



City of Culver City

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Staff Report Details (With Text)

File #: 19-326 **Version:** 1 **Name:** Approval of a Voluntary Collection Agreement with Airbnb for the Collection of Transient Occupancy Tax on Short Term Rentals.

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Title: CC - Approval of a Voluntary Collection Agreement with Airbnb for the Collection of Transient Occupancy Tax on Short Term Rentals.

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Attachments: 1. 2018-09-24_ ATT1_Proposed Airbnb VCA.pdf

Date	Ver.	Action By	Action	Result
9/24/2018	1	City Council Meeting Agenda		

CC - Approval of a Voluntary Collection Agreement with Airbnb for the Collection of Transient Occupancy Tax on Short Term Rentals.

Meeting Date: September 24, 2018

Contact Person/Dept: Jesse Mays / Assistant to the City Manager

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 (09/17/18); GovDelivery e-mail lists: Short Term Rentals (09/17/18), Finance Authority (09/17/18), Fiscal and Budget Issues (09/17/18).

Department Approval: Serena Wright, Assistant City Manager (09/18/18)

RECOMMENDATION

Staff recommends the City Council approve the proposed Voluntary Collection Agreement with Airbnb for the collection of transient occupancy tax on short term rentals.

BACKGROUND

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 Innclusive, 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 264. Of these listings, 155 are entire homes for rent, and 106 are for a private room in a home, and 3 are for a shared room. There are 231 properties with at least one night booked on Airbnb during the past month. There are currently 208 active hosts (170 with a single listing, and 38 with multiple listings). Listings include 31 studios, 60 1-BR, 41 2-BR, 14 3-BR, 7 4-BR, and 2 5-BR+ homes.

The current average daily rate for Airbnb bookings in Culver City is \$138/night for an entire home and \$73/night for a private room. The median monthly revenue for properties with at least one booking was \$3,140 for the entire home and \$1,534 for a private room. The occupancy rate (number of booked nights divided by the number of nights available) for Airbnb listings during August 2018 was 90%, excluding listings with no booked nights.

For the 12 months ending August, 2018, the total Culver City market revenue was projected to be \$5,189,093. If current Culver City's Transient Occupancy Tax ("TOT") of 14% had been applied to these bookings, the City would have generated TOT revenue of \$726,473.

Applicability of TOT to Short Term Rentals in Culver City

Culver City's TOT 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.)

DISCUSSION

At its June 11, 2018 meeting, after hearing from members of the public, the City Council discussed this matter at length and provided direction to staff to negotiate a VCA with Airbnb. Over the past few months, staff from the City Manager's Office, Finance Department and City Attorney's Office negotiated the proposed VCA (Attachment 1), which includes the following key provisions:

- Airbnb assumes (and hosts are relieved of) collection duties for TOT associated with listings on its site, including liability for any failure to report, collect and/or remit the correct amount of TOT. (Sections D and H)
- Airbnb agrees to an audit once every four years. (Section F)
- The City waives Airbnb from TOT or any related fines for bookings made prior to the VCA. (Section I)
- The VCA is terminable by either party for convenience with 30 days' notice. (Section L)

Although VCAs have proven popular with cities, there are several issues associated with entering into a VCA that should be understood before entering into such agreement. In negotiating the terms of the proposed VCA, City staff considered such issues, including:

- The benefit of Airbnb's cooperation in facilitating TOT collection against any concessions to be made by the City by entering into the VCA.
- Challenges with confirming accurate payments and limited ability to audit.
- Limitation on past collections.
- Perception the City is condoning the operation of short term rentals, which is currently an unpermitted use in the Zoning Code.

Through discussions with Airbnb, City staff was able to reach some compromise in order to address some of the above issues. For example:

- Airbnb's standard 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. Staff was able to obtain Airbnb's agreement to eliminate the 12-month limitation. Culver City will be able to audit all periods.

- Airbnb's standard VCA requires a city to agree that it will not seek personally identifiable information (PII) relating to a host or a guest until the city has conducted an audit of Airbnb. In Culver City's case, Airbnb agreed to modify the language so that Culver City need only make "reasonable attempts" to audit prior to requiring Airbnb to produce PII.
- Staff was able to obtain Airbnb's agreement to eliminate a provision that would have had the City waive its right to pursue previously unpaid taxes directly from hosts, although there are no plans to do so at this time.
- Although the City is legally able to collect TOT from short terms rentals while they are still an unpermitted use, doing so could be construed as the City condoning the activity. In order to attempt to address this concern, Airbnb has agreed to notify hosts that the existence of the VCA or the payment of any tax under the VCA shall not be construed as authorizing any activity that is otherwise prohibited under the CCMC.

Airbnb requires three to four weeks to test/configure its systems and send out host notifications. Therefore, if the City Council approves the VCA and it is executed by October 1st, Airbnb would commence its collection efforts on November 1st.

Other Hosting Platforms

After the June 11, 2018 City Council meeting, staff contacted HomeAway about initiating VCA negotiations. HomeAway informed staff that they were not pursuing any additional VCAs at this time other than the three "beta test" VCA agreements they have in place with Los Angeles, Broward County, Florida, and Washington, D.C.

In consultation with the Short Term Rental Subcommittee, it was determined not to pursue additional VCAs with other smaller hosting platforms at this time due to the limited number of listings and TOT potential.

FISCAL ANALYSIS

It is anticipated the City could receive approximately \$60,500 per month in TOT revenue through the implementation of a VCA with Airbnb.

ATTACHMENTS

1. 2018-09-24_ATT 1_Proposed Airbnb VCA

MOTION

That the City Council:

1. Approve a voluntary collection agreement with Airbnb for the collection of transient

occupancy tax on short term rentals;

2. Authorize the City Attorney to review/prepare the necessary documents; and
3. Authorize the City Manager to execute such documents on behalf of the City.