



Written by [Joe Wolverton, II, J.D.](#) on September 24, 2016

## Nashville City Council: Government Controls How Private Property is Used

State lawmakers in Tennessee may be called upon to invalidate city ordinances that force homeowners to get government approval before offering their property to guests using online booking services such as Airbnb.

City leaders in the state capital — Nashville — have recently enacted city regulations forcing property owners to obtain permits from the city government before listing their homes for rent on Airbnb and similar sites.



Nashville city ordinances also impose a cap — three percent — on the number of dwellings in a community that can be offered for rent at one time. In other words, you can post your home for rent on Airbnb only if fewer than three percent of your neighbors have already done likewise.

Unsurprisingly, the ordinance is being challenged by citizens for being an unconstitutional restriction on the right of homeowners to determine how they handle their own property.

A state senate committee heard testimony from a Nashville Metropolitan Council Member Burkley Allen and Allen's responses reveal how government considers itself the true owner of all property within its jurisdiction.

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"To me it is a privilege to be able to do this, not a right," said Allen, the chief sponsor of Nashville's anti-Airbnb ordinance. "The city of Nashville decided to grant that privilege."

Read that again: The government of the city of Nashville has declared that property owners must ask its permission to dispose of their property and that the right of property is a privilege given and taken away by government.

When this purported prerogative was challenged by state Senator Mark Green, Allen claimed that city zoning ordinances authorized the city council to regulate property as set out in the new law.

"We do decide that there are rules," Allen said.

In other words, you may own the property, but the city controls how you can use it.

During the hearing before the special senate committee, Senator Green called the decision to set a three-percent cap on the number of residents who can offer their homes for rent on the Internet "arbitrary."

What Allen and his council colleagues seem to forget is that property ownership and the right to dispose of that property according to one's own will is one of the central tenets of liberty.

As Ron Paul once wrote:

Privacy is the essence of liberty. Without it, individual rights cannot exist. Privacy and property are



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interlocked. If both were protected, little would need to be said about other civil liberties. If one's home, church or business is one's castle, and the privacy of one's person, papers and effects [is] rigidly protected, all rights desired in a free society will be guaranteed. Diligently protecting the right to privacy and property guarantees religious, journalistic and political experience, as well as a free market economy and sound money. Once a careless attitude emerges with respect to privacy, all other rights are jeopardized.

Perhaps the city council of Nashville should take a break from their study of the *Communist Manifesto* and read a little John Locke.

Locke, one of the men most often quoted by the Founding Fathers, wrote concerning property, its relationship to liberty, and the right of a people to protect what is theirs from government:

*Whenever the Legislators endeavor to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence. Whensoever therefore the Legislative shall transgress this fundamental Rule of Society; and either by Ambition, Fear, Folly or Corruption, endeavor to grasp themselves, or put into the hands of any other an Absolute Power over the Lives, Liberties, and Estates of the People; By this breach of Trust they forfeit the Power the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty. [Emphasis in original.]*

The city ordinance restricting the right of property owners to rent their homes on Airbnb is being challenged in court.

P.J. and Rachel Anderson, Nashville residents who rented their home on Airbnb prior to the enactment of the city ordinance, are suing the city. Once the ordinance was put in force, the Andersons were denied a permit after being informed by city regulators that their neighborhood had already reached the three-percent cap established by the ordinance.

Remarkably, the ordinance also prohibits traditional advertising — signs in windows, for example — and gives police the power to search and seize homes of those who violate the relevant provisions of the law without obtaining a warrant!

The lawsuit complains that the ordinance violates the First and Fourth Amendments of the U.S. Constitution.



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