

## Mayor's Office of Special Enforcement

### NOTICE OF ADOPTION OF FINAL RULES GOVERNING REQUIRED DISCLOSURES OF SHORT-TERM RENTAL TRANSACTIONS BY BOOKING SERVICES

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN** the Mayor's Office of Special Enforcement ("OSE") by section 1043(e) of the New York City Charter ("City Charter"), sections 26-2101 *et. seq.* of the Administrative Code of the City of New York, and Local Law 64 for the year 2020, and in accordance with the requirements of section 1043 of the City Charter, that OSE promulgates and adopts Chapter 17 of Title 43 of the Rules of the City of New York, regarding reporting requirements for booking services.

These rules were proposed and published on November 2, 2020, and a public hearing was held on December 2, 2020.

#### **Statement of Basis and Purpose**

Local Law 146 for the year 2018 (LL 146), enacted on August 6, 2018, established a new provision of law: Chapter 21 (sections 26-2101 through 26-2105) of Title 26 ("Housing and Buildings") of the Administrative Code of the City of New York, regarding reporting requirements for short-term residential rentals. The law specified that it was to be administered by the Mayor's Office of Special Enforcement (OSE) unless specified otherwise by executive order.

Shortly after LL 146 was enacted, Airbnb, Inc. and HomeAway, Inc. each challenged LL 146 by filing a complaint against the City of New York in federal court. On January 3, 2019, the court preliminarily enjoined LL 146 from taking effect pending the resolution of the litigation. On June 20, 2019, the court nevertheless granted permission for OSE to publish the final rule it had issued to implement LL 146, which specified that the rule would not take effect until "15 business days after the lifting of the preliminary injunction issued on January 3, 2019 in *Airbnb, Inc. v City of New York*, 18 Civ. 7712 (PAE) and *HomeAway.com, Inc. v City of New York* 18 Civ. 7742 (PAE), unless another date is ordered by the court." In the following year, Airbnb, Inc. and the City settled their case, the City amended Chapter 21 of Title 26 of the Administrative Code of the City of New York, the court dismissed the action brought by HomeAway, Inc. as moot, and consequently the rule previously published to implement LL 146 never went into effect.

The amendments to Chapter 21 of Title 26 of the Administrative Code of the City of New York were signed into law by the Mayor on July 7, 2020 as Local Law 64 for the year 2020. Chapter 21 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 OSE. 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 OSE unless specified otherwise by executive order.

This rule implements Chapter 21 of Title 26 of the Administrative Code of the City of New York in accordance with Local Law 64 for the year 2020. Specifically, this rule:

- Specifies the time, manner, and form of reporting by the booking services;
- Establishes penalty provisions;
- Establishes a process for publishing and maintaining a list of buildings exempt from the reporting requirements; and
- Establishes a retention and disposal period for information obtained pursuant to the law.

No substantive comments were received during the public comment period.

New material is underlined.

[Deleted material is in brackets.]

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

Section 1. 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**

<b><u>§17-01</u></b>	<b><u>Definitions</u></b>
<b><u>§17-02</u></b>	<b><u>Reporting requirements for booking services</u></b>
<b><u>§17-03</u></b>	<b><u>Method of submission</u></b>
<b><u>§17-04</u></b>	<b><u>Penalties</u></b>
<b><u>§17-05</u></b>	<b><u>Exempt transactions based on rentals occurring in certain buildings</u></b>
<b><u>§17-06</u></b>	<b><u>Privacy and security of information</u></b>
<b><u>§17-07</u></b>	<b><u>Retention and Disposal of Information Obtained in the Report</u></b>
<b><u>S17-08</u></b>	<b><u>No Private Right of Action</u></b>

#### **§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.

Qualifying Listing. The term “qualifying listing” means a listing or advertisement that offers a short-term rental via a booking service, and: (1) such listing or advertisement offers or appears to offer the short-term rental of an entire dwelling unit or housing accommodation, or (2) such listing or advertisement offers or appears to offer a short-term rental for three or more individuals at the same time.

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 associated with a qualifying listing for which it charged, collected or received a fee, directly or indirectly, for activity described in the definition of booking service, except for 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 the associated qualifying listing;

d. A statement as to whether such short-term rental transaction involved the: (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; and

f. 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, provided that a booking service shall, considering its technical capacity, de-identify the account number to the greatest extent possible so as to protect the privacy and security of the account number. De-identification of a unique account number shall be consistent from report to report.

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

3. A booking service need not report any information for transactions associated with a qualifying listing when all such transactions within a reporting period result in the rental of a dwelling unit or housing accommodation for an aggregate of four days or less.

4. The reports shall be submitted on a quarterly basis. With the exception of the initial reporting period, the reporting periods shall consist of the following quarters: January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 31. The initial reporting period shall begin when Local Law 64 for the year of 2020 takes effect on January 3, 2021, and end on March 31, 2021.

5. Each report shall cover transactions occurring during a period that begins with the first day of a reporting period and ends with the last day of that reporting period.

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

7. The initial report shall be submitted not more than 60 calendar days after the conclusion of the initial reporting period. 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.

### **§17-03 Method of submission**

1. Each report shall be electronically submitted by a booking service through a secure portal accessible from the administering agency's website. No later than 15 business days after Local Law 64 for the year of 2020 takes effect on January 3, 2021, the administering agency will publish on its website additional guidance on the electronic submission process.

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 a proposed alternate secure 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 service 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 another such 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 the close of the initial reporting period. 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 will provide at least 90 days' notice before any changes to the formatting requirements take effect. The 90-day notice will 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 qualifying listing for which any of the information required pursuant to section 17-02(1) of this chapter is missing, incomplete or inaccurate.

2. In the event that a booking service's report is missing, incomplete, or inaccurate, the administering agency will provide the booking service a written notice of its 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 qualifying 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 will 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 will publish the list of exempt buildings on its website no later than 15 business days after Local Law 64 for the year of 2020 takes effect on January 3, 2021. 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 will review all documents and statements submitted in support of the application, and may consider any other information it deems relevant.

8. The administering agency will 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 and security 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 and information contained therein shall be used by the administering agency and the personnel of agencies assigned to such administering agency solely for purposes related to the enforcement of laws relating to short-term rentals, and will be kept confidential by the administering agency and such personnel, and will not be revealed by the administering agency or such personnel in any other manner or under any other circumstances.

3. Identifying information, as defined in section 23-1201 of the administrative code, will be collected, retained, and disclosed by the administering agency only in compliance with this chapter, in accordance with the requirements and approvals required by chapter 12 of title 23 of the administrative code, 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 will consider whether disclosure of such information would constitute an unwarranted invasion of personal privacy under sections 87(2) and 89(2) of the new york state public officers law, and will deny access to those portions of the records that would constitute such an invasion if released. In accordance with section 89(2)(b) of the new york state public officers law, the administering agency may withhold identifying information, prior to making records available for public inspection. In the event that the administering agency is compelled by law to disclose such records without withholding the identifying information, the administering agency will, prior to such disclosure, notify the individuals

whose identifying information must be disclosed. Submission of such notice to the email address provided by the booking service for each such individual shall constitute an adequate attempt to notify the individual. The administering agency will also consider whether such disclosure would interfere with law enforcement investigations or judicial proceedings or deprive a person of a right to a fair trial or impartial adjudication, and are thereby exempt from disclosure pursuant to section 87(2)(e) of the new york state public officers law. The administering agency will also consider whether the records are exempt from disclosure under any other exemption enumerated in section 87(2) of the new york state public officers law.

5. If a booking service requests, at the time of submission of a report required by this chapter, that the administering agency exempt such records from disclosure pursuant to the new york state public officers law § 87(2)(d), and the administering agency determines that it is compelled by law to disclose such records, then the administering agency will notify such booking service of the disclosure of such records at least 10 calendar days prior to such disclosure.

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

7. The administering agency will protect the privacy and security of identifying information by implementing appropriate physical, technical and administrative safeguards, in accordance with the city's information technology security standards and requirements relating to the use, transfer and storage of confidential data.

#### **§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 all investigations are closed, except that records involved in civil court litigation will be kept for a period of 10 years after the close of the case.

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

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

#### **§17-08 No private right of action**

1. Nothing contained in this chapter shall be construed as creating any private right of action against the city or any agency, office or employee thereof.