

Air BnB and Other “Sharing Economy” Lodging Vendors

Testimony of

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Assembly Committees on Local Government and Revenue & Taxation

1. Major Issues
 - a. Land Use
 - b. Taxation
 - c. Health & Safety / Nuisance Behaviors
2. Land Use Issues
 - a. Commercial uses in residential zones?
 - b. Zoning ordinance may treat this use as allowed, forbidden or allowed on issuance of a permit
 - c. City of Auburn’s recent ordinance provides for an over-the-counter permit unless, after notice to neighbors, someone requests a hearing
 - d. May also be private land use disputes
 - i. CC&Rs
 - ii. Landlord / Tenant Disputes
 - iii. Boundary and easement disputes

3. Tax Issues
 - a. Business License Taxes typically apply
 - i. Whether use is legal or not
 - ii. But license may not issue if planning clearance not obtained
 - b. Transient Occupancy / Hotel Bed Taxes
 - i. Authorized by R&T Code § 7280 et seq. and by charter city home rule power
 - ii. Typically imposed on an “operator” who provides lodging for compensation to one who stays fewer than 30 days.
 - iii. Whether on-line resellers of hotel stays are “operators” is currently before the Supreme Court: *In re Transient Occupancy Tax Cases*, Cal. S. Ct. Case No. S218400 (Respondent’s Brief due 3/18/2015)
 - d. Tax Amendment Will Require Voter Approval under Prop. 218
 - i. 50% approval for general tax; 2/3 approval for special tax (Cal. Const., art. XIII C, § 2)
 - ii. Most taxes are for general governmental purposes, but some have a portion set aside for particular purposes (like tourism promotion) and therefore are special taxes
 - iii. Auburn’s TOT ordinance exempts lodgings with fewer than 3 units, and the City will therefore place an amendment on November 2016 ballot to tax Air BnB and similar vendors

4. Health and Safety Concerns

- a. Opponents of these uses in residential zones express these concerns:
 - i. Parking
 - ii. Noise (“party houses”)
 - iii. Loss of privacy
 - iv. Loss of housing
 - v. Impact on neighborhood character
- b. Local governments want a means to contact a responsible party in the event of a call for service by police and fire departments, comparable to the manager of a hotel.

5. These are mostly policy issues

- a. Cities and counties can forbid commercial uses in residential zones and can define transient lodging for compensation as a commercial use under their land use powers.
- b. Cities and counties have the power to tax these uses, too, provided they comply with the voter approval requirements of Proposition 218.
- c. Cities have a wide variety of enforcement tools: criminal, civil, and administrative.

6. Questions?