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8 BEFORE THE HEARING EXAMINER  
9 FOR THE CITY OF SEATTLE

10 In the Matter of the Appeals of:

11 621 APARTMENTS LLC, ROY STREET  
12 COMMONS LLC, ERIC AND AMY  
13 FRIEDLAND, RAISSA RENEE LYLES,  
14 SEATTLE SHORT TERM RENTAL  
15 ALLIANCE, SEA TO SKY RENTALS, AND  
MICHELLE ACQUAVELLA

16 of the adequacy of the Determination of Non-  
17 Significance (DNS) for Land Use Code and  
18 Licensing Code text amendments relating to short  
term rentals issued by the Director, Seattle  
Department of Construction & Inspections.

Hearing Examiner Files:

W-17-002  
W-17-003

DECLARATION OF COURTNEY A.  
KAYLOR IN SUPPORT OF  
APPELLANTS' RESPONSE TO  
MOTION TO DISMISS

19  
20 I, Courtney A. Kaylor, declare as follows:

21 1. I am the attorney for Appellants 621 Apartments LLC et al. ("Appellants") in this  
22 matter. I am competent to testify and make this declaration based on my personal knowledge.  
23

24 2. Attached to this declaration are true and correct copies of the following  
25 documents:

26 **Exhibit A:** Proposed ordinance amending Seattle Municipal Code Title 23.

27 **Exhibit B:** Proposed ordinance amending Seattle Municipal Code Title 6.

28 DECLARATION OF COURTNEY A. KAYLOR IN  
SUPPORT OF APPELLANTS' RESPONSE TO  
MOTION TO DISMISS - Page 1 of 2

**McCullough Hill Leary, PS**

701 Fifth Avenue, Suite 6600  
Seattle, Washington 98104  
206.812.3388  
206.812.3389 fax

1           **Exhibit C:** Acquavella v. City of Seattle, King County Superior Court No. 08-2-39188-4  
2 SEA, Findings of Fact, Conclusions of Law and Judgment, May 5, 2009.

3           **Exhibit D:** Housing Affordability Impacts of Homeaway in Seattle, ECONorthwest.

4           I declare under penalty of perjury that the foregoing is true and correct. Executed this  
5 14<sup>th</sup> day of July, 2017, at Seattle, Washington.  
6

7  
8   
9 Courtney A. Kaylor

## **EXHIBIT A**

**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL \_\_\_\_\_**

..title

AN ORDINANCE amending Sections 22.214.030, 23.44.051, 23.45.504, 23.45.545, 23.84A.024, 23.84A.030, and 23.84A.036 of the Seattle Municipal Code (SMC); and adding a new Section 23.42.060 to the SMC; relating to short-term rental uses and bed and breakfast uses.

...body

WHEREAS housing vacancy rates are at low levels, making it increasingly difficult for people to obtain permanent housing; and

WHEREAS, removal of residential units from the long-term housing market contributes to low vacancy rates; and

WHEREAS, the conversion of long-term housing units to short-term rentals could result in the loss of housing for Seattle residents; and

WHEREAS, it is in the public interest that short-term rental uses be regulated in order to help preserve housing for long-term tenants; and

WHEREAS, the business model of short-term rental agencies depends upon participation and contact with local short-term rental operators; and

WHEREAS, the standards for the operation of short-term rental uses contained in this ordinance help to preserve the availability of housing for long-term rentals by limiting the number of short-term rentals a person can operate, reduce negative effects on affordable housing, and protect the safety and livability of residential neighborhoods; and

WHEREAS, the City Council finds that this ordinance is necessary to protect and promote the health, safety, and welfare of the general public; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. Section 22.214.030 of the Seattle Municipal Code, last amended by Ordinance 124312, is amended as follows:

**22.214.030 Applicability**

A. The registration provisions of this Chapter 22.214 shall apply to all rental housing units with the exception of:

1. Housing units lawfully used as ~~((vacation))~~ short-term rentals for periods not to exceed three consecutive months and not consecutively used by the same individual or individuals for more than three months in any ~~((twelve))~~ 12-month period;

2. Housing units rented for not more than 12 consecutive months as a result of the property owner, who previously occupied the unit as a primary residence, taking a work-related leave of absence or assignment such as an academic sabbatical or temporary transfer;

3. Housing units that are a unit unavailable for rent;

4. Housing units in hotels, motels, inns, bed and breakfasts, or ~~((in))~~ similar accommodations that provide lodging for transient guests, but not including short-term rentals as defined in Section 23.84A.024 unless the short-term rental qualifies for exemption under subsection 23.214.030.A.1;

5. Housing units in facilities licensed or required to be licensed under ~~((RCW))~~ chapter 18.20, ~~((RCW))~~ 70.128, or ~~((RCW))~~ 72.36 RCW, or subject to another exemption under this Chapter 22.214;

6. Housing units in any state licensed hospital, hospice, community-care facility, intermediate-care facility, or nursing home;

7. Housing units in any convent, monastery, or other facility occupied exclusively by members of a religious order or congregation;

8. Emergency or temporary ((-)) shelter or transitional housing accommodations;

9. Housing units owned, operated, or managed by a major educational or medical institution or by a third party for the institution; and

10. Housing units that a government entity or housing authority owns, operates, or manages; or units exempted from municipal regulation by federal, state, or local law.

\* \* \*

Section 2. A new Section 23.42.060 is added to the Seattle Municipal Code as follows:

**23.42.060 Short-term rentals**

Short-term rental uses are subject to the following provisions:

A. Short-term rental uses are permitted in any structure established as a dwelling unit unless (1) the proposed use is in a dwelling unit established as a caretaker's quarters, or (2) the proposed use is over water or otherwise prohibited by the shoreline regulations contained in Chapter 23.60A.

B. A short-term rental use may be located in a dwelling unit or an accessory dwelling unit.

C. Business license

1. All operators of short-term rental uses shall have a valid business license tax certificate issued by the Department of Finance and Administrative Services.

2. All operators of short-term rental uses shall have a valid short-term rental operator's license issued by the Department of Finance and Administrative Services.

D. Number of residents and guests. The total number of residents and guests occupying a dwelling unit that includes a short-term rental may not exceed the maximum number

of residents allowed in a household by this code. For sites with an accessory dwelling unit, the total number of residents and guests occupying both the dwelling unit and any accessory dwelling units may not exceed the number of residents allowed for a household.

E. Short-term rental uses may display signs identifying the use if the signs are permitted by Chapter 23.55.

F. If a short-term rental operator provides breakfast, light snacks, or both to guests, the facility and operator must meet applicable health and safety regulations including but not limited to regulations of Public Health—Seattle & King County and the Washington State Department of Health.

G. Notwithstanding Sections 23.42.100, 23.42.102, and 23.42.104, short-term rental uses, as defined in Section 23.84A.024, in existence prior to adoption of Council Bill \_\_\_\_\_ shall comply with the requirements of this Chapter 23.42 no later than one year from the adoption of Council Bill \_\_\_\_\_.

Section 3. Section 23.44.051 of the Seattle Municipal Code, last amended by Ordinance 124919, is amended as follows:

**23.44.051 Bed and breakfasts**

~~((A bed and breakfast use is permitted if it meets the following standards))~~

A. ~~((General provisions))~~ New bed and breakfast uses. Subject to Section 23.76.026, proposed bed and breakfast uses are prohibited after the effective date of Council Bill \_\_\_\_\_.  
Proposed uses that would have been classified as a bed and breakfast use before that date may qualify and be permitted as a short-term rental use.

B. Existing bed and breakfast uses

1                   1.       Existing bed and breakfast uses are not deemed to be nonconforming uses,  
2 notwithstanding Sections 23.42.100, 23.42.102, and 23.42.104. Except as provided below, an  
3 existing bed and breakfast use is a use that has one or more of the following: a land use permit  
4 from The City of Seattle establishing the bed and breakfast use, a valid food service  
5 establishment permit for a bed and breakfast use issued by Public Health—Seattle & King  
6 County; or a valid transient accommodation license for a bed and breakfast use issued by the  
7 Washington State Department of Health. A bed and breakfast use that was discontinued for one  
8 year immediately preceding the effective date of Council Bill \_\_\_\_\_ is not an existing bed  
9 and breakfast use.

10                   2.       Existing bed and breakfast uses are subject to the following requirements:

11                   ((1-)) a.       The bed and breakfast use shall have a valid business  
12 license tax certificate issued by the Department of Finance and Administrative Services;

13                   ((2-)) b.       The bed and breakfast use shall be operated by ((an owner))  
14 the primary resident of the dwelling unit where the bed and breakfast is located; ((who owns at  
15 least a 50 percent interest in the dwelling in which the bed and breakfast is located;

16                   3.       ~~An owner who owns at least a 50 percent interest in the dwelling shall~~  
17 ~~reside in the structure in which the bed and breakfast use is located during any period in which~~  
18 ~~rooms are rented to guests;~~

19                   4.       ~~No more than two people who reside outside the dwelling unit shall be~~  
20 ~~employed, with or without compensation, in the operation of the bed and breakfast use;~~

21                   5.       ~~The bed and breakfast use shall be operated within the principal structure,~~  
22 ~~which shall be at least five years old;~~



1                   6-)) c. There shall be no evidence of the bed and breakfast use visible  
2 from the exterior of the dwelling unit except for a sign permitted by subsection 23.55.020.D.1;

3                   ((7-)) d. The bed and breakfast use shall have no more than five  
4 guest rooms, provided that this limitation does not apply to bed and breakfast uses that were  
5 established on or before April 1, 1987, and that have been continuously operated as a bed and  
6 breakfast since that date; and

7                   e. A bed and breakfast use may be located in a dwelling unit or an  
8 accessory dwelling unit.

9                   ~~((8. Parking shall be provided as required in Chapter 23.54.))~~

10                  ~~((B. Alterations to single-family structures. Interior and exterior alterations consistent~~  
11 ~~with the development standards of the underlying zone are permitted.~~

12                  ~~C. Dispersion. Any lot line of property containing any proposed new bed and~~  
13 ~~breakfast use must be located 600 feet or more from any lot line of any other bed and breakfast~~  
14 ~~use.~~

15                  ~~D. Neighborhood mitigation provisions~~

16                   1. ~~The owner will make public transit information available to patrons, and~~  
17 ~~the owner's operating plan must describe how the transit information will be made available to~~  
18 ~~patrons.~~

19                   2. ~~The design of the structure in which the use is located and the orientation~~  
20 ~~of the access will minimize impacts, such as noise, light and parking, to neighboring structures.~~

21                   3. ~~The owner's operating plan includes quiet hours, limits on programmed~~  
22 ~~on-site outdoor activities, and parking policies to minimize impacts on residential neighbors.~~

1                   4. ~~The delivery of goods and services associated with the bed and breakfast~~  
2 ~~use are accommodated at a time and in a manner that will limit, to the extent feasible, impacts on~~  
3 ~~surrounding properties.~~

4                   5. ~~The operating plan shall be distributed to all residents and property owners~~  
5 ~~within 300 feet of the proposed bed and breakfast use. The distributed plan shall reference this~~  
6 ~~Section 23.44.051 and provide contact information for the Seattle Department of Construction~~  
7 ~~and Inspections' Review and Inspection Center and contact information for the operator of the~~  
8 ~~bed and breakfast. Applicants for a permit to establish a bed and breakfast use shall provide~~  
9 ~~proof to the Seattle Department of Construction and Inspections that they made a good faith~~  
10 ~~effort to provide the required distribution prior to issuance of a permit establishing the use.))~~

11                   \*\*\*

12                   Section 4. Subsection 23.45.504.C of the Seattle Municipal Code, which section was last  
13 amended by Ordinance 124843, is amended as follows:

14 **23.45.504 Permitted and prohibited uses**

15                   \* \* \*

16                   C.     Accessory uses. The following accessory uses are permitted in all multifamily  
17 zones, subject to the standards in Section 23.45.545, if applicable:

- 18                   1.     Private garages and carports;
- 19                   2.     Private, permanent swimming pools, hot tubs, and other similar uses;
- 20                   3.     Solar collectors, including solar greenhouses;
- 21                   4.     Open wet moorage accessory to residential structures;
- 22                   5.     Uses accessory to parks and playgrounds, pursuant to Section 23.45.578;

6. Bed and breakfasts ~~((in a dwelling unit that is at least five years old))~~  
lawfully operating prior to the effective date of Council Bill \_\_\_\_\_;

7. Recycling collection stations;

8. Urban farms with planting area not more than 4,000 square feet. Urban farms with greater than 4,000 square feet of planting area may be allowed as an administrative conditional use to any use permitted outright or as a conditional use. The Director may grant, condition, or deny a conditional use permit in accordance with subsection 23.42.051.B; and

9. Accessory dwelling units.

\* \* \*

Section 5. Subsection 23.45.545.G of the Seattle Municipal Code, which section was last amended by Ordinance 124378, is amended as follows:

**23.45.545 Standards for certain accessory uses**

\* \* \*

G. Bed and breakfast uses. ~~((A bed and breakfast use may be operated under the following conditions:))~~

1. New bed and breakfast uses. Subject to Section 23.76.026 (vesting), proposed bed and breakfast uses are prohibited after the effective date of Council Bill \_\_\_\_\_.  
Proposed uses that would have been classified as a bed and breakfast use before that date may qualify and be permitted as short-term rental uses.

2. Existing bed and breakfast uses

a. Existing bed and breakfast uses are not deemed to be nonconforming uses notwithstanding Sections 23.42.100, 23.42.102, and 23.42.104 (nonconforming use regulations). Except as provided below, an existing bed and breakfast use is

1 a use that has one or more of the following as of the effective date of Council Bill \_\_\_\_\_ : a  
2 land use permit from The City of Seattle establishing the bed and breakfast use, a valid Food  
3 Service Establishment permit for a bed and breakfast use issued by Public Health—Seattle &  
4 King County; or a valid transient accommodation license for a bed and breakfast use issued by  
5 the Washington State Department of Health. A bed and breakfast use that was discontinued for  
6 one year immediately preceding the effective date of Council Bill \_\_\_\_\_ is not an existing  
7 bed and breakfast use;

8 b. The bed and breakfast use has a valid business license tax  
9 certificate issued by the Department of Finance;

10 ~~2. The operation of a bed and breakfast use is conducted within a single~~  
11 ~~dwelling unit;~~

12 ~~3. The bed and breakfast use is operated within the principal structure and~~  
13 ~~not in an accessory structure;~~

14 ~~4.)) c. There shall be no evidence of a bed and breakfast use visible from~~  
15 ~~the exterior of the ((structure)) dwelling unit other than a sign permitted by subsection~~  
16 ~~23.55.022.D.1; ((, so as to preserve the residential appearance of the structure;)) and~~

17 d. A bed and breakfast use may be located in a dwelling unit or an  
18 accessory dwelling unit.

19 ~~((5. No more than two people who are not residents of the dwelling may be~~  
20 ~~employed in the operation of a bed and breakfast, whether or not compensated; and~~

21 ~~6. Parking is required pursuant to Chapter 23.54. Interior and exterior~~  
22 ~~alterations consistent with the development standards of the underlying zone are permitted.))~~

Section 6. Section 23.84A.024 of the Seattle Municipal Code, last amended by Ordinance 125272, is amended as follows:

**23.84A.024 “L”**

\* \* \*

“Lodging use” means a commercial use in which the primary activity is the provision of rooms to transients. Lodging uses include but are not limited to the following uses:

1. “Bed and breakfast” means a lodging use ((§)) where rooms within a single dwelling unit are provided to transients by a resident operator for a fee by prearrangement on a daily or short-term basis. A breakfast and/or light snacks may be served to those renting rooms in the bed and breakfast.

2. “Hotel” means a lodging use ((§)) located in a structure in which access to individual units is predominantly by means of common interior hallways, and in which a majority of the rooms are provided to transients for a fee on a daily or short-term basis.

3. “Motel” means a lodging use ((§)) located in a structure in which access to individual units is predominantly by means of common exterior corridors, and in which a majority of the rooms are provided to transients on a daily or short-term basis, and in which off-street parking is provided on the lot.

4. “Short-term rental” means a lodging use, that is not a hotel or motel, in which a dwelling unit or portion thereof is provided to guests by a short-term rental operator for a fee for fewer than 30 consecutive nights. A dwelling unit or portion thereof that is used by the same individual or individuals for 30 or more consecutive nights is not a short-term rental.

\* \* \*

Section 7. Section 23.84A.030 of the Seattle Municipal Code, last amended by Ordinance 124378, is amended as follows:

**23.84A.030 “P”**

\* \* \*

“Preliminary plat” means a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision, that is submitted to furnish a basis for the approval or disapproval of the general layout of a subdivision.

“Primary residence” means a person’s usual place of return for housing as documented by motor vehicle registration, driver’s license, voter registration, or other similar evidence. A person may have only one primary residence.

“Principal structure” means the structure housing one or more principal uses as distinguished from any separate structures housing accessory uses.

\* \* \*

Section 8. Section 23.84A.036 of the Seattle Municipal Code, last amended by Ordinance 125272, is amended as follows:

**23.84A.036 “S”**

\* \* \*

“Short subdivision” means the division or redivision of land into nine (~~((9))~~) or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, development, or financing.

“Short-term rental.” See “Lodging use.”

1       “Short-term rental operator” means any person who is the owner or tenant of a dwelling  
2 unit, or portion thereof, who provides a dwelling unit, or portion thereof, for short-term rental  
3 use.

4       “Shoulder” means the graded area between the roadway edge and the sidewalk, or slope  
5 line where there is no sidewalk, on the portion of a street where there are no curbs.

6                               \* \* \*

7       Section 9. The provisions of this ordinance are declared to be separate and severable. The  
8 invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance,  
9 or the invalidity of its application to any person or circumstance, does not affect the validity of  
10 the remainder of this ordinance, or the validity of its application to other persons or  
11 circumstances.

Section 10. This ordinance shall take effect on January 1, 2018.

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of  
\_\_\_\_\_, 2017.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Edward B. Murray, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

(Seal)



## **EXHIBIT B**

**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL \_\_\_\_\_**

..title

AN ORDINANCE related to the regulation of short-term rental businesses; adding a new chapter 6.600, Short-Term Rentals, to the Seattle Municipal Code.

..body

WHEREAS, housing vacancy rates are at low levels, making it increasingly difficult for people to locate permanent housing; and

WHEREAS, removal of residential units from the long-term housing market contributes to low vacancy rates; and

WHEREAS, the conversion of long-term housing units to short-term rentals could result in the loss of housing for Seattle residents; and

WHEREAS, it is in the public interest that short-term rental uses be regulated in order to conserve limited housing resources; and

WHEREAS, the short-term rental platforms, as part of a new but growing industry, would also benefit from regulation to ensure good business standards and practices; and

WHEREAS, short-term rental platform businesses depend upon participation and contact with local short-term rental operators; and

WHEREAS, this ordinance provides standards for the operation of short-term rental platform and short-term rental operators; and

WHEREAS, the City Council finds that this ordinance is necessary to protect and promote the health, safety, and welfare of the general public; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. A new Chapter 6.600 is added to the Seattle Municipal Code as follows:

**Chapter 6.600 SHORT-TERM RENTALS**

## **6.600.010 Scope and purpose**

This chapter 6.600 applies to all short-term rental operators and short-term rental platforms that facilitate short-term rental operators to offer a dwelling unit, or portion thereof, for short-term rental use within The City of Seattle. The ordinance enacting this Chapter 6.600 is an exercise of The City of Seattle's police power to license short-term rental platforms and short-term rental operators for regulation. Some of its regulatory purposes are to preserve the City's permanent housing stock, increase economic opportunity for residents operating short-term rentals in their own homes, reduce any indirect negative effects on the availability of affordable housing, create a level playing field for all parties engaged in the business of providing lodging, and protect the livability of residential neighborhoods.

## **6.600.020 Application of other provisions**

The licenses provided for in this Chapter 6.600 are subject to the general provisions of the new Seattle License Code set forth in Chapter 6.202 as now or hereafter amended. In the event of a conflict between the provisions of Chapter 6.202 and this Chapter 6.600, the provisions of this Chapter 6.600 shall control.

## **6.600.030 Definitions**

"Accessory dwelling unit" or "ADU" means an "Accessory dwelling unit" or a "Detached accessory dwelling unit" or "DADU" as defined under "Residential use" in Section 23.84A.032.

"Booking service" means any reservation and/or payment service provided by a person or entity that facilitates a short-term rental transaction between a short-term rental operator and a prospective short-term rental guest, and for which the person or entity collects or receives,

1 directly or indirectly through an agent or intermediary, a fee in connection with the reservation  
2 and/or payment services provided for the short-term rental transaction.

3 “Director” means the Director of Finance and Administrative Services or that Director’s  
4 designee.

5 "Dwelling unit" means a room or rooms located within a structure that are configured to  
6 meet the standards of Section 23.42.048 and that are occupied or intended to be occupied by not  
7 more than one household as living accommodations independent from any other household.

8 "Fee" means remuneration or anything of economic value that is provided, promised, or  
9 donated primarily in exchange for services rendered.

10 "Guest" means any person or persons renting a short-term rental.

11 "Household" means a housekeeping unit consisting of any number of related persons;  
12 eight or fewer non-related persons; eight or fewer related and non-related persons, unless a grant  
13 of special or reasonable accommodation allows an additional number of persons.

14 "Local contact" means the short-term rental operator or the person(s) designated by the  
15 short-term rental operator who: (1) reside in King County; and (2) are the point of contact for  
16 any short-term rental guest(s) for the duration of the guest(s)’ stay in the short-term rental.

17 “Operate a short-term rental platform within the City” means that a short-term rental  
18 platform is engaged in business in the City, including having agreements with short-term rental  
19 operators or other customers in the City who provide dwelling units, or portions thereof, located  
20 in the City for short-term rental use, regardless of whether the short-term rental platform is  
21 physically present in the City.

22 "Owner" means any person who, alone or with others, has title or interest in any building,  
23 property, dwelling unit or portion thereof, with or without accompanying actual possession

1 thereof, and including any person who as agent, or executor, administrator, trustee, or guardian  
2 of an estate has charge, care, or control of any building.

3 "Person" means any individual, firm, corporation, association, governmental entity, or  
4 partnership and its agents or assigns.

5 "Primary residence" means a person's usual place of return for housing as documented by  
6 motor vehicle registration, driver's license, voter registration or other such evidence as  
7 determined by Director's rule. A person may have only one primary residence.

8 "Short-term rental advertisement" means any method of soliciting use of a dwelling unit  
9 for short-term rental purposes.

10 "Short-term rental" means a lodging use, that is not a hotel or motel, in which a dwelling  
11 unit or portion thereof is provided to guest(s) by a short-term rental operator for a fee for fewer  
12 than 30 consecutive nights. A dwelling unit or portion thereof that is used by the same individual  
13 or individuals for 30 or more consecutive nights is not a short-term rental.

14 "Short-term rental operator" means any person who is the owner or tenant of a dwelling  
15 unit, or portion thereof who provides a dwelling unit, or portion thereof, for short-term rental  
16 use.

17 "Short-term rental operator registry" means a log of information maintained by the short-  
18 term rental operator.

19 "Short-term rental platform" means a person that provides a means through which an  
20 owner or tenant of a dwelling unit, or portion thereof, may offer the dwelling unit, or portion  
21 thereof, for short-term rental use and from which the platform derives revenues, including, but  
22 not limited to, booking fees or advertising revenues from providing or maintaining booking  
23 services. This service includes but is not limited to allowing a short-term rental operator to

1 advertise the dwelling unit, or portion thereof, for short-term rental use through a website  
2 provided by the short-term rental platform and providing a means for potential users to arrange  
3 payment for use of the short-term rental, whether the user pays directly to the owner or tenant or  
4 to the short-term rental platform. Merely publishing a short-term rental advertisement for  
5 accommodations does not make the publisher a short-term rental platform.

6 "Tenant" means a person occupying or holding possession of a dwelling unit or portion  
7 thereof for a period of 30 or more days, pursuant to written or oral agreement.

#### 8 **6.600.040 License required**

9 A. It is unlawful for any person to operate as a short-term rental platform within the  
10 City without a valid short-term rental platform license issued pursuant to this Chapter 6.600.

11 B. It is unlawful for any person to operate as a short-term rental within the City  
12 without a valid short-term rental operator license issued pursuant to this Chapter 6.600.

#### 13 **6.600.050 License applications**

14 A. Short-term rental platform licenses are issued by the Director and may be  
15 obtained by filing with the Director a short-term rental platform application in a format  
16 determined by the Director.

17 B. Short-term rental operator licenses are issued by the Director and may be  
18 obtained by filing with the Director a short-term rental operator license application in a format  
19 determined by the Director and by submitting a signed declaration of compliance attesting that  
20 each dwelling unit, or portion thereof, offered for short-term rental use satisfies the  
21 requirements of Section 6.600.070.

22 C. Each short-term rental operator license shall be issued a license number and  
23 such other information as the Director deems necessary.

D. All short-term rental platform licenses and short-term rental operator licenses shall expire one year from the date the license is issued and shall be renewed annually.

**6.600.060 Short-term rental platforms general provisions**

All short-term rental platforms operating in Seattle city limits shall comply with the following:

A. Possess a valid short-term rental platform license issued pursuant to this Chapter 6.600.

B. Provide booking services only for short-term rental operators who possess valid short-term rental operator licenses issued pursuant to this Chapter 6.600.

C. Provide the following information electronically to the City on a quarterly basis:

1. The total number of short-term rentals in the City listed on the platform during the applicable reporting period; and

2. The total number of nights each Seattle listing was rented through the short-term rental platform during the applicable reporting period.

D. Inform all short-term rental operators who register with the short-term rental platform of the operator's responsibility to collect and remit all applicable local, state and federal taxes unless the short-term rental platform does this on the operator's behalf.

E. Provide a copy of summaries prepared by the Director pursuant to Section 6.600.065 to any short-term rental operator for which the short-term rental platform provides booking services. Such provision includes notifying all short-term rental operators of changes to local regulations when the short-term rental platform is notified by the Department. Upon request, the short-term rental platform shall provide documentation demonstrating that the required notification was provided.

F. Upon request, permit the Director to review any records that are required to be kept under this Chapter 6.600.

### **6.600.065 Summaries of short-term rental regulations**

The Department shall, as soon as practicable after passage of the ordinance introduced as Council Bill [REDACTED], and as the Department shall deem necessary thereafter, prepare a summary of this Chapter 6.600 and any other applicable regulations or identified best practices for operating a short-term rental. This shall include information pertinent to the neighborhood where the short-term rental is located including, but not limited to parking restrictions, restrictions on noise and amplified sounds, trash collection schedule, and any other information, as determined by the Director.

### **6.600.070 Short-term rental operator general provisions**

All short-term rental operators who offer dwelling units, or portions thereof, for short-term rental use in the City shall comply with the following:

A. Possess no more than one valid short-term rental operator license issued pursuant to this Chapter 6.600.

B. Limit on the number of dwelling units provided by the short-term rental operator.

1. Except as provided in subsection 23.600.070.B.2, a short-term rental operator may be issued a license to provide a maximum of one dwelling unit, or portion thereof, for short term rental use, or a maximum of two dwelling units, if one of the units is the operator's primary residence. If the short-term rental operator's primary residence is located on a lot that includes a principal dwelling unit and an accessory dwelling unit, both units shall be considered the operator's primary residence.



2. A short-term rental operator who operates short-term rentals in the Downtown Urban Center, Uptown Urban Center, or the South Lake Union Urban Center, as established in the Seattle Comprehensive Plan, may be issued a license to provide short-term rental use in: (1) the operator's primary residence, or portion thereof; (2) any dwelling units located in the Downtown Urban Center, Uptown Urban Center, or the South Lake Union Urban Center that the short-term rental operator provided as a short-term rental prior to the effective date of the ordinance introduced as Council Bill [REDACTED], and (3) no more than one additional dwelling unit, or portion thereof, located outside of the Downtown Urban Center, Uptown Urban Center, or the South Lake Union Urban Center. If the license applicant wishes to continue operating a short-term rental in a location described in subsection 6.600.070.B.2(2), the applicant must provide the Director with the following evidence of the prior short-term rental use:

a. A business license tax certificate issued by the Department of Finance and Administrative Services for the short-term rental use, in effect on the effective date of the ordinance introduced as Council Bill [REDACTED]; and

b. Records demonstrating collection and remittance of all applicable local, state and federal taxes within the 12-month period prior to the effective date of the ordinance introduced as Council Bill [REDACTED]; and

c. A registry identifying the dates the dwelling unit was used as short-term rental within the 12-month period prior to the effective date of the ordinance introduced as Council Bill [REDACTED].

C. Post the short-term rental operator license number issued for the dwelling unit on every listing advertising or soliciting the dwelling unit, or portion thereof, for use as a short-term rental.

1 D. Comply with all standards provided in Section 23.42.060.

2 E. Provide local contact information to all short-term rental guests during a guest's  
3 stay. The local contact must be available to respond to inquiries at the short-term rental during  
4 the length of the stay.

5 F. Comply with the requirements of the Housing and Building Maintenance Code in  
6 subsection 22.214.050.M and the Rental Registration and Inspection program, unless exempted  
7 from registration pursuant to subsection 22.214.030.A.1.

8 G. Comply with RCW 19.27.530 by ensuring that all dwelling units have working  
9 smoke detectors and carbon monoxide alarm(s) in every bedroom and on all habitable floors and  
10 a properly maintained and charged fire extinguisher.

11 H. Post the following information in a conspicuous place within each dwelling unit  
12 used as a short-term rental:

- 13 1. Emergency contact information;
- 14 2. Contact information for the short-term rental operator or the designated  
15 local contact;
- 16 3. Street address;
- 17 4. Floor plan indicating fire exits and escape routes;
- 18 5. Information about how a guest can contact The City of Seattle's Customer  
19 Service Bureau to report any concerns or complaints; and
- 20 6. Maximum occupancy limits.

21 I. Upon request by the Director, provide documentation and a signed declaration of  
22 compliance attesting to compliance with subsections 6.600.070.A through 6.600.070.H.

J. Maintain liability insurance appropriate to cover the short-term rental use in the aggregate of not less than \$1,000,000 or conduct each short-term rental transaction through a short-term rental platform that provides equal or greater coverage.

K. Remit all applicable local, state and federal taxes unless the short-term rental platform does this on the short-term rental operator's behalf.

#### **6.600.080 License fees**

A. Short-term rental platform license fees. The fee for a short-term rental platform license issued pursuant to this Chapter 6.600 shall be a quarterly fee based on the total number of nights booked for short-term rental use through the short-term rental platform. Short-term rental platforms shall pay \$[2 to \$7] per night booked. The per night fees shall be calculated and paid on a quarterly basis. If a short-term rental platform fails to provide complete information as required by subsection 6.600.060.C, the quarterly per night license fee may be estimated by the Director.

B. Short-term rental operator license fees. The fee for a short-term rental operator license issued pursuant to this Chapter 6.600 shall be [\$50 - \$100] per dwelling unit annually, paid at the time the application is submitted to the City.

C. The Director may adjust any of the fees in subsections 6.600.080.A and 6.600.080.B in the Director's Rules following consideration of the following factors:

1. The projected costs and annual budget allotted for administrative, enforcement and regulatory costs across the short-term rental industry;
2. The need for increased enforcement to reduce illegal activity;
3. The total number of nights booked in Seattle city limits across the short-term rental industry; and

4. The administrative burden of issuing additional short-term rental platform or operator licenses.

D. The purpose of any adjustment is to ensure the fees cover the Director's administrative, enforcement and other regulatory costs.

E. License fees are non-refundable and non-transferrable.

#### **6.600.090 Enforcement and rulemaking**

The Director of Finance and Administrative Services is authorized to enforce this Chapter 6.600 and to promulgate and adopt rules pursuant to Chapter 3.02 to implement the provisions of this Chapter 6.600.

#### **6.600.100 Short-term rental platform – Violations and enforcement**

A. Violations. It is a violation of this Chapter 6.600 for any person or short-term rental platform to:

1. Operate a short-term rental platform in Seattle city limits without possessing a valid short-term rental platform license issued pursuant to this Chapter 6.600.

2. Provide booking services to short-term rental operators who do not possess a valid short-term rental operator licenses issued pursuant to this Chapter 6.600.

3. Misrepresent any material fact in an application for a short-term rental platform license or other information submitted to the Director pursuant to this Chapter 6.600.

4. Fail to comply with any requirements of Chapter 6.600 applicable to short-term rental platforms.

B. Enforcement

1. Investigation and notice of violation

1                   a.       The Director is authorized to investigate any person or short-term  
2 rental platform the Director reasonably believes does not comply with the provisions of Chapter  
3 6.600 applicable to short-term rental platforms.

4                   b.       If, after investigation, the Director determines that any provisions  
5 of provisions of Chapter 6.600 applicable to short-term rental platforms have been violated, the  
6 Director may issue a notice of violation to the short-term rental platform or other person  
7 responsible for the violation.

8                   c.       The notice of violation shall state the provisions violated,  
9 necessary corrective action, and a compliance due date.

10                  d.       The notice of violation shall be served upon the short-term rental  
11 platform, agent, or other responsible person by personal service or regular first class mail  
12 addressed to the last known address for the short-term rental platform or responsible person.

13                  e.       Nothing in this Section 6.600.100 limits or precludes any action or  
14 proceeding to enforce this code, and nothing obligates or requires the Director to issue a notice  
15 of violation prior to the imposition of civil or criminal penalties.

16                  f.       Unless a request for review before the Director is made in  
17 accordance with subsection 6.600.100.B.2, the notice of violation shall become the final order of  
18 the Director.

19                   2.       Review by the Director

20                  a.       Any person aggrieved by a notice of violation issued by the  
21 Director pursuant to subsection 6.600.100.B.1 may obtain a review of the notice by requesting  
22 such review in writing within ten days of the date of the notice. When the last day of the period  
23 so computed is a Saturday, Sunday or federal or City holiday, the period shall run until 5 p.m. on

1 the next business day. Within 15 days of the request for review, the aggrieved person may submit  
2 additional information in the form of written material to the Director for consideration as part of  
3 the review.

4                   b.       The review will be made by a representative of the Director who is  
5 familiar with the case and the applicable ordinances. The Director's representative will review all  
6 additional information received by the deadline for submission of information. The reviewer may  
7 also request clarification of information received. After review of the additional information, the  
8 Director may:

- 9                               1.       Sustain the notice of violation;  
10                              2.       Withdraw the notice of violation;  
11                              3.       Continue the review to a date certain for receipt of  
12 additional information; or  
13                              4.       Modify the notice of violation, which may include an  
14 extension of the compliance date.

15                   c.       The Director shall issue an Order of the Director containing the  
16 decision and shall cause the same to be mailed by first class mail to the person or persons  
17 requesting the review and the persons named on the notice of violation.

18                   d.       Extension of compliance date. The Director may grant an  
19 extension of time for compliance with any notice or order, whether pending or final, upon the  
20 Director's finding that substantial progress toward compliance has been made and that the public  
21 will not be adversely affected by the extension. An extension of time may be revoked by the  
22 Director if it is shown the conditions at the time the extension was granted have changed, the  
23 Director determines a party is not performing corrective actions as agreed, or if the extension

1 creates an adverse effect on the public. The date of revocation shall then be considered the  
2 compliance date.

3 4. Penalties

4 a. In addition to any other sanction or remedial procedure that may be  
5 available, any person violating or failing to comply with any of the provisions of Chapter 6.600  
6 applicable to short-term rental platforms shall be subject to the following cumulative penalties  
7 for each violation for each listing from the date the violation occurs until compliance is achieved:

- 8 1) \$500 per day for each violation for the first ten days, and  
9 2) \$1,000 per day for each violation for each day beyond ten  
10 days of non-compliance until compliance is achieved.

11 b. In cases where the Director has issued a notice of violation or order  
12 of the Director, the violation will be deemed to begin, for purposes of determining the number of  
13 days in violation, on the date that compliance is required on the notice of violation or order of the  
14 Director.

15 5. Civil actions. Civil actions to enforce subsection 6.600.040.A, Section  
16 6.600.060, or subsection 6.600.100.A shall be brought in the Seattle Municipal Court, except as  
17 otherwise required by law or court rule. In any civil action for a penalty, the City has the burden  
18 of proving by a preponderance of the evidence that a violation exists or existed; the issuance of a  
19 notice of violation or an order following a review by the Director is not itself evidence that a  
20 violation exists.

21 6. Appeals to Superior Court. Final decisions of the Seattle Municipal Court  
22 on enforcement actions authorized by subsection 6.600.100.A may be appealed pursuant to the  
23 Rules for Appeal of Courts of Limited Jurisdiction.

**6.600.110 Short-term rental operator -- Violations and enforcement**

A. Violations. It is a violation of this Chapter 6.600 for any person to:

1. Provide a dwelling unit, or portion thereof, for short-term rental use without possessing a valid short-term rental operator's license for that dwelling unit, or portion thereof, issued pursuant to this Chapter 6.600.

2. Misrepresent any material fact in any short-term rental operator license application or other information submitted to the Director pursuant to this Chapter 6.600.

3. Fail to comply with any requirements of Chapter 6.600 applicable to short-term rental operators.

B. Enforcement. If after investigation the Director determines that any of the provisions of Chapter 6.600 applicable to short-term rental operators have been violated, the Director may issue a civil citation to the short-term rental operator or other person responsible for the violation.

1. The civil citation shall include the following information: (1) the name and address of the person to whom the citation is issued; (2) the address of the dwelling unit involving the violation; (3) a separate statement of each provision violated; (4) the date of the violation; (5) a statement that the person cited must respond to the civil citation within 15 days after service; (6) a space for entry of the applicable penalty; (7) a statement that a response must be sent to the Hearing Examiner and received not later than 5 p.m. on the day the response is due; (8) contact information for the Hearing Examiner where the citation is to be filed; (9) a statement that the citation represents a determination that a violation has been committed by the person named in the citation and that the determination shall be final unless contested as



provided in this chapter; and (10) a certified statement of the Director's representative issuing the citation, authorized by RCW 9A.72.085, setting forth facts supporting issuance of the citation.

2. Service. The citation shall be served by first class mail, addressed to the short-term rental operator or other person responsible for the violation. Service shall be complete three days after the mailing. If a citation sent by first class mail is returned as undeliverable, service may be made by posting the citation at a conspicuous place on The property where the violation occurred and service shall be complete on the date of posting. The citation may also be served in person.

3. Response to citations

a. A person cited must respond to a citation in one of the following ways:

1) Paying the amount of the monetary penalty specified in the citation, in which case the record shall show a finding that the person cited committed the violation; or

2) Requesting in writing a mitigation hearing to explain the circumstances surrounding the commission of the violation and providing an address to which notice of such hearing may be sent; or

3) Requesting in writing a contested hearing specifying the reason why the cited violation did not occur or why the person cited is not responsible for the violation, and providing an address to which notice of such hearing may be sent.

b. A response to a citation must be received by the Office of the Hearing Examiner no later than 15 days after the date the citation is served. When the last day of

1 the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period shall  
2 run until 5 p.m. on the next business day.

3 c. Failure to respond. If a person fails to respond to a citation within  
4 15 days of service, an order shall be entered by the Hearing Examiner finding that the person  
5 cited committed the violation stated in the citation, and assessing the penalty specified in the  
6 citation.

7 4. Hearings

8 a. Mitigation hearings

9 1) Date and notice. If a mitigation hearing is requested, the  
10 mitigation hearing shall be held within 30 days after written response to the citation requesting  
11 such hearing is received by the Hearing Examiner. Notice of the time, place, and date of the  
12 hearing shall be sent to the address specified in the request for hearing not less than ten days  
13 prior to the date of the hearing.

14 2) Procedure at hearing. The Hearing Examiner shall hold an  
15 informal hearing that shall not be governed by the Rules of Evidence. The person cited may  
16 present witnesses, but witnesses may not be compelled to attend. A representative from the  
17 Department of Finance and Administrative Services may also be present and may present  
18 additional information, but attendance by a representative from the Department of Finance and  
19 Administrative Services is not required.

20 3) Disposition. The Hearing Examiner shall determine  
21 whether the cited person's explanation justifies reduction of the monetary penalty; however, the  
22 monetary penalty may not be reduced unless the Department of Finance and Administrative  
23 Services affirms or certifies that the violation has been corrected prior to the mitigation hearing.

1 Factors that may be considered in whether to reduce the penalty include whether the violation  
2 was caused by the act, neglect, or abuse of another; or whether correction of the violation was  
3 commenced prior to the issuance of the citation but that full compliance was prevented by a  
4 condition or circumstance beyond the control of the person cited.

5 4) Entry of order. After hearing the explanation of the person  
6 cited and any other information presented at the hearing, the Hearing Examiner shall enter an  
7 order finding that the person cited committed the violation and assessing a monetary penalty in  
8 an amount determined pursuant to subsection 6.600.110.B.5. The Hearing Examiner's decision is  
9 the final decision of the City on the matter.

10 b. Contested hearings

11 1) Date and notice. If a person requests a contested hearing,  
12 the hearing shall be held within 60 days after the written response to the citation requesting such  
13 hearing is received.

14 2) Hearing. Contested hearings shall be conducted pursuant to  
15 the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted  
16 by the Hearing Examiner for hearing contested cases, except as modified by this Section  
17 6.600.110. The issues heard at the hearing shall be limited to those that are raised in writing in  
18 the response to the citation and that are within the jurisdiction of the Hearing Examiner. The  
19 Hearing Examiner may issue subpoenas for the attendance of witnesses and the production of  
20 documents.

21 3) Sufficiency. No citation shall be deemed insufficient for  
22 failure to contain a detailed statement of the facts constituting the specific violation which the

1 person cited is alleged to have committed or by reason of defects or imperfections, provided such  
2 lack of detail, or defects or imperfections do not prejudice substantial rights of the person cited.

3 4) Amendment of citation. A citation may be amended prior to  
4 the conclusion of the hearing to conform to the evidence presented if substantial rights of the  
5 person cited are not thereby prejudiced.

6 5) Evidence at hearing. The certified statement or declaration  
7 authorized by RCW 9A.72.085 shall be prima facie evidence that a violation occurred and that  
8 the person cited is responsible. The certified statement or declaration authorized under RCW  
9 9A.72.085 and any other evidence accompanying the report shall be admissible without further  
10 evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085  
11 shall also be admissible without further evidentiary foundation. The person cited may rebut the  
12 Department of Finance and Administrative Services' evidence and establish that the cited  
13 violation(s) did not occur or that the person contesting the citation is not responsible for the  
14 violation.

15 6) Disposition. If the citation is sustained at the hearing, the  
16 Hearing Examiner shall enter an order finding that the person cited committed the violation and  
17 impose the applicable penalty pursuant to subsection 6.600.110.B.5. The Hearing Examiner may  
18 reduce the monetary penalty in accordance with the mitigation provisions in subsection  
19 6.600.100.B.4.a.3. If the Hearing Examiner determines that the violation did not occur, the  
20 Hearing Examiner shall enter an order dismissing the citation.

21 7) Final decision. The Hearing Examiner's decision is the final  
22 decision of the City.

1                   c.       Failure to appear for hearing. Failure to appear for a requested  
2 hearing will result in an order being entered finding that the person cited committed the violation  
3 stated in the citation and assessing the penalty specified in the citation. For good cause shown  
4 and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order  
5 entered upon a failure to appear and schedule a new contested hearing date.

6                   5.       Citation penalties

7                   a.       Violation warning. The Director may, in an exercise of discretion,  
8 issue a warning to the person responsible for the violation if that person has not been previously  
9 warned or cited for violating this Chapter 6.600.

10                  b.       First violation. The first time a person is found to have violated  
11 one of the provisions referenced in subsection 6.600.040.B, Section 6.600.070, or subsection  
12 6.600.110.A, the person shall be subject to a penalty of \$150.

13                  c.       Second and subsequent violations. Any second or subsequent time  
14 a person is found to have violated one of the provisions referenced in subsection 6.600.040.B,  
15 Section 6.600.070, or subsection 6.600.110.A, the person shall be subject to a penalty of \$500 for  
16 each subsequent violation.

17                  d.       Collection of penalties. If the person cited fails to pay a penalty  
18 imposed pursuant to this subsection 6.600.110.B, the penalty may be referred to a collection  
19 agency. The cost to the City for the collection services will be assessed as costs, at the rate  
20 agreed to between the City and the collection agency, and added to the penalty. Alternatively,  
21 the City may pursue collection in any other manner allowed by law.

22                  e.       Each day a separate violation. Each day a person violates or fails to  
23 comply with one of the provisions referenced in subsection 6.600.040.B, Section 6.600.070, or

subsection 6.600.110.A may be considered a separate violation for which a civil citation may be issued.

### **6.600.120 Alternative criminal penalty**

Any person who violates or fails to comply with any of the provisions in this Chapter 6.600 and who has had at least two or more citations, or two or more notices of violation issued against them for violating this Chapter 6.600, within the past three years from the date the criminal charge is filed shall be guilty of a misdemeanor subject to the provisions of Chapters 12A.02 and 12A.04, except that absolute liability shall be imposed for such a violation or failure to comply and none of the mental states described in Section 12A.04.030 need be proved. The Director may request the City Attorney prosecute such violations criminally as an alternative to the citation and notice of violation procedures outlined in this Chapter 6.600.

### **6.600.130 Additional relief**

The Director may seek legal or equitable relief to enjoin any acts or practices when necessary to achieve compliance.

### **6.600.140 Denial, revocation, or refusal to renew license**

A. The Director may revoke the license of any short-term rental platform for violating or failing to comply with any applicable provision of this Chapter 6.600 or for any reason set forth in Section 6.208.020.

B. The Director may revoke the license of any short-term rental operator for violating or failing to comply with any applicable provision of this Chapter 6.600 or for any reason set forth in Section 6.208.020.

1           C.       The Director shall deny any renewal application if grounds exist for the Director  
2 to deny a license pursuant to Section 6.202.230. No license may be renewed unless all  
3 outstanding penalties assessed against the licensee are paid in full to the Department.

4           Section 2. The provisions of this ordinance are declared to be separate and severable.  
5 The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this  
6 ordinance, or the invalidity of its application to any person or circumstance, does not affect the  
7 validity of the remainder of this ordinance, or the validity of its application to other persons or  
8 circumstances.

Section 3. This ordinance shall take effect on January 1, 2018.

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of  
\_\_\_\_\_, 2017.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Edward B. Murray, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

(Seal)



## **EXHIBIT C**

1  
2  
3  
4  
5  
6  
7 IN THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

8 MICHELLE AND JAMES ACQUAVELLA,

9 Petitioners,

10 vs.

11 CITY OF SEATTLE,

12 Respondent,

13 and

14 BARRY AND LINDA ANDREWS, ROBERT  
AND LESLIE FISCHER, JOHN GARDNER, S.  
DON GARRISON, ROBERT AND OLESIA  
GREENE, ALEX AND WANDA HORNBECK,  
15 ROBERT LANGDON AND PATRICIA  
NARASIMHAN, CASEY MACDONALD,  
16 LUIS SALAS, REBECCA SNELLENBERG,  
HENRY STOCKBRIDGE AND COLEEN  
17 WRIGHT,

18 Additional Parties.

No. 08-2-39188-4 SEA

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND JUDGMENT

19 This matter came on for trial before this Court on the Land Use Petition brought by Petitioners  
20 Michelle and James Acquavella ("Acquavella"). Trial was held April 24, 2009. Petitioner Acquavella  
21 was represented by Courtney Kaylor, McCullough Hill, P.S. Respondent City of Seattle ("City") was  
22 represented by Patrick Downs, Assistant City Attorney, Seattle City Attorney's Office.

23 The Court makes the following Findings of Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND JUDGMENT - 1

Judge Julie Spector  
King County Superior Court  
516 Third Avenue  
Seattle WA 98104  
(206) 296-9160

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**I. FINDINGS OF FACT**

1. This action is a Land Use Petition filed under the Land Use Petition Act ("LUPA") (RCW 36.70C).

2. Acquavella owns and manages condominium units in the The Elektra Condominiums ("Elektra"), located at 1400 Hubbell Place in Seattle. Transcript of Proceedings Before the Hearing Examiner City of Seattle ("TR") 6:18-7:2. The Covenants, Conditions, Restrictions and Reservations ("CC&Rs") for the Elektra, recorded in 1997, expressly permit rental for periods of three days or more. Documentary Record ("DR"), Tab 12:74. Specifically, the CC&Rs state that "no Unit Owner shall be permitted to Lease his or her Unit for transient purposes which shall be deemed as Renting for any period less than three (3) days." *Id.*

3. The Elektra building was designed and constructed as a multi-family residential building. DR Tab 6:13. The building entrance is not open to the general public. TR 10:23-26. The building garage is not available for general public parking but each condominium is assigned an individual parking space in the garage. TR 10:23-11:2. Each condominium has the physical characteristics of an independent residence, including a full kitchen, living area and bedroom. TR 10:9-12. Each condominium has a separate mail box, telephone line and utilities for the exclusive use of its occupants. TR 10:12-14, 11:15-21; DR Tab 6:13.

4. The condominium units owned and managed by Acquavella have been used for owner occupancy and both long and short term rental. Acquavella testified before the Hearing Examiner that her tenants have an expectation of privacy and dominion over the rental unit. TR 11:8-9. Acquavella does not enter the condominiums except in emergencies (such as when a repair is needed) and then only after providing notice consistent with landlord tenant law. TR 11:9-14. Acquavella regards all of her

1 rentals as residential. TR 11:7-8. A rental agreement is entered into prior to occupancy by Acquavella's  
2 tenants. TR 11:4-6.

3 5. Acquavella testified that she does not provide housekeeping service, room service or  
4 transportation service. TR 10:11-12, 11:22-26. Acquavella's tenants may contract for outside utility  
5 services, such as cable or internet service. TR 11:15-18. Acquavella's tenants receive a front door key  
6 and access the building as any other resident does. TR 10:23-26. Acquavella's tenants are given a  
7 garage door opener to access their parking space. TR 10:23-11:2. They are given a key to the mail box  
8 associated with the unit and, at their option, may receive mail at this mail box. TR 10:15-17.  
9 Acquavella's tenants have included persons working in Seattle, receiving medical treatment in Seattle,  
10 and visiting Seattle for other reasons. TR 12:24-13:19.

11 6. The undated Sea to Sky Rentals rental agreement included in the City's code enforcement  
12 file is consistent with Acquavella's testimony. DR Tab 101:514-517. The rental agreement gives the  
13 tenant exclusive possession and use of the condominium. The rental agreement provides, "[w]hen you  
14 rent the unit, you assume responsibility for it and its contents." DR Tab 101:516. The rental agreement  
15 does not permit Acquavella to enter the condominium except to make required repairs at the request of  
16 the tenant. *Id.* The rental agreement states the condominiums are rented furnished (including kitchen  
17 equipment and linens). *Id.* However, "[h]ousekeeping services are not provided with your rental." *Id.*  
18 Clean linens are provided only once at the request of the tenant. *Id.* Tenants are responsible for long  
19 distance telephone charges. *Id.* The rental agreement requires a nonrefundable cleaning fee and  
20 provides that tenants are liable for damages to the condominium. DR Tab 101:515. The rental  
21 agreement allows eviction (the common term for an unlawful detainer action) for violation of the rental  
22 agreement. DR Tab 101:514. The rental agreement refers to "guests," "check in," "reservation," and  
23 recommends travel insurance. DR Tab 101:514-515.

1           7.       The City issued a Notice of Violation ("NOV") to Acquavella stating that her rental  
2 activities constituted an impermissible lodging use. DR Tab 58:242-244.

3           8.       The City issued NOVs to other property owners in the Elektra as well. DR Tab 58:254-  
4 256. One of these property owners, the Mummerys, submitted a six month lease agreement to the City  
5 in response to the NOV. DR Tab 40:178-183. The lease agreement used the Seattle Suites rental  
6 agreement form. *Id.* This rental agreement form contains many terms that are similar to ones in the Sea  
7 to Sky rental agreement that the City argues are characteristic of lodging. The Seattle Suites agreement  
8 states that violation of the agreement will result in immediate termination (DR Tab 40:179); smoking,  
9 repeated neighbor complaints, pets, parties or excessive noise will all result in immediate termination  
10 (DR Tab 40:179, 182); payment can be made by credit card (DR Tab 40:181); the tenant's credit card  
11 may be charged for damages (DR Tab 40:180); the landlord pays for basic utilities but the tenant is  
12 responsible for payment for long distance telephone calls and upgraded utilities (*id.*); the terms "guests,"  
13 "reservation" and "check in/out" are used (DR Tab 40:181-182); and housekeeping is not typically  
14 provided but may be provided for an additional fee (DR Tab 40:183). However, contrary to the City's  
15 current position, City staff determined that a six month lease using this rental agreement form  
16 constituted a residential use, not a lodging use. DR Tab 39:177.

17           9.       Acquavella sought reconsideration of the NOV issued to her. DR Tab 51:229-230. The  
18 City then issued a Land Use Order of the Director, which upheld the NOV. DR Tab 42:188-197.  
19 Subsequently, the City entered into an agreement with Acquavella that provided that Acquavella would  
20 submit a request for a Code Interpretation regarding whether her rental activities constitute a residential  
21 use. DR Tab 31:152-156.

22           10.      Acquavella submitted the request for a Code Interpretation to the City. DR Tab 9:34-60.  
23 The City then issued the Code Interpretation, which concluded that rental of condominium units in the

1 Elektra for less than 30 days is a lodging use. DR Tab 10:61-69. The Code Interpretation also  
2 concluded that short term rental is not permitted as an accessory use to a primary residential use of  
3 property. *Id.* Acquavella appealed the Code Interpretation to the City's Hearing Examiner. DR Tab  
4 30:147-151.

5 11. The Hearing Examiner held a quasi-judicial hearing on the appeal. DR Tab 6:12. Andy  
6 McKim, a Land Use Planner with more than 20 years of experience with the City, testified that the  
7 City's prior practice was to use a 30 day "rule of thumb" for distinguishing between lodging and  
8 residential uses. TR 16:20-23; TR 29:15-17; DR Tab 6:13. Following the hearing, on October 23, 2008,  
9 the Hearing Examiner issued a decision ("Hearing Examiner Decision") reversing the Code  
10 Interpretation. DR Tab 6:17. The Hearing Examiner concluded that the 30 day rule announced in the  
11 Code Interpretation is not supported by the Seattle Municipal Code ("City Code" or "SMC") and cannot  
12 be used by the City. DR Tab 6:16. No party appealed this portion of the Hearing Examiner Decision.

13 12. In addition, the Hearing Examiner found that the Elektra was permitted as a multifamily  
14 residential building and that the building and its operations have not been modified. DR Tab 6:13. The  
15 Hearing Examiner also concluded that "[e]ach condominium unit fits the definition of 'dwelling unit'  
16 because the unit itself consists of a group of rooms within a structure designed, arranged, and intended  
17 to be occupied by not more than one household as independent living accommodations." DR Tab 6:16.  
18 No party appealed this finding or conclusion.

19 13. Nevertheless, the Hearing Examiner concluded that "to be considered a 'housekeeping  
20 unit,' the person or persons who rent a condominium unit on a short term basis would have to be  
21 authorized during their occupancy to manage the unit itself ('the house') and affairs associated with it  
22 ('home affairs')." DR Tab 6:16. The Hearing Examiner based this determination on the definition of  
23 "housekeeping" in Webster's Dictionary but did not consider the related definition of "housekeep" in the

1 same dictionary. DR Tab 6:15. The Hearing Examiner concluded that there was not enough evidence in  
2 the record to determine whether Acquavella's rental activities are a residential use. DR Tab 6:16.

3 14. In addition, the Hearing Examiner determined that Acquavella's rentals are not accessory  
4 to a primary residential use of property. DR Tab 6:17.

5 15. Following the Hearing Examiner decision, the City refused to withdraw the NOV or  
6 Director's Order. Instead, the City indicated that it was forwarding the matter to the City's Law  
7 Department with a request that enforcement actions be filed. DR Tab 33:160.

8 16. Acquavella timely filed this action under LUPA appealing portions of the Hearing  
9 Examiner Decision.

10 17. In a LUPA action this Court sits in an appellate capacity and reviews the factual record  
11 created before the City. In this case, the Court supplemented the factual record created before the  
12 Hearing Examiner with the City's code enforcement file. In its briefing and argument, the City relied  
13 almost exclusively on documents in the code enforcement file. The City cited only one exhibit from the  
14 Hearing Examiner record. The Hearing Examiner did not consider the documents in the code  
15 enforcement file. Acquavella had no opportunity to cross examine witnesses whose statements are  
16 contained in these documents or otherwise dispute the accuracy or relevance of the information  
17 contained in them. Also, many of the documents relate to other property owners or to short term rental  
18 generally. DR Tab 40, 49, 63, 65, 75, 100, 102. In addition, many of the documents are outdated, with  
19 many created more than a year before the Hearing Examiner proceedings. DR Tab 56 (field notes dated  
20 10/29/07), Tab 63 (anonymous correspondence dated 9/19/07), Tab 64 (correspondence dated 9/19/07),  
21 Tab 65 (correspondence dated 9/19/07), Tab 67 (correspondence dated 9/19/07), Tab 74  
22 (correspondence dated 9/13/07), Tab 75 (correspondence dated 9/7/07), Tab 88 (correspondence dated  
23 8/31/07), Tab 101 (Sea to Sky web pages, many outdated), Tab 103 (outdated vrbo.com web pages), Tab

1 104 (outdated vacationhomrentals.com web pages), Tab 105 (outdated roadsideamerica.com web  
2 pages), Tab 106 (outdated vacationrentals inamerica.com web pages), Tab 108 (outdated trails.com web  
3 pages). Notably, the Sea to Sky rental agreement in the code enforcement file is undated. DR Tab  
4 101:514-517.

5 18. Acquavella makes three alternative requests for relief. First, Acquavella requests that the  
6 Court reverse the Hearing Examiner Decision and determine that her rental activities are residential.  
7 Primarily, Acquavella argues that her rental activities are residential under the plain language of the City  
8 Code. Acquavella also argues that the "control test" used by the City is not relevant to the question  
9 before the Court, which is whether Acquavella's rental activities are a residential use under the City  
10 Code, because the "control test" does not appear in the City Code. Even if the "control test" were  
11 relevant, Acquavella argues that her rental activities would constitute a residential use under this test. In  
12 addition, Acquavella argues that the City Code is unconstitutionally vague as interpreted and applied to  
13 Acquavella by the City.

14 19. Second, in the alternative, if the Court determines that the "control test" is relevant, then  
15 Acquavella requests that the Court remand this matter to the Hearing Examiner for an evidentiary  
16 hearing.

17 20. Third, in the alternative, Acquavella requests that the Court determine that her rental  
18 activities are a permitted accessory use.

## 19 II. CONCLUSIONS OF LAW

20 Based on the foregoing findings of fact, the Court enters the following Conclusions of Law:

### 21 Jurisdiction and Standard of Review

22 1. This Court has jurisdiction over this action under RCW 36.70C.040.  
23



1           2.       The Court may grant relief if one of the standards set out in RCW 36.70C.130 is met.  
2       These standards are: (a) The body or officer that made the land use decision engaged in unlawful  
3       procedure or failed to follow a prescribed process, unless the error was harmless; (b) the land use  
4       decision is an erroneous interpretation of the law, after allowing for such deference as is due the  
5       construction of a law by a local jurisdiction with expertise; (c) the land use decision is not supported by  
6       evidence that is substantial when viewed in light of the whole record before the court; (d) the land use  
7       decision is a clearly erroneous application of the law to the facts; (e) the land use decision is outside the  
8       authority or jurisdiction of the body or officer making the decision; or (f) the land use decision violates  
9       the constitutional rights of the party seeking relief.

10      RCW 36.70C.130(1).

11           3.       Whether a decision is an erroneous interpretation of the law is a question of law reviewed  
12      *de novo*. *Schofield v. Spokane County*, 96 Wn. App. 581, 586, 980 P.2d 277 (1999). If an agency's  
13      interpretation of its code is not a matter of preexisting policy, as in this case, no deference is due to that  
14      interpretation. *Sleasman v. City of Lacey*, 159 Wn.2d 639, 647, 151 P.2d 990 (2007). Substantial  
15      evidence is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or  
16      correctness" of the decision. *Schofield, supra*, 96 Wn. App. at 586. A decision is clearly erroneous if  
17      "although there is evidence to support it, the reviewing court on the entire evidence is left with the  
18      definite and firm conviction that a mistake has been committed." *Id.* Acquavella bears the burden of  
19      proof in this matter.

20           4.       In this case, the portions of the Hearing Examiner Decision under appeal are an erroneous  
21      interpretation of the law, not supported by substantial evidence and a clearly erroneous application of the  
22      law to the facts.

23           Principles of Statutory Interpretation

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND JUDGMENT - 8

Judge Julie Spector  
King County Superior Court  
516 Third Avenue  
Seattle WA 98104  
(206) 296-9160

1           5.       In interpreting a statute, the Court's objective is to ascertain and carry out the legislative  
2 intent. *Delyria v. Wash. State School for the Blind*, 165 Wn.2d 559, 563, 199 P.3d 980 (2009). If the  
3 statute's meaning is plain on its face, then the Court must give effect to the plain meaning as an  
4 expression of legislative intent. *Id.* The dictionary may be used to define the plain meaning. *Sleasman*,  
5 *supra*, 159 Wn.2d at 643. The interpretation of local ordinances is governed by the same principles as  
6 the interpretation of statutes. *Griffin v. Thurston County Board of Health*, 165 Wn.2d 50, 55, 196 P.3d  
7 141 (2008).

8           6.       Agencies do not have the authority to make rules which amend or change legislative  
9 enactments. *Washington Federation of State Employees v. State Personnel Board*, 54 Wn. App. 305,  
10 308, 773 P.2d 421 (1989). Instead, the City must interpret and enforce the City Code as written, without  
11 adding new criteria on a case-by-case basis. *Schroeder v. Bellevue*, 83 Wn. App. 188, 193, 920 P.2d  
12 1216 (1996).

13           First Claim: Acquavella's Rental Activities Are Residential

14           7.       SMC 23.45.004 states that "multifamily structures" are a principal use permitted outright  
15 in all multifamily zones. The Elektra is located in a multifamily zone. DR Tab 6:12.

16           8.       "Residential" means "a use within a structure intended to be occupied as a dwelling."  
17 SMC 23.84.032. Residential uses include multifamily structures, which are structures containing two or  
18 more dwelling units. *Id.* The Hearing Examiner found and the City acknowledged in its briefing that the  
19 Elektra is a multifamily structure. DR Tab 6:13.

20           9.       A dwelling unit is "a room or rooms located within a structure, designed, arranged,  
21 occupied or intended to be occupied by not more than one (1) household as living accommodations."  
22 SMC 23.84.008. The Hearing Examiner concluded that the condominiums in the Elektra are dwelling  
23 units and no party appealed this conclusion. DR Tab 6:16.

1           10.     Based on this conclusion, the Court need not address the subsidiary term “household” or  
2 its subsidiary term “housekeeping unit.” Nevertheless, based on the record before the Court,  
3 Acquavella’s tenants qualify as households and housekeeping units.

4           11.     A household is a “housekeeping unit” consisting of a limited number of people (any  
5 number of related persons; eight or fewer non-related, nontransient persons; or eight or fewer related and  
6 non-related nontransient persons). SMC 23.84.016. In its briefing, the City acknowledged that this  
7 definition focuses on the number of residents and Acquavella’s tenants do not exceed the eight-person  
8 limit.

9           12.     The SMC does not define “housekeeping unit.” According to Webster’s Dictionary,  
10 “housekeep” means “to perform the routine duties (as cooking and cleaning) of managing a house” and  
11 “housekeeping” means “the management of a house and home affairs.” Merriam Webster’s Collegiate  
12 Dictionary (10<sup>th</sup> ed. 1993). The American Heritage Dictionary provides a similar definition, stating that  
13 “housekeeping” means “[p]erformance or management of household tasks.” The American Heritage  
14 Dictionary of the English Language (4<sup>th</sup> ed. 2000).

15           13.     Under the definitions of “housekeep” and “housekeeping” in Webster’s Dictionary and  
16 the American Heritage Dictionary, authority or control over the condominium is not required. Instead,  
17 under these dictionary definitions, the term “housekeeping unit” means only an individual or group of  
18 people who perform routine household tasks (such as cooking and cleaning).

19           14.     Acquavella’s rental of condominiums in the Elektra is a permitted residential use under  
20 the plain language of the City Code.

21           15.     This conclusion is consistent with the recent decision of the Court of Appeals, Division I,  
22 in *Ross v. Bennett*, 148 Wn. App. 40, \_\_\_ P.3d \_\_\_ (2008). In that case, the Court construed the plain  
23 meaning of the term “residential” in a property covenant. The Court held that short term vacation rental

1 qualifies as a residential use. This Court, like the Court in *Ross*, is construing the plain meaning of the  
2 term “residential.”

3 16. The City Code defines “lodging” as “a retail sales and service use in which the primary  
4 activity is the provision of rooms to transients.” SMC 23.84.024. The City Code does not define  
5 “transients.” The dictionary definition of this term is “passing with time; transitory”; “remaining in a  
6 place only a brief time.” American Heritage College Dictionary (4th ed. 2004).

7 17. In determining what constitutes a “brief time” with regard to rentals at the Elektra, the  
8 Court may reasonably look to the Elektra CC&Rs. The CC&Rs define “transient” rentals as those less  
9 than three days. DR Tab 12:74. Acquavella’s rentals are all for three days or more. DR Tab 6:12.  
10 Therefore, they are not “transient.”

11 18. In addition, rentals less than 30 days occur only an average of 41% of the time in the  
12 condominiums rented by Acquavella. TR 12:12-14. The Court cannot ignore the time that the  
13 condominiums are vacant for purposes of calculating this percentage because the record does not show  
14 what time period the Acquavella condominiums are vacant. Further, the City has acknowledged that the  
15 residential use of an owner or long term tenant does not terminate in his or her absence. TR 43:17-15.  
16 Therefore, even if rentals less than 30 days are considered “transient,” these rentals are not the “primary  
17 activity” in the condominiums.

18 19. Lodging includes bed and breakfasts, hotels and motels. SMC 23.84.024. A hotel is a  
19 building in “which a majority of the rooms are provided to transients for a fee on a daily or short-term  
20 basis.” *Id.* No party claims that the Elektra is a bed and breakfast or motel. The Elektra is also not a  
21 hotel. The Elektra has 200 condominiums but only approximately 25 condominiums are rented on a  
22 short term basis. DR Tab 6:12; TR 12:18-24.  
23

1           20.     The “control test” used by the City is not relevant to the determination of whether  
2 Acquavella’s rentals are a permitted use under the City Code. The “control test” does not appear in the  
3 City Code. While the City Council could adopt the “control test,” it has not done so, and both the City  
4 and the Court are bound to apply the City Code as written. *Washington Federation of State Employees*,  
5 *supra*, 54 Wn. App. at 308; *Schroeder, supra*, 83 Wn. App. at 193.

6           21.     In addition, the Court lacks jurisdiction to determine the nature of the relationship  
7 between Acquavella and her renters. The issue before the Court is whether Acquavella’s rentals qualify  
8 as a permitted use under the City’s Land Use Code (Title 23 of the City Code). The Land Use Code  
9 establishes the rules for the City’s regulation of land; it does not determine relationships between private  
10 parties.

11           22.     Even if the “control test” were relevant, Acquavella’s rentals would qualify as residential.  
12 In *Mercer Island v. Steinman*, 9 Wn. App. 479, 513 P.2d 80 (1973), the Court determined that a  
13 residential tenant (distinguished from a lodger) “has exclusive legal possession of premises and is  
14 responsible for their care and condition.” The record shows that Acquavella’s tenants have exclusive  
15 legal possession during their tenancy. TR 11:8-14; DR Tab 101:514-517. In addition, they are  
16 responsible for the care and condition of the condominium during their tenancy. TR 10:9-12, 11:22-26;  
17 DR Tab 6:13; DR Tab 101:516. Therefore, they are residential tenants.

18           23.     The Court in *Mercer Island* also identified six factors that are “indicative of tenancy”:

19           (1) the exclusive possession of the rooms by the occupiers without a right of control or entry in  
20 the owner during the occupancy, (2) the separateness of each living unit from the remaining  
21 areas of the structure, (3) the existence of private outside entryways for each living space with  
22 keys possessed privately by the occupiers, (4) the absence of commonly shared cooking, eating  
and bathing facilities or other areas, (5) the arrangement of rental on a landlord-tenant basis, and  
(6) the absence of the performance of cooking, cleaning, garbage removal and telephone services  
for the occupiers by the owner.

23           *Mercer Island, supra*, 9 Wn. App. 484-485.

1           24.     The evidence in the record shows that Acquavella's tenants have all these indicia of  
2 residential tenancy. First, they have exclusive possession of the condominiums during the tenancy  
3 without the right of entry by the landlord. TR 11:8-14; DR Tab 101:514-517. Second, each  
4 condominium unit is a separate and independent living unit. TR 10:12-18; DR Tab 6:13. Third,  
5 Acquavella's tenants have keys to not only the condominium units that they are renting, but also to the  
6 building, which has a controlled entrance not open to the public. TR 10:22-26. Fourth, there are no  
7 commonly shared cooking, eating, or bathing facilities. TR 10:9-12; DR Tab 6:13.

8           25.     Fifth, Acquavella's rentals are arranged on a landlord tenant basis. Acquavella regards  
9 all of her rentals as residential rentals. TR 11:7-8. Acquavella's rental agreement includes the hallmark  
10 of residential tenancy, exclusive use and possession by the tenant. DR Tab 101:514-517; TR 11:8-14.  
11 The fact that it refers to tenants as "guests," allows payment by credit card, recommends travel  
12 insurance, and refers to "check in" and "check out" is not controlling. The rental agreement is generally  
13 consistent with landlord tenant law, including provisions requiring Acquavella to make repairs if  
14 needed, allowing eviction (a common term for unlawful detainer) and providing that the tenant is  
15 responsible for damages caused by the tenant. DR Tab 101:514-515; RCW 59.18.060(5) (duty to  
16 repair); RCW 59.18.150 (right of entry to repair); RCW 59.18.140 (tenant duty to conform with  
17 reasonable obligations in rental agreement), RCW 59.18.180 (substantial noncompliance grounds for  
18 unlawful detainer action); RCW 59.18.285 (nonrefundable fees permitted); SMC 22.206.160.A (duty to  
19 repair); SMC 22.206.170.F (right of entry for repair); SMC 22.206.160.C.1.c (noncompliance with  
20 material term of rental agreement grounds for eviction). If any of the terms of the rental agreement  
21 violate landlord tenant law, the result is not that the rental is not residential, but rather that these terms  
22 cannot be enforced against the tenant.  
23

1           26. Sixth, Acquavella does not provide cooking or cleaning services for the tenants as part of  
2 the lease agreement. TR 11:22-26; DR Tab 101:516. Fresh towels may be provided only once on  
3 request. DR Tab 101:516. Tenants are responsible for complying with City requirements for separation  
4 of recyclables for garbage removal. *Id.* The cost of local, but not long distance, telephone service is  
5 included in the rent. *Id.*

6           27. The City's claim that the Acquavella rentals are lodging under the "control test" is not  
7 consistent with the City's established practice and is not entitled to deference. *Sleasman, supra*, 159  
8 Wn.2d at 647. The City's historic practice has been to distinguish residential from lodging uses based  
9 on a 30-day rule of thumb, not the "control test." TR 16:20-23; TR 29:15-17; DR Tab 6:13. In addition,  
10 the Seattle Suites rental agreement contains many of the terms that the City identifies as characteristics  
11 of lodging. DR Tab 40:179-183. However, the City determined that a six month lease using the Seattle  
12 Suites rental agreement constituted a residential use. DR Tab 39:177.

13           28. The decision in *Benham v. Morton & Furbish Agency*, 929 A.2d 471, 2007 ME 83 (2007)  
14 has no precedential value in this case because it is not a Washington case. In addition, it is not  
15 persuasive because it conflicts with Washington precedent. *Hughes v. Chehalis School District No. 302*,  
16 61 Wn.2d 222, 377 P.2d 642 (1963) (a lease can be as short as one evening); *Ross, supra*, 148 Wn. App.  
17 40 (vacation rental is a residential use).

18           29. Acquavella argues that the City Code is unconstitutionally vague as interpreted and  
19 applied to Acquavella by the City. In light of the Court's conclusion that Acquavella's rentals are  
20 residential under the plain language of the City Code, the Court does not reach this issue. The City  
21 Code is not susceptible to challenge on this basis on the record before the Court. This ruling does not  
22 preclude Acquavella from bringing such a challenge in the future based on additional facts.

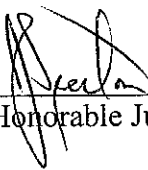
1           30.     Also, in light of the conclusion that the Acquavella rentals are residential, the Court does  
2 not reach Acquavella's alternative claims that this matter should be remanded to the Hearing Examiner  
3 or that her rental activities are a permitted accessory use.

4                               **III.    JUDGMENT**

5           Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED,  
6 ADJUDGED AND DECREED as follows:

7           1.     Acquavella's rental activities are a permitted residential use.

8           Dated this 5th day of May, 2009

9                                 
10                              \_\_\_\_\_  
11                              The Honorable Judge Julie Spector  
12  
13  
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23



## **EXHIBIT D**

# Housing Affordability Impacts of HomeAway in Seattle

# Scope of our analysis

1. The role of short-term rentals in the Seattle housing market
2. Characteristics of HomeAway rentals
3. The observed effect of HomeAway on Seattle housing prices and affordability
4. Impact of HomeAway properties on low-income and vulnerable populations

# HomeAway Summary Stats

Number of  
properties rented  
at least once

498

Average nights  
per stay

4.1

Percent of hosts  
renting out an  
entire property

100%

Average cost  
per night

\$207

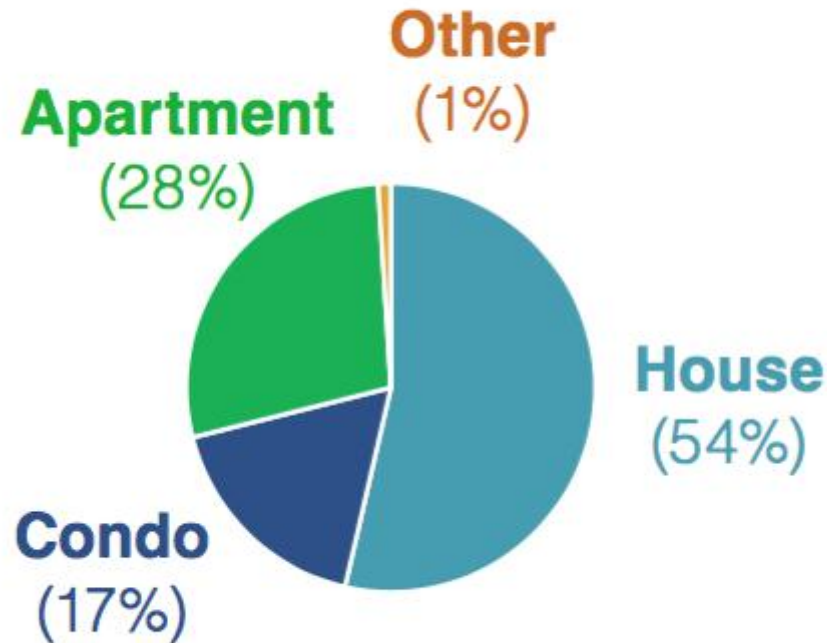
Median nights  
rented per year

100

*April 2015-April 2016*

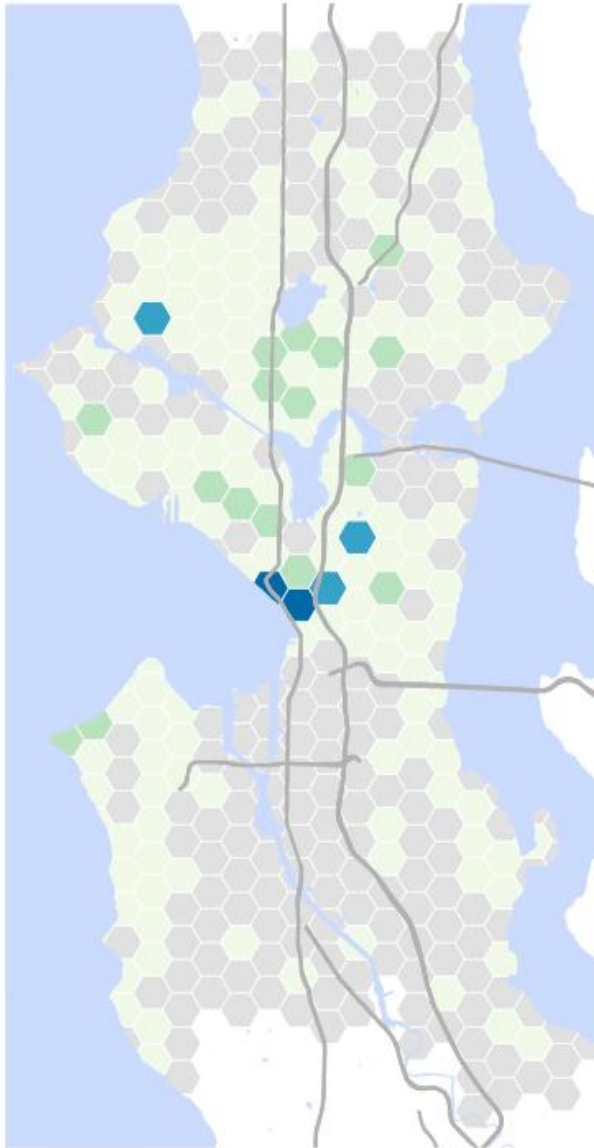
# HomeAway Summary Stats

## Types of Properties Rented on HomeAway

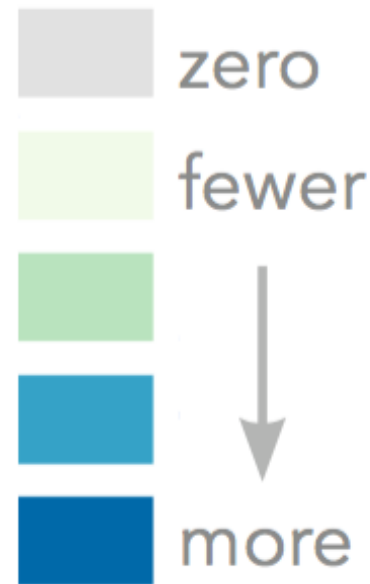


*April 2015-April 2016*

# HomeAway Summary Stats

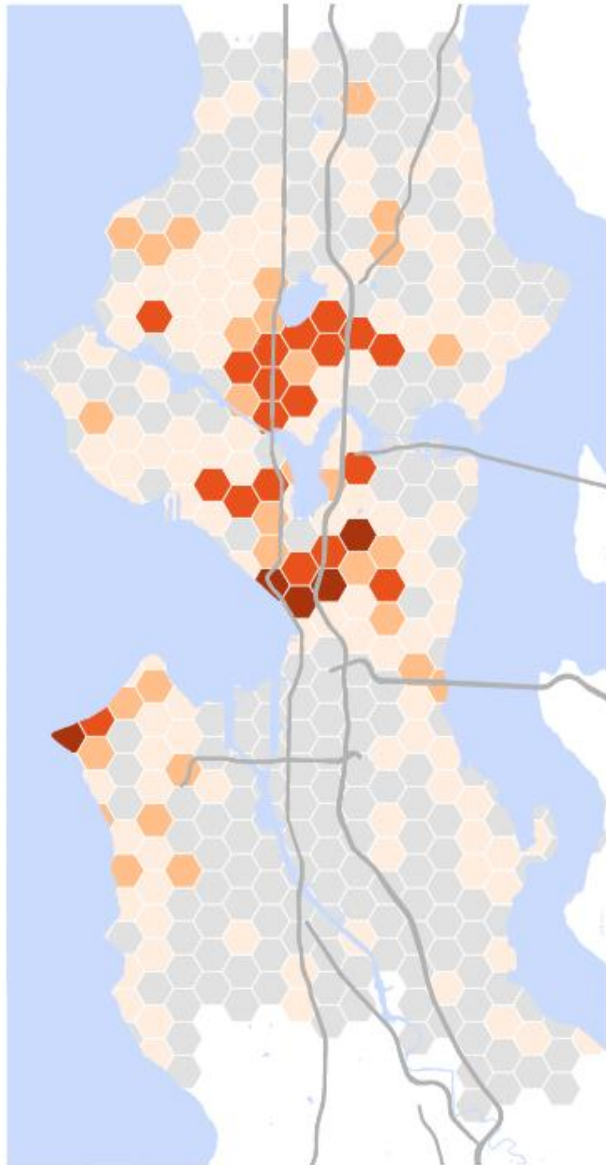


**Number of  
HomeAway  
properties rented  
at least once**

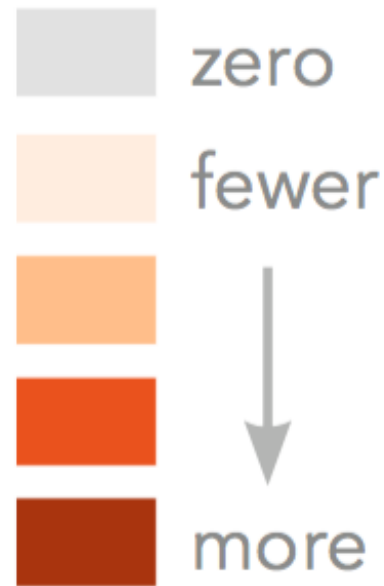


*April 2015-April 2016*

# HomeAway Summary Stats



Number of nights  
booked at HomeAway  
properties



*April 2015-April 2016*

# Findings



# HomeAway properties are a very small share of Seattle's total housing stock

## Single-family housing



## Multifamily housing



Number of units  
in Seattle (2014)

154,500

169,900

Number of  
HomeAway  
properties rented  
at least once

272

226

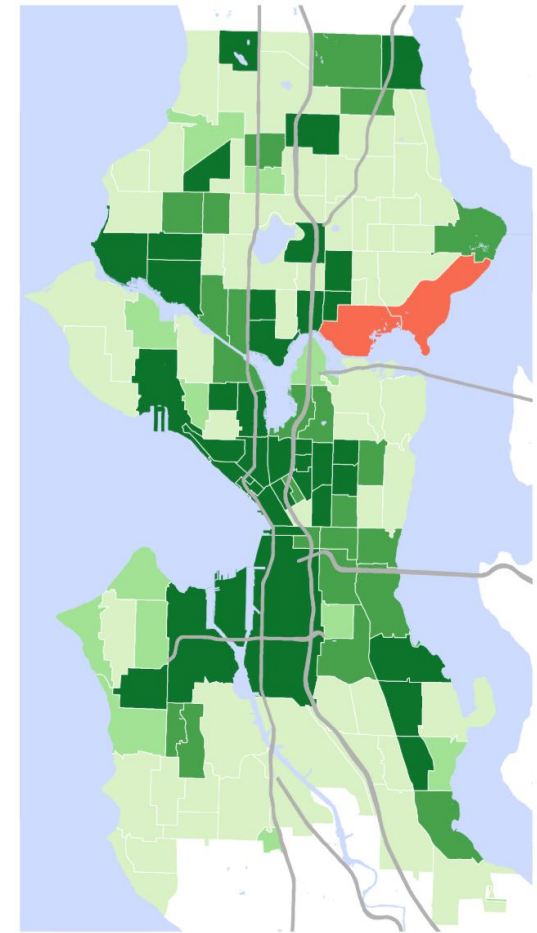
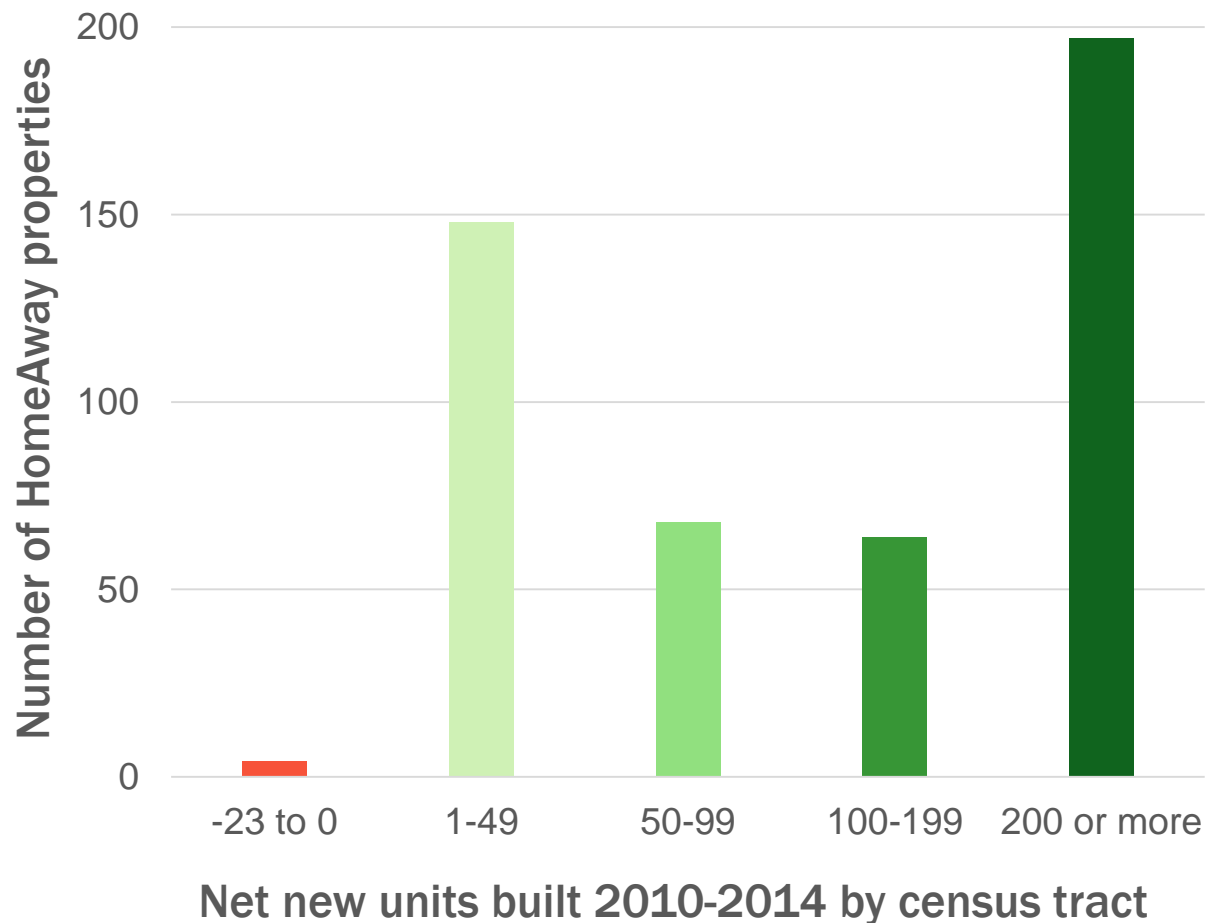
Percent of total  
units rented on  
HomeAway

0.18%

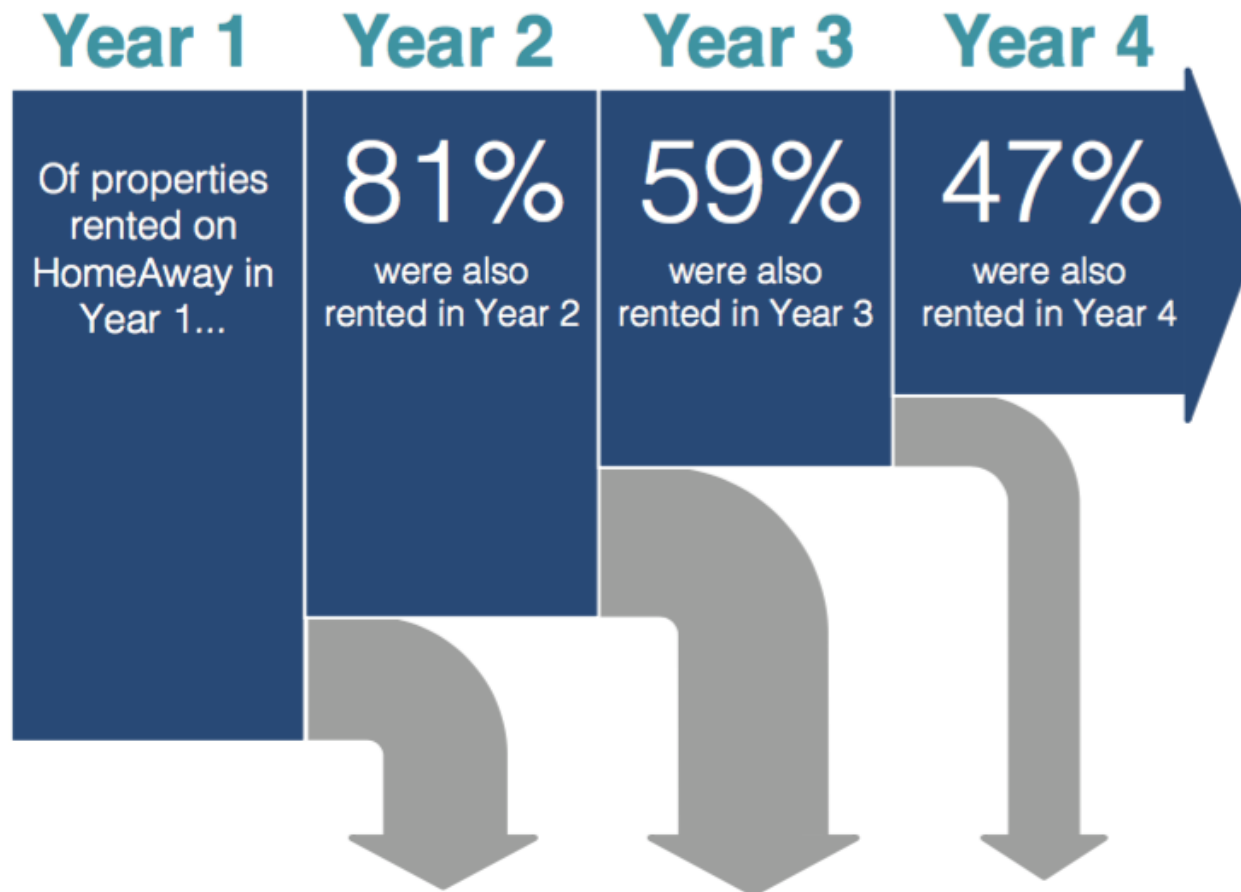
0.13%

# HomeAway properties tend to be located in areas of Seattle that have added the most housing units

**Distribution of HomeAway Properties by  
Number of Residential Units Built 2010-2014**



# HomeAway properties don't stay on the short-term rental market



**More than half of HomeAway properties rented in Year 1 were not renting on HomeAway 3 years later**

# Few HomeAway properties generate significant short-term rental income

- About 60% of 1, 2, and 3 bedroom properties on HomeAway earn less than comparable long-term rents.

How much money do people make renting on HomeAway?



# A sizable share of HomeAway hosts occupy the property for a portion of the year

Host lives at  
property part of  
the year

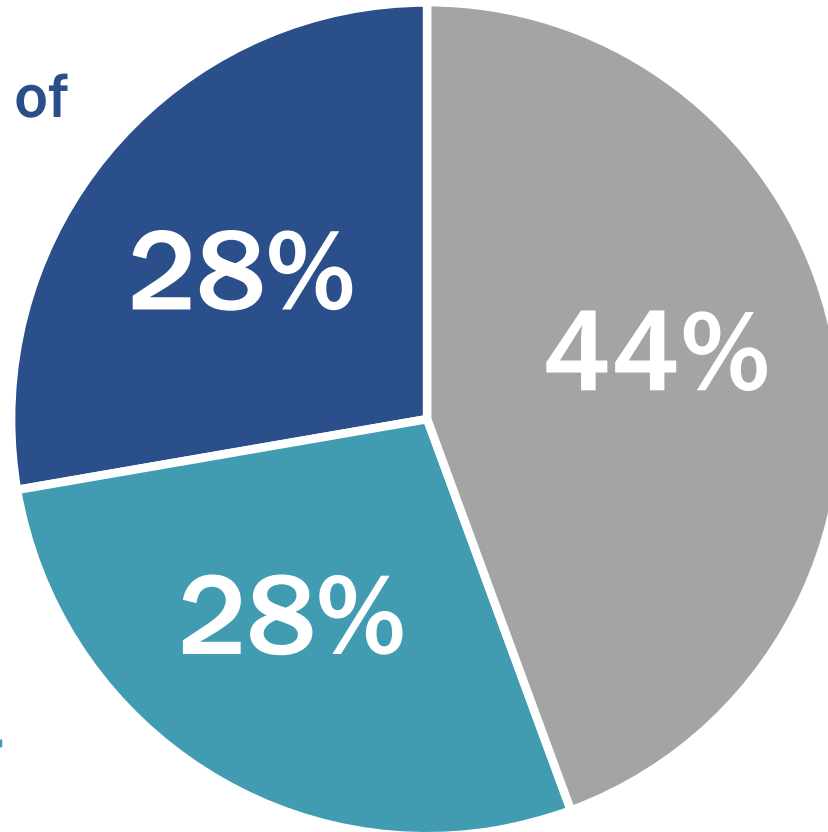
28%

For Rent  
by Owner

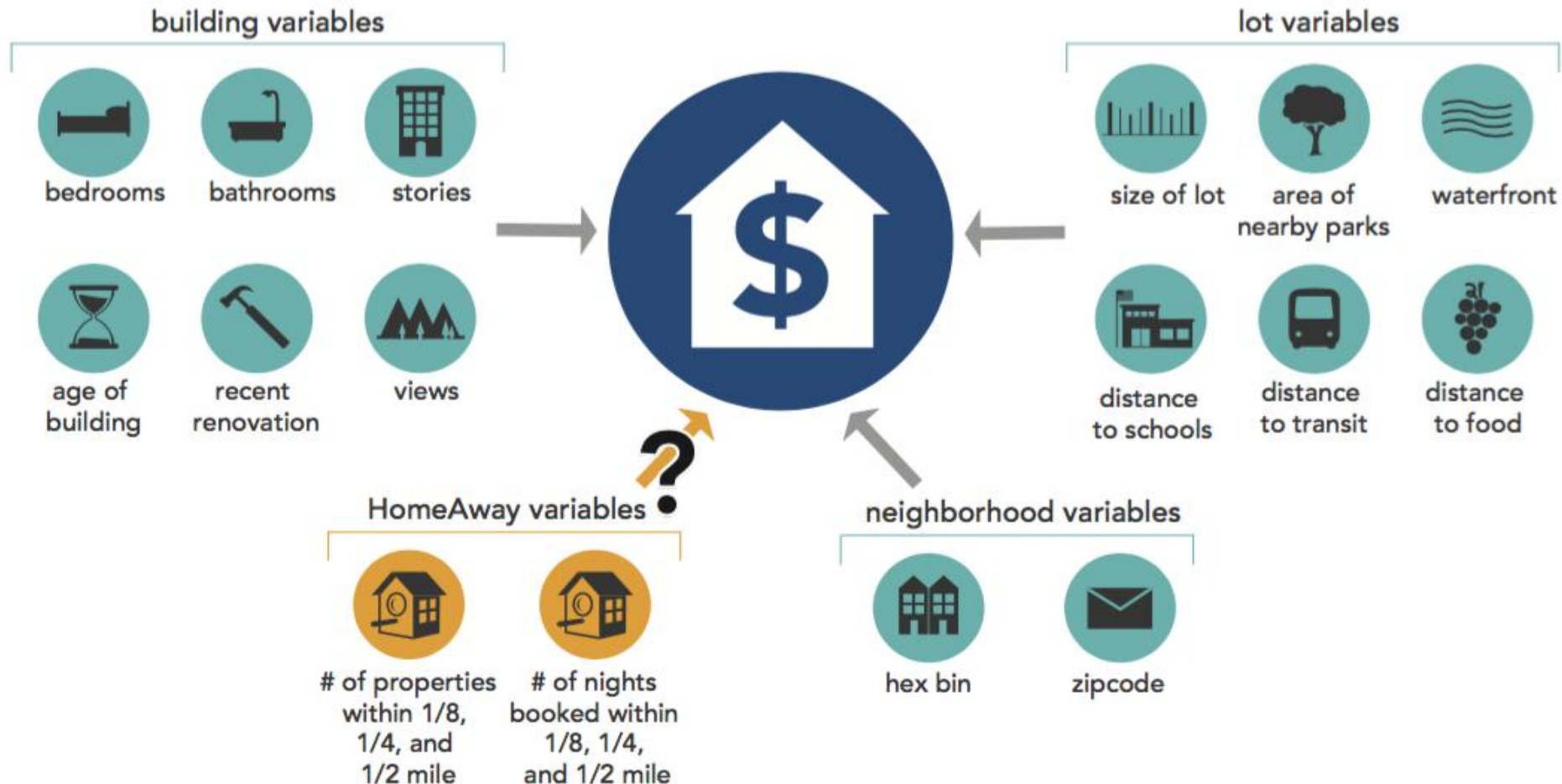
28%

Property  
Manager

44%

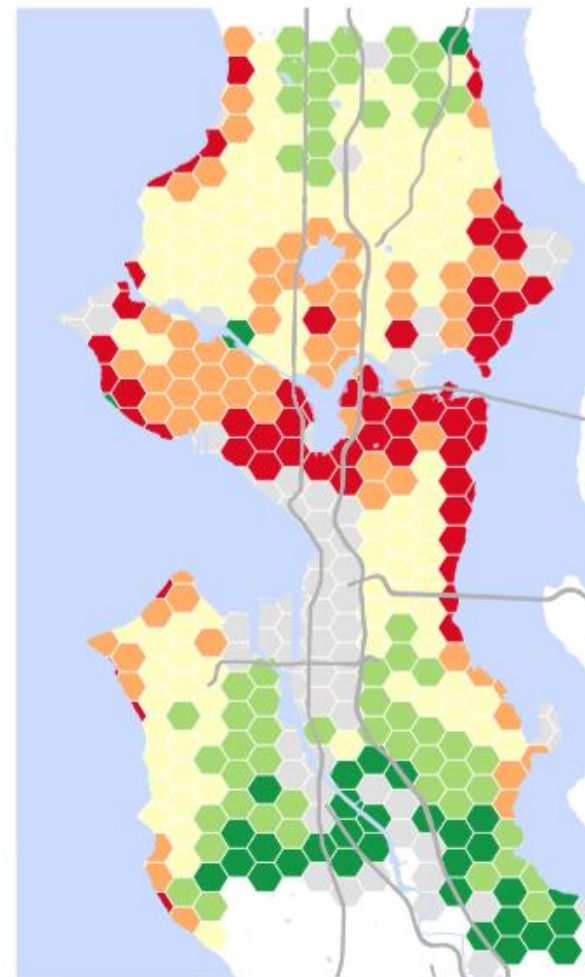
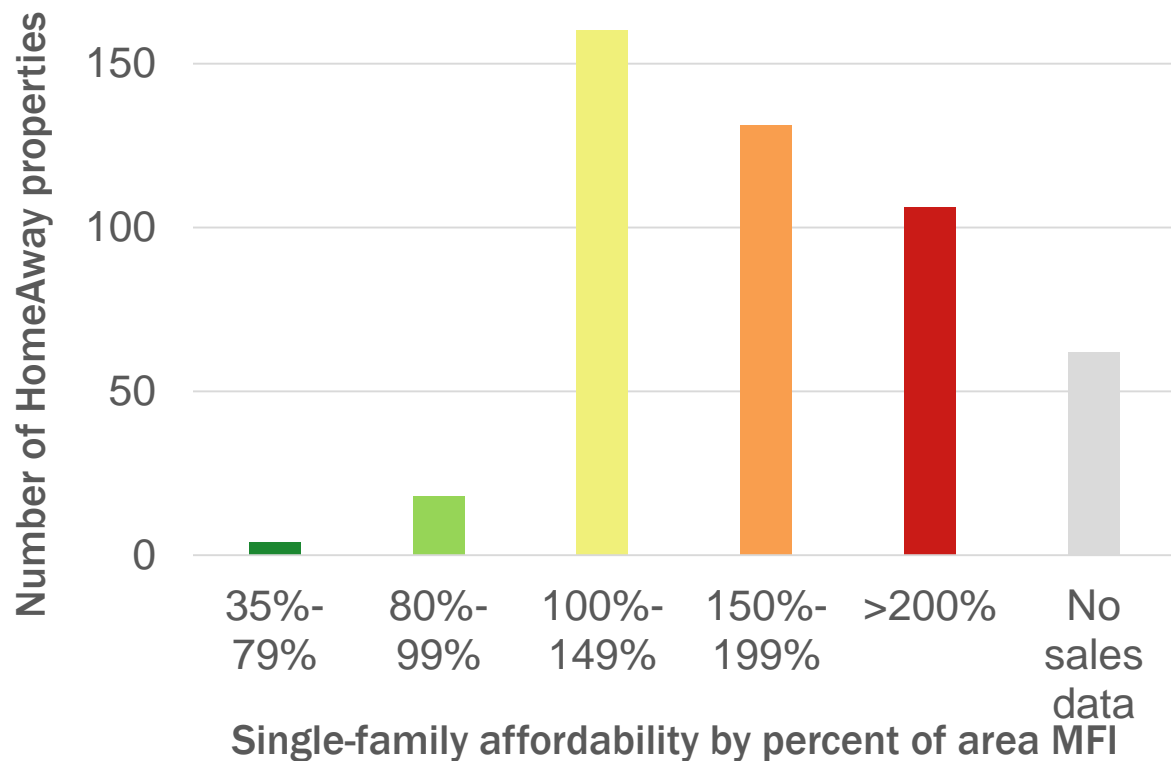


# HomeAway properties have no impact on the sales prices of nearby homes



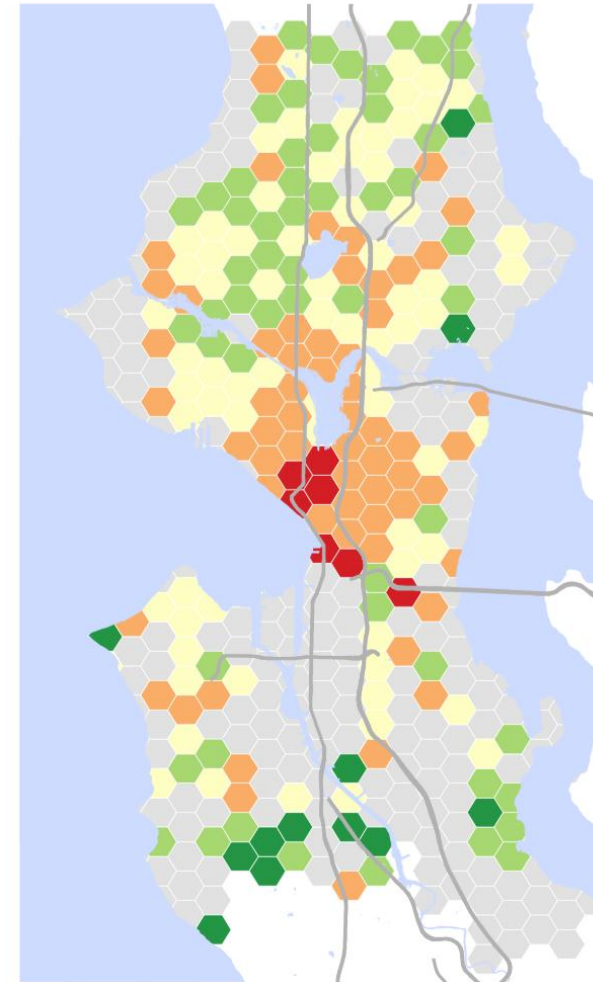
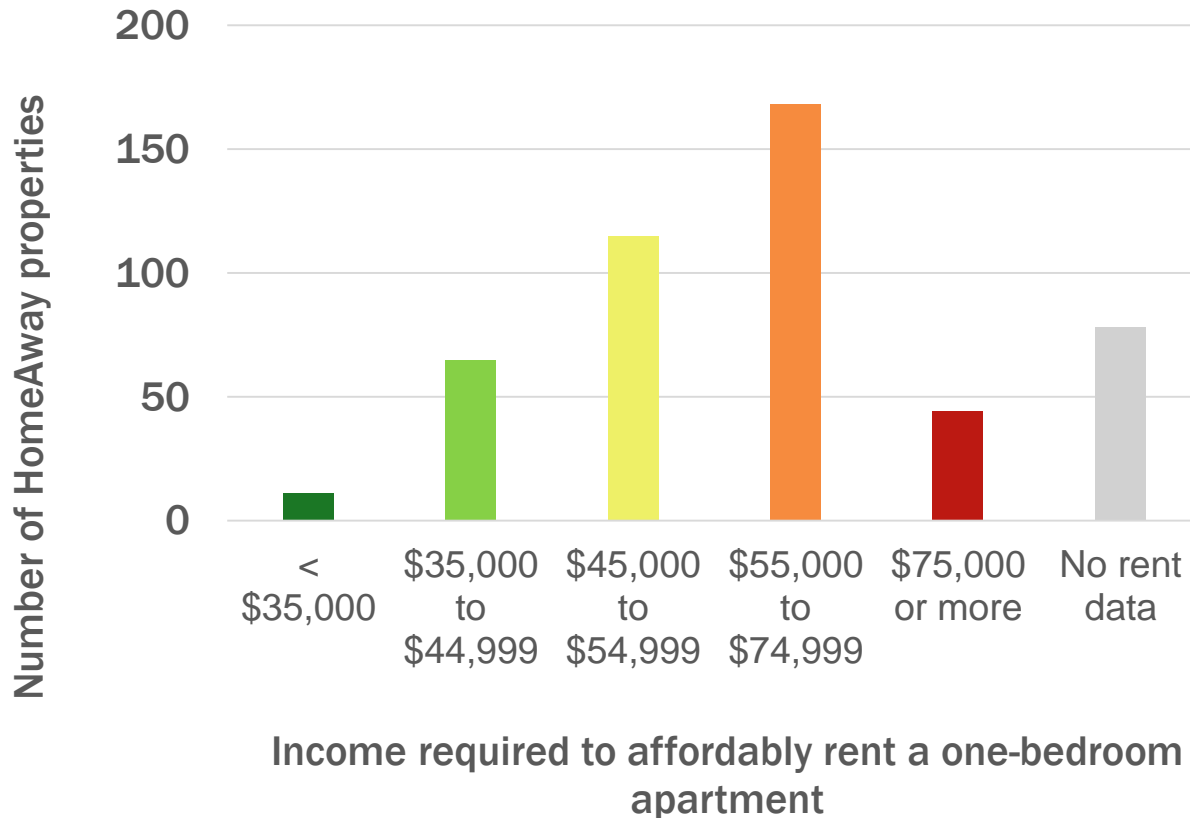
# Most HomeAway properties are located where home prices are less affordable

**Distribution of HomeAway Properties by Percent of Area Median Family Income Required to Afford a Home**



# HomeAway properties are located where multifamily rents are less affordable

**Distribution of HomeAway Properties by Income Required to Afford a 1-Bedroom Apartment**





# Few HomeAway properties are located in areas at high risk of displacement

Distribution of HomeAway Properties by Vulnerability to Displacement Score

