



SANTA ROSA COUNTY BOARD OF COMMISSIONERS

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MEMORANDUM

TO: Board of Commissioners
FROM: Tony Gomillion, County Administrator
DATE: July 18, 2016
SUBJECT: AIRBNB Draft Agreement

DISCUSSION

Discussion of the draft agreement between AIRBNB and the Clerk of Court for the collection of tourist development taxes.

BACKGROUND

The online vacation rental industry has continued to evolve during recent years and AIRBNB is a major vendor in this market. A number of counties around the state have reached agreements with AIRBNB and the State Department of Revenue has an agreement on behalf of some counties. There are a few counties that are considering litigation against AIRBNB. The draft agreement is attached.

**VOLUNTARY COLLECTION AGREEMENT
FOR
SANTA ROSA COUNTY TOURIST DEVELOPMENT TAX**

THIS VOLUNTARY COLLECTION AGREEMENT (the “**Agreement**”) is dated _____, 2016 and is between **AIRBNB, INC.**, a Delaware corporation (“**Airbnb**”) and the **CLERK OF COURT OF SANTA ROSA COUNTY, FLORIDA** (the “**Tourist Tax Collector**”). Each party may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS:

WHEREAS, Airbnb represents that it provides an Internet-based platform through which a third party desiring to offer an accommodation (a “**Host**”) and a third party desiring to book an accommodation (a “**Guest**”) have the opportunity to communicate, negotiate and consummate a booking transaction for accommodations (“**Booking Transaction**”) pursuant to a direct agreement between Host and Guest to which Airbnb is not a party (the “**Platform**”);

WHEREAS, Airbnb represents that any agreement regarding a Booking Transaction through use of the Platform is between the Host and Guest only, that Airbnb is not a party to such agreements, that a Host exclusively determines the price to be charged, the dates to book such accommodations, the parties with whom to transact and all other material terms of such agreements, that only the Host and not Airbnb has the right and ability to accept and book an accommodation, and that Airbnb does not own any real property and does not have any possessory interest in any real property or accommodations offered by Hosts (including, but not limited to, as an owner, lessee, sublessee, mortgagee in possession, licensee, agent or in any other capacity), and therefore cannot and does not transfer any possessory interest in any property or accommodations to any person;

WHEREAS, Airbnb represents that it is not an owner, proprietor, managing agent, dealer, vendor or otherwise operator of any hotel, motel, room, or accommodation of any kind within the meaning of applicable law in Santa Rosa County (the “**County**”). Airbnb represents it does not receive, collect or charge rent, or other taxable consideration relating to occupancy, within the meaning of applicable County laws.

WHEREAS, the legal rights, remedies and obligations of Airbnb, Hosts and Guests using the Platform are specified in a document titled “Terms of Service” (the “**TOS**”) and other

policies and procedures available at www.airbnb.com, including, but not limited to, certain TOS provisions to which Hosts and Guests have agreed that when or if Airbnb determines to assist with collection and remittance of occupancy taxes in a given jurisdiction, users grant Airbnb authority to register, report, collect and remit the applicable occupancy taxes pursuant to this Agreement and the TOS;

WHEREAS, the Tourist Tax Collector and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of applicable occupancy taxes from Hosts and Guests, resulting from Booking Transactions completed by Hosts and Guests on the Platform for occupancy of accommodations located in the County, in accordance with this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

(A) With respect to Booking Transactions between Hosts and Guests completed on the Platform for accommodations for which Santa Rosa County Tourist Development Tax (“TDT”), imposed under applicable County law (the applicable “Code”), and during the period in which this Agreement is effective (as defined below), and solely pursuant to the terms and conditions of this Agreement, Airbnb agrees contractually to assume the duties of a TDT dealer as described in the Code (hereinafter referred to as “Dealer”).

(B) Airbnb neither agrees to undertake, nor undertakes any obligation to assume the duties of a Dealer and does not agree to undertake any obligation contractually or otherwise to collect or remit TDT relating to any user’s transaction completed, made or facilitated through any means, or method or other platform, other than the Host or Guest’s use of the Platform. Any obligation assumed by Airbnb pursuant to this Agreement (during any period in which it is effective) shall be limited to users completing Booking Transactions directly between the Guest and Host through their use of the Platform.

PROSPECTIVE COLLECTION OF TDT

(C) Starting on _____ (the “Effective Date”), Airbnb agrees to commence collecting and remitting TDT, pursuant to the terms of this Agreement, at the applicable rate, on completed Booking Transactions for occupancy of accommodations located in the County between a Guest and Host who use the Platform. For the avoidance of doubt, this

agreement to collect shall not extend to any period or transaction prior to the Effective Date or after the termination of this Agreement or to any user's transaction completed, through any means, method or platform, other than the Platform.

REMITTANCE OF TDT

(D) Airbnb agrees to reasonably report aggregate information on the tax return form prescribed by the Tourist Tax Collector, including all TDT that is subject to the provisions of this Agreement, and it shall remit all TDT collected from Guests in accordance with this Agreement and the TOS and evidenced on such returns in the time and manner described in the Code or as agreed between the Parties in writing. **TDT collected shall be reported and remitted for each TDT district within the county as defined by the Code.** For the avoidance of doubt, except as may expressly be agreed to herein, Airbnb does not agree to produce personally identifiable information on users of the Platform pursuant to tax collection that is the subject of this Agreement.

AIRBNB LIABILITY

(E) On a prospective basis upon the Effective Date of this Agreement, and during any period in which this Agreement is in effect, in accordance with the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of TDT, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with law. Nothing contained herein nor any action taken pursuant to this Agreement, including but not limited to the collection or remittance of TDT, shall impair, restrict or prevent Airbnb from asserting that any TDT and/or penalties, interest, fines or other amounts assessed against it were not due, are the subject of a claim for refund under applicable law or enforcing any and all rights accorded to it pursuant to law.

(F) During any period in which this Agreement is in effect, and Airbnb is not in breach of its obligations under this Agreement, then with respect to Booking Transactions covered by this Agreement, the Tourist Tax Collector agrees to audit Airbnb on the basis of TDT returns and supporting documentation filed by Airbnb with the Tourist Tax Collector and shall not directly or indirectly audit any individual Guest or Host relating to such Booking Transactions unless and until an audit of Airbnb by the Tourist Tax Collector has been exhausted with the matter unresolved.

(G) With respect to any audit of completed Booking Transactions that are subject to this Agreement during any period in which it is effective, the Tourist Tax Collector agrees to audit Airbnb on an anonymous numbered account basis. The Parties agree that Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest and/or relating to any Booking Transaction in connection with an audit or otherwise without binding legal process served only after completion of such audit by the Tax Department of Airbnb with respect to such Host or Guest. The Tourist Tax Collector agrees that for TDT purposes, it will limit its audit of Airbnb and/or any assessment against Airbnb for alleged under collection of TDT to no more than a consecutive twelve (12) month tax period within any consecutive forty-eight (48) month period.

(H) The Tourist Tax Collector agrees that pursuant to this Agreement and during the period in which it is effective, Airbnb agrees to register as a Dealer for the reporting, collection and remittance of TDT, in connection with its obligations assumed under the Code and as set forth in this Agreement. Registration with the Tourist Tax Collector and the issuance of any certificate of authority will be in the name of Airbnb, Inc. at 888 Brannan Street, 4th Floor, San Francisco, CA 94103. Airbnb, Inc. will be the registered taxpayer on behalf of any subsidiary or affiliate of Airbnb, Inc. collecting TDT from Guests.

GUEST AND HOST LIABILITY

(I) During any period in which this Agreement is effective, and solely with respect to a Host's activity on the Platform, said Host shall not be required to individually register with the Tourist Tax Collector to collect, remit and report TDT, under the Code, on the condition that Airbnb is in compliance with its obligations under this Agreement and the Code. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to TDT, including any obligation to register with the Tourist Tax Collector to collect, remit and report TDT for a user's transactions completed through any means, method, device or platform other than the Platform, or restrict the Tourist Tax Collector from investigating or enforcing any provision of applicable law against such users for any occupancy arranged directly or through a means other than the Platform.

(J) Nothing herein shall relieve any Guest or Host of liability for TDT imposed by the Code, except as noted in paragraphs (E) (F), (G), (H), (I) and (K) herein, nor limit the Tourist

Tax Collector's authority to hold such Guest or Host responsible for any applicable TDT, penalties and interest for which they may be liable, including, but not limited to, civil and criminal penalties arising from inaccurate, false or misleading representations made to Airbnb or the Tourist Tax Collector by such Guest or Host, whether or not such representations were, in fact, relied upon by Airbnb or the Tourist Tax Collector in complying with its responsibilities under this Agreement.

WAIVER OF LOOK-BACK

(K) The terms of this Agreement shall be prospective only as of the Effective Date and the County **to the extent authorized by law to do so** expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders investors, employees and other agents, and/or Hosts or Guests from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of TDT or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to TDT on any Booking Transactions completed on the Platform prior to the Effective Date. Nothing contained in this Paragraph or in this Agreement shall impair or prevent the County from collecting alleged indebtedness related to TDT for transactions completed through any means, method, device or platform other than the Platform. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the County may have or claim to have against any Host or Guest unrelated to TDT or the matters released herein.

NOTIFICATION TO GUESTS AND HOSTS

(L) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it will notify (i) Hosts that TDT will be collected and remitted to the Tourist Tax Collector as of the Effective Date pursuant to the terms of this Agreement; and (ii) Guests and Hosts of the amount of TDT collected and remitted on each Booking Transaction. Additionally, the Parties agree that Airbnb may, at its discretion, notify Hosts of the specific provisions of paragraphs (I), (J) and (K) of this Agreement.

PROSPECTIVE TAX TREATMENT

(M) Collection and remittance of TDT under this Agreement shall begin on the Effective Date.

LIMITATION OF APPLICATION

(N) This Agreement is solely for the purpose of facilitating the administration and collection of the TDT with respect to Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution and implementation of this Agreement by the Parties, including but not limited to, the collection and/or remittance of TDT, shall not be considered an admission or evidence of any issue of law or fact arising under the Code or any other provisions of the laws of the United States of America or of any State, county or municipal entity thereof. By entering into or acting pursuant to the terms of this Agreement, including but not limited to collecting and/or remitting TDT, Airbnb does not waive, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions to, without limitation, (i) contest the validity of any construction of the Code that extends beyond the express terms of the ordinance; (ii) contest that Airbnb is an operator, vendor, or any other entity responsible for the operation of an accommodations business subject to regulation or to the collection or remittance of TDT, or (iii) contest that Airbnb charges, collects, receives or otherwise comes into possession of taxable consideration or that a third party is occupying an accommodation subject to tax.

MODIFICATIONS

(O) No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

DURATION/TERMINATION

(P) This Agreement shall apply to Booking Transactions made on or after the Effective Date and shall remain in effect unless terminated in accordance with paragraph (Q) below.

(Q) This Agreement may be terminated by Airbnb or the Tourist Tax Collector for convenience, provided that proper notice is given. Proper notice for the purposes of this paragraph means at least 30 days' written notification to the other party by certified or registered mail and, in the case where Airbnb is the party seeking to terminate the Agreement, at least 30 days e-mail notification to each Host offering accommodations in the County through Airbnb's Platform that Airbnb will no longer be collecting and remitting TDT for Booking Transactions subject to this Agreement. Any termination under this paragraph shall not affect the duty of Airbnb to remit to the Tourist Tax Collector any TDT collected from Guests up through and

including the effective date of termination of this Agreement, even if not remitted by Airbnb to the Tourist Tax Collector as of the date of termination.

MISCELLANEOUS

(R) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Florida without regard to its conflict of law principles. The Parties agree that any dispute arising out of or relating to this Agreement shall be heard exclusively in the courts located in the State of Florida or the United States District Court for the Northern District of Florida and each Party consents to the exclusive jurisdiction of such courts and waives any and all objections to jurisdiction or venue in such courts or any assertion of inconvenient forum.

(S) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(T) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

(U) CONFIDENTIALITY.

- (i) The Tourist Tax Collector agrees that, to the maximum extent permitted by law, both the terms of this Agreement, and all discussions and negotiations related to it and all information related to Airbnb as is described in §§ 213.053 and 213.0535, *Fla. Stat.* (2015) shall remain strictly confidential. The Tourist Tax Collector covenants and agrees that it will assume the same duties with respect to such information as is applicable to the Florida Department of Revenue with respect to information described in §213.053, *Fla. Stat.* (2015). The Tourist Tax Collector may disclose such information as is required to be disclosed pursuant to §§ 213.053 and 213.0535, *Fla. Stat.* (2015), but shall not

make disclosures of information permitted by, but not required to be disclosed by such statutes. **However, nothing herein will affect the responsibility of the Clerk of Court or his employees to fully respond to public record requests under Chapter 119, Florida Statutes.** In the event of a mandatory disclosure of such information the Tourist Tax Collector agrees to provide advance written notice not less than ten days prior to any such disclosure to the attention of Airbnb's General Counsel via e-mail (legal@airbnb.com).

- (ii) For the avoidance of doubt, any and all data provided to the Tourist Tax Collector by Airbnb in furtherance of meeting its obligations assumed under this Agreement, including but not limited to data provided on tax returns and/or reports and data provided pursuant to an audit by the Tourist Tax Collector, shall not be shared with any other governmental agency, department or division of the County of Santa Rosa or any other jurisdiction, including but not limited to federal, state or local, except for the purposes of enforcement of a tax obligation and only if such inter-agency sharing is required by law.
- (iii) The Tourist Tax Collector agrees that it will inform any and all relevant employees of this obligation and that it will instruct each to abide by the confidentiality provision contained in this Section (U).

(V) RELATIONSHIP OF THE PARTIES. The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(W) WAIVER AND CUMULATIVE REMEDIES. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(X) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb

employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(Y) ASSIGNMENT. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by all of the terms of this Agreement and all past due fees are paid in full. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

(Z) MISCELLANEOUS. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

NOTICES

(AA) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

To Airbnb:
Airbnb, Inc.
Attn: Deputy General Counsel
888 Brannan Street, 4th Floor
San Francisco, CA 94103
Email: legal@airbnb.com

With copy to:
Airbnb, Inc.
Attn: Global Head of Tax
Tax Department
888 Brannan Street, 4th Floor
San Francisco, CA 94103
Email: tax@airbnb.com

To the Clerk of Court:
Santa Rosa County Clerk of Court
Attn: Mr. Donald C. Spencer
6495 Caroline Street STE A
Milton, FL 32570
Fax: 850-983-1986
Email: _____

(Signatures follow on next page)

IN WITNESS WHEREOF, Airbnb and the Tourist Tax Collector have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By: _____

Signature of Taxpayer or
Authorized Representative

Beth Adair, Global Head of Tax

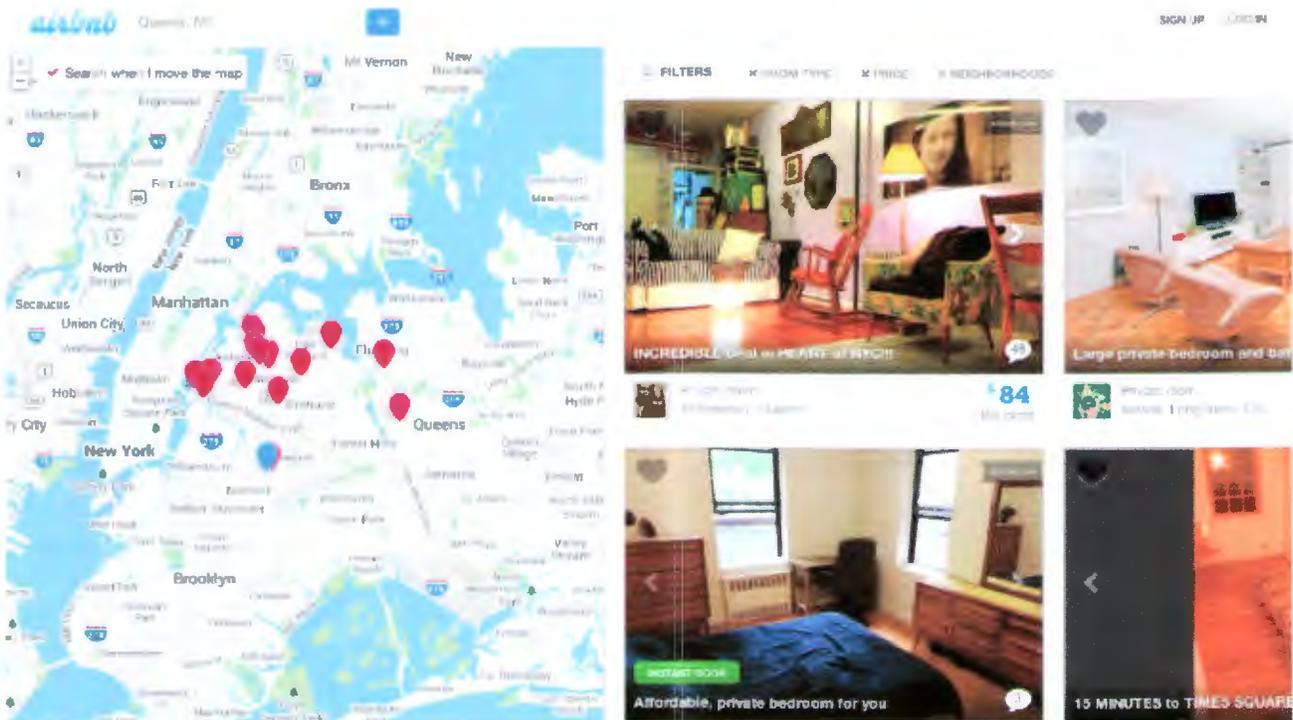
Print Name and Title of Taxpayer or
Authorized Representative

**THE CLERK OF COURT OF SANTA ROSA COUNTY,
FLORIDA**

Donald C. Spencer

POLITICO

POLITICOFLORIDA



Airbnb website. | AP Photo/Airbnb

Airbnb touts statewide growth, 750,000 guests in 2015

By **DANIEL DUCASSI** | 07/20/16 05:31 AM EDT

TALLAHASSEE — Airbnb released statewide data on Wednesday that provides a glimpse into the scale of Florida's emerging peer-to-peer hospitality industry.

The company reported more than total 750,000 guests in Florida last year, claiming 149 percent annual growth.

They were housed by 16,100 hosts, with Airbnb stating that the median host brought in \$7,200 for 41 nights.

“This data demonstrates the ways home sharing is creating economic opportunity for

thousands of Floridians, while also bringing more people to the Sunshine State to support our largest industry: tourism,” said Airbnb’s regional head of public policy, Michael O’Neil, in a statement.

The bulk of the hosts and guests are in Miami-Dade, Broward and Monroe counties, with nearly 8,000 hosts and more than 400,000 guests.

The Orlando/Daytona area had about 155,000 guests with 2,550 hosts, followed by the Tampa/St. Petersburg area with 2,300 hosts and roughly 82,000 guests.

The company is using the numbers to highlight what it sees as its contributions not just to Florida’s tourism industry, but to state and local public coffers.

Though companies like Airbnb and Uber have curried favor with some state lawmakers who laud the “disruptive technologies,” they may face steep legislative hurdles when it comes to finding a regulatory home as they try to compete with well-established traditional businesses.

For example, Uber found a champion in Rep. Matt Gaetz last session. He jockeyed to get legislation that would have set up a regulatory framework for car-hailing companies through the House, but it ultimately failed in the Senate amid attempts by Sen. David Simmons to broker a compromise with cab companies.

Airbnb has veteran Democratic political strategist Chris Lehane heading up its global policy and public affairs efforts. The company says it is already working politicians at the state and local level.

“We are committed to working with municipalities across the state to make it easier for our host community to pay their fair share of taxes,” O’Neil said. “We have a productive relationship with the state and several counties, and are having conversations with officials in many other counties to streamline the tax collection process and ensure our hosts can continue contributing to their local community.”

Airbnb has also faced criticism from affordable housing advocates, who say use of the service is exacerbating the scarcity of affordable housing, while legal civil rights groups have raised concerns about hosts discriminating against minorities.

Housing advocates, hotel workers and big landlords joined forces in New York earlier this summer to pass a bill cracking down on apartment tenants who advertise short-term stays without staying on the premises, in violation of local law.

The company has since pressed on with a public relations offensive, touting its economic benefits and pointing to improvements.

For the second time in six months, the home-rental platform released statistics earlier this month showing it has removed listings it believes “could impact long term housing availability.”

In June, the national Lawyers’ Committee for Civil Rights Under Law praised initial steps Airbnb took to combat discrimination on its network, but said there was more work to be done.

“Companies such as Airbnb are at the forefront of the rapidly growing sharing economy but their efforts to curb discrimination simply have not kept pace,” said Kristen Clarke, president of the lawyers’ group. “Airbnb must take greater action to end the discrimination.”

See the data from Airbnb below: