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ROCKY WILES
COMMISSION OFFICE MANAGER
(213) 978-1300

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

EXECUTIVE OFFICES

200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801

VINCENT P. BERTONI, AICP
DIRECTOR
(213) 978-1271

KEVIN J. KELLER, AICP
EXECUTIVE OFFICER
(213) 978-1272

LISA M. WEBBER, AICP
DEPUTY DIRECTOR
(213) 978-1274

<http://planning.lacity.org>

November 28, 2018

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: Planning and Land Use Management (PLUM) Committee

**REPORT BACK RELATIVE TO PROPOSED HOME-SHARING ORDINANCE (COUNCIL FILES
14-1635-S2, 14-1635-S3)**

On November 6, 2018 the PLUM Committee considered the proposed Home Sharing Ordinance (HSO) and voted to request the City Attorney prepare and present the ordinance, as amended, for form and legality. The PLUM Committee motion also instructed the Department of City Planning (DCP) to report back on the following:

1. Options to further incentivize maximum participation and compliance by platforms, including those incentives that could be incorporated within platform sharing agreements. Planning staff was further instructed to engage platforms directly to identify the most appropriate set of incentives.
2. Details regarding the web-based enforcement system, including all of the pertinent service components and anticipated implementation timeline, with the assistance of the Office of City Attorney and Chief Administrative Officer (CAO).

The Department's response to these items is detailed below. To assist in implementation and enforcement of the proposed Home-Sharing Ordinance, the Department has prepared some recommended actions for the City Council, provided at the end of this report.

1. Incentivizing Maximum Participation and Compliance by Platforms

The Department has engaged representatives of the major hosting platforms to identify the types of incentives that could be incorporated within the proposed platform agreement structure in order to incentivize participation and compliance. The platform agreement framework, as currently

incorporated in the proposed ordinance, recognizes that certain host requirements may be waived if hosts advertise solely on a platform that enters into a platform agreement and complies with the ordinance's platform responsibilities. The agreements would spell out how the platforms will comply with the provisions of the ordinance. In order to inform the potential incentive options, a summary of the hosting platform requirements and the concept of platform agreements is presented below.

Hosting Platform Requirements

A Home-Sharing Hosting Platform (hosting platform) is defined as an entity "that participates in Short-Term Rental business by collecting or receiving a fee, directly or indirectly through an agent or intermediary, for conducting a Booking Service transaction using any medium of facilitation." As currently proposed, all hosting platforms would be required to comply with the following responsibilities outlined in proposed LAMC section 12.22 A.31 (f):

- A hosting platform shall not complete any booking service transaction unless it has verified that the rental unit has a valid home-sharing registration number issued by the City or, as applicable, a pending registration number.
- A hosting platform shall not complete any booking service transaction for any rental unit approval which has exceeded the 120-day limit for hosting short-term rentals in one calendar year unless they have an extended home-sharing approval.
- A hosting platform shall designate an employee or representative to respond to enforcement issues and coordinate sharing of information.
- A hosting platform shall provide the City basic information needed by the City to verify tax compliance and conduct enforcement.
- If subject to a Transient Occupancy Tax (TOT) collection and remittance agreement, the hosting platform shall assume the same duties and responsibilities as the host.

The proposed ordinance identifies penalties and fines of \$1,000 per day for hosting platforms that do not comply with these requirements, as outlined in proposed LAMC Section 12.22 A.31(g).

Platform Agreement

The concept of a Platform Agreement was introduced by the PLUM Committee as a way to provide incentives for platforms to enter into a written agreement with the City detailing how they intend to comply with the platform responsibilities outlined above. In exchange, hosts that list exclusively with that platform would be able to take advantage of a number of streamlining benefits with regards to registration and compliance requirements. By signing an agreement, platforms would be able to incentivize hosts to utilize their services. As currently incorporated in the draft ordinance, the proposed incentives for hosts that list solely on a platform that has signed and adhered to a platform agreement are as follows:

- An exception for hosts from the requirement to individually register for a Transient Occupancy Tax (TOT) Registration Certificate with the Office of Finance, since the platform agreement would include a requirement for hosting platforms to collect TOT revenues for all bookings;

- The option for hosting platforms to implement a “pass through registration” process whereby hosting platforms provide relevant information to the City on their users, for the purpose of facilitating home-sharing registration; and
- A streamlined renewal process that would allow hosts to renew without the need to provide information on their previous booking activities to the Department (the Department would receive all necessary information directly from the hosting platforms).

Beyond incentivizing data sharing and self-enforcement by hosting platforms, the platform agreement allows for customization of the compliance details to correspond with individual capabilities. For example, data sharing protocols and procedures can be negotiated, as well as the method by which platforms would verify the current status of listings with the City.

Discussions with Hosting Platforms

Department staff engaged representatives from two key hosting platforms that have been engaged in the public process up until this point - Airbnb and Homeaway, which owns VRBO. Together, these firms represent approximately ninety percent of short-term rental listings in Los Angeles. However, it should be noted that their business models differ and that discussions with the two hosting platforms varied considerably. As opposed to Airbnb, Homeaway and VRBO state that most of their hosts are believed to be non-primary residents who would not be eligible for home-sharing under the proposed ordinance.

In discussion with Department staff, hosting platforms generally expressed concerns regarding two key provisions of the proposed ordinance: (1) the primary residence requirement; and (2) hosting platform responsibilities requiring them to share basic user information with the City and refrain from booking unpermitted listings.

While hosts and property owners are primarily responsible for unpermitted activity, the assistance of hosting platforms is necessary to assist in enforcement because names and property addresses are usually hidden from public view by hosting platforms. Given the importance of enforcement to the success of the ordinance, participation by hosting platforms has been deemed necessary by both the City Planning Commission and the City Council.

Airbnb has offered to share some limited data on a monthly basis with the City, but only anonymously, where the information cannot be connected to an actual person or address. The company has indicated that contact information would only be provided through a targeted subpoena process when the user has had a chance to challenge the sharing of their information through a legal proceeding.

Airbnb has proposed an alternative framework centering on the use of a “pass-through registration” system whereby platforms forward basic information to the City on new and existing users. The City would therefore have host names and property addresses to aid in enforcement. However, Airbnb has indicated that it may offer to participate in the system only if it applies to a much wider segment of the market, including non-primary residences and vacation rentals. Airbnb appears to have only rolled out the pass-through registration system in cities that have permitted short-term rentals beyond primary residences. In New Orleans, the company discontinued the pass-through registration system once the City Council placed a moratorium on whole-home listings and non-primary residences. The Department has been working with potential third party

vendors to assess their capabilities to design a unique online/mobile home-sharing registration system that will work with all platforms.

Policy Options to Incentivize Platform Compliance through Platform Agreements

Based on conversations with hosting platforms, and in line with the PLUM Committee direction, the Department has prepared some additional policy options to further incentivize maximum participation and compliance by platforms. These incentives can be included as part of platform agreements but will also require amendments to the proposed ordinance.

Several options were identified, but only those that are within the scope of the proposed home-sharing framework are listed as any other options may require further environmental analysis.

1. Allow for a 2 year renewal period rather than 1 year; or
2. Allow for additional flexibility with data sharing requirements while ensuring the City's enforcement needs are addressed.

2. Details Regarding the Web-Based Enforcement System

As discussed in prior Department reports to the City Council (see October 19, 2017 PLUM report), the Department recommends a new more proactive, technology-based approach to enforcement of short-term rentals. The proposed approach differs from the typical approach to zoning code enforcement, which is largely based on site inspections that occur after a complaint is received. Under the typical approach, the ability to establish a code violation relies on documenting evidence of a violation. With dedicated short-term rental evidence of short-term rental use is often difficult to prove.

In contrast, the recommended short-term rental enforcement strategy would involve use of the internet and web listings, where short-term rentals are booked by most guests. The proposed ordinance would prohibit hosts from advertising an unregistered short-term rental listing. As proposed, technologies such as web-harvesting and property geolocation would be used to search for and locate all illegal listings operating in the City of Los Angeles (e.g. posted without a registration number, or beyond the 120 day cap). Enforcement would also benefit from the creation of an automated online/mobile registration portal with the ability to authenticate identification and check City databases in real-time. These tasks are complex and would benefit from the services of a third party vendor with experience in short-term rental monitoring and compliance.

As adopted in 2016, Council Motion 14-1635-S3 directed the Department of City Planning to consider technology-based options for the implementation and enforcement of the proposed ordinance. Many cities are increasingly utilizing technology-based solutions to counter illicit short-term rental activity, including Pasadena, Malibu, Berkeley, Minneapolis and Ft. Lauderdale.

In line with the motion, the Department has been working closely with the Office of City Attorney to move forward options for securing a vendor for these tasks. The Department has developed a proposed scope of services (Attachment A) for short-term rental compliance services. The services would be designed to match the unique registration and enforcement requirements of the proposed Home-Sharing ordinance.

Proposed Staffing Resources

Assuming the contractual services laid out in this report are employed, additional staffing to register hosts below the 120 day cap will include key functions, including managing the functions of the vendor, finalizing registrations, and coordinating enforcement activities. Six (6) positions are needed to facilitate registration and enforcement of all home-sharing activity once the ordinance becomes effective. This initial staffing need is modest compared to much smaller cities such as San Francisco and Santa Monica that have six and four staff respectively. Additional Planning Department employees are also requested to be authorized to implement the extended home-sharing provisions, including processing administrative and discretionary applications. The staff would be funded primarily by the cost of the extended home-sharing entitlement and would be able to be ramped up accordingly, including up to 20 planners (see Attachment B for details). By way of comparison, New York City has a short-term rental staff of 48 persons, including enforcement personnel. It should be noted that while position authorities are recommended for immediate authorization by City Council, the process of hiring and on-boarding new staff can take between 4-6 months, or longer, depending on the status of the position. If appropriate staffing is not in place by the effective date of the ordinance, staff from other projects may need to be diverted from other assignments. In addition, it is necessary to secure office space for the Planning Department in order to accommodate the additional staffing resources.

The costs for staffing and contractual services are anticipated to be covered by the funding sources included in the draft ordinance, including the 10% of TOT from home-sharing activities, the per-night fee for administration and enforcement, and registration and application fees. It is important to note that the reduction of the application fees for the Administrative Clearance for Extended Home-Sharing, as directed by the PLUM Committee, may require a city subsidy in order to cover the costs of case processing. Including any required subsidy, projected revenues are aligned with program costs, as presented in the September 13, 2018 report. The funding for all sources will not begin to accumulate until after the ordinance takes effect in July 2019. Positions to administer and enforce the Home-Sharing Ordinance (HSO) are not included in the FY 2018-19 adopted budget. The Department therefore, recommends the City Council authorize position authorities necessary to appropriately staff the work program; and authorize the Controller to appropriate an advance funding for contractual services and salaries from the Reserve Fund to the Department of City Planning's fund for expenditures (see Recommended Action below). The Reserve Fund advancements will be reimbursed by the Short Term Rental Enforcement Trust Fund which will accumulate revenue from the TOT, and the per-night and registration and application fees when the Ordinance is effectuated.

Enforcement Procedures Including Pertinent Service Components and Anticipated Implementation Timeline

The central enforcement tool is likely to be the proposed ordinance's ban on online advertising without a registration number. This, along with other important ordinance provisions such as the 120 day cap, requires looking online at more than twenty-five thousand ads for violations, then sending out warnings and citations. The procedures and timeline anticipated to accomplish the enforcement system are outlined below. It is important to note that the enforcement procedures provided below are limited to the vendor and inter-Departmental responsibilities associated with regular home-sharing registration and not the typical complaint-based code enforcement. Certain steps need to be in place before the July 1, 2019 ordinance effective date and are identified separately.

Preparation Phase (Now Until July 1, 2019 Effective Date)

1. City Council provides advance funding for staffing and third-party vendor to be repaid from future revenue from new sources established by ordinance.
2. Execute agreement with the third party vendor for information technology services.
3. Establish new Home-Sharing Unit within the Department of City Planning.
4. Establish new Short-Term Rental Task Force for coordination between City agencies (Office of Finance, LADBS, Housing and Community Investment Department, Los Angeles Police Department, Office of City Attorney, Chief Administrative Officer, etc.). The Department will convene regular meetings.
5. Establish data sharing protocols with enforcement agencies.
6. Third party vendor creates new online and mobile-based application/registration system integrated to the proposed ordinance's unique provisions.
7. Third party vendor scans all short-term rental websites in operation in Los Angeles and provides information on all short-term rentals to the Department in database and dashboard format.
8. Establish a 24-hour/7-days-a-week staffed hotline to receive neighbor complaints and provide real-time outreach to hosts to help resolve issues as they are reported.
9. Establish form letters and process to issue "notice of violations" and finable citations.

Implementation Phase (Beginning July 1, 2019)

10. The vendor will begin regular scanning of all Short-Term Rentals and provide information on unpermitted listings located in the City of Los Angeles to the Department of City Planning.
11. Unpermitted listings will be identified and vendor will provide available information to document the code violation.
12. A warning "notice of violation" will be mailed to the host and property owner (if contact information is available), as well as the hosting platform.
13. The vendor will proactively check listings after notice of violation has been issued, as well as in periods thereafter, to ensure the violation has been remedied. If not, information will be forwarded to City code enforcement staff.
14. City staff will verify the code violation by examining the documentary evidence.
15. If confirmed, a violation notice with the appropriate fee will be sent to the host and/or property owner, as well as the hosting platform.
 - a. The Administrative Citation Enforcement (ACE) program may be used to send the fines specified in the ordinance, or general ACE use violations.
 - b. Or, other code enforcement fines including Code Violation Inspection Fees and Non Compliance Fees may be assessed.
16. If fines are not paid, and the matter persists, fines will escalate and the case may be referred to the Office of City Attorney to seek compliance.

Recommendations for City Council Consideration

As discussed in this report, to assist in the preparation necessary for effective implementation and enforcement of the proposed Home-Sharing Ordinance, the Department recommends that the City Council consider the following actions if it wishes to move forward with the adoption of the proposed ordinance:

1. INSTRUCT the Department of City Planning to enter into a contract with Host Compliance for monitoring and verification services as outlined under Attachment A of this report; and FIND that the services provided by Host Compliance are of an expert and technical nature and therefore, competitive bidding under Charter Section 371 is neither practicable nor advantageous.
2. TRANSFER, subject to the approval of the Mayor, \$1,464,825 from the Unappropriated Balance Fund No. 100-58 to the Department of City Planning's Fund No. 100-68, Account No. 3040 (Contractual Services) for the services described above.
3. APPROVE Resolution Authorities for the following 26 positions for the Home-Sharing program implementation, enforcement and administration. These position authorities include:
 - 1 Principal City Planner
 - 1 Senior City Planner
 - 6 City Planners
 - 11 City Planning Associates
 - 1 Management Analyst
 - 2 Senior Administrative Clerks
 - 3 Administrative Clerks
 - 1 Principal Accountant II
4. TRANSFER, subject to the approval of the Mayor, \$671,678 from the Unappropriated Balance Fund No. 100-58 to the Department of City Planning's Fund No. 100-68, Account No. 1010 (Salaries General - \$541,678) and Account No. 6010 (Office and Admin - \$130,000) for staff salaries and office expenditures.
5. INSTRUCT the Department of City Planning to work with the City Administrative Officer to identify alternative funds to subsidize the full staffing costs associated with the registration and renewal of the proposed application fees as listed in the proposed Home-Sharing ordinance.
6. REQUEST the Office of the City Administrative Officer to work with the General Services Department and the Department of City Planning to evaluate options to identify and provide the Department of City Planning additional spaces at Figueroa Plaza or City Hall to accommodate the additional staff.

Conclusion

The Department will continue to provide policy details to help inform the City Council's consideration of short-term rental regulations. If you have any questions, please contact Matthew Glesne of the Department of City Planning at (213) 978-2666 or matthew.glesne@lacity.org.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

A handwritten signature in blue ink, appearing to read 'K. J. Keller', with a horizontal line extending to the right.

KEVIN J. KELLER, AICP
Executive Officer

Attachments: A. Potential Scope of Work for Third Party Vendor
 B. Requested Position Authorities

KJK:AV:MG:ch

Attachment A - Proposed Scope of Services

The following scope of services have been identified by the Department as areas where a third party vendor may be able to offer valuable services that the City is unable to provide at this time.

1. Mobile Enabled Online Registration and Tax Collection Forms

The development and hosting of electronic web-based short-term rental registration and Transient Occupancy Tax collection forms customized to the City's specific requirements. The online forms will be designed and developed to streamline the collection of all information and backup-documentation required by the city to process registration and collect all short-term rental related fees and taxes will include the following features and capabilities:

- 24/7 availability
- Mobile adaptive design
- HTTPS and SSL encryption
- The ability to validate inputs whenever possible as to minimize data-entry errors
- Ability to allow applicants to review and electronically sign permit applications and affidavits under penalty of perjury
- Integrated electronic credit card, debit card and Automated Clearing House payment capabilities
- Ability to collect scans, images, pdf documents and other types of supporting documents (such as proofs of permanent residency, landlord permissions, Homeowners' Association approvals, insurance policies etc.)
- Ability to integrate external data sources and systems using our secure REST API
- Ability to dynamically and automatically cross reference permit application data with other relevant databases including GIS data sources and other electronic sources of information
- Ability to easily verify and validate permit eligibility and the validity and authenticity of applicant provided supporting documents
- Application data available in real-time through app.hostcompliance.com All data can be download 24/7 via app.hostcompliance.com

2. Trend Monitoring

Monthly email-delivered report and live web-delivered dashboard with aggregate statistics on the short-term rental activity in City of Los Angeles's jurisdiction:

- Active monitoring of jurisdiction's short-term rental listings across more than 50 Short Term Rental (STR) websites
- Monthly analysis of jurisdiction's STR activity scale, scope and trends

3. Address Identification

Monthly email-delivered report and live web-delivered dashboard with complete address information and screenshots of all identifiable STRs in City of Los Angeles's jurisdiction:

- Active monitoring of jurisdiction's STR listings across more than 50 STR websites
- Up-to-date list of jurisdictions' active STR listings
- High resolution screenshots of all active listings (captured weekly)
- Full address and contact information for all identifiable STRs in jurisdiction
- All available listing and contact information for non-identifiable STRs in jurisdiction

4. Compliance Monitoring

Ongoing monitoring of the STRs operating in City of Los Angeles's jurisdiction for zoning, permit and registration compliance coupled with systematic outreach to non-compliant short-term rental property owners (using City of Los Angeles's form letters)

- Ongoing monitoring of STRs for zoning, permit and registration compliance
- Pro-active and systematic outreach to unregistered and/or illegal short-term rental operators (using jurisdiction's form letters)
- Monthly staff report on jurisdiction's zoning, permit and registration compliance:
- Up-to-date list of STRs operating illegally or without the proper registration
- Full case history for non-compliant listings

5. Rental Activity Monitoring and Tax Collection

Support Ongoing monitoring of jurisdiction's short-term rental properties for signs of rental activity:

- Automatic monitoring of review activity across more than 50 STR websites
- Weekly screenshots of reviews and calendars for each active listing
- Quarterly staff report on jurisdiction's STR tax compliance
- Up-to-date list of short-term rental landlords suspected of under-reporting taxes
- Documentation of information that serves as the foundation for the suspicion of tax under-reporting
- Custom data reports and analysis to support tax audits and other short-term rental related investigations
- Quarterly pro-active, systematic and data-informed outreach (letters) to short-term rental operators regarding their tax remittance obligations (using jurisdiction's form letters)
 - Up to 4 letters each property per year (full color)
 - Letters are 2 pages each (2nd page is dedicated to full length screenshot of listing) to improve results for effective compliance
- Integrated mobile-enabled web forms to streamline TOT audits and the collection of rental activity documentation from hosts suspected on TOT underreporting

6. 24/7 Short-term Rental Phone Hotline and Online Complaint Forms

24/7 staffed telephone and online hotline/forms for neighbors to report non-emergency problems related to STR properties:

- Incidents can be reported by phone or online
- Full documentation of all reported incidents
- Digital recordings and written transcripts of all calls
- Ability for neighbors to include photos, video footage and sound recordings to document complaints
- Real-time outreach to owners or managers of problem properties (whenever contact info is known)
- Automatically escalate unresolved issues to emergency responders where required
- Ability to automatically generate email notification to City's code enforcement contact detailing complaint

- Integrate the short-term vacation rental hotline into existing 311 systems, and/or leave it standalone if desired
- Automatic reports to pin-point problem properties, repeat complainants, the number and types of reported incidents, complaint trends and other enforcement related information
- Custom reports and analysis of hotline related activities

Attachment B - Proposed Position Authorities for Home-sharing for Program Initiation and Implementation, Enforcement, and Administration - 26 Total Number of Position Authorities

Home-Sharing Enforcement and Administration (6 positions):

- 1 City Planner
- 1 City Planning Associate - To assist City Planner.
- 1 Management Analyst
- 1 Senior Administrative Clerk
- 1 Administrative Clerk
- 1 Principal Accountant II - Administers the trust funds and ensures expenditures and transfers are in compliance with ordinance

Extended Home-Sharing Administrative Clearance (10 positions):

- 1 Principal City Planner
- 1 Senior City Planner
- 2 City Planners
- 4 City Planning Associates
- 1 Senior Administrative Clerk
- 1 Administrative Clerk
-

Extended Home-Sharing Discretionary Review (10 positions):

- 3 City Planners (1 per geographic team)
- 6 City Planning Associates (2 per geographic team)
- 1 Administrative Clerk