

CITY OF COOS BAY CITY COUNCIL
Agenda Staff Report

MEETING DATE	AGENDA ITEM NUMBER
June 20, 2017	

TO: Mayor Benetti and City Councilors

FROM: Susanne Baker, Finance Director
Nate McClintock, City Attorney

THROUGH: Rodger Craddock, City Manager

ISSUE: AirBnB Transient Occupancy Tax Agreement

SUMMARY:

The City of Coos Bay and the Coos Bay North Bend Visitor's Convention Bureau are not receiving transient occupancy tax for vacation rentals through AirBnB. Through negotiations with AirBnB, an agreement has been developed which would require AirBnB to begin remittance of transient occupancy tax for their hosts at the beginning of the next month. The agreement requires authorization by the City Council before it can be executed.

ACTION REQUESTED:

It is staff's recommendation the City Council direct the City Manager to execute the AirBnB agreement as presented.

For additional information, see the attached June 13, 2017 Joint Council / URA Work Session report.

**CITY OF COOS BAY
JOINT CITY COUNCIL / URA WORK SESSION
Agenda Staff Report**

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It is staff's recommendation the City Council direct the City Manager to execute the AirBnB agreement as presented.

BACKGROUND:

Online remittance of transient occupancy tax for those who rent vacation rentals for less than 30 calendar days is a fairly new requirement over the last couple of years. City staff has been working with online vendors to receive transient occupancy tax over this time period and collaborating with other cities in Oregon for efficiency. Through this experience, AirBnB has proven to be a unique vendor; they do not provide information to determine who their hosts are in which to make contact directly with the property for transient occupancy tax collection. Through negotiations, AirBnB has agreed to act as an intermediary and obtain the transient occupancy tax directly and remit it for their hosts to the City of Coos Bay.

The advantage of AirBnB collecting the transient occupancy tax would be the City would work with one vendor instead of many different individual property owners. Staff has determined there are approximately 10 – 15 properties utilizing AirBnB for their property rentals at this time. While the City does have an active ordinance for transient occupancy tax, the ordinance does not specifically address anonymity of hosts and agreements with online property management companies such as AirBnB. Subsequently, a separate agreement is being proposed to allow for the nuances of AirBnB to be vetted to ensure it is a workable solution before making changes to an ordinance.

Major components of the agreement with AirBnB include continued anonymity of their hosts,

provides for a limited audit of individual records to a consecutive twelve-month period within a forty-eight month period, and releases AirBnB for any transient occupancy tax remittance for taxable booking transactions prior to the effective date of the agreement.

BUDGET IMPLICATIONS:

The agreement is anticipated to increase transient occupancy tax receipts.

**VOLUNTARY COLLECTION AGREEMENT
FOR
CITY OF COOS BAY, OREGON TRANSIENT ROOM TAX**

THIS VOLUNTARY COLLECTION AGREEMENT (the “**Agreement**”) is dated June 1, 2017 and is between **AIRBNB, INC.**, a Delaware corporation (“**Airbnb**”) and City of Coos Bay, Oregon (the “**Taxing Jurisdiction**”). Each party may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS:

WHEREAS, Airbnb represents that it provides an Internet-based platform (the “**Platform**”) through which third parties offering accommodations (“**Hosts**”) and third parties booking such accommodations (“**Guests**”) may communicate, negotiate and consummate a direct booking transaction for accommodations to which Airbnb is not a party (“**Booking Transaction**”);

WHEREAS, the Taxing Jurisdiction and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of alleged applicable transient room taxes (“**TRT**”) imposed under applicable City of Coos Bay, Oregon law (the applicable “**Code**”) for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in the City of Coos Bay, Oregon (the “**Taxable Booking Transactions**”);

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

(A) Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective (defined below), and solely for Taxable Booking Transactions completed on the Platform, Airbnb agrees contractually to assume the duties of a TRT collector as described in the Code (hereinafter referred to as a “**Collector**”).

(B) Starting on July 1, 2017 (the “**Effective Date**”), Airbnb agrees to commence collecting and remitting TRT, pursuant to the terms of this Agreement, at the applicable rate, on Taxable Booking Transactions. Except as set forth in Paragraph (L) below, Airbnb shall not assume any obligation or liability to collect TRT for any period or for any transaction prior to the Effective Date or termination of this Agreement.

REMITTANCE OF TRT

(C) Airbnb agrees to report aggregate information on the tax return form prescribed by the Taxing Jurisdiction, including all TRT that is subject to the provisions of this Agreement, and

it shall remit all TRT collected from Guests in accordance with this Agreement and Airbnb's Terms of Service (www.airbnb.com) (the "TOS") in the time and manner described in the Code or as otherwise agreed to in writing.

AIRBNB LIABILITY

(D) Pursuant to the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of TRT, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with the Code. Nothing contained herein nor any action taken pursuant to this Agreement shall impair, restrict or prevent Airbnb from asserting that any TRT and/or penalties, interest, fines or other amounts assessed against it were not due, are the subject of a claim for refund under applicable law or otherwise bar it from enforcing any rights accorded by law.

(E) During any period for which Airbnb is not in breach of its obligations under this Agreement, the Taxing Jurisdiction agrees to audit Airbnb on the basis of TRT returns and supporting documentation, and agrees not to directly or indirectly audit any individual Guest or Host relating to Taxable Booking Transactions unless and until an audit of Airbnb by the Taxing Jurisdiction has been exhausted with the matter unresolved. The Taxing Jurisdiction reserves the right to audit any individual Airbnb Host for activity that has been brought to the attention of the Taxing Jurisdiction in the form of a complaint or other means independent of this Agreement or independent of data or information provided pursuant to this Agreement.

(F) The Taxing Jurisdiction agrees to audit Airbnb on an anonymous numbered account basis for Taxable Booking Transactions. Except as otherwise agreed herein, Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Booking Transaction without binding legal process served only after completion of an audit by the Taxing Jurisdiction of Airbnb with respect to such users. The Taxing Jurisdiction agrees that it will not audit or issue an assessment against Airbnb more than once per any consecutive forty-eight month period and that such audit or assessment will be limited to a consecutive twelve-month period within the forty-eight month period. The Parties agree that any audit findings of the Taxing Jurisdiction in the selected twelve (12) month period may be projected against the remainder of any periods open under the applicable statute of limitations, unless Airbnb elects, at its sole discretion, to undergo further audit of such open periods by the Taxing Jurisdiction.

-(G) Airbnb, Inc. agrees to register as a Collector for the reporting, collection and remittance of TRT under this Agreement and will be the registered Collector on behalf of any affiliate or subsidiary collecting TRT.

GUEST AND HOST LIABILITY

(H) During any period in which this Agreement is effective relating to Taxable Booking Transactions, Hosts shall be permitted but not required to register individually with the Taxing Jurisdiction to collect, remit and/or report TRT, provided Airbnb is in compliance with its obligations herein. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to TRT for transactions completed other than on the Platform, or restrict the Taxing Jurisdiction from investigating or enforcing any provision of applicable law against such users for such transactions.

WAIVER OF LOOK-BACK

(I) The Jurisdiction expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders investors, employees and other agents, and/or Hosts or Guests from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of TRT or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to TRT on any Taxable Booking Transactions prior to the Effective Date. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the Jurisdiction may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.

NOTIFICATION TO GUESTS AND HOSTS

(J) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it will notify (i) Hosts that TRT will be collected and remitted to the Taxing Jurisdiction as of the Effective Date pursuant to the terms of this Agreement; and (ii) Guests and Hosts of the amount of TRT collected and remitted on each Taxable Booking Transaction.

LIMITATION OF APPLICATION

(K) This Agreement is solely for the purpose of facilitating the administration and collection of the TRT with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution of or actions taken under this Agreement shall not be considered an admission of law or fact or or constitute evidence thereof under the

Code or any other provisions of the laws of the United States of America, of any State or subdivision or municipality thereof. Neither Party waives, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions relating to the validity or interpretation or applicability of the Code, regulations or application of law.

DURATION/TERMINATION

(L) This Agreement may be terminated by Airbnb or the Taxing Jurisdiction for convenience on 30 days written notification to the other Party with such termination effective on the first day of the month after such 30 day notice period. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the Taxing Jurisdiction any TRT collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the Taxing Jurisdiction as of the date of termination.

MISCELLANEOUS

(M) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Oregon without regard to its conflict of law principles.

(N) MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.

(O) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(P) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

(Q) RELATIONSHIP OF THE PARTIES. The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise,

joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(R) **WAIVER AND CUMULATIVE REMEDIES.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(S) **FORCE MAJEURE.** Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(T) **ASSIGNMENT.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

(U) **MISCELLANEOUS.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

NOTICES

(V) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

To Airbnb:

Airbnb, Inc.
Attn: General Counsel
888 Brannan Street, 4th Fl.
SF, CA 94103
legal@airbnb.com

Airbnb, Inc.
Attn: Global Head of Tax
888 Brannan Street, 4th Fl.
SF, CA 94103
tax@airbnb.com

To the Taxing Jurisdiction:

City of Coos Bay, Oregon
500 Central Avenue
Coos Bay, Oregon 97420
541-269-8915
Fax: 541-267-5912
E-mail: finance@coosbay.org

IN WITNESS WHEREOF, Airbnb and the Taxing Jurisdiction have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By: _____
Signature of Authorized Representative

Mike Liberatore, Acting Global Tax Director

Name and Title of Authorized Representative

City of Coos Bay, Oregon

By: _____
Signature

Name and Title