

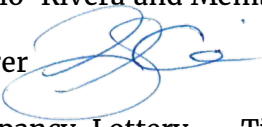


THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: January 7, 2022

TO: Honorable Council President Elo-Rivera and Members of the City Council

FROM: Elizabeth Correia, City Treasurer 

SUBJECT: Short-Term Residential Occupancy Lottery – Tier 3 and Tier 4 *Good Actor* Prioritization

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On October 11, 2021, the Office of the City Treasurer presented a Short-Term Residential Occupancy (STRO) lottery methodology for Tier 3 and Tier 4 licenses to the City Council. The methodology presented focused on lottery eligibility. Staff was asked to incorporate prioritization of *good actors* as provided in the motion passed by City Council on February 23, 2021 and report back to Council via memo.

City Council defined a *good actor* as a Host that has:

1. Paid Transient Occupancy Tax (TOT), whether directly to the City or through an Online Hosting Platform,
2. Recent booking activity, and
3. Less than three (3) verifiable complaints.

The lack of available data and noncompliance with existing TOT regulations poses a significant challenge to staff when applying priority criteria. Although some Hosts remit TOT directly to the City, the majority of Hosts utilize a hosting platform that remits TOT to the City in the aggregate; therefore, the City does not receive the data necessary to verify eligibility during the application process. Additionally, some hosting platforms offer an “opt out” option; participation in this option means that the hosting platform collects TOT but does not remit the TOT to the City. Any reports provided by hosts reflecting TOT collected would require payment validation from the hosting platforms. Although this data is not currently received by the City, some of the hosting platforms have verbally committed to providing data that will allow staff to validate some priority criteria<sup>1</sup>. If data is not made available, some Hosts may not receive priority points.

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<sup>1</sup> City staff will work with hosting platforms to execute written agreements based on verbal commitments.

Additionally, many Hosts have not completed individual TOT registration as required by the San Diego Municipal Code (SDMC)<sup>2</sup>. It is the duty and responsibility of the City Treasurer to enforce all taxing provisions of the SDMC, including the TOT registration requirement.

Lottery Prioritization (Good Actor)

In order to fulfill the City Treasurer City Charter section 45 responsibilities, prioritization will include Hosts who completed TOT registration as of the date of the first reading of the Ordinance. As a result, for purposes of lottery prioritization, a *good actor* will be defined as applicants who:

1. Demonstrate compliance with the registration and tax remittance requirements as outlined in the SDMC Chapter 3, Article 5, Division 1 – Transient Occupancy Tax (TOT),
2. Have verifiable proof of booking activity of more than 90 days per calendar year, and
3. Have no verifiable violations for the dwelling unit in the prior two (2) calendar years. Note verifiable violations are those in which a penalty was issued by Development Services Department.

Lottery prioritization will be based on a weighted scale with points assigned as defined in the table below. To satisfy the direction provided by City Council, staff has assigned higher priority points to the three criteria memorialized during the previous City Council meetings.

Although priority points will not guarantee a license, it will improve the probability that *good actors* will receive a license and still provide an opportunity for a license to newcomers in the industry. A priority point will be granted to applicants meeting each of the following criteria:

Criteria	Priority Weight Point
Hosts in compliance with Transient Occupancy Tax (TOT) registration requirement as of STRO Ordinance First Reading (February 23, 2021)	1
Hosts with proof of booking activity of more than 90 days per calendar year and operating during the previous ( <b>maximum of 3 points</b> ):	
a. One (1) to two (2) calendar years; <b>or</b>	1
b. More than two (2) calendar years but less than five (5) calendar years; <b>or</b>	2
c. Five (5) calendar years or more.	3
Hosts with verifiable proof of payment of Transient Occupancy Tax (TOT) per year for ( <b>maximum of 3 points</b> ):	
a. Previous one (1) to two (2) calendar years; <b>or</b>	1
b. More than two (2) calendar years but less than five (5) calendar years; <b>or</b>	2
c. Five (5) calendar years or more.	3
Hosts operating during the previous two (2) calendar years and have no verifiable code violations during the previous two (2) calendar years	3
<b>Maximum Weight Possible</b>	<b>10</b>

<sup>2</sup> SDMC §35.0113 (as amended August 6, 1990 by Ordinance 17508) requires Operators renting Occupancy to Transients, to register with the City Treasurer and obtain a “Transient Occupancy Registration Certificate” to be posted at all times within thirty (30) days after commencing business.

Prioritization criteria are in addition to the minimum application requirements as outlined in the STRO ordinance section 510.0105. For an application to be considered complete and submitted, Hosts must certify under penalty of perjury that all information contained in the application, including prioritization criteria, is accurate. A Host's failure to provide adequate documentation may result in the removal of prioritization points or revocation of a license. Licenses issued to Hosts that are determined by the City to contain false or inaccurate data may be revoked.

Prioritizing good actors who have long standing economic activity in the STRO industry advances the purpose of the Ordinance by:

- Allowing the City to continue to maximize TOT to protect the cleanliness and public safety of our neighborhoods, while continuing to support the small businesses that rely on tourism resulting from STRO,
- Preserving low cost accommodations at the coast consistent with the requirements of the Coastal Act, and
- Supporting the City's desire for safe and livable neighborhoods by reducing the strain on San Diego Police Department and Code Enforcement related to STRO operation.

#### Lottery Methodology

After passage of the published lottery application submission date, if the total number of Tier 3 or Tier 4 applications received are greater than the number of licenses available, completed applications will be weighted as outlined above. The lottery, including weighting, will be conducted by staff from the Performance and Analytics Department and will be done by random lottery as presented to City Council on October 11, 2021.

cc: Honorable Mayor Todd Gloria  
Honorable City Attorney Mara Elliott  
Paola Avila, Chief of Staff, Office of the Mayor  
Jay Goldstone, Chief Operating Officer  
Jeff Kawar, Interim Independent Budget Analyst  
Matthew Vespi, Chief Financial Officer  
Jeff Sturak, Deputy Chief Operating Officer  
Jessica Lawrence, Director of Policy, Office of the Mayor  
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