

NetChoice Promoting Convenience, Choice, and Commerce on The Net

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Councilmember Bernard C. "Jack" Young, President
100 Holliday Street
Suite 400
Baltimore, Maryland, 21202

RE: **Opposition to 18-0189 – Limited Residential Lodging and Creating New Taxes on Travel Services**

Dear Council President Young and members of the City Council,

We ask that you not move forward with 18-0189.

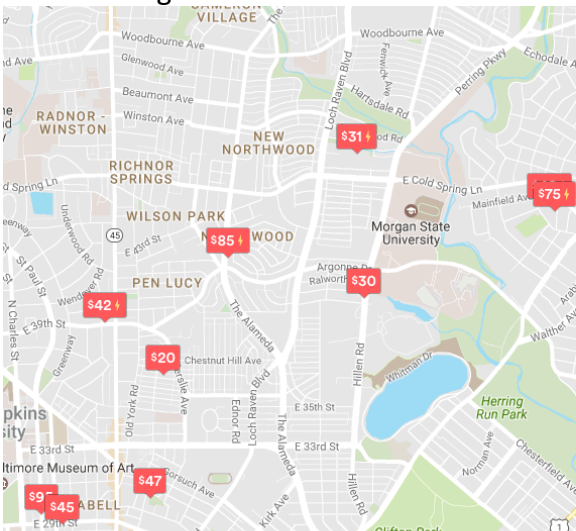
This bill:

- imposes unworkable state-level requirements on Short-term rental (STR) platforms in Baltimore,
- is preempted by federal law,
- forces disclosure of private information of Baltimore residents to city employees,
- unconstitutionally forces disclosure of Baltimore visitors to city law enforcers, and
- is so broad it would capture advertisements on BaltimoreSun.com and other local sites.

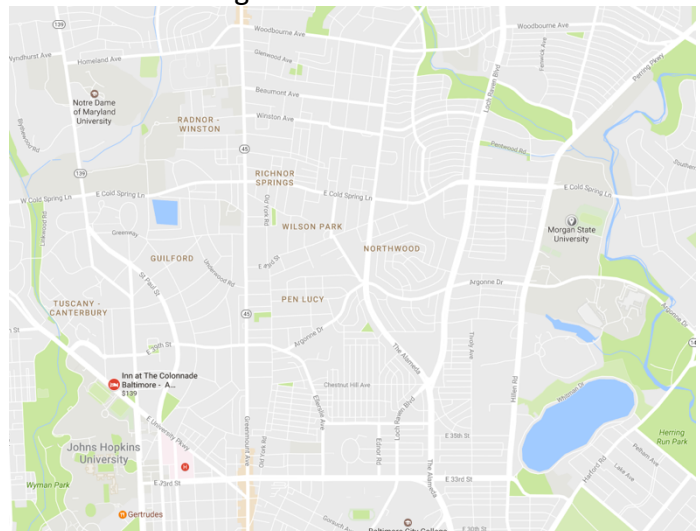
Benefits to your constituents of short-term rentals

STR services provide necessary income to many of your constituents. Over 52 percent of hosts nationwide live in low-to-moderate income households. More than 48 percent of the income hosts earn through certain short-term rental services is used to cover household expenses.

STR listings in and around District 4



Hotel listings in and around District 4



Consider, for example, families coming from across the country for graduation ceremonies at Morgan State University. STR services allow constituents to earn income by sharing their homes.

The presence of STR services also brings new money into areas like District 4. Since there are few hotels in the districts like these, travelers are not likely to encounter businesses in areas under-served by hotels. Conversely, guests who stay in districts via STR services, bring income to your districts as they visit restaurants, grocery stores, and businesses in areas like District 4.

Big hotel chains benefit most from 18-0189 passage

Big hotel chains are backing 18-0189 for entirely selfish reasons. Big hotel chains see STRs as a threat to their business model – however, it’s not for the reasons you may think.

Presently, the hotel industry enjoys record setting occupancy and pricing. However, the presence of STR services is seen by some in the hotel industry as forcing hotels to keep prices at reasonable levels. For instance, LaSalle Hotel Properties’s CEO told investors that a law curtailing short-term rental services would allow hotels to boost their prices by eliminating competition.¹

Lower hotel room prices mean that visitors to Baltimore have more money to spend with Baltimore businesses. Likewise, when your constituents travel, STR services help them find more reasonably priced accommodations.

As you can see from the image above, the nearest hotel to Morgan State, The Inn at The Colonnade Baltimore costs \$139/night. A nearby STR costs only \$30. It’s important to keep STR services and a competitive market as a check on hotel price inflation.

18-0189 imposes these requirements and liability on newspapers like BaltimoreSun.com

We are sure that the Council would think it absurd to hold *newspapers* responsible for what customers write in their classified listings. But that is precisely what 18-0189 would require of classified sections of newspapers, bulletin boards in universities, and internet websites.

18-0189 requires every business that “facilitates...even in part,” short-term rentals to comply with a litany of requirements – even if the advertiser is not a party to the rental transaction. Advertisements, of course, would include paid-for ads in the classified section of the local newspaper.

This would require every newspaper with a classified section to register and failure to comply with the onerous rules of 18-0189 would result in stiff penalties. For example, 18-0189 forces hosting intermediaries to know if a host is licensed. However, there is no clear mechanism for the intermediary to achieve this knowledge with certainty.

Much like the Classified ads listing in the Baltimore Sun, STR hosting platforms are just that, platforms for hosts to list their STR availability.

It would be absurd to impose 18-0189’s requirements on the Sun’s classified section and we ask that you not do so for STR services either.

¹ Gaby Del Valle, *Hotel CEO: New Airbnb Regulations Should Allow A 'Big Boost' In Hotel Room Rates*, Gothamist (Oct. 27, 2016) (Passage of a law limiting short-term rental services “should be a big boost in the arm for the business, certainly in terms of the pricing.”)

18-0189 would undermine a key benefit of the internet and would likely be unconstitutional

The internet is an open resource that enables people from all parts of Baltimore to freely communicate with one another and pursue their goals. While some nations discourage user-generated content, the United States created a fertile ground for business models that have transformed the world.

Moreover, this openness is bolstered by Section 230 of the federal Communications Decency Act, which says platforms can't be held strictly liable for content posted *by others*.

However, 18-0189 fails to recognize Section 230. Consider 18-0189's requirement that hosting intermediaries know if a host is licensed – this is a violation of Section 230. Santa Monica attempted to enact similar requirements as 18-0189 and faced a swift injunction and ongoing legal fees.

18-0189 not only threatens a core tenet of the internet but is at odds with federal law – resulting in the likely injunction of the 18-0189.

18-0189 exposes the privacy of Baltimore residents and short-term rental guests to city employees and potentially law enforcement

The 4th Amendment of the US Constitution protects Baltimore citizens from unlawful search and seizure and is a core privacy protection.

But 18-0189 ignores this privacy protection and instead requires platforms to disclose records and information about hosts and guests to city employees and potentially law enforcement. And this disclosure does not require the state's employees to first obtain a warrant.

Moreover, 18-0189 requires disclosure to the City employees and potentially law enforcement, the names and addresses of hosts and also names and addresses of guests. Failure to turn over this sensitive information is punishable by a \$500/day fine.

18-0189 requires disclosure of names and addresses of Baltimore residents and also guests to City employees and potentially law enforcement.

This not only exposes the operating procedures and income of businesses but could also expose the privacy of Baltimore residents using the platform and people staying in Baltimore homes.

The hotel industry has successfully defeated in court disclosure mandates like 18-0189. When the city of Los Angeles demanded a hotel's proprietary business records, the hotel industry fought back in court – ultimately winning at the US Supreme Court (*see In re Patel*, 576 U. S. ____ (2015)). To protect this court ruling, we could see the hotel industry opposing 18-0189. And if 18-0189 is passed, Baltimore would likely see a similar court outcome.

Legal arguments aside, 18-0189 grants virtually any Baltimore public employee access to private information of Baltimore residents. As you can imagine, this provides an easily abused resource of information about your constituents and guests staying in the state.

Rather than advance 18-0189, which imposes all these burdens and unintended consequences, we instead encourage you to look to reasonable regulations that have proven beneficial in other jurisdictions.

We've seen high compliance rates when localities create reasonable registration and regulation for STRs.

A thoughtful approach to home-sharing by creating a registration process would benefit all Baltimore residents.

We welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org