



# Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Trevor Rusin, Assistant City Attorney

Date prepared: January 27, 2021 Meeting date: February 8, 2021

Subject: Compliance Agreement with Airbnb

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**RECOMMENDED ACTION:** Approve compliance agreement with Airbnb, Inc.

**FISCAL IMPACT:** There is no significant fiscal impact associated with the recommended action.

**WORK PLAN:** This item was not included in the Adopted Work Plan for Fiscal Year 2019-2020. This project is part of staff operations.

**BACKGROUND:** On September 29, 2020, the City adopted Ordinance No. 468 regulating the short term rental of property in the City, which is codified in Chapter 17.55 of the Malibu Municipal Code (MMC).<sup>1</sup> This ordinance imposed obligations on online hosting platforms, such as Airbnb, that facilitate the short term rental of property in the City. These obligations are detailed in MMC Section 17.55.070 and include the following:

- Collecting and remitting transient occupancy tax to the City
- Disclosing information related to listings on their website, subject to applicable laws
- Preventing the booking of short-term rentals unless the property is listed on the City's registry of properties with valid short-term rental permits at the time the platform receives a fee for the transaction
- Not collecting fees for facilitating or providing ancillary services to an unpermitted short-term rental

MMC Section 17.55.070 (E) allows a hosting platform to satisfy these obligations through a compliance agreement. Airbnb seeks to enter such an agreement, which is attached hereto as Attachment 1.

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<sup>1</sup> Ordinance 472, also known as the "Hosted Ordinance" and which was designed to supersede Ordinance 468, will become effective when the local coastal program amendments contained in the Ordinance are approved by the California Coastal Commission, but that review by the Coastal Commission is not yet complete.

The central features of the agreement are the following:

1. Requires Airbnb to include a field that will force hosts to input their City STR permit number when setting up a listing on their platform.
2. Requires Airbnb to display that STR permit number on all listings.
3. Requires Airbnb to take down any STR listing in the City that does not display a STR permit number in the correct format designated by the City by February 16, 2021.
4. Requires Airbnb to communicate with hosts regarding the City's short-term rental permit requirements, and the requirements of this Agreement.
5. Requires Airbnb to send monthly reports to the City that includes the URL and host provided STR permit number for each STR listing on its platform. The first report shall be due no later than March 1, 2021.
6. Beginning on March 1, 2021, upon written or email notification from the City that a short term rental listing does not have a valid STR permit number, Airbnb will deactivate the listing from its website within 10 calendar days and cancel any existing STR rental reservations for that listing that were processed on or after January 15, 2021, within 30 calendar days.
7. Airbnb will work to provide the City with access to a Malibu-specific City portal that provides additional information and enforcement tools specific to the listings in Malibu to aid enforcement and administrative efforts.
8. Airbnb will maintain its existing agreement to collect transient occupancy tax for bookings executed through its platform.

If the Agreement is executed by the City Council, Airbnb shall be deemed to be in compliance with MMC Section 17.55.070 so long as it is in compliance with the terms of the Compliance Agreement.

While Airbnb is not required by the MMC to provide any of the benefits listed above, the most important feature of the Agreement is that it will require Airbnb to remove illegal listings from being displayed on its website. Every listing located in the City will have to include a STR permit number, and if the City discovers a fraudulent, expired, or revoked permit number is listed the listing will have to be taken down by Airbnb. Host Compliance, with whom the City currently has an agreement in place, has tools that allow it to scrape and examine listings on Airbnb and quickly identify illegal listings. As a result, it is anticipated that illegal listings will be quickly identified and eliminated if the Agreement is adopted.

While it is illegal for an individual to advertise their unpermitted short-term rental in the City under the MMC, it is not illegal for a hosting platform to contain listings for unpermitted short-term rentals.<sup>22</sup> Instead, the MMC prohibits hosting platforms from booking

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<sup>22</sup> This construction mirrors ordinances adopted by San Francisco, Santa Monica, and many jurisdictions throughout the state in order to avoid any conflict with the Communications Decency Act.

transactions for unpermitted rentals. As it is easier to prevent, and take action against, illegal listings under a system such as that proposed by the Agreement (where the hosting platform requires a permit number in order to post a listing and agrees to remove illegal listings), other jurisdictions such as Santa Monica and Los Angeles have entered agreements similar to the one proposed here.

The development of the Malibu-specific City Portal will also provide a user-friendly tool that will allow Code Enforcement staff to quickly identify new listings on the Airbnb and immediately report them to Airbnb if they are unpermitted. This will provide an additional level of scrutiny to the listings on Airbnb and help ensure any unpermitted listings are identified and removed quickly.

If the system proposed by the Agreement does not result in the elimination of illegal listings to the satisfaction of the City Council, it can terminate the Agreement and Airbnb would then be governed again by the provisions of MMC Section 17.55.070(A)-(D). The Agreement may be terminated by the City upon 60 days' notice, or immediately if Airbnb fails to fulfill its obligations under the Agreement.

The City is under no obligation to enter into the Agreement. If the City does not adopt the Agreement, Airbnb will simply have to comply with the specific provisions of MMC Section 17.55.070. In that case the City will continue to circulate a list of all of the permitted short-term rental properties in the City to Airbnb and Airbnb will be barred from booking stays for those properties. Airbnb will not be under any obligation to remove illegal listings, or to force its hosts to list their permit number online.

ATTACHMENT: Proposed Compliance Agreement with Airbnb

## COMPLIANCE AGREEMENT

This Memorandum of Understanding (“AGREEMENT”) is entered into by and between Airbnb, Inc. (“Airbnb”) and the City of Malibu (the “City”) (collectively, the “Parties”) as of the date signed by both parties (the “Effective Date”).

### **1. RECITALS**

The following recitals are fully incorporated into this Agreement:

A. On September 29, 2020, the City enacted Ordinance No. 468 pertaining to short-term rentals (“Ordinance”) that added chapter 17.55 to the Malibu Municipal Code (“MMC”);

B. MMC Section 17.55.070(E) provides that a hosting platform may satisfy its obligations under that section through a compliance agreement with the city that “prevents booking transactions for unpermitted short-term rentals, collects all transient occupancy tax due, and complies with the disclosure requirements of this section”; and

C. Airbnb desires to enter into a compliance agreement pursuant to MMC Section 17.55.070(E).

NOW, THEREFORE, the Parties hereto agree as follows:

### **2. DEFINITIONS**

Unless otherwise defined in this Agreement, all initially capitalized terms shall have the same meaning as in MMC Section 17.020.060.

2.01 “Short-Term Rental Permittee” means any person holding a Short-Term Rental Permit issued by the City Manager or designee pursuant to MMC Sections 17.55.010 and 17.55.020.

2.02 “Short-Term Rental Permit Number” means the Short-Term Rental Permit Number issued by the City Manager or designee pursuant to MMC Sections 17.55.010 and 17.55.020.

2.03 “Short-Term Rental Listing” or “Listing” means a publicly available webpage or advertisement (online or otherwise) for a Short-Term Rental located on any website associated with Airbnb.

### **3. AIRBNB RESPONSIBILITIES**

3.01 **Designated Field.** Beginning no later than January 15, 2021, Airbnb shall include a

designated field in its listing flow that requires a host to input their Short-Term Rental Permit Number for their Short-Term Rental Listing on Airbnb's website.

3.02 **Display Field.** Airbnb shall display the Short-Term Rental Permit Number on all Short-Term Rental Listings in a manner visible to any person visiting the Listing.

3.03 **Platform Takedown Date.** On February 16, 2021, Airbnb shall take down any Short-Term Rental Listings that do not display a Short-Term Rental Permit Number in the correct format designated by the City.

3.04 **Host Education.** Before the designated field is launched, Airbnb will communicate to hosts regarding the City's Short-Term Rental Permit requirements, including the relevant requirements established by this Agreement. Airbnb shall display a link to the City's webpage where a Host may apply to obtain a City Short-Term Rental Permit either on the same page as, and in proximity to, the City Short-Term Rental Permit number field displayed during the listing creation process, or on a page immediately preceding the page with the City Short-Term Permit number field. The page displaying the link shall notify the Host of the obligation to obtain a Short-Term Rental Permit for all Short-Term Rental activity in the City, the obligation to display the permit number, and the consequences and penalties for failing to comply with those obligations.

3.05 **Monthly Reports.** On the last business day of each month, Airbnb will send a report to the City that includes the URL and host provided Short-Term Rental Permit Number for each Short-Term Rental Listing on its platform. The first report due under this Section will be submitted to the City no later than on March 1, 2021.

3.06 **Rolling Takedown Date.** Beginning no later than March 1, 2021, upon written notification from the City that a Short-Term Rental Listing does not have a valid Short-Term Rental Permit Number, Airbnb shall deactivate the Short-Term Rental Listing from its website within 10 calendar days and cancel any existing Short-Term Rental reservations for that Listing processed by Airbnb on or after January 15, 2021, no later than 30 calendar days of the notification being sent. This notice may be provided via the Hosting Platform Portal and/or an email directed to [andrew.fede@airbnb.com](mailto:andrew.fede@airbnb.com).

3.07 **Hosting Platform Portal.** Airbnb shall work to provide the City with access to Airbnb's City Portal, which provides relevant localized insights on Airbnb's footprint within the City (e.g., tourism recovery efforts, community safety, and Airbnb support) and enforcement tools for City Short-Term Rental Listings to effectuate this Agreement.

3.08 **Transient Occupancy Tax.** Separate and apart from this Agreement, Airbnb shall maintain its current agreement with the City regarding the collection and payment of transient occupancy tax.

#### 4. **AGREEMENT TERM**

4.01 This Agreement shall commence on the Effective Date and remain in effect until terminated by either party upon 60 days' prior written notice to the other party. If Airbnb fails to perform any of the provisions of this Agreement, City may give Airbnb written notice of the default. City may terminate this Agreement upon delivery of such notice of default, or it may offer Airbnb an opportunity to cure the default. If provided an opportunity to cure the default, the default must be cured to the satisfaction of the City within the time period provided by the City in writing to avoid immediate termination of this Agreement. If Airbnb is provided an opportunity to cure the default, but no period to cure is provided in writing for the cure to be completed, the default must be cured to the City's satisfaction within 15 calendar days of delivery of the notice of default. If the City amends its ordinances, regulations, administrative rules or policies to impose materially different tax, fee, or regulatory obligations pertaining to short-term rentals, hosting platforms, or hosts, Airbnb may terminate this Agreement upon 30 days' prior written notice to the City. In the event the Parties withdraw from the Agreement or this Agreement is otherwise terminated, the Parties shall be returned to the legal positions they occupied prior to execution of this Agreement and Airbnb must immediately come into full compliance with MMC Chapter 17.55, including Section 17.55.070, as Airbnb will no longer be satisfying its obligations through a compliance agreement as authorized by Section 17.55.070(E).

4.02 This Agreement may be modified or amended at the mutual discretion of the Parties by written amendment signed by both Parties.

#### 5. **MISCELLANEOUS**

5.01 **Geographic Scope.** This Agreement, and the obligations imposed on the Parties, are limited to Short-Term Rental Listings located within the City.

5.02 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which, when taken together, will constitute one and the same instrument. The Agreement will 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 will be legally binding with the same force and effect as manually executed signatures.

5.03 **Governing Law.** This Agreement shall be deemed to be made under, and shall be interpreted in accordance with the laws of the State of California and the laws of the United States,

as applicable. Venue for any action related to this Agreement shall lie exclusively in the courts located in Los Angeles County.

**5.04. Indemnification.** Notwithstanding anything in this Agreement to the contrary, except for the active negligence or willful misconduct of City, or any of its, officers, agents, employees, assigns, and successors in interest, Airbnb shall defend, indemnify, and hold harmless City and any of City's officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Airbnb's employees and agents, or damage or destruction of any property of either Party hereto or of third parties, arising in any manner by reason of active negligence or willful misconduct by Airbnb, its subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest in connection with the implementation and execution of this Agreement. The rights and remedies of City provided in this Section 5.04 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. This provision will survive expiration or termination of this Agreement.

**5.05. Limitation of Liability.** City will not be liable hereunder for special, indirect, consequential, or incidental damages including, but not limited to, lost profits, failure to achieve cost savings, or the failure or increased expense of operations, regardless of whether any such losses or damages are characterized as arising from strict liability or otherwise, even if City is advised of the possibility of such losses or damages, or if such losses or damages are foreseeable.

**5.06. No Assignment.** Airbnb shall not assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of City, and any attempted such assignment, subcontract delegation, or transfer in violation of the foregoing will be null and void.

**5.07. Waiver.** A waiver of a default of any part, term, or provision of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A Party's performance after the other Party's default shall not be construed as a waiver of that default.

**5.08. Severability.** If any term, clause, or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause, or provision and such invalid term, clause, or provision shall be deemed to have been severed from the Agreement.

5.09. **Further Assurances.** The Parties shall take such actions and execute and deliver such documents and information as may be reasonably necessary or appropriate to effectuate the purposes of this Agreement

5.10. **Voluntary Agreement.** Airbnb acknowledges and agrees that this Agreement is voluntary. Airbnb affirms that it has read and fully understands the terms of this Agreement.

5.11 **Authority.** Each Party represents and warrants that the person executing this Agreement on its behalf has full authority and capacity to execute this Agreement.

5.12. **Contact and Notice Information.** All notices and other communications related to the administration of this Agreement will be in writing and delivered to the Parties using the following email addresses and/or physical addresses:

Airbnb, Inc.:

City:

Airbnb, Inc.

City of Malibu

John Choi

Reva Feldman

john.choi@airbnb.com

rfeldman@malibucity.org

With a copy sent to:

With a copy sent to:

Benjamin Lee

Trevor Rusin

ben.clee@airbnb.com

trevor.rusin@bbklaw.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers.

Airbnb, Inc.

City of Malibu

By:

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MIKKE PIERSON

Name:

Mayor

Title:

Date:

ATTEST:

