However, the court found that the individual residents had failed on the last prong of the analysis by failing to show the required individual effect. Each resident participating in the law suit was issued citations for serious violations, not just leaving a garbage can on the curb. There was no evidence that violations of the serious nature "would have been tolerated or treated more favorably anywhere in the City." The Eleventh Circuit concluded by stating that the "record includes no evidence that the City's zero-tolerance campaign made any actual difference for these counterclaimants" and that they were therefore not entitled to prevail on their disparate impact claim.

http://www.ca11.uscourts.gov/unpub/ops/201215014.pdf (last accessed Jan. 8, 2014)

Search and Seizure: Ordinance Requiring Hoteliers to Provide Police Officers With Extensive Records About Hotel Guests Violates Fourth Amendment

Patel v. City of Los Angeles, No. 08-56567 (9th Cir. Dec. 24, 2013).

Los Angeles Municipal Code §41.49 (Ordinance) mandates city hotels keep specific information about their guests on file for at least 90 day and commands that police officers be able to inspect the records upon demand. The information recorded must include "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." The warrantless inspection requirement states that the records "shall be made available to any officer of the Los Angeles Police Department for inspection, [provided that] whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." If an hotelier refuses a demand by an officer it is punishable as a misdemeanor with a $1000 fine and up to six months in jail.

Plaintiffs brought a facial challenge against the Ordinance under § 1983 seeking declaratory and injunctive relief, claiming it was invalid under the Fourth Amendment. The district court rejected the facial challenge, ruling in favor of the City of Los Angeles, because it determined that it could not say that in every possible circumstance the law would be unconstitutionally applied.

HELD: En banc, the Ninth Circuit held, with a four-judge dissent, that the Ordinance was facially invalid under the Fourth Amendment because it authorized inspections of administrative records without the opportunity to obtain pre-compliance judicial review.

DISCUSSION: The majority began by determining that the nonconsensual, warrantless review of an hotelier's guest records constituted a search under the Fourth Amendment. The majority found the hoteliers' records imbued with traditional privacy interests protected by the Fourth – the hotel owners had a possessory and ownership interest in the papers. The court noted that while the guests may lack a privacy interest in the records, given their voluntary disclosure to a third party, the hotels have such an interest in the records as they contain, for example, sensitive business information (a customer list).

Having decided the police inquiry was a search, the majority evaluated whether the searches were reasonable. The majority did not engage in the normal balancing test to answer this question requires because, as it said, "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."

Given these findings, the majority held the inspections to be facially invalid because, despite furthering a legitimate government interest (stated by the city as deterring drug dealing and prostitution in hotels) and being sufficiently "limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome," the law failed to provide hotel operators "an opportunity to obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." In the majority's opinion the law left hoteliers subject to "unbridled discretion" of officers in the field with nothing but "risking criminal conviction" as a tool to challenge the reasonableness of an officer's decision to inspect the records. Since the hallmark of the law was that hoteliers turn over records non-consensually and without a warrant, the majority held this deficiency meant there were no circumstances whatsoever in which the law could be applied constitutionally.

DISSENT: Two dissenting opinions were filed in the case. First, Judge Tallman dissented on the grounds that the majority decided the case based on a facial challenge, rather than an as-applied challenge. He cited Supreme Court precedent directing lower courts not 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." The second dissent, by Judge Clifton, held neither the plaintiffs nor the majority had proved the ordinance was unreasonable in all circumstances.

http://cdn.ca9.uscourts.gov/datastore/opinions/2013/02/19/08-56567.pdf (last accessed Jan. 9, 2014)

Taxes: Online Travel Companies Not Liable for Unpaid Lodging Taxes Where City Cannot Establish That They Collected Retail Room Price

City of Rome v. Hotels.com, No. 12-14588 (11th Cir. Dec 13, 2013)

In another of the now-familiar cascade of online travel company (OTC) taxes, the Eleventh Circuit has upheld the OTC's argument that the municipality was unable to establish that they had collected a "retail" room price rather than a "wholesale" price.

For years cities and counties in Georgia have been litigating with OTC's about taxes and fees. The latest round to make it through the courts came a couple weeks ago when Rome, Georgia, representing a class of 250 cities and counties in Georgia, sued Hotels.com and other OTC's