

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

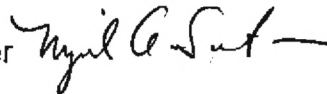
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Date: July 18, 2016

CAO File No. 0220-05153-0000  
Council File No. 16-0600  
Council District: All

To: Eric Garcetti, Mayor  
Herb J. Wesson, Council President  
Paul Krekorian, Chair, Budget and Finance Committee

From: Miguel A. Santana, City Administrative Officer



Reference: 2016-17 Budget Revenue

Subject: **IMPLEMENTATION OF THE 2016-17 REVENUE BUDGET (EXHIBIT H) –  
REVENUE ENHANCEMENT AND DEPARTMENT FEE ANNUAL REVIEWS**

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### SUMMARY

The Office of the City Administrative Officer (CAO) reviews revenues and prepares estimates as part of the City's budget development and monitoring responsibilities. Revenue enhancement and annual fee reviews help ensure the City receives adopted budget revenue in order to fund the variety of essential services provided to its citizens. This report provides an update on the implementation of revenue enhancement actions taken by Mayor and Council in adopting the 2016-17 budget and in particular the instruction to the Office of Finance (Finance) to finalize a collection agreement with Airbnb for the collection and remittance of the City's Transient Occupancy Tax (TOT). As detailed herein the collection agreement (Attachment A) has been executed with Airbnb. This report also provides the status of annual fee reviews conducted by operating departments. Additionally, it makes recommendations for further actions to prepare for the development of the 2017-18 budget.

### Implementation of the 2016-17 Revenue Budget (Exhibit H)

#### Revenue Enhancement

With the adoption of the 2016-17 budget, Council approved Exhibit H and other recommendations to ensure full implementation of the revenue budget (C.F. No. 16-0600). The status of these ordinance changes to increase fees, facilitate tax collection, transfer surplus funds and sell surplus properties, along with other actions, are described below.

**Homelessness** – The City Attorney was asked to prepare an ordinance to amend Section 5.500(a) of the Los Angeles Administrative Code so that proceeds from the sale of any of the surplus properties included in the 2016-17 adopted budget would be deposited into the Affordable Housing Trust Fund and used to support the development of supportive housing. The City Attorney report was released June 22, 2016 and is pending in the Homelessness and Poverty

Committee and the Housing Committee (C.F. No. 16-0600-S157). This Office will issue a Request for Qualifications/Proposals on these sites by July 22, 2016. The goal is to sell or develop these properties for supportive housing to meet the \$47 million commitment in the budget.

Finance – Exhibit H instructed Finance to finalize contract negotiations with Airbnb and similar short-term rental websites for the collection and remittance of the City's TOT. With the expectation that the agreement would be in place at the start of the year, \$5 million in appropriations were set aside in the General City Purposes (GCP) Fund for rapid-rehousing vouchers as part of the \$138 million budget commitment to homeless programs (C.F. No. 16-0600). An additional \$769,000 in GCP funding to support the activities of the Cultural Affairs Department and Los Angeles Tourism and Convention Board, was set aside as well.

The Offices of Finance and the CAO report that a collection agreement between Airbnb and the City has been signed under delegated authority and is now in place for implementation on August 1, 2016, at which point Airbnb will collect TOT on bookings made by hosts using their platform. The agreement seeks to facilitate the collection of TOT on behalf of hosts who are currently responsible to collect the tax from guests and remit to the City, in accordance with Los Angeles Municipal Code Section 21.7.

The agreement does not limit the City from continuing its efforts in developing regulations to control or restrict short-term rentals in the City. While these regulations are being developed, the City is legally entitled to collect TOT from short-term rental hosts, either directly or via agreements with hosting platforms. The agreement ensures that all hosts using Airbnb comply with existing requirements for the collection of the tax. Finance is pursuing similar agreements with other short-term rental website platforms.

Other terms of the temporary agreement (Attachment A) include:

- The City or Airbnb may terminate the voluntary agreement prior to the conclusion of the three-year term following the adoption of a comprehensive ordinance to regulate short-term rentals in the City.
- Airbnb assumes the role of TOT collector for the term of the agreement. Airbnb does not assume TOT liability for bookings made prior to the effective date or after the termination date of the agreement.
- Finance may audit Airbnb's TOT remittances.
- Hosts or guests using Airbnb are not relieved from complying with laws concerning tax compliance or zoning regulations.
- The agreement does not limit the City's authority to pursue previously unpaid taxes directly from hosts.

Through this agreement, Finance is anticipating to realize the \$5.8 million funding expected in the budget. Once the Council adopts an ordinance regulating short-term rentals, it is recommended that the TOT collection agreement be amended or replaced to reflect any changes to laws applicable to short-term rentals.

**Attachment A**

**Collection Agreement for City of Los Angeles Transient Occupancy Tax**

**COLLECTION AGREEMENT  
FOR  
CITY OF LOS ANGELES TRANSIENT OCCUPANCY TAX**

**THIS COLLECTION AGREEMENT** (the “**Agreement**”) is dated July 15, 2016 and is between **AIRBNB, INC.**, a Delaware corporation (“**Airbnb**”) and the **CITY OF LOS ANGELES**, a municipal corporation (“**City**”) acting by and through its Office of Finance, for the purpose of collecting the City’s Transient Occupancy Tax (“**TOT**”). Each party may be referred to individually as a “**Party**” and collectively as the “**Parties**.”

**RECITALS:**

WHEREAS, Airbnb represents that it provides an Internet-based platform (the “**Platform**”) through which third parties offering accommodations (“**Hosts**”) and third parties booking such accommodations (“**Guests**”) may communicate, negotiate and consummate a direct booking transaction for accommodations to which Airbnb is not a party (“**Booking Transaction**”);

WHEREAS, the Office of Finance and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of TOT imposed under the Los Angeles Municipal Code (“**Code**”) for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in the City (the “**Taxable Booking Transactions**”).

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

(A) Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective (defined below), and solely for Taxable Booking Transactions completed on the Platform, Airbnb agrees contractually to assume the duties of a TOT collector as described in the Code (hereinafter referred to as a “**Collector**”).

(B) Starting on August 1, 2016 (the “**Effective Date**”), Airbnb agrees to commence collecting and remitting TOT, pursuant to the terms of this Agreement, at the applicable rate, on Taxable Booking Transactions. Except as set forth in Paragraph (L) below, Airbnb shall not assume any obligation or liability to collect TOT for any period or for any transaction prior to the Effective Date or after termination of this Agreement.

## **REMITTANCE OF TOT**

(C) Airbnb agrees reasonably to report aggregate information on the tax return form prescribed by the Office of Finance, including all TOT that is subject to the provisions of this Agreement, and it shall remit all TOT collected from Guests in accordance with this Agreement and Airbnb's Terms of Service ([www.airbnb.com](http://www.airbnb.com)) (the "TOS") in the time and manner described in the Code or as otherwise agreed to in writing.

## **AIRBNB LIABILITY**

(D) Pursuant to the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of TOT, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with the Code. Nothing contained herein nor any action taken pursuant to this Agreement shall impair, restrict or prevent Airbnb from asserting that any TOT and/or penalties, interest, fines or other amounts assessed against it were not due, are the subject of a claim for refund under applicable law or otherwise bar it from enforcing any rights accorded by law.

(E) During any period for which Airbnb is not in breach of its obligations under this Agreement, the Office of Finance agrees to audit Airbnb on the basis of TOT returns and supporting documentation.

(F) The Office of Finance agrees to audit Airbnb on an anonymous numbered account basis for Taxable Booking Transactions. Except as otherwise agreed herein or as otherwise validly legally required, now or in the future, Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Booking Transaction without binding legal process served by the Office of Finance on Airbnb with respect to such users.

(G) Airbnb, Inc. agrees to register as a Collector for the reporting, collection and remittance of TOT under this Agreement and will be the registered Collector on behalf of any affiliate or subsidiary collecting TOT.

## **GUEST AND HOST LIABILITY**

(I) Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to TOT for transactions completed other than on the Platform, or restrict the Office of Finance from investigating or enforcing any provision of applicable law against such users for such transactions.

(I) The City expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders investors, and/or employees and other agents from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of TOT or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to TOT on any Taxable Booking Transactions prior to the Effective Date.

## **NOTIFICATION TO GUESTS AND HOSTS**

(J) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it will notify (i) Hosts that TOT will be collected and remitted to the Office of Finance as of the Effective Date pursuant to the terms of this Agreement; (ii) Guests and Hosts of the amount of TOT collected and remitted on each Taxable Booking Transaction; (iii) Hosts that neither the existence of this Agreement, nor any of its specific terms, or the payment of any tax contemplated by this Agreement or otherwise required by the Code shall be construed as authorizing any activity that is otherwise prohibited under the Code or any other applicable rules or regulations, or relieving any Host of their obligation to comply with applicable rules and regulations. Specific language of such notifications shall be subject to approval by the Director of Finance.

## **LIMITATION OF APPLICATION**

(K) This Agreement is solely for the purpose of facilitating the administration and collection of the TOT with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution of or actions taken under this Agreement shall not be considered an admission of law or fact or constitute evidence thereof under the Code or any other provisions of the laws of the United States of America, of any State or subdivision or municipality thereof. Neither Party waives, and expressly preserves, any and all arguments,



contentions, claims, causes of action, defenses or assertions relating to the validity or interpretation or applicability of the Code, regulations or application of law.

#### **DURATION/TERMINATION**

(L) The term of this Agreement will begin as of the Effective Date and shall continue thereafter for a period of three (3) years. This Agreement may be terminated by Airbnb or the Office of Finance for convenience on 30 days' written notification to the other Party. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the Office of Finance any TOT collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the Office of Finance as of the date of termination.

#### **MISCELLANEOUS**

(M) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of California without regard to its conflict of law principles.

(N) MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.

(O) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(P) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

(Q) RELATIONSHIP OF THE PARTIES. The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise,

joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(R) **WAIVER AND CUMULATIVE REMEDIES.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(S) **FORCE MAJEURE.** Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(T) **ASSIGNMENT.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld).

(U) **MISCELLANEOUS.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

#### **NOTICES**

(V) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:



**To Airbnb:**

Airbnb, Inc.  
Attn: General Counsel  
888 Brannan Street, 4<sup>th</sup> Fl.  
SF, CA 94103  
legal@airbnb.com

Airbnb, Inc.  
Global Tax Director  
888 Brannan Street, 4<sup>th</sup> Fl.  
SF, CA 94103  
tax@airbnb.com

**To the Office of Finance:**

Attn: Director of Finance  
City of Los Angeles, Office of Finance  
200 N. Spring St., Room 220  
Los Angeles, CA 90012  
E-mail: Finance.Executive@lacity.org

**(Signatures follow on next page)**

*IN WITNESS WHEREOF*, Airbnb and the Office of Finance have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By: Beth Adair  
Signature of Authorized Representative

Beth Adair, Global Tax Director  
Name and Title of Authorized Representative

THE CITY OF LOS ANGELES OFFICE OF FINANCE,  
CALIFORNIA

By: Claire Bartels  
Claire Bartels, Director of Finance

By: Miguel A. Santana  
Miguel Santana, City Administrative Officer

APPROVED AS TO FORM AND LEGALITY

July 15, 2015  
Michael N. Feder, City Attorney

By: [Signature]

# Airbnb strikes deal with L.A. to collect millions in lodging taxes



City Administrative Officer Miguel Santana, pictured last month, says the new agreement with Airbnb will help the city collect lodging taxes but cautioned that it does not legalize short-term rentals. (Rick Loomis/Los Angeles Times)

By **Emily Alpert Reyes**

JULY 18, 2016, 4:55 PM

**U**nder a newly announced deal with Los Angeles city officials, Airbnb will soon start collecting lodging taxes from rental hosts, providing millions of dollars in revenue to the city annually.

Angelenos who rent out rooms or whole homes for short stays are already supposed to pay the same kind of lodging taxes as hotels, but L.A. tax officials have [struggled to track down hosts](#) and make sure they pay.

Now Airbnb, one of many websites that help people rent out their homes to travelers, will facilitate that process by collecting the taxes and handing them over to the city of Los Angeles.

The deal, which was worked out with city budget and tax officials, would go into effect in August. Los Angeles had been banking on more than \$5 million in tax revenue from such rentals for the budget year that began in July — money that would help pay for homeless programs.

“The hosts are required to pay that tax,” said City Administrative Officer Miguel Santana, L.A.’s top budget official. “We’re simply creating a mechanism to facilitate that.”

Airbnb praised the move, saying it would help Angelenos and ensure that the city shared in the economic benefits of such rentals. “Our community of hosts wants to pay their fair share and we want to help,” John Choi, Airbnb public policy manager for Southern California, said in a written statement Monday.

Santana cautioned that the agreement does not legalize short-term rentals. Despite the booming popularity of such rentals, it is currently illegal to rent out a home for less than 30 days at a time in much of Los Angeles, according to planning officials. L.A. is now [mulling a new law](#) that would legalize and regulate such rentals, restricting the number of days that a room or home can be offered to travelers and requiring hosts to register with the city.

“There is going to be a lot of debate about how this industry is regulated,” Santana said. “We just want to make sure that while that conversation is taking place, the city is not missing out on millions of dollars in revenues.”

Critics of the industry were nonetheless alarmed by the announcement. Keep Neighborhoods First co-founder Judith Goldman, whose group has raised concerns about “commercialized” rentals, said it would “validate illegal activity by Airbnb.”

Last year, city lawmakers opted to [hold off](#) on negotiating a tax deal with Airbnb, despite the fact that Mayor Eric Garcetti had already included \$5 million from such an agreement in the city budget. At the time, Councilman Paul Koretz said he was worried about legitimizing what he dubbed the “cheating economy” before regulations were in place.

This year, however, the council approved budget recommendations that called on finance officials to finalize negotiations with Airbnb and similar websites to collect the 14% tourist tax.

The city had once again included \$5 million from such taxes from rental hosts in its annual budget. Airbnb has [estimated](#) that collecting such taxes from its hosts could have yielded more than \$20 million for Los Angeles last year.

City Councilman Mike Bonin said he was glad to see the agreement, but “reasonable regulations” were still urgently needed.

"We need to let our regulations dictate how much revenue we receive, and not let potential revenue dictate what sort of regulations we craft," Bonin said in an emailed statement.

The roiling debate over L.A.'s proposed law has pitted rental hosts who rely on the flourishing business against housing and neighborhood activists who argue that it has worsened the housing crisis.

Under the proposal, rental hosts could be fined for flouting the rules, and online platforms such as Airbnb could also face fines if they advertise unregistered rentals. That could set up the city for a legal battle with the rental giant: Airbnb recently [sued its hometown of San Francisco](#), seeking to block similar rules.

Santana said that the tax agreement with Airbnb can be amended or revoked as soon as the city adopts any new regulations

The agreement includes a mechanism for the city to audit the tax payments. And the city is not prohibited from pursuing hosts for lodging taxes they failed to pay in the past, according to a report released by his office Monday.

Airbnb has reached similar agreements with other cities across the country to collect the required taxes from its hosts. Los Angeles is also seeking to strike such agreements with other online rental platforms.

[emily.alpert@latimes.com](mailto:emily.alpert@latimes.com)

**Twitter:** [@LATimesEmily](#)

**ALSO**

[Are Airbnb hosts in greater danger of identity theft?](#)

[Popularity of Airbnb, Uber surges among American summer travelers](#)

[Airbnb's legal argument: Don't hold us accountable for the actions of our hosts](#)

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## UPDATES:

**4:47 p.m.:** This article was updated with additional reactions.