



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Authorize the City Manager or His Designee to Waive Transient Occupancy Taxes for Short-term Rental Hosts Who Come into Full Compliance with the Sunnyvale Municipal Code.

BACKGROUND

Transient Occupancy Tax (TOT) has been collected from hotels since 1965 in accordance with the Sunnyvale Municipal Code (SMC) Chapter 3.16. At that time TOT was applicable only to the hotel industry, but now Sunnyvale residents are offering accommodations to visitors in their homes. Private, short-term rentals (STR) in residential areas have become an attractive option for visitors. With the increased popularity of STRs, Council took formal action to amend the SMC in 2015. Regulations allow hosted rentals accommodating up to four adult guests; requirements include the collection and remittance of TOT. In 2018, Council approved a Voluntary Collection Agreement (VCA) with Airbnb to remit TOT on behalf of their hosts. Airbnb provides the leading internet platform for STRs and captures most the TOT due to the City. Other hosting platforms are used for booking accommodations and they do not remit TOT on behalf of their hosts. Staff intends to collect TOT from all hosts operating a STR in Sunnyvale.

Currently, the City has the ability to contact hosts directly through an outside vendor who identifies hosts who are operating an STR without a TOT certificate or STR approval. Resources to collect TOT will include assessing back taxes, penalties/interest, managing the expected push-back from hosts and conducting administrative hearings as needed. With the adoption of the VCA with Airbnb, the City agreed not to seek back taxes from Airbnb hosts prior to the effective date of the VCA. However, this provision in the VCA only applies to Airbnb transactions, not to hosts who used other platforms.

EXISTING POLICY

Council Policy

SMC Chapter 3.16. Transient Occupancy Tax

ENVIRONMENTAL REVIEW

The action being considered does not require environmental review under the California Environmental Quality Act (CEQA) because it is a fiscal activity that will not result in a significant impact on the environment. (CEQA Guidelines, Section 15378(b)(4))

DISCUSSION

When TOTs were imposed on STRs pursuant to the SMC, discussions acknowledged that enforcement would be difficult, and would only be addressed when a complaint is received (RTC Nos. 15-0562 and 18-0400). Some barriers to enforcement have been addressed. The SMC was amended to allow the City to issue Administrative Subpoenas. Staff have also contracted with a vendor to identify STR hosts and their compliance status. These tools can assist staff collecting TOT. With the vendor in place, staff has realized that every host who comes into compliance will be charged back taxes, which is not consistent with the process for Airbnb hosts. Also, the process to calculate and verify the back taxes will be a significant effort for staff, and is expected to be met by resistance from the hosts who were unaware of the requirements.

Registration for TOT requires remittance of all earnings during the past three years, which include the three years of back taxes, interest and penalties of the unpaid back taxes. The amount due from a host who has been operating for the past three years could be significant. The Tax Administrator (Director of Finance) has the authority to waive penalties and interest for good causes, but not the back taxes.

Staff recommends Council delegate the authority for waiving the past three years back taxes to the City Manager or his designee, which is consistent with the Airbnb VCA and is an incentive for hosts who are immediately responsive to the City's outreach and who become fully compliant with the SMC. The purpose of this incentive is to bring as many hosts as possible into compliance.

Should Council not delegate the authority, staff would analyze records for all hosts, using administrative subpoenas as needed to ensure that the back taxes are collected. Hosts who object to the back taxes could appeal, first to the tax administrator and possibly to Council directly. Only 25% of current listings were posted in the last six months, most rentals have been active for multiple years and would require significant analysis. City staff may not be able to absorb the additional workload required to perform this work.

FISCAL IMPACT

Although waiving the back taxes brings less TOT revenue to the City, not waiving the back taxes would require significant resources for the City to collect the three years of back taxes. Also, waiving the back taxes would give incentive for the hosts to register with the City and start remitting TOT. STR revenues continue to grow, and the City collected \$26,582 in FY 2016/17 and \$47,688 in FY 2017/18. The City is estimated to collect about \$700,000 for FY 2018/19. Initial estimates are for \$62,000 annually from all hosts who have not yet remitted. 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.

ALTERNATIVES

1. Authorize the City Manager or his designee to waive Transient Occupancy Taxes for short-term rental hosts who come into full compliance with the Sunnyvale Municipal Code.
2. Do not authorize the City Manager to waive Transient Occupancy Taxes for short-term rental hosts who come into full compliance with the Sunnyvale Municipal Code.

STAFF RECOMMENDATION

Alternative 1: Authorize the City Manager or his designee to waive Transient Occupancy Taxes for short-term rental hosts who come into full compliance with the Sunnyvale Municipal Code.

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