

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2328 (Flora) – As Introduced February 16, 2022

SUBJECT: Local ordinances: home experience sharing.

SUMMARY: Prohibits cities and counties from prohibiting or effectively prohibiting the use of property as a home experience sharing unit. Specifically, **this bill:**

- 1) Provides that a city or county shall not prohibit or effectively prohibit the use of property as a home experience sharing unit.
- 2) Provides that a city or county may reasonably regulate home experience sharing units to protect the public’s health and safety through generally applicable ordinances or other local regulations.
- 3) Provides the following definitions for purposes of this bill:
 - a) “Effectively prohibit” means the city or county acts or fails to act in a manner that prevents a property owner from using the owner’s property as a home experiences sharing unit after reasonable compliance with generally applicable local laws.
 - b) “Home experience sharing unit” means a privately owned, noncommercial, property or residential dwelling unit that is rented partially for a fee for a period of fewer than 18 continuous hours and that does not provide sleeping accommodation to transients.
- 4) Finds and declares that this bill addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this bill applies to all cities, including charter cities.

EXISTING LAW:

- 1) Allows a city or a county to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public, including land use authority.
- 2) Requires, pursuant to Planning and Zoning Law, every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element.
- 3) Requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill prohibits cities and counties from prohibiting or effectively prohibiting the use of property as a home experience sharing unit. This bill provides that a city or county may reasonably regulate home experience sharing units to protect the public's health and safety through generally applicable ordinances or other local regulations.

“Effectively prohibit” means the city or county acts or fails to act in a manner that prevents a property owner from using the owner's property as a home experiences sharing unit after reasonable compliance with generally applicable local laws.

“Home experience sharing unit” means a privately owned, noncommercial, property or residential dwelling unit that is rented partially for a fee for a period of fewer than 18 continuous hours and that does not provide sleeping accommodation to transients.

This bill is sponsored by Swimply.

- 2) **Author's Statement.** According to the author, “Property owners have specific rights to use their property as long as it does not violate, disturb, or prevent a neighboring property owner from using or enjoying their property. Through local government control, property owners can still have the right to use their homes as home experience sharing units, without disturbing those around them. Currently there are not laws in place to define this new sharing economy nor prevent municipalities from outright banning home experience sharing units, which will not only restrict property rights, but our citizens access to spaces and economic well-being.

“Economy sharing is not new and we as government leaders now understand the benefits such economies reap, but also the potential limitations to a community. As state leaders it is our responsibility to get ahead of these issues and help create universal standards where our citizens can benefit, but also continue to allow localities to have regulatory control to meet their local needs, and this is what AB2328 succeeds in doing.”

- 3) **Background.** According to an article published in Forbes on September 5, 2021, “Swimply, which likes to call itself the Airbnb for swimming pools, launched in 2018. The company says they have over 20,000 pools available on the platform across all 50 states Canada and Australia. The Swimply business proposition is simple; it collects 15% of the booking fee from the hosts and another 10% from the guests. Venture capitalists apparently like the concept as Swimply has secured \$11.2M in Series A funding to date.

“As the largest swimming pool rental platform in the world, we see a huge market opportunity here as people seek experiences with their families and friends that they can't get at home. In fact, our motto is ‘Escape Locally’ – offering unique access to nearby private pools’ says Sonny Mayugba, VP of Growth at Swimply. He added ‘Interestingly, we have also seen our customers use Swimply while traveling to enjoy the great outdoors. For example, this pool in Temecula would top off a perfect day of wine tasting in California's wine country.’

“...Swimply says there are more than 10 million pools in the U.S., but 96% of Americans don't have access to one. With the average pool owner using their pool just 15% of the time,

Swimply, which claims 4000% growth since last year, sees an available resource just begging to be rented out. Their pitch is that these surprisingly affordable rentals (in Los Angeles starting around \$45 an hour) offer the chance to spend enjoy pool time with friends and family. One pool is even located at an actual castle.

“The rates to rent a pool seemed low (\$30 for an hour in Houston, \$45 in Los Angeles). Would it be worth the risk and hassle for a homeowner to list? According to a spokesperson, Swimply pool owners earn about \$5,000 to \$10,000 per month on average. A recent Wall Street Journal story claimed that a Swimply host in Portland may earn \$111K this summer...

“A spokesperson noted that Swimply has a Trust and Safety policy. Hosts are eligible for up to \$1,000,000 of applicable insurance-backed coverage when a guest is injured during a Swimply reservation. ‘The program provides protection in the unfortunate event that a guest files a lawsuit or claim against a host for bodily injury that occurs during a Swimply reservation. The coverage also may cover any defense costs in the event of a legal dispute for which Swimply and Swimply’s registered hosts are legally liable.’ There are, of course, conditions for coverage.

“What if you do rent your pool to a party of party animals? Swimply says that hosts are eligible for up to \$10,000 (under certain conditions) if a host’s pool or property is damaged during a Swimply reservation and the guest is unwilling or unable to pay for the damages. Swimply says its main guideline for rentals is ‘your pools, your rules,’ about such issues about whether alcohol, glass (always problematic around pools) or smoking is allowed on property. Guests who book on Swimply book a specific number of people on the platform, for events like family reunions, gender reveals, swim classes, aerobic workouts, etc. Pool owners can deny bookings if they’re not comfortable with a ‘party’ atmosphere. In July the company said it was placing on ban ‘on all parties and events at Swimply listings that are marketed events with ticket sales or entry fees, bring DJs or outside sound systems, and/or offer cash bars. We are also placing an immediate ban on parties where guests bring drugs or weapons.’

“There seems to be certain amount of give and take in the pool rental world. Providing a restroom for example is ‘entirely optional.’ If a bathroom is not offered, Swimply limits the reservation time to an hour. However, a spokesperson noted that ‘Most hosts do provide a restroom as it allows them to charge more per hour and accept longer reservations.’ The homeowner can choose to be home or not for the booking. (What could go wrong?) But Swimply has found that 80% of homeowners choose to be home to share the secrets of their pool with their guests...

“The company says this fall it will promote hot tubs as well as heated and indoor pools, that are on the platform. Swimply is also planning to launch what it calls ‘Joyspace.’ Joyspace will allow consumers to rent out their basketball courts, tennis courts, BBQ/fire pits, private gyms, indoor home theater, even a backyard playset.”

- 4) **Arguments in Support.** Swimply, sponsor of this bill, states, “Swimply is a marketplace for homeowners to share and rent out their underutilized pools and spaces to members of their community. Such a home sharing experience means the partial rental of a privately owned, noncommercial, property or residential dwelling unit for a fee for a limited period (fewer than 18 continuous hours and that does not provide sleeping accommodation to transients.)

Home sharing experiences are part of the sharing economy. By opening portions of one's home to their community, hosts are bringing greater access and resources to the community.

“Property owners have specific rights to use their property as long as it does not violate another property owner's right to enjoy their own property. This important balance is created by local government regulations. However, without statewide definitions and criteria, newly created and legal property uses can be misinterpreted and restricted. Economy sharing is a \$200 billion dollar industry which when regulated appropriately can bolster communities. And since home sharing experiences are not short-term rentals, where full homes may be taken out of the housing supply, they do not have the same effect on the housing stock.

“AB 2328 allows localities to regulate and ensure their communities can engage with home experience sharing while maintaining housing access, safety, limiting nuisance, and preserving cleanliness. AB 2328 balances property owners' rights with localities' need to ensure a community is beneficial for all constituents and we thank you for your authorship.”

- 5) **Arguments in Opposition.** The League of California Cities, in opposition, writes, “This measure is premature and creates a broad preemption that poses health, safety, and litigation risks. Furthermore, legislation is not needed to reaffirm local authority to regulate these activities. Home sharing as contemplated in this measure is not widely used in California so there is not enough information for state and local policy makers to carefully consider treatment of home experience sharing platforms. Without enough information, there should be hesitation to blanketly preempt local ordinances deemed by a new industry to be unreasonable or effectively prohibiting its operations.

“In this instance, the Legislature is being asked to condone and protect the activities of a burgeoning industry without review of its business practices or impacts on land use, public safety, and other quality of life factors. In other similar cases, state and local policy makers have carefully considered the laws and regulations of various types of sharing economy enterprises from ridesharing to short-term rentals. This approach has allowed state and local lawmakers to adapt and respond to the ever-evolving sharing economy.

“The Legislature should allow for local governments to maintain their sufficient existing authority to regulate home experience sharing. This approach allows local government to protect public health and safety and meet local land use needs while adapting to the latest sharing economy trends.”

- 6) **Amendments.** In order to address concerns raised by the opposition, the author has asked the Committee to amend the bill as follows:

SECTION 1.

Chapter 6.4 (commencing with Section 51043) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.4. Home Experience Sharing**51043.**

~~(a) A city or county shall not prohibit or effectively prohibit the use of property as a home experience sharing unit.~~

~~(b) A city or county may reasonably regulate home experience sharing units to protect the public's health and safety through generally applicable ordinances or other local regulations.~~

(a) For purposes of this section:

~~(1) "Effectively prohibit" means the city or county acts or fails to act in a manner that prevents a property owner from using the owner's property as a home experiences sharing unit after reasonable compliance with generally applicable local laws.~~

~~(I) "Home experience sharing unit" means a privately owned, noncommercial, property or residential dwelling unit that is rented partially for a fee for a period of fewer than 18 continuous hours and that does not provide sleeping accommodation to transients.~~

~~(d) The Legislature finds and declares that this section addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.~~

7) **Double-Referral.** This bill is double-referred to the Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

Swimply [SPONSOR]
Chamber of Progress
Swim Up Hill
Technet
Valley Industry & Commerce Association

Opposition

City of Chula Vista
League of California Cities

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