

*D.C. Office of the Tenant Advocate
Comments on the Second Proposed Rulemaking
by the Department of Consumer and Regulatory Affairs
for 14 D.C.M.R. Chapter 99
and 17 DCMR Chapter 5
March 22, 2021*

TITLE 14: HOUSING
CHAPTER 99: SHORT-TERM RENTALS

9901: Requirements for Short-Term Rental

9905: Requirements for Booking Services

1. **A host should be required to provide its short-term rental license endorsement number to prospective guests, and booking services should be prohibited from listing ads for short-term rentals where the host does not provide this number.**

Concern: Proposed section 9901.7 prohibits a host from using a booking service that does not *permit* the inclusion of the short-term rental license endorsement number on listings. Furthermore, proposed section 9905.1 requires a booking service to *permit* a host to provide a guest with this number. However, the regulations do not take the next logical step of requiring a host to *actually* provide a booking service with this number and to require its display on listings. Likewise, the regulations do not require a host who does not use a booking service to provide this number to a prospective guest directly. A prospective short-term renter should be able to verify that a host has a current, valid business license with a short-term rental endorsement prior to booking a stay.

Recommendation: The Department should amend section 9901.7 to require a host to actually provide its short-term rental license endorsement number to prospective guests directly, or to a booking service for display on its listings if such a service is used.

9902: License Application

9903: Issuance and Renewal of License

2. **A host should be required to certify substantial compliance with the housing code and property maintenance code in order to receive a short-term rental license endorsement.**

Concern: While the statute provides that an inspection of the premises shall not be required for a short-term rental license endorsement, the regulations should nonetheless address the condition of the unit and the property. Code compliance ensures the safety of not only the guest and the host, but others in the neighborhood as well (for example, with respect to fire hazards). Code compliance is no less important simply because the dwelling is to be used as a short-term rental rather than a long-term rental.

Recommendation: The Department should amend section 9902.2 to require the host to attest that the dwelling substantially complies with the housing and property maintenance codes as a pre-requisite to a short-term rental license endorsement. The host should also be required to re-attest this each time a license is renewed (along with other re-certifications per Comment #3 below) under section 9903.7. Finally, section 9903.6 should be amended to clarify that although an inspection is not required, the host must attest to housing and property maintenance code compliance.

3. A host should be required to affirmatively re-certify the items under § 9902.2 in order to renew a short-term rental license.

Concern: Proposed section 9903.7 provides that biannual license renewal will be automatic so long as the host pays the requisite fees. The Department would rely on the host to come forward with any changes to the information previously certified under section 9902.2. If the host presents nothing, the proposed regulations would have the Department presume that the host has all the necessary permits for the dwelling and that it remains the host's primary residence (among other requirements). However, the statute does *not* dictate that renewal shall be automatic or that hosts shall not be asked to re-certify that they meet the requirements. The OTA is concerned that property owners will be emboldened by this "no questions asked" renewal process to skirt the law as long as they pay their biannual fees.

Recommendation: The Department should amend section 9903.7 to require a host to affirmatively re-certify all items under section 9902.2 for each biannual license renewal (including re-certifying compliance with the housing and property maintenance codes per Comment #2 above).

9904: Exemption from 90-Night Limit for Short-Term Rental Operating as a Vacation Rental

4. The proposed rules contravene the statute by allowing an exception to the 90-day vacation rental limit where the host's spouse or domestic partner works outside of the District for more than 90 days in a year.

Concern: Proposed sections 9904.2(a), 9904.3, and 9904.5(a) directly contravene the statute by permitting an exception to the 90-day limit for vacation rentals where a host's spouse works outside of the District for more than 90 days in a calendar year. This would permit a host to operate a vacation rental for more than 90 days in a calendar year in circumstances not contemplated by the statute. Additionally, we note that the inclusion of this provision contradicts the relevant comment in the introduction.

Recommendation: The Department should revise 9904.2(a), 9904.3, and 9904.5(a) to remove references to the host's spouse or domestic partner. Per the statute, the exception for mandatory work outside of the District for more than 90 days in a year should only be available for the host. (See D.C. Official Code § 30-201.06(f)(1)(A)(i)).

9910: Penalties

5. **The provided penalties should be significantly higher, both to better conform to the penalties provided in the statute and to deter illegal short-term rental operations more effectively.**

Concern: While it is true that the statute provides that the Mayor may adjust the statutory fines by rulemaking, the fines for hosts provided in proposed section 9910.1 are unreasonably lower than the statutory fines. The penalties provided in the regulations range from half of that provided in the statute for the first violation (\$250 vs. \$500) to *one-sixth* of that provided in the statute for the third violation (\$1,000 vs. \$6,000). In addition, these penalties are significantly inadequate when applied to certain easily foreseeable scenarios that were indeed contemplated by the Council when it approved the authorizing legislation. For example, a large multifamily operation operating many unlicensed short-term rentals is unlikely to be significantly deterred by penalties maxing out at \$1,000 for a third violation, nor will the sanction of license revocation deter the owner where the rentals are unlicensed in the first place.

Recommendation: The Department should increase the penalties provided in 9910.1 to conform to the statutory amounts noted above. (See D.C. Official Code § 30–201.10(a)(1)-(3)). The Department should also provide a stronger deterrent where a short-term rental is operated entirely without a license. Finally, the Department should consider penalties that escalate by building size for unlicensed operation of short-term rentals in multifamily buildings.

6. **The rules should provide that each night a guest stays in a single unit of improper short-term rental housing shall constitute a separate violation by the host.**

Concern: It is unclear what constitutes a single violation for the purposes of assessment of penalties against a host who operates a short-term rental in violation of the regulations. For example, if a single violation were to constitute (a) a single, multi-night stay by a guest or (b) a single year in which the host exceeds the 90-day vacation rental limit, then a host could potentially absorb the cost of the fines and still make a profit.

Recommendation: The Department should provide that, for the purposes of 9910.1, each single night that a guest stays – versus a single multi-night stay -- in any short-term rental unit with respect to which the host is in violation shall constitute a separate violation of these regulations, warranting an additional penalty.