

# Tourist Tenements in the Making



Independent Democratic Conference

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September 2016

## **Introduction:**

In December 2015 Senator Jeffrey D. Klein, the leader of the Independent Democratic Conference (IDC), stood with local community leaders and residents to demand that the website Airbnb.com take down an advertisement for ‘Fenton Lounge,’ a house on Fenton Avenue in the Pelham Garden’s section of The Bronx that the owner had turned into a virtual club by advertising the house as a space for large scale parties<sup>1</sup>. Neighbors reported that festivities went on until the early morning hours and sometimes included strippers using a stripper pole conveniently installed by the owner. Airbnb at the time suspended the owner, Nebi Ayele, from its site and took down his advertisement. Only a few months later, an advertisement for ‘Fenton Lounge 2.0’ again appeared on the Airbnb website<sup>2</sup>. The new advertisement no longer mentions wild parties, but promotes the location as a place where more than 16 people can stay and relax in the New York City area. While this new advertising strategy fits in much better with Airbnb’s general business model, it also showcases the problematic fact that a significant portion of advertisements for Airbnb rentals in New York City break the law.

The new advertisement for ‘Fenton Lounge 2.0’ states that it can accommodate up to 16 guests. Even if the owner now claims that the space is not going to be used for parties, trying to place in excess of 16 people into a two-family home is deeply troubling behavior. Unfortunately, Fenton Lounge is not the only property trying to get away with this dangerous behavior. Similarly, in Northeast Queens, Senator Tony Avella, a member of the IDC, and local community groups recently highlighted a listing for a home in the quiet, residential Broadway-Flushing neighborhood in Queens<sup>3</sup> that accommodates groups of over a dozen. Packing large numbers of people into limited spaces is also seen in apartment buildings. Earlier this year, officers from the Mayor’s Office of Special Enforcement raided a loft in Williamsburg, Brooklyn, which the owners had illegally subdivided into eight different “rooms” in order to serve a large numbers of guests<sup>4</sup>. These three rentals showcase a pattern of advertisements for rentals that break a number of State and City laws that not only affect the character of neighborhoods but place people in danger.

IDC staff decided to analyze how many other Airbnb advertisements exist for very large parties, which we defined as more than 13 guests. The staff found dozens of advertisements for overnight stays available to groups that size throughout New York City. These ads illustrated a number of different strategies that hosts use to cram as many people as possible into their limited spaces. This report will show that hosting that many lodgers is not only illegal but dangerous. These advertisements violate State and City housing law, as well as the various safety and fire codes that have been put in place to protect residents and visitors. The fact that Airbnb allows such ads to be on its website highlights the irresponsibility of the company and the need for legislative

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<sup>1</sup> Press release can be found at the following link: <https://www.nysenate.gov/newsroom/press-releases/jeffrey-d-klein/senator-klein-demands-removal-ad-airbnb-animal-house>

<sup>2</sup> Ad was available previously at this link: <https://www.airbnb.com/rooms/12346131?guests=16&s=tbjWww0e>

<sup>3</sup> Brady, Ryan, “Community slams Airbnb house listing”, *Queens Chronicle* (7/7/16). Article can be found at the following link: [http://www.qchron.com/editions/north/community-slams-airbnb-house-listing/article\\_348460ba-d4ea-5f8c-a8a6-b318ca57f74f.html](http://www.qchron.com/editions/north/community-slams-airbnb-house-listing/article_348460ba-d4ea-5f8c-a8a6-b318ca57f74f.html)

<sup>4</sup> Rose Marcius, Chelsia & Fermino, Jennifer, “EXCLUSIVE: NYC shuts down illegal Airbnb hotel in Williamsburg after raid”, *New York Daily News* (2/28/16). Article can be found at the following link: <http://www.nydailynews.com/new-york/brooklyn/city-shuts-illegal-airbnb-hotel-williamsburg-article-1.2546218>

action to curb such acts. The IDC plans to introduce proposals aimed at limiting the use of private dwellings as short term rentals and imposing a certain level of responsibility on Airbnb to police its website. The IDC also urges the Executive to sign legislation passed by the Legislature this past session to outlaw advertisements for short term rentals in residential multiple dwellings.

**Key Findings:**

**110 postings advertised spaces for 13 or more guests; 91 of them were for overnight stays and the rest were advertised as event spaces.**

- **Brooklyn had the most postings, followed by Manhattan and then Queens. Fenton Lounge 2.0 was the sole such advertisement for The Bronx.**
- **All but three of the overnight postings were for the entire apartment or home and only two were advertised for stays of 30 days or more, making the rest short term rentals.**

**State and City Law regarding Lodgers:**

New York State and New York City were at the forefront of creating laws to regulate buildings standards to protect residents from dangerous overcrowding. Massive immigration to New York in the mid-19<sup>th</sup> Century, particularly to New York City, encouraged landlords to build tenement buildings. These new multi-story brick buildings were built side-by-side, designed to fit as many tenants as possible, often lacking basic amenities like running water because pipes would take away space that could be used for sleeping areas. These buildings, devoid of running water, adequate lighting and ventilation proliferated and became the main housing for the poor. Conditions became so bad that New York State passed the Tenement House Act of 1867, the United State's first comprehensive housing reform law.<sup>5</sup> Future Tenement House Acts followed in 1879 and 1901. These acts sought to regulate the provision of basic services like running water and ventilation for residential units. Various tragedies, like the Shirtwaist Factory Fire also brought fire safety into the minds of legislators. In 1929 the State replaced the Tenement House Act of 1901 with the Multiple Dwelling Law, which still to this day regulates multiple dwellings in New York City.

The Multiple Dwelling Law, as with all other chapters of New York State Law, defines the terms it uses. Section 4 of the Multiple Dwelling Law (MDW) sets out these definitions and it is a subsection of this law that many cite to say that short term rentals of any type are allowed in buildings that have been designed for permanent occupancy, which is defined as occupancy of 30 days or more. Subdivision 8 of Section 4 of the MDW lays out the rules of occupancy for Class A multiple dwellings, which are designed for permanent residential occupancy. It also lays out certain exemptions to this rule, including:

*“(1) (A) occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons living within the household of the permanent occupant such as house guests or lawful boarders, roomers or lodgers; or*

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<sup>5</sup> Pentecost, Neil, 'NEW YORK CITY looking back', available at:  
<http://newyorklookingback.blogspot.com/2011/05/tenements.html>

*(B) incidental and occasional occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons when the permanent occupants are temporarily absent for personal reasons such as vacation or medical treatment, provided that there is no monetary compensation paid to the permanent occupants for such occupancy.”*

The first paragraph above shows that New York State law does envision there being short term renters present in units, but the law isn't silent on the number of lodgers, roomers, or boarders. Note that the paragraph refers to lodgers, roomers, and boarders living within the household. There is another subdivision of section 4 of the MDW that speaks to households, boarders, roomers or lodgers, and that is subsection 5, which reads as follows:

*“5. A "family" is either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers. A "boarder," "roomer" or "lodger" residing with a family shall mean a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.”*

Clearly a person using a website like Airbnb to contact a family to pay for the ability to stay in their home counts as a boarder, roomer, or lodger, and the law is clear that there can be no more than four such boarders, roomers, or lodgers making up such a household, which is what would make someone a “lawful boarder, roomer, or lodger” mentioned in subdivision 8.

The MDW is State law, but New York City has its own laws and regulations. This includes the Housing Maintenance Code, which was instituted in 1967. This code, which is part of the City's Administrative Code, lays out the City's own rules for designing safe housing units. Section 27-2078 of the Administrative Code deals specifically with the issue of lodgers:

*“ § 27-2078 Rental of rooms to boarders. a. A family may rent one or more living rooms in an apartment to not more than two boarders, roomers or lodgers, if every living room in such apartment has free and unobstructed access to each required exit from such apartment as provided in paragraphs (a), (b) and (c) of subdivision four of section two hundred forty-eight or paragraph (a) of subdivision one of section fifty-three of the multiple dwelling law, and if each such boarder, roomer or lodger has access to, and the right to use, at least one water closet, bath or shower and one washbasin as may be required in or for an apartment in this code.*

*b. Where a tenant rents any part of an apartment in a multiple dwelling to more than two boarders, roomers or lodgers, such rental shall constitute a use of the apartment for single room occupancy and such rental in an apartment of a converted dwelling shall constitute an unlawful use as a rooming unit.*

*c. A family may rent one or more living rooms in a private dwelling to not more than two boarders, roomers or lodgers, except as otherwise prohibited under the zoning resolution of the city of New York.”*

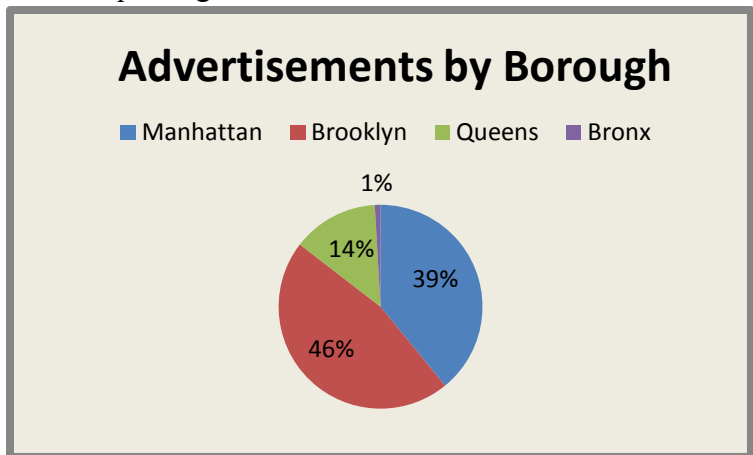
The New York City Housing Maintenance Code, unlike the Multiple Dwelling Law, applies to all housing units in New York City, including private residences, which again, are housing units that house less than three families, such as the building currently advertised as Fenton Lounge 2.0. As subsection (c.) of §27-2078 shows, New York City limits the number of roomers, borders, and lodgers to two per family for private residences, regardless of the number of rooms that the family is willing to rent out. The City code also makes it clear that the zoning code is able to impose even more restrictive rules on lodgers, though in the case of Fenton Lounge, local zoning does not impose any additional limitations. The building advertised as Fenton Lounge 2.0 can house up to two families, meaning that a maximum of four lodgers can be legally present. Yet the ad for Fenton Lounge 2.0 states that each of the two bedrooms located in the unit have four queen-sized beds inside, plus two additional couches that individuals might be able to sleep on in common areas.

Fenton Lounge 2.0 is only one of dozens of places that advertise on Airbnb for parties of over a dozen guests. One such other house is located in Broadway-Flushing in Queens. Senator Tony Avella and members of the Broadway-Flushing Homeowners Association brought attention to the listing in July of this year<sup>6</sup>. The Queens property bills itself as fit for 13 or more guests, even though it is a single family home. The advertisement for this property claims there are six bedrooms in the house, able to fit a party of 13 or more.

IDC staff went through Airbnb’s website to identify properties that are being advertised as being fit for 13 or more guests during the first two weeks in August. After removing duplicate ads, we were able to identify 110 locations being advertised for groups of 13 or more guests during that time period.

The vast majority of advertised properties were located in Manhattan and Brooklyn; none where in Staten Island; Fenton Lounge 2.0 was the sole advertisement in The Bronx; and the remainder were in Queens. Airbnb.com released a report on its listings in New York City at the end of last year<sup>7</sup>, allowing us to compare this subset of postings with the entire current set of Airbnb postings, which according to the report number close to 36,000.

According to that report, 52% of postings are in Manhattan, 39% in Brooklyn, 7% in Queens, and The Bronx and Staten Island each had 1%. The relative lack of Airbnb hosts in the two boroughs is also seen in this set of properties. We do see a significant difference thought in the balance of the remaining three boroughs. The majority of these postings are from Brooklyn and Queens, with Manhattan having slightly under 40% of the

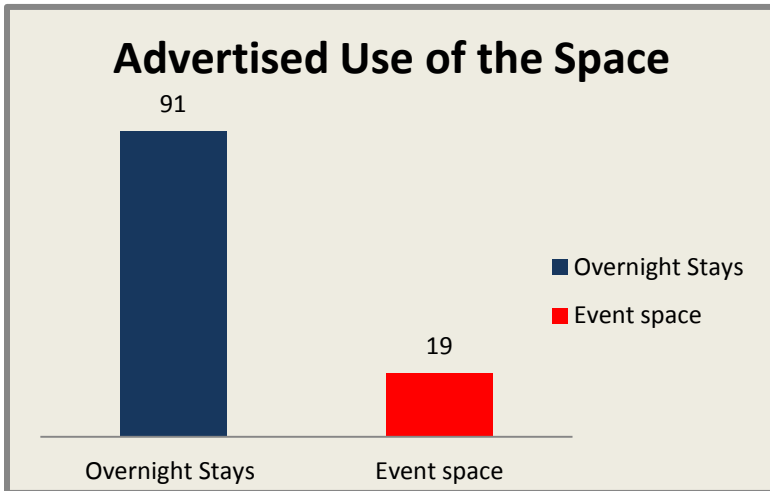


<sup>6</sup> Brady, Ryan, “Community slams Airbnb house listing”, *Queens Chronicle* (7/7/16).

<sup>7</sup> Airbnbaction, *Data on the Airbnb Community in NYC*, Dec. 1, 2015, available at the following link: <https://www.airbnbaction.com/data-on-the-airbnb-community-in-nyc/>



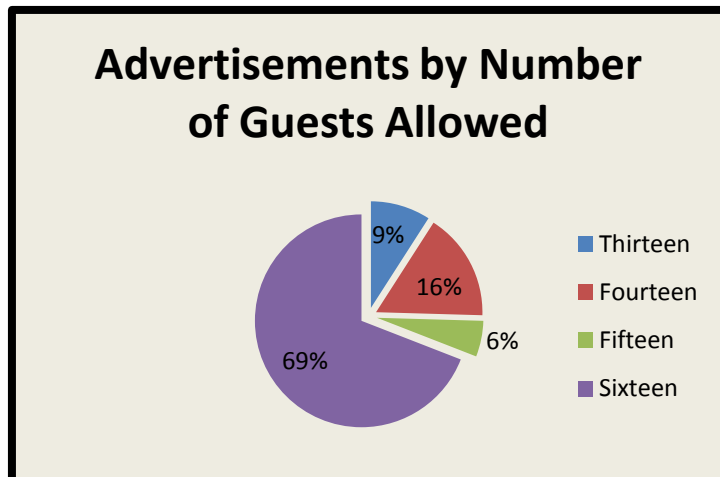
postings. In fact, Queen’s share doubles from 7% to 14%. The greater availability of space is likely the driving force between this difference. Staff also examined the kind of property being advertised and saw a relatively even split between houses being rented out and apartments, with a smattering of other property types as well. Of the 110 advertisements, staff identified 51 as apartments and 52 as houses. Apartments include lofts or condominium units, while houses include townhouses and not just detached or semi-detached units.



Our staff found that 19 of these advertisements were people trying to rent out spaces for events and not for overnight guests. The majority of those spaces advertised for photography or movie shoots, though there were some that advertised for parties, weddings, conferences, or other types of social gatherings. All of these spaces were in Brooklyn and Manhattan, with ten of them in Brooklyn and nine in Manhattan.

Not surprisingly, the overwhelming majority of advertisements for groups of this scale promised to rent out the entire apartment or house. Of the 110 advertisements, only ten were classified by the hosts as being for just a private room. When staff did a more detailed examination of the advertisements, we discovered that one of these ten specifically stated in the text of the advertisement that it was in fact an advertisement for the whole unit, so in reality only nine of the advertisements were for a part of a unit, as opposed to the whole. Of those nine, six were advertised for events as opposed to overnight stays. This means that the great majority of advertisements our staff saw located in a multi-family dwelling are breaking State law on short term rentals. Out of the 110 advertisements, only two stated that the minimum stay was for 30 days, which would make those ads for permanent residence.

The vast majority of these ads were for parties of 16 or more guests, which is the maximum number of guests that Airbnb allows one to advertise. Out of the 110 advertisements, 76 of them were for 16 or more guests. This set includes all 19 advertisements for event space, leaving 57 of them for overnight stays. The next most popular number of guests advertised was for 14 guests, and the remainder advertised for an odd number of guests. While 16 is the maximum party size that Airbnb allows advertisement for, hosts are able to advertise the ability

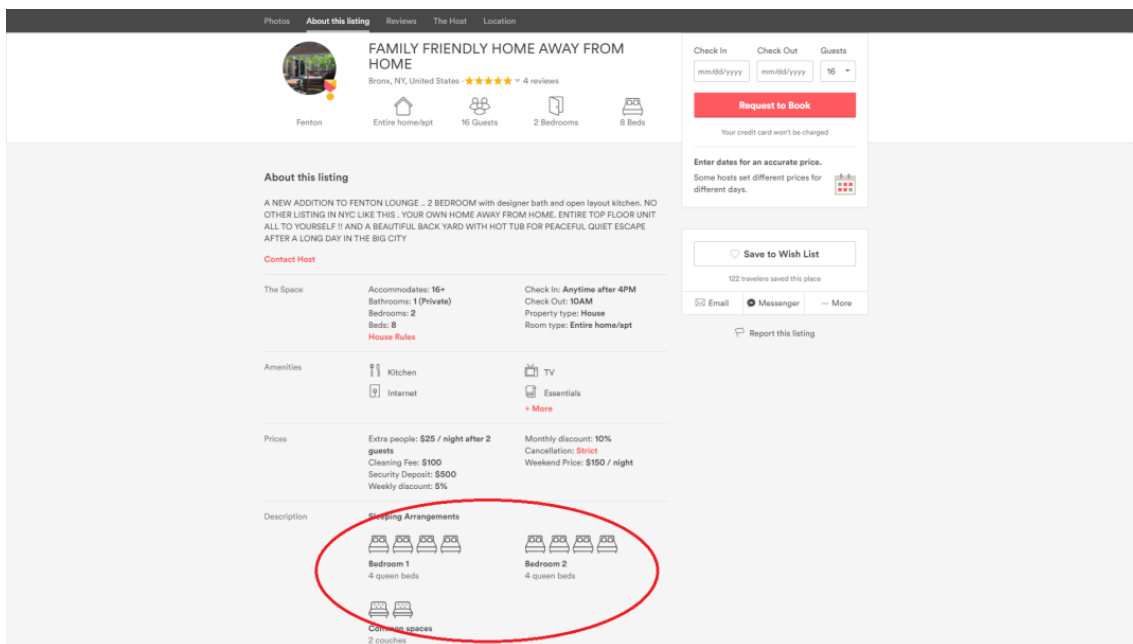


to host even larger parties on their ads. We found five ads, all for 16 guests and for overnight stays, that claimed that the space being rented out would allow for parties greater than 20 people. One advertisement claimed to be able to fit 30 people, and another one 32.

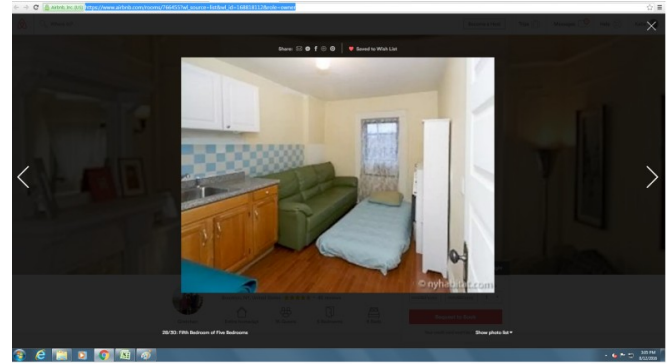
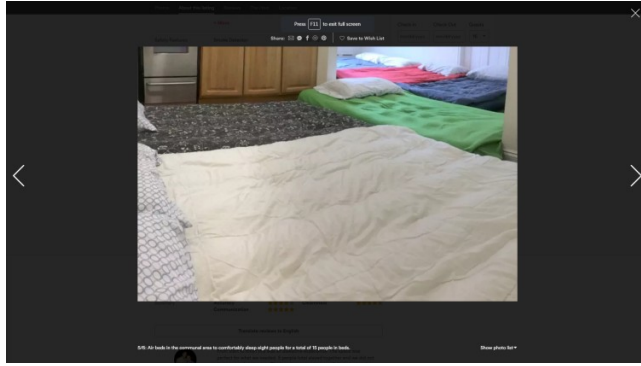
In order to fit such large groups, hosts turn to a number of different tactics. When going through the advertisements and the photos that hosts have posted, we see the kinds of strategies that hosts resort to in order to try to fit these large groups of people into their spaces. The strategies include liberal use of bunk beds, including bunk beds where each bunk is designed for two people – it also includes putting beds, including bunk beds, in rooms that are typically thought of as common areas. Also used are inflatable mattresses, though they are not pictured as often. In a couple of cases, it appears that kitchen areas are included when putting in beds. In another, multiple beds are put into a basement laundry area.

In more radical examples, owners modify their spaces to accommodate large groups. This was seen particularly in loft apartments which, because of their past history as commercial or industrial spaces, have large open floor plans. One such loft that had been modified was the unit raided by the Mayor’s Office of Special Enforcement in Williamsburg<sup>8</sup>. The owner of that space had subdivided the loft space into independent, numbered rooms. Guests shared two bathrooms and a single kitchen. Our staff found examples of hosts creating these kinds of “private” spaces in their large loft spaces. Unfortunately, this kind of action runs afoul of City safety regulations. The owner of this space was fined for multiple code violations, among them failure to provide an unobstructed exit passageway and leaving a fire door propped open.

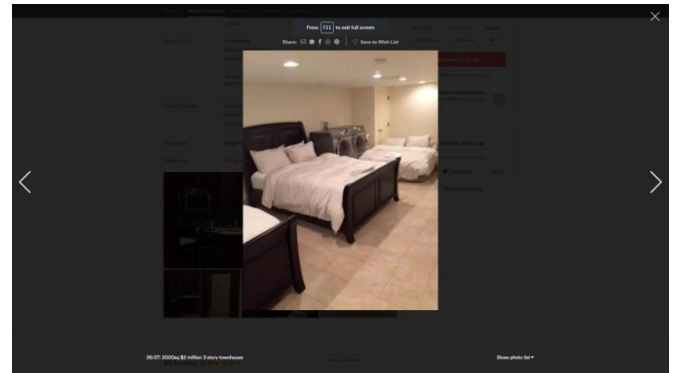
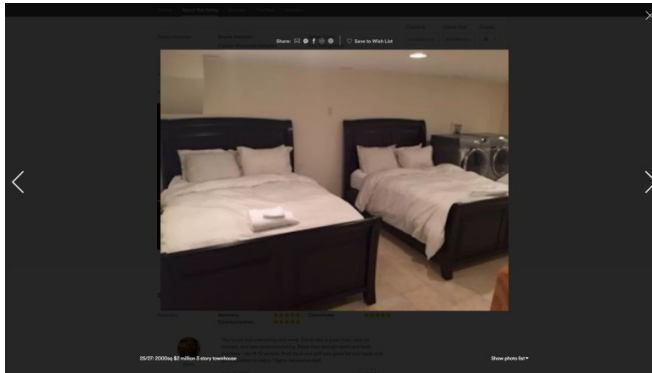
The next pages highlight some of the more egregious photos we found. While it’s clear that hosts do everything they can in these photos to make the spaces look inviting, well lit and stylish, the actions depicted in these photos can put people in danger.



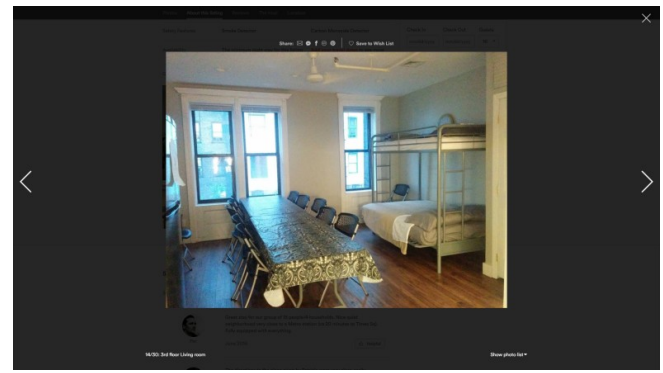
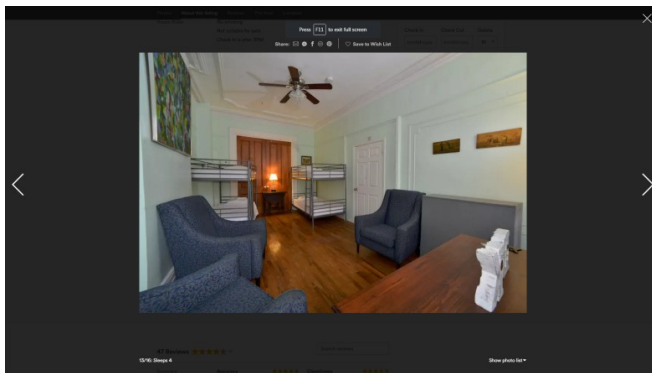
<sup>8</sup> Rose Marcius, Chelsia & Fermino, Jennifer, “EXCLUSIVE: NYC shuts down illegal Airbnb hotel in Williamsburg after raid”, *New York Daily News* (2/28/16).



*These photos highlight kitchen areas being turned into sleeping areas.*



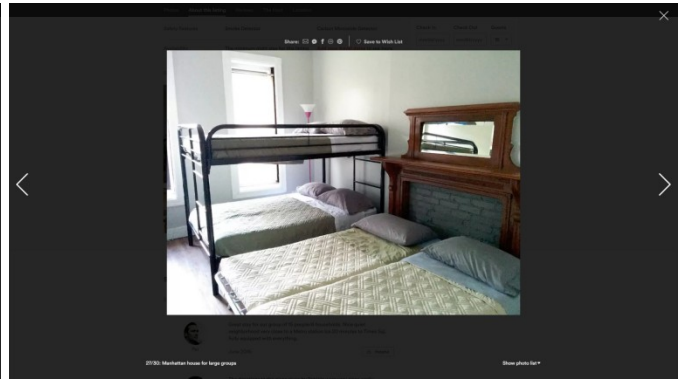
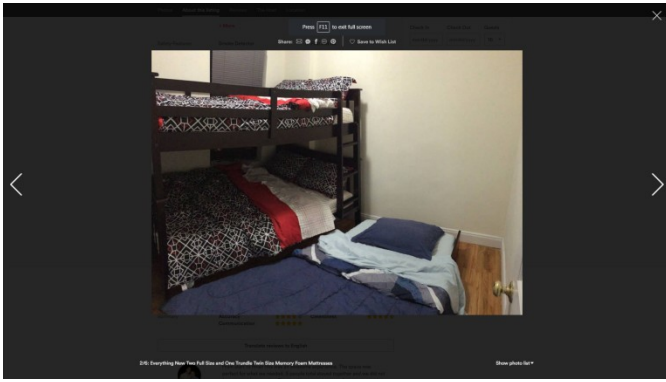
*These two pictures showcase a laundry space that has been outfitted to sleep six adults.*



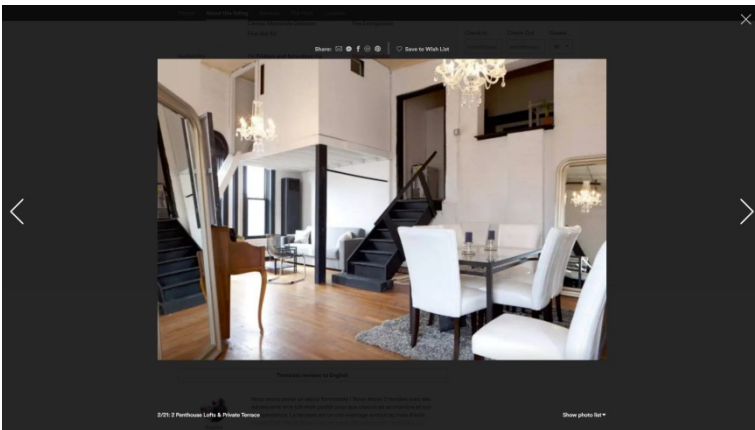
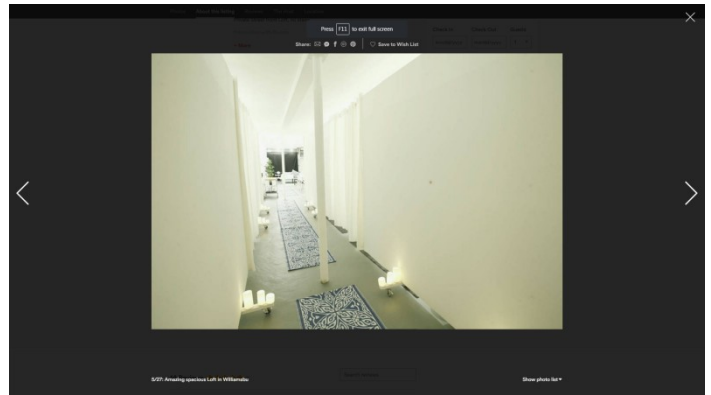
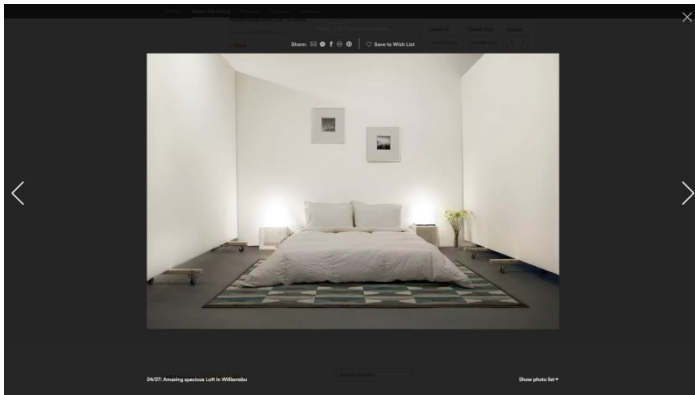
*These pictures highlight the use of bunk beds to turn common area into rooms capable of being used by multiple adults to sleep in.*

Hosts not only turn to trying to convert common spaces into makeshift bedrooms, but when possible, they seek to put as many people into actual bedrooms as well, in order to maximize the number of people in any given space.





*These two photos highlight the number of beds that some hosts will try to stuff into single bedrooms in order to fit as many guests as they are advertising. The final strategy we saw was hosts making changes or erecting structures in more open spaces, like large loft spaces, to create sleeping areas. One host, pictured below, utilizes walls on rollers to create multiple bedrooms.*



*The host whose unit is pictured to the left also has a loft, and as can be seen in the upper left of the image, one of the sleeping areas is a small room that has been constructed and is accessible by a small ladder.*

Hosting large numbers of lodgers in residential units is problematic not only because it breaks the letter of the law, but because it creates a real danger for all involved. As we noted, the reason that New York took the lead in creating laws to regulate the construction of residential units was to ensure the health and safety of our residents. Overcrowding creates problems of their own, particularly in the case of emergencies such as fires.

## **The Safety Concerns of Short Term Rentals:**

New York has a very strict fire code in order to ensure that buildings are safe and that in the event of a fire residents can get out and firefighters will be able to do their difficult jobs safely. New York City has different standards for residential buildings than they do for hotels and other buildings in which large numbers of transient residents are expected to reside in. An affidavit filed by a Fire Department's Chief of Fire Prevention (see Appendix) highlights all the various other safety features installed and steps that taken in buildings with transient populations in order to prevent tragedies that are not required of residential units.

For example, §§405.5 of the Fire code states that every room in a hotel must have signage that shows the nearest emergency exit, including how many doors will have to be crossed, the location of fire boxes to sound the alarm of fire, and instructions to follow. This is so that people unfamiliar with a space will know what to do. No such requirement exists for buildings meant for permanent residency as there is an expectation that individuals will get to know the space. Hotels and other such residences are expected to have fire boxes, which will allow individuals to alert the authorities of a fire. It is very possible that foreign tourists might not try to call 911 but instead try to call 112 or 999, which are the two other common international emergency numbers. This lack of knowledge on the part of short term residents could lengthen the time in which the authorities will be notified of danger, something that puts the lives of residents and firefighters at risk.

The Housing Maintenance Code recognizes the need to ensure the ability of lodgers to get out safely in case of a fire. The section of the code referenced earlier in the report makes it clear that in terms of renting out rooms for lodgers in Multiple Dwellings, such rooms must have unobstructed access to fire escapes, including ensuring that no sleeping area can only access the fire exit by having to pass through another sleeping area or bathroom, as mandated in §248 of the Multiple Dwelling Law. Converting all public spaces in an apartment or house into sleeping areas for multiple people certainly violates the spirit of this provision and possibly, depending on the layout of a unit, the actual word of this law.

Buildings designed for transient occupancy have different rules regarding the provision of portable fire extinguishers, including monthly inspections. None of these apply to residential units. Most of the advertisements posted said that a fire extinguisher is available in the unit, but if the residents are not there to give their lodgers a tour, how are they to know where such extinguishers are? In addition, there is certainly no mandate that extinguishers be inspected monthly, unlike for ones in commercial spaces. So, even if hosts are trying to be fire conscious by providing fire extinguishers, they may very well not be taking the steps necessary to ensure that this measure is effective.

On September 1 the Mayor's Office of Special Enforcement finally took action against the Fenton Lounge and gave the owner four Environmental Control Board violations<sup>9</sup>. Three of those violations, one for a failure to provide the means of egress, lack of a sprinkler system, and failure to provide a fire alarm system, all speak to the dangers that are created by turning

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<sup>9</sup> NYC Dept. of Buildings record of violations being served available here: <http://a810-bisweb.nyc.gov/bisweb/OverviewForComplaintServlet?requestid=2&vlcompdetlkey=0002025506>

residential structures into makeshift hotels. Briefly, even after being served with violations the owner of the Fenton Lounge kept advertising the location<sup>10</sup>, though renewed press attention seems to finally have prompted Airbnb to take action to remove the ads.

Airbnb constantly argues that it provides the benefit of allowing residents to supplement their income, helping people to survive the sky-high rents caused by the affordable housing crisis in New York City. This same argument can be made for allowing people to start home bakeries or restaurants, or to become beauticians for their neighbors by setting up home salons or barber shops. In fact, there are lots of home enterprises that individuals could be engaging in to supplement their incomes, and these types of businesses used to exist regularly. The reason we don't allow for unregulated home restaurants and bakeries, or for home barber shops and nail salons is because we have learned from our past, from the dangers posed to public health and safety by allowing for these kinds of unregulated activities. We have regulations on the safety measures needed for transient occupancy buildings because we have learned from past tragedy that the fire code must treat residential buildings and hotels differently.

We should not ignore the lessons of the past simply because today some people might be able to make an income putting themselves and others in danger with the help of new technologies that allow a third party like Airbnb to profit handsomely from this activity. New York took the lead in creating building and fire codes meant to save lives and we need to strenuously and vigilantly enforce these laws against illegal hotels and boarding houses. Putting 16 or more tourists in a unit designed for a couple of families is a recipe for tragedy.

### **Legislative Solutions:**

In 2010, New York State amended the Multiple Dwelling Law to clarify that the purpose of residential Class A multiple dwelling properties was for permanent residency, and Senator Klein and the IDC believe that this clarification needs to be extended to private residencies. New Yorkers in residential neighborhoods throughout the City expect that their neighbors won't turn nearby homes into commercial operations. Senator Klein and the IDC will introduce legislation to extend the 2010 law clarification to one-and two-family homes in New York City.

In addition, it is critical that Airbnb.com be held responsible as well. After all, it is this company that knowingly provides people with a platform not only to post illegal advertisements but facilitates the actual rental of such properties and profits handsomely from all this activity. As we noted, back in December 2015 Airbnb provided information on the close to 36,000 rentals being advertised on their site, and even in their own report<sup>11</sup> showed that they were hosting thousands of ads, including close to 12,000 just in Manhattan, for short term rentals for entire apartments that are almost certainly illegal. A recent report<sup>12</sup> conservatively estimated that a third of the

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<sup>10</sup> The follow up ads were at these links previously: <https://www.airbnb.com/rooms/5046189> and <https://www.airbnb.com/rooms/12346131?guests=13&s=oSPOGAvW>

<sup>11</sup> Ibid.

<sup>12</sup> David, Greg, "A third of Airbnb revenue comes from apartments turned into hotels, says study." Crains New York Business, (8/24/16). Article available at the following link: <http://www.crainsnewyork.com/article/20160824/BLOGS01/160829940/a-third-of-airbnb-revenue-comes-from-apartments-turned-into-hotels-fivethirtyeight-study-says>

revenue made by Airbnb hosts in New York City was earned through “commercial” rentals, those that essentially mimic hotels are therefore illegal when being operated out of residential units.

Senator Klein and the IDC plans to introduce legislation that would make Airbnb responsible for investigating advertisements placed on their website to ensure that advertisements are not breaking New York State or City laws or regulations, including health and safety regulations, and then removing ads that fail to pass muster or face fines.

On June 17 the New York State Senate passed S.6340-A sponsored by Senator Andrew Lanza (R-Staten Island). The New York State Assembly had passed the same bill earlier that same day. This legislation, supported by the IDC, would prohibit the advertisement of short term rentals in Class A residential buildings covered by the Multiple Dwelling Law and impose fines on those that violate the ban, providing authorities with the necessary tools to crack down on people advertising illegal rentals. Now that the legislation has passed both houses, it is up to Governor Cuomo to take the final step and sign it. The IDC urges Governor Cuomo to sign this legislation into law.

### **Conclusion:**

New York City has long been at the forefront of ensuring that its housing stock is safe for residents. We have instituted laws such as the Multiple Dwelling Law, the Housing Maintenance Code, and the Fire Code to ensure that buildings are constructed to the right standards for their intended uses, and have passed laws to prohibit activities that endanger people’s lives. One such action is turning residential properties into illegal hotels hosting over a dozen guests. Residential properties are not meant to host dozens of transient guests.

The IDC’s investigation found over 100 ads featuring residential spaces for groups of more than a dozen people, some claiming to house over 30 people. This kind of behavior not only creates an inconvenience for neighbors, but creates real dangers to both residents of this city and those guests that may choose housing not knowing that it is an illegal posting, since they saw the ad on Airbnb. We should not wait for a tragedy to strike before taking actions to curb illegal rentals that create dangerous conditions.

It is important that the State government take steps to protect our residents and tourists visiting New York from this kind of irresponsible behavior. As such, the Executive should act and sign into law the recent bill passed by the Legislature that will impose fines on individuals advertising illegal short term rentals and the Legislature should examine additional steps necessary to make sure that illegal short term rentals are handled not only in multi-family buildings but in private homes as well and that hosting websites be made responsible for the content they profit from.

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.

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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).

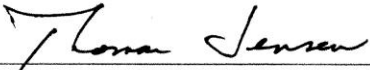
(d) In contrast to the posting of diagrams on each transient occupancy unit showing two evacuation routes, in apartment buildings there need only be a fire safety notice posted on the back of the main entrance door to individual dwelling unit doors and in the common areas of the building, that assists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

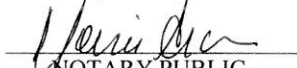


fire safety guide for that building, as is afforded to a resident of the building. The visitor is thus placed at significantly increased risk of injury or death in the event of a fire.

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