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Testimony of State Senator Liz Krueger
Before the New York City Council Committee on Housing and Buildings
Regarding Intro 981 to Require Short-term Rental Booking Services to
Share Transaction Data with the Mayor’s Office of Special Enforcement
June 26, 2018

My name is Liz Krueger and I represent the 28th Senate District, which includes the East Side and Midtown areas of Manhattan. I want to thank Chairman Robert Cornegy and the members of the City Council Housing and Buildings Committee for providing me with the opportunity to testify today in support of Intro 981, sponsored by Councilmember Carlina Rivera, Speaker Corey Johnson, and 38 other members of the Council. I believe this legislation is critically important to the city’s efforts to crack down on illegal hotel activity and to preserve our limited housing stock for New Yorkers.

I have been working for a more than a decade to understand and address the exponential growth of residential apartments illegally converted into short-term transient units for visitors, commonly referred to as illegal hotels. After years of collaboration with a working group of elected officials, neighborhood organizations, housing advocates, and city agencies, Assemblymember Dick Gottfried and I passed legislation in 2010 clarifying ambiguities in city and state laws that made it difficult for enforcement agencies to take any action against illegal hotel operators. Following the enactment of the state law, I worked closely with the working group to support the subsequent passage in 2012 of Local Law 45, sponsored by then-Councilmember Gale Brewer, which classified illegal hotel violations as “immediately hazardous” and increased the fines the city can impose. In 2016, I co-sponsored legislation, enacted as Chapter 396 of the Laws of 2016, which prohibits the advertising of illegal hotel units and empowers the issuance of violations based on advertisements.

While the laws enacted since 2010 have removed many of the obstacles to enforcement action against illegal hotels, the continued growth of these illegal operations makes it clear that the Mayor’s Office of Special Enforcement (OSE) needs additional tools to proactively enforce the law. I want to share a few of key lessons I have learned while wrestling with illegal hotel issues over the years, and explain why I believe Intro 981 is so vital to the OSE’s ability to effectively enforce the law and work to return desperately needed apartments to New York City’s housing market.

The proliferation of illegal hotel activity has removed thousands of desperately needed housing units from our city’s housing market. A January 2018 analysis conducted by the Urban

Politics and Governance research group at McGill University's School of Urban Planning estimated that Airbnb alone has removed 13,500 units of housing from New York City's long-term rental market. This includes 12,200 frequently listed entire home listings that were available for rent 120 days or more and 5,600 entire home listings available for at least 240 days. Although Airbnb is the largest of the online booking services, there are many others conducting similar transactions. As a result, the total number of residential units unavailable to everyday New Yorkers because of these online marketplaces is much higher.

Given New York City's extraordinarily low 3.6% vacancy rate and the prevalence of illegal hotel activity in particular neighborhoods, the loss of thousands of units available to everyday New Yorkers has already had a significant impact on the availability and cost of housing in many communities. A 2016 report conducted by BJH Advisors for Housing Conservation Coordinators and MFY Legal Services found that the number of vacant rental apartments citywide would increase by 10% if Airbnb "impact listings" (entire homes booked multiple times per-month and listed for at least three months out of the year) were returned to the rental market as available units. The study found that impact listings reduce housing supply by an average of 17% in the neighborhoods where Airbnb listings are most prevalent. A recent analysis by City Comptroller Scott Stringer concluded that New York City renters paid an additional \$616 million in rent in 2016 because short-term rentals facilitated by Airbnb reduced the number of units available to rent on a long-term basis and drove up rental prices.

Most disturbingly, a substantial percentage of illegal hotel activity takes place in buildings that are regulated under our rent stabilization laws and/or tax abatement programs intended to preserve affordable residential units. In many cases, our constituents are forced to face harassment and even eviction proceedings by unscrupulous building owners and managers who want to free up more residential units for this illegal – but lucrative – alternate use. Warehousing units as illegal hotel rooms to remove them from the rent regulation rolls for a year or more has even become a backdoor deregulation tactic used by some building owners. So taxpayers are unknowingly and unintentionally subsidizing this business model even as it shrinks the universe of available homes.

Many of the booking companies that facilitate illegal hotel activity are attempting to create a false distinction between "bad" illegal hotel operators and "hosts" who participate in the "new sharing economy". Since the enactment of the state legislation in 2010, the majority of the activity has shifted from being organized by a relatively small number of local operators, frequently unscrupulous building owners or managers, to large online booking services such as Airbnb, Homeaway, and Flipkey that act as both marketplace and middleman for millions of short-term apartment rentals around the world. These online businesses have become hugely profitable by ignoring state and local laws and the damage their business model does to communities. When confronted with the illegal activity facilitated by their websites, the booking services claim they are simply online platforms that have no control over third-party content available through their services. Regardless of how illegal activity is facilitated, the deleterious impacts it has on housing, public safety, and communities remain the same.

Airbnb, currently the largest of these online platforms with a valuation estimated last over of more than \$31 billion, likes to portray itself as a pioneer of the "sharing economy" movement fighting for everyday New Yorkers struggling to pay high housing costs. The company has

repeatedly claimed that it is more than happy to help get rid of the big illegal hotel operators on their site, and only wants the business of everyday New Yorkers renting out their primary residences occasionally to tourists.

The facts do not match their words. The reality is a substantial portion of Airbnb's revenue in New York City is generated by a small percentage of hosts who control multiple listings and/or rent entire apartments for many months of the year. The 2016 Housing Conservation Coordinators/MFY Legal Services report determined that the average Airbnb unit is rented 132 days a year, the equivalent of nearly 4.5 months a year. The report found that 30% of all Airbnb listings were by commercial hosts who generated more than \$317 million in revenue for the company in 2015. More recently, the 2018 McGill University report determined that the top 10% of New York City Airbnb hosts generated 48% of the company's revenue from the city last year; the bottom 80% of hosts generated just 32% of revenue. The McGill report estimated that Airbnb earned \$435 million—more than two-thirds of the company's total New York City revenue—last year from entire apartment listings that are illegal under state law.

Airbnb has repeatedly rejected multiple requests in recent years by elected officials and the OSE to voluntarily share comprehensive data on its listings and bookings in New York City. The company provided a one-time limited snapshot of its operations in December 2015 to select media and city officials. However, according to a February 2016 report from independent data analysts Tom Slee and Murray Cox, Airbnb actually conducted a one-time purge of over 1,000 listings controlled by commercial operators from its website in the month before the snapshot was shared in order to present a more flattering picture of its New York City activity. Many of the listings soon reappeared on the site in the following months.

The reality is that Airbnb is spending millions of dollars in lobbying and advertising to try to protect the hundreds of millions of dollars in revenue it earns from illegal listings in New York City, its largest market in the United States. The company is actively lobbying for changes in state law that would create loopholes that commercial illegal hotel operators could drive trucks through. Moreover, the legislation would do nothing for the "everyday New Yorkers" who would be at increased risk of eviction if the bill passes, let alone all of the New Yorkers who will have to continue to suffer from illegal hotel activity in their buildings.

To be crystal clear: for the so-called "regular" Airbnb hosts the company claims it wants to protect, the primary "threat" is not city and state enforcement. For these hosts, the primary threat facing them it is the reality that Airbnb has enticed them into behaviors that violate their lease agreements and serve as an easy pretext for eviction proceedings.

Virtually all residential leases, and cooperative and condominium governing documents, prohibit renters, cooperative shareholders, and condominium owners from renting their homes on a transient basis. Even if state and city laws were changed tomorrow to permit whole-apartment short-term rentals in multifamily buildings, anyone who engaged in this activity would continue to violate their leases or contractual ownership agreements and open themselves up to serious repercussions. This is a bedrock reality at the foundation of the real estate market in New York City and it will not change.

Numerous articles have appeared in the press in recent years about eviction cases initiated against both renters and cooperative shareholders who listed their homes on Airbnb and similar sites for violating the terms of their leases and/or corporate bylaws. My office has also received reports from tenant attorneys that more and more landlords have started eviction cases against rent regulated tenants who rented out rooms for less than 30 days, claiming that the tenants turned their apartments into commercial operations and/or were engaging in profiteering. As a lifelong tenant advocate, I find it offensive that booking companies are actively recruiting tenants to list their apartments on their websites even though they are well aware they are putting residents at risk of eviction.

The OSE needs the tools provided by Intro 981 to stem the tide of illegal hotel activity. Throughout all the years I worked on illegal hotel issues, I have been exceedingly impressed by the expertise and dedication of the OSE staff. The OSE staff were instrumental in the drafting of the city and state illegal hotel laws, and have repeatedly brought groundbreaking litigation against some of the worst violators. On a day-to-day basis, the OSE is responsible for investigating complaints of suspected illegal hotel activity from residents, visitors, community groups, and elected officials in every corner of the city. In recent years, the Mayor and City Council have recognized the critically important work being done by the OSE and significantly increased its budget. However, despite the funding increases and commitment of its staff, the OSE has continued to face serious hurdles in its enforcement efforts.

One of the most difficult obstacles faced by staff of the OSE is a lack of data. OSE staff regularly struggle to determine the exact locations where suspected illegal hotel activity is taking place, the identities of “hosts” responsible for illegal listings, and the addresses where violations and other legal notices can be served once evidence of illegal activity has been collected. Online booking services do not publish the addresses of listings, the names of those responsible for listings, or any contact information for hosts on their websites. The booking services also do little to prevent hosts from establishing multiple online profiles to obscure the number of listings they control. While Airbnb has agreed to share address and host information for completed transactions on a monthly basis with city enforcement agencies around the world, it has consistently refused to do so in New York. Without access to this transaction data, the OSE’s ability to efficiently address complaints and conduct proactive enforcement is significantly limited.

Intro 981 would substantially improve the OSE’s ability to respond to complaints and proactively conduct enforcement action against commercial illegal hotel operators. Online booking services would be required to disclose address and host information to the OSE each month for all completed short-term rental transactions. Those companies that do not comply would be liable for \$5,000 to \$25,000 in civil penalties for each unit where a transaction was not disclosed. San Francisco, Chicago, and New Orleans have passed similar legislation in recent years requiring booking services to share data with their enforcement agencies. For the first time, the OSE would have access to the data it needs in order to quickly determine the exact locations of illegal hotel complaints, serve violations on those responsible, and initiate broader legal action against the small percentage of hosts who are responsible for removing thousands of units from the housing market.

It is also highly likely that the passage of Intro 981 would lead to a dramatic reduction in the number of illegal listings on booking platforms. The number of Airbnb listings in San Francisco dropped by almost 50% in the months after the city’s registration and data disclosure requirements

went into effect earlier this year. San Francisco's experience makes clear that simply knowing that name and address details for transactions is shared with local enforcement agencies serves as a strong deterrent for many potential illegal hotel operators.

I am also pleased to see that Intro 981 has been carefully drafted to ensure it does not violate federal law governing online activity. The federal Communications Decency Act (CDA) shields "interactive computer services," such as booking platforms, from liability for *content* they do not control that is posted by third parties. However, courts across the country have repeatedly found that the CDA does not provide immunity to online platforms for their business *conduct* as service providers. Intro 981 explicitly only requires the booking services to provide data related to completed business transactions. It does not treat the booking services as the publishers of content provided by third parties, or create any liability for this content. Federal courts in California have determined that the CDA does not shield booking service providers from San Francisco's and Santa Monica's recently implemented short-term rental ordinances because the laws only hold the platforms accountable for the business transactions conducted on their sites. The legislation also mandates booking service providers to obtain lawful consent from hosts to provide information to the OSE. This language is critical to make certain that the new data sharing requirements do not violate the Section 2702(c) of the federal Stored Communications Act which limits the ability of governments to obtain records from online companies about customers without consent.

I strongly urge the Council to enact Intro 981 as quickly as possible. The OSE needs the tools provided by the legislation to effectively crack down on illegal hotel operations that are endangering public safety, taking desperately needed apartments away from New Yorkers, and exacerbating our city's affording housing crisis.

Thank you again for the opportunity to testify today. I look forward to working with the members of this committee to curb illegal hotel activity as well as on other critically important affordable housing issues.