



**Contra
Costa
County**

To: Board of Supervisors
From: FINANCE COMMITTEE
Date: September 19, 2017

Subject: Short Term Rental Transient Occupancy Tax Report

RECOMMENDATION(S):

ACCEPT the report on the Transient Occupancy Tax (TOT) associated with short-term rentals such as Airbnb and DIRECT staff to negotiate with Airbnb on a Voluntary Collection Agreement authorizing Airbnb to remit TOT to the County.

FISCAL IMPACT:

Potential increase in Transient Occupancy Taxes (TOT) estimated at \$75,000 annually.

BACKGROUND:

Background

On May 9, 2017 the Board of Supervisors referred to the Finance Committee the issue of exploring opportunities for transit occupancy tax (TOT) revenue from Airbnb within the unincorporated areas of the County. The Finance Committee considered the various mechanisms for collecting TOT at its meeting on August 16, 2017 and recommends County staff be authorized to negotiate and bring to the Board for its consideration a Voluntary Collection Agreement with Airbnb. The following outlines the various tax collection mechanisms and issues related to collecting TOT and other revenue from short term rentals. A separate report on regulatory options associated with short term rentals will also be

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☒ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **09/19/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: September 19, 2017

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Kristine Solseng (925)
674-7809

cc:

considered by the Board on September 19, 2017.

Contra Costa County has a 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),

BACKGROUND: (CONT'D)

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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 Rental

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 (see attached) 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 to 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 Collection 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 a similar agreement with Home Away/VRBO. This may be because VRBO has been a marketing platform versus Airbnb’s business model as a transactional service. The Finance Committee directed staff to contact Airbnb to better understand the agreement process. To date, Airbnb has provided a Voluntary Collection Agreement Term Sheet that defines the relationship between the County, Airbnb, and Airbnb hosts. A copy of the Term Sheet is attached as well as a copy of the City of Richmond’s Airbnb Voluntary Collection Agreement.

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 (DCD) to review current zoning regulations and further examine the need for additional regulation of short-term rentals. DCD will report to the Board on this issue also on September 19, 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.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board does not authorize staff to negotiate a Voluntary Compliance Agreement with AirBnb, the County may lose out on potential revenue collected from short-term rentals.

ATTACHMENTS

Contra Costa County Transient Occupancy Tax Ordinance

Santa Monica Short Term Housing Ordinance

AirBnB Voluntary Collection Agreement Term Sheet

City of Richmond's Voluntary Collection Agreement