

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: July 18, 2016

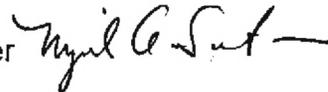
CAO File No. 0220-05153-0000

Council File No. 16-0600

Council District: All

To: Eric Garcetti, Mayor  
Herb J. Wesson, Council President  
Paul Krekorian, Chair, Budget and Finance Committee

From: Miguel A. Santana, City Administrative Officer



Reference: 2016-17 Budget Revenue

Subject: **IMPLEMENTATION OF THE 2016-17 REVENUE BUDGET (EXHIBIT H) –  
REVENUE ENHANCEMENT AND DEPARTMENT FEE ANNUAL REVIEWS**

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### SUMMARY

The Office of the City Administrative Officer (CAO) reviews revenues and prepares estimates as part of the City's budget development and monitoring responsibilities. Revenue enhancement and annual fee reviews help ensure the City receives adopted budget revenue in order to fund the variety of essential services provided to its citizens. This report provides an update on the implementation of revenue enhancement actions taken by Mayor and Council in adopting the 2016-17 budget and in particular the instruction to the Office of Finance (Finance) to finalize a collection agreement with Airbnb for the collection and remittance of the City's Transient Occupancy Tax (TOT). As detailed herein the collection agreement (Attachment A) has been executed with Airbnb. This report also provides the status of annual fee reviews conducted by operating departments. Additionally, it makes recommendations for further actions to prepare for the development of the 2017-18 budget.

### Implementation of the 2016-17 Revenue Budget (Exhibit H)

#### Revenue Enhancement

With the adoption of the 2016-17 budget, Council approved Exhibit H and other recommendations to ensure full implementation of the revenue budget (C.F. No. 16-0600). The status of these ordinance changes to increase fees, facilitate tax collection, transfer surplus funds and sell surplus properties, along with other actions, are described below.

**Homelessness** – The City Attorney was asked to prepare an ordinance to amend Section 5.500(a) of the Los Angeles Administrative Code so that proceeds from the sale of any of the surplus properties included in the 2016-17 adopted budget would be deposited into the Affordable Housing Trust Fund and used to support the development of supportive housing. The City Attorney report was released June 22, 2016 and is pending in the Homelessness and Poverty

Committee and the Housing Committee (C.F. No. 16-0600-S157). This Office will issue a Request for Qualifications/Proposals on these sites by July 22, 2016. The goal is to sell or develop these properties for supportive housing to meet the \$47 million commitment in the budget.

Finance – Exhibit H instructed Finance to finalize contract negotiations with Airbnb and similar short-term rental websites for the collection and remittance of the City's TOT. With the expectation that the agreement would be in place at the start of the year, \$5 million in appropriations were set aside in the General City Purposes (GCP) Fund for rapid-rehousing vouchers as part of the \$138 million budget commitment to homeless programs (C.F. No. 16-0600). An additional \$769,000 in GCP funding to support the activities of the Cultural Affairs Department and Los Angeles Tourism and Convention Board, was set aside as well.

The Offices of Finance and the CAO report that a collection agreement between Airbnb and the City has been signed under delegated authority and is now in place for implementation on August 1, 2016, at which point Airbnb will collect TOT on bookings made by hosts using their platform. The agreement seeks to facilitate the collection of TOT on behalf of hosts who are currently responsible to collect the tax from guests and remit to the City, in accordance with Los Angeles Municipal Code Section 21.7.

The agreement does not limit the City from continuing its efforts in developing regulations to control or restrict short-term rentals in the City. While these regulations are being developed, the City is legally entitled to collect TOT from short-term rental hosts, either directly or via agreements with hosting platforms. The agreement ensures that all hosts using Airbnb comply with existing requirements for the collection of the tax. Finance is pursuing similar agreements with other short-term rental website platforms.

Other terms of the temporary agreement (Attachment A) include:

- The City or Airbnb may terminate the voluntary agreement prior to the conclusion of the three-year term following the adoption of a comprehensive ordinance to regulate short-term rentals in the City.
- Airbnb assumes the role of TOT collector for the term of the agreement. Airbnb does not assume TOT liability for bookings made prior to the effective date or after the termination date of the agreement.
- Finance may audit Airbnb's TOT remittances.
- Hosts or guests using Airbnb are not relieved from complying with laws concerning tax compliance or zoning regulations.
- The agreement does not limit the City's authority to pursue previously unpaid taxes directly from hosts.

Through this agreement, Finance is anticipating to realize the \$5.8 million funding expected in the budget. Once the Council adopts an ordinance regulating short-term rentals, it is recommended that the TOT collection agreement be amended or replaced to reflect any changes to laws applicable to short-term rentals.

Finance – Finance was also instructed to report on modernizing the City's business license structure to appropriately incorporate all elements of the sharing economy—e.g. Airbnb, Uber and Lyft (C.F. 16-0600-S107). Finance reports that all entities that conduct business within the City of Los Angeles—including those defined as sharing economy—are able to register with the Office of Finance. Finance is developing outreach initiatives to proactively encourage sharing economy entities to register business and pay applicable taxes. These efforts include working with Airbnb to provide information and a direct link to the Office's website on Airbnb's hosting platform. Additionally, Finance is revising internal processing methods to better identify registrants participating in the sharing economy for reporting purposes.

General Services (GSD) – Exhibit H requested the City Attorney to prepare an ordinance amending the Los Angeles Administrative Code Section 5.142, Creation of Store Revolving Fund, to release \$3.9 million in existing surpluses and encumbrances in the Store Revolving Fund to be transferred to the General Fund as 2016-17 revenue. The City Attorney report was released June 30, 2016 and is pending in the Budget and Finance Committee (C.F. No. 16-0776).

Engineering – Exhibit H requested the City Attorney to prepare ordinances to amend the Los Angeles Municipal Code and the Los Angeles Administrative Code to update and increase various fees and permits for special services provided by and collected by the Bureau of Engineering. As discussed below, BOE is currently reviewing its fees with the assistance of a consultant.

#### Annual Fee Reviews

The CAO requested departments to provide a status update of their annual fee reviews. Departments are responsible for making an annual assessment of their fee charges to reflect the true cost of services provided, assuring full cost recovery. A recent review shows that while some departments conduct annual assessments of fee charges, other departments have not kept the practice of annually assessing their fees.

In completing the fee review, the CAO asked departments: whether any new or updated fees were assumed in the 2016-17 adopted budget; whether the department was planning on updating any fees for 2016-17 (adopted or otherwise); and if neither, when were the fees last updated by the department.

While the majority of departments do not have any significant General Fund fee revenues, the following departments and bureaus generate sufficient General Fund fee revenues to have a material effect on the budget and require an annual update: Animal Services, Building and Safety, Fire, Planning, Police, Public Works Bureaus of Contract Administration (BCA), Engineering (BOE) and Street Services (BSS), and Transportation. Departments with minor amounts of fee revenue are Ethics and Cultural Affairs.

Departments with General Fund fee revenues performing fee reviews are highlighted below. The attached table provides a listing of all departments that are in the process of or are planning to

update their fees in 2016-17, which includes reviews of special fund fees by El Pueblo, Library and Recreation and Parks and Zoo. (See Attachment B.)

**Animal Services** – The Department has roughly \$3.7 million in fee revenues. It is working on a comprehensive fee study for 2016-17 that will likely take effect in 2017-18.

**Building and Safety** – This Department has \$7 million in General Fund permit and fee revenues. Its Enterprise Trust Fund also pays for roughly \$30 million in overhead reimbursements funded through special fund fee revenues. Building and Safety reports it updates fees annually as part of its budget submission.

**Ethics** – This Department only has the legislative advocate filing fee (\$300,000 in annual revenue) and believes the collections fully cover costs.

**Fire** – The Department has approximately \$35 million in various permit, fee and assessment revenues. Ambulance billing adds another \$77 million in revenues while Ground Emergency Medical Transport reimbursements are estimated at \$6 million in 2016-17. Fire is preparing its annual Cost of Special Services fee report for 2016-17, which proposes fee increases for dozens of different permit, inspection, and other fees. The CAO is expecting to receive a final draft of this report in early August. The report, when finalized, will proceed to the Fire Commission and Council for approval. The Department is hopeful to have the fee changes in place by the end of September. As the fee study was not completed before the adoption of the 2016-17 budget, the Department's assumed revenue does not reflect any of the report's proposed increases. Ambulance fees were last raised in late 2015.

**Planning** – The Department is expected to transfer \$18 million in General Fund overhead reimbursements; these reimbursements are funded through planning fees. Planning is close to completing a comprehensive fee study which covers all of its activities. Many of the fees are below full cost recovery and Council has not sought a change in this practice. New updated fees are expected to be implemented by January 1, 2017.

**Police** – The Department budget assumes an estimated at \$25 million in fee and permit revenues, which assumes updates to its Permit Fees and Special Permit fees for 2016-17. The Special Permit fees are effective July 1, 2016; however, revenues are expected to decrease with the implementation of a third-party collections contract and associated costs. The 2016-17 fee structure for Police Permit fees was approved by the Public Safety Committee on June 21, 2016, and will become effective upon approval by the City Council and Mayor (C.F. No. 14-1299).

**Engineering (BOE)** – The Bureau has roughly \$18 million in various permit and assessment fee revenues. Engineering is currently working with a consultant to review its permits and fees. Any adjustments will likely occur in 2017-18.

**Transportation** – The Department has roughly \$7 million in various fee and permit revenues. Transportation has periodically reviewed its various fees such as parking meter removal, film

permits, traffic studies, condition clearance and permit issuance. It is currently working on the Expedited Review fee. Parking Citations were revised in 2012.

### **Next Steps for Fiscal Year 2017-18**

Street Services (BSS) has not updated any of its fees since 2005, with some fees last revised in 1991. Contract Administration's (BCA) last fee update was in 2009. The potential impact from increasing fees could be significant, since BSS and BCA each receive roughly \$7 million each in annual permit, fee and assessment fees revenues.

Cultural Affairs has not updated its instructional program fees since 2003, and other fees, such as design review and tours, were last updated in 2007. Cultural Affairs has approximately \$200,000 in instructional program, design and tour fee annual revenues. It should be noted that there are policy considerations associated with increasing Cultural Affairs' fees, particularly for instructional fees. Even modest increases to these fees could create hardships for low income residents, effectively making these services unaffordable.

It is recommended that Departments annually update fees to reflect the cost of providing services. This Office will work with departments to determine whether fees should be reviewed and updated in advance of the 2017-18 budget process. Bureaus of Street Services and Contract Administration should review their fee costs and revenues to ensure that fees charged recover the cost of the services provided. While there may be limited ability to raise Cultural Affairs fees when taking into consideration the need to keep these services affordable, given that it has been 10 years or more since they were last revisited, the Department's fees should also be reviewed.

### **RECOMMENDATIONS**

It is recommended that the Council, subject to the approval of the Mayor:

Instruct the City Administrative Officer, with the assistance of departments, report back in the First Financial Status Report with its recommendations for fee studies to be conducted in preparation for the development of the 2017-18 budget.

### **FISCAL IMPACT STATEMENT**

Approval of the above recommendation will not impact the General Fund. This report summarizes the actions taken to date to realize a total of \$9.7 million in General Fund revenue—from facilitating tax collection and transferring surplus funds—and up to \$47 million in special fund revenue—from the sale of surplus property, to ensure full implementation of the adopted revenue budget.

MAS/BC/mck: 03170001

Attachments

**Attachment A**  
**Collection Agreement for City of Los Angeles Transient Occupancy Tax**

**COLLECTION AGREEMENT  
FOR  
CITY OF LOS ANGELES TRANSIENT OCCUPANCY TAX**

**THIS COLLECTION AGREEMENT (the "Agreement") is dated July 15, 2016 and is between AIRBNB, INC., a Delaware corporation ("Airbnb") and the CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Office of Finance, for the purpose of collecting the City's Transient Occupancy Tax ("TOT"). 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 Office of Finance and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of TOT imposed under the Los Angeles Municipal Code ("Code") for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in the City (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 TOT collector as described in the Code (hereinafter referred to as a "Collector").**

**(B) Starting on August 1, 2016 (the "Effective Date"), Airbnb agrees to commence collecting and remitting TOT, 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 TOT for any period or for any transaction prior to the Effective Date or after termination of this Agreement.**

## **REMITTANCE OF TOT**

(C) Airbnb agrees reasonably to report aggregate information on the tax return form prescribed by the Office of Finance, including all TOT that is subject to the provisions of this Agreement, and it shall remit all TOT collected from Guests in accordance with this Agreement and Airbnb's Terms of Service ([www.airbnb.com](http://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 TOT, 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 TOT 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 Office of Finance agrees to audit Airbnb on the basis of TOT returns and supporting documentation.

(F) The Office of Finance agrees to audit Airbnb on an anonymous numbered account basis for Taxable Booking Transactions. Except as otherwise agreed herein or as otherwise validly legally required, now or in the future, 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 by the Office of Finance on Airbnb with respect to such users.

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

## **GUEST AND HOST LIABILITY**

(H) Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to TOT for transactions completed other than on the Platform, or restrict the Office of Finance from investigating or enforcing any provision of applicable law against such users for such transactions.

(I) The City expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders investors, and/or employees and other agents 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 TOT or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to TOT on any Taxable Booking Transactions prior to the Effective Date.

## **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 TOT will be collected and remitted to the Office of Finance as of the Effective Date pursuant to the terms of this Agreement; (ii) Guests and Hosts of the amount of TOT collected and remitted on each Taxable Booking Transaction; (iii) Hosts that neither the existence of this Agreement, nor any of its specific terms, or the payment of any tax contemplated by this Agreement or otherwise required by the Code shall be construed as authorizing any activity that is otherwise prohibited under the Code or any other applicable rules or regulations, or relieving any Host of their obligation to comply with applicable rules and regulations. Specific language of such notifications shall be subject to approval by the Director of Finance.

## **LIMITATION OF APPLICATION**

(K) This Agreement is solely for the purpose of facilitating the administration and collection of the TOT 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 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) The term of this Agreement will begin as of the Effective Date and shall continue thereafter for a period of three (3) years. This Agreement may be terminated by Airbnb or the Office of Finance for convenience on 30 days' written notification to the other Party. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the Office of Finance any TOT collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the Office of Finance 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 California 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).

(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, 4<sup>th</sup> Fl.  
SF, CA 94103  
legal@airbnb.com

Airbnb, Inc.  
Global Tax Director  
888 Brannan Street, 4<sup>th</sup> Fl.  
SF, CA 94103  
tax@airbnb.com

To the Office of Finance:

Attn: Director of Finance  
City of Los Angeles, Office of Finance  
200 N. Spring St., Room 220  
Los Angeles, CA 90012  
E-mail: Finance.Executive@lacity.org

**(Signatures follow on next page)**

*IN WITNESS WHEREOF*, Airbnb and the Office of Finance have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By:   
Signature of Authorized Representative

Beth Adair, Global Tax Director  
Name and Title of Authorized Representative

THE CITY OF LOS ANGELES OFFICE OF FINANCE,  
CALIFORNIA

By:   
Claire Bartels, Director of Finance

By:   
Miguel Santana, City Administrative Officer

APPROVED AS TO FORM AND LEGALITY

, 20 15  
Michael N. Feder, City Attorney

By 

**Attachment B**  
**Status of Fee Reviews**

<b>Department</b>	<b>Updated or new fees budgeted in 2016-17</b>	<b>Updated or new fees implemented in 2016-17</b>	<b>Time of last fee update</b>
Aging	NA	NA	NA
Animal Services	No	No	NA
Building and Safety	No	Yes	2013
City Administrative Officer	NA	NA	NA
City Attorney	NA	NA	NA
City Clerk	NA	NA	NA
Economic and Workforce Development	NA	NA	NA
Controller	NA	NA	NA
Council	NA	NA	NA
Cultural Affairs	No	No	2003, 2007
Disability	NA	NA	NA
Emergency Management	NA	NA	NA
Ethics Commission	No	No	Unknown
Finance	NA	NA	NA
Fire	No	Yes	2016
General Services	NA	NA	NA
Housing and Community Investment	NA	NA	NA
Information Technology	NA	NA	NA
Mayor	NA	NA	NA
Neighborhood Empowerment	NA	NA	NA
Personnel	NA	NA	NA
Planning	No	Yes	2013
Police	Yes	Yes	2016
PW Board	NA	NA	NA
PW Bureau of Contract Administration	No	No	2009
PW Bureau of Engineering	No	Yes	2016
PW Bureau of Sanitation	NA	NA	NA
PW Bureau of Street Lighting	NA	NA	NA
PW Bureau of Street Services	No	No	Pre 2000
Transportation	No	No	2012