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OAKLAND

2016 JAN 13 PM 5:46 **AGENDA REPORT**

TO: Sabrina B. Landreth
City Administrator

FROM: Margaret L. O'Brien
Interim Revenue & Tax
Administrator

SUBJECT: Tax & Fee Assessment on TRHP &
TNC

DATE: January 13, 2016

City Administrator Approval

Date:

1/14/16

RECOMMENDATION

Staff Recommends That The Finance Committee Accept This Informational Report Regarding Tax And Fee Assessment On Transient Residential Hosting Platform ("TRHP") (Commonly Known as Short-Term Residential Rentals) And Transportation Network Companies ("TNC") Operating In The City Of Oakland.

EXECUTIVE SUMMARY

The Revenue Management Bureau ("RMB") was requested to provide an update regarding taxation and fee assessment of the Transient Residential Housing Platform¹ ("TRHP"). TRHP is defined 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. A TNC is the sharing economy's ride sharing business or peer-to-peer sharing of passenger vehicles, whereby a vehicle ride is prearranged by the passenger via a smart phone or computer app. In May/June 2016, the RMB will conduct a tax compliance audit to bring operators of TRHPs and drivers with TNCs into compliance with the City's Transient Occupancy Tax ("TOT") and Business Tax requirements.

BACKGROUND / LEGISLATIVE HISTORY

Short-Term Residential Rentals

A TRHP 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. TRHP arrangements are often conducted over the internet through various peer-to-peer or booking agent websites such as Airbnb, Flipkey, Vacation Rental By

¹ SB593 Sec 1, Article 12, 53170(a)(1)(2): "Transient residential hosting platform" means a person or entity that facilitates the rental of a residential unit offered for occupancy for tourist or transient use for compensation to the offeror of that unit, and the transient residential hosting platform derives revenues, including booking fees, subscription charges, or advertising revenues. "Facilitate" includes, but is not limited to, the act of allowing the offeror of the residential unit to offer or advertise the residential unit on the Internet Web site provided or maintained by the operator.

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Owner ("VRBO"), HomeAway and Craigslist. To date, there are approximately 8-10 different TRHP websites currently offering lodging opportunities in Oakland. It is likely that many TRHP hosts advertise on multiple sights.

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, Flipkey, 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. In some instances, this concept is creating a shadow economy whereby no TOT is imposed on the transient, collected, or remitted to the City as required by local law.

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 Oakland Municipal Code ("O.M.C."), is operating a business in the City of Oakland and is subject to the Business Tax.

Transient Occupancy and Business Tax

Pursuant to chapter 4.24 of the 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."

Businesses within the definition of hotel operator under the O.M.C, are 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.

Transportation Network Companies

Similar questions of taxation revolve around the shared economy's ride sharing businesses or TNC, such as Uber and Lyft. These are fast growing companies that, "utilizing an app," allows city dwellers hail for transportation services and also the opportunity to select the mode of travel, such as personal passenger vehicles, , 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.

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.

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 California Public Utilities Commission ("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.

ANALYSIS AND POLICY ALTERNATIVES

Collection and Remittance of TOT

Most TRHPs are structured as brokers to operators that rent out their homes. Under the OMC Section 4.24, TOT is imposed on the transient, but the operator is required to collect from the transient. TRHPs have argued that they are not required to collect the taxes, because the property owners that are the operators that are subject to the requirement to collect.

Collection and Remittance of Business Tax

There appear to be approximately 1,155+/- TRHP hosts/operators in the City of Oakland. In June 2016, staff is preparing to conduct an AB63 audit. AB63 permits the State Franchise Tax Board ("FTB") to disclose specified income tax information to the RMB under a written agreement. Staff will be utilizing the information provided by the FTB as the basis for a tax compliance audit. It is anticipated that this audit will bring into compliance TRHP operators and TNC drivers. As TRHP operators are licensed, if they are not already reporting TOT, the newly licensed operators will also be assessed TOT.

FISCAL IMPACT

Short-Term Residential Rentals

Although there are no immediate fiscal impacts, there appear to be approximately 1,155+/- TRHP hosts/operators in the City of Oakland. The business tax for a hotel operator is \$1.80 per \$1,000 gross receipts. However, if annual gross receipts are less than \$33,335, the operator pays a minimum \$60.00. If the majority of these hosts are generating less than \$33,335 per year in gross receipts, bringing all 1,000 possible TRHP hosts/operators into compliance will generate approximately \$60,000 per year in additional business license revenue.

Additional TOT that may be received under the AB63 compliance audit is unknown. There are approximately 8-10 different TRHP websites currently offering lodging opportunities in Oakland. It is likely that many TRHP hosts advertise on multiple sights. The City under a voluntary Agreement with Airbnb, is already receiving TOT from transients booking accommodations via Airbnb. Thus, the only bookings that would be subject to TOT would be those outside of the Airbnb platform.

Transportation Network Companies

The fiscal impact on additional business tax from the AB63 compliance audit is unknown.

PUBLIC OUTREACH / INTEREST

There was no public outreach conducted with this report.

COORDINATION

This report was prepared in coordination with the City Attorney's Office and the Controller's Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: No direct economic opportunities have been identified.

Environmental: No environmental opportunities have been identified.

Social Equity: No social equity opportunities have been identified.

ACTION REQUESTED OF THE FINANCE AND MANAGEMENT COMMITTEE

Staff Recommends That The Finance Committee Accept This Informational Report Regarding Tax And Fee Assessment On Transient Residential Hosting Platform ("TRHP") (Commonly Known As Short-Term Residential Rentals) And Transportation Network Companies ("TNC") Operating In The City Of Oakland. This is an informational report only, no action is required.

For questions regarding this report, please contact MARGARET O'BRIEN, Interim Revenue & Tax Administrator, 510-238-7480.

Respectfully submitted,

 For

MARGARET L. O'BRIEN
Interim Revenue & Tax Administrator,
Revenue Management Bureau