

A stylized, minimalist illustration of a house in shades of gray. The house has a gabled roof, two dormer windows on the upper level, and a central door with a square window. There are two trees on either side of the house, represented by simple circles and stems. The background is white, and the house is centered.

# The Future of the Relationship Between Cities and Airbnb

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# Impacts on Cities

- Financial
- Housing Stock
- Safety Issues
- Quality of Life
- Unforeseen Externalities

# Who are the players?

- Airbnb
- Homeaway/VRBO
- Flipkey
- Craig's List/Message Boards
- Small Operators/Brokers
- Individuals



# Litigation: Issue #1

- Can a hosting platform be required to collect taxes
  - Need an authorizing ordinance/statute, which will generally be your Transient Occupancy Tax ordinance
  - Usually these are aimed at owners/operators, and did not anticipate hosting platforms
  - City of Portland v. Homeaway: unfavorable decision on 12(b)(6) motion based on ordinance/statute language
    - Still active, 2<sup>nd</sup> Amended Complaint filed
  - Homeaway v. City of San Francisco: dismissed on narrow grounds because Homeaway determined not to fall under ordinance
  - Challenged in Airbnb/Homeaway v. City of Santa Monica
    - Unresolved, currently stayed

# Litigation: Issue #2

- Can a hosting platform be required to disclose host information
  - Stored Communication Act, 18 U.S.C. section 2701
    - Limits on requiring disclosure of customer info without legal process
  - Illegal Search/Seizure
  - Due Process – Right to Review
  - Homeaway/Airbnb v. City of Santa Monica
  - Airbnb v. City of San Francisco
    - Generate reports, authorizes subpoenas

# Litigation Issue #3

- Can a hosting platform be prohibited from advertising illegal listings
  - Communications Decency Act: prohibits holding a publisher liable for the actions of a third party speaker
    - Designed to prevent message boards from being sued due to the actions of posters
  - 1<sup>st</sup> Amendment, not narrowly tailored to further a substantial government interest
    - Generally hosting platforms will assert a City should go after the host, not the hosting platform
  - No protected right to advertising illegal activity
    - *Central Hudson Gas & Elec. Corp.* (1980) 447 U.S. 557
    - *Johnston v. City of Hermosa Beach*
  - Due Process issues with enforcement

# Litigation Issue #4

- Can a City regulate the content of host listings
  - E.g. require registration number, removal of listings that don't conform to an ordinance's requirements
  - Communications Decency Act
  - 1<sup>st</sup> Amendment, not narrowly tailored to further a substantial government interest

# Litigation Issue #5

- What enforcement options are available against hosting platforms
  - Criminal v Civil/Administrative
  - Liability for actions of hosts v own actions that violate an ordinance
  - Communications Decency Act
  - 1<sup>st</sup> Amendment, not narrowly tailored to further a substantial government interest
  - Due Process



# Litigation Issue #6

- Do individuals have vested rights to short term rental use
  - Johnston v. City of Hermosa Beach
  - If allow currently, may be harder to remove, but still allowed
  - Takings: unlikely to have damages as can still rent out property for periods longer than 30 days
  - Coastal Commission issues if LCP in place

# Current Cases

- City of Portland v. Homeaway
  - To enforce ordinance, collect taxes and fines
  - Motion to dismiss granted, amended complaint filed
  - Motion to dismissed argued, under consideration
- Homeaway v. City of Portland
  - To overturn ordinance
  - Motion for Preliminary Injunction reply brief filed
- Airbnb v. City and County of San Francisco
  - Preliminary Injunction Denied, settlement talks ongoing, TRO in place
  - Need an accurate and prompt verification mechanism
- Homeaway v. City of San Francisco
  - Challenged an earlier version of the ordinance
  - Dismissed on Standing Issues
- Airbnb v. City of Santa Monica
  - Stayed pending Airbnb v. City and County of San Francisco
- Airbnb v. City of Anaheim
  - Sought to hold make websites liable for posting listings that lack a city permit
  - Dismissed by Airbnb when City that the ordinance would not be enforced against Airbnb and other similar hosting platforms
- Johnston v. City of Hermosa Beach
  - Request for Preliminary injunction denied, currently being appealed

# Other Jurisdictions

- Airbnb v. State of New York
  - Passed a law that would fine hosts \$7500 for posting short term rentals on websites like Airbnb when they conflict with local housing regulations
  - Law suspended pending lawsuits outcome, settlement discussion ongoing
- Airbnb v. City of Nashville
  - Ordinance regulating short term rentals unconstitutionally vague
- Chicago: 2 lawsuits
  - Challenge new regulations scheduled to go into effect
  - Extra tax, limit on number of units that can be rented, maintain records
- Berlin
  - Airbnb fighting City demand it turn over information to enforce a new law imposing fines up to \$110,000 on people renting out more than 50% of their homes for less than 2 months
- Barcelona
  - Imposing fines that exceed \$65,000 for listings without proper licenses
- Amsterdam
  - Scraping data from short term rental websites because they won't turn over details of violators

# State Legislature

- 2 Bills introduced by Sen. Mike McGuire
- First required sharing of information with local jurisdictions and enforcement of local ordinances by hosting platforms
  - Opposed by Airbnb and other hosting platforms
  - No longer active
- Second set up a voluntary state system
  - Supported by Airbnb
  - Opposed by most cities due to voluntary nature, state control, and other issues
  - No longer active
- No current legislation of note