AHLA
AMERICAN HOTEL & LODGING ASSOCIATION

October 17, 2019

Zoning Commission for the District of Columbia
441 4th Street, NW, Suite 200S
Washington, DC 20001

Dear Commissioners:

As the commission considers Case No. 19-15, amendments to authorize short-term rentals, the American Hotel & Lodging Association (AHLA) respectfully offers the following comments on behalf of our national membership of hotel brands, REITs, management companies and independent properties.

With more than 54,000 properties across the country, including 140 in the District of Columbia alone, our industry embraces the opportunity to compete for guests. We thrive when everyone – all 54,000 of us – plays by the same set of rules designed to ensure the safety of our guests, our employees and the communities in which we do business.

To be clear, the lodging industry is not against home-sharing. The occasional rental of a primary residence – the true spirit of the "sharing economy" – is the type of activity that generates positive benefits to tourism in the District and across the country. However, we are concerned by the growing number of commercial investors using short-term rental platforms to operate multi-unit, full-time lodging businesses with little or no oversight. That is not home-sharing as envisioned by the sharing economy; those are illegal hotels.

That is why AHLA stood alongside the hospitality workers union, affordable housing advocates and the Hotel Association of Washington, DC in support of short-term rental legislation passed unanimously by the Council in November 2018. That legislation was part of a national wave of communities – from Boston to Los Angeles, San Francisco to Honolulu, and Baltimore to Santa Monica – that decided to protect precious housing supply and ensure a level playing field for lodging businesses by holding short-term rental platforms accountable for fostering illegal activity through their websites.

Perhaps the most critical provisions of the laws passed by these cities and the District in just the last two years were the accountability required of short-term rental platforms. Preventing online platforms from processing transactions on non-compliant rental units has proven to be an important part of efficient enforcement in jurisdictions where it has been implemented.

In 2016 the City of San Francisco enacted an ordinance making it a misdemeanor for short-term rental platforms to collect booking fees on illegal rentals. Airbnb and HomeAway subsequently challenged the ordinance based on Section 230 of the federal Communications Decency Act, strict criminal liability, and the First Amendment. In November of that same year, the U.S. District Court for the Northern District of California ruled against the platforms, finding that the platforms were unlikely to prevail on the merits of their legal challenges. Subsequently, a settlement agreement was reached whereby platforms agreed to

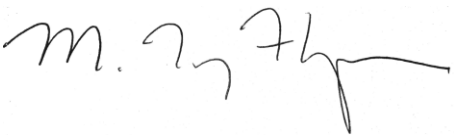
be more transparent and to take an active role in prohibiting illegal units from being rented through their platforms. Once the settlement was implemented in late 2017, thousands of illegal short-term rentals in San Francisco were returned to the housing stock for full-time residents of the city.

The biggest endorsement for cities taking steps to address illegal short-term rentals by holding online platforms accountable came in March of this year, when the U.S. Ninth Circuit ruled against HomeAway and Airbnb in their litigation against the City of Santa Monica. The Santa Monica ordinance holds the companies responsible for booking rentals of unlicensed residences. The court sided with the city that the restriction does not violate the Communications Decency Act, which shields online services from liability for the content that their users post on their sites. An earlier decision in the same case ruled that "The City's Ordinance does not penalize Plaintiff's publishing activities; rather, it seeks to keep them from facilitating business transactions on their sites that violate the law," making a clear distinction between the rights of free speech on the web and the brokering of illegal activities for a fee.

While the popular online platforms may have started out as a means for homeowners to offer an extra room in their home for the opportunity to earn supplemental income, these multibillion dollar companies have morphed into lodging providers with revenue growth increasing exponentially by the facilitation of multi-unit, full-time commercial hosts. Short-term rental platforms have grown because commercial investors are listing residential properties that have no regular occupant and are available for rent year-round. Seeing an easy loophole, investors in cities across the country began operating illegal hotels without licensing, basic consumer protections or the taxes imposed on legitimate hotels and bed and breakfast inns. But thanks to the actions taken by the Council and complemented by the proposed amendments before you, illegal hotel operators in the District will soon be reined in.

Thank you for the opportunity to provide input as the commission considers amendments necessary to fully implementation the short-term rental ordinance passed by Council. Please do not hesitate to contact me if I can provide further information.

Sincerely,



M. Troy Flanagan
Senior Vice President, Government Affairs & Industry Relations

cc: The Honorable Muriel Bowser, Mayor of the District of Columbia
The Honorable Phil Mendelson, Chairman, Council of the District of Columbia