



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute an Agreement with Airbnb, Inc. for the Voluntary Collection of the City's Transient Occupancy Tax on Residential Short-Term Rentals
Category:	Community Development
Meeting Date:	4/30/2019
Staff Contact:	Daniel Degu, 408-586-3054
Recommendation:	Approve and Authorize the City Manager to Execute a Voluntary Collection Agreement with Airbnb, Inc. for the Collection of the City's Transient Occupancy Tax on Residential Short-Term Rentals, with Negotiating Authority Granted to the City Attorney to Negotiate Better Terms with Airbnb, Inc.

Background:

Short-term rentals allow partial to entire-home rental to lodgers seeking short-term accommodations, often through online rental marketplaces, for a consecutive period of 30 or fewer days. The short-term rental industry, including Airbnb (Air-bed and breakfast), HomeAway, and VRBO (Vacation Rentals by Owner), have grown over eight hundred percent (800%) since 2011, according to Host Compliance, and totaled an unprecedented eight million rental listings worldwide in 2017.

According to Host Compliance, there were approximately 341 short-term rentals available within Milpitas City limits as of November 2018. Of the 341 short-term rentals available, roughly 235 short-term rentals are single-family, 85 short-term rentals are multi family, and 21 short-term rentals are unknown property types. Furthermore, of the 341 short-term rentals available about 197 short-term rentals are considered a partial home rental while 126 short-term rentals are listed as an entire home.

The Milpitas Municipal Code currently defines short-term rentals as hotels generally and does not allow them in any residential zoning district. The City Council has the authority to regulate or prohibit short-term rentals within City limits and consistent with City Council Economic Development and Job Growth priority, staff explored issues related to short-term rentals through community engagement and subsequent City Council direction.

On December 13, 2018, and January 17, 2019, two community meetings on short-term rentals were held. City staff provided an oral presentation and answered questions from attendees. Community members at these meetings were in support of short-term rentals with comments including that supplemental income from short-term rentals are good for both the residential property owner and City, and questions were asked about business license requirements and safety requirements such as smoke detectors and fire extinguishers.

On December 28, 2018, a community survey on short-term rentals was launched and disseminated through the City's website, social media such as Nextdoor and Facebook, flyers and the City's local access government channel. **Exhibit A** (attached) provides a summary of the survey results.

On January 14, 2019, staff engaged the Economic Development & Trade Commission to provide background information on short-term rentals. Staff reviewed current and proposed regulations pertaining to short-term

rentals in Santa Clara County, including the City of Milpitas, and potential regulations that the City Council could consider for adoption.

On February 26, 2019, City Council directed staff to “explore a Voluntary Collection Agreement with Airbnb for collection of the City’s transient occupancy tax on behalf of Airbnb hosts who rent their residences to others using the Airbnb lodging platform.” City staff re-engaged Airbnb officials regarding their interest in entering into a Voluntary Collection Agreement, to which they remain interested in collaborating with the City.

The City Council also directed staff to “... amend the zoning code to make (short-term rentals) STRs an allowed or conditionally allowed use, ... choose to impose new transitory-lodging-specific licensing and permitting requirements, good-neighbor rules, and use restrictions and provide additional enforcement tools.” City staff spanning several departments, in conjunction with the City Attorney’s Office, has been regularly meeting to develop a new regulatory program and comprehensive Short-Term Rental Ordinance to regulate short-term rentals in Milpitas, since the City Council’s direction in February 2019.

On April 8, 2019, staff re-engaged the Economic Development & Trade Commission, to present recommended short-term rental regulations and to solicit feedback from Commission members. Several Commissioners provided insightful feedback and supplemental regulations such as city oversight, use restrictions, and good-neighbor rules, which will be integrated into the proposed Short-Term Rental Ordinance for City Council consideration.

Analysis:

Initially staff intended to recommend the Voluntary Collection Agreement and the Short-Term Rental Ordinance for City Council consideration at the same Council meeting. However, staff now proposes to decouple the two aforementioned action items (Voluntary Collection Agreement and Short-Term Rental Ordinance) and will proceed with City Council consideration on just the Voluntary Collection Agreement at this meeting in order to align transient occupancy tax revenues in Fiscal Year 2019-20 budget. Staff will return to City Council in late summer or early fall of 2019 to consider the adoption of a Short-Term Rental Ordinance after receiving Planning Commission recommendation.

The proposed Voluntary Collection Agreement is between Airbnb, Inc., and the City for the collection and remittance of the City’s transient occupancy tax and sales tax. The current transient occupancy tax is 14 percent and any short-term rentals operating for 30 consecutive calendar days or fewer is subject to the current business license and transient occupancy tax regulations pursuant to Section Title III, Chapter 1 and Section Title III, Chapter 13 of the Milpitas Municipal Code. Over 45 California municipalities have executed a Voluntary Collection Agreement with Airbnb, including the cities of Cupertino, Morgan Hill, Palo Alto, San Jose, Santa Clara, and Sunnyvale.

Key provisions of the proposed Voluntary Collection Agreement are summarized below:

- Airbnb agrees to assume the duties of collection and remittance of applicable transient occupancy taxes and applicable sales taxes on behalf of its hosts.
- The City agrees to waive the right to collect from Airbnb all applicable transient occupancy taxes and applicable sales taxes for any period or for any transaction prior to the effective date of the agreement. The draft agreement is not clear about whether this waiver applies just to Airbnb itself or to all of its hosts as well (precluding the City from collecting unpaid taxes that are currently owed by a host).
- Airbnb waives responsibility to remit applicable transient occupancy taxes and applicable sales taxes to the City for certain “registered” hosts and also waives any liability for those registered hosts’ failure to collect, report, or remit taxes.

- Airbnb agrees to assume liability for any failure to report, collect, or remit the correct amount of applicable transient occupancy taxes and applicable sales taxes to the City except as to the registered hosts.
- The City has audit rights as to Airbnb, but not as to individual hosts.
- Airbnb agrees to notify hosts that the applicable transient occupancy taxes and applicable sales taxes will be collected and remitted.

Airbnb has represented that if the Voluntary Collection Agreement is fully executed by May 31, 2019, Airbnb will be able to begin transient occupancy tax collection on behalf of its hosts on or about July 1, 2019, with revenues directly to the City on August 31, 2019. Airbnb estimated that there were approximately 210 hosts in Milpitas utilizing their online rental marketplace platform as of January 2019. The annual average earning for a host was \$8,800 with an average length of stay of 4.8 nights. Based on the number of hosts and annual host earnings, City staff estimates that the transient occupancy tax collected and remitted through Airbnb would be an additional approximate \$260,000 annually. The anticipated revenues will be part of the City's General Fund to support critical and essential City services.

If Council approves the recommendation, staff will negotiate and execute a Voluntary Collection Agreement with Airbnb while continuing to develop a new regulatory program and comprehensive ordinance to regulate short-term rentals in the city. An executed Voluntary Collection Agreement with Airbnb simplifies the remittance process for hosts using the Airbnb hosting platform and enables compliance with the City's current transient occupancy tax regulations; while the new regulatory program and comprehensive ordinance allows the City to preserve the residential character of existing neighborhoods and establish operating standards to reduce community impact.

Please note that merely entering into the Voluntary Collection Agreement will not create any new right for people to operate a short-term rental in the City. As noted above, short-term rentals are currently a prohibited use. The short-term rentals that are currently operating in the City, including those that are listed on Airbnb, are operating illegally under existing zoning ordinance. This does not prevent the City from taxing these illegal uses if they fit the legal definition of a taxpayer. In effect, operators of illegal short-term rentals still must pay applicable taxes. When the City amends its code later this year to allow and regulate short-term rentals, it will bring all short-term rentals into zoning conformance.

Fiscal Impact:

Airbnb, Inc., estimates that there were approximately 210 Airbnb hosts in Milpitas utilizing their online rental marketplace platform as of January 2019. The annual average earning for a Milpitas host was \$8,800 with an average length of stay of 4.8 nights. Based on the number of hosts and annual host earnings, City staff estimates that the transient occupancy tax collected and remitted through Airbnb, Inc. would be an additional approximate \$260,000 annually. The anticipated revenues will be part of the City's General Fund to support critical and essential City services.

California Environmental Quality Act:

The proposed action — to authorize the City Manager to execute a Voluntary Collection Agreement with Airbnb, Inc. — does not itself constitute a "project" under CEQA because it would not itself affect the environment in any way. It will not allow any new use to operate, nor will it impose any new or change any existing regulation of uses. It affects only the collection and remittance of already-established taxes. Therefore, CEQA does not apply. Even if the proposed project were a project under CEQA, the proposed action would be statutorily exempt under 14 Cal. Code Regs. § 15262 (exempting feasibility and planning studies). Any amendments that staff might recommend as a result of a study would be subject to a separate CEQA analysis when the amendments go before the appropriate legislative bodies (commission and council).

Recommendation:

Approve and authorize the City Manager to execute a Voluntary Collection Agreement with Airbnb, Inc. for the collection of the City's transient occupancy tax on residential short-term rentals, with negotiating authority granted to the City Attorney to negotiate better terms with Airbnb, Inc.

Attachments:

1. Exhibit A: Short-Term Rental Survey Results
2. Exhibit B: Draft Airbnb, Inc. Voluntary Collection Agreement
3. Exhibit C: 02-26-19 Council Agenda Report + Meeting Minutes

The Vice Mayor remarked that she did not see it anywhere that Councilmembers had access to spaces (facility use), and felt the Council should have free use of public spaces or parks.

Councilmember Phan responded that as long as there was a public benefit to the event, he would support that. The City could have a set-aside fund for office of each Councilmember. Perhaps they could have the City Attorney or other sign off on that fact. Vice Mayor Dominguez said it could be on a number of uses per member, perhaps, rather than a fund.

The City Manager asked the Council to consider what was the priority of the Council's use of City facilities, and then those could come back to the Council.

At 7:07 PM, Mayor Tran opened the public hearing.

Dan Boatwright, of Castle Properties at 260 S. Main Street across from Catholic Church, referred to a current fee, on fire and water related charges on water meters. He discussed fire flow for water and wanted to ask staff to separate out residential size from other flow in order to charge the proper amount. Mr. Boatwright asked Council to give clarification to staff, and to make domestic charges separate from fire flow meter fee.

The City Manager responded that she could take this back to staff to discuss and come back at a future meeting.

Robert Marini, resident, asked about the use of parks and benefits. He referred to a candidate's use of a park and raising funds. He needed explanation from Karina Dominguez of her proposal about the use of public spaces.

Voltaire Montemayor, resident, was for the good of everybody. He supported subsidies for people, if funds were available. On the issue of false alarms, a penalty charged was alright.

Councilmember Nuñez stepped away from the meeting for a few minutes prior to the vote below.

Motion: to continue the public hearing on the Master Fee Schedule to the special City Council meeting scheduled on Wednesday, May 15, 2019 at 6:00 PM

Motion/Second: Councilmember Phan/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Nunez)

2. VOLUNTARY TAX COLLECTION AGREEMENT

Economic Development Director Alex Andrade explained the request for the City Council to approve a Voluntary Collection Agreement (or "VCA") related to collecting Transient Occupancy Tax (hotel tax or "TOT") from short term rental owners in the city.

Mr. Andrade introduced Economic Development Coordinator Daniel Degu, who described short term rentals in Milpitas and how those were regulated. Only one short term renter paid such tax presently with 341 such rentals operating in Milpitas as of November 2018. Staff anticipated revenue to be approximately \$260,000 annually. Mr. Degu described five key provisions of the proposed voluntary agreement. If it was signed by May 31, then TOT could be collected starting July 1, 2019. Staff identified six cities that had entered into agreement with the Airbnb company to date.

Councilmember Nuñez asked if Airbnb would hold the City harmless with regard to liability at sites. City Attorney Diaz replied that the city would collect tax on the short term use (similar to a hotel night stay), as required under the TOT ordinance. Private tenant use would be covered by the homeowner association and/or the renter.

Councilmember Montano asked what the other six cities were doing. Staff said the agreement (VCA) was similar for each city, which then was collecting its TOT at established rates.

Councilmember Phan focused on the key word "voluntary" on the part of Airbnb. Its goodwill brought the VCA to the City Council. He referred to relief for those folks who needed housing. Maybe this revenue could go to those

who needed rental assistance or affordable housing, instead of going to the General Fund. Funds into the Housing Authority would be valuable and/or maybe a public-private partnership for this goal, using credits perhaps.

Councilmember Montano agreed with the concept of putting funds into the Housing Authority.

Resident Robert Marini noted that Airbnb was a profitable company and so he asked why it wanted to go in on this arrangement.

Councilmember Nuñez asked the two corporate representatives Mick Del Rosario and Allison Peck if the company's stock went up or down, after the VCA agreements with other cities were signed. Mr. Del Rosario provided some context on the part of Airbnb for signing onto the agreements.

How the money was used, once collected, could be discussed at the scheduled upcoming budget study session on May 15, said the City Manager.

In response to Councilmember Montano, Ms. Peck spoke of the company's global tax policy and how Airbnb had partnered with the disaster response team at the City of San Jose recently, stating it helped to provide homes during wildfires or following other disasters.

Motion: to approve and authorize the City Manager to execute a Voluntary Collection Agreement with Airbnb, Inc. for collection of the City's Transient Occupancy Tax on residential Short Term Rentals, with negotiating authority granted to the City Attorney to negotiate better terms with Airbnb, Inc.

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried on a vote of: AYES: 5
NOES: 0

3. GENERAL PLAN STUDY SESSION PREPARATION

Councilmember Nuñez left the room and the meeting at 7:50 PM.

Planning Director Ned Thomas referred to an upcoming meeting to give a broad update on the General Plan and its status, per hired consultants for that major long term policy document including a Land Use map. He introduced Barbara Nelson, a consultant from FCS who was hired to help prepare staff and Council for the upcoming future meeting with the General Plan consultants. Ms. Nelson remarked that a City's General Plan was its "constitution for future development."

Mr. Thomas gave history on efforts to date, including formation of the Council-appointed General Plan Advisory Committee, with 14 land use alternatives at locations around the city. Maps with the alternatives were available.

Ms. Nelson then listed next milestones on the General Plan update, with four dates for actions in 2019 and the General Plan Advisory Committee (GPAC) recommendations and Land Use Alternatives report. She defined the roles of City Council and of other participants: GPAC, community, Planning Commission and city staff.

Councilmember Montano mentioned the school district also should be noted in the roles. Staff noted that Milpitas Schools Superintendent Cheryl Jordan served as a member on the GPAC.

14 opportunity areas would be discussed on May 21, and staff would seek input and direction from City Council, go over the Land Use Alternates Report and GPAC recommendations.

Mayor Tran thanked staff for work done on this topic to date.

Councilmember Phan noted progress on the GPAC since Mr. Thomas arrived at the city. He spoke of non-conforming uses and zoning within the General Plan. He wanted to incorporate some type of "Social Justice" element when forming the General Plan. Planning Manager Jessica Garner replied how that could be incorporated in the "Health and Wellness" element the City would include.