



October 21, 2019

Sara A. Clark
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

BY ELECTRONIC MAIL

Ms. Clark,

Thank you for the opportunity to provide comment on the City of Cupertino's efforts to regulate short-term rentals (STRs). Expedia Group is a family of brands that includes vacation rental leaders Vrbo and HomeAway. Our experience working with communities in California and around the world gives us a unique understanding of the kinds of regulations that work for municipalities like Cupertino, and we are grateful for your outreach as this process gets underway.

Cupertino's proposed language is very similar to provisions enacted in Santa Monica, California with regard to STR platforms—specifically, that platforms verify STR operators' license numbers before allowing any bookings, share identifiable user and booking data with city regulators, and be responsible for collecting and remitting Transient Occupancy Tax (TOT) to the City of Cupertino. In our experience, the regulatory goals of these provisions are more easily accomplished through simpler provisions such as those enacted in Seattle, Washington.

License Enforcement and Data

We understand the City's interest in a high rate of compliance with license requirements for STR operators. As drafted, Cupertino's new regulations would require platforms to review listings for license numbers and check those numbers against a city-maintained database before every booking. This approach presents many challenges in the short-term rental ecosystem. STR operators join and leave platforms constantly; meanwhile, the city is charged with maintaining a real-time list of valid license numbers—a task inconsistent with the fact that license applications, revocations, or appeals may take days or weeks to resolve. Moreover, that scheme puts the burden of enforcement and confirming the validity of the City's own license numbers on private companies.

Finally, this approach assumes a relatively small and static marketplace of platforms. In reality, homeowners choose between dozens of platforms when offering their home to guests, platforms which in many cases may not have the capacity (or visibility) to reliably accommodate the proposed system. The result is a regulatory scheme that attempts to require a constantly changing number of platforms to align their constantly changing sets of listings with a constantly

changing city-maintained registry. This approach is a poor fit for the STR marketplace in Cupertino.

By comparison, Seattle has adopted a simpler and more portable relationship with platforms. In Seattle, platforms must:

- Include a “mandatory field” into which STR operators *must* input a license number, consistent with the city’s alphanumeric format, before their listing can be displayed.
- Provide monthly reports to city staff which match each listing’s URL to its corresponding license number.
- Remove any listings flagged as non-compliant by city staff.

We believe this approach accommodates the constraints of a diverse and dynamic set of operators, platforms, and regulatory needs and respectfully encourage Cupertino to pursue similar language.

Cupertino is pursuing language similar to Santa Monica’s with regard to the sharing of user data. However, federal privacy laws prohibit platforms from sharing users’ personal data. We believe the data reports listed above are sufficient to drive compliance with city license requirements within the obligations of federal law. They allow the City easy visibility into the license numbers of properties on the platform, which, in turn, allows the City to check the validity of the license numbers and alert the platforms to any that are invalid.

Moreover, the Ninth Circuit’s decision in the *Santa Monica* litigation said nothing about the data disclosure provision of that law because it wasn’t at issue. Santa Monica, recognizing the constraints of federal law, has never attempted to invoke or enforce that provision. And just this year, two other federal courts enjoined enforcement of New York’s and Boston’s law that required similar monthly disclosures regarding platforms’ users, their properties, and their rental activity. Both courts held that such disclosures to a governmental entity—without any kind of legal process—violated the Fourth Amendment of the U.S. Constitution.

TOT Requirements

As drafted, Cupertino’s proposed ordinance would require platforms to collect and remit TOT generated by short-term rental activity in the city. This provision requires voter approval consistent with Proposition 218, which prohibits a local government from “impos[ing], extend[ing] or increas[ing] any general tax unless and until that tax is submitted to the electorate and approved by a majority vote.”

The proposed language would newly “impose” tax liabilities and obligations on platforms by subjecting platforms to tax collection, recordkeeping, enforcement and remittance liabilities for tax owed as a result of short-term residential occupancies the platform facilitates. While Cupertino’s TOT is imposed on “transients” for the privilege of occupancy, tax liability is also imposed on an “operator” if tax is not remitted, whether or not it is collected by the operator from the guest. The proposed language would effectively treat platforms like “operators” for

purposes of tax collection, recordkeeping and remittance liabilities. For no other purpose would platforms be considered operators—thus, the proposed amendments “impose” tax liabilities and obligations that do not exist under current law. This can only be done if voter approval is first secured.

Again, we are deeply grateful for the City’s efforts to engage with Expedia Group and other stakeholders as part of this process. We look forward to working with you further to identify sustainable, workable, and legal ways to assist Cupertino increase compliance with local regulations. Please feel free to contact me at rilazaro@expediagroup.com or 206-660-8227 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'R de Sam Lazaro', with a stylized 'W' at the end.

Richard de Sam Lazaro
NW Government Relations, Expedia Group