



## Maryland Hotel Lodging Association

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TO: Members of the Montgomery County Council  
FROM: Amy Rohrer, Maryland Hotel Lodging Association  
RE: Zoning Text Amendment 17-03 (Accessory Residential Uses - Short-term Rentals)  
and Bill 2-16 (Transient Housing - Licensing and Registration)  
POSITION: **SUPPORT**

As the statewide trade association representing hotels in Maryland, we wish to express support for passage of Zoning Text Amendment 17-03 and Bill 2-16. In order to maximize the effectiveness of this legislation, we also urge Councilmembers to adopt amendments as discussed below to strengthen compliance with this new regulatory program and ensure equitable tax collection and remittance.

We welcome new players to the accommodations industry when commonsense rules and regulations are in place, abided by, and enforced. Currently, the playing field in Montgomery County is quite skewed as short-term residential lodging is taking place and growing exponentially<sup>1</sup>, despite an existing prohibition on rentals lasting less than 30 days in units zoned for residential use. It is time for proper oversight of this market in Montgomery County.

If the Council opts to retain the current prohibition on short-term rentals in the county, it should take steps to ensure its laws are enforced to restore a fair competition in the lodging marketplace. In the alternative, assuming a preference to legalize and regulate the short-term rental model, we support both pieces of legislation before the Council for the following reasons.

### **The primary residence requirement and 90 day cap ensure the activity is truly “home sharing.”**

From a competitive standpoint, the lodging industry is especially concerned by the growth of what are essentially unlicensed hotels facilitated by platforms like Airbnb. A 2016 study from Penn State University<sup>2</sup> indicates many users of Airbnb have moved well past “home sharing” and are engaged in commercial or investment activity. Specifically, the study shows that a

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<sup>1</sup> There are over 1200 rental units in Montgomery County on Airbnb alone. See <https://www.airdna.co/region/us/maryland>, which provides city-level rental data scraped from Airbnb’s website.

<sup>2</sup> See From Air Mattresses to Unregulated Business: An Analysis of the Other Side of Airbnb ([https://www.ahla.com/sites/default/files/Airbnb\\_Analysis\\_Oct\\_2016\\_0.pdf](https://www.ahla.com/sites/default/files/Airbnb_Analysis_Oct_2016_0.pdf)); see also Hosts with Multiple Units – A Key Driver of Airbnb’s Growth ([https://www.ahla.com/sites/default/files/CBRE\\_AirbnbStudy\\_2017.pdf](https://www.ahla.com/sites/default/files/CBRE_AirbnbStudy_2017.pdf)), CBRE Americas Research, March 2017.

significant portion of Airbnb’s revenue is driven by hosts that are either multiple-unit operators renting two or more units, or full-time operators who rent their unit(s) 360 or more days per year. In either case, this is unregulated business activity – and it accounts for nearly 40 percent of Airbnb’s fee revenue.

A primary residence requirement solves much of this problem, and is consistent with the “One Host, One Home” policy that Airbnb has instituted in other jurisdictions to prohibit hosts from listing multiple properties. In addition to protecting local lodging businesses, this approach also protects the availability of long-term housing.<sup>3</sup> Adoption of this policy makes sense in a densely populated market like Montgomery County.

**Rental registration and licensing by the Department of Health and Human Services and related requirements will help to ensure the safety of guests, integrity of communities, and compliance with existing or future rules and regulations.**

Bill 2-16 includes some commonsense lodging safety requirements including fire extinguishers, smoke detectors, carbon monoxide alarms, keeping records of overnight visitors, and listing a designated emergency contact within 15 miles of the unit. It is important to note that these modest safety measures represent just a fraction of the licensing, inspection, insurance and construction regulations that traditional hotels and bed and breakfasts carry.

As written, ZTA 17-03 and Bill 2-16 would go a long way to restoring order in the lodging marketplace. In order to maximize the effectiveness of this potential regulatory framework, however, we also recommend the following amendments to Bill 2-16.

**Amendment 1: ensure transparent tax remittance by requiring short-term rental operators to prove they have registered with the Comptroller of Maryland as a vendor and with the Montgomery County Department of Finance as a short-term accommodation provider.**

Transient lodging rental transactions are subject to both state sales and use tax and county hotel occupancy tax, which are paid by guests and normally collected by lodging operators. Compliance with these obligations is spotty in the short-term rental market, because many operators are either unaware of or simply non-compliant with their collection obligations.

The county should therefore ensure short-term rental operators are properly registered to collect applicable taxes. The host’s State Vendor Identification Number<sup>4</sup> and County Room Rental and Transient Tax Account Number should be listed on the short-term rental license application. Having this operator-level data up front is the surest way for the county to ensure complete remittances across all short-term rental platforms.

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<sup>3</sup> See J. Fingas, *Airbnb bans multi-listing hosts in New York and San Francisco*, Engadget, October 19, 2016 <https://www.engadget.com/2016/10/19/airbnb-bans-multi-listing-hosts-in-ny-and-san-francisco/>

<sup>4</sup> The state’s 6% sales tax applies to short-term rentals, and operators have an existing obligation to register with the Comptroller of Maryland. Registration and filing at both levels is required of all lodging operators, and serves as a cross-check between the tax collection agencies. [http://taxes.marylandtaxes.com/Resource\\_Library/Tax\\_Publications/Tax\\_Alerts/SUT\\_TaxAlert\\_May2016.pdf](http://taxes.marylandtaxes.com/Resource_Library/Tax_Publications/Tax_Alerts/SUT_TaxAlert_May2016.pdf).

In cases where platforms opt to collect and remit tax on behalf of rental operators, the platforms can utilize existing mechanisms (e.g., a “resale certificate”) to excuse hosts of their tax remittance obligations without a wholesale waiving of established, reliable tax collection processes. This would parallel the process by which online travel companies (i.e., Expedia) collect taxes on behalf of hotels within the county for rooms booked on their platforms.

Proposed Amendment Language to Bill 2-16 (as revised per Planning Board recommendations):  
*Article III*

*Sec. 54-43. Certification for a License*

*(p) the applicant provides a Vendor Identification Number issued by the Comptroller of Maryland and a Room Rental and Transient Tax Account Number issued by the Montgomery County Department of Finance;*

We also encourage the Council to investigate the termination of the unprecedented voluntary tax collection agreement (“VCA”) with Airbnb. All short-term rental operators and platforms should be placed on an auditable, uniform tax collection system. The county should ensure lodging tax collection occurs across all platforms. What is technically an “illegal” short-term rental activity is legitimized by the collection of hotel tax by the county through a system that currently lacks transparency and accountability.<sup>5</sup>

**Amendments 2 and 3: require short-term rental operators to display their license number directly on advertisements and online listings and require short-term rental platforms to delist rental units that are not compliant with county law.**

In order to maximize compliance with a registration system, a two-pronged approach is needed: increase transparency with respect to the rental operator’s licensing status, while requiring rental platforms to remove unlicensed units.

The inclusion of a license number on each online listing would facilitate the identification of unlicensed operators and assist in remedying violations when local authorities undertake compliance efforts. This can be as simple as the rental operator including his or her license number in the text of an online rental advertisement – which has the added benefit of showing the traveling public that rental units are legal.

Additionally, short-term rental platforms should share listing data with the county to facilitate compliance, and stop selling units that are not compliant with county law. This would end the current unregulated market where rental platforms sell units and collect fee revenue without regard for the underlying legality of the rental. Short-term rental platforms have demonstrated

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<sup>5</sup> To date, Montgomery County remains the only jurisdiction in the state to enter such an agreement. A copy of the Montgomery County tax agreement was secured and analyzed as part of a study of VCAs by a former director of the Multistate Tax Commission. It found the Montgomery County contract with Airbnb to be among the worst in the country, in terms of ceding control to Airbnb and its secrecy provisions. See D. Bucks, *Airbnb Agreements with State and Local Tax Agencies*, p. 49-51, available at [https://www.ahla.com/sites/default/files/Airbnb\\_Tax\\_Agreement\\_Report\\_0.pdf](https://www.ahla.com/sites/default/files/Airbnb_Tax_Agreement_Report_0.pdf).

that they can cancel future stays and deactivate listings after receiving notice from the city of an invalid registration (i.e., a de-listing process).<sup>6</sup>

Proposed Amendment Language to Bill 2-16 (as revised per Planning Board recommendations):

*Article III*

*Sec. 54-43. Certification for a License*

*(q) a County issued license number must be displayed directly within any rental listing or advertisement on a short-term rental platform.*

*Article III*

*Sec. 54-47. Suspension*

*(d) The short-term rental platform must provide a monthly list of all units to verify compliance with County law and, upon notice, remove listings identified as in violation by the Director.*

Short-term rental platforms with listings in the county should provide information to the Department of Health and Human Services that is sufficiently detailed to facilitate enforcement of the 90-day cap on unhosted (i.e., whole unit) rentals.

In summary, should the Council opt to legalize commercial lodging activity through short-term rental platforms, ZTA 17-03 and Bill 2-16 would take important steps to ensure that short-term rental operators and platforms follow some basic rules while restricting the use of these platforms by real estate speculators and unlicensed commercial operators. We encourage the inclusion of our suggested additions to ensure the success of this legislation.

Thank you for your consideration.

For further information, contact:

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<sup>6</sup> See A sensible truce for short-term rentals in S.F., San Francisco Chronicle, September 3, 2017. <http://www.sfchronicle.com/opinion/editorials/article/Editorial-A-sensible-truce-for-short-term-12171209.php?cmpid=email-premium>.