



# Airbnb in the city

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From the Office of:  
New York State Attorney General  
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# TABLE OF CONTENTS

INTRODUCTION.....	2
DATA & TERMINOLOGY .....	4
GROWTH IN PRIVATE SHORT-TERM RENTALS .....	6
COMMERCIAL USERS.....	10
EFFECTS OF SHORT-TERM RENTALS ON RESIDENTIAL HOUSING SUPPLY .....	12
GEOGRAPHIC DISTRIBUTION OF SHORT-TERM RENTALS.....	15
APPENDIX A: SUMMARY OF SELECTED LAWS .....	18
APPENDIX B: SELECTED AFFIDAVITS (FIRE & SAFETY ISSUES).....	20
APPENDIX C: SELECTION OF ANONYMOUS COMPLAINTS .....	38



This report was prepared by the Office of the Attorney General of the State of New York's Research Department and Internet Bureau.

# INTRODUCTION

The rapid rise of short-term rental platforms like Airbnb have dramatically expanded the use of traditional apartments as transient hotel rooms—sparking a public debate in New York and in communities worldwide about the real-world consequences of this online marketplace.

Where supporters of Airbnb and other rental sites see a catalyst for entrepreneurship, critics see a threat to the safety, affordability, and residential character of local communities. Are the new platforms fueling a black market for unsafe hotels? By bidding up the price of apartments in popular areas, do short-term rentals make metropolitan areas like New York City less affordable? Is the influx of out-of-town visitors upsetting the quiet of longstanding residential neighborhoods?

Until now, the discourse has centered more on opinions and anecdotes than facts. This report seeks to bridge the gulf between rhetoric and reality. It offers the first exploration of the data on how users in New York City, one of Airbnb's most important markets, utilize the most successful online lodging rental platform. More broadly, the report endeavors to use quantitative data to inform an ongoing debate about how we embrace emerging, disruptive technologies, while protecting the safety and well-being of our citizens.

By analyzing Airbnb bookings for “private” stays,<sup>1</sup> this report presents a snapshot of short-term rentals in New York City from January 1, 2010 through June 2, 2014 (the “Review Period”). Among the key findings:

**Short-Term Rentals Experienced Explosive Growth.** Private short-term bookings in New York City on Airbnb increased sharply during the Review Period, registering more than a tenfold increase. The associated revenue also spiked, nearly doubling each year. This year, revenue to Airbnb and its hosts from private short-term rentals in New York City is expected to exceed \$282 million.

**Most Short-Term Rentals Booked in New York Violated the Law.** State and local laws in New York—including the Multiple Dwelling Law and the New York City Administrative Code—prohibit certain short-term rentals. During the Review Period, 72 percent of units used as private short-term rentals on Airbnb appeared to violate these laws.<sup>2</sup>

**Commercial Users Accounted for a Disproportionate Share of Private Short-Term Rentals by Volume and Revenue.** Ninety-four percent of Airbnb hosts offered at most two unique units during the Review Period. But the remaining six percent of hosts dominated the platform during that period, offering up to hundreds of unique units, accepting 36 percent of private short-term bookings, and receiving \$168 million, 37 percent of all host revenue. This report refers to these hosts as “Commercial Users.”

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<sup>1</sup> Airbnb hosts can offer a “shared room,” where the host remains present during the stay, an “entire home/apartment,” where the host is not present, or a “private room,” where the host may or may not remain present during the stay. This report and its source data address only the last two categories, which, when combined, are labeled “private” stays, rentals, or reservations in the report.

<sup>2</sup> By assuming that all reservations listed as a “Private Room” complied with these laws, the analysis *understates* the degree to which rentals on Airbnb may have violated the law. Specifically, a “Private Room” rental for less than 30 days is legal only where a permanent resident was present during the stay.

**Top Commercial Users Employed Rental Platforms to Run Multimillion-Dollar Short-Term Rental Businesses.** Well over 100 Commercial Users each controlled 10 or more unique Airbnb units during the Review Period. Together, these hosts accepted 47,103 private short-term reservations and earned \$59.4 million in revenue. The highest-earning operation administered 272 unique Airbnb listings, booked 3,024 reservations, and received \$6.8 million in revenue during the Review Period. Each of the top 12 New York City operations on Airbnb during that period earned revenue exceeding \$1 million.

**Private Short-Term Rentals Displaced Long-Term Housing in Thousands of Apartments.** In 2013, more than 4,600 units were booked as short-term rentals through Airbnb for three months of the year or more. Of these, nearly 2,000 units were booked as short-term rentals for a cumulative total of half the year *or more*—rendering them largely unavailable for use by long-term residents.<sup>3</sup> Notably, the share of revenue to Airbnb and its hosts from units booked as private short-term rentals for more than half the year increased steadily, accounting for 38 percent of each figure by 2013.

**Numerous Short-Term Rental Units Appeared to Serve as Illegal Hostels.** New York law does not permit commercial enterprises to operate hostels, where multiple, unrelated guests share tight quarters. In 2013, approximately 200 units in New York City were booked as private short-term rentals for more than 365 nights during the year. This indicates that multiple transients shared the same listing on the same night, as they would in an illegal hostel. The 10 most-rented units for private short-term rentals were each booked for an average of about 1,900 nights in 2013, with the top listing accepting 13 reservations on an average night.

**Gentrified or Rapidly Gentrifying Neighborhoods Primarily in Manhattan Accounted for the Vast Majority of Revenue from Private Short-Term Rentals in New York City.** Bookings in just three Community Districts in Manhattan—the Lower East Side/Chinatown, Chelsea/Hell’s Kitchen, and Greenwich Village/SoHo—accounted for approximately \$187 million in revenue to hosts, or more than 40 percent of private stay revenue to hosts during the Review Period. By contrast, all the reservations in three *boroughs* (Queens, Staten Island, and the Bronx) brought hosts revenue of \$12 million—less than three percent of the New York City total.

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<sup>3</sup> The actual number of apartments that shifted from long- to short-term housing could be much higher. This analysis covers paid Airbnb bookings only, omitting short-term rentals simultaneously offered on other platforms. This analysis also excludes nights when the apartments remain vacant between bookings.

# DATA & TERMINOLOGY

In late 2013, the Office of the Attorney General of the State of New York (“NYAG”) launched an investigation of users of web platforms like Airbnb who run large-scale enterprises in violation of fire safety, zoning, tax, and other applicable laws. Appendix A provides a brief overview of several applicable laws. In particular, the Multiple Dwelling Law (the “MDL”), as amended in 2010, prohibits rentals in “Class A” buildings—a category encompassing most residential apartment buildings in New York City—for stays of less than 30 days. This prohibition confronts the fire and safety risks associated with hotels and other transient accommodations, as detailed in Appendix B.

On May 14, 2014, NYAG served Airbnb with a subpoena for detailed information about rental transactions on its platform. Shortly thereafter, and pursuant to an agreement dated May 20, 2014, Airbnb shared data with NYAG reflecting certain rental transactions in an anonymized format (the “Data”).

In particular, Airbnb produced Data on 497,322 transactions (the “Reviewed Transactions”) for stays between January 1, 2010 and June 2, 2014 (the “Review Period”) that involved:

(1) A private stay, i.e. where the host listed an “entire home/apartment” or a “private room” for rent;

**and**

(2) One of the following:

a. A rental transaction for a stay in New York City of less than 30 days; or

b. A rental transaction for a stay in a unit in New York City of between 30 and 180 days that did not qualify for the *de minimis* exception for hotel room occupancy taxes (i.e., where a unit is booked for only up to 14 days or at most three times in a given year).

While private stays constitute the bulk of New York City reservations on Airbnb, the company declined to disclose the number of transactions not meeting the review criteria. It is therefore unclear how many transactions are excluded from the Data. As above, this report uses the word “private” (often paired with “booking,” “reservation,” “stay,” or “short-term rental”) as shorthand to distinguish the Reviewed Transactions (involving rentals for an “entire home/apartment” or a “private room”) from other Airbnb transactions, particularly those involving a “shared room.”

Airbnb anonymized key details of the Reviewed Transactions, replacing user names and unit numbers with unique ID codes. When analyzing the transactions, this analysis assumes the accuracy and uniqueness of Airbnb’s designations.

NYAG also conducted a second-level analysis of the Reviewed Transactions using New York City’s Geosupport Desktop Edition. By geo-locating the building addresses associated with the 35,354 unique units in the Data, NYAG identified the unique Borough, Block, and Lot (“BBL”) identification number for all but 3,138 unique units. The BBL numbers allowed NYAG to search for the units in the Primary Land Use

Tax Lot Output (“PLUTO”) database, which identifies the type of building for zoning purposes. By necessity, NYAG relied on the accuracy of this database.

NYAG sought and obtained this Data in connection with potential enforcement actions involving the Reviewed Transactions. The information and analyses contained in this report, however, are provided solely to aid the public discourse. Pursuant to the terms of its agreement with Airbnb, dated May 20, 2014, NYAG may publicly disclose its analyses of the Data (such as those contained in this report). The underlying Data may not be disclosed.

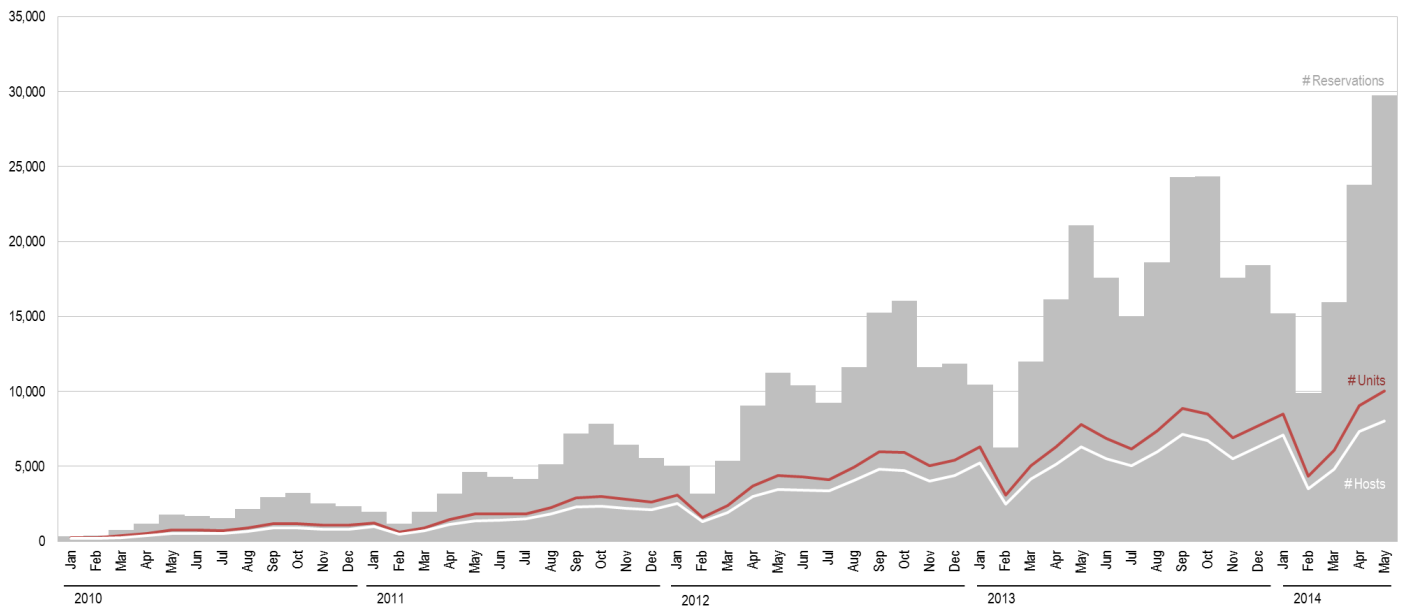
# GROWTH IN PRIVATE SHORT-TERM RENTALS

## Private Short-Term Rentals in New York City have Grown at a Staggering Pace.

During the Review Period, the number of unique units booked for private short-term rentals through Airbnb has exploded, rising from 2,652 units in 2010 to 16,483 in just the first five months of 2014. Private bookings in New York City saw a nearly twelvefold spike, rising from 20,808 in 2010 to an estimated 243,019 in 2014.<sup>4</sup> As with traditional hotel rooms, the short-term rental market varies seasonally. The chart below (Figure 1) shows that private bookings on Airbnb were on an upward trajectory throughout the Review Period, as measured by number of hosts, unique units, and total reservations.

**Figure 1:**  
**Monthly Growth in Private Short-Term Rentals on Airbnb**

(Source: Airbnb Data, 2010-2014)

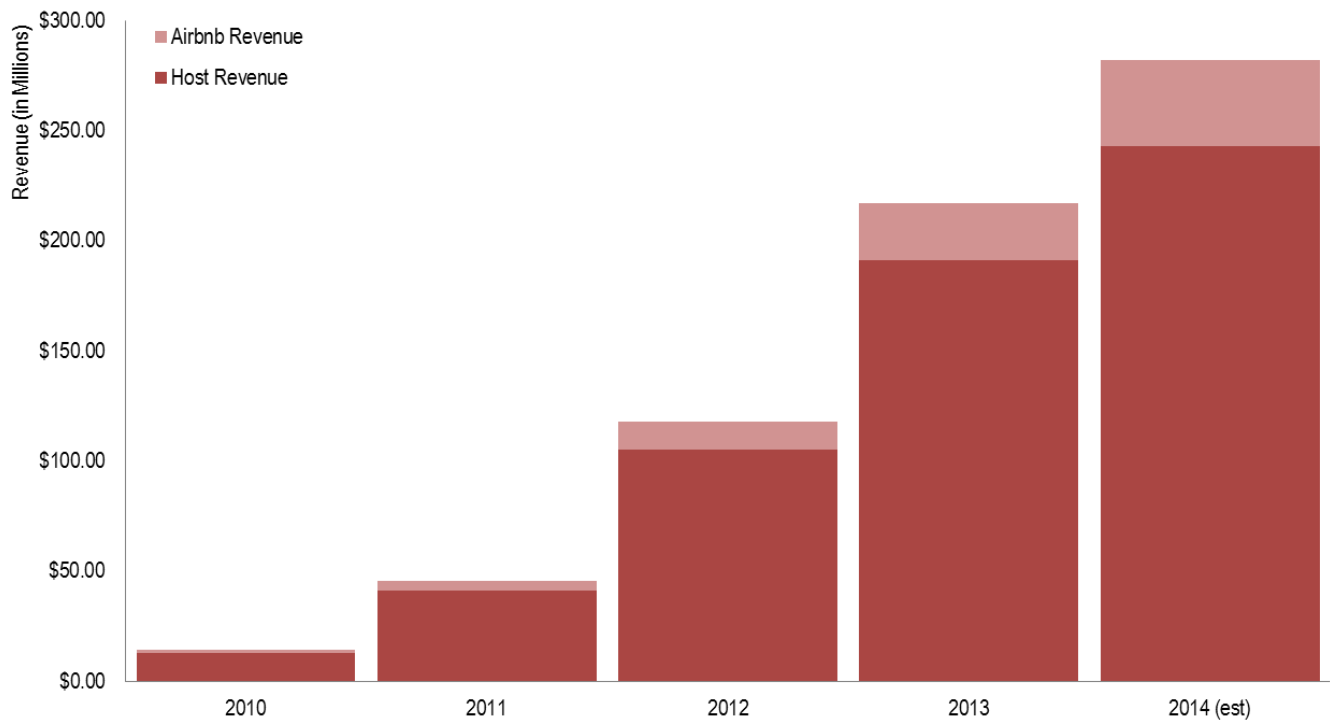


<sup>4</sup> For illustrative purposes, NYAG estimated 2014 year-end totals by assuming that the average monthly performance experienced in the first five months of the year in the relevant category would continue throughout the year. This is a rough estimate, which does not account for seasonal or other factors. For example, the estimation method makes no adjustment for the seasonal peak seen in August and September of previous years.

**Private Short-Term Rentals in New York City Generated Over \$500 million in Revenue in Less than Five Years.** As reflected in Figure 2 below, between the start of 2010 and the end of 2013, revenue to Airbnb and its hosts from private short-term rentals in New York City doubled almost every year, with revenue in 2014 estimated to exceed \$282 million. During the Review Period (January 1, 2010 through June 2, 2014), transaction fees associated with the Reviewed Transactions resulted in direct revenue to Airbnb of about \$61 million.<sup>5</sup>

**Figure 2:**  
**Revenue from Airbnb Reservations Nearly Doubled Every Year**

(Source: Airbnb Data, 2010-2014)



<sup>5</sup> Hosts pay Airbnb a three percent fee for reservations booked on the platform. Guests pay Airbnb a fee that varies from six to 12 percent of the reservation.



## Most Private Short-Term Rentals Booked in New York City Violated the Law.

Comparing the addresses associated with the Reviewed Transactions to a database of New York City buildings suggests that 72% of unique units used as private short-term rentals on Airbnb during the Review Period involved the rental of an “entire/home apartment” for less than 30 days in either (1) a “Class A” multiple dwelling or (2) a non-residential building.<sup>6</sup> These rentals would respectively violate the MDL (which prohibits such rentals in “Class A” buildings) or the New York City Administrative Code (which prohibits the use of non-residential buildings for housing). See Appendix A.

As depicted in Figure 3 below, the 300,891 reservations that appear to violate the building use and zoning laws yielded approximately \$304 million for hosts during the Review Period. Airbnb itself earned almost \$40 million in fees from these transactions. This represents approximately two out of every three dollars Airbnb received in connection with the Reviewed Transactions.

### Figure 3: Most Private Short-Term Rentals on Airbnb Appear to Violate New York Law

(Source: Airbnb Data, 2010-2014, compared with PLUTO)

# 72%

Percent of unique units rented in apparent violation of the MDL or NYC Administrative Code.

Revenue:	\$304 Million
Reservations:	300,891
Units:	25,532
Hosts:	20,835



The above numbers likely understate the degree to which private short-term rentals posted on Airbnb during the Review Period may have violated the law. For purposes of this calculation, the report assumes that *all* reservations identified as a “private room” (as distinct from an “entire home/apartment”) complied with the MDL, regardless of whether they were located in a “Class A” building. In fact, “private room” rentals in “Class A” buildings shorter than 30 days would comply with the MDL only where the host or another permanent resident remained in the unit during the guest’s stay.

<sup>6</sup> Specifically, the MDL permits rentals shorter than 30 days in hotels and “Class B” buildings, primarily one- and two-family homes. This analysis therefore assumes that rentals in residential buildings comply with the MDL where they are designated in the Department of Buildings separate classification system as Class A (“One Family Dwelling”), B (“Two Family Dwelling”), H (Hotels), S0 (“Primarily One Family with Two Stores or Offices”), S1 (“Primarily One Family with Store or Office”), or S2 (“Primarily Two Family with Store or Office”). The MDL also permits sublets of apartments for 30 days or more.

**New York City Is Likely Owed Millions in Unpaid Hotel Taxes from Private Short-Term Rentals.**

A number of taxes may apply to private short-term rentals. See Appendix A. In particular, New York City assesses a hotel room occupancy tax of 5.875 percent that applies to private short-term rentals. Excluding fines and penalties, the total estimated liability for hotel room occupancy taxes associated with the Reviewed Transactions is over \$33 million.<sup>7</sup> See Figure 4 below.

Few Airbnb hosts appear to have filed the paperwork with New York City necessary to remit hotel room occupancy taxes, nor did Airbnb collect any of the hotel taxes owed for the Reviewed Transactions.<sup>8</sup> Even the most conservative estimate therefore finds that private short-term rentals booked through Airbnb incurred millions of dollars in unpaid hotel room occupancy taxes.

**Figure 4:**  
**Private Short-Term Rentals in New York City Incurred Over \$33 Million in Hotel Tax Liability**

(Source: Airbnb Data, 2010-2014)

<b>Year</b>	<b>Hotel Room Occupancy Taxes</b>
2010	\$961,378
2011	\$3,079,250
2012	\$7,797,270
2013	\$14,221,841
2014 (through 6/2/14)	\$7,407,413
<b>Total</b>	<b>\$33,467,152</b>

<sup>7</sup> To calculate the total estimated liability for hotel room occupancy taxes, we first multiplied the total payments for private short-term rentals by the hotel room occupancy tax rate (.05875). Next, we added the per-room fee, which ranges up to \$2 per night depending on the cost of the room. We then excluded all “private room” transactions where the host only offered one listing. (Such transactions would not be taxable where the host remained present during the stay.) Finally, we applied the *de minimus* exception, excluding tax liability for any unit booked in a given year (a) for fewer than 14 days; or (b) on fewer than three separate occasions. See Appendix A for further discussion of the hotel room occupancy tax.

<sup>8</sup> Based on guidance from tax authorities, Airbnb maintains that it is not required to collect these taxes on behalf of hosts.

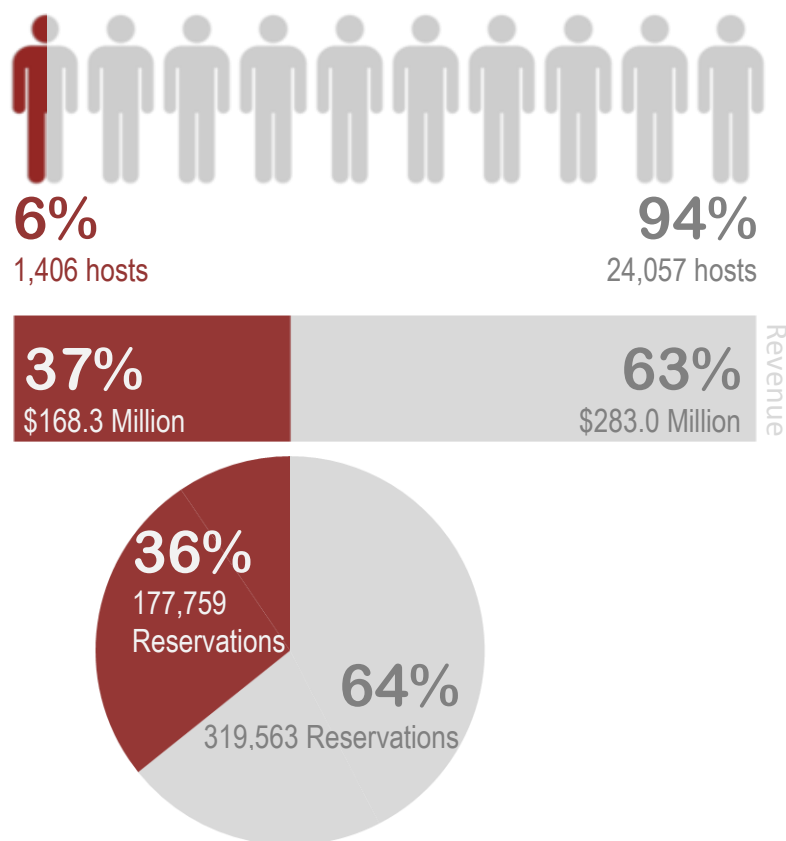
# COMMERCIAL USERS

**While Commercial Users Represented a Minority of Hosts, They Dominated the Private Short-Term Rental Market in Units, Reservations, and Revenue.** 25,463 hosts offered private short-term rentals in New York City during the Review Period. Of these hosts, 24,057 (94 percent) offered no more than two unique units for private short-term rentals during the period.<sup>9</sup>

As illustrated in Figure 5, 1,406 hosts (six percent) acted as “Commercial Users,” running larger operations that administered from three to 272 unique units during the Review Period. During that period, Commercial Users controlled more than one in five unique units in New York City booked on Airbnb as private short-term rentals, accepted more than one in three private reservations, and received more than one of every three dollars in revenue from private short-term rentals on Airbnb—for a total of \$168 million.

**Figure 5:**  
**Commercial Users Accounted for a Disproportionate Share of Private Short-Term Rentals**

(Source: Airbnb Data, 2010-2014) ■ Commercial Users (Hosts with 3+ Unique Units)



<sup>9</sup> While operating smaller ventures, these hosts may nonetheless be in violation of the law. See, e.g., pp. 8-9 above.

**Major Commercial Ventures Used Airbnb to Conduct Multimillion-Dollar Businesses.** Since 2010, 124 Commercial Users offered 10 or more unique units as private short-term rentals. These Commercial Users operated enterprise-scale ventures that together earned revenue of \$60 million during the Review Period. The chart below (Figure 6) reflects the top 12 Commercial Users by revenue. During the Review Period, these Commercial Users together controlled 801 unique units, accepted 14,655 private reservations, and received more than \$24.2 million in total revenue for private short-term rentals. A single Commercial User—the top New York host on Airbnb during the Review Period—controlled 272 unique units and received revenue of \$6.8 million. This individual received two percent of all New York host revenue for private stays and personally earned Airbnb close to \$800,000 in fees.

**Figure 6: The Top Commercial Users Earned Millions from Private Short-Term Rentals**

(Source: Airbnb Data, 2010-2014)

Host	Unique Units	Reservations	Nights Booked	Revenue to Host
1	272	3,024	29,234	\$6,838,472
2	223	1,342	12,003	\$2,863,493
3	46	1,833	12,184	\$2,168,027
4	22	1,607	13,103	\$1,616,814
5	16	751	4,212	\$1,613,763
6	27	1,480	8,675	\$1,598,276
7	24	1,185	6,008	\$1,418,058
8	21	802	4,731	\$1,417,459
9	14	1,072	6,175	\$1,345,823
10	9	663	3,211	\$1,156,561
11	34	425	7,708	\$1,138,706
12	92	471	3,198	\$1,026,270
<b>Total</b>	<b>801</b>	<b>14,655</b>	<b>110,442</b>	<b>\$24,201,722.00</b>

In April 2014, in direct response to NYAG’s investigation, Airbnb publicly claimed it had barred certain large Commercial Users from accepting additional reservations. The time period covered by the Data does not enable us to gauge whether Airbnb’s purported reform lessened the domination of Commercial Users in the private short-term rental market. Commercial Users with between three and nine unique units, however, enjoyed a similarly elite position on the platform; during the Review Period, they were responsible for one-quarter of all private short-term bookings and received revenue of \$108.9 million—about one in every four dollars hosts received. Regardless, the Data make clear that during the approximately 4.5-year Review Period, Commercial Users accounted for a substantial and disproportionate share of Airbnb’s business in New York City.

# EFFECTS OF SHORT-TERM RENTALS ON RESIDENTIAL HOUSING SUPPLY

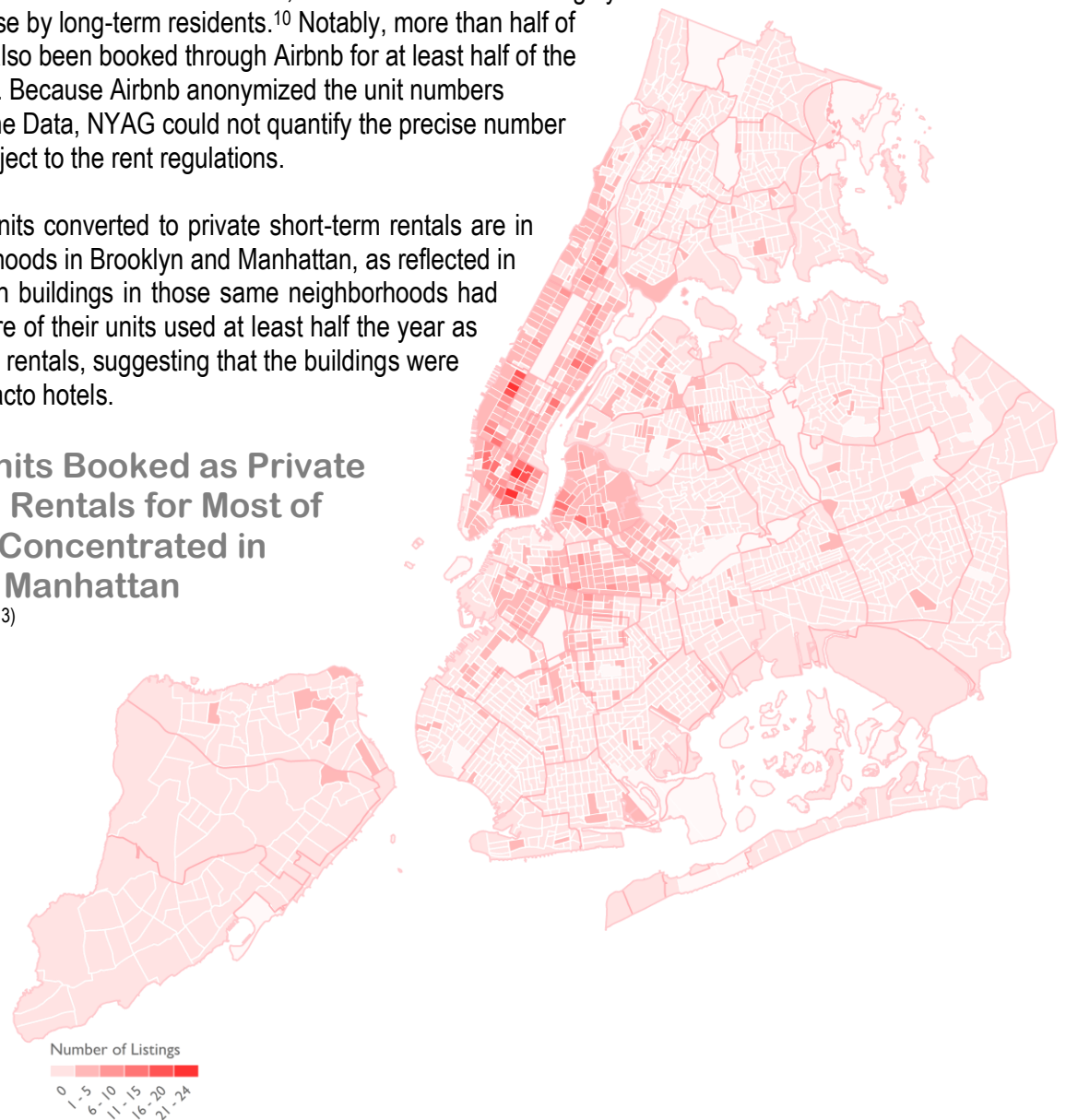
## Thousands of Residential Units in New York City Were Dedicated Primarily or Exclusively to Private Short-Term Rentals.

In 2013, over 4,600 unique units were each booked as private short-term rentals for three months of the year or more. Of these, nearly 2,000 units were each booked as private short-term rentals on Airbnb for at least 182 days—or half the year. While generating \$72.4 million in revenue for hosts, this rendered the units largely unavailable for use by long-term residents.<sup>10</sup> Notably, more than half of these units had also been booked through Airbnb for at least half of the prior year (2012). Because Airbnb anonymized the unit numbers associated with the Data, NYAG could not quantify the precise number of these units subject to the rent regulations.

The majority of units converted to private short-term rentals are in popular neighborhoods in Brooklyn and Manhattan, as reflected in Figure 7. A dozen buildings in those same neighborhoods had 60 percent or more of their units used at least half the year as private short-term rentals, suggesting that the buildings were operating as de facto hotels.

**Figure 7: Units Booked as Private Short-Term Rentals for Most of 2013 Were Concentrated in Brooklyn & Manhattan**

(Source: Airbnb Data, 2013)



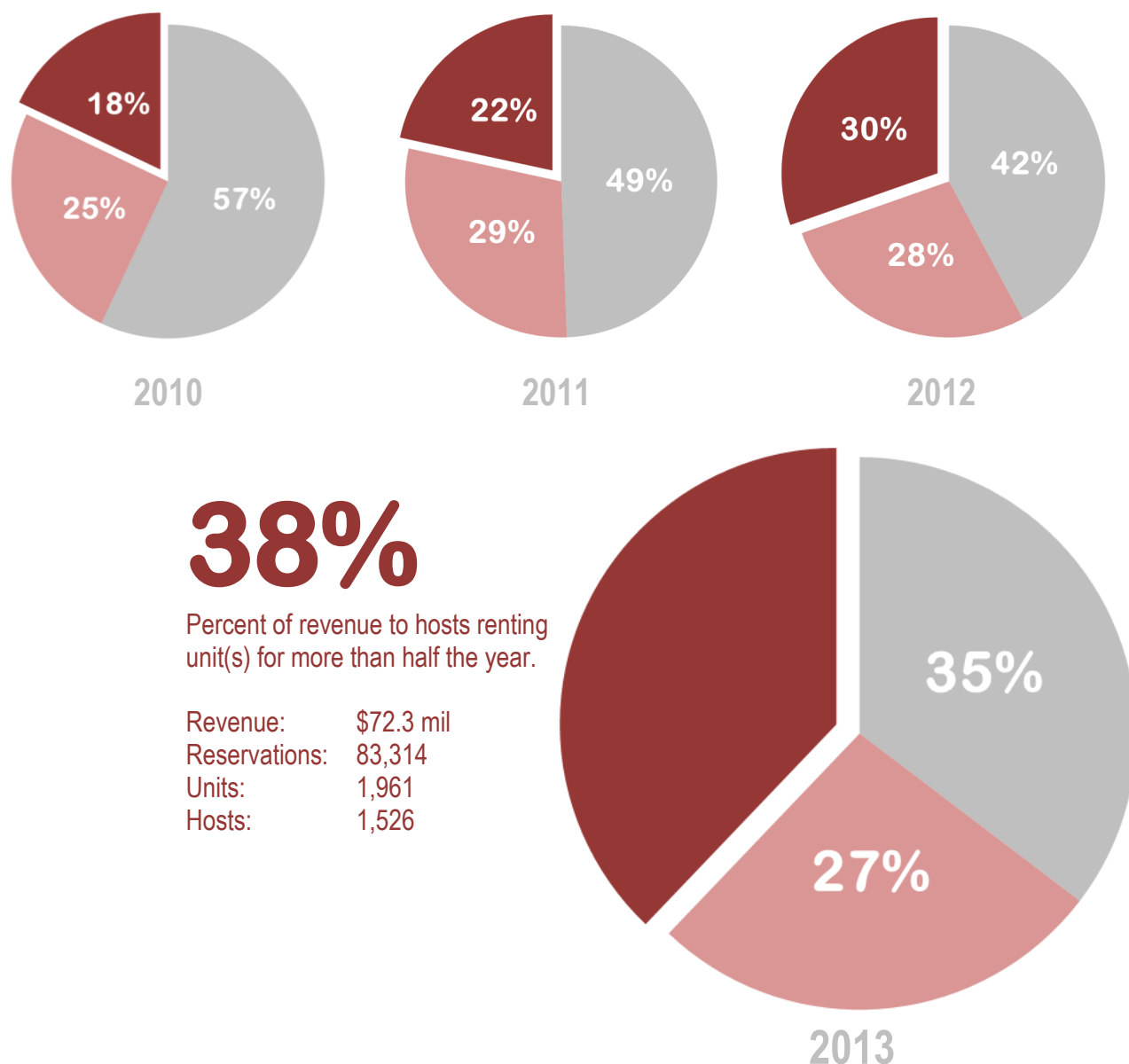
<sup>10</sup> It is likely that the number of units dedicated to private short-term rentals is substantially higher. The Reviewed Transactions cover Airbnb reservations only. Although listing on more than one site is common, this analysis cannot account for short-term rentals booked on other platforms. Also, the Data do not indicate periods when a unit is left intentionally vacant pending further short-term rentals.

**Units Dedicated Primarily or Exclusively to Private Short-Term Rentals Accounted for an Increasing Share of Revenue Over Time.** As reflected in Figure 8 below, over time, the share of revenue hosts received from units booked for more than half the year has increased, rising from 18 percent of private short-term rental revenue in New York City in 2010 to 38 percent of such revenue in 2013. Airbnb’s revenue from the associated fees also increased, rising from over \$270,000 in 2010 to \$10 million in 2013. Units booked on Airbnb as private short-term rentals for half the year or more—and thereby largely removed from long-term housing—generated 38 percent of all fees Airbnb received in 2013 in connection with the Reviewed Transactions.

**Figure 8: Increasing Share of Host Revenue from Units Booked as Private Short-Term Rentals for Majority of the Year**

(Source: Airbnb Data, 2010-2014)

- Unit rented for 182+ days in year
- Unit rented for 90-182 days in year
- Unit rented for less than 90 days in year



**Numerous Units Booked as Private Short-Term Rentals May Have Operated as Illegal Hostels.** Certain states permit hostels, where multiple, transient strangers often share rooms outfitted with bunk beds and barebones amenities. Because tight quarters and other factors create heightened fire and safety risks to travelers and permanent residents, these states generally require hostels to adhere to rigorous safety requirements. New York currently prohibits for-profit hostels entirely.

Although other explanations may apply to certain listings, patterns of high occupancy in connection with a single unit are consistent with their use as a hostel or other high-volume transient accommodation. Close to 200 units throughout New York City were each booked on Airbnb as private short-term rentals for more than 365 total nights in 2013.<sup>11</sup>

Figure 9 below provides data associated with 10 most-booked private short-term listings on Airbnb in 2013. For 2013, these units averaged 1,920 booked nights *each*. One listing in Brooklyn accepted 285 individual reservations for a total of 4,735 booked nights. Thus, on an average night, this listing accommodated 13 reservations.

### Figure 9: Ten Most-Rented Units Booked Substantially More Than 365 Nights a Year

(Source: Airbnb Data, 2013)

Rank	Borough	Reservations	Nights Booked	Average Nightly Rate Charged	Revenue to Host
1	Brooklyn	285	4,735	\$49.12	\$193,495.00
2	Brooklyn	90	2,273	\$107.77	\$130,331.00
3	Brooklyn	361	2,129	\$45.15	\$81,110.00
4	Manhattan	313	2,059	\$178.72	\$305,243.00
5	Manhattan	304	1,599	\$75.73	\$108,130.00
6	Manhattan	44	1,407	\$104.22	\$100,992.00
7	Brooklyn	460	1,313	\$101.94	\$113,168.00
8	Manhattan	221	1,278	\$158.80	\$169,693.00
9	Manhattan	204	1,245	\$105.97	\$110,965.00
10	Queens	182	1,165	\$132.44	\$119,716.00

<sup>11</sup> The Data exclude all listings identified as a “shared room,” which could likewise serve as illegal hostels or other high-volume transient accommodations. We expect that the number of New York City units booked as short-term rentals for more 365 days a year during the Review Period would increase if these transactions were included.

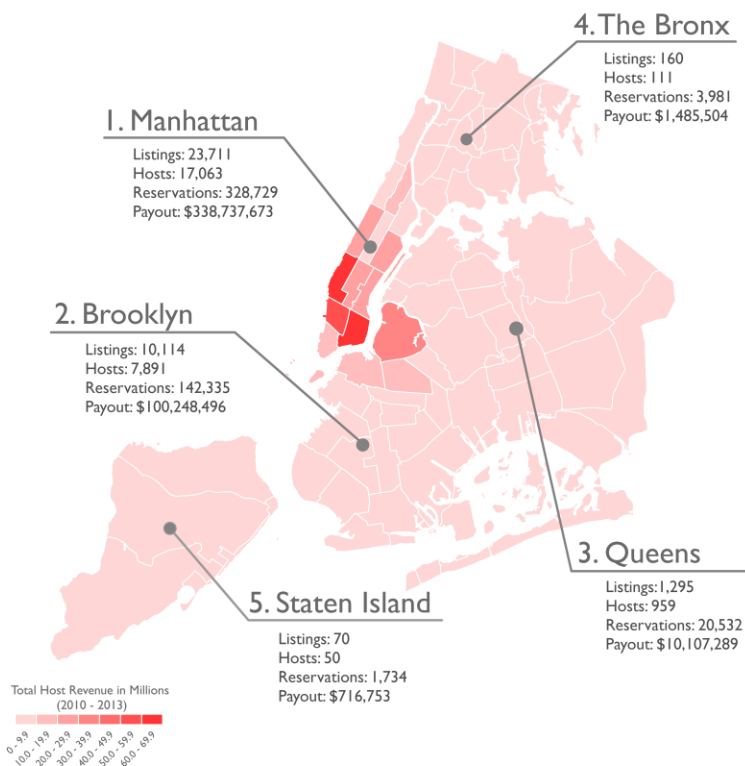
# GEOGRAPHIC DISTRIBUTION OF SHORT-TERM RENTALS

**Revenue Generated in Manhattan and Brooklyn Accounted for Virtually All Revenue from Private Short-Term Rentals Citywide.** During the Review Period, private bookings in those two boroughs yielded \$438 million to Airbnb hosts—97 percent of the citywide revenue totals. The 33,825 unique units in Manhattan and Brooklyn during that period accounted for the vast majority (96 percent) of units used for private short-term rentals booked citywide. This runs counter to the suggestion that any benefits associated with private short-term rentals are well-distributed throughout the city.

As depicted in Figure 10 below, during the Review Period, about 17,000 hosts offered over 23,000 unique units in Manhattan for private short-term rentals and received revenue of \$338 million. Brooklyn emerged as a distant second in each category, with just under 8,000 hosts offering about 10,000 unique units and receiving revenue of approximately \$100 million. By contrast, private short-term rentals in the remaining three boroughs (Queens, Staten Island, and the Bronx) together yielded hosts just \$12.2 million—less than three percent of the citywide total.

**Figure 10: Vast Majority of Private Short-Term Rentals Booked in Manhattan and Brooklyn**

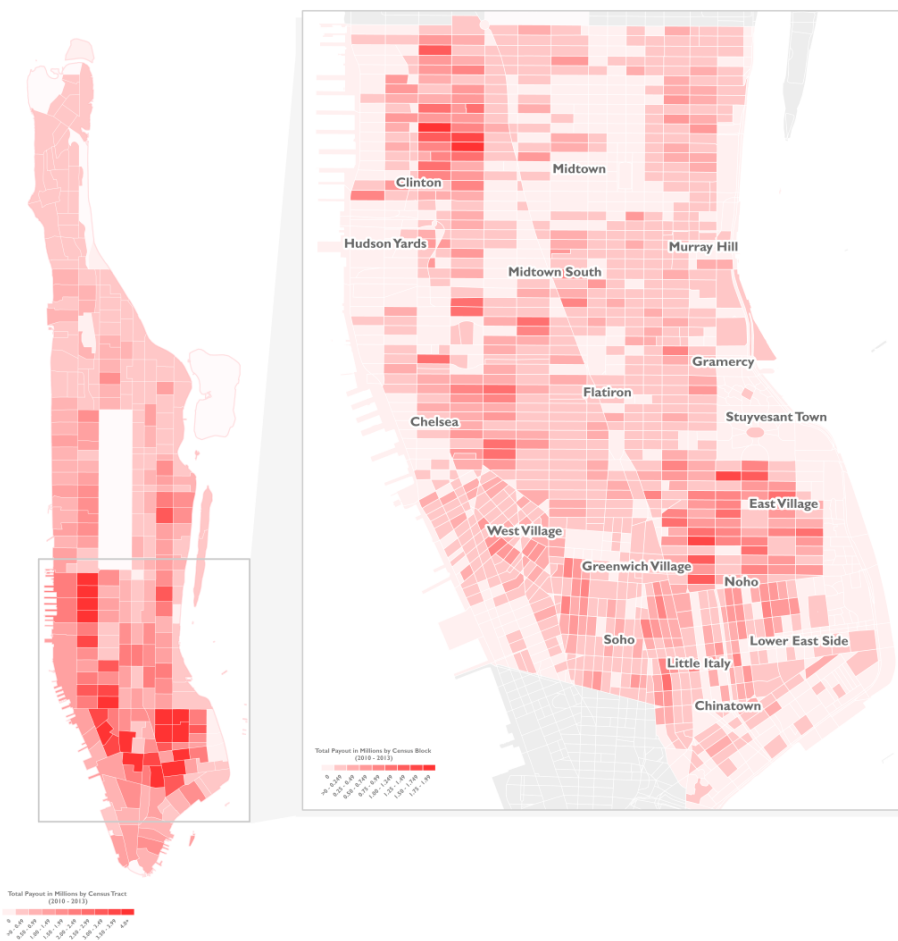
(Source: Airbnb Data, 2010-2014)





**Three Community Districts in Manhattan Accounted for an Outsize Share of Private Short-Term Rentals in the Borough and Citywide.** As reflected in Figure 11, three Community Districts—the Lower East Side/Chinatown, Chelsea/Hell’s Kitchen, and Greenwich Village/SoHo—accounted for one-third of unique units booked as private short-term rentals in New York City. These three, largely downtown districts accounted for host revenue of \$186.9 million, which represented 55 percent of host revenue for private stays in Manhattan and 41 percent of host revenue for private stays citywide. Greenwich Village/SoHo and Chelsea/Hell’s Kitchen had the highest median rents in New York City, tied at \$2,035 per month in 2012.<sup>12</sup> The Lower East Side was the most rapidly gentrifying neighborhood in New York City (based on the spread between median rents of new residents compared with all renters).<sup>13</sup>

**Figure 11:**  
**Three Lower Manhattan Community Districts Accounted for Most of Borough Revenue**  
 (Source: Airbnb Data, 2010-2014)



<sup>12</sup> NYU Furman Center For Housing and Urban Policy, State of City's Housing & Neighborhoods 2013. "MN02 Greenwich Village/SoHo." Available: [http://furmancenter.org/files/sotc/SOC2013\\_Manhattan\\_02.pdf](http://furmancenter.org/files/sotc/SOC2013_Manhattan_02.pdf)

NYU Furman Center For Housing and Urban Policy, State of City's Housing & Neighborhoods 2013. "MN04 Clinton/Chelsea." Available: [http://furmancenter.org/files/sotc/SOC2013\\_Manhattan\\_04.pdf](http://furmancenter.org/files/sotc/SOC2013_Manhattan_04.pdf)

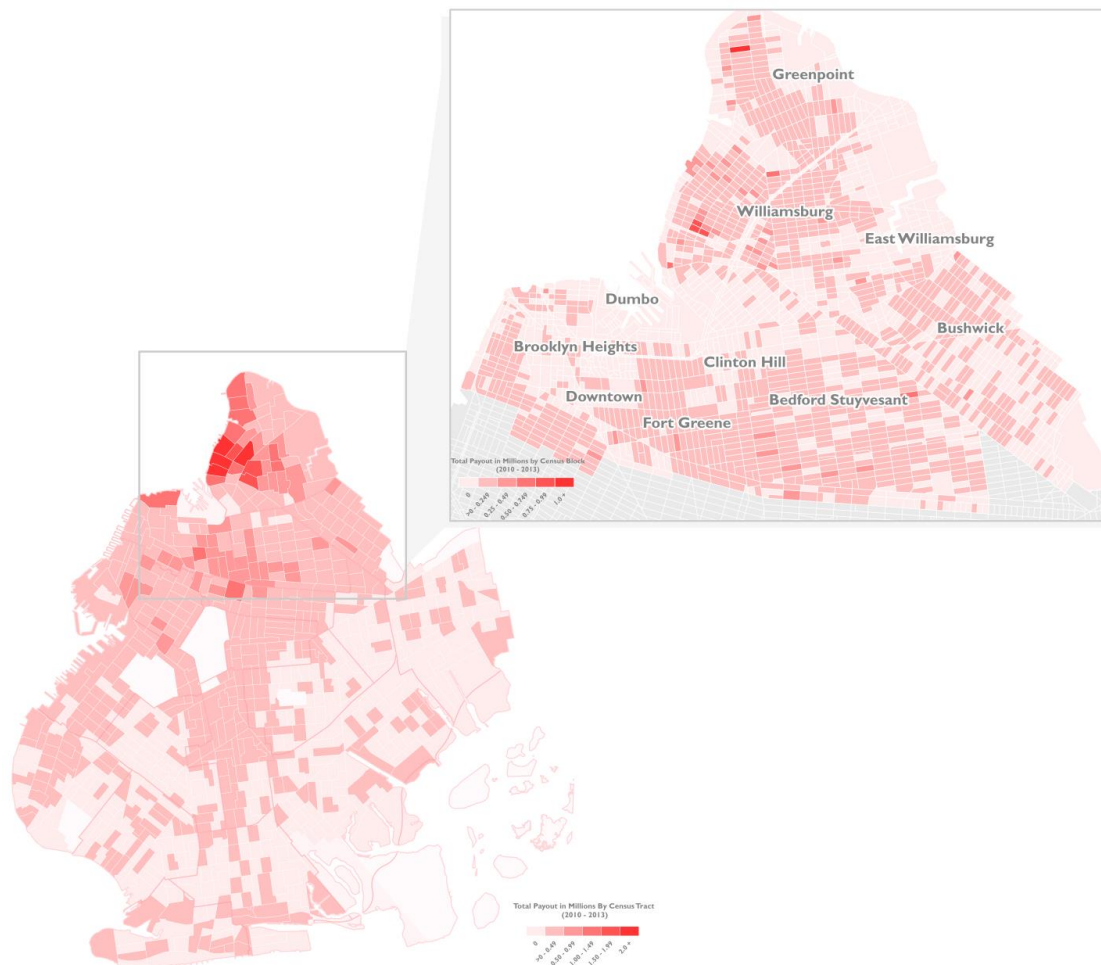
<sup>13</sup> NYU Furman Center For Housing and Urban Policy, State of City's Housing & Neighborhoods 2013. "MN03 Lower East Side/Chinatown." Available: [http://furmancenter.org/files/sotc/SOC2013\\_Manhattan\\_03.pdf](http://furmancenter.org/files/sotc/SOC2013_Manhattan_03.pdf)

**Williamsburg and Greenpoint Hosted the Greatest Share of Private Short-Term Rentals in Brooklyn.** During the Review Period, most revenue from private Brooklyn short-term rentals came from Community Districts along the Northern Brooklyn waterfront and in the neighborhoods often collectively called “Brownstone Brooklyn.” As depicted in Figure 12 below, the Williamsburg/Greenpoint Community District had for the largest concentration of private short-term rentals in Brooklyn, generating \$39 million for hosts—40 percent of the boroughwide total and nearly 10 percent of the citywide total.

Like the Lower East Side, the Williamsburg/Greenpoint Community District was one of the most rapidly gentrifying neighborhoods in New York City, as reflected in the disparity between the rents paid by old and new renters in 2012.<sup>14</sup> Other popular community districts included Downtown Brooklyn/Fort Greene (\$14.7 million revenue), Prospect Heights/Bedford Stuyvesant (\$14.4 million revenue), and Park Slope (\$8.67 million revenue).

**Figure 12: Williamsburg and Greenpoint Accounted for 40 Percent of Brooklyn Host Revenue**

(Source: Airbnb Data, 2010-2014)



<sup>14</sup> NYU Furman Center For Housing and Urban Policy, State of City's Housing & Neighborhoods 2013. "BK01 Greenpoint/Williamsburg." Available: [http://furmancenter.org/files/sotc/SOC2013\\_Brooklyn\\_01.pdf](http://furmancenter.org/files/sotc/SOC2013_Brooklyn_01.pdf)

# APPENDIX A: SUMMARY OF SELECTED LAWS

## PROPERTY USE AND SAFETY LAWS

Property use and safety laws establish basic standards for the permissible and sound use of property. These laws seek to protect the health, safety, morals, welfare, and reasonable comfort of the residents of the property.

One such law is the New York State Multiple Dwelling Law (the “MDL”), which prohibits rentals of less than 30 days in “Class A” multiple dwelling. Prior to 2010, the MDL defined “Class A” buildings as those dwellings occupied “as a rule, for permanent residence purposes.” The phrase “as a rule, for permanent residence purposes” was ambiguous and left room for various interpretations. For example, the phrase “as a rule” could mean that at least some measure of secondary short-term occupancy is permitted in a “Class A” building, provided that the majority of units are occupied on a permanent residency basis. The court in *City of New York v. 330 Continental, LLC*, 60 A.D.3d 226 (1st Dept. 2009) followed this interpretation, holding that the MDL is not violated when only a minority of units in a Class A building are used as transient hotel rooms.

In 2010, the MDL was amended to specify that permanent residency of a dwelling means at least 30 consecutive days’ occupancy by a “natural person or family” in a unit. Thus, one cannot rent out an apartment in a “Class A” multiple dwelling for less than 30 days, unless a “permanent resident” is present during the rental period. A “multiple dwelling” is a dwelling occupied by three or more families living independently. The purpose of this prohibition is to protect guests, ensure the proper fire and safety codes, and protect permanent residents who “must endure the inconvenience of hotel occupancy in their buildings.” It was also designed to preserve the supply of affordable permanent housing. See New York State Assembly Memorandum in Support of Legislation (S. 6873-B, 233rd Leg. (N.Y. 2010 (Sponsor’s Memo) Bill No. A10008).

Even if the building is not a “Class A” multiple dwelling, a short-term rental could still violate the law. For example, New York City Administrative Code, section 28-118.3.2, prohibits changes to the use, occupancy, or egress of a building. A short-term stay in a building that is not a “Class A” multiple dwelling would violate the law unless the building’s certificate of occupancy expressly authorized that type of use.

## TAX LAWS

Anyone who rents out a unit on a short-term basis must pay applicable hotel taxes. These taxes include the New York City Hotel Occupancy tax of 5.875%, plus an additional per room fee of 50 cents to \$2, depending on the total cost of the room.<sup>15</sup>

The operator (as relevant here, the host) is personally liable for the portion of the tax collected or required to be collected. The operator must collect the tax for all rentals of apartments or rooms, except in the case of: (1) rental of only one room in an owner-occupied home; (2) rentals for less than 14 days, or for fewer than three occasions during the year (for any number of total days);<sup>16</sup> and (3) “long-term leases,” i.e., rentals for a continuous period of 180 consecutive days.

Other taxes, including sales taxes and the New York City Unincorporated Business Tax (“UBT”), may also apply. The UBT is a 4% tax on net income imposed on individuals or unincorporated entities that carry on or are currently liquidating a trade, business, profession, or occupation within New York City. This includes those engaged in the business of renting out homes and apartments for profit as an unincorporated business.

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<sup>15</sup> This additional fee is based on the “rent” being charged for a room:

If the rent for the room is...	The tax will be...
\$10 or more, but less than \$20	50 cents per day per room + the hotel room occupancy tax rate
\$20 or more, but less than \$30	\$1 per day per room + the hotel room occupancy tax rate
\$30 or more, but less than \$40	\$1 per day per room + the hotel room occupancy tax rate
\$40 or more	\$2 per day per room* + the hotel room occupancy tax rate

A hotel suite may have more than one room. The tax will be \$2.00 per room per day on each of the rooms that make up the suite plus the hotel room occupancy tax for the entire suite rental. For example, the tax on a suite with 3 rooms will be \$6.00 per day plus the hotel room occupancy tax for the entire suite rental.

<sup>16</sup> Rentals of listings in a single building are aggregated and rentals of listings by a single owner or primary leaseholder are aggregated across buildings. Once a facility is required to pay hotel occupancy tax, it must continue to pay the tax until it falls below the de minimis thresholds for three consecutive years.

# **APPENDIX B: SELECTED AFFIDAVITS (FIRE & SAFETY ISSUES)**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

**AFFIDAVIT IN  
SUPPORT**

-against-

Index No.

CITY OASES, LLC, et al.,

Defendants.

-----X

STATE OF NEW YORK    )  
                                  )ss.:  
COUNTY OF KINGS     )

THOMAS JENSEN, being duly sworn, deposes and says:

1. I am employed by the New York City Fire Department (“FDNY”) as the Chief of Fire Prevention, a position I have held since 2007. I am a member of FDNY’s uniformed firefighting force, and hold the rank of Assistant Chief. I have been employed by FDNY since 1973, when I was appointed to the position of Firefighter. Prior to being appointed to the rank of Assistant Chief, I was promoted to and held the ranks of Lieutenant, Captain, Battalion Chief, Deputy Chief, Deputy Assistant Chief.

2. As Chief of Fire Prevention, I oversee the operations and personnel of the Bureau of Fire Prevention, the FDNY bureau primarily responsible for FDNY’s fire prevention and code enforcement mission. In addition, as Chief of Fire Prevention I served as the Chair of the Fire Protection Systems Committee of the New York City Department of Buildings Code Revision Project that culminated in the 2014 New York

City Building Code, and I was a member of the Managing Committee of FDNY's Code Revision Project that culminated in the 2014 New York City Fire Code.

3. I am fully familiar with the New York City Fire Code, and its predecessor, the New York City Fire Prevention Code, by virtue of my training, experience and position.

4. I make this affidavit in support of plaintiffs' application for a temporary restraining order, and preliminary injunction in the above-captioned action. This affidavit outlines the heightened fire and life safety concerns and standards associated with transient residential occupancies, as compared to non-transient residential occupancies.

5. FDNY is responsible for enforcing the New York City Fire Code ("Fire Code") and rules promulgated thereunder, which seek to prevent fires and mitigate their danger to life or property, throughout the five boroughs of New York City. FDNY also has authority to enforce fire and life safety provisions contained in the New York City Building Code ("Building Code").

6. One type of building occupancy specifically addressed in the Fire Code and Building Code are hotels and other transient accommodations.

7. Transient residential occupancies in New York City (classified by Building Code Section 310.1.1 as Group R-1 occupancies) are required to be designed, constructed and operated in accordance with more stringent fire protection requirements than those applicable to apartment buildings and other non-transient residential occupancies (classified by New York City Building Code Section 310.1.2 as Group R-2 occupancies).

8. A major reason for this distinction is that the visitors who stay in transient residential occupancies are not familiar with the layout of the building, including the exit stairwells, as are permanent residents. Occupants of transient accommodations therefore are likely to find it more difficult to evacuate the building quickly in the event of a fire or other emergency. This would be especially the case if there is a heavy smoke condition, smoke being a prime cause of death and serious injury in the event of fire. Occupants of transient accommodations typically are only familiar with the entrance through which they entered and the elevators. Use of elevators is discouraged in the case of a fire because they may open on floors engulfed by fire, smoke or heat, or even stall between floors.

9. Historically, it has taken tragic fires to lead to major changes and improvements in fire safety. For example, the 1980 fire at the Las Vegas MGM Grand Hotel and Casino, which resulted in some eighty-five (85) deaths and hundreds of injuries, and other significant hotel fires in Las Vegas, Houston, and White Plains, New York, led to substantial changes in fire safety requirements for transient accommodations in New York City. Beginning in the 1980s, FDNY addressed the need for heightened fire safety protection requirements in transient accommodations, first by issuance of a directive (Fire Prevention Directive 2-82), then by promulgation of a rule (3 RCNY 39-01), and more recently through the enactment in 2008 of Chapter 4 of the new New York City Fire Code, which, together with the new Fire Department rules, incorporated the requirements of the now repealed Fire Prevention Directive 2-82 and 3 RCNY 39-01.

10. With the enactment of Local Law No. 148 of 2013, the Fire Code was revised to enhance emergency preparedness in hotels and other transient residential



occupancies by requiring that the emergency preparedness plans, staff training and drills in such occupancies address all types of emergencies, not just fires. The Fire Department will be promulgating rules implementing these new Fire Code provisions. Until such time as such rules are promulgated, existing (2008 Fire Code) emergency preparedness requirements for hotels and other transient residential occupancies remain in effect as set forth in FC401.3.6.1.

11. The Fire Code imposes or references a series of requirements on transient residential occupancies beyond those which are applicable to non-transient residential occupancies:

- (a) Provision of portable fire extinguishers (FC 906.1);
- (b) Provision of automatic sprinkler systems (FC 903.2, referencing the Building Code);
- (c) Provision of photoluminescent exit path markings for exits and stairwells in high-rise buildings (FC 1001.2, referencing the Building Code);
- (d) Provision of manual, automatic, or manual and automatic fire alarm systems, on all floors with smoke detection capability, notification of building occupants and, in most buildings, voice communication capability (FC 907.2, referencing the Building Code and National Fire Protection Association Standard 72);
- (e) A fire safety and evacuation plan, which sets forth the evacuation and other procedures to be implemented in the event of a fire, and which

designates the fire safety director, deputy fire safety directors and fire brigade members<sup>1</sup> (2008 Fire Code Section FC 404.2.1);

(f) Provision of a fire safety director, who is responsible for implementing the fire safety and evacuation plan, notifying the Fire Department, and communicating all instructions and directions to building occupants in the event of a fire, and who must possess a FDNY certificate of fitness and be present in the hotel or motel at all times (2008 Fire Code Section FC 401.6.5);

(g) Provision of a lobby fire command center, equipped with a control panel that displays the status of alarm devices in the building, and that is used by the fire safety director and FDNY emergency response personnel to implement the fire safety and evacuation plan (FC 907.3);

(h) Provision of a fire brigade, consisting of building staff trained in fire safety, who assist the fire safety director and FDNY personnel with the implementation of the fire safety and evacuation plan (2008 Fire Code Section FC 401.6.5); and

(i) Posting of diagrams on every guest room entrance door showing the route to two stairwells or other means of egress (FC 405.5).

12. In contrast, the New York City Fire Code contains the following less stringent fire protection requirements for non-transient residential occupancies:

(a) There is no requirement for portable fire extinguishers.

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<sup>1</sup> 2008 Fire Code Section 402.4.1(8) requires this plan for “Group R-1 occupancies, occupied by more than 30 lodgers, or more than 15 lodgers above street level, for a period of 90 days or less; and/or operated to accommodate such numbers of lodgers for such period of occupancy; and/or designed to contain a total of more than 30 sleeping rooms, or more than 15 sleeping rooms above the street level, for such period of occupancy; and/or occupied by one or more lodgers on a floor more than 75 feet (22 860 mm) above the street level, for such period of occupancy, or operated or designed for such lodging.”

(b) There was no requirement for a building-wide fire alarm system in older apartment buildings, and, in newer apartment buildings, the requirement for a fire alarm system is limited to certain areas of the building and does not alert building occupants in the event the fire alarm system is activated (FC 907.2, referencing the Building Code and National Fire Protection Association Standard 72).

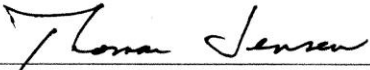
(c) In contrast to the detailed fire safety and evacuation plan and emergency preparedness staff to implement it required in transient residential occupancies, in apartment buildings the Fire Code only requires annual distribution of a fire safety guide that contains information about the building, basic fire prevention and fire preparedness measures and emergency fire safety instructions in the event of fire (FC 406.2.1).

(d) In contrast to the posting of diagrams on each transient occupancy unit showing two evacuation routes, in apartment buildings there need only be a fire safety notice posted on the back of the main entrance door to individual dwelling unit doors and in the common areas of the building, that assists occupants in selecting the safest course of action in the event of a fire (FC 405.5).

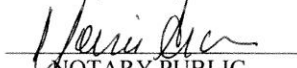
13. Accordingly, a visitor who occupies a unit in an apartment building that is being used illegally for transient occupancy, does not have the benefit of the fire and life safety measures required in legal transient occupancies for the protection of persons unfamiliar with the layout of the building. Moreover, a visitor who occupies a unit in an apartment building that is being used illegally for transient occupancy is not afforded the same opportunity to familiarize himself or herself with the information contained in the

fire safety guide for that building, as is afforded to a resident of the building. The visitor is thus placed at significantly increased risk of injury or death in the event of a fire.

14. In the larger context of fire safety in New York City it is important to note that the overall fire protection measures developed and instituted in recent decades have resulted in a dramatic decline in the number of fatalities attributable to fire incidents. As depicted in Exhibit A attached hereto, the number of fire related fatalities declined from almost 300 in 1976 to 62 in fiscal year 2010. That number has since declined even further. FDNY Statistics for fiscal year 2013 (see Exhibit B) reported 493,377 fire incidents, including 25,278 structural fires but only 47 civilian fire fatalities. New York City's fire protection measures, including those designed to protect transient visitors to the City, have contributed to the historically low level of fire deaths.

  
THOMAS JENSEN  
Chief of Fire Prevention

Sworn to before me this  
19<sup>th</sup> day of August, 2014.

  
NOTARY PUBLIC

Maire Archer  
Notary Public, State of New York  
No. 0249883828  
Qualified in New York County  
Commission Expires 12/7/17

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
THE CITY OF NEW YORK,

Plaintiff,

Index No.:

-against-

CITY OASES, LLC, MINA GUIRGUIS, SZILVIA PATKOS, HAMID KERMANS SHAH a/k/a ABDOLHAMID KERMANS SHAH, ABDOLMAJID KERMANS SHAH a/k/a MAJID KERMANS SHAH, WILSHIRE LIMITED, THE LAND AND BUILDING KNOWN AS 59 FIFTH AVENUE, BLOCK 570, LOT 6, County of New York, City and State of New York, RAHMAN NY INC., THE LAND AND BUILDING KNOWN AS 5 WEST 31<sup>ST</sup> STREET, BLOCK 833, LOT 36, County of New York, City and State of New York, and "JOHN DOE" and "JANE DOE," numbers 1 through 10, fictitiously named parties, true names unknown, the parties intended being the managers or operators of the business being carried on by defendants CITY OASES, LLC, RAHMAN NY INC., and/or WILSHIRE LIMITED,

**Affidavit of**  
**VLADIMIR PUGACH**

Defendants.

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STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

VLADIMIR PUGACH, being duly sworn, deposes and says:

1. I am presently employed as an Associate Inspector for the New York City Department of Buildings (hereinafter the "DOB"), and I have been so employed for almost nine (9) years. I have been assigned to the Mayor's Office of Special Enforcement ("OSE")

(formerly named the Office of Midtown Enforcement) since July 2009, where I serve as a member of the Mayor's Inspection Task Force (hereinafter the "MTF").

2. The MTF is composed of inspectors from various New York City agencies, including the DOB, the New York City Fire Department, the New York City Health Department, and the Department of Finance, as well as officers from the New York City Police Department. The MTF's function is to perform 'quality of life' inspections, covering compliance with health, safety and fire codes, in structures located within the five boroughs of the plaintiff, CITY OF NEW YORK [the "CITY"].

3. I submit this affidavit, which is based upon both my personal knowledge and my review of pertinent records kept by the CITY and its various agencies, in support of the plaintiff's application for a temporary restraining order, as well as its motion for a preliminary injunction.

4. On December 3, 2011, and August 25, 2012, I participated in code enforcement inspections of 59 Fifth Avenue, New York; and on April 21, 2012, and October 5, 2013, I participated in code enforcement inspections of 5 West 31<sup>st</sup> Street. These inspections were conducted by the MTF in response to complaints that dwelling units in the buildings were being operated as illegal transient hotel units.

#### **59 Fifth Avenue**

##### **A. December 3, 2011 Inspection**

5. During the December 3, 2011 inspection of 59 Fifth Avenue, I observed, among other things, (a) that the second and third floors had been converted from 2 class A apartments to 3 class A apartments on each floor without first obtaining a permit as required by the New York City Building Code; (b) that the second and third floors were occupied for

transient use, contrary to that allowed by the certificate of occupancy for the building; (c) that there was a failure to provide (i) a fire alarm system as required for transient occupancy, (ii) a sprinkler system as required for transient occupancy, and (iii) the means of egress required for transient occupancy.

6. Accordingly, I issued ECB Notices of Violation for the violations, as follows:

- i. Violation No. 34924282Z for violation of § 28-118.3.2 of the New York City Building Code for occupancy contrary to that allowed by Certificate of Occupancy No. 75911, in that the 2<sup>nd</sup> and 3<sup>rd</sup> floors were converted from two class A apartments to 3 class A apartments, and were occupied by transient, short-term guests, scheduled to stay for less than 30 days. Additionally, the attic apartment was illegally occupied as an office. This is a Class 1 Hazardous violation.
- ii. Violation No. 34924283K for violation of § 28-105.1 of the New York City Building Code for work without a DOB permit for the installation of full height partitions creating additional apartments on the 2<sup>nd</sup> and 3<sup>rd</sup> floors, and plumbing for the additional apartment. This is a Class 1 Hazardous violation.
- iii. Violation No. 34924284M for violation of § BC 1004.4 of the New York City Building Code for failure to provide required means of egress for transient use of the 2<sup>nd</sup> and 3<sup>rd</sup> floors. This is a Class 1 Hazardous Violation.
- iv. Violation No. 34924285Y for violation of § BC 907.2.8 of the New York City Building Code for failure to provide a fire alarm system in a building used for transient occupancy. This is a Class 1 Hazardous Violation.
- v. Violation No. 34924286X for violation of § BC 903.2.7 of the New York City Building Code for failure to provide an automatic sprinkler system in a building used for transient occupancy. This is a Class 1 Hazardous Violation.

A copy of the Certificate of Occupancy No. 75911 is annexed hereto as Exhibit "A".

7. These violations directed discontinuation of the illegal occupancy, the obtaining of permit for the work done without a permit, and imposed a partial stop work

order. Copies of each of the December 3, 2011 ECB Notices of Violation are collectively annexed hereto as Exhibit “B”.

8. On the day of the inspection, December 3, 2011, I took photographs at 59 Fifth Avenue of the “House Rules” for the transient guests, and of documents in possession of guests showing the booking of accommodations at 59 Fifth Avenue, indicating the length of stay, among other things, documents which were shown by guests to the MTF team. Those photographs are attached as Exhibit “C”.

9. The violations were the subject of a hearing at the New York City Environmental Control Board (“ECB”), held on April 12, 2012, at which I testified. After hearing, the violations were sustained and held to be Class 1 Hazardous Violations by the ECB judge. A copy of the April 19, 2012 ECB decision is annexed hereto as Exhibit “D”.

10. Defendant Wilshire Limited appealed the ECB judge’s decision to the Board. That appeal was denied by Appeal Decision and Order issued on December 20, 2012. A copy is attached as Exhibit “E”.

**B. August 25, 2012 Inspection**

11. On August 25, 2012, I participated in a follow-up code enforcement inspection of 59 Fifth Avenue conducted by the MTF, in response to a new complaint that 2<sup>nd</sup> and 3<sup>rd</sup> floor apartments were being operated as an illegal transient hotel.

12. During that inspection I observed that there had been no change in the illegal use of the 2<sup>nd</sup> and 3<sup>rd</sup> floor apartments for transient use and occupancy, and that the attic apartment was also being used and occupied transiently. In addition, I observed that the egress and fire safety violations had not been corrected.

13. Accordingly, I issued ECB Notices of Violation for the recurring violations



and additional fire safety violations, as follows:

- i. Violation No. 34979610R for violation of § 28-118.3.2 of the New York City Building Code for occupancy contrary to that allowed by Certificate of Occupancy No. 75911, in that the 2nd and 3rd floors were converted from two class A apartments to 3 class A apartments, and were occupied by transient, short-term guests, scheduled to stay for less than 30 days. Additionally the attic was also being occupied by transient, short-term guests, and one of the 2nd floor apartments as an office. This is a recurring Class 1 Hazardous violation.
- ii. Violation No. 34979611Z for violation of § BC 1004.4 of the New York City Building Code for failure to provide required means of egress for transient use of the 2<sup>nd</sup> and 3<sup>rd</sup> floors. This is a recurring Class 1 Hazardous Violation.
- iii. Violation No. 34979612K for violation of § BC 907.2.8 of the New York City Building Code for failure to provide a fire alarm system in a building used for transient occupancy. This is a recurring Class 1 Hazardous Violation.
- iv. Violation No. 34979613M for violation of § BC 903.2.7 of the New York City Building Code for failure to provide a sprinkler system in a building used for transient occupancy. This is a recurring Class 1 Hazardous Violation.
- v. Violation No. 34979614Y for violation of § 28-204.4 of the New York City Building Code, for failure to comply with the Commissioner's order to file a certificate of correction with respect to the five violations described in Paragraph 6 of this Affidavit.

14. The violations directed discontinuation of the illegal occupancy and the filing of a certificate of correction. Copies of the August 25, 2012 ECB Notices of Violation are collectively annexed hereto as Exhibit "F"

15. During the inspection I took photographs of documents in possession of guests showing the booking of accommodations at the Subject Premises and information on check-in procedures. Copies of these photographs are annexed hereto as Exhibit "G".

16. The violations were the subject of a hearing at the New York City Environmental Control Board ("ECB"), held on May 2, 2013, at which I testified. After

hearing, the violations were sustained and held to be Class 1 Hazardous Violations by the ECB judge. A copy of the May 10, 2013 ECB decision is annexed as Exhibit "H".

17. Defendant Wilshire Limited appealed the ECB judge's decision to the Board. That appeal was denied by Appeal Decision and Order issued on October 31, 2013. A copy of the Appeal Decision and Order is annexed hereto as Exhibit "I".

**5 West 31<sup>st</sup> Street**

**A. April 21, 2012 Inspection**

18. During the code inspection of 5 West 31<sup>st</sup> Street conducted by the MTF on April 21, 2012, I observed, among other things, (a) that, on the ninth and tenth floors, full height partitions had been erected to create twelve transient-use rooms, and plumbing and electrical wiring installed, without first obtaining a permit as required by the New York City Building Code; (b) that the ninth and tenth floors were occupied for transient use; (c) that there was a failure to provide (i) a fire alarm system as required for transient occupancy, (ii) a sprinkler system as required for transient occupancy, and (iii) the means of egress required for transient occupancy; and (d) that there was a failure to comply with the Building Code requirements for the direction of swing of exit doors for transient accommodations, in that the doors marked for exit on the ninth and tenth floors swing against the direction of egress.

19. There being no certificate of occupancy for 5 West 31<sup>st</sup> Street, upon my examination of the records at the DOB concerning the building, I determined that the transient occupancy on the ninth and tenth floors of the building is contrary to that which is lawfully allowed.

20. Accordingly, I issued ECB Notices of Violation for the violations, as follows:

- i. Violation No. 34947948H for violation of § 28-118.3.2 of the New York City Building Code for occupancy contrary to that allowed by

DOB records, in that the 9<sup>th</sup> and 10<sup>th</sup> floors, with twelve sleeping rooms, were occupied by transient, short-term guests, scheduled to stay for less than 30 days. This is a Class 1 Hazardous violation.

- ii. Violation No. 34947947X for violation of § 28-105.1 of the New York City Building Code for work without a DOB permit for the installation of full height partitions creating twelve transient-use rooms on the 9<sup>th</sup> and 10<sup>th</sup> floors, and for the installation of plumbing and electrical wiring. This is a Class 1 Hazardous violation.
- iii. Violation No. 34947942R for violation of §§ 28-301.1, BC 1018.1, and 27-366 of the New York City Building Code for failure to provide required means of egress for transient use of the 9<sup>th</sup> and 10<sup>th</sup> floors. This is a Class 1 Hazardous Violation.
- iv. Violation No. 34947943Z for violation of § BC 907.2.8 of the New York City Building Code for failure to provide a fire alarm system in a building used for transient occupancy. This is a Class 1 Hazardous Violation.
- v. Violation No. 34947944K for violation of § 1008.1.2.2 of the New York City Building Code for failure to comply with the required direction of swing of exit doors in a building with transient occupancies. This is a Class 1 Hazardous Violation.
- vi. Violation No. 34974946Y for violation of § 28-118.3 of the New York City Building Code for an altered or changed building being occupied without a valid certificate of occupancy, as required by §§ 28-118.3.1 and 28-118.3.2.

21. The violations directed discontinuation of the illegal occupancy, the obtaining of a certificate of occupancy, and compliance with the Code. Copies of the April 21, 2012 ECB Notices of Violation are collectively annexed hereto as Exhibit "J".

22. On the day of the inspection, April 21, 2012, I took photographs at 5 West 31<sup>st</sup> Street of the operator's contact information and Certificate of Authority posted at the building, of booking invoices and reservation documents. Those photographs are annexed hereto collectively as Exhibit "K".

23. The Violations were the subject of a hearing at the New York City

Environmental Control Board (“ECB”), held on February 28, 2013, at which I testified. After hearing, the violations were sustained and held to be Class 1 Hazardous Violations by the ECB judge. A copy of the March 14, 2013 ECB decisions is annexed hereto as Exhibit “L”.

**B. October 5, 2013 Inspection**

24. On October 5, 2013, I participated in a follow-up code enforcement inspection of 5 West 31<sup>st</sup> Street conducted by the MTF in response to a new complaint that the Subject Premises was being operated as an illegal transient hotel.

25. On that date the apparent person in charge refused entry to the MTF to perform an inspection. That individual, Iana Ivashyna, was the same apparent person in charge at the time of the first inspection performed on April 21, 2012. A photograph of her official New York State identification card taken during the prior inspection conducted on April 21, 2012 is attached as Exhibit “M”.

26. Each and every one of the sixteen (16) ECB NOV’s noted above that I issued to the defendants herein included an order from the DOB Commissioner to correct the conditions that gave rise to the charged violations and to certify such correction with DOB. Under DOB regulations, a Class 1 [immediately hazardous] violation must be corrected ‘immediately’ .

27. I have reviewed the DOB records regarding the Buildings at 5 West 31<sup>st</sup> Street and 59 Fifth Avenue. Based upon my review, I have determined that, to date, the defendant owners have failed to certify their correction for each and every one of the sixteen (16) NOV’s that were issued to them on December 3, 2011, April 21, 2012, and August 25, 2012. Of those sixteen (16) NOV’s, fifteen (15) of them were issued on the basis that the violations were Class I hazardous violations and, in fact, after their respective hearings, the ECB upheld

such violations as Class 1 hazardous violations. The sixteenth violation [NOV 34979614Y] was issued as an “Aggravated 1” violation, indicating that the charged violation was issued as a ‘repeat offense’, which is considered to be a more serious violation than a Class 1 violation. A copy of a recent print-out from DOB records for each of the two buildings, at 5 West 31<sup>st</sup> Street and 59 Fifth Avenue, is annexed hereto collectively, as Exhibit “N”, confirming this information.

28. Finally, as part of OSE’s investigation regarding the operation by defendants of illegal short-term rentals in permanent residence apartments in New York City, I, together with MTF member New York City Police Department [“NYPD”] Sergeant Arthur Levine, confirmed the current offering and availability of short-term accommodations at both 59 FIFTH AVENUE and 5 WEST 31<sup>st</sup> STREET. See Affidavit of NYPD Sergeant Arthur Levine, sworn to on August 22, 2014 [“Levine Affid.”], at paragraph 4.

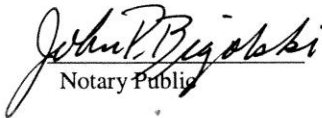
29. In that regard, we booked reservations through the Contempo Design Suites web site, <http://www.contempodesignnyc.com>, for two (2) days [11/6/14 – 11/8/14] at 59<sup>th</sup> FIFTH AVENUE, under the alias name of “Kim Gallagher”. In addition, we booked reservations through the Urban Oasis web site, <http://www.urban oasisnyc.com>, for seven (7) days [5/1/15 – 5/8/15] at 5 WEST 31<sup>st</sup> STREET, under the alias name of “Martin Keller”. Copies of the reservation documents and invoices for 59 FIFTH AVENUE and 5 WEST 31<sup>ST</sup> STREET are annexed to the Levine Affid., respectively, as Exhibits “A” and “B”.

30. Based on my observations with Sergeant Levine that the defendants were offering apartments in both 59 FIFTH AVENUE and 5 WEST 31<sup>st</sup> STREET for short-term rental, and based on our actual booking of short-term rental accommodations at both Buildings despite the fact that such accommodations are not lawfully permitted by the relevant provisions

of the applicable statutes and codes, I issued two ECB Notices of Violation: ECB NOV # 35096468M [to respondent/defendant WILSHIRE LIMITED, for 59 FIFTH AVENUE] and ECB NOV # 35096469Y [to respondent/defendant RAHMAN NY INC., for 5 WEST 31<sup>ST</sup> STREET]. Both NOV's cited the respondents/defendants for their violations of NYC Building Code [Admin. Code] § 28-210.3 [Illegal conversions of dwelling units from permanent residences.] which states, in pertinent part, that "It shall be unlawful for any person or entity who owns or occupies a multiple dwelling or dwelling unit classified for permanent residence purposes to use or occupy, offer or permit the use or occupancy or to convert for use or occupancy such multiple dwelling or dwelling unit for other than permanent residence purposes." Copies of the two NOV's are annexed hereto , collectively, as Exhibit "O".

  
VLADIMIR PUGACH

Sworn to before me on the  
25<sup>th</sup> day of August, 2014

  
Notary Public

JOHN P. BIGOLSKI  
Notary Public, State of New York  
No. Q1B15023114  
Qualified in Kings County  
Commission Expires Jan. 31, 2018-JB

# APPENDIX C: SELECTION OF ANONYMOUS COMPLAINTS

During the Review Period, thousands of New Yorkers submitted complaints to state and city agencies complaining about the proliferation of short-term rentals, primarily in New York City. These complaints raise a host of grievances with short-term rentals, including safety, noise, and a failure to abide by building rules. The excerpts below—which are anonymized to protect the complainants—highlight a few of the broad themes found in these complaints.

## Complaint Submitted October 13, 2013 (NYAG):

*[I live in] a Class A, partly rent-stabilized, partly market-rent four-flight walk-up tenement building of a lower Manhattan neighborhood. The apartment on the 1st floor being rented out as a hotel suite... The [temporary renters] apparently [do not] have key to side yard to dispose of garbage so was dumping it on street in front. After we complained by leaving notes a maid service began to appear every few days to clean the apartment... We urged management to put an end to illegal hotel rental. In July, 2012 [an apartment in the building] was burglarized of all her grandmother's jewelry in what appeared to be an inside job. Meanwhile, I began to notice a revolving door in the apartment beneath mine. This morning, another neighbor concerned about the erosion of Class A apartments found on line [the apartment in question] being [listed] on Airbnb. It appears that [numerous other apartments my block have also been] listed on Airbnb... Safety, building security, quiet enjoyment of our homes, any sense of community are under assault: please investigate.*

## Complaint Submitted October 14, 2013 (NYAG):

*I write to ask you to take the strongest enforcement action possible against the proliferation of illegal hotels in our neighborhoods facilitated openly by the website Airbnb. I live in a middle class, northern Brooklyn neighborhood and about one and a half years ago I spent almost one entire hellish year battling an illegal hotel operating in the apartment below me. I called countless [City agencies] but to no avail. The person who operated that site had numerous others throughout the city. It was a health and safety risk and the proprietor threatened me with physical force for reporting her and the landlord at the time (the building has since been sold) was a willing accomplice as he hoped to get higher rent from a hotel than from legal tenants. Rent in our neighborhood has become near unaffordable for us and it is partly because people can charge such high rents to illegal hotels.*

## Complaint Submitted March 11, 2014 (NYAG):

*I am writing to bring your attention to a business that is using Airbnb to illegally rent out its apartments via Airbnb, essentially operating as a hotel chain masquerading as individuals renting apartments. The company in question is [presents itself as a legitimate short-term rental service] using several pseudonyms. From what I can tell, they are buying NY tenement apartments and*

*renting them out to tourists. Among many other problems, this has the effect of forcing long-standing residents out of their apartments to serve tourists.*

**Complaint Submitted March 12, 2014  
(Office of New York Senator Elizabeth Kruger):**

*I am 41 year old resident of New York City [and hold a lease in a] building with three apartments in Northern Brooklyn... Since October of 2010 I have confronted the problem of [the tenant in the unit above mine] renting the apartment for tourists. They use the Airbnb [website]. At first I got really frightened of having transient strangers entering and exiting the building with so much frequency, then I kind of got used to it, but never felt comfortable with the circumstances. Besides, my life and the life of my roommates is constantly disrupted with the noise from upstairs neighbor with groups of people making heavy noise, especially during the night. We have had property stolen from the basement, lost deliveries left inside the building, the front door was once vandalized and the list of incidents goes on... The host accommodates up to four people in each room (for a total of 12 people at the same time). [For] at least one year the host has [been offering short-term rentals and does] not live in the building but with his girlfriend somewhere else in the neighborhood. To rent the rooms he comes to meet his clients, gives them the keys to the building, and then leaves...*

**Complaint Submitted March 21, 2014  
(New York City Office of Special Enforcement):**

*[I just wanted to give you] an update on two apartments [being used as illegal hotels]. Both apartments are owned by the same landlord... and both apartments are almost continuously occupied [for short periods by groups of tourists from all over the world]... We also see a cleaning person and the Airbnb hostess visiting both apartments with supplies. I have met every family so far (except the one that moved in today) to let them know about the situation. I am hoping that some of them mention the fact of this being an illegal rental on the Airbnb website, or to the hostess... All of the felt something was amiss when the hostess failed to meet them in person and had them pick up the keys from someone else... Our lives have been seriously affected by these illegal activities*





NEW YORK STATE OFFICE

*of the*

ATTORNEY  
GENERAL

