

**Accommodating Airbnb: Managing the Presence of Peer-to-Peer Accommodations
Companies in New York City**

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ABSTRACT

There are four commonly cited concerns raised by the popularity—and profitability—of Airbnb in New York City: the lack of taxation, the integrity of housing stock, public safety, and legality. The 416,000 yearly guests of Airbnb in New York City are not paying the occupancy and sales taxes to the city and state that would be paid by tourists staying in licensed hotels (Jiha 2015). Affordable housing advocates are angered by the idea of diverting housing stock in New York. Complaints to the Mayor’s Office of Special Enforcement (OSE) about apartments being converted into ‘illegal hotels’ rose 62% from 2013 to 2014 (New York City Council 2015). This thesis seeks to identify the most appropriate policy response to the wildly popular and widely criticized short-term rental market. This paper explores the history of Airbnb’s relationship with New York, elucidates the planning issues and legislation relevant to short-term rentals, analyzes policy options available to city governments, and finally provides recommendations for the City of New York. The author concludes that the legalization of short-term apartment rentals would allow New York City and New York State to capture the benefits of the short-term rental market and reduce the loss of housing stock to illegal commercial rental conversion at an more significant level than the present prohibition achieves.

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1. PROBLEM DEFINITION

Websites that accommodate listings for short-term vacation rentals have been available as early as 1996, but the unparalleled success of the accommodations company Airbnb has only recently brought short-term rentals into the spotlight (Dito 2011). Airbnb has become pervasive in many major cities across the globe. New York City is its second biggest market, having been surpassed Paris in February of 2015 (Robinson 2015). The consulting firm HR&A Advisors concluded that Airbnb brings 416,000 visitors into New York City each year, and the number is expected to rise (Kusisto 2013). Between January 1, 2010 and June 2, 2014, there was a tenfold increase in whole-home and private-room Airbnb rentals in New York City (Office of the Attorney General of the State of New York 2014). The reach and popularity of the company has drawn the attentions of local and regional governments, which have begun expressing concern about how the presence of Airbnb and its predecessors are affecting their cities.

There are four commonly cited concerns raised by the popularity—and profitability—of Airbnb in New York City: the lack of taxation, the integrity of housing stock, public safety, and legality. The 416,000 yearly guests of Airbnb in New York City are not paying the city and state taxes on hotel occupancy and room sales. New York City and the State of New York are not receiving the occupancy and sales taxes that would be paid by tourists staying in licensed hotels (Jiha 2015). In cities like New York and San Francisco, where space is tight and prices are high, the idea of diverting housing stock has angered advocates of affordable housing.

Because they are not built to be hotels, rooms and apartments rented through Airbnb lack the safety precautions required of formal lodging. There is a concern this deficiency could pose a threat to guests and to neighboring tenants. Complaints about illegal hotels to the Mayor's Office of Special Enforcement (OSE) rose 62% from 2013 to 2014 (New York City Council 2015).

Many of the rentals on the explosively popular site are not in compliance with the New York State and New York City laws regulating short-term housing rentals. The Attorney General's office found that 72% of the private short-term rentals in New York City were noncompliant (Office of the Attorney General of the State of New York 2014). While City Council deliberates taking further action to address Airbnb's presence in New York, individual renters—not the company turning the most significant profit—are subject to debilitating fines that in many cases exceed their incomes from Airbnb by a significant sum. In addition, Housing Court time (and money) is being taken up by individual cases of a very broad phenomenon because of the lack of cohesive short-term rental enforcement policy (Marritz, NYC Tells Airbnb Hosts: Don't Get Too Cozy 2013).

This research seeks to find an answer to the question: what should be done about Airbnb? This paper begins with a history of Airbnb's relationship with New York, then moves on to elucidate the urban planning issues that arise with the widespread use of Airbnb, explores policy options available to city governments, and finally provides recommendations for the City of New York.

1.1 INTRODUCTION TO THE SHARING ECONOMY

When discussing Airbnb, it is difficult to avoid the term “sharing economy.” The entrance of Airbnb into the public consciousness introduced the idea of the sharing economy along with it, but there is still confusion about what the term entails. A helpful way to explain the sharing economy is to describe what it is not. When the prototypical American household needs something—kitchen appliances, a lawnmower, a car—that something is generally purchased. The tendency to purchase something new, to be used sparingly and then left in storage, is an economy of individual, redundant consumption. A sharing economy is an alternative that focuses on reduction of this redundancy and resulting waste. This is accomplished through shared or community ownership of durable goods, lending, bartering, local currency systems, and gifting of surpluses among households (Orsi and Kassen 2012) (Fickey 2011). This might take the form of ridesharing, of a car-sharing club where ownership is shared between neighbors, or hosting travelling musicians in a spare bedroom (Sustainable Economies Law Center 2010). While some have offered the sharing economy as a radical alternative to capitalist markets, others view this kind of collaborative consumption as a “third perspective” that lies somewhere in between capitalism and anti-capitalism (Orsi and Kassen, *The Legal Aspect of the Sharing Economy* 2012) (Heinrichs 2013).

In the years following the Second World War, sharing durable goods became something associated with poverty and depression influencing the adoption of the current standard of individual ownership of goods. Negative associations of sharing goods have begun to diminish in recent years. Numerous platforms for “peer-to-peer” exchanges of goods and services have arisen and taken advantage of this cultural shift, the Internet, and the prevalence of smart phones, Airbnb being one of the most prominent. The early platforms were mechanisms for the free exchange of goods, but it is the more recent—and most widespread—that put a price on the services shared (Tomalty 2014). Car shares (business-to-consumer) were the first of these services to gain widespread traction, and they have become a part of a more sustainable transportation planning toolkit (Tomalty 2014).

One of the benefits of the more commercial ventures is that they help buffer the risk associated with sharing valuable assets with strangers. Airbnb, for example, offers coverage of up to one million dollars in damages to the apartments being lent

(Tomalty 2014). Commercial sharing endeavors like Airbnb, however, have recently come under fire. Landlords angered by lease violations, affordable housing advocates afraid of a reduction of the housing stock, irritated neighbors, tenants who fear displacement, foregone tax money, and the huge success of company makes Airbnb something that cities cannot easily ignore.

2. LITERATURE REVIEW

Academic literature on Airbnb itself is sparse. Most studies that have been conducted focused generally on the company's mechanisms for establishing trust between hosts and guests, although one study measured the specific economic impact of the company on the hotels of Texas. Scholarly articles on the wider sharing economy are still few and far between, but there is a burgeoning body of work on alternative economic projects that span the globe, as well as essays published outside of traditional academic journals that use a Marxist lens to analyze the phenomenon; both provide useful frames for the conversation around the sharing economy. Articles concerning economies alternative to capitalism typically feature cases in rural areas, or in cities located within a more socialistic national environment than cities in the United States, but the conclusions from these studies are helpful frames to begin thinking about Airbnb and the actions cities have taken in response to its presence.

2.1 THE SHARING ECONOMY

The sharing economy, or the new economy as it is sometimes called, is “an in-between place” that is “sandwiched between the realm of commercial economic activity and the realm of personal economic activity” (Sustainable Economies Law Center 2010). The early notion of the sharing economy captured a range of exchanges that included bartering, community ownership of durable goods, and ridesharing, as well as the short-term rental of a room or home. The motivation behind sharing—or trading, or exchanging—a durable good or unwanted surplus of nondurable goods was to reduce waste, and capitalize on capital or other resources that already existed. This kind of transaction benefits the person providing the good and the person using it, and it provides a benefit to a society that is confronting the negative externalities that are a result of consumption.

The sharing economy as it has come to be known is dominated by three companies: Uber, Lyft, and Airbnb. While these companies may have their roots in the sharing economy, they have diverged from each other and from their origins. While Airbnb could still be framed in the context of the original notion of the sharing economy, because it can benefit the host, the guest, and arguably the environment, it could also be viewed as a category apart from its local and small-scale predecessors.

These sharing economy companies, unlike a cooperative or car-share, require a third party, outside the sharer and the recipient, to profit. Additionally, the trajectory Airbnb has taken has complicated the original premise of sharing an existing resource. Airbnb has been used not just by households with a spare room or entire households going on vacation, but by people renting out new apartments entirely separate from their own residences, or in some cases by people getting larger accommodations than they would otherwise in order to run it like a conventional bed and breakfast.

There are differences in the primary motivations that drive the original participants in the Sharing Economy and the primary objectives of the contemporary Micro-Entrepreneurship, the Gig Economy, or the Trust Economy¹. While the desire to decrease consumption and material waste drove ride-shares and neighborhood cooperatives, the primary objective of Airbnb is, as a for-profit company, the creation of company wealth and the provision of an income for hosts. The rhetoric of Airbnb's founder, who cites his company's intention to create "create as many micro-entrepreneurs as possible," reflects this priority (D. Thompson 2013). The company may be "mission-driven," but it is no grassroots nonprofit.

The practices of the "ride-sharing" company Uber are the furthest afield from the original motivations of the sharing economy. Instead of allowing users to share a ride with a driver already on the move, they have created a fleet of full-time drivers with Uber as their primary means of employment. Uber is not in the business of utilizing existing capital or reducing waste; it incentivizes drivers to buy new cars and offers a special loan rate for its members. These loans have also come under fire for being high risk, at the expense of low-income Uber drivers (WSJ Blog 2014). Uber takes twenty percent of the driver's fare earnings, and it can lower the price per mile whenever it pleases, leaving drivers to drive longer hours to earn a similar rate (and in doing so accelerating the depreciation of their vehicles). It cut per mile fares in half, and brought the average hourly wage of its "partner-drivers"—who are independent contractors—from a living wage of over \$15 down to below minimum wage (Asher-Schapiro 2014). Uber has removed sharing of some surplus good or service from its sharing economy and it functions as a conventional full-time taxi service, sans worker protections or benefits.

Critics Tom Slee and Avi Asher-Schapiro both draw upon Marxist theory to question the motives of the sharing economy. Slee points out that Uber and Lyft's practice of

¹There is shared feature in the future envisioned by Airbnb CEO Brian Chesky and the future espoused by Marxist critics: drastically shorter work weeks, and working in different fields throughout the week. In social critic Alyssa Battistoni's future, however, the patchwork labor is the kind that serves a social good—like eldercare or food production—and it is supplemented by a basic universal income that provides stability (Battistoni 2014).

hiking up fares in poor weather or during high traffic times as evidence that the companies' central concern is profit, not sharing or "helping out your neighbors" (Slee 2014). He indicates that the companies that have popularized the trust economy are even moving further away from peer-to-peer relationships, evaluations, and trust mechanisms, opting instead for centralized verification methods like Airbnb's verification of government issued identification documents. Slee also suggests that the sharing company's "preferred phrasing of [earning] "extra money" harks back to women's jobs of forty years ago. And like those jobs, they don't come with things like insurance protection, job security, benefits" (Slee 2014).

Asher-Schapiro does not make a distinction between the different companies that comprise the sharing economy. He argues that because Uber's driver-partners operate with extremely slim margins, cannot exert control of their prices, bear the burden of gas, and can be fired ("deactivated") at any time, they are not the independent entrepreneurs Uber claims, but rather exploited labor being masked as independent contractors (Asher-Schapiro 2014). Asher-Schapiro posits that the sharing economy as whole "is a scheme to shift risk from companies to workers, discourage labor organizing, and ensure that capitalists can reap huge profits with low fixed costs," concluding: "Uber is just capitalism, in its most naked form" (Asher-Schapiro 2014).

Economist Tom Friedman has embraced the precarious employment that has characterized large portions of the new economy. He touts it as the antidote to an increasingly technological work place that gives unskilled worker a way to "earn a good living now by building their own branded reputations," though there is no evidence supporting the assertion that piecemeal employment can provide a "good living" (Friedman 2013).

While there is a tendency to discuss Airbnb and Uber as one of the same industry, and while Airbnb has the potential to adopt Uber's negative qualities, there remains a distinction between Airbnb economics and Uber economics. The different types of Airbnb hosts have different impacts. Most hosts are sharing underused capital (for a fee), though some others use the platform to acquire additional capital to generate profit (hosts with multiple apartment listings, people who buy a larger home than required with the express purpose of renting a room through Airbnb). Secondly, the fee to host in Airbnb includes insurance coverage; Uber laborers have no such protection or benefits from the company. Hosts set prices in Airbnb, where Uber drivers are subject to the rising and falling fares set by the company. Lastly, the high price of real estate and rental homes creates a notable obstacle to the practice of acquiring new capital and then using the peer-to-peer platform, contrary to the original intent of efficient sharing of existing capital.

The term sharing economy is applied to a spectrum of transactions. While the high cost of real estate creates a barrier that prevents most Airbnb hosts from removing the “sharing” portion, thereby placing Airbnb to the left of Uber on the spectrum, Airbnb is different from having your neighbors pay you for sharing your surplus soup or garden vegetable harvest because it is a third party, and it has a goal of making a profit off of the people engaged in the peer-to-peer transactions. Airbnb may benefit the host and the guest, and it may make efficient economic use of capital that already exists (a bed, couch, or temporarily unused apartment) but because it is a large, profit-oriented company with a responsibility to investors, it belongs on a different rung than neighbors co-owning a lawnmower or the other original permutations of the sharing economy. Airbnb is anticipated to launch an IPO, which would bring it even further away from the roots of the sharing economy (Frier 2014) (Carr, What Hotel Operators Really Think of Airbnb 2014).

Identifying these distinctions, and naming them more appropriately (some have suggested the “gig economy” and the “click economy”) might improve the public and academic discourse, and minimize the extent that branding obscures the functions of the companies who currently protect themselves with the umbrella of the sharing economy (Treuhaft 2015). Alternatively, Tom Slee suggests that organizations that comprise the sharing economy establish a set of principles that set standards for sharing enterprises, as the Rochdale Principles do for cooperatives.

The author of two books on law and the sharing economy—which cover all endeavors from carpools to cooperatives to multi-million dollar peer-to-peer markets—has attempted to simply the definition of the new sharing economy: “all these in-between ways that people are making a livelihood—that’s the new economy. That’s the sustainable and the sharing economy” (Sustainable Economies Law Center 2010). The new economy may be less wasteful but as we are seeing with Airbnb’s peers, there may be a tension between sustainable and equitable economic outcomes. Continuing to name Airbnb and Uber as the industry leaders in the sharing economy erases the differences between them, and it does not allow room for the discussion of local peer-to-peer exchanges that may not be profitable but that also lack the legal framework to carryout their mission.

2.2 ALTERNATIVE ECONOMIES

The literature surrounding alternative economies in cities is still narrow and self-referential, but it is expanding, and entering a “period of productive dissent” (Fickey 2011). What most authors do reiterate is that Western nations are suffused with an attitude that the market is not something that should be manipulated by government.

This attitude is permissive of government assistance to businesses in the interest of economic growth—as you see in the case of local economic development—but prohibitive of most policy actions bearing any resemblance to socialist programs. Capitalism is pervasive, and usually goes unchallenged in the public sphere.

Gibson-Graham, the most commonly cited source on alternative economies, suggests one way to combat the common difficulty of imagining any economic structure beyond capitalism is to challenge our assumption of the homogeneity of our capitalist economy. She summarizes Stephen Healy’s argument that “when the capitalist economy is seen as the real, dominant and or the most powerful form of economic life, the alternative economy is usually seen as idealistic, inferior, and powerless.” She goes on: “...if we displace this binary view of the economy with one of radical difference—of diverse capitalist and non-capitalist forms—then we open up many more spaces, of action without prejudging their transformative potential” (Gibson-Graham & Roelvink, 2011). She explains that there are already multiple forms of divergent economic activity—diverse economies—that exist, which she provides a frame for:

Transactions	Labor	Enterprise
Market	Paid	Capitalist
Alternative Market	Alternative Paid	Alternative Capitalist
Non-Market	Unpaid	Non-capitalist

Here, Airbnb could be considered an alternative capitalist enterprise, as labor is paid, but in a non-traditional market, and through an enterprise that has social motives that go beyond capital accumulation.

Other scholars have suggested creating multiple capitalist alternative or alternative market categories, in order to further dismantle the binary created by using “alternative” only in relation to an economic “non-alternative” (capitalism). These subcategories are alternative-additional institutions, alternative-substitutional institutions, or alternative-oppositional institutions. Alternative-additional is defined as “institutions or enterprises providing an additional choice to other extant institutions while not necessarily adopting or advocating values that seek to reject the (state or capitalist) mainstream.” Alternative-substitutional is defined as “institutions that act as a form of substitute for institutions once pervasive (in a particular place) yet have subsequently moved elsewhere. In some cases these substitutes can be of “last resort,” allowing people to survive under extreme economic and social

circumstances” An alternative-substitutional enterprise might be a sliding scale, “honor system” produce stand at a community garden in an area no longer served by supermarkets. Alternative-oppositional is defined as producing “something different in value of operational terms, whilst simultaneously representing a rejection of more non-alternative or mainstream forms and their identities” (Fickey 2011). Non-monetary exchange systems like the time-banks are found in Ithaca, New York and numerous Spanish cities. Airbnb is more easily situated within this frame, here within the category of alternative-additional, as the company provides a new choice in short-term lodging, without displacing the hotel industry or advocating its guests or hosts move away from capitalism. Guests who choose Airbnb over hotels because of an ecological or political motivation, however, could interpret the company as an alternative-oppositional enterprise. Promoting itself as a part of the sharing economy could be seen simply as a way for Airbnb to capture these travelers’ dollars.

Neither of these two frameworks for alternative economies above makes any mention of the state. While alternative economies often exist without support from—and sometimes without being noticed by—the state, A. E. G. Jonas notes that “there is a danger that [economic] alternatives are simply to be understood in relation to the market (which might assume many forms) and that consequently there is no role in their formation for regulation, intervention or subsidy by the state (Fickey 2011) (Jonas 2010). Other theorists interested in alternative economies often question the long-term viability of alternative projects, because they see them as “vulnerable to cooptation by capital and the state” (Jonas 2010) (Fickey 2011). These theorists may point to Airbnb as an example of this, as the company is first and foremost in the service of profit.

Michael Samers often cites Gibson-Graham’s work, but criticizes what he sees as the unquestioning celebration (he also uses “fetishization”) of informal, small scale, and alternative economies by the left. He rejects that only large-scale economies can produce the dehumanization described in Herbert Marcuse’s “One Dimensional Man,” citing Gregson and Crewe’s 2003 work to insist that small-scale production too can produce “sameness”. As one of the largest endeavors in the sharing economy, and as a company that markets itself on its individuality, Airbnb makes an interesting subject for Samers’ lens. Whether or not Airbnb creates the kind of sameness that large-scale economic projects do may be a matter of scope: for the traveler, Airbnb produces very personal, experiential lodgings, but for the residents of a tourist destination, Airbnb further homogenizes the city’s real estate to cater to visitors.

Interesting questions are coming out of the field of “economic geography”—a body of work which “through an attention to space, place, and difference, rejects the tendencies towards formalism and homogeneity inherent within orthodox economics”— regarding alternative economies, but these questions have yet to be

answered in the literature. Andrew Leyshon asks three questions of proponents of diverse economies that the sharing economy will also need to grapple with: “what is the prospect for diversity initiatives in a world where neoliberalism is so strong, both materially and ideologically?” “How can such initiatives “scale” and overcome the problems of the “spatial fix” that...constrains so much capitalist development?” Do we live in a “both/and world,’ where it is possible to develop alternative systems that exist alongside capitalism?” (Leyshon 2005). Within the literature on alternative economies, there is also recognition of the need to further explore the role of the state and the importance of differential power relationships (Fickey 2011) (Jonas 2010). The global scale of Airbnb, and its material success existing alongside traditional hospitality companies, make an investigation of Airbnb’s self-promotion in New York a useful case to explore the themes identified by economic geographers and alternative economists, and build the literature on the role of city government in alternative economic enterprises.

2.3 THE SHARED EXPERIENCE

The literature on hospitality exchanges focuses on the sociological implications and the ability of the business (or nonprofit organizational) model to have staying power. When answering the question “why does this work?” the studies find that free ridership is not a problem because people are not looking for one-to-one reciprocity in a hospitality exchange. A Harvard sociologist found that users of the non-monetary hospitality exchange website CouchSurfing consider the experience of sharing lodging with a traveler as something interesting and valuable in and of itself² (Marx 2012).

This experiential component, while certainly less of a factor in hospitality exchanges that come with a fee, is not something that can be ignored. Renting a spare room, bed, or couch through Airbnb produces a profit, but it is still a shared experience that is not for everyone. There will be travelers who would not be comfortable renting even a space from, or to, a stranger, even if they had the whole space to themselves. This knowledge should temper projections about the impact Airbnb will have on the hotel industry in the coming years.

² Not all research on the sociological underpinnings of the sharing economy uncovers its nobler ideas. Another Harvard study investigated the influence of racial prejudice on Airbnb transactions and both guest and host ratings, which are a kind of capital in an industry that relies so heavily on personal relationships and ratings (Edelman and Luca 2014).

3. METHODOLOGY

This research stemmed from the author's interest in the perceptions and appropriation of the term "sharing economy." As it became clear to the author that the rhetoric of entrepreneurship had become Airbnb's primary example of the social good it conferred (Kirkland 2014), the research questions shifted away from perceptions of the so-called sharing economy and towards how cities can best respond to the prevalence of short-term rentals that function as cottage businesses.

The methodology of this thesis comprised:

- Gathering secondary sources for a literature review,
- Four 'expert interviews' with people working in the fields of housing law, hotel management, and local legislature, in addition to an interview with an Airbnb host and guest,
- The synthesis and analysis of primary and secondary documents,
- The construction of a historical timeline of Airbnb's involvement with New York City,
- Projecting the impacts of three alternative responses to short term rentals, and
- Providing recommendations informed by the above research.

In order for interviews to be as frank and forthcoming as possible, all interviewees signed consent forms that assured them that they would be identified only by their field of work.

The findings of this study were constrained by the limited number of expert interviews. Emails were sent to professionals working in the fields of housing law, hotel management, local legislature, and the sharing economy. Emails were sent to acquaintances with ties in that field, asking for introductions in the hopes of increasing the response rate of potential interviewees. The ultimately low number of responses and the high cancellation rate of scheduled interviews resulted in only one interview with a member in each field of interest. As such, the principle data this study drew upon was a transcription of the New York City Council's Housing Committee hearing on short-term rentals.

4. BACKGROUND

4.1 THE RISE OF THE INTERNET'S HOME RENTAL MARKET

Airbnb is not the only, and certainly not the first website to allow users to rent space in an online market. In Airbnb you can see elements of its predecessors, and in some of its predecessors you can see a change in response to Airbnb's popularity. A selection of the most successful short-term rental websites is profiled below.

VRBO.com

VRBO is an abbreviation of the term “vacation rentals by owner,” and it was founded only three years after the Internet became a public resource. VRBO is not in the market of renting rooms or a couch; it allows users to rent entire homes. It focuses on traditional vacation destinations in the United State, like beachside towns (Higgins 2012).

HomeAway.com

HomeAway's focus is on international, usually non-urban vacation destinations (Higgins 2012). It launched in 2006 with 60,000 listings, and by 2011 the number of property listings had grown to more than 250,000. Originally, homeowners paid to list their homes on this rental site but in the last year they moved to a pay-at-time-of-booking system, like Airbnb's. On HomeAway, 40 percent of rental listings are from management companies. In 2014, 6 percent of HomeAway listings were also listed on Airbnb, a small number that has been slowly trending up. The most overlap occurs in destinations that are close to San Francisco, Airbnb's headquarters, and close to Austin, HomeAway's headquarters. Since its launch, HomeAway has acquired 17 rival sites (Helft 2014). Like VRBO, it is not in the market of renting shared spaces—only entire condos and houses.

CouchSurfing.Com

CouchSurfing was founded as a public company in 2004 by a computer programmer who had been informally couch-surfing to afford to travel. The website connected hosts who had a spare couch or bed they could share with a guest. The website's terms of use prohibited the exchange of currency, but guests are encouraged to thank the host in some non-monetary way. CouchSurfing had a mission “to internationally network people and places, create educational exchanges, raise collective consciousness, spread tolerance, and facilitate cultural understanding.” While the exchange between hosts and guests is still experiential and nonmonetary, in 2007, CouchSurfer accepted 7.6 million in investment, and dropped its nonprofit status and

became a B corporation, a new type of company that “is contractually required to be socially and environmentally responsible” (Marx 2012).

Intervac-HomeExchange.com

Intervac is a home and automobile exchanged trade. There is no monetary transaction between guests and host, though Intervac members pay a yearly fee of \$99 USD to gain access to the listings. Intervac began in 1953 to support cultural learning exchanges between teachers in Europe and the United States; it allowed educators to participate in a cultural exchange that would have been prohibitively expensive otherwise (Intervac 2012). Intervac offers simultaneous and non-simultaneous home exchanges. Now, Intervac allows members to offer low-cost vacation rentals to other members, and there are also nonmonetary hospitality exchanges, and youth exchanges (Intervac Home Exchange 2015).

4.2 ABOUT AIRBNB

Airbnb was founded in 2008. The idea for the company came from the founder’s successful venture renting out their air mattresses to conference goers on a weekend when all hotels in San Francisco were booked.

Airbnb’s website offers three types of accommodations:

- Entire Place: “1000+” in New York City; total number unspecified
- Private Room: “1000+” in New York City; total number unspecified
- Shared Room (couches, fold outs, and railroad apartments): 897 (Airbnb 2015)

While an increasingly large portion of Airbnb’s listings are for unshared, or whole-home rentals (an estimated 2/3 of all available rentals), the company’s focus remains to be urban rentals, distinguishing it from vacation rental predecessors VRBO and Homeaway (Helft 2014).

Like other online peer-to-peer accommodations websites, Airbnb is dependent upon trust between hosts and guests. Airbnb now offers an insurance policy, creating an additional buffer to ease the minds of hosts. The insurance policy covers property damage and third party bodily harm in amounts up to one million dollars per claim and up to two million dollars per year. This policy supplements any existing insurance a host may have, and is offered only for hosts in the United States (Airbnb 2015).

Airbnb has been so successful that it has inspired a whole host of adjacent endeavors: SpareChair is a market for co-working spaces, EatWith is a market for home-cooked meals, and RideRelay is a market for daily rental of privately owned automobiles (Nagy 2014). Most recently, Breather, a website and application which allows users book quiet spaces to work or relax in select North American cities (Breather 2015). There is even a company that supports brands in becoming “the Airbnb of x,” a now widely used phrase that indicates a web or mobile application that allows users to pay each other (and the developer) to rent services like power-tools, bicycles, or bathrooms³ (Johnson 2014).

4.2.1 THE BENEFITS OF AIRBNB

Because the prices offered on its website are often far lower than those offered by hotels, Airbnb opens up opportunities for new cultural experiences and possibilities. The option of affordable lodging benefits middle and lower middle class consumers who could not otherwise afford to travel (Interview, Airbnb Host and Guest 2015). Whole-home rentals are particularly beneficial for families who could not otherwise afford to travel with children at the prices of traditional hotels. Airbnb also helps meet the need created by a dearth of hostels in one of the world’s most popular vacation destinations. Airbnb provides high-end options for travelers, but it also provides accommodations that are affordable for the population that would otherwise stay in a hostel. The broadening of the tourist base is a financial boon for cities, as they can collect more sales tax from the shops, entertainment venues, and restaurants that have seen a widening customer base. It is also appealing to travelers who are less interested in traditional tourism and are in search of more “authentic” experiences and living as local resident might. By providing a unique experience, and by providing an affordable alternative to conventional lodging, Airbnb expands and diversifies the tourist base of a city (Interview, Housing and Tenant Rights Lawyer 2015).

Airbnb is less energy intensive than conventional lodging options, which may be something to consider as New York attempts to move on PlaNYC’s Climate Challenge & Waste Goals. Of all commercial and service buildings, hotels and service industries have the greatest negative environmental impact, excluding hospitals. A study of the Environmental Protection Agency Region 2, which includes—New York, New Jersey, the Virgin Islands, and Puerto Rico—found that

³ This particular Airbnb of X speaks to a different issue that monetizing spaces brings up: the privatization of public space. When libraries are closed, or unavailable near by, the only available restrooms in a city are confined to the private sphere; only patrons of a business are able to gain access to them. The restrooms in transit centers, even within the area reserved for paying commuters, are closed (Jaffe 2013). Even McDonald’s wants to place limits on the amount of time customers may use their spaces (Colletti 2014).

energy, water, and solid waste impacts are greatest in New York City and the Hudson Valley (Polansky, et al. 2008). A residential stay is less waste-intensive than a hotel stay, with only one cleaning at the end of stay, and no corporate policy of including new travel-sized toiletries (or toiletries of any size) for each new guest. While there is no indication that Airbnb will capture and replace considerable pieces of the hotel industry in New York (which would be undesirable in a city with very limited housing stock) it does allow more visitors to come to New York and have a smaller environmental footprint while doing so. While Airbnb may produce less negative environmental externalities than a conventional hotel, these must be weighed against Airbnb's social cost. There is indeed a social benefit to choosing to share a good when not in use over repetitive redundant consumption of goods, but the problems arise when "sharing" drives new consumption. The social/environmental benefit is lost, and the transaction is simply an untaxed, unregulated illegal hotel, or taxi service, as the case may be.

4.2.2 THE TROUBLE WITH AIRBNB

ILLEGAL HOTELS & THE REDUCTION OF HOUSING STOCK

Some apartment owners or tenants who can afford to rent multiple apartments simultaneously have used Airbnb's platform to pose as a resident of each of their available units and "host" guests in multiple apartments for most of the year. Six percent of New York City's Airbnb hosts offered between three units and 272 distinct units for rental, meaning that they were not just renting out the place where they lived, but had multiple properties they were renting out exclusively to short-term guests. These commercial rentals accounted for 36% of all private rentals in the New York City Airbnb market and 37% of all host revenue for Airbnb. More than 100 hosts offered more than 10 units on Airbnb, and the top earning host offered 272 units (Office of the Attorney General of the State of New York 2014). The conversion of residences to fulltime short-term rentals takes housing off the market for New Yorkers.

"In 2013, more than 4,600 units were booked as short-term rentals through Airbnb for three months⁴ of the year or more. Of these, nearly 2,000 units were booked as short-term rentals for a cumulative total of half the year or more—rendering them largely unavailable for use by long-term residents" (Office of the Attorney General of the State of New York 2014)

⁴ This is the approximate cutoff for legal hosting in San Francisco, where the city government recently made renting a room or home to travelers for less than 90 days a year a legal practice.

Airbnb began as a way for residents to make extra income on the space they already had, but “the share of revenue to Airbnb and its hosts from units booked as private short-term rentals for more than half the year increased steadily, accounting for 38 percent of each figure by 2013” (Office of the Attorney General of the State of New York 2014).

UNHAPPY NEIGHBORS

Airbnb has drawn complaints from apartment owners and renters regarding neighborhood character, quality of life, and safety. There is anger over the presence of transient strangers in their buildings. Most of these complaints have come from residents of buildings that are being run full-time as illegal hotels, where people from around the globe are visible coming and going with their luggage. Because so much of this is so anecdotal, and the complaints so impassioned, it sets the tone for the discussion and obscures the fact the source of the complaints are not generally about the occasional rental of a neighboring apartment while its tenant is out of town (Interview, Housing and Tenant Rights Lawyer 2015).

NEIGHBORHOOD AFFORDABILITY

While not as easy to quantify as a reduction in housing stock, local lawmakers are concerned about the secondary impacts that short-term rentals might have on the price of housing in the neighborhood or the city as a whole (Interview, City Elected Official 2015). Many residents fear being priced out of their neighborhoods, and see Airbnb not as a symptom of gentrification but as a source (New York City Council 2015). Although neighborhood affordability was cited as one of the motivations for the Attorney General’s investigation into Airbnb, the report did not explore Airbnb’s impacts on neighborhood affordability in New York City. The report featured only one constituent’s comment about the affordability of the neighborhood (Office of the Attorney General of the State of New York 2014).

VIOLATION OF LEASES & RENT CONTROL

Even where the length of rental makes Airbnb legal to use in an apartment or duplex, renting an apartment or duplex through Airbnb may still be a violation of the lease or cooperative agreement.

Subsidized and rent controlled apartments are a particular concern, as making a profit off of a below-market residence disrupts the logic of these programs, which are meant to provide a living space, not an asset to capitalize. In the case of below-market rents, a landlord is prevented from making as much profit as they could for the sake of social interest; the possibility that the tenants are able to realize more of this value does not sit well with landlords or proponents of rent regulations (Interview, Housing and Tenant Rights Lawyer 2015).

SAFETY

Many criticisms of the sharing economy by tenants and public officials are voiced as concern for the safety of tenants and short-term rental guests. One common argument from these groups is that apartments rented through Airbnb lack the fire safety measures present in traditional hotels, creating unsafe environments for tenants and short-term rental guests. These concerns are commonly voiced in cases where multiple rental units in a building are being used exclusively for short-term rentals, resulting in a large and constant stream of guests. Illegal subdivision of apartments is also a point of discussion in conversations about fire safety and Airbnb (New York City Council 2015).

The Attorney General's report on Airbnb also raises the suspicion that hosts are using the website to run illegal hostels in addition to private rooms and whole-home rentals. This is suspected in cases where there is a high volume of unrelated, unacquainted guests staying in the same unit. Because of fire and safety concerns, hostels and other high-density accommodations are highly regulated in New York City. In addition, only nonprofit hostels are allowed in the city. (Office of the Attorney General of the State of New York 2014).

HOST LIABILITY

Airbnb hosts in the United States are automatically entitled to Airbnb's new Host Protection Insurance, which covers hosts whether or not they are hosting guests legally (Lieber 2014). The insurance policy kicks in if the primary homeowners or rental insurance denies a claim, which is a common result for Airbnb hosts. Airbnb does not, however, advise hosts that many insurance companies will drop clients from their insurance plans if they suspect a home is being used for commercial purposes. For example, this is standard operating procedure for the large insurance company State Farm. In one case, State Farm gave this rationale for dropping a client from their insurance:

“The property owner changed the way she used her home on a fairly regular basis. Renting rooms in a home brings exposures that an individual and insurer should mitigate” (Lieber 2014).

4.2.3 AIRBNB AND THE LODGING INDUSTRY

At the January 20th, 2015 meeting of the City Council's Committee on Housing and Buildings, a member of the New York Hotel Trade Council Union spoke and critiqued short-term residential rentals as competing “with legal hotels on an unlevelled playing field.” Because the short-term rentals do not pay business taxes and other taxes that a regulated hotel does, the speaker accused the short term rental market as “pushing down room rates citywide, suppressing wages industry wide, and

undermining [hotel] workers' attempts to maintain their standard of living" (New York City Council 2015).

The member of the New York Hotel Trade Council union was correct in the sentiment that New York hotel rates are not ideal, as revenue-per-available-room (RevPAR) grew 5%, where other American cities grew 5-15% over the same period. The reason for the relatively slow revenue increase is not a mystery, and cannot be attributed in any significant part to short-term rentals. There has been a 21% increase in the supply of hotel rooms in New York City over the last 5 years, rising from 93,254 rooms in 2009 to 112,940 last year. By comparison, as of January 3, 2015 there were 27,392 Airbnb listings in New York City, 15,977 of which were whole-home rentals (Maloney 2015). There are 27,000 additional hotel rooms currently in the construction or in planning stages. Much of the actual and planned growth is occurring in areas of Brooklyn that are quickly gentrifying, by hotels that are slightly less expensive than their Manhattan counterparts (Bloomberg News 2015). Even with this sizable increase in number of hotel rooms, the revenue per available room in New York grew.

Hotel management has not been very concerned about Airbnb and short-term residential rentals because they view Airbnb listings as satisfying a niche market (Interview, Hotel Management Company on Airbnb 2015). While the New York Hotel Association contributed funds to the anti-Airbnb campaign ShareBetter, most hotels have not expressed a concern that Airbnb pose a direct threat to their business. The Four Seasons, Ritz-Carlton, InterContinental Hotel Group, and Hilton Worldwide seem unperturbed; Hilton's Executive Vice President even praised the company (Carr, What Hotel Operators Really Think of Airbnb 2014). While the year-to-year increase in profit per room is not growing as quickly as other cities, New York's hotel industry as a whole is still strong despite the increased popularity of Airbnb and other short-term rental options. New York City has seen a continued increase in tourism resulting in rising job growth in area hotels (New York State Office of the State Comptroller 2015) (Office of the Attorney General of the State of New York 2014). In California, the state's Lodging Industry Association welcomed Airbnb's head of hospitality as a key speaker at their 2014 Lodging Expo in Los Angeles (Interview, Hotel Management Company on Airbnb 2015).

The role of unionized hotel jobs and job compensation must be considered if Airbnb were to capture a significant portion of New York's would-be hotel guests, but it is clearly not presently the case. A more pressing concern about jobs associated with tourism is Airbnb's stated interest in providing a company cleaning service for hosts' properties. The cleaning service would entail "stocking, which means leaving towels, bed sheets, mints, and a welcome package, like Vitaminwater in the fridge," as well as "staging, which is making sure the heating and lights are on" (Carr, Inside Airbnb's

Grand Hotel Plans 2014). The whole service would amount to a \$60 dollar fee passed on to the customers. Airbnb is also piloting a car service similar to Uber. With these services, Airbnb would be moving away from a model of users determining their own prices to operating a service where laborers would likely be independent contractors, and vulnerable to the problems independent contractors have experienced in the new sharing and gig economies (Asher-Schapiro 2014).

As discussed in the literature review, Airbnb is moving further away from the original mission of the sharing economy, and as a result is in danger of contributing to the problem of piecemeal employment as a status quo. The new “gig” economy can be useful for those who need a temporary supplementary income, but when this type of employment becomes the status quo, it may begin to operate as an exploitative labor system under unrestrained capitalism (Asher-Schapiro 2014) (Slee 2014).

4.3 AIRBNB AND NYC

4.3.1 TIMELINE OF AIRBNB’S HISTORY & ITS RELATIONSHIP WITH NEW YORK

- 2008 – Airbnb founded (12 years after VRBO and 2 years after HomeAway)
- 2009 – Airbnb joined San Francisco-based start-up incubator Y Combinator, which encouraged the company to focus primarily in New York City (Austin 2011)
- 2010 – NY State Senator Liz Kruger sponsored a bill with State Assembly Member Dick Gottfried “Illegal Hotel Law.” The bill amends the 1954 Multiple Dwelling Law to give local agencies enforcement tools to curtail illegal hotels, defined as renting a residential unit in a building of three or more units (Krueger 2014)
- 2012 – between January and June – Airbnb paid \$30,000 to a lobbying firm in New York’s state capital, Albany (Bolton-St. Johns) (Marritz, NYC Tells Airbnb Hosts: Don’t Get Too Cozy 2013)
- 2012 – September 12 – New York City Council passes Local Law 45, which allows enforcement agencies to increase the fine for converting permanent residences to transient units from \$800 to anywhere between \$1,000 and \$25,000 (New York City Council 2015)
- 2012 – November – Airbnb waives fee for hosts offering free housing to New Yorkers displaced by Hurricane Sandy (Heine 2012). Mayor Bloomberg commends Airbnb’s efforts as “another great example of the private sector using technology to help address this emergency” (Marritz, NYC Tells Airbnb Hosts: Don’t Get Too Cozy 2013)
- 2013 – Mayor’s Office of Special Enforcement (OSE), which investigates quality of life complaints, begins using sophisticated database Palantir to

focus in on major violators of the illegal hotels law (Marritz, Inspectors' Gadgets Find Illegal Airbnbs 2015)

- 2013 – Airbnb, HomeAway, FlipKey, and TripAdvisor form the Short Term Rental Advocacy Center to advocate short-term rental legalization, regulation, and simplification of process and compliance (Short Term Rental Advocacy Center 2015) (Dailey 2013).
- 2014 – May 14th – The Attorney General of the State of New York served Airbnb a subpoena requesting data on its transactions in New York City (Office of the Attorney General of the State of New York 2014).
- 2014 – May 20th – Airbnb makes agreement with the Attorney General's office to provide them with host data in NYC that had been anonymized (Office of the Attorney General of the State of New York 2014)
- 2014 – June 17th – A judge in New York City's Housing Court ruled that a renter facing eviction from landlord for renting the apartment through Airbnb had a grace period to correct the lease violation. Even though the renter was breaking the law, the judge said the 2010 "Illegal Hotel Law" is "generally aimed at the conduct of owners of property, not tenant" and that does not impact a tenant's right to correct problematic behavior before losing their home (Marritz, Airbnb Decision Could Give Renters Breathing Room 2014).
- 2014 – September 12 – Share Better Coalition, a group of elected officials, tenant groups, and affordable housing advocates launches website and an anti-Airbnb campaign with 3 million dollars in funding from coalition members and from the New York Hotel Association (Karmin 2014).
- 2014 – October – Attorney General of the State of New York's Research Department and Internet Bureau releases a report on Airbnb that finds that 72 percent of the private short-term rentals in New York City were noncompliant with the law
- 2015 – January 20 – Airbnb executive spoke at New York City Council meeting on short-term rentals and illegal hotels which lasted eight hours (Hawkins, City Council's animosity toward Airbnb grows 2015) (Karni 2015)
- 2015 – February (around the 10th) – Brooklyn-based engineer launches InsideAirbnb, a website that maps Airbnb locations and statistics about each rental (Whitehouse 2015)
- 2015 – February 20 – The first Airbnb eviction in New York City: a man renting out a rent stabilized apartment while his family lived in an outer borough was evicted (Hawkins, Anti-Airbnb folks delight in first tenant eviction 2015) (Marsh 2015)
- 2015 – March – The City Council created a proposal for a \$2 million increase in the budget for the Mayor's Office of Special Enforcement (OSE) with the

intent of tripling the size of the staff specifically assigned to address illegal short-term rentals (Golding 2015).

4.4 LEGALITY

The following section is an exploration of the state law and local regulations that impact short-term rentals offered through Airbnb's website.

4.4.1 A SPECTRUM OF HOSTING SITUATIONS

The law that determines the legality of short-term rentals in New York categorizes three hosting situations: a legal whole-home single-family house or duplex rental, a legal private room rental, and illegal hotels. Illegal hotels are defined as any whole-home rental less than thirty days in a building with three or more units, or any rental in an apartment building that occurs for less than thirty days while the primary tenant is away.

A whole-home short-term (less than 30 days) Airbnb rental is legal in NYC if:

- It is in a duplex or single family home

A private room short-term (less than 30 days) Airbnb rental is legal in NYC if:

- It is in a duplex or single family home, *or*
- It is in a building with three or more units and the primary tenant is present *for the whole duration of the rental period*

The least expensive Airbnb rentals are short-term (less than 30 days) shared rooms, where a guest pays to sleep on a couch or cot in a room shared with one of the apartment's tenants. These are acceptable for apartments as well as duplexes and single-family homes, as a shared room implies that the primary tenant will be home for the duration of the rental. This type Airbnb rental is legal in NYC if:

- The occupancy numbers do not breach health and safety codes

To elucidate the full scope of Airbnb transactions in New York City, it is helpful to break down the type of rental transactions not only by accommodations but also by the host's role and motivations.

		Private Room				Whole-Home			
Shared Room		by renter	by owner	by renter, commercial	by owner, commercial	by renter	by owner	by renter, commercial	by owner, commercial
Example	Rented couch, futon, or foldout bed in a space shared by host and guest, whether that be a loft, bedroom, or living room	Rented private room in the host's rental, e.g. renting out a roommate's room for a week while they are away	Rented private room in the host's house, coop, or condo, e.g., renting out your guestroom or office for a week	Rented private room that is dedicated to the express purpose of generating Airbnb income	Rented private room that is dedicated to the express purpose of generating Airbnb income	Rented apartment where the tenant is not present for the duration of the guest's stay	Rented condo, co-op, house where the tenant is not present for the duration of the guest's stay	Rented condo, co-op, house that is dedicated to the express purpose of generating Airbnb income	Rented condo, co-op, house that is dedicated to the express purpose of generating Airbnb income
Violation of State Dwelling Law?	If tenant is not present for duration of guest	If tenant is not present for duration of guest	If tenant is not present for duration of guest	If tenant is not present for duration of guest	If tenant is not present for duration of guest	If apartment is in building with more than three units	If apartment is in building with more than three units	If apartment is in building with more than three units	If apartment is in building with more than three units
Violation of City Law?	If unit is rent regulated	If unit is rent regulated	If unit is rent regulated	If unit is rent regulated	If unit is rent regulated	If unit is rent regulated	If unit is rent regulated	If unit is rent regulated	If unit is rent regulated
Other Potential Violations?	Lease, zoning, business license & taxation	Lease, zoning, business license & taxation	Condo, Co-op, Homeowners' Association, zoning, business license & taxation	Lease, zoning, business license & taxation	Condo, Co-op, Homeowners' Association, zoning, business license & taxation	Lease, zoning, business license & taxation	Condo, Co-op, Homeowners' Association, zoning, business license & taxation	Lease, zoning, business license & taxation	Condo, Co-op, Homeowners' Association, zoning, business license, & taxation

FIGURE 1 A SPECTRUM OF RENTAL TYPES

4.4.2 MULTIPLE DWELLING LAW

The Multiple Dwelling Law was originally adopted in 1929, and was most recently amended in 2010 by a bill sponsored by Senator Liz Krueger to clarify the definition of illegal hotels.

New York State law distinguishes multiple dwelling buildings by classes. A Class A building is one that:

“is occupied, as a rule, for permanent residence purposes. This class shall include tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, garden-type maisonette dwelling projects, and all other multiple dwellings except class B multiple dwellings” (New York State Assembly 2010).

Multiple dwellings are buildings with more than two residential units, meaning the Multiple Dwelling Law does not apply to one- and two-family homes. Most residential buildings in New York City contain more than two residential units, falling under Class A classification (Office of the Attorney General of the State of New York 2014). A Class B building is:

“a multiple dwelling which is occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals. This class shall include hotels, lodging houses, rooming houses, boarding houses, boarding schools, furnished room houses, lodgings, club houses, college and school dormitories and dwellings designed as private dwellings but occupied by one or two families with five or more transient boarders, roomers or lodgers in one household” (New York State Assembly 2010).

By adding the following passage to the definition of Class A buildings, Krueger’s amendment to the Multiple Dwellings Law prohibits short-term rentals (less than 30

consecutive days⁵) in any multiple dwelling unless the primary tenant is present for the entire duration of the guest.⁶

“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 and a person or family so occupying a dwelling unit shall be referred to here-in as the permanent occupants of such dwelling unit” (Smith 2010),

where family is defined as:

“either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers” (New York State 1929).

The law’s broad definition of “family” would enable a resident to participate in a home-exchange website so long as there was no money involved in the exchange, but it makes the practice of compensating the occasional house-sitter illegal by requiring presence of the primary resident. The remainder of the bill elucidates exceptions for universities and the case of visiting scholars being hosted in dormitories.

4.4.3 TAXATION

NEW YORK STATE

The Attorney General’s report cites Airbnb’s being in violation of tax laws as one of the reasons it launched its investigation. The State of New York collects the New York City Sales Tax, the New York State Sales Tax, and the New York State Hotel Unit Fee (\$1.50 per unit per day)

⁵ Though it would be legal to rent an apartment for more than 30 days through a site like Airbnb, the guest would earn residency rights. A San Francisco host ran into this problem when their Airbnb guest stopped paying after 30 days, but refused to leave. Unlike hotel management, residential landlords (in this case, Airbnb hosts) do not have the right to remove nonpaying guests for trespassing. The fight to evict the “guest” will cost the Airbnb host thousands in legal fees. Airbnb itself has been minimally helpful (Said 2014).

⁶ It is legal to rent a part of an apartment in a residential multiple building so long as the owner is present in the apartment as well, though this may be in violation of a lease or co-op and condominium bylaws (Dailey 2013).

NEW YORK CITY

Hotels in New York City must pay the city’s Hotel Room Occupancy tax (known colloquially as the Hotel Tax). The hotel room occupancy tax rate is presently 5.875%, which is levied based on the cost of the hotel room. Since the price of most accommodations in New York City exceed forty dollars a night, the tax amounts to two dollars plus 5.875% of the cost of the room per night. This tax is collected by the City.

If the rent for the room is...	The tax will be...
\$10 or more, but less than \$20	50 cents per day per room + the hotel room occupancy tax rate
\$20 or more, but less than \$30	\$1.00 per day per room + the hotel room occupancy tax rate
\$30 or more, but less than \$40	\$1.50 per day per room + the hotel room occupancy tax rate
\$40 or more	\$2.00 per day per room* + the hotel room occupancy tax rate

Source: NYC Finance Commissioner's Office

FIGURE 1 NYC HOTEL OCCUPANCY TAX RATES.

Airbnb hosts may also be subject to New York City’s four percent Unincorporated Business Tax (“UBT”), which applies to people or unincorporated businesses that “carry on or are currently liquidating a trade, business, profession, or occupation within New York City”, including “those engaged in the business of renting out homes and apartments for profit as an unincorporated business” (Office of the Attorney General of the State of New York 2014). As yet there have been no cases of UBT tax remittance.

It estimated that between 2010 and 2014 Airbnb hosts would have generated \$33,467,152 in occupancy taxes, excluding city sales and state sales and occupancy taxes (Office of the Attorney General of the State of New York 2014).

4.4.4 HEALTH & SAFETY REGULATIONS FOR HOTELS

The state of New York requires hotels to have two modes of unobstructed egress for evacuation, evacuation plans on the doors, fire alarms, conspicuous portable fire extinguishers, illuminated exit signs, emergency lighting where necessary, and doors designed to prevent the spread of fire. No short-term residence can be opened without a permit for operation, which has a three-year expiration date, and must be posted visibly in the residence. An official from the permitting office must be allowed entry into the property for inspection at any time. Hotel health regulations also require sites to be free of vermin and have proper refuse storage systems, as well as to change bedding more than once a week unless it is the responsibility of the guest to clean (Public Health Law Section 225 2009).

These building regulations were driven by the once high death tolls of urban fires, and by the general rising concern about health and hygiene in growing cities. As fire chief Thomas Jensen said in the City Council Hearing on STRs, the reason hotels have more fire and safety regulations than conventional Class A buildings is that “we assume that the residents there have knowledge of their building and egress and so forth, and...hotel occupants do not” (New York City Council 2015).

The Mayor’s Office of Special Enforcement, under the jurisdiction of the Mayor’s Office of Criminal Justice, is responsible for enforcing fire and building codes in the city’s five boroughs (New York City Council 2015). The office investigates complaints from 311. Enforcement from the office can entail issuing a violation, litigating, or something in between. If an owner does not cease operating short-term rentals on the first violation notice, the OSE will consider bringing a nuisance abatement case. First time offenders of the short-term rental specification can be charged \$1,000 to \$5,000, with fines up to \$30,000 for those who are identified as being in violation more than once⁷ (Dailey 2013). Enforcement is expedited properties with the most numerous complaints, and those that appear to be the most serious with respect to health and safety violations. Serious or urgent complaints are those that concern buildings without sufficient means of egress, without sprinkler systems, and an extreme number of people in one unit (New York City Council 2015). A tenant renting their apartment while on a weeklong vacation is treated no differently than a landlord operating multiple rental units as an illegal hotel. The office is comprised of 12 staff members, three police officers, one fire department inspector, two building inspectors, two attorneys, an investigator, in addition to an office manager and the acting director of the office.

The director of the Office of Criminal Justice testified “many if not most of the complaints that this office receives concern short term transient rentals” (New York City Council 2015). This results in a correspondingly large portion of their resources being spent on short-term rentals, rather than investigating building code violations that do not have tells as noticeable as people with luggage moving. OSE received 1150 short-term rental complaints in 2014, and performed 883 inspections, but these 883 inspections were not 883 different buildings; there are often multiple complaints for different kinds of violations within each building (New York City Council 2015). When asked by Council Member Rosenthal if having more staff would increase the response time, and enable the office to “issue more violations, and bring more cases to court” the director of the Criminal Justice Office skirted the question, asserting that

⁷ There have been instances where a tenant with a first time offense has received a violation notice with the maximum fine. Tenant Nigel Warren, who used the site for one long weekend away, was subject to a \$30,000 fine (Marritz, NYC Tells Airbnb Hosts: Don’t Get Too Cozy 2013).

they are very efficient now, especially with a new software program that helps locate the site of 311 complaints (New York City Council 2015).

4.4.5 LICENSING BUSINESSES

The company founders suggest that Airbnb should be viewed as small-scale entrepreneurship. For this reason it is prudent to look at business licensing practices in the state of New York.

HOME OCCUPATIONS

Legal home-based businesses can only run under one of two conditions: the owner received a variance for the business, or the business is considered an accessory use of the property. An accessory use is a use “conducted on the same zoning lot as the principal use to which it is related” (City Planning Commission 2013). For example, accessory use can include living or sleeping accommodations for servants or caretakers⁸, structures for domestic animals, swimming pools, incinerators, and home occupations.

A home occupation is an accessory use in a unit within an otherwise residential building. Home occupations “include but are not limited to fine arts studios, professional offices, teaching of not more than four pupils simultaneously.” Home businesses must acquire a home occupation permit for their business from the city. Home occupation permits are not granted for

“advertising or public relations agencies, barber shops, beauty parlors, commercial stables or kennels, depilatory, electrolysis or similar offices interior decorators' offices or workshops, ophthalmic dispensing, pharmacy, real estate or insurance offices, stockbrokers' offices, [and] veterinary medicine” (City Planning Commission 2013).

A home occupation may not occupy more than 25 percent and not more than 500 square feet of floor area. A home occupation allows for the employment of one person who lives outside the home unit.

While room or apartment rentals are not mentioned in the list of either prohibited or permissible home occupations, an American Planning Association article on land-based classification systems notes: “land-use inventories seldom tabulate accessory uses unless the community has a special interest or concern.” The article cites guest rooms for rent in a tourist community as one such special interest (Jeer 1997)

THE BED & BREAKFAST PROBLEM

⁸ Except in zoning districts C6-2M, C6-4M, M1-5M, M1-6M, M1-5A and M1-5B.

Bed and breakfasts, the businesses most closely resembling Airbnb rentals, are required to register with the City of New York. Beginning in 1993, bed and breakfasts were also required to pay sales tax in addition to the occupancy taxes. The 2010 amendment to the State of New York’s multiple dwelling law, however, made illegal most of the bed and breakfasts operating in New York City (Raskin 2015).

Unlike their rural counterparts, it is common for New York City’s bed and breakfasts to be located within Class A buildings. While these bed and breakfasts were registered with the City and had been doing business for years, the 2010 amendment made *all* short term rentals in *all* buildings with more than two units illegal. Since the law passed, forty percent of bed and breakfasts—which provided a relatively affordable alternative to Manhattan’s hotels—have closed. It has been pointed out that New York’s bed and breakfasts are “mostly minority- or women-owned businesses” and all are licensed New York City “small-facility operators” (Raskin 2015).

Without the ability to make an income, many owners are left with no option but to sell; today, only fifteen bed and breakfasts remain. These alternatives to large hotels do not return any affordable housing to the market, but rather became a part of the luxury housing market.

4.4.6 ZONING RESTRICTIONS

For the most part, hotels in New York City are only allowed in areas zoned as commercial. Hotels are a part of commercial Use Group 5, which “consists of hotels primarily for transient occupancy” (NYC Department of City Planning 2008). Use Group 5 is permitted in districts C4, C5, C6, C8, but only in a limited number of C1 districts⁹. In C2-1, C2-2, C2-3, and C2-4 districts, hotels are only permitted within 1000 feet of entrances to limited access expressways, freeways, or highways, “all of which prohibit direct vehicular access to abutting land and provide complete separation of conflicting land and provides complete separation of conflicting traffic flows” (NYC Department of City Planning 2008).

Hotels may be located in residential areas only in zone R10H, by special permit. Special permits are subject to the Uniform Land Use Review Process and the discretion of the city Planning Commission or the Board of Standards and Appeals (NYC Department of City Planning 2008). The R10H zone is comprised of Central Park South, and Fifth Avenue between E 59th and E 61st in Manhattan. In certain circumstances, hotels may be located in M1 (light) manufacturing zones.

The rationale for establishing separate residential zones in New York was to meet the housing needs of the city’s present and future population, protect health and safety,

⁹ Excludes C1-1, C1-2, C1-3, and C1-4.

and prevent traffic and unreasonable density (NYC Department of City Planning 2008). The separate commercial districts were intended to maintain a balance between residential land and commerce, services, and, in the case of commercial Use Group 5, transient guests.

4.4.7 A NOTE ON TENANT RIGHTS AND LEASE RESTRICTIONS

QUIET ENJOYMENT

Tenants have the right to “quiet enjoyment” of their homes. Quiet enjoyment refers to their right to peacefully occupy their home without “willful... and intentional...” interference from the landlord (Metropolitan Council on Housing 2015). Landlords who are operating some of a building’s apartments as unlicensed hotels may run the risk of having a claim that they violated this right leveled against them, but it has not yet been a tactic used in court (New York State Real Property Law § 235-B n.d.).

EVICTION

Housing in New York City can be rent controlled, rent stabilized, or unregulated. Rent controlled units limit the rent that can be charged and restricts the ability of the owner to evict residents of the unit. When these apartments are vacated they become rent stabilized or unregulated apartments. Residents of rent-stabilized apartments cannot be evicted except for reasons allowable by law. Residents of New York’s Public Housing Authority (NYCHA) may not be evicted without a being allowed access to a grievance process, where they may remedy the offense. In unregulated (non-rent stabilized, non-rent-controlled) apartments, the landlord can evict tenants at the end of the lease term.

LEASE RESTRICTIONS

Most leases prevent tenants from subletting without the consent of the landlord. Many leases, condominiums, and homeowner’s associations also explicitly prohibited home-based businesses (Small Business Association 2009). Property leased or owned by the US Government must be approved prior to the establishment of a home-based business (D. Thompson 2010).

Most actions taken against noncompliant short term rentals have been handled at the property or parcel level, so landlords are the ones that receive violation notices even if the tenant was the host. Landlords who are not operating illegal short term rentals themselves have an incentive to ensure their tenants are not participating in noncompliant rentals.

4.5 SUMMARY OF FINDINGS FROM PRIMARY AND SECONDARY SOURCES

The reaction to Airbnb in the political arena have been characterized by a more general anger about wider issues in New York City, and rather than taking actions

that address issues specifically raised by Airbnb, there is a tendency toward overbroad responses.

1. The majority of tenant complaints and concerns made to the New York City Council concern commercially run illegal hotels using Airbnb, not Airbnb hosts that rent out the homes in which they reside. The most sensational of complaints come from buildings where apartments have been illegally subdivided to create more rooms for transient rentals, and from Single Residency Operations (SRO) being rented to multiple travelers at once.
2. The tenant testimonies made during the City Council hearing on short term rentals more frequently reflected anger about absent, unresponsive landlords rather than problems that were arising from converting whole apartment floors into exclusively short-term rentals. When one tenant witness in the City Council's hearing on the Multiple Dwelling law was asked about quality of life issues that resulted from the presence of short term rentals in their building, they cited poor work ethic of doormen, lack of hot water, and a loss of security. Multiple tenants cited smelling marijuana in the building, while other mentioned being woken up by delivery people taking food to people suspected of being tourists in the early morning (New York City Council 2015, 340-355). One tenant cited the risk of bedbug posed by tourists, while another mentioned the shower in the rental above theirs leaked twice, causing a problem in their ceiling. Short-term rentals were also singled out as a driver of gentrification rather than a symptom; this sentiment was mentioned but not investigated in the Attorney General's report.
3. The hotel industry' profitability is not threatened by short term rentals, but the primary function and outcome of the short-term rental prohibition is beneficial to the hotel industry, as it made previously legal alternatives to hotels in New York City illegal. The 2010 short-term rental law does not distinguish between any short-term rental outside a conventional hotel, and in doing so delegitimized New York City's previously legal, tax-paying, registered bed and breakfasts.
4. The remaining restrictions on the presence of transient occupancy in cities are driven by a desire to balance residential needs with commercial endeavors, and to protect health and safety. The zoning, health, and fire codes as they apply to transient hotels were written for large, disorienting buildings with large numbers of guests. While the evacuation plan component of the regulations is catered specifically to the needs of tourists, the remainder is concerned with the number of occupants within a building. The latter could be scaled according to building size.
5. While safety of travelers in New York is one of the commonly cited concerns about short-term rentals, the conventional bed and breakfasts that are getting

fined say they are only getting fined for noncompliance with the Certificate of Occupancy in their buildings. Noncompliance with fire regulations has been mentioned by building inspectors, but the bed and breakfasts did not report fines for noncompliance with fire codes (New York City Council 2015, 281).

6. City Council Members acknowledged the benefit of Airbnb confers to individual hosts who came out in support of short term home rentals by, but it was deemed less significant than the problems it creates.

5. POLICY OPTIONS

5.1 CONSTRUCTING THE ALTERNATIVES / PROJECTING POLICY OUTCOMES

5.1.1 ALTERNATIVE 1: STATUS QUO

New York City's first policy option is the status quo, meaning letting present trends continue. The status quo does not mean New York would stop its current policies or only do what they are currently doing. If present trends continue, individual Airbnb cases will continue to go to court, and there will be an increase in the Office of Special Enforcement's time and resources devoted to responding to complaints and fining those identified as operating short-term rentals in Class A multiple dwellings.

PROJECTED POLICY OUTCOME

If present trends continue, New York City will see an increasingly large number of cases being brought against landlords by the OSE, and against tenants by landlords, as in the case of rent controlled and subsidized properties. It is likely that the city will pass the proposal to add \$2,016,000 to the OSE's budget with the intention of increasing the number of staff dedicated to short-term rental investigation (Progressive Caucus of the New York City Council 2015). The OSE's primary function is not the investigation of all short-term rentals in New York City; rather their goal is to respond to the range of complaints that they receive. As the director of the Criminal Justice Office has pointed out repeatedly, the Office of Special Enforcement "was created as an inspection unit. It's gone well beyond inspection function by bringing suits against--by bringing litigation against landlords and others involved in this business. But it is not an investigative body...other skill sets might be deployed in order to do the kinds of things... [the City Council is] suggesting." She clarified: "we're a complaint driven organization, and right now, we seem to be keeping up with what the complaints are" (New York City Council 2015). With increasing pressure from City Council to issue more violations and bring more cases to court, paired with the \$2 million increase from the \$96,426 proposed for fiscal year 2016, is likely that the OSE will face political pressure to develop these "other skill sets." The OSE will remain primarily complaint-driven, but there will be an additional investigative component to its work regarding illegal hotels.

While the proposal specifically mentions staff members using the Internet to seek out offending listings, OSE's handling of violations will remain unchanged. Violations and fees will continue to be sent to landlords, and tenants will still respond in court; litigation will continue to be used as a time-intensive enforcement tool. Even with a large increase in funding, OSE inspectors would still be prohibited from entering a

building without permission, which means they must make multiple trips to a suspected illegal hotel site in order to gather enough information to bring charges (New York City Council 2015).

As the OSE steps into a more investigative role and violations and cases against short-term rental operators rise, there will be a greater risk of getting caught, and a smaller incentive to operate short term rentals, though it is unlikely to curtail the bulk of Airbnb rentals. With a staff of twelve, OSE currently makes 883 inspections a year, which includes trips to the same building. Assuming the efficiency of the office remains constant, the additional twenty-five staff members could increase the number of inspections to 1,840—only a small portion of the 35,354 Airbnb rental units in New York City analyzed in the Attorney General’s report. It is unlikely that this will result in any significant reduction either in large commercial short-term rental operations or in noncompliant short-term rentals in general. As the department will still be primarily complaint driven, the enforcement priority will continue to be those with the most complaints and the most serious infractions—usually cases where property owners have large short-term rental operations in one building or have illegally subdivided units. This prioritization is unlikely to lead to the identification of hosts who operate short-term rentals at multiple sites. New York City’s bed and breakfasts will remain illegal unless they find patrons who will stay longer than thirty days. In the absence of significant reduction in short-term rentals it is likely that state and local lawmakers will continue passing pieces of reactionary legislation, like the amendment to the Multiple Dwelling Law, that affect aspects of short-term rentals rather than legislating a comprehensive plan of action for eliminating illegal hotels in the city.

5.1.2 ALTERNATIVE 2: PROACTIVE RESPONSE

New York’s second option is to move away from a complaint driven approach to enforcing the 2010 amendment of the multiple dwellings law and address the problems associated with short-term rentals at the source. The City could shift the burden of investigation of illegal hotels to Airbnb by fining the company directly if allows hosts with more than one unit to rent to appear in its listings. A proactive approach would also require the (small number of) renters who are legally allowed to host because of compliance with the Multiple Dwelling Law to acquire a home occupation permit and file paperwork to remit the unincorporated business tax, and state and local occupancy taxes. The Airbnb website could be monitored to ensure that all rental listings displayed a valid permit, the failure to do so resulting in fines to the company.

As a \$14 billion company, Airbnb would be a more significant source of revenue than individual hosts who may not be able to pay fines and who tend to challenge them in housing court. Since housing stock is a primary concern of the City Council, the revenue from noncompliance fines could be directed to Housing Preservation and Development or the New York City Housing Authority, and partially to the Office of Special Enforcement. A similar approach is taken by the government of Barcelona, which has come out against Airbnb as strongly as many of New York's council members. Unlike New York, Barcelona responds to unlawful Airbnb listings by fining not the hosts, but the company. In the United States, this approach would require a federal policy change.

PROJECTED POLICY OUTCOME

The Internet allowed short-term rentals to prosper, but it also makes it easy for the company or a regulatory body to monitor listings and quell the conversion of housing stock to exclusive short-term rental units. It would also reduce the overall number of noncompliant short-term rental listings. One might expect that limiting hosts to a single posting on Airbnb would simply result in people posting listings under false names to evade detection, as some do presently (Pressler 2014). There is always a possibility that commercial hosts could collude with friends and adopt their names and identification, but Airbnb's recent shift toward government identification card verification would make this fraud more difficult.

Observers have pointed out that as a young company, Airbnb's first responses to government challenges have been youthfully reticent, and there is always the possibility that Airbnb might view such a direct involvement by the city into the company's operations as a reason to litigate. After its original reluctance to provide the Attorney General New York with information on its operations in NYC, however, it has taken a more cooperative posture towards governments.

By fining the company directly, Airbnb will have an incentive to filter illegal postings before they are posted, reducing the number of inspections necessary for OSE staff. The removal of offending listings, which the Attorney General's office found to be its most lucrative listings, means that Airbnb will make less money. As a young company with a responsibility to its investors, they are likely to recoup this lost income by raising the cost to hosts. This decreases the profitability of hosting, and may lead to a reduction in even the compliant short-term rentals in the city. New York City's bed and breakfasts will remain illegal unless they find patrons who will stay longer than thirty days.

5.1.3 ALTERNATIVE 3: LEGALIZATION & TAXATION

A third option is to end the prohibition of short-term rentals within Class A dwelling units, but address concerns about safety, preservation of housing stock, and loss of tax money by taxing and regulating Airbnb's business in New York. Removing the across-the-board ban on short term rentals in apartment buildings would enable the city to make a distinction between types of short term rentals, and set limits on the type and duration of rentals permissible; the city could ban rentals outside of the home someone lives in, and restrict the days per year that a tenant could have a short term rental. Because the 2010 amendment to the Multiple Dwelling Law makes many Airbnb rentals illegal at the state level, a change would also have to take place at the state level.

Public safety: The state of New York could maintain the intent of hotel regulations by minimizing safety risk associated with short-term home & room vacation rentals and adapting hotel safety precautions to an apartment scale. As bed and breakfasts were required to do, short-term rentals could be required to have adequate evacuation information and safety protocols posted visibly to the door on the occupied side. Another safety precaution required for hotels is the requirement to have two means of egress (Marritz, NYC Tells Airbnb Hosts: Don't Get Too Cozy 2013). This requirement was waived for bed and breakfasts, which are considerably less dense than hotels (Interview, Housing and Tenant Rights Lawyer 2015).

While sprinkler systems are cost prohibitive and may not be at a scale appropriate for short-term home and room rentals, the city could require a fire extinguisher be present and readily accessible in rentals (Newport Partners 2013). Another safety regulation that would be more appropriate to the scale of apartment buildings is the requirement of carbon monoxide and fire alarms (which should be, but are not always, present in apartments to begin with). New York City could go further and require additional safety materials in homes where travellers are staying, like disaster preparedness kits with water, and an emergency light source, to incorporate the City's resiliency objectives.

While a yearly inspection of short-term rental properties would not be feasible in a city as large as New York, the city could rely on self-reporting to monitor the safety of rentals. If all New York City Airbnb listings featured a list of all the requirements for short-term rentals (fire extinguisher, evacuation plan), the registration number of the rental listing, and the phone number of the Office of Special Enforcement, guests could call and report noncompliance.

Preservation of Housing Stock: Making a distinction between the different kinds of rentals available on Airbnb, and limiting the days per year that an apartment can be used for short-term rentals accordingly, can prevent the loss of housing stock. As other municipalities have reasoned, capping rental days undercuts attempts to operate

apartments as exclusively short-term rental units by limiting the revenue that can be generated. Other jurisdictions have discussed limiting the amount of income a short-term rental can generate, but the rational nexus behind this would be more difficult to withstand a court challenge (Interview, Housing and Tenant Rights Lawyer 2015).

Taxation: The legitimization of Airbnb would allow the city and state to collect sales and occupancy taxes, as hotels do and as bed and breakfasts did. The city could also choose to require Airbnb to pay back taxes on the transactions that happened prior to the legalization of some short-term rentals, as the City Council did in San Francisco, California (Said, S.F. Starts on Path to Regulate Airbnb 2014). The City may also choose to levy an additional tax or fee for short-term rentals to fund the OSE's additional enforcement work.

The city could choose to include a provision in a regulatory law that asserting that the legality of short term rentals does not supersede lease agreements, which would lend the law more political feasibility, but this would amount to choosing the status quo alternative, as most leases prohibit subletting.

PROJECTED POLICY OUTCOME

It is unclear whether regulation and taxation would lead to increase or decrease in short-term rentals on the market, as the legalization might inspire new people to use a service like Airbnb, while taxation could make hosting less lucrative and less desirable. Regulation would, however, quell if not eradicate the conversion of housing stock to exclusive short-term rental units. As with the proactive approach, this would reduce the profits of Airbnb, though to a lesser degree. Airbnb would, however, celebrate this policy (at least publicly) because it would legitimize most of its hosts in New York City, if not its most lucrative ones. As with the proactive approach, regulation and taxation would make use of new staff and support for OSE, though the website monitoring required would be slightly more nuanced. The regulation of Airbnb, which would distinguish between commercial short-term rentals and people who rent their spaces while out of town, would also allow conventional bed and breakfasts to operate legally once again.

5.2 EVALUATIVE CRITERIA

Each policy will be evaluated through the lenses of equity, efficacy, and political feasibility. Equity, efficacy, and political feasibility are broken into subcategories, which are each assigned a weight within the larger category. If the conditions of a subcategory are met by a policy, it is assigned a value of 1. If a policy meets the conditions of a subcategory in part, it is assigned a value of 0.5. If a policy does not meet the conditions of a subcategory, it receives a 0 for that subcategory. The

assigned value for each subcategory is multiplied by the subcategory's respective weight and then summed with the other weighted subcategories to create a total for the criterion. The resulting numbers for equity, efficacy, and political feasibility are totaled for each project. These final figures are not independently meaningful, but rather provide a measure of rank between the policies.

EQUITY

An equitable policy outcome would minimize adverse impacts on underserved populations. Operationally, this would entail ensuring housing stock is not diminished by short-term rentals like those featured on Airbnb. An equity lens would also take into account tenants whose short-term rentals allow them to remain in increasingly expensive neighborhoods, and the cases of traditional bed and breakfasts who were hurt by the reactionary Multiple Dwelling Law amendment, but these cases are less critical than New York City's need to preserved housing stock. The reduction of housing stock conversion, reinstating legal status to conventional New York City bed and breakfasts, and enabling residents to earn supplementary income are assigned the weights of 0.7, 0.2, and 0.1, respectively.

EFFICACY

The efficacy of a policy option will be determined by the extent that it produces an outcome that reduces the negative impacts of Airbnb as raised by lawmakers and tenants as discussed above: the conversion of housing stock to transient units, Airbnb's operation of a lucrative business in New York without paying the taxes required of legitimate businesses, and, to a lesser extent, the unwanted impacts short-term apartment rentals may have on neighbors. The reduction of housing stock conversion, the collection of city and state taxes, and the minimization of impact on other tenants will be assigned weights of 0.6, 0.35, and 0.05, respectively.

POLITICAL FEASIBILITY

A policy option can only be effective if it has the potential for adoption and implementation. Political feasibility will be evaluated on the basis of city council sentiments and local and state authority to make changes. The favor of City Council is assigned a weight of 0.05, while the ability of City Council and the State Legislature to act is given weights of 0.5 and 0.45.

5.3 CONFRONTING THE TRADE-OFFS

The ideal outcome of city policy would be to create an environment that makes the commercial short-term rental of apartments difficult if not impossible, that removes these listings from popular short-term rental sites, and that generates the greatest amount of benefit for New Yorkers.

5.3.1 EQUITY

The status quo approach to handling short-term rentals in the city is unlikely to result in an equitable outcome. Investigating short-term rentals after they have already been put on the market is inefficient, and it is not going to result in a number of inspections and fines sufficient to deter the lucrative and well-established practice. Commercial illegal short term rentals will continue to operate and take housing stock off the market, exacerbating New York’s housing shortage and increasing unaffordability. Under the status quo it is especially difficult to identify short-term rental operators who use apartments in different buildings, as the Office of Special Enforcement is more likely to receive complaints about short-term rentals in a single building, where a commercial short-term rental operation is consolidated and more conspicuous.

A proactive approach to handling short-term rentals in New York is likely to have a more equitable outcome. Preventing illegal short-term rentals from being put on the market in the first place will result in fewer residential units removed from the city’s housing stock. Shifting the burden of responsibility to Airbnb and other short term rental companies would likely result in more of the multi-building commercial rental operations being caught, as it is easier for the company to identify users using its verification process than it is for the City. A proactive response policy would not result in any great benefit to non-commercial hosts using short-term rentals as a way to make ends meet, and it would not benefit most conventional bed and breakfasts, as they would remain illegal. Illegal hosts whose posts managed to appear on Airbnb or a related site would benefit, however, from the fact that the company would cover the cost of the oversight, rather than be burdened with a \$30,000 fine themselves (though they may face other ramifications from their landlords).

A regulation and taxation approach would also result in fewer residential units removed from the city’s housing stock, with the additional benefit of making a distinction between commercial users and users that rented space in the apartments in which they reside. It would also allow for conventional bed and breakfasts to earn an income once more.

	Weight	Status Quo	Proactive Approach	Legalization
Reduces loss of housing stock	0.7	0	1	0.5
Allows for conventional Bed & Breakfasts	0.2	0	0	1
Enables struggling residents to supplement incomes	0.1	1	0	1
Equity Weighted Sum	1	0.1	0.7	0.65

FIGURE 2 EVALUATING EQUITY

5.3.2 EFFICACY

As discussed above, the status quo does not reduce a significant amount of commercial and home short-term rentals. The status quo also fails to recoup occupancy and sales taxes from Airbnb or its hosts (though Airbnb does mail income tax forms to its hosts in New York City). The proposed budget and staff increase does not indicate any plan to collect taxes on the 25% of Airbnb hosts the Attorney General’s office deemed to be currently legal. Quality of life complaints have been increasing, the vast majority of which are coming from buildings with full-time commercial short-term rental; without a significant reduction in the amount of illegal hotels, community impacts will

A proactive approach does a better job of reducing illegal short-term rentals, but similarly neglects to collect taxes from even legal short-term rental hosts. The improved ability to enforce the short-term rental ban would correspond with a reduction in negative impacts to neighbors’ quality of life.

A legalization approach would prevent a similar amount of housing stock from being lost to short-term rental conversion, but it would leave the City and State to collect taxes on short-term rental hosts on top of continuing the practice of fining noncompliant operations. The legalization and regulation approach would reduce the number of commercially operated short-term rentals, which are the primary source of impacts to neighborhood character and quality of life, but it may also result in new, single-listing tenants to use Airbnb as well. While non-commercial, tenant-as-host rentals are not the source of many complaints to City Council, to the State Legislature, or to the Attorney General’s office, the new legality and new level of awareness by neighbors of the potential for transient guests may inspire an increase in preemptive complaints.

	Weight	Status Quo	Proactive Approach	Legalization
Reduces loss of housing stock	0.6	0	1	1
Collects taxes from short-term rentals	0.35	0	1	1
Minimizes quality of life impacts associated with short-term rentals	0.05	0.5	1	0
Efficacy Weighted Sum	1	0.025	1	0.95

FIGURE 3 EVALUATING EFFICACY

5.3.3 POLITICAL FEASIBILITY

The status quo is, understandably, the most politically feasible alternative.

A proactive approach is very much in line with the sentiments expressed by city council members during the hearing on short term rentals, in which many chided the Office of Special Enforcement for failing to be proactive enough (even after the

Office of Criminal Justice’s insistence that the OSE’s mandate was not investigatory). This approach would have the support of anti-short term rental tenants, hotels, and many city council members. It would not have the support of conventional bed and breakfasts, but their numbers are small and growing smaller; they have not proven to have much political clout. This approach however, would not be feasible without a federal level policy change, which is unlikely. The Telecommunications Act of 1996, which addressed the quickly developing technology of the Internet, protects the developers and operators of interactive websites from being held responsible for the content posted by its users. Airbnb is able to use this federal as a way to evade responsibility for managing illegal (profitable) listings in the face of local governmental requests to remove offending listings.

A regulatory approach would be less feasible than the status quo because it requires a state level policy change, but it is more feasible than the proactive approach; it would just require changing the frame of the short-term rental conversation. It is attractive for policymakers to be against Airbnb because it endears them to the hotel industry, most landlords, as well as tenants angry about gentrification and an increasingly unaffordable New York. If, however, Airbnb could point out that it is easier being anti-Airbnb than addressing the state’s role in gentrification, and easier than mobilizing resources for affordable housing, proponents of short-term rentals might be able to create a new base of ground level support. At the state level, the company has already installed lobbyists in Albany to advocate for the legalization and regulation of short-term rentals; it has the resources necessary to stake a long campaign.

	Weight	Status Quo	Proactive Approach	Legalization
Favorable to City Council	0.05	0	1	0.5
City Council has authority to enact	0.5	1	0	0
State Government has authority to enact	0.45	1	0	1
Political Feasibility Weighted Sum	1	0.95	0.05	0.475

FIGURE 4 EVALUATING POLITICAL FEASIBILITY

Taking equity, efficacy, and political feasibility together, legalization and regulation is the best way to minimize the negative impacts of the explosive popularity of the short-term rental market. While regulation often generates bureaucracy and its associated costs, in this case it is preferable to the complaint driven status quo that has been considered insufficient to handle the current situation. A centralized, concerted plan will better prevent the negative externalities of a widespread and lucrative market than a scattered effort on the part of a small, complaint-driven enforcement agency with multiple concerns might. Regulation would allow for centralized complaints and a clear indicator of legality present on a listing, as well as significant tax revenue for the state and city. Of the three policy options explored here,

legalization and regulation of short-term rentals would result in the greatest benefit to New York City.

	Weight	Status Quo	Proactive Approach	Legalization
Reduces loss of housing stock	0.7	0	1	0.5
Allows for conventional Bed & Breakfasts	0.2	0	0	1
Enables struggling residents to supplement incomes	0.1	1	0	1
Equity Weighted Sum	1	0.1	0.7	0.65
Reduces loss of housing stock	0.6	0	1	1
Collects taxes from short-term rentals	0.35	0	1	1
Minimizes quality of life impacts associated with short-term rentals	0.05	0.5	1	0
Efficacy Weighted Sum	1	0.025	1	0.95
Favorable to City Council	0.05	0	1	0.5
City Council has authority to enact	0.5	1	0	0
State Government has authority to enact	0.45	1	0	1
Political Feasibility Weighted Sum	1	0.95	0.05	0.475
Total Weighted Sum	3	1.075	1.75	2.075

FIGURE 5 RANKING POLICY RESPONSES

5.4 LIMITATIONS & FURTHER RESEARCH

As mentioned in the methodology section, the findings of this study are constrained by the limited number of expert interviews. The ultimately low number of responses and the high cancellation rate of scheduled interviews resulted in only one interview with a member in each field of interest. As such, the principle data this study drew upon was a transcription of the New York City Council's Housing Committee hearing on short-term rentals.

Additionally, this analysis did not uncover policy options that specifically address quality of life concerns associated with short-term apartment rentals. In this analysis, the extent to which a policy reduces negative impacts to neighbors is a function of how they reduce un-hosted commercial rental operations. Most municipalities that have adopted short-term rental legislation have dealt with (or shifted the burden of) quality of life concerns by writing into law that the legalization of short-term rentals was not to supersede lease agreements, or condominium or Homeowners' Association guidelines.

Lastly, demand-side solutions to reducing short-term rentals were not investigated in the course of this research. The wild success of Airbnb in New York City has demonstrated a need for more affordable lodging for travelers. Further research might explore how supporting hostels or other lower cost lodging alternatives might reduce demand for short-term apartment rentals.

6. CONCLUSIONS & RECOMMENDATIONS

Airbnb has found favor both with New Yorkers who are looking to make the most of limited resources as well as those with enough capital to exploit the short-term home rental market. As the Attorney General's subpoena has uncovered, while the majority of Airbnb hosts are renting the home in which they live, the majority of Airbnb's New York City profits come from the latter. Fining Airbnb for listing rentals that deplete housing stock would be an ideal solution for a successful company that profits from illegal enterprises with a high social cost, but federal law prevents this. Until changes are made to the content or legal interpretation of the Telecommunications Act of 1996, the most effective approach to balancing the social costs and benefits of the short-term rental market is legalization and regulation. Regulation allows cities and states to capture some of the economic value of the short-term rental market, and improving the enforcement capacity by having a centralized method of addressing complaints.

In an opinion piece in the New York Times, Janelle Orsi, the founder of the Sustainable Economies Law Center had this to say about policymaking in the wake of the rising popularity of peer-to-peer markets:

“It’s not a matter of deciding whether it should be legal to use Airbnb... It’s a matter of deciding how, where, when and how much. A more nuanced legal system could figure this out, by balancing concerns about housing affordability, health and safety, impact on neighborhoods, and the imperative to reduce consumption and carbon emissions” (Orsi, *Narrow Rules Narrow Our Economic Options* 2014).

A more nuanced legal system may be imperative as the economy begins to account for the finite nature of our natural resources, but, as discussed in the literature review and body of the report, Airbnb will not fulfill any of the missions of the new/sharing economy without regulation. Unregulated, Airbnb allows individuals and companies to not just make better use of existing capital, as is the hallmark of the sharing economy, but to consume more resources through the conversion of multi-functional capital (apartments) into single-use capital (unlicensed hotels).

If regulated, the city of New York can leave room for its residents to take advantage of the positive aspects of Airbnb (global community and supplementary income), while removing the detrimental and minimizing the inconvenient (removal of housing stock, invoking the ire of neighbors).

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