

## A Taxing Problem: How to Regulate Online Vacation Rental Marketplaces

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In recent years, the “sharing economy” has developed across the country. It is largely unregulated and, as such, can operate contrary to the interests of local businesses and communities. These “sharing” services are complex and increasingly controversial — causing local governments to recognize a need for regulation. Among these “sharing” services are online vacation rental marketplaces.



Online vacation rental marketplaces are websites that enable property owners, tenants and occupants to rent their living space to travelers — ranging anywhere from an entire home to a couch or spare bedroom. Typically, these are short-term rentals consisting of several days or weeks. Proponents of such websites emphasize that they allow property owners and tenants to make some needed extra money in difficult economic times while providing travelers with cheaper options than local hotels. The leading online marketplace is Airbnb, which claims more than 800,000 listings in 190 countries worldwide, and boasts more than 17 million guests. Each property is associated with a “host” (the person renting the space) who may be viewed by the website’s registered users.

Airbnb is different from hotel marketing websites like Travelocity because it operates outside the standard “business” model. Airbnb claims it does not rent room space (like a hotel), but rather facilitates a connection between individuals willing to “share” room space. A similar argument is made by ridesharing services like Uber and Lyft (where driver and rider “share” the vehicle trip). These websites operate on a “broker’s” model, taking a percentage cut from both the “host” and “guest.” However, they typically leave compliance with local laws to the host and guest. Because the host and guest usually are not professional businesses, this often results in little or no compliance with local laws.

Problems associated with residential short term rentals are nothing new to local governments. Large numbers of them are often linked with excessive noise, parking problems, trash and degradation of a neighborhood’s residential character. In severe cases, residential neighborhoods in popular tourist destinations can become de facto “hotel rows.”

They can also have negative impacts on the local hotel industry and the jobs they provide. Online vacation rental marketplaces often directly compete with local hotels, offering a more personalized experience at lower rates. Because rented homes are usually located in “single-family residential” zones, guests can sometimes stay closer to desired tourist areas, and thereby reduce transportation costs.

Beyond that, most local governments tax hotel stays (usually called a “transient occupancy tax”). Generally, hotels are responsible for collecting and remitting these taxes to the local government.

However, websites like Airbnb make it difficult to collect these taxes because the obligation to pay, file returns/reports, etc. is often left to the host or guest. These people may be unaware of how to comply with such obligations, or incapable of navigating complex reporting requirements. These taxes are an important source of revenue that can be jeopardized by these “sharing” arrangements. It is often a challenge just figuring out who to tax. Typically, hotels must register with the local government so room rentals and taxes due can be tracked. By contrast, many local governments are unaware of which properties are being rented in their communities through sharing websites, so they are unable to track taxes due from these arrangements. In many cases, they are forced to search these websites themselves and then send letters informing hosts about taxes due. This has obvious inefficiencies and many hosts fall through the cracks — with lost tax revenue being the result.

There are some potential solutions, however. **Airbnb recently agreed with Multnomah County, Ore. to collect local taxes from its hosts and remit those taxes to the County and the City of Portland. Other government agencies may also be able to enter into such agreements.** Putting the onus of collection and payment on a sophisticated business like Airbnb better ensures that proper transient occupancy taxes are paid on these rentals.

**Cities may also ban short-term rentals in certain zones.** This approach was used well before websites like Airbnb existed. **The California Supreme Court has upheld bans on residential rental properties for less than 30 days. Other cities have taken different regulatory approaches. For example, the city of Rancho Mirage, Calif. recently passed an ordinance requiring every short-term rental agreement to be signed by someone more than 30 years old.**

**Alternatively, some cities are choosing to “legalize” the short term rental process. Both San Francisco and Nashville, Tenn. currently have proposals to allow short term rentals while requiring hosts who use such services to register with the city and to collect taxes like traditional hotel operators do.** In San Francisco, the controversial proposal was passed by the Board of Supervisors on Oct. 21 and submitted to Mayor Ed Lee for approval. Two amendments to the proposal, which would have limited rentals to a total of 90 days per year and required all hosting platforms to pay back taxes, both failed to make it into the final proposal. These proposals go a long way toward mainstreaming online vacation rental marketplaces, but **they do not solve the aforementioned difficulties of enforcement.** The cities may well have trouble ensuring that all homeowners using these platforms are, in fact, registered with the city, or that they are collecting the correct amount of taxes from their guests.

**Local governments that permit residential short-term vacation rentals have found a code enforcement approach effective. This approach focuses on the nuisance conditions associated with short term rentals, such as excessive noise, parking and trash.**

Some agencies have issued subpoenas to websites like Airbnb requesting information on hosts renting room space so that they can be tracked for zoning, code enforcement and taxing purposes.

This is an emerging field and several issues have already arisen that may impact local regulation. For example, in 2011, Florida passed a law prohibiting cities and counties from restricting short-term vacation rentals. **Arizona’s takings law is drafted so broadly that the City of Sedona had to pay for diminution in property values as a result of passing its ordinance prohibiting short-term rentals.**

Privacy concerns have also been raised relating to subpoenas for host information. Earlier this year, **New York’s Attorney General engaged in a public battle with Airbnb by issuing one such subpoena. The State and Airbnb ultimately agreed to the disclosure of some information for tracking purposes, but a group of hosts has sued Airbnb to prevent the release.**

What response is right for your agency depends on your particular circumstances. However, online vacation rental marketplaces are growing with the increased popularity of the “sharing economy.” So local governments should consider how to approach these issues and the role websites like Airbnb are going to play in their future.

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