

**NetChoice** *Promoting Convenience, Choice, and Commerce on The Net*

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Minneapolis City Council  
350 S. 5th St., Room 307  
Minneapolis, MN 55415

October 10, 2017

RE: **Opposition to Ord Amending Title 13 – Imposing Unreasonable restrictions on Short-Term Rentals**

Dear Minneapolis City Council Members:

While well intentioned, we respectfully ask that you oppose the Ordinance Amending Title 13's ("Ordinance") limits on short-term rental properties (hereinafter STRs) as it would:

- Suppress tax collection and compliance
- Hurt local businesses
- Encourage hotels to raise prices
- Send Minneapolis on the wrong path

### **Minneapolis businesses and home owners benefit from short-term rentals**

Short-term rental services provide needed income to many Minneapolis homeowners. Over 52 percent of hosts nationwide live in low-to-moderate income households. More than 48 percent of the income hosts earn through short-term rental is used to cover the costs of maintaining their households.

The presence of short-term rental services also brings new money into areas where there are few hotels. Consider, for example, families looking to stay in Victory – an area woefully underserved by hotels – but not STRs. Short-term rentals via internet platforms are enabling Minneapolis residents to earn income by sharing their homes in these college communities.

And, guests who stay in in these STRs bring income into the district as they visit restaurants, grocery stores, and other businesses there. This includes areas like Victory and other underserved areas of Minneapolis.

### **The Ordinance imposes new liability on Minneapolis travel agents, property managers, and newspapers.**

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 the Ordinance would require of online classified sections of newspapers and internet websites that charge for listings – listings that could include STRs.

The Ordinance imposes liability and requirements on any website that permits advertisements on STRs. Advertisements, of course, would include paid-for ads in the classified section of the local newspaper.

### **Imposing unreasonable requirements on STRs depresses tax collection**

We've seen high compliance rates when localities create reasonable registration and regulation for short-term rentals. By achieving a high level of compliance, Minneapolis would enjoy a more reliable source of tax revenue from registered home owners.

Unfortunately, the Ordinance makes compliance more difficult. Consider the required annual inspections at rates determined by the locality. Or requirements to obtain a business license.

Such restrictions not only diminish compliance, but would merely send STRs underground. This means less tax revenue for the state and less oversight of short-term rental activity.

### The Ordinance hurts local businesses and moves money away from underserved areas of Minneapolis

It's not just the hosts that lose from a diminishing of STRs, but also Minneapolis's local businesses. When travelers save on lodging, they have more to spend at Minneapolis's local restaurants, shops, and stores. Moreover, short-term rentals encourage travelers to visit parts of Minneapolis not serviced by hotels.

In essence, short-term rentals mean more money for Minneapolis's smaller businesses.

In fact, a recent survey found that 64% of local voters believed having short-term rentals in the city brings benefits to local residents and the local economy.

Moreover, passing the Ordinance encourages travelers to only visit areas of Minneapolis flush with hotels – not the underserved areas of Minneapolis. This means less money flowing into the underserved parts of Minneapolis.

### The Ordinance's restrictions on short-term rentals encourages hotels to raise prices

Short-term rentals have frustrated hotels as they create price competition that benefits home-owners and travelers alike.

Hotels excitedly exclaimed that laws like the Ordinance “should be a big boost in the arm for the business,” “certainly in terms of the pricing.” Another hotel operator said stated short-term rental companies have frustrated his “ability to price at what maybe the customer would describe as sort of gouging rates.”<sup>1</sup>

Moreover, while hotels are complaining about short-term rentals, they are enjoying record level profits and reservations.<sup>2</sup>

### The Ordinance requirements on short-term rental platforms would run afoul of federal laws

The internet is an open platform that enables people from all parts of Minneapolis to participate and say whatever they want.

While some nations discourage user-generated content, the United States created fertile ground for business models that have transformed the world.

Moreover, this innovation is protected by Section 230 of the federal Communications Decency Act. Section 230 operates as the backbone for our favorite e-Commerce sites. Without Section 230 we might not have platforms like eBay, Kickstarter, Stubhub, HomeAway, or YouTube. Put simply, Section 230 says platforms can't be held strictly liable for content posted by others.

However, the Ordinance ignores Section 230 and instead imposes requirements on websites that merely operate much like a bulletin-board. This not only threatens a core tenet of the internet, but is at odds with federal law – resulting in the likely injunction of the Ordinance.

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<sup>1</sup> Elizabeth Dwoskin, *Hotel CEO openly celebrates higher prices after anti-Airbnb law passes*, The Wash. Post (October 26, 2016).

<sup>2</sup> Hotel occupancy is on track to reach a record this year, with the national occupancy rate predicted to reach 65 percent in 2015, or the highest since hotel-data provider STR started tracking in 1987 (see [CBS Money Watch - Who is Airbnb really hurting?](#)).

## The Ordinance exposes the privacy of Minneapolis residents and short-term rental guests

The 4<sup>th</sup> Amendment of the US Constitution protects Americans from unlawful search and seizure, including for their business records. But, the Ordinance would force platforms to disclose records and personal information about hosts and guests, to tax collectors or agencies without a warrant.

In 2015, the US Supreme Court ruled this form of warrantless disclosure unconstitutional<sup>3</sup> – when Los Angeles demanded the guest records of a hotel operator without a warrant. Even hotel trade associations filed briefs in support of the defendant.<sup>4</sup> The Supreme Court said lodging operators “must be afforded an *opportunity* to have a neutral decision maker review an officer’s demand to search the registry before he or she faces penalties for failing to comply.”<sup>5</sup>

In addition, the Ordinance allows tax collectors and government agents to enter private homes for an “inspection” without any showing of cause.

We worry that the new investigative powers that the Ordinance gives to state and local officials could be abused and could jeopardize Minneapolis’s citizen’s privacy.

## A better path for Minneapolis

Instead of moving forward with the Ordinance, we instead suggest that you encourage your state legislature to follow Arizona and other states that are taking a reasonable approach to short-term rentals. Arizona successfully and proudly adopted legislation that creates registration requirements for hosts, opportunity for platforms to collect and remit taxes, state-wide standards, and local control for noise and other issues.

We ask that you not deny your constituents the right to earn extra money by sharing their homes. We hope that instead you look to create short-term rental policies developed through an open and transparent dialogue among policymakers, industry stakeholders, property owners, and the public.

So, while we ask that you not substantially limit short-term-rentals 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](http://www.netchoice.org)*

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<sup>3</sup> *Los Angeles v. Patel*, 576 U.S. \_\_\_\_ (2015)

<sup>4</sup> Br. of Asian Am. Hotel Owners Ass’n, *City of Los Angeles v. Patel*, 2015 U.S. S. Ct. Briefs LEXIS 2005 (2015).

<sup>5</sup> *Patel* at 12 (emphasis in the original).