

REPORT TO COUNCIL

SUBJECT

Approve Agreement between the City of Sunnyvale and Airbnb, Inc. for the Collection of the City's Transient Occupancy Tax on Short-Term Rentals

BACKGROUND

Like many cities across the country, the City of Sunnyvale continues to grapple with the popularity of short-term rentals. Sunnyvale Municipal Code (SMC) Chapter 19.76 provides that short-term rental hosts register with the City and remit Transient Occupancy Taxes, "in accordance with any hosting platform if utilized, pursuant to Chapter 3.16." Chapter 19.76 also requires the host to reside on-site throughout the lodger's stay (no "unhosted" rentals) and limits the number of adult overnight lodgers to four.

The proliferation of hosting platforms facilitating short-term rental transactions has made it difficult for cities to track and register rentals. A recent estimate identified more than 900 short-term rental listings in Sunnyvale across multiple hosting platforms. Online platforms generally do not make available the identity of hosts or addresses of rental listings, nor do they proactively facilitate collection of TOT. These limitations have made it difficult for cities to identify properties being used as short-term rentals and to collect applicable taxes.

Generally, lodgers booking accommodations pay electronically using the host platform website, with the host platform briefly holding the funds, deducting platform service fees from guests and hosts before passing the remainder of the funds to the host. Many public agencies have negotiated tax collection agreements with hosting platforms for the collection and remittance of TOT payments.

EXISTING POLICY

Council Policy, Chapter 7, *Planning and Management*, Policy B.1.1 - The City will maintain a diversified and stable revenue base, not overly dependent on any land use or external funding source.

Council Policy, Chapter 7, *Planning and Management*, Policy B.1.4 - When considering a new tax or revenue source or an increase in an existing tax or revenue source, the following criteria should be considered:

- Community/Voter acceptance
- Competitiveness with surrounding communities
- Efficiency of revenue collection and enforcement
- Effectiveness in generating sufficient revenues in the short and long-term to justify its establishment

- Enhancement of revenue diversity to promote stability and provide protection from downturns in business cycles
- Equity/Fairness in distribution of the revenue burden on various segments of the community

ENVIRONMENTAL REVIEW

This action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment and section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

DISCUSSION

The City currently has a total of 28 short-term rental hosts registered, with 20 actively remitting an average of \$3,200 in TOT monthly. Staff has received multiple complaints from registered hosts who are aware of and frustrated by the low citywide levels of compliance with SMC requirements, as they feel that this is unfair to the few hosts who do comply.

Since late 2015, when the short-term rental ordinance went into effect, the City has received complaints on approximately 20 properties from neighbors about lawful and unlawful short-term rental activity. The Department of Public Safety, Neighborhood Preservation Unit, responds to complaints and works to address violations of the short-term rental ordinance, while respecting the constitutional and legal rights of residents and guests in private homes.

City staff engaged Airbnb (currently the largest hosting platform for short-term rentals) regarding entering into a voluntary tax collection agreement on behalf of hosts using their service. After research and discussion, staff determined collection and remittance of taxes by the hosting platform is appropriate and would provide immediate benefits to the City.

Over 30 California public agencies have already entered into similar tax collection agreements with Airbnb. In Santa Clara County, Palo Alto, Santa Clara and San Jose have negotiated voluntary tax collection agreements with Airbnb.

Key provisions of the proposed agreement are summarized below:

- Airbnb is not a host, but will act on hosts’ behalf to collect and remit TOT.
- Airbnb will assume liability to report, collect and remit the correct amount of TOT.
- The agreement does not relieve short-term rental hosts from remitting TOT for bookings on other platforms, or registration requirements under the Short-Term Rental ordinance.
- Airbnb will not provide personal identifying information about hosts except in response to a warrant or court order.
- The City will maintain audit rights with Airbnb, but not individual hosts.
- The City agrees to waive the right to collect TOT payments owed by hosts for Airbnb bookings made prior to the effective date of the agreement.
- Airbnb agrees to notify guests and hosts of the TOT to be collected.

The proposed agreement does not require Airbnb to enforce other terms of the City's short-term rental ordinance, such as registration or host-occupancy requirements. Likewise, this agreement only covers bookings via the Airbnb platform, so staff will be initiating entering into agreements and collection processes with other hosting platforms.

Staff's recommendation is that enforcement be effected via other means, such as contracting with a compliance service equipped to identify and outreach to hosts across multiple hosting platforms. Staff is currently exploring this service with potential vendors. TOT payments for platforms not covered by a collection agreement could also be remitted through such a service.

FISCAL IMPACT

The City will receive additional Transient Occupancy Tax revenue as a result of entering into this Agreement. Airbnb estimates that bookings would generate approximately \$500,000 in annual revenue. Revenue from TOT goes to the General Fund.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

RECOMMENDATION

Authorize the City Manager to execute a Voluntary Collection Agreement, in substantially the same form as Attachment 1 to the report, with Airbnb, Inc. for the collection of Transient Occupancy Tax.

Prepared by: Beth Goodsell, Senior Management Analyst

Reviewed by: Timothy J. Kirby, Director, Department of Finance

Reviewed by: Teri Silva, Assistant City Manager

Reviewed by: John Nagel, City Attorney

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Draft Airbnb, Inc. Voluntary Collection Agreement