



Internet Association

December 12, 2016

Honorable Members, Portland City Council
Portland City Hall
1221 SW 4th Ave
Portland, OR 97204

RE: Internet Association Short-Term Rental Ordinance Concerns

Dear Honorable Members,

On behalf of the Internet Association, I respectfully submit this letter to express our opposition to Item 1403 on the December 13 Council agenda to amend the city's current Transient Lodging Tax ordinance. While this ordinance is described as a "housekeeping" ordinance, we believe that it redefines "operator" in a way that imposes liability on platforms for the compliance of individual hosts and compels en masse disclosure of personal, confidential data in contravention of well-settled federal law, presenting serious public policy concerns.

The Internet Association represents more than 41 of the world's leading internet companies and advances public policy solutions that foster innovation, promote economic growth, and empower people through the free and open internet.

Home sharing exemplifies internet-enabled innovation that increases quality and choice while decreasing costs. Innovations like these must be allowed to compete and grow in an open market. Their value proposition, along with the internet's ability to seamlessly connect of supply and demand, is unique to the platform and reflective of all Internet Association member companies.

However, innovative technologies like internet-enabled short-term vacation rentals change the status quo and can prompt the need for modernized rules and regulations. In such an environment, lawmakers may be tempted to enact provisions without consideration for the greater implications posed to the actors involved. Government policies that place questionable requirements on platforms to monitor and be liable for user-generated content, like the proposed amendments in Portland, could undermine the benefits of short-term rentals in the local economy.

Moreover, they ultimately conflict with federal platform liability law - one of the core tenets of the internet, and a key driver of its growth. As such, the Internet Association's member companies are deeply committed to protecting user privacy and maintaining their trust. Moreover, a requirement that forces particular online platforms to provide recurring user data access to government officials sets a dangerous precedent that violates a fundamental tenet of online privacy - that a user's information and online activities will not be summarily turned over to law enforcement officials without sufficient legal justification.

The Internet Association is sensitive to community and public official concerns regarding short-term rentals, and wants to find appropriate solutions that stop bad actors in Portland. However, although some short-term rental platforms work tirelessly to address and proactively remove violators, they nevertheless are often unfairly painted as the bad actors themselves by local lawmakers. The proposed changes to Portland's ordinance reflect that sentiment and seek an inappropriate solution that produces no appreciable public policy benefit. Further, it reopens a legal quagmire that would leave hosts and travelers in a state of operational uncertainty.

In 2015, Portland attempted to impose platform liability and mandatory data sharing on short-term rental platforms its original short-term rental ordinance. This was rebuffed by the U.S. District Court, which determined that platforms do not fall within the definition of "operator." By broadly redefining this term now to include online platforms, the City opens a new era of legal uncertainty by conflicting with well-established federal law that prohibits intermediary liability for user-generated content. The certainty guaranteed by this provision is credited with allowing the explosive growth of internet services, from blogs and consumer review sites, to social networks and video hosting services. To hold intermediaries liable



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would chill innovation and create an environment rife with risk for platforms hosting online content created by others. For example, if intermediaries such as YouTube, Facebook, HomeAway, Twitter and Airbnb were held legally responsible for the millions of pieces of content users posted each day, these sites would be operationally incapacitated.

Each city and county maintains separate, unique regulations that may impact short-term rentals. These regulations may include caps on the number of nights per year that a listing may be rented, host registration requirements, zoning requirements that differ block by block, and myriad other specific rules. It would be an impossible and unfair standard to require home sharing platforms ensure every listing is in 100% compliance with each city and county's local ordinance. Likewise, Portland should not require home sharing sites to shoulder the fundamental local government responsibility of ensuring ordinance compliance under the threat of financial penalties.

For the reasons stated above, the Internet Association must respectfully OPPOSE the proposed ordinance. The Internet Association stands ready and willing to work with you and your colleagues to find an effective solution to regulating short-term rentals that addresses community needs and allows this growing industry to continue flourishing.

Should you have any questions regarding our position, please feel free to contact me at (916) 498-3336 or Kimzey@internetassociation.org. Thank you.

Sincerely,

Lauren Kimzey
Internet Association, State and Local Government Affairs Manager