



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-15

For the meeting of: August 28, 2015

Sept. 1

Date: July 17, 2015

To: Board of Supervisors

From: Humboldt County Treasurer-Tax Collector

Subject: Transient Occupancy Tax and Airbnb Inc. Compliance with County Ordinances

RECOMMENDATION(S): That the Board of Supervisors Support a Demand to Airbnb Requiring Compliance with Humboldt County Transient Occupancy Tax (Humboldt County Code Sections 712-1 through 712-15) and Humboldt County Board of Supervisor Resolution 12-38 Requiring Compliance With Humboldt County Tourism Business Improvement District Assessments.

SOURCE OF FUNDING: N/A

DISCUSSION:

Online hosting platforms now facilitate short term lodging in Humboldt County whereby operators rent out a room or rooms, a living space, or an entire house for less than thirty days through an online website hosted by a company. This is loosely termed the sharing economy. Airbnb Inc. is one of the companies that provides for advertising, reservations, and rentals for the operators. When operators in Humboldt County rent out their property through Airbnb, Inc., they do not currently pay the transient occupancy tax (TOT) as required by Humboldt County Ordinance. Airbnb does not currently require their operators in Humboldt County to collect the mandated 10% TOT (Humboldt County Code Section 712-3) or the mandated 2% Humboldt County Tourism Improvement District (HCTBID) assessments (Humboldt County Resolution 12-38) as is required from all other short term lodging facilities in the county.

The Airbnb platform makes it nearly impossible to determine the locations of the rentals it advertizes short of renting them out and then being told the location. Not knowing the location of these rentals facilitated by Airbnb makes collection efforts unreasonably difficult and too costly to collect. Therefore, because the Tax

Prepared by John Bartholomew

CAO Approval

REVIEW:

Auditor

County Counsel

Personnel

Risk Manager

Other

TYPE OF ITEM:

☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor

Ayes
Nays
Abstain
Absent

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated:

By:

Kathy Hayes, Clerk of the Board

Collector must treat all tax payers equally under the law, the Tax Collector requests cooperation from Airbnb to either collect and remit TOT and HCTBID assessments directly to the office of the Treasurer-Tax Collector (T-TC) along with verifiable data regarding said rentals; or to provide the T-TC department with all locations of rentals it facilitates in Humboldt County at least quarterly. Otherwise equal treatment of all short term lodging operators through-out Humboldt County cannot be achieved.

Senate Bill (SB) 593 (McGuire) is on-line hosting platform legislation that is currently on hold by the author due to the reluctance of Senate leadership to support the proposal. The current version of the bill would require on-line hosting platforms to collect and remit TOT and to provide specified data to local jurisdictions (address, rate, number of nights on a quarterly basis). It also allows locals to compel hosting platforms to remove homes from their site if home sharing is prohibited in that jurisdiction.

Airbnb has launched a full scale attack on SB 593 based primarily on privacy concerns (they do not want operator data shared with the municipalities) and their concern that imposing TOT on the home sharing operators will stifle the economy. The opposition has gained some support in the Senate. Airbnb's arguments against the bill negate the fundamental tax collecting requirement that all tax payers be treated equally. As it stands now, Airbnb type lodging operators are treated differently relative to all other short-term lodging operators that currently must, and do, pay TOT on a quarterly basis.

Since action at the state level is stalled, it is recommended that the county take action to collect the TOT and HCTBID assessments as all short-term lodging owners and operators in the county are legally required to pay.

On March 31, 2015, the T-TC sent the attached letter (Attachment 1) to Brian Chesky, the Chief Executive Officer (CEO) of Airbnb, requesting TOT compliance and has yet to receive a response. This lack of response indicates that Airbnb will not comply with existing county TOT ordinances absent additional action by the county.

For the last several months the T-TC and County Counsel's office have been in contact with the counties of Sonoma, San Luis Obispo, and Santa Cruz in coordinated discussions to determine the most productive course of action to secure Airbnb compliance. One county sent a strongly-worded letter to Airbnb indicating that the County Board of Supervisors would consider legal action against Airbnb should it not comply with the county's TOT ordinances. This resulted in Airbnb contacting that county and agreeing to collect and remit TOT; contract negotiations are still underway. Therefore the T-TC and the office of County Counsel recommend a similar course of action and request your Board authorize and direct Counsel to send the letter attached hereto as Attachment 2 to Airbnb. See a draft of that proposed letter in attachment 2.

FINANCIAL IMPACT: Positive

OTHER AGENCY INVOLVEMENT: None

ALTERNATIVES TO STAFF RECOMMENDATIONS: Not try to engage Airbnb directly but instead wait until SB 593 or other proposed legislation be approved, or not, at the state level.

ATTACHMENTS:

1. Letter to Airbnb dated March 31, 2015
2. Proposed follow-up letter to Airbnb

ATTACHMENT 1



COUNTY OF HUMBOLDT

JOHN BARTHOLOMEW
TREASURER-TAX COLLECTOR

825 FIFTH STREET ROOM 125
EUREKA, CALIFORNIA 95501

PHONE: 707-476-2450
FAX: 707-445-7608
TOLL FREE: 877-448-6829
EMAIL: taxinfo@co.humboldt.ca.us

Brian Chesky, CEO
Airbnb, Inc.
888 Brannan Street
San Francisco, CA 94107

March 31, 2015

Subject: Transient Occupancy Tax (TOT) Compliance

Dear Mr. Chesky,

Congratulations on the success of Airbnb and your business model. It fills an important niche satisfying the demand for short term lodging with a ready and willing supply. In this regard, we applaud you for stimulating growth in economies all over the world.

However, as a County Tax Collector, I must treat all tax payers equally under the law. This office cannot fulfill TOT responsibilities without collecting TOT from the lodgings you facilitate. This equal treatment mandate means we must strictly adhere to collecting TOT from all establishments which enable "the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days" (California Revenue and Taxation Code section 7280). So it follows that the lodging facilities you represent must also comply with these same TOT obligations.

The innovative model you use for linking the supply of lodging with the demand of eager tenants, or guests, easily circumvents the ability of our office to be aware of, find, contact, and ensure that those lodging owners, and/or operators, pay the required TOT to our jurisdiction. Therefore I request that Airbnb help facilitate this compliance.

I understand that TOT compliance is something you are dealing with in many jurisdictions and that you may be formulating a comprehensive approach to satisfy these requests. In absence of such a comprehensive solution, and given that Airbnb is already remitting TOT collections to certain jurisdictions, I request that we too be included in this select group.

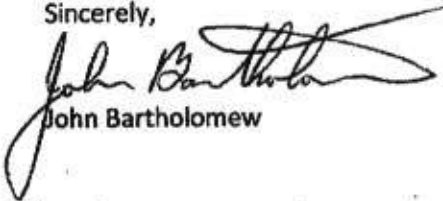
Humboldt County therefore asks that Airbnb begin collecting and submitting TOT to this office as soon as is reasonably possible.

Please reply with the date TOT will begin to be collected, as well as the frequency we should expect to receive the TOT remittance. We require monthly or quarterly remittance along with data for the lodging represented, including the name and address of the owners represented, so we can avoid duplicate TOT collection efforts. Once a start date is agreed upon, mailing and wiring instructions will be forwarded to the designated Airbnb department for payment reconciliation.

I welcome any comments, questions, or concerns you have regarding this request and look forward to a mutually satisfying agreement. Once an agreement for terms have been reached a contract will be drawn to secure a binding understanding between Airbnb and Humboldt County.

Using my email jbartholomew@co.humboldt.ca.us for correspondence is very welcome. Thank you for your consideration, effort, and reply in moving this forward.

Sincerely,



John Bartholomew

Cc:

David Owen, Airbnb Regional Head of Public Policy
Carolyn Ruth, County of Humboldt Assistant County Counsel
Natalie Duke, County of Humboldt Deputy County Counsel
Phillip Smith-Hanes, County of Humboldt Administrative Officer

ATTACHMENT 2



**COUNTY COUNSEL
COUNTY OF HUMBOLDT**

825 FIFTH STREET

EUREKA, CALIFORNIA 95501

PHONE: (707) 445-7236 FAX: (707) 445-6297

September 4, 2015

Brian Chesky, CEO
Airbnb, Inc.
888 Brannan Street
San Francisco, CA 94107

Re: Lack of compliance with Humboldt County's TOT Ordinance

Dear Mr. Chesky:

On March 31, 2015, the Humboldt County Treasurer-Tax Collector John Bartholomew wrote to you requesting that Airbnb pay transient occupancy tax (TOT) as mandated by law when facilitating short term rentals in the unincorporated area of Humboldt County. (See attached letter). On August 31st Mr. Bartholomew finally received a phone call from your organization.

Given Airbnb's delay in responding to the letter, Mr. Bartholomew had contacted County Counsel and brought the issue of Airbnb's non-compliance to the attention of the Humboldt County Board of Supervisors (the Board) at its September 1st meeting. The Board directed Counsel to notify Airbnb that if it fails to comply with the County's request by September 30, 2015, the Board will consider all potential enforcement options, including implementation of police powers to cap the number of days properties may be rented on a short-term basis and filing a lawsuit against Airbnb. Please continue your discussions with Mr. Bartholomew to resolve this matter in a timely fashion.

If you have any questions please contact me .

Sincerely,

Jeffrey S. Blanck
County Counsel