

Short-Term Rental Regulations

Popularity of short-term rentals

Statistical and anecdotal evidence demonstrate the increasing popularity of short-term rentals. With the advent of the internet, it is easier than ever to find accommodations outside traditional venues. Companies such as Airbnb, Homeaway, Flipkey and more provide “an Internet platform connecting individuals who offer accommodations (hosts) to individuals who wish to book accommodations (guests). If the parties agree on the price and terms, they can complete the transaction, including payment, via such platform” (*Airbnb, Inc. v Schneiderman*, 44 Misc 3d 351, 354 [Sup Ct 2014]). Other resources, such as Craigslist, simply have listings for vacation rentals, and individuals are left to their own devices to negotiate the terms and conditions of payment.

According to Airbnb, in the summer of 2010 roughly 47,000 people stayed with Airbnb hosts around the world. Five years later that number swelled 353 times, and the summer of 2015 boasted 17 million guests staying with hosts from Airbnb (*see Airbnb Summer Travel Report: 2015* at 3, accessible at <http://blog.airbnb.com/wp-content/uploads/2015/09/Airbnb-Summer-Travel-Report-1.pdf>). In New York City alone, Airbnb saw an increase from 2,652 short-term rental units in 2010 to 16,483 in the first five months alone of 2014, and bookings rose from 20,808 in 2010 to an estimated 243,019 in 2014 (*see New York State Office of the Attorney General “Airbnb in the City”* at 6 [October 2014]).

Although New York City is Airbnb’s largest market in the United States with approximately 35,000 properties available for rent (*see New York Deflates Airbnb*, *The Economist*, Oct 27, 2016 accessible at <http://www.economist.com/news/business/21709353-new-rules-may-temper-airbnb-new-york-its-future-still-looks-bright-new-york-deflates>), short term rentals are an issue across New York State. In fact, Airbnb reports that travellers going from New York City to the Catskills and Hudson Valley region are one of three of its biggest routes for the company (*see Airbnb Summer Travel Report: 2015* at 5 accessible at <http://blog.airbnb.com/wp-content/uploads/2015/09/Airbnb-Summer-Travel-Report-1.pdf>).

Why the Controversy?

On the one hand, proponents argue that allowing short-term rentals to operate creates new income opportunities and draws visitors. A report commissioned by Airbnb states that a “typical single-property host makes an extra \$7,530 annually” by renting his or her primary residence for about two or three months each year—the equivalent of a 14 percent raise for a household that pulls in the median income of \$52,800 a year” (see *Airbnb Summer Travel Report: 2015* at 7). Airbnb also reported that visitors using its site in 2013 stay, on average, an additional two and a half nights per stay and spent \$190 per trip (see *Airbnb Economic Impact*, accessible at <http://blog.airbnb.com/economic-impact-airbnb/>). In short, the argument goes, people are both making and saving money.

Others claim that short-term rentals ruin the housing market. The New York State Attorney General’s Office reported that in 2013, more than 4,600 units were booked in New York City as private, short-term rentals for one quarter of the year or more. Of these, nearly 2,000 units were each booked as private short-term rentals on Airbnb for at least 182 days, approximately half of the year, thus rendering the units largely unavailable for use by long-term residents. The AG’s office further opines that the number is even higher than this due to the fact that they looked at data only from Airbnb and not from other short-term rental sites (see New York State Office of the Attorney General “Airbnb in the City” at 12). The AG’s office also found that although commercial users represented a minority of hosts in New York City, they dominated Airbnb in terms of units rented, reservations made, and revenue taken in (see New York State Office of the Attorney General “Airbnb in the City” at 10-11). Thus, commercial entities and others may be purchasing property for the sole purpose of using them for short-term rentals, an issue which is particularly problematic in areas where housing is at a premium.

There are also safety and money issues surrounding short-term rentals from a municipal perspective. For example, although New York City’s code imposes a hotel occupancy tax on short-term rentals, the AG’s office reported that “few Airbnb hosts appear to have filed the paperwork with New York City necessary to remit hotel room occupancy taxes, nor did Airbnb collect any of the hotel taxes owed for the [transactions reviewed by the AG’s office]) thus costing New York City millions of dollars in taxes (see New York State Office of the Attorney

General “Airbnb in the City” at 9). Finally, short-term rentals are not held to the same fire and safety standards as hotels.

Legal Background

Multiple Dwellings Law

In 2010 the Multiple Dwelling Law was amended to change, among other things, the definition of a Class A multiple dwelling. The MDL applies to cities with populations of more than 325,000, although any city, town or village may adopt its most of its standards or those that are more stringent (see MDL § 3 [1],[2]). Before it was amended, MDL § 4(8)(a) required that a class A multiple dwelling be “occupied, as a rule, for permanent residence purposes”. The First Department found that the statute's use of the phrase ‘as a rule’ “indicates that a secondary use of the building, different from the specified primary use [such as transient rentals], is permitted” (City of New York v 330 Cont. LLC, 60 AD3d 226, 231 [1st Dept 2009]). The 2010 amendment clarified that class A multiple dwellings can be used for permanent residence purposes only which means occupying a unit by a natural person or family for 30 consecutive days. Thus, under the MDL, a person may not rent out their unit for less than 30 days unless a permanent resident is present.

Most recently, in October 2016, new legislation was passed amending the MDL yet again by creating MDL § 121, which makes it illegal to advertise units for occupancy that would otherwise violate New York State law. Violators are subject to a \$1000 fine for the first violation and up to \$7500 for the third and more. This legislation resulted in Airbnb commencing a lawsuit against New York State and New York City wherein Airbnb argued that the law was essentially attempting to hold Airbnb responsible for third-party content. The case was settled in December 2016.

Special Use Permits

One way to regulate short-term rentals if you’re in a municipality that has zoning is to make them subject to a special use permit. A special use permit allows the under the code, but subjects the property more review and more conditions, potentially (see generally Town Law § 274-b; Village Law § 7-725-b; General City Law § 27-b). For example, in a special use permit

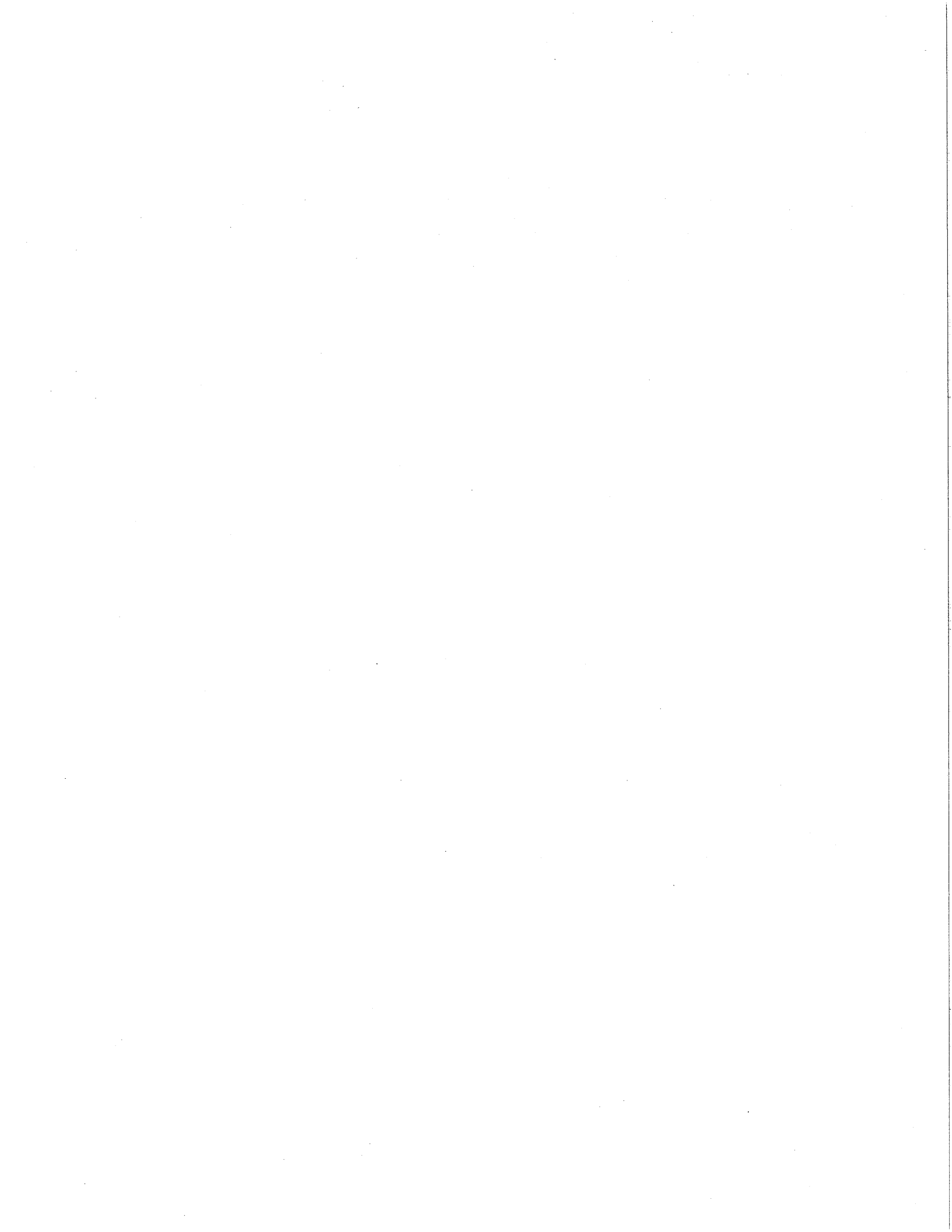
situation, an area may be zoned residential, and “short-term rentals” as defined in the code are allowed in residential zones, but they need special use permit. As a condition of obtaining the special use permit, the municipality could require a certain amount of parking spaces per lot. However, the conditions have to be reasonable, so you probably wouldn’t be allowed to require something like ten onsite parking spots on a three bedroom house. Furthermore, these conditions must relate to how the land is used, and not the conduct of individuals or operations on the premises (see e.g. Old Country Burgers Co., Inc. v Town Bd. of Town of Oyster Bay, 160 AD2d 805, 806 [2d Dept 1990]). Thus, you probably cannot regulate things like noise with a special use permit.

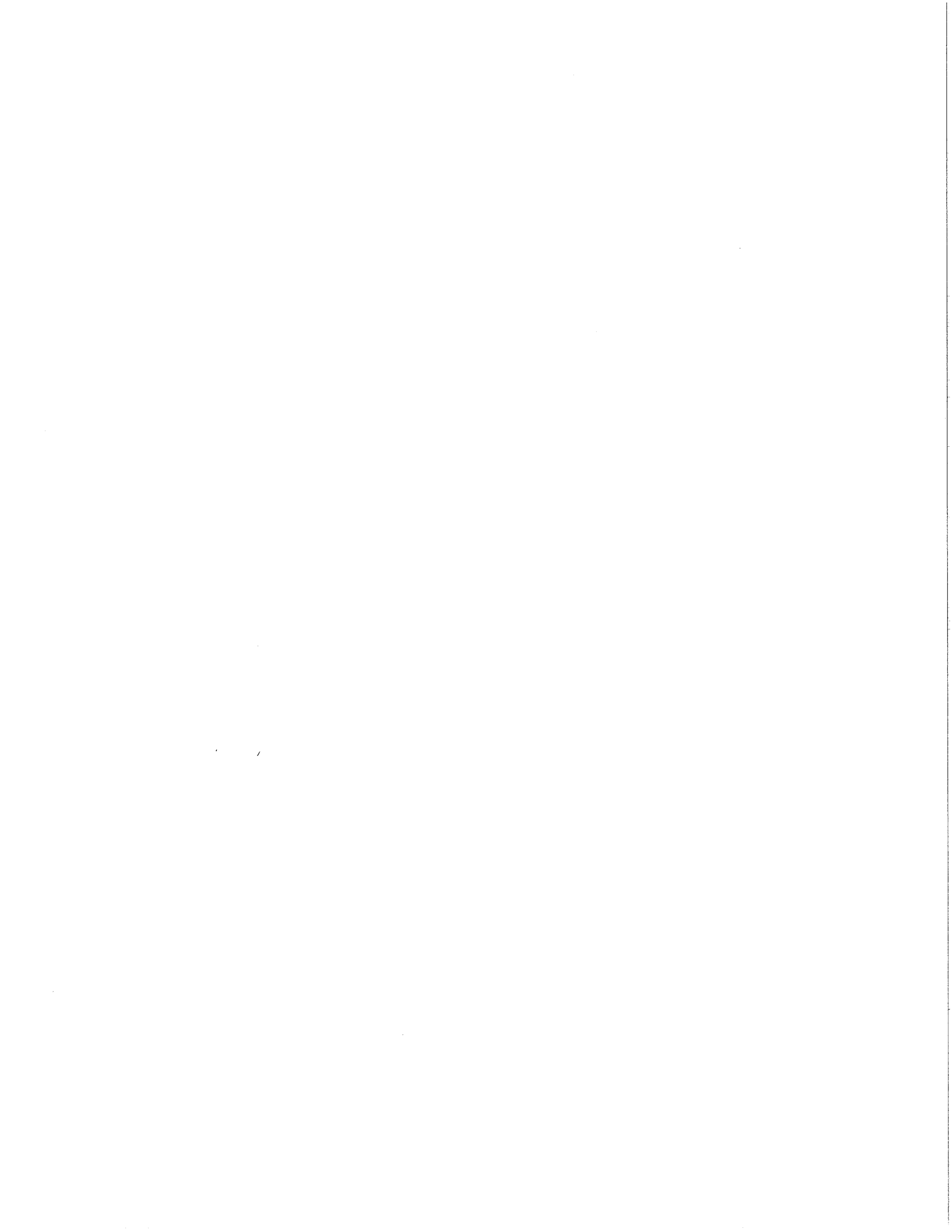
Importance of Definitions

Definitions are of utmost importance when regulating short term rentals. Fruchter v Zoning Bd. of Appeals of Town of Hurley, 133 AD3d 1174 (3d Dept 2015) illustrates this perfectly. In *Fruchter* petitioner owned a two bedroom, single-family home in an area zoned residential and he would rent out the entire house and the entire property. Petitioner got an order for remedy from the town code enforcement officer for running a bed and breakfast in a residential neighborhood without a special use permit that was required under the town code to run a B&B or hotel. Petitioner appealed the order to the zoning board of appeals, which determined that petitioner did, in fact, need a special use permit. When the matter went before the Third Department Appellate Division the court noted that the town code defined a “bed and breakfast” as an “owner-occupied dwelling” where “rooms” were available for rent. The court said petitioner did not fit that definition because he rented out the entire house and he did not live in the structure. The court also found that the property did not fit under the definition of “hotel” because under the town code, hotel was defined as something having “a common exterior entrance or entrances,” and here, petitioner rented out his entire property.

Another case, Atkinson v Wilt, 94 AD3d 1218 (3d Dept 2012) further demonstrates the need for definitions that work. In *Atkinson* petitioner owned a six bedroom, single-family house in an area zoned for single and multifamily residential use. He advertised renting the home on the internet and also belonged to the town chamber of commerce. He was told by the zoning enforcement officer that he could not rent out his home because it was a “tourist accomodation,” and that was not a permitted use in a single or multifamily residential area. The town code

defined tourist accomodation as “any hotel, motel, resort, tourist cabin or similar transient facility used to house the general public, including accessory restaurant” and defined “single-family residence” as “a detached building, not including a mobile home, used as a living quarters for one family. The court said the fact that the owner advertised the property online and was a member of the chamber of commerce did not change what was a single-family residence to a tourist accomodation. It noted that the owner carefully screened who they rented to, and thus, the property was not open to the general public, and even though the town argued that it fell under “similar transient facility” when you looked at the code as a whole and saw how the word transient was used elsewhere, it didn’t make any sense. The court also rejected the argument “single-family residence” meant only one family could stay there.





JUDGE BUCHWALD

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

16 CV 8239

AIRBNB, INC.,

Plaintiff,

- against -

ERIC SCHNEIDERMAN, Attorney General of
the State of New York, in his official capacity;
CITY OF NEW YORK, a municipal corporation;
and BILL DE BLASIO, Mayor of New York
City, in his official capacity,

Defendants.

Case No.

COMPLAINT TO DECLARE
INVALID AND ENJOIN
ENFORCEMENT OF MULTIPLE
DWELLING LAW SECTION 121
& NEW YORK CITY
ADMINISTRATIVE CODE
SECTION 27-287.1

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
2016 OCT 21 PM 3:11

For its complaint, plaintiff Airbnb, Inc. ("Airbnb") alleges:

I. INTRODUCTION

1. This is an action to enjoin and declare unlawful the enforcement against Airbnb by the State of New York (the "State") and the City of New York (the "City") (collectively, the "government") of New York Multiple Dwelling Law Section 121 and New York City Administrative Code Section 27-287.1 (the "Act"). This action is brought pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 1367, the Court's equitable powers, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

2. As applied to Airbnb, the Act directly conflicts with, and is preempted by, section 230 of the Communications Decency Act of 1996, 47 U.S.C. § 230 (the "CDA").¹ Application of the Act to Airbnb would hold Airbnb liable for the content of rental listings created and posted by third-parties on Airbnb's platform. As such, the Act unquestionably treats online platforms such as Airbnb as the publisher or speaker of third-party content and is completely preempted by the CDA.

¹ Airbnb does not concede that it is subject to liability under a correct interpretation of the Act, and expressly preserves the argument that it is not. The Act would be unlawful if it were to be applied to Airbnb.

3. The Act also suffers from several other defects: It is an unjustifiable content-based restriction on speech in violation of the First Amendment; its lack of a *mens rea* or scienter requirement violates both the First Amendment and the Due Process Clause; it is impermissibly vague regarding whether its provisions apply to hosting platforms like Airbnb; and it violates the home rule clause of the New York State Constitution.

4. The Act makes it “unlawful to advertise occupancy or use” of accommodations that cannot lawfully be rented out for less than 30-day periods, whether or not the publisher of the advertisement knows or has reason to know the advertisement is for an unlawful rental. Violators face hefty civil penalties and the possibility of criminal prosecution.

5. The Act does not expressly state whether websites and other intermediaries, such as online platforms like Airbnb that host third-party listings, “advertise” within the meaning of the law and thus are subject to liability. Given the ambiguity of the Act, Airbnb anticipates the government will argue that the Act applies to such online platforms, and will seek to enforce the Act against Airbnb and other such hosting platforms. Airbnb thus faces the real prospect of being the subject of an enforcement action under the Act. For the following reasons, any such enforcement would be unlawful and should be enjoined.

6. First, the enforcement of the Act against Airbnb is preempted by the CDA, which aims “to promote the continued development of the Internet” and “to preserve” its “vibrant and competitive free market.” 47 U.S.C. § 230(b)(1)-(2). In furtherance of these goals, the CDA expressly preempts state and local laws that treat a website “as the publisher or speaker of any information provided by another information content provider.” *Id.* § 230(c)(1), (e)(3). The Act does just that—by imposing hefty penalties on a website for displaying allegedly unlawful ads posted by users.

7. Second, the Act also violates Airbnb’s and hosts’ First Amendment rights. It is a content-based restriction on advertisements—in the form of rental listings—which are protected speech under the First Amendment. The Act seeks to punish hosts for advertising short-term rentals and Airbnb for publishing hosts’ advertisements if the advertisements are for short-term

rentals that do not comply with New York state or municipal law. To justify this content-based restriction on speech, the government bears the burden of showing that the Act is narrowly tailored to further a substantial government interest. The government cannot carry this burden because there is a less-restrictive means available to enforce the New York law. Instead of targeting the speech, the government instead could simply enforce its existing short-term rental law directly against hosts who violate it.

8. Third, the Act violates the First Amendment and the Due Process Clause of the Fourteenth Amendment insofar as it provides for the possibility of liability based on the creation or publication of advertisements in the absence of any *mens rea* or scienter requirement. The Act impermissibly creates a strict-liability crime for advertising short-term rentals that violate State law, even if hosts or hosting platforms like Airbnb have no knowledge of the violation.

9. Fourth, the Act violates the First Amendment and the Due Process Clause of the Fourteenth Amendment on vagueness grounds because it fails to provide a reasonable person with notice regarding whether its operative prohibitions apply to hosting platforms like Airbnb.

10. Fifth, the Act violates the home rule clause of the New York State Constitution, N.Y. Const. art. IX, § 2(b)(2), because it is a legislative act relating to the affairs of New York City but was not enacted by the Legislature in response to a request from City officials, and it does not have any reasonable relationship to any substantial state concern.

11. If this Court does not enjoin enforcement of the Act, Airbnb (and its hosts) will be forced to choose between two outcomes, both of which impair free speech: either block most or all third-party listings or risk substantial criminal and civil penalties for allowing these advertisements to remain on their site. The Act will therefore cause irreparable harm to both online providers of third-party rental listings and the public at large in either scenario, by eliminating or significantly impairing free speech in online forums.

II. PARTIES

12. Plaintiff Airbnb is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in San Francisco, California. It maintains a

website that provides an online marketplace for people to list, explore, and book both short-term and long-term housing accommodations.

13. Defendant Eric Schneiderman is Attorney General of the State of New York.

14. Defendant City of New York is an incorporated municipality within the State of New York.

15. Defendant Bill de Blasio is Mayor of New York City, an incorporated municipality within the State of New York.

16. Defendants Attorney General Schneiderman and Mayor de Blasio are sued in this action in their official capacities as representatives of the State of New York and City of New York.

III. JURISDICTION AND VENUE

17. This Court has jurisdiction of this action under 28 U.S.C. § 1331 and 42 U.S.C. § 1983 because Airbnb alleges violations of its rights under the Constitution and laws of the United States.

18. Pursuant to 28 U.S.C. § 1367, this Court has jurisdiction over Airbnb's claim arising under the New York State Constitution because it is so related to the federal claims in this action that it forms part of the same case or controversy under Article III of the United States Constitution.

19. This Court may declare the legal rights and obligations of the parties in this action pursuant to 28 U.S.C. § 2201 because the action presents an actual case or controversy within the Court's jurisdiction.

20. Venue is proper in this Court under 28 U.S.C. § 1391 because the Mayor resides in this District and both he and the Attorney General are residents of the State of New York, and because a substantial part of the events giving rise to Airbnb's claims for relief occurred in this judicial district.

IV. FACTUAL ALLEGATIONS

A. Airbnb

21. Founded in 2008, Airbnb provides an Internet platform through which persons desiring to book accommodations (“guests”), and persons listing unique accommodations available for rental (“hosts”), can locate each other and enter into direct agreements to reserve and book travel accommodations on a short and long-term basis.

22. Airbnb does not manage, operate, lease or own hosts’ accommodations, and it is not a party to the direct agreements between third-party guests and hosts for the booking of accommodations offered by hosts. Airbnb provides a platform through which interested hosts can list their accommodations, hosts and guests can locate one another, and hosts and guests can message each other directly to determine the material terms of their bookings. The platform also provides payment processing services allowing hosts to receive payments electronically. In consideration for use of its platform, Airbnb receives a service fee from both the guest and host, determined as a percentage of the accommodation fee set solely by the host.

23. Only hosts decide whether to list their properties, what their prices and terms of booking are, and when and with whom to transact. As Airbnb’s Terms of Service state, hosts “alone are responsible for any and all Listings and Member Content [they] post.”² Hosts provide the descriptions of their rentals, set their lengths of stay, determine the prices and whether the entire property or a portion thereof is available for rent, and decide when and with whom they want to enter into agreements. Airbnb plays no role in this process.

24. Airbnb advises its hosts and guests to be aware of and comply with local law in listing and renting units listed on Airbnb. The Airbnb Terms of Service reference at their outset parties’ “OBLIGATIONS TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS,” and state that:

IN PARTICULAR, HOSTS SHOULD UNDERSTAND HOW THE LAWS WORK IN THEIR RESPECTIVE CITIES. SOME CITIES HAVE LAWS THAT RESTRICT THEIR ABILITY TO HOST PAYING GUESTS FOR

² Airbnb, “Terms of Service,” <https://www.airbnb.com/terms> (last visited October 11, 2016).

SHORT PERIODS. THESE LAWS ARE OFTEN A PART OF A CITY'S ZONING OR ADMINISTRATIVE CODES. IN MANY CITIES, HOSTS MUST REGISTER, GET A PERMIT, OR OBTAIN A LICENSE BEFORE LISTING A PROPERTY OR ACCEPTING GUESTS. CERTAIN TYPES OF SHORT-TERM BOOKINGS MAY BE PROHIBITED ALTOGETHER.³

25. Airbnb maintains a "Responsible Hosting" section on the Airbnb website specific to New York City that provides a variety of general information for hosts about applicable laws and regulations that they should follow, including safety guidelines and business regulations.⁴

26. The "Responsible Hosting" page for New York City informs hosts that "it's important for you to understand the laws in your city" and provides links to City websites that describe New York State and New York City law informing hosts explicitly that "[t]he New York State Multiple Dwelling Law restricts renting out a Class A multiple dwelling for periods of fewer than 30 days."⁵

27. Airbnb is committed to helping provide solutions tailored to meet the needs of cities like New York City with historic housing challenges. Airbnb discretionarily removes listings that it believes may be offered by hosts with multiple "entire home" listings or by unwelcome commercial operators. If Airbnb is alerted to shared spaces or private rooms that appear to be operated by unwelcome commercial operators or that do not reflect the community vision, it generally will remove such listings. In fact, within the last year, Airbnb removed numerous New York City listings from its platform as part of its efforts. As of September 2016, Airbnb had removed over 2,900 listings from New York City from hosts with multiple listings that could impact long-term housing availability.

28. In New York, there are approximately 46,000 hosts who post listings on Airbnb as of October 1, 2016. The typical New York host rents a unit for 36 nights a year on Airbnb, and earns approximately \$5,300 in income. 78% of Airbnb hosts in New York earn low,

³ *Id.*

⁴ Airbnb, "New York, NY," <https://www.airbnb.com/help/article/868/new-york--ny> (last visited October 20, 2016).

⁵ *Id.*

moderate, or middle incomes, and 72% of Airbnb hosts in New York use the money they earn from sharing their space to help them to be able to stay in their homes.⁶

B. New York Law and Relevant Legislative History

29. In 2010, the State of New York enacted a law that prohibits the rental of “multiple dwellings” for less than 30 days. “Multiple dwelling” is defined as a dwelling “occupied as the residence or home of three or more families living independently of each other.” N.Y. Multiple Dwelling Law (“MDL”) § 4-7. The 2010 law contains two exemptions. First, a rental of a multiple dwelling for less than 30 days is permissible for “[o]ther natural persons living within the household of the permanent occupant such as house guests or lawful boarders, roomers or lodgers.” *Id.* § 4-8(a)(1)(A). Second, such a rental is permissible for “incidental and occasional occupancy ... by other natural persons when the permanent occupants are temporarily absent for personal reasons such as vacation or medical treatment, provided that there is no monetary compensation paid to the permanent occupants for such occupancy.” *Id.* § 4-8(a)(1)(B). New York State Senator Liz Krueger, the sponsor of the 2010 law, publicly stated it was not aimed at Airbnb.⁷

30. On May 26, 2015, Senator Krueger testified before the Federal Trade Commission. She stated that “Section 230 of the Communications Decency Act of 1996 protects online service providers and users from actions against them based on the content of third parties.” As a result, she explained, “companies like Airbnb and other online booking platforms oftentimes can act with near immunity from prosecution” She urged the Commission to “work with Congress to amend Section 230.”⁸

⁶ Airbnb, “Data on the Airbnb Community in New York City,” <https://www.airbnbaction.com/data-on-the-airbnb-community-in-nyc/> (last visited October 20, 2016).

⁷ Brian Caulfield, *Airbnb: The Ebay for the Entire House*, FORBES (Nov. 18, 2010), <http://www.forbes.com/forbes/2010/1206/technology-airbnb-sequoia-capital-ebay-startup-next-door.html> (last visited October 11, 2016).

⁸ Comments of New York State Senator Liz Krueger before the Federal Trade Commission, *The “Sharing” Economy: Issues Facing Platforms, Participants, and Regulators* (May 26, 2015), https://www.ftc.gov/system/files/documents/public_comments/2015/05/01816-96161.pdf (last visited October 20, 2016).

31. On January 6, 2016 and January 31, 2016, respectively, the Act was introduced in the Senate and Assembly. New York State Assemblymember Linda Rosenthal, who sponsored the bill (Assembly Bill 8704-C), publicly stated the bill would stop Airbnb from providing the “platform that enables its hosts to break the laws of New York State that are in place to protect tenants and affordable housing.”⁹

32. That legislation passed the Assembly on June 16, 2016, and the Senate on June 17, 2016. Governor Cuomo signed the legislation into law on October 21, 2016.

33. The legislation amends both the MDL and the Administrative Code of New York City to make it “unlawful to advertise occupancy or use of dwelling units in a class A multiple dwelling for occupancy that would violate subdivision eight of section four of this chapter defining a ‘class A’ multiple dwelling as a multiple dwelling that is occupied for permanent residence purposes.” MDL § 121(1); N.Y.C. Admin. Code § 27-287.1(1).

34. The Act specifies that, for purposes of the MDL, “advertise” means “any form of communication for marketing that is used to encourage, persuade or manipulate viewers, readers or listeners into contracting for goods and/or services as may be viewed through various media including, but not limited to, newspapers, magazines, flyers, handbills, television commercials, radio, signage, direct mail, websites or text messages.” MDL § 121(3).

35. The Act further specifies that, for purposes of the Administrative Code, “advertise” means “any form of communication, promotion or solicitation, including but not limited to direct mail, newspapers, magazines, flyers, handbills, television commercials, radio, signage, direct mail, websites, text messages *or similar displays, intended or used to induce, encourage or persuade the public to enter into a contract for goods and/or services.*” N.Y.C. Admin. Code § 27-287.1(3) (italics added).¹⁰

⁹ Jennifer Fermino, *Airbnb Battles New York Regulators on ‘Strict’ Home Sharing Law*, NY DAILY NEWS (June 15, 2016), <http://www.nydailynews.com/news/politics/airbnb-battles-n-y-regulators-strict-home-sharing-law-article-1.2674070> (last visited October 20, 2016).

¹⁰ The italicized text appears in the definition of “advertise” in the Administrative Code, but not the definition of “advertise” in the MDL.

36. A violation of the new sections of the MDL and the Administrative Code may result in a civil penalty of not more than \$1,000 for the first violation, \$5,000 for the second violation, and \$7,500 for the third and every subsequent violation. MDL § 121(2); N.Y.C. Admin. Code § 27-287.1(2).

37. Other sections of the Administrative Code provide that any “agent, architect, builder, contractor, engineer, or any other person who commits or assists in” a violation of the code shall be subject to civil judicial enforcement of the code, including “the payment of civil penalties” of up to \$25,000. N.Y.C. Admin. Code §§ 28-205.1, 28-202.1. In addition, a separate section of the Administrative Code provides that that any “agent, architect, builder, contractor, engineer, or any other person who commits or knowingly assists in” a violation of the code “shall be guilty of a criminal offense punishable by a fine or imprisonment or both” N.Y.C. Admin. Code § 28-206.1; *see also id.* § 28-203.1.

38. Similarly, a separate section of the MDL provides that “every person who shall violate or assist in the violation of any provision of this chapter shall be guilty of a misdemeanor punishable, for a first offense, by a fine of not exceeding five hundred dollars or by imprisonment for a period of not exceeding thirty days, or by both such fine and imprisonment; for the second and any subsequent offense arising from the failure to remove the violation upon which the first offense was based, by a fine of not exceeding one thousand dollars or by imprisonment for a period of not exceeding six months, or by both such fine and imprisonment.” MDL § 304(1).

39. The Act took effect immediately after signing by the Governor.

40. In a June 2016 hearing on the Act, a lawmaker asked with respect to Airbnb, “who is responsible for the advertising?” New York State legislative counsel responded “that both the renter and the [platform] service are advertising the units,” implying that both could face liability under the Act.¹¹

¹¹ Shane King, *Report on June 14, 2016 Assembly Standing Committee Meeting on Codes*, New York State Watch (June 14, 2016).

41. At a subsequent hearing on the Act, Assemblymember Rosenthal explained, in response to a question from a colleague, that “it is the host” alone who would be subject to liability under the Act, since “the host . . . is the person advertising,” and “Airbnb is protected by the Communications Decency Act and that gives them Federal immunity for liability for service providers from content generated by third-party user[s] of the service, which is the host.”¹²

42. The text of the Act is vague as to whether liability under it may be imposed on Airbnb in its role as a hosting platform that publishes third-party rental listings. The Act might be read to extend only to *hosts*, since as a general matter, the party offering goods or services is the one said to “advertise,” whereas media outlets and other platforms for advertising are said to *publish* or *broadcast* advertisements. But it is also possible that the government might argue that the Act imposes liability on hosting platforms like Airbnb as well—either directly or by virtue of the secondary-liability provisions of Chapter 28 of the New York City Administrative Code and section 304 of the Multiple Dwelling Law. *See* N.Y.C. Admin. Code §§ 28-205.1, 206.1 (imposing criminal and civil liability on any “agent, architect, builder, contractor, engineer, or any other person” who commits or assists in a violation); MDL § 304 (imposing criminal and civil liability on “every person who shall violate or assist in the violation of any provision of this chapter”).¹³

43. The Act relates to the affairs of New York City, but was not enacted in compliance with the procedures of the home rule clause of the New York State Constitution. The Act was not the subject of any home rule message from the City or City officials.

44. The Act’s restrictions will make it more difficult for City residents to use home-sharing to help pay their rent or mortgage, making the City less affordable for City residents, contrary to the law’s purported justifications of addressing affordable housing issues. Similarly, the substantial penalties applicable under the law will inflict significant economic hardship on

¹² Transcript of June 17, 2016 Hearing of the New York State Assembly, at 58, <https://goo.gl/pwhRCO> (last visited October 20, 2016).

¹³ Airbnb does not concede that it would in fact be subject to criminal liability under a correct interpretation of the Act, and expressly preserves the argument that it would not be.

City residents who rely on home-sharing to make ends meet, in conflict with the City's otherwise stated policies. Indeed, the Mayor has touted the fact that his administration has significantly reduced fines assessed against small businesses, noting that "[s]mall businesses need support and resources – not onerous fines for violations that don't pose any risk to consumers," and that "[r]educing these fines is a bedrock of our effort to make it easier to open and operate a small business in New York City"¹⁴

45. The Act does not require, as a prerequisite to the imposition of civil or criminal liability, that the party advertising an unlawful listing know or have reason to know that the listing in question is unlawful.

46. Airbnb faces a threat of prosecution and penalties under the Act because the government could construe the Act in a manner that would impose liability on Airbnb for publishing third-party rental listings that the Act makes unlawful.

47. If allowed to remain in effect, the Act would impose significant immediate burdens and irreparable harm on Airbnb. In order to be assured of avoiding liability, including potential criminal prosecution, Airbnb would be required to screen and review every listing a host seeks to publish on Airbnb's platform advertising a housing rental in New York. Performing this task would require a massive expenditure of time and resources on the part of Airbnb. Rather than incur this expense, Airbnb very likely will be forced to remove entire categories of rentals, encompassing many lawful listings, which will constitute an illegal infringement on the free speech of Airbnb and its hosts.

48. The Act also creates the incorrect perception that Airbnb's own activities are unlawful. This perception will lead to the sort of reputational injury and loss of goodwill that irreparably harms a business.

¹⁴ NYC Press Release, *De Blasio Administration Reduces Fines Assessed by Consumer Affairs on Businesses in Half, Cuts Violations Issued by One Third Over Past Year* (July 31, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/530-15/de-blasio-administration-reduces-fines-assessed-consumer-affairs-businesses-half-cuts> (last visited October 20, 2016).

V. CLAIMS FOR RELIEF

CLAIM 1: VIOLATION OF THE COMMUNICATIONS DECENCY ACT, 47 U.S.C. § 230, AND THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION, AND CLAIM FOR INJUNCTIVE RELIEF, PURSUANT TO 42 U.S.C. § 1983 AND THE COURT'S EQUITABLE POWERS

49. Airbnb incorporates all previous paragraphs as if fully set forth herein.

50. The Communications Decency Act defines an “interactive computer service” as “any information service ... that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet” 47 U.S.C. § 230(f)(2). Thus, Airbnb is a provider of an interactive computer service within the meaning of the Communications Decency Act because it operates the interactive online platform Airbnb.com and provides information to multiple users by giving them computer access to a computer server

51. The third-party hosts that create listings on Airbnb.com are persons responsible for the creation or development of information provided through Airbnb, within the meaning of 47 U.S.C. § 230(f)(3).

52. The Act violates Airbnb’s rights under 47 U.S.C. § 230(c)(1), which states 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,” because enforcement of the Act against Airbnb—inssofar as it would impose criminal and/or civil liability on Airbnb for the publication of third-party rental listings on its platform—would treat Airbnb, a provider of an interactive computer service, as the publisher or speaker of information provided by another information content provider.

53. The Act is a “State ... law that is inconsistent with” Section 230, in direct violation of 47 U.S.C. § 230(e)(3).

54. The Act also interferes with or impedes the accomplishment of the full purposes and objectives of federal law, violates the Supremacy Clause, U.S. Const. art. VI, cl. 2, and is invalid and preempted.

55. Pursuant to 42 U.S.C. § 1983 and the Court's equitable powers, Airbnb seeks injunctive relief against the State and City to prevent enforcement of the Act, which would conflict with and violate the CDA.

**CLAIM 2: VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS
OF THE CONSTITUTION, AND CLAIM FOR INJUNCTIVE RELIEF,
PURSUANT TO 42 U.S.C. § 1983 AND THE COURT'S EQUITABLE POWERS**

(Content-Based Restrictions on Speech)

56. Airbnb incorporates all previous paragraphs as if fully set forth herein.

57. By prohibiting certain rental advertisements and imposing civil and/or criminal liability based on advertising, the Act imposes a content-based speech restriction on Airbnb's and hosts' speech, including commercial speech, based on hosts' creation of the advertisements and the publication of those third-party advertisements by Airbnb.

58. The restriction on speech imposed as a result of enforcement of the Act against Airbnb or hosts is not narrowly tailored to directly advance a compelling state interest. Instead of seeking to impose liability on hosts for advertising or on Airbnb for publishing third-party advertisements, the government could instead enforce short-term rental laws directly against hosts who rent their residences in a manner that does not comply with the law. The government has not shown, and cannot show, that this less-speech-restrictive alternative would be an inadequate means of achieving its policy goals.

59. The Act would also have an impermissible chilling effect on speech because it will prevent Airbnb from publishing any third-party listing which Airbnb is unable to confirm complies with the Act. As such, the Act will likely force Airbnb to remove lawful listings. Similarly, the Act will force many hosts to forgo advertising short-term rentals because they will not be able to determine whether their advertisements are lawful under the terms of the Act. Given the substantial criminal and civil penalties for non-compliance, and the difficulty (and sometimes practical impossibility) of confirming that a short-term rental advertisement complies

with the Act, hosts may refrain from creating, and platforms may refrain from publishing, even lawful listings.

60. The enforcement of the Act against Airbnb therefore violates the First Amendment of the U.S. Constitution, as applied to the State and City by the Fourteenth Amendment.

61. Pursuant to 42 U.S.C. § 1983 and the Court's equitable powers, Airbnb seeks injunctive relief against the State and City, whose enforcement of the Act against Airbnb would conflict with and violate the First Amendment.

**CLAIM 3: VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS
OF THE CONSTITUTION, AND CLAIM FOR INJUNCTIVE RELIEF,
PURSUANT TO 42 U.S.C. § 1983 AND THE COURT'S EQUITABLE POWERS**

(Imposition of Criminal and Civil Penalties Without Scienter)

62. Airbnb incorporates all previous paragraphs as if fully set forth herein.

63. The imposition of criminal and civil penalties under the Act violates the First Amendment and Due Process Clause of the Fourteenth Amendment of the United States Constitution because it purports to impose strict liability on hosts who advertise unlawful short-term rentals and platforms that publish such advertisements, in the absence of proof of scienter.

64. The Act does not require a showing that the host or platform *knew* the third-party listing at issue advertised a non-compliant rental. The Act therefore would impose strict criminal and civil liability on hosts for creating unlawful listings or Airbnb for publishing those listings that ultimately prove to violate the Act, even if Airbnb or the host has no knowledge of the violation.

65. Pursuant to 42 U.S.C. § 1983 and the Court's equitable powers, Airbnb seeks injunctive relief against the State and City, whose enforcement of the Act through criminal and civil penalties would conflict with and violate the First Amendment and Due Process Clause of the Fourteenth Amendment.

CLAIM 4: VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION, AND CLAIM FOR INJUNCTIVE RELIEF, PURSUANT TO 42 U.S.C. § 1983 AND THE COURT'S EQUITABLE POWERS

(Vagueness)

66. Airbnb incorporates all previous paragraphs as if fully set forth herein.

67. Enforcement of the Act against Airbnb would violate the First Amendment and Due Process Clause of the Fourteenth Amendment of the United States Constitution because the Act fails to provide an ordinary person with fair notice of whether liability under the Act may be imposed on Airbnb in its role as a hosting platform that publishes rental third-party listings, and is thus impermissibly vague. This vagueness is further evidenced by the confusion of the lawmakers, who disagreed as to whether it applies to Airbnb.¹⁵

68. Pursuant to 42 U.S.C. § 1983 and the Court's equitable powers, Airbnb seeks injunctive relief against the State and City, whose enforcement of the Act against Airbnb would conflict with and violate the First Amendment and the Due Process Clause of the Fourteenth Amendment.

CLAIM 5: VIOLATION OF THE HOME RULE CLAUSE OF THE NEW YORK STATE CONSTITUTION, N.Y. CONST. ART. IX, § 2(B)(2)

69. Airbnb incorporates all previous paragraphs as if fully set forth herein.

70. The Act constitutes a legislative action that relates to the affairs or government of New York City because it amends the New York City Administrative Code and because the legislative history of the Act confirms that concerns specific to New York City were the primary driving force behind the Act.

71. The prefatory "Justification" section for the Act states that the original genesis of changes in short-term rental laws was "an explosion of illegal hotel operators in single room occupancy buildings *in New York City*," and that the Act seeks to "protect communities and existing affordable housing stock" (emphasis added).

¹⁵ Shane King, *Report on June 14, 2016 Assembly Standing Committee Meeting on Codes*, New York State Watch (June 14, 2016); Transcript of June 17, 2016 Hearing of the New York State Assembly, at 58, <https://goo.gl/pwhRCO> (last visited October 20, 2016).

72. The Act, which concerns matters local to New York City, should have been enacted in compliance with the procedures for such laws set forth in the home rule clause.¹⁶

73. The Act does not have any reasonable relationship to any area of substantial state concern. First, it was enacted in response to local problems, and conflicts with the interests of out-of-City state residents. Indeed, the Act's restrictions will serve to make it more difficult for out-of-City state residents to find affordable housing options when visiting the City. In addition, the Act's restrictions on advertising are unnecessary because existing short-term rental laws can instead be enforced directly against hosts who may violate them.

74. Further, the Act's restrictions and substantial penalties will make it more difficult for City residents to use home-sharing to help pay their rent or mortgage, making the City less affordable for City residents, contrary to the law's purported justifications of addressing affordable housing issues and the City's own policies of reducing fines on small businesses and for low-level criminal offenses.

75. Pursuant to section 2(b)(2) of article nine of the New York State Constitution and 28 U.S.C. § 1367, Airbnb seeks injunctive relief against the State and City, whose enforcement of the Act against Airbnb would conflict with and violate the home rule clause of the New York State Constitution.

CLAIM 6: DECLARATORY RELIEF PURSUANT TO 28 U.S.C. § 2201

76. Airbnb incorporates all previous paragraphs as if fully set forth herein.

77. This action presents an actual case or controversy between Airbnb and Defendants concerning the validity and enforceability of the Act.

78. Because the Act violates the CDA, 47 U.S.C. § 230, the First and Fourteenth Amendments of the United States Constitution, and the home rule clause of the New York State Constitution, Airbnb seeks and is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the Act is invalid and unenforceable.

¹⁶ N.Y. Const. art. IX, § 2(b)(2).

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Airbnb respectfully requests that the Court:

79. Declare that, as applied to Airbnb, the Act violates 47 U.S.C. § 230 and the Supremacy Clause because it would permit the imposition of penalties as a result of the publication of third-party rental advertisements or other information by third-party hosts on Airbnb.com and impose duties on Airbnb with respect to its protected publishing and editorial acts concerning third-party rental advertisements;

80. Declare that, as applied to Airbnb, the Act violates the First and Fourteenth Amendments because it would place content-based restrictions on speech by imposing criminal and civil penalties on Airbnb as a result of the publication of third-party advertisements of multiple dwelling units for fewer than 30 days, and the restrictions that the Act would impose are not narrowly tailored to promote a compelling or substantial interest on the part of the government;

81. Declare that, as applied to Airbnb, the Act violates the First Amendment and Due Process Clause of the Fourteenth Amendment of the United States Constitution because it purports to impose strict criminal and civil liability for the publication of third-party listings in the absence of proof of *mens rea* or scienter;

82. Declare that, as applied to Airbnb, the Act violates the First Amendment and Due Process Clause of the Fourteenth Amendment of the United States Constitution because the Act is unconstitutionally vague and fails to provide an ordinary person notice of the conduct it punishes;

83. Declare that, as applied to Airbnb, the Act violates the home rule clause of the New York State Constitution because it relates to the affairs or government of New York City but does not satisfy the requirements of section 2(b)(2) of article nine of the New York State Constitution;

84. Preliminarily and permanently enjoin Defendants and their respective officers, agents, servants, employees, and attorneys, and those persons in concert or participation with them, from taking any actions to enforce the Act against Airbnb;

85. Award Airbnb its reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

86. Award Airbnb such other and further relief as the Court deems just and proper.

84. Preliminarily and permanently enjoin Defendants and their respective officers, agents, servants, employees, and attorneys, and those persons in concert or participation with them, from taking any actions to enforce the Act against Airbnb;

85. Award Airbnb its reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

86. Award Airbnb such other and further relief as the Court deems just and proper.

DATED: October 21, 2016

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(Use this form to file a local law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City
Town of Geneva
Village

FILED
STATE RECORDS

APR 19 2016

DEPARTMENT OF STATE

Local Law No. 2 of the year 2016.

A local law "Amending Chapter 165 (Zoning) of the Code of the Town of Geneva to Add Regulations Pertaining to Short-Term Rentals"

(Insert Title)

Be it enacted by the Town Board (Name of Legislative Body)

County
City
Town of Geneva
Village

as follows:

Section 1. Section 165-3 of the Zoning Code of the Town of Geneva is hereby amended with the insertion of a new definition for "Short-Term Rental" to read as follows:

SHORT-TERM RENTAL – A dwelling unit that is rented, in whole or part, to any person or entity for a period of less than 30 consecutive nights, and is not regulated by any other section of the Code of the Town of Geneva. "Rental" means an agreement granting use or possession of a residence, in whole or part, to a person or group in exchange for consideration valued in money, goods, labor, credits, or other valuable consideration. Use of a short-term rental by a record owner of a property shall not be considered to be a rental under this section.

Section 2. Schedule I – Permitted Uses in Section 165-7 of the Zoning Code of the Town of Geneva is hereby amended by adding "Short-term rental in compliance with section 165-28.6" under the Residential Uses heading and making such Use a permitted use by right in the A, R-1 and R-2 District columns such that the letter "P" shall appear in these locations of the Schedule.

Section 3. Chapter 165 (Zoning) of the Code of the Town of Geneva is hereby amended with the insertion of a new Section 165-28.6 to read as follows:

§ 165-28.6. Short-Term Rental Regulations.

- A. Permit Required. An owner shall obtain a revocable short-term rental permit whenever a dwelling unit is to be used for short-term rental purposes.
 - (1). A short-term rental permit shall be obtained prior to using the unit as a short-term rental.
 - (2). A short-term rental permit shall be valid for three calendar years, shall expire on December 31 of the third year it is in effect, and must be renewed upon expiration as long as the unit is used as a short-term rental.
 - (3). The short-term rental permit is transferable to a new owner, so long as the owner registers with the Town, updates the short-term rental permit application, and agrees in writing to comply with the requirements of the short-term rental permit and these regulations.

- (4) If the terms of the short-term rental permit are not kept or these regulations not followed, the short-term rental permit may be revoked and the owner subject to the penalties of Chapter 1, section 1-16 of the Code of the Town of Geneva, and the penalties set forth below.

B. Short-Term Rental Permit Application Requirements. An application for (or renewal of) a short-term rental permit shall be submitted to the Town Code Enforcement Officer, signed by all persons and entities that have an ownership interest in the subject property, shall be accompanied by payment of a permit fee, to be determined by the Town Board, shall be accompanied by a copy of the current vesting deed showing how title to the subject property is then held, shall be completed on the form provided by the Town, and shall provide the following information:

- (1) A list of all of the property owners of the short-term rental including names, addresses, telephone numbers and email addresses.
- (2) Completion of a signed and notarized affidavit by the property owners certifying the following:
 - (a) Compliance with the following standards:
 - (i) There shall be one functioning smoke detector in each sleeping room and at least one functioning smoke detector in at least one other room, one functioning fire extinguisher in the kitchen and at each exit, and at least one carbon monoxide detector.
 - (ii) Exterior doors shall be operational and all passageways to exterior doors shall be clear and unobstructed.
 - (iii) Electrical systems shall be serviceable with no visual defects or unsafe conditions.
 - (iv) All fireplaces, fireplace inserts or other fuel burning heaters and furnaces shall be vented and properly installed.
 - (v) Each sleeping room shall have an exterior exit that opens directly to the outside, or an emergency escape or rescue window.
 - (b) The number of sleeping rooms within the short-term rental, as defined in this section.
 - (c) The number of parking spaces on the property that meet the standards set forth below.
 - (d) Affidavit certifications shall be valid during the term of the short-term rental permit, or until modifications requiring a building permit are made, or until the Town Code Enforcement Officer has reason to believe an inspection is warranted, at which point the Code Enforcement Officer shall obtain a search warrant to conduct such inspection unless an owner of the property voluntarily consents to permit the Code Enforcement Officer onto the property and into the short term rental for purposes of conducting such inspection. If relevant circumstances on the property change or for any reason the certification is or becomes inaccurate, a new certification shall be submitted.
- (3) A site plan, drawn to scale, showing the location of buildings, required parking and, if not served by a public sewer, the location of the septic system and leach field. An accurate, suitable plan need not be prepared by a professional.
- (4) If the property is served by a private septic system, a septic inspection report issued pursuant to Chapter 159 of the Code of the Town of Geneva, dated within 90 days of the date of the application, stating the size of the tank(s) and leach or absorption field or area, and the location and condition of all septic system components. The report must state the septic system was adequately functioning at the time of inspection. The septic system must be in compliance with Chapter 159, and the maximum occupancy of the short-term rental unit shall be limited by the number of bedrooms allowed for the size of the septic

tank and leach or absorption area, as set forth in the regulations of the N.Y.S. Department of Health (referred to in Chapter 159), Appendix 75-A of Part 75 of Title 10 of the New York Code of Rules and Regulations, as amended, and regulations and/or standards applicable to aerobic septic systems. A system failure will require a new passing inspection report. The Town Code Enforcement Officer may allow occupancy in excess of these regulations and standards if circumstances show the system will adequately function for an allowed occupancy, and may condition any variance on certain actions and safeguards by the owner, such as frequent pumping of the septic tank or further, periodic inspection by the Town Code Enforcement Officer or designee.

- (5) The name, address, telephone number and email address of a contact person, who shall be responsible, and authorized, to act on the owner's behalf to promptly remedy any violation of these standards or the permit. The contact person may be the owner or an agent designated by the owner to serve as a contact person.
- (6) A statement that the applicant has met and will continue to comply with the standards of these regulations and the permit.

C. Short-Term Rental Standards. All short-term rentals shall meet the following standards:

- (1) The maximum occupancy for each short-term rental unit shall be the smaller of:
 - (a) the maximum number of people allowed based on the septic inspection report, if applicable; or
 - (b) the number of people calculated on the basis of 2 persons per sleeping room (unless the room size is below 100 square feet), plus an additional 2 persons. For this purpose, a sleeping room is defined as fully-enclosed habitable space of at least 70 square feet for one person and 100 square feet for two persons, with an emergency escape or rescue opening.
- (2) The property must have sufficient off-street parking spaces, in compliance with the requirements of Article VI (Off-Street Parking and Loading) of this Chapter, to accommodate the maximum occupancy.
- (3) Tenants and guests shall park in the off-street parking spaces required by Article VI (Off-Street Parking and Loading) of this Chapter and shall not park on any part of the lawn of the property nor on the street.
- (4) A house number visible from the street or road shall be maintained.
- (5) Provisions shall be made for weekly garbage removal during rental periods. Garbage containers shall be secured with tight-fitting covers at all times to prevent leakage, spilling or odors, and placed where they are not clearly visible from the street or road except around pick-up time.
- (6) Advertisements for the short-term rental must conform to what is allowed under these regulations and the short-term rental permit.

D. Procedure upon filing application.

- (1) Upon the filing with the Town Code Enforcement Officer of the permit application, permit fee, and all documents and information required by this Chapter, the Town Code Enforcement Officer shall have 30 days to review the application and then either issue the permit, with or without conditions, or notify the applicant in writing that the application has been denied along with the reason or reasons for denial. If a permit is issued, the permit shall bear the signature of the Town Code Enforcement Officer.
- (2) In reviewing the application, if the Town Code Enforcement Officer has probable cause to believe information contained in the application is inaccurate or incomplete, he may petition a court of competent jurisdiction for a search warrant to conduct an inspection of the short term rental property for purposes of ensuring compliance with this section. Alternatively, the Town Code Enforcement Officer may request permission from an owner of the short term rental to come onto the property and to conduct an inspection of the short term rental

property for purposes of ensuring compliance with this section, which permission the owners of the short term rental are under no obligation to give. If an inspection authorized herein is conducted, the Town Code Enforcement Officer shall use the results of such inspection in determining whether to issue the permit, with or without conditions, or to not issue the permit.

- (3) In issuing a short-term rental permit, the Town Code Enforcement Officer may impose such reasonable conditions and restrictions as are directly related to and incidental to the use of the property for short-term rentals so long as such conditions and restrictions are consistent with the requirements of the Town Zoning Law and the On-Site Individual Wastewater Treatment System Law of the Town of Geneva and are imposed for the purpose of minimizing any adverse impact the issuance of the short-term rental permit may have on the neighborhood or community.
- (4) The Town Code Enforcement Officer may decline an application for any of the following reasons:
 - (a) If the application is incomplete, the documentation required by this Chapter was not included with the application or the full permit fee, in payment form acceptable to the Town Clerk, was not included with the application.
 - (b) If the Town of Geneva issued a short-term rental permit to any of the owners needing to sign the short-term rental permit application and any of such owners had a short-term rental permit revoked within the previous year.
 - (c) If the affidavit from the owners or, if conducted, an inspection conducted by the Town Code Enforcement Officer as authorized in this section does not evidence that the subject property is in compliance with this Chapter or with the On-Site Individual Wastewater Treatment System Law of the Town of Geneva.
 - (d) If the site plan required to be submitted with the application does not comport with the requirements of this section.
 - (e) If a private septic inspection report is required to be submitted with the application and if such report does not comport with the requirements of this section or with the On-Site Individual Wastewater Treatment System Law of the Town of Geneva.
- (5) Short-term rental permits issued pursuant to this section shall state the following:
 - (a) The names, addresses and phone numbers of every person or entity that has an ownership interest in the short-term rental property and of a primary contact person who shall be available during the entire time the short-term rental property is being rented;
 - (b) The maximum occupancy and vehicle limits for the short-term rental unit;
 - (c) Identification of the number of and location of parking spaces available;
 - (d) A statement that littering is illegal;
 - (e) A statement that all fires must be attended;
 - (f) A statement that guests must comply with the Noise ordinance of the Town of Geneva, as set forth in Chapter 106 of the Town Code, which sets strict limits on noise levels between 10:00 p.m. and 7:00 a.m., which ordinance will be enforced by the Ontario County Sheriff's Department, the New York State Police, or any law enforcement agency properly exercising jurisdiction over the premises or incident;
 - (g) A statement that the short-term rental permit may be revoked for violations; and
 - (h) Any conditions imposed by the Town Code Enforcement Officer.
 - (i) That the permit shall expire on December 31 of the third year for which it is effective.

E. Conformity and Display of Permit.

- (1) The issuance of a short-term rental permit is subject to continued compliance with the requirements of these regulations.
- (2) Prior to any tenants coming onto the short-term rental property:
 - (a) The current short-term rental permit shall be prominently displayed inside and near the front entrance of the short-term rental; and
 - (b) A copy of the current short-term rental permit shall be provided to every adjacent property owner and to every property owner within 150 feet of the short-term rental property (whether on the same side of the road, across the street or behind the subject property). A statement of compliance with this provision, stating the owners served, and their addresses, and the method of service (e.g., mail, personal delivery), shall be provided to the Town Code Enforcement Officer.
- (3) The owners must ensure that current and accurate information is provided to the Town Code Enforcement Officer and that they notify the Town Code Enforcement Officer immediately upon any information contained on the permit changing. If, based on such changes, the Code Enforcement Officer issues an amended short-term rental permit, the owners must immediately replace the permit displayed inside and near the front entrance of the short-term rental with the amended permit and must immediately provide a copy of the amended permit to every adjacent property owner and to every property owner within 150 feet of the short-term rental property (whether on the same side of the road, across the street or behind the subject property).

F. Compliance, Hearings and Penalties. Owners of short-term rental units shall obey all applicable laws, ordinances and regulations of the Town of Geneva, Ontario County, New York State and the United States of America, and shall be subject to the enforcement and penalty proceedings contained in this Chapter.

The following process shall be followed in the event of a complaint alleging a violation of these regulations or a permit issued under these regulations:

- (1) The complaining party shall first attempt to contact the contact person designated on the permit, describe the problem and indicate the desired remedy.
- (2) The contact person shall, within two (2) hours of receiving the complaint, respond to the complaint and remedy as soon as reasonably possible any situation that is out of compliance with these regulations or with the permit for the property.
- (3) If the response is not satisfactory to the complaining party (including the inability to promptly reach the contact person), the complaining party may file a complaint with the Town Code Enforcement Officer by submitting a written complaint including the date, time and nature of the alleged violation as well as a statement that the complainant either unsuccessfully attempted to contact the contact person or did contact the contact person but the complaint was not adequately resolved. A failure to attempt to contact the contact person will not excuse a violation.
- (4) If the Town Code Enforcement Officer finds a violation of the permit or of this section, the Code Enforcement Officer may do any of the following depending on the circumstances:
 - (a) Attach reasonable conditions to the existing short-term rental permit;
 - (b) Suspend the short-term rental permit; and
 - (c) Revoke the short-term rental permit.
- (5) Should a permit be revoked, none of the owners of the short-term rental property may obtain any short-term rental permit sooner than one year after the date of revocation.
- (6) The Town may initiate enforcement proceedings under this Chapter at any time following receipt of a complaint.

- (7) Decisions of the Code Enforcement Officer will be provided to the parties and may be appealed, within 30 days of receipt of the decision, by the owner or by the complainant to a tribunal, appointed by the Town Board, consisting of one Town Board member, one town resident who holds a short-term rental permit, and one town resident who does not hold a short-term rental permit. The appealing owner or complainant shall make a written request for a hearing to the Town Clerk, and the tribunal shall hear the appeal within 15 days of the request, during which time the decision of the Code Enforcement Officer shall be stayed. At the hearing the tribunal shall accept evidence offered by the property owner, the complaining party, the Code Enforcement Officer and any other witness with relevant evidence. The tribunal shall make its decision within 10 days of the hearing, and may uphold the Code Enforcement Officer's decision, reject it, or modify it.
- (8) Any property owner found in willful violation of the provisions of this ordinance shall be required to reimburse the Town for its reasonable costs of enforcement, including reimbursement for staff time and reasonable attorney's fees.

Section 4. Required off-street automobile parking spaces in Section 165-38 of the Zoning Code of the Town of Geneva is hereby amended by adding "Short-term rental" under the "Residential Uses" heading and making the "Number of Spaces Required" for "Short-term rentals" "1 for every 2 permitted occupants".

Section 5. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

Section 6. This local law shall take effect immediately upon filing with the Secretary of State.

CHAPTER 24
CODE OF THE VILLAGE OF LAKEWOOD, N.Y.

§ 24-1 SHORT TERM RENTAL REGULATIONS.

- A. This section applies to a short-term rental use that:
- (1) is rented for periods of less than 30 consecutive days;
 - (2) is not part of a multifamily use; or
 - (3) is not occupied by the owner as a primary residence;
 - (4) is rented for not less than seven (7) consecutive days.
- B. A short-term rental use under this section may not:
- (1) include the rental of less than an entire dwelling unit;
 - (2) operate without a license as required by Section 24-5;
 - (3) operate without providing notification to renters as required by Section 24-3 (B)

§ 24-2 LICENSE REQUIREMENTS.

- A. To obtain a license, the owner of a short-term rental use must submit an application on a form provided for that purpose by the Village Clerk. The application must include the following:
- (1) a fee established by separate ordinance;
 - (2) the name, street address, mailing address and telephone number of the owner of the property;
 - (3) the name, street address, mailing address and telephone number of a local responsible contact for the property;
 - (4) the street address of the short-term rental use;
 - (5) proof of property insurance;
 - (6) statement of payment of county bed taxes due as of the date of submission of the application; and
 - (7) any other information requested by the Village Clerk.
- B. The Village Clerk shall issue a license under this section if:
- (1) the application includes all information required under this section;
 - (2) the proposed short-term rental use complies with the requirements of Chapter 24 of the village code;
 - (3) the structure has a valid certificate of occupancy or compliance;
 - (4) the structure has been determined by the Code Enforcement Officer not to pose a hazard to life, health or public safety, based on a minimum life-safety inspection;
 - (5) is approved by a resolution by the Village Board.
- C. A license issued under this section:
- (1) is valid for a maximum of one year from the date of issuance, subject to a one-time extension of 30 days at the discretion of the Village Clerk;
 - (2) may not be transferred by the property owner listed on the application and does not convey with a sale or transfer of the property; and
 - (3) satisfies the requirements for a change of use from residential to short-term rental use;
- D. A license may be renewed annually if the owner:
- (1) pays a renewal fee;
 - (2) provide statement of payment that hotel occupancy taxes have been paid for the licensed unit required by the County of Chautauqua for the previous year;
 - (3) provides updates of any changes to the information required;
 - (4) the Code Enforcement Officer has issued a Certificate of Occupancy based on a life safety inspection conducted at initial license issue and at a minimum of every 36 months thereafter; at the discretion of the Code Enforcement Officer. (2)

§ 24-3 **NOTIFICATION REQUIREMENTS.**

- A. The Village Clerk shall provide a packet of information with each license summarizing the restrictions applicable to the short-term rental use, including:
- (1) the name and contact information of the local responsible contact designated in the application;
 - (2) occupancy limits applicable under NYS Fire Code Chapter 4-408;
 - (3) restrictions on noise applicable under separate ordinance;
 - (4) parking restrictions;
 - (5) trash collection schedule, containers shall be rodent proof & covered;
 - (6) information on relevant burn bans;
 - (7) other guidelines and requirements applicable to short-term rental uses.
- B. The owner or operator of a short-term rental use must:
- (1) provide renters a copy of the information packet;
 - (2) post the packet conspicuously in the common area of each dwelling rental unit included in the registration.
- C. The Village Clerk shall mail notice of the contact information for the local responsible contact to all properties within 100 feet of the short-term rental use at the owner or operator's expense.

§ 24-4 **INSPECTIONS**

The code official shall make inspections to determine the condition of short-term rentals to ensure compliance with this chapter and other applicable laws. For the purpose of making inspections, the code official or the code official's representative may enter, examine and survey, at all times, all buildings, dwelling units, guest rooms and premises on presentation of the proper credentials. The owner or operator of an establishment, or the person in charge, shall give the code official free access to the building.

§ 24-5 **LICENSES AND PERMITS REQUIRED**

No person may operate a short-term rental unless a license for the operation, in the name of the owner or operator and for the specific dwelling unit, has been issued by the code official and is currently valid and in good standing.

§ 24-6 **LICENSE SUSPENSION**

- A. Whenever the code official finds on inspection of the physical premises or review of applicable records of any short-term rental, that conditions or practices exist that violate any provision of the Property Maintenance Code, or any rule or regulation adopted under this code, or that the establishment has failed to comply with any provision, prohibition or requirement related to the registration, reporting, collection, segregation, accounting, disclosure or payment of county bed taxes, the code official shall give written notice to the owner of the property and the operator of the short-term rental that unless the violations are corrected by an identified deadline, the license shall be suspended. By resolution of the Board of Trustees.
- B. At the end of the time provided for correction of the violation(s), the code official shall re-inspect the location or records of the short-term rental and if the conditions or practices have not been corrected, shall suspend the license and give written notice to the licensee that the license has been suspended.
- C. On receipt of notice of suspension, the licensee shall immediately stop operation of the short-term rental.
- D. Penalties: Any violation of provisions of this section by any person shall be punishable by fines listed in the Zoning Code fee and fine schedule.
- E. A suspended license shall only be re-instated by action of the Village Board.