

**REPORT ON PUBLIC HEARING HELD JANUARY 12, 2022
BY THE DEPARTMENT OF LICENSES AND INSPECTIONS
ON THE CITY OF PHILADELPHIA REGULATIONS
UNDER SECTION 9-3909 AND 9-3910 OF THE PHILADELPHIA CODE**

Dated: 2/28/22

Elizabeth Baldwin

Department of Licenses and Inspections
Elizabeth Baldwin
Chief Code Engineer

Dated: 2/28/22

Approved: Lewis Rosman /s/

Law Department
Lewis Rosman
Chief Deputy City Solicitor

1. Procedural Summary

Bill No. 210081, approved June 23, 2021 (effective April 1, 2022) established, among other things, licensing requirements for operators of “limited lodging” (Section 9-3909 of The Philadelphia Code) and for “limited lodging and hotels booking agents (Section 9-3910) applicable to businesses operating in and carrying out transactions pertaining to short-term lodging rentals in Philadelphia.

On November 10, 2021, the Department of the Licenses and Inspections (“the Department”), in coordination with the Department of Public Health, adopted regulations pertaining to the implementation of the Code provisions adopted under Bill No. 210081.

Based on submissions to the Department made by affected business and/or a trade association related to such businesses, which after discussion with one such business the Department determined to constitute a request for a public hearing pursuant to the requirements of Section 8-407 of the Home Rule Charter, the Department scheduled a public hearing for January 12, 2022. Notice of the hearing was duly advertised in local newspapers and posted prominently on the Department’s website and in its monthly newsletter.

The hearing was conducted by Elizabeth Baldwin, Chief Code Engineer, Department of Licenses and Inspections, and attended by Lewis Rosman, Chief Deputy City Solicitor, on behalf of the City Law Department.

The following witnesses provided testimony: Tracie Robinson on behalf of Expedia Group and Kelly Fay on behalf of AirBNB.

The hearing transcript is attached as Exhibit C hereto. In addition to written submissions of Ms. Robinson and Ms. Stevenson in connection with the hearing, the following written comments were provided to the Department, and are collected as Exhibit D.

December 8, 2021 Letter of Airbnb

December 8 Letter of Travel Tech

January 11, 2022 Letter of Travel Tech

2. Action on the Regulation

Through this report on the January 12, 2022 hearing, the Department modifies the proposed amendment and adopts it as modified. A clean copy of the Regulation as amended is attached as Exhibit A hereto and shall become effective 11 days after the filing of this Report with the Records Department. A markup showing all changes made to the Regulation through this process is attached as Exhibit B.

Testimony of Tracy Robinson, on behalf of Expedia Group

Through Ms. Robinson's testimony, she requested the Department extend the timeline for implementation of the final regulation by 90 days. Ms. Robinson stated that this timeline would provide hosts with time to obtain licensure and platforms with time to modify their websites and applications, start a communication campaign to notify hosts of their new obligations, and acquire registration numbers from hosts.

A concern with enforcement timeline was also raised in the January 11, 2022 letter of Travel Tech.

Response:

The ordinance, and not the regulation, establishes the effective date of the law as April 1, 2022. While this request is outside of the scope of the regulation and the Department has no authority to modify the effective date of the law through regulation, the timeline for enforcement has been considered.

The provisions of Sections 9-3902 and 9-3909 requiring a property owner or tenant letting a unit for 30 days or less to possess a limited lodging operator or rental license shall begin to be enforced by the Department on April 1, 2022. If the owner or tenant is compliant with zoning laws that went into effect on June 23, 2021, they should be able to obtain the required license with ease.

The provisions of Section 9-3910 requiring a company facilitating reservations for limited lodging on behalf of another entity to possess a Limited Lodging and Hotels Booking Agent license shall begin to be enforced on April 1, 2022.

The Department agrees that additional time may be required for operators to submit license information to the Booking Agent and, therefore, shall not enforce the provisions of 9-3910 requiring the Booking Agent to obtain evidence of valid licensure until July 1, 2022.

Because this is outside of the scope of the regulation, an amendment cannot be made to reflect this intention.

Ms. Robinson urged the Departments to work with the industry to ensure that the final regulations and the implementation process are workable and calculated to achieve the city's goals without creating too heavy a burden for businesses.

This concern was also raised in the January 11, 2022 letter of Travel Tech.

Response:

The regulations are limited to 1) establishing lead paint safety requirements for the limited lodging operator license 2) identifying required application information for the Booking Agent

license which was not defined in the ordinance and 3) establishing the format and frequency of operator transaction history provided by the Booking Agent to the Department.

It is the Department's position that requirements set forth in the regulation are the minimum necessary for enforcement; however, the Department will meet with affected stakeholders to further explain and explore these requirements.

Ms. Robinson presented concerns with the security of information provided with an application (i.e. name, address, and telephone number) and urged the City to adopt measures to protect data and exclude from being discovery under freedom of information laws.

Response:

There is a typographical error in the regulations that shall be fixed in the amended regulation. Section 2 is meant to refer to the application criteria for the Booking Agent License, and not for the Limited Lodging License, and as such should refer to § 9-3910 and not § 9-3909.

Although the request is otherwise outside of the scope of the regulation, it should be noted that the information submitted with both the 'Limited Lodging Operator' and the 'Limited Lodging and Booking Agent' license applications will be managed in accordance with standard policies and procedures adopted by the City of Philadelphia:

All application information submitted and/or stored electronically is secured in accordance with policies and procedures executed by the City's Office of Information Technology.

Certain license information, including location of business activity, business name, and business contact address, is made publicly available in accordance with the City's Open Data Policy.

All other requests for information are evaluated in accordance with the Pennsylvania Right to Know law.

Ms. Robinson recommended that the City exclude hotel information from its reporting requirements. She suggested instead that this information be provided upon request rather than adding to the administrative burden of regular, blanket reporting.

Response:

The ordinance establishes new licensing criteria for the short-term rental of dwelling units which is based upon primary use.

Primary Residence- if an owner or tenant is renting their primary residence, they must secure a zoning permit for 'limited lodging' use and a 'limited lodging operator' license.

Non-primary Residence- if an owner is renting a dwelling that is not their primary residence, they must secure a zoning permit for 'visitor accommodation' use and a 'rental (hotel)' license.

Those dwellings that fall within a rental (hotel) license are a critical part of the legislation and must be included in the regular reporting. The legislation does not include any distinction nor is it necessary to separate categories of hotels through the license structure.

It should be noted that existing law requires licensure of traditional hotels and one rental license is required for each location. As such, the regular report need only include one entry per hotel location.

During discussion, Ms. Robinson expressed concern with identifying listings that were added or removed within the last 30 days of the reporting period. Ms. Robinson stated that the time periods did not seem to align with the quarterly reporting period.

This concern was also raised in the January 11, 2022 letter of Travel Tech.

Response:

The data points under discussion are listed under Item No. 1 of Regulation No. 3:

d) The date each property was first listed for rental by a booking agent, if the *property was not listed within the 30 days prior*.

e) The date each property was removed from being listed for rental by a booking agent, if the property was removed for at least 30 days.

This information is being requested to enable the Department to readily establish the dates of non-compliance for hosts who are in violation of the licensure laws; however, the Department agrees that these requirements complicate the quarterly reporting scheme. The regulation will be amended to eliminate the requirement to provide the information required under 1(d) and 1(e). The Department may request this information for individual properties under investigation.

Testimony of Kelly Fay, on behalf of AirBNB

Ms. Fay testified to AirBNB's commitment to continued collaboration and cooperation to ensure the best outcome for their hosts and the City. She echoed Ms. Robinson's request to extend the timeline for enforcement by 90 days and referenced concerns with specific data points submitted through written testimony.

Legal Issues raised in testimony and letters received.

Both Airbnb and Travel Tech raised concerns, in written comments submitted and/or testimony at the hearing, that the requirement in the regulation for the Booking Agents to regularly provide the City with information identifying the Limited Lodging operators with whom they do business, including address information concerning the locations booked, would violate the Fourth Amendment rights of the businesses.

The City recognizes that there have been federal court decisions that have determined that such information is, in some circumstances, protected. For a variety of reasons, the City believes that, under the City's regulatory scheme, which is distinguishable from the situations addressed in the cases cited, is entirely reasonable and lawful and does not violate anyone's privacy interests.

The platforms have also raised concerns regarding provisions of the ordinance that prohibit the platforms from acting as a booking agent in connection with unlicensed lodging locations in Philadelphia. Specifically, the platforms have argued that the Stored Communications Act prohibits the City from adopting such a prohibition.

The platforms' complaint in this regard pertains to the terms of the ordinance itself and not to the regulation at issue here; therefore, this issue needs no further discussion here. We acknowledge that the issue has been raised, however, and note that the City will continue to consider this issue and, if it is determined to be appropriate to do so, will make the appropriate recommendations to amend the ordinance.

Exhibit A

CITY OF PHILADELPHIA

DEPARTMENT OF LICENSES AND INSPECTIONS

DEPARTMENT OF PUBLIC HEALTH

Regulations Under Sections 9-3909 and 9-3910 of The Philadelphia Code

Pursuant to its authority under Section 8-407 of Home Rule Charter, the Department of Licenses and Inspections (the “Department”) and the Department of Public Health hereby promulgates the following regulation under Sections 9-3909 (“Limited Lodging Operator License”) and 9-3910 (“Limited Lodging and Hotels Booking Agent License”) of The Philadelphia Code.

Regulation No. 1: LEAD PAINT SAFETY REQUIREMENTS

An application for a Limited Lodging License under § 9-3909 is subject to compliance with the Lead Paint Disclosure and Certification Law, Philadelphia Code § 6-803(3) (“Rental Protections”). No Limited Lodging License shall be issued or renewed pursuant to § 9-3909 unless the operator of the Limited Lodging has provided to the Department of Public Health a copy of such certification.

Regulation No. 2: LIMITED LODGING AND HOTELS BOOKING AGENT
LICENSE APPLICATION

1. An application for a new Limited Lodging and Hotels Booking Agent License pursuant to § 9-3910, or application for renewal of such License, shall contain the following information:
 - a) The name, address, and telephone number of the applicant.
 - b) The commercial activity license number of the applicant.
 - c) A non-refundable application fee of twenty dollars (\$20). If the application is approved, the application fee shall be applied towards the license fee required under § 4-A-906 of the Code.

2. An application for a Limited Lodging License pursuant to Section 9-3909 of The Philadelphia Code shall contain the information required by that Section.

Regulation No. 3: BOOKING AGENT TRANSACTION HISTORY

1. The booking agent shall submit a regular report to the Department of Licenses and Inspections that includes the following information:

- a) The name of each licensed operator for whom a transaction has been consummated with respect to a property located in Philadelphia during the reporting period.
- b) The license type, license number, and rental license category, if applicable, associated with each booking.
- c) The street address associated with each such booking, including the unit number, if applicable.

2. The information shall be reported electronically through an online form available on the Department's website, on a quarterly basis, as follows:

Quarter 1: January 1-March 31, report shall be provided by April 30.

Quarter 2: April 1-June 30, report shall be provided by July 31.

Quarter 3: July 1-September 30, report shall be provided by October 31.

Quarter 4: October 1-December 31, report shall be provided by January 30.

Exhibit B

CITY OF PHILADELPHIA

DEPARTMENT OF LICENSES AND INSPECTIONS

DEPARTMENT OF PUBLIC HEALTH

Changes to proposed regulations:

Additions in **Bold**; Deletions in ~~Strikethrough~~

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- a) The name, address, and telephone number of the applicant.
- b) The commercial activity license number of the applicant.
- c) A non-refundable application fee of twenty dollars (\$20). If the application is approved, the application fee shall be applied towards the license fee required under § 4-A-906 of the Code.

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- b) The license type, license number, and rental license category, if applicable, associated with each booking.
- c) The street address associated with each such booking, including the unit number, if applicable.
- ~~d) The date each property was first listed for rental by a booking agent, if the property was not listed within the 30 days prior.~~
- ~~e) The date each property was removed from being listed for rental by a booking agent, if the property was removed for at least 30 days.~~

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Hearing
January 12, 2022

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IN RE:
RECORDED HEARING

RECORDED HEARING

LOCATION: Audio Recording of Hearing

DATE: January 12, 2022

TRANSCRIBED BY: Lourdes Alvarado, Court Reporter
U.S. Legal Support, Inc.

1 ELIZABETH BALDWIN: Is called to order. This
2 hearing is being conducted to receive public comments
3 on limited lodging regulations filed by the Department
4 of Licenses and Inspections on November 10th, 2011.
5 These regulations are being promulgated pursuant to
6 bill number 210081, which was signed by the mayor on
7 June 23rd, 2021. This bill establishes licenses for
8 both limited lodging operators and booking agents. The
9 regulations established minimum (unintelligible) safety
10 requirements and requirements for the booking agent to
11 share information concerning operator transactions with
12 the Department of Licenses and Inspections.

13 So, this hearing provides the public an
14 opportunity to comment on the regulations. We will
15 then evaluate the feedback and file a report
16 reaffirming or modifying the regulations with the
17 department of records.

18 So, with that, I would like to call the first
19 speaker, Tracy Robinson.

20 TRACY ROBINSON: Good morning.

21 ELIZABETH BALDWIN: Good morning.

22 TRACY ROBINSON: Having trouble getting my screen
23 up. Okay. There we go. Sorry.

24 All right. Good morning, everyone. I will try to
25 keep my remarks brief. But since I'm the first person

1 to testify, I don't -- I'm not regurgitating what my
2 industry colleagues have to say, so (unintelligible)
3 stop me at any time.

4 On behalf of the Expedia Group, which owns the
5 (unintelligible), thank you for this opportunity to
6 provide comments on the proposed limited lodging
7 regulations for the City of Philadelphia. My name is
8 Tracy Robinson and I'm a regional government affairs
9 manager at Expedia Group. I will skip all of the
10 introductory language on the company, but if you have
11 questions about Expedia Group, I'm happy to take those
12 at any time.

13 Today we extend an invitation to both the
14 Department of Licenses and Inspections and the
15 Department of Public Health to work with us and our
16 industry peers on the proposed Philadelphia
17 regulations. This morning my comments will focus on
18 four areas. One is the implementation and enforcement
19 timeline for the proposed regulations. Two, the
20 importance of working with the industry to ensure the
21 final regulations are fair, enforceable and tailored to
22 achieve the city's goals without creating undue burdens
23 for industry inhouse. Three, the meaningful data
24 security and measures -- the need for meaningful data
25 security measures to protect any user information

1 provided to the city. And, finally, a quick note on
2 the exclusions from hotels from the regulations data
3 reporting requirements.

4 And, in addition, I note that Expedia Group
5 concurs in the legal arguments that were presented by
6 the Travel Technology Association, Travel Tech, in
7 their written testimony, which I believe you already
8 have, particularly as they pertain to the reporting of
9 our users' personal information.

10 So, the first topic I'll address is timeline. We
11 (unintelligible) the department to extend the
12 timelines, the implementation of the final regulations
13 because once the regulations are published, hosts will
14 have to obtain their licenses as -- where the platform
15 and platforms will have to modify our websites and
16 applications and start a communication campaign to
17 notify hosts of their new obligations under the
18 regulations. And then we'll have to get the host to
19 input registration numbers into their listings. So,
20 from our perspective a more workable timeframe for all
21 of these steps would be 90 days. And I'll just note
22 that the platforms in the city I think have a common
23 interest in achieving full compliance. So, we do hope
24 you'll consider revising the timeline.

25 Next, collaboration with the industry. As I

1 mentioned earlier, we invite the departments to work
2 with the industry to ensure the final regulations and
3 the implementation process is workable and really
4 calculated to achieve your goals without creating too
5 much of a burden for businesses and for hosts. Each of
6 the major short-term rental platforms has already
7 worked successfully with other jurisdictions, both on
8 the development of the effective short-term rental
9 regulations and also on implementation. And, in fact,
10 most recently we worked with the District of Columbia.
11 We're still working with the District of Columbia.
12 They recently published their new regulations and
13 implemented a whole new registration system. So, we
14 worked with them to tailor their regulations and we
15 provided feedback on implementation. And we even
16 recruited hosts to help them test their new
17 (unintelligible) regulation system, which I know
18 wouldn't apply in Philadelphia because you already have
19 the registration system. But just to show that we are
20 certainly open to working with (unintelligible) and we
21 definitely want to (unintelligible) and active partner
22 to the City of Philadelphia as well.

23 On data security, as studies seek to obtain more
24 information about that (unintelligible) information
25 about individuals, we simply urge them to adopt some

1 robust security measures to protect that information
2 from unauthorized (unintelligible). Some of the
3 information that is required in the current version of
4 the regulations (unintelligible) telephone number,
5 obviously (unintelligible) to identity theft and we
6 know that municipal governments are suffering more and
7 more data breaches. We also would recommend that any
8 user information that the platforms do provide to the
9 city be exempted from being discoverable under any
10 freedom of information laws. And we've seen this in
11 other city regulations, including the DC one most
12 recently.

13 And, lastly, on hotel information, we agree with
14 Travel Tech in the recommendation that the city exclude
15 hotel information from the reporting requirements. But
16 perhaps the city could tell us a little more about the
17 reason for those requirements. Obviously, we'd be
18 willing to work with you, but we think this information
19 could be provided on request rather than adding it to
20 information that's a part of regular blanket reporting.

21 So, that covers all of the points I wanted to
22 address today. And in conclusion, obviously, we ask
23 that the city adopt a timeline that sets all of the
24 stake holders up for success and that you work with us
25 (unintelligible) short-term rental platforms to

1 (unintelligible) regulations that balance the needs of
2 everyone involved. So, homeowners, travelers,
3 government and the communities where short-term rentals
4 are operating.

5 Thank you again for this opportunity to provide
6 comments and I'm happy to submit written comments if
7 that's -- if that would be helpful or if that's allowed
8 and, obviously, happy to take questions.

9 ELIZABETH BALDWIN: Thank you, Tracy.

10 So, my first question relates to implementation.
11 The bill itself actually establishes the license and
12 the effective date of the license. The regulations
13 only serve to establish the reporting requirement
14 between the booking agent and the city.

15 And are you -- when you talk about the enforcement
16 date, are you talking about the enforcement date that
17 was established by law or the reporting periods in the
18 regulation?

19 TRACY ROBINSON: Well, both. And I think, as I
20 recall, I think Travel Tech also noted in their
21 testimony an issue with the frequency of the data
22 reporting. I think it was written as information in
23 30-day increments. But we think it would make more
24 sense to report that information on a quarterly basis.
25 But I guess to answer your question more directly,

1 we're thinking about an extended timeline for both --
2 for us to -- for the platforms to get up and running as
3 far as having hosts listing their registration or their
4 license numbers in their listing, but also for the
5 reporting requirements. It's just going to take some
6 product development on our part for the implementation
7 of the actual registration and including registration
8 numbers and listings. And so we think -- what I heard
9 was that enforcement would begin in March, March 1st,
10 and that's -- okay. I'm sorry (unintelligible). If
11 that's correct, that's a very tight timeline for us.

12 THE COURT: Okay. So the bill actually takes
13 effect on April 1st, I believe, the bill establishing
14 the license both for the limited lodging operator and
15 the booking agent. So the bill already establishes
16 that effective date. The question -- yeah, April 1st,
17 2022.

18 The question was, would we have the license
19 available by that date and the response is, yes, we
20 expect to have the license available by March 1st so
21 folks would have 30 days to obtain the license. And so
22 the effective date of the license is one issue, but
23 then there is a separate issue where the booking agents
24 would need to update their own software systems to
25 accommodate the license number requirement. And then

1 the reporting requirement and the regulation, it is
2 quarterly. But it's basically like 30 days after the
3 quarter ends, you know, you must submit this
4 information. So, let me just pull up the regulation.

5 TRACY ROBINSON: The information that we would be
6 reporting, though, for example, is if listing had been
7 added or removed within the prior 30 days, and it just
8 seemed like that didn't really line up with the
9 quarterly reporting requirement.

10 ELIZABETH BALDWIN: Okay. So, the way it's
11 established in the regulation is by April 30th we would
12 require a report of operator transactions between
13 January 1st and March 31st, not specific transaction
14 information, but information related to your listings
15 or the operators who listed with you.

16 Do you think that's problematic?

17 TRACY ROBINSON: No. Well, to the extent that the
18 report would cover personal information, yes, we agree
19 with Travel Tech, but that is problematic.

20 But are you asking if we think that the timing of
21 the reporting is a problem or --

22 ELIZABETH BALDWIN: Yes. So, actually, that's
23 what I was wondering. You mentioned it would be
24 difficult, you know, to pull detail on 30 -- in 30-day
25 increments, but I'm just clarifying it's quarterly

1 reporting due 30 days after or within 30 days of the
2 end of each quarter.

3 TRACY ROBINSON: But that's not a quarterly
4 reporting. The timeframe is not a problem. If you
5 give me one moment, I'm just pulling up -- I'm on Page
6 2 of the regulations, subparagraph D, as in David, and
7 then subparagraph E. The day each property was first
8 listed for rental by the booking agent if the property
9 was not listed within the 30 days prior. Our thinking
10 was just that instead of 30 days, since we're doing
11 this on a quarterly -- the reporting on a quarterly
12 basis, why not just align the two so that it would be
13 within the quarter.

14 ELIZABETH BALDWIN: So, that was actually intended
15 to capture those listings that were no longer active at
16 the day of the quarter. But we can certainly look at
17 this, but that was the intent of these two sections.

18 TRACY ROBINSON: Okay.

19 ELIZABETH BALDWIN: And I also just want to know,
20 obviously, we have to review the comments with the law
21 department, but the information that we require
22 regarding the license, that's actually information that
23 we made public now. So, it's information related to
24 the business, the license type, the license number,
25 rental license, category and the name of each license

1 operator.

2 TRACY ROBINSON: Sorry.

3 ELIZABETH BALDWIN: Or the entity. You can
4 actually obtain that information now through our
5 website.

6 TRACY ROBINSON: Is the -- sorry. I'm so sorry.

7 ELIZABETH BALDWIN: Go ahead.

8 TRACY ROBINSON: Are the address and phone number
9 also made public?

10 ELIZABETH BALDWIN: We are not asking -- we're
11 asking for the address of the listing, not the address
12 of the business. Not the address of the limited
13 lodging operator or, you know, the short-term rental
14 operator.

15 TRACY ROBINSON: And the business phone number of
16 the operator?

17 THE COURT: We're not asking for that either.

18 TRACY ROBINSON: Okay.

19 ELIZABETH BALDWIN: So, we're asking for the name
20 of the entity. If it's a limited lodging, then it
21 should be a person because it's a person that lives
22 there. If it's like rental of the hotel
23 classification, then it could be, you know, a legal
24 entity and so we're asking for that information. The
25 license type, because it could be a short term -- it

1 could be a limited lodging operator license or it could
2 be a rental license with the hotel classification if
3 the person who was renting the property does not live
4 there.

5 LEWIS ROSSMAN: I just want to add -- this is
6 Lewis Rossman. And I want to introduce myself. I'm
7 chief deputy in the city law department and I've been
8 on the recording since the start of the -- start of the
9 hearing.

10 We do ask -- the regulations do provide for the
11 limited lodging licensee, the individual who is using
12 their property for limited lodging, to provide their --
13 to provide a name, address, telephone number in
14 connection with their license for that activity. But
15 that's not what we -- we do not ask for that
16 information in connection with what we asked the
17 booking agents to report to us.

18 TRACY ROBINSON: Is that information also made
19 public, the information that's submitted as part of the
20 application?

21 LEWIS ROSSMAN: For the limited lodging licensee?

22 TRACY ROBINSON: Yes.

23 THE COURT: So, it's not protected information.
24 If it were to be requested, you know, a
25 (unintelligible) request, then all information may be

1 provided. But we do expose certain information for all
2 license holders. And in this case it would be the name
3 -- I don't know if we put a business address there
4 anymore, but we at least provide the name of the
5 licensee, the license number.

6 TRACY ROBINSON: Okay.

7 ELIZABETH BALDWIN: Do you have any additional
8 comments?

9 TRACY ROBINSON: No, I don't. Thank you.

10 THE COURT: Okay. Well, thank you.

11 So, now our second and final speaking, Kelly Faye.

12 KELLY FAYE: Hello and good morning, everybody.

13 ELIZABETH BALDWIN: Hello.

14 KELLY FAYE: I'll keep my comments relatively
15 brief. I think, but I can just (unintelligible) but
16 thanks for the time today.

17 My name is Kelly Faye and I'm a member of Airbnb
18 North American public policy team. And I want to start
19 by thanking the department for the opportunity to
20 participate in today's hearing and for all their work
21 on this issue and the many others impacting the City of
22 Philadelphia.

23 So, since the introduction of bill number 21008100
24 by counsel man (unintelligible) last year, we've been
25 really eager to engage with (unintelligible) holders

1 and work together to ensure that the updated
2 regulations achieve the city's goals while allowing
3 Philadelphia and its residents to benefit responsibly
4 from home sharing. This engagement included
5 participating in prior city council hearings outlining
6 with memos detailing our suggestions and concerns to
7 the counsel and administration as well as meeting with
8 the sponsor on several occasions and seeking to open a
9 dialogue with the department and other stake holders.
10 And since the bill's passage last year in June, we
11 picked a (unintelligible) to work collaboratively most
12 recently including, outlining and presenting a
13 (unintelligible) proposal to the department as well as
14 the sponsor. And we have greatly appreciated the
15 opportunity to engage with the department on these
16 items in our meetings since late last year.

17 It remains our goal to continue these
18 conversations to ensure the best outcome for our host
19 as well as the city. As we continue these discussions
20 we would like to highlight a few areas that we believe
21 should be examined in the limited lodging operator and
22 booking agent licenses regulations. First, I think, in
23 concurrence with Tracy, that being the timeline for
24 implementation, as we understand that all of the
25 registrations will be available for booking agents and

1 hosts on March 1st with a hard enforcement date of
2 April 1. And we are -- Airbnb is prepared to support a
3 really robust awareness campaign and education campaign
4 for our host and community on the responsibilities once
5 all of those are available. But we do respectfully
6 request you to consider extending that window between,
7 you know, the availability and launch of all licenses
8 and the hard enforcement date. That's really just due
9 to our work with other cities that shows a window
10 closer to 90 days allows for a reasonable amount of
11 time for hosts to gather material under their
12 responsibilities and where they kind of fall and ask
13 questions, go through the registration process without
14 overwhelming the new system.

15 And, secondly, that, you know, Airbnb provide
16 detailed feedback on -- our concerns are on the
17 specific date of points requested in these regulations
18 formally to the city in May of 2021 during the
19 legislative process and, again, in December of 2021.
20 And it brings our hope to work together with the
21 department, to find a reasonable solution that enables
22 effective enforcement while respecting the federal data
23 privacy rights of our businesses and hosts.

24 So, with that I will wrap it up. I think we
25 greatly appreciate the time to state our position and

1 we look forward to continuing this important
2 conversation. And thank you very much for your time
3 this morning as well.

4 ELIZABETH BALDWIN: Thank you, Kelly.

5 Lewis, are there any questions regarding the
6 specific data points?

7 LEWIS ROSSMAN: Do I have any specific questions?
8 No. No.

9 ELIZABETH BALDWIN: Okay.

10 LEWIS ROSSMAN: I mean, we have received a variety
11 of written comments. Both -- at the time we identified
12 the need to schedule a hearing there were several
13 different things provided to us in writing, which we've
14 asked about, whether a hearing was requested and to
15 cover that hearing was requested. So, we will make
16 those particular pieces, those writings, part of the
17 record.

18 We subsequently received at least one other
19 document, one other letter, from the trade association.
20 So, we'll make that part of the record and include
21 that. And if anyone wants to submit anything else in
22 writing, you certainly can do that. We're happy to
23 take a look at it, included as part of the record for
24 the hearing just, you know, if you can do that in the
25 next week, that would be helpful. Just to make sure

1 that we get that and respond to it. And just so you
2 understand that the process -- so, we will identify --
3 we'll make a record of a summary of the comments
4 provided both today and in writing and (unintelligible)
5 we'll provide a record of the comments both in --
6 received today and in writing provide responses in the
7 form of a report, file that report with the city's
8 department of records, and then the regulation still
9 become law until 10 days after that report is filed.

10 And I just want to add there is one other very
11 technical thing that provides a disclaimer about -- at
12 the beginning of the hearing about participation in the
13 hearing was a consent to the recording of the hearing
14 that was, I think, recorded after -- before the
15 recording actually started. So, that won't be in the
16 formal record, but I just want to make clear that
17 (unintelligible) did provide that, identifying that the
18 proceedings would be recorded at the start of the
19 hearing at the very beginning.

20 And that's all I got.

21 ELIZABETH BALDWIN: Okay. Thank you. With that,
22 I thank you all for your time. And this concludes the
23 hearing.

24 TRACY ROBINSON: Thank you.

25 KELLY FAYE: Thank you.

1 LEWIS ROSSMAN: Thank you, everybody.
2 (Thereupon, the recording concluded.)

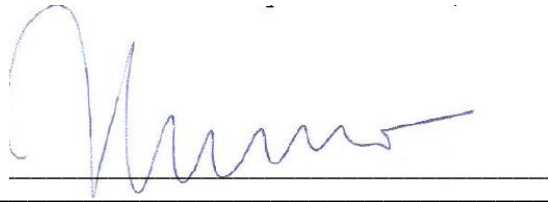
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REPORTER'S CERTIFICATE

I, LOURDES ALVARADO, Professional Reporter, certify that I was authorized to and did stenographically transcribe said recording; and that the foregoing pages are a true and complete record; and that this computer-assisted transcript was prepared under my supervision.

Dated this 21st day of January, 2022.



A handwritten signature in blue ink, appearing to read 'Lourdes Alvarado', is written over a horizontal line.

LOURDES ALVARADO, Professional Reporter

<hr/> <p style="text-align: center;">1</p> <hr/> <p>1 15:2 10 17:9 10th 2:4 1st 8:9,13, 16,20 9:13 15:1</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 10:6 2011 2:4 2021 2:7 15:18,19 2022 8:17 210081 2:6 21008100 13:23 23rd 2:7</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>30 8:21 9:2, 7,24 10:1,9, 10 30-day 7:23 9:24 30th 9:11 31st 9:13</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>90 4:21 15:10</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>accommodate 8:25 achieve 3:22 5:4 14:2 achieving 4:23 active 5:21 10:15</p>	<p>activity 12:14 actual 8:7 add 12:5 17:10 added 9:7 adding 6:19 addition 4:4 additional 13:7 address 4:10 6:22 11:8,11, 12 12:13 13:3 administration 14:7 adopt 5:25 6:23 affairs 3:8 agent 2:10 7:14 8:15 10:8 14:22 agents 2:8 8:23 12:17 14:25 agree 6:13 9:18 ahead 11:7 Airbnb 13:17 15:2,15 align 10:12 allowed 7:7 allowing 14:2 American 13:18 amount 15:10 anymore 13:4 application 12:20 applications 4:16 apply 5:18 appreciated 14:14 April 8:13,16 9:11 15:2 areas 3:18 14:20</p>	<p>arguments 4:5 association 4:6 16:19 availability 15:7 awareness 15:3</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>balance 7:1 BALDWIN 2:1, 21 7:9 9:10, 22 10:14,19 11:3,7,10,19 13:7,13 16:4, 9 17:21 basically 9:2 basis 7:24 10:12 begin 8:9 beginning 17:12,19 behalf 3:4 benefit 14:3 bill 2:6,7 7:11 8:12,13, 15 13:23 bill's 14:10 blanket 6:20 booking 2:8, 10 7:14 8:15, 23 10:8 12:17 14:22,25 breaches 6:7 brings 15:20 burden 5:5 burdens 3:22 business 10:24 11:12, 15 13:3 businesses 5:5 15:23</p>	<hr/> <p style="text-align: center;">C</p> <hr/> <p>calculated 5:4 call 2:18 called 2:1 campaign 4:16 15:3 capture 10:15 case 13:2 category 10:25 chief 12:7 cities 15:9 city 3:7 4:1, 22 5:22 6:9, 11,14,16,23 7:14 12:7 13:21 14:5,19 15:18 city's 3:22 14:2 17:7 clarifying 9:25 classification 11:23 12:2 clear 17:16 closer 15:10 collaboration 4:25 collaborativel y 14:11 colleagues 3:2 Columbia 5:10,11 comment 2:14 comments 2:2 3:6,17 7:6 10:20 13:8,14 16:11 17:3,5 common 4:22 communication 4:16 communities 7:3</p>
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To: Elizabeth Baldwin, Department of Licenses & Inspections Chief Code Engineer

CC: Ralph DiPietro, Department of Licenses & Inspections Acting Commissioner

Tumar Alexander, Managing Director

Jim Engler, Mayor's Chief of Staff

Diana Cortes, City Solicitor

Lewis Rosman, Chief Deputy City Solicitor; Legislation & Legal Counsel Unit

Councilmember Mark Squilla

December 8, 2021

Dear Elizabeth Baldwin:

Recap of November 17, 2021 Meeting & Airbnb's City Portal Compliance Solution

As you know, in June 2021 the Philadelphia City Council passed Bill No. 21008100 to revise the use of properties for limited lodging and hotel purposes. From the moment the bill was introduced by Councilmember Mark Squilla, Airbnb's team sought to meet with the Department of Licenses & Inspections on numerous occasions to discuss, propose reasonable compliance schemas, and highlight legal infirmities of the bill.

In the months since 21008100 passed, the Airbnb team has continually contacted legislative and enforcement stakeholders, to collaborate on a mechanism for implementation and enforcement of the new ordinance. Our efforts have included: briefing Councilmember Squilla on enforcement solutions (e.g. [Airbnb's City Portal](#)), requesting meetings with the Department of Licenses and Inspections to discuss the rulemaking process, and providing copious reference materials outlining the tools Airbnb has developed to support enforcement and compliance for city's with short-term rental regulations.

On November 17, 2021 Airbnb obtained its first meeting with the Department of

Licenses and Inspections (Elizabeth Baldwin). In that meeting, Airbnb outlined its compliance proposal and demoed features of its City Portal to aid Philadelphians adherence to Bill No. 21008100:

- A dedicated portal for city officials to streamline enforcement and compliance efforts.
- Listing and permit search functionality.
- Remove ineligible listings from accepting short-term rental reservations.
- Obtain a comprehensive view of Airbnb's Philadelphia Host community in the City (e.g., listing URL, permit number, and Host ID for active users).
- A mandatory permit field for all listings.
- Offering in-app notification of Hosts in Philadelphia alerting them of their responsibilities under the new regulations with reminders of enforcement date and other milestones.
- Collaborating on educational materials and an awareness campaign for Airbnb users.

Airbnb has crafted the aforementioned proposal to help its Hosts meet their new compliance obligations, address the legal infirmities of the Bill (e.g., federally non-compliant datasharing), and adhere to various federal obligations and protections (e.g., platform immunity). We have previously highlighted these infirmities, obligations, and protections for relevant City stakeholders. Based on a December 2, 2021 follow-up from the Department of Licenses & Inspections and the current status of rulemaking, we have recapped those concerns below.

Legal Considerations

Department of Licenses & Inspections' Request for Federally Non-Compliant Datasharing

Under Regulation No. 3, the Department of Licenses & Inspections would request the following user information without a subpoena or court order on a quarterly basis:

- a) The name of each licensed operator for whom a transaction has been consummated with respect to a property located in Philadelphia during the reporting period.
- b) The license type, license number, and rental license category, if applicable, associated with each booking.
- c) The street address associated with each such booking, including the unit number, if applicable.
- d) The date each property was first listed for rental by a booking agent, if the property was not listed within the 30 days prior.
- e) The date each property was removed from being listed for rental by a booking agent, if the property was removed for at least 30 days.

This would require hosting platforms to report the personally identifiable information (“PII”) of their users without any legal or administrative process, which violates the federal protections granted by the federal Stored Communications Act (“SCA”), 18 U.S.C. § 2701 et seq., and the Fourth Amendment. Recent decisions by federal courts in the First and Second Circuit have enjoined passage of similar laws on these grounds. Both New York City and Boston enacted laws that required platforms to submit monthly reports similar to the current proposal. In those instances, the Courts ruled that requiring hosting platforms to disclose their business records without any legal process violated the Fourth Amendment, which guards against unreasonable searches and seizures by government officials. *Airbnb, Inc. v. City of Boston*, Case No. 18-cv-12358-LTS (D. Mass. May 3, 2019); *HomeAway.com, Inc. v. City of New York*, 373 F. Supp. 3d 467 (S.D.N.Y. 2019).

One of Airbnb’s main priorities is to protect its users’ privacy in compliance with applicable laws. The SCA and state corollaries protect individuals’ information and limit disclosure to governmental entities without due process as a matter of federal and state law. For entities like Airbnb that provide users the ability to “send or receive wire or electronic communications” and that store such communications, 18 U.S.C. §§ 2510(15), 2711(1)–(2), the SCA requires that governmental entities issue an administrative subpoena to obtain the information that the County seeks. See *id.* §§ 2702(a)(3), 2703(c); *United States v. Davis*, 785 F.3d 498, 505–06 (11th Cir. 2015) (*en banc*). For instance, a federal court has held that the SCA barred Portland’s attempt to obtain user information from a hosting platform similar to Airbnb without obtaining an appropriate subpoena or court order. *HomeAway.com, Inc. v. City of Portland*, No. 3:17-cv-00091-MO, Dkt. No. 36 (D. Or. Mar. 20, 2017).

Without a tailored administrative subpoena or court order, to comply with § 9-3910 (3)-(5) and simultaneously satisfy its obligations under applicable federal and state law, Airbnb can provide via its City Portal any permutation of the below.

- **Host Related Information**
 - Listing Airbnb ID
 - Listing URL
 - Listing License

Platform Liability

While neither Bill No. 21008100 nor the rulemaking process create requirements that platform preverify Hosts’ information. Moreover, there was no legislative intent to this end, we deduced from our last Department of Licenses & Inspections discussion some confusion on this point. To be clear, creating a preverification provision barring platforms from allowing Hosts to access the platform unless the platform has externally validated Host information is unequivocally a violation of the Communications Decency Act

("CDA"). Congress established the CDA to protect platforms from exact scenario-liability for the legality of a third party's acts.

The CDA "establish[es] broad 'federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.'" *Johnson v. Arden*, 614 F.3d 785,791 (8th Cir. 2010) (quoting *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006)). In providing a "broad grant of webhost immunity," the CDA "gives effect to Congress's stated goals" of "'promot[ing] the continued development of the Internet,'" and "'preserv[ing] [its] vibrant and competitive free market.'" *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1174–75, 1180 (9th Cir. 2008) (*en banc*) (quoting § 230(b)(1), (2)).

In particular, the CDA "bar[s] plaintiffs from holding [websites] legally responsible for information that third parties created and developed." *Johnson*, 614 F.3d at 791. See, e.g., *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009) ("removing content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove"); *Roca Labs, Inc. v. Consumer Opinion Corp.*, 140 F. Supp. 3d 1311, 1321, 1324 (M.D. Fla. 2015) (imposing liability for publishing "third parties' posts" or for "refusal or failure to remove those posts" is "exactly the type of liability the CDA precludes"); *Backpage.com, LLC v. Hoffman*, No. [XX]2013 WL 4502097, at*6 (D.N.J. Aug. 20, 2013) (statute "[ran] afoul of Section 230 by imposing liability" for "publishing" third-party ads). Any local bill this is inconsistent with these holding is preempted by the CDA. See 47 U.S.C. § 230(e)(3) ("[N]o liability may be imposed under any State or local law that is inconsistent with this section.").

Notably, other cities have enacted laws only later to recognize their illegality under the CDA. For example, the City of Anaheim passed a law that sought to require Airbnb to verify that a property owner had a valid short-term rental permit before allowing listings for the property. Airbnb challenged the law on CDA grounds, and ultimately, the City agreed that the law could not be applied to Airbnb. As a spokesperson for Anaheim stated, "[a]fter considering federal communications law, we won't be enforcing parts of Anaheim's short-term rental rules covering online hosting sites." *Lily Leung, Anaheim Won't Fine Websites Like Airbnb for Illegal Short-Term Rental Listings, Orange County Register* (Aug. 23, 2016), <https://goo.gl/vbt9CG>.

We look forward to the opportunity to continue this discussion and work collaboratively towards a solution for all stakeholders.

Sincerely,

Airbnb Team



December 8, 2021

Councilmember Mark Squilla

Re: Department of Licenses and Inspections and the Department of Public Health Promulgation of Short-Term Rental (STR) Regulations

Dear Councilmember Squilla:

On behalf of the Travel Technology Association, which represents companies including Airbnb, Vrbo, Booking.com, TripAdvisor, and many others, I write to you today to raise concerns about the Department of Licenses and Inspections and the Department of Public Health promulgation of new [regulations](#) under Sections 9-3909 (“Limited Lodging Operator License”) and 9-3910 (“Limited Lodging and Hotels Booking Agent License”) of The Philadelphia Code.

Our members are proud to facilitate a marketplace that allows travelers to easily search for, compare and book accommodations across Philadelphia. As we look toward recovery from the pandemic, these travelers generate immense economic benefits throughout the region and our industry is always seeking ways to innovate, provide better service and inspire people to travel. According to a recent poll we conducted, one third of travelers plan to stay in a short-term rental and 75% of travelers indicate that short-term rentals (“STRs”) provide a valuable alternative to other lodging options when considering travel priorities such as health safety precautions.

We appreciate your leadership and your understanding of how short-term rentals are a benefit to the tourism sector in Philadelphia. However, as currently drafted, the proposed code changes are unworkable, unfair, violate federal law and will have a chilling effect on the recovery of Philadelphia’s travel and tourism economy.

Specifically, Regulation No. 3: BOOKING AGENT TRANSACTION HISTORY would violate federal law.

Requiring short-term rental platforms to submit to the city detailed transaction-level information, including the operator name, property address, license number, type, and category, and historical information associated with each booking transaction, is not only a violation of the terms of service that STR platforms have in place with their customers, but also, such a requirement would certainly violate federal law, which protects such data under the Stored Communications Act (“SCA”).

The SCA protects individuals’ right to privacy by limiting governmental access to stored wire and electronic communications and transactional records.” In order to comply with the SCA, online platforms, like our member companies, that provide users the ability to “send or receive wire or electronic communications” and that store those communications may not disclose user data to governmental entities without valid legal process. In this case, the SCA would almost certainly require that the city use an administrative

subpoena to obtain basic user information (such as name, address, telephone number, etc.), and require a court order to obtain more detailed or transactional data, such as rental activity.

Given the significant practical and legal issues outlined above, I, along with my members, urge you to reconsider this proposal and instead work with our members directly to identify a path forward that works for the city, Philadelphia homeowners, travelers, and third-party booking platforms. Travel Tech welcomes the opportunity to work with you to address your objectives and priorities for regulating short-term rentals, but as currently proposed, Regulation #3 would conflict with federal law, jeopardize the privacy of STR operators, adversely alter the relationship between operators and the platforms they rely on, and do irreparable harm to Philadelphia's travel and tourism economy at a time when it has been so devastated by the global pandemic. We strongly urge you to withdraw the proposal and continue to work with us to find a fair and practical path forward.

Sincerely,

Stephen Shur
President
sshur@traveltech.org
703-842-3754

Cc:

Elizabeth Baldwin - Chief Code Engineer for Licensing & Inspections
Tumar Alexander – Managing Director of Licensing & Inspections
Ralph DiPietro – Acting Commissioner Licensing & Inspection
Jim Engler – Chief of Staff to Mayor Kenney
Diana Cortes - City Solicitor
Lewis Rosman - Deputy City Solicitor



January 11, 2022

Elizabeth Baldwin - Chief Code Engineer for Licenses & Inspections
Tumar Alexander – Managing Director of Licenses & Inspections
Ralph DiPietro – Acting Commissioner Licenses & Inspection
Jim Engler – Chief of Staff to Mayor Kenney
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Cooperation Between the City and Short-Term Rental Platforms Benefits All

We respectfully encourage the Department of Licenses and Inspections to work with the leading short-term rental platforms on the promulgation of rules related to short-term rentals. Our members have been working in partnership with communities around the world to address priorities and objectives, and have deployed creative, efficient and effective solutions to satisfying new regulations.

Current Timeline for Compliance is Unworkable

Our industry has serious concerns with the proposed timeline for implementation of the regulation. As written, the regulation will require significant development of technology resources to facilitate the platforms’ compliance. The current proposed timeline is unreasonable, and we respectfully request that the deadline for compliance be extended to allow the platforms to comply.

Clarification of Data Elements is Required, Hotel Data Excluded

The Department should revise the data elements required by the regulation. For example, the regulation requires platforms to report when a home is listed and delisted, if 30 days transpire between a listing or delisting. Given that the reports by platforms are due quarterly, it would make more practical sense for platforms to simply provide the required data on homes that are actively listed on a quarterly basis. This is just one example and also another reason why establishing a dialogue with short-term rental platforms can streamline the process for all.

Furthermore, it is our understanding the reporting requirements encompass not only short-term rental data but also data about hotels. This poses an unnecessary burden on platforms as the city already has access to basic information about hotels and does not need information about their listing history. We

suggest that hotel listings could be made available upon request and therefore encourage the Department to exclude them from the regular reporting requirements.

The Detailed, Periodic Data Sharing Requirement Violates Federal Law

Requiring short-term rental platforms to submit to the city detailed transaction-level information, including the operator name, property address, license number, type, and category, and historical information associated with each booking transaction, is not only a violation of the terms of service that STR platforms have in place with their customers, but also, such a requirement would certainly violate federal law, which protects such data under the Stored Communications Act (“SCA”).

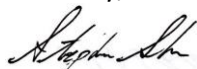
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Short-Term Rentals are a Critical Component to Philadelphia’s Travel and Tourism Economy

Our members are proud to facilitate a marketplace that allows travelers to easily search for, compare and book accommodations across Philadelphia. As we look toward recovery from the pandemic, these travelers generate immense economic benefits throughout the region and our industry is always seeking ways to innovate, provide better service and inspire people to travel. According to a recent poll we conducted, one third of travelers plan to stay in a short-term rental and 75% of travelers indicate that short-term rentals provide a valuable alternative to other lodging options when considering travel priorities such as health safety precautions.

Given the significant practical and legal concerns outlined above, I, along with my members, urge you to work with our members directly to identify a path forward that works for the city, Philadelphia homeowners, travelers, and third-party booking platforms.

Sincerely,



Stephen Shur

President

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703-842-3754