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## Disrupting Affordable Housing

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# Disrupting Affordable Housing: Regulating Airbnb and Other Short- Term Rental Hosting in New York City

*James A. Allen*

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*James A. Allen (james.allen@brooklaw.edu) expects to receive his J.D. in 2018 from Brooklyn Law School. I would like to acknowledge Professor Ted De Barbieri for helping me think through the origins of this paper and for his continued willingness to have a “quick” conversation. I would also like to thank Sara Amri for assisting me with research critical to this paper and for furthering my understanding of the need for proactive tenants’ rights. Acknowledgments are also owed to Professor Sabeel Rahman for directing my research and Professor Anika Singh Lemar for providing feedback critical to the paper. Thanks of course, to the ABA Journal of Affordable Housing and Community Development especially Laurie Hauber and Emily Blumberg. Finally, I must sincerely thank my family, to whom I owe everything.*

*Use of Airbnb and other short-term rental (STR) hosting platforms has been increasing. These platforms have provided entrepreneurial New Yorkers with an opportunity to alleviate their rising costs of rent and have brought tourists into less traditionally visited neighborhoods—arguably offering a more genuine “New York” experience. However, the rapid expansion of these platforms has had an adverse impact on the New York City rental vacancy rate, has impacted the City’s affordable housing stock, and has the potential to negatively impact some of the City’s most vulnerable communities. Current STR regulations in New York are inadequate in addressing how to balance these competing concerns. Without comprehensive legislation addressing short-term rentals, the New York City permanent resident rental stock is at risk of being further depleted.*

### Introduction

Airbnb was founded in 2007 by Brian Cheskey and Joe Gebbia.<sup>1</sup> Living as roommates in San Francisco, Cheskey and Gebbia received a notice from their landlord that their rent would increase by 25 percent that month.<sup>2</sup> Unemployed, strapped for cash, and worried they would not be able to pay their living expenses, they were determined to “design their way out” of their situation.<sup>3</sup> Coincidentally, at that time, Gebbia noticed that San Francisco was experiencing an influx of people visiting for a design conference and that the majority of the city’s hotel rooms had been sold out.<sup>4</sup> Gebbia was reminded of a time in college when he let a passerby sleep on his couch for a night and believed he and Cheskey could use their unfortunate situation as an opportunity to offer a similar accommodation to conference attendees through a web-based platform.<sup>5</sup> That is the story of how AirBedandBreakfast.com or, “Airbnb,” was created.<sup>6</sup>

Airbnb is a short-term rental (STR) hosting platform.<sup>7</sup> Platforms such as Airbnb allow hosts with a home or other property to offer it as a short-term rental by electronically posting its description, location, photos, and rental price to a web-based exchange.<sup>8</sup> Travelers use the platform to connect with hosts as well as to book and pay for travel.<sup>9</sup> Airbnb profits by collecting a percentage of the total travel fee from both host and traveler.<sup>10</sup> Hosts have

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1. *How I Built This With Guy Raz: Airbnb: Joe Gebbia*, NATIONAL PUBLIC RADIO (Oct. 16, 2016) (downloaded using iTunes).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Airbnb.com, <https://www.airbnb.com/>.

8. *Local Destinations for a Global Society*, Airbnb.com, <https://www.airbnb.com/how-it-works> (last visited Feb. 28, 2017).

9. *Id.*

10. See *Airbnb Help Center: What are host service fees?*, AIRBNB.COM, <https://www.airbnb.com/help/article/63/what-are-host-service-fees> (last visited Feb. 28, 2017);

the option to offer their property for one night or year-round<sup>11</sup> and offer a range of accommodations from luxurious to austere.<sup>12</sup>

The flexibility for hosts and variety for guests has added to the attraction and success of Airbnb. In its first week, during the 2008 Democratic National Convention, Airbnb went from 0 to 800 rooms.<sup>13</sup> While the company originally struggled to find its footing,<sup>14</sup> Airbnb now has more rooms listed on its site than the biggest hotel chain and is valued at \$30 billion, a valuation greater than Hyatt or Wyndham Worldwide.<sup>15</sup> On-demand, short-term rentals are now more popular than ever<sup>16</sup> and Airbnb is by far the leader of the industry.<sup>17</sup> As Airbnb and other STR platforms continue to grow, cities and states have had varying regulatory reactions.<sup>18</sup> The variety of regulation is partly caused by the plethora of policy concerns raised by STRs and the web-based platforms that facilitate such rentals.<sup>19</sup>

These innovative platforms have disrupted issues across the policy spectrum. For example, platform users have accused hosts of discrimination

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*Airbnb Help Center: What are guest service fees?*, AIRBNB.COM, <https://www.airbnb.com/help/article/104/what-are-guest-service-fees> (last visited Feb. 28, 2017).

11. Hugo Martin, *Big Chunk of Airbnb's Revenue Comes from Year-Round Rentals, Study Finds*, L.A. TIMES (Jan. 20, 2016), <http://www.latimes.com/business/la-fi-airbnb-hotels-20160120-story.html>.

12. Olivia Zaleski & Gerrit De Vynck, *Airbnb Acquires Luxury Retreats, Beating Out Expedia, Accor*, BLOOMBERG.COM (Feb. 16, 2017), <https://www.bloomberg.com/news/articles/2017-02-16/airbnb-buys-vacation-home-management-company-luxury-retreats>; see also Sam Biddie, *The Worst Airbnb in the Universe: 22 Beds in One Apartment*, VALLEYWAG BLOG, GAWKER.COM (Sept. 3, 2014), <http://valleywag.gawker.com/the-worst-airbnb-in-the-universe-22-beds-in-one-apartm-1630029953>.

13. *How I Built This With Guy Raz*, *supra* note 1.

14. Michael Carney, *Brian Chesky: I Lived on Cap'n McCain's and Obama O's got AirBnB Out of Debt*, PANDO.COM (Jan. 10, 2013), <https://pando.com/2013/01/10/brian-chesky-i-lived-on-capn-mccains-and-obama-os-got-airbnb-out-of-debt/>.

15. *How I Built This With Guy Raz*, *supra* note 1; see also PriceWaterhouse Coopers, *Consumer Intelligence Series: The Sharing Economy*, at 23, <http://www.pwc.com/us/en/industry/entertainment-media/publications/consumer-intelligence-series/sharing-economy.html>.

16. *The Sharing Economy*, *supra* note 15, at 13.

17. C.J. Arlotta, *Airbnb Continues to Dominate Short-Term Rental Market*, HOTEL BUSINESS.COM (Feb. 3, 2017), <http://www.hotelbusiness.com/Other/Airbnb-Continues-to-Dominate-Short-Term-Rental-Market/56245>.

18. Lori Weisberg, *Airbnb: Opportunity or Nuisance?*, San Diego Union Trib. (June 10, 2016), <http://www.sandiegouniontribune.com/business/tourism/sdut-airbnb-opportunity-or-nuisance-2016jun10-story.html>.

19. For an in-depth look regarding property rights and municipal regulation of STRs, see Emily M. Speier, Note, *Embracing Airbnb: How Cities Can Champion Private Property Rights Without Compromising the Health and Welfare of the Community*, 44 PEPP. LAW REV. 387 (2017).

based on race or ethnicity<sup>20</sup> and academic studies have shown that hosts with traditionally non-white names earn less than those with traditionally white names who offer similar properties.<sup>21</sup> Furthermore, concerns have been raised regarding the health and safety of guests as well as hosts.<sup>22</sup> Additionally, there is the issue of liability for damages that occur while visiting an short-term rental, with horror stories that range from properties serving as a venue for sexual exhibitionism to the death of a family member.<sup>23</sup> Amid other issues, there have also been numerous claims and studies discussing the adverse impact of short-term rentals on their surrounding housing economy, particularly for municipalities with historically problematic housing circumstances, such as long periods of low rental vacancy rates and challenges in affordable housing availability.<sup>24</sup> As discussed in this

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20. Kristen Clarke, *Does Airbnb Enable Racism?*, N.Y. TIMES (Aug. 23, 2016), <https://www.nytimes.com/2016/08/23/opinion/how-airbnb-can-fight-racial-discrimination.html>; see also Katie Benner, *Airbnb Adopts Rules to Fight Discrimination by Hosts*, N.Y. TIMES (Sept. 8, 2016), <https://www.nytimes.com/2016/09/09/technology/airbnb-anti-discrimination-rules.html>.

21. Emily Deruy, *Asian Hosts Earn Less Than Whites on Airbnb*, ATLANTIC (Nov. 2, 2015), <https://www.theatlantic.com/politics/archive/2015/11/asian-hosts-earn-less-than-whites-on-airbnb/433299/>; see also Benjamin Edleman & Michael Luca, *Digital Discrimination: The Case of Airbnb.com* (Harvard Bus. Sch. Working Paper Jan. 10, 2014), <http://hbswk.hbs.edu/item/digital-discrimination-the-case-of-airbnb-com>.

22. Short Term Rental Zoning Restrictions, NOLA.GOV (last visited Mar. 3, 2017), <http://www.nola.gov/short-term-rentals/str-zoning-restrictions/>; see also Harriet Aird & Georgie Burgess, *Tasmania eases Airbnb regulations for renting out rooms in sharing economy*, ABC.NET.AU (Feb. 3, 2017), <http://www.abc.net.au/news/2017-02-03/tasmanian-government-lifts-red-tape-on-airbnb-rentals/8239486>.

23. Michael Kaplan, *Orgies, Drugs, Arrests: Airbnb Users' Real-life Nightmares*, N.Y. POST.COM (July 15, 2016), <http://nypost.com/2016/07/15/orgies-drugs-arrests-airbnb-users-real-life-nightmares/>; see also Zak Stone, *Living and Dying on Airbnb*, MEDIUM.COM (Nov. 8, 2015), <https://medium.com/matter/living-and-dying-on-airbnb-6bff8d600c04#2uolfgzev>; see also Sage Larrazo, *Airbnb Bribes Host With Cash Under NDA After 200 Partiers Destroy Apartment Complex*, OBSERVER.COM (Mar. 29, 2017), <http://observer.com/2017/03/airbnb-nda-damage-in-london-after-drug-party/> (exploring how Airbnb has offered monetary amounts in exchange for hosts non-disclosure of some of the more unconventional stays).

24. For an analysis by Airbnb of nineteen jurisdictions, see *Airbnb Policy Tool Chest* (2016), <https://www.airnbncitizen.com/airbnb-policy-tool-chest/>; see also American Hotel & Lodging Ass'n, *From Air Mattresses to Unregulated Business: An Analysis of the Other Side of Airbnb* (Sept. 2016), [https://www.ahla.com/sites/default/files/Airbnb\\_Analysis\\_September\\_2016\\_0.pdf](https://www.ahla.com/sites/default/files/Airbnb_Analysis_September_2016_0.pdf); Dayne Lee, *How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations*, 10 HARVARD L. & POL'Y REV. 229 (2016). But see Gideon Yaffe, *Activists say Airbnb drives up rents. But is that actually true?* L.A. needs to find out, L.A.TIMES.COM (May 13, 2016), <http://www.latimes.com/opinion/op-ed/la>

Note, due to the varying housing priorities across jurisdictions, regulatory solutions regarding how to deal with short-term rentals have been diverse.<sup>25</sup>

This Note discusses how Airbnb and similar short-term rental platforms impact New York City housing, arguing that the current regulations are inadequate in addressing the increasing popularity of short-term rental use. This Note also suggests numerous policy proposals to address the proliferation of STRs. The Note progresses in three Parts.

Part I begins with a brief introduction to the New York City capacity problem and affordable housing landscape. Part I.A provides a short history of New York City affordable housing and Part I.B explores New York's attempt to accommodate residents and an increasing tourist industry. This part will conclude by concentrating on why short-term rental concerns are crucial to New York City residents and why New York legislators have a responsibility to protect every unit of available housing. Part I.C explores Airbnb's history in New York. This part will address how various users of Airbnb have benefitted from its innovative qualities while also discussing how "bad actors" have taken advantage of the platform.

Part II will analyze what New York has done to regulate short-term rentals and platforms such as Airbnb, detailing why existing policies are inadequate in facing the current and growing short-term rental dilemma. Part II will attempt to summarize policy solutions considered in New York and will conclude by reviewing considerations and solutions of other cities dealing with the rise of short-term rentals.

Finally, Part III discusses how comprehensive legislation can combat the disruption of "on demand" housing. This part explores methods proposed by Airbnb and its advocates regarding how to work with jurisdictions facing "historical housing problems." This part will include a discussion of policy suggestions and actions taken by other jurisdictions outside of New York and observes how New York can use these measures to curb short-term rental abuse by "bad actors." Part III will conclude by examining the short-term rental legislation introduced in New York in 2017 and will provide policy suggestions intended to more adequately regulate the impact of Airbnb in New York City.

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oe-0513-yaffe-airbnb-ordinance-la-20160513-story.html (arguing that Lee's report is based on skewed data); Rachel Monroe, *More Guests, Empty Houses*, SLATE.COM (Feb. 13, 2014), [http://www.slate.com/articles/business/moneybox/2014/02/airbnb\\_gentrification\\_how\\_the\\_sharing\\_economy\\_drives\\_up\\_housing\\_prices.html](http://www.slate.com/articles/business/moneybox/2014/02/airbnb_gentrification_how_the_sharing_economy_drives_up_housing_prices.html); Dessi Mia Carbajal, *The Impact of Short Term Rentals on Affordable Housing in Oakland: A Report and Recommendations* (Dec. 2015), <http://www.naceda.org/assets/EBHO%20Short%20Term%20Rental%20Impact%20Report.pdf> (prepared for Community Economics, Inc. & East Bay Housing Organizations).

25. *Airbnb Policy Tool Chest*, *supra* note 24, at 3 ("[E]ach city and country is economically, geographically, and demographically unique.").

### I. The New York City Capacity Problem

To understand the importance of Airbnb in New York, one must first understand New York City's attempt to balance housing affordability with its rise in tourism. For decades, the New York State legislature and judiciary have recognized the adverse impact of the City's low rental vacancy rate. Congestion, or a lack of available rental housing, creates a lack of housing supply;<sup>26</sup> a lack of housing supply increases the cost of rent.<sup>27</sup> As rents increase, developers and their investors are less likely to develop new housing with affordable or low-income units.<sup>28</sup> Rising rents have contributed to a lack of affordable housing and have "priced out" many New Yorkers.<sup>29</sup>

Attempting to "prevent[] exactions of oppressive rents and the forestalling of profiteering and other disruptive practices,"<sup>30</sup> the New York legislature adopted pioneering housing practices in an attempt to provide an affordable housing market.<sup>31</sup> While innovative, these practices have

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26. *Congestion and Its Social Effects*, 13:4 CANADIAN J. OF PUB. HEALTH 177–79 (1922).

27. Editorial Board, *Airbnb's Affordable Housing*, N.Y. POST (Jan. 21, 2015), <http://nypost.com/2015/01/21/airbnbs-affordable-housing/>.

28. *The Cost of Affordable Housing: Does It Pencil Out?*, URB. INST. <http://apps.urban.org/features/cost-of-affordable-housing/> (describing why developers and their investors have incentives to develop and rent units at market rate); Patrick Clark, *Why is it So Hard to Build Affordable Housing: It's Not Affordable*, BLOOMBERG (July 26, 2016), <https://www.bloomberg.com/news/articles/2016-07-26/why-it-s-so-hard-to-build-affordable-housing-it-s-not-affordable>.

29. *Airbnb's Affordable Housing*, *supra* note 27; *The Bright Side of Being Priced Out of New York*, BLOOMBERG (Aug. 23, 2016), <https://www.bloomberg.com/view/articles/2016-08-23/the-bright-side-of-being-priced-out-of-new-york>; *see also* Michael Greenberg, *Tenants Under Siege: Inside New York City's Housing Crisis*, LXIV:13 N.Y. REV. BOOKS 75–81 (Aug. 17, 2017), <http://www.nybooks.com/articles/2017/08/17/tenants-under-siege-inside-new-york-city-housing-crisis/> (exploring New York City's issues regarding housing, homeless, and affordability).

30. *In Re Hotel Ass'n v. Weaver*, 144 N.E.2d 14 (N.Y. 1957).

31. According to the Furman Center for Real Estate and Urban Policy,

[t]he city had the nation's first tenement laws, its first comprehensive zoning ordinance, and its first public housing project. Its present policies continue to set New York City apart. Practically nowhere else has rent regulation persisted so long, or do public housing projects successfully house so many residents, or does the government spend so much money to house the poor, the homeless, and the middle class. The homelessness budget of the City of New York, for instance, almost matches the federal government's spending on homelessness nationwide. The city's capital expenditures for housing, meanwhile, amounted to more than three times the housing expenditures of the next 32 largest cities combined during the late 1980s and 1990s.)



had residual adverse effects.<sup>32</sup> The burdens of these practices have been suffered most harshly by the population they were intended to serve.<sup>33</sup> Thus, affordable housing was developed, but often at the expense of the principles of “livability.”<sup>34</sup>

Additionally burdensome is the ever-increasing rise in New York City tourism. Tourism numbers are reaching record highs and New York renters are now offering tourists the opportunity for a more “New York experience” by listing their apartments on platforms such as Airbnb.<sup>35</sup> These rentals vary in accommodation from couches, to bedrooms, to full apartments. As the success of renting becomes more profitable, New Yorkers are beginning to take apartments off the market for the purpose of renting them

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*Housing Policy in New York City: A Brief History*, FURMAN CENTER FOR REAL ESTATE AND URBAN POLICY, [http://furmancenter.org/files/publications/AHistoryofHousingPolicycombined0601\\_000.pdf](http://furmancenter.org/files/publications/AHistoryofHousingPolicycombined0601_000.pdf).

32. See JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 270–71 (1961) (describing urban renewal, Ms. Jacobs says, “[o]ur present urban renewal laws are an attempt to break [the linkage that creates slums] by forthrightly wiping away slums and their populations, and replacing them with projects intended to produce higher tax yields, or to lure back easier populations with less expensive public requirements. The method fails. At best, it merely shifts slums from here to there, adding its own tincture of extra hardship and disruption. At worst, it destroys neighborhoods where constructive and improving communities exist and where the situation calls for encouragement rather than destruction.”).

33. Anthony Paletta, *A Brief History of Affordable Housing in New York*, METROPOLIS, <http://www.metropolismag.com/cities/can-affordable-housing-overcome-the-odds-once-again-in-new-york/> (describing the mass construction of public housing in New York as a “process [that] indisputably delivered better housing units to many New Yorkers; [but] also dramatically altered many neighborhoods for the worse. East Harlem, the Lower East Side, and Brownsville saw local character replaced by ‘NYCHA Modernism,’ defined by the sprawling landscape of cruciform brick towers set away from the street. Developments rendered in this ‘style’ tended to destroy the vast majority of businesses in their path and, paradoxically, often drove out neighborhood residents who would have gained from the new units. Even Robert Moses complained about their ‘monotonous sameness and institutional character.’”; Greg B. Smith, *NYCHA Tenant Lives in ‘Deplorable Conditions’ With No Sink or Bath as Agency Stalls on Repairs*, N.Y. DAILY NEWS (Apr. 17, 2017), <http://www.nydailynews.com/new-york/nycha-tenant-lives-deplorable-conditions-repairs-stall-article-1.3063345> (describing present-day horrid conditions in NYCHA buildings).

34. *What is Livability?*, PARTNERS FOR LIVABLE COMMUNITIES, <http://livable.org/about-us/what-is-livability> (describing livable circumstances as those which provide a healthy environment, close to work, and with educational, cultural, and recreational opportunities).

35. Zoe Rosenberg, *Airbnb Launches Local-led Experiences Neighborhood Tours in NYC*, CURBED.COM (Mar. 20, 2017), <https://ny.curbed.com/2017/3/20/14981224/airbnb-harlem-tours-experiences/>.



through a short-term rental platform or platforms. These “private listings” directly impact the New York City housing stock and place a potential burden on the City’s affordable housing.

This Part provides a brief historical overview of New York City housing and discusses how the increase of short-term rentals impacts the market for affordable housing. “Affordable housing” is used broadly to include income restricted units, rent stabilized and rent controlled units, units of households paying no more than 30 percent of their income, as well as units available and created through public programs.

#### A. A Brief History of Housing in New York

In the 1930s and the decades that followed, coping with post-World War and Depression Era market conditions, the federal government passed a series of laws intended to promote affordable housing for moderate and low-income families.<sup>36</sup> Even before the federal government introduced policies such as the United States Housing Act of 1937, the Emergency Price Control Act of 1942, and the Housing Act of 1949,<sup>37</sup> New York led the effort among states and municipalities that recognized the importance of housing.<sup>38</sup> For example, New York in 1879 was the first state to adopt tenement housing laws addressing tenement building health and safety conditions.<sup>39</sup> New York was also an early adopter of rent control and rent stabilization.<sup>40</sup>

Responding to population increases caused by World War I, New York enacted the Emergency Rent Laws of 1920.<sup>41</sup> Under these laws, landlords had to base increases in rent on reasonableness.<sup>42</sup> The 1920 laws also provided tax incentives for developers to nudge construction of new

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36. TIM IGLESIAS & ROCHELLE E. LENTO, *THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT* 4–5 (2d ed. 2011).

37. These laws allowed the federal government to control rents and grant subsidies in an attempt to spur public and affordable housing development. See U.S. Housing Act of 1937, Pub. L. No. 75-412; Emergency Price Control Act of 1942, 50 U.S.C.A. § 961 (2010); Housing Act of 1949, 42 U.S.C.A. § 1441 (2005);

38. *Housing Policy in New York City: A Brief History*, *supra* note 31.

39. Sarah Bean Apmann, *Tenement House Act of 1901*, GREENWICH VILL. SOC’Y FOR HISTORIC PRESERVATION (Apr. 11, 2016), <http://gvshp.org/blog/2016/04/11/tenement-house-act-of-1901/>.

40. *Housing Policy in New York City: A Brief History*, *supra* note 31; *Rent Stabilization/Control*, N.Y. STATE HOMES & COMMUNITY RENEWAL BD., <http://www.nyschr.org/Rent/>; *Rent Regulation Prior to the Establishment of the Board*, N.Y. STATE HOMES & COMMUNITY RENEWAL BD., <http://www.nycrgb.org/html/about/intro%20PDF/historyoftheboard.pdf>

41. Steve Cohen, *Rent Stabilization: Preserving Low and Moderate-Income Housing*, CITYLAW (Sept. 24, 2015), <http://www.citylandnyc.org/rent-stabilization-preserving-low-and-middle-income-housing/>.

42. *Id.*

housing.<sup>43</sup> In 1929, these emergency measures were dropped as the city's vacancy rate went from 1 percent to 8 percent.<sup>44</sup>

After World War II, some federal policies expired as conditions in the national market normalized. Recognizing federal relief would become sparser, the New York legislature chose to solidify the federal housing tools by passing similar state laws addressing rent control and rent stabilization.<sup>45</sup> Stemming from these laws, such protective measures included the Local Emergency House Control Act of 1962 and the Emergency Tenant Protection Act of 1974.<sup>46</sup> The Acts granted local municipalities the authority to declare a statutory emergency if the municipality's rental vacancy rate dropped below 5 percent and allowed localities to enact rent stabilization measures in an attempt to control rent during "abnormal market conditions."<sup>47</sup>

Since the passage of the 1974 Emergency Tenant Protection Act, New York City has declared a statutory emergency.<sup>48</sup> The current New York City rental vacancy rate is 3.45 percent;<sup>49</sup> it has been below 5 percent since 1960. This has created a capacity problem in New York City that has been exacerbated by the growing popularity of short-term rentals.<sup>50</sup>

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43. *Id.*

44. *Id.*

45. *Id.*

46. N.Y. Unconsol. Laws § 8621 (McKinney 1974) (establishing the Emergency Tenant Protection Act (EPTA)).

47. EPTA § 8623 (Local determination of emergency; end of emergency). Like the Federal Price Control Act, the purpose of the 1979 Act was enacted "to prevent exaction of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare." N.Y. Unconsol. Laws § 8622 (McKinney 1979). The declaration of a statutory emergency is a discretionary act by a local legislative body. It is unclear whether a local body must declare the state of emergency over once the rental vacancy rate rises above 5 percent. *See, e.g.,* Garden v. Vill. of Roslyn, 593 N.Y.S.2d 301, 302–03 (N.Y. App. Div. 1993). Examples of "abnormal market conditions" include "speculative, unwarranted, and abnormal increases in rents and speculative and other disruptive practices caused by congestion." N.Y. Unconsol. Laws § 8621.

48. *See* TIMOTHY L. COLLINS, AN INTRODUCTION TO THE NEW YORK CITY RENT GUIDELINES BOARD AND THE RENT STABILIZATION SYSTEM 1, 4 (2016).

49. Elyzabeth Gaumer & Sheree West, *Selected Initial Findings of the 2014 New York City Housing and Vacancy Survey* (Feb. 9, 2015), <http://www1.nyc.gov/assets/hpd/downloads/pdf/2014-HVS-initial-Findings.pdf>.

50. Office of N.Y. State Att'y Gen., *Airbnb in the City*, at 3 (Oct. 2014), <https://ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf> (reporting that Airbnb alone accounted for the displacement of long-term housing options, served as illegal hotels or hostels, and generated the most revenue in "gentrified or rapidly gentrifying neighborhoods"); *see also* Aric Jenkins, *Airbnb Host Rented Out Rooms That Were Illegally Built on the Roof*, *Officials Say*, *FORTUNE* (May 18, 2017), <http://fortune.com/2017/05/18/new-york-city-airbnb-dumbo-roof/>.

*B. The New York City Capacity Problem:  
Balancing Affordability with the "Tourist Economy"*

The scarcity of available rental units creates an intensely competitive housing market and has increased the cost of New York City rent. Under these statutory emergencies, the City has been able to introduce rent stabilization laws and New York State has enacted legislation to subsidize rents and encourage development of affordable housing.<sup>51</sup> The New York City government considers an apartment to be affordable "when a household spends no more than 30% of its income on rent."<sup>52</sup> In 2010, approximately 49 percent of New York households exceeded that standard and in 2016, it was reported that the average New York City resident spends more than two-thirds of his or her annual income on rent.<sup>53</sup>

1. Addressing Affordable Housing in New York City

While New York legislators have largely championed innovative affordable housing practices that have provided residents with an ability to afford rent,<sup>54</sup> New York City still sees many residents displaced or homeless because of increasing costs for housing.<sup>55</sup> In the affordable housing arena, New York has attempted to accommodate residents by offering a number of programs, which unfortunately are unable to meet the demand of thousands of applicants who apply each year. For example, New York City has introduced a structure of affordable housing program availability that is based on different tiers for household area median income (AMI). This tiered structure makes applying to available affordable

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51. N.Y. Unconsol. Laws § 8626 (McKinney).

52. *Affordable Housing*, NYC.GOV, <http://www1.nyc.gov/site/hpd/about/what-is-affordable-housing.page>).

53. N.Y.C. Comptroller, *Rents Through the Roof! A Statistical Analysis of Unaffordable Rents in New York City* at 3 (Sept. 2012), <https://comptroller.nyc.gov/wp-content/uploads/documents/Rents-through-the-Roof.pdf>; Emily Nonko, *New Yorkers Will Spend Two-Thirds of Their Income on Rent In 2016*, CURBED.COM (Apr. 21, 2016), <https://ny.curbed.com/2016/4/21/11477788/this-year-new-yorkers-will-spend-two-thirds-of-their-income-on-rent>

54. N.Y.C. Rent Guidelines Bd., *2015 Housing Supply Report* (updated July 20, 2015) (discussing how New York has attempted to combat a lack of affordable housing with programs such as rent-control and stabilization, city-sponsored housing construction, affordable housing tax incentives, and administratively enacted freezes on increases to rent).

55. Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 28 WASH. U. J. URB. & CONTEMP. L. 195, 201 (1985); Michael N. Grynbaum & Nikita Stewart, *Mayor de Blasio, Facing Homelessness Crisis, Issues Plan to Fight It*, N.Y. TIMES (Dec. 17, 2015), <https://www.nytimes.com/2015/12/18/nyregion/mayor-de-blasio-unveils-plan-to-track-homeless-population.html?src=un&feedurl=https%3A%2F%2Fstatic01.nyt.com%2Fpages%2Fnyregion%2Findex.jsonp>.

housing units accessible to the largest possible population by adjusting rents to the household's tier.<sup>56</sup> Making affordable housing units available to the largest possible population is important to New York because these units are highly coveted.

An example of New York's tiered approach and its affordable housing popularity is the recent housing lottery at Essex Crossing. At Essex Crossing, a multi-use development in the lower east side of Manhattan, 104 of the first 211 units were designated as affordable.<sup>57</sup> The lottery for the 104 units opened to a range of prospective tenants "making 40 percent of the area median income to those making 165 percent of the AMI. [M]ost units [were] available for those making 60 percent of the AMI, or between \$30,069 and \$63,060 per year (depending on family size)."<sup>58</sup> Demonstrating the demand for such subsidized housing, the first Essex Crossing lottery drew in over 93,000 applicants for the available 104 units.<sup>59</sup>

New York's support for affordable housing can also be exhibited in the shape of tax incentives. For instance, in 1971 as the City began to experience a rare decrease in population, the legislature introduced the controversial "421-a Tax Program." The 421-a Tax program provided incentives to developers for developing affordable, multi-unit residential buildings on vacant or mostly vacant city land.<sup>60</sup>

More recently, Mayor Bill De Blasio has introduced an ambitious and praiseworthy plan to create 200,000 units of affordable housing.<sup>61</sup> De Blasio's ten-year plan intends to construct 80,000 new units of affordable housing and preserve another 120,000.<sup>62</sup> Noble in its attempt, the plan has yielded slow

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56. *Income Eligibility*, N.Y.C. HOUSING DEV. CORP., <http://www.nychdc.com/pages/Income-Eligibility.html>.

57. Amy Plitt, *Essex Crossing's First Affordable Housing Lottery Has Launched*, CURBED.COM (Mar. 2, 2017), <https://ny.curbed.com/2017/3/2/14786292/lower-east-side-affordable-housing-essex-crossing>.

58. *See id.* (stating studios listed at \$519 a month and \$3,424 a month three-bedrooms).

59. Tanya Warerkar, *Essex Crossing's First Affordable Housing Lottery Nets Over 93,000 Applicants*, CURBED.COM (June 8, 2017), <https://ny.curbed.com/2017/6/8/15761716/essex-crossing-affordable-housing-applications>

60. Evan Bindelglass, *Everything You Need to Know About NYC's 421-a Tax Program, Poised to Expire Today*, CURBED.COM (Jan. 15, 2016), <https://ny.curbed.com/2016/1/15/10846176/everything-you-need-to-know-about-nycs-421-a-tax-program-poised-to>; Charles V. Bagli, *Affordable Housing Program Gives City Tax Break to Developers*, N.Y. TIMES (Apr. 10, 2017), [https://www.nytimes.com/2017/04/10/nyregion/affordable-housing-city-tax-break-developers.html?\\_r=0](https://www.nytimes.com/2017/04/10/nyregion/affordable-housing-city-tax-break-developers.html?_r=0).

61. Nonko, *supra* note 53.

62. Jessica Dailey, *De Blasio Unveils 10-Year, \$41B Affordable Housing Plan*, CURBED.COM (May 5, 2014), <https://ny.curbed.com/2014/5/5/10103592/de-blasio-unveils-10-year-41b-affordable-housing-plan>.

results so far.<sup>63</sup> One hurdle the mayor suffered was temporary: between 2014 and 2016, the 421-a Tax break was repealed and developers dragged their feet while they waited to see if Governor Cuomo would reinstate the program.<sup>64</sup>

Another hurdle to the creation of affordable housing is more substantial. Developing affordable housing is difficult in overly competitive markets such as New York City because many tenants are able to pay higher rents.<sup>65</sup> As high-income earners move into New York City, the AMI continues to increase and “affordable” rent becomes less and less obtainable.<sup>66</sup> While Mayor De Blasio’s program stalls, long-time New Yorkers are finding themselves unable to pay the rising cost of rent and are being priced out of their neighborhoods. Low- and moderate-income New Yorkers are being displaced by high-income earners for whom developers are constructing buildings.<sup>67</sup>

## 2. Tourism in New York

This capacity problem has been compounded by New York City’s rise in tourism. In 2016, the City set a tourism record by surpassing 60 million visitors in a year.<sup>68</sup> The attraction of New York as a tourist destination has benefitted the New York City economy by sustaining more than 375,000 jobs and by increasing the City’s work force; 15,000 new employees were hired in 2016 alone.<sup>69</sup> A key beneficiary of the increase in visitors has been the travel industry, including both hoteliers and short-term rental websites.

For example, in 2016, New York City saw an increase of hotel room bookings by 1.2 million across the five boroughs.<sup>70</sup> To accommodate this influx of tourists, the mayor’s office has indicated that the City will construct

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63. Brad Sylvester, *Housing New York is Making Slow and Steady Progress*, CITY & STATE (June 21, 2017), <http://cityandstateny.com/articles/policy/housing/housing-new-york-progress-so-far.html#.WWwa9tPytE4>.

64. Bagli, *supra* note 60.

65. Alan Ehrenhart, *Why Affordable Housing is Hard to Build*, GOVERNING.COM (June 2016), <http://www.governing.com/columns/assessments/gov-affordable-housing.html>.

66. Nonko, *supra* note 53.

67. Alexandra Schwartz, *The “Poor Door” and the Glossy Reconfiguration of City Life*, NEW YORKER (Jan. 22, 2017), <http://www.newyorker.com/culture/cultural-comment/the-poor-door-and-the-glossy-reconfiguration-of-city-life>.

68. Press Release, Office of N.Y.C. Mayor, Mayor de Blasio Announces Total NYC Visitors Surpasses 60 Million for First Time (Dec. 19, 2016), <http://www1.nyc.gov/office-of-the-mayor/news/963-16/mayor-de-blasio-total-nyc-visitors-surpasses-60-million-first-time>.

69. *Id.* (accounting for growth from varying sectors providing services to the tourism industry).

70. *Id.*

an estimated 29,000 hotel rooms by 2019.<sup>71</sup> Further accommodating these guests were STR hosts, with Airbnb leading the way in booking a record number of trips in the City.<sup>72</sup> Additionally, visits to the “outer boroughs” have been touted because 2016 saw more than 565,000 tourists hosted by short-term rentals in Brooklyn and more than 22,000 hosted by short-term rentals in the Bronx.<sup>73</sup>

Recognizing a threat to their market, hotels have fought back against the rise of short-term rentals.<sup>74</sup> Hotels have also tried to adapt to their popularity and have incorporated themes progressed by short-term rentals.<sup>75</sup> A result of this adaptation has been the proliferation of boutique hotels.<sup>76</sup> Attempting to attract hip millennials, hotels across the boroughs are now being developed to have a homier feel.<sup>77</sup> Conversely, Airbnb is attempting to mature to become a more inclusive travel company, incorporating many themes of traditional hotels.<sup>78</sup> Hotel developments are progressing as developments for affordable housing are stagnant; as short-

71. *Id.*

72. Jennifer Fermino, *NYC Sees More New Year's Eve Airbnb Rentals Than Any Other City*, NYDAILYNEWS.COM (Dec. 30, 2016), <http://www.nydailynews.com/new-york/nyc-sees-new-year-eve-airbnb-rentals-city-article-1.2928926>; Julie Samuels, *It's Time for New York to Open its Doors to Home Sharing*, CITY & STATE (June 8, 2017), <http://cityandstateny.com/articles/opinion/new-york-airbnb-open-home-sharing.html>.

73. *New data: more than 565,000 tourists visited Brooklyn on Airbnb in 2016*, BROOK. DAILY EAGLE (Mar. 1, 2017), <http://www.brooklyneagle.com/articles/2017/3/1/new-data-more-565000-tourists-visited-brooklyn-airbnb-2016> (reporting a 27% increase in visiting from 2015 to 2016 and \$146 million in hosting income); see also Robert Christie, *Airbnb Hosts 22,000 In Bronx in 2016*, BRONX TIMES (Feb. 26, 2017), <http://www.bxtimes.com/stories/2017/8/08-airbnb-2017-02-24-bx.html> (reporting a 107% increase in visiting from 2015 to 2016 and \$3.5 million in hosting income, a 75% yearly increase).

74. Jillian Jorgensen, *NYC Hotel Workers Union to Fund Primary Elections Backing City Council Candidates*, N.Y. DAILY NEWS (July 26, 2017), <http://www.nydailynews.com/news/politics/nyc-hotel-workers-union-fund-elections-backing-council-runners-article-1.3355617>.

75. Liz Moyer, *Hotels, Feeling the Pinch of Airbnb, Promote Local Experiences*, N.Y. TIMES (May 29, 2017), <https://www.nytimes.com/2017/05/29/travel/hotels-feeling-the-pinch-of-airbnb-promote-local-experiences.html>.

76. Leigh Gallagher, *How Hotels Are Starting to Imitate Airbnb*, FORTUNE.COM (Dec. 22, 2016), <http://fortune.com/2016/12/22/hotels-imitate-airbnb/>.

77. Sarah Schmalbruch, *Meet the Hotels That Want to Look Like Airbnb Rentals*, SLATE.COM (Aug. 21, 2015), [http://www.slate.com/blogs/business\\_insider/2015/08/21/extended\\_stay\\_hotels\\_try\\_to\\_compete\\_with\\_airbnb\\_by\\_adding\\_luxury\\_livability.html](http://www.slate.com/blogs/business_insider/2015/08/21/extended_stay_hotels_try_to_compete_with_airbnb_by_adding_luxury_livability.html).

78. Katie Benner, *Airbnb Tries to Behave More Like a Hotel*, N.Y. TIMES (June 17, 2017), <https://www.nytimes.com/2017/06/17/technology/airbnbs-hosts-professional-hotels.html>



term rental and hotel advocates debate, housing advocates are often absent from the conversation.<sup>79</sup>

Tourism should be touted for its support to the New York City economy and as a method of improving United States diplomacy but city and state legislators must also recognize and address New York becoming a "tourist city" and how that impacts the City's most vulnerable residents. For example, displaced residents are now dealing with harsh public transit options as subway cars and platforms are becoming more expensive, outdated, and over-capacity.<sup>80</sup> Additionally, disruptions in ride-sharing platforms have raised concerns regarding workers' rights, an increase of traffic congestion, and an increase in air pollution.<sup>81</sup>

As hurdles in developing affordable housing persist and as tourism expands across the City,<sup>82</sup> elected officials must attempt to tackle a sustainable level of affordability balanced against the attractions and symptoms of a "tourist city."<sup>83</sup> City planners are dealing with pedestrian, commuter,

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79. Lucinda Shen, *The Hotel Industry Is Striking Back at Airbnb*, FORTUNE.COM (Apr. 17, 2017), <http://fortune.com/2017/04/17/airbnb-hotel-research/>; Ali Breland, *Airbnb Fires Back at Hotel Industry*, THEHILL.COM (Apr. 19, 2017), <http://thehill.com/policy/technology/329571-airbnb-fires-back-at-hotel-industry>.

80. See Charles E. Schumer, Kristen Gillibrand, Robert Mendez & Cory Booker, *Think New York Transit is Bad? Just Wait*, N.Y. TIMES (Apr. 11, 2017), <https://www.nytimes.com/2017/04/11/opinion/think-new-york-transit-is-bad-just-wait.html>; see also Emma G. Fitzsimmons, *Surge in Ridership Pushes New York Subway to Limit*, N.Y. TIMES (May 6, 2016), <https://www.nytimes.com/2016/05/04/nyregion/surge-in-ridership-pushes-new-york-subway-to-limit.html>; Dan Rivoli, *NYC Council Proposes Millions for Discount MetroCards for Poor, Citi Bike Expansion*, DAILYNEWS.COM (Apr. 4, 2017), <http://www.nydailynews.com/new-york/nyc-council-proposes-millions-discount-metrocards-citi-bikes-article-1.3019098>; Sara Amri, *Fighting for Fair Fares in New York City Through Civil Society Enforcement of Title VI*, BROOK. J. L. & POL'Y [forthcoming Spring 2018].

81. Nomin Ujiyediin, *New York City Considers Expanding Brooklyn Bridge Pathways*, WNYC.ORG (Aug. 8, 2016), <http://www.wnyc.org/story/new-york-city-considers-expanding-brooklyn-bridge-pathways/>; Stephen Nessen, *Ride Sharing Apps Are Contributing to Congestion in the City, New Report Finds*, WNYC.ORG (Feb. 27, 2017), <http://www.wnyc.org/story/ride-sharing-apps-are-contributing-congestion-city-new-report-finds>.

82. Greg David, *New Hotels and Euro Safety Fears Could Make 2017 Another Record Year for NYC Tourism*, CRAINSNEWYORK.COM (Dec. 22, 2016), <http://www.crainsnewyork.com/article/20161221/BLOGS01/161229980/can-new-york-citys-tourism-boom-continue-in-2017-against-all-odds-while-nyc-is-where-to-go-for-tourists-coming-from-china-brazil-england-and-more>.

83. K. Sabeel Rahman, *Shape of Things to Come: The On-Demand Economy and the Normative Stakes of Regulating 21st-Century Capitalism*, EUROPEAN JOURNAL OF RISK REGULATION [forthcoming], <https://ssrn.com/abstract=2875883>. For example, city funds are being directed toward efforts to deal with pedestrian, commuter, and tourism over-crowding on the Brooklyn Bridge. Additionally, there are reports of increased traffic congestion and pollution due to a rise in ride hailing applications. Finally,



and tourist overcrowding in innovative ways and should apply innovative thinking to their treatment of short-term rentals. As short-term rental use increases, there have been growing reports detailing their adverse impact on the City's rental market and housing ecosystem; these reports have raised concerns that lawmakers must address and Airbnb would like to swiftly extinguish.<sup>84</sup>

### C. The Impact of Short-Term Rentals on New York City Affordable Housing

Increasingly popular, short-term rental units are important to address because they have the direct potential of further decreasing the rental vacancy rate and raising New York City's area median income. With regards to the rental vacancy rate, a 2015 report estimated that if the private short-term rentals on Airbnb alone were relinquished back to the year-round housing market, "the number of vacant rental units citywide would increase by 10 percent and the vacancy rate would rise to 4.0 percent."<sup>85</sup> If those rental units were returned to the market, they would increase the available rental supply, nudging the rental market toward a normal level.

Additionally, a 2014 report from the New York Attorney General's office—discussed further below—found that many STRs are in gentrifying or rapidly gentrifying neighborhoods.<sup>86</sup> The Attorney General's report indicates that renters are occupying rentals for the sole purpose of renting them to transient visitors for profit.<sup>87</sup> The potential impact of this is two-fold: not only are these rentals depleting the market of available

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an estimated construction of 29,000 hotel rooms is anticipated by 2019, an increase that may eat into the city's housing stock. Nomin Ujijediin, *New York City Considers Expanding Brooklyn Bridge Pathways*, WNYC.ORG (Aug. 8, 2016), <http://www.wnyc.org/story/new-york-city-considers-expanding-brooklyn-bridge-pathways/>; Stephen Nessen, *Ride Sharing Apps Are Contributing to Congestion in the City, New Report Finds*, WNYC.ORG (Feb. 27, 2017), <http://www.wnyc.org/story/ride-sharing-apps-are-contributing-congestion-city-new-report-finds>; Press Release, *supra* note 68.

84. Frank Shafroth, *Airbnb Creates an Affordable Housing Dilemma for Cities*, GOVERNING.COM (Sept. 2016), <http://www.governing.com/columns/public-money/gov-airbnb-affordable-housing.html>; Rosa Goldensohn, *Friends and Foes of Airbnb Ask City to Focus on 'Bad Actors'*, CRAIN'S N.Y. BUS. (Dec. 19, 2016).

85. BJH Advisors LLC, Housing Conservation Coordinators Inc. & MFY Legal Services Inc., *Shortchanging New York City: The Impact of Airbnb on New York City's Housing Market* at 6 (June 2016). Because the rental vacancy rate would remain below five percent, the city would still be able to enact rent control measures but more apartments would be available on the New York City rental market.

86. Office of N.Y. State Att'y Gen., *Airbnb in the City*, *supra* note 50, at 3.

87. *Id.* at 15–17.

units but they are also potentially raising the area median income (in turn potentially impacting tiers for affordable housing eligibility).<sup>88</sup>

While it was Airbnb's intention to start as a means of bringing together a community and offering a supplemental income, some units on Airbnb in New York have morphed into full-fledged businesses.<sup>89</sup> While Airbnb may bring tourists into new neighborhoods and provide New Yorkers with a means of paying rising rent, these reports are juxtaposed to claims that Airbnb is disrupting New York's housing ecosystem. For example, some stories corroborate the Attorney General's finding that short-term rentals are most prominent in rapidly gentrifying neighborhoods.<sup>90</sup> Other reports have found that white hosts in "traditional neighborhoods of color" typically earn more than their African-American neighbors.<sup>91</sup> These are important concerns that New York City must diligently address and concerns Airbnb and other STR platforms should be eager to cooperate on.

### 1. The Early History of Airbnb in New York

New York City has always been important to Airbnb's growth. In its early stages, New York hosts provided the Airbnb founders with crucial feedback about how to improve the platform operationally.<sup>92</sup> Moreover,

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88. For example, if a high-income earner rents an apartment in Manhattan in which she lives and an apartment in Brooklyn which she rents as an STR, she is actively occupying two rental units and could raise the area-media-income assuming she makes more than the median income in either of her respective areas.

89. Megan Barber, *Airbnb vs. the City*, CURBED.COM (Nov. 10, 2016), <https://www.curbed.com/2016/11/10/13582982/airbnb-laws-us-cities>; Tomio Geron, 'Couch-Surfing' Takes Off with Airbnb, WALL ST. J. (Nov. 11, 2010), <https://blogs.wsj.com/venturecapital/2010/11/11/couch-surfing-takes-off-with-airbnb/> (stating "[t]he service took off after it changed its policy from a 'bed and breakfast' idea where the person who rents out the space has to be there when lodgers stay, to one where people can rent out the spaces while the owner is away.").

90. Katie Benner, *A Brooklyn Neighborhood Where Airbnb Is Being Put to the Test*, NYTIMES.COM (July 4, 2016), [https://www.nytimes.com/2016/07/04/technology/a-brooklyn-neighborhood-where-airbnb-is-being-put-to-the-test.html?\\_r=2](https://www.nytimes.com/2016/07/04/technology/a-brooklyn-neighborhood-where-airbnb-is-being-put-to-the-test.html?_r=2); Gwynn Hogan, *No Landlords Fined in Airbnb Hot Spot Since City Crackdown Began*, DNAINFO.COM (May 12, 2017), <https://www.dnainfo.com/new-york/20170512/east-williamsburg/landlords-airbnb-illegal-hotel-legislation>.

91. Erin Durkin, *Most Airbnb hosts in black neighborhoods are white, study shows*, N.Y. DAILY NEWS (Mar. 1, 2017), <http://www.nydailynews.com/new-york/airbnb-hosts-black-neighborhoods-white-study-shows-article-1.2985069>; Feliks Garcia, *Airbnb is 'Ravaging' Black Neighbourhoods in New York City and Trying to Hide it, Officials Say*, INDEPENDENT (Apr. 25, 2016), <http://www.independent.co.uk/news/world/americas/airbnb-ravaging-black-communities-new-york-city-a7000761.html>; Office of N.Y. State Att'y Gen., *Airbnb in the City*, *supra* note 50, at 3 (describing how most profits from Airbnb STRs are in gentrifying or rapidly gentrifying areas of NYC).

92. *How I Built This With Guy Raz*, *supra* note 1.

because New York is visited by so many international tourists each year, by converting those visitors into hosts, New York has also been a major contributor to the growth of Airbnb in other countries and cities.<sup>93</sup> The growth of hosts in New York should not come as much of a surprise; the platform encourages the entrepreneurial spirit embodied by so many New Yorkers and is often a tool used to alleviate the rising costs of rent.<sup>94</sup>

The popularity and entrepreneurial nature of hosting in New York has also resulted in a variety of rental listings.<sup>95</sup> For example, some hosts choose to rent out a spare room or allow guests to sleep on a couch.<sup>96</sup> These types of rentals are aligned with Airbnb's general message to support the "home-sharing" community and foster an environment that encourages hosts to make suggestions about the surrounding area in an effort to promote local businesses.<sup>97</sup> However, these rentals are often less profitable for hosts because either they are renting infrequently or guests are less likely to book with hosts who stay in the unit during the rental. Other listings offer full apartments and earn more from their guests. The potential to earn more from a unit by offering it as a short-term rental has led to the alleged increase in private short-term rentals and "illegal hotels."<sup>98</sup>

A full apartment unit, or a "private short-term rental," can be listed on a short-term rental platform with different intentions. For example, hosts may list a full apartment because they are out of town and would like to cover the cost of their trip. Other listings of full units may be made available for pecuniary purposes where hosts rent an apartment solely for earning rental income. While the former rental seems innocent and the latter nefarious, both are violations of New York's multiple dwelling law.

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93. *Id.*

94. See Laurretta Charlton, *Is Airbnb Good for the Black Middle Class?*, NEW YORKER (Oct. 5, 2016), <http://www.newyorker.com/tech/elements/is-airbnb-good-for-the-black-middle-class>; see also Ben Chapman, *That's a roof with a view*, NYDAILYNEWS.COM (July 21, 2009), <http://www.nydailynews.com/life-style/real-estate/website-airbnb-lets-users-sublet-couches-roofs-odd-spaces-article-1.429969>.

95. See Office of N.Y. State Att'y Gen., *Airbnb in the City*, *supra* note 50, at 2 n.1. Airbnb hosts can offer (1) a "shared room," where the host remains present during the stay, (2) an "entire home/apartment," where the host is not present, or (3) a "private room," where the host may or may not remain present during the stay.

96. *From Air Mattresses to Unregulated Business*, *supra* note 24.

97. See *Who We Are, What We Stand For*, AIRBNB BLOG, <http://blog.airbnb.com/who-we-are/>.

98. Julie Bort, *107 New York Airbnb Hosts May Be Breaking The Law*, BUSINESSINSIDER.COM (Sept. 3, 2014), <http://www.businessinsider.com/ny-ag-examines-107-airbnb-host-records-2014-9>.

The New York Multiple Dwelling Law (MDL) prohibits renting an entire apartment for less than thirty days if the lessee is unattended by a permanent resident.<sup>99</sup> Those in favor of the MDL argue that it prohibits the rise of housing units being taken off the market solely for use as a short-term rental.<sup>100</sup> Those in opposition argue that it is too restrictive and draconian.<sup>101</sup> Concerns over short-term rentals in New York have played out in public over the last few years as politicians and Airbnb advocates as well as opponents grapple with how to live with one another. A central concern for lawmakers has been how to balance the economic interests gained by Airbnb with the impact of short-term rentals on the housing economy and how to prevent “bad actors” from taking advantage of short-term rental platforms.<sup>102</sup>

While proponents of Airbnb and other short-term rental platforms argue that hosting boosts local economic activity, those arguments often fail to mention the impact that hosting has on the city’s rise of gentrification and the depletion of the city’s rental vacancy rate.<sup>103</sup> This precarious relationship has been a topic of debate ever since Airbnb transformed from a couch-surfing site<sup>104</sup> to a platform that allows hosts to list private short-term rentals.<sup>105</sup> Today, “[t]he majority of Airbnb consumers choose

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99. N.Y. Multiple Dwelling Law art. 1, § 4(8)a; N.Y.C. ADMIN. CODE § 27-2004(a) (8)(a) (amended in 2011 to include § 2.62, “Short term rental of apartments or rooms by tenants or owners”).

100. *Fact vs. Fiction: The Truth on New York Legislation*, SHAREBETTER.ORG, <http://www.sharebetter.org/factsvsfiction/>.

101. Katie Benner, *Airbnb Sues Over New Law Regulating New York Rentals*, N.Y. TIMES (Oct. 21, 2016), [https://www.nytimes.com/2016/10/22/technology/new-york-passes-law-airbnb.html?\\_r=0](https://www.nytimes.com/2016/10/22/technology/new-york-passes-law-airbnb.html?_r=0).

102. Rosa Goldensohn, *De Blasio Ramps Up Airbnb Enforcement*, CRAIN’S N.Y. BUS. (Apr. 26, 2017), [http://www.crainsnewyork.com/article/20170426/REAL\\_ESTATE/170429915/mayor-bill-de-blasio-budgets-1-6-million-to-crack-down-on-airbnb](http://www.crainsnewyork.com/article/20170426/REAL_ESTATE/170429915/mayor-bill-de-blasio-budgets-1-6-million-to-crack-down-on-airbnb).

103. *New Study: Airbnb Generated \$632 Million in Economic Activity in New York*, AIRBNB.COM (Oct. 22, 2013), [https://www.airbnb.com/press/news/new-study-airbnb-generated-632-million-in-economic-activity-in-new-york?show\\_survey=0](https://www.airbnb.com/press/news/new-study-airbnb-generated-632-million-in-economic-activity-in-new-york?show_survey=0) (but other estimates have hosts earning more); see also Rich Bockmann, *Airbnb Revenue in Black Neighborhoods Mostly Goes to White Hosts: Study*, THEREALDEAL.COM (Feb. 24, 2017), <https://therealdeal.com/2017/02/24/airbnb-revenue-in-black-neighborhoods-mostly-goes-to-white-hosts-study/>.

104. Matt Gross, *Going Deep for the Cheap in New York*, N.Y. TIMES BLOG (Dec. 9, 2009 12:01 AM), <https://frugaltraveler.blogs.nytimes.com/2009/12/09/going-deep-for-the-cheap-in-new-york/>.

105. Tom Acitelli, *Airbnb Sees Blue Skies in NYC*, THEREALDEAL.COM (Oct. 31, 2011), [https://therealdeal.com/issues\\_articles/airbnb-sees-blue-skies-in-nyc/](https://therealdeal.com/issues_articles/airbnb-sees-blue-skies-in-nyc/); see also Eli Rosenberg, *Welcome, Airbnb Guest! Your Neighbors Are the Trumps*, NYTIMES.COM (Mar. 6, 2017), <https://www.nytimes.com/2017/03/06/nyregion/airbnb-trump-tower.html>.

to rent the entire place, rather than sharing quarters or a meal with the owner.”<sup>106</sup> However, the renting of an entire apartment as an STR often means that the housing unit is taken off the market for a potential permanent resident.<sup>107</sup>

## 2. New York’s Regulation of Short-Term Rentals

Permanent resident housing concerns over short-term rentals is not a new topic. In 1929, attempting to combat landlords who were reaping a greater profit by converting residential property units into “illegal hotels,” the New York legislature enacted the Multiple Dwelling Law.<sup>108</sup> The Multiple Dwelling Law is meant to protect tenants from housing conditions that are “a menace to the health, safety, morals, welfare, and reasonable comfort of the citizens of the state.”<sup>109</sup> The MDL echoes the old tenement laws in its attempt to provide a certain livable standard.

In the late aughts, an effort to modernize the MDL was advanced as Mayor Bloomberg’s administration received over 2,500 complaints of “illegal hotels” to the non-emergency (311) line.<sup>110</sup> According to complaints, landlords were dodging the restrictions of the law because the term “permanent residence purposes” as used in the MDL was loosely defined.<sup>111</sup> This led New York legislators to introduce an amendment to the MDL, reading in pertinent part: “A class A multiple dwelling shall only be used for permanent residence purposes. For the purposes of this definition, ‘permanent residence purposes’ shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more.”<sup>112</sup>

The MDL provides an exception that allows for guest occupancy for less than 30 consecutive days if a permanent resident is present.<sup>113</sup> The

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106. *The Sharing Economy*, *supra* note 15, at 16, <https://www.pwc.com/us/en/technology/publications/assets/pwc-consumer-intelligence-series-the-sharing-economy.pdf>.

107. *Shortchanging New York City*, *supra* note 85, at 26; Office of N.Y. State Att’y Gen., *Airbnb in the City*, *supra* note 50, at 3.

108. Harold Riegelman, 1932 *Amendments to Dwelling Law*, 4 N.Y. ST. BAR ASS’N BULL. 288, 288–90 (1932).

109. N.Y. Multiple Dwelling Law art.1, § 2, “Legislative Findings.”

110. Memorandum in Opposition to Airbnb, Inc.’s Motion to Quash and In Support of the Attorney General’s Cross-Motion to Compel Responses to an Investigatory Subpoena at 8, *Airbnb Inc. v. Eric T. Schneiderman* 2014 N.Y. Slip Op. 24129 Index No.: 5593-13 (Nov. 8, 2015) (hereinafter *Schneiderman Opposition to Airbnb Petition*).

111. Deanna Ting, *Airbnb vs. New York City: The Complete Battle Up to Now*, SKIFT.COM (Oct. 25, 2016), <https://skift.com/2016/10/25/airbnb-vs-new-york-city-the-complete-battle-up-to-now/>.

112. N.Y. Multiple Dwelling Law art. 1, § 4.a.8(a); N.Y.C. ADMIN. CODE, tit. 27, ch. 2, art. 1 § 27-2004.8(A) (1980).

113. N.Y. Multiple Dwelling Law § 304.

purpose of the amendment was to clarify and strengthen the statute to more explicitly oppose the influx of sites such as Airbnb.<sup>114</sup> The MDL is strengthened by the New York City Code, which states,

It shall be unlawful for any person or entity who owns or occupies a multiple dwelling or dwelling unit classified for permanent residence purposes to use or occupy, offer or permit the use or occupancy or to convert for use or occupancy [a] multiple dwelling or dwelling unit for other than permanent residence purposes.<sup>115</sup>

While Airbnb and others submitted testimony opposing the amendment,<sup>116</sup> it found enough votes to pass and the MDL was changed effective May 1, 2011.<sup>117</sup>

Under the revised law, New York first challenged the legality of an Airbnb listing in 2012 when the New York City Environmental Control Board levied fines on a landlord and tenant. The Control Board claimed that the tenant was operating his apartment for “illegal use in [a] residential neighborhood.”<sup>118</sup> The tenant, Nigel Warren, was renting his East Village apartment for \$100 per night *while his roommate remained in the apartment*.<sup>119</sup> Although Airbnb’s terms and conditions relinquished them from any potential liability,<sup>120</sup> they provided legal support and ultimately helped win an appeal striking Nigel’s fines.<sup>121</sup> Although his case only challenged the

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114. “Prior to May 1, 2011, enforcement often proved difficult because the law did not define a threshold for permanent or transient occupancy, with time periods ranging from 30 to 90 days. Residents had been complaining to local leaders for year [sic] about illegal units and conversions, so the city worked with State Senators and Assemblymen to streamline the law to make both compliance and enforcement simple.” Jason Clampit, *Airbnb’s growing pains mirrored in New York City, where half its listings are illegal rentals*, SKIFT.COM (Jan. 7, 2013), <https://skift.com/2013/01/07/airbnbs-growing-pains-mirrored-in-new-york-city-where-half-its-listings-are-illegal-rentals/>.

115. N.Y.C. Admin. Code § 28-210.3.

116. N.Y. Bill Jacket, 2010 S.B. 6873-B, Ch. 225 at 96–98.

117. Clampit, *supra* note 114.

118. Ron Lieber, *A Warning for Hosts of Airbnb Travelers*, N.Y. TIMES (Nov. 30, 2012), <http://www.nytimes.com/2012/12/01/your-money/a-warning-for-airbnb-hosts-who-may-be-breaking-the-law.html>.

119. See Tomio Geron, *Airbnb Wins New York City Appeal on Short-Term Rentals*, FORTUNE.COM (Sept. 27, 2013), <https://www.forbes.com/sites/tomiogeron/2013/09/27/airbnb-wins-new-york-city-appeal-on-short-term-rentals/#76c178e6fabf>.

120. *Terms of Service*, AIRBNB.COM (last updated Oct. 27, 2016), <https://www.airbnb.com/terms/>.

121. *Huge Victory in New York for Nigel Warren and Our Host Community*, AIRBNBCITIZEN.COM (Sept. 27, 2013), <https://www.airbnbcitizen.com/huge-victory-in-new-york-for-nigel-warren-and-our-host-community/>.

legitimacy of renting a room while another lessee remained in the apartment, Airbnb touted the win as a victory for home-sharing.<sup>122</sup>

After the victory, Airbnb began to go on the offensive. Working with a pro-sharing economy affiliate, Peers.org, Airbnb and its hosts began an effort to repeal the Multiple Dwelling Law in New York.<sup>123</sup> Hosts began to visit legislative offices and Peers published targeted advertisements in popular New York political outlets such as *City & State*.<sup>124</sup> Airbnb also promoted a study that found it generated over \$630 million in economic activity in New York.<sup>125</sup>

Then, in 2013, New York Attorney General Eric Schneiderman subpoenaed Airbnb for information on 225,000 in-state users.<sup>126</sup> The Attorney General requested the material as a method of cracking down on landlords who were evicting tenants in order to convert units into Airbnb rentals and also to identify tenants who are gone most of the year and using their apartments to generate income.<sup>127</sup> In another publicity win for Airbnb, after refusing to turn over the information on privacy grounds, a judge quashed the subpoena, declaring it to be overbroad and unduly burdensome.<sup>128</sup>

Unrelenting, the Attorney General issued a new, refined subpoena and days later Airbnb and the Attorney General reached an agreement that required Airbnb to provide data on more than 100 hosts.<sup>129</sup> In the same

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122. See Marcus Wohlsen, *Airbnb Vows to Fight NYC Ruling Against Room Sharing*, WIRED.COM (June 5, 2013), <https://www.wired.com/2013/06/airbnb-fights-nyc/>; see also *Huge Victory in New York for Nigel Warren and Our Host Community*, *supra* note 121.

123. Katie Brennan, *Airbnb Hosts Campaign Against New York Subpoena*, N.Y. TIMES INTRANSIT BLOG (Oct. 18, 2013), <https://intransit.blogs.nytimes.com/2013/10/18/airbnb-hosts-campaign-against-new-york-subpoena/>; see also *Save Airbnb in New York: Legalize Sharing*, PEERS.ORG (2013), <http://action.peers.org/page/s/legalize-sharing-ny> (a petition started in 2013 that has since garnered over 240,000 signatures).

124. Jason Clampet, *New York Legislator Explains What a Legal Rental Is to Airbnb Lobbyists*, SKIFT.COM (Dec. 17, 2013), <https://skift.com/2013/12/17/ny-state-senator-responds-to-airbnb-lobbying-group-with-primer-on-legal-rentals/>.

125. *New Study: Airbnb Generated \$632 Million in Economic Activity in New York*, *supra* note 103.

126. See Ryan Tate, *NY Attorney General Subpoenas Airbnb for Info on 225K Users*, WIRED.COM (Oct. 7, 2013), <https://www.wired.com/2013/10/airbnb-ny/>.

127. Schneiderman Opposition to Airbnb Petition, *supra* note 110, at 3.

128. See *Airbnb Inc. v. Eric T. Schneiderman*, 2014 N.Y. Slip Op. 24129, Index No.: 5593-13 (Nov. 8, 2015).

129. Associated Press, *Schneiderman to Issue New Airbnb Subpoena*, CRAIN'S N.Y. BUS. (May 13, 2014), <http://www.crainsnewyork.com/article/20140513/TECHNOLOGY/140519964/schneiderman-to-issue-new-airbnb-subpoena>.



week, Airbnb removed over 2,000 New York hosts who they claimed were “bad actors providing a low-quality experience.”<sup>130</sup>

In 2014, the Attorney General’s office issued a report detailing findings regarding Airbnb rentals.<sup>131</sup> The report found that most Airbnb rentals in New York violated the Multiple Dwelling Law.<sup>132</sup> The report also found that “commercial users” accounted for a disproportionate share of “private short-term rentals”<sup>133</sup> and that private short-term rentals displaced thousands of apartments that would otherwise be available for permanent residents.<sup>134</sup> By this time, the Attorney General had been joined by other politicians in opposing the rapid rise of short-term rentals<sup>135</sup> and third parties were also beginning to study the impact of Airbnb on the city’s rental market.<sup>136</sup> For example, in a 2016 report disputed by Airbnb, one third-party study claimed that there were 51,397 total New York City Airbnb listings.<sup>137</sup> Of those, the report identified 8,058 units as “Impact Listings,” listings that are apartments likely removed from the market for the sole purpose of serving as a short-term rental.<sup>138</sup>

Attempting to curb such rentals, state and city legislators began considering how to best crackdown on “bad actors” and how to appropriately enforce the MDL.<sup>139</sup> As a possible solution, the New York State Assembly

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130. Bort, *supra* note 98. Shortly thereafter, New York City reached a \$1 million settlement with Smart Apartments, LLC, one of Airbnb’s most infamous bad actors. Drew Grant, *Infamous Airbnb Hotelier Toshi to Pay \$1 Million to NYC*, OBSERVER.COM (Nov. 20, 2013), <http://observer.com/2013/11/infamous-airbnb-hotelier-toshi-to-pay-1-million-to-nyc/>.

131. Office of N.Y. State Att’y Gen., *Airbnb in the City*, *supra* note 50.

132. *Id.* at 2.

133. The AG’s report defines “private STRs” as Airbnb rentals that are listed as “entire home/apartment” (where the host leaves during the stay) and “private room” (where the host may or may not remain during the stay). *Id.* at 2–3.

134. *Id.* at 2 n.1.

135. John Santore, *Illegal Airbnb Rentals Could See New Fines Under Proposed Legislation*, DNAINFO.COM (Dec. 23, 2015), <https://www.dnainfo.com/new-york/20151223/new-york-city/illegal-airbnb-rentals-could-see-new-fines-under-proposed-legislation>; see also Tess Hofman, *Stringer Airs Concerns About Airbnb Before Council Hearing*, THEREALDEAL.COM (Jan. 19, 2015), <https://therealdeal.com/2015/01/19/stringer-air-concerns-about-airbnb-before-hearing/>.

136. See Jaron Benjamin & Jonathan Westin, *Airbnb’s Threat to Affordable Housing*, NYDAILYNEWS.COM (Aug. 9, 2014), <http://www.nydailynews.com/opinion/airbnb-threat-affordable-housing-article-1.1897375>; see also Rachel Monroe, *More Guests, Empty Houses*, SLATE.COM (Feb. 13, 2014); *The Impact of Short Term Rentals on Affordable Housing*, *supra* note 24.

137. *Shortchanging New York City*, *supra* note 85, at 26.

138. *Id.* at 27.

139. Jennifer Fermino, *New York City will spend \$10M to crack down on illegal hotels*, NYDAILYNEWS.COM (Nov. 16, 2015), <http://www.nydailynews.com/new-york/nyc-spend-10m-crack-illegal-hotels-article-1.2436047>.

in late 2015 proposed an amendment that introduced an escalating fine—beginning at \$1,000 and going up to \$7,500—per violation of the MDL.<sup>140</sup> The legislation also made it illegal to publicly advertise rentals in violation of the MDL on platforms such as Airbnb.<sup>141</sup> In 2016, Governor Cuomo signed the proposed amendment into law.<sup>142</sup>

Airbnb initially attempted to combat the legislation in court.<sup>143</sup> This suit was a shift away from Airbnb's typical community messaging and focused less on repealing the law and more on Airbnb avoiding liability for the fine.<sup>144</sup> Airbnb dropped the lawsuit after reaching a settlement agreement with New York that ensured all fines would be imposed on the hosts and not Airbnb.<sup>145</sup> However, the newly implemented fine and the outcome of the settlement has left guests wondering if they are renting illegal units and has caused an uproar among Airbnb hosts.<sup>146</sup>

## II. Living with Airbnb

Aside from public opposition, another complication with the law is determining how many people are breaking it. One obvious problem of regulating short-term rentals in New York has been a lack of clear data.<sup>147</sup> Airbnb itself has disputed third-party reports and has claimed that

140. Santore, *supra* note 135.

141. N.Y.S. Assembly Bill 8704-C (Jan. 13, 2016).

142. Associated Press, *Cuomo signs bill authorizing fines for illegal Airbnb listings*, CRAIN'S N.Y. BUS. (Oct. 21, 2016), <http://www.crainsnewyork.com/article/20161021/TECHNOLOGY/161029968>; Mike Vilensky, *Albany Approves Airbnb Penalties*, WALL ST. J. (June 17, 2016), <https://www.wsj.com/articles/albany-approves-airbnb-penalties-1466206171>.

143. Complaint to Declare Invalid and Enjoin Enforcement of Multiple Dwelling Law Section 121 & New York City Administrative Code Section 27-287.1, *Airbnb, Inc. v. Schneiderman, et al.*, Case No. 16-cv-8239 (Oct. 21, 2016); *see also* Joel Stashenko, *Airbnb Files Lawsuit After Cuomo Signs Deal Imposing Fines for Ads*, N.Y. L.J. (Oct. 21, 2016), <http://www.newyorklawjournal.com/id=1202770471578/Airbnb-Files-Lawsuit-After-Cuomo-Signs-Bill-Imposing-Fines-for-Ads?mcode=1202619332324&curindex=3&slreturn=20170205162150>.

144. Memorandum of Law in Support of Application of Airbnb, Inc. For a Temporary Restraining Order And Preliminary Injunction at 3, *Airbnb, Inc. v. Schneiderman et al.*, Case No. 16-cv-8239 (Oct. 26, 2016) [hereinafter Memorandum of Law in Support of Airbnb].

145. NY Stipulation of Settlement and Dismissal, *Airbnb, Inc. v. Schneiderman, et al.*, Case No. 16-cv-8239 (Dec. 5, 2016) [hereinafter 2016 Settlement].

146. Kristina Conley, *Half of NYC's Airbnb listings are illegal under new law*, NYPOST.COM (Oct. 28, 2016), <http://nypost.com/2016/10/28/half-of-nycs-airbnb-listings-are-illegal-under-new-law/>.

147. *Sleeping Around: Short-Term Rentals and Housing in New York City* at 18, CITIZENS HOUSING & PLANNING COUNCIL (Mar. 2017), <http://chpcny.org/2017/03/sleeping-around-short-term-rentals-housing-new-york-city/> (describing a lack of "reliable, objective, and useful data").

despite some bad actors, its platform has a net-positive impact for New Yorkers.<sup>148</sup> Although it has proffered internal studies that place it in a positive light, Airbnb has added to the opacity of the short-term rental dilemma by its reluctance to release data.<sup>149</sup> This lack of transparency has led to an inability to understand just how pervasive an issue short-term rentals may be; two recent reports have pegged listings in New York City at 46,000 and 51,397, a margin of 5,397 listings.<sup>150</sup>

An additional result of this lack of transparency is the inability to know how the newly implemented fine will fare against those it is intended to prohibit or how it may impact those wishing to rent casually. Thus, the newly implemented fine is a prohibition on the influx of “illegal hotels” but it is also prohibitive on others who may wish to rent their space infrequently and as a way to stay in their costly New York apartment.<sup>151</sup>

In reaction, Airbnb hosts in New York have advocated for the service as a means of remaining a “permanent resident” in a city that is becoming increasingly more expensive.<sup>152</sup> For instance, according to Airbnb, “there are approximately 46,000 hosts [in New York and the] typical New York host rents a unit for 36 nights a year . . . earning approximately \$5,300 in income. Among Airbnb hosts in New York, 78% are low-, moderate-, or middle-income, and 72% of these hosts use the money they earn sharing their space to stay in their homes.”<sup>153</sup>

Additionally, outlets have praised Airbnb for bringing tourists into boroughs and neighborhoods that do not typically attract the tourist economy.<sup>154</sup> Further arguments in favor of short-term rentals have centered

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148. *Airbnb Generated \$632 Million in Economic Activity in New York*, *supra* note 103 (but other estimates have hosts earning more).

149. Additionally, much of the attention has been given to just Airbnb and not the other short-term rental platforms.

150. See Memorandum of Law in Support of Airbnb, *supra* note 144, at 5; but see *Shortchanging New York City*, *supra* note 85, at 26 (citing 51,397 “listings”).

151. Joanna Walters, *There’s something in the Airbnb: Hosts Anxious as New York Begins Crackdown*, THEGUARDIAN.COM (Feb. 12, 2017), <https://www.theguardian.com/technology/2017/feb/12/airbnb-hosts-new-york-fines-government-illegal>; Michael Garafalo, *How Williamsburg Airbnb Hosts Are Dealing With the New Law Against Home Sharing*, BEDFORDANDBOWERY.COM (Oct. 27, 2016), <http://bedfordandbowery.com/2016/10/how-are-williamsburg-airbnb-hosts-dealing-with-the-new-law-against-home-sharing/>.

152. Evelyn Badia, *How Airbnb Saved My House*, N.Y. POST (Dec. 8, 2013), <http://nypost.com/2013/12/08/how-airbnb-saved-my-house/>; see also Evelyn Badia, *Making a Living With Aibnb*, NYTIMES.COM (Apr. 7, 2017), 3.

153. See Memorandum of Law in Support of Airbnb, *supra* note 144, at 5.

154. *New data: more than 565,000 tourists visited Brooklyn on Airbnb in 2016*, *supra* note 73 (reporting a 27% increase in visiting from 2015 to 2016 and \$146 million in hosting income); see also *Airbnb Hosts 22,000 In Bronx in 2016*, *supra* note 73 (reporting a 107% increase in visiting from 2015 to 2016 and \$3.5 million in hosting income, a 75% yearly increase).

around home-sharing as a beacon of sustainability and progressivism.<sup>155</sup> For example, short-term rentals in New York City have spawned a micro-economy, creating jobs for cleaners, freelance photographers, and technicians.<sup>156</sup> Airbnb—ever the public relations enthusiast—has even publicized a study that declares home-sharing is a “greener” way of traveling.<sup>157</sup>

To quell hosts’ concerns, New York legislators have indicated that the MDL is not meant to be a bar on the casual renter.<sup>158</sup> However, regardless of how the city chooses to enforce the current law, the city’s solution does not resolve the issue of how difficult it is to track short-term rentals. Additionally, casual hosts do not appear to be fully informed of how New York intends to enforce the law.<sup>159</sup> These concerns and their potential consequences on affordable housing require a more comprehensive solution.

#### A. Proposals Within New York

Airbnb has recently addressed the adverse impact of short-term rentals in New York by recently committing to a “One Host, One Home” policy, which would limit Airbnb hosts to one rental property per jurisdiction.<sup>160</sup> The “One Host, One Home” policy is part of Airbnb’s “Community Compact”<sup>161</sup> effort, an attempt to work with cities like New York that have, according to Airbnb, “historical housing challenges.”<sup>162</sup>

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155. Nathan Heller, *Is the Gig Economy Working?*, NEW YORKER (May 15, 2017), <http://www.newyorker.com/magazine/2017/05/15/is-the-gig-economy-working> (discussing a panel at the Democratic National Convention that suggested home-sharing was sustainable and aligned with progressive values).

156. See e.g., *id.* (describing a company called Happy Host that acts exclusively as a management company for STRs). These micro-economies have also been impacted by the new crackdown in New York. Abby Ellin, *New York’s Housecleaners Become Collateral Damage in Airbnb Crackdown*, FORTUNE.COM (May 17, 2017), <http://fortune.com/2017/05/17/airbnb-regulation-new-york-housecleaners/>.

157. *New Study Reveals A Greener Way to Travel: Airbnb Community Shows Environmental Benefits of Home Sharing*, AIRBNB (July 31, 2014), <https://www.airbnb.com/press/news/new-study-reveals-a-greener-way-to-travel-airbnb-community-shows-environmental-benefits-of-home-sharing>.

158. Hogan, *supra* note 91 (discussing the mayor’s office’s intent to crackdown on commercial and dangerous landlords).

159. Walters, *supra* note 151.

160. 2016 Settlement, *supra* note 145, at 1; see also *One Host, One Home: New York City*, AIRBNBCITIZEN.COM (July 2016), <https://www.airbnbaction.com/wp-content/uploads/2016/07/OneHostOneHomeNewYorkCity-1.pdf>.

161. *The Airbnb Community Compact*, AIRBNB ACTION.COM (2015), <https://www.airbnbaction.com/wp-content/uploads/2015/11/Airbnb-Community-Compact.pdf>.

162. See Memorandum of Law in Support of Airbnb, *supra* note 144, at 5. Airbnb does not define “historic housing challenges” in its memorandum. However, Airbnb’s *Policy Tool Chest* New York as facing “affordable housing challenges” because of the city’s previous poor decision making: “[New York City is] facing

Attempting to add to New York's long history of policy and land use decisions, New York State Senator Martin Golden introduced legislation to cope with short-term rentals. Senator Golden's proposal introduced an amendment to the Multiple Dwelling Law that aimed to balance the interests of the casual renter while providing a means of prohibiting the "bad actor." In 2013, he circulated a draft amendment that would provide a carve-out for a "specific class of good actors."<sup>163</sup> The bill proposed

a registration process where individuals would pay the Buildings Department \$200 per apartment to register as a short-term rental unit. [Single Room Occupancies (SROs)], rent-stabilized and rent-controlled units would not be eligible. No individual could have more than 30 short-term rental registrations under his or her name, and hotel taxes would be required, as well as smoke detectors and evacuation diagrams.<sup>164</sup>

In essence, the Golden proposal would have implemented both a hotel tax and a permitting process, requiring all short-term rentals to be registered with the Buildings Department. The Golden proposal would have been at odds with the current "One Host, One Home" policy by allowing up to thirty short-term rentals under one host and would have restricted who could host by preventing hosting in rent-controlled units.<sup>165</sup>

The Golden proposal never made it out of committee; however, the proposal serves as an early model for an Airbnb permitting process and hotel tax, both of which have been solutions developed and implemented by other municipalities outside of New York. New York's residential and tourist populations distinguish it from other cities, but New York can learn from the experiences and solutions of other localities.

### B. Solutions from Other Cities

Outside of New York, cities have faced their own dilemmas in dealing with how to adapt to the rise of Airbnb. Cities such as New Orleans, Nashville, Oakland, San Diego—and even Airbnb's hometown of San Francisco—have faced growing pains and have proposed varying solutions. Cause for concern has not just impacted U.S. cities but has been addressed by international municipalities, such as Barcelona, London, and even Tasmania. The proposed solutions from these cities have ranged from potential ballot initiatives—which provided voters with an opportunity to address

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affordable housing challenges that are rooted in policy and land use decisions made long before the internet or Airbnb were created. For example, housing prices in New York increased by 250 percent from 1974 to 2006." *Airbnb Policy Tool Chest*, *supra* note 24, at 8.

163. Annie Karni, *Airbnb: Hugely popular, still illegal*, CRAIN'S N.Y. BUS. (May 12, 2013).

164. *Id.*

165. N.Y.S. Assembly Bill 4263-A (Mar. 25, 2011), [http://assembly.state.ny.us/leg/?default\\_fld=&bn=S04263&term=2011&Summary=Y&Actions=Y&Text=Y&Votes=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=S04263&term=2011&Summary=Y&Actions=Y&Text=Y&Votes=Y).

short-term rentals directly—to legislatively enacted moratoriums on STRs in certain cities or municipal zones.<sup>166</sup> These solutions vary in degree of regulatory burden, such as simply collecting a tax to introducing a comprehensive permitting program.

Below is a brief description of some of the solutions used by other cities and how they may be compared to the Airbnb dilemma in the New York City.

### 1. A Moratorium

A few jurisdictions have gone to the extreme of issuing moratoriums on short-term rentals. Notably, municipalities that have issued or considered a moratorium are typically driven by tourist economies. These cities include Anaheim, Amsterdam, Duluth, Laguna Beach, Nashville, New Orleans, Palm Springs, Port Townsend, and San Diego.<sup>167</sup> Moratoriums are often issued for a specified period and provide lawmakers with an opportunity to consider the appropriate implementation of short-term rentals into the local housing ecosystem. Understandably, because the imposition

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166. Rebecca Bowe, *S.F. Voters to Decide on Airbnb Rentals, Mission Moratorium and Other Housing Measure*, KQED NEWS (Sept. 30, 2015), <https://www.kqed.org/news/2015/09/30/s-f-voters-to-decide-on-airbnb-rentals-mission-moratorium-and-other-housing-measures/>.

167. Joseph Pimentel, *Anaheim Extends Moratorium on Short Term Rentals*, OCREGISTER.COM (Apr. 13, 2016), <http://www.ocregister.com/articles/short-711996-city-term.html>; Gavin Haines, *Amsterdam has Become 'Unlivable' as Residents Fight Back to Stop 'Disneyfication' of City*, TELEGRAPH.CO.UK (Dec. 2, 2016), <http://www.telegraph.co.uk/travel/destinations/europe/netherlands/amsterdam/articles/how-amsterdam-is-tackling-disneyfication/>; Peter Passi, *Duluth Places Moratorium on Vacation Rental Permits*, DULUTH NEWS TRIB. (June 15, 2015), <http://www.duluthnewstribune.com/news/3767107-duluth-places-moratorium-vacation-rental-permits>; Bryce Alderton, *New Rules in Laguna Beach Target Airbnb and Other Short-term Housing*, LATIMES.COM (Sept. 10, 2016), <http://www.latimes.com/local/lanow/la-me-laguna-short-term-housing-20160909-snap-story.html>; Eric Snyder, *Metro Council to Consider Moratorium on Airbnb Properties*, NASHVILLE BUS. J. (Jan. 9, 2017), <http://www.bizjournals.com/nashville/news/2017/01/09/metro-council-to-consider-moratorium-on-airbnb.html>; Jeff Adelson, *City Council Approves New Short-term Rental Rules*, NEW ORLEANS ADVOCATE (Oct. 20, 2016), [http://www.theadvocate.com/new\\_orleans/news/politics/article\\_315b13fc-971b-11e6-8898-ef43f90825c4.html](http://www.theadvocate.com/new_orleans/news/politics/article_315b13fc-971b-11e6-8898-ef43f90825c4.html); Katherine Rosman, *Palm Springs Is Hot. The Old Guard Is Hot Under the Collar*, NEWYORKTIMES.COM (Mar. 4, 2017), [https://www.nytimes.com/2017/03/04/style/palm-springs-hotels-airbnb-vacation-rental-homes.html?\\_r=0](https://www.nytimes.com/2017/03/04/style/palm-springs-hotels-airbnb-vacation-rental-homes.html?_r=0); Cyndey Mcfarland, *Port Townsend City Council Approves Moratorium on Tourism Homes*, PENINSULA DAILY NEWS (Mar. 24, 2017), <http://www.peninsuladailynews.com/news/port-townsend-city-council-approves-moratorium-on-tourism-homes/>; Phil Diehl, *Del Mar Places Moratorium on New Short-term Rentals*, SAN DIEGO UNION TRIB. (Apr. 16, 2016), <http://www.sandiegouniontribune.com/sdut-del-mar-places-moratorium-on-short-term-rentals-2016apr06-story.html>.



of a moratorium has an immediate adverse impact on multiple parties, moratoriums have been met with hostility by Airbnb advocates. Hosts may not legally offer short-term rentals and guests may not book them. The result is a loss in revenue for hosts as well as intermediary platforms such as Airbnb.<sup>168</sup> Localities also decrease their number of potential rental options for would-be visitors.

While the above-mentioned cities have serious housing concerns, they are all much smaller than New York. Additionally, their concerns with regulating short-term rental platforms trend more toward conflict within the local tourism industry than conflict regarding resident affordability and livability.<sup>169</sup> Furthermore, although criticism of Airbnb in New York has called for a proactive crackdown on listings that are in violation of the MDL, there has not yet been a push for a moratorium. A moratorium on all short-term rentals in New York would be difficult to enforce and would likely cause political backlash.

## 2. A Tax

A policy measure that appears more popular than the moratorium—particularly for larger municipalities—is the introduction of a tax. Airbnb first implemented a hotel tax in 2014.<sup>170</sup> The tax was piloted in Portland, Oregon, and San Francisco earned \$5 million total between those localities in less than a year.<sup>171</sup> Airbnb argues that hotel taxes are archaic and should not apply to short-term rentals. However, recognizing that a tax would be a reasonable concession to operate, Airbnb created a voluntary collection agreement, which allows it to collect and remit the local tax.<sup>172</sup>

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168. *Airbnb Policy Tool Chest*, *supra* note 24, at 5, [https://www.airbnbccitizen.com/wp-content/uploads/2016/12/National\\_PublicPolicyTool-ChestReport-v3.pdf](https://www.airbnbccitizen.com/wp-content/uploads/2016/12/National_PublicPolicyTool-ChestReport-v3.pdf) (stating, “the California Coastal Commission (CCC) went on record in support of sensible short-term vacation rental policies, convinced that home sharing provides a more affordable way for many travelers, including groups and families, to visit expensive beach communities. The CCC has found that prohibiting such rentals in some cases would limit lodging opportunities for coastal visitors and ultimately discourage public access to beaches.”).

169. Eric Snyder, *Nashville's Top Tourism Chief Backs Airbnb Moratorium*, NASHVILLE BUS. J. (Feb. 2, 2017), <https://www.bizjournals.com/nashville/news/2017/02/02/nashvilles-top-tourism-chief-backs-airbnb.html>; Matt McKinney, *As Airbnb Takes Off, Duluth and Other Cities Wrestle with Rules*, STAR TRIBUNE (July 5, 2015), <http://www.startribune.com/as-airbnb-takes-off-cities-wrestle-with-rules/311651521/>; Weisberg, *supra* note 18.

170. Emily Badger, *Airbnb is About to Start Collecting Hotel Taxes in More Major Cities, Including Washington*, WASH. POST (Jan. 29, 2015), [https://www.washingtonpost.com/news/wonk/wp/2015/01/29/airbnb-is-about-to-start-collecting-hotel-taxes-in-more-major-cities-including-washington/?utm\\_term=.e1439fa7be76](https://www.washingtonpost.com/news/wonk/wp/2015/01/29/airbnb-is-about-to-start-collecting-hotel-taxes-in-more-major-cities-including-washington/?utm_term=.e1439fa7be76).

171. *Id.*

172. *Airbnb Policy Tool Chest*, *supra* note 24, at 4 (stating, “When a jurisdiction signs a VCA with Airbnb, we collect and remit appropriate local taxes from guests



Since 2014, the hotel tax has been expanded to cities such as Amsterdam, the District of Columbia, London, and dozens of others.<sup>173</sup> As Airbnb usage expands, revenue from a hotel tax is likely to increase.<sup>174</sup> For example, in 2015, when Airbnb first proposed collecting a hotel tax in New York, it estimated the raised revenue would be \$21 million annually; the estimated amount in 2017 was a predicted \$90 million per annum.<sup>175</sup>

As discussed above, Airbnb prefers this solution because the burden to pay the tax rests with the host and the guest.<sup>176</sup> Furthermore, the tax—often ranging between 5 percent and 14.5 percent—is not so great that it is a deterrent for potential Airbnb users. However, and understandably, Airbnb has resisted proposed tax remedies when they appear to be too burdensome on its users.<sup>177</sup> For example, in London, the city chose to go beyond a simple hotel tax, introducing a more comprehensive tax plan for STRs that provided those who rented their spare rooms with certain tax incentives.<sup>178</sup> However, with the UK now considering a repeal of the so-called “rent-a-room tax break,” Airbnb has pushed back against a repeal of the favorable law because users have raised concerns about tax compliance burdens and the implementation of the U.K. collecting the tax.<sup>179</sup>

Other criticisms for and against the tax remedy has come from outside of Airbnb and its advocates. For instance, a 2017 *Financial Times* report suggests that Airbnb has a distinct advantage over hoteliers in the U.K.

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as part of their booking transactions and remit the tax revenue directly to the proper tax administrator on behalf of hosts”).

173. Badger, *supra* note 170; Amelia Murray, *Budget 2017: Up to 50,000 Airbnb Hosts Could Pay Between £400 and £3,300 More Tax*, TELEGRAPH.CO.UK (Mar. 11, 2017), <http://www.telegraph.co.uk/tax/income-tax/budget-2017-50000-airbnb-hosts-could-pay-400-3300-tax/>.

174. Tessa Love & Allen Young, *Airbnb Says it Made \$175M for Local Municipalities in 2016—and Would Have Made More if They'd Cooperated*, SACRAMENTO BUS. J. (Jan. 17, 2017), <http://www.bizjournals.com/sacramento/news/2017/01/17/airbnb-sf-taxes-regulations-tot.html>.

175. Samantha Shankman, *Airbnb's Newest Plan for Gaining Legitimacy in New York City: Pay \$21 Million in Taxes*, SKIFT.COM (Mar. 28, 2014), <https://skift.com/2014/03/28/airbnbs-newest-plan-for-gaining-legitimacy-in-new-york-city-pay-21-million-in-taxes/>; see also Tom Precious, *Airbnb Offers to Pay Collect Taxes on Customers in New York*, BUFFALONEWS.COM (Oct. 19, 2016).

176. *Airbnb Policy Tool Chest*, *supra* note 24, at 4.

177. Leslie Hook, *Airbnb Faces \$400m Lost Bookings in London Crackdown*, FT.COM (Jan. 2, 2017), <https://www.ft.com/content/3bedf28e-c63d-11e6-8f29-9445cac8966f>.

178. *Rent a Room in Your Home: The Rent Room Scheme*, GOV.UK, <https://www.gov.uk/rent-room-in-your-home/the-rent-a-room-scheme>.

179. Murray, *supra* note 173 (hosts are doubtful of a bookkeeping burden and computer oversight program that they claim is overbearing).

because of the current tax structure.<sup>180</sup> The report suggests that the current tax structure disproportionately favors small businesses and residents sharing a room.<sup>181</sup> The *Financial Times* suggests that a more analogous tax plan to that of London's hotels would seem to even the now disparate competitive advantage.<sup>182</sup> Airbnb counters this argument by declaring that the service they provide is disparate and distinct from the service a large hotel provides.<sup>183</sup>

Other constituents outside of the Airbnb circle have expressed contradicting opinions regarding a tax.<sup>184</sup> For example, some New York hotel advocates have been strictly opposed to the hotel tax, arguing that the collection of the tax is Airbnb's attempt to "legitimize what [the hotel association] see[s] as an illegal business."<sup>185</sup> In contrast, after years of refusing to legitimize Airbnb through avoiding its offer to collect a hotel tax,<sup>186</sup> the New York Attorney General finally declared that hosts should be liable for the "hotel room occupancy tax."<sup>187</sup> However, due in part to a lack of comprehensive legislation, the responsibility to pay the tax is still in question. Additionally, tax implementation and compliance oversight measures also remain unclear.<sup>188</sup>

### 3. A Comprehensive Approach

Approaches that deal with this lack of clarity often do so by means of more comprehensive legislation, introducing statutory rules or amendments to address and regulate short-term rentals. While providing clearness, opponents to these approaches have argued that they often introduce a greater regulatory burden on hosts and, subsequently, hosting platforms.<sup>189</sup> Examples of these approaches have ranged from restricting public

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180. Vanessa Houlder, *Airbnb's Edge on Room Prices Depends on Tax Advantages*, FT.COM (Jan. 2, 2017), <https://www.ft.com/content/73102c20-c60e-11e6-9043-7e34c07b46ef>.

181. *Id.*

182. *Id.*

183. *Id.*

184. Airbnb, *New York Hotel Lobbyists Flip-Flop on Taxes*, AIRBNBCITIZEN.COM (Apr. 17, 2017), <https://www.airbnbcitizen.com/new-york-hotel-lobbyists-flip-flop-on-taxes/>.

185. Kaja Whitehouse, *Airbnb Aims to Start Taxing Renters by July 1*, NYPOST.COM (Apr. 14, 2014), <http://nypost.com/2014/04/14/airbnb-aims-to-start-taxing-renters-by-july-1/>.

186. Dara Kerr, *Airbnb: Let us Pay Hotel Taxes in New York*, CNET.COM (Apr. 15, 2015), <https://www.cnet.com/news/airbnb-let-us-pay-hotel-taxes-in-new-york/>.

187. See Office of N.Y. State Att'y Gen., *Airbnb in the City*, *supra* note 50, at 9; see also Hotel Room Occupancy Tax, N.Y.C. Dep't of Finance, <http://www1.nyc.gov/site/finance/taxes/business-hotel-room-occupancy-tax.page>.

188. REVENUE ACTIONS AND STAR: FY 2018 EXECUTIVE BUDGET BRIEFING BOOK 13 (2017); see also Speier, *supra* note 19.

189. Murray, *supra* note 173.

advertising of STRs to requiring a special permitting process. Localities that have introduced or have considered more stringent requirements include: Amsterdam, Austin, Barcelona, Berlin, Denver, Kansas City, London, Los Angeles, New Orleans, Oklahoma City, Portland, and a growing number of others.<sup>190</sup> These cities trend more toward addressing historical housing complications and are more analogous to New York City than the traditional tourist cities mentioned above. Responses in these cities should be used by New York lawmakers to inform how to appropriately address Airbnb and other short-term rental hosting platforms as they integrate into the New York City housing ecosystem.

Some of these jurisdictions are like that of New York—and have legislation that is similar to the MDL—but have been more proactive in their administration of the law. For example, Berlin has outlawed the short-term rental of entire apartment unit without a permit and Barcelona has placed a moratorium on short-term rental hosting registrations.<sup>191</sup> To enforce the law, both Berlin and Barcelona have implemented large fines and encouraged people to anonymously report neighbors they suspect are renting units illegally.<sup>192</sup> Such enforcement has been rallied against by

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190. Nicky Woolf, *Airbnb Regulation Deal with London and Amsterdam Marks Dramatic Policy Shift*, THEGUARDIAN.COM (Dec. 3, 2016), <https://www.theguardian.com/technology/2016/dec/03/airbnb-regulation-london-amsterdam-housing>; Austin Code Department: Vacation Rental Listing, AUSTINTEXAS.GOV, <https://www.austintexas.gov/str>; Natasha Lomas, *Airbnb Faces Fresh Crackdown in Barcelona as City Council Asks Residents to Report Illegal Rentals*, TECHCRUNCH.COM (Sept. 19, 2016), <https://techcrunch.com/2016/09/19/airbnb-faces-fresh-crackdown-in-barcelona-as-city-council-asks-residents-to-report-illegal-rentals/>; Business Licensing Center: Short-Term Rental Regulations & Licensing in Denver, DENVERGOV.ORG, <http://www.denvergov.org/content/denvergov/en/denver-business-licensing-center/business-licenses/short-term-rentals.html>; Diane Stafford, *Kansas City proposes an ordinance to require permit fees from Airbnb hosts*, KANSAS CITY STAR (Feb. 13 2017), <http://www.kansascity.com/news/local/article132421899.html>; Hillel Aron, *L.A. Is Poised to Enact Strict Airbnb Regulations*, LAWEEKLY.COM (June 23, 2016), <http://www.laweekly.com/news/la-is-poised-to-enact-strict-airbnb-regulations-7056105>; City of New Orleans: Short Term Rental Administration, NOLA.GOV, <http://www.nola.gov/short-term-rentals/>; Oklahoma City: Home Sharing Requirements, OKC.GOV, <https://www.okc.gov/departments/finance/taxes/home-sharing-requirements>; Portland Development Services—Accessory Short-Term Rental Permits, <https://www.portlandoregon.gov/bds/65603>.

191. Lomas, *supra* note 190; Agence France-Presse, *Berlin's Government Legislates Against Airbnb*, THEGUARDIAN.COM (May 1, 2016), <https://www.theguardian.com/technology/2016/may/01/berlin-authorities-taking-stand-against-airbnb-rental-boom>.

192. Lomas, *supra* note 190; *Berlin's Government Legislates Against Airbnb*, *supra* note 191. Barcelona has provided guests with a method of clarity by providing a

residents but the proactive nature and clarity in the law has at least established clear guidelines for renters and visitors.

Other cities have been stricter than New York in addressing short-term rentals. Like Barcelona, these municipalities often require a license or a permit to serve as a host of a short-term rental. These registrations have provided outlets for the casual renter by allowing permit or license holders to rent their units for a designated number of days per year.<sup>193</sup> For example, in late 2016—as New York was settling a deal with Airbnb that would ensure liability for a fine to rest with its hosts—Amsterdam and London introduced legislation that would make Airbnb responsible for policing the number of days non-registered units were rented through their website.<sup>194</sup> Under the deal, listings were to be removed after a host rented the unit for a specified number of days per year, sixty in Amsterdam and ninety in London.<sup>195</sup>

Similar registration requirements have been introduced in the United States. In 2016, the County of Los Angeles introduced legislation that required short-term rental hosts to register with the county, pay a small registration fee, and pay both a business tax and a “bed tax,” which L.A. hotels must also pay.<sup>196</sup> Among other restrictions, the law prohibits residents from renting short-term rentals for more than 180 days per year and requires landlord consent to operate, and hosts are restricted to only one listing.<sup>197</sup> Also in 2016, and similar to the MDL, the City of Santa Monica narrowed the county legislation by enacting legislation that prohibits residential rentals for less than thirty days without a permanent resident present.<sup>198</sup> Santa Monica went a step further than the MDL, requiring all residents obtain a business license and pay a 14 percent tax on all rentals.<sup>199</sup>

Although less like the MDL, recent New Orleans legislation perhaps provides the best model for New York.<sup>200</sup> In 2017, like the municipalities

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website which allows guests to check whether a short-term rental is illegal before booking.

193. Woolf, *supra* note 190.

194. *Id.*

195. *Id.*

196. Aron, *supra* note 190.

197. Department of City Planning: Recommendation Report City Planning Commission (June 23, 2016), <http://planning.lacity.org/ordinances/docs/HomeSharing/StaffRept.pdf>.

198. Ivan Penn, *Airbnb Sues Santa Monica over Short-term Rental Ban*, LATIMES.COM (Sept. 2, 2016), <http://www.latimes.com/business/la-fi-airbnb-lawsuit-santa-monica-20160903-snap-story.html>.

199. *Id.*

200. Katie Benner, *New Orleans Becomes New Model for Airbnb to Work With Cities*, NYTIMES.COM (Dec. 7, 2016), <https://www.nytimes.com/2016/12/07/technology/new-orleans-airbnb-model.html>; Kevin Litten, *Airbnb: New Orleans Will Become Nationwide Model for Short-term Rental Enforcement*, NOLA.COM

above, New Orleans introduced regulations that would require all short-term rental hosts to obtain a permit, pay taxes, and cap the number of days per year a resident could rent his entire apartment;<sup>201</sup> the regulation also implemented a ban on short-term rentals in certain districts, such as the French Quarter.<sup>202</sup> In New Orleans, Airbnb worked more collaboratively with regulators and administrators than in other cities in the past. For example, Airbnb made rare concessions in data sharing; an issue the company has been previously reluctant to negotiate.<sup>203</sup> Airbnb also worked with New Orleans by streamlining the permit registration process and “adopt[ing] a pass through registration system that would allow the platform to submit a registration to the City on the Host’s behalf.”<sup>204</sup> While New Orleans has a considerably smaller population, New York can learn from its regulatory goals and procedures<sup>205</sup> and build upon the New Orleans and Los Angeles models.

### III. Policy Projections

Recently, both Airbnb policy personnel and New York lawmakers have indicated that they are open to a more comprehensive approach. For example, in 2016, as the New Orleans legislation was being introduced, Airbnb released a *Policy Tool Chest* (PTC), which addressed the need to “work with local governments to craft progressive, fair rules for home sharing.”<sup>206</sup> The PTC is a follow-up report to the Airbnb Community Compact and offers policy considerations from lessons learned in jurisdictions across the world.<sup>207</sup> The principle suggestions of the PTC included:

- *Tax collection* through a tool developed by Airbnb called the “Voluntary Collection Agreement” (VCA), which ensures the appropriate taxes are collected and remitted;

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(Nov. 30, 2016), [http://www.nola.com/politics/index.ssf/2016/11/airbnb\\_new\\_orleans\\_model.html](http://www.nola.com/politics/index.ssf/2016/11/airbnb_new_orleans_model.html).

201. Benner, *supra* note 200.

202. A concession Airbnb made partly to appease hotel industry advocates. *Id.*

203. *Id.*; see also Penn, *supra* note 198 (Santa Monica was the third city sued by Airbnb over a law that mandated it share user data); Robert McClendon, *In Push for Legalization, Airbnb Releases New Orleans Data for the First Time*, NOLA.COM (Nov. 17, 2015), [http://www.nola.com/politics/index.ssf/2015/11/in\\_push\\_for\\_legalization\\_airbn.html](http://www.nola.com/politics/index.ssf/2015/11/in_push_for_legalization_airbn.html). *Contra Airbnb Policy Tool Chest*, *supra* note 24, at 2 (Airbnb stating that data has been released in 19 jurisdictions).

204. City of New Orleans, Short Term Rental Zoning Amendments & Enforcement Regulations at 10 (2016), <https://assets.documentcloud.org/documents/3181618/STR-Presentation-Final-102016.pdf>); see also *Airbnb Policy Tool Chest*, *supra* note 24, at 9 (describing three preferred methods of registration).

205. City of New Orleans, Short Term Rental Zoning Amendments & Enforcement Regulations at 3.

206. *Airbnb Policy Tool Chest*, *supra* note 24, at 2.

207. *Id.* at 3.

- Being “*Good Neighbors*” through the implementation of policies such as the “*Friendly Buildings Program*,” which “brings building owners and landlords to the table with their tenants, and with [Airbnb], to enable home sharing on their properties under rules they help create”;
- *Accountability* through measures such as limits to the number or nights per year, rules for rent-stabilized and social housing, and regulations on the number of listings; and
- *Transparency and Privacy* through mechanisms such as annual reports and anonymous data sharing.<sup>208</sup>

The PTC specifically suggests New York enact some of these measures and elsewhere cites New York as an example of positive short-term rental policies.<sup>209</sup> It appears New York lawmakers have heeded some of these suggestions. In April 2017, Assembly Members Joseph Lentol and James Skoufis introduced proposed MDL amendments (Lentol proposal) that included components from the PTC, the New Orleans legislation, and other jurisdictions previously mentioned. Providing a carve out for the occasional host, the Lentol proposal would:

- Institute a hotel *tax collection* on all STRs to be administered through a VCA with hosting platforms;
- Implement a *registration process* to be administered by the Division of Housing and Community Renewal. Hosting platforms would be able to implement a “pass through registration” allowing hosts to register with the Division directly through their platform;
- Require *safety standards*, such as distinct posting of evacuation diagrams and emergency phone numbers as well as require *insurance* to protect against third-party claims; and
- Place a *limit on the number of STRs a host can operate* to one “class A multiple dwelling unit,” an attempt at codifying the “One Host, One Home” policy.<sup>210</sup>

Although the Lentol proposal received criticism for plagiarizing language used by Airbnb, his proposal does include regulations not expressed in the Airbnb PTC,<sup>211</sup> i.e., amendments such as limits on generated rent in rent controlled units, requirements of hosts and hosting platforms to maintain records related to guests and rentals, data sharing

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208. *Id.* at 1–3.

209. *Id.* at 4.

210. N.Y.S. ASSEMBLY PROPOSAL A7520 (Apr. 28, 2017), [http://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A07520&term=2017&Summary=Y&Actions=Y&Memo=Y&Text=Y](http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A07520&term=2017&Summary=Y&Actions=Y&Memo=Y&Text=Y).

211. Gwynne Hogan, *Assemblyman’s Pro-Airbnb Legislation Plagiarizes Lingo From Company’s Memo*, DNAInfo.com (May 3, 2017), <https://www.dnainfo.com/new-york/20170503/williamsburg/joseph-lentol-airbnb-affordable-housing>.

and reporting by hosting platforms, the mandatory creation of a 24-hour complaint platform administered by the hosting platforms, requirements to notify hosts about permit registration, and regulations such as escalating fines or repayment of earned income received in violation of the MDL.<sup>212</sup>

While offering a comprehensive approach, notably absent are some of the restrictions that were implemented by other cities to protect affordable housing for permanent residents. For example, the Lentol proposal was mute in addressing a cap on the number of days a full apartment can be rented per year and restrictions on short-term rentals in certain municipal zones. Additionally, while the Lentol proposal establishes reporting requirements, it appears they would be inadequate in addressing how to appropriately measure and monitor the impact of short-term rentals.

While noble in its attempt to force collaboration with municipalities, the insertion of catch-all provisions leads the Lentol proposal to be self-defeating, leaving the City unable to identify “bad actors.”<sup>213</sup> Furthermore, because the amended definition of a “short-term rental host” does not restrict the definition to an individual person, individuals could theoretically establish separate legal entities as “owners” to skirt the “One Host, One Home” amendment. Even if the amendment were revised to restrict individuals specifically to one listing, the Lentol proposal would not restrict the proliferation of private short-term rentals—individuals would still be able to take housing units off of the market for potential permanent residents for the sole purpose of using them as short-term rentals.

Understandably, these proposals were met with vehement opposition by other elected officials because they were not strong enough to prohibit the adverse impact of short-term rentals on the already debilitated stock of affordable housing.<sup>214</sup> As exhibited by these lawmakers and—as displayed by the rise in short-term rental use by New Yorkers—New York has a responsibility to deal with these issues in a more proactive manner and such a plan appears to be on the horizon. Policy discussions have consistently progressed since the embattled disputes between 2012 and 2015, and serious concessions have been made by both Airbnb and New York

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212. N.Y.S. ASSEMBLY PROPOSAL A7520, *supra* note 210.

213. Under Section 209(2)(b)(ii), “Requirements of hosting platforms,” the final sentence of the subsection reads: “Hosting platforms shall not have the obligation to disclose any listing or host-level information if the disclosure could reasonably lead to the identification of a specific property or short-term rental host.” *Id.*

214. Mike Vilensky, *Battle Over Airbnb Legislation Heats Up in Albany*, WSJ.COM (May 4, 2017), <https://www.wsj.com/articles/battle-over-airbnb-legislation-heats-up-in-albany-1493936838>; Mike Vilensky, *New York Lawmaker Introduces Airbnb Bill*, WSJ.COM (Apr. 30, 2017), <https://www.wsj.com/articles/new-york-lawmaker-introduces-airbnb-bill-1493590614>; Kadia Goba, *Lentol, Mosley Lock Horns Over Airbnb Legislation*, KINGSCOUNTYPOLITICS.COM (May 3, 2017), <http://www.kingscountypolitics.com/lentol-mosley-lock-horns-airbnb-legislation/>.



lawmakers.<sup>215</sup> Additionally, there appears to be solid support for comprehensive reform, beginning with the introduction of the Golden proposal in 2012 to the Lentol proposal in 2017. However, New York needs to deal with this matter in a more communal manner, introducing further steps to adequately regulate the impact of short-term rentals on the New York City housing ecosystem.

In attempting to balance the competing interests, New York lawmakers should take a similar approach to New Orleans and Los Angeles, amending the Multiple Dwelling Law to introduce comprehensive legislation that provides a more proactive attitude toward the regulation of short-term rentals. To adequately address the rise of short-term rentals, New York should take the following steps: (1) require all hosts to have a permit to operate a short-term rental, (2) limit hosts to one listing, (3) require short-term rental platforms to share certain user data, (4) limit the number of nights per year an entire apartment may be listed as available for rent, (5) ban and cap short-term rentals in certain municipal zones, (6) require collection of a tax, and (7) consider creating a government agency or division to administer and oversee short-term rentals. This type of comprehensive legislation would provide for the occasional renter to benefit from platforms such as Airbnb while also providing clear guidelines that curb the adverse impact STRs have on the New York City housing ecosystem.

#### A. A New York City Short-Term Rental Permit Process

A permit requirement is a core tenet of adequate short-term rental regulation. As mentioned, current opacity makes it difficult to identify the impact of short-term rentals. Through the implementation of a permit

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215. Despite persistent allegations of constituents and elected officials fighting a proxy war for special interests. See, e.g., Annie Karni, *Controller Scott Stringer voices concerns over Airbnb ahead of City Council hearing*, NYDAILYNEWS.COM (Jan. 19, 2015), <http://www.nydailynews.com/blogs/dailypolitics/controller-scott-stringer-voices-concerns-airbnb-blog-entry-1.2084026> (tying Stringer to the hotel trades union who endorsed Stringer in his bid for NYC Comptroller and oppose Airbnb); *Stringer airs concerns about Airbnb before Council hearing*, REAL DEAL (Jan. 19, 2015, 5:07 PM), <https://therealdeal.com/2015/01/19/stringer-airs-concerns-about-airbnb-before-hearing/>; Josh Dawsey, *Union Financed Fight to Block Airbnb in New York City*, WALL ST. J. (May 9, 2016), <https://www.wsj.com/articles/union-financed-fight-to-block-airbnb-in-new-york-city-1462842763> (discussing the Hotel Trades Council creation of a political organization called Share Better to introduce legislation and arrange meetings with policy makers); Jason Clampet, *Airbnb Is Fighting to Make Sharing Legal in New York, But It Already Is*, SKIFT.COM (Oct. 16, 2013), <https://skift.com/2013/10/16/airbnb-is-fighting-to-make-sharing-legal-in-new-york-but-it-already-is/> (describing the ties between Peers, a sharing economy lobbying group, and Airbnb); Vilensky, *supra* note 214 (claiming lawmakers are representing the interests of the hotel lobby group "ShareBetter").

system, all hosts and rental property listings would be identified by the City, making administration of their use more attainable and efficient for the appropriate agency. Registration requirements have been popular policy measures enacted as of late but their implementation has varied and lawmakers should be aware that too heavy a burden on a host may provide for unequal application. For example, in New Orleans, the price of a permit ranges from \$50 to \$500 per year, depending on the type of unit being rented; such a cost may be prohibitive to some while more accessible to others.

The Lentol proposal would provide for registration of short-term rentals directly with the Division of Housing and Community Renewal or allow hosting platforms to implement “pass-through registrations” such as that of New Orleans. While the New Orleans fee range is said to be prohibitive, the Lentol proposal would limit the registration fee to \$100 or less. The fee in both New Orleans and in the Lentol proposal are collected to pay for enforcement of the short-term rental regulations. This is an area that remains widely different by jurisdiction and an area where Airbnb and other short-term rental platforms should be eager to work with municipal agencies in designing creative solutions toward a streamlined and cost-effective permit process.<sup>216</sup>

#### *B. A Strict One Host, One Listing Policy*

The disparity in reporting on usage of Airbnb is also in part due to the varying measurements. While Airbnb has required a “One Host, One Home” policy in New York, it is apparent that there are hosts violating this policy by posting multiple listings of full apartments. These are clear examples of units that are directly cutting into the rental vacancy rate and should be banned immediately. These “bad actors” are currently difficult to police because of a lack of a permit system that tracks who or where they may be. New York, Airbnb, and other short-term rental hosting platforms will need to work together to identify non-registered listings, particularly those listing multiple units or attempts to run “illegal hotels” (whether be one apartment building or a network of units across the city). This will require more restrictive language than the Lentol proposal and sharing of specific information from hosting platforms.

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216. For example, see Chicago and New Orleans for efficient “pass through registration” process. *Policy Tool Chest*, *supra* note 24, at 9 (Chicago); City of New Orleans, Short Term Rental Zoning Amendments & Enforcement Regulations at 10. See Barcelona or Denver for less efficient processes. Lomas, *supra* note 190 (for a description of Barcelona’s process); Business Licensing Center: Short-Term Rental Regulations & Licensing in Denver, DENVERGOV.ORG, <http://www.denvergov.org/content/denvergov/en/denver-business-licensing-center/business-licenses/short-term-rentals.html> (Denver).

### C. A Data Sharing Policy

Having a ban is not enough without the ability to track and enforce the ban. A permit will allow the City to track how many listings are operating with accuracy, but it is inadequate without knowing who may be violating the permit and the one listing per host requirements. Thus, Airbnb and similar platforms should be required to share some user data. A data sharing policy will efficiently ensure that no users are eating into the already dismal rental vacancy rate, while the permit system in conjunction with a ban on more than one listing would allow authorities to more adequately track “bad actors” who are listing multiple apartments as short-term rentals. While Airbnb has been reluctant to share user information in the past, the New Orleans plan and details in a recent policy report from Airbnb raise new hope for the prospects of limited data sharing. For example, in New Orleans, Airbnb and other platforms will share some user information such as names and addresses, types of listing, and number of overnight stays per year.<sup>217</sup>

The Lentol proposal sets clear objectives for data sharing, such as quarterly reporting and requiring hosts to keep a log of guest information for one year. However, the Lentol proposal does not require Airbnb to share specific data, such as that which is shared in New Orleans.

### D. A Limit to Overnight Listings per Year

With the sharing of information from short-term rental hosting platforms, New York City would also be able to measure short-term rental use and identify which hosts are renting for substantial parts of the year. This information will be critical to identifying how short-term rentals are impacting the City housing stock and how many hosts are appropriate “permanent residents” versus those who are gone for substantial amounts of time. Cities have ranged in the number of nights that they allow entire units to be rented out to short-term rental guests. For example, Amsterdam prohibits renting for more than 60 nights while Los Angeles County settled on 180 nights per year.<sup>218</sup>

New York should implement a similar per annum cap, but the cap should be based on number of nights a unit is *listed* as available rather than a cap on the number of overnight stays. For example, if a unit is listed 300 days a year but only rented 20 nights, it is still likely that this unit could be used by a potential permanent resident. Such measures will ensure hosts are not using their one allowed listing as a commercial short-term rental that may be exacerbating the housing stock and adversely impacting neighborhoods. The Lentol proposal neglects this issue.

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217. Benner, *supra* note 200.

218. Woolf, *supra* note 190.

### E. A Ban in Certain Municipal Zones

The New York City housing crisis and rise of short-term rentals have adversely impacted traditional neighborhoods of color more than others.<sup>219</sup> New York should identify neighborhoods more vulnerable to the negative impact of short-term rentals and establish restrictive zones where short-term rentals are either capped or banned all together. To enact such a ban or moratorium the city would first need to access data from short-term rental platforms and analyze how pervasive and how rapidly short-term rentals have grown by neighborhood. The city, working with the Rent Guidelines Board, should then determine which of these neighborhoods have experienced the highest numbers of displacement, homelessness, or adequate affordable housing.

These moratoriums have not been popular in the jurisdictions that have implemented them but they are prudent measures in counteracting the rapid rise of short-term rentals.<sup>220</sup> As more people move to neighborhoods such as Brownsville, East New York, and Harlem, long-time tenants of those neighborhoods battle more and more with affordability.<sup>221</sup>

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219. Office of N.Y. State Att’y Gen., *Airbnb in the City*, *supra* note 50, at 3.

220. See *supra* n. 105.

221. Brownsville Plan, NYC.GOV (June 2017), <https://www1.nyc.gov/assets/hpd/downloads/pdf/community/the-brownsville-plan.pdf> 9 (discussing the city’s \$1.4 billion plan to revitalize Brownsville); *Brownsville residents worry Cuomo’s \$1.4B plan may do more harm than good*, THEREALDEAL.COM (Mar. 15, 2017), <https://therealdeal.com/2017/03/15/brownsville-residents-worry-cuomos-1-4b-plan-may-do-more-harm-than-good/> (arguing that the development will cause gentrification). *Contra* Gina Bellafonte, *No ‘Inner City’ in Brownsville, Brooklyn, Just Overlooked Strengths*, N.Y. TIMES (Mar. 30, 2017) (arguing that the development in Brownsville is not causing gentrification). East New York: Emma Whitford, *Report: Most East New York Residents Can’t Afford De Blasio’s “Affordable” Housing Plan*, GOTHAMIST.COM (Dec. 4, 2015), [http://gothamist.com/2015/12/04/east\\_new\\_york\\_gentrification.php](http://gothamist.com/2015/12/04/east_new_york_gentrification.php); Amanda Mikelberg, *East New York, Bushwick are 2017’s hottest neighborhoods: Survey*, METRO.US (Jan. 18, 2017), <http://www.metro.us/new-york/east-new-york-and-bushwick-are-2017-s-hottest-neighborhoods-says-survey-of-pros/zsJqar—eoJQ6Z8Dm1TO6>. *Contra* Michael Spitzer-Rubenstein, *Development killers make New York less affordable*, CRAINSNEWYORK.COM (May 29, 2017), <http://www.crainsnewyork.com/article/20170529/OPINION/170529952/development-killers-make-new-york-less-affordable>; Zoe Rosenberg, *Fully affordable 403-apartment building for East New York unveiled*, CURBED.COM (July 5, 2017). On Harlem, see Michael Henry Adams, *The End of Black Harlem*, N.Y. TIMES (May 27, 2016), <https://www.nytimes.com/2016/05/29/opinion/sunday/the-end-of-black-harlem.html>; Jeffery C. Mays, *As Gas Stations Vanish, Harlem Sees Gentrification Creeping In*, N.Y. TIMES (May 28, 2017), <https://www.nytimes.com/2017/05/28/nyregion/as-gas-stations-vanish-harlem-sees-gentrification-creeping-in.html>; Rose Hackman, *What will Happen When Harlem Becomes White?*, GUARDIAN (May 13, 2015), <https://www.theguardian.com/us-news/2015/may/13/harlem-gentrification-new-york-race-black-white>.

Such areas should be regulated to ensure “bad actors” do not usurp units critical to permanent resident livability and a cap should be favored so as to not unequally restrict opportunity from some and not others.

In addition to restrictions on short-term rentals, zoning prohibitions may also be used to work collaboratively with neighbors and neighborhood organizations.<sup>222</sup> Similar to the cap on number of overnight listings or stays, the Lentol proposal avoids this zoning issue altogether save to limit short-term rental hosting in rent stabilized units and SROs.

#### *F. A Comprehensive Tax Policy*

Introducing the above measures will be costly. This makes it all the more important to require a tax on short-term rentals to provide a budget for enforcement and increase revenue for the municipality and the state. Airbnb has been amenable to tax collection in the past, working with municipalities through Voluntary Collection Agreements (VCAs), which are meant to “ensure that proper taxes are collected and remitted while relieving hosts of onerous tax filings and governments of the burden of collection and enforcement.”<sup>223</sup> Airbnb claims that jurisdictions have used such tax revenue to aid affordable housing and combat homelessness and have increased spending in “destination-marketing efforts and tourism infrastructure.”<sup>224</sup> In New York City, a tax should be modeled after the New Orleans hotel tax policy, which, like other VCAs, collects a local hotel or occupancy tax but also includes a \$1 fee on every short-term rental transaction, which is then dedicated to New Orleans affordable housing.<sup>225</sup> The Lentol proposal provides for municipalities to contract with hosting platforms to enter into VCAs but does not propose the \$1 affordable housing fee.

#### *G. A Short-Term Rental Agency or Division*

A robust and proactive reform in this area requires oversight. Personnel will be needed to sufficiently address the impact and administration of short-term rentals in New York.<sup>226</sup> To administer such reform, the creation of a Short-Term Rental Agency or a Short-Term Rental division in an already existing agency is recommended. This unit would be responsible for administering the registration process, tracking the prohibitions on short-term rentals in the City, and facilitating the processing of complaints against short-term rentals that may be operating illegally.

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222. Benner, *supra* note 200.

223. *Policy Tool Chest*, *supra* note 24, at 4.

224. *Id.*

225. Litten, *supra* note 200.

226. City of New Orleans, Short Term Rental Zoning Amendments & Enforcement Regulations at 11.

### H. Other Considerations

Other options should also be explored. For example, New York should work toward an agreement with short-term rental platforms and short-term rental hosts to share data regarding short-term rentals so lawmakers can appropriately account for their impact. Further examples should be borrowed from jurisdictions like Los Angeles, which has a policy that requires landlord consent to operate a short-term rental.<sup>227</sup> New York City should consider such a policy but should adjust it to include the complexities of the tenant-cooperative relationship.

Similarly, New York regulators should take this as an opportunity to innovate and introduce less commonly considered options, such as a revenue-sharing model. Under such a regulation, tenants would be required to share a percentage of the revenue on each rental. Under some cooperative agreements, income from subleasing is likely required, but under such a regulation, a similar requirement would hold for any host of a short-term rental; this would serve as a type of compensation for other tenants who use shared accommodations in the building. Some legal commentators have explored this as an option, and it would be aligned with Airbnb's mission to be "Good Neighbors."<sup>228</sup>

### Conclusion

In October 2016, when asked about municipal regulation and Airbnb's valuation, co-founder Joe Gebbia urged caution. Referring to the dot.com bubble, he said he "remembered companies that were here today and gone tomorrow" and that "if you're not thinking of what's next, the world could change around you."<sup>229</sup> The comments alluded to Gebbia's awareness of his company's precarious position in jurisdictions across the world. This tenuous situation has been harshened as hotel advocates and landlords begin to battle Airbnb and other hosting platforms in the policy arena, in court, and in the boutique tourist industry at large.<sup>230</sup>

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227. Los Angeles Department of City Planning: Recommendation Report City Planning Commission (June 23, 2016), <http://planning.lacity.org/ordinances/docs/HomeSharing/StaffRept.pdf>.

228. Janelle Orsi, *Principles for a True Sharing Economy* (2015).

229. *How I Built This With Guy Raz*, *supra* note 1.

230. Katie Benner, *Inside the Hotel Industry's Plan to Combat Airbnb*, NYTIMES.COM (Apr. 16, 2017), <https://www.nytimes.com/2017/04/16/technology/inside-the-hotel-industrys-plan-to-combat-airbnb.html>; see also Dan Rene, *Will Hotels Destroy Faster Than Airbnb Builds?*, THEHILL.COM (Apr. 20, 2017), <http://thehill.com/blogs/pundits-blog/technology/329715-will-hotels-destroy-faster-than-airbnb-builds>; see further, Arjun Kharpal, *Airbnb's Growth is Slowing Because it's Being Hit by Regulation, UBS Says*, CNBC.COM (Apr. 13, 2017), <http://www.cnbc.com/2017/04/13/airbnb-growth-slowing-regulation-ubs.html>; Glenn Blain, *EXCLUSIVE: Anti-Airbnb Coalition Launches Ad Campaign About Illegal Rentals in New York*, NYDAILYNEWS.COM (Feb. 20, 2017), <http://www.nydailynews.com/news/>

As these challenges increase, the bystander is the New Yorker struggling to find affordable housing.

While the pressure placed on Airbnb and similar platforms continues to grow—and while Airbnb founders seem more willing to participate—it is critical that they do not overlook the neighborly principles of Community that they so often promote.<sup>231</sup> In the same 2016 interview where Gebbia cautioned listeners about the need to adapt to your surroundings, he also made the following analogy when asked about the introduction of municipal regulations on disruptive companies such as Airbnb and Uber:

I think about that question in the context of innovations over the last 100 years and there are three examples that come to mind of new ideas that entered the world that had a pretty rough start but are now so commonplace and everyday you'd laugh if you thought like, "Oh wow, people were against that at one point?" So, ATM machines at one point had a lot of criticism and I think had laws being written against them in certain states in the U.S. because it was this new and different way of banking where you didn't have to talk to a person[,] can you imagine today without ATM machines? The VCR I think is another great example . . . it was met with such resistance from incumbent industries because they didn't want you to watch movies at home. The car is another example . . . there were certain cities against the car and there were actually laws drafted to outlaw cars but after a year of trying a more efficient way of transportation, the people demanded that they didn't want to go back to horse and buggy and so the policy makers had to modify the laws to what people wanted. And so, I think the world is ready for our invention given that there have been over 100 million people that have stayed in homes all over the world.<sup>232</sup>

Gebbia should be aware that this is a false analogy. The ATM, the VCR, and the car were all inventions that gave users alternative options to amenities, they were not options that restricted a crucial right such as housing. While *some* people may be ready for Airbnb—without comprehensive legislation and efficient regulatory oversight—others will be blighted by its adverse impact. Those others will include the New York City rental vacancy rate and the New York City housing ecosystem.

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politics/anti-airbnb-group-launches-ad-campaign-illegal-n-y-rentals-article-1.2977598; Megan Rose Dickey, *A Big Apartment Management Company is Suing Airbnb*, TECHCRUNCH.COM (Feb. 18, 2017), <https://techcrunch.com/2017/02/18/a-big-apartment-management-company-is-suing-airbnb/>.

231. James Temperton, *Airbnb has Taken on Hotels, Now it's Gunning for the Whole Travel Industry With Trips*, WIRED.CO.UK (Nov. 17, 2016), <http://www.wired.co.uk/article/airbnb-trips-launch>.

232. *How I Built This With Guy Raz*, *supra* note 1.