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NetChoice

Defending Free Speech and Free Enterprise
Online

Kansas City—Ordinance No. 230268

OPPOSITION LETTER

April 17, 2023

Mayor Quinton Lucas and City Council
City Hall
414 E 12th St
Kansas City, MO 64106

Dear Mayor Quinton Lucas and Members of the Kansas City Council,

I am writing on behalf of NetChoice to share concerns with proposed short-term rental (STR) ordinance No. 230268, which is set to be discussed at the Neighborhood, Planning, and Development Committee meeting on April 19, 2023.

NetChoice is a trade association of the world's leading internet companies. We promote a free and open internet ecosystem that fosters economic growth and consumer choice. And we fight to protect internet innovation and commerce and to make the Internet safe for free enterprise and free expression. We do not, however, speak for our individual members. Instead, we defend our principles whenever they are at risk.

We support fair and reasonable rules that preserve the benefits of home sharing for residents and the local economy alike. For residents, home sharing provides an additional source of income at a time when the rising cost of living is stretching Americans' pocketbooks. Short-term rentals also stimulate tourism in Kansas City by bringing visitors into neighborhoods that lack traditional lodging options. These new visitors eat, drink, and shop at small businesses, thereby benefiting the local economy.

Kansas City's proposed ordinance threatens these benefits and also raises a number of serious questions under applicable federal law. The ordinance—which penalizes any booking service that receives a direct or indirect payment for an unregistered STR—seeks to hold online platforms responsible for individual users' compliance with city requirements. Such a directive raises significant legal questions under the Communications Decency Act, which provides that, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230.

Federal law is also implicated by the ordinance’s data-sharing provisions. Platform data-sharing necessarily involves host and guest privacy concerns, and the protection of confidential and sensitive business information. The detailed user activity and transactional data sought by the City—including host personally identifying information, booking dates and durations, and prices paid for all short-term stays—is afforded heightened protection under the Stored Communications Act, and disclosure generally requires proper legal process—a warrant or court order. *See, e.g., In re Search Warrant to Google, Inc.*, 2017 WL 2985391, at *3 (D.N.J. July 10, 2017) (to obtain “records of user activity,” a governmental entity must comply with § 2703(d)).

Relatedly, the Fourth Amendment to the U.S. Constitution prohibits the compelled disclosure of platform records to the government without some form of legal process and method of precompliance review, such as a subpoena. *See Patel v. City of Los Angeles*, 738 F.3d 1058 (9th Cir. 2013), *aff’d*, 576 U.S. 409 (2015) (finding that businesses have a protected privacy interest in their confidential business records).

NetChoice acknowledges the Council’s efforts to establish a regulatory framework that provides clarity for STR operators in Kansas City. However, an ordinance that penalizes online platforms for individual users’ failure to comply with city requirements while also mandating extensive data sharing is not the answer. Many other cities have worked with relevant stakeholders, including our members, to enact reasonable regulations that achieve local objectives without undermining legal protections. For these reasons, I ask that you refrain from enacting such obligations on internet platforms.

NetChoice looks forward to working with you to ensure that Kansas City remains open for free enterprise. Thank you in advance for your consideration, and please reach out with any questions.

Sincerely,

Carl Szabo
Vice President & General Counsel
NetChoice