

Planning Commission

Comments For

ZOA-2022.1

Comments Submitted Through July 21, 2022 (5:00 pm)

July 20, 2022
Curry County Planning Commission
Attn: Director Becky Crockett

Subject: Request for Further Review 7/21-Proposed Amendments A through O

Dear Planning Commissioners,

I have concerns that these proposals represent a significant reduction in oversight of planning and building within the county- consequently resulting in environmental and economic impact to the county and its residents.

I do not understand why changes of this importance and impact are moving so quickly.

I ask that you deny Amendment #5, or at least vote for a continuance so that the public can gain a more complete understanding of these changes and their impact.

Sincerely,

Michael Knibbs
Langlois, Oregon

[REDACTED]

Becky Crockett

From: Bellah Stephan <[REDACTED]>
Sent: Thursday, July 21, 2022 7:45 AM
To: Becky Crockett
Subject: Citizen Concerns

July, 21, 2022

To: Curry County Planning Commission
Submitted: to Planning Director Becky Crockett
From: Connie Stephan, PO Box 1307, Port Orford, OR 97465

Dear Curry County Planning Commission members:

Greetings. I am a long term resident of Curry County and it has been brought to my attention that there are many changes to the Curry County zoning code you are considering at the upcoming meeting.

I understand that this is in response to meeting increasing needs in our community and I appreciate your efforts and deliberations on how to meet those needs, but I have a number of citizen concerns about the proposals. I would like to request better mapping of areas that have been proposed for making changes in, and more publicly available information about both the process and the proposals and who it may impact. I am concerned that citizens be well informed and given the opportunity to participate in the decision making process as this proposal and changes may impact us all within the community.

I would like to second and support the following recommendations that were submitted to the Curry County Planning Commission by Anne Vileisis.

Thank you for your service, time and consideration.

Sincerely,

Connie Solomon-Stephan

Becky Crockett

From: (null) lindatarr <[REDACTED]>
Sent: Thursday, July 21, 2022 7:42 AM
To: Becky Crockett
Subject: Letter to Planning Commission

Hi Becky,
Thank you for delivering this to the Planning Commissioners.

Dear Commissioners,

Thank you for your efforts to fill the void in policy regarding ADUs and short term rentals in Curry County. I have just become aware of the significant changes being considered to the County zoning ordinances at your upcoming meeting. I have done my best to learn about these changes, but having only two days to prepare, have not had adequate time to inform myself about the reasoning behind them and the possible effects of the changes.

I do understand that allowing short term rentals without adequate planning and restrictions could have a profoundly negative effect on my neighborhood in the Urban Growth Boundary of Port Orford. Allowing the larger scale dwellings and ADUs to be STRs will no doubt alter the neighborhood significantly, without contributing to the availability of affordable housing.

I am specifically very concerned about the effect the growth allowed housing density and in STRs will have on the water supply, both for adjacent properties in the watershed and for the City of Port Orford.

I want to point out that demands for fire protection will increase significantly for our volunteer fire departments, which are currently in need of more volunteers. Lack of affordable housing has a profound effect on younger people being able to own or rent homes and contribute to the community. We need younger people to be able to do this critical volunteer work. And when every other dwelling is a STR, who is going to do this and the other volunteer work that makes our area the livable and very special place that it is?

Also, vacation rentals owned by absentee owners already have placed the burden of, for instance, picking up the trash left behind because visitors are unaware of how to coexist with wildlife.

Also, I believe there are restrictive covenants in effect for the property owners in the Cedar Terraces part of the Port Orford UGB. How do these changes effect those covenants? I believe we all need time to research and consider this.

The aspect of the proposed changes that concerns me the most is:

Section 2.400. #4 The Board of Commissioners reserves the right to pre-empt any permit review process or appeal process and hear any permit application or appeal directly.

This is just not good government. It isn't fair and I question whether it is legal.

I would like to attend your meeting, but as the Chairperson of the Port Orford Watershed Council, I must be at the Port Orford City Council meeting, which is at the same time.

Please give those who will be effected by these decisions time to understand the complicated issues and participate meaningfully in the process.

Thank you for your service to our communities.

Sincerely,

Linda Tarr
[REDACTED]
[REDACTED]

Sent from my iPhone

July 20, 2022

Curry County Planning Commission

c/o Director Becky Crockett

Subject: Denial of, or Continuance Request for Further Review 7/21 Agenda Item 5 - Proposed Amendments A, B, D, E, F, G, H, I, J, K, L, M, N, O

Dear Planning Commissioners,

Please Vote to *Deny* Agenda Item #5 on the July 21st Agenda Proposed Zoning Code Amendments in its entirety.

Barring that, please vote for a Continuance for Agenda Item #5 on the July 21st Agenda.

Do not allow this preponderance of conflicting changes to move forward until the public has further opportunity to understand and comment on the impacts of the fourteen Proposed Amendments A, B, D, E, F, G, H, I, J, K, L, M, N, O (Where is Amendment C?).

Reading the Amendments, the threat to future citizen involvement in the ongoing enforcement of growth in Curry County appears to be under assault. Some language appears to remove the public from ADU and STR evaluations in the targeted zones. This is a significant over reach.

- County BOC ability to "*pre-empt any permit review process or appeal process...*" Attachment B
- STR "*...the administrative applicat;on most likely will be approved by the Director.*" Staff Report
- Codifying STR's means no citizen oversight for selected residential and commercial designations
- Staff Report and Attachment K present different ADUs requirements for what is allowed inside and outside of the UGB. Shouldn't they match?
- Why is Attachment M being proposed? Who in Curry will benefit from this?

There are *many more concerns* with the proposed amendments but these few alone should be sufficient to *Deny in the entirety* or at the very least vote for a *continuance* so the clear examples of existing discrepancies and other concerns can be addressed.

All of these zoning changes are too much to fast affecting to many and benefitting too few. They are irreversible and will significantly impact the character of the entire county forever.

Please. Let's *slow this process down with a continuance at least*. Please make sure the decisions you make are what is best for the current citizens of Curry County, the population you represent, and their children.

Sincerely,
Bob Morrow
Langlois, Oregon



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

Oregon Coastal Management Program

810 SW Alder Street, Suite B

Newport, OR 97365

www.oregon.gov/LCD



July 20, 2022

Becky Crockett, Curry County Planning Director
Curry County Community Development Department
94235 Moore Street, Suite 113, Gold Beach, Oregon

Sent via electronic mail to crockettb@co.cunyu.or.us

Re: PAPA Submission, DLCD File# 001-22, local File# ZOA-2022.1

Dear Becky,

This letter serves as DLCD comments to the proposed text amendments to Curry County Zoning Ordinance in above-referenced file numbers. Please enter this letter into the record.

Regarding the proposed Section 2.400 Board of Commissioners Review of Application and Appeal :

- The decision to "call up" or "pre-empt" a land use decision or land use application should be decided at a public hearing.
- The "limited evidentiary hearing" by the Board is limited to an appeal of a land use decision. The "limited evidentiary hearing" cannot be used if the Board call up an application before it has been heard and decided by the Planning Department/Hearings Officer/Planning commission. If the Board will be the initial decision-maker, the Board needs to hold a full hearing.
- For "limited evidentiary hearing," the Board can limit evidence, specific issues, criteria, or conditions to the universe of the applicable criteria by which the application is judged, but the Board cannot add specific issues, criteria, or conditions beyond the applicable criteria.

Regarding Short-Term Rentals:

- Any analysis of housing need in the County's Comprehensive Plan has to take into account the number of existing and projected STRs, because the County will need to allow more housing in urban areas to make up for the housing supply "lost" to STR use.

Please let us know if you have any questions or would like assistance with any of the above.

Respectfully,

Hui Rodomsky
South Coast Regional Representative, DLCD

Becky Crockett

From: Donna Smith [REDACTED]
Sent: Wednesday, July 20, 2022 5:22 PM
To: Becky Crockett
Subject: Zone changes

Hello Becky,

My name is Donna Smith and I live in Langlois. I have reviewed the proposed zoning changes in Curry County and they concern me.

I believe these proposed changes could have a negative effect on the quality of life for those in Curry County. Please consider denying those changes.

Donna Smith

Sent from my iPad

Becky Crockett

From: [REDACTED]
Sent: Wednesday, July 20, 2022 2:59 PM
To: Becky Crockett
Subject: Proposed zoning code change comments

Hello Ms. Crockett,
Please send this letter of concern to the planning commissioners before the zoning code change meeting Thursday.
Thank you,
Florence Prescott

Dear Planning Commissioners:

I am writing regarding your upcoming meeting to address changes to the zoning code. As a homeowner living in the Port Orford urban growth boundary for 21 years, I have concerns regarding vacation rentals, the lack of affordable housing in our area and finally, our fragile water system.

First of all, there is an important need for public input in the planning process which Section 2.400. #4 disregards. I feel that this section should be removed since it allows Board of Commissioners the ability to make decisions on their own without public review. This is undemocratic and could lead to some major problems.

Secondly, I feel that it is critical for the County Planners to confer with the Port Orford Planning Commission regarding regulation of accessory dwelling units and short term rentals. If the idea is to create more affordable housing then allowing ADUs and multi family dwellings to become short term rentals only exacerbates the problem by driving up property values and putting affordable housing out of reach for most families trying to live and work here. Port Orford already has a major problem with medical staff, educators, other professionals and young families not being able to find housing here. The success of our town depends on affordability and vacation rentals do not help!

My main concern regards Port Orford's inadequate water issues, our ability to fight fires, keeping drinking water safe and flowing. Vacation renters typically overuse water and overuse of septic tanks in R2 zones could also affect drinking water safety for the city. Much of the R2 zone is within the Port Orford watershed where springs and small creeks are already vulnerable to leaky septic systems. The aquifer could also be overtapped by too much water usage and ongoing clearing of trees for land development.

I live in an R2 zone in the Port Orford UGB and do not wish to have the character and safety of my area compromised by unregulated vacation rentals. Let's protect our watershed and build truly affordable housing for Port Orford instead of allowing wealthy investors to benefit at our expense.

Sincerely,
Florence Prescott

[REDACTED]
[REDACTED]
[REDACTED]

Sent from my iPad

Sent from my iPad

July 19, 2022

To: Curry County Planning Commission
Submitted: to Planning Director Becky Crockett
From: Ann Vileisis [REDACTED]

Dear Curry County Planning Commission members:

I am writing with regards to the many changes to the Curry County zoning code you are considering at your meeting this week.

I appreciate that with this proposed set of ordinance changes and additions, Curry County is aiming to address some important issues -especially the lack of affordable housing and the proliferation of unregulated vacation rentals, which have become extremely problematic in many communities.

However, I have some concerns and specific recommendations for you to consider.

Foremost, this long slate of many changes requires more time for careful and thoughtful consideration, so I request a longer, more deliberate process.

It would be very helpful for the Planning Department to furnish Planning Commissioners and the public with maps that show which zones are located in which locations, so citizens can better understand the proposals being made.

It would also be helpful for the Planning Department to hold workshops in Curry County's major cities, at times of day that are convenient to people who work--so more citizens can understand what is being proposed. Citizens who own land or homes in the zones that will be affected by these changes did not receive any notice about the proposed changes that will affect their neighborhoods.

My comments come from the perspective of a citizen of Port Orford, who has been closely engaged with planning for STRs within our city limits, but I know that citizens in other communities and surrounding areas share similar concerns.

ATTACHMENT B, Review of BOC

Section 2.400. #4 The Board of Commissioners reserves the right to pre-empt any permit review process or appeal process and hear any permit application or appeal directly.

I am concerned that this new provision will reduce opportunities for public input in the land-use process. As it is, we have very little newspaper coverage in Curry County, and so it's often difficult for people to become aware of proposed changes to land use planning or to specific

proposals and the public meetings that consider them. The standard two-step process for land use planning decisions, which proscribes planning commission consideration first with BOC follow up, provides more time for people to learn about issues and more opportunity for public input, which I think helps to assure a better outcome.

Keep in mind that Oregon's Planning Goal 1 emphasizes the need for public input in all phases of the planning process.

RECOMMENDATION: Remove provision #4 from Section 2.400

ATTACHMENT D, Permitted Use

Section 3.082. Permitted Uses Subject to Zoning Standards and Planning Clearance.

- 1. Accessory Dwelling Units (ADU) as specified in Section 4.100.**
- 2. Short-Term Rental as specified in Section 4.300.**

This provision allows both ADUs and STRs in the following RR zones: RR 2, RRS, RR 10

In particular, I am concerned that this provision will allow STRs throughout the R2 zone, which includes the entire area within the Port Orford UGB -at the very same time that another change in the ordinance allows for increasing density-with more duplexes, triplexes, and quadplexes (see Attachment G, R2 below)-all of which can become STRs. If the goal is to help with affordable housing, these multiple family dwellings should not be allowed to become STRs -otherwise they will become, in effect, boutique motel commercial businesses in otherwise rural residential neighborhoods! Mini-motel complexes are more suited to commercial zones.

I have the same concern about ADUs in the UGB. If the goal is truly to create more affordable housing, it seems that allowing all ADUs and multi-family dwellings to become STRs will, in fact, have the opposite effect of increasing property values and putting housing further out of the affordability of anyone but investors.

The City of Port Orford's City Council and Planning Commission has been working carefully and diligently to come up with a plan to regulate STRs and ADUs within our city-as a means to help maintain affordable housing and recognizing our water supply limitations and to reduce future conflicts. The County Planning Commission should specifically coordinate with the Port Orford Planning Commission before making decisions that will impact areas in the Port Orford UGB -to make sure goals and strategies are in alignment.

RECOMMENDATION: Coordinate with Port Orford Planning Commission about ordinances and policies that will impact Port Orford UGB.

ATTACHMENT G, R-2 zone changes

Section 3.110. Residential-Two Zone (R-2)

As described above, this change will allow *many* new and more urban uses in the R2 zone, which surrounds the city of Port Orford and its exceptionally large UGB. The new uses include multiple family dwellings (duplexes, triplexes, quadplexes), ADUs with single family dwellings, and all of these, plus existing homes, can become STRs per provisions in Section 3.082 and Section 4.300. These new changes have the potential to fundamentally change the character of rural residential neighborhoods, places people have chosen to live because of their "rural way of life." Ideally the county would poll citizens/ landowners in these zones to see if these changes toward higher density and urbanization are truly what citizens want to see.

In particular, I am concerned that in this zone, multiple family dwellings will become an **OUTRIGHT USE (PO)**, with no opportunity for public notice or public input.

This zone includes areas with high fire risk, areas near our lake, areas within the tsunami zone, and so there could well be important issues and concerns to be worked out ahead of time, with regards to water, septic, and access that regulations alone do not adequately address. Not all parcels will be conducive to multiple family dwellings. Oftentimes outside developers do not have sufficient specific knowledge of local conditions and circumstances that neighbors or local citizens can provide. This makes it crucially important for there to be a conditional use process, with public notice and the opportunity for public input.

RECOMMENDATION: *Make multiple-family dwellings a CONDITIONAL USE and not an OUTRIGHT USE in the R2 zone.*

Also, if the goal is to provide affordable housing, these multiple family dwellings should not be allowed to become STRs -otherwise they will become, in effect, boutique motels in otherwise residential neighborhoods. Again, because this will be allowed with a planning clearance (**P**), there would be no way for citizens to raise legitimate concerns about projects before construction begins -afterwards it will be too late. Also, in this zone with many wells, sharing groundwater sources (aquifers of unknown and limited extent), it may be especially important for there to be greater consideration of long-term water availability as part of the planning process.

RECOMMENDATION: *Do NOT allow multiple family dwellings in R2 zones to become STRs.*

I am also concerned that Planned Unit Developments (PUDs) within the R2 zone are being shifted from Conditional Uses to uses that can be approved with a Planning Clearance alone (**P**). The Planning Director has explained to me that PUDs will get full public review through the subdivision ordinance, and that one review is a more efficient public process. I am also concerned that there be coordination with Port Orford for PUDs in the Port Orford UGB.

RECOMMENDATION: *Assure that PUDs within UGBs have an adequate public process that includes notice and opportunities for public input. Coordinate with cities about PUDs within their respective UGBs.*

ATTACHMENT K, Standards for ADU in UGB

Section 4.090 Accessory dwelling unit standards inside Urban Growth Boundaries (UGB)

ADUs inside UGBs are allowed to become STRs with a planning clearance (**P**). Again, if the goal is to provide more affordable housing, ADUs should not be allowed to become STRs. If there is a desire for ADUs to become STRs in some additional zones, consideration could be given for more specific and focused areas.

RECOMMENDATION: *Do NOT allow ADUs in the R2 within the Port Orford UGB to become STRs. (Note that ADUs outside the UGB are not allowed to become STRs, the same should be true for STRs within the UGB.)*

ATTACHMENT N Vacation Rentals (aka STRs)

Section 4.300 Short-Term Rentals (STRs)

I appreciate that this proposed ordinance seeks to provide a very strong framework for regulating vacation rentals in our county-where we now have absolutely nothing. I support several key provisions of this part of the code, especially the revocable permit, requirements for a contact person, requirements for a license and fees (which will hopefully help to fund enforcement), requirements to show adequacy of septic disposal.

That said, I have some specific concerns to raise:

Water adequacy

There is no requirement to assure that there is adequate water commensurate with occupancy for an STR. The proof of water availability to build a single-family dwelling, required at time of construction, is not sufficient for running an STR. In Port Orford, we've come to learn that vacation rental users use far more water than residents-and at the time of year-summer--when we typically need most to conserve. There needs to be some way to ensure adequacy of water to meet capacity for STRs. This is elucidated carefully in requirements for parking -there needs to be similar elucidation about requirements for water supply into the future.

RECOMMENDATION: *Add requirement to show proof of sufficient water capacity. Consult with our Water Master about the best ways to assure and show proof of water adequacy for STRs.*

Septic adequacy

I very much appreciate the requirement for DEQ approval for a septic system. This is especially important in areas with septic systems close to our cherished lakes and streams. The problem

of leaking old septic systems near Garrison Lake, in lower Hunter Creek, and likely in other locations, is known. For this reason, if a septic system is deemed adequate at the outset of an STR permit issuance, will it remain adequate into the future if there is a lot of use, as is the case with high occupancy STRs (up to 15)? For STRs it would seem prudent to require proof of septic adequacy, commensurate with occupancy on a regular basis rather than just once.

RECOMMENDATION: *Add requirement to show proof of septic system adequacy, commensurate with occupancy, every 4-6 years as part of STR renewal process.*

Definition #1 -STR can include an ADU

This is not clear. Does this mean that a single-family dwelling run as an STR can operate the ADU as a second STR unit?

RECOMMENDATION: *Clarify this language.*

Transferability #6

Permits for STRS should not be transferable with a sale of property. A new owner should need to re-apply for an application and not just renew. This will afford an important opportunity for a check-in and ensure that the new owner understands the requirements.

RECOMMENDATION: *Make land use permits for STRs non-transferable.*

Revocation of Land use permit

This is extremely important and is the critical hammer of this whole ordinance, which will hopefully help to create a system of well run, well managed STRs in Curry County. However, the language about violations that lead to revocation of an STR land use permit is not clear.

The code enforcement officer can give citations for violations to noisy guests who block driveways, but does the owner of an STR have any accountability for these violations, especially repeat violations? Do the three violations (3 strikes) refer only to the violations that accrue directly to the property owner, such as building code violations or safety violations? Or do violations associated with poor visitor behavior also count toward the consequence of permit revocation? For the "hammer" to work, there needs to be clear consequences for violations.

Also does the STR owner have a remedy if there is a dispute about these violations? It's not fair if the owner is blamed for noise that he or she did not directly cause, and yet it's not fair if there is no remedy for surrounding neighbors (see below). There needs to be more specific elucidation of this remedy process or else the county could be vulnerable to litigation.

RECOMMENDATION: *Clarify the process and language about violations that lead to permit revocation and about the remedy for both afflicted neighbors and for STR owners. Make sure there is a strong consequence for violations that serves as an adequate hammer for good management rather than a slap on the hand.*

Consideration of neighborhood impacts and complaint resolution

The code states: *Short term rentals are subject to review, consideration of neighborhood impacts and complaint resolution.* But it's not clear what the process is for complaint resolution. Also, it's not clear how and when neighborhood impacts are considered.

The code indicates that complaints be made first to the contact person and then to county code enforcement officer. Because most complaints will likely be made at nights or on weekends when the code officer will likely not be working, I am concerned that this will not be a workable solution for neighbors. The code officer is given leeway about whether or not a citation will be made -but after the fact, it is highly unlikely that a citation will be given.

Because STRs are allowed with a planning clearance, there is no ostensible process for notice or consideration of neighborhood impacts. Will the code officer or planner keep track of complaints and regard them-during the renewal process-as the consideration of neighborhood impacts?

Finally, consider again, will STR owners be held accountable for repeat problems? For example, if there are noisy parties at an STR with a high occupancy, do the neighbors have any remedy? If the violations go to the guests, does the owner ever get held accountable? This might be a case where a condition of lower occupancy could help to resolve an ongoing issue, but how might that solution come about? Will these issues be moderated by the planning department or the code enforcement officer? If there is a local owner, or an owner onsite, it's likely that problems will be fewer and more easily resolved, but with the trend toward investment companies owning STRs, there could well be a problem with accountability.

RECOMMENDATION: Clarify the process and language about consideration of neighborhood impacts and complaints to ensure that neighbors have adequate remedies for poorly managed STRs that create nuisances.

STRs in general

While I very much appreciate this effort to rein in badly managed STRs, I am concerned that we are also inadvertently allowing STRs in so many zones with no limits. Do we really want STRs to be allowed to throughout our county with no limit? It seems that this question should be discussed more carefully and deliberately.

By definition, a home put into service as an STR removes it from the housing supply for people who live and work locally. As you well know, even professional people with jobs cannot find housing or are priced out of the market because of STRs. I've heard about this problem from our medical providers, schools, and other employers. The future well-being of our communities is at stake if we end up with too many STRs owned by outside investors.

The reason this is important to consider from a policy perspective is that we now have investment companies rushing to buy up real estate with the express purpose of converting homes to STRs. (Not a month goes by when we don't receive at least one letter from a real

esta_te investment or STR company!) This makes our communities and surrounding areas extremely vulnerable to a high rate of conversion from long term to short term housing and also to steeply increasing costs. As a result, median home price has been climbing out of reach of most people.

One important tool that many communities have adopted is to put a cap on STR licenses. This would allow the County to consider the right number (eg. a specific number/ or no greater than 2 % of all dwellings) for our place-and to create a cap that can be increased or lowered as a matter of policy as need be.

RECOMMENDATION: *Consider a process to cap STR licenses. Consider carefully whether STRs should be limited to some specific zones.*

Fee structure and dealing with large corporate managers of STRs

This code implies that there will be fees associated with STR licensing. The county should certainly create a fee structure for STRs, including collection of local TLT fees and taxes that can provide sufficient revenues to fully fund management and enforcement of the STR program. However, it's important to be aware that some large STR management companies that property owners hire do an inconsistent job of collecting and paying local fees and taxes. Some have even been known to bully local governments to avoid both tax collection and also in relation to code enforcement (See the attached article about how Air BnB in particular has been waging a "guerilla war" against local governments, basically resisting local requirements.)

Dealing with these large corporations can take a high level of legal expertise and so it is recommended that the County consult with legal counsel with specific expertise in STRs to ensure that fees can actually be collected and the final codes can actually be enforced as the county intends and to avoid costly future problems and litigation.

RECOMMENDATION: *Develop a fee structure to generate funds adequate to support the STR management and enforcement program. Consult with legal counsel with specific expertise in STRs to avoid costly future problems and litigation.*

Existing STRs on resource zoned lands

I am aware of several STRs on resource lands (FG) -and I wonder, will enacting this ordinance inadvertently make those existing STRs illegal? (It is generally considered that where a use is specifically listed in one zone but omitted from uses in another zone, it is presumed to be not allowed in the other zone.) Will existing STRs in these zones be grandfathered in (or will we be asked to allow STRs in those zones, too, in the future?)

RECOMMENDATION: *Clarify the process for what happens to existing STRs in zones where STRs are not allowed.*

Conclusion

How we deal with the proposed zoning changes and especially with STRs may have enormous ramifications for our citizens. I appreciate this important effort by our Planning Department to address concerns about housing and unregulated STRs, and I urge you to carefully consider the well-being of citizens in all these neighborhoods and zones where changes are proposed.

Thank you for considering my comments and recommendations, and also for your public service to Curry County.

Sincerely,

Ann Vileisis

Attachment:

"Inside Air BnB's 'Guerilla War' against local governments," March 28, 2018 (online version includes links to litigation)

<https://www.wired.com/story/inside-airbnbs-guerrilla-war-against-local-government/>

Inside Airbnb's 'Guerrilla War' Against Local Governments



wired.com › story › inside-airbnbs-guerrilla-war-against-local-governments

By Paris Martineau
March 20, 2019

"Read my lips: We want to pay taxes," Chris Lehane, Airbnb's global head of public policy, told the nation's mayors in 2016. In the years since, the home-sharing site has repeated the declaration in press releases, op-eds, emails, and on billboards. On its website, Airbnb says it is "democratizing revenue by generating tens of millions of new tax dollars for governments all over the world."

But when Palm Beach County, Florida, a popular tourist destination, passed an ordinance in October 2018 requiring Airbnb and other short-term rental companies to collect and pay the county's 6 percent occupancy tax on visits arranged through their sites, Airbnb sued.

Palm Beach County tax collector Anne Gannon wasn't surprised. "We knew we were going to get sued," she says. "That's what they do all over the country. It's their mode of operation."

Gannon has been cajoling, threatening, and ordering Airbnb to collect taxes for its hosts since 2014. Five years, three lawsuits, and millions in unpaid occupancy taxes later, she's still trying. "All we want them to do is pay their taxes," she says. "They absolutely don't want to pay their taxes the way we want to collect them. That's the bottom line."

Similar dramas are playing out around the country. From Nashville to New Orleans to Honolulu, Airbnb is battling local officials over requests to collect occupancy taxes and ensure that the properties listed on its site comply with zoning and safety rules. In the past five months alone, the company has spent more than half a million dollars to overturn regulations in San Diego and has sued Boston, Miami, and Palm Beach County over local ordinances that require Airbnb to collect taxes or remove illegal listings. Elsewhere, Airbnb has fought city officials over regulations aimed at preventing homes from being transformed into de facto hotels and requests from tax authorities for more specific data about hosts and visits.

Airbnb is engaged in "a city-by-city, block-by-block guerrilla war" against local governments, says Ulrik Binzer, CEO of Host Compliance, which helps cities draft and enforce rules for short-term rentals, sometimes putting it at odds with hosting platforms. "They need to essentially fight every one of these battles like it is the most important battle they have."

Founded in 2008 as an early champion of the sharing economy by allowing people to rent homes, apartments, and rooms to others, Airbnb has grown into a lodging colossus, offering more than 6 million places to stay in more than 191 countries. Its listings outnumber those of the top six hotel chains combined, helping the company reportedly generate more than \$1 billion in revenue in the third quarter of 2018. It is valued by investors at \$31 billion, making it the

country's second most valuable startup, after Uber. By comparison, Hilton and Marriott's current market capitalizations are \$25 billion and \$43 billion, respectively. Earlier this month, Airbnb acquired last-minute hotel booking service HotelTonight, reportedly for more than \$400 million.

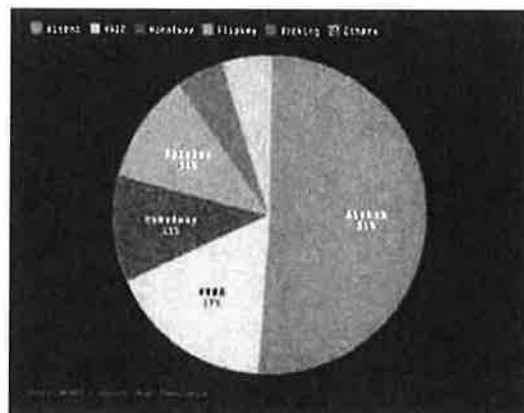
One reason Airbnb is often a cheap option for travelers: Running a hotel or bed and breakfast is expensive; snapping photos of your home, apartment, or spare room and filling out an online profile is not. Hotels must comply with a litany of health, safety, and zoning rules-as well as register with local agencies and agree to collect certain taxes-before they can book a single guest.

Airbnb maintains that, in some cases, it's not permitted to collect occupancy taxes required of hotels and other lodgings; it's also not responsible for ensuring the rooms and homes listed on its sites comply with zoning or health regulations. The company says it follows local and state laws but considers itself a "platform," serving merely to connect hosts and visitors, rather than a lodging provider-more akin to Facebook than Marriott.

The onus is on hosts, Airbnb argues, to collect and pay any relevant taxes and to comply with other regulations. In practice, though, few actually do--at least not without considerable effort by local authorities-according to interviews with more than a dozen local government officials and advisers.

Some officials agree with Airbnb. In an early 2018 survey of state tax departments by Bloomberg, officials in 25 states said it was the host's responsibility to pay occupancy tax for an Airbnb stay. Officials in 14 states said they consider it the responsibility of Airbnb or other short-term rental operators. The survey was taken before the US Supreme Court ruled in June that states may collect sales tax from online retailers even when they don't have a physical presence in that state. The survey did not include local authorities, who are often more reliant on revenue from occupancy taxes, especially in popular tourist areas.

To be sure, these aren't Airbnb's taxes, any more than Hilton "pays" taxes for its guests' hotel stays. Rather, the officials sparring with Airbnb want the company to collect and forward the taxes from guests, much as hotels do. Airbnb says it isn't required to collect the taxes in many places; early on, it largely didn't.



That changed around 2014, when Airbnb began striking deals with officials in select cities to collect and deliver taxes from its hosts. It calls these Voluntary Collection Agreements, or VCAs. In Portland, site of the first agreement, city officials legalized home-sharing and lowered the registration fee for short-term rentals around the same time Airbnb agreed to add a 11.5 percent occupancy tax on each booking. It later negotiated similar deals in San Francisco, Chicago, Philadelphia, Washington, DC, and elsewhere. The company says it has signed more than 350 such agreements nationwide and more than 500 around the world, and has collected more than \$1 billion in taxes.

"Some governments have rules requiring platforms like Airbnb to collect and remit taxes, and we make every attempt to comply with these obligations," says Christopher Nulty, Airbnb's head of public policy. "However, many governments do not have such rules and so Airbnb has proactively established more than 500 voluntary collection agreements globally to ensure our community is paying their fair share of taxes. We are eager to do everything we can to ensure we are paying our fair share and willing to work with any government that will work with us."

However, those agreements don't require hosts to meet other zoning, health, and safety rules, and they prohibit cities from attempting to collect back taxes. Some also create obstacles for local agencies to identify and police hosts who list through the site. Dan Bucks, former director of the Montana Department of Revenue and former executive director of the US Multistate Tax Commission, analyzed some of the few publicly available Airbnb agreements and found that most prevented city officials from learning the names or addresses of Airbnb hosts, making it impossible for officials to enforce local codes. Bucks says the agreements helped Airbnb grow by "providing a shield of secrecy" to hosts. His study was partially funded by the American Hotel and Lodging Association, which is often at odds with Airbnb and other short-term rental companies.

"All we want them to do is pay their taxes."

-Anne Gannon, Palm Beach County Tax Collector

Airbnb says its VCAs are designed to help government agencies collect tax revenue, not to help them enforce other laws related to short-term rentals. The company says the agreements show that it is a responsible corporate citizen.

Historically, other online rental services, such as Booking.com, HomeAway, and VRBO, have not collected these taxes in many places. In the past two years, HomeAway and VRBO have begun collecting some occupancy taxes in a handful of areas-sometimes using their own version of a VCA. Booking.com does not offer any occupancy-tax collection services, compounding the revenue drain for municipalities. Booking.com's global communications manager, Kim Soward, says the company pays all required taxes. Expedia Group-owner of HomeAway, VRBO, VacationRentals, and other sites--did not respond to multiple requests for comment.

Airbnb is the undeniable giant of the field, and is reportedly preparing for an initial public offering. About 51 percent of all short-term rental listings in the US are on Airbnb, according to

an analysis by Binzer, of Host Compliance. VRBO controls 17 percent of listings and HomeAway 11 percent, he says.

Poster Child

New Orleans was hailed as the poster child for Airbnb's work with local governments after signing a VCA in December 2016. Around the same time, the city struck a deal with Airbnb to legalize short-term rentals while requesting that the company share the names and addresses of hosts, ban certain illegal listings, and create an online system that automatically registers hosts with the city, among other things. Many viewed the deal as a sign Airbnb was learning to live with local taxes and regulations.

Today, city officials say they're disappointed. They say a surge in short-term rentals has exacerbated New Orleans' affordable housing crunch and turned entire residential blocks into de facto hotels. Jane's Place Neighborhood Sustainability Initiative, a local housing group, says there were 4,319 whole-wiit Airbnb listings in the city last year, more than double the 1,764 in 2015. The group found that 11 percent of operators, including many from outside Louisiana, control 42 percent of the city's short-term rentals.

The largest operator, a company called Souder, has 197 short-term rental permits. Nearly 80 percent of Souder's listings are booked through platforms like Airbnb, according to Souder's director of communications, Mason Harrison. "That's a different story than the mom-and-pop" narrative that Airbnb often uses to describe its hosts, says New Orleans councilmember Kristin Gisleson Palmer.

City officials say the registration system Airbnb launched in April 2017 didn't give them some data they had requested, such as the identity of the property owner or tenant, the number of bedrooms in the property, and contact information for the property manager. To collect the missing data, city staffers say they had to contact 4,786 applicants over three months. "We could not really effectively use [the data provided] for enforcement and holding folks accountable," Palmer says.

In May 2018, the city council imposed a nine-month freeze in some areas on new permits for renting a home without an owner present. The following month, Airbnb disabled the registration system-including another enforcement-enabling feature, which displayed hosts' license numbers on their Airbnb listings.

A February 15 report by the city's Department of Safety and Permits, obtained by WIRED, states that disabling the registration system caused a year of work by city officials tracking short-term rentals to "disappear overnight." The report concludes that Airbnb and other short-term rental companies had engaged in "deliberate data obfuscation, refusal to provide the required data, and a total failure of cooperation with any enforcement mechanisms pursued by the City." The report notes that Airbnb continues to collect and remit occupancy taxes for its listings in the city.

Airbnb says city officials' description of events is "inaccurate," and that it is supplying all the information that is required. The company says there were "initial bumps in the road that Airbnb

was working with the city to address, only to have lawmakers abruptly change the rules in May 2018." Those changes, the company says, made the registration system ineffective.

"Housing affordability is a challenge in New Orleans-in fact 70 percent of our host community have said they rely on the income they make to stay in their homes," Airbnb says. The company says it is committed to working with officials to resolve any concerns.

A February report by the New Orleans Department of Safety and Permits is critical of short-term rental companies. [INCLUDED IN ONLINE VERSION]

Blocking New Laws

Airbnb says it complies with laws that require it to collect and pay taxes for hosts. But it has also worked to forestall such laws--even seeking at times to strip cities of authority over short-term rentals. That's what happened in Nashville in late 2017 and early 2018.

As the city inched closer to prohibiting so-called "mini hotels"-non-owner-occupied homes used exclusively as vacation rentals-Airbnb shifted its focus from City Hall to the state Capitol three blocks away. In the latter half of 2017, the company more than doubled the number of lobbyists it employed in Tennessee, to from four to 11, and spent between \$225,000 and \$350,000 on lobbying between February 2017 and August 2018, according to reports the company filed with the state.

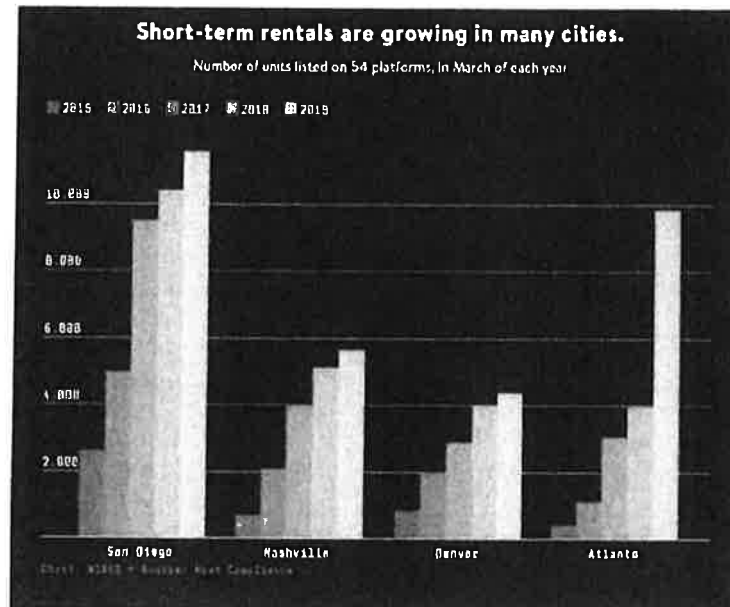
In January 2018, the Tennessee Department of Revenue signed a VCA with Airbnb. The agreement requires Airbnb to collect and pay the 7 percent state sales tax on its bookings, but does not cover the 5 percent occupancy tax in Nashville, by far its largest market in the state. A few days later, Nashville passed its ordinance prohibiting mini hotels.

Around this time, a political action committee called the Committee to Expand Middle Class By Airbnb, Inc. donated \$10,000 to groups representing Tennessee Republicans, according to campaign finance records. The donations included \$2,500 to the campaign of state representative Cameron Sexton, who had introduced a bill in 2017 specifying that short-term rentals should not be considered hotels under state law. The bill, known as the Short-Term Rental Unit Act, was drafted in consultation with Airbnb and other short-term rental companies, including HomeAway, according to the *Tennessean*. It included a provision stripping cities of the power to ban existing short-term rentals. The Tennessee General Assembly passed the bill in April 2018.

Local activists say the law cripples cities' ability to tackle an important local issue. "The Tennessee state Legislature and Tennessee's governor decided to severely weaken the basic protections for the health, safety, and well-being of Nashvillians that were created by our local government," John Stem, president of the Nashville Neighborhood Alliance, a residents' group, says via email.

Airbnb says the Tennessee law was the work of "state lawmakers who care deeply about this issue and worked to organize a broad coalition of supporters-including the business,

technology, property rights, and home sharing communities." Sexton did not return a request for comment.



Similar scenarios have unfolded elsewhere after cities have moved to restrict short-term rentals. In February 2016, the Austin City Council voted to phase out mini hotels in residential areas by 2022. In the following months, several other Texas cities passed similar restrictions. Then, early in 2017, Texas state lawmakers introduced two bills in the legislature preventing municipalities from banning short-term rentals and enforcing many regulations.

A few months later, in April 2017, Airbnb announced that it had signed a VCA with Texas officials to collect state occupancy taxes. Bennett Sandlin, executive director of the Texas Municipal League, which represents cities, called the deal "a smokescreen to cover the company's refusal to pay taxes." The 2017 bills eventually stalled in the Texas legislature, but lawmakers plan to try again this year.

Airbnb says it has "excellent working relationships" with many Texas cities and hopes to extend the VCA with the state to "new tax agreements with Texas municipalities to help them collect new revenue from home sharing."

Where's the Money?

Gannon, the Palm Beach tax collector, has been tilting at travel companies for a decade. In 2009, she sued Expedia, Orbitz, Priceline, and Travelocity for failing to collect and pay occupancy taxes on the full cost of the hotel rooms they were selling; three years later, the companies settled the suit and agreed to pay nearly \$2 million in back taxes.

She then turned to the online home-rental companies. In 2014, she sued Airbnb, HomeAway, and TripAdvisor, alleging they should be classified as "dealers" renting accommodations under Florida law, and thus required to collect occupancy taxes on behalf of their hosts. In January, after five years, a judge ruled that the services were not dealers under Florida law and did not have to collect the taxes for hosts. Gannon is appealing the ruling.

In 2015, the Florida Department of Revenue signed a VCA authorizing Airbnb to collect and remit the 6 percent sales tax for all listings in the state, plus local sales and occupancy taxes for some counties.

Soon after, Gannon asked to see the details of the agreement; state officials told her it was confidential. So she sued the Florida Department of Revenue, alleging that the agency's secrecy violated the state's public records law. A few hours later, the department faxed a copy of its Airbnb VCA to Gannon's office; she says she was instructed not to share it with anyone. It required Airbnb to provide the state only with aggregate data and allowed the company to withhold "any personally identifiable information" about hosts or guests. Most other VCAs signed with state or local governments contain identical language.

Officials say such details about hosts and their rentals are crucial to enforcing local laws and ensuring the lump sum tax payments match up with detailed data on stays. Shielding names and other details from tax officials "is a gross departure from standard practice," says Bucks, the former tax commissioner.

"We're the middle---the hosts are stuck in the middle."

--Maria Vale, Airbnb host in Palm Beach County, Florida

In New Orleans, the February report by the city's Department of Safety and Permits says Airbnb provided officials there with anonymous account numbers in place of addresses or taxpayer identifiers, making it difficult for the city to audit the information. "It is impossible to track whether we are getting all the money that we are supposed to get," says Andrew Sullivan, chief of staff for Palmer, the New Orleans councilmember.

Airbnb disagrees. "Airbnb provides the necessary information to ensure tax payments are accurate, including number of nights, charges, and the amount of tax collected," Nulty says. He says the company welcomes audits; however, many of the company's VCAs prohibit cities from auditing Airbnb more than once every two years.

Airbnb's 2016 VCA with Sonoma County, California. [INCLUDED IN ONLINE VERSION]

A Public Clash

Palm Beach County's monthly commissioners meeting is typically a dull affair. But October 16, 2018, was different.

The chambers were packed with people dressed in white, holding hot pink flyers. The reason: Gannon's proposal to amend the county's Tourist Development Ordinance to require platforms such as Airbnb to collect and remit occupancy taxes on behalf of hosts, and to share more data with the county.

A few weeks earlier, emails from Airbnb had arrived in the inboxes of its hosts in the county. "Home-sharing in Palm Beach County is under attack," many declared in bold letters, asserting that Gannon had proposed an "unfriendly" ordinance that would make hosts' lives more difficult. The emails implored hosts to attend the hearing and "use your voice to oppose this proposal and share the benefits" of home sharing.

Around 100 hosts attended the meeting. But Gannon was prepared. Having seen several of the emails, she assembled a three-page document rebutting what she calls Airbnb's "campaign of misinformation," line by line. The packet was printed on hot pink paper and given to each person who walked through the door.

During the meeting, some hosts expressed doubts about Airbnb's position. Some recalled seeing a message from Airbnb stating that it was collecting and remitting taxes on their rentals, though the company was not. "I have this underlying fear ... that I am breaking a law that I don't really know about," said Ruth Riegelhaupt-Herzig, an Airbnb host since 2015.

"We thought Airbnb took care of everything, and I was a little scared I was in trouble with the government," host Maria Vale said at the meeting. "All I'm saying is we're the middle-the hosts are stuck in the middle."

Nulty says that Airbnb makes it clear to hosts which taxes it collects via this webpage, which lists areas with VCAs and what taxes they cover. The page does not explain which taxes hosts are required to collect on their own. A different Airbnb page instructs hosts to tell guests to bring extra money when checking in so the host can collect taxes in person. Riegelhaupt-Herzig says that isn't effective, as most guests are wary of paying an additional 6 or 10 percent directly to the host, in addition to the booking charges they paid online through Airbnb.

What's more, all stays booked in the area have a charge labeled "Occupancy Taxes and Fees" added to the final bill, because of the state's VCA. "So for us to tum around and say, 'I'm sorry, you haven't paid the occupancy tax in Palm Beach County,' they think we're scamming them," which isn't good for a reviews-based business, Riegelhaupt-Herzig told WIRED. She says she has been paying the county occupancy tax since October out of her own pocket.

\$137 per night

★★★★ 11

Dates

04/17/2019 → 04/29/2019

Guests

1 guest ▼

\$144 x 12 nights ? \$1,731

5% weekly price discount ? -\$87

Cleaning fee ? \$150

Service fee ? \$231

Occupancy taxes and fees ? \$126

Total **\$2,151**

Request to Book

You won't be charged yet

Screenshot of the confirmation for a booking in Palm Beach County, Florida, showing occupancy taxes and fees.

After more than an hour of testimony, commissioner Dave Kerner said Airbnb had allowed its hosts to “be misled” about paying taxes. “That is concerning,” Palm Beach County mayor Melissa McKinlay said. “And so I will support this ordinance today.” It was approved unanimously seconds later.

In San Diego last year, Airbnb took a different tack to counter a new law. City officials had signed a VCA with Airbnb in 2015. But they grew unhappy with the setup’s lack of transparency and the inability to audit, says San Diego councilmember Barbara Bry. What’s more, Airbnb use had skyrocketed in San Diego since then. In March 2015, there were more than 2,600 rental units listed on short-term rental sites in San Diego, according to Host Compliance; by 2019, that total had soared to more than 11,500. Host Compliance says two-thirds of short-term rentals in San Diego are posted on Airbnb. Bry says that the rise of full-time investor-owned short-term rentals in residential areas has hurt enrollment in public schools, transformed neighborhoods into districts of mini hotels, and contributed to a citywide housing shortage.

Last August, the San Diego City Council passed an ordinance that banned the short-term rental of homes that aren’t the owner’s primary residence and required platforms to collect taxes on

behalf of their hosts, effectively overriding their VCA. Bry says she assumed Airbnb would sue, but it didn't. Within days, Airbnb threw its weight behind a movement to overturn the new rules through a citywide referendum.

Public records show Airbnb donated \$1.1 million to a California political action committee called "Committee To Expand the Middle Class, Supported by Airbnb, Inc." That group reported spending \$300,000 to hire signature gatherers to circulate petitions opposing the San Diego ordinance. Airbnb also directly donated \$276,358 to a second group around the same time, records show.

Four weeks after the city council approved the new rules, representatives of Airbnb, HomeAway, and Stand for Jobs delivered more than 62,000 signatures calling for a referendum to rescind the ordinance, nearly twice the number needed to force a citywide vote.

City councilmembers said they didn't want to risk losing the vote, so they rescinded the ordinance, with plans to try again. "I'm disappointed that a corporation reportedly valued at \$31 billion descended upon our city with its unlimited millions of dollars and used deceptive tactics to force us to where we are today," Bry said during a council meeting on October 22, just before the council voted to rescind its ordinance.

Airbnb says the petitions garnered so many signatures because the ordinance "would have devastated the local economy, impacted property rights in every San Diego neighborhood, and cost the city millions annually in tax revenue."

The San Diego City Council plans to introduce a new short-term rental ordinance sometime this fall, Bry told *WIRED*. If Airbnb challenges a new ordinance, Bry says city officials will be more prepared, and will respond with their own public-education campaign and take the contested ordinance to a public vote.

Airbnb's battles with local officials have intensified since last year's Supreme Court ruling in a case involving online retailers. Some tax experts say the decision undercuts Airbnb's position that it doesn't have to collect taxes for its hosts. "There is no doubt whatsoever now that on a constitutional basis Airbnb can be required to collect [taxes]," says Bucks. "There is no justification for these special deals anymore." Airbnb says it's monitoring state-by-state developments related to the case.

Airbnb's recent lawsuits against Palm Beach, Boston, and Miami focus on another aspect of those cities' ordinances: a requirement that platforms remove listings that don't comply with the law. Airbnb says the requirements are unconstitutional and technologically unfeasible. But the company does remove illegal listings in its hometown of San Francisco, and has conducted occasional or ongoing purges in New Orleans, Santa Monica, Japan, Berlin, Vancouver, and, briefly, New York City. In New York, Airbnb sued to block a city ordinance requiring it to turn over more detailed information on listings; a judge in January blocked the law from taking effect.

In Boston, city councilor Michelle Wu helped lead the push last year for an ordinance aimed at discouraging hosts from turning apartments and homes into mini hotels. The ordinance requires

hosts to register with the city and restricts short-term rentals to owner-occupied units. "Airbnb describes itself as a quaint little home-sharing service ... but the reality is that it has grown to be a corporate entity that makes millions of dollars from businesses taking advantage of loopholes and running de facto hotels," she says.

On April 17, Airbnb sent emails to thousands of Boston Airbnb users criticizing Wu. The email claimed that she was aligned with "big hotel interests" and falsely said she intended to place a "restrictive 30-day cap on unhosted stays." Wu says Airbnb never sought to discuss the ordinance or check the claims in the email. Airbnb says Wu's proposal was "anti-tenant, anti-middle class," and "overly restrictive."

A few weeks after Airbnb sued Boston, Massachusetts governor Charlie Baker signed legislation to tax and regulate short-term rentals at both the state and local levels. The law, which goes into effect in July, requires hosts to register with the state. Information about hosts-minus specific house numbers-will be displayed on a publicly available registry, and hosts who run multiple rentals must pay additional taxes. Airbnb says the law will "jeopardize the privacy of our hosts while placing significant and unnecessary burdens" on them. The company says it is working with state officials to address those concerns.

Airbnb's municipal confrontations have been a boon for Binzer, whose company Host Compliance works with 150 cities to identify short-term rental owners skirting taxes and regulations and to devise an enforcement strategy without striking deals with Airbnb. He used to be an occasional Airbnb host himself-and paid occupancy taxes-when he lived in Tiburon, California; then he was tapped to help local officials quantify Airbnb's business in town. He says cities are often overmatched by Airbnb, in part because the company periodically tweaks the site in ways that impede tax collectors and enforcement agencies.

For example, Binzer says that until December 2016, Airbnb included the street name of a property in the metadata attached to the listing. Airbnb's terms of service prohibit third parties from scraping its site for this kind of information, but critics say it's crucial for enforcement. Officials in some cities used this data to identify hidden hosts. Then Airbnb removed the street name, and altered the geocoding for listings, changing the latitude and longitude so properties appear in slightly different locations.

"It's a cat and mouse game," Binzer says. "They literally put the pin in the wrong place of where the actual property is."

Airbnb says it shields the street name and other personal information related to hosts "to ensure an added level of privacy when third-party scrape sites aim to compile listing information."

From Negotiation to Litigation

Around the time Palm Beach County Commissioners passed the short-term rental tax ordinance in October, Gannon says she spoke with a representative from Airbnb. She recalls the company floating a gradual implementation strategy: Airbnb would comply with some of the new rules

immediately, but others-like a system requiring hosts to be properly registered with tax authorities-would be phased in over time.

Gannon thought that seemed reasonable, as long as Airbnb collected and paid the taxes. But she didn't have time to see the discussion through. A month and a half after the ordinance was passed, Airbnb sued the county. The suit argues Airbnb can't be required to police illegal listings and share host information because "Airbnb is a realization of Congress's [free speech] goals" and a "classic intermediary." It doesn't question whether the company can be compelled to collect occupancy taxes; Airbnb is not collecting them in the county, though the ordinance went into effect on January 20. HomeAway also sued the county; the suits have since been combined.

"They were just stringing us along until they had their lawsuit ready to file," Gannon says. "It's typical of Airbnb ... They're getting ready to issue an IPO and go public."

Airbnb's lawsuit against Palm Beach County, Florida.. [INCLUDED IN ONLINE VERSION}

Updated 3-21-2019, 5:30 pm EDT: This story was updated to clarify the relationship between the American Hotel and Lodging Association and Airbnb, to clarify a characterization of Airbnb's corporate citizenship, and to add a comment clarifying Airbnb's position about its cooperation with the city of New Orleans. The updated story also makes clear that HomeAway was among the companies that helped draft a Tennessee law and that HomeAway has sued Palm Beach County.

Updated 4-5-2019, 4:50 pm EDT: This story was updated to correct the amount Airbnb spent to oppose a San Diego ordinance.

Updated 4-12-2019, 6:00 pm EDT: This story was updated to incorporate additional comment from Airbnb regarding the company's stance on collecting taxes.



July 21, 2022

Curry County Planning Commission
c/o Becky Crockett
Gold Beach, OR

Re: Proposed Curry County Zone Code Changes

Via Email

Dear Curry County Planning Commission Members,

Oregon Coast Alliance is an Oregon nonprofit corporation whose mission is protection of coastal natural resources and working with coastal residents to enhance community livability.

We write today with concern for several of the proposed changes to the Curry County land use ordinances, as follows:

- I. Sec. 2.400 #4: Giving the Board of Commissioners power to hear a completed decision issued by the planning director or planning commission is within normal range of the Board's powers, and should be explicitly granted as is done in this section. However, #4 raise serious questions for ORCA. This allows BOC to reserve the right to *pre-empt* any permit or appeal process and hear the matter directly. This is dangerous and inappropriate. It gives BOC the power to short-circuit, limit and manipulate a legitimate land use application decision making its way through the regular public process. It gives BOC unlimited opportunity to eviscerate public input and decision-making, and impose politically-preferred solutions to controversial issues. This section should be removed from the ordinance changes.
2. Sec. 3.082: This change would allow both Short Term Rentals (STRs) and Accessory Dwelling Units (ADUs) in Rural Residential zones outside UGBs and rural communities. This provision is a carte blanche to throw open rural Curry County to STRs, which is already host to hundreds, per the staff report. ORCA recommends no STRs be allowed in any Rural Residential zone.

3. Sec. 3.090, 3.100, 3.110, 3.120: this amendment allows STRs in the Rural Community Residential zone, and the R-1, R-2 and R-3 (these three apply only inside a UGB) zones, subject only to planning clearance and zoning regulations - without any caps, limitations or restrictions whatsoever. This will, once again, cause a proliferation of STRs in these zones, including the turnover of existing or to be built ADUs outside UGBs into short-term rentals. This is, as has been proven multiple times nationwide, highly disruptive to neighborhoods and local economies. As they are commercial enterprises, STRs should **not** be allowed in residential zones, where people live in order to maintain a rural way of life. ORCA recommends STRs not be allowed in any of these zones.
 - a. STRs in the RCR zone of the county's four unincorporated communities will greatly impact the neighborhood and community fabric of those communities, especially as the RCR zone applies to higher densities in those communities.
 - b. Allowing STRs in the R-1, 2, and 3 zones, inside the UGBs of Curry County's towns, will draw a constantly increasing vacation economy into neighborhoods that will eventually be urbanized, and where housing is desperately needed for the local workforce.
4. Sec. 3.130 and 3.150: these changes would allow STRs in the Rural Commercial Zone and the Light Commercial Zone inside UGBs. These are the zones where STRs should be placed, as they are in fact commercial enterprises. However, STRs in these commercial zones need to be capped or limited, whether by number of nights per stay number of overall STRs allowed in the zone, or other means, in order to protect both local commercial enterprises and other commercial lodging types such as hotels motels, B&Bs and inns. ORCA recommends further language that provides caps and restrictions no numbers of STRs allowed in these zones.
5. Sec. 4.090: This section allows ADUs inside Urban Growth Boundaries. However, unlike the ADUs permitted *outside* UGBs (see Sec. 4.100), this standard contains no limitation on an ADU becoming a short-term rental. Thus, there is a very real danger that ADUs inside urban growth boundaries will be flipped to short-term rental use. This not only disrupts neighborhoods, but severely reduces the likelihood that allowed ADUs will become part of the solution to the affordable/workforce housing crisis. ORCA recommends a provision barring STR use of the ADUs allowed inside urban growth boundaries.
6. Sec. 4.200: this is a proposal to add an entirely new use to the Curry County code, namely a "Neighborhood Activity Center with High Intensity Use Standards," specifically in the R-2 zone, which applies inside an Urban Growth Boundary. This proposal appears to be a tailor-made zone for some kind of activity, which is not specified. ORCA trusts that during the hearings process, the purpose of this zone becomes more apparent, so that whatever standards are necessary can be incorporated into the draft language.

- a. The proposal as it stands requires an analysis of water availability, but has no similar provision for an analysis of sewer capacity. Merely requiring such a project to be part of a community sewer system is not enough - it says nothing about the system's capacity, or the need to downsize a project to meet local sewer capacity.
 - b. There are no provisions in this draft language for building, maintaining and properly using an appropriately sized stormwater system, which is an essential in an area with so high an average annual rainfall. This is all the more true as the proposal limits projects to the west side of Highway 101, where soils closer to the shore are often porous and sandy.
7. Sec. 4.300 is the new set of standards Curry County proposes to adopt to regular STRs. The standards are admirably clear and objective, and are good as far as they go. However, they are expressly tailored to maximize STR use in any zone where they will be allowed, permitting up to fifteen people per STR. ORCA recommends the following:
- a. Sec. 4.330 (4): STRs should be limited to many fewer than fifteen people, regardless of the size of the home. This will proportionately limit all other problems for which STRs are infamous. A much more manageable maximum would be 6-8 people.
 - b. Sec. 4.330 (12) This section on sewage management is incomplete. Providing an "existing system evaluation report" for an onsite system is insufficient, as DEQ issues these at the time of construction for the likely number of inhabitants at that time - e.g., usually a family of a small number of permanent residents. Switchover to an STR does not automatically trigger a new DEQ inspection. Curry County should require *all* STRs to provide a new DEQ evaluation based on current occupancy projections as an STR.
 - c. Sec. 4.340(6): The standard here allows transferability of an STR permit upon sale of the property. ORCA strongly recommends that any STR permit be made non-transferable. This is the only way the county can enforce its STR standards, by having each new STR owner complete a new application for a permit, which should, in addition, trigger a new DEQ capacity inspection and assurance of adequate water.
 - d. Caps and limitations: ORCA strongly recommends that Section 4.300 contain language limiting and capping STRs, because they will, as has been proven many times over, become a nuisance in rural neighborhoods and commercial centers. First, they should not be allowed in any rural residential zone, whether inside or outside a UGB. Second, ADUs should be prohibited from becoming short-term rentals. Third, in the commercial zones where allowed, STRs should be capped to a small percentage of the buildings and commercial uses in the zone. There are many ways to restrict STRs, and the literature on the topic is vast.

- e. STRs are not allowed in resource zones. Those that currently exist need to be phased out, but the proposed code changes make no recommendations for how to do this, nor lists the County resource zones where STRs may exist and are not permitted ORCA recommends adding language to clarify how and under what timeline and procedure STRs in resource zones will be removed.

Thank you for the opportunity to comment on these matters. Please add this letter to the record.

Sincerely,

/s/ Cameron La 'Fofette

Executive Director

July 20, 2022

To: Curry County Planning Commission
Submitted via County Planning Director Crockett
From: Ann Vileisis, [REDACTED]

Dear Curry County Planning Commissioners,

I sent an earlier letter but want to share with you this additional illustration: a map that shows the R2 zone in Port Orford's UGB.

Because Port Orford's UGB is so large and is mostly all zoned R2, the changes proposed for this zone will have much larger impact in our community than in other communities. That's why it's especially important to provide enough time for citizens to understand the proposed changes and to coordinate with the City of Port Orford's Planning Commission.

Thank you for considering my comments.

Sincerely,

Ann Vileisis



f
 J
 J
 a
 1
 □
 j
 i
 i
 1
 i

fV
 V
 b

2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12

NOT EDGED

