

April 24, 2017

Ms. Randi Powell
Legislative Policy Advisor
Committee of the Whole
Chairman Phil Mendelson
John A. Wilson Building
1359 Pennsylvania Avenue
Washington D.C. 20004

The Information Technology and Innovation Foundation (ITIF) appreciates the opportunity to file comments regarding D.C. bill Number B22-0092, the Short-term Rental Regulation and Affordable Housing Protection Act of 2017. ITIF is a nonprofit, nonpartisan research and educational institute based in the District of Columbia. ITIF focuses on the intersection of technological innovation and public policy. Recognized as one of the world's leading science and technology think tanks, ITIF's mission is to formulate and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. In particular, ITIF has done extensive policy research on the sharing economy and barriers to e-commerce innovation.

ITIF believes that the proposed legislation could be substantially improved by restricting its coverage to owners who rent multiple units on a regular basis. This change would significantly reduce the regulatory burden on both the District and its residents while still covering those few renters that account for the vast majority of rentals and whose activity has the largest impact on the housing market and tax revenue. The legislation should also be amended to make it clear that platforms such as Airbnb, FlipKey, and HomeAway are not responsible for verifying the accuracy of information given to them by users or for ensuring that private parties comply with local laws. To do otherwise would force platforms to incur unreasonable costs and subject them to unnecessary liability that would stifle innovation and cause much of the business to migrate to platforms that are less subject to regulation.

The hotel industry has lately been advocating for legislation around the nation that would prohibit or raise the cost of these rentals.¹ The industry argues that private rentals have an unfair competitive advantage

¹ Katie Benner, "Inside the Hotel Industry's Plan to Combat Airbnb," *New York Times*, April 16, 2017, <https://www.nytimes.com/2017/04/16/technology/inside-the-hotel-industrys-plan-to-combat-airbnb.html?>

because they are not subject to the high tax rates on out-of-town lodgers and do not have to comply with extensive regulations regarding availability and safety. Others argue that private rentals reduce the amount of housing available to permanent residents.

The position of the hotel industry is consistent with that of other incumbent industries whose business practices are disrupted by information technology that makes it easier for willing buyers and sellers to find each other. Rather than adapt to new sources of competition, the incumbents often try to preserve their market share and stop innovation by either making it illegal or subjecting it to burdensome regulations.²

Governments should generally ignore these attempts to limit competition. Airbnb and other Internet platforms that match renters with tenants for either overnight or short-trip rentals have been growing rapidly. For the most part, these platforms increase total social welfare. They allow homeowners to supplement their income by renting out rooms that would otherwise be vacant. At the same time, they give travelers a more authentic experience at a similar or lower price to a hotel. Studies of platform markets and the gig and short-term rental markets show that they increase the welfare of both buyers and sellers and that they seldom justify additional regulation.³ Platforms also save on societal resources, including energy resources, by increasing the utilization rates of existing buildings, rather than requiring new construction to meet demand. Where playing conditions are not level, the right answer is usually to reduce the regulatory and tax burden on the incumbents.

Complaints about the impact of short-term rentals on the local housing market apply mainly to the small number of property owners who rent out multiple properties on a daily or weekly basis. The homeowner who chooses to supplement her income by occasionally listing a room in her house and the property owner who rents out one or two separate properties have relatively little effect on the overall market. The income that homeowners earn from rentals is often vital to their ability to afford their own home and stay in the District.

² Robert D. Atkinson, “The Revenge of the Disintermediated: How the Middleman is Fighting E-Commerce and Hurting Consumers,” (Progressive Policy Institute, January 2001), http://www.academia.edu/3146048/The_Revenge_of_the_Disintermediated_How_the_Middleman_is_Fighting_E-Commerce_and_Hurting_Consumers.

³ Joe Kennedy, “Three Paths to Update Labor Law for the Gig Economy,” (Information Technology and Innovation Forum, April 2016), <https://itif.org/publications/2016/04/18/three-paths-update-labor-law-gig-economy>; Joe Kennedy, “Why Internet Platforms Don’t Need Special Regulation,” (Information Technology and Innovation Forum, October 2015), <https://itif.org/publications/2015/10/19/why-internet-platforms-don%E2%80%99t-need-special-regulation>.

ITIF believes that cities should adopt a housing friendly policy. That means that they should work hard to reduce the cost and shorten the time needed to build new housing in the city, even though this often requires additional infrastructure. New housing at all price ranges is the surest way to reduce scarcity and keep rents and home prices low. But it also means fostering a vibrant market in short-term rentals at the individual level. These rentals allow residents to earn additional income, provide visitors with a more affordable and personal place to stay, and increase the District's travel and tourism competitiveness against its regional rivals. Short-term rentals can also help develop struggling neighborhoods, both by bringing additional revenue into the area and by strengthening its ties to the rest of the economy.

ITIF nominated New York City for its 2014 Luddite Award for its hostile approach to Airbnb and the short-term rental market.⁴ Led by New York Attorney General Eric Schneiderman, the city had adopted an aggressive strategy against short-term rentals, arguing that all rentals of less than 29 days were illegal, even if the owner was present during the stay and even if the owner only rented out once. Although these rentals account for only a small portion of total rentals on sites like Airbnb, the city tried to fine one owner \$7,000.

ITIF also believes that platforms should not be held responsible for the accuracy of information provided to them by renters or for their compliance with local law. This is an unreasonable burden for a single jurisdiction to impose on an online platform. Moreover, verifying compliance should be the responsibility of the city. This makes no more sense than requiring the publisher of a phone book to verify that every business in its directory has paid their taxes. It would also strengthen the competitiveness of platforms that operate overseas, that do not impose any safety or reliability requirements, and that do not handle payments. These platforms would be harder to regulate and less likely to share housing data with the city.

In conclusion, ITIF believes that the Council should make it as easy as possible for the District's residents to earn extra income by renting out their properties on a short-term basis. If the Council decides to impose a cap, it should be much closer to San Francisco's 90 day limit, rather than the 15 day limit contained in the current legislation. Residents should not need a permit to rent out a spare bedroom in their house or apartment. In the case of separate establishments, ITIF believes that homeowners should not be required to apply for a license until they pass a minimum threshold of, say, 60 days of rentals. Making all residents obtain a license would dramatically increase the paperwork burden on both residents and the District. It would also expose homeowners who do not know of the law to possible fines. The paperwork burden could also be

⁴ Robert D. Atkinson, "The 2014 ITIF Luddite Awards," (Information Technology and Innovation Forum, January 2015), <https://itif.org/publications/2015/01/05/2014-itif-luddite-awards>.

minimized by allowing residents to register on-line and using digital records so that platforms can easily integrate them into their operations.

With today's Internet, property owners and renters find it increasingly easy to find each other. The District is much better off if they use established platforms such as Airbnb than if they use foreign sites that are not subject to effective regulation or a number of less formal bulletin boards such as Craigslist. The best way to do this is to minimize regulation and liability governing the platforms and instead use the data they collect to gain a better insight into the housing needs of both District residents and visitors.

Sincerely,

Robert D. Atkinson
President and Founder
The Information Technology and Innovation Foundation