International Municipal Lawyers Association 2016 Mid Year Seminar

AirBnb/Home Sharing Panel

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2016 Virginia General Assembly Session

- 4 Bills submitted regarding Limited Residential Lodging
  - House and Senate versions of a bill proposed by AirBnb (HB812/SB416) and the Hospitality Industry (HB1268/SB751)
- Local Government was consulted less than 5 days prior to the General Assembly Session
- Local Government invited to less than 3 stakeholder meetings
  - AirBnb
  - Governor's Staff

SB416 – Senator Vogel's bill

- Limited residential lodging definition includes:
  - Accessory or secondary use of residential dwelling unit
  - Occupancy for less than 30 days
  - Primary use must remain residential
  - Tax will be collected and remitted
    - By Operator or
    - Hosting platform having entered into an agreement with the VA Dept. of Taxation ("Tax")
- Primary resident defined includes owner or a tenant who has lived in the dwelling unit for 60 days (could even be a sublessee!)

Section of the bill was entitled “Preemption of certain state and local law”

- Preempts ALL local zoning authority
- Short Term Residential Lodging cannot be deemed a hotel, motel, bed and breakfast inn, lodging hour or *any* other commercial enterprise
- If operated for less than 90 days – cannot constitute a business for purposes of local business taxes and/or licenses

What the locals can do

- Regulate noise and signage
- Only allow guests at reasonable hours
- Notify lodgers of trash collection days
- Require contact information of the operator
- Require smoke detectors
- Create a local ordinance requiring operators to maintain $500,000 of liability insurance
- BUT LOCALS WONT BE TOLD WHO & WHERE THESE OPERATORS ARE!

Anonymity Issues

- Options available for paying applicable taxes include:
  - An individual operator may collect and remit the appropriate tax
  - Register with a hosting platform who “may” enter into an agreement with tax to collect and remit the appropriate taxes
  - Tax will not receive any identifying information about the operators
  - Tax will not have the authority to conduct audits on individual operators
  - The amounts remitted to tax will be in the aggregate by jurisdiction
  - Tax will take a portion for its expenses
  - Localities will only get an aggregate check with no authority to audit or know where in their locality these operators are
  - No information is subject to the Freedom of Information Act

Anonymity

- “Applicable taxes payable by a registered hosting platform in accordance with this section shall be subject to audit only by the Department or its authorized agent. Any such audit shall be conducted on the basis of returns and supporting documents filed by the hosting platform with the Department and shall not be conducted directly or indirectly on any individual operator or limited lodger to whom rooms, lodging, dwellings, or accommodations are furnished in exchange for a charge for occupancy. Audits of a registered hosting platform for applicable taxes shall be conducted on an anonymous numbered account basis and shall not require the production of any personally identifiable information relating to any booking transaction or individual operator or limited lodger to whom rooms, lodging, dwellings, or accommodations are furnished in exchange for a charge for occupancy.
- No commissioner of the revenue, director of finance, or other similar collector of county, city, or town taxes may conduct an audit of applicable taxes payable by a registered hosting platform……..”

Passed Version of the Bill Included these changes

- Def. Limited Residential Lodging was amended to add that there cannot be simultaneous occupancy by more than one party under separate contracts at one time
- The Preemption language was amended to just state that it will follow typical health, safety and welfare ordinances and that a locality cannot create ordinances specifically for limited residential lodging unless it applied to all residential uses
- Tax Collection is no longer exempt from FOIA, but subject to the tax disclosure provisions already existing in state code

Cont.

- For Registration purposes:
  - Will provide Tax a monthly aggregate schedule listing amounts due to each locality
  - Require operators to acknowledge compliance with local laws
  - Still no ability for individual audits

Bill also requires a study to be completed by Dec. and Reenactment during the 2017 Legislative Session

- Group to include
  - Hotel Industry
  - Hosting Platform Providers
  - Local and State Government/Tax Officials
  - Property Owners
- Study Goal – “explore issues related to expansion of the framework set forth in this act related to the registration, land use, tax, and other issues of public interest associated with the short-term rental of dwelling and other units...”
- *Virginia undertook a study of Uber and Lyft prior to enacting legislation, so there is a precedent for a study

City of Charlottesville – local regulation

- Requires a Provisional Use Permit:
  - Proof of home ownership and permanent residence
  - Contact information of the responsible party
  - Business license and payment of taxes
  - Certificate of Occupancy
  - Right of Entry for the City Inspector

City of Roanoke – local regulation

- Special Exception process requiring:
  - No changes to façade
  - 4 guests maximum
  - 14 days at a time maximum
  - Owner must reside in the dwelling

Virginia Locality Concerns

- Preemption of Local Land *Use*
- Lack of Information to the locality
  - Including not knowing where these homes are
- Inability to Audit and Collect Taxes
- Overall Accountability to ensure the health, safety and welfare of localities

Current Actions in preparation for the Study

- The Virginia Municipal League ("VML") and the Virginia Association of Counties ("VACO") are conducting a survey to determine how localities currently handle these types of operations
- VML in conjunction with the hospitality industry will work to maintain a level playing field and operations that are safe for the users
- Work with Commissioners of the Revenue to discuss taxation and review local ordinances
- Continue to work on a model that supports the Short Term Residential Lodging Industry and balances the abilities of localities to regulate appropriately

Questions?

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