

December 8, 2022

Mayor Latoya Cantrell
City of New Orleans
1300 Perdido Street, 2nd Floor
New Orleans, LA 70112

Tammie Jackson, Director
Department of Safety & Permits
1300 Perdido Street, 7th Floor
New Orleans, LA 70112

Re: Enforcement of Fines for Illegal Short-term Rentals

Dear Mayor Cantrell and Ms. Jackson:

This letter highlights the importance of enforcing the City of New Orleans (City) short-term rental regulations. This letter will also address the potential for the City to collect a significant amount of money from fines for short-term rental violations. The Office of Inspector General's (OIG) concern with the City's ongoing short-term rental issues is primarily focused on the City's lack of enforcement of its own short-term rental regulations. If implemented effectively, the City's new plan to quadruple the number of City workers dedicated to short-term rental enforcement could vastly increase the number of violations brought up for administrative hearings, deterring illegal short-term rentals.¹

In 2019, the City overhauled the short-term rental rules that appeared in the original 2016 ordinance.² The main change allowed short-term rentals to operate in residential areas only if the owner lived on the site and had a homestead exemption to prove that the residence was their primary home.³ The City also required platforms, such as Airbnb⁴, to remove illegal listings.⁵ The revised ordinance also stated that illegally operating short-term rentals could have their permits revoked. Even with these measures taken by the City, the number of illegal short-term rentals continues to grow.

¹ "Beefed up Short-Term Rental Enforcement Coming to New Orleans Soon, Cantrell Administration Says." Nola.com, June 9, 2022. https://www.nola.com/news/business/beefed-up-short-term-rental-enforcement-coming-to-new-orleans-soon-cantrell-administration-says/article_dc9a3cb8-e83a-11ec-9c13-6357f162d677.html.

² Ordinance No. 28157 M.C.S. codified City Code Sections 26-613 to 26-629.

³ City Code Sections 26-614 and 26-617(C)(6)(v).

⁴ Airbnb is an online marketplace focused on short-term rentals.

⁵ Illegal listings are those listings operating without an active permit issued by the City or in violation of the City's Home Rule Charter.

Following the Fifth Circuit's decision that the residency/homestead exemption requirement for residential short-term permits was unconstitutional⁶, the City instituted a total ban on new residential short-term rental permits in October 2022.⁷ The ban could last as long as a year and no new residential short-term rental permits will be granted. Current permit holders who would like to continue to operate their short-term rental can apply for a determination of non-conforming status with the Department of Safety and Permits. As of October 2022, there were more than 600 pending permit applications. The City needs to focus its efforts on preventing and deterring illegal short-term rentals while levying and collecting outstanding fines for short-term rental violations.

OIG auditors downloaded local Airbnb data from a watchdog website that focuses on Airbnb short-term rental properties.⁸ The auditors quickly identified 12 short-term rental properties operating illegally in the City. After determining the precise address for these listings, the OIG then verified that the permit was either expired or did not exist on the City's online map of short-term rental licenses.⁹ Three of the properties identified were operating without a permit, and the other nine properties were operating with expired permits. Seven of the nine (78%) properties operated for more than two years beyond the dates upon which their permits had expired.

As part of the City's 2019 changes to the short-term rental ordinance, illegal short-term rentals such as the 12 properties identified by OIG auditors were now subject to a minimum \$500 fine for each day they were operating in violation of the City's short-term rental regulations. The new ordinance stated,

Any person who violates this article ... shall be subject to a fine of not less than \$500.00 for each offense. Each day that such violation exists shall constitute a separate and distinct offense. Multiple violations can occur during a single guest stay, and may be noticed and heard in a single administrative hearing.¹⁰

For the 12 illegal short-term rentals identified by the OIG, the auditors reviewed all nights booked for the year ending on December 31, 2022. Per the terms of the above-described ordinance, the City may be able to levy and collect a minimum fine of \$500 per night, which could result in fines of at least \$519,500 for the year 2022 arising from the illegal operation of the 12 short-term

⁶ Hignell-Stark v. City of New Orleans, 46 F. 4th 317 (5th Circuit, 2022).

⁷ "New Orleans City Council passes total ban on new residential short-term rental permits." Nola.com, October 21, 2022. https://www.nola.com/news/politics/new-orleans-city-council-passes-total-ban-on-new-residential-short-term-rental-permits/article_92a7adde-5185-11ed-981a-bfa4da908b38.html.

⁸ Inside Airbnb is a mission driven project that provides data and advocacy about Airbnb's impact on residential communities. The project has a vision where data and information empower communities to understand, decide and control the role of renting residential homes to tourists. <http://insideairbnb.com/>.

⁹ <https://data.nola.gov/Housing-Land-Use-and-Blight/Map-of-Short-Term-Rental-Licenses/j5u3-2ueh>.

¹⁰ City Code Section 26-629 (a).

rental listings identified by the OIG.¹¹ Figure 1 shows the OIG’s methodology used to calculate the minimum amount due in fines to the City for the 12 locations tested.

Figure 1. Illegal Short-term Rental Fines Collectable

Illegal Short-term Rental Property	Short-term Rental Permit Status	Nights Booked for Period 1/1/2022 - 10/31/2022 ¹²	Nights Booked for Period 11/1/22 - 12/31/2022 ¹³	Total Nights Booked 1/1/2022 - 12/31/2022	Total Fines Collectable by City for Nights Booked 1/1/2022 - 12/31/2022 ¹⁴
Property 1	Expired 10/2020	14	0	14	\$7,000
Property 2	Expired 5/2020	27	25	52	\$26,000
Property 3	Expired 1/2022	54	1	55	\$27,500
Property 4	Expired 4/2020	36	23	59	\$29,500
Property 5	Expired 2/2020	58	27	85	\$42,500
Property 6	Expired 5/2020	96	29	125	\$62,500
Property 7	Expired 4/2019	196	28	224	\$112,000
Property 8	No Permit Issued	42	18	60	\$30,000
Property 9	No Permit Issued	132	17	149	\$74,500
Property 10	No Permit Issued	50	10	60	\$30,000
Property 11	Expired 6/2020	22	24	46	\$23,000
Property 12	Expired 2/2022	77	33	110	\$55,000
	Totals	804	235	1,039	\$519,500

Although the OIG recognizes the City’s ongoing efforts to regulate the governance of short-term rentals through legislation, the above findings highlight the urgency for the City to implement and execute its new plan. As previously described, OIG auditors were able to quickly identify 12 properties operating illegally during the year ending on December 31, 2022, accumulating at least \$519,500 in potential fines collectable by the City during that period. The properties identified by the OIG represent a small percentage of the actual number of illegal short-term rentals currently operating in the City. If the City follows through with its plans for increased short-term

¹¹ As shown in Figure 1, the auditors determined the minimum total fines collectable by the City for each illegal short-term rental property. Auditors determined this number by reviewing nights booked through October 31, 2022 that could be verified by reviews on the Airbnb website combined with nights booked for the remainder of the year as of November 1, 2022. Therefore, \$519,500 is the minimum amount of fines the City can collect on the 12 properties, and it is likely the actual amount is significantly greater.

¹² For each property, the auditors calculated nights booked for the period January 1, 2022 through October 31, 2022 using the number of reviews available on the Airbnb website for that period as of November 1, 2022 and multiplying that by the minimum number of nights per stay.

¹³ For each property, the auditors calculated the nights booked for the period November 1, 2022 through December 31, 2022 by reviewing the nights booked for the remainder of the year on the Airbnb listings calendar as of November 1, 2022.

¹⁴ For each property, the auditors multiplied the total nights booked during the year ended December 31, 2022 by the \$500 daily fine that the City should collect on such violations.

rental enforcement, it could potentially levy and collect significant fines from short-term rentals operating illegally. Effective enforcement by the City will also deter homeowners from operating illegal short-term rentals. Ongoing litigation regarding short-term rentals does not preclude the City from levying fines for those properties operating illegally with an expired permit or no permit at all.¹⁵

The information in this letter is provided to you for any action you deem necessary. The OIG is willing to provide the City with the addresses and information gathered in the compilation of this letter in order to assist the City with the collection of these fines. If you have any questions regarding this matter, please contact me at (504) 681-3263 or via email at emichel@nola.oig.gov. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Edward Michel". The signature is written in a cursive style.

Edward Michel, CIG
Inspector General

cc: Holly Callia, ERB Vice-Chair
Monique Gougisha Doucette, ERB Secretary
Wanda A. Brooks, CPA, CGMA, CICA, ERB Member
Elizabeth Livingston de Calderon, J.D., ERB Member
Michael A. Cowan, Ph.D., ERB Member
Tyrone G. Jefferson, Jr., ERB Member

¹⁵ "Judge sets March 31 deadline for new short-term rental law in New Orleans." Nola.com, December 5, 2022. https://www.nola.com/news/politics/new-orleans-short-term-rental-law-must-pass-by-march-judge/article_9edc94ae-74dd-11ed-ba97-77e329bb625e.html. refer to 1331.09