

City of Sacramento

Legislation Text

File #: 2019-01733, **Version:** 1

Title:

(Pass for Publication) Ordinance Amending Various Sections of and adding Article V to Chapter 5.114 of the City Code, Relating to Short-Term Rentals [Two-Thirds Vote Required]

File ID: 2019-01733

Location: Citywide

Recommendation:

1) Pass a Motion by two-thirds vote waiving Rule 7.K.3.a of the Council Rules of Procedure, requiring the text of an ordinance as approved by the Law and Legislation Committee to be the text that is included in the published agenda as pass-for-publication; 2) review an Ordinance amending various sections of and adding article v to chapter 5.114 of the Sacramento City Code, relating to Short-Term Rentals; and 3) pass for publication the Ordinance title as required by Sacramento City Charter Section 32(c) for consideration on February 4, 2020.

Contact: Tessa St. John, Program Manager, (916) 808-4847; Susan Wren, Revenue Manager, (916) 808-5844, Department of Finance

Presenter: None

Attachments:

- 1-Description/Analysis
- 2-Ordinance (Redline)
- 3-Ordinance (Clean)

Description/Analysis

Issue Detail: On April 16, 2019, Councilmember Harris asked staff to address the following concerns related to short-term rentals (STRs):

1. Increase the responsibility of the hosting platforms to collect the City's transient occupancy tax (TOT) and ensure operators comply with the Sacramento City Code (SCC), including holding the hosting platforms responsible for noncompliant operators.

2. Prohibit short-term rental operators with revoked or denied permits from reapplying for two years if the revocation or denial is based on certain grounds.

Hosting Platforms

The proposed amendments will clarify that, while STR operators must comply with all aspects of the ordinance, internet companies that provide online hosting services and charge a fee for facilitating STR transactions will be held responsible for collecting TOT and held accountable for booking illegal rentals. The amended ordinance will not regulate internet companies that don't charge for booking services and act solely as publishers of advertisements for STRs (e.g., Craigslist).

Requiring the hosting platform to capture the TOT at the point of transaction between the operator and guest will increase compliance. Currently, the City of Sacramento (City) has agreements with two hosting platforms to collect and remit TOT. Individual operators that are booking rentals through all other platforms are required to report and remit TOT themselves. These proposed amendments would apply the expectations and obligations expressed in the agreements on all hosting platforms, as defined in the Ordinance, without the need to secure individual agreements. The recommended changes will also require the hosting platforms to maintain accurate TOT records, as defined by SCC, which will allow the City to audit the TOT payments for accuracy.

The City of Santa Monica instituted similar requirements, and in March of 2019, the Ninth Circuit Court of Appeals upheld Santa Monica's Ordinance following a challenge from Airbnb and HomeAway. STR industry insiders expect this decision to continue to face legal challenges, citing that the ruling is out of step with other court decisions and runs contrary to the Communications and Decency Act's protections for innovation on the internet. (Los Angeles Times, "Airbnb loses major fight over Santa Monica's rental law," dated March 13, 2019)

Revoked or Denied Permits

Previously, the SCC allowed operators who were denied a permit during the application or renewal process to immediately reapply for a permit. Building a case for denial or revocation can take time and is costly to the City. The proposed change would add the authority to deny a STR permit application for certain grounds (e.g., providing false or misleading information, outstanding enforcement action, previous nuisance, housing or building violations, or fee delinquencies). The proposed amendment will also change the time frame from 12 months to two years for both denial of an application and revocation of a permit; preventing an operator, whose permit has been revoked or application denied based on the above grounds, from reapplying for a period of two years.

Staff has conducted outreach to the hosting platforms to inform them of upcoming changes and to begin developing a functional process for removing unpermitted operators from the platforms.

Policy Considerations: The recommended amendments will increase conformity by moving the onus of compliance to the hosting platforms who can capture TOT at the point of transaction. Allowing the City to hold the platforms responsible will provide an additional tool to increase the City's effectiveness in enforcement of noncompliant operators, which is consistent with Council's support of compliant permittees.

Economic Impacts: Not applicable.

Environmental Considerations:

California Environmental Quality Act (CEQA): This report concerns administrative activities and governmental fiscal activities that do not constitute a "project" as defined by the CEQA Guidelines Sections 15378(b)(2) and 15378(b)(4) and are not subject to the provisions of CEQA (CEQA Guidelines Section 15060(c)(3)).

Sustainability: Not applicable.

Commission/Committee Action: The recommended changes were reviewed by the Law and Legislation (L&L) Committee on August 20, 2019 and forwarded to City Council for adoption. After presenting to the L&L Committee, the language in the Ordinance was changed to address concerns about the implementation of Article V. The clarified language specifies the information required to be kept by the hosting platforms is for the purpose of confirming the accuracy of TOT payments. Because the language has changed since passing the L&L Committee, the Ordinance requires a two-thirds approval vote to pass.

Rationale for Recommendation: STRs benefit residents who utilize their homes to host visitors, but these uses have the potential to impact the character of neighborhoods by bringing in commercial activities and removing residential housing stock from the market. With the adoption of 5.114 and subsequent amendments, Council established regulations to assist with mitigating this impact and granted the authority to remove and prevent noncompliant operators. The proposed ordinance will streamline the collection and remittance of TOT and would prohibit hosting platforms from completing transactions for any STRs which are not permitted by the City. Provided a hosting platform complies with collecting and remitting TOT and only completes booking transactions for City-approved and permitted units, it will be deemed in compliance. Currently there are approximately 200 noncompliant City operators advertising and booking through hosting platforms.

Ensuring that STR operators that have violated the SCC and had an application denied or permit revoked are not able to reapply for two years will inhibit operators who have not complied with the SCC from continuing to negatively impact their neighborhoods.

Financial Considerations: Civil penalties for noncompliant STR operators are provided for in the

SCC at no less than \$250 or more than \$25,000 for each day the violation continues (SCC section 5.114.040(C)). The proposed amendments would apply these fees to noncompliant hosting platforms, as well as operators.

The City collected approximately \$75,000 in TOT in FY2018/19 from individual STR operators and \$892,761 has been remitted by Airbnb (Airbnb remits TOT on behalf of operators utilizing their hosting platform). Requiring all hosting platforms to collect and remit the TOT on behalf of the City will ensure that the TOT is being levied in accordance with the SCC.

Local Business Enterprise (LBE): Not applicable.