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San Francisco Chronicle

Airbnb, HomeAway would police rentals under proposed SF law

By Carolyn Said | April 25, 2016 | Updated: April 25, 2016 4:27pm

10





Photo: Michael Macor, The Chronicle

San Francisco Supervisor David Campos says this property on Dolores Street was illegally converted into a tourist hotel. Campos along with Aaron Peskin want to toughen San Francisco's vacation-rental laws to make platforms like Airbnb and HomeAway more responsible for enforcing the law.

San Francisco's struggles to regulate vacation rentals in private homes aren't over.

Short-term-rental sites like Airbnb and HomeAway/VRBO would be on the hook to ensure that their hosts follow the city's registration requirements under amendments to an existing law that Supervisors David Campos and Aaron Peskin plan to propose on Tuesday, The Chronicle has learned. Platforms that flout the mandate would face fines of up to \$1,000 a day per listing and misdemeanor charges.

"Unless the hosting platforms have a role in enforcement, enforcement is not going to happen," Campos said. "They have to have some skin in the game."

San Francisco made vacation rentals legal with a February 2015 law that requires all hosts to register with the city. **As of March, only 1,647 hosts had complied.**

Airbnb alone has about 7,000 hosts, while HomeAway/VRBO has about 1,700;

FlipKey has about 900, and numerous hosts list on sites such as Craigslist. "You have to ask yourself, how do you make compliance happen when so many people are ignoring the law?" Campos said.

Registration numbers

The supervisors' proposal would require companies to verify that all listings have a valid San Francisco registration number before posting them online. When the city



flags rentals that seem illegitimate, the listing services would be required to respond with details about those properties within one business day or face big fines. Funds generated from the new plan would go to an affordable housing fund.

Campos and Peskin agree with housing activists who say that lucrative vacation rentals siphon units from the market, driving up prices and tightening availability. The existing law's attempts to prevent this, such as limiting rentals to people's own homes and capping whole-home rentals at 90 days a year, have been difficult to enforce.

Compelling the companies to police themselves is the best way to identify offenders, they said.

"We are closing a long-standing loophole by holding the hosting platforms accountable for the hundreds of units (rented by) unscrupulous individuals who have taken multiple units of affordable housing off the rental market," Peskin said.

Airbnb, which said this month that **it will voluntarily crack down on illegal listings by people who control multiple properties**, struck a somewhat conciliatory tone.

"While others debate the legality of this proposal, Airbnb will continue working with our community to simplify the process and get hosts registered," it said. "As the only platform collecting and remitting taxes and taking steps to remove unwelcome listings, we look forward to engaging with all stakeholders to find real solutions that accomplish our shared goals of protecting housing."



Photo: Michael Macor, The Chronicle

Supervisor David Campos is co-sponsoring the amendment that seek to crack down on properties that operate as hotels.

The legality issue Airbnb raises could trip up the proposed amendments. The Communications Decency Act shields online intermediaries from liability for content generated by users of their services. That federal law aims to prevent service providers from being compelled "to actively monitor and police their users," said Corynne McSherry, legal director of the Electronic Frontier Foundation. "That would create a chilling atmosphere for online commerce and speech."



IMAGE 1 OF 13

If you'd like your next vacation to be music-themed, check out some of these music lover-friendly rentals on Airbnb, like this David Bowie-themed room.

For instance, the federal law means that bloggers and news sites aren't held responsible for what readers say in comments sections. "Those protections are why we have the Internet we have today," McSherry said. "If service providers

were actively required to snoop on users and always liable for what users did, we'd have a very different Internet."

But Marc Rotenberg, executive director of the Electronic Privacy Information Center, said the San Francisco proposal seems narrow enough to pass muster. "If you're operating a business on the Internet and providing business-related information pursuant to licensed activity, it seems entirely reasonable that you comply with those obligations" that the supervisors are suggesting, he said. "I don't think it's a (Communications Decency Act) or First Amendment issue."

3 options for verification

The proposed requirements wouldn't affect services such as Craigslist that are purely classified-ad sites. Instead they would cover sites and apps that play some kind of role in helping book or pay for the vacation rentals. City staff said Airbnb, HomeAway/VRBO and FlipKey all fall into this category.

"I believe this has been crafted in a narrow manner that will survive legal challenges," Peskin said.

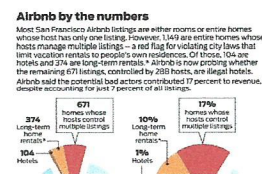
To help avert charges that it violates the federal law, the proposal offers three options for hosting platforms to verify that listings are registered: enter a registration number in the listing themselves; check that the host entered a number on the listing; or check with the city that a listing has been registered without having to post its registration number.

Portland, Ore., has a similar requirement. Last fall, it sued HomeAway for failing to display the numbers, collect hotel taxes and meet other requirements. HomeAway's defense pointed to the

HOME-RENTAL FIRMS UNDER FIRE



Most Airbnb hosts flout SF laws, city report says



Airbnb to purge illegal hotels from San Francisco listings



City implores Airbnb, other firms, to deactivate illegal listings



Airbnb, other short-term rentals may get closer scrutiny in S.F.

Communications Decency Act as protecting it.

No change for hosts

HomeAway sued San Francisco in 2014 after the city passed its vacation-rental law, saying that the law favored Airbnb's business model. That case was dismissed.

The Austin, Texas, company, now owned by travel giant Expedia, said it will review San Francisco's new proposal. HomeAway welcomes discussion on how to work with San Francisco "on the best path forward for all short-term rental stakeholders," Matt Curtis, senior director of government relations, said in a statement.

The supervisors' proposal doesn't change requirements for hosts.

"This does not have any impact on the mom and pop that is renting to supplement their income; they have nothing to worry about," Campos said. "It puts the focus on corporate entities making millions and millions of dollars in this business who have taken no responsibility for the law being broken."

Other supervisors said they'd rather not comment on the proposal until they see all its details.

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