



April 8, 2021

The Honorable Lesley E. Cohen
Chair, Assembly Committee on Revenue
Legislative Building, Room 4108
Carson City, Nevada 89701

SUBJECT: AB363 (Nguyen)

Dear Chair Cohen,

Thank you for the opportunity to comment on AB363. As proposed, the intent of AB363 is to legalize short-term rentals across the state and create a simple way for our community to pay their fair share of transient lodging tax (TLT) which generates millions of dollars in revenue for Nevada each year. At Airbnb, we are committed to partnering with governments and to help our community pay its fair share of hotel and tourism taxes. As of September 2020, we have delivered more than [\\$2.6 billion in tourism-related taxes to local governments](#) on behalf of our global host community over the past seven years. Now, we are collecting and remitting taxes in more than [29,000 jurisdictions around the world](#). In Washoe County alone, Airbnb has collected and remitted \$4.9 million in transient lodging taxes since March 2016 through a local tax collection agreement.

However, as currently drafted, the broad and restrictive provisions in the bill threaten these economic benefits for hosts who rely on the income to make ends meet, for communities working to rebuild from the impacts of the COVID-19 pandemic, and local governments trying to regulate the industry but being met with over cumbersome processes.

We urge the Committee to consider substantive amendments to AB363 to ensure short-term rentals remain a vital source of economic opportunity for Nevada residents and communities alike. Without changes, the 1,000 foot distance requirement between short-term rentals, 3-night minimum for all stays, and County Board of Commissioners discretionary review for each short-term rental application will serve as a de facto ban on short-term rentals statewide and override recently adopted laws in Washoe County and Henderson, among other jurisdictions. In addition, as seen in jurisdictions across the nation with far less restrictive STR regulations, the overreaching nature and extent of Nevada's proposed STR regulations will invite a number of legal challenges across localities. And under the proposed rules, the state of Nevada and local communities would gain little, if any, significant tax revenue given AB363 would essentially ban any meaningful short-term rental activity.

We would like to thank the sponsor for maintaining open communication on the bill, and look forward to continuing the discussion on AB363. We respectfully ask for amendments to AB363 that will provide for a more balanced and fair proposal to ensure benefits for all stakeholders.

Airbnb Comments:

Tax Collection and Platform Parity: The State of Nevada would benefit from a level playing field where all platforms with a financial link to the transaction, whether via collecting rent, charging fees, subscriptions or commissions, are subject to the same tax requirements. Imposing uniform tax obligations across the short-term rental industry would discourage platform shopping (e.g., hosts list on other platforms that do not collect tax), and ensure that local tax authorities receive all of the tax revenue that is owed to them. We estimate that Airbnb alone could have collected and remitted \$14.5M in transient lodging taxes on behalf of hosts in 2019. We urge the Committee to ensure tax collection and hosting platform parity is reflected in the bill.

One Thousand Foot Distance Requirement: The 1,000 ft distance requirement is a de facto ban on short-term rentals. This limits the ability of a host who wants to legally use their home as a short-term rental and creates an unequitable system of preference based on the timing that an application is submitted. Setting a 1,000 ft distance requirement at the state level is a one-size fits-all approach. Every jurisdiction has different needs and requirements for their short-term rental policy. Washoe County recently passed an ordinance with no distance requirements, Douglas County is considering density caps in lieu of distance requirements, and the City of Las Vegas implemented a smaller distance restriction. One thousand feet, as prescribed in the bill, would have different impacts depending on the location both in the state and within a local jurisdiction. In most places, it would make it impossible for short-term rentals to be permitted. Additionally, distance requirements invite fraud, whereby someone applies for and is granted a permit simply to let the permit lay fallow in order to preclude rentals in the neighborhood. We recommend removing the distance requirement completely — cities and counties should be allowed to contemplate their own manner in managing the number of permits they wish to issue.

Board Approval For STR Permits: Board review for all short-term rental applications will be an enormous burden for local government and hosts alike, straining already limited staff resources for what should be ministerial permits granted through typical procedures by municipal staff. Nevada would be the first and only state in the nation to take this approach costing significant time and money. In addition, we are concerned that discretionary Board approval will lead to arbitrary decisions that may raise issues of bias and discrimination. AB363 already requires a specific STR permit as well as a state-issued business license. Across the United States, awarding permits on a ministerial basis if the property is deemed eligible to list a short-term rental is not only common practice, but an effective and efficient solution at securing broad based compliance. The administrative burden of this approach could also lead to meaningful delays in the issuance of permits, leading to complaints to local officials.

If the intent of AB363 is to grant members of the public notification for short-term rental activity in the neighborhood, we would recommend consideration of a neighbor notification process instead, where adjacent neighbors are notified by municipal staff when a host applies for an STR permit. This balance allows for stronger compliance and transparency while protecting valuable city and county resources and neighborhood needs.

3-Night Minimum: Night minimums are an anti-access measure that disproportionately impacts low-income families and underrepresented communities. Although 3-nights is a common length of stay, some more affluent communities have unfortunately used night minimums as a tool to keep lower income guests from visiting an area. The 3-night minimum is also unnecessarily restrictive for business travelers, individuals looking to take a weekend trip and families visiting their loved ones near hospitals. Additionally, placing a night minimum on short-term rentals but not having the same rules apply to hotel stays presents a conflict of parity across the hospitality sector.

Instead of night minimums, we believe hosts can support local government officials to ensure the health and tranquility of neighborhoods by implementing 24/7 local contact provisions and utilizing Airbnb Trust and Safety tools. We are supportive of including a local contact provision in AB363 — we believe this is a fair, balanced, and a proactive framework to ensure hosts are responsive to needs and concerns of local officials, should an issue arise. Additionally through the [Airbnb Neighbor Tool](#), members of the public can access a 24/7 hotline that was created to address issues that may come up, including noise or parties, neighborhood concerns (parking, trash), and personal safety. Anyone can submit their concerns through the tool or hotline to our rapid-response agents. Airbnb uses this tool to coordinate with local government officials and law enforcement on issues that arise.

Legal Considerations: This bill imposes platform data disclosure requirements in conflict with federal law.

First, the cumulative nature of the 1,000 foot density restriction, discretionary public Board approval of STR permits, and 3-night minimum stays is ripe for a number of legal challenges, including regulatory takings, equal protection, and contract clause claims. (See, e.g., *Calvey v. Town Bd. of N. Elba*, 2021 U.S. Dist. LEXIS 56686 (N.D.N.Y. Mar. 25, 2021); *Vill. of Tiki Island v. Ronquille*, 463 S.W.3d 562 (Tex. App. 2015)). These challenges have been brought by STR operators in other jurisdictions with far less restrictive STR regulations, with courts allowing legal challenges to move forward on the basis that burdensome STR regulations may effectuate an unlawful “taking” of STR properties and improperly interfere with upcoming STR bookings.

In particular, STR requirements - such as the 1,000 foot distance restriction and discretionary public County approval of STR permits - are particularly susceptible to an equal protection claim. The former would effectively treat similarly situated STRs, e.g., STRs in urban v. rural zones, differently depending on the density of a given land use zone, while the latter would give unbridled discretion for county officials to determine whether to approve a STR permit absent any procedural or uniform standards. These concerns were highlighted by Washoe County’s

legal staff, which resulted in the County recently passing a permissive STR scheme that avoids minimum stays, density restrictions, and cumbersome permitting procedures.

Second, the bill's proposed platform data-sharing requirements squarely implicate confidential, business sensitive information protected by a platform's 4th Amendment right. As set forth in several federal court cases, a platform cannot be compelled to disclose listing specific and related business records (e.g., individual listing booking revenue, average number of bookings per listing) without any legal process. (See, e.g., *Airbnb, Inc. v. City of Boston*, Case No. 18-cv-12358-LTS (D. Mass. May 3, 2019); *HomeAway.com, Inc. v. City of New York*, 373 F. Supp. 3d 467 (S.D.N.Y. 2019). And to the extent that the proposed requirements require disclosure of host personally identifiable information, the federal Stored Communications Act mandates specified forms of legal process - like a subpoena or court order - that a government must follow before obtaining this type of information from internet providers. (18 U.S.C. §§ 2702, 2703).

Outside of these legal issues, the bill's platform data-sharing requirements are impracticable and unduly burdensome. Requiring platforms to share: (1) the number of bookings, listings, owners and lessees for each county, (2) the average number of bookings per listing for the county, and (3) current year-to-date revenue collected from all rentals **disaggregated by owner or lessee**, among other things, amounts to effectively "a wholesale replica of . . . a booking services' database" in Nevada that was rejected in the *HomeAway* matter, with the court making clear that existing Fourth Amendment law "does not afford a charter for such a wholesale regulatory appropriation for a company's user database." (*HomeAway.com, Inc.*, 373 F.Supp.3d at 507.)

Subjecting counties to a host of lawsuits in connection with a state mandated law does not serve anyone's interest.

Misdemeanor Violation: The bill currently levies a misdemeanor charge for a violation of the short-term rental laws. Common practice in many jurisdictions is to make penalties commensurate with typical nuisance and noise violations which would be civil penalties. We ask the Committee to reconsider this provision and seek a more reasonable approach.

Occupancy Restrictions: The bill states that occupancy limits are set at two people, including children, per room. As proposed, this would include one family, which includes two parents with one or two children to book separate rooms. This is below industry standard across most cities and states. We would recommend 2 people per bedroom, plus 2 guests not including children.

We are coming off the heels of a once in a century pandemic that has devastated the travel and tourism industries. Now is the time to help draw visitors to Nevada in a safe and healthy manner. Short-term rentals are a valuable source of local tax revenue, allows struggling residents to leverage their homes, and helps drive visitor demand — which benefits local businesses, including resorts and casinos, and the broader community. Onerous regulations stifle tourist demand, eliminate critical opportunities for residents to help make ends meet,

minimize tax revenue, and depress the ability for tourist serving businesses to recover from the pandemic. A divide and conquer approach that pits different tourist and travel industry groups against each other is self-defeating. We must all come together as an industry and recognize that this is a critical time to boost economic recovery following one of the worst economic crises in the past half century. We look forward to working with Assemblywoman Nguyen and other state and local leaders to ensure Airbnb and our community are partners to Nevada's growth and economic recovery. Thank you for the consideration of our comments, we look forward to continued engagement on AB363.

Sincerely,

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