

City of Sacramento

Legislation Text

File #: 2019-01839, **Version:** 1

Title:

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] (Passed for Publication 01/28/2020; Published 01/31/2020)

File ID: 2019-01839

Location: Citywide

Recommendation:

1) Pass a Motion by two-thirds vote temporarily suspending rule 7.K.3.a of the Council Rules of Procedure, which requires that the text of an ordinance approved by the Law and Legislation Committee be the text that is included in the published agenda as pass-for-publication; and 2) adopt an Ordinance amending various sections of, and adding article V to, chapter 5.114 of the Sacramento City Code, relating to short-term rentals.

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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 internet hosting platforms to collect the City's transient occupancy tax (TOT) and ensure that STR operators comply with the Sacramento City Code, including holding the hosting platforms responsible for noncompliant operators.

2. Prohibit STR 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 responsible for collecting TOT and be subject to penalties for booking illegal rentals. The amended ordinance will not regulate internet companies that don't charge a fee 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 has agreements with two hosting platforms to collect and remit TOT, while several more lodging-reservation platforms exist. Individual STR operators who book rentals through all other platforms are required to report and remit TOT themselves each month. The proposed ordinance would apply the expectations and obligations expressed in the two existing agreements on all hosting platforms as defined in the proposed 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 the City Code, which will fulfill the City's need for documentation to audit the TOT payments for accuracy.

Although the platforms that currently contract with the City of Sacramento have not filed any complaints related to collecting TOT, the City of Santa Monica instituted similar requirements and was challenged in federal court by Airbnb and HomeAway. In March 2019, the Ninth Circuit Court of Appeals upheld Santa Monica's ordinance, but STR industry insiders still expect that these types of ordinances could continue to face future legal challenges in other jurisdictions. (Los Angeles Times, "Airbnb loses major fight over Santa Monica's rental law," dated March 13, 2019)

Revoked or Denied Permits

Currently, the City Code allows STR operators who have been 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 two years.

Staff 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 compliance by moving the onus to the hosting platforms that can collect TOT at the point of transaction. Allowing the City to hold the platforms responsible and subjecting them to civil penalties will provide an additional tool to increase the City's effectiveness in enforcement against noncompliant operators, which is consistent with City 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 CEQA Guidelines and thus are not subject to CEQA (14 Cal. Code Regs. §§ 15060(c)(3), 15378(b)(2), and 15378(b)(4)).

Sustainability: Not applicable.

Commission/Committee Action: The proposed ordinance was approved by the Law and Legislation Committee (L&L) on August 20, 2019, and forwarded to City Council for adoption. The language in the proposed ordinance was subsequently changed to address concerns about the implementation of article V. The new language specifies that the information to be kept by the hosting platforms is required for the purpose of confirming the accuracy of TOT payments. Because the language approved by L&L has been changed, the City Council must temporarily suspend rule 7.K.3.a of the Council Rules of Procedure, which requires that the language approved by L&L be the language passed for adoption, before passing the proposed ordinance. Suspension requires a two-thirds vote (Council Rules of Procedure, rule 1.D).

Rationale for Recommendation: STRs benefit residents who utilize their homes to host visitors, but these uses have the potential to negatively impact the character of neighborhoods by bringing in commercial activities and removing residential housing. With the adoption of chapter 5.114 in 2016 and the subsequent amendments to it, the City Council has established regulations to assist with mitigating this impact and has authorized the City Manager to suspend or revoke the permits of noncompliant STR operators; in addition, the City Attorney is authorized to prosecute noncompliant operators. The proposed ordinance will streamline the collection and remittance of TOT for residents who use hosting platforms and will prohibit hosting platforms from completing transactions for any STRs not permitted by the City. So long as a hosting platform collects and remits TOT as required and only completes booking transactions for City-approved and -permitted units, it will be in compliance. About 200 noncompliant STR operators within the City are advertising and booking through hosting platforms.

The proposed ordinance will also authorize the City Manager to deny an application for a STR permit

if the STR operator, within the two years preceding the application, has violated the City Code or had an application denied or a permit revoked. This will prevent operators who have not complied with the City Code from continuing to negatively impact their neighborhoods.

Financial Considerations: The City Code prescribes civil penalties for noncompliant STR operators of not less than \$250 and not more than \$25,000 for each day the violation continues (City Code § 5.114.040.C). The proposed ordinance would apply these penalties to noncompliant hosting platforms as well.

TOT is a source of revenue for the Community Center and General Funds. The City collected approximately \$75,000 in TOT in FY2018/19 from individual STR operators and \$892,761 from two hosting platforms that had contracted with the City to collect TOT on behalf of operators. Requiring that *all* hosting platforms collect and remit the TOT to the City will ensure that the TOT is being levied in accordance with the City Code. The potential increase in TOT revenue that could be generated by the proposed ordinance is subject to many variables and is therefore difficult to estimate.

Local Business Enterprise (LBE): Not applicable.