

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AIRBNB, INC.,

Plaintiff,

v.

THE CITY OF NEW YORK,

Defendant.

CIVIL ACTION NO. 18-cv-_____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Airbnb, Inc. (“Airbnb”), by and through its undersigned counsel, for its Complaint against Defendant the City of New York (the “City”), alleges as follows:

INTRODUCTION

1. Local Law 2018/146, N.Y.C. Admin. Code § 26-2101–4 (the “Homesharing Surveillance Ordinance” or the “Ordinance”) is an extraordinary act of government overreach. It is also the product of a multi-million dollar campaign funded by the City’s powerful hotel lobby, which is intent on intimidating New Yorkers into abandoning homesharing.

2. The Homesharing Surveillance Ordinance requires homesharing platforms to turn over an unprecedented amount of intimate personal data about their New York City hosts and whom they invite into their homes each month to a government enforcement agency—the Mayor’s Office of Special Enforcement—that works shoulder to shoulder with private investigators hired and paid by the hotel lobby. No probable cause, notice, or legal review is contemplated in connection with the bulk collection of this data, and no real restrictions are placed on its use or dissemination. As such, the Ordinance is an unlawful end-run around established restraints on governmental action and violates core constitutional rights under the First and Fourth Amendments to the U.S. Constitution and Article I, Section 12 of the New York Constitution, as well as the federal Stored Communications Act, 18 U.S.C. §§ 2701 *et seq.*

3. Under normal circumstances, government agencies may obtain private information about citizens only by following the strict legal processes that protect constitutional rights and provide for review and challenge. The Homesharing Surveillance Ordinance evades those protections by mandating—under threat of newly-created legal liability—that Internet platforms holding the sought-after data obtain blanket, advance “consent” from their users and then automatically surrender the demanded data to the City’s enforcement agency every month. Because users of these platforms have no opportunity to challenge this turnover of data to the Office of Special Enforcement, the City is betting that they will walk away from homesharing.

4. More specifically, the Ordinance targets data concerning New Yorkers who share their homes with travelers on a short-term basis using an Internet homesharing platform like Airbnb. For each instance in which a New York City residence is rented on a short-term basis using such a platform, the Homesharing Surveillance Ordinance requires that the platform turn over to the City’s enforcement agency on a monthly basis:

- a. the address of the residence;
- b. the full legal name, address, telephone number, and email address of the host;
- c. the specific identifiers (name, number, and URL) of both the home and the host on the homesharing platform;
- d. a statement of when and how the residence was occupied;
- e. the total number of days the residence was rented;
- f. the fees received by the platform; and
- g. if the platform collects rent, the amount paid and host bank account information.

5. Thus, the Ordinance requires Internet homesharing platforms to turn over personal information about their hosts, much of which is not made public through the platforms. The Ordinance also requires homesharing platforms to turn over their own non-public and commercially sensitive information, including detailed breakdowns of revenues and technical information about listings. To the extent a platform collects rent, it is also required to hand over highly sensitive bank account information about how guests choose to pay and how much. All of this is data the Office of Special Enforcement could not otherwise obtain without precompliance review, and the Ordinance permits that agency to use and share the data however and whenever it chooses, without any meaningful limitation. In so doing, the Ordinance breaches critical privacy protections both for homesharing platforms like Airbnb and for the New Yorkers who share their homes on these platforms.

6. Put another way, the Homesharing Surveillance Ordinance requires Airbnb to report on a monthly basis volumes of otherwise private information about who New Yorkers choose to invite into their homes, where those homes are located, when and for how long the guests stay, and what the guests are doing there.

7. As the Supreme Court has recognized, “when it comes to the Fourth Amendment, the home is first among equals. At the Amendment’s ‘very core’ stands ‘the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.’” *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). Indeed, “the overriding respect for the sanctity of the home . . . has been embedded in our traditions since the origins of the Republic.” *Payton v. New York*, 445 U.S. 573, 590 (1980). The Homesharing Surveillance Ordinance is inconsistent with these fundamental principles.

8. City Council members and other State and City officials claim that this extreme governmental surveillance is somehow necessary because housing is being taken off the market illegally for use as short-term rentals and thereby driving up housing costs. As of June 1, 2018, however, there are only about 28,000 “entire home” Airbnb listings spread across New York City—approximately 0.8 percent of New York City homes. Moreover, 95% of hosts listing an entire home on Airbnb have only a single home offered—hardly a threat to the City’s housing stock.

9. City officials also claim that the Homesharing Surveillance Ordinance was designed to combat illegal hotel operators, but the Ordinance makes no distinction between commercial operators and the ordinary New Yorkers who use Airbnb’s homesharing platform to supplement their income so they can afford to remain in their homes and support their families.

10. The reality is the Ordinance is the product of a lobbying campaign funded by the hotel industry, which believes it is being threatened by homesharing and has co-opted the very agency—the Office of Special Enforcement—that will receive and exploit the data.

11. The Homesharing Surveillance Ordinance provides that enforcement agency with a complete picture into New York homesharing without the need for probable cause, notice, legal process, or review. The Office of Special Enforcement will be able to use the compelled information for whatever nefarious purpose it desires without a need to articulate a reasonable relation to any particular investigation. Office of Special Enforcement agents already are using data from servers purchased from data-mining company Palantir—including data collected and supplied to the agency by the hotel lobby’s private investigators—to turn up unannounced at New Yorkers’ private homes to harass homesharing hosts and guests and issue citations for alleged violations (many of which are subsequently dismissed upon challenge).

12. Even worse, nothing in the Homesharing Surveillance Ordinance secures the data. For example, nothing in the Ordinance prevents the Office of Special Enforcement from sharing the data with other agencies or turning the data over to any member of the public—including individuals associated with the hotel lobby—who files a request under the Freedom of Information Law.

13. Given the above, it should come as no surprise that this surveillance regime far exceeds in scope and severity the regulations imposed on any other industry in New York City. New York City hotels are not required to disclose this same information about all of their patrons' stays.

14. In sum, the systematic, ongoing, bulk surveillance mandated by the Homesharing Surveillance Ordinance is illegal. The Ordinance requires Airbnb and other homesharing platforms to communicate a chilling message to their users under the guise of obtaining "consent" and then to surrender to the City an extraordinary amount of commercially sensitive and personal information about their hosts without cause or protection. This unprecedented end-run around restraints on governmental action warrants this Court's intervention.

OVERVIEW OF CLAIMS

15. Plaintiff Airbnb brings this action under 42 U.S.C. § 1983, 18 U.S.C. § 2707 and 28 U.S.C. § 2201 to declare unlawful Chapter 21 of Title 26 of the New York City Administrative Code and to enjoin its enforcement.

16. The Homesharing Surveillance Ordinance violates the Fourth Amendment to the U.S. Constitution because it authorizes warrantless searches of Airbnb's private business records without any opportunity for precompliance review. The information sought under the Ordinance is highly sensitive and proprietary commercial and personal data in which Airbnb has a reasonable expectation of privacy.

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