

MAYOR'S OFFICE OF SPECIAL ENFORCEMENT

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Mayor's Office of Special Enforcement is proposing a rule to implement Local Law 146 for the year 2018, which requires booking services to report information regarding transactions based on short-term rentals.

When and where is the hearing? The Mayor's Office of Special Enforcement will hold a public hearing on the proposed rule. The public hearing will take place at 10:30 a.m. on Tuesday, December 18, 2018. The hearing will be in Spector Hall on the ground level of 22 Reade St, New York, NY 10007.

This location has the following accessibility option(s) available: The building is wheelchair accessible. See below for information on requesting additional accessibility.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Mayor's Office of Special Enforcement through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to oserules@cityhall.nyc.gov, with the subject line of "comment on proposed rule".
- **Mail.** You can mail comments to: Executive Director Christian Klossner at: The Mayor's Office of Special Enforcement, 22 Reade St., 4th Floor, New York, NY, 10007.
- **Fax.** You can fax comments to the Mayor's Office of Special Enforcement, The Mayor's Office of Special Enforcement, RE: proposed rule, at 212-788-6834.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 646-576-3533. You can also sign up in the hearing room before the hearing begins on December 18, 2018. You can speak for up to three minutes.

Is there a deadline to submit comments? Written comments on this proposed rule must be submitted to the Mayor's Office of Special Enforcement no later than close of business on December 18, 2018.

Do you need assistance to participate in the hearing? You must tell the Mayor's Office of Special Enforcement if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 646-576-3533.

You must tell us by December 11, 2018. Late requests can be made but may not be honored depending on availability of assistance.

Can I review the comments made on the proposed rule? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at The Mayor's Office of Special Enforcement, 22 Reade St, 4th floor, New York, NY 10007.

What authorizes the Mayor's Office of Special Enforcement to make this rule? Section 1043 of the New York City Charter ("City Charter") and Local Law 146 for the year 2018 (section 26-2101 *et. seq.* of the Administrative Code of the City of New York) authorize the Mayor's Office of Special Enforcement to make this proposed rule. This proposed rule was not included in the regulatory agenda of the Mayor's Office for this Fiscal Year because it was not contemplated when the Mayor's Office published the agenda.

Where can I find the rules of the Mayor's Office? The rules of the Mayor's Office are in Title 43 of the Rules of the City of New York.

What rules govern the rulemaking process? The Mayor's Office of Special Enforcement must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Local Law 146 for the year 2018, enacted on August 6, 2018, establishes a new provision of law: Chapter 26 (sections 26-2101 through 26-2105) of Title 26 (“Housing and Buildings”) of the Administrative Code of the City of New York. Chapter 26 requires online, computer, or application-based platforms, or “booking services,” that charge, collect, or receive fees for the use of the platform in connection with short-term rentals to report information about those transactions to the Mayor’s Office of Special Enforcement. Such information includes: the physical address of the short-term rental; the location online of the advertisement that resulted in the short-rental; information relating to the identity of the host, including contact information; and information related to the scope of the short-term rental transaction. The law specifies that it is to be administered by the Mayor’s Office of Special Enforcement unless specified otherwise by executive order.

The purpose of this proposed rule is to implement Local Law 146 for the year 2018. Specifically, this proposed rule would specify the time, manner, and form of reporting by the booking services; establish penalty provisions; establish a process for publishing and maintaining a list of buildings exempt from the reporting requirements; and establish a retention and disposal period for information obtained pursuant to the law.

The authority of the Mayor’s Office of Special Enforcement for these rules is found in section 1043 of the New York City Charter and Local Law 146 for the year 2018 (section 26-2101 *et. seq.*) of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Title 43 of the Rules of the City of New York is amended by adding a new chapter 17, to read as follows:

CHAPTER 17

REQUIRED DISCLOSURES OF SHORT-TERM RENTAL TRANSACTIONS BY BOOKING SERVICES

<u>§17-01</u>	<u>Definitions</u>
<u>§17-02</u>	<u>Reporting requirements for booking services</u>
<u>§17-03</u>	<u>Method of submission</u>

§17-04	Penalties
§17-05	Exempt transactions based on rentals occurring in certain buildings
§17-06	Privacy of information
§17-07	Retention and Disposal of Information Obtained in the Report

§17-01 Definitions

Administering agency. The term “administering agency” means the Office of Special Enforcement, as established under executive order number 96 for the year 2006, or such other agency as subsequently designated by executive order.

Booking Service. The term “booking service” means a person who, directly or indirectly: (1) provides one or more online, computer or application-based platforms that individually or collectively can be used to (i) list or advertise offers for short-term rentals, and (ii) either accept such offers, or reserve or pay for such rentals; and (2) charges, collects or receives a fee for the use of such a platform or for provision of any service in connection with a short-term rental. A booking service shall not be construed to include a platform that solely lists or advertises offers for short-term rentals.

Building. The term “building” means a building as defined in the New York city building code that is located in the city.

Class B multiple dwelling. The term “class B multiple dwelling” shall have the meaning ascribed to such term in the housing maintenance code.

Directly or indirectly. The term “directly or indirectly” means a person acting directly or indirectly through any subsidiary or affiliate thereof to perform the activity described in the definition of booking service.

Dwelling unit. The term “dwelling unit” means a dwelling unit, as such term is defined in the housing maintenance code, that is located in a building within the city.

Host. The term “host” means a person other than a booking service, including a co-host, who uses a booking service to offer, manage or administer a short-term rental.

Listing. The term “listing” means an online advertisement offering a short-term rental.

Short-term rental. The term “short-term rental” means a rental for occupancy of fewer than 30 consecutive days of (i) a dwelling unit or part thereof or (ii) housing accommodations within a building

§17-02 Reporting requirements for booking services

1. A booking service shall submit to the administering agency a report of transactions for which it charged, collected or received a fee, directly or indirectly, for activity described in the definition of booking service, except those transactions described in §17-05 of this chapter. Each short-term rental associated with such fee is considered to be a separate transaction. Such report shall include the following information:

- a. The physical address of the short-term rental associated with such transaction, including the street name, street number, apartment or unit number, borough or county, and zip code;
- b. The full legal name, physical address, phone number and email address of the host of such short-term rental and the uniform resource locator (URL) and the individualized name and number of such host on such booking service's platform;
- c. The individualized name and number and the URL of such advertisement or listing;
- d. A statement as to whether such short-term rental transaction involved (i) short-term rental of the entirety of a dwelling unit or housing accommodations in a building or (ii) short term rental of part of such unit or housing accommodations;
- e. The total number of days that the dwelling unit, part thereof or housing accommodations in a building were rented as a short-term rental through such booking service's platform;
- f. The total amount of fees received by such booking service for such short-term rental; and
- g. If such booking service collects rent for short-term rentals on behalf of such host, (i) the total amount of such rent received by such booking service and transmitted to such host and (ii) the account name and consistently anonymized identifier for the account number for the account used by such host to receive payments from such booking service or, if such booking service provides an explanation why such anonymized identifiers are unavailable, the account name and account number for such account. Accounts may be anonymized by providing only the last five digits of the account number.

2. In instances where such information is unavailable to the booking service, the booking service shall provide an explanation of why such information is unavailable.

3. With the exception of the initial report submitted by a booking service, each report shall cover transactions occurring during a period that begins with the first day of a month and ends with the last day of the same month. The initial report submitted by a booking service shall cover a period that begins February 2, 2019 and concludes on March 31, 2019.

4. A transaction related to a short-term rental that begins in one month but ends in the subsequent month shall be included in the report covering the month in which the rental concludes.

5. Following the initial report, a booking service must submit the report to the administering agency not more than 45 calendar days after the conclusion of the reporting period. The initial report shall be submitted not more than 60 calendar days after the conclusion of the initial reporting period.

§17-03 Method of submission

1. Each report shall be submitted electronically through a portal accessible from the administering agency's website.

2. The portal may require a booking service to submit contact information, including an email address, to be used by the administering agency for communications related to booking service submissions.

3. A booking service may apply for an exception to electronic submission, indicating specifically the alternate method of submission and the reporting period(s) for which it seeks the exception. Such exception shall be granted only in the following circumstances, and at the sole discretion of the administering agency:

- a. the booking services has fewer than 20 hosts;
- b. the booking service had fewer than 100 short-term rental transactions during the reporting period; or
- c. the booking service is prevented from using the prescribed submission method based on a technical disruption that is beyond its control or other unusual circumstance that exists.

4. The report shall be submitted in an electronic format prescribed and published on the administering agency's website no later than February 28, 2019. Reports not in compliance with the required formatting will be rejected and deemed missing, except for those booking services that were granted an exception pursuant to this section. The administering agency shall provide at least 90 days notice before any changes to the formatting requirements take effect. The 90 day notice shall be published on the administering agency's website and sent to all booking services who have submitted at least one report previously, via the contact information provided by the booking service.

§17-04 Penalties

1. A booking service that fails to submit a report in compliance with the requirements of this chapter shall be liable for a civil penalty, to be assessed once per reporting period for each set of missing, incomplete or inaccurate records corresponding to a unique listing.

2. In the event that a booking service's report is missing, incomplete, or inaccurate, the administering agency shall provide the booking service a written notice of deficiencies in compliance. The notice shall include specific information regarding deficiencies in need of correction. The booking service shall have 15 business days

from the date such a notice is provided to either correct the deficiency or provide a written statement explaining why the required information is unavailable or how it is complete or accurate. The booking service shall submit the corrections or explanation in a manner directed in the notice of deficiency. Upon the conclusion of the 15 business day period in which a booking service may cure deficiencies, the administering agency may seek civil penalties for any continuing deficiency.

3. The civil penalty shall not be more than the greater of \$1,500 or the total fees collected during the preceding year by the booking service for transactions related to the unique listing for which there is missing, incomplete or inaccurate information being reported. Penalties based on total fees shall not include any fees that were used to assess a previous penalty.

4. Civil penalties established by this section may be imposed and recovered in a proceeding before the office of administrative trials and hearings or a court of competent jurisdiction.

§17-05 Exempt transactions based on rentals occurring in certain buildings

1. The administering agency shall publish a list of addresses for buildings it has reason to believe at the time of such publication are class B multiple dwellings lawfully used for transient occupancy. Booking services are not required to include in reports transactions which are based on a short-term rental occurring in a building on this list, and no penalties shall be assessed based on the absence of or material deficiencies for transactions occurring at these addresses in such report.

2. Inclusion or lack of inclusion on such list does not alter and may not be deemed to alter the legal occupancy or zoning use group of a building or portion thereof as described in the certificate of occupancy or as otherwise determined by the Department of Buildings (“DOB”).

3. The administering agency shall publish the list of exempt buildings on its website no later than February 28, 2019. The list shall be updated every six months thereafter, and published in the same location.

4. The owner, as defined in the Housing Maintenance Code, of a building not included on the list may apply to the administering agency for a review of the building’s legal occupancy and inclusion on the list. Any individual, including, but not limited to, owners, tenants, neighbors, or civic groups may apply to the administering agency for a review of a building’s legal occupancy and removal from the list.

5. An application for inclusion on or removal from the exempt buildings list shall indicate the basis for adding or removing the building to or from the list, and must include all documents and statements supporting the application. The application must include the currently applicable certificate of occupancy, if one is available from the DOB. If no currently applicable certificate of occupancy is available, the application

must include other relevant and applicable documentation of the current lawful uses of the multiple dwelling which the applicant is seeking to be added to or removed from the list. Such documentation may include I-cards maintained by the Department of Housing Preservation and Development or other records maintained by the DOB regarding the subject multiple dwelling, including DOB job applications. The supporting documents and statements shall be submitted to the administering agency in the particular format specified on the administering agency's website.

6. The application must be accompanied by payment to the City of a \$200 processing fee. The administering agency may waive the processing fee upon request of the applicant if doing so would be in the public interest. If an application is withdrawn before the administering agency conducts its review, partial or full refund of processing fees shall be provided upon application to the Comptroller of the City of New York, and upon verification of claim by the administering agency.

7. The administering agency shall review all documents and statements submitted in support of the application, and may consider any other information it deems relevant.

8. The administering agency shall notify the applicant in writing of the final agency decision within 60 days of receipt of the application.

9. Subsequent applications for review of a previously reviewed building filed by the same applicant will only be considered if there has been a change in the legal occupancy occurring after the previous agency decision.

§17-06 Privacy of information

1. Information submitted in the report shall be available for public review only to the extent required by federal, state and local law.

2. Unless otherwise required by federal, state or local law, reports submitted pursuant to this chapter shall be for the information of the administering agency and the personnel of agencies assigned to such administering agency, and shall be kept in the confidence of such agency and such personnel and shall not be revealed by the administering agency or such personnel in any manner or under any circumstances except as related to activity within the purpose and functions of the administering agency with respect to short term rentals.

3. Identifying information, as defined in § 23-1201 of the administrative code, will be collected, retained, and disclosed only in compliance with this chapter and New York City Administrative Code Title 23, Chapter 12, and only with all approvals required by that chapter.

4. When receiving requests for information in the reports pursuant to the New York State Freedom of Information Law ("FOIL"), the administering agency must consider whether disclosure would constitute an unwarranted invasion of personal privacy, and

shall deny access to those portions of the records that would constitute such an invasion if released. Prior to making records available for public inspection, the administering agency may choose to notify individuals whose records may be released.

5. When receiving demands for records pursuant to subpoena, court order, or other legal process, the administering agency must consider whether it is appropriate or feasible to seek a court order quashing, modifying, or protecting against subsequent disclosure.

§17-07 Retention and Disposal of Information Obtained in the Report

1. The administering agency will retain the reports:

a. As long as investigations involving the information in the reports remain open; or

b. For a period of three years after investigations are closed, except that records involved in civil court litigation will be kept for a period of 10 years after close of the case.

2. Records will be kept in the administering agency offices for three years after investigations are closed, and thereafter in the Records Center in the case of litigation records.

3. Booking services must retain all submitted reports for 3 years.

4. The administering agency shall ensure that the records are collected and retained in a manner compliant with city data security standards.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Reporting transactions by booking services

REFERENCE NUMBER: 2018 RG 128

RULEMAKING AGENCY: Mayor's Office of Special Enforcement

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: November 9, 2018

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Reporting Transactions by Booking Services

REFERENCE NUMBER: 2018 RG 128

RULEMAKING AGENCY: Office of the Mayor – Mayor's Office of Special Enforcement

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) There is a cure period incorporated, above and beyond the statutory requirements, that requires notice of deficient reporting and a 15 business day cure.

/s/ Shifra Goldenberg
Mayor's Office of Operations

November 9, 2018
Date