



Whitepaper

Airbnb & Municipal Zoning Regulation

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Introduction

Imagine this scenario: You're on a business trip to San Francisco from New York City. Your trip is short, so short in fact that the idea of shelling out hundreds of dollars on an expensive hotel room seems less than ideal. You'd like to stay with family, but they live too far away from the central hub of the city, where all your business is located. You need a place located no more than a taxicab ride from the city that won't cost you an arm and a leg. Now, imagine this scenario: You're a San Francisco resident who is struggling to make this month's rent. Your apartment is a two-bedroom walk-up, centrally located near the city hub. Your previous roommate has moved out, so right now it is just you living there. You need to rent the spare room temporarily, until you can find a new roommate, to help meet the month's rental costs.

Over the last decade, startups and tech companies have been developing convenient ways for regular people to offer routine services such as transportation and lodging. Consumers now willingly allow strangers' access to items that were previously regarded as private extensions of one's self. The personal automobile for example, once a symbol of American freedom and autonomy, can now be temporarily "rented" by anyone to anyone. A simple search on websites like Ebay or Craigslist will reveal hundreds of listings by previous owners for items as personal as t-shirts to toothbrushes. Even the bed, a place where the average American spends almost eight hours of their day[1], is "for rent" for the right price. This phenomenon is commonly referred to as the "sharing economy", a social and cultural creation representing a de-emphasis of ownership and an embrace of sharing.

This paper will explore the legality with respect to zoning of the sharing economy titan, Airbnb.[2] Section II will provide insight into why Airbnb has become so popular, and why municipalities have reason to fear its growth. Many municipalities adopted regulatory systems ten, twenty, even thirty years ago. These systems have proven ill quipped to handle the growth of various new technologies, sharing economy services included. Undoubtedly, technological and economic developments produce better, more efficient lifestyles. municipalities moving forward, with particular focus on how two major American cities have responded to Airbnb in vastly different ways.

All growth, however, is accompanied by pain; pain communities have not yet discovered how to alleviate. The national reaction to sharing economy services has been mixed.[3] In order to best understand the divide between existing zoning legislation and Airbnb, a discussion of the policy and legal history of zoning is required. Section III will provide the framework for the discussion with an overview of the American land use system, paying particular attention to local municipal zoning authority and functions, using an existing zoning ordinance (Town of Waywayanda, New York) as a model to explain where, if at all, Airbnb fits into current regulatory schemes. Section IV will discuss the legal and regulatory conflicts between municipalities and Airbnb, focusing on several cities that have taken differing approaches to dealing with the company. Finally, this paper will conclude with a discussion of best practices for municipalities moving forward, with particular focus on how two major American cities have responded to Airbnb in vastly different ways.

An Introduction to Airbnb

Founded in 2008 by Brian Chesky, Joe Gebbia, and Nathan Blecharczyk, Airbnb describes itself as “a trusted community marketplace for people to list, discover, and book unique accommodations around the world — online or from a mobile phone or tablet.”[4] The company, headquartered in San Francisco, has over two million listings in more than 190 countries worldwide.[5] Users can host or stay in accommodations ranging from castles to small apartments in cities such as London, Miami, and Buenos Aires.[6] Users simply download an app that gives them access to thousands of listings across the globe, many of which are competitively priced against traditional hotel options. Airbnb is widely regarded as one of the “pioneers” of this new, rapidly expanding economy.[7]

Advocates often use the phrase “collaborative consumption” when explaining the merits of the phenomenon known as the “sharing economy.” Sharing-economy companies offer a wide variety of services but are united by three common traits. First, they rely on recent technological advances to satisfy age-old consumer demands in ways not previously possible.[8] Second, they exist in and parallel to a wide variety of well-established industries that are fundamentally disrupted by the sharing economy’s emergent ability to provide innovative alternatives.[9] Third, they operate in interstitial areas of the law because they present new and fundamentally different issues that were not foreseen when the governing statutes and regulations were enacted.[10]

The premise behind the sharing economy is simple: owners of goods and services that are expensive to attain, such as travel and lodging accommodations, provide temporary access to the items for a fee. All of the sharing is done through individuals, the owner and the user, with the companies acting as intermediaries that help connect individuals to each other.

Services like Airbnb, Uber[11], and DogVacay[12], are often more convenient than similar traditional services and can be had at a cheaper cost. Airbnb offers an easy way to generate additional income from an otherwise unused room, house, or castle[13] by placing the room up for rent on their website. Airbnb also contributes to local municipalities in a variety of ways. According to an Airbnb study, the company found that 400,000 Airbnb guests who visited New York City between 2012 and 2013 spent \$632 million on food, transportation, and other travel and tourist related expenses, supporting 4,580 jobs.[14] The same study found Airbnb generated approximately \$56 million in local spending and supported 430 jobs in San Francisco. [15] In fact, Airbnb's study was conducted in twelve cities over nine countries and found positive economic impacts in all twelve cities.[16] As compared to tourists staying in hotels, Airbnb guests in New York City tend to stay two days longer and spend nearly \$200 more at local businesses during their visit.[17] Proponents of Airbnb would argue the company's positive community impact extends much further than increased economic activity. Guests report feeling much more "like a local" when staying in an Airbnb listing as opposed to a hotel.[18] The company has also exhibited a strong philanthropic mission, by participating in community-service projects and aiding in relief efforts around the world by providing free housing to victims of natural disasters. [19]

A major criticism of Airbnb has been that the abundance of short-term listings available in densely populated cities limits the amount of affordable housing available for permanent residents.[20] However, in New York City, the typical host earns only \$6,160 per year via Airbnb, an amount that marginally increases or sustains their budget, but far too low to decrease the availability of housing in a city whose average monthly rent is almost \$3,300.[21] Some argue, therefore, that Airbnb serves to make housing more affordable: half of current Airbnb hosts, many of whom are moderate- to low-income individuals, have explained that hosting helps them afford to stay in their homes.[22]

Airbnb has also dealt with criticism arising from a lack of regulation and security. For travelers using these services, the reduction in price is coupled with a reduction in the safety standards a traveler may expect from an established hotel. In the last five years, numerous incidents of sexual assault and theft have been reported by sharing economy consumers. For example, an Uber driver in India was convicted of raping a passenger in December of 2014;^[23] and in July of 2015, a man providing lodging through Airbnb sexually assaulted a Rhode Island teenager on vacation in Madrid.^[24] In addition to concerns over safety, several states have alleged that sharing economy services such as Uber and Airbnb are subject to appropriate taxation and workers compensation laws, to which they have not yet adhered.^[25] In a report filed by the Office of the Attorney General of the State of New York's Research Department and Internet Bureau, it is alleged that short-term rental services such as Airbnb are outright illegal.^[26] For now, however, these companies are here to stay, operating in an apparent violation of state and local law.

The Modern American Zoning System

To understand why municipalities across the country have declared Airbnb illegal, one must first understand the system of laws it purports to be breaking. The origins of the modern American zoning system can be traced back to 1916, when New York City adopted the first comprehensive zoning ordinance in the United States.^[30] In 1922, the U.S. Department of Commerce published a model statute, the Standard State Zoning Enabling Act, which most states adopted soon thereafter.^[31] Then, in the 1926 Supreme Court decision, *Village of Euclid v. Ambler Realty Company*, Justice Sutherland's opinion reflected a gathering consensus among state Supreme Court judges that public guidance of private development was within the police power of the states.^[32] The states, in turn, delegated these powers to local governments in what is now referred to as municipal home rule. The Municipal Home Rule Law grants further specific police powers of local legislation to particular local governments, some of which contain restrictions. The police power has been defined generally as the power to regulate persons and property for the purpose of securing the public health, safety, welfare, comfort, peace and prosperity of the municipality and its inhabitants.^[33]

It was from these events that modern American zoning was born, and with it a system of regulation that vests in the municipalities themselves. The American land use system can be described as developing over three distinct phases: the granting of power from state enabling acts, the creation and adoption of a local land use plan, and the creation of administrative and quasi-judicial local agencies to review and adjudicate issues arising from land use regulations.[34]

A. Granting of Power from State Enabling Acts

First, local municipalities are given the express right to enact zoning regulations by the state. Most states grant power to municipalities to enact zoning for the purpose of promoting the health, safety, morals, or general welfare of the community.[35] With this power in hand, municipalities may enact zoning regulations that best fit their current needs, keeping an eye, of course, towards future economic and social development. Most municipalities do this by developing districts, or dividing the town into smaller parts by proposed uses.[36] These districts can incorporate a variety of important uses including: commercial, residential, industrial, agricultural, and a number of mixed uses.[37] This direct conveyance of powers vests the authority to zone with the municipality and no other authority according to municipal home rule. It is for the municipality to dictate the development of land in its boundaries. The resulting modern land use system is one that has been unanimously adopted by the fifty states.

B. Adopting a Comprehensive Plan

The second phase of the modern American land use system is the creation and adoption of a local comprehensive land use plan. The comprehensive plan has the legal authority to act as the vehicle for guiding community development, the scope to cover the necessary functions and facilities, and the history of practice to inspire public acceptance of its policies.[38] The comprehensive plan is composed of three distinct parts: principles, processes, and attributes.[39] Principles include normative statements of intent that underlie a plan's overall strategy, including its goals, objective, policies, maps, and other content.[40] Processes include planning activities that take place during the preparation of a comprehensive plan and define how it will be carried out—public participation and plan implementation.[41] Finally, attributes include plan-making design standards that shape the content and characteristics of comprehensive plans.[42]

Most states encourage but do not require local governments to adopt a comprehensive plan.[43] While the adoption of a comprehensive plan is not required, almost all local governments adopt comprehensive plans in some form because of its reputation for being the best method for growth and success of the municipality. Once a comprehensive plan is adopted, many states do require that zoning be in conformance with that comprehensive plan.[44] This requirement gives local governments the freedom to enact zoning regulations that will best suit their goals while ensuring that those regulations are not so invasive on individual rights as to warrant them unconstitutional. In order to be considered valid exercises of police power, the ordinances must be rationally related to a legitimate public purpose, and they may they not be arbitrary or capricious. An ordinance that is enacted contrary to objectives outlined in the comprehensive plan may be found to be ultra vires, or beyond the locality's legal authority.

C. Regulatory and Administrative Agencies

The American land use system features a system of checks and balances, in addition to the courts, in the form of administrative and quasi-judicial agencies and regulators. In a given local government, one would likely find a planning board, zoning board of appeals, other involved agencies, and regulators tasked with implementing and enforcing the zoning code.[45] The primary function of these entities is to review and adjudicate issues relating to the implementation and application of zoning regulations on private landowners.[46] These entities are required to "hold public hearings on most proposals and petitions, to provide notice to affected parties of the hearings, to hold meetings open to the public, and to ensure that their voting members have no conflicts of interest that prevent their decisions from being objective." [47] Great deference is shown to the local government, which, after adopting a comprehensive plan has the burden only of proving a particular regulation is a valid exercise of the police power.[48] A local government enjoys a presumption of validity on their zoning and land use decisions so long as the decisions are not arbitrary or capricious with respect to the individuals' rights the decisions limit.[49]

D. Use Variances

With zoning having been established as a valid use of the State’s police power, municipalities shifted their focus to developing creative ways of alleviating difficulties arising from new development.[50] Some of these strategies employed by local governments include: Higher Density Districts, Bulk and Area Requirements, Incentive Zoning, Special Permits, Floating Zones, Generic Environmental Impact Statements, Transfer of Development Rights, Variances, and Intermunicipal Agreements.[51] In a typical municipal zoning district, uses are permitted either as-of-right or conditionally (i.e., by special use permit).[52] In typical Euclidian[53] residential districts, commercial uses are not permitted as-of-right and would therefore need approval from the municipality. With this framework in mind, one may see how Airbnb undermines many municipal zoning codes and allows individuals to operate de-facto hotels in districts that only permit single-family residences as-of-right.

One likely analogue for regulating short-term, transient rentals of the type fostered by Airbnb is how zoning treats bed and breakfast operations. Bed and breakfast lodgings are a land use often permitted by local zoning codes as a conditional use in residential districts, subject to various standards and fees, which vary greatly depending on the type of community or neighborhood involved. Zoning may require a certain lot size, limit the number of guest rooms allowed, subject operations to periodic inspections, and require that only a certain percentage of a building be used for the bed-and-breakfast operations, among other requirements.

A sample zoning code[54]—used here as a comparative framework for our analysis—defines a dwelling unit as a “a building or entirely selfcontained portion thereof containing complete housekeeping facilities for only one (1) family.”[55] The code goes on to specify that “rental units/rooms in a boardinghouse, dormitory, motel, inn, nursing home or other similar building shall not be deemed to constitute ‘dwelling units.’”[56] Separately, a “family” is defined “as any number of persons related by blood, marriage or adoption, or any number of persons who are not so related living together as a single nonprofit housekeeping unit, using all rooms and housekeeping facilities in common and having such meals together as they may eat at home...”[57] To comply with zoning, these definitions require permanent occupancy of a dwelling unit by a single family, not the rental of rooms to unrelated persons who come and go over short periods of time.

In order to ensure fairness, there are a number of techniques available to a landowner whose intended use does not conform to the district's zoning. He or she may apply for a use variance, which, if approved, would grant the right to use the land for purposes beyond those delineated in the zoning.[58] The standards for granting a use variance vary from state to state and from community to community. Some states do not permit use variances, some require only a showing of practical difficulties, and others set forth several standards that must be met, which generally include: that the owner cannot realize a reasonable economic return on the property; the property is unique; the alleged hardship was not self-created; and the proposed nonconforming use will not alter the essential character of the neighborhood.[59] If all of the factors are found in the applicants favor, the zoning board may grant a variance from the originally zoned use. With these factors in mind, it becomes clear that a use variance is not a viable option for a homeowner seeking to use Airbnb. The homeowner would have to prove that they couldn't realize a reasonable economic return on their single-family home without the use of temporary lodging. Zoning limits single-family homes to residential uses and to those uses that are customarily associated with residential use and incidental and subordinate to that residential use.[60] Zoning restrictions limiting the occupational use of homes recognize that residential districts must be protected from home occupations that are out of character with the neighborhood and are not uses that homeowners expect to be affected by when they purchase a home in a single-family area.[61] The homeowner wishing to use Airbnb will have no luck utilizing their municipalities' use variance provision; perhaps the municipality will view Airbnb as a "special" use?

E. Special Use Permits

Section D explained how a use variance may be used by a landowner to alleviate the discrepancy between the landowners proposed use and the current zoning attached to the premises. A similar technique available to individuals who are limited by the existing zoning district is a special use permit. [62] A municipal zoning law can authorize other uses but only if they receive a special or conditional use permit.[63]

Special use permits require authorization of a particular land use that is permitted in the zoning ordinance or local law, adherence to the requirements imposed by that zoning, and harmony between the specially-permitted use and the existing as-of-right uses (i.e., the specially-permitted use will not adversely affect the character of the neighborhood if requirements are met).[64] There is no express requirement that a local government grant a special use permit.[65] A local government may also attach conditions to the issuance of a special use permit.[66] Once a special permit is issued, it is personal to the applicant and is affixed to or “runs” with the land.[67]

Most zoning ordinances expressly enumerate specially-permitted uses.[68] Taking again a sample zoning code as a framework for analysis: the Town of Wawayanda, New York, for example, has several zoning districts ranging from Agricultural-Residential to Commercial.[69] In the Agricultural-Residential or “AR” zone, the legislative purpose of the zone is expressed as “intended to accommodate residential development that is compatible with the rural qualities of the Town and that may coexist with existing agricultural activities throughout this district.”[70] The principal permitted or as-of-right uses in that zone are limited to family farms and agricultural uses.[71] However, there are a number of uses available via special permit. One such use available via special permit is the “home occupations,” defined as “[a]n activity carried out for gain by a resident and conducted as an accessory use in the resident's dwelling unit or on the site of the residence.”[72] Also allowed via special permit is the bed-and-breakfast, defined as, “[a]n owner-occupied dwelling used for renting accommodations to transient, fee-paying guests and providing not more than one meal (breakfast) daily to lodging guests only.”[73]

F. Application: The Problem Presented by Airbnb

Lack of regulation and adherence to locally adopted laws can mean a municipality is enforcing rules against some residents, but unable to enforce them against others. Using the Wawayanda town code as an example, Airbnb would not qualify as a bed-and-breakfast because it is not the “primary use of the property.”[74] In other words, if an individual resides in a single family home and is simply renting out a spare bedroom to a weary traveler, this would not transform the single family home into something resembling the characteristics of a for-profit bed-and-breakfast.

Most municipal zoning codes characterize for-profit bed-and-breakfasts as having commercially identifiable features such as signage and a common dining room.[75]

Here lies the essential problem with sharing economy services such as Airbnb. Zoning regulations are put in place by municipalities to guarantee citizens certain comforts and enjoyment of their property. Landowners are protected from nuisances that may disrupt the quiet enjoyment of their land or depreciate economic viability of their property.[76] The special permit and use variance processes are designed to give flexibility to individuals and local governments alike. A particular township or village may recognize a need for a corner store or gas station in a residentially zoned district. Rather than going through the lengthy and potentially expensive process of amending the comprehensive plan and zoning ordinance, the locality can simply issue the appropriate relief. Certainly, it is a valid exercise of its police power for a town to aspire to protect the agricultural character of its community. Suppose one resident living in an agricultural zone in Wawayanda uses Airbnb to offer temporary housing to a visitor. Neighbors living in that zone may be subjected to increased noise and traffic as a result, nuisances that are out of character with an agricultural community. Companies like Airbnb want to conduct their business and continue to grow while municipalities need to maintain control over the economic and aesthetic functionality of their zoned districts. As sharing economy services and zoning meet at a problematic crossroads, future development rests on how the law can be used to alleviate contrasting objectives.

How Have Municipalities Responded So Far?

The American zoning system, for the most part, provides municipalities and individuals with flexibility to utilize their property in a manner beneficial to both the individual and community as a whole. In cities across the country, zoning is instrumental in achieving economic and aesthetic appeal, helping to keep housing affordable for lower income residents, and ensuring residential neighborhoods do not become over-saturated with tourists.[77] While the dangers to short-term renters are apparent, one could argue that the revenue earned by Airbnb hosts creates a new kind of affordability—helping people stay in their homes who otherwise might not be able to afford it.

A. New York City's War on Airbnb

New York City is the first major city to wage legal and political war against Airbnb in an effort to regain control. In a 2014 report, the Office of the New York State Attorney General, Eric T. Schneiderman, asserts that sharing economy mega-companies like Uber and Airbnb are providing individuals the means and the mode to usurp New York City regulations.[78] The Attorney General's report discovered a number of significant issues regarding Airbnb's presence in the New York City market. First, the report found that private, short-term rentals increased tenfold between 2010 and 2014, with revenue to Airbnb and its hosts exceeding 282 million dollars in New York City for 2014.[79] The report claimed that well over 100 "Commercial Users" each controlled ten or more unique Airbnb units, allowing commercial properties to dominate the rental market, accepting 36 percent of short-term rentals between 2010 and 2014.[80] The report also found that Airbnb has had a significant effect on displacing long-term renters in the city. [81] Most notably, the Attorney General's investigation in New York City found that about 72 percent of rentals through Airbnb violated New York City laws.[82]

In 2010, the New York State Senate voted in favor of Senate Bill S6873 (S6873), a housing regulation that places restrictions on the length of occupancy of "Class A multiple dwellings" in New York City.[83] New York City Municipal Code defines a Class A multiple dwelling as "a multiple dwelling which is occupied, as a rule, for permanent residence purposes." [84] The Senate Bill—which was promulgated in response to the rise of illegal use of single-family dwellings as transient hotels, such as with Airbnb[85]—contains a provision making it illegal for the permanent resident of such a dwelling to allow occupancy by another for fewer than 30 days while also accepting monetary gain.[86] In New York City, the applicable Building, Fire, and Housing Maintenance codes set forth different standards for dwellings that are to be occupied on a month-to-month basis than for dwellings that are to be occupied on a day-to-day basis.[87] In fact, New York City has outlawed for-profit hostels altogether as a measure of safety.[88]

In addition to the restrictions on length of stay and monetary gain set forth in S6873, the bill also closes a “loophole” that was being used to justify illegal transient occupancy in permanent residency dwellings.[89] Explaining this loophole, the court in *City of New York v. 330 Continental, LLC* held that the Multiple Dwelling Law allows a minority of the units in Class A Multiple Dwelling buildings to be occupied for nonpermanent or transient occupancy. [90] The court based this holding, in part, on the definition of Class "A" multiple dwelling, as set forth under Section 4(8)(a) of the Multiple Dwelling Law.[91] In interpreting Section 4(8)(a) of the Multiple Dwelling Law, the court held that "the statute's use of the phrase 'as a rule' indicates that a secondary use of the building, different from the specified primary use, is permitted." [92] The court concluded that no violation of the Class A certificate of occupancy would result from use of a minority of the units in one of the buildings for nonpermanent or transient occupancy.[93]

The New York City bill effectively closes this loophole by modifying the “permanent residence” and “as a rule” provisions of the Multiple Dwelling Law. Under the current law, “the only "secondary" transient use of class A dwelling units allowed would be use by the permanent occupants, natural persons not corporate entities, for house guests or boarders roomers or lodgers living within the household of the permanent occupants or for circumstances such as the occasional pet or apartment "sitter" when the permanent occupants are absent for personal reasons such as vacation or for medical treatment.” [94] Under this new scheme, tenants can no longer rent their apartment on Airbnb to transient guests. The amendment to the Multiple Dwelling Law provides that only the tenant, the tenant’s guests, or the tenant’s employees (maid, pet or apartment sitter) are permitted to occupy the dwelling if the tenant is absent.

In addition to New York City wishing to provide safe accommodations for its visitors, the City also has an interest in protecting local businesses from unfair competition. Hotels and other lodging entities in the city spend significant sums of money to comply with applicable laws, and are also subject to hospitality taxes, which Airbnb hosts traditionally have avoided. Airbnb and other sharing services represent a total departure from the traditional business model. Unfortunately, the regulatory scheme currently in place is ill-equipped to handle the complex variety of issues that have arisen since its inception.[95]

In an effort to comply with regulation, Airbnb has begun collecting hotel occupancy taxes in several cities across the country.[96] Current tax law, however, prevents Airbnb from collecting and remitting occupancy related taxes on behalf of their hosts and guests in New York.[97] According to the New York City Department of Finance, Airbnb is not required to collect the City's hotel room occupancy tax because, by providing a method for hosts and guests to privately contract for available accommodations, Airbnb "is neither a hotel operator nor a room remarketer."[98] Airbnb and New York are at a stalemate. Unfortunately, political grandstanding is impeding progress, as hotel special interest groups fear competition and resist change.[99]

Like any corporation, municipalities are obligated to provide benefits to their members. Unlike most corporations, municipal corporations derive revenue, in large part, from the taxation of citizens. Consequently, municipalities are extremely vigilant of new sources of taxable revenue taking place in their boundaries. Since the new wave of sharing services does not fit neatly into the traditional regulatory mold, those services were destined to bump heads with decades-old laws.[100] It comes as no surprise then, that taxation and housing laws are at the forefront of the regulatory and legal issues facing Airbnb.[101]

B. San Francisco's Embrace of Airbnb

In light of New York City's response, other cities across the country are beginning to crack down on illegal hotels. The city councils of Moab, St. George, Park City, and Provo, Utah have each enacted ordinances prohibiting residents from renting their own properties to transient visitors.[102]

San Francisco, where Airbnb was born, initially had mixed reactions from residents regarding the validity of temporary rentals.[103] As in most cases, some residents value the additional income, while others say landlords are evicting them from their homes in hopes of renting out rooms to Airbnb full-time.[104] Airbnb's hometown, however, is now on the forefront of progressive solutions and compromise. San Francisco has endorsed a plan to effectively legalize Airbnb.[105] The City's Board of Supervisors recently voted to adopt regulations that require permanent residents to secure a business license from the City, to show that they have occupied their homes for 275 days out of the last year, with a limit of 90 days of occupancy permitted by Airbnb customers.[106]

The City also developed a special department to assist with, regulate, and enforce short-term rentals.[107] Additionally, there are new reporting, recordkeeping, and safety regulations that govern short-term listings.[108] In an effort to address Airbnb opponents' concern about a lack of affordable housing, the new law prevents landlords from evicting current tenants to create makeshift hotels.[109]

San Francisco should serve as a model for the way municipalities think about Airbnb. Notice that while San Francisco amended outdated laws, enacted a series of new requirements, and developed a special regulatory board, no capital improvements or infrastructure were needed to address the problems. As Airbnb co-founder Brian Chesky puts it, “[w]hereas historically, to create opportunities, cities would need massive projects and investments, these jobs only require the Internet.”[110]

C. Airbnb’s Response

In response to these varying municipal reactions to its service, Airbnb created a section on its website educating its customers about municipal regulatory issues.[111] In a webpage titled “What legal and regulatory issues should I consider before hosting on Airbnb?” the company posts a disclaimer to its users. [112] The page explains, “[w]hen deciding whether to become an Airbnb host, it's important for you to understand how the laws work in your city.”[113] It goes on to say:

Some cities have laws that restrict your ability to host paying guests for short periods. These laws are often part of a city's zoning or administrative codes. In many cities, you must register, get a permit, or obtain a license before you list your property or accept guests. Certain types of short-term bookings may be prohibited altogether. Local governments vary greatly in how they enforce these laws. Penalties may include fines or other enforcement.[114]

Whether or not this shift of responsibility onto the user absolves Airbnb of liability under familiar legal principles like agency and contributory liability remains to be seen.[115]

Conclusion: What Solutions Are Possible?

Absent local ordinances expressly forbidding transient rentals, Airbnb and similar lodging services would still be illegal under most municipal zoning ordinances. For the most part, large-scale enforcement of illegal transient hotels presents a huge challenge because of the inability to know who is renting and when they are doing so. The municipality's zoning enforcement officer could scan Airbnb's website for listings in that area, (a potentially time consuming and costly technique) but in a popular tourist destination listings can be bought up just moments after they are posted. That does not mean enforcement is impossible, however, as one New York City tenant learned the hard way, with potential fines reaching over \$40,000.[116] Sharing economy services can benefit economic and social growth. Beneficial as they may be, there are clear and present dangers associated with these uses. In light of these risks, regulation is in order. Most sharing services prefer self-regulation to government-imposed, sometimes burdensome regulation.[117] Recently, scholars have found that successful self-regulatory organizations (SROs) exhibit four distinct characteristics:

First, an SRO must establish credibility early on through its performance. Second, self-regulatory actors must demonstrate strong enforcement capabilities. Third, SROs must be perceived as legitimate and independent. And finally, an SRO must take advantage of participants' reputational concerns and social capital.[118]

Whether or not Airbnb has demonstrated its capability of self-regulation remains to be seen. Even so, there are a number of regulatory issues (building and fire safety codes, for example) that are an inseparable element of Airbnb's business model. Certainly, the agencies involved in disseminating and enforcing those issues will want to be involved in the regulation process.

To date, Airbnb has been willing to comply with state challenges and investigations. [119] Airbnb could make use of its financial and technological resources by increasing measures of security and working hand-in-hand with municipalities to be in compliance with relevant codes. Of course, municipalities must be willing to reconsider, rethink, and redraft existing code so that sharing services may operate freely and without fear of breaking the law.

In addition to San Francisco and New York, several American cities have taken action in response to Airbnb. Portland, Oregon; Denver, Colorado; and Philadelphia, Pennsylvania have responded in a variety of ways. In Portland, the city council voted to legalize homesharing services and partnered with Airbnb to launch its Shared City Initiative.[120] The Shared City Initiative has agreed to help Airbnb renters collect taxes on behalf of the city. In Denver, a task force was convened to explore the city's sharing economy and consider the present regulations regarding short-term rentals for their appropriateness.[121] Finally, Philadelphia zoning codes imply that homesharing listings are illegal, but city officials have indicated that they will not enforce existing laws to crack down on service providers.[122]

The sharing economy is here to stay. Urban planners, engineers, architects, politicians, businessmen, and especially lawyers will have to adapt. [123] It will certainly not be easy. Past regimes have disregarded new developments in commerce and culture simply because they did not understand them. Surely, regulators across the country are asking themselves why hotels and taxicabs need to change. The industries have been part of the American economy for hundreds of years without intervention or significant technological innovation, but change has already begun to take place. The most progressive cities across the country are attracting millennial's to live and work in their communities. Many of the country's larger cities are embracing bike-sharing programs[124], clean energy solutions such as solar and wind[125], and programs to combat obesity.[126] Without doubt, the current paradigm of regulation regards Airbnb listings as "in violation", if not outright illegal. Regulators would be wise to encourage the growth and development of these companies, or risk missing out on the next great economic revolution.

About the Author

Leonard Cohen is the 2016 Daniel J. Curtin, Jr. fellow of the American Planning Association's Planning & Law Division and a second year law student at Pace University School of Law in White Plains, New York. Prior to attending Pace, Lenny earned a B.A. in English and Creative Writing at the University of South Florida. Lenny developed an interest for land use and planning while taking an undergraduate architecture course that focused on sustainable cities.

He is currently a Junior Associate on Pace's Environmental Law Review, part of Pace's 4th ranked Environmental Law Program. Lenny served as a summer intern at Pace's Land Use Law Center, where he worked on a variety of issues ranging from fair housing to economic development for New York municipalities.

Notes & References

[1] UNITED STATES DEP'T OF LABOR, BUREAU OF LABOR STATISTICS: AMERICAN TIME USE SURVEY (2014).

[2] If you live in an area zoned for residential use, is it a violation to rent out your apartment or condo short-term on Airbnb? What about space in your private single-family home? Zoning codes draw sharp distinctions between land uses and may or may not accommodate flexibility of use depending on the municipality. The demographics of cities are changing, and a population increase in young, single workers has already had impacts on housing stock with the development of the micro-unit. Coupled with concerns about housing affordability and shifts from a 9-to-5 workday to more freelance and projectbased work, this area is ripe for some new thinking. Molly Cohen & Corey Zehngebot, *What's Old Becomes New: Regulating The Sharing Economy*, 58-SPG B. B.J. 6 (2014).

[3] Colorado Governor John Hickenlooper signed into law a bill to authorize ridesharing services. In California, the state's Public Utility Commission (PUC) approved a regulatory framework under which ridesharing companies could operate legally throughout the state. In other cases, state intervention has prohibited sharing economy companies from operating legally. Arizona Governor Jan Brewer vetoed a bill that would have enabled ridesharing due to her concerns regarding insurance and drug testing requirements for drivers. A ruling from the State of Maryland's Public Service Commission (PSC) deems that Uber's black car and SUV services (but not the cheaper UberX and Lyft services) qualify as common carriers, and thus that they are subject to the same regulations imposed on traditional transportation providers. The Maryland PSC is currently developing new regulations that would apply to all ridesharing companies. See Nicole DuPuis & Brooks Rainwater, *The Sharing Economy: An Analysis of Current Sentiment Surrounding Homesharing and Ridesharing*, NATIONAL LEAGUE OF CITIES, (2014).

[4] AIRBNB ABOUT US, <https://www.Airbnb.com/about/about-us> (last visited Mar. 4, 2016).

[5] *Id.*

[6] *Id.*

[7] Six years after its founding, Airbnb stands as one of the most prominent participants in the sharing economy, a group that includes compatriots such as Uber and Lyft. Roberta A. Kaplan & Michael L. Nadler, *Airbnb: A Case Study in Occupancy Regulation and Taxation*, 82 U. CHI. L. REV. DIALOGUE. 103 (2015).

[8] Roberta A. Kaplan & Michael L. Nadler, *Airbnb: A Case Study in Occupancy Regulation and Taxation*, 82 U. CHI. L. REV. DIALOGUE. 103 (2015).

[9] *Id.*

[10] *Id.*

[11] Uber is a ride sharing application that allows individuals who have qualified to use their personal vehicle as a taxi for others. Uber is unique because it usurps the traditional taxicab regulatory process by providing peer-to-peer communication. Quite simply: if you have a car you can drive for Uber and if you have a smartphone you can ride with Uber.

[12] *DogVacay* is a service that allows dog owners to leave their dog with a host who will take care of the dog. It is cheaper than a kennel and provides the dog with a more comfortable place to stay while its owner is away.

[13] AIRBNB WISHLISTS, <https://www.airbnb.com/wishlists/stay-in-a-castle> (last visited April 20, 2016).

[14] *Airbnb Economic Impact* (Airbnb), online at <http://blog.Airbnb.com/Airbnb-economic-impact> (visited March 4, 2016); *New Study: Airbnb Generated \$632 Million in Economic Activity in New York* (Airbnb Oct 22, 2013), online at <http://www.Airbnb.com/press/news/new-study-Airbnb-generated-632-million-...> (visited March 4, 2016).

[15] *Id.*

[16] *Id.*

[17] *New Study: Airbnb Generated \$632 Million in Economic Activity in New York* (Airbnb Oct 22, 2013), online at <http://www.Airbnb.com/press/news/new-study-Airbnb-generated-632-million-...> (visited March 4, 2016).

[18] See *Economic Impact; Peer-to-Peer Rental*, Economist at 9 Julie Vallone, *Airbnb Valued above Hyatt, Wyndham*, Investor's Business Daily A5 (June 30, 2014); Carolyn Said, *How an Airbnb Dabbler Became a Superhost* (San Francisco Chronicle June 14, 2014), online at <http://www.sfchronicle.com/realestate/article/How-an-Airbnb-dabbler-beca...> (visited March, 4 2016); Jason Tanz, *How Airbnb and Lyft Finally Got Americans to Trust Each Other* (Wired Apr 23, 2014), online at <http://www.wired.com/2014/04/trust-in-the-share-economy> (visited March 4, 2016).

[19] See, for example, Press Release, *Mayor Bloomberg and Airbnb Announce New Platform to Help Victims of Hurricane Sandy with Free Housing* (NYC Office of the Mayor Nov 7, 2012), online at <http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c70...> (visited March 4, 2016); Patrick Hoge, *Airbnb to Aid Disaster Response in San Francisco and Portland*, *San Francisco Bus Times* (Bus Journals July 29, 2014), online at <http://www.bizjournals.com/sanfrancisco/blog/techflash/2014/07/Airbnb-to...> (visited March 4, 2016).

[20] In 2013, over 4,600 unique units were each booked as private short-term rentals for three months of the year or more. Of these, nearly 2,000 units were each booked as private short-term rentals on Airbnb for at least 182 days—or half the year. While generating \$72.4 million in revenue for hosts, this rendered the units largely unavailable for use by long-term residents.¹⁰ Notably, more than half of these units had also been booked through Airbnb for at least half of the prior year (2012). Because Airbnb anonymized the unit numbers associated with the Data, NYAG could not quantify the precise number of these units subject to the rent regulations. AIRBNB IN THE CITY, (2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>.

[21] Kenneth T. Rosen, Randall Sakamoto, and David Bank, *Short-Term Rentals and Impact on the Apartment Market* (3-4) (Airbnb Pub Pol Blog Oct 2013), online at <http://publicpolicy.Airbnb.com/wp-content/uploads/2014/04/Short-TermRentalsandImpactonApartmentMarketNY1.pdf> (visited March 4, 2016).

[22] See *Economic Impact; Peer-to-Peer Rental*, ECONOMIST at 9

[23] Nida Najar, *Ex-Driver for Uber Is Convicted of Raping Passenger in New Delhi*, N.Y. TIMES, October 20, 2015.

[24] Ron Lieber, *Airbnb Horror Story Points to Need for Precautions*, N.Y. TIMES, August 14, 2015.

[25] See generally; *The Economist: Rise of the Sharing Economy*, <http://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy> (last visited March 4 2016)

[26] *The report* will say nearly three-quarters of all Airbnb rentals in the city are illegal, violating zoning or other laws. Commercial operators, not hard-luck residents, supply more than a third of the units and generate more than a third of the revenue. At least a handful of landlords are running what amount to illegal hostels. David Streitfeld, *Airbnb Listing Mostly Illegal, New York State Contends*, N.Y. TIMES, October 15, 2014.

[27] See Nicole DuPuis & Brooks Rainwater, *The Sharing Economy: An Analysis of Current Sentiment Surrounding Homesharing and Ridesharing*, NATIONAL LEAGUE OF CITIES, (2014).

[28] Austin, Charlotte, El Paso, Indianapolis, San Diego, San Francisco, Seattle, San Jose and Washington DC. See Nicole DuPuis & Brooks Rainwater, *The Sharing Economy: An Analysis of Current Sentiment Surrounding Homesharing and Ridesharing*, NATIONAL LEAGUE OF CITIES, (2014).

[29] Baltimore, Boston, Chicago, Columbus, Dallas, Denver, Detroit, Fort Worth, Houston, Jacksonville, Louisville, Las Vegas, Los Angeles, Memphis, Nashville, New York, Oklahoma City, Philadelphia, Phoenix, Portland and San Antonio. See Nicole DuPuis & Brooks Rainwater, *The Sharing Economy: An Analysis of Current Sentiment Surrounding Homesharing and Ridesharing*, NATIONAL LEAGUE OF CITIES, (2014).

[30] See, e.g., John R. Nolon, Historical Overview of the American Land Use System: A Diagnostic Approach to Evaluating Governmental Land Use Control, 23 PACE ENVTL. L. REV. 821, 821-22 (2006).

[31] *Id.*

[32] See *Euclid v Ambler Realty Co.* [1926] 272 U.S. 365.

[33] JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW 136 (West Publishing et al. eds., 8th ed. 2008).

[34] See, e.g., John R. Nolon, Historical Overview of the American Land Use System: A Diagnostic Approach to Evaluating Governmental Land Use Control, 23 PACE ENVTL. L. REV. 821, 821-22 (2006).

[35] JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW 136 (West Publishing et al. eds., 8th ed. 2008).

[36] JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW 1041 (West Publishing et al. eds., 8th ed. 2008).

[37] JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW 1043 (West Publishing et al. eds., 8th ed. 2008).

[38] American Planning Association: <https://www.planning.org/sustainingplaces/complanstandards/>.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] The seven states that require local governments to adopt comprehensive plans are: Alaska, California, Florida, Idaho, Maine, Oregon, and Washington.

[44] N.Y. TOWN LAW § 263 (McKinney 2004).

[45] See, e.g., John R. Nolon, Historical Overview of the American Land Use System: A Diagnostic Approach to Evaluating Governmental Land Use Control, 23 PACE ENVTL. L. REV. 821, 824-25 (2006).

[46] *Id.*

[47] See, e.g., John R. Nolon, Historical Overview of the American Land Use System: A Diagnostic Approach to Evaluating Governmental Land Use Control, 23 PACE ENVTL. L. REV. 821, 821-22 (2006).

[48] *Id.*

[49] See *Euclid v Ambler Realty Co.* [1926] 272 U.S. 365.

[50] “So-called “neo-Euclidian zoning” techniques such as planned unit development districts, floating zones, special use permits, and others evolved at the local level. These allowed local governments more flexibility in locating development in appropriate places. In the modern era, additional techniques have been authorized such as the purchase of development rights, the transfer of development rights, and the recreation of traditional neighborhood districts to give even greater authority to local governments to marshal the forces of development and arrange buildings appropriately on the land.” See, e.g., John R. Nolon, Historical Overview of the American Land Use System: A Diagnostic Approach to Evaluating Governmental Land Use Control, 23 PACE ENVTL. L. REV. 821, 821-22 (2006).

[51] *James A. Coon, Guide to Planning and Zoning Laws of New York State*, Local Government Technical Series (2011) http://www.dos.ny.gov/lg/publications/Guide_to_planning_and_zoning_laws.pdf

[52] See, e.g., JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE IN A NUTSHELL (Thomson West et al. eds., 2007).

[53] Euclidian zoning refers to a separation of land uses (as opposed to allowing for a mix of uses) and is derived from the seminal zoning case, *Euclid v. Ambler Realty* discussed earlier.

[54] Note: The following sections will make use of a Town Zoning Code. The town is that of Wawayanda, New York. Wawayanda is a small Hamlet town in close proximity to Highway 84. While all zoning codes are different depending on the particular characteristics of the municipality, Wawayanda’s code serves as a fine model for the purposes of this paper.

[55] *Town of Wawayanda Zoning Code*, § 195-2 (emphasis added), (1998)

[56] *Town of Wawayanda Zoning Code*, § 195-2, (1998)

[57] *Town of Wawayanda Zoning Code*, § 195-2, (1998)

[58] JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW 177 (West Publishing et al. eds., 8th ed. 2008).

[59] N.Y. TOWN LAW § 267-b (2)(b) (McKinney 2004).

[60] JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW 238-9 (West Publishing et al. eds., 8th ed. 2008).

[61] *Id.* at 239.

[62] N.Y. TOWN LAW § 274-b (McKinney 2004); N.Y. GEN. CITY LAW § 27-b (McKinney 2004); N.Y. VILLAGE LAW § 7-725-b (McKinney 2004).

[63] As used in this section the term "special use permit" shall mean an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met. N.Y. TOWN LAW § 274-b (McKinney 2004).

[64] JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW 195 (West Publishing et al. eds., 8th ed. 2008).

[65] JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW 195 (West Publishing et al. eds., 8th ed. 2008).

[66] JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW 195 (West Publishing et al. eds., 8th ed. 2008). In New York for example, the authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town. N.Y. TOWN LAW § 274-b

[67] JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW 195 (West Publishing et al. eds., 8th ed. 2008).

[68] *Id.*

[69] Town of Wawayanda Zoning Code, Zoning Map (1998).

[70] Town of Wawayanda Zoning Code, AR Zone Schedule (1998).

[71] Agriculture as defined by New York State Department of Agriculture and Markets Agriculture, livestock (2 or more acres) Agriculture, nurseries and greenhouses without retail Agriculture, retail sale of farm, nursery and related products (maximum 20,000 square feet) Agricultural, tourism activities on ongoing farm operation. Home occupation, minimal One-family dwellings Two-family dwellings Wireless communication facility, minor. Town of Wawayanda Zoning Code, AR Zone Schedule (1998).

[72] Town of Wawayanda Zoning Code, AR Zone Schedule (1998).

[73] Town of Wawayanda Zoning Code, Definitions (1998).

[74] Town of Wawayanda Zoning Code, § 195-2, (1998).

[75] Town of Wawayanda Zoning Code, § 195-2, (1998).

[76] “It becomes one of those minor discomforts in life, which must be borne in deference to the principle that one man’s enjoyment of property cannot always be the controlling factor, but must be considered in connection with the reasonable and lawful use of other property by his neighbors.” *Clark v. Wambold*, 165 Wis. 70, 160 N.W. 1039 (Wis.1917).

[77] *See generally*; AIRBNB IN THE CITY, (2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>.

[78] AIRBNB IN THE CITY, 2-3, (2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>.

[79] Private short-term bookings in New York City on Airbnb increased sharply during the Review Period, registering more than a tenfold increase. The associated revenue also spiked, nearly doubling each year. AIRBNB IN THE CITY, (2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>.

[80] “Well over 100 Commercial Users each controlled 10 or more unique Airbnb units during the Review Period. Together, these hosts accepted 47,103 private short- term reservations and earned \$59.4 million in revenue.” AIRBNB IN THE CITY, (2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>.

[81] “In 2013, more than 4,600 units were booked as short-term rentals through Airbnb for three months 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.” AIRBNB IN THE CITY, (2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>.

[82] AIRBNB IN THE CITY, (2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>.

[83] N.Y. MULT DWELL LAW § 4 (1954) *amended by* Senate Bill 6873 (2010).

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[85] “Many owners of Class A multiple dwellings have been illegally using Class A dwelling units as transient hotels. When called upon to justify this fundamentally unsafe and illegal practice, they have cited the ambiguity of the terms “as a rule” and “primarily” preceding the requirement of “permanent residence” or “long term” residence for such dwellings. These owners have also claimed that the permanent or long term residence requirement is met when the dwelling unit is leased by a corporate entity for more than 30 days even though the actual occupancy by individuals is less than 30 days. This bill would put an end to these spurious defenses by defining the term “permanent residence purposes” as occupancy by a natural person or family for 30 consecutive days or longer (the permanent occupants).” NEW YORK STATE SENATE, <https://www.nysenate.gov/legislation/bills/2009/s6873b> (last visited March 4, 2016).

[86] Only the permanent occupants would be permitted to allow occupancy of the dwelling unit for less than 30 consecutive days and even then only by lawful boarders, roomers or lodgers or house guests living within the household of the permanent occupants or while the permanent occupants are temporarily absent for vacation or other personal reason if there is no monetary compensation for such use. N.Y. MULT DWELL LAW § 4 (1954) *amended by* Senate Bill 6873 (2010).

[87] http://www.nyc.gov/html/fdny/pdf/firecode/2009/fire_code_1126_2008_amended_1137_41_64_2009_final_complete.pdf

[88] Certain states permit hostels, where multiple, transient strangers often share rooms outfitted with bunk beds and barebones amenities. Because tight quarters and other factors create heightened fire and safety risks to travelers and permanent residents, these states generally require hostels to adhere to rigorous safety requirements. New York currently prohibits for-profit hostels entirely. Although other explanations may apply to certain listings, patterns of high occupancy in connection with a single unit are consistent with their use as a hostel or other high-volume transient accommodation. Close to 200 units throughout New York City were each booked on Airbnb as private short-term rentals for more than 365 total nights in 2013. AIRBNB IN THE CITY, 14 (2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>.

[89] *City of New York v. 330 Continental, LLC*. 60 AD3d 226, 231 (1st Dept. 2009).

[90] *Id.*

[91] *City of New York v. 330 Continental, LLC*. 60 AD3d 226, 231 (1st Dept. 2009).; N.Y. MULT DWELL LAW § 4 (1954)

[92] N.Y. MULT DWELL LAW § 4 (1954)

[93] See NEW YORK STATE SENATE, <https://www.nysenate.gov/legislation/bills/2009/s6873b>. Quoting *City of New York v. 330 Continental, LLC*. 60 AD3d 226, 231 (1st Dept. 2009).

[94] See NEW YORK STATE SENATE, <https://www.nysenate.gov/legislation/bills/2009/s6873b> (last visited March 4, 2016).

[95] See generally: Molly Cohen and Corey Zehngebot, *What's Old Becomes New: Regulating the Sharing Economy*, 58 Boston Bar J 34 (2014).

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[100] Our society is captivated by dollars and so is our legal system. Taxes must be paid in dollars. Minimum wage must be paid in dollars. Most income is difficult to recognize and quantify unless it comes in the form of dollars. The application of many rules and regulations is determined by dollar volume of a business, and so on. Jenny Kassana & Janelle Orsid, *The Legal Landscape of the Sharing Economy*, 27 J. Envtl. L. & Litig. 1 (2012)

[101] For tax purposes, is a ride-share provider like an UberX driver running a small business or franchise? There's been no consensus about how to tax the "sharing economy" due to the diversity of business types. In some cases, participants may not be required to pay certain specialty taxes: e.g., it is unclear whether Airbnb hosts are required to pay hotel occupancy tax in most municipalities, but they still pay state and federal income tax. Indeed, in many situations, it's less clear how sharing economy transactions should or could be taxed. Molly Cohen & Corey Zehngebot, *What's Old Becomes New: Regulating The Sharing Economy*, 58-SPG B. B.J. 6 (2014).

[102] WATCHDOG.ORG: <http://watchdog.org/221982/zoning-meets-property-rights-airbnb-vrbo-outlawed-several-utah-cities/>

[103]

[104] Molly Cohen & Corey Zehngebot, *What's Old Becomes New: Regulating The Sharing Economy*, 58-SPG B. B.J. 6 (2014).

Beth Goldman, *Letter Responding to Request for Ruling Regarding New York City Hotel Room Occupancy Tax* (New York City Department of Finance Aug 21, 2013), online at <http://www.nyc.gov/html/dof/downloads/pdf/redacted%20letter%20rulings/ho> (visited March 4, 2016).

See Brian Chesky, *The \$21 Million Problem, The Blog* (Huffington Post Apr 15, 2014), online at http://www.huffingtonpost.com/brian-chesky/the-21-million-problem_b_5149... (visited March 4, 2016); David Hantman, *\$21 Million More for New York*, Airbnb Pub Pol Blog (Airbnb Apr 14, 2014), online at <http://publicpolicy.Airbnb.com/21-million-new-york> (visited March 4, 2016); Craig Karmin, *Airbnb to Mayor: Tax Our Hosts, Fund Pet Programs* (Wall St J Mar 27, 2014), online at <http://online.wsj.com/articles/SB10001424052702303779504579465532885246114> (visited March 4, 2016).

See Lisa Fickenscher, *Hotels Girding for a Fight against Airbnb* (Crain's NY Bus Aug 19, 2013), online at http://www.crainsnewyork.com/article/20130819/hospitality_tourism/130819... (visited March 4, 2016); Jason Q. Freed, *Legal Issues Divide Hosts and Hoteliers* (Hotel News Now Feb 10, 2014), online at <http://www.hotelnewsnow.com/Article/13109/Legal-issues-divide-hosts-and-...> (visited March 4, 2016); Megan Sullivan, *Is Airbnb the Hotel Industry's Greatest Threat?* (Lodging Apr 1, 2014), online at <https://lodgingmagazine.com/is-airbnb-the-hotel-industrys-greatest-threat/...> (visited March 4, 2016).

[105] See Carolyn Said, *Supes Back 'Airbnb Law' to Allow Short-Term Rentals, with Limits* (San Francisco Chronicle Oct 8, 2014), online at <http://www.sfgate.com/news/article/Supervisors-approve-Airbnb-law-580785...> (visited March 4, 2016); Kim-Mai Cutler, *San Francisco Legalizes, Regulates Airbnb with 7-4 Vote, Lots of Amendments* (Tech Crunch Oct 7, 2014), online at <http://techcrunch.com/2014/10/07/san-francisco-Airbnb> (visited March 4, 2016). See also Elliot Njus, *Portland Legalizes Airbnb-Style Short-Term Rentals, OregonLive* (Oregonian July 30, 2014), online at http://www.oregonlive.com/frontporch/index.ssf/2014/07/portland_legaliz... (visited March 4, 2016).

[106] SAN. FRAN. ADMIN. CODE § 41A (2015).

[107] OVERVIEW OF AIRBNB LAW IN SAN FRANCISCO, <http://www.nolo.com/legal-encyclopedia/overview-Airbnb-law-san-francisco.html>.

[108] SAN. FRAN. ADMIN. CODE § 41A.5 (2015).

[109] OVERVIEW OF AIRBNB LAW IN SAN FRANCISCO, <http://www.nolo.com/legal-encyclopedia/overview-Airbnb-law-san-francisco.html>.

[110] The Future of Airbnb in Cities, <http://www.mckinsey.com/industries/travel-transport-and-logistics/our-insights/the-future-of-Airbnb-in-cities> (last visited March 4, 2016).

[111] TERMS OF SERVICE (Airbnb June 30, 2014), online at <http://www.Airbnb.com/terms> (visited March 4, 2016).

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] See generally: Molly Cohen and Corey Zehngebot, *What's Old Becomes New: Regulating the Sharing Economy*, 58 Boston Bar J 34 (2014).

[116] Special enforcement officers from the city showed up while he was gone, and the landlord received five violations for running afoul of rules related to illegal transient hotels. Added together, the potential fines looked as if they could reach over \$40,000. Ron Lieber, *A Warning for Hosts of Airbnb Travelers*, N.Y. TIMES, November 30, 2012.

[117] Since the digital reach of sharing-economy platforms and the blurring of the personal and the professional dramatically increases the scale of peer-to-peer exchange, people may well conclude that anything other than delegated regulation imposes prohibitive governing costs on society. At the same time, new self-regulatory bodies need to be credible while being inclusive, policing misbehavior without stifling experimentation and innovation. Molly Cohen & Arun Sundararajan, *Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy*, 82 U Chi L Rev Dialogue 116 (2015).

[118] Self-regulation often emerges as a natural byproduct of economic exchange and has a long history of success. Different market inefficiencies for peer-to-peer transactions will require different entities to act as partners in the self-regulatory solution. Furthermore, governmental oversight and judiciously chosen transparency will increase the likelihood of SRO success. Molly Cohen & Arun Sundararajan, *Self-Regulation and Innovation in the Peer- to-Peer Sharing Economy*, 82 U Chi L Rev Dialogue 116 (2015).

[119] See generally: AIRBNB IN THE CITY, (2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>.

[120] See Nicole DuPuis & Brooks Rainwater, *The Sharing Economy: An Analysis of Current Sentiment Surrounding Homesharing and Ridesharing*, NATIONAL LEAGUE OF CITIES, (2014).

[121] *Id.*

[122] *Id.*

[123] Every community in the U.S. will soon need “sharing lawyers,” “grassroots transactional lawyers” or whatever you may prefer to call these new legal specialists. By our estimation, with around 30,000 incorporated towns and cities in the U.S., we will soon need at least 100,000 sharing lawyers. As the sharing economy becomes the predominant economic force in our society, all transactional lawyers in the U.S. (approximately 500,000) should consider transforming the focus of their practices to smooth the way toward a more sustainable economy. No matter how you do the math, the sharing economy offers a huge opportunity to new and experienced lawyers alike. Jenny Kassana & Janelle Orsid, *The Legal Landscape of the Sharing Economy*, 27]. *Envtl. L. & Litig.* 1 (2012)

[124] BIKE SHARING PROGRAMS ROLL INTO CITIES ACROSS THE U.S., <http://www.npr.org/2013/06/01/187862903/bike-sharing-programs-roll-into-cities-across-the-u-s> (last visited March 4, 2016)

[125] Maria Gallucci, *San Diego, Calif's No. 1 'Solar City,' Pushes Into Wind Power*, online at <http://insideclimatenews.org/news/20110626/solar-energy-san-diego-county-wind-power-projects>, (last visited March 4, 2016).

[126] GOVERNOR CUOMO ANNOUNCES STATEWIDE CAMPAIGN TO FIGHT OBESITY, online at <https://www.governor.ny.gov/news/governor-cuomo-announces-statewide-campaign-fight-obesity> (last visited March 4, 2016).



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