

Testimony – Bill 22-23, ZTA 23-04 by Jacqueline Coolidge

We are pleased to see the proposals to tighten restrictions on short term rentals such as AirBnB in Montgomery County. While we understand the benefits of new and flexible opportunities for short term accommodation, we worry about the impact on the market for affordable housing in the county, which has been a growing problem over the past several years.

Montgomery County should be on guard against market forces that incentivize investment in short term rentals that may reduce the stock of housing (“affordable” or otherwise, as overall supply has a major impact on housing costs throughout the market). County Council should not be encouraging investments that might “increase property values” (and hence revenues from property tax) but impinge on the availability of affordable housing. This has been a serious problem in other jurisdictions (e.g., San Francisco most famously¹) and should be considered a risk for Montgomery County as well.

We agree that there should be more **meaningful opportunity for neighbors to object to proposed commercialization of properties in areas zoned for residential use**. While the majority of short term rentals have not given rise to problems for neighbors, there are also instances of loud parties and traffic associated with some short term rental properties. Many people in the county work from home and need quiet in order to concentrate. Others work night shifts and need to sleep during the day. Yet others have young children who need naps, or students who need a full night sleep and may need to get up early to attend sport or band or theater practice.

The County lacks an effective mechanism for enforcement even of the regulations already on the books. In the past few years, “hosts” have often failed even to provide notice to their neighbors as required. We know that County staff are not available to deal with problems or complaints, even urgent ones, if they occur in the evening, on weekends, or during holidays. In those situations, neighbors can only call the police, who are under-resourced and usually forced to prioritize “bigger problems,” such that infractions of short term rental regulations are allowed to fester.

We think days allowed for short term rental should be even more restricted. It is efficient and beneficial for residents to be able to rent out their homes while they are away for vacation, e.g., for four weeks or thirty days. Allowing short term rentals for longer periods of time starts to incentivize investment in properties aimed at the often lucrative short term market, again shifting scarce real estate assets in the county away from needed housing.

We agree that **finer need to be increased to levels that will meaningfully deter infractions**. Current fines are too easily absorbed as “the cost of doing business.” Fines have been stuck at the same level for many years, regardless of general inflation and even higher inflation in property values and earnings from short term rentals. The proposal to increase fines to \$1000/day are needed to discourage abuse of the short term rental market, and should be indexed to inflation to ensure they can reliably deter such abuse going forward.

¹ [https://www.businessinsider.com/san-francisco-report-blames-airbnb-for-housing-shortage-airbnb-strikes-back-2015-](https://www.businessinsider.com/san-francisco-report-blames-airbnb-for-housing-shortage-airbnb-strikes-back-2015-5#:~:text=The%20report%20calculated%20that%20approximately,a%20shortage%20of%20affordable%20housing.)

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We recommend the County also to **update its license fees**. Public policy best practice calls for licensing fees to be set such that the revenue generated covers, but does not substantially exceed, the cost of administration, monitoring, and supervision of the licensed activity.² County licensing fees, like the fines mentioned above, have failed to keep up with normal inflation and need to be adjusted upward.

We're also concerned about the **proposed shift in the relevant agency responsible for short term rentals**. On the one hand, it may sound logical to have "Housing" (Department of Housing and Community Affairs, DHCA) in charge of short term rentals as well as long term rentals. On the other hand, short term rentals are clearly a substitute for hotel accommodation, with very much the same set of risks for renters, which should take priority. Health and Human Services (DHHS) have staff with the requisite experience and skills.

In particular, we are concerned about the **overlaps between short term rentals (such as AirBnB) and the newer issue of hourly rentals (such as Swimply)**. Private pools that are commercialized for rental (through any platform) need to conform to most, if not all the health and safety regulations for public pools. Private pools could escape all but minimal regulation in the past because the risk was born by the homeowner (and their occasional guests). Encouraging a commercial market for rental of private pools opens them up for much more intensive use and concurrent risks, starting with the need for monitoring water quality to ensure against pathogens (e.g., e coli) while maintaining balance (e.g., to avoid chemical burns). One inspection every two years is woefully inadequate.

Private pools have never been required to have a certified lifeguard, although risks of drowning or diving accidents are notoriously high.

These considerations need to be handled by the staff who have experience in monitoring and inspection of public pools.

Short term rental property (whether overnight or hourly) can include a pool, gym, tennis court, dog run, or other amenities. These kinds of amenities ought to be regulated by the same standards that apply to them as under public commercial use. Those standards are well defined for public pools, public and commercial gyms, public and commercial sports facilities, etc.

There are two compelling reasons to treat overnight or hourly rentals together: A) The state of Wisconsin attempted legislation that treated hourly rental platforms like Swimply differently from those for overnight dwelling rentals. The threat of a lawsuit was enough to skuttle the legislation. B) The health, safety, and equal-access issues are the same for amenities such as pools that are included with the overnight dwelling rental as they are for hourly rental. This also reinforces the logic that all commercial rental of health-related amenities should reside under the responsibility of the Department of Health and Human Services.

Platform rentals have been effectively exempted from anti-discrimination rules that normally apply to "public accommodations," including both the Civil Rights Act and the Americans with Disabilities Act. The RESJ Impact Statement cited several examples of research showing that many of the platforms

² World Bank (2011), "Avoiding the Fiscal Pitfalls of Subnational Regulation: How to Optimize Local Regulatory Fees to Encourage Growth" <https://openknowledge.worldbank.org/handle/10986/27217>

(including AirBnB and various “gig economy” platforms), including both the “host” side and the “guest” side have experienced discriminatory racial/ethnic outcomes.

There are many reasons to be skeptical of the claims of the lucrative corporate platforms about the benefits of the so-called “sharing economy.” We believe it is important for Montgomery County to prioritize the well-documented need for more affordable housing over the blandishments of corporate lobbyists who are intent on expanding their own markets for the sake of their own profits.