

STAFF REPORT

DATE: September 12, 2017
TO: City Council
FROM: Kelly Stachowicz, Assistant City Manager
SUBJECT: Short Term Internet Rentals - Update

Recommendation

1. Approve attached Resolution to authorize City Manager to execute agreement with Airbnb to collect transient occupancy tax, as required by Davis Municipal Code, for short term rentals secured through the Airbnb platform.
2. Require Airbnb hosts to hold a Davis business license in order to rent their property.
3. Provide direction to staff on any additional activity Council is interested in exploring related to short term rentals.

Fiscal Impact

Transient Occupancy Tax in Davis is 12% of the cost of a room night. It is unknown how many Airbnb rentals there are in Davis or how many room nights are used each year. As of this report, the Airbnb website showed 266 rentals with an average price of \$79. If each of those locations rented out for 20 room nights per year, the revenue to the City would be approximately \$50,000.

In addition, if Airbnb hosts apply for a business license, additional revenues will flow to the City. These revenues will, like the TOT, range from \$13 per host upward depending on gross receipts.

However, the City does not have access to data to know the locations or the average number of room nights through Airbnb in Davis.

Council Goal(s)

This is not a specific task in the Council goals. However, it fits within the goals of “Ensure Fiscal Resilience” and “Drive a Diverse and Resilient Economy.”

Background and Analysis

In September of 2015, the City Council discussed the issue of short term rentals via internet platforms, specifically Airbnb. Council did not wish to create additional regulations at that time but directed staff to continue to work with Airbnb and the public, returning to the City Council at a later date.

Although a focused public forum has yet to take place, staff and the City Attorney’s office have been working with Airbnb and have a draft agreement for Airbnb to pay transient occupancy tax

to the City. The Municipal Code already requires a short term rental like those facilitated by Airbnb to pay transient occupancy tax (TOT), but the City has no way to know locations, terms and usage of such properties without the assistance of the online platform, hence the need for an agreement with Airbnb to provide the required TOT. The proposed agreement does not provide the City with any information about individual properties; no location, rental nights or prices are disclosed. It does, however, provide that Airbnb will collect and remit to the City the 12% transient occupancy tax, in the same manner as existing brick and mortar hotels in Davis. Staff recommends the Council authorize the City Manager to execute the agreement.

In addition, staff recommends that the City's policy should be to require a business license for anyone who rents out a room for a short term rental. Similar to any home-based business, a business license allows the City to know where in residential areas business activity is taking place and to collect the appropriate tax for revenue generated through that for-profit enterprise. A business license is also required for traditional hotels and for single family homes that are used as rental units. A business license is based on gross receipts, so the more a host makes, the higher the business license tax. A host would pay \$13 per year up to \$10,000 gross receipts and a sliding scale beyond that (the total cost for gross receipts up to \$30,000 would be \$25).

Council may also wish to provide additional direction to staff regarding outreach, regulation and/or activity related to short term rentals in the city.

Attachments

1. Resolution
2. Agreement with Airbnb

RESOLUTION NO. 17-XXX, SERIES 2017

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
VOLUNTARY COLLECTION AGREEMENT WITH AIRBNB**

WHEREAS, residents of Davis may utilize the Airbnb internet platform to engage in the sharing economy to rent out space in their homes on a short term basis; and

WHEREAS, these actions fall under existing city code requiring the payment of transient occupancy tax for each room night; and

WHEREAS, the City of Davis does not have a mechanism by which to collect the funds other than to enter into a cooperative agreement with Airbnb.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Davis that the City Manager is authorized to execute the attached Agreement (Exhibit A) with Airbnb, allowing for changes as may be required by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Davis this 12th day of September, 2017 by the following vote:

AYES:

NOES:

ABSENT:

Robb Davis
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

**VOLUNTARY COLLECTION AGREEMENT
FOR
CITY OF DAVIS, CALIFORNIA, TRANSIENT OCCUPANCY TAX**

THIS VOLUNTARY COLLECTION AGREEMENT (the “**Agreement**”) is dated _____, 2017 and is between **AIRBNB, INC.**, a Delaware corporation (“**Airbnb**”) and the **FINANCE DEPARTMENT OF THE CITY OF DAVIS, CALIFORNIA** (the “**Taxing Jurisdiction**”). 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 Taxing Jurisdiction and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of applicable transient occupancy taxes (“**TOT**”) imposed under applicable City of Davis law (the applicable “**Code**”), on behalf of Hosts for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in the City of Davis (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 solely for the collection and remittance of TOT (hereinafter referred to as a “**Collector**”). The assumption of such duties shall not trigger any other registration requirements to which Airbnb is not otherwise subject.

(B) Starting on _____, 2017 (the “**Effective Date**”), Airbnb agrees to commence collecting and remitting TOT on behalf of Hosts, 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 termination of this Agreement.

REMITTANCE OF TOT

(C) Airbnb agrees reasonably to report aggregate information on the tax return form prescribed by the Taxing Jurisdiction, including an aggregate of gross receipts, exemptions and adjustments, and taxable receipts of all TOT that is subject to the provisions of this Agreement. Airbnb shall remit all TOT collected from Guests in accordance with this Agreement and Airbnb's Terms of Service (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 Taxing Jurisdiction agrees to audit Airbnb on the basis of TOT returns and supporting documentation, and agrees not to directly or indirectly audit any individual Guest or Host relating to Taxable Booking Transactions unless and until an audit of Airbnb by the Taxing Jurisdiction has been exhausted with the matter unresolved. The Taxing Jurisdiction reserves the right to audit any individual Airbnb Host for activity that has been brought to the attention of the Taxing Jurisdiction in the form of a complaint or other means independent of this Agreement or independent of data or information provided pursuant to this Agreement.

(F) The Taxing Jurisdiction agrees to audit Airbnb on an anonymized transaction basis for Taxable Booking Transactions. Except as otherwise agreed herein, 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 only after completion of an audit by the Taxing Jurisdiction of Airbnb with respect to such users. The Taxing Jurisdiction agrees that it will not audit or issue an assessment against Airbnb more than once per any consecutive forty-eight month period and that such audit or assessment will be limited to a consecutive twelve-month period within the forty-eight month period.

(G) Airbnb, Inc. agrees to register as a Collector for the sole purpose of 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

(H) During any period in which this Agreement is effective relating to Taxable Booking Transactions, provided Airbnb is in compliance with its obligations herein, Hosts shall be relieved of any obligation to collect and remit TOT on Taxable Booking Transactions, and shall be permitted but not required to register individually with the Taxing Jurisdiction to collect, remit and/or report TOT. 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 Taxing Jurisdiction from investigating or enforcing any provision of applicable law against such users for such transactions.

WAIVER OF LOOK-BACK

(I) The Jurisdiction expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders investors, employees and other agents, and/or Hosts or Guests 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. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the Jurisdiction may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.

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 Taxing Jurisdiction as of the Effective Date pursuant to the terms of this Agreement; and (ii) Guests and Hosts of the amount of TOT collected and remitted on each Taxable Booking Transaction.

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) This Agreement may be terminated by Airbnb or the Taxing Jurisdiction for convenience on 30 day written notification to the other Party. Such termination will be effective on the first day of the calendar month following the 30 day written notification to the other Party. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the Taxing Jurisdiction 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 Taxing Jurisdiction 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 entering into an arm's-length transaction and do not have any relationship, employment or otherwise. 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 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). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

(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, 4th Fl.
SF, CA 94103
legal@airbnb.com

Airbnb, Inc.
Attn: Global Head of Tax
888 Brannan Street, 4th Fl.
SF, CA 94103
tax@airbnb.com

To the Taxing Jurisdiction:

Fax: _____
E-mail: _____

(Signatures follow on next page)

IN WITNESS WHEREOF, Airbnb and the Taxing Jurisdiction have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By: _____
Signature of Authorized Representative

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

**THE FINANCE DEPARTMENT OF THE
CITY OF DAVIS, CALIFORNIA**

By: _____
Signature

Name and Title