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CITY COUNCIL STAFF REPORT

Meeting: June 19, 2018

Subject

Agreement with Airbnb to collect transient occupancy taxes from its platform users who operate short-term rentals in Cupertino.

Recommended Action

Authorize the City Manager to enter into a voluntary collection agreement with Airbnb to collect transient occupancy taxes owed to City from short-term rental operators in Cupertino using the Airbnb platform.

Background

Short-term rentals (STRs) fall under the definition of “hotel” under Cupertino’s Transient Occupancy Tax (TOT) regulations (Section 3.12.020 of Chapter 3.12, Transient Occupancy Tax). People or “transients” occupying these short-term rentals are subject to a 12% TOT on the rent charged during the first 30 days of occupancy. Proprietors or “operators” of these short-term rentals are required to register and obtain a Transient Occupancy Registration Certificate from the City within 30 days of commencing business as well as collect TOT from renters. To date, the City has not received any TOT remittances from short-term rental operators in the City.

As reported to Council in February, there are roughly 300 STRs available within City limits. However, the City does not have the data or resources required to proactively enforce TOT requirements at this time. Enforcement of STRs has been complaint-based and focused on zoning requirements.

A study session was held on February 5, 2018 in which Council directed staff to pursue a voluntary collection agreement (VCA) with STR platforms like Airbnb. In addition, Council expressed interest in creating a regulatory program for STRs.

Discussion

Based on data we gathered from STR compliance vendors, the majority of STR operators in Cupertino utilize the Airbnb platform. In addition to marketing STRs, Airbnb acts as a collection agent for STR operators. While Airbnb is not an STR operator and is therefore not responsible for collecting TOT, it has agreed to voluntarily collect TOT on behalf of its users and remit the revenue to cities that sign a voluntary collection agreement (VCA). Under the terms of the VCA, Airbnb agrees to assume the duties to collect the TOT completed on its hosting platform and remit it to the City on a monthly basis pursuant to our TOT code.

Airbnb represents that it achieves 100% compliance with TOT collection through the VCA. It achieves this compliance by programming its hosting platform to automatically collect the TOT from transients who rent short-term rental units from Airbnb hosts. Once collected, Airbnb remits the TOT directly to the City as required by the City's code. While the hosts are responsible for remitting the tax, Airbnb voluntarily collects and remits the tax on the hosts' behalf.

According to the League of California cities, Airbnb has signed VCAs with nearly half of California cities. Neighboring cities such as Palo Alto, Santa Clara, and San Jose have already signed agreements, while Sunnyvale and Mountain View are considering it. Cities are signing on because the arrangement facilitates the collection of TOT and STR operators. There are, however, some important caveats the City will need to consider:

- *Confidentiality for Hosts and Guests.* Airbnb will not provide the City with personally identifiable information regarding its hosts or guests, unless it is part of a binding legal process. Without this data, it is difficult to ensure compliance with other parts of the City's municipal code, including zoning regulations.
- *Limits on Audits.* The agreement limits the City's ability to audit transactions to a consecutive 12 month period within a three-year period.

Airbnb was reluctant to negotiate the terms of their voluntary collection agreement as it is trying to maintain consistency in administering the voluntary collection program. Confidentiality for hosts and guests is a non-negotiable term for them. The City of San Francisco was successful in forcing platforms such as Airbnb and Homeaway to require hosts to register with the City by enacting laws requiring qualified website companies to comply with certain data requirements, which prompted litigation and a lengthy mediation process. San Francisco had leverage as one of the largest markets for STRs with over 11,000 listings.

While it would be ideal for Airbnb to share host data with the City, the alternatives are also not ideal. The City could attempt to pro-actively enforce the City's TOT regulations but this would require a significant investment in enforcement resources to identify, notify, and cite TOT violators. Identifying STR operators would be very time consuming as rental platforms do not provide basic information like an operator's full name, exact address, or occupancy rates for their listings. If identified, hosts are likely to have been unaware of the City's regulations requiring them to collect TOT. Therefore, staff is concerned that attempting to collect TOT would result in little to no net revenues to the City.

The City could also enact regulations similar to San Francisco, which require hosting platforms to collect TOT, require host registration with the City, and require hosting platforms to make available transaction data. However, this could invite costly legal action against the City as in the case of San Francisco but with far fewer benefits given the relatively small number of STRs actively operating in Cupertino. Enforcement would also remain a time-consuming and costly issue.

Staff recommends that the City enter into the VCA with Airbnb and begin to collect TOT revenues as of August 1, 2018. The VCA will simplify the remittance process for STR operators using the Airbnb platform and enable the City to receive 100% of the TOT associated with taxable rental bookings completed on Airbnb.

Cupertino stands to generate an additional \$350,000 in TOT revenue annually with little to no effort from City staff. This estimate is based on activity from 2017 showing 190 active rentals in Cupertino and transactions totaling \$3.4 million. All TOT is credited to the General Fund and can be used for general purposes.

Nothing in this VCA prevents the City from enacting a regulatory program that restricts how STRs operate in the City. Based on Council direction, staff is drafting amendments to its zoning code to provide more flexibility to STR operators while ensuring these STRs do not take away opportunities for long-term rentals. The program will also create a process for addressing nuisance issues. Staff does not anticipate that draft regulations will conflict with the VCA and expects to bring a draft to Council on July 3.

Staff also reached out to Homeaway but was informed that the platform is not entering into VCAs at this time.

Sustainability Impact

No impact.

Fiscal Impact

Based on estimates from Airbnb, the City could generate an additional \$350,000 in annual TOT revenue.

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Approved for Submission by: David Brandt, City Manager

Attachments:

A – Draft Voluntary Collection Agreement