

RE: Local Law 18 for the year 2022 (LL18)

I am a Short Term Rental host, an attorney specializing in Privacy Law, and a resident of New York City. Please find my legal analysis of the Short Term Rental registration rules being proposed by the Mayor's Office of Special enforcement in relation to New York City's Local Law 18 of 2022.

The following considerations are not exhaustive. Many additional legal concerns, not addressed here, exist in regards to LL18. Most of the issues addressed here concern the privacy rights of hosts and/or guests.

The following terms will have the meaning provided in the text of LL18: "Administering Agency," "Building," "Dwelling Unit," "Listing," "Listing Identifier," "Material Fact," "Material False Statement," "Owner," "Permanent Occupant," "Private Dwelling," "Registered Host," "Short Term Rental."

Terms not defined by the LL18:

"Competence:" Shall have the meaning given by the Model Rules of Professional Conduct Section 1.1, as published by the American Bar Association (also "ABA").

"Breach" shall have the meaning set forth in General Business (GBS) CHAPTER 20, ARTICLE 39-F Section 899-AA

"Personal Information" shall have the meaning set forth General Business (GBS) CHAPTER 20, ARTICLE 39-F Section 899-AA

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"General Data Protection Regulation" or "GDPR" shall have the meaning set forth by the European Parliament and Council of the European Union. All articles in the regulation shall be collectively referred to as "GDPR"

"California Consumer Privacy Act" also "CCPA" and "California Privacy Rights Act" also "CPRA" shall have the meaning stipulated by the California Legislature

"Other Applicable Privacy Regulations" shall have the same meaning as all applicable privacy laws and/or regulations enacted, modified, and/or amended by the states of the United States of America. Said definition shall include "CCPA" and "CPRA"

Terms have been capitalized in accordance with Gregg Reference Manual.

Please note: LL18 has not (1) capitalized terms, (2) properly defined terms, (3) properly identified the law's sections, (4) been written in a manner that any and all New York City residents can comprehend. Regulations must be easy to understand by any and all residents, which means that, in general, such regulations need to be written at a ninth grade educational level. Failure to provide such inclusive language directly discriminates against any and all residents whose reading comprehension level does not align with the regulation as written.

The Privacy Issues Identified Are as Follows:

**§ 21-03.1.3 - Information to be provided as part of the application for the Short Term Rental registration.**

Hosts are required to provide the following information:

1. Full legal name
2. Current phone number
3. Full physical address
4. Email address or other means of communication "acceptable" to the Administering Agency
5. Type of Dwelling Unit
6. Full legal name of **ALL** permanent occupants of the Dwelling Unit and the **NATURE OF THEIR RELATIONSHIP** to the applicant
7. A diagram of the Dwelling Unit, that includes "(i) all rooms in the unit, (ii) location of fire extinguishers, (iii) normal and emergency exit routes from the unit to the building that contains the unit, and (iv) which room or rooms will be used to house the short-term lodgers"
8. Uniform resource locator of listing identifier associated with the booking
9. Whether the applicant is a tenant or owner of the Dwelling Unit.

Many issues arise from the language in § 21-03.1.3 of LL18, only the ones highlighted or underlined above shall be addressed:

1. **Full Legal Name**: Demanding that hosts provide their full legal name for an application that will be publicly available is excessive. Many individuals do not use their full legal name on a daily basis and reserve such use for financial transactions. Moreover, providing a full legal name in conjunction with the information required in § 21-03.1.5 present substantial risks to individuals who may have their financials compromised in case of a data Breach. Publication or inadvertent disclosure of such Private Information and Personal Information may lead to identity theft, harassment, etc.

2. **Current Phone Number**: most individuals do not retain the same number for multiple years and some do not have a phone or cellphone. Moreover, landlines are no longer common, so the likelihood of an individual modifying the phone number is high. This requirement would cause individuals the obligation to amend the application unnecessarily when another contact method has already been provided.

3. **Other Means of Communication**: Means of Communication is not clearly defined and it is up to the Administering Agency's discretion which "Means of Communication" are deemed suitable. This clause directly discriminates against individuals who are unable to complete the requirement and are left to the Administering Agency discretionary power to decide whether an alternative method is acceptable. This particular clause may directly affect individuals with levels of technology education that do not align with the requirement and those in financial difficulties, among others.

6. **Full Legal Name of All Permanent Occupants and the Nature of Their Relationship to the Applicant**: This requirement is particularly alarming from a privacy perspective. Concerns will be addressed separately. While LL18 may not specifically state that such information will be disclosed, it does not prevent disclosure either. Thus, the risk of disclosure is clearly present and hosts are left to the discretion of individual enforcers:

- a. **Full Legal Name of All Permanent Occupants**:

- 1) **Children.** The requirement of providing the full legal name of all permanent occupants indicates that information about children would become available. This requirement, combined with the requirement to provide the applicant's full legal address, would result in children's information becoming public or at least accessible to those engaged with the agency. This is dangerous enough as it is, but in case of a Breach this information may have even more dangerous repercussions. If this information were to become available to those who present a risk to children, including but not limited to, child molesters, child traffic rings, rapists, etc. would be able to gain knowledge of the name of the child in question and the address where they reside. It is concerning that none of these issues were considered during the drafting of LL18 or the proposed rules. Multiple Privacy Regulations around the world protect children's information for this exact reason. The failure to protect children and creating an unnecessary risk to them can be argued to go beyond mere negligence and venture to the legal definition of recklessness.
- 2) **Victims of Domestic Violence, Harassment, Discrimination of Any Sort, and Any Other Individual Whose Identity or Geographic Location Should Remain Private out of Safety Concerns.** During the pandemic cases of domestic violence increased ~10% in the United States of America, harassment against People of Color and of certain religious affiliations has also increased at unprecedented rates. The list and concerns mentioned below are, by no means, exhaustive.
  - a) Victims of Domestic Violence. Survivors are now attempting to move away from their abusers, publishing their information or making such information available to unnecessary parties puts them at risk of injury, kidnapping, and even death. The fact that the City of New York is willing to put individuals at such a risk without any concern for their safety is egregious.
  - b) Victims of Harassment and Violence Based on Their Status as a Protected Class (as defined by the Supreme Court of the United States). The pandemic and political and financial unrest brought about record numbers of discrimination, harassment, and/or assault. Providing a full legal name and full address creates a risk of minorities. Minorities would be put at further risk of violence by racist and xenophobic perpetrators if this information were to become public. This law would render all efforts by the City and the State of New York to protect minorities useless.
- 3) **Nature of Their Relationship to The Applicant.** The nature of the relationships of people living under the same roof is and should remain private. The following issues are not exhaustive. The Supreme Court of the United States ruled in *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) that relationships within a household are private. The case referred to an East Cleveland, Ohio zoning ordinance that limited the occupancy of a dwelling to "members of a single family." Although the factual situation in this case is different, the following statements made by Justice John Paul Stevens in his concurring opinion are worth mentioning.
  - a) Justice Stevens argued that the "critical question presented by this case is whether East Cleveland's housing ordinance is a permissible restriction on appellant's *right to use her own property as she sees fit*". Additionally, Justice Stevens concluded the ordinance "*cuts so deeply into a fundamental right normally associated with the ownership of residential property.*"
  - b) **LGBTQ+, Biracial Couples, and Other Minorities Discrimination Concerns.** Minority communities have seen improvement in their rights, protections, and acceptance in recent times. However, one would be remiss not to acknowledge that discrimination and violence against minorities continue to exist. For example, outing same sex couples (and even straight couples in some cases) could result in violence and/or harassment. This does not

even account for individuals who choose to keep this information private from any third party, and who have a right to their privacy. The City of New York has continuously repeated its commitment to protect our community, yet LL18 completely disregards minorities and the violence they face daily.

- c) **Parent - Child Relationship.** Unconventional parental relationships could also become public, likely harming the child and family unit. For example, parents may choose not to disclose their child whether they are adopted or not, or whether they are being raised by a grandparent, aunt, or another family member as a result of their biological parents not being able to care for them. This requirement could make all of this information available. It will likely harm the family unit and the child themselves.

#### **§ 21-03.1.4 - Administering Agency Discretion to Accept Documents**

In cases where a lease or property title is not available the Administering Agency may “at its sole discretion” accept a written statement explaining the reason for which the documents are not available. While documentation showing the power to enter the registration is appropriate, the power granted to the Administering Agency to decide at its sole discretion if a statement is sufficient is arbitrary and may vary from employee to employee making the determination. There are a multitude of reasons from which a person may not be able to provide such documentation. Thus, the Administering Agency should not retain sole discretion as it may lead to arbitrary decisions.

#### **§ 21-03.1.5 - § 21-03.1.6 - Identification and Verification Documentation Requirements**

##### **Unexpired Documents**

Driver’s license or StateID;  
U.S.Passport or U.S.Passport card;  
U.S. Military ID; or  
IDNYC card.

##### **Verification Information - Two Needed**

1. Utility Bill, dated within the last 60 days(e.g.,telephone,gas,electric,cable,or water);  
Correspondence from any government agency that shows home address;
2. A voter registration card;
3. Social Security Statement;
4. A bank statement dated within the last 60 days;
5. An automobile registration documentation;
6. Income Tax Form For The Last Calendar Year;
7. Insurance documentation or insurance bill that shows home address;
8. Current (active) license or permit or certificate issued by a City/State/Federal government agency that shows home address;
9. College or school correspondence that shows home address;
10. A w-2 from the most recent tax filing period;
11. Official payroll documentation that includes home address issued by an employer within the past 60 days, such as a paystub with home address, a form submitted for tax withholding purposes, or payroll receipt; or

12. other forms of proof that the administering agency determines are acceptable and indicates as such by including such information on the agency's website.

“. . . financial information or personal identifying information about an individual that is not the applicant may be redacted by the applicant such that the financial information is not visible, and the administering agency shall accept the documents unless the redaction interferes with its ability to confirm the authenticity of the documentation.”

### **Privacy Concerns**

First, I would like to point out that many individuals may not be able to produce these documents, including undocumented people. Secondly, many individuals may have concerns regarding making some or all of this information accessible to third parties. Thirdly, it is a blunt disregard of people living in the same household rights to not make their own information available, particularly when the Administering Agency retains discretion to assess whether redacted documents “interfere with its ability to confirm the authenticity of the documentation.”

### **§ 21-03.1.11 - Application Fee**

The fee is \$145 non-refundable. This requirement assumes that all individuals aiming to be hosts are financially able to pay the registration fee upfront and will face no financial hardship if the application is denied and the fee is not refunded. No recourse or assistance is granted to these individuals. This arguably amounts to financial discrimination.

### **§ 21-03.1.12, 15-16, § 21-06.1 - Information Publication and Amendment.**

“Prior to requiring payment, the applicant shall indicate their understanding that the administering agency is required to *publish on the city open data portal*, for all registrations: the registration number; the uniform resource locators associated with such registration; *the address and unit number of the dwelling unit, including latitude and longitude*; the status of the registration, including active or revoked; and the expiration date of the registration.”

Booking Services allow hosts to provide the information only after a booking has been confirmed. This allows hosts to maintain their privacy and the safety of their home (and guests). Publishing this information publicly has multiple concerns, including the aforementioned concerns about the safety of children, victims, and minorities.

Additionally, the requirement to keep information updated at all times may further exacerbate the concerns listed above. It will also require additional work by hosts and will make public any modifications to the household.

### **§ 21-03.4-5 - Information Registration Certificate, Application Number in Advertisements, and Data Collection and Record Retention**

**Copy of Certificate Publication.** This requirement will result in hosts providing all of their Personal Information to anyone who enters the dwelling. The City of New York cannot force individuals to provide their Personal Information against their will. The City of New York is treating hosts as if they were running

a business out of a commercial building and not hosting guests in their private residence. Hosts cannot be equated to business owners and have business guidelines govern over their residences. They are not a business, they are not a commercial institution, they are people renting rooms in their private residence (their private property). This is a place where they leave and that is and should remain private. They cannot be forced to publish their Personal Information and assume unnecessary risks to their financials, safety, and/or wellbeing.

**Application Number Included in Advertisements.** The same concerns listed throughout this statement apply. Hosts publishing the Application Number in every single advertisement, will lead to them making unnecessary Personal Information public and assuming the risks of having their identity stolen, being harassed, facing risks of violence, etc.

**Data Collection and Record Keeping.** Owners are required to keep records for a period of at least seven (7) years. While the regulation does not specifically request that guest Personal Information is retained separately by the hosts in order to satisfy the requirement, hosts are expected to segregate Personal Information in order to avoid guest identification. Hosts are not equipped to comply with this requirement while at the same time complying with all applicable Privacy Regulations, which vary in the definitions of anonymization and/or deidentification of Personal Information. Furthermore, even when no Personal Information is required the information requested by LL18 can lead to the identification of an individual through indirect identifiers. This would make hosts obliged to comply with a multitude of Privacy Regulations. In addition, multiple regulations grant individuals the right to have their Personal Information deleted and/or prohibit retention beyond a certain period of time. Many hosts provide accommodations for residents or citizens of the European Union, whose rights are protected by the GDPR. In the United States multiple states have passed legislation protecting their residents, those regulations would also require compliance by the hosts. Around the globe multiple countries have specific Privacy Regulations intended to protect their citizens abroad. Many of these regulations have not been translated into English, are too convoluted to understand, or there is simply no consensus as to how they should be interpreted. Hosts would also be required to comply with the security measures imposed by these regulations. The expectation that hosts can comply with all regulatory requirements and become well versed with such regulations is completely absurd. It takes attorneys years of law school, practice, and specialization to grasp the concepts of those laws and assist clients with regulatory compliance, to demand that hosts with their own work obligations and without a law degree to become Competent (as required by the ABA) is simply nonsensical.

This requirement can have horrible repercussions for victims of domestic violence. It can also significantly affect persons who can become pregnant. Currently, the United States has been seeing an increase of regulations that prevent persons who can get pregnant from having access to reproductive resources, including abortion. Moreover, states have implemented regulations that allow the use of any information, that may be considered evidence, valid when prosecuting a person for their decision to not bear a child. People who flee their states to secure an abortion many times rely on more affordable accommodations, such as those provided by hosts. These records may be used not only against the people seeking the abortion, but also against the hosts and the booking agency. This particular regulation can have a detrimental effect on the right to make choices about one's body. The City of New York has offered a safe haven to all those affected by other states' intrusion over their choices. Yet, the City of New York, through LL18, forces people seeking to have an abortion to rent a room at a hotel. Many of the people choosing to stay with a host as opposed to a hotel do so because they cannot afford

one. LL18 puts these people at a disadvantage and further supports the idea that abortion should be accessible to the wealthy ones, thereby further victimizing those with limited resources.

The record keeping requirement, among others, puts hosts in the position of not being able to comply with Privacy Regulations; creates an unnecessary burden on hosts; and puts guests at risk of identity theft, criminal prosecution, civil penalties, and deprives them of their rights under Privacy Regulations.

### **§ 21-10.12 & New York Multiple Dwelling Home - Locks and Obligation to Be in the Residence at All Times.**

“A registered host shall not allow a rentee to have *exclusive access* to a separate room within a registered dwelling unit (e.g., *providing the rentee with a key to lock the door when such rentee is not in the dwelling unit is prohibited*).”

It is surprising that the City of New York would consider that one cannot have a right to privacy in their own home. Hosts, as well as guests, cannot be deprived of their right to maintain aspects of their life private. Hosts and guests may have sensitive documents for example passports, checks, medical and financial information, etc. While a person may leave such documents unlocked when their immediate family is present, it is absurd to require people to leave such documents accessible to strangers. Moreover, many people are working from home right now, such people would likely have in their possession information that can be deemed confidential either under contractual obligations or constitutional protections. For example, employees are likely to have signed a Non-Disclosure Agreement (NDA) which prevents them from making any company information available, attorneys, doctors, psychologists, etc. will have in their power privileged information. All of these people are required to make reasonable efforts to protect the information in question. One could argue that failing to lock a door and granting strangers access to the information does not qualify as “reasonable efforts.” LL18 puts people in the position of risking disclosure of confidential or privileged information, such a request is outrageous.

“A common household is deemed to exist if every member of the family has access to all parts of the dwelling unit. Lack of access to all parts of the dwelling unit establishes a rebuttable presumption that no common household exists.”

While New Multiple Dwelling Home allows for privacy locks when the person is present in the room, privacy locks at any other time are forbidden. Some of the concerns have been mentioned above. However, other considerations include, but are not limited to:

The Right to Privacy Health Information. Preventing a person to lock the door to their room so no third parties can access the space, makes people who are on medication (many of them protected under the Americans with Disabilities Act) vulnerable to disclosure of their Private Information. All United States residents have the right to maintain their health information private (Health Insurance Portability and Accountability Act - HIPAA). State or City governments cannot intrude on this right as it is protected by Federal Law. New York City is forcing hosts (and guests) to make their rooms (and anything contained inside) accessible to all those staying in the household. This includes their medical information and prescriptions. If a host were to take painkiller medications, and a guest were to obtain access, consume, and/or have complications from such consumption (e.g., overdose), the host would be liable for not preventing the guest from accessing the medications. The City is requesting that hosts absorb that risk.

Moreover, it can be argued that the City is interfering with the wellbeing of the hosts as they are forcing them to choose between taking their medication or having a guest at the home.

Right to Privacy of Sexual and Reproductive Practices. People's sexual practices could be compromised. People may keep objects related to said practices in their private rooms. These pertain to the private life of any individual and should not be public to others. Hosts may have to modify their practices to accommodate LL18. This is simply unacceptable. Moreover, people trying to conceive, for example, may keep hormones and other medications (including syringes) in their private rooms. These medications are highly sensitive and should not be touched by any other person than the one using them. Tampering with such medications can lead to in vitro fertilization complications and possibly the failure of the procedure. These treatments are extremely expensive, many people can only afford to have them done once. In addition, many people only have the physical ability to have these treatments performed a finite number of times. Limiting or jeopardizing the reproductive needs and wants of a person is unfair, harmful, and cruel. No one should have their ability to conceive jeopardized to comply with an arbitrary, ill thought out, and poorly written law.

Obligation to be on the Property. While the regulation does not specifically state that the host must be present "at all times," it does state that a host must be present in order to have a guest. This means that people are not allowed to go to work, attend a dinner, buy groceries, socialize with friends, go to medical visits, go to political demonstrations, go to their place of worship, or even go to the Emergency Room, if so needed. *Hosts have already reported being fined because they went to work and were not present at the residence.* The idea that a host cannot leave their residence for a minute when hosting a guest is ludicrous and does not account for normal human behavior. It does not account for emergencies or recreational time, which is needed for a person's mental health. This regulatory obligation puts hosts' jobs at risk, puts their physical and mental health at risk, and does not account for every day-to-day living needs.

### **§ 21-13.6 - Preponderance of the Evidence.**

The City of New York has shifted the burden of proof onto the host. If a penalty were to be imposed, the host would qualify as a defendant. It would be the City's obligation (as the plaintiff) to prove that a violation has occurred. It is not the obligation of the defendant to prove that one has not occurred. This clause goes against the Rules of Evidence.

### **Other Considerations.**

**Harassment.** Guests have already reported being harassed by "inspectors" who interrogate them until they produce a statement of a "violation," e.g., "I haven't seen the host yet." These interrogations qualify as harassment under the law. Civil Servants are not allowed to "interrogate," "scare," "intimidate," or "harass" individuals. Inspectors have also been accused of "intimidating" guests until they report their hosts.

**Harassment and Abuse Against Women.** Women hosts have reported that they have had male "inspectors" show up in groups at their homes and try to intimidate them into gaining access to their home. Some women have granted access and these individuals have opened cabinets, inspected bedrooms, bathrooms, fridges, etc. These "inspectors" are taking the discretion given by the City of New York and LL18 to abuse women and assert power over them, thereby turning them into victims of abuse.



Many of them have ceased or are considering ceasing hosting at their private residence out of fear of the abuse.

**Inspections.** Hosts have already reported having “inspectors” knock on their door and demand entry. Hosts are not given the option to refuse inspectors access to their property. They have been intimidated into granting access and some have reported suffering mental health problems after being victims of these intrusions due to the fear these “inspectors” have caused them.

**Business.** Hosts are being treated as business owners and these “inspectors” are treating hosts’ private residences as a commercial business they can enter at will and disrespect as they please. They have shown no consideration for the fact that these are the hosts residences and the privacy implications of having an unwanted individual push their way into the hosts’ homes.

**Self-Regulatory Entity.** The City has refused to provide the name of the entity that will oversee the practices of the Administering Agency. Instead, the provided guidelines to a convoluted process for filing complaints, that seems to be intended to discourage those considering filing one. They have further hinted at the fact that complaints will be reviewed and “investigated” internally. In other words, the Administering Agency would have sole authority and respond to no one, which in return will make the abuse of power and risk of harassment and mental abuse to hosts even greater.

**Housing Crisis.** The assumption that LL18 will address the housing crisis is without merit. Hosts who rent a room in their house will not make that room available for long term rent. Short Term Rentals allow hosts to decide when the room can be available and when it cannot. Most hosts rely on these rooms being vacant when they have family and/or friends visiting. They are unlikely to have a roommate full time. Thus, the rooms removed from the booking platforms will likely not be put into the market.

In conclusion, LL18 is completely flawed. It fails to account for basic privacy rights granted to individuals, puts hosts and guests at risk of mental and physical harm, will lead to discrimination, and curtails the rights of individuals to work, seek medical assistance, associate, practice religion, decide what to do in the privacy of their own homes, etc. The law is innately flawed and seems to have been written by individuals who have not encountered any of the issues mentioned above throughout their lives. It completely disregards the needs of minorities, risks posed to victims, the needs of any other group who may be affected by the law. It further disregards other regulations (including state and global) that may protect guests staying at the hosts’ home. The law seems to have been drafted by someone who has no understanding of the law as a whole, regulatory interactions, or the implications of the vague, overly broad, missing, and confusing terms or language, and the implications of the failure to account for the aforementioned. If LL18 is intended to regulate Short Term Rentals by corporations or owners with multiple properties, then LL18 fails to do so. LL18 mostly affects homeowners who rely on the Short Term Rentals for additional income. Consequently, LL18 should not become effective. If the City of New York chooses to enforce the law as written, the City should assume full responsibility for the harassment, discrimination, privacy violations, detrimental effects on minorities and vulnerable groups, and any and all legal issues whether mentioned in this document or not. This document is intended to put the city on notice of such concerns and the possible implications of the law.