

Moore-Love, Karla

From: Myrie, Trevaun
Sent: Wednesday, December 21, 2016 11:30 AM
To: Moore-Love, Karla
Subject: FW: Letter to the Portland City Council
Attachments: VRMA- Portland- December 2017.pdf

Letter

Trevaun Myrie

Admin Support Specialist
Office of Mayor Charlie Hales
1221 SW Fourth Avenue, Suite 340
(Office) (503) 823-4120
Trevaun.Myrie@portlandoregon.gov

From: Holcomb, Gregory [<mailto:gholcomb@vrma.com>]
Sent: Wednesday, December 21, 2016 11:28 AM
To: Hales, Mayor <mayorcharliehales@portlandoregon.gov>; Commissioner Saltzman <dan@portlandoregon.gov>;
Commissioner Fish <nick@portlandoregon.gov>; Commissioner Fritz <amanda@portlandoregon.gov>; Commissioner
Novick <novick@portlandoregon.gov>
Subject: Letter to the Portland City Council

Please find our attached letter regarding rules for second homes that are used as vacation rentals.

Thank you

Greg Holcomb
Senior Advocacy Coordinator
Vacation Rental Managers Association
2025 M Street NW, Suite 800 | Washington, DC 20036 USA
(202) 367-2404 | gholcomb@vrma.com | vrma.com



To: Portland City Council
Date: December 21, 2016
Re: Portland's vacation rental industry
From: Mike Copps, Executive Director, Vacation Rental Managers Association

Dear Council members:

Over the past several years the Portland City Council has taken steps to address the growing short-term rental marketplace by establishing rules to legalize primary residency rentals. During those discussions you stated that the Council would work to find solutions that address the concerns of the traditional vacation rental industry. To date those discussions have not happened and you are denying home owners basic property rights while hurting the travel and tourism market in your community. We are committed to working with the Portland City government to design sensible, easy to understand and enforceable regulations of the traditional vacation rental industry.

The Vacation Rental Managers Association (VRMA) is a 31-year old international trade association representing professional property managers of traditional short-term vacation rentals. We agree with the United States Conference of Mayors when they approved a policy which states; "onerous regulations of short-term rentals can drive the industry underground, thus evading local regulations and local hotel taxes", and, "fair regulation of short-term rentals ensures greater compliance and greater receipt of local hotel taxes".

Traditional short-term rentals, or vacation rentals, are a travel option around the world and the positive impact of the activity affects communities everywhere. Recent economic impact studies show communities with effective and easy-to-follow regulations achieve the greatest rate of compliance, overall financial impact and job growth.

The VRMA urges the Portland City Council to work on a proposal that addresses the needs of second homeowners to protect their property rights and promote travel and tourism in your community.

Thank you,

Mike Copps
Executive Director,
Vacation Rental Managers Association

Moore-Love, Karla

From: Joy Langley (ELCA) <jlangley@expedia.com>
Sent: Tuesday, December 20, 2016 8:09 AM
To: Moore-Love, Karla
Cc: Council Clerk – Testimony
Subject: [Approved Sender] Written testimony - Opposition to 1403/1440
Attachments: ExpediaTestimony.Portland.pdf

Thank you, Ms. Moore-Love, for your assistance at last week's council meeting.

Attached please find written testimony in opposition to 1403/1440.

Please don't hesitate to reach out if you have any questions and have a great day.

Best,

Joy

Joy E. Langley

Government Affairs Manager, Northwest Region

Expedia, Inc.

Cell 202.465.5026

Direct 425.679.7463 | jlangley@expedia.com

[@joyelangley](#) | [LinkedIn](#)

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December 19, 2016

Portland City Council
c/o Karla Moore-Love, Clerk for the City Council of Portland
City Hall
1221 SW 4th Avenue, Room 110
Portland, OR 97204

RE: Opposition to City Council Agenda Item 1403/1440

Dear City Council Commissioners:

On behalf of Expedia, Inc. and our family of travel technology brands, I respectfully urge you to oppose City Council Agenda Item 1403/1440, which would amend Portland City Code Chapter 6.04 to impose new taxes on travel service providers, be inconsistent with state and federal law, harm small businesses, and ultimately create a barrier to success for the entire travel and tourism economy in Portland.

Expedia, Inc. has called the Pacific Northwest home for 20 years. In that time, we've provided a critical service to travelers, our hotel partners, and the many local destinations we market. Expedia platforms, including the popular vacation rental sites HomeAway and VRBO, shine an international spotlight on Portland neighborhoods. We connect local accommodations providers to a world of potential travelers on 200 travel booking sites in more than 75 countries.

In Portland, our dedication to the community runs deep. This year, we were proud to raise \$30,000 to combat local homelessness through our "Home for the Holidays" campaign. In the wake of our acquisition of leading vacation rental platform HomeAway, we have also provided education for our vacation rental owners regarding compliance with existing laws, as well as best practices to be a good neighbor.

Our concerns about the proposed amendments, which would render the law vulnerable to legal challenge, fall into the following categories:

- inconsistencies with the City's Charter and preemption by Oregon law;
- inconsistencies with and preemption by federal law, including with regard to the privacy of our owner/manager/host information; and
- excessive presumptive tax assessments and attorneys' fees, even when the City brings a tax collection action and loses.

Additionally, the City Council should bear in mind that if the concern is affordable housing, these proposed provisions would do little to create affordable units. In fact, according to the recent [Zillow Home Price Expectations \(ZHPE\) Survey](#), 90 percent of housing experts believe short-term rentals have minimal to no impact on housing affordability.

We welcome the opportunity to work with the City of Portland to address these concerns and to provide insight into the travel technology ecosystem.

Inconsistencies with the City’s Charter and preemption by Oregon Law:

The proposed definition of “Operator” exceeds the City’s authority under its charter and state law by purporting to impose the tax on entities that are (1) not the owner and operator of a Hotel (*see* City Charter § 7-113); and (2) are not within the scope of ORS 320.350(7)(b).¹ The proposed definition of “Operator” is beyond the scope of and preempted by ORS 320.350(7)(b) to the extent that it requires an entity to collect tax even if that entity (1) is not actually the transient lodging provider; (2) is not the entity actually charging for occupancy; and (3) does not receive the consideration rendered for occupancy. *See* ORS 320.350(7)(b); ORS 320.300(12), (13), (14).

Those criteria determine what businesses Oregon law allows the City to require the tax be collected by. Yet the proposed definition of “Operator” appears to potentially include entities like HomeAway that do not provide transient lodging and do not charge or receive any amounts for occupancy. *See* proposed PCC 6.04.010 J; proposed PCC 6.04.010 B. Indeed, the definition of “Operator” is broad enough that it would potentially sweep in entities like The Oregonian or craigslist, purporting to require those businesses to register as “Operators” and remit tax to City if they accept advertisements for hotels or short-term rentals. *See* proposed PCC 6.04.010 J(4); PCC 6.04.010 B(3), (4).

In addition, the proposed provision stating that there may be multiple Operators for a Hotel creates serious practical difficulties. *See* proposed PCC 6.04.010 J (“There may be more than one Operator for a Hotel and each Operator is independently responsible for compliance with this Chapter though the tax will only be collected once.”). If there are multiple Operators, it is entirely unclear under the proposed amendments which Operator will be legally authorized to collect the tax from a traveler and which Operator will be required to remit it to the City. Furthermore, businesses like HomeAway that do not ever have the payment for occupancy in their hands *cannot*, as a practical matter, collect any tax.

Finally, the proposed definition and provisions applicable to the term “Rent” are preempted by ORS 320.350(7)(a)(A) to the extent that they seek to include as “Rent” amounts that either (1) are not paid *for occupancy* or (2) are tax. *See, e.g.*, proposed PCC 6.04.010 L; proposed PCC 6.04.020; proposed PCC 6.04.040 A. Yet the proposed amendments attempt to redefine “Rent” to include fees and commissions, which would effectively impose a new tax on the services provided by vacation rental platforms, local travel agents, and online travel companies, a tax that could ultimately be passed on to Oregon travelers.

¹ In the ongoing suit in U.S. District Court, the court is currently considering whether the City has the power to tax Booking Agents, except as authorized by ORS 320.350(7)(b). If the court rules that the City does not have the power to tax Booking Agents except as authorized by ORS 320.350(7)(b), the proposed amendments will be invalid.



Inconsistencies with and preemption by Federal Laws:

The federal Stored Communications Act will preempt enforcement of proposed PCC 6.04.040 B against online companies like HomeAway. Such companies, which provide electronic communication services and/or remote computing services to the public, are prohibited by federal law from disclosing information pertaining to their customers or subscribers to government entities, except under certain circumstances. *See* 18 U.S.C. § 2702(a)(3). Yet proposed PCC 6.04.040 B provides that an Operator must provide physical addresses for lodging locations and contact information for short-term rental property owners or managers upon request by the Division.

The federal Communications Decency Act will preempt enforcement of proposed PCC 6.04.060 D against online websites, like HomeAway, that allow a short-term rental owner or manager to post listings. The Communications Decency Act provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). Yet proposed PCC 6.04.060 D states that “[n]o Operator will advertise or otherwise represent that an accessory Short-Term Rental is available for Occupancy unless all applicable legal requirements allowing the Occupancy of a Short-Term Rental has [sic] been met” Under the Communications Decency Act, the City cannot impose liability on a website like HomeAway by treating it as if it—not the property owner or manager—were the speaker.

Excessive Tax Assessments and Attorneys’ Fees:

The proposed presumptive tax provision expressly authorizes “excessive” tax assessments. Proposed PCC 6.04.165 D provides that “[p]resumptive taxes are not intended to approximate actual taxes that may be due and *nothing prohibits the Division from assessing excessive tax amounts* due based on reasonable assumptions and calculation methods.” (Emphasis added.) Authorizing “excessive tax amounts” is extraordinary. Furthermore, if presumptive taxes are “not intended to approximate actual taxes due,” then by what standard would anyone determine whether “reasonable assumptions and calculations methods” were used?

The proposed attorneys’ fee provision potentially makes the Operator liable for the City’s attorneys’ fees in litigation initiated by the City *even if the City loses.* Proposed PCC 6.04.130 C provides that “[s]hould the City institute legal proceedings . . . to collect the taxes, penalties and interest assessed in accordance with this Chapter, the City shall be entitled to its reasonable costs and attorneys’ fees.” That is a very aggressive and unfair departure from typical attorneys’ fees provisions in American law. Ordinarily, in a law authorizing fee-shifting, the party that institutes a lawsuit is not entitled to its fees *unless it actually prevails*. If the City overreaches by suing someone that the court determines does *not* owe taxes, penalties, and interest as claimed by the City, why should that innocent party then pay the City’s attorneys’ fees?

In closing, we request that the City Council:

- Reconsider the adoption of draconian and fundamentally unfair tax assessment and attorneys' fees provisions;
- Reconsider adopting any amendments until stakeholders have had a chance to weigh in; and
- Reconsider amendments that may expose the City to additional litigation.

Thank you for your consideration and please don't hesitate in contacting me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joy Langley". The signature is fluid and cursive, with the first name "Joy" being more prominent and the last name "Langley" following in a similar style.

Joy Langley
Northwest Regional Manager, Government Affairs
Expedia, Inc.

cc:

Charlie Hales, Mayor
Nick Fish, Commissioner
Amanda Fritz, Commissioner
Steve Novick, Commissioner
Dan Saltzman, Commissioner

188170



Parsons, Susan

From: City Auditor, Mary Hull Caballero
Sent: Wednesday, December 14, 2016 4:23 PM
To: Council Clerk – Testimony
Subject: FW: Internet Association Item 1403 Opposition Letter
Attachments: IA Portland-Item 1403 Oppose Letter .pdf

From: Lauren Kimzey [mailto:kimzey@internetassociation.org]
Sent: Monday, December 12, 2016 12:11 PM
To: Commissioner Fish <nick@portlandoregon.gov>; Commissioner Fritz <amanda@portlandoregon.gov>; Commissioner Novick <novick@portlandoregon.gov>; Hales, Mayor <mayorcharliehales@portlandoregon.gov>; Commissioner Saltzman <dan@portlandoregon.gov>; City Auditor, Mary Hull Caballero <AuditorHullCaballero@portlandoregon.gov>
Subject: Internet Association Item 1403 Opposition Letter

Good afternoon,

Attached for your review, please find a letter on behalf of the [Internet Association](#) respectfully opposing [Item #1403](#), relating to transient lodgings/short-term rentals, on tomorrow's ([Dec 13](#)) meeting agenda.

Please review and let me know if you have any questions or concerns, thank you.

Lauren Kimzey

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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



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 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

Moore-Love, Karla

From: Carl M. Szabo <cszabo@netchoice.org>
Sent: Tuesday, December 13, 2016 9:57 AM
To: Hales, Mayor; Commissioner Fish; Commissioner Fritz; Commissioner Novick; Commissioner Saltzman; City Auditor, Mary Hull Caballero
Cc: Moore-Love, Karla; Parsons, Susan; Steve DelBianco
Subject: Opposition to Ordinance No. 1403 and 1404 – Hotel Tax on STRs and Hosting Intermediaries and New Burdens on STR Hosting Intermediaries
Attachments: NetChoice Opposition to Portland City Ordinance 1403 and 1404.pdf

Dear Mayor Hales and members of the Portland City Council,

We ask that you not adopt Ordinance Nos. 1403/1404 as it opens the door to new taxes on services rendered by Portland City businesses, violates federal law, and creates higher taxes on travelers to Portland.

We further outline our concerns in the attached testimony.

While we ask that you not adopt the 1403/1404. We welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Carl Szabo
Senior Policy Counsel
NetChoice
202-420-7485
cszabo@netchoice.org

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

Carl Szabo, Senior Policy Counsel
 1401 K St NW, Suite 502
 Washington, DC 20005
 202-420-7485
www.netchoice.org



December 13, 2016

RE: **Opposition to Ordinance No. 1403/1404 – Hotel Tax on STRs and Hosting Intermediaries and New Burdens on STR Hosting Intermediaries**

Dear Mayor Hales and members of the Portland City Council,

We ask that you not adopt Ordinance Nos. 1403/1404 as it opens the door to new taxes on services rendered by Portland City businesses, violates federal law, and creates higher taxes on travelers to Portland.

1403/1404 imposes a new tax on Portland citizens

Today, Portland does not impose sales tax or lodging tax on service fees charged by travel agents.

These service fees compensate travel agents for researching and comparing available hotel options, booking the room, and handling payment to the hotel.

By redefining “Rent” to include service fees, 1403 and 1404 would impose a new tax on these service fees provided by travel agents and online travel companies, a tax that is passed on to Oregon travelers.

1403/1404 would allow tax collectors to levy their occupancy tax on more than just hotel rooms

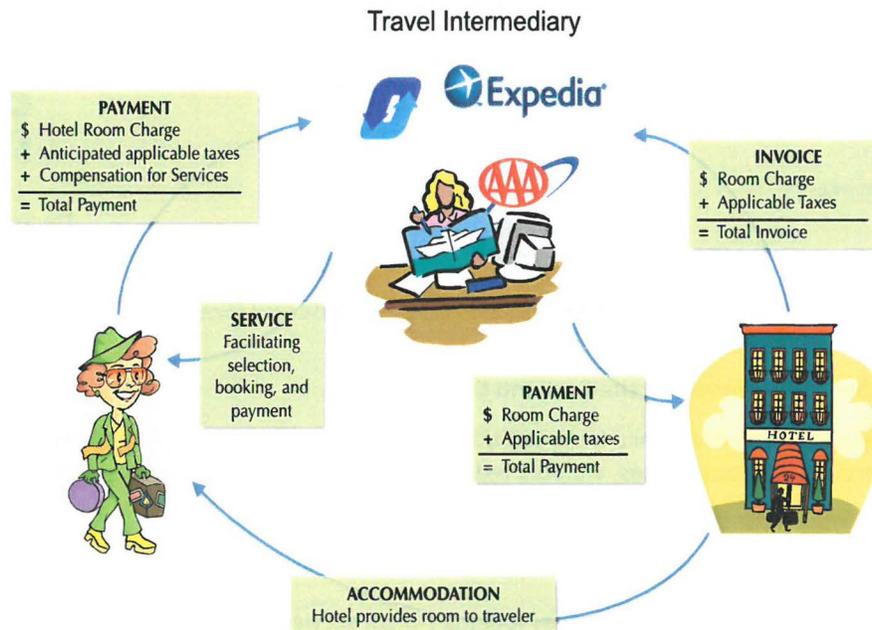
Portland travel agents routinely create packages that bundle hotel rooms, food, travel, and events into one price. 1403/1404 allows tax collectors to impose their occupancy taxes on all kinds of goods and services when included in travel packages, such as:

- taxi from PDX to the hotel
- food served at a hotel restaurant
- tickets to the Japanese Gardens
- Pittock Mansion tours

Nearly all travel agents and travelers rely upon online services to research, compare, and book reservations

From our work on this issue in states and at NCSL, it’s clear there is some misunderstanding about travel reservation services and taxes. The chart below shows the flow of services, taxes, and payments in a typical transaction where a traveler uses a travel agent or online travel company to research and book a hotel reservation.

As shown in the chart, travel agents and online travel companies are providing a *service* to travelers. These services include comparisons of rates and amenities at multiple hotels, plus facilitation in making the reservation, processing the payment, and sending charges and applicable taxes to the hotel operator. Clearly, this facilitation service is distinct from the room provided by the hotel where the traveler eventually stays.



Avoid the conflation of travel services and lodging providers

By maintaining the true distinction between travel service providers and hotel operators, you can help Illinois's travel and tourism industry focus on serving travelers and creating jobs – not on collecting nominal new taxes from the state's own citizens.

Instead of passing 1403/1404 we suggest amending it to clarify when an occupancy tax applies. We suggest substituting the existing bill text with this language from Missouri law:

"Any tax imposed or collected by any municipality, any county, or any local taxing entity on or related to any transient accommodations, whether imposed as a hotel tax, occupancy tax, or otherwise, shall apply solely to amounts actually received by the operator of a hotel, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public.

Under no circumstances shall a travel agent or intermediary be deemed an operator of a hotel, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public unless such travel agent or intermediary actually operates such a facility. ...

*This section is intended to clarify that taxes imposed as a hotel tax, occupancy tax, or otherwise, shall apply solely to amounts received by operators, as enacted in the statutes authorizing such taxes."*¹

¹ Missouri HB 1442 (2010), signed into law July 2010 (emphasis added).

Big Hotel Chains Benefit Most from 1403/1404's passage

Big hotel chains are backing this new tax for entirely selfish reasons. This new tax would not affect reservations made directly at hotels and their websites. But this new tax raises the traveler's cost for booking through their local Portland travel agent.

By making it more expensive to use Portland travel agents, travelers are encouraged to book directly through the big hotels' websites. Channeling travelers to the big hotel websites keeps Portland's boutique hotels hidden from travelers and allows big hotels to avoid competing with lower room rates and better amenities.

We ask you to not impose these new costs on Portland travel agents and not give big hotel chains even more of an advantage over Oregon's travel agents. We appreciate your consideration of our views, and please let us know if we can provide further information.

1403/1404 Would Undermine a Key Benefit of the internet and would likely be found Unconstitutional

1403/1404 forces hosting intermediaries like HomeAway and Airbnb to determine and collect the taxes for a listing posted on their site by a city resident, register with the city, display permit in their ad, disclose personal information to the city, and be responsible for actions of property owners/managers/hosts.

However, 1403/1404 is preempted by federal law and would there be found unconstitutional. Section 230 of the federal Communications Decency Act says platforms can't be held strictly liable for content posted *by others*.

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

However, 1403/1404 violates Section 230. This not only threatens a core tenet of the internet, but is at odds with federal law – resulting in a likely injunction of 1403/1404.

We ask that you not create new taxes on your local travel agents nor discourage travelers from visiting your city by increasing occupancy taxes.

While we ask that you not adopt the 1403/1404. We welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Sincerely,



Carl Szabo

Senior Policy Counsel, NetChoice

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