



**CONTRA COSTA COUNTY
DEPT. OF CONSERVATION AND DEVELOPMENT
30 Muir Road
Martinez, CA 94553**

DATE: August 16, 2017

TO: Finance Committee
Supervisor Karen Mitchoff, District IV, Chair
Supervisor John Gioia, District I, Vice Chair

FROM: John Kopchik, Director, Department of Conservation and Development
By: Kristine Solseng, Principal Planner

SUBJECT: Transient Occupancy Tax Collection for Short Term Rentals (Airbnb)

RECOMMENDATIONS

ACCEPT report on the Transient Occupancy Tax (TOT) regarding short-term rentals such as Airbnb and **CONSIDER** any additional information requests of staff and a potential recommendation to the Board of Supervisors.

Background

On May 9, 2017 the Board of Supervisors referred to the Finance Committee the issue of exploring opportunities for revenue from Airbnb within the unincorporated areas of the County. This report explores mechanisms and issues related to collecting TOT and other revenue from these types of rentals.

Contra Costa County has a transient occupancy tax ("TOT") ordinance (see attached) which authorizes the collection of a 10% tax on the rent charged. Currently, the following hotels in the unincorporated area) are subject to the TOT: Embassy Suites (unincorporated Walnut Creek area), Crowne Plaza (unincorporated Concord area), Burlington Hotel (Port Costa), and The Renaissance Club Sport Hotel (unincorporated Walnut Creek area. The county collects between \$2 to \$2.5 million per year from the TOT.

There have been an increasing number of short-term, online rental services providing accommodations in private homes and apartments similar to those historically provided only by traditional hotels and motels. Airbnb is the most popular web based service, which allows individuals to list, find, and rent lodging. There are similar electronic hosting platforms such as Homeway/VRBO and TurnKey. Currently, there is no revenue collected from these short-term home and apartment rentals.

TOT Collection and Short-Term Rentals

- **Current TOT Collection:**

The County collects TOT from “operators” of “hotels.” The County's TOT ordinance defines the terms “hotel” and “operator.” In the view of staff, Airbnb rentals appear to fall into the County's definition of “hotel.” The term “operator” is defined as “the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal.”

The TOT Ordinance Code requires hotel operators to register with the tax administrator and obtain a certificate. The Ordinance also requires operators to make quarterly reports to the tax administrator of the total rents charged and taxes collected. The administrative burden of requiring every individual who wants to use their property as an Airbnb rental to fulfill the registration and reporting requirements would likely be cost prohibitive. Presumably, this is why local agencies have sought to have the electronic hosting platform collect the tax.

- **Local Agency Approaches to Collecting TOT on Short-Term Rentals:**

There are two approaches to collecting TOT from Short-Term Rentals. One is require hosts and hosting sites to collect and remit TOT to local agencies, and the other is to enter into a Voluntary Compliance Agreement with the hosting site.

- **Short Term Rental TOT Collection by Ordinance:**

Some jurisdictions have enacted laws to require the collection of TOT from short-term rentals. In June of 2015, the City of Santa Monica established a "Home-Sharing Ordinance" (see attached). This ordinance requires hosts (property owners) and hosting platforms, such as Airbnb and VRBO, to be responsible for collecting TOT. Santa Monica's regulations specify that:

“If the Hosting Platform collects payment for the rental, the hosting platform and the host shall both have legal responsibility for the collection of all applicable TOT and remittance of the collected tax to the City on a monthly basis.”

- **Airbnb Voluntary Compliance Agreement:**

A number of jurisdictions (e.g., San Jose, Richmond, Pinole, Sonoma County) have entered into Voluntary Compliance Agreements (VCA) with Airbnb whereby the hosting platform agrees to collect the TOT on behalf of the property owner and pay it to the city or county. As part of the VCA terms, Airbnb will provide a quarterly summary of TOT collected, but it does not provide information about specific hosts or rental units. Some jurisdictions have concerns over the lack of transparency about who is hosting and where the units are located. Staff was unable to find similar agreement with Home Away/VBRO. This may be because VRBO has been a marketing platform versus Airbnb's business model as a transactional service. A copy of the City of Richmond's Airbnb Voluntary Compliance Agreement is attached.

- **Potential Revenue from Short-Term Rentals**

The revenue generated from an agreement depends on the number of Airbnb units rented in unincorporated Contra Costa County. Based on a preliminary review of Airbnb listings, there

are an estimated 200 listings in unincorporated Contra Costa County. Considering a very conservative estimate of \$80/night with a two-night stay and each unit rented twice a month, the County would receive about \$76,800 in additional revenue annually.

- **State Laws Imposing Collection Obligations on Airbnb:**

California State Senator McGuire introduced legislation in both 2015 and 2016 to regulate short-term rentals, in particular collection of TOT. Neither bill was passed and some of the unresolved issues include:

- Role of the State and local jurisdictions in the collection of TOT and regulating short term rentals;
- Level of transparency required by hosting sites to state and local jurisdictions; and
- Conflicting interests from hotel/labor organizations and hosting site/hosts.

Other Regulatory Issues

- **Zoning:**

In considering whether to impose TOT on short-term rentals, some jurisdictions have elected to change their ordinances to remove prohibitions against renting out property on a short-term basis, thus allowing greater access to Airbnb services. Other jurisdictions have limited short-term rental by requiring additional permitting/registration, restricting the type of unit allowed to be rented (hosted vs non-hosted), restricting the duration a unit may be rented, and requiring additional conditions related to health/safety. The Board has directed the Department of Conservation and Development to review current zoning regulations and further examine the need for additional regulation of short-term rentals. It is anticipated DCD will report to the Board on this issue in September 2017. The Board may wish to consider coordinating the exploration of the zoning issue with its review of revenue actions from these types of rentals.

- **Business Tax:**

The Ordinance Code requires anyone operating a business in the unincorporated area to obtain a business license. If the estimated 200 hosts in unincorporated Contra Costa County are required to pay the Business License Tax, it could generate \$20,000 annually. However, this may be a very optimistic amount because businesses with annual gross receipts of less than \$20,000 per year are exempt from the Business License Tax. Additionally, hosting sites may not release the names of their hosts providing a challenge for enforcement.