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# AGENDA REPORT

**TO:** Henry L. Gardner  
CITY ADMINISTRATOR

**FROM:** David McPherson  
Revenue & Tax Administrator

**SUBJECT:** Informational Report Regarding  
Short-Term, Residential Rentals and TNCs

**DATE:** June 1, 2014

City Administrator  
Approval *AD*

Date

6/9/14

**COUNCIL DISTRICT:** City-Wide

## **RECOMMENDATION**

It is recommended that the City Council accept this informational report, options and recommendations from the City Administrator on the fiscal impact of and possible revenue mechanisms for identified types of online, third-party private accommodations and ride-sharing on/in the City of Oakland.

Staff further recommends that the City Council discuss and create policy regarding short-term, residential rentals and ride-sharing businesses that operate within the City of Oakland.

## **OUTCOME**

This report is for informational purposes only.

## **BACKGROUND/LEGISLATIVE HISTORY**

### *Short-Term, Residential Rentals*

A Short-Term, Residential Rental ("STRR") is defined for the purposes of this informational report, as the rental of a private residence or a portion of a private residence as an alternative to traditional hotel/motel/bed and breakfast accommodations. STRR arrangements are often conducted over the internet through various peer-to-peer or booking agent websites such as Airbnb, VRBO, HomeAway and Craigslist. The City of Oakland currently has no policy in place specific to monitoring and regulating STRRs. The City does have various zoning and code regulations, business tax and transient occupancy tax ("TOT") laws that combined could provide framework for legislation of STRRs that would allow for standard enforcement, regulation and the collection and remittance of TOT and other City taxes and fees.

Item: \_\_\_\_\_  
Finance & Management Committee  
June 24, 2014

*Transportation Network Companies*

Currently, the City does not regulate peer-to-peer ride sharing businesses known as Transportation Network Companies (“TNC”), such as Uber and Lyft. However, by definition of Oakland’s Municipal Code, the cars and drivers associated with TNCs would be considered taxis and taxi drivers.

**ANALYSIS**

*Short-Term, Residential Rentals*

The “sharing economy” in the form of short-term rentals of residential housing space is growing, be it a whole house/condo/apartment, a bedroom, a couch, or an in-law unit. This new market, enabled by websites such as Airbnb, VRBO, HomeAway, and Craigslist, allows visitors to Oakland to take a non-traditional tract and rent space in a residential community, shunning traditional hotel rooms in search of less expensive or more accommodating alternatives. Homeowners are more than happy to earn extra income by accommodating this growing short-term rental market segment, placing advertisements on the above mentioned websites (and more), and inviting strangers into their homes and communities. This concept is essentially creating a shadow economy whereby no TOT is imposed on the transient, collected, or remitted to the City as required by local law. Furthermore, this shadow economy raises policy questions that have yet to be defined and addressed by the City Council. It is important to note that in Chapter 8 of the O.M.C., the City has defined operating standards for hotels; the purpose of which is to, “promote the health, safety, comfort, convenience, prosperity, and general welfare by requiring that businesses that offer shelter to visitors, transient guests, and other residents provide a minimum level of cleanliness, quality, and security.” These operating standards cover everything from security to furniture, lighting to clothes storage and more. Furthermore, hotels as defined by the O.M.C. are subject to inspections by the Fire Department. Thus, if the City is to pursue the collection of TOT from STRRs, it is unknown whether the City would also be required to enforce the hotel operating standards set forth in the O.M.C.

In addition, “any person, either for himself or herself, or for any other person, operating a business in the City of Oakland must procure a business tax certificate and the carrying on of any business without procuring a certificate shall constitute a violation of local law.” Therefore, anyone who is operating a hotel as defined in the O.M.C., is operating a business in the City of Oakland and is subject to the Business Tax.

*Regulation in Other Cities*

Airbnb has already agreed to collect and remit TOT in Portland, Oregon. The City of San Francisco is taking steps to regulate STRRs by considering legislation requiring homeowners or residential leasees register their unit with the City, provide proof of primary residence and

liability insurance. The permit is good for two years. To renew the permit, the permit holder must show proof of compliance with the San Francisco's TOT and other city laws. It should be noted that a coalition of landlord and tenant activists, as well as organized labor and neighborhood groups are opposing the proposed legislation.

The City of Austin, Texas, created a licensing system. STRR owners have to secure a license from a specially created government unit that deals with these properties. Austin also limits the number of homes that can be rented per building and per area in the city, in an effort to prevent any single neighborhood from becoming overrun by temporary visitors.

For the few cities that have managed to put policy in place, there dozens more still in the early discussion stages. The City of Berkeley is in the early stages of conversations with Airbnb to collect and remit TOT. On April 29, 2014, the Berkeley City Council passed a proposal requesting that the City Manager create a policy for companies such as Airbnb to pay TOT, as currently paid by other small local businesses. Malibu, California is also in the early stages of grappling with how to regulate STRRs. In Malibu, the City is issuing subpoenas to more than 60 websites that advertise STRRs. Malibu wants to learn how many STRRs are being offered in its community for taxation and regulation purposes. In Los Angeles County, the cities of Venice and Silver Lake have started discussing the issue of STRRs. This is a burgeoning residential rental market and communities across the country are initiating policy and regulation conversations.

#### *Transient Occupancy and Business Tax*

Pursuant to chapter 4.24 of the Oakland Municipal Code ("O.M.C"), the City imposes on each transient a tax of fourteen percent (14%) of the rent charged by the hotel operator. According to O.M.C section 4.24.020 a **hotel** is defined as;

"any public or private space or structure for living therein, including but not limited to any: inn, hostelry, tourist home or house, motel rooming house, mobile home or other living place within the city, offering the right to use such space for sleeping or overnight accommodations wherein the owner or operator thereof [...], for compensation, furnishes such right of occupancy to any transient."

Furthermore, an **operator of a hotel** is defined as;

"the person who is proprietor of a hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory 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. Compliance with the provisions of this chapter by either the principal or the managing agent shall however, be considered to be compliance by both."

Finally, pursuant to O.M.C. section 4.24.050;

“Each operator shall collect the tax imposed [...] to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.”

If STRRs are considered hotels by definition of the O.M.C, then the hotel operator is required to collect the TOT and remit it to the City. This collection and remittance mechanism is provided for by local law and is enforceable when the hotel operator is using websites like VRBO and HomeAway, where the transaction takes place between the hotel operator and the transient. This is not the case with Airbnb, which acts as a booking agent or broker. Under the Airbnb business model, the transient pays Airbnb who then remits payment to hotel operator. Under the City’s municipal code, Airbnb is not considered a hotel operator. Thus, the City cannot require Airbnb to collect and remit TOT. Furthermore, each hotel operator would be required to pay the Business Tax and visibly maintain a business tax certificate at their place of business.

Enforcement of these taxes is not easy. As a test in 2013, a City consultant produced a listing from Craigslist that had approximately 185 possible compliance leads. Staff was then required to verify that each listing was within Oakland, as often the “location” may be Oakland because that is where the hotel operator lives, but the actual rental is elsewhere such as Tahoe, Napa, or even Hawaii. This process effectively reduced the list of possible compliance leads to approximately 90. Then, staff had to pinpoint the rental, as addresses are often not provided in the listings, only after several email exchanges with the hotel operator. Finally, compliance notices were sent to the few identifiable hotel operators.

#### *Questions regarding STRRs*

There are several policy and regulation questions that need to be addressed regarding STRRs, some of which are:

- How does this affect the City’s housing stock? Removing long-term residential rentals from the market?
- What is the impact of STRRs in residential neighborhoods?
- Are there safety issues regarding rentals in residential neighborhoods and multifamily dwellings, “not knowing who is coming and going”?
- Traffic and parking challenges?
- If STRRs are considered hotels, are they held to hotel standards as defined in the O.M.C.? Including being required to submit to Fire Department safety inspections?

- Does Oakland update the O.M.C. to recognize websites like Airbnb as a “hotel operator” thereby providing a legal requirement for websites like Airbnb to collect and remit TOT?
- Does Oakland create a permitting process by which the hotel operator is required to register, pay associated fees and taxes, in order to operate in the City?
- Under the new permitting process, would the City require proof of liability insurance? If, so at what threshold?
- Does Oakland update the O.M.C. to specifically identify short-term, residential rentals as a subcategory under section 4.24.020 that is beholden to the TOT and business tax but not the City’s hotel standards as found in Chapter 8 of the O.M.C.?
- Does the City create a rental threshold that exempts hotel operators who only host five days or less of short-term, residential rentals?
- Should the City follow Malibu’s example and issue subpoenas to various peer-to-peer websites, with the hope of gathering Oakland specific rental data?

### *Transportation Network Companies*

Similar questions of taxation and regulation revolve around the shared economy’s ride sharing businesses or Transportation Network Companies (“TNC”), such as Uber and Lyft. These are fast growing companies that, “utilizing an app, lets city dwellers hail taxis, sedans and SUVs.” TNCs like Uber, Lyft and Sidecar represent that they are facilitating peer-to-peer sharing of passenger vehicles and hence not subject to regulation by the City. However, many cities are finding that the TNCs and the drivers who operate on their systems are engaging in the transportation of persons for compensation and therefore do fall within regulatory authority. Section 5.64.030 of the O.M.C defines a taxicab as, “every passenger vehicle designed for carrying not more than eight persons, excluding the driver, used to carry passengers for hire, and which is operated at rates per mile or upon a waiting time basis or both.” The same section defines a taxi driver as, “every person driving a taxicab as defined by this chapter.”

Because the TNC business model involves dispatching traditional for-hire drivers and vehicles, as well as non-professional casual drivers, regulating them raises a number of policy questions. Cities are more familiar with regulating traditional for-hire modes of transportation such as taxis. Models for that, both good and bad, abound. As these companies have begun operations within the last year and a half, good models of regulation for peer-to-peer services are still being discussed and established around the country. It would be easier to ban them from functioning, while protecting other interests of the City, as these new entrants into the market have potential to disrupt existing for-hire services that the Council also views as important to the public. However, the City wants to be encouraging and welcoming to new businesses and new market segments. To that end, staff recommends that the City Council consider having a discussion concerning the regulation of TNCs, and to set policy in accordance with the Council majority.

*TNCs and the Public Utilities Commission*

In September 2013, a ruling from the Public Utilities Commission (“PUC”), adopted rules and regulations for TNCs, to ensure public safety is not compromised. The PUC defines a TNC as, “a company or organization operating in California that provides transportation services using an “online-enabled platform to connect passengers with drivers using their personal vehicles.” Note that the PUC already regulates charter party carriers, such as limousines, charter buses, and shuttles. The following companies are licensed by the CPUC:

- Lyft
- Raiser
- Sidecar
- Wingz
- Summon

On average, a TNC ride is about 70-80% less than a traditional taxi ride. Uber X (the traditional Uber) charges a base fee of \$3, \$0.30-\$1.50 per mile and a \$1 safety fee. Lyft charges a combination of a base fee \$2.25, \$1.35 per mile, \$0.27 per minute, and \$1 safety fee. No matter which rideshare company a consumer uses, one can expect bridge tolls (if applicable) to be added to the fare.

Under PUC regulations, a company or individual wishing to operate as a TNC must apply for a TNC permit issued by the PUC. Permits for TNCs will only be granted to companies utilizing smart phone technology applications (“app”) to facilitate transportation of passengers in the driver’s personal vehicle. TNC’s are not permitted to themselves own vehicles used in their operation or own fleets of vehicles. However, there is no limit to the number of drivers that utilize the app under one permit. In addition, TNC drivers shall only transport passengers on a prearranged basis. For the purpose of PUC regulation, a ride is considered prearranged if the ride is solicited and accepted via a TNC digital platform *before* the ride commences. TNC drivers are strictly prohibited from accepting street hails.

Furthermore, each TNC must file its insurance policies under seal with the Safety and Enforcement Division as part of licensing. TNCs must maintain liability insurance policies providing a minimum of \$1 million per-incident coverage, for vehicles that seat seven or fewer passengers and \$1.5 million per-incident coverage for vehicles that seat ten or fewer passengers, including the driver. The required insurance coverage must be available to cover claims regardless of whether a relevant TNC driver maintains insurance adequate to cover any portion of the claim. Also, TNCs must obtain proof of both personal insurance and commercial excess liability insurance from each TNC driver before the driver begins providing service and for as long as the driver remains available to provide service.

The PUC also requires TNCs to establish a driver-training program to ensure that all drivers are safely operating the vehicle prior to the driver being able to offer service. TNC drivers must possess a valid California driver’s license, be at least 21 years of age, and must provide at least

one year of driving history before providing TNC service. TNCs must institute a policy of zero-tolerance for intoxicating substances with respect to drivers. Drivers must submit to and pass a criminal background check prior to becoming a TNC driver.

TNCs may only use street-legal coupes, sedans, or light-duty vehicles including vans, minivans, sport utility vehicles (SUVs) and pickup trucks. TNC vehicles must not be significantly modified from factory specifications, (e.g., no "stretch" vehicles). Under no circumstances may a TNC operate a vehicle with a seating capacity of more than 10 passengers including the driver, which is legally defined as a bus. TNCs must inspect all vehicles and maintain the record of such inspection in case of an audit.

The app used by a TNC to connect drivers and passengers must display for the passenger: 1) a picture of the driver, and 2) a picture of the vehicle the driver is approved to use. TNCs must allow passengers to indicate whether they require a wheelchair-accessible vehicle or a vehicle otherwise accessible to individuals with disabilities. TNC vehicles must display consistent trade dress (i.e., distinctive signage or display on the vehicle) when providing TNC services that is sufficiently large and color-contrasted as to be readable during daylight hours at a distance of 50 feet. The trade dress must be sufficient to allow a passenger, government official, or member of the public to associate a vehicle with a particular TNC. Acceptable forms of trade dress include, but are not limited to, symbols or signs on vehicle doors, roofs, or grills. Magnetic or removable trade dress is acceptable. The TNC must include a photograph of their trade dress with its application for TNC authority.

Based on the information above, it may seem that there is little or no difference between a TNC and a taxicab. In fact, the two are separate and distinct types of transportation. A TNC may not operate as a taxi, or advertise as to indicate that it provides taxicab service. Taxis are licensed and regulated by cities and counties, and TNCs operate under authority from the CPUC, subject to the Public Utilities Code and CPUC regulations. Taxis have meters and top lights; TNC vehicles do not. The most important operational difference is that TNC transportation must be prearranged. Taxis may provide transportation "at the curb," which means a customer may arrange transportation by simply hailing a cab from the sidewalk. To that end, staff recommends that the City Council consider having a discussion concerning the regulation of TNCs, and to set policy in accordance with the Council majority.

### **PUBLIC OUTREACH/INTEREST**

This is an informational memo only and does not require any additional public outreach.

Item: \_\_\_\_\_  
Finance & Management Committee  
June 24, 2014

## **COORDINATION**

This informational memo was coordinated with the City Administrator's office.

## **COST SUMMARY/IMPLICATIONS**

This is an informational report that does not require any action, nor does it have a fiscal impact to the City.

### *Short-Term, Residential Rentals*

In preparation of this report, staff reviewed the Airbnb website. There were 743 Oakland listings, of which 89 were listed incorrectly. Of the remaining 654 Oakland listings, approximately 318 were considered "high occupancy," meaning there are current and bountiful comments from past renters. The median room rate was \$79.50. Thus, if the 318 high occupancy listings rented for \$79.50 per night for 10 nights per month, the TOT remitted annually to the City would be \$333,600 for the General Purpose Fund and \$91,000 for Measure C. The annual Business Tax remitted to the City would be \$19,080. It is likely that none of the STRRs will generate more than \$33,336 per year, thus they will each remit to the City a business tax of \$60 per year. Note, that collection and remittance of the TOT and Business Tax require either the hotel operator to voluntarily register their business with the City or for staff to have sufficient success with identifying and collecting tax scofflaws.

### *Transportation Network Companies*

Staff does not have sufficient data to calculate the loss of revenue due to TNCs. However, taxi companies remit a business tax of \$180 per vehicle per year. Taxi drivers pay a \$110 annual permit fee. Taxi Medallions fees are \$2,585 for original issuance, and \$719 for annual renewal. Also, listed in Master Fee Schedule is a host of various taxi related fees such as, vehicle inspection fees, spare vehicle fees and investigative fees.

## **SUSTAINABLE OPPORTUNITIES**

*Economic:* No direct economic opportunities have been identified.

*Environmental:* No direct environmental opportunities have been identified.

*Social Equity:* No social equity opportunities have been identified.



**Henry L. Gardner, City Administrator**

Subject: Informational Report Regarding Short-Term Residential Rentals and TNCs


Date: June 2, 2014

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For questions regarding this report, please contact David McPherson, Revenue & Tax Administrator, at 510-238-6650.

Respectfully submitted,



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Finance & Management Committee  
June 24, 2014