



City of Culver City

Staff Report

File #: 18-01337, Version: 1

Item #: C-6.

CC - (1) Discussion of Establishing Voluntary Collection Agreements for Short Term Rental Transient Occupancy Tax; and (2) Direction to the City Manager as Deemed Appropriate.

Meeting Date: June 11, 2018

Contact Person/Dept: Jesse Mays / City Manager's Office

Phone Number: (310) 253-6000

Fiscal Impact: Yes No

General Fund: Yes No

Public Hearing: **Action Item:** **Attachments:**

Commission Action Required: Yes No **Date:**

Public Notification: (E-Mail) Meetings and Agendas - City Council (06/06/18); GovDelivery e-mail lists: Short Term Rentals (06/04/18), Finance Authority (06/04/18), Fiscal and Budget Issues (06/04/18).

Department Approval: John Nachbar, City Manager (06/05/18)

RECOMMENDATION

Staff recommends the City Council discuss and consider direction on:

1. A voluntary collection agreement (VCA) with Airbnb, HomeAway and any other willing hosting platform.

AND/OR

2. A request for proposals for TOT collection services for short term rental hosts who do not use platforms with VCA agreements.

BACKGROUND/DISCUSSION

Short Term Rental Hosts and Hosting Platforms

Short term rental hosts use hosting platforms to advertise, facilitate, and manage bookings at their

property. Airbnb is the largest short term rental hosting platform in Culver City by number of active listings. The two other most well-known hosting platforms, HomeAway (which owns Vacation Rental By Owner and VacationRentals.com) and FlipKey (owned by TripAdvisor), currently each only have a handful of Culver City listings. There are also other, less popular short term rental sites that do not appear to currently have any presence in Culver City, such as Inclusive, Homestay, and Vacasa.

Current Airbnb Market in Culver City

On Airbnb, the number of active listings (listings with days available for rent during the past month) in Culver City is currently 212. Of these listings, 113 are entire homes for rent, and 98 are for a private room in a home. There are 175 properties with at least one night booked on Airbnb during the past month. There are currently 173 active hosts (145 with a single listing, and 28 with multiple listings). Listings include 23 studios, 43 1-BR, 29 2-BR, 13 3-BR, 4 4-BR, and 1 5-BR+ homes.

The current average daily rate for Airbnb bookings in Culver City is \$155/night for an entire home and \$73/night for a private room. The median monthly revenue for properties with at least one booking was \$2,764 for the entire home and \$1,217 for a private room. The occupancy rate (number of booked nights divided by the number of booked nights available) for Airbnb listings during April 2018 was 86%, excluding listings with no booked nights.

For the 12 months ending April, 2018, the total Culver City market revenue was projected to be \$4,931,260. If current Culver City's Transient Occupancy Tax of 14% had been applied to these bookings, the City would have generated TOT revenue of \$690,376.

Applicability of TOT to Short Term Rentals in Culver City

Culver City's Transient Occupancy Tax ordinance (CCMC Section 11.02.100, et seq.) is written broadly enough to apply to short term rental hosts and the hosting platforms they use. This is true even though short term rentals are currently prohibited in residential zones. TOT applies to transient occupancy of a hotel for a rental period of 30 days or less. The ordinance defines hotel as: "**Any structure, or any portion of any structure**, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, **tourist home or house**, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, **or other similar structure or portion thereof.**" (Emphasis added.) Also, the definition of "operator" in the City's TOT ordinance does not distinguish between property owners who rent their homes, apartments or rooms directly to short-term tenants and those owners who rent via hosting platforms, and includes a proprietor serving in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or "any other capacity". Therefore, the TOT ordinance should be equally applicable to property owners and hosting platform companies. Pursuant to CCMC Section 11.02.105 each transient is subject to and shall pay the City's TOT in the amount of fourteen percent (14%) of the rent charged by the hotel operator.

Voluntary Collection Agreement

Short-term rental hosts who are not using a professional property manager may find it difficult to properly track and remit TOT to the City. This makes it burdensome for a city to achieve tax

compliance from these hosts. In order to make it easier for hosts to collect and remit TOT, and to relieve the city from the burden of collection, some cities have entered into Voluntary Collection Agreements (VCA) with hosting platforms, such as Airbnb. A VCA is a legally binding agreement between a hosting platform and a taxing authority to contractually assume the tax collection and remittance obligations of the platform's hosts for booking transactions completed on the platform. The platform registers as a taxpayer and reports/remits in the aggregate on a single return. Hosts cannot opt in/out. If a hosting platform has a VCA with the jurisdiction, hosts are relieved of tax collection tracking and remittance for transactions completed on the platform in that jurisdiction. The platform does not assume obligations unrelated to tax (e.g., rental permitting, zoning, health and safety requirements, etc.) According to Airbnb, implementation of an occupancy tax VCA typically takes two to three months, but sometimes over a year depending on the length of the negotiations with the jurisdiction.

Cities Using VCAs with Airbnb

Although it has not finalized its short term rental regulation, Los Angeles began a three-year VCA agreement with Airbnb on August 1, 2016. During the first year the VCA was in place, Airbnb remitted approximately \$40 million in taxes to the City of Los Angeles, which was much greater than the \$13 million it had expected. (According to Airbnb, L.A. had 15,900 active hosts during this time period, compared to Culver City's estimated 223.) A copy of L.A.'s VCA agreement with Airbnb is attached. Key terms in L.A.'s agreement include:

- L.A. 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 L.A.
- 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.
- L.A. 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 L.A.'s authority to pursue previously unpaid taxes directly from hosts, although L.A. agrees to not pursue these unpaid taxes from Airbnb.

L.A. anticipates that its collection agreement will be amended or replaced to reflect any changes to laws that are applicable after short-term rental regulations have been decided. L.A. also has a VCA agreement with HomeAway, which has resulted in the collection of TOT, although according to L.A. significantly less than that collected by Airbnb.

West Hollywood is in the process of establishing a VCA agreement with Airbnb. Santa Monica has agreements with Airbnb and HomeAway that are not standard VCA agreements, but are related to litigation between the Santa Monica and those companies.

As of Spring 2017, California cities and counties in which Airbnb collects occupancy taxes through a VCA include:

- Coachella • Desert Hot Springs • Indio • La Quinta • Los Angeles • Malibu • Oakland • Palm Desert • Palo Alto • Rancho Mirage • San Diego • San Francisco • San Jose • Santa Clara • Santa Monica • Humboldt County • Marin County • Nevada County • San Luis Obispo County • Santa Cruz County •

Sonoma County • Tuolumne County

Issues Associated with VCAs

In determining whether to enter into a VCA, the City will need to weigh the benefit of the hosting platform's cooperation in facilitating TOT collection against the concessions made by the City by entering into the VCA. Although these agreements have proven popular with cities, there are several issues associated with entering into a VCA agreement that should be understood before entering into the agreement.

Transparency

Airbnb's standard VCA makes it difficult for cities to confirm accurate payments. A common provision of the VCA requires a city to agree to only audit Airbnb once per any consecutive 48-month period, and that the audit, and any subsequent assessment based on the audit, will be limited to a consecutive 12-month period. Airbnb's VCA frequently asks the city to agree that it will not seek personally identifiable information relating to a host or a guest until the city has conducted an audit of Airbnb. Other hotels operating in Culver City do not impose these restrictions on their data. According to a March 2017 report by the American Hotel and Lodging Association, VCAs "do not guarantee the proper collection of taxes due" and "block tax agencies from verifying the accuracy of Airbnb payments." Depending on how the VCA was negotiated, the City will likely have a limited picture of Airbnb's operations, and will not be able to fully evaluate the company's tax bill, and will not be able to easily identify compliance by individual hosts.

Limitation on Past Collections

Airbnb's standard VCA requires cities to waive and release it 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 transaction prior to the effective date of the VCA. However, the VCA doesn't necessary limit the City from pursuing previously unpaid taxes directly from hosts.

Impact of Tax Collection While STRs Still Prohibited

Although the City is legally able to collect TOT from STRs while they are still illegal, doing so could be construed as the City condoning the activity. The City currently has an informal moratorium on active enforcement of the STR prohibition, but members of the public could accuse the City of not enforcing the prohibition due to the desire to collect tax revenue. This issue can be addressed by continuing to separate the City's enforcement and tax collection functions. The Code Enforcement Services division of the Community Development Department is responsible for code enforcement, while the Finance Department is responsible for TOT collection.

Additional Tax Collection Methods

Some cities use alternative TOT collection method or use a supplemental collection method to collect TOT from hosts using platforms without a VCA agreement. For example, companies such as Host Compliance and Accela offer online platforms that allow hosts to easily register and pay TOT online. This would allow the City to collect TOT from providers such as Flipkey, Craigstlist, etc.

Sources and Additional Information

“Emerging Issues in the Enforcement of Short-Term Rental Regulations.” Report by Kevin Heneghan and Andrea Visveshwara. League of California Cities City Attorneys’ Spring Conference, May 3-5, 2017. Accessible at:

<https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2017/Spring-Conf-2017/Heneghan-ResidentialRentalRegulationIssues>

“Short Term Rental Regulatory Issues” Presentation by Airbnb. League of California Cities City Attorneys’ Spring Conference, May 3-5, 2017. Accessible at:

<https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2017/Spring-Conf-2017/HeneghanPPT-Residential-Regulation-Issues.aspx>

“Implementation of the 2016-2017 Revenue Budget (Exhibit H) - Revenue Enhancement and Department Fee Annual Reviews.” Report by Miguel A. Santana, City Administrative Officer, City of Los Angeles. Includes VCA agreement with Airbnb. Accessed at:

http://clkrep.lacity.org/onlinedocs/2016/16-0600_rpt_CAO_07-18-2016.pdf

FISCAL ANALYSIS

There is no fiscal impact associated with this item.

ATTACHMENTS

1. 2018-06-11 - ATT 2016 VCA Between City of Los Angeles and Airbnb

MOTION

That the City Council:

1. Direct the City Manager to return for City Council approval with a voluntary collection agreement with Airbnb, HomeAway, and any other willing hosting platform; and/or
2. Direct the City Manager to issue a request for proposals for TOT collection services for short term rental hosts who do not use platforms with VCA agreements.