held out to the public to be, a hotel, a full and complete register must be kept of any and all persons using any rooms for lodging purposes, which register shall be open to inspection by police officers. The person having charge of any such hotel, as defined at section 6.40.010, shall provide a suitable book or card for the purpose of keeping and effecting such registry, which book shall set forth the name of the person, date of registry, automobile license number, home address of the person, and the number of the room occupied, the number of such room being plainly designated upon the door for the main ingress and egress therefrom. Before any room or lodging is

furnished to a person, such person shall register and write his name and address in the registry.

Mesa, Ariz., Code § 5033 (2011)

It is unlawful for any operator of a hotel to fail to maintain the registration records required by this Chapter or to fail to make the records available to the Mesa Police Department for inspection or investigation or any other law enforcement purpose upon demand.

Metro Government of Nashville and Davidson County, Tenn., Code § 6.28.010 (2013)

A. Every person operating a hotel or roominghouse, engaged in the business of lodging transients, shall keep a book or register in which shall be listed the name and address of each of its guests or lodgers, together with the date of arrival and the date of departure.

B. Such book or register shall be kept so as to show arrivals and departures of guests for a period of at least six months.

C. Every person operating a hotel or roominghouse and the employees thereof shall exhibit such book or register to any member of the police department upon the written request of the chief of police or the chief of the detective department.

Miles City, Mont., Code § 6-268 (2013)

The register of every person conducting or operating an overnight accommodation within the city limits shall be open to the inspection of any member of the city police department or other such authorized person at any time.

Minneapolis, Minn., Code § 244.1260 (2013)

Every person to whom a hotel license has been issued shall at all times keep a hotel register within the hotel, in which shall be written the names of all occupants renting or occupying hotel units in such hotel. The register shall be signed by the persons renting a hotel unit. After the name or names of persons renting or occupying any hotel unit the operator, or the operator's agent, shall write the number of the room or rooms which each person is to occupy, together with the date and hour when such room or rooms are rented, all of which shall be done before such person is permitted to occupy such room or rooms. The register shall be at all times open to inspection by the chief of police, commissioner of health, the director of inspections and the chief of the fire prevention bureau or their authorized representatives. (Code 1960, As Amend., § 78.070; 76-Or-184, § 1, 10-29-76; 78-Or-244, § 47, 11-22-78; Pet. No. 252271, § 28, 5-11-90)

Modesto, Cal., Code § 4-7.302 (2013)

The hotel or lodging house register required by Section 4-7.301 shall be open to the public at any and all reasonable hours, and the pages thereof shall, upon demand be open to inspection or investigation by any member of the Police Force or other peace officer of the City, immediately upon demand having been made by such peace officers.

Muskogee, Okla., Code § 22-15 (2013)

Every hotel or roominghouse in the city shall keep a daily register or record upon which each guest shall be required to write his name and address. Opposite the signature and address shall appear the room to which the guest is assigned. The register or record shall at all times be open and available for inspection by any police officer.

Narragansett, R.I., Code § 14-263 (2012)

Every operator or keeper of a hotel or motel, upon being licensed under the provisions of this article, shall keep a true and accurate register of all guests using or occupying his licensed premises, which register shall show the name of each guest, and the date of arrival and departure of each guest. The register shall at all reasonable times be open to the inspection of any police officer in the town.

Niles, Ill., Code §§ 22-300 and 22-302 (2013)

§ 22-300

The operator of a motel shall keep a register which shall contain the names and addresses of all persons occupying any room or suite of rooms within the motel and the hour and date of arrival and departure of guests. The register shall include the state automobile license number. The register shall be available for examination at all times by the police department.

§ 22-302

It shall be the duty of the police department of the village to from time to time check the register referred to in section 22-301. If, after such investigation, it is

determined that the owner of the car is different than the person who has signed the register as the owner, then such person shall be guilty of a misdemeanor.

Nogales, Ariz., Code § 13-8 (2013)

(a) It shall be unlawful for any owner, operator or person in charge of any hotel, roominghouse, lodginghouse, auto trailer court or auto court within the city to furnish accommodations therein to any person without first entering in a register to be kept for that purpose the name and address of each guest so furnished with accommodations and requiring the person requesting such accommodations to affix the date and signature and place of residence to such register.

(b) Such register shall be made available for the inspection of any police officer of the city at all times upon request.

(c) It shall be unlawful for any person to enter in the register of guests of any hotel, roominghouse, lodginghouse, auto trailer court or auto court within the city a false or fictitious date, name or place of residence, knowing it to be false.

North Las Vegas, Nev., Code § 9.08.030 (2013)

A. Definitions. For the purpose of this section, the words set out in this section are defined as follows:

1. "Prostitution" means an act by any person, performed for a fee, of engaging in sexual

intercourse, oral-genital contact, or any touching of the sexual organs or other intimate parts of another person for the purpose of arousing or gratifying the sexual desire of either person.

2. "Public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building that fronts on any of the aforesaid places, or a motor vehicle in or on any such place.

B. Loitering for Prostitution. Any person who remains or wanders about in a public place, or on private property not owned by or in the lawful control of such person, and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons, for the purpose of prostitution, or of patronizing a person engaged in prostitution, shall be guilty of a misdemeanor.

C. Room Register of Lodging Places.

1. Every person within the limits of the city who keeps, maintains or controls any hotel, rooming house, or lodging house shall provide, keep and maintain a public register, and shall require every person who rents, or occupies a room in such hotel, rooming house or lodging house, to write in such register his

name and place of residence. Such registration shall be made on a page of the register, properly dated, with reference to the day of the year, month, and week, and the time of day the person rents or arranges to occupy a room shall also be entered.

2. Such hotel, rooming house or lodging house register so kept shall be open to the public at any and all reasonable hours, and the pages thereof shall be open for inspection or investigation by any member of the police department or other peace officer immediately upon demand by any such member of the police department or other peace officer.

Northport, Ala., Code § 54-638 (2011)

The manager of any hotel shall permit the examination by the police, at all hours when such manager is at such manager's office or at the room where the register is kept, of all rooms in the hotel which at the time are not actually occupied by a guest and of all rooms which do not show on the register as being occupied by a guest.

Oklahoma City, Okla., Code § 13-144 (2013)

The operator of a motel or tourist camp shall keep a record of all persons who rent or use any camp buildings. The record shall contain the names of said persons, and their home addresses. The record shall be open to inspection by any officer of the Police Department.

Perryville, Mo., Code § 9.04.300 (2013)

A. The owner, proprietor, manager or other person in charge of any hotel, motel, lodging house, rooming house or other place whatsoever where transients are accommodated shall at all times require a valid photo identification document and keep a register in which shall be ascribed the names of all of the guests or persons renting or occupying rooms in such establishment. The register shall be signed by the person renting a room or by someone under his or her direction. The register shall include the full name of the person, his or her home or business address, driver's license number, a complete description of his or her vehicle, including the license plate number of the vehicle and the state issuing the license plate. Such registration shall be made and, after the names and information are ascribed in the register, the manager or other person in charge, or his or her agent, shall write the number of the room such guest or person is to occupy, together with the time when such room is rented, so as to identify the room occupied by the person registering. All of the foregoing shall be done before any guest is permitted to occupy a room. Such register shall at all times be open to inspection by any police officer of the city, county, state or federal government. A registration will not be required for private meeting rooms, banquet facilities, group sales events, weddings or hotel accommodations utilized by pre-registered corporate agencies.

B. No person shall write or cause to be written or knowingly permit to be written in any register in any hotel, motel, lodging house, rooming house or other place whatsoever where transients are accommodated in the city any other or different name or designation than the true name of the person so registered therein or the name by which the person is generally known.

C. Failure to comply with this section is a misdemeanor and shall be punishable as provided in Section 1.16.010.

Pleasant Hill, Cal., Code § 866 (2012)

Each person operating a hotel or motel in the city shall require each guest to register the following information before occupying a room:

1. Name and home or business address of each occupant, except for children under age 18. The hotel operator shall require photographic identification to confirm the identity.

2. The make, model and license number and state of registration of any vehicle driven by the guest. However, a hotel with pay parking is exempt from this requirement.

3. The date of registration and number of days the guest is staying.

4. The room number where the guest is staying….

The hotel or motel operator shall retain the registration information on the premises for one year. The registration information must be available for inspection by the police department at any time.

Port Huron, Mich., Code § 12-252 (2013)

Every person in charge of a hotel or motel or his agent, servant or employee shall provide and maintain a register in which shall be inscribed, in ink, at the time of arrival, the correct name of every guest renting or occupying a room, together with the home street and city address of each such guest, and the number of the space assigned, together with the time when such was rented. When any guest shall terminate his stay, the time thereof shall be entered in the register. Such register shall be open to inspection to police and fire officers on official business.

Richmond, Cal., Code § 11.40.010 (2013)

Every owner, keeper or proprietor of any lodging house, rooming house or hotel in the City of Richmond shall, from and after the adoption of this chapter, keep a register wherein he shall require all guests, roomers or lodgers to inscribe their names upon their procuring lodgings, or a room or rooms, or accommodations in such lodging house, rooming house or hotel. The said register shall also show the time when said name was inscribed, meaning the time of the day, also the day, the month and the year, also the room or rooms occupied or to be occupied by said lodger, or roomer or guest in such lodging house, or rooming house or hotel. Said register shall be kept in a conspicuous place in said lodging house, rooming house or hotel, and shall at all times be open to inspection by the lodgers, roomers or guests of said lodging house, rooming house or hotel, and to the Chief of Police or any regular policeman or police detective of the City of Richmond or any peace officer of the State of California.

Richmond, Va., Code § 18-39 (2011)

(a) Every person who operates a motel or hotel where rooms or units are let to the public shall at all times keep and maintain therein a guest register in which shall be inscribed, with ink or indelible pencil, or entered into a computer or other electronic-based guest registry either the name and home or business address of each guest or person age 14 years or older renting or occupying a room or the name of the organization making the reservation for the guest or person age 14 years or older, as well as the guest's vehicle description and license plate information. Such register shall be signed by the person renting a room or confirmed by a computer entry or other electronic database entry by an authorized employee of the hotel or motel. The proprietor of such hotel or motel or the proprietor's agent shall thereupon write with ink or indelible pencil or enter into a computer or other electronic database or data entry system opposite such name so registered the number of each room assigned to and occupied by such guest, together with the date when such room is rented. Until all of the entries have been made in such register, no guest shall be suffered or permitted to occupy privately any room in such motel or hotel. When the occupant of a room or space so rented shall vacate and surrender the room, it shall be the further duty of the proprietor of the hotel or motel or the proprietor's agent to maintain for one year a record of the date when such room was vacated and surrendered.

(b) The guest register required by this section shall be subject to inspection at any and all reasonable times by the chief of police or by any police officer in the performance of such officer's duties.

(c) The guest vehicle parking area of every hotel or motel shall be accessible at all times to any police officer in the performance of the police officer's duties.

Rocklin, Cal., Code § 5.36.030 (2013)

The register shall be available and shall be presented for examination upon request of the chief of police, any sworn police officer of the city, and any other person with authority to exercise peace officer powers within the city as authorized by the chief of police.

St. Louis, Mo., Code § 25.32.510 (2012)

905.7 Every person to whom a boarding house, rooming house, dormitory or hotel permit has been issued shall at all times keep a standard hotel register within such house in which shall be inscribed the names of all occupants renting or occupying rooming units in such house. The register shall be signed by the person renting such unit. After the name or names of persons renting or occupying such unit, the applicant, or the applicant's agent, shall write the number of the room or rooms which each person is to occupy, together with the date and hour when such room or rooms are rented. All of which shall be done before such person is permitted to occupy such room or rooms. The register shall be at all times open to inspection by the building

official, Health Commissioner or fire official of the City of Saint Louis or Police Department.

Salinas, Cal., Code § 21-350 (2013)

(a) The chief of police and any police officer or officers specifically so designated by the chief, shall have access at all times to all rooming houses, lodging houses and hotels (except the private room of a guest, unless so authorized by other laws or ordinances) for the purpose of investigating any complaint or enforcing any law, ordinance or regulation relating to gaming, prostitution, fornication, lewdness, lasciviousness or immoral conduct.

(b) The hotel record shall be made available to any law enforcement officer for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

San Antonio, Tex., Code § 15-83 (1959)

(a) No person registering in a hotel shall do so or attempt to do so under any false name or identity. No person registering in a hotel shall present for the purpose of registration, false identification or any identification which misrepresents or fails to disclose the registrant's true identity.

(b) It shall be the duty of the owner or operator of any hotel as defined in this chapter to keep, in a format chosen by the hotel sufficient to comply with the record keeping requirements set out in this ordinance, a register, of persons

accommodated in such establishment for the purpose of verifying registrants' identities. Such register shall include, for all guest rooms and guest stays, either:

(1) The name of the registrant, the type of official photo identification presented and any personal identification number contained thereupon, the registrant's address, and the expected duration of the registrant's stay in such establishment; or, in the alternative,

(2) Documentation that the person guaranteed payment using a valid credit card issued in the name of the registrant as provided by the registrant, which at the time of registration, was verified through the hotel's customary credit card verification procedures.

No such owner or operator, or his employee, agent or representative shall knowingly write, cause to be written or permit to be written, in any register in any such hotel any other or different name or designation than the true name of the person so registered therein, or the name by which such person is generally known.

(c) Such record or register shall be available at all times for inspection by any officer of the police department of the city, and maintained for a period of two (2) years.

(d) Any person who shall violate any provision of this section shall be guilty of a class C misdemeanor and shall, upon conviction, be

punished by a fine of not more than five hundred dollars ($500.00).

San Diego, Cal., Code § O-16814 (1987)

Every manager or person in control of any hotel, motel, inn, boarding, lodging, transient apartment house, or auto court or trailer park in the City of San Diego shall keep a register for the registration of transient guests. Such register shall be preserved for at least three (3) years and shall at all times be subject to inspection by any law enforcement officer of the City of San Diego.

San Francisco, Cal., Police Code § 919 (2011)

The owner, manager or person in charge of any hotel, motel, auto court, or furnished apartment house shall keep a suitable book or register cards, open to inspection by regularly employed members of a law enforcement agency, in which all occupants of hotels, motels, auto courts, and furnished apartments shall sign their names, and the number of the hotel room, motel, auto court, or furnished apartment assigned to these guests shall be indicated on the registry book or registry cards.

Santa Cruz, Cal., Code § 2014-01, § 2010-16, § 75-29 (1975)

Every person who owns or operates any establishment subject to this chapter shall keep a register of persons who board or lodge in such establishment, in which the owner, manager or other person having the management or control of such establishment shall require any such person boarding or lodging thereat or therein to register his or her name

and address, and in which such owner or manager shall enter the number of the apartment or room occupied by such guest…Guest registries maintained pursuant to this section shall be available for immediate review and inspection upon request by any member of the Santa Cruz Police Department.

Seattle, Wash., Code § 6.98.020 (2008)

Everyone operating, managing or keeping a hotel as defined in Section 6.98.010 shall require registration of each guest at the time of his or her arrival on a register kept for that purpose and shall require identification of any adult guest whose room has been paid for in cash, including money order, traveler check or personal checks, or by voucher at the time of registration. Such identification shall be in a valid and current form issued by a governmental entity. A photocopy of such identification shall be maintained by the hotel or the identifying information and form of identification shall be transposed into the hotel registration record. Such record shall be kept available for inspection by any peace officer at any reasonable time, or in a police emergency at any time of day or night. Provided, that before such inspection the peace officer must have individualized or particularized suspicion of illegal activity by the guest or in or nearby the room. No guest shall write or cause to be written in a hotel register any false information or name other than his or her true name. For any guest taking occupancy through a prearranged advanced reservation in his or her name, name of a corporation, business, association or any other entity, the hotel shall require identification of the specific guest at the time of registration. PROVIDED that said hotel need not photocopy or record the

identification of a person whose personal or business credit card (containing a name and expiration date) has been verified as valid in advance of the registration.

South Beloit, Ill., Code § 18-127 (2012)

Each hotel proprietor shall keep a register of guests, as required by state law, and each operator of a roominghouse shall keep a list of all persons staying therein. Such registration or list shall be available for inspection by any member of the police department at any time.

South San Francisco, Cal., Code § 1470-2013 (2013)

Every operator of a hotel, as defined by this chapter, shall keep a register in which the following information shall be entered legibly, either in electronic, ink, or typewritten form, prior to the room being furnished or rented to a guest: (a) the true names and residence addresses for each guest; and (b) the make, type and license number of any vehicle under the control of the guest, if the vehicle will be parked on hotel premises. The register shall also show the day, month, and year when such information was entered, the day, month and year of guest check-in, and the room or rooms to be occupied by such persons. It is unlawful for any operator to refuse or neglect to comply with the requirements of this chapter….The Register shall be made available to any officer of the South San Francisco Police Department. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

Sparks, Nev., Code § 5.52.040 (2013)

Every register or registration system kept in compliance with the provisions of this chapter shall, upon demand, be open for inspection or investigation by the chief of police, or his authorized agent, or for the inspection or investigation of any of the military police or any officer in any of the armed, naval or military services of the United States of America, or any agent of the Federal Bureau of Investigation, at any and all times.

Steger, Ill., Code § 22-552 (2013)

No person shall knowingly permit any fugitive from justice to stay in any roominghouse or hotel. Each hotel proprietor shall keep or cause to be kept a register of guests as required by state law, and each operator of a roominghouse shall keep a list of all persons staying therein. Such registration or list shall be available for inspection by any member of the police department at any time.

Tarrant, Ala., Code § 12-4 (2013)

(a) Every person conducting any lodginghouse, hotel, motel, inn, tourist home, or boardinghouse in the city shall at all times keep and maintain therein a book or register, in which shall be inscribed with ink or indelible pencil the name and home address of each guest or person renting or occupying a room therein. Such register shall be signed by the person renting a room, or someone authorized by such person, and the proprietor of such lodginghouse, hotel, motel, inn, tourist home, or boardinghouse, or such proprietor's agent, shall thereupon write

opposite such name so registered the number of each room assigned to and occupied by each guest, together with the time when such room is rented, and until all of the aforesaid entries shall have been made in such register, no guest shall occupy or be suffered or permitted to occupy privately any room in such house. When the occupant of each room so rented shall quit and surrender the same, the proprietor of such lodginghouse, hotel, motel, inn, tourist home or boardinghouse, or such proprietor's agent, shall enter the time thereof in such register opposite the name of such occupant. Such register shall be kept at all times open to the inspection of any guest of such lodginghouse, hotel, motel, inn, tourist home or boardinghouse wherein such register is kept and of any executive or police officer of the city.

(b) It shall be unlawful for any person to write, or cause to be written, or knowingly permit to be written, in any register in any lodginghouse, hotel, motel, inn, tourist home or boardinghouse in the city, any other or different name or designation than the true name of the person registering therein, or the name by which such person is generally known.

Trenton, Mich., Code § 22-174 (2014)

Every holder of a license required by this article shall provide and maintain, by digital process or bound volume, the name and home address of any person, other than members of the family as listed in the application for the license, occupying the premises or any part thereof. The register shall also show the make

and license number of any motor vehicle owned or used by each registrant. The register shall be maintained in the premises in plain view and in a convenient place near the main entrance and shall be submitted upon demand to any official or police officer of the city or to any police officer of the state.

Tuscaloosa, Ala., Code § 17-62 (2013)

The manager of any hotel shall permit the examination by the police, at all hours when such manager is at such manager's office or at the room where the register is kept, of all rooms in the hotel which, at the time, are not actually occupied by a guest and of all rooms which do not show on the register as being occupied by a guest.

Warren, Mich., Code § 17-78 (2013)

(a) Every licensee or his agent, servant or employee, under this article shall provide and maintain a register in which shall be inscribed, in ink, at the time of arrival, the correct name of every guest renting or occupying a room, together with the home street and city address of each such guest, and the number of the space assigned, together with the time when such was rented. When any guest shall terminate his stay, it shall be the duty of the licensee or his agent, servant or employee, to see to it that the time thereof is entered in the register. Such register shall be open to inspection to police and fire officers on official business.

(b) Whenever a licensee or his agent, servant or employee knows or has reasonable cause for believing that any person has inscribed a false

name or given false information in such register, it shall be his duty to forthwith notify the police department of such fact.

(c) It shall be unlawful for any person to write or cause or permit to be written in any hotel or motel register any other or different name or designation than the true name of the person so registered.

Warrensburg, Mo., Code § 14-3 (2013)

The registration book or register of guests required by section 14-1 to be kept by every hotel, motel, boarding house or rooming house in the city shall be kept open and made available for inspection by all police officers. It shall be unlawful for the owner, proprietor, manager or clerk of such hotel, motel, boarding house or rooming house to refuse to allow or permit any police officer to inspect such registration book or register of guests.

Waycross, Ga., Code § 22-10 (2013)

All hotel and boardinghouse proprietors shall keep a register showing the name, age and residence of all boarders kept by them and such register shall be open to inspection by the chief of police. Any person who shall violate any of the provisions of this section shall be punished as provided in section 1-6 of this Code.

West Milwaukee, Wis., Code § 14-506 (2012)

* * *

(b) It shall be unlawful to knowingly permit any fugitive from justice to stay in any roominghouse or hotel. Each hotel proprietor shall keep or cause to be kept a register of guests as required

> by law, and each operator of a roominghouse shall keep a list of all persons staying in the roominghouse. Such registration or list shall be available for inspection by any member of the police department at any time.
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> * * *

Wichita, Kan., Code §§ 5.38.035 and 5.38.040 (2013)

§ 5.38.035

Any employee of a hotel, rooming house, apartment house, or any other place within the corporate limits of the city which caters to and permits transient guests to occupy a room, who resides or lives upon the premises shall be required to register with the proprietor or manager of said hotel, rooming house, or apartment house, and a suitable register will be maintained by said proprietor or manager and shall at all times be kept open to the inspection of any member of the police department upon request.

§ 5.38.040

The register required to be kept by Section 5.38.020, and all other registers maintained by any hotel, rooming house or apartment house shall at all times be kept open to the inspection of any member of the police department.