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A Tale of Two Cities: The Regulatory Battle To Incorporate Short-Term Residential Rentals Into Modern Law

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COMMENTS

A TALE OF TWO CITIES: THE REGULATORY BATTLE TO INCORPORATE SHORT-TERM RESIDENTIAL RENTALS INTO MODERN LAW

DANA PALOMBO*

This Comment examines the home-sharing company, Airbnb, and the issues surrounding its legality. The online platform connects hosts willing to rent out their residences on a short-term basis to paying guests. Airbnb's operations raise legal and regulatory questions in terms of liability, taxes, and zoning, in addition to the issue of its encroachment on the hotel industry. However, Airbnb has contributed to city economies by offering to pay hotel taxes and by launching the Shared City initiative to give back to local communities. This Comment focuses on New York City ("NYC") and San Francisco's treatment of short-term residential rentals. NYC's conservative position is that Airbnb is detrimental to the city and to its hospitality and tourism industries. It contends short-term rentals violate New York state's Multiple Dwelling Act ("MDA") and seeks to rid NYC of them altogether. On the other hand, San Francisco, the birthplace of Airbnb, respects the objectives of the company and seeks to regulate its operations by

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incorporating short-term rentals into San Francisco's Administrative Code, as demonstrated by its recent passage of the short-term rental legislation. Ultimately, San Francisco's liberal approach to regulating short-term rentals, in combination with Airbnb's Shared City initiative, is the ideal catalyst for the future of home-sharing in cities across the United States.

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INTRODUCTION

The home-sharing company, Airbnb, is rapidly expanding its empire to cities across the globe.¹ Since its start in 2007, Airbnb has had more than eleven million guests stay at hosts' residences,² and is worth about ten billion dollars.³ Innovative companies like Airbnb are developing the sharing economy by infiltrating the traditional economy.⁴ The sharing economy is defined as Internet-based sharing through websites or smartphone applications ("apps").⁵ The sharing economy raises legal questions and regulatory issues, and must be navigated delicately so that the public welfare and potential for otherwise unattainable economic success and development is not quashed.⁶ The sharing economy has opened many doors, especially for those struggling in this difficult economy, and despite its public approval, it often receives condemnation from state legislators.⁷ Many people who are suffering because of the economic downturn are turning to sharing platforms to keep their homes,

1. See Ryan Lawler, *Amidst Reports of New Funding, Airbnb Growth Accelerates in Europe*, TECHCRUNCH.COM (Mar. 20, 2014), <http://techcrunch.com/2014/03/20/airbnb-big-in-europe/> (reporting Airbnb's increasing popularity, notably in Europe, where over 80% of travelers use Airbnb).

2. *Id.*

3. See, e.g., Alex Konrad & Ryan Mac, *Airbnb Cofounders To Become First Sharing Economy Billionaires As Company Nears \$10 Billion Valuation*, FORBES (Mar. 20, 2014 6:39 PM), <http://www.forbes.com/sites/alexkonrad/2014/03/20/airbnb-cofounders-are-billionaires/> (noting Airbnb's founders become young billionaires).

4. See Molly Cohen & Corey Zehngebot, *Heads Up: What's Old Becomes New: Regulating The Sharing Economy*, 58 BOS. BAR J. 6, 6 (2014) (recognizing that sharing companies encourage efficient operation using non-product assets with conventional products).

5. See *id.* (explaining platforms share, "underutilized space, skills, and stuff for monetary and non-monetary benefits").

6. See *id.* (concluding there are environmental, social, and economic benefits to the sharing economy).

7. See Elizabeth A. Harris, *The Airbnb Economy in New York: Lucrative but Often Illegal*, N.Y. TIMES, Nov. 4, 2013, http://www.nytimes.com/2013/11/05/nyregion/the-airbnb-economy-in-new-york-lucrative-but-often-unlawful.html?_r=0 (citing a case where illness and job loss led a host to rely on Airbnb in the difficult economy); see also Tomio Geron, *Airbnb and The Unstoppable Rise Of The Share Economy*, FORBES (Jan. 23, 2013 7:00 AM), <http://www.forbes.com/sites/tomiogeron/2013/01/23/airbnb-and-the-unstoppable-rise-of-the-share-economy/> (quoting a partner at Google saying, "[t]he sharing economy is a real trend. I don't think this is some small blip").

pay rent, or maintain their livelihood.⁸

Sharing platforms are not limited to the same services as Airbnb. Companies like Uber, Sidecar, and Lyft have profited by revolutionizing transportation.⁹ Just like the hotel industry suffers from short-term residential rentals, the taxi industry suffers from the use of personal cars as cabs.¹⁰ Sharing economy pioneers meet legal complications and pushback from traditional industries as their technology and business models evolve.¹¹

Apprehensions about accepting the sharing economy are valid since many of these sharing companies fly under the legal and regulatory radar.¹² Airbnb has created regulatory concerns that have sparked legal changes worldwide, but it raises the most pressing legal issues in two prominent American cities: NYC and San Francisco.¹³ Airbnb found a backdoor into the hotel industry and crafted regulatory hacks that caused unexpected competition and infuriation among traditional businesses that demanded sharing companies follow customary rules.¹⁴ NYC is threatened by Airbnb and has more stringently enforced the New York State "Illegal Hotel Law," formally known as the MDA.¹⁵ NYC seeks to prevent short-term rentals of residences because these rentals may not only break state laws, but may also violate lease agreements.¹⁶

8. See generally Harris, *supra* note 7 (noting many New Yorkers use Airbnb for extra income through short-term renting).

9. See John G. Browning, *Emerging Technology and Its Impact on Automotive Litigation*, 81 DEF. COUNS. J. 83, 84 (2014) (naming these companies as pioneers of alternative transportation services).

10. See *id.* (stating these companies do not consider themselves transportation carriers).

11. See *id.* (noting the pushback by taxi unions and issues with the speed of technological innovation).

12. See Geron, *supra* note 7 (noting Airbnb's continued operation despite its illegality).

13. See *id.* (stating there are regulatory issues of short-term rentals in New York and San Francisco).

14. See Brad Tuttle, *Sharing is Hard: Legal Trouble for Airbnb, RelayRides, FlightCar*, TIME (June 6, 2013), <http://business.time.com/2013/06/06/sharing-is-hard-legal-trouble-for-airbnb-relayrides-flightcar/> (emphasizing that traditional industries need for these new platforms to abide by customary rules).

15. See Andrea Peterson, *Airbnb is Facing Off Against New York's Attorney General. Here's Why*, WASH. POST, Apr. 22, 2014, <http://www.washingtonpost.com/blogs/the-switch/wp/2014/04/22/airbnb-is-facing-off-against-new-yorks-attorney-general-heres-why/> (explaining Airbnb disrupts local laws, dodges taxes, and perpetuates illegal hotels).

16. See, e.g., Kathy Steinmetz, *Major Reservations: Why Cities Are Worried About Airbnb*, TIME (Apr. 16, 2014), <http://time.com/64323/airbnb-san-francisco-new-york/> (taking issue with lease violations and evictions for short-term renting); see also Harris, *supra* note 7 (asserting the legality of short-

San Francisco has taken a more liberal approach by passing legislation to incorporate short-term rentals into existing regulations.¹⁷ This legislation requires Airbnb hosts to follow guidelines so that the city can regulate short-term rentals and minimize their potentially detrimental effects on the hotel industry.¹⁸ The legislation amends San Francisco's Administrative Code, but requires key changes in Airbnb's current operations.¹⁹ The pitfalls of the sharing economy include issues surrounding the legal implications of zoning, taxation, insurance, liability, and industry intrusion.²⁰ Airbnb established the Shared City initiative, which partners Airbnb with cities to return revenue to cities in order to alleviate these drawbacks.²¹

This Comment argues that the regulatory and legal issues surrounding short-term rentals via Airbnb should be evaluated, organized, and incorporated into modern regulation. It compares NYC's conservative perspective and San Francisco's liberal perspective on the concepts surrounding short-term rentals and home-sharing. It assesses zoning, taxation, insurance, and liability issues, and examines current and proposed legislation regarding short-term rentals. Airbnb's legality is considered from a regulatory standpoint, in that the strictly regulated hotel industry is compared against the lenient standards Airbnb follows. This Comment suggests that San Francisco's legislation is a step in the right direction in terms of fusing the sharing economy with current law. Further, it recommends that San Francisco's liberal perspective, in combination with Airbnb's Shared City initiative, should serve as a catalyst for future legislation in American cities.

I. INFILTRATION OF THE SHARING ECONOMY

Sharing companies have become more common, which is attributable to

term rentals if the permanent resident is present).

17. See Steinmetz, *supra* note 16 (declaring the legislation would legalize short-term rentals in a regulated way).

18. See *id.* (stating hosts need rentals approved).

19. See generally Steven T. Jones, *Chiu Introduces Legislation To Regulate Airbnb And Short-Term Housing Rentals*, S.F. BAY GUARDIAN (Apr. 15, 2014 4:22 PM), <http://www.sfbg.com/politics/2014/04/15/chiu-introduces-legislation-airbnb-and-short-term-housing-rentals>

(expanding on the legislation's stricter regulations of length and frequency of short-term rentals).

20. See Cohen & Zehngelot, *supra* note 4, at 7 (elaborating on each to prove the legal implications sharing companies face).

21. Brian Chesky, *Shared City*, MEDIUM (Mar. 26, 2014), <https://medium.com/@bchesky/shared-city-db9746750a3a> (describing the Shared City initiative and the beneficial relationships Airbnb can have with cities in which it operates).

the transformation of technology and the desire for the otherwise unobtainable.²² Technology provides reduced transaction expenditures allowing for low overhead costs.²³ These innovative companies provide a glimpse into the future and leave their users yearning for the cheap convenience the sharing economy offers.²⁴

A. Evolution of the Sharing Economy and Companies that Dominate It

The sharing economy is defined as “a system that uses technology to link supply and demand in previously impossible ways.”²⁵ It affords consumers the luxury of convenience while getting the most for their money.²⁶ It is easier than ever for a consumer to have access to short-term rentals, private drivers, and virtual department stores without having to go anywhere.²⁷ One click of a button can provide consumers with rock-bottom prices that traditional businesses cannot compete with.²⁸ However, many view the sharing economy as the enemy, instead of accepting it as the way of the future.²⁹

Sharing companies have expanded on traditional industries. Yet there are still more advances to be made within the sharing economy.³⁰

22. See Jenny Kassan & Janelle Orsi, *The Legal Landscape of the Sharing Economy*, 27 J. ENVTL. L. & LITIG. 1, 4 (2012) (observing that partaking in excessive consumption is ridiculous, so sharing is the way of the future for things we need or want).

23. See Malcolm Seymour, *Litigation May Not Be the Best Way to Fight Airbnb*, LAW360 (Jan. 8, 2014, 2:04 PM), <http://law360.com/articles /499403/litigation-may-not-be-the-best-way-to-fight-airbnb> (expressing Airbnb is underpriced compared to traditional businesses in the same field).

24. See Cohen & Zehngelot, *supra* note 4, at 6 (noting the sharing economy’s stability and potential for economic growth).

25. Rob Walker, *Why Is the ‘Sharing Economy’ Starting So Many Arguments?*, YAHOO! (June 25, 2014), <https://www.yahoo.com/tech/why-is-the-sharing-economy-starting-so-many-89792610714.html>.

26. See Geron, *supra* note 7 (asserting that access can be as convenient as ownership).

27. See *The Rise of the Sharing Economy*, THE ECONOMIST (Mar. 9, 2013), <http://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy> (explaining how the sharing economy helps consumers).

28. See Seymour, *supra* note 23 (noting Airbnb maintains its user base by having lower prices than conventional hotels).

29. See *The Rise of the Sharing Economy*, *supra* note 27 (noting the growth of the sharing economy and its worth of twenty-six billion dollars).

30. See Derek Thompson, *Airbnb CEO Brian Chesky on Building a Company and Starting a ‘Sharing’ Revolution*, THE ATLANTIC (Aug. 13, 2013, 2:07 PM), <http://www.theatlantic.com/business/archive/2013/08/airbnb-ceo-brian-chesky-on-building-a-company-and-starting-a-sharing-revolution/278635/> (indicating Airbnb founders think more innovative businesses will join the sharing economy).

Although ride-sharing and home-sharing companies have established themselves within the taxi and hotel industries respectively, other industries remain untapped.³¹ Representative David Schweikert believes that “we are entering the age of the hyper-efficient economy,” citing companies like Airbnb among those that are revolutionizing the economy.³²

Consumers find comfort in using established and familiar entities, and since the sharing economy is still a developing and unfamiliar medium, some users are skeptical of its increasing popularity.³³ While consumer confidence may not be unequivocal, the sharing economy offers society an enhanced social and technological future.³⁴ For example, sharing companies have contributed to societal organizations during disasters.³⁵ One such example is Airbnb working with NYC during Hurricane Sandy to connect people who needed shelter to Airbnb hosts who could take in refugees.³⁶

Surprisingly, Airbnb appeals more to people over fifty-five, rather than the expected eighteen to twenty-five-year-old demographic.³⁷ The appeal stems from the efficiency of the sharing economy, “collaborative consumption,”³⁸ which allows people to capitalize on what they already have access to, and its simplicity of use.³⁹ Opponents of the sharing

31. See *id.* (stating an Airbnb founder’s ideas on ways to capitalize on untapped areas of sharing from parking to cooking); see also Liz Gannes, *Sourcing Petsitters with DogVacay: 500,000 Sleepovers and Counting*, RECODE (June 20, 2014, 10:00 AM), <http://recode.net/2014/06/20/dogvacay-half-a-million-nights-later/> (describing DogVacay as “Airbnb for dogs”).

32. 160 CONG. REC. H. 5764 (daily ed. June 25, 2014) (statement of Rep. Schweikert) (aiming to tell constituents about the sharing economy’s efficiency and how it is a rapidly emerging phenomenon, exemplifying its growth by naming sharing companies, but questions if those companies threaten traditional business).

33. See Thompson, *supra* note 30 (quoting an Airbnb co-founder that some may not like untraditional experiences while traveling).

34. See Kassan & Orsi, *supra* note 22, at 5 (expressing the most marketable benefits of the sharing economy).

35. See *Emergency Mgmt 2.0: How #Socialmedia & New Tech Are Transforming Preparedness, Response, & Recovery #Disasters: Hearing Before the S. Comm. on Emergency Preparedness, Response, and Commc’ns, Comm. on Homeland Sec.*, 113th Cong. 21 (2013) (statement of Michael Beckerman, President and CEO of the Internet Ass’n) (noting how social media and sharing companies help during disasters in ways traditional businesses cannot).

36. See *id.* (explaining the difference Airbnb could have made if it existed during Hurricane Katrina).

37. See Jessica Salter, *Airbnb: The Story Behind the \$1.3bn Room-Letting Website*, THE TELEGRAPH (Sept. 7, 2012 7:00 AM), <http://www.telegraph.co.uk/technology/news/9525267/Airbnb-The-story-behind-the-1.3bn-room-letting-website.html> (explaining how Airbnb anticipates evolving and appealing to a range of users).

38. Walker, *supra* note 25.

39. See Salter, *supra* note 37 (expressing Airbnb’s co-founders’ desire to capitalize

economy claim that sharing suffocates innovation, but supporters counter that traditionalists are simply threatened by what is rapidly becoming the new norm.⁴⁰

Uber, a ride-sharing company that matches drivers with passengers, is in the sharing economy spotlight with Airbnb.⁴¹ Ride-sharing, like home-sharing, has caused controversy and faced legal complications.⁴² Like Airbnb's alleged encroachment on the hotel industry, Uber, and companies like it, spark competition within the traditional cab industry.⁴³ However, many people believe that sharing companies seek to stimulate change and improvements for consumers, rather than destroy existing industries.⁴⁴

B. What is Airbnb? The Brief Six-Year History of the Home-Sharing Company

Airbnb is considered the Uber of residential rentals or the "e-Bay for space."⁴⁵ It is the matchmaker between travelers and hosts, seeking to promote the sharing economy and encourage aspiring entrepreneurs.⁴⁶ The sharing economy allows anyone to be an entrepreneur by fostering collaboration in a pre-established framework.⁴⁷ Peer-sharing does not require individuals to be innovative or to have strong drive and passion to

on renting things that already exist).

40. See Tuttle, *supra* note 14 (discussing that peer sharing companies fail to comply with regulations that traditional companies are required to follow).

41. See Stephanie Francis Ward, 'App' Me A Ride: Internet Car Companies Offer Convenience, but Lawyers See Caution Signs, 100 A.B.A. J. 13, 14 (Jan. 2014), available at http://www.abajournal.com/magazine/article/internet_car_companies_offer_convenience_but_lawyers_see_caution_signs (discussing Uber's legal complications because of the taxi associations' complaints that Uber is an "unauthorized service provider" and should not operate without a cab license).

42. See, e.g., Browning, *supra* note 9, at 84 (discussing issues that new technology poses using ride-sharing as a controversial example).

43. See Ward, *supra* note 41, at 14 (contending taxi associations will fight until ride-sharers follow the same rules cabs do).

44. See Thompson, *supra* note 3030 (suggesting that other industries need not suffer unless they refuse to change).

45. See *id.* (attributing Airbnb as a prototype for the sharing economy by citing imitation business models).

46. See Miguel Helft, *Growing Quietly in Airbnb's Shadow*, FORTUNE (Mar. 12, 2014, 1:08 PM), <http://fortune.com/2014/03/12/growing-quietly-in-airbnbs-shadow/> (elaborating on the competitors in the home-sharing economy including HomeAway and Vacation Rentals By Owner (VRBO), and the ways they compete with Airbnb's success).

47. See Kassan & Orsi, *supra* note 22, at 7 (clarifying that the sharing economy allows people to succeed by building relationships with others rather than competing with them).

compete in the marketplace.⁴⁸

Airbnb was established in San Francisco by two friends, Joe Gebbia and Brian Chesky, who were struggling to pay rent.⁴⁹ Due to a conference in San Francisco, hotels lacked vacancies, so the pair decided to rent out airbeds in their apartment and serve breakfast to guests.⁵⁰ Based on this idea, they created airbedandbreakfast.com.⁵¹ They quickly realized that their idea could work on a larger scale if they capitalized on their strengths and expertise by taking advantage of space that already existed and only required a few modifications.⁵² The third founder, Nathan Blecharczyk, maintained Airbnb's online presence and put together its first online platform just two weeks before the conference that put Airbnb on the map.⁵³

The founders launched Airbnb just before the Democratic National Convention where President Barack Obama was due to speak, and they booked almost 1,000 rentals.⁵⁴ Despite its success, Airbnb did not generate profits until it gained investors and began charging a booking fee catapulting Airbnb from a small start-up into a budding company.⁵⁵ As Airbnb received more funding and investments, it rocketed to the ten billion dollar company it is today.⁵⁶ The founders adjusted their approach,

48. See *id.* (explaining anyone can be an entrepreneur despite lacking competitive drive).

49. See Salter, *supra* note 37 (noting the co-founders stumbled upon the idea for Airbnb while pursuing other careers).

50. See, e.g., Christine Lagorio-Chafkin, Brian Chesky, Joe Gebbia, & Nathan Blecharczyk, *Founders of Airbnb*, INC.COM (July 19, 2010), <http://www.inc.com/30under30/2010/profile-brian-chesky-joe-gebbia-nathan-blecharczyk-airbnb.html> (stating attendees of the conference were buzzing about the new way to stay); see also Salter, *supra* note 37 (describing the first three guests who were charged just eighty dollars per night).

51. Salter, *supra* note 37.

52. See *id.* (explaining the co-founders wanted to take advantage of the eco-friendly idea).

53. See Lagorio-Chafkin, *supra* note 50 (noting Blecharczyk was recruited because of expertise in computer science programming).

54. See *id.* (stating 80,000 people were expected to attend the conference, allowing Airbnb to succeed because there was a shortage of hotel rooms in the area and noting the shortening of airbedandbreakfast.com to Airbnb.com); see also Salter, *supra* note 37 (noting Airbnb targeted festivals and conventions where cities struggled to accommodate an influx of people).

55. See Thompson, *supra* note 30 (elaborating on the founders' cereal fundraiser, which sold boxes of 'Obama O's' and 'Cap'n McCains' for forty dollars each profiting over \$30,000).

56. See generally Anna Vital, *How Airbnb Started*, FUNDERSANDFOUNDERS.COM (Apr. 10, 2014), <http://notes.fundersandfounders.com/post/82297315548/how-airbnb-started> (depicting the timeline of Airbnb's developments).

which led to an increase in rentals and celebrity investments in Airbnb.⁵⁷ As it expanded, Airbnb offered more luxurious options ranging from rentals in Paris with views of the Eiffel Tower to castles in England.⁵⁸ Airbnb was established as a cheap alternative to a hotel, so the founders were surprised when users started to prefer homes to hotel rooms.⁵⁹

Airbnb currently operates in 190 countries and over 34,000 cities; it has hosted over fifteen million guests since its founding, and boasts more than 800,000 listings worldwide.⁶⁰ The story behind these impressive numbers reveals that Airbnb must work hand-in-hand with each of these 34,000 cities because each city imposes strikingly different short-term rental regulations.⁶¹ Despite the legal woes Airbnb has faced in terms of taxes, liability, zoning, safety, and many other regulatory issues, it has managed to escalate itself to success and raise over one hundred million dollars through investments.⁶²

C. Airbnb's Shared City Initiative

Airbnb launched Shared City, an initiative that attempts to bring cities back to the concept of sharing spaces and operating with greater efficiency.⁶³ Cities are the original sharing platforms, and Airbnb believes that returning to community-sharing will strengthen cities socially, economically, and environmentally.⁶⁴ Shared City is the "initiative to help civic leaders and [communities] create more sharable, more livable cities through relevant, concrete actions and partnerships."⁶⁵ The first city to partner with Airbnb was Portland, Oregon.⁶⁶ Shared City encourages hosts to donate money from renting properties in order to to support local

57. See *id.* (citing that singer Barry Manilow rented a house through Airbnb and actor Ashton Kutcher invested in the company and sits on the board as an advisor).

58. See *About Us*, <https://www.airbnb.com/about/about-us> (last visited Mar. 2, 2015) (noting Airbnb's listings of over 600 castles for rent).

59. See Thompson, *supra* note 30 (explaining that many guests contend that hotels can feel cold and impersonal).

60. See *About Us*, *supra* note 58 (showing Airbnb's success across the globe in terms of total statistics since its founding).

61. See Thompson, *supra* note 30 (commenting on the legal issues Airbnb faces at the neighborhood level and noting a New York judge recently ruling against an Airbnb host).

62. See Vital, *supra* note 56 (describing Airbnb's increased success between 2010 and 2014).

63. See Chesky, *supra* note 21 (indicating that Airbnb hosts benefit by acting entrepreneurial).

64. See *id.* (expressing Airbnb's commitment to support local businesses and celebrate cultural heritages).

65. *Id.*

66. See *id.* (noting Airbnb wants many partners for Shared City).

businesses and causes.⁶⁷

Airbnb also seeks to launch its Home Safety initiative in more American cities to educate and encourage host responsibility and the adoption of effective safety practices.⁶⁸ Airbnb wants to prevent hosts from abusing the platform by skirting laws and regulations.⁶⁹

Shared City encourages mom-and-pop shops to become staples in communities once again.⁷⁰ Shared City aims to offer significant community benefits, and even vows to “collect and remit taxes” on behalf of Airbnb hosts.⁷¹ Airbnb believes hosts should pay taxes and abide by the same regulations under which established businesses operate.⁷² This initiative seeks to bond communities through charity, safety, and support for local businesses, while addressing Airbnb’s legal issues.⁷³ Airbnb is proactive in reaching out to cities to lessen the strain on short-term rentals.⁷⁴ If Shared City successfully creates more close-knit, stable communities in its initial cities, Airbnb intends to launch it in other cities across America.⁷⁵

II. CONSERVATIVE VS. LIBERAL: THE DISPARITY BETWEEN NEW YORK CITY AND SAN FRANCISCO’S PERSPECTIVES ON HOME-SHARING THROUGH AIRBNB

NYC and San Francisco express opposing views on the benefits that

67. See *id.* (explaining Airbnb would match donations as a percentage of its fees).

68. See *id.* (expressing Airbnb’s goal of placing smoke and carbon monoxide detectors in rental residences).

69. See Leigh Gallagher, *Airbnb Cozies Up To Cities*, FORTUNE (Mar. 26, 2014 5:01 PM), <http://fortune.com/2014/03/26/airbnb-cozies-up-to-cities/> (contending Airbnb seeks to enrich cities where it operates while making rentals safer and collecting taxes).

70. See *id.* (noting that supporting small business would perpetuate sharing communities and reduce waste).

71. See *id.* (stating Airbnb vows to maintain tax payments throughout experimentation with Shared City); see also Chesky, *supra* note 21.

72. See Malia Spencer, *Airbnb Launches Shared City Initiative in Portland*, PORTLAND BUS. J. (Mar. 26, 2014, 5:39 PM), <http://www.bizjournals.com/portland/blog/2014/03/airbnb-launches-shared-city-initiative-in-portland.html> (indicating Airbnb’s willingness to collect taxes and then pass proceeds on to the city and offer disaster relief training to hosts).

73. See Chesky, *supra* note 21 (explaining Airbnb’s efforts to better connect and work with the community).

74. See Gallagher, *supra* note 69 (highlighting Airbnb’s Shared City initiative as a proactive approach that works with local governments by undertaking the creative leg work to alleviate the burden placed on cities because of short-term rentals).

75. See James Brasuell, *Airbnb’s ‘Shared City’ Program Will Collect, Remit Taxes*, PLANETIZEN (Mar. 30, 2014, 11:00 AM), <http://www.planetizen.com/node/68090> (noting Airbnb wants to work with governments through Shared City to help with its legal issues).

Airbnb can have on their communities. NYC leans in a conservative direction, seeking to expel short-term rentals because of their potential to infringe on the current economic stability of the city. San Francisco is more liberal in its acceptance of the changes that Airbnb offers and the benefits that can arise from accepting short-term rentals in a restricted way.

A. New York's Conservative View of Short-Term Rentals

NYC contends that short-term rentals pose too many issues with regard to various aspects of the community and economy. The city is much less willing to consider regulating short-term rentals as San Francisco has chosen to do.

1. Does Airbnb Have Any Liability if Its Hosts Encounter Legal Issues?

Like many legal disclaimers, Airbnb renounces liability if a legal issue arises.⁷⁶ Airbnb's website articulates hosts' responsibilities to obey local laws by stating, "[b]y accepting our Terms of Service and activating a listing, you certify that you will follow your local laws and regulations."⁷⁷ From a business perspective, it makes sense for companies to protect themselves from liability.⁷⁸ Unexpected accidents can occur when guests stay in unfamiliar places. On one occasion, a hot water heater could have led to severe injuries had a guest bumped into it.⁷⁹

The sharing economy, and home-sharing specifically, has encountered liability issues.⁸⁰ Ride-sharing companies' encroachment of the taxi industry is comparable to Airbnb's encroachment on the hotel industry.⁸¹

76. See *Airbnb Responsible Hosting*, <https://www.airbnb.com/help/responsible-hosting> (last visited Mar. 2, 2015) (listing host responsibilities and stating a liability disclaimer); see also *Airbnb's \$1,000,000 Host Guarantee*, <https://www.airbnb.com/guarantee> (last visited Apr. 13, 2015).

77. What Legal and Regulatory Issues Should I Consider Before Hosting on Airbnb? <https://www.airbnb.com/support/article/376> (last visited Apr. 13, 2015).

78. See generally Ron Lieber, *Home-Sharing? Don't Ignore Liability*, N.Y. TIMES, Apr. 20, 2012, available at <http://www.nytimes.com/2012/04/21/your-money/home-insurance/home-sharing-dont-overlook-your-liability-your-money.html?pagewanted=all> (explaining any amount of guests staying increases liability concerns).

79. See *id.* (noting if a "naked toddler" leaned against the hot water heater it could have been a tragedy).

80. See *id.* (considering potential conflicts with insurance when using a residence for a commercial use).

81. See Nicole Gelinas, *The City That Never Shares? Airbnb, Uber & NYC*, N.Y. POST (June 22, 2014, 10:11 PM), <http://nypost.com/2014/06/22/the-city-that-never-shares-airbnb-uber-nyc/> (expressing that New York City real-estate has high value,

Uber and Lyft are currently facing legal challenges regarding their refusal to acknowledge that their drivers are employees and continue to insist that they are independent contractors.⁸² Airbnb chose to renounce liability, claiming that its users are not employees, and that it only provides a platform to connect parties.⁸³ This rejection of liability should not mean Airbnb is exempt from responsibility if hosts act illegally or if something goes wrong during a guest's stay.⁸⁴ However, Airbnb contends that it is just a matchmaker, similar to an online dating platform.⁸⁵ A dating site connects two parties using the site as a starting point, but what happens from there is not the dating site's responsibility.⁸⁶

Airbnb appears to set its users up to break the law.⁸⁷ Its terms and conditions state, "Airbnb is not responsible for and disclaims any and all liability related to any and all listings and accommodations."⁸⁸ Airbnb encourages users to familiarize themselves with local laws to ensure their compliance, but this is ironic since most laws prohibit short-term residential rentals.⁸⁹

which is why sharing for profit is controversial).

82. See Allison Griswold, *Are Uber Drivers Employees? The Trial That Could Devastate the "Sharing Economy."*, SLATE (Mar. 12, 2015, 12:54 PM), http://www.slate.com/blogs/moneybox/2015/03/12/uber_lyft_employment_cases_juries Could Decide the Legal Fate of the Sharing.html (indicating that the legal controversy that ride-sharing companies are facing in California because they categorize their drivers as independent contractors, deprive drivers of benefits and require them to pay for "on-the-job costs like gas and vehicle maintenance out of their own pockets," will now have to be resolved by a jury).

83. See generally Ward, *supra* note 41, at 14 (describing sharing platforms as intermediaries, similar to e-Bay or Match.com).

84. See generally Lieber, *supra* note 78 (contrasting the potential for liability claims by citing Airbnb's statement that it has not heard of a liability claim or judgment over \$10,000).

85. See generally Marc Champion, *London Must Choose Uber Or Nostalgia*, BLOOMBERG VIEW (June 11, 2014, 1:15 PM), <http://www.bloombergview.com/articles/2014-06-11/london-must-choose-uber-or-nostalgia> (expressing Uber's claim that is not physically attached to the car, it is simply the intermediary).

86. See generally *id.* (citing Uber claiming it is not a taxi company but rather a "kind of dating site that matches passengers to drivers and handles the money.").

87. See Gelinas, *supra* note 81 (stating "Airbnb 'works' because it is what it pretends not to be: an illegal-sublet service.").

88. *Terms of Service*, <https://www.airbnb.com/terms> (last updated June 30, 2014).

89. See generally *Responsible Hosting*, <https://www.airbnb.com/help/responsible-hosting> (indicating Airbnb's policies place most of the responsibility on the host); see also Harris, *supra* note 7 (discussing the severity of consequences from short-term renting illegally in New York City, but also the difficulty of enforcing those laws).

i. Airbnb Requires Hosts to Provide Insurance

After the initial excitement over the opportunity to profit from short-term renting, hosts began asking questions about insurance coverage.⁹⁰ Airbnb shields itself from liability in this regard by explicitly stating that it:

recommends that hosts obtain appropriate insurance for their accommodations. Please review any insurance policy that you may have for your accommodation carefully, and in particular please make sure that you are familiar with and understand any exclusions to, and any deductibles that may apply for, such insurance policy, including, but not limited to, whether or not your insurance policy will cover the actions or inactions of guests (and the individuals the guest invites to the accommodation, if applicable) while at your accommodation.⁹¹

Airbnb suggests that hosts have homeowners or rental insurance; however, if an insurance company refuses to provide coverage, a host should bring the complaint to Airbnb because it may motivate Airbnb to create a better insurance policy.⁹² Airbnb publicizes its host-friendly guarantee, which claims to provide a one million dollar insurance policy for hosts.⁹³ This policy seems admirable, but the small print reveals that the one million dollar guarantee only applies after a host's personal insurance is exhausted.⁹⁴ Airbnb may suffer if hosts decide that renting through Airbnb is not worth the insurance risk.⁹⁵

ii. Blindly Signing Your Life Away

Airbnb, like most electronic companies, lists its terms and conditions in a

90. See generally Leiber, *supra* note 78 (noting that most insurance companies say they can deny a claim if it is related to commercial activity under residential coverage).

91. See *id.* (expressing disdain for the refusal to take legal responsibility and stating, "If someone gets hurt, don't go crying to Airbnb."); see also *Responsible Hosting*, <https://www.airbnb.com/help/responsible-hosting>.

92. See generally Leiber, *supra* note 78 (noting some insurance companies will provide policies for renters, but that the insurance issue could be the downfall of Airbnb).

93. See Andrew Coutts, *Terms & Conditions: Airbnb Makes Everything Your Problem*, DIGITAL TRENDS (Nov. 4, 2013), <http://www.digitaltrends.com/web/terms-conditions-airbnb/#!bil0QG> (disclosing how Airbnb puts responsibility on hosts about illegal subletting consequences, personal insurance policies, minimal reimbursement for loss from damage, and the responsibility to pay taxes on rentals); see also *Airbnb's \$1,000,000 Host Guarantee*, <https://www.airbnb.com/guarantee> (last visited Apr. 13, 2015).

94. See Coutts, *supra* note 93 (insinuating that Airbnb makes most of the legal problems the hosts' problem to deal with).

95. See generally Leiber, *supra* note 78 (noting not having insurance while breaking rental laws is a dangerous mixture).

difficult format to read, making it likely that they are not read at all.⁹⁶ Terms and conditions, while often written in small print in an arbitrary location, or not listed at all, may still be legally binding.⁹⁷ Users often click “I agree” to accept terms and conditions that may bind them to contractual terms they never read.⁹⁸ Courts have accepted these clickwrap contracts as valid following the decision in *ProCD, Inc. v. Zeidenberg*. In that case, the United States Court of Appeals for the Seventh Circuit held that Zeidenberg was bound to the terms he agreed to when he loaded ProCD’s software onto his computer.⁹⁹ Zeidenberg chose to ignore the terms and conditions and clicked “I agree” despite being unaware of the what he was agreeing to.¹⁰⁰

Therefore, users who blindly accept Airbnb’s terms and conditions would likely be held to their agreements.¹⁰¹ Users are prompted to enter personal information, and in small print at the bottom of the sign-up window, a message states, “[b]y signing up, I agree to Airbnb’s Terms of Service, Privacy Policy, Guest Refund Policy, and Host Guarantee Terms.”¹⁰² Each policy explanation is extensive in length and written using complicated legalese.¹⁰³

The conditions in Airbnb’s “Terms of Service” state, in all caps:

96. See generally Rachel S. Conklin, Note, *Be Careful What You Click For: An Analysis of Online Contracting*, 20 LOY. CONSUMER L. REV. 325, 326 (2008) (expressing concern about unassuming people accepting contractual agreements unknowingly).

97. See *id.* (noting that during browsing sessions a user may agree to terms by visiting a site).

98. See Mark A. Lemley, *Terms of Use*, 91 MINN. L. REV. 459, 466 (2006) (elaborating that every court that examined the issue has held clickwrap acceptances as enforceable contracts).

99. See *ProCD v. Zeidenberg*, 86 F.3d 1447, 1450 (7th Cir. 1996) (indicating that Zeidenberg “decided to ignore the license”).

100. See *id.* at 1449, 1452 (explaining that clicking the “I accept” button constitutes acceptance, binding Zeidenberg to the contract); see also Lemley, *supra* note 98, at 468–69 (explaining that before the *ProCD* case, clickwrap licenses were not always upheld, but following the decision, courts now uphold clickwrap agreements).

101. See generally Lemley, *supra* note 98, at 468–69 (noting that courts’ holdings now find clickwrap acceptances as binding).

102. *Sign* Up, [https://www.airbnb.com/signup_login?redirect_params\[action\]=show&redirect_params\[controller\]=homepages](https://www.airbnb.com/signup_login?redirect_params[action]=show&redirect_params[controller]=homepages) (last visited Apr. 13, 2015).

103. See *Terms of Service*, www.airbnb.com/terms; see also *Privacy Policy*, www.airbnb.com/terms/privacy_policy (last visited Apr. 13, 2015); see also *Host Guarantee Terms and Conditions*, www.airbnb.com/terms/host_guarantee (last visited Apr. 13, 2015); *Guest Refund Policy Terms*, www.airbnb.com/terms/guest_refund_policy (last visited Apr. 13, 2015).

[y]ou understand and agree that Airbnb is not a party to any agreements entered into between hosts and guests, nor is Airbnb a real estate broker, agent or insurer. Airbnb has no control over the conduct of hosts, guests and other users of the site, application and services or any accommodations, and disclaims all liability in this regard to the maximum extent permitted by law.¹⁰⁴

If users were aware that Airbnb renounced insurance liability, they would be more likely to question and contest this practice, which could compel Airbnb to take on more responsibility for issues that arise as a result of its operations.¹⁰⁵

2. *Airbnb Is Asking New York State to Tax It Like a Hotel*

Airbnb has not been paying taxes like legally operating hotels are required to do, but the company is determined to pay the hotel tax in order to be considered legitimate and operate without concern.¹⁰⁶ In the case of *Airbnb, Inc. v. Schneiderman*,¹⁰⁷ New York State's Attorney General Eric Schneiderman subpoenaed Airbnb's NYC user records in a campaign to enforce the MDA, which prohibits "illegal hotels."¹⁰⁸ The Attorney General sought to determine how many Airbnb users were avoiding occupancy taxes, due to hotel industry complaints that this lack of payment hurts hotels.¹⁰⁹ Airbnb argued that collecting information on 15,000 of its hosts was unreasonable and a "fishing expedition," and it challenged the

104. *Terms of Service*, www.airbnb.com/terms (last visited Apr. 13, 2015).

105. See generally Lieber, *supra* note 78 (suggesting Airbnb should create more stable liability and insurance policies).

106. See Kaja Whitehouse, *Airbnb Aims to Start Taxing Renters by July 1*, N.Y. POST (Apr. 14, 2014, 5:46 AM), <http://nypost.com/2014/04/14/airbnb-aims-to-start-taxing-renters-by-july-1/> (stating the New York Hotel Association's opposition to Airbnb paying taxes since that would legitimize Airbnb).

107. 989 N.Y.S.2d 786, 788–89 (Sup. Ct. 2014).

108. See *id.* (stating the Attorney General requested a list of Airbnb's users in an attempt to gain more control of short-term rentals in New York City); see also Seymour, *supra* note 23 (navigating Airbnb's complications because of the MDA, which prohibits rentals except for "permanent resident purposes").

109. See Kevin Roose, *Will Airbnb's \$21 Million Olive Branch Get It Legalized in New York?*, N.Y. MAG. (Apr. 18, 2014, 8:00 AM), <http://nymag.com/daily/intelligencer/2014/04/will-airbnbs-21-million-get-it-legalized.html> (citing a hotel representative claiming Airbnb impinges on housing stock, loses revenue for New York City, and increases job loss in the hotel industry); see also Joe Coscarelli, *NYC Sues First of Many Illegal Airbnb-ers*, N.Y. MAG. (Oct. 17, 2014, 2:15 PM), <http://nymag.com/daily/intelligencer/2014/10/nyc-sues-first-of-many-illegal-airbnb-ers.html> (specifying that seventy-two percent of New York City Airbnb apartment listings are illegal, but the first targets of lawsuits are brothers Hamid and Adbolmajid Kermanshah who are using Airbnb to become "mini hospitality moguls" by using two large residential buildings as hotels in midtown Manhattan).

Attorney General's request.¹¹⁰ The judge agreed that the subpoena was overly broad, and gave the Attorney General's office a year to review the Airbnb host data of only 124 hosts, which was made anonymous for privacy reasons.¹¹¹ The New York State government's concern is that Airbnb gives users the ability to abuse the platform by operating residentially-zoned buildings as illegal hotels.¹¹² New Yorkers purchase shares of a cooperative or condominium to live in residential buildings; however, permanent residents may experience strangers coming and going because neighbors use these residences as illegal hotels.¹¹³

David Hartman, head of Airbnb's Public Policy Department, reports that eighty-seven percent of hosts rent the property where they permanently reside and are not transforming residential buildings into illegal hotels.¹¹⁴ Airbnb contends that most of its hosts do not abuse the platform and announced that it removed about 2,000 listings that made NYC "worse, not better."¹¹⁵

110. See Andrea Peterson, *Airbnb is Facing Off Against New York's Attorney General. Here's Why.*, WASH. POST, Apr. 22, 2014, <http://www.washingtonpost.com/blogs/the-switch/wp/2014/04/22/airbnb-is-facing-off-against-new-yorks-attorney-general-heres-why/> (delving into the dispute between New York's Attorney General and Airbnb over Airbnb's concerns about releasing user information and the local tax dilemma).

111. See David Hantman, *Our Community in New York*, AIRBNB PUB. POL'Y (June 12, 2014), <http://publicpolicy.airbnb.com/author/david-hantman/> (contending the Attorney General was after a few bad actors, but demanded information on thousands of New York Airbnb users); see also Joel Stashenko, *AG to Learn Names of 124 Airbnb Hosts*, N.Y. L.J. (Aug. 27, 2014), <http://www.newyorklawjournal.com/this-weeks-news/id=1202668144807/AG-to-Learn-Names-of-124-Airbnb-Hosts?mcode=1202615038803&curindex=5&slreturn=20140729135958> (stating the "vast majority" of the 124 disclosed hosts have stopped using Airbnb).

112. See Peterson, *supra* note 110 (adding Schneiderman's finding that 12% of hosts are responsible for about one third of New York listings, implying those are illegal hotel operations); see also David Streitfeld, *Airbnb Listings Mostly Illegal, New York State Contends*, N.Y. TIMES, Oct. 15, 2014, <http://www.nytimes.com/2014/10/16/business/airbnb-listings-mostly-illegal-state-contends.html> (reinforcing that most Airbnb rentals are illegal because they violate zoning and other property laws, and while New York is not looking to target small-time Airbnb hosts, it wants to shut down the illegal hotels to protect the real estate market).

113. See generally Peterson, *supra* note 110. (noting the Attorney General's office thinks Airbnb listings raise housing costs).

114. See David Hantman, *New York and the Airbnb Community*, AIRBNB PUB. POL'Y (Apr. 21, 2014), <http://publicpolicy.airbnb.com/author/david-hantman/page/2/> (clarifying Airbnb's motivations by explaining that it helps more than it hurts by creating jobs and helping 62% of hosts to keep their homes).

115. See Peterson, *supra* note 110 (suggesting, however, that 2,000 listings does not indicate just a few isolated cases); see also Coscarelli, *supra* note 108 (explaining that attorney general Eric Schneiderman found that "six percent of Airbnb hosts in the city are making thirty-seven percent of the revenue").

Airbnb continues to request that NYC alter its laws to allow Airbnb to collect taxes on rentals.¹¹⁶ Airbnb claims it could bring in sixty-five million dollars in hotel occupancy tax revenue¹¹⁷ for NYC and it reached out to Mayor Bill de Blasio for his endorsement.¹¹⁸ Critics argue that Airbnb hurts the hotel industry's success by encroaching on its tourist base.¹¹⁹ The hotel industry argues that Airbnb is an "illegitimate enterprise,"¹²⁰ and it initially demanded that Airbnb pay hotel taxes.¹²¹ Hotels want a level playing field, arguing that Airbnb should have to comply with hotel regulations, or that they should be able to take advantage of Airbnb's more lenient standards.¹²² Therefore, it was surprising when Airbnb's attempt to pay taxes was met with opposition by the hotel industry, which claimed that if Airbnb pays taxes it would fall "under the umbrella of legality."¹²³ Airbnb's path to operational legality through the tax vein has not been overwhelmingly embraced, but it is necessary for fair competition. That being said, it requires compromise by lawmakers and the hotel industry.¹²⁴

Airbnb adopted a goodwill angle to win over NYC and convince lawmakers to consider its tax proposal.¹²⁵ Airbnb has pulled on NYC's heartstrings by emphasizing that the tax would provide the city with

116. See Craig Karmin, *Airbnb to New York's Mayor: Tax Our Hosts, Fund Pet Programs*, WALL ST. J. (Mar. 27, 2014, 10:31 PM), <http://online.wsj.com/news/articles/SB10001424052702303779504579465532885246114> (explaining that Airbnb wants New York's Mayor to help reform laws so Airbnb can pay taxes).

117. See Ryan Lawler, *As It Seeks New Regulations in NY, Airbnb Estimates It Would Collect \$65 Million in Taxes There*, TECH CRUNCH (Jan. 16, 2015), <http://techcrunch.com/2015/01/16/airbnb-65-million-in-ny/> (contending that the amount of tax revenue will only continue to increase over time).

118. See Karmin, *supra* note 116 (citing Airbnb's attempt at legitimacy by gaining mayoral support of Airbnb tax payments).

119. See *generally id.* (suggesting the hotel industry calls Airbnb illegitimate to protect itself from Airbnb's operations).

120. Whitehouse, *supra* note 106.

121. See *generally* Seymour, *supra* note 23 (insinuating hotels want Airbnb to abide by the same regulations hotels do).

122. See *id.* (noting hotels want fair competition not a "race to the bottom").

123. Roose, *supra* note 109; see also David Hantman, *New York Hotel Lobbyists Flip-Flop On Taxes*, AIRBNB PUB. POL'Y BLOG (Apr. 17, 2014), <http://publicpolicy.airbnb.com/new-york-hotel-lobbyists-flip-flop/> (explaining hotels' changed stance and quoting a Hotel Association representative stating hotels would "oppose it, certainly," in reference to Airbnb paying taxes).

124. See Roose, *supra* note 109 (insinuating the hotel industry's argument that Airbnb should not pay taxes is circular: "Airbnb shouldn't be legalized because it is illegal.").

125. See Whitehouse, *supra* note 106 (noting Airbnb says it wants to do the work for the lawmakers by initiating tax collection).

millions of dollars, which could go toward programs to help residents.¹²⁶ For example, the taxes could provide 420,000 textbooks to public schools and nearly three million meals to the elderly.¹²⁷ Airbnb also tackles its issue from an emotional angle by describing how it enhances the lives of New Yorkers in helping citizens keep their homes during a difficult economy.¹²⁸ For instance, one New York woman who rented out a bedroom through Airbnb would not have been able to pay her rent and medical bills without the extra income she received.¹²⁹ Taxing Airbnb would remedy concerns about Airbnb's unfair competition in the hotel industry, and would allow some hosts to retain their residences, which would benefit the city overall.¹³⁰

3. Zoning Issues Surrounding Short-Term Rentals and New York State's MDA

The MDA is unique to New York State because not all states have comparable multiple dwelling laws.¹³¹ However, most states do regulate residential areas, landlords, and hotels, usually reserving the right to rent rooms to the hotel industry.¹³² The MDA was amended in 2010 to eliminate interpretations that would allow illegal hotels.¹³³ This affected Airbnb and its hosts who operate their businesses out of residential dwellings.¹³⁴

Under the MDA, Class A dwellings are for permanent resident purposes only.¹³⁵ "Permanent resident" means that the same person or family inhabits the dwelling for thirty or more consecutive days.¹³⁶ The

126. *See id.* (adding Airbnb has deferred directly to New Yorkers to pay taxes to show its dedication).

127. *Id.*

128. *See* David Hantman, *Our Community in New York*, AIRBNB PUB. POL'Y (June 12, 2014), <http://publicpolicy.airbnb.com/community-new-york/>. (expressing hosts' need for Airbnb to afford homes in a difficult economy).

129. *See* Harris, *supra* note 7 (noting that being present while guests stay is often a legal way to short-term rent).

130. *See id.* (suggesting that allowing short-term rentals and taxing hosts would be a win for the City and for its residents).

131. *See* Seymour, *supra* note 23 (explaining the MDA has been on New York's books for decades to protect the City's real estate).

132. *See id.* (adding those who rent are usually categorized as a hotel or landlord, but Airbnb hosts fall into neither category).

133. *See id.* (noting the amendment to the MDA closed loopholes that used to technically allow illegal hotels and rentals).

134. *See id.* (elaborating that Schneiderman seeks to enforce the MDA since most Airbnb hosts violate it).

135. N.Y. MULT. DWELL. LAW § 4 (McKinney 2011).

136. *Id.*

occupancy of a Class A dwelling can only be modified if guests staying for under thirty days reside in the dwelling while the permanent resident is present.¹³⁷ If the permanent resident is not present and guests stay in the house for under thirty days, the permanent resident cannot receive payment from the guests for their occupancy.¹³⁸ Unless the location is zoned as a hotel or hostel, any rental under thirty days — where the permanent resident is not present — is illegal and violates New York State zoning laws.¹³⁹ However, the MDA is hard to enforce because violators fly under-the-radar, as landlords and neighbors may not notice transient guests, especially if no one monitors who frequents the building.¹⁴⁰

Additionally, hotels must follow various safety provisions that Airbnb user bypass.¹⁴¹ The MDA requires fire sprinklers and alarms in multiple dwellings, provisions that Airbnb hosts may not have since private residences are not required to follow such strict safety standards.¹⁴² Airbnb hosts currently have no legal obligation to make potential dangers apparent to guests.¹⁴³

Zoning laws are hard to modify and can lead to complications or community disruptions.¹⁴⁴ While Airbnb offers tourists a unique experience and allows hosts to make extra income, zoning may not be the best solution to its legal issues.¹⁴⁵ This is because if a residential neighborhood's zoning changes to commercial for short-term renting, nothing prevents a person from opening up other short-term commercial operations in those areas as well.¹⁴⁶

137. *Id.*

138. *Id.*

139. *See id.* (creating a loophole by broadly defining family).

140. *See generally* Jessica Dailey, *An Introduction to New York's Short Term Rental Laws*, CURBED (Mar. 25, 2013), http://ny.curbed.com/archives/2013/03/25/an_introduction_to_new_yorks_short_term_rental_laws.php (insisting amending the MDA is necessary to better regulate short-term rentals).

141. *See* Jay Karen, *The Rise of Airbnb.com and the Illegal, Short-Term Rental*, INNKEEPING BLOG (Aug. 3, 2013), <http://www.innkeepingblog.com/2011/08/the-rise-of-airbnb-com-and-the-illegal-short-term-rental/> (questioning Airbnb's legality and its steps to create safety provisions).

142. N.Y. MULT. DWELL. LAW § 29-02-09 (McKinney 2011).

143. *See* Leiber, *supra* note 78 (noting hosts do not have the safety regulations hotels do, which could lead to injuries).

144. *See* Ngai Pindell, *Home Sweet Home? The Efficacy of Rental Restrictions To Promote Neighborhood Stability*, 29 ST. LOUIS U. PUB. L. REV. 42, 46–47 (2009) (noting that it is arguable that without zoning regulations there are negative effects like more traffic and lower property care).

145. *See generally id.* at 47 (implying that tampering with zoning may create additional issues).

146. *See generally id.* at 54 (noting rental restrictions protect the aesthetic

i. Policy Issues Resulting from Commercial Use in Areas Zoned for Residential Use

Short-term renting raises questions about the effects it has on the stability of a community.¹⁴⁷ From a policy perspective, economic and resident stability is at stake.¹⁴⁸ In *Ewing v. City of Carmel-by-the-Sea*, the California Court of Appeals emphasized the importance of resident stability and the compromising effect short-term rentals have on the character of a community.¹⁴⁹ The city council contended that the zoning was meant to create an area “for permanent single-family residential uses and structures and to enhance and maintain the residential character of the City.”¹⁵⁰ The commercial use of residential areas leads to more traffic, demand for parking, light and noise issues, and a need for public services to accommodate the influx of people.¹⁵¹ Transient residents do not have a stake in the community and do not join community activities.¹⁵² The *Ewing* court cites *Miller v. Board of Public Works* and *Euclid v. Ambler Realty Co.* to emphasize that zoning is essential to maintaining community character.¹⁵³ Separating commercial and residential areas serves a purpose for the welfare of residents and “promote[s] and perpetuate[s] the American home.”¹⁵⁴

In *United Property Owners Ass’n. v. Borough of Belmar*, owners challenged zoning provisions affecting their residences.¹⁵⁵ The owners took issue with “undesirable conduct” by transients and wanted to purge

tranquility and quality of a community).

147. See generally Charles Gottlieb, *Residential Short-Term Rentals: Should Local Governments Regulate The “Industry”?*, 65 PLAN. & ENVTL. LAW 4, 4 (2013) (implying that there are consequences that come along with unstable renting).

148. See *id.* at 4 (noting that transients lack commitment, which creates unstable communities).

149. See *Ewing v. City of Carmel-By-The-Sea*, 286 Cal. Rptr. 382, 387 (Ct. App. 1991) (upholding a ban on short-term rentals to keep the community’s character and limit negative impacts).

150. *Id.*

151. See *id.* at 387 (noting short-term rentals harm communities).

152. See *id.* (listing community features that suffer because of transients, such as local government or little league).

153. See *id.* (citing *Miller v. Bd. of Pub. Works*, 234 P. 381, 493 (Cal. 1925) (noting the court observed that with homeownership comes stability, which is untrue of short-term rentals); *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926) (elaborating that zoning does not constitute a taking because the purpose of zoning is to “limit the property owner’s rights to make profitable of some segments of his property”)).

154. *Ewing*, 286 Cal. Rptr. at 388.

155. See *United Prop. Owners Ass’n of Belmar v. Borough of Belmar*, 447 A.2d 933, 934 (N.J. 1982) (stating the purpose of zoning was to confine short-term rentals to hotels and boarding houses along the beach, but it slowly encroached on residential areas).

such people in order “to restore peace and quiet and other characteristics of neighborhoods where people . . . live in relative permanency.”¹⁵⁶ The court explained that “[z]oning laws are designed to control types of uses in particular zones,”¹⁵⁷ but that ultimately in a vacation area, banning or strictly regulating rentals is an “arbitrary . . . restraint on use of private property.”¹⁵⁸ Bans on short-term rentals have typically been enforced to control stability and restrict owners from using residences for unauthorized purposes.¹⁵⁹ Traditionally, problems arose because of seasonal rentals, but because of Airbnb, short-term rentals have become commonplace.¹⁶⁰

ii. Violations of the Multiple Dwelling Act Set Precedents

Short-term rentals not only face resistance from neighbors and the community, but also from landlords who will evict tenants to maintain control of their properties.¹⁶¹ In a recent New York housing court case, *Gold Street Properties v. Freeman*, an Airbnb host violated her lease and the MDA by renting her apartment short-term.¹⁶² The court allowed the host to stay in her apartment, as long as she removed her listing from Airbnb and cancelled future guest reservations.¹⁶³ This case sets a precedent that may result in difficulties for landlords who want to evict tenants for breaching their leases by renting short-term.¹⁶⁴ The holding in that case is not a slam-dunk for Airbnb, but it provides hosts with greater protection against immediate eviction for short-term renting.¹⁶⁵

156. *Id.*

157. *Id.* at 937.

158. *Id.*

159. See Pindell, *supra* note 144, at 54 (explaining that the law tries to restrict illegal property use by narrowly defining family and by increasing enforcement of nuisance codes).

160. See generally *id.* (discussing issues arising because of seasonal vacation rentals).

161. See generally Natalie Rodriguez, *NYC Housing Court Ties Landlords' Hands In Airbnb Fight*, LAW360 (June 18, 2014, 8:30 PM), <http://www.law360.com/articles/549322/nyc-housing-court-ties-landlords-hands-in-airbnb-fight> (citing a recent decision that makes it harder for landlords to evict because of zoning).

162. See *Gold Street Properties v. Freeman*, N.Y. L.J., July 2, 2014, at 1 (N.Y. Civ. Ct. June 16, 2014) (holding the short-term renting was illegal, but set a one strike before eviction precedent).

163. See Rodriguez, *supra* note 161 (clarifying the court allowed the tenant to maintain her residence in *Gold Street* because she cured her breach by removing her listing, although the landlord argued that the tenant did not cure the issue fast enough).

164. See *id.* (quoting a tenant's rights litigator stating this case is not “a victory for Airbnb. The judge still found what the tenant did was illegal.”).

165. See *id.* (indicating that tenants may be punished less impulsively, are not gaining more rights, and if the landlord requests no short-term renting, the tenant must

In a case brought before New York's Environmental Control Board, an Airbnb host rented out his apartment,¹⁶⁶ and was served with Notices of Violation for violating the MDA.¹⁶⁷ However, the fines were dismissed on a technicality that allows short-term stays if the resident is present, and in this case, a roommate was there while guests were present.¹⁶⁸

B. San Francisco's Liberal View on Short-Term Rentals

San Francisco has chosen to adopt a decidedly liberal perspective on the operations of Airbnb than NYC, possibly because San Francisco calls itself the home of the company.. Although San Francisco is more open to home-sharing than NYC, it does intend to impose some limitations on the growing industry.

1. San Francisco's Landlord-Tenant Liability and Landlord Abuse of Airbnb

Until recently, short-term rentals were illegal in San Francisco, like most areas of the country, because short-term rentals not only violated the San Francisco Administrative Code ("SFAC"), but they also usually violated lease agreements as well.¹⁶⁹ For instance, one San Francisco resident needed extra income, so he rented his apartment through Airbnb.¹⁷⁰ His landlord found out and notified him that he breached his lease and could be

comply).

166. See Ron Lieber, *A \$2,400 Fine For An Airbnb Host*, N.Y. TIMES, May 21, 2013, <http://money.cnn.com/2013/05/21/technology/innovation/airbnb-illegal-new-york/> (stating a New York City Environmental Board ruled renting via Airbnb violates the MDA).

167. See *id.* (noting the law is not concerned with smaller scale tenant rentals, but primarily seeks to stop landlords who use residential buildings to run illegal hotels in violation of New York's "illegal hotel" law, also known as the MDA).

168. See Tomio Geron, *Airbnb Wins New York City Appeal On Short-Term Rentals*, FORBES (Sept. 27, 2013, 6:26 PM), <http://www.forbes.com/sites/tomiogeron/2013/09/27/airbnb-wins-new-york-city-appeal-on-short-term-rentals/> (explaining it is unclear how Airbnb is affected when the resident does not stay with the guest).

169. See Carolyn Said, *Airbnb Sublets in S.F. Land Some Renters in the Doghouse*, S.F. GATE (Mar. 18, 2014, 9:38 PM), <http://www.sfgate.com/realestate/article/Airbnb-sublets-in-S-F-land-some-renters-in-the-5326019.php#page-1> (describing the frustration landlords feel when tenants profit from the landlord's property); see also Dara Kerr, *San Francisco Mayor Signs Landmark Law Making Airbnb Legal*, CNET.COM (Oct. 28, 2014, 1:25 PM), <http://www.cnet.com/news/san-francisco-mayor-makes-airbnb-law-official/> (announcing that San Francisco's Mayor Ed Lee approved a bill that amended local zoning laws, legalizing short-term rentals that company like Airbnb make possible).

170. See Said, *supra* note 169 (adding the Airbnb host stayed elsewhere so the Airbnb guest could have the whole apartment).

evicted.¹⁷¹

Generally, if the tenant ceases operations through Airbnb, evictions are remedied under a “cure or quit” notice.¹⁷² Many landlords dislike when tenants profit off of their property, and demand strict enforcement of the “no-rentals-under-thirty-days” law.¹⁷³ However, because of “cure or quit” notices, many tenants can remove their Airbnb listings and avoid eviction.¹⁷⁴ Some lease agreements prohibit subleasing, which includes short-term renting to transient guests.¹⁷⁵ Therefore, when landlords are made aware that their properties are being rented through Airbnb, they commence eviction proceedings.¹⁷⁶ Now that the proposed bill that sought to legalize short-term rentals has been passed, landlords will continue to face this issue and others like it.¹⁷⁷

Landlords are not always the victims of short-term renting.¹⁷⁸ Sometimes landlords abuse Airbnb for their own benefit, and to the detriment of their city.¹⁷⁹ These landlords may pay tenants in breach of their lease agreements to move out and then utilize those spaces for short-term rentals.¹⁸⁰ In 2014, City Attorney David Herrera filed two lawsuits against landlords in San Francisco because they each used residential properties as illegal hotels, making those spaces unavailable to permanent

171. See *id.* (stating the host had “three days to vacate the apartment or face an eviction lawsuit”).

172. See Barbara McDowell, *Developments in Landlord-Tenant Law: 2005-2006*, 10 UDC/DCSL L. REV. 249, 252 (2007) (defining a cure or quit notice as the “time within which tenants ordinarily must take corrective action in order to avoid eviction”).

173. S.F., CAL., ADMIN. CODE § 41A-5 (2013) (codifying that permanent residences cannot be rented for under thirty days).

174. See Said, *supra* note 169 (noting that taking down Airbnb listings can resolve landlord issues, but if hosts are unable to meet the quit deadlines, landlords may proceed with eviction).

175. See *id.* (quoting San Francisco lawyer Dave Wasserman, “[w]hen tenants do Airbnb and [law enforcement] catch[es] them, [law enforcement] serve them with eviction notices for violating their lease agreements”).

176. See *id.* (explaining hosts use Airbnb for a profitable boost, but are cheating landlords out of money).

177. See Kerr, *supra* note 169 (indicating that although San Francisco became one of the first cities in the world to legalize short-term rentals, not everyone is happy about it).

178. See generally Gerry Shih, *San Francisco Sues Landlords Who Evicted Tenants for Airbnb*, REUTERS (Apr. 23, 2014, 4:42 PM), <http://www.reuters.com/article/2014/04/23/us-airbnb-lawsuit-idUSBREA3M1YS20140423> (elaborating on San Francisco suing landlords who were running illegal hotels through Airbnb).

179. *Id.*

180. See Said, *supra* note 169. (explaining that landlords will pay rent-controlled tenants to leave to avoid losing in a jury trial and to prevent tenants from profiting by short-term renting).

renters while San Francisco was in a housing shortage.¹⁸¹

Removing residential rental units from the market has been termed “hotelization,” which is what San Francisco’s legislation on short-term rentals intends to prevent.¹⁸² The Ellis Act allows landlords to take properties off the market, but not without restrictions.¹⁸³ The two lawsuits filed by the city were against landlords who converted residential units into illegal hotels, and charged rent well above what the Ellis Act permits.¹⁸⁴ *San Francisco v. Lee* concerned a landlord who took the property he owned off the market in 2006, with an Ellis Act rental cap of \$1,087 per month.¹⁸⁵ The landlord used the property as an illegal hotel before returning to long-term renting, with an extreme rental increase to a range of \$4,200 and \$7,038 per month.¹⁸⁶

In the second lawsuit, *San Francisco v. Yurovsky*, the landlords took their three residential units off of the long-term rental market.¹⁸⁷ In 2006, the landlords were served with Notices of Termination of Tenancy pursuant to the Ellis Act, San Francisco’s Rent Stabilization Ordinance, and SFAC Section 37.9.¹⁸⁸ Unless the landlords intended to “go out of the rental

181. See Bob Egelko, *S.F. Attorney Sues 2 Landlords Over Short-Term Rentals*, SF GATE (Apr. 24, 2014, 6:52 AM), <http://www.sfgate.com/bayarea/article/S-F-city-attorney-sues-2-landlords-over-5425826.php> (expressing concern for the “dwindling housing supply” and landlord use of residences as illegal hotels).

182. See Lydia O’Connor, *Airbnb Faces Near-Ban In San Francisco*, HUFFINGTON POST (Apr. 29, 2014, 11:59 PM), http://www.huffingtonpost.com/2014/04/29/airbnb-laws-san-francisco_n_5235820.html (defining “hotelization” as short-term rentals, which proposed legislation seeks to regulate).

183. See Andrew McIntyre, *SF Sues 2 Landlords for Tourism Hotel Conversion*, LAW360 (Apr. 24, 2014), <http://www.law360.com/articles/531352/sf-sues-2-landlords-for-tourism-hotel-conversion> (noting that Ellis Act restrictions for violating a rental cap could last between five to ten years).

184. See *id.* (stating the landlords rented buildings illegally, violated, and exceeded Ellis Act rent caps).

185. See Compl. for Injunctive or Other Relief at ¶ 12, *San Francisco v. Lee*, No. 14-538857 (Sup. Ct. Cal. Apr. 23, 2014) (specifying that there can be incremental increases of the Ellis Act cap if it is approved); see also McIntyre, *supra* note 183 (explaining that the \$1,087 rental rate was to be maintained for subsequent long-term renters).

186. See Complaint for Injunctive or Other Relief at ¶¶ 7, 9, *San Francisco v. Lee*, No. 14-538857 (Sup. Ct. Cal. Apr. 23, 2014) (indicating that the landlord stopped short-term renting the residential space around 2009 and then re-rented for a monthly rate well above the requisite Ellis Act rate).

187. See Complaint for Injunctive or Other Relief at ¶¶ 7, 9, *California v. Yurovsky*, No. 14-538857, 2014 WL 1623802 (Sup. Ct. Cal. Apr. 23, 2014) (describing the residential property as a building with three residential units and one commercial unit).

188. But see *id.* (conceding that landlords are not required to offer residential rentals in their properties).

business” altogether, evicting tenants for the purpose of short-term renting is arguably illegal.¹⁸⁹ These cases are pending in San Francisco, but the city’s end goal is to obtain injunctions and monetary compensation for each day the violations occurred.¹⁹⁰

Although San Francisco has had landlord-tenant issues, the city’s Mayor, Ed Lee, supports Airbnb.¹⁹¹ Since Airbnb’s start in 2008, the San Francisco Tenants Union has remained unwavering in its stance against the company, stating that it has “begun a process with city regulators to sue seven other landlords on similar charges.”¹⁹² The lawsuits against the two San Francisco landlords send a strong message to Airbnb and its users that laws will be enforced until legal change is implemented.¹⁹³

2. *Airbnb Mimics Hotel Industry Tax Standards*

Although Airbnb’s home city is in San Francisco, it has sustained regulatory issues there prior to the passage of legislation pertaining to its regulation.¹⁹⁴ Despite the conflict over Airbnb’s legality and San Francisco’s laws and regulations, Airbnb is determined to maintain a relationship with the city.¹⁹⁵ Airbnb asserts its intention to collect and pay taxes on its operations in San Francisco under the new short-term rental regulations.¹⁹⁶ The taxes amount to fourteen percent of hosts’ profits.¹⁹⁷ Taxing hosts may be a setback for the Airbnb-host relationship, but it is a step in the right direction because allows the company to maintain relations

189. *Id.*

190. See McIntyre, *supra* note 183 (elaborating the defendants should pay penalties and cease unlawful behavior).

191. See Shih, *supra* note 178 (explaining that San Francisco’s Mayor supports Airbnb’s cause and its technological advances).

192. *Id.*

193. See *id.* (noting the determination to limit illegal rentals).

194. See O’Connor, *supra* note 182 (recognizing the controversy around Airbnb when citizens protested Airbnb’s elimination).

195. See Kim-Mai Cutler, *Airbnb Says It Will Start Collecting Hotel Taxes In San Francisco*, TECH CRUNCH (Mar. 31, 2014), <http://techcrunch.com/2014/03/31/airbnb-sf-hotel-tax/> (quoting Airbnb’s Head of Global Public Policy, “[w]e have repeatedly said that we believe our community in San Francisco should pay its fair share of taxes”).

196. Dara Kerr, *Airbnb Begins Collecting 14% Hotel Tax in San Francisco*, CNET.COM (Sept. 17, 2014, 12:23 PM), <http://www.cnet.com/news/airbnb-begins-collecting-14-hotel-tax-in-san-francisco/>; see also Kerr, *supra* note 168 (explaining that the new legalization push limits short-term renters and requires Airbnb hosts to “sign up in a city registry, collect transient occupancy taxes and carry liability insurance”).

197. See Cutler, *supra* note 195 (illuminating Airbnb’s attempt to prove it has not been avoiding its tax responsibilities).

with the city as Airbnb explores its newfound legitimacy.¹⁹⁸ San Francisco could generate about \$274 million by requiring Airbnb to pay hotel taxes on short-term rentals.¹⁹⁹

Airbnb's payment of hotel taxes mimics the requirements of the hotel industry.²⁰⁰ Airbnb has put a lot of effort into trying to follow the law, but San Francisco's "arcane" and "difficult" tax laws make it so difficult that some Airbnb hosts claimed to have been denied the ability to pay taxes.²⁰¹ Allowing Airbnb hosts to pay taxes under the new legislation gives Airbnb legitimacy by placing it within the realm of the hospitality industry, thus refuting claims that Airbnb's operations are comparable to other illegal operations petitioning to pay taxes in exchange for validity.²⁰² Now that Airbnb will pay hotel taxes, it will no longer severely compromise the prosperity of the hotel industry and those who rely on it for jobs, or add to the housing crisis. Instead, it can continue to help San Francisco residents, but in a legal manner.²⁰³

3. San Francisco's Past Housing Laws and the Proposed Legislation for Short-Term Rentals that Made the Jump to Legalization

San Francisco has chosen to embrace the changes that short-term rental platforms offer its community. The city is accepting home-sharing, but on its own terms through restricting regulations.

198. See generally Andrew Szeto, *Activists Hold Competing Rallies On Short-Term Rental Restrictions*, BEYOND CHRON (Apr. 30, 2014), <http://beyondchron.org/activists-hold-competing-rallies-on-short-term-rental-restrictions/> (describing rallies for and against legalizing short-term rentals indicates that taxing hosts may only be a temporary compromise); see also Samantha Shankman, *Airbnb to Begin Collecting Taxes in Four New Cities*, SKIFT (Jan. 30, 2015, 12:00 PM), <http://skift.com/2015/01/30/airbnb-to-begin-collecting-taxes-in-four-new-cities/> (contending that hosts may be upset that they now have to pay taxes on their rentals).

199. See Cutler, *supra* note 195 (explaining 14% occupancy tax would be added to the guest's bill as an additional charge).

200. See *id.* (indicating that the 14% tax would be in addition to the tax hosts already pay on income they make from Airbnb).

201. David Hantman, *San Francisco, Taxes and the Airbnb Community*, AIRBNB PUB. POL'Y BLOG (Mar. 31, 2014), <http://publicpolicy.airbnb.com/san-francisco-taxes-airbnb-community/>.

202. See generally, Alan Farnham, *Airbnb: Towns Crack Down on Homeowners Who Take Guests*, ABC NEWS (Sept. 9, 2013), <http://abcnews.go.com/Business/users-airbnb-breaking-law-critics-claim/story?id=20148183> (referring to concerns about where the law-breaking ends if short-term rentals are not restricted and comparing Airbnb to running a residential escort service).

203. See generally Szeto, *supra* note 198 (emphasizing how Airbnb's existence takes away jobs from the hotel industry); see also Kerr, *supra* note 168 (quoting San Francisco Mayor Ed Lee, "Now, San Franciscans who just want to share their home with occasional visitors will have a clear set of rules and restrictions to earn extra money to make ends meet").

i. San Francisco's Administrative Code

Airbnb's zoning issues are not limited to New York City. Airbnb has also encountered zoning concerns in San Francisco, in addition to tax and liability issues.²⁰⁴ San Francisco's legislation on short-term rentals is codified in the SFAC.²⁰⁵ Chapter 41A of the SFAC states that a permanent resident cannot rent out his residential unit for less than thirty days at a time.²⁰⁶ A similar version of this SFAC rule appears under San Francisco's Planning Code ("Planning Code"),²⁰⁷ which regulates business owners from converting residential units for commercial or transient purposes.²⁰⁸ The Planning Code states that a residential unit rented short-term alters the categorization of the unit from residential to commercial, which is why many opponents are demanding stricter reform of the short-term rental laws.²⁰⁹ Additionally, under Chapter 37.9 of the SFAC, a landlord can evict a tenant if a residential unit is rented in a way that violates the law.²¹⁰ The Department of Building Inspection ("DBI") enforces these provisions, but often does not take action unless neighbors or landlords complain.²¹¹

ii. San Francisco's Proposed Legislation Made Into Law

San Francisco is a pioneer in proposing to incorporate short-term rentals into local laws and regulations.²¹² David Chiu, President of the Board of

204. See generally Farnham, *supra* note 202 (noting short-term rentals often "violate local zoning laws, which prohibit rentals shorter than thirty days, except for hotels and licensed bed-and-breakfasts").

205. S.F., CAL., ADMIN. CODE § 41A.4(c) (2013); see also San Francisco, CA: Airbnb Help Center, <https://www.airbnb.com/help/article/871> (noting that the new legislation is not effective until February 1, 2015, and the SFAC codes remain the same and are still in effect).

206. S.F., CAL., ADMIN CODE § 41A-5 (2013).

207. S.F., CAL., PLANNING CODE § 101.1.

208. See generally O'Connor, *supra* note 182 ("The short-term rental market is exploding and cries out for some sort of regulation . . . People are stunned to find out that a house on their block is now a hotel.").

209. See generally Carolyn Said, *S.F. Ballot Would Severely Limit Short-Term Rentals*, SF GATE (Apr. 29, 2014, 7:40 AM), <http://www.sfgate.com/news/article/S-F-ballot-measure-would-severely-limit-5436664.php> (indicating if an area wants to host transients then it should request a zone change to legitimize its actions); S.F., CAL., PLANNING CODE § 101.1 (2013).

210. S.F., CAL., ADMIN. CODE § 37.9 (2013).

211. See Randy Shaw, *Will SF Finally Stop Illegal Tourist Rentals?*, BEYOND CHRON (Apr. 21, 2014), <http://beyondchron.org/will-sf-finally-stop-illegal-tourist-rentals/> (indicating the DBI is an enforcement agency, but its lack of funding limits its prevention of short-term rentals).

212. See generally Steven T. Jones, *Chiu Introduces Legislation To Regulate Airbnb And Short-Term Housing Rentals*, S.F. BAY GUARDIAN (Apr. 15, 2014, 10:49 AM), <http://www.sfbg.com/politics/>

Supervisors in San Francisco, created the legislation that sought to do this.²¹³ The current SFAC Section 41A prohibits renting residential units, and prevents multiple dwellings from being used as illegal hotels.²¹⁴

Legislation was passed in October that legalizes short-term rentals in a highly regulated manner, by limiting the rentals to ninety nights per year, and requiring permanent residents to occupy their homes for at least 275 days per year (sixty of which must be consecutive).²¹⁵ The ninety-night limit could prevent San Francisco residents from getting displaced by Airbnb rentals.²¹⁶ However, this legislation will not excuse tenants from violating their lease agreements with landlords.²¹⁷ Hosts will be held to a higher standard, requiring them to maintain liability insurance and register their residences with the city.²¹⁸ A registry of hosts will redact names, but will list addresses for landlords for eviction and lease enforcement purposes.²¹⁹ This registry will incentivize hosts to maintain compliance with short-term rental laws in order to avoid sanctions or eviction.²²⁰ Fortunately for hosts, this legislation has a one-strike rule preventing landlords from evicting tenants on their first offense, but it does increase fee penalties for repeat offenders.²²¹ Proponents of the legislation argue

2014/04/15/chiu-introduces-legislation-airbnb-and-short-term-housing-rentals (discussing the proposed legislation seeks to legalize, but regulate short-term rentals).

213. See *id.* (noting it took two years to finish the legislation).

214. See *id.* (explaining regulations are meant to stop conversions of rental units solely for transient use).

215. See *id.* (noting the legislation requires the resident to physically occupy the home for 275 days a year); see also Kate Rogers, *San Francisco Moves Closer to Legalizing Airbnb*, CNBC (Oct. 22, 2014, 9:40 AM), <http://www.cnbc.com/id/102102286> (enumerating the new legislations restrictions and discussing “Airbnb law” that brings the company further into legitimacy).

216. See Stephen T. Jones, *SF Supervisors Vote to Legalize and Regulate Airbnb’s Short-Term Rentals*, S.F. BAY GUARDIAN (Oct. 7, 2014, 6:31 PM), <http://www.sfbg.com/politics/2014/10/07/sf-supervisors-vote-legalize-and-regulate-airbnbs-short-term-rentals> (indicating that while San Franciscans rely on Airbnb for rent, it is also important to retain a ninety-night limit to prevent the displacement of the city’s residents).

217. See Cutler, *supra* note 195 (describing that the legislation does not override lease agreements).

218. See Jones, *supra* note 212 (showing the legislation allows landlords to identify and evict tenants violating their leases).

219. See *id.* (noting opponents claim the registry violates privacy, but agree it helps to achieve the legislation’s goal).

220. See *id.* (providing that the legislation regulates rental costs and prevents the abuse of sharing platforms thereby incentivizing host compliance).

221. See *id.* (adding Airbnb is held to a higher standard to inform hosts about local laws); see also Carolyn Said, *Chiu Toughens Proposed SF Airbnb Legislation*, S.F. GATE (Sept. 2, 2014, 5:53 PM), <http://blog.sfgate.com/techchron/2014/09/02/chiu-toughens-proposed-sf-airbnb-legislation/> (noting the legislation requires city approval

these changes are necessary to protect San Francisco's residents and the hotel industry so as to not worsen the housing crisis.²²²

iii. Opposition to the Legislation

Since short-term rentals have established a niche in San Francisco despite their illegality, this new legislation is necessary to regulate their permissibility.²²³ However, opponents assert that the legislation does not regulate short-term rentals strictly enough.²²⁴ Because of this skepticism, opponents and housing advocates have established a ballot initiative that rivals the legislation as a much more conservative counterpart.²²⁵ This initiative seeks to hinder Airbnb's ability to grow in San Francisco and would harshly regulate short-term rentals.²²⁶

Controversially, this initiative would reward witnesses who report hosts who rent their residences short-term.²²⁷ The initiative goes further by proposing that short-term rentals should only be allowed in commercially zoned areas, which would devastate Airbnb hosts in residential zones.²²⁸ Further, the ballot initiative agrees that there should be a registry, but the initiative seeks to increase visibility to the public.²²⁹ This initiative would also require hosts to get rentals approved by their landlords or homeowners associations, require Airbnb to confirm the host is registered, and make the host demonstrate proof of personal rental or homeowners insurance.²³⁰ The initiative threatens to damage Airbnb's operations and the company strongly opposes it; instead, Airbnb supports the new legislation as the best way to begin the legalization process for Airbnb's operations in San Francisco, despite the restrictions the new legislation imposes.²³¹ If this

for rentals as well as protection of affordable housing and ensuring building and fire safety compliance).

222. See O'Connor, *supra* note 182 (noting Airbnb's efforts to help regulate short-term rentals and improve the economy).

223. See generally Jones, *supra* note 212 (implying without regulating the rentals, they will continue to create problems).

224. See generally Said, *supra* note 209 (pointing out that housing advocates have prepared a ballot initiative that would more strictly regulate short-term rentals).

225. See *id.* (noting the ballot initiative is tougher than Chiu's proposed legislation).

226. See *id.* (citing the ballot initiative would only allow short-term rentals in commercially zoned areas).

227. See Jones, *supra* note 212 (expressing Airbnb's disdain for this initiative because it would severely hurt its operations).

228. *Id.*

229. See *id.* (noting the proposed legislation would only make names on the registry known through sunshine law requests).

230. See *id.* (suggesting that making hosts jump through hoops will discourage people from short-term renting).

ballot initiative went on to trump the passed legislation, reversing the harm it would do to the legality of short-term rentals would be nearly impossible.²³²

4. Shared City

Airbnb has made efforts to gain acceptance within the communities where the majority of its hosts operate. Most notably, Airbnb has partnered with Portland, Oregon to work with the community while allowing residents to utilize Airbnb's services.²³³ In doing this, Airbnb has portrayed itself as a company that gives back, offering cities services and funding that other companies do not.²³⁴ Airbnb ties itself to communities through Shared City, creating a connection that bonds cities with the company before creating a formal legal relationship. This non-legal relationship provides cities with large sums of tax revenue to put toward projects cities ideally seek to implement, but otherwise do not have the funds for.²³⁵ To win over the community, Airbnb has created an initiative that provides safer spaces, a boosted economy, and a way to benefit residents by supporting local businesses, encouraging entrepreneurs to pursue business ventures, and creating opportunities to make extra income to sustain a budget.²³⁶

Recently, Portland became the first city in the United States to narrowly legalize short-term rentals.²³⁷ Portland appreciated the sharing economy bringing people to Portland, but strictly regulates short-term rentals by only allowing one or two bedrooms to be rented at a time, requiring hosts to purchase a permit from the city, and requiring hosts to pass safety inspections.²³⁸ Portland vows to use some of the proceeds for affordable

231. See *id.* (stating the legislation and the ballot initiative agree that hosts should pay hotel taxes).

232. See *id.* (expressing Airbnb's desire to work with San Francisco to prevent infringement on the hotel industry).

233. See generally Chesky, *supra* note 21 (noting that Airbnb is making progress with Shared City in Portland).

234. See *id.* (explaining Portland hosts can donate money earned from hosting to local causes and Airbnb will match donations).

235. See Cutler, *supra* note 195 (elaborating that \$274 million in tax revenue could be used to benefit locals).

236. See Chesky, *supra* note 21 (intending to work with communities to highlight unique characteristics and diverse neighborhoods by promoting small businesses to guests).

237. See Steve Law, *City Legalizes Airbnb, Other Short-Term Home Rental Services*, PORTLAND TRIBUNE (July 30, 2014, 12:12 PM), <http://portlandtribune.com/pt/9-news/228670-92077-city-legalizes-airbnb-other-short-term-home-rental-services-> (detailing the unanimous vote by Portland city commissioners to legalize, but strictly regulate, short-term rentals).

238. See *id.* (adding whole-house rentals, apartments and condos cannot partake in

housing and to use Airbnb for lodging during emergencies.²³⁹

III. A LIBERAL APPROACH AS THE CATALYST GOING FORWARD

Although NYC has valid reasons for rejecting short-term rentals, San Francisco's decision to embrace the change on its own terms is ultimately the best approach. As technology advances and people become more comfortable with the sharing economy as whole, it would behoove the nation to embrace, but regulate, the sharing economy while it is in its infancy.

A. The Sharing Economy is Here to Stay

Although the sharing economy has created copious amounts of legal issues within cities, it has also created a new norm. The simplicity of using the Internet to access almost anything has become the standard way to do everything from calling a personal driver to renting out homes for short-term stays.²⁴⁰ Banning these online platform-based companies is not the way to remedy the legal and regulatory issues. NYC's conservative attempt to prohibit Airbnb altogether is unrealistic because hosts will continue to break the law. The most practical option is to model future laws on the regulations set out in San Francisco's new legislation as a launching point. Regulating companies with business models like Airbnb's from the outset is the best strategy, since its users have already proven they will use these services whether they are legal or not. Unfortunately, regulating these types of innovative companies is notoriously difficult, but societally beneficial in the long run. By regulating these companies, users have the opportunity to comply with the law, whereas if these services are available but illegal, users are pigeonholed into breaking the law.

Sharing platforms allow for a cheaper and more convenient experience, and in this era of technology, users will be unwilling to revert to an inconvenient or more expensive alternative. If these services are regulated and legalized, a more level playing field can be established between Airbnb and the hotel industry. Fair competition is an important part of business and sharing companies should not be exempt from competing.

short-term rentals).

239. See *id.* (conceding officials expect illegal short-term rentals, but think the benefits outweigh the harm).

240. See Tuttle, *supra* note 14 ("The sharing economy is here to stay, and so are we.").

B. Airbnb Should Be Treated Like Hotels

Although Airbnb does not seek to encroach on the hotel industry, it has caused some problems in that regard.²⁴¹ The company competes directly against hotels and should not be immune to the fourteen percent tax requirement, zoning regulations, and liabilities that hotels must comply with.²⁴² As Airbnb's Shared City initiative suggests, the company should be required to sustain some of the same safety precautions as hotels.²⁴³ Additionally, Airbnb should focus on the legality of its operations in larger cities where its influence is most heavily concentrated, like NYC or San Francisco, and where short-term rentals are more likely to be abused. Establishing overarching regulations to standardize home-sharing would create fair competition and continuity throughout this up-and-coming industry.

Creating an equal playing field between competitors within the same industry is crucial for Airbnb to be successful in American communities.²⁴⁴ Airbnb and other hosting platforms are not following the law and they cause disturbances within traditional industries that abide by regulations. Further, Airbnb should take more responsibility in educating its users on the local laws of places where Airbnb is prominent as well as provide clarity about necessary insurance coverage and the potential for legal complications.²⁴⁵ Regulating Airbnb would not only legalize its operations, but also create a safety net for users should they encounter legal issues in cities where it is still illegal.²⁴⁶ To further ensure the security of its users, Airbnb should take more responsibility rather than renouncing liability by claiming to simply be an online medium that exists to link hosts and guests to one another. It does not make sense for Airbnb to renounce liability when the operations it emboldens are the reason legal issues exist in the first place.

241. See Szeto, *supra* note 198 (arguing that Airbnb takes away hotel jobs and people lose wages and benefits).

242. See *id.* (noting reform is months away).

243. See Chesky, *supra* note 233 (indicating hosts will be educated in safety, install smoke and carbon monoxide detectors, have first aid kits, and fire safety or escape route information).

244. See Patrick Mayock, *Airbnb/Hotel Playing Field Beginning to Level*, HOTEL NEWS NOW (Sept. 26, 2014), <http://www.hotelnewsnow.com/Article/14493/Airbnb-hotel-playing-field-beginning-to-level> (expressing the importance of Airbnb agreeing to play by the same rules as the hospitality industry).

245. See generally Julie Bort, *Airbnb Host Can't Get Squatter To Leave*, BUS. INSIDER (July 21, 2014, 1:48 PM), <http://www.businessinsider.com/airbnb-host-cant-get-squatter-to-leave-2014-7> (explaining an Airbnb rental gone wrong because a guest refused to leave and now must be evicted).

246. See Jones, *supra* note 212 (implying a safety net exists if hosts have a law to follow, plus the delayed eviction benefit).

C. San Francisco's New Legislation in Combination with Shared City

Airbnb welcomes regulations in the cities where it primarily operates. It is better for lawmakers to regulate a new industry in its infancy, in order to gain control early and to mitigate the risk of harm to consumers, operators, and surrounding industries. Hosting platforms like Airbnb are rapidly gaining popularity and are calling for the law to catch up with technology, so as to not irreversibly damage existing businesses and industries.

Airbnb has agreed to make it clear to hosts when they may be breaking the law by posting information on its website; however, the information currently available is vague and suggests that hosts should still familiarize themselves with local laws.²⁴⁷ The legal information on Airbnb's website needs to be more comprehensive for users because hosts are still responsible for Airbnb-related infractions.²⁴⁸ Ultimately, Airbnb and short-term rentals are illegal in most places, so hosts who take a chance using Airbnb will run the risk of legal complications until legislation is amended.²⁴⁹

Now that San Francisco's proposed legislation has been passed, it should be implemented in tandem with the incorporation of Airbnb's Shared City initiative. The new legislation should also include requirements for safety regulations. Shared City should work in conjunction with cities' regulations to offer benefits to the community as a whole, not just to those who have chosen to host for extra income. NYC's treatment should not be further pursued because it just incentivizes people to find more creative ways to skirt the law. A preferable solution would be for Airbnb's operations to be incorporated into the laws of cities across the country, thus regulating short-term rentals and creating fair competition with the hotel industry, while simultaneously working with the community to economically benefit its local residents.

CONCLUSION

Airbnb has revolutionized the way people travel, and its innovative technology is here to stay. Despite the legal issues Airbnb has faced in terms of its legal liability, such as failure to pay hotel taxes, and zoning complications, it has produced a service that many hosts and guests are fond of. The legislation in San Francisco incorporating short-term rentals

247. See *Responsible Hosting*, <https://www.airbnb.com/help/responsible-hosting> (last visited Apr. 13, 2015) (reiterating hosts should make sure they know their local laws).

248. *Id.*

249. See Seymour, *supra* note 23 (stating not all states have laws like the MDA, but most states regulate short-term rentals).

into the city's regulations should act as the catalyst for other cities affected by short-term rentals. Not only should home-sharing be regulated, but it should also work in tandem with Airbnb's Shared City initiative to contribute to local economies and businesses. Additionally, safety provisions should be added to existing regulations to make home-sharing a safer, more enjoyable experience for hosts, guests, and Airbnb. Proactively establishing boundaries and regulations for innovative companies like Airbnb is essential because the sharing economy is not decelerating.