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October 20, 2021

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, CA 90012

Dear Los Angeles City Council,

We have reviewed the recent Progress Report on the Los Angeles Home Sharing Ordinance (HSO) by the Department of City Planning (DCP). To our knowledge, this is the first substantive analysis conducted by the DCP in the two-year history of the policy. For the past two years, Better Neighbors LA (BNLA) has focused on HSO enforcement and regularly communicated our findings and our recommendations both to DCP staff and to policymakers at the City Council. Our past letters have addressed, inter alia, improper exemptions; the breadth of the short-term rental (STR) market beyond Airbnb; hosts gaming the system; and the lost revenue from failed enforcement.

We appreciate DCP staff's diligence in compiling the report which contributes to understanding changes in the short-term rental market in the wake of the HSO and provides context for BNLA's earlier analyses. Given DCP's reluctance to engage productively with BNLA, we find much of this report reassuring. Indeed, DCP and BNLA describe the same market with the same enforcement challenges. In this letter, we hope to clarify the points of alignment and to address the one major difference — a difference that speaks to the heart of the HSO.

Tremendous Progress Has Been Undermined by Unscrupulous Hosts and Noncompliant Platforms

A key finding upon which DCP and BNLA agree is that since the start of the HSO, the number of STRs in Los Angeles has dropped by approximately 85 percent.ⁱ ⁱⁱ While a significant portion of this reduction is clearly attributable to the global pandemic, recent academic research does suggest the policy itself deserves credit.ⁱⁱⁱ

Furthermore, both agree that expansion of the Application Programming Interface (API) is critical to resolving current enforcement problems. DCP explains that the API “provides a more efficient form of enforcement,” noting that when it was launched in August 2020 “the API resulted in an immediate, approximately 14 percent further reduction in listings.”^{iv} A BNLA analysis captured the full first month of changes and found an even stronger effect from the API: from August 2020 to September 2020, the number of STRs dropped by about 50 percent.^v

The promise of the API, however, is hampered by another challenge identified by both DCP and BNLA: Airbnb is the only platform with a Platform Agreement, and thus Airbnb remains the only

platform using the API. As DCP explains, “the participation of other hosting platforms would improve overall enforcement.”^{vi}

BNLA and DCP agree not only on what we *do not* see — the vast portion of the non-Airbnb market that is invisible to the API — but we also agree on what we *do* see: rampant cheating by hosts. A few host violations may be innocent and appropriate to cure (e.g., related to paperwork), but time and again the DCP report describes the sort of unscrupulous and willful attempts to evade compliance with the HSO that BNLA has documented over the last two years:

- “In some cases, a host will knowingly, illegally list their unit for a few days, then remove the listing only to repost it a few days later, and repeat the process, possibly in an attempt to evade the enforcement system.”^{vii}
- “[T]here has been a continuing problem with listings that claim to be exempt even though they are not recognized by the City as a hotel, motel, bed and breakfast, or TORS.”^{viii}
- DCP states that it is not consistently able to determine if a host is improperly listing a non-primary residence because “Home-Sharing registration is largely a self-certifying process.”^{ix}
- “It appears that guests are making private arrangements with hosts for shorter stays that may not be visible to the hosting platforms.”^x (BNLA has referred to this as “the 30-day lie.”)
- “Unscrupulous hosts have found, and undoubtedly will continue to find, multiple ways to attempt to short-term rent without being registered... There are those who short-term rent and use invalid registration numbers in an attempt to evade enforcement... [O]utright fake registration numbers are also used.”^{xi}
- “Some hosts have falsely classified their property as being outside the City limits to evade detection by the City’s monitoring system.”^{xii}
- “Home-Sharing staff have witnessed how easy it is for a property owner, who actually lives in the main house, to fraudulently claim that a post-2017 ADU is their primary residence or to engage a friend or relative to apply for a registration, fraudulently as a tenant.” DCP concludes that the overrepresentation of ADUs in the HSO “is perhaps an indicator that at least some ADUs are inappropriately being used as vacation rentals.”^{xiii}

Finally, DCP and BNLA agree on a major element of the solution: stronger penalties. DCP explains that for unscrupulous hosts “who may regard short-term rentals as a lucrative business model, a fine of \$500 may be considered a cost of doing business, and a heftier fine is needed to garner their attention.”^{xiv}

DCP’s continuing refusal to address platform accountability

Platform accountability has always grounded the city’s approach to the HSO, from the first DCP report in 2016. DCP first describes how “the Administrative Citation Enforcement (ACE) program could be used to ‘write tickets’” against hosts — before explaining that focused enforcement on hosts would create “several barriers to enforcement.”^{xv} Namely:

“In such scenarios, the City lacks an easy and direct method for determining if a listing is legitimate, who is responsible and whether a complaint’s allegations of short term rental violations at a specific address correspond to listings on a platform. According to other cities, hosting platforms have generally not been very cooperative without legal and/or regulatory consequences.”

The solution that DCP proposed in 2016 — the policy tool at the heart of the HSO — is platform compliance: “[P]latforms must verify compliance with the registration requirements by actively preventing or canceling any nonpermitted listings.”^{xvi} This approach grew sharper and more refined as DCP developed the HSO. In 2017, a DCP report again recognized the importance of platform accountability in its proposed “best practices for enforcement:”

“Many communities that have adopted STR regulations have found effective enforcement to be difficult... Most cities have been unable to secure cooperation from hosting platforms to ensure they will not list illegal STRs...

However, over the past few years, a combination of stricter regulations, court decisions and policy shifts by some hosting platforms has led to more cooperation and enhanced enforcement capabilities. Many cities are moving in the direction of imposing platform accountability for listing illegal postings, including Seattle, San Francisco, Portland, and Santa Monica. Some hosting platforms are complying with STR limitations in certain cities and/or have begun practicing self-enforcement against users that are clearly commercial operators or places of other criminal activity...

[T]he proposed ordinance follows the lead of cities like Santa Monica and San Francisco in requiring that hosting platforms remove the listings or face penalties. Penalties have been assessed by cities against both hosts and platforms. This framework appears fairly effective according to staff from both cities, which have both seen significant declines in commercial STR listings. However, the system is both labor- and time-intensive for city staff to enforce.”^{xvii}

Despite the years of planning for a system built on platform accountability, however, in its 2021 report DCP states “At the present time it is more direct and efficient to enforce against hosts rather than hosting platforms.”^{xviii} No further explanation is given, and no attempt is made to square this striking statement with past program development or past DCP statements, all of which concluded the exact opposite — that absent platform accountability, it would be impossible to achieve the goals of the HSO.

Indeed, DCP’s recent report clearly articulates some of the (entirely anticipated) limitations of host-based enforcement. Central to the HSO is a 120-day cap on rental activity across all platforms, intended to mitigate the incentive to convert housing into hotels. Yet because only one platform (Airbnb) is in minimal compliance, “City Planning is not able to monitor and document the aggregate number of nights for a host across all hosting platforms” and the 120-day cap is being neither monitored nor enforced.^{xix} The city does not have any proposal to address this problem, and rejects the tool — platform accountability — that was explicitly devised to solve the problem.

The DCP report also demonstrates how the city’s approach to enforcement is imbalanced, disproportionately impacting the one platform with a city agreement: Airbnb. After unscrupulous Airbnb hosts are foiled by the API, they have simply moved their illegal business to other platforms. For years, and according to DCP data, Airbnb has held a steady market share of two-thirds of Los Angeles STR listings.^{xx} In the past year, according to DCP, Airbnb’s market share has dropped to fifty-five percent of listings.^{xxi} While BNLA has no intrinsic concern for any given platform’s market share, we are concerned when non-compliant platforms derive a competitive advantage by evading city regulations. The city’s failure to hold non-Airbnb platforms accountable drives more and more of the market underground, invisible to DCP. Absent an effort to hold all platforms accountable, we should expect to see ongoing erosion of early enforcement progress.

Recommendations

1. Immediately eliminate the specific, concrete Platform Agreement loopholes identified by DCP.

The DCP report describes noncompliant STR activity as the product of an array of violations by a range of actors, suggesting that a range of solutions will be required. While some enforcement improvements may require technical solutions yet to be developed, DCP describes the immediate benefits that would accrue from simple language changes to the existing agreement with participating platforms. We support these DCP recommendations:

- a. The Platform Agreement should explicitly prohibit double-booking.
- b. The Platform Agreement should prohibit all listings (short-term or long-term) for certain specific, sensitive property types, as described by DCP (“if the unit is subject to affordable housing covenants, the RSO, or is income-restricted under City, state, or federal law, or is in a building that has been converted from units subject to the RSO to a single-family home within five years of conversion”).
- c. The Platform Agreement should prohibit the reposting of any listing that was previously removed, in recognition of the willful evasion of unscrupulous hosts, and to end the ongoing game of whack-a-mole.

2. Enforcement against lawbreaking hosts must be enhanced.

We agree with DCP that a greater financial penalty is required, though we believe the current HSO provides reasonably robust tools that allow for escalation. DCP acknowledges that “regulations allow the City to fine violators \$500 for each day a unit is listed without a valid registration number,” and they describe a protocol under current rules for doing so. They suggest, however, that this should only occur after a warning and a first fine. Here we cannot agree.

As DCP itself notes, and as we describe above, hosts are not making innocent mistakes but instead are aggressive in their efforts to evade the law. DCP does not need to warn such hosts they are violating the law, nor wait to fine them for their full violations. In addition, BNLA has found that when DCP has fined a host for a single violation, it no longer accepts reports or undertakes investigations of additional on-going violations. Rather, DCP considers the “case closed” and does not issue subsequent fines.

Enhancing enforcement also requires greater speed in moving through the ACE administrative hearing process. According to the DCP report, the city began issuing citations under the HSO in November 2019 but did not begin conducting hearings until “the second week of August 2021.”^{xxii} This delay is unacceptable.

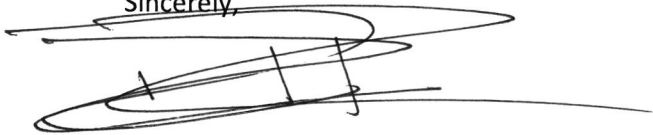
3. Hold platforms accountable.

In its report, DCP states that “City Planning would like to move forward with enforcing against hosting platforms that are out of compliance.”^{xxiii} DCP notes, accurately, that most platforms are in fact out of compliance. Yet DCP goes on to suggest the city will not embrace platform accountability because “building a [legal] case against a hosting platform is difficult.”^{xxiv} This position is inconsistent with the importance of platform accountability well-understood by DCP since the outset of the HSO. Here we see DCP admitting it is unable to bring the enforcement actions against platforms that DCP itself identifies as necessary to bring the short-term rental

market into compliance with the HSO. Thus, it cannot settle for targeting hosts' compliance as it makes clear this effort is insufficient to regulate the market overall.

We look forward to sharing with you BNLA's annual progress report, currently in production.

Sincerely,



Randy Renick
Better Neighbors LA

ⁱ See page 9 of DCP report. BNLA's analysis (using Inside Airbnb data scrapes) finds an 85.6% drop in STR listings from October 2019 to August 2021.

ⁱⁱ DCP's primary metric is the raw number of listings. While this can be a useful metric, we do not believe it to be the most meaningful metric, as it ignores *actual use* (i.e., the extent to which a given listing is rented), and it ignores salient differences between *types* of listings (i.e., entire home vs. private room). BNLA's forthcoming annual progress report seeks to address these challenges.

ⁱⁱⁱ Hans R.A. Koster, Jos van Ommeren, and Nicolas Volkhausen, "Short-term rentals and the housing market: Quasi-experimental evidence from Airbnb in Los Angeles," *Journal of Urban Economics*, July 2021.

^{iv} Page 9 of DCP report.

^v BNLA's analysis (using Inside Airbnb data scrapes) finds 10,993 STRs listed in August 2020 and 5,248 STRs listed in September 2020.

^{vi} Page 15 of DCP report. See also BNLA's March 30, 2021 letter.

^{vii} Page 10 of DCP report.

^{viii} Page 11 of DCP report. See also BNLA's February 15, 2021 letter

^{ix} Page 14 of DCP report.

^x Page 14 of DCP report. See also BNLA's April 30, 2021 letter.

^{xi} Page 14 of DCP report.

^{xii} Page 14 of DCP report.

^{xiii} Page 15 of DCP report.

^{xiv} Page 10 of DCP report. See also BNLA's July 22, 2021 letter.

^{xv} Memo from Vincent Bertoni to the City Planning Commission, June 23, 2016; DIR-2016-1243-CA, p. A-15.

^{xvi} Memo from Vincent Bertoni to the City Planning Commission, June 23, 2016; DIR-2016-1243-CA, p. A-15.

^{xvii} Memo from Vincent Bertoni to the L.A. City Council, October 19, 2017; (council files 14-1635-S2, 14-1635-S3); p. 7.

^{xviii} Page 3 of DCP report.

^{xix} Page 14 of DCP report.

^{xx} Patrick Beguin (Granicus) email to Yeghig Keshishian (City Planning), August 30, 2020 describes 7,959 short-term listings across all platforms, including 5,461 on Airbnb. See also Roy Samaan, Short-Term Rentals and L.A.'s Lost Housing, LAANE report, August 24, 2015, describing 23,268 short-term listings across all platforms, including 15,031 on Airbnb.

^{xxi} Page 4 of DCP report.

^{xxii} Page 11 of DCP report.

^{xxiii} Page 15 of DCP report.

^{xxiv} Page 15 of DCP report.