

NYC's New Law Is A Game Changer For Short-Term Rentals

By **Adam Lindenbaum** and **Collin Chipetine** (December 1, 2022, 6:20 PM EST)

For the first time in their decadelong campaign against tenant abuses of the short-term rental industry, New York City landlords should soon have the upper hand when it comes to saying who can turn their properties into vacation homes.

Beginning Jan. 9, 2023, strict new regulations, along with a hefty set of financial penalties, will become effective in what could be a slam dunk over one of the city's most unregulated industries.

Millions of apartments will be barred from ever becoming short-term rentals and, with the city's Office of Special Enforcement primed to police the new streamlined rules, thousands of units operating illegally can be shut down.

Almost one year ago, on Dec. 9, 2021, the New York City Council passed Introductory Bill No. 2309-A to curb illegal short-term rental activity throughout the city by setting forth strict preregistration, advertising and record-keeping requirements for rental hosts.

First introduced by Councilman Ben Kallos, Bill No. 2309-A was enacted into law Jan. 9 as Local Law 18 when the bill was returned unsigned by Mayor Eric Adams without a veto.

Local Law 18 adds Sections 26-3101 through 26-3105 to the New York City Administrative Code that will become effective Jan. 9, 2023, with the penalties to be imposed under the law not effective until May 9, 2023.

The focus of the bill's authors, Kallos, Tenants PAC and the Coalition Against Illegal Hotels, was a concentrated effort toward mitigating the spike in short-term rentals across New York as online platforms such as Airbnb.com and VRBO.com continued to grow in both revenue and reach across New York City.

Local Law 18 aims to restore the city's stock of affordable housing to permanent residents rather than allow them to be exploited by enterprising tenants who list their apartments illegally on various online platforms, and through word-of-mouth networks.

Registration of Short-Term Rentals by Hosts

Administrative Code Section 26-3102(a) provides, in pertinent part:



Adam
Lindenbaum



Collin Chipetine

It shall be unlawful for a person who owns, manages, occupies or otherwise controls a dwelling unit to offer, manage or administer the short-term rental of such dwelling unit unless such dwelling unit is registered in accordance with this chapter, such dwelling unit has been issued a unique short-term rental registration number, and such registration is currently valid.

As of Jan. 9, anyone looking to rent a property for 30 days or less will have to register with the OSE and display that registration number on their listing. Under the proposed rules of the OSE,[1] the registration fee will be \$145 per unit.

By enforcing this registration and the publication of such on any listing, the city council has, in one stroke, made it easier for enforcement agencies — and the public — to see who is legally entitled to lease their property to strangers for periods of less than 30 days.

Restrictions on Short-Term Rental Registrations

Significantly, this local law recategorizes whole classes of accommodations as unauthorized and restores control over real property for property owners, managers and co-op and condo boards.

A property cannot be registered as a short-term rental if it is (1) rent controlled, (2) rent stabilized, including any property subject to RPTL 421-a regulations, (3) subject to Mitchell Lama regulations, (4) part of New York City Housing Authority housing, or (5) a property in receipt of a subsidized mortgage and under New York City Department of Housing Preservation and Development supervision.

In a catch-all step, the city will also now allow any property owner — of any property type — to request a permanent overriding veto against registration so that, in the event a tenant or unit owner applies to register their property, it will be immediately flagged as prohibited by request of the building owner or management.

The OSE will maintain a prohibited buildings list that will be publicly accessible for anyone to check whether they are living next door to an illegal short-term rental. If an applicant applies to register a dwelling unit under Local Law 18, the record owner will be notified by OSE in writing, giving the opportunity to respond accordingly with knowledge of the host's intentions.

The registration process alone will ease the burden in what has been a shadowy market for owners, occupants and visitors alike. To date, the extremely fast pace of short-term rental transactions has left a lot of people burned, with visitors left vulnerable and owners without real recourse because guests are in and out so quickly. This registration requirement attempts to organize the market and gives both sides a level of comfort never previously enjoyed.

The significance of the registration requirement cannot be overstated. AirBnb.com and the like are widely popular in places like New York City where hotel accommodations are expensive, particularly for families.

However, increasingly, short-term rentals have proliferated in both Manhattan and the outer boroughs, which have become destinations unto themselves as visitors look to be immersed in the city's many diverse pockets. The problem is that when you have a city as densely populated as New York, with people living in close proximity and an abundance of high-rise buildings, the issue of safety must remain a priority.

New York hotels are required to operate within the city's strict fire safety regulations, which are designed to protect transient occupants who are unfamiliar with a building and its surroundings. These regulations cover everything from emergency fire exits to swimming pool oversight, structural integrity to cleaning protocols. These heightened building safety rules simply do not apply to Class A apartments that are rented out on a short-term basis as if they were a hotel.

For visitors considering a short-term rental in NYC, the issue has always come down to the tension between risk and cost savings.

Perhaps you can secure an accommodation for \$200 as opposed to \$500 for a hotel — but is that \$300 savings worth taking when the property is operating without the owner's consent and without safety protocols in place? The city now appears committed to making abundantly clear to all constituents what the rules are and eliminating unauthorized accommodations and undue safety risks.

We've all read the headlines about neighbors plagued by short-term renters traipsing noisily through their buildings at all hours of the day and night, of sex clubs operating from random apartments and, in extreme cases, violent crimes.[2] Under the new regulations, the OSE can now take immediate action to shut down the illegal rental and fine the offenders, simply because it is not registered.

It is the type of satisfying resolution that New Yorkers have been demanding for many years as they fretted over the comings and goings in their community, and one that sides squarely with the long-term interests of individuals and families who want to feel safe, or high-paying renters in luxury buildings who demand peace and quiet, or anyone who is too scared to let their kids play outside for fear of transient visitors.

Advertising and Record-Keeping

Local Law 18 will now also require any owner or host utilizing booking services to identify any booking service name ie: AirBnb, VRBO, etc., in the OSE application along with the registration number in any advertisement for the space.

This will allow OSE to check booking service listings for unauthorized activity, making it easier to identify offenders. Furthermore, registered hosts must maintain accurate records following each short-term rental for at least seven years, which records are to be provided to OSE upon request. This reinforces the primary registration regulation by legally requiring hosts to provide accurate records of their business upon demand.

Right now, it appears that the OSE is aiming to enact additional regulations to enforce Local Law 18 against booking services as well.

The proposed requirements for booking services prohibit the collection of any fees in connection with short term rentals of dwelling units without using the OSE's electronic verification system to (1) verify that the short term rental has been duly registered; (2) such registration is currently valid; (3) the URL includes the registration number; and (4) the host's full legal name and address match the information in the OSE's systems.

The booking services will have their own set of reporting requirements and fee schedule to complete each registration with OSE.

Penalties

Owners, tenants and other hosts who engage in short-term rental activity without full compliance with the registration and other requirements of Local Law 18 will face costly civil penalties enforced by OSE.

Violators of any of the provisions of Local Law 18 may be liable for the lesser of \$5,000 or three times the revenue generated through the short-term rental. Penalties may be enforced against the registered host for each separate violation. Booking services will also be subject to penalties for noncompliance with the OSE's regulations.

While the threat of a financial penalty in and of itself may not deter some bad actors, its inclusion in the new legislation provides OSE with yet another tool to curb illegal short-term rentals. If the agency receives a complaint, the first thing it will presumably do is check the registration status and, if the property isn't found, the offender can be summoned and fined.

Conclusion

This wide-ranging registration process and the OSE's ability to issue fines for noncompliance is a game-changer in the short-term rental landscape. The local law will disqualify entire categories of properties from registration, whether by nature of a property that is expressly prohibited by law, in a co-op or condo building that bans such conduct by its bylaws, proprietary leases or house rules, or a building owner who simply says no to short-term rentals on its property.

Property owners need to make themselves aware of this new local law and how it will affect their ability to anticipate certain issues and handle them. Ultimately, the net effect of Local Law 18 will make life easier for landlords by greatly reducing unwanted short-term rental activity, and in battling against those tenants who persist, provide legal ammunition in any holdover case that a landlord brings in housing court.

The impending registration, advertising and record-keeping requirements of Local Law 18, backed by substantial administrative penalties for noncompliance, provide strong disincentives for the casual engagement in unsanctioned or illegal short-term rental activity.

Such requirements, if aggressively enforced by the OSE, appear to be effectively drafted to yield the intended result to widely curb such activity, help the affordable housing crisis and protect the safety of New Yorkers and visitors alike.

Adam Lindenbaum is a member and Collin Chipetine is a law clerk at Rosenberg & Estis PC.

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[1] <https://www.nysenate.gov/newsroom/press-releases/john-c-liu/after-shooting-community-rallies-against-illegal-airbnb>.

[2] <https://www.nyc.gov/assets/specialenforcement/downloads/pdfs/Proposed-Rules-Registration-and-Requirements-for-Short-Term-Rentals.pdf>.