

2.11 Agreement with HomeAway.com, Inc. for the Collection of Transient Occupancy Tax.

Recommendation:

Adopt a resolution authorizing the City Manager or her designee to negotiate and execute a Tax Collection Agreement with HomeAway.com, Inc., at no cost to the City, for the collection of the City's Transient Occupancy Tax on short-term rentals, where the host (owner or primary tenant) uses a hosting platform provided by HomeAway.com, Inc. and its subsidiaries.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended)
resulting in no physical changes to the environment. (Finance)



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Drew Corbett

SUBJECT: SEE BELOW

DATE: September 3, 2024

Approved

Date

9/5/24

COUNCIL DISTRICT: Citywide

SUBJECT: Agreement with Homeaway.Com, Inc. for the Collection of Transient Occupancy Tax Collection

RECOMMENDATION

Adopt a resolution authorizing the City Manager or her designee to negotiate and execute a Tax Collection Agreement with HomeAway.com, Inc., at no cost to the City, for the collection of the City's Transient Occupancy Tax on short-term rentals, where the host (owner or primary tenant) uses a hosting platform provided by HomeAway.com, Inc. and its subsidiaries.

SUMMARY AND OUTCOME

The delegation of authority to the City Manager or her designee to negotiate and execute a Tax Collection Agreement with HomeAway.com, Inc. (HomeAway) will allow the Finance Department to capture additional Transient Occupancy Tax (TOT) revenue that may not have been collected. Chapters 4.72 and 4.74 of the San José Municipal Code place the responsibility of tax remittance on the individual owners or primary tenants of the rental property. In addition to the City's existing agreement with Airbnb, Inc. (Airbnb), executing an agreement with HomeAway.com, Inc. would assist the City in capturing a large portion of any remaining TOT shortfall where individual hosts have collected but failed to remit TOT to the City.

BACKGROUND

On January 8, 2015, the City executed a Voluntary Collection Agreement (VCA) with Airbnb, effective February 1, 2015. Since the agreement, Airbnb has remitted TOT to the City on behalf of short-term rental hosts using its hosting platform.

In an effort to expand the TOT taxable base to increase overall TOT revenues, the Finance Department explored further revenue enhancement options. After researching multiple third-party short-term rental solutions, City staff engaged HomeAway regarding its interest in entering into a VCA on behalf of the hosts using its service.

ANALYSIS

The recommended resolution would authorize the City to negotiate and execute a VCA with HomeAway for the collection of the City's TOT pursuant to Chapters 4.72 and 4.74 of the San José Municipal Code.

HomeAway is a corporation which provides an internet platform through which third parties desiring to rent out accommodations (hosts) and third parties desiring to book accommodations (guests) have the opportunity to locate each other, communicate, negotiate, and book a transaction pursuant to an agreement between the hosts and guests. For the purposes of this VCA, HomeAway agrees to act as a limited collection and remittance agent of the hosts to the extent such hosts offer to or rent accommodations to guests in San José via the HomeAway platforms that are subject to the City's TOT. HomeAway assumes all responsibilities for the collection and remittance of the TOT for applicable transactions on its platforms in the City, starting on the effective date of the VCA once finalized.

Staff estimates the TOT revenue from Airbnb hosts currently accounts for more than 90% of all short-term rental revenue received by the City. While Airbnb likely represents a majority of hosts in the City, staff believes entering into this VCA with HomeAway will capture a large portion of any remaining TOT shortfall where individual hosts have collected but failed to remit TOT to the City. Since VRBO is a subsidiary of HomeAway, the City would have tax collection agreements involving three of the major hosting platforms with listings in the City.

EVALUATION AND FOLLOW-UP

This memorandum will not require any follow-up from staff.

HONORABLE MAYOR AND CITY COUNCIL

September 3, 2024

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COORDINATION

This memorandum was coordinated with the City Attorney's Office, City Manager's Budget Office, and Planning, Building, and Code Enforcement Department.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the September 17, 2024 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
DREW CORBETT
Acting Director of Finance

The principal author of this memorandum is Eric Warnars, Program Manager. For questions, please contact eric.warnars@sanjoseca.gov or (408) 535-3889.