

DATE

TO: Supervisor Hilda L. Solis, Chair
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FROM: Joseph Kelly
Treasurer and Tax Collector

SUBJECT: **ANALYSIS OF THE APPLICABILITY OF THE COUNTY'S TRANSIENT
OCCUPANCY TAX AND BUSINESS LICENSE ORDINANCE TO
ONLINE HOSTING PLATFORMS**

This report documents our review of the applicability of the Los Angeles County's Transient Occupancy Tax (TOT) Ordinance, Business License Ordinance and Zoning Code to peer-to-peer online hosting platforms, such as Airbnb, and to Online Travel Companies, such as Expedia. This report also seeks Board direction on the treatment of online hosting platforms.

Background

The County's TOT is codified in Title 4 of the County Code (Code). The TOT is a tax for the privilege of occupying a room for transient use, i.e., for stays of 30 consecutive calendar days or less. The TOT rate is 12% of the rent charged by hotel/motel operators in the unincorporated areas of the County.

The following chart lists the Fiscal Year 2015-16 TOT revenue and number of remitters by Supervisorial District. Over half of the TOT revenue is generated from eight hotels in Marina del Rey, which is located in the Fourth District.

Transient Occupancy Tax Revenue Collection
For Fiscal Year 2015-2016

	Amount of Revenue	Number of Remitters
District 1	\$ 1,580,588	19
District 2	\$ 1,385,907	22
District 3	\$ 132,999	3
District 4	\$ 11,609,572	19
District 5	\$ 5,128,463	32
Total	\$ 19,837,529	95

Online hosting platforms, such as Airbnb, utilize a peer-to-peer business model through which a software platform facilitates rentals of lodging space, such as rooms in personal residences, rooms in bed-and-breakfasts, or entire homes or apartments. In general, the online hosting platform allows an “operator/host” to make the property available for rent in exchange for compensation from a “transient/guest.” The rentals can be short-term or long-term, and may be for shared rooms where guests share the entire space with the host or others; private rooms where guests may share common areas but have a private room for sleeping; or entire homes or apartments where guests rent the entire unit and do not share any space with others. The online hosting platform provides the listing service, reservation system, and handles the payments between the hosts and guests. As well, the platform typically keeps 3% of each reservation as a host service fee. Airbnb, which commenced operations in 2008, has forecasted revenues of \$900 million this year, with over one million listings in over 190 countries.

The Online Travel Companies business model has been in existence longer than, and is different from, the peer-to-peer business model. Online Travel Companies, such as Expedia, work with hotels and motels to purchase blocks of rooms at a discount, and/or serve as an intermediary, then markets those rooms online. The guests pay the room rate and applicable taxes to the Online Travel Companies. The Online Travel Companies collect the TOT and forward the TOT to the hotels to remit to the County. The hotel/motel maintains all the records. The County has the authority to audit the records of the hotel/motel. In 2007-08, the Treasurer and Tax Collector (TTC) contracted audits of 60 hotel/motel operators with reported gross rents of \$93.8 million, and \$11.3 million in TOT. The audits determined that 19 operators had receipts from Online Travel Companies and remitted the applicable TOT to the County. Twelve of those operators separately accounted for rents received from Online Travel Companies; these operators received \$2.9 million in gross rents and remitted \$344,000 in TOT related to online rentals. The other seven operators combined online rents received with their overall rental income, remitted the appropriate TOT, but could not separately report the TOT related to online rentals. The remaining 41 operators did not use Online Travel Companies.

Title 4 – TOT Ordinance

Operator vs. Online Hosting Platforms

Title 4, Section 4.72.020 defines the “Operator” to mean the person who is the (1) proprietor of the hotel either as an owner, lessee, sublessee, or in some other capacity, or a person who is the (2) managing agent of the structure. Title 4, Section 4.72.020 defines “Hotel” to mean “any structure in the unincorporated territory of the county, or any portion of any such structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes.”

County Counsel has confirmed that given these definitions, the person or authorized agent who lists lodging space with Airbnb for shared rooms, private rooms, or entire homes or apartments, can be considered an Operator under the Code. Operators are subject to the TOT ordinance, are required to register with the TTC for purposes of obtaining a TOT certificate, and are required to collect and remit the TOT to the County. In addition, certain Operators are required to obtain a business license, as discussed below in Title 7 – Business License Ordinance.

Airbnb provides a software platform that connects a person wanting to rent lodging space with a person who has such a space for rent. Since Airbnb is providing a software platform for purposes of introducing these two parties, it is not the proprietor or managing agent of the lodging, and it is not considered to be an Operator within the definition of the Code. Similarly, Expedia provides a software platform that sells hotel/motel rooms online. As such, it is also not considered an Operator under the Code since it is not the proprietor or managing agent of the hotel/motel room. Consequently, software platform providers like Airbnb and Expedia are not subject to the TOT ordinance, and are not required to register with the County or collect and remit TOT to the County.

Title 7 - Business License Ordinance

Title 7, Chapter 7.50-Housing, requires every person conducting a hotel, motel, apartment house, or certain boarding houses to obtain a business license before operating.

These provisions are not applicable to Airbnb because Airbnb provides a software platform that connects interested parties; it does not operate hotel, motel or apartment businesses. These provisions are applicable to the person or authorized agent who lists lodging space with Airbnb because such persons are the ones conducting a hotel, motel, apartment house or boarding house.

Prior to accepting a business license application, the TTC refers the application to the Department of Regional Planning (DRP). DRP confirms the type of business based on

their records and Title 22 – Planning and Zoning Ordinance, which has its own definitions for apartment house, hotel, motel, and rooming/boarding house.

The following are definitions from Title 22, Chapter 22.08, of the Code:

- "Apartment house" means a building, or a portion of a building, designed or used for occupancy by three or more families living independently of each other, and containing three or more dwelling units.
- "Hotel" means any building containing six or more guest rooms or suites of guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied on a temporary basis by guests.
- "Motel" means a group of attached or detached buildings containing guest rooms or dwelling units, some or all of which have a separate entrance leading directly from the outside of the building with garage attached or automobile parking space conveniently located on the lot or parcel of land, and which is designed, used or intended to be used wholly or in part for the accommodation of automobile transients. Motels include auto courts, motor lodges and tourist courts.
- "Rooming house" or "boarding house" means a lodging house, or other building or structure maintained, advertised or held out to the public as a place where sleeping or rooming accommodations are furnished to the whole or any part of the public, whether with or without meals. "Rooming house" includes fraternity and sorority houses.

Section 22.20.080, which regulates accessory uses in zone R-1 (single family zone), states "if the residence is not used for either a home for children, foster family, or home for the aged, rooms may be rented to not more than four roomers, with or without table board in a single-family residence." Under this language, DRP currently considers a single-family residence that accommodates more than four "roomers" as a "Rooming house," which are limited to zone R-3 and higher.

Section 7.50.010 states that "places which provide sleeping and living accommodations to five or more persons unrelated to the operator, which are not otherwise licensed under this title as an apartment house, hotel or motel, shall be required to obtain a license as a boarding house."

Accordingly, a person who lists with Airbnb sleeping and living accommodations that can house five or more guests is required to obtain a business license. If the type of business does not qualify under apartment house, hotel, or motel, then the person who offers accommodations for five or more guests must obtain a business license as a boarding house. A business license is not required if the accommodations are for up to four guests. The first year fee for a boarding house business license is \$282. The annual renewal fee is \$200 thereafter.

The following chart illustrates the current applicability of the TOT and Business License ordinances to the peer-to-peer online hosting platform, the Online Travel Company, and the operator of a residence, or of a hotel or motel.

Applicability of TOT and Business License Ordinances

	Subject to Transient Occupancy Tax?	Subject to Business License?
Airbnb (Peer-to-peer online hosting company)	No, does not meet definition of Operator per the Code. Provides software platform that connects operators of rooms/accommodations and travelers.	No, does not conduct hotel, motel, apartment house, or boarding house. Provides software platform that connects persons who conduct a hotel, motel, apartment house, or boarding house with travelers.
Airbnb Host (Proprietor or managing agent of residence/lodging space)	Yes. Operator, pursuant to Title 4, Section 4.72.020 F.	No, if provides accommodations to less than 5 persons.
		Yes, if provides accommodations to 5 or more persons. Person providing rooming accommodations to 5 or more persons requires a business license, pursuant to Title 7, Section 7.50.010.
Expedia (Online Travel Company)	No, does not meet definition of Operator per Code. Provides software platform that connects operators of rooms/accommodations and travelers.	No, does not conduct hotel, motel, apartment house, or boarding house. Provides software platform that connects persons who conduct a hotel, motel, or apartment house with travelers.
Hotels/Motels that sell to Online Travel Companies	Yes. Operator, pursuant to Title 4, Section 4.72.020 F.	Yes. Hotels/Motels are required to procure a business license, pursuant to Title 7, Section 7.50.040.

Regulatory Environment

Due to the increasing number of municipalities determining that Airbnb type listings are subject to the local TOT, state legislation has been proposed to facilitate the collection of TOT from the online hosting platforms.

Senate Bill (SB) 1102

In February 2017, SB 1102 introduced legislation that would allow online platforms to collect and remit TOT on behalf of the operators to the taxing jurisdiction. The proposed legislation resulted from Airbnb's desire to comply with local TOT ordinances and attempted to address some of the challenges of complying with differing ordinances, such as audit requirements from each municipality. The proposed legislation granted the State Controller the authority to audit the collection and remittance of the TOT, but certain information reviewed in audits (e.g., taxpayer information, operator information, and property address) would be confidential and not subject to release. The audit provision takes away the County's current authority to audit, and grants it to the State Controller. Property addresses are needed for regulatory and enforcement purposes such as for registration, licensing, and land use.

The proposed legislation allows for the platforms to opt in if they wish to participate in the program. The legislation as written requires the County to opt out if the County does not wish to participate.

TTC staff participated in a conference call with the authoring Senator's office, representatives from several online hosting platforms, as well as staff from other county Treasurer and Tax Collectors. The municipalities represented were uniformly concerned over the loss of local authority to audit, and the lack of information provided. In addition, the municipal representatives wanted to change the language to offer local jurisdictions the option to opt-in as well, as opposed to needing to take Board action if we chose to opt-out.

SB 1102 was held in the Senate Appropriations committee in May 2016, and is not expected to move forward this year.

Senate Bill (SB) 133

In June 2016, SB 133 replaced SB 1102, and considered some of the concerns with SB 1102, such as shifting from an "opt out" requirement for local jurisdictions to a voluntary "opt in" option.

SB 133 requires the platforms to remit taxes directly to the local jurisdictions, but the platforms will not be subject to the reporting requirements of the local jurisdictions. SB 133 is not clear on the reporting requirements that would govern. However, the State Controller will audit the platforms and will submit a report to each jurisdiction, which implies that the platforms will need to report information to the State Controller so the State Controller may perform audits.

In addition, the proposed legislation states that the participating platforms “shall not be required to provide personally identifiable information to any city, county, or city and county, ... except pursuant to an order by a court of competent jurisdiction.” The State Controller will be the only entity entitled to review personally identifiable information obtained during the course of the audit. The local jurisdictions will not be able to independently validate whether the TOT remittances were appropriate, or have access to address information, which is necessary for regulatory or enforcement purposes.

The author subsequently pulled this bill before it was heard in the Assembly Local Government Committee.

Difference from Mobile Telephony Services Model (MTS) Model

Last year, new legislation granted the State collection authority for Utility Users Tax (UUT) on sales of Mobile Telephony Services (MTS) from retail locations. The business model used for MTS required the State to be involved with the entire process. The retail stores remit the UUT collected to the State, in the same manner as they remit sales tax. The State then distributes and reports the UUT to the appropriate local jurisdiction where the sales occurred. In addition, the State performs audits. The local jurisdictions have the authority to review the State’s audit records, subject to certain confidentiality provisions. The State is responsible for the entire MTS process, and may recoup its administrative costs from the UUT collected.

The legislation as proposed in SB 1102 and SB 133 splits responsibility. The platforms will remit taxes to the local jurisdictions without reporting requirements. The State would separately audit the platforms. The local jurisdictions may review the State’s audits, but without details such as property addresses, will be without a mechanism to independently validate the accuracy of the TOT remitted or determine appropriate regulatory or land use.

Magnitude of Online Hosting Platform Utilization

The peer-to-peer online hosting platform opened up a new market of renting out personal residences. Staff performed an exercise to determine if anyone who lists online was remitting TOT to the County. Currently, we have eight TOT remitters that are smaller operators with less than five units. Staff confirmed through a review of listings on a hosting platform that two of the eight listed with the platform, and therefore determined that we did receive TOT from some of those who list online.

In addition, staff performed an exercise to determine the potential magnitude of online listings that were not registered with the TTC and the extent of potential revenue foregone by the County. Staff reviewed one unincorporated area in each Supervisorial District, and attempted to choose the areas that had the most potential listings. Below is a chart of the number of listings that are not registered with the TTC, per one unincorporated area in each Supervisorial District.

Online Listings Not Registered with the TTC

	Unincorporated Area	Online Listings
District 1	Hacienda Heights	2
District 2	Westmont	1
District 3	Calabasas (adjacent)	3
District 4	Marina del Rey	19
District 5	Altadena	25

Staff's exercise uncovered 50 online listings that were not registered with the TTC, and that have not paid TOT to the County. However, the potential TOT that was not remitted from 50 listings does not pose a material revenue stream to the County.

Regulatory Challenges

In general, Airbnb hosts have not been complying with the applicable TOT framework statewide. Each municipality's response to this has varied, and responses are generally dependent on the potential revenue from compliance with their TOT frameworks. For example, the City and County of San Francisco classifies Airbnb as a "Qualified Website Company" which allows it to collect TOT from the online platforms. Airbnb participates in that program, and collects and remits TOT on behalf of the operators/hosts. The City and County of San Francisco also requires the registration of Airbnb hosts, and recently required that Airbnb disallow hosts that are not registered. In response, Airbnb filed a lawsuit against the City and County of San Francisco in June 2016.

In May 2014, the City of Anaheim permitted the use of residential units as Short-Term Rentals (STRs) for occupancies of less than 30 consecutive days. Due to the large number of rental applications, the City of Anaheim issued a temporary moratorium on granting new licenses in September 2015. Based on community concerns about the incompatibility of the vacation rentals and the neighborhood impacts, in June 2016, the City Council voted to ban new Short-Term Rentals. The City Council implemented an 18-month phase-out period for existing Short-Term Rentals, which they call the "STR Amortization Ordinance." The City of Anaheim is now reviewing other options, such as implementing a "Home Sharing Pilot Program" in which permits are only issued to the legal owner of the home who must reside in the home as his/her primary residence. In addition, no more than half the bedrooms in the home may be used for "home sharing" purposes.

DRP has also made us aware in recent months that at least one of the Supervisorial Districts has received complaints regarding homeowners who rent out an entire house through these online marketplaces.

Although the Zoning Code currently contains definitions and regulations, which can be applied to short term rentals, it did not anticipate that short-term rental of homes, townhouses and apartments would be as popular as they have now become and that online services would create the marketplace they now have. The Zoning Code does not adequately address the impact that this land use may have on communities, such as late night noise, a strain on parking resources and an increase in trash.

Due to the increasing focus on the issues with online hosting platforms, the TTC and the DRP are seeking Board direction on the treatment of peer-to-peer online hosting platforms.

Findings and Recommendations

The person or authorized agent who lists lodging space with Airbnb for shared rooms, private rooms, entire homes or apartments, is considered an Operator under the Code. Operators are subject to the TOT ordinance, are required to register with the TTC for purposes of obtaining a TOT certificate, and are required to collect and remit the TOT to the County. In addition, certain Operators are required to obtain a business license.

Recommendations:

Within the next 60 days, the TTC will publish a fact sheet and Frequently Asked Questions regarding the applicability of the County's TOT Ordinance to Airbnb hosts, will update the TTC website with this material, and will consult with your offices and related County departments on its distribution. Importantly, this material will also inform constituents of the procedures to report unlicensed activity. Upon receipt of such report, staff will gather as much information as possible and assign the complaint to a Tax and License Field Inspector for investigation. If the inspector determines that a business license is required, the inspector will issue a Field Inspection Report advising the property owner to apply for a business license. Staff will also notify DRP of such reports for DRP to identify any land use and zoning issues. My office will report back to your Board, six months and one year after this effort commences, to keep you informed of developments.

If the Board decides that Title 22 amendments are necessary to address this issue, clear objectives should be established including the following considerations: balancing the character and enjoyment of low density neighborhoods with the activities associated with short term rentals, the preservation of housing for the local population, fair and balanced regulations which would allow property owners to supplement their income, the potential for added revenue from applying the Transit Occupancy Tax to these uses, and the potential impact to traditional short term rentals such as motels and hotels.

Attempts at consolidating audit compliance at the State level through legislation are likely to continue, and my office will participate in the legislative review process as appropriate.

Honorable Board of Supervisors
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Should you have any questions, please contact me directly or your staff may contact Nai-len Ishikawa, Assistant Treasurer and Tax Collector, of my staff at (213) 974-2139 or nishikawa@ttc.lacounty.gov, or for questions regarding land use, please contact Richard Bruckner, Director of the Department of Regional Planning at (213) 974-6401 or rbruckner@planning.lacounty.gov.

JK:RB:NWI:rkl

c: Chief Executive Officer
County Counsel
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