

STAFF REPORT

DATE: September 15, 2015
TO: City Council
FROM: Kelly Stachowicz, Assistant City Manager
Harriet Steiner, City Attorney
SUBJECT: Short Term Residential Rentals

Recommendation

1. Introduce attached ordinance, which would set parameters to regulate short-term residential rentals.
2. Direct staff to work with Airbnb to pursue an agreement related to collection of Transient Occupancy Tax.

Summary

The internet has provided a platform to rent out space in a residential unit for short-term visitors through sites such as Airbnb.com and VRBO.com. While individual homes are already included under the rules for transient occupancy tax, there is not a unified mechanism to collect the tax, as there is with traditional hotels, and there is no monitoring of these business activities in otherwise residential neighborhoods. This report seeks to outline the issues related to the topic and begin a conversation through provision of a draft ordinance that will address those issues.

Fiscal Impact

It is estimated there are between 150-200 residential units participating in short term rental programs, however, occupancy rates (how often the room are rented out) are unknown. Transient Occupancy Tax is based on a percentage of the cost of the room per night and currently sits at 10% in Davis (so a \$90/night room would cost the user an additional \$9 in TOT, which would come to the City).

In addition, business licenses cost \$10 annually plus a fee based on category of business and annual gross receipts. The latter cost for the vast majority of short term rentals for individual units would be \$3.00 - \$9.00 annually.

While this would be new revenue to the City, the increase would likely be offset by the costs to administer/monitor the program.

Council Goal(s)

This does not specifically meet listed objectives in the existing Council Goals.

Background and Analysis

The sharing economy has capitalized on a market for short-term residential rentals, traditionally filled by hotels, motels and bed & breakfast accommodations. Now, Airbnb and other similar companies (hereinafter referred to as Airbnb) provide online platforms for booking vacation

rentals, homes, apartments and rooms for a period of days, weeks or months. The distinguishing factor between sharing platforms and a traditional online travel company like Orbitz is that individuals voluntarily list their personal homes, rentals, and rooms on a website like Airbnb – setting their own rental price, house rules, and length of stay. In this way, Airbnb provides an online platform for individuals to act as temporary hotels or landlords while oftentimes escaping the traditional local regulation of hotels, motels and other more traditional short term rental businesses.

Airbnb's growth in cities across the country has spurred numerous legal issues related to local control and regulation. Namely, cities have grappled with how to impose local business license requirements, collect business and transient occupancy taxes, mitigate the impact on available housing and on affordable long term rentals, and enforce local zoning ordinances. Public response to Airbnb tends to vary, with many objecting to neighbors' frequent short-term rental of their homes in traditional single-family residential areas while those who use Airbnb cite the economic need and freedom to travel and/or supplement income for mortgage or rental payments. While Airbnb is often considered a direct competitor to the traditional hotel industry and therefore faces the most pressure in typical tourist destinations like San Francisco and New York City, Airbnb currently lists available rentals in Davis, Sacramento and surrounding areas.

Currently, the following are true:

- The City does not currently prohibit or regulate short-term rentals, but does impose owner occupancy requirements on affordable housing units.
- The City's existing TOT Ordinance encompasses online platforms like Airbnb within the definition of "operators" and therefore the City can collect TOT directly from Airbnb without amending or expanding the TOT Ordinance. Airbnb's compliance with the City's TOT obligations would be deemed compliance by the individuals renting their homes and rooms on a short-term basis, but likely requires entering into a separate agreement with Airbnb. In the absence of compliance by Airbnb and similar services, the individuals renting their homes or rooms must comply with the TOT ordinance and pay TOT directly to the City.
- The City's existing business license requirements already broadly apply to those renting their homes or rooms or conducting a business from their home, and therefore the City may require individuals who offer short-term rentals to register for a business license and pay business license taxes.
- The City has broad authority to enforce its zoning and nuisance ordinances and may choose to impose greater or fewer regulations on short-term rentals as needed in the future. For example, if citizens begin to complain about noise, parking, or trash violations associated with short-term rentals, the City's existing ordinances grant authority to enforce compliance through nuisance abatement and/or administrative fines for such violations.

Many California cities have elected to directly regulate the use of short-term rentals in order to mitigate the impact that such rentals have on the local community. However, there is not a single standard template that cities have used to regulate such rentals, as they are highly dependent on the character and concerns of the local community and existing local ordinances.

Regulating Use of Short-Term Rentals

Currently, the Davis Municipal Code does not prohibit or regulate short-term rentals. However, the City does not want short-term rentals to adversely impact existing affordable housing safeguards and regulations. Additionally, there is an ongoing need for available rental housing during the school year. An ordinance regulating the use of short-term rentals should be mindful of these existing needs and restrictions in order to preserve the City's commitment to affordable housing units (both formally restricted affordable housing and long term rental housing for the student population and others) without infringing on the need for flexible rental housing (e.g., subletting in the summer months).

Other Cities' Approaches to Regulation

There are numerous ways for the City to regulate short-term rentals, demonstrated by the diverse approaches other cities have taken in their local ordinances. For example, several jurisdictions prohibit short-term rentals in residential neighborhoods altogether as an unpermitted commercial use in their zoning codes. Alternatively, many jurisdictions – particularly coastal cities and other high-tourism areas like Malibu, Carlsbad, Encinitas, Newport Beach, and Santa Cruz – have long permitted and regulated vacation rentals and therefore have responded to the growth of more casual short-term rentals by amending existing regulations. Recently many cities have been newly define short-term rentals and openly authorizing their use in light of the reality of Airbnb's presence – such an approach provides the City great latitude in crafting how to regulate the rentals to meets the City's and the community's needs. Common tools used to mitigate the impact of short-term rentals on the community include imposing permit or license requirements, limiting both the allowable length of stay for guests and the total number of days in a year that a unit may be rented, requiring advanced notice and inspection for Building and Fire Code compliance, and/or imposing minimum insurance requirements.

The cities of Santa Monica, Napa, and San Francisco highlight some of the different approaches that can be taken. Santa Monica recently enacted a “home-sharing” ordinance that flatly prohibits short-term vacation rentals of less than 30 days unless property-owners register for a business license and live on-site during a guest's entire stay. Napa regulates vacation rentals through its zoning code and requires a vacation rental permit, subject to an annual Fire Department inspection and numerous restrictions on advertising, occupancy, noise, and annual notice requirements. San Francisco, on the other hand, has elected to carve-out a short-term rental exception to its existing prohibition on the unlawful conversion of residential units in order to safeguard affordable housing units. Cities like Santa Barbara and Sunnyvale are currently considering short-term rental regulations, but have not moved beyond public comment and discussion.

Existing Davis Municipal Code Provisions Regarding Housing

Affordable Units. Davis's longstanding commitment to affordable housing exists in both its inclusionary requirements in the General Plan policies and owner-occupancy requirements for affordable units. The owner occupancy requirements were put in place to assure that the persons and families who obtained the units resided in them and that the units were not rented out. Therefore, currently, affordable units may not be rented on a short term basis without the owner staying in the unit. To change this would require both a change to the City's affordable housing rental requirements and potentially modification of the covenants that regulate these units.

Market Rent Housing. With respect to market rate ownership and rental units, a significant percentage of these units in the City are rented to students, local workers associated with UC Davis and others who need affordable long term rentals within the city. The City's rental vacancy rate is historically very low and the removal of units from the long term rental market may have a significant and adverse impact on both the availability and affordability of long term rentals.

In light of the above, the best option for the City may be to regulate the presence of hosting platforms and mitigate their impacts on the rental housing market by adopting an ordinance that limits short-term rentals of residential units to a certain number of days out of the year without imposing many additional regulatory procedures. Such an approach allows flexibility for both City regulation and renters. A stricter approach, for example tying short-term rentals to the zoning code or prohibiting short-term rentals altogether, may not balance the interests and realities of the university population.

Collecting Transient Occupancy Taxes (TOT)

One of the biggest issues cities have faced regarding the use of online hosting platforms and the rise of short-term rentals is the collection and enforcement of TOT requirements. This is primarily the result of two simultaneous issues: 1) Airbnb does not assume responsibility for collecting and remitting TOT on behalf of its users; and 2) users of Airbnb either do not qualify or do not appropriately register as "hotel operators" subject to a city's TOT ordinance, and therefore do not collect or remit TOT to the City.

Davis' existing TOT Ordinance is sufficiently broad to address these issues without expansion or amendment. A "transient" (someone who occupies a room for 30 days or less) is required to pay a tax to the operator in the amount of ten percent of the rent charged by an operator of a hotel. "Hotel" is defined broadly by Municipal Code to include "any structure or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house ... or other similar structure or portion thereof." Additionally, "operator" is similarly defined broadly to include an "owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity." This means the obligations imposed by the existing ordinance apply to the individuals renting their residences on a short-term basis – regardless of whether they are owners or renters.

Regarding Airbnb (or similar services) specifically, the City's definition of "Operator" expressly contemplates an operator who "performs his or her functions through a managing agent of any type of character other than an employee." A managing agent is deemed an operator for purposes of the TOT ordinance, and compliance by either the principal or the managing agent is "considered to be compliance by both." This means that a managing agent is also liable for collecting and remitting TOT to the City, and if a managing agent complies with the TOT requirements then an individual operator does not have any further obligations under the ordinance.

Here, Airbnb facilitates the booking and payment of rent for the occupancy of rooms or homes for transient purposes, and is not an operator's (i.e., owner's or lessee's) employee; as such, staff and the City Attorney believe that Airbnb qualifies as a "managing agent" for purposes of the City's TOT ordinance. This means both the individuals using online platforms like Airbnb to

rent their homes and apartments and the online platforms themselves are subject to the City's TOT ordinance and the City may enforce the TOT obligations on either. Additional obligations under the TOT ordinance include a requirement that each operator of a hotel registers the hotel with the City's director of finance and obtains a "transient occupancy registration certificate." There are also operator reporting and record retention requirements and penalties in the event of a violation. However, since the ordinance clearly states that compliance by a managing agent is deemed compliance by the principal operator, individuals renting out their homes and apartments as short-term rentals through Airbnb would not need comply if, and only if, Airbnb complies with the TOT provisions on their behalf.

As a result of the above, the recommendation is for the City to attempt to collect TOT directly from Airbnb and similar services. This is most likely achieved through entering into a contract with Airbnb, but would only relieve individual renters of their obligations under the TOT ordinance as long as Airbnb complied on their behalf (i.e., if Airbnb does not comply, or individuals do not utilize Airbnb, the individuals are still liable under the ordinance). As noted on Airbnb's website, Airbnb has already entered into agreements with a variety of local governments to collect and remit local taxes on behalf of the hosts who use the site to rent their units. Currently, Airbnb is collecting and remitting taxes in the following California cities: San Francisco, San Jose, Malibu, Oakland, Palo Alto and San Diego.

The effect of a contract is not to relieve individual renters of their potential obligations under the municipal code, but to provide an easier avenue for the City's regulation of short-term rentals and collection of TOT and presumably ease for the individual host.

Collecting Business License Taxes

Chapter 19 of the Davis Municipal Code governs the City's license requirements. Specifically, all businesses are subject to a business license tax and registration tax. Historically the city has required that owners who rent their houses file and pay business license taxes. Requiring individuals who rent their homes or apartments on a short-term basis to file and pay business license taxes is therefore consistent with current practice and existing business license regulations.

The current code reads that "persons engaged in the business of renting or letting rooms, apartments, or other accommodations for dwelling, sleeping, housekeeping or lodging must pay an annual business license tax in accordance with the schedule of taxes for Group II businesses based upon gross receipts derived therefrom." Group II businesses with annual gross receipts between \$0 and \$9,999 must pay a business license tax of \$3.00 in addition to the annual registration tax of \$10.

As demonstrated above, the business license requirements are broad and encompass those engaged in the business of renting rooms, apartments and other dwellings. Additionally, the above referenced tax schedule is unlikely to create an undue burden on individuals renting only a few days or weeks out of the year.

It is worth noting that there are a few exemptions from the business license tax obligations that could apply to residents engaged in short-term rentals. Any person over the age of sixty-five (65) or under eighteen (18) who is engaged in a part-time occupation generating \$1,500 or less in gross income in a year is exempt from the business license requirements. For example, an older

individual engaged in the short-term rental business of his or her home could be exempt from the business license requirements if the total revenue from such rentals does not exceed \$1,500. Additionally, a person who carries on a business in his or her home in a residential zone whose annual gross receipts are less than \$1,500 may apply for a conditional exemption from the payment of business license taxes. Importantly, this exemption does not apply if such a person advertises or solicits the business in any way other than personal oral recommendation and so anyone listing their rental on Airbnb will not fall under this exemption.

The last relevant exemption to the business license requirements is for “any person who vacates his personal residence for a period not exceeding fifteen consecutive months and who rents such residence for all or a portion of such period.” This exemption essentially applies to those renting out their entire home; many such rentals do exist on Airbnb, although less so in Davis. However, those renting a room or rooms without vacating their residence would not be exempt. Additionally, even for those individuals who do fall under this exemption for a business license tax would nevertheless be required to comply with the short-term rental regulations. In other words, TOT obligations and short-term rental use restrictions would apply regardless of the business license exemption.

Additional Options for City Regulation and Enforcement

The growth of short-term rentals may invoke additional, related and overlapping issues with other provisions of the municipal code and a short-term rental ordinance does not preclude enforcement under those provisions. For example, the City has a comprehensive nuisance ordinance, which may allow for abatement of any uses in violation of the Zoning Code or other municipal code provisions. Furthermore, existing municipal code provisions impose noise and smoking restrictions, garbage disposal requirements, etc. which may be relevant to short-term rental use and enforceable under those provisions. Lastly, the TOT and business license tax requirements contain their own enforcement and penalty procedures which are not excused by compliance with the short-term rental regulations contained in the attached ordinance.

Draft Ordinance Regulating Short-Term Rentals

The draft Ordinance accomplishes the following:

- 1) imposes short-term rental registration requirements, including demonstration of compliance with business license and TOT requirements;
- 2) imposes short-term rental use restrictions, including number of days in a calendar year a residential unit may be rented as a short-term rental;
- 3) defines and clarifies online hosting platforms and their obligations; and
- 4) provides for the filing of a written complaint procedure and imposes penalties upon a finding of violation(s).

The Ordinance achieves desired objectives by safeguarding affordable housing and the availability of a long-term rental market, clarifying that existing TOT and business license requirements apply to the short-term rental context without expanding those requirements, and avoiding inflexible or highly burdensome regulations that may be at odds with local interests and needs.

The key provisions of the Ordinance are detailed below:

1) *Registration Requirements:*

A residential unit must first be registered as a Short-Term Rental, on an annual basis, “on a form deemed acceptable and furnished” by a designated person. The registration must demonstrate compliance with all applicable business license and TOT requirements, and the Owner (defined broadly to include lessees) must acknowledge legal responsibility for all transient users of the short-term rental. Owners must maintain adequate records for 2 years. This is an easy way to monitor short-term rentals, ensure compliance with other Code provisions, and leaves the City with discretion on how detailed the registration form should be.

Additional Possible Registration Requirements:

The Short-Term Rental Registration is not necessary to impose regulation, and the City may decide that more or fewer requirements are necessary. Many other jurisdictions impose lengthy permitting procedures, including: proof of ownership, fire and building code inspections, proof of insurance coverage, designation of a local contact who can respond to the rental on a 24-hour basis, registration/permit fees, and an appeals process.

2) *Short-Term Rental Use Restrictions:*

A residential unit may only be used as a Short-Term Rental for a maximum number of 90 days in a calendar year, or, for those who did not own or rent the unit for the entire preceding calendar year, no more than 25% of the days the individual owned or rented the unit. This keeps the use of Short-Term Rentals at a minimum – safeguarding the long-term rental market by ensuring that rooms and homes are not continuously rented out on a short-term basis. This may also keep potential noise and nuisance complaints to a minimum and prevents the conversion of residential neighborhoods to commercial-like hotels. The Ordinance also imposes an overnight occupancy limit of two persons per bedroom plus one, and requires a written rental agreement that includes basic contact information and provides notice of the occupancy restrictions and TOT requirements. Online hosting platform confirmations satisfy this requirement so long as the requisite information is included in the booking.

Possible Additional Use Restrictions:

Other possible options include: vehicle occupancy limits, pet restrictions, daytime “guest” occupancy limits, “quiet hours,” public notice to nearby neighbors, and requiring someone on-premises to “host” transient users of short-term rentals. None of these are recommended at this time.

3) *Hosting Platform Obligations:*

The Ordinance specifically defines hosting platforms and requires that they provide notice to all users of the site that the City regulates short-term rentals and imposes business license and TOT requirements on such rentals. The Ordinance additionally states that hosting platforms must comply with all Municipal Code provisions, including the requirements of “operators” under the TOT ordinance. The purpose of this section is primarily to clarify the obligations of hosting platforms and ensure that all users have adequate notice of the City’s regulations.

4) *Violations & Penalties:*

The Ordinance provides a procedure for interested parties (including the City) to file a written complaint against an owner or hosting platform if it is believed that there is a violation of the Ordinance. Upon the filing of a complaint, the City may take reasonable steps necessary to determine the validity of the complaint, including conducting an inspection of the property and/or making a request for appropriate records. The City has independent discretion to determine whether there is a violation of the Ordinance. Currently, the Ordinance only provides for administrative citations in the event of a violation. The City may decide to impose more stringent penalties, including criminal penalties.

Attachments

1. Draft Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS
ADDING ARTICLE 18.10 TO THE DAVIS MUNICIPAL CODE
REGARDING SHORT-TERM RENTALS**

WHEREAS, the growing popularity of “home-sharing” and other short-term vacation rentals, through the use of websites such as Airbnb and Homeaway, allow individual homeowners, landlords, and tenants to list homes, apartments, and rooms for rent at the price and duration of their choosing;

WHEREAS, the City of Davis (“City”) has had a long standing commitment to affordable housing, implementing inclusionary requirements in its General Plan policies and requiring affordable housing (both rental and ownership) options for households from extremely low to moderate income levels;

WHEREAS, the City Council finds that unregulated “home-sharing” and use of existing housing as short-term rentals threatens the existing availability of decent, safe, sanitary and permanently affordable rental housing in the City of Davis (“City”);

WHEREAS, the City currently requires all hotel operators to register with the City and all transients to pay a transient occupancy tax (“TOT”) in the amount of ten percent (10%) of the rent charged by any operator of a hotel;

WHEREAS, the City currently requires all businesses to register with the City and pay a business license tax, including those who rent their homes or operate a business from their home;

WHEREAS, the City Council finds that the use of short-term rentals within the City is increasing, often evading existing regulations contained in the City’s affordable housing, TOT, and business license tax ordinances; and

WHEREAS, the City Council further finds that the failure to regulate such short term rentals therefore threatens existing safeguards in place to ensure the availability of affordable housing and prevents the City from lawfully collecting business license and transient occupancy taxes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby adopts the recitals of this Ordinance as true and correct and such recitals are hereby incorporated by reference as though fully set forth in the text of this Ordinance.

SECTION 2. Article 18.10 is hereby added to the City of Davis Municipal Code to read in full as set forth in the attached Exhibit “A,” incorporated herein by this reference.

SECTION 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or

invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

SECTION 4. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same or a summary thereof to be published as required by law.

SECTION 5. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

INTRODUCED on the _____ day of _____, 2015, and **PASSED AND ADOPTED** by the City Council of the City of Davis on this _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daniel M Wolk
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

EXHIBIT "A"

ARTICLE 18.10 SHORT-TERM RENTALS

18.10.010 Purpose.

It is the purpose of this Article to benefit the general public by minimizing adverse impacts on the existing housing supply and neighborhood character of the City and on persons and households of all income levels resulting from the loss of residential units through their conversion to tourist and transient use. This is to be accomplished by regulating the use of existing housing as short-term vacation rentals and by clarifying those responsible for registering with the City as a hotel operator and/or business with the duty to pay appropriate City taxes and fees.

18.10.020 Definitions.

For purposes of this Article, the following words and phrases shall have the following meanings:

- (a) "Business Entity." A corporation, partnership, or other legal entity that is not a natural person that owns or leases one or more Residential Units.
- (b) "Complaint." A complaint submitted to the City alleging a violation of this Article 18.10 and that includes the Residential Unit's address, including unit number, date(s) and nature of alleged violation(s), and any available contact information for the Owner of the Residential Unit at issue.
- (c) "Conversion or Convert." A change of use from Residential Use to Transient Use, including, but not limited to, renting a Residential Unit for Transient Use in violation of this Article.
- (d) "Department." The Department designated by the City Manager for oversight of this program.
- (e) "Director." City Manager or designee
- (f) "Hosting Platform." A person or entity that provides a means through which an Owner may offer a Residential Unit for Transient Use. This service is usually, though not necessarily, provided through an online platform and generally allows an Owner to advertise the Residential Unit through a website provided by the Hosting Platform and provides a means for potential users to arrange Transient Use and payment, whether the user pays rent directly to the Owner or to the Hosting Platform.
- (g) "Owner." Owner includes any person or Business Entity that holds legal title to the Residential Unit or who exercises legal occupancy of a Residential Unit, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity, but does not include a transient.

- (h) “Rent.” The consideration charged, whether or not received, for Transient Use of a Residential Unit valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature.
- (i) “Residential Unit.” Any home or house, apartment, condominium, dwelling unit or any portion thereof, including a room or rooms that form part of a tenancy-in-common arrangement in any building or portion thereof, which is designed, built, occupied, rented, leased, let or hired out for Residential Use.
- (j) “Residential Use.” Any use for occupancy for dwelling, lodging, or sleeping purposes typically associated with dwelling for human habitation for a period of greater than 30 days.
- (k) “Short-Term Rental.” A Residential Unit offered for Transient Use by the Owner of the Residential Unit in compliance with the requirements of this Article.
- (l) “Transient.” A person who rents a Residential Unit for Transient Use.
- (m) “Transient Use.” Any use of a Residential Unit for occupancy by reason of concession, permit, right of access, license or other agreement in exchange for Rent for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days, including any occupancy by employees or guests of a Business Entity, regardless of whether the Owner is present or occupying the Residential Unit.

18.10.040 Short-Term Rental Registration Requirements.

- (a) Any Owner offering a Residential Unit for Transient Use, through a Hosting Platform or other means, must first register the Residential Unit as a Short-Term Rental with the City on a form deemed acceptable and furnished by the Director and signed by the Owner under penalty of perjury. At minimum, such registration must occur annually and demonstrate the following:
 - (1) Compliance with all applicable Business License requirements set forth in Chapter 19;
 - (2) Compliance with the Transient Occupancy Tax requirements set forth in Article 15.05 of the Davis Municipal Code;
 - (3) Acknowledgment that the Owner is legally responsible for compliance of all Transients of the Short-Term Rental with the provisions of this Article and the Municipal Code.
 - (4) Registration of the Residential Unit as a Short-Term Rental shall not relieve the Owner of all other legal obligations and restrictions imposed by this Code or any other applicable law or regulation.

- (b) The Owner of a Short-Term Rental shall maintain records for two (2) years demonstrating compliance with this Chapter, including but not limited to information demonstrating the number of days per calendar year he or she has occupied the Residential Unit, the number of days per calendar year the Residential Unit has been rented as a Short-Term Rental, and the amount of Rent charged for each Short-Term Rental stay. These records shall be made available to the Department upon request.
- (c) Nothing contained in this Section 18.10.040 shall be deemed to authorize an activity which is otherwise prohibited by this Code or any other applicable law, regulation, or agreement which may prohibit the Owner from subleasing, renting, or otherwise allowing a Short-Term Rental of the Residential Unit, including the restrictions on affordable housing units set forth in Chapter 18. If the Department determines that use of the Residential Rental as a Short-Term Rental violates any provision of this Code or other applicable law, the Department reserves the right to deny registration and any further Transient Use of the Residential Unit shall be a violation of this Article.

18.10.050 Short-Term Rental Use Restrictions.

- (a) A Residential Unit may not be rented as a Short-Term Rental for an amount exceeding ninety (90) total days out of the calendar year or, if the Owner has not rented or owned the Residential Unit for the full proceeding year, for an amount exceeding twenty-five percent (25%) of the days he or she has owned or rented the Residential Unit for Residential Use. Use of the Residential Unit for Transient Use in excess of the limits set by this Section shall constitute an unlawful Conversion of the unit.
- (b) The Owner of a Short-Term Rental shall limit overnight occupancy of the unit to a specific number of occupants, with the maximum not to exceed two persons per bedroom plus one person.
- (c) Prior to allowing occupancy of a Short-Term Rental, an Owner or the Owner's agent or representative shall enter into a written rental agreement with the Transient which includes (1) the Owner's contact information, including name and phone number; (2) the terms and conditions of the Short-Term Rental, including the occupancy restrictions; (3) the Transient's contact information, including name and phone number, as well as any additional occupants' contact information; and (4) notice of the Transient Occupancy Tax requirements set forth in Article 15.05. If an Owner utilizes a Hosting Platform for booking and payment of the Short-Term Rental, the Hosting Platform confirmation shall constitute a written rental agreement for purposes of this Section so long as all requisite information specified above was included in the listing prior to the Transient's booking and payment.

18.10.060 Requirements for Hosting Platforms.

- (a) All Hosting Platforms shall provide the following information in a notice to any user listing a Residential Unit located within the City through the Hosting Platform's service, prior to the user listing the Residential Unit: that the Davis Municipal Code regulates

Short-Term Rentals of Residential Units within the City and imposes business license and transient occupancy tax obligations.

- (b) A Hosting Platform shall provide to the Department access to any records related to the use and occupancy of each Short-Term Rental in the City for the purpose of inspection or audit to determine compliance with this Article. A Hosting Platform shall maintain such records for a period of two (2) years.
- (c) A Hosting Platform shall comply with all requirements of the Davis Municipal Code, including the requirements for managing agents of hotel operators for purposes of collecting and remitting transient occupancy taxes pursuant to Article 15.05 of the Davis Municipal Code. This Section shall not relieve a Hosting Platform of liability related to an Owner's, Business Entity's, or Transient's failure to comply with all legal requirements of this Article or the payment of applicable transient occupancy taxes.

18.10.070 Violations and Penalties.

- (a) Complaint. Upon the filing of a written Complaint with the Department that an Owner or Hosting Platform is not complying with the requirements of this Article, the Director shall take reasonable steps necessary to determine the validity of the Complaint. Any interested party may file a Complaint, including occupants of a Residential Unit, landlords, local residents and neighbors, and the City. The Director may independently determine whether an Owner or Hosting Platform is offering or renting a Residential Unit for Transient Use in violation of this Article, and shall have discretion to enforce any penalty authorized by this Section. To determine if there is a violation, the Director may initiate an investigation of the subject property and Residential Unit. This investigation may include, but is not limited to:
 - (1) An inspection of the subject property and/or Residential Unit;
 - (2) A request for any pertinent information or records from the Owner or Hosting Platform, demonstrating the occupancy and use of the Residential Unit as a Short-Term Rental.
- (b) Penalty for Violation. Following the filing of a Complaint and the determination of a violation by the Director, this Article may be enforced through the administrative citation procedures set forth in Davis Municipal Code Chapter 1, Article 1.02. This provision is in addition to, and not in lieu of, any other available remedy at law