



Office of the Mayor
Mayor Tom Bates

ACTION CALENDAR (Supplemental)
June 28, 2016

To: Members of the City Council
From: Mayor Tom Bates
Subject: Short-Term Rental Regulations Ordinance

RECOMMENDATION:

Request the City Manager enter into negotiations with AirBnB to collect and remit to the City of Berkeley transient occupancy taxes (TOT) from their hosts until such time that any outstanding legislative issues related to short-term rentals have been resolved. The City Manager shall report back to Council when an agreement has been reached.

BACKGROUND:

On May 31, 2016, the City Council adopted a first reading of an ordinance regulating short-term rentals. On June 14, 2016, the Council continued the item to June 28, 2016 and directed staff to return with amendments and information on a number of items which are now before the Council.

Also on June 14, 2016 the Mayor received a letter from AirBnB regarding a Voluntary Collection Agreement which they have implemented in other jurisdictions, including the City of Oakland, CA, where the legislative process regarding short term rentals has not yet been finalized.

The City of Berkeley used a similar approach when it adopted the Medical Marijuana tax after the passage of Measure T in 2010 prior to finalizing the regulations.

FINANCIAL IMPLICATIONS:

Unknown amount of additional transient occupancy tax revenue.

ENVIRONMENTAL SUSTAINABILITY:

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CONTACT PERSON:

Mayor Tom Bates 510-981-7100

Attachment



June 14, 2016

The Honorable Mayor Thomas Bates
City of Berkeley
2180 Milvia St, # 5
Berkeley, CA 94704

Dear Mayor Bates,

Thank you for contacting me to advise that you will not be attending the US Conference of Mayors later this month.

We are pleased that you are interested in discussing how Airbnb can collect and remit taxes in Berkeley. To that end, I am attaching a copy of our key terms for a Voluntary Collection Agreement for your review.

As I mentioned, we are collecting and remitting taxes in 190 cities, states, or other taxing jurisdictions around the world. In fact, since our first agreements in San Francisco and Portland in 2014, we have remitted over \$85 million in hotel, tourist, and occupancy taxes. In many jurisdictions, we are collecting and remitting taxes while the legislative process regarding home-sharing is taking place, including in neighboring Oakland, CA.

We look forward to working with you to help ensure Airbnb facilitates revenue collection for your city while the legislative process moves forward.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MT' or 'Marisa Moret'.

Marisa Moret
Public Policy

Enclosure

TEMPLATE OF KEY TERMS FOR COMPLIANCE BY AIRBNB WITH THE BERKELEY TOT

THIS TEMPLATE summarizes the key terms for an agreement ("**Agreement**") between **AIRBNB, INC.**, and the **BERKELEY DEPARTMENT OF FINANCE** (the "**Department of Finance**"). The Agreement is in regard to the collection and remittance of the Berkeley Transient Occupancy Tax ("**TOT**"). Airbnb provides an Internet-based platform ("**Platform**") through which a third party desiring to offer an accommodation (a "**Host**") and a third party desiring to book an accommodation (a "**Guest**") have the opportunity to communicate, negotiate and consummate a booking transaction for accommodations ("**Booking Transaction**") pursuant to a direct agreement between Host and Guest to which Airbnb is not a party.

KEY TERMS:

COLLECTION BY AIRBNB:	Airbnb will assume the role of "Operator" on behalf of its Hosts, solely for purposes of the TOT, to allow Airbnb to collect and remit the TOT on behalf of Airbnb's Hosts.
EFFECTIVE DATE:	Airbnb will not be responsible for the collection of the TOT until the date the Agreement goes into effect.
REGISTRATION:	Airbnb will register to remit the TOT. Solely with respect to a Host's activity through Airbnb, Hosts will not be required to register to collect, remit and report the TOT. The Host will also not be required to file any TOT returns with respect to activity through Airbnb.
TAX BASE:	Airbnb will collect the TOT at the applicable tax rate on completed Booking Transactions for occupancy of accommodations located in the City of Berkeley between a Guest and Host who use Airbnb's platform. The tax collected will be based upon the Accommodations Fee, which is the amount that the Host charges for accommodations.
CONFIDENTIALITY:	As required by the Agreement between Airbnb and its Hosts, Airbnb will not provide without proper legal process personally identifiable information regarding its Hosts and Guests, including but not limited to their names and listing addresses (but will provide information on a numbered anonymous basis). Any information provided by Airbnb will be kept strictly confidential by the Tax Collector.
TERMINATION:	Either party can terminate the Agreement upon a 30 day notice.
RETROACTIVE LIABILITY:	The Department of Finance will waive any pursuit of the TOT from Airbnb and/or Hosts and/or Guests related to the period prior to when Airbnb begins collecting and remitting TOT under the Agreement.
AUDIT REQUESTS:	The Department of Finance will audit Airbnb no more frequently than every four years, and will audit only a single year each time. The Department of Finance will not directly or indirectly audit any individual Guest or Host relating to the Booking Transactions. If an audit is pursued by the Department of Finance, the Confidentiality terms apply.
EXEMPTIONS AND WAIVERS:	Airbnb will collect the TOT on Accommodation Fees related to Booking Transactions within the City of Berkeley notwithstanding any exemptions (e.g. those based on the definition of "Hotel", grandfathered bed and breakfast rules, etc.), with the exception of the length of stay (stays over 29 days in duration will not be subject to tax).