

COMMUNITY CONSEQUENCES OF AIRBNB

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Abstract: Short-term rental accommodations account for more than 20% of the United States lodging market, with annual sales now greater than those of nearly all legacy hotel brands. The rise of companies like Airbnb has created a booming market that provides affordable short-term rentals for travelers and new income for those with an extra couch, spare room, or even an unused home. However, while individual hosts and guests may benefit economically, the use of short-term rentals produces significant consequences for the surrounding community. Airbnb proliferation causes fewer affordable housing options, higher average asking rents, and erosion of neighborhood social capital. Due to discrimination among users on Airbnb’s platform, many of the benefits of short-term rental accommodations accrue to white hosts and guests, locking communities of color out of potential income and equity streams. These issues raise a question at the core of property law: which stick in the bundle is implicated by a short-term rental accommodation?

Current regulations attempt to walk the line between protecting property rights and mitigating externalities created by short-term rental accommodations and borne by the local community. In doing so, the law fails to adequately address consequences resulting from the vast increase in short-term rental accommodations. This Article assesses the benefits and costs of short-term rental accommodations and analyzes how current statutory approaches amplify or diminish these effects. After examining the legal, economic, and social interests of multiple short-term rental accommodation stakeholders, including hosts, guests, the local community, and platform operators, it argues that current policies are fragmented, inconsistently applied, and ineffective. Instead, the law must be reformed to better secure access to affordable housing stock, prevent “hotelization” of residential neighborhoods, create meaningful opportunities for diverse users to share economic gains, and eliminate pathways to discriminate on homesharing platforms like Airbnb.

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INTRODUCTION

Airbnb is a “lifeline” for Suzan Albritton.¹ After Ms. Albritton’s husband passed away unexpectedly, she was no longer able to afford the home they had shared for over a decade.² Were it not for the additional income she earned by listing her property on Airbnb, she would have been forced from her home and out of her community. For every Suzan Albritton, however, there is a Christian Rhodes. Mr. Rhodes, a resident of New Orleans’s Treme neighborhood, watched as his neighborhood’s population changed from families and other longtime residents to Airbnb guests.³ The balloons were the final straw. After a weekend bachelorette party adorned a nearby home with anatomically shaped balloons, Mr. Rhodes knew that he and his young children could no longer live in the neighborhood⁴; he quickly sold his home.⁵

Debates rage about the effects of the sharing economy, which has dramatically transformed the way consumers access the marketplace. Using a smartphone, a person can book a pet sitter on Rover,⁶ order dinner delivery through Seamless,⁷ and set up a visit from their own private masseuse on Soothe⁸—all from the backseat of their Uber.⁹ As Suzan Albritton and the Rhodes family illustrate, the benefits of such apps can be tremendous, but these gains may be accompanied by far-reaching and unintended consequences.

Airbnb’s tremendous success brings this issue to the forefront. Founded in 2008, Airbnb is a short-term rental platform that allows hosts to share

1. Letter from Suzan Albritton, Airbnb Host, to L.A. City Councilmembers (Aug. 21, 2015), available at http://clkrep.lacity.org/onlinedocs/2014/14-1635-s2_misc_1_8-21-15.pdf [<https://perma.cc/ZJA4-NQYB>].

2. *Id.*

3. Emily Peck & Charles Maldonado, *How Airbnb Is Pushing Locals Out of New Orleans’ Coolest Neighborhoods*, HUFFINGTON POST (Oct. 30, 2017, 5:45 AM), https://www.huffingtonpost.com/entry/airbnb-new-orleans-housing_us_59f33054e4b03cd20b811699 [<https://perma.cc/5JDW-UKWD>].

4. *Id.*

5. *Id.*

6. See ROVER, www.rover.com [<https://perma.cc/Y8ET-AJC2>] (“Book trusted sitters and dog walkers who’ll treat your pets like family.”).

7. See SEAMLESS, www.seamless.com (last visited Nov. 11, 2019) (“Seamless is simply the easiest way to order food for delivery or takeout.”).

8. See SOOTHE, www.soothe.com [<https://perma.cc/G2G7-EHHM>] (“Soothe helps you book a five-start massage to your home, hotel, office, or event in as little as an hour.”).

9. See generally UBER, www.uber.com [<https://perma.cc/4KPP-ZFCP>].

their interest in a property with prospective guests.¹⁰ More than ten years later, Airbnb has a private valuation of \$31 billion and “is the second-biggest ‘start-up’ . . . in the country, after Uber.”¹¹ There are over four million Airbnb listings worldwide,¹² “in more than 100,000 cities and 191 countries and regions.”¹³ According to Airbnb, it “uniquely leverages technology to economically empower millions of people around the world to unlock and monetize their spaces, passions and talents to become hospitality entrepreneurs.”¹⁴

Supporters of Airbnb laud it as a way for hosts and communities to generate new revenue and achieve economic stability. For hosts, wealth accumulation is accomplished through two distinct channels. First, in listing an accommodation on Airbnb, a new income stream is available to the host.¹⁵ Second, as the property’s potential to generate additional income increases, the underlying value of the property increases, thereby raising total home equity.¹⁶ Airbnb also claims to have a positive effect on the surrounding economy.¹⁷ A study released by the company on the economic effect of Airbnb on New York City claims that “[i]n one year, Airbnb generated \$632 million in economic activity in the city, which included \$105 million in direct spending in the outer boroughs.”¹⁸ For guests, Airbnb presents an opportunity to enjoy accommodations at more affordable prices than traditional hotels.¹⁹ Moreover, the availability of

10. See AIRBNB, [www.airbnb.com](https://perma.cc/4CTZ-CKLA) [https://perma.cc/4CTZ-CKLA].

11. Derek Thompson, *Airbnb and the Unintended Consequences of ‘Disruption,’* ATLANTIC (Feb 17, 2018), https://www.theatlantic.com/business/archive/2018/02/airbnb-hotels-disruption/553556/?utm_source=atfb [https://perma.cc/M7VL-YK8F].

12. Avery Hartmans, *Airbnb Now Has More Listings Worldwide than the Top Five Hotel Brands Combined*, BUS. INSIDER (Aug. 20, 2017, 1:00 PM), <https://www.businessinsider.com/airbnb-total-worldwide-listings-2017-8> [https://perma.cc/LFD7-RGAM].

13. *About Us*, AIRBNB, [www.airbnb.com/about/about-us](https://perma.cc/WF8C-9G27) [https://perma.cc/WF8C-9G27].

14. *Id.*

15. See *How Much Are People Making in the Sharing Economy?*, PRICEONOMICS (June 15, 2017), <https://priceonomics.com/how-much-are-people-making-from-the-sharing/> [https://perma.cc/DRH6-WSX2].

16. Kyle Barron, Edward Kung & David Proserpio, *The Sharing Economy and Housing Affordability: Evidence from Airbnb* 4 (Mar. 29, 2018) (unpublished manuscript), <https://marketing.wharton.upenn.edu/wp-content/uploads/2019/08/09.05.2019-Proserpio-Davide-Paper.pdf> [https://perma.cc/7CAC-LQK2].

17. *The Economic Impacts of Home Sharing in Cities Around the World*, AIRBNB, [www.airbnb.com/economic-impact](https://perma.cc/J8CW-4TXQ) [https://perma.cc/J8CW-4TXQ] [hereinafter *The Economic Impacts of Home Sharing in Cities Around the World*].

18. *Airbnb Economic Impact*, AIRBNB, <https://blog.airbnb.com/economic-impact-airbnb/> [https://perma.cc/2VE9-PSFA] [hereinafter *Airbnb Economic Impact*].

19. Niall McCarthy, *Is Airbnb Really Cheaper Than a Hotel Room in the World’s Major Cities?*, FORBES (Jan. 23, 2018), <https://www.forbes.com/sites/niallmccarthy/2018/01/23/is-airbnb-really->

reviews and information about the host creates a personal connection, and allows for more informed decision-making about where to stay.

Airbnb's positive effects for users, and on the local economy, however, are not without their costs. The growth of Airbnb rentals within a jurisdiction is linked to the loss of long-term rental accommodations. As the New York State Attorney General noted, "private short-term rentals [have] displaced long-term housing in thousands of apartments."²⁰ This effect is replicated in other housing markets. In many parts of Montreal, Airbnb has converted 3% of the total housing stock to short-term rentals.²¹ Moreover, by "reallocating long-term rentals to the short-term market," Airbnb functions to increase average asking rents.²² In New York City, "Airbnb is responsible for nearly 10 percent of citywide rental increase between 2009 and 2016."²³ For jurisdictions already grappling with an affordable housing crisis, an influx of Airbnb listings and the attendant consequences threatens the stability and vitality of the community.

Opponents of short-term rental accommodations are primarily concerned with "commercialization of residential neighborhoods."²⁴

cheaper-than-a-hotel-room-in-the-worlds-major-cities-infographic/#69a805f78acb
[<https://perma.cc/MB3S-NQFN>].

20. N.Y. STATE OFFICE OF THE ATT'Y GEN., AIRBNB IN THE CITY 3 (2014), <https://ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf> [<https://perma.cc/JHX5-NF5V>].

21. See WACHSMUTH ET AL., URBAN POLITICS & GOVERNANCE RESEARCH GRP., SCH. OF URBAN PLANNING, MCGILL UNIV., SHORT-TERM CITIES: AIRBNB'S IMPACT ON CANADIAN HOUSING MARKETS 23 (2017) [hereinafter WACHSMUTH ET AL., SHORT-TERM CITIES], <https://upgo.lab.mcgill.ca/publication/short-term-cities/short-term-cities.pdf> [<https://perma.cc/G8PQ-7PW4>].

22. Kyle Barron, Edward Kung & David Proserpio, *Research: When Airbnb Listings in a City Increase, So Do Rent Prices*, HARV. BUS. REV. 10, 28 (Apr. 17, 2019), https://ci.carmel.ca.us/sites/main/files/file-attachments/harvard_business_article_and_study.pdf [<https://perma.cc/737Q-HURC>] ("[B]y decreasing the cost of listing in the short-term market, the home-sharing platform has the effect of raising rental rates. The intuition is fairly straight-forward: the home-sharing platform induces some landlords to switch from the long-term market to the short-term market, reducing supply in the long-term market and raising rental rates.").

23. *Comptroller Stringer Report: NYC Renters Paid and Additional \$616 Million in 2016 Due to Airbnb*, OFFICE OF N.Y.C. COMPTROLLER (May 3, 2018), <https://comptroller.nyc.gov/newsroom/comptroller-stringer-report-nyc-renters-paid-an-additional-616-million-in-2016-due-to-airbnb/> [<https://perma.cc/3WRF-6ZW7>]. For a discussion of the effect of Airbnb on New York City rent, see WACHSMUTH ET AL., THE HIGH COST OF SHORT-TERM RENTALS IN NEW YORK CITY 35–38 (2018) [hereinafter WACHSMUTH ET AL., HIGH COST OF SHORT TERM RENTALS], <https://mcgill.ca/newsroom/files/newsroom/channels/attach/airbnb-report.pdf> [<https://perma.cc/9323-UCU3>].

24. CITY OF NEW ORLEANS PLANNING COMM'N, SHORT TERM RENTAL STUDY 30–31 (Jan. 19, 2016), <https://www.nola.gov/city-planning/major-studies-and-projects/2015-short-term-rental-study/final-short-term-rental-study/> [<https://perma.cc/X8HB-4QY8>] ("There is especially a concern over investors purchasing homes and renting them out only as a short term rental. They say that these uses are 'mini-hotels' because no one ever lives there and should be prohibited in residential districts, like other commercial uses.").

Where once there were communities of mutually invested neighbors, now there are tourists with needs that may conflict with those of permanent residents.²⁵ As short-term rental listings increase in an area, locals experience problems such as “unfamiliar cars blocking driveways, late night parties on formerly quiet streets, and concerns about child safety in an environment with fewer familiar eyes on the street.”²⁶ These effects are exacerbated when Airbnbs are operated by commercial property owners, rather than mom and pop hosts. In certain jurisdictions, the share of the Airbnb market held by hosts with more than one listing is over 40%.²⁷ The reality of professional hosts with numerous listings is at odds with Airbnb proponents’ characterization of the platform as a way for average homeowners to subsidize their incomes.

These issues are compounded by rampant discrimination on the platform. Minority guests are less likely to be accepted than their white counterparts.²⁸ Further, discrimination against hosts manifests in lower listing prices relative to comparable accommodations by white hosts.²⁹ Taken together, discrimination against guests and hosts functions to bar minorities from experiencing the same degree of benefits from Airbnb;

25. See generally Apostolos Filippas & John J. Horton, *The Tragedy of Your Upstairs Neighbors: When Is the Home-Sharing Externality Internalized?* (Apr. 5, 2017) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443343 [<https://perma.cc/3TUV-5AP5>].

26. ROY SAMAAN, L.A. ALLIANCE FOR A NEW ECON., AIRBNB, RISING RENT, AND THE HOUSING CRISIS IN LOS ANGELES (2015) [hereinafter SAMAAN, AIRBNB], <https://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf> [<https://perma.cc/LVK3-V7UU>].

27. Jake Wegmann & Junfeng Jiao, *Taming Airbnb: Toward Guiding Principles for Local Regulation of Urban Vacation Rentals Based on Empirical Results from Five US Cities*, 69 LAND USE POL’Y 494, 498 (2017) (noting that of the remaining cities, Austin’s share was 30%, Chicago’s share was 38%, San Francisco’s share was 34%, and Washington, DC’s share was 39%).

28. Benjamin Edelman et al., *Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment*, 9 AM. ECON. J.: APPLIED ECON. 1, 2 (2017), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/app.20160213> [<https://perma.cc/G6Q4-LYDL>] (“To test for discrimination, we conduct a field experiment in which we inquire about the availability of roughly 6,400 listings on Airbnb across five cities. Specifically, we create guest accounts that differ by name but are otherwise identical. . . . [W]e select two sets of names—one distinctively African American and the other distinctively white. We find widespread discrimination against guests with distinctively African American names.”); see also Amy B. Wang, *‘One Word Says It All. Asian’: Airbnb Host Banned After Allegedly Cancelling Guest Because of Her Race*, L.A. TIMES (Apr. 7, 2017, 7:40 PM), <https://www.latimes.com/business/technology/la-fi-airbnb-discrimination-20170407-story.html> [<https://perma.cc/CYT5-4542>].

29. Benjamin Edelman & Michael Luca, *Digital Discrimination: The Case of Airbnb.com* 4.2 (Harvard Bus. Sch., Working Paper No. 14-054, 2014), https://www.hbs.edu/faculty/Publication%20Files/Airbnb_92dd6086-6e46-4eaf-9cea-60fe5ba3c596.pdf [<https://perma.cc/A7PE-3XRE>] (“The raw data show that non-black and black hosts receive strikingly different rents.”); Venoo Kakar et al., *The Visible Host: Does Race Guide Airbnb Rental Rates in San Francisco?*, 40 J. HOUSING ECON. 25 (2017); Hanying Mo, *Racial Discrimination in the Online Consumer Marketplace A Study on Airbnb IV* (May 16, 2016) (unpublished manuscript), https://www.stat.berkeley.edu/~aldous/157/Old_Projects/Hanying_Mo.pdf [<https://perma.cc/62RL-HJFT>].

minority guests do not benefit from saving money on short-term accommodations, and minority hosts are locked out of opportunities to increase wealth. This means that the benefits of Airbnb use flow disproportionately to white users, concentrating wealth along racial lines. Compounding these effects, as Airbnb proliferation erodes affordable housing, and even accelerates gentrification, minorities disproportionately experience the harms of Airbnb without the attendant benefits.

Central to the discussion of community consequences is critical analysis of how the regulatory landscape amplifies the effects of Airbnb on individuals and the surrounding community.³⁰ Laws governing Airbnb implicate traditional notions of real property ownership, which conceptualizes property as a “bundle of rights.”³¹ Through this lens, policymakers have attempted to balance the rights of individual property owners with those of the community. Resulting policy regimes fall into four categories: (1) host accountability measures, such as zoning laws, licensing requirements, and tax structures; (2) restrictions on eligible hosts, length of rentals, and permissible locations; (3) responsibility and enforcement, including who bears the onus of compliance and who is liable for failure to comply; and (4) policies to address discrimination and diffuse the concentration of wealth along racial lines. Because they are fragmented and incomplete, current approaches fail to successfully prevent negative community effects of Airbnb.

This Article provides the first comprehensive analysis of the short-term rental accommodation regulatory landscape, providing recommendations to amplify the benefits of Airbnb while mitigating the harms.

The Article proceeds in four Parts. Part I examines the effects of short-term rental accommodations, including positive economic contributions, both at the individual and community level, as well as negative externalities, including the effect on monthly rent, the supply of rental housing, and neighborhood social capital. In doing so, Part II will assess how Airbnb accelerates gentrification and aggregates wealth along racial lines. Part III analyzes current regulations in example jurisdictions both in

30. See Orly Lobel, *The Law of the Platform*, 101 MINN. L. REV. 87, 161 (2016) (“A promising aspect of the contemporary law of the platform is that many of the regulatory questions of Web 3.0, including zoning, consumer protection, residential and transportation safety, worker rights, and occupational licensing, are traditionally resolved at the state and local levels.”).

31. *Moore v. Regents of Univ. of Cal.*, 793 P.2d 479, 510 (Cal. 1990) (Most, J., dissenting) (internal quotation marks omitted); Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 711 (1986) (“The right to exclude others has often been cited as the most important characteristic of private property. This right, it is said, makes private property fruitful by enabling owners to capture the full value of their individual investments, thus encouraging everyone to put time and labor into the development of resources.”).

the United States as well as abroad. Finally, Part IV proposes a regulatory framework to allow for the benefits of the short-term rental market while mitigating attendant consequences.

I. EFFECTS OF SHORT-TERM RENTALS

The popularity of homesharing platforms has exploded in recent years. These platforms allow hosts to list available property online for guests to rent, almost always on a short-term basis, in exchange for a fee. While there are several sites, including VRBO,³² HomeAway,³³ and HouseTrip,³⁴ Airbnb is by far the largest.³⁵ Founded in 2008 by two art school graduates, Airbnb started as a way for locals to earn extra money by renting spare rooms to tourists.³⁶ Today Airbnb has more than four million listings³⁷—more than the top five hotel brands combined.³⁸

In addition to appealing to tourists, Airbnb now also markets itself to business travelers. By partnering with Concur, an expense management company, Airbnb formally entered the corporate arena.³⁹ In 2017, “the number of business travelers expensing Airbnb accommodations increase[ed] by 33%.”⁴⁰ According to Concur data, “more than 250,000 companies in over 230 countries and territories use Airbnb for work.”⁴¹

32. VRBO, <https://www.vrbo.com/> [<https://perma.cc/N6XJ-U77N>].

33. HOMEAWAY, <https://www.homeaway.com/> [<https://perma.cc/A8P3-HHFT>].

34. HOUSETRIP, <https://www.housetrip.com/> [<https://perma.cc/GK2W-46YZ>].

35. Given its dominance of the short-term rental marketplace, throughout this Article “Airbnb” will be used as a stand-in for all short-term rental accommodations.

36. Jessica Pressler, “*The Dumbest Person in Your Building is Passing Out Keys to Your Front Door!*” *The War Over Airbnb Gets Personal*, N.Y. MAG. (Sept. 23, 2014), <http://nymag.com/news/features/airbnb-in-new-york-debate-2014-9/> [<https://perma.cc/T63S-X8CZ>].

37. Avery Hartmans, *Airbnb Now Has More Listings Worldwide Than the Top Five Hotel Brands Combined*, BUS. INSIDER (Aug. 20, 2017), <https://www.businessinsider.com/airbnb-total-worldwide-listings-2017-8> [<https://perma.cc/LFD7-RGAM>]; see also Juliet Schor, *Debating the Sharing Economy*, GREAT TRANSITION INITIATIVE (Oct. 2014), <https://www.greattransition.org/publication/debating-the-sharing-economy> [<https://perma.cc/T4B8-NZ53>] (“The debut of the sharing economy was marked by plenty of language about doing good, building social connections, saving the environment, and providing economic benefits to ordinary people. It was a feel-good story in which technological and economic innovation ushered in a better economic model. Especially in the aftermath of the financial crash, this positive narrative was hard to resist.”).

38. Hartmans, *supra* note 37.

39. *Id.*

40. SAP Concur Team, *Airbnb and Concur Expand Partnership to Provide Airbnb Listings within Concur Travel*, SAP CONCUR (July 13, 2017), <https://www.concur.com/newsroom/article/airbnb-and-concur-expand-partnership-to-provide-airbnb-listings-within> [<https://perma.cc/7V5G-7DAG>].

41. *Id.*

Airbnb does not charge a fee for hosts to list their homes on the platform. Instead, it “makes money by charging hosts and guests a service fee that is a percentage based on the cost of the rental.”⁴² Airbnb prices are often significantly lower than that of nearby hotels, making it an attractive option for visitors who want more space at affordable prices. Using the platform, individual guests and hosts may realize economic gains while neighborhoods undergo significant changes to the local housing market.

A. Positive Effects for Individuals and the Community

The benefits of short-term rental platforms to guests are readily apparent. The ability to book a short-term rental rather than a hotel can be attractive to guests for a variety of reasons. These include greater square footage at a lower price, access to amenities not often found in hotels such as kitchens, washers, and dryers, the opportunity to create personal connections with locals in a new city, and the ability to “live like a local.” In addition, short-term rentals may confer economic benefits to individual hosts as well as the surrounding community.

1. Wealth Accumulation for Hosts

Sharing homes on Airbnb allows hosts to realize increased capital through two channels of wealth accumulation. First, new income is available to the host via the short-term rental platform, which raises total income. Second, as the home’s potential to generate additional income rises, its total value as an asset grows, leading to increased home equity for the host.

Airbnb provides an opportunity for hosts to convert an underutilized asset—the home—into an income stream. The profitability of an individual short-term rental can vary widely depending on its location as well as the expenses unique to that property. For example, two identical listings generating the same income will have different net profits depending on their underlying costs such as rent/mortgage, utilities, etc. However, hosts can expect to earn 81% of total rent, on average, “by listing one room of a two-bedroom home on Airbnb.”⁴³ In Miami, San

42. *Airbnb, Inc. v. City & Cty. of S.F.*, 217 F. Supp. 3d 1066, 1069 (N.D. Cal. 2016).

43. Nick Wallace, *Where Do Airbnb Hosts Make the Most Money?*, SMART ASSET (Feb. 20, 2018), <https://smartasset.com/mortgage/where-do-airbnb-hosts-make-the-most-money> [<https://perma.cc/6V2W-4ZLU>] (“First, we calculated expected revenue of private-room Airbnb rentals in each city . . . Then, we calculated expected net profits (after average rent, utilities, and internet) for full-home rentals in each city.”).

Diego, Chicago, and Philadelphia, utilizing one room in a two-bedroom home as a short-term rental may generate over 90% of the total rent.⁴⁴ According to analysis by Priceonomics, Airbnb hosts earn more than other sharing economy users, by far.⁴⁵ While the amount an Airbnb host can earn will vary widely depending on the type, quality, and location of the accommodation, hosts “mak[e] an average of \$924 off their platform each month.”⁴⁶

The profitability of sharing properties on sites like Airbnb has created a cottage industry to help hosts maximize their revenue. Beyond Pricing, for example, offers “automated dynamic pricing” using “real-time market data to ensure our price recommendations maximize revenue and occupancy for our hosts.”⁴⁷ Airbnb even has a tool on its site to help hosts appropriately price their homes.⁴⁸

For some hosts, additional revenue generated by Airbnb rent has been critical. As one host noted in a letter to the Los Angeles City Council, “in a very short period of time, using only my existing resources [the home], I was able to pull myself out of a financial crisis, generate steady and solid monthly income, provide a warm and welcoming local experience to visitors willing to spend lots of vacation dollars in L[os] A[ngeles], and provide a steady stream of cash to the LA City Finance coffers.”⁴⁹

Evidence suggests that Airbnb also has a positive effect on local home value. By creating an additional revenue stream, the market value of the asset increases. One study found that “the number of Airbnb listings in [a] zip code . . . is positively associated with house prices.”⁵⁰ Specifically,

44. *Id.*

45. *How Much Are People Making in the Sharing Economy?*, *supra* note 15; see also Stacey Leasca, *Here’s How Much the Average Airbnb Host Earns in a Month*, TRAVEL & LEISURE (June 16, 2017), <https://www.travelandleisure.com/travel-tips/how-much-airbnb-hosts-make> [<https://perma.cc/B8AR-KXPB>].

46. *How Much Are People Making in the Sharing Economy?*, *supra* note 15 (“Of course, on all of these platforms, there is a wide range of earners. Several Airbnb hosts in our records, for instance, made over \$10,000 per month, while others made less than \$200.”).

47. BEYOND PRICING, www.beyondpricing.com [<https://perma.cc/34DJ-J6UY>]. Several other sites offer this service as well. See KEYBEE, www.keybeehosting.com [<https://perma.cc/H49X-FBDN>]; WHEELHOUSE, www.usewheelhouse.com [<https://perma.cc/XW2A-26UT>]; AIRDNA, www.airdna.co [<https://perma.cc/9CJV-ABDC>].

48. *Earn Money as an Airbnb Host*, AIRBNB, www.airbnb.com/host/homes [<https://perma.cc/QGJ4-YZZZ>].

49. Letter from Stephanie Woods, Airbnb Host, to Mitch O’Farrell, L.A. City Councilmember (July 17, 2015), http://clkrep.lacity.org/onlinedocs/2014/14-1635-S2_pc_7-17-15.pdf [<https://perma.cc/D77V-GJNX>].

50. Barron et al., *supra* note 16, at 4. The increase in home value is related to the area’s media owner-occupancy rate; areas with a high concentration of owner-occupied units experience more modest gains in house prices. *Id.* at 26. In zip codes “with a 56% owner-occupancy rate (the 25th

researchers found that, at the median owner-occupancy rate zip code, a “1% increase in Airbnb listings is associated with a . . . 0.026% increase in house prices.”⁵¹ Other research has found that the effect may be several times greater.⁵²

2. *Local Economic Impact*

Airbnb’s own research suggests that short-term rental platforms may have a positive effect on the local economy. By providing accommodations to tourists, short-term rental platforms help draw more people, and their dollars, to an area. Moreover, because Airbnb allows guests to “live like a local,” many tourists may bring their spending to areas of the cities not served by traditional hotel accommodations. Airbnb has also released data on its economic impact in local communities around the world.⁵³ As may be expected when a company conducts its own impact analysis, the data is overwhelmingly positive. For example, the company claims that “in one year, Airbnb generated \$632 million in economic activity in [New York City], which included \$105 million in direct spending in the outer boroughs.”⁵⁴ On the other side of the world, in Sydney, Australia, Airbnb claims its “guests and hosts supported AUD \$214 million in economic activity.”⁵⁵

While limited, available empirical research completed by third parties suggests that Airbnb may have a positive effect on the local economy. For example, analysis on the economic impact of Airbnb on New Orleans found that short-term rental accommodations benefited the local economy along three dimensions: “(1) the ‘direct effect’ of spending on rent, food, and beverages, transportation, and the like, (2) the ‘indirect effect,’ where sectors form the supply chain of these industries increase their purchase

percentile),” a 1% increase in Airbnb listings leads to a 0.037% increase in house prices. *Id.* In contrast, “in zip codes with an 82% owner-occupancy rate (the 75th percentile),” a 1% increase in Airbnb listings correlates with an increase of only 0.019% in home prices. *Id.*

51. *Id.* at 1, 4. The authors note, however, “[o]f course, these estimates should not be interpreted as causal, and may instead be picking up spurious correlations. For example, cities that are growing in population likely have rising rents, house prices, and numbers of Airbnb listings at the same time.” *Id.*

52. Stephen Sheppard & Andrew Udell, *Do Airbnb Properties Affect House Prices?* 42 (Oct. 30, 2018) (unpublished manuscript), <https://web.williams.edu/Economics/wp/SheppardUdellAirbnbAffectHousePrices.pdf> [<https://perma.cc/BQB8-WHSQ>] (“Our analysis indicates that subjecting a property to the treatment of having Airbnb properties available nearby when it is sold increases prices by 3.5% (for properties that are far from the center and whose ‘treatment’ consists of only a few Airbnb properties) to more than 65% for properties that are near the center and/or are ‘treated’ by having a larger number of local Airbnb properties.”).

53. *The Economic Impacts of Home Sharing in Cities Around the World*, *supra* note 17.

54. *Airbnb Economic Impact*, *supra* note 18.

55. *Id.*

to fill this demand, and (3) the ‘induced effect,’ where local incomes are spent and re-spent locally.”⁵⁶ Across the three dimensions, it is estimated that Airbnb contributed nearly \$134 million dollars in total increased income⁵⁷ and \$185 million dollars in total value added to the regional economy in 2015.⁵⁸

However, not all economists agree on the extent of economic gains attributable to Airbnb. Analysis by the Economic Policy Institute (EPI) suggests that they are “much smaller than commonly advertised.”⁵⁹ According to the EPI, studies touting alleged economic gains ignore the fact that most spending would happen anyway, absent the Airbnb option, as travelers opt instead to stay in hotels and other accommodations.⁶⁰ As a result, they “vastly overstate the effect” of Airbnb on the local economy.⁶¹

B. Effects on the Local Housing Market

Airbnb lauds its service as a mechanism to allow underutilized resources to be put to use. However, in collecting a fee to share space in their homes, hosts gain a financial benefit while imposing costs on their neighbors and the surrounding communities. Homesharing affects the properties, neighborhoods, and even cities in which those homes are situated. While Airbnb touts an increase in property values and higher tax revenues from tourist activities, it is not without costs to locals. The surrounding community experiences a loss of affordable housing, increase in average rental prices, and changes in neighborhood character.

56. MEHMET F. DICLE & JOHN LEVENDIS, *THE ECONOMIC IMPACT OF AIRBNB ON NEW ORLEANS* 2 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2856770 [<https://perma.cc/VSS8-GQ7Q>]. This research examines the economic impact of Airbnb on New Orleans for calendar year 2015. *Id.* at 9 (“When income is spent it becomes income for other people, many of them locals. The locals, in turn, spend a portion of their money locally, proving additional income for more locals. Similarly, when a business makes a product, it must purchase materials from another business and so forth. The process is one of a circular flow of income. Income leaks from the system whenever it is spent outside of the region. The task of the economist is to estimate how spending in one sector of the economy spills over into other interconnected sectors.”).

57. *Id.* at 12.

58. *Id.* at 13.

59. Josh Bivens, *The Economic Costs and Benefits of Airbnb*, *ECON. POL’Y INST.* 2 (Jan. 30, 2019), <https://www.epi.org/files/pdf/157766.pdf> [<https://perma.cc/6VPF-48FD>] (finding that research on the positive economic benefits of Airbnb on the local economy are largely overstated because Airbnb is commonly a pure substitution for other forms of accommodation). “Two surveys indicate that *only* 2 to 4 percent of those using Airbnb say that they would not have taken the trip were Airbnb rentals unavailable.” *Id.* (emphasis added).

60. *Id.*

61. *Id.*

1. Loss of Long-Term Rental Accommodations

Homesharing diminishes the available housing stock and exacerbates the affordable housing crisis⁶² by converting long-term rental accommodations to short-term rentals. The number of units listed on Airbnb increased significantly in recent years, surpassing new construction and reducing available housing stock.⁶³

Research on the conversion of long-term accommodations to short-term listings supports this finding. A New York State Office of the Attorney General report analyzed Airbnb bookings in New York City between January 1, 2010 and June 2, 2014.⁶⁴ The report found that in 2013, over 4,600 Airbnb units were booked as short-term rentals for three months or more and, of these, close to 2,000 were booked as short-term rentals for six months or more.⁶⁵ As a result, “private short-term rentals displaced long-term housing in thousands of apartments.”⁶⁶ Some estimates place the total number of New York City long-term rentals lost to Airbnb at 13,500 units.⁶⁷ In 2017, “12,200 entire-home listings were frequently rented (rented for 60 days or more, and available for 120 days or more), while 5,600 entire-home listings were very frequently rented (rented 120 days or more, and available 240 days or more).”⁶⁸

The rate of displacement will increase as Airbnb continues to expand. There were 67,1000 Airbnb listings in New York City that were rented at least one time between September 2016 and August 2017.⁶⁹ This represents a 4.5% increase from September 2015 to August 2016 when 64,200 units were rented, and an increase of 37% from September 2014

62. See generally James A. Allen, *Disrupting Affordable Housing: Regulating Airbnb and Other Short-Term Rental Hosting in New York City*, 26 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 151 (2017).

63. WACHSMUTH ET AL., SHORT-TERM CITIES, *supra* note 21, at 35, 38 (“[N]eighbourhoods with the most Airbnb activity are seeing their available long-term rental housing significantly constrained by short-term rentals.”).

64. N.Y. STATE OFFICE OF THE ATT’Y GEN., *supra* note 20, at 2. The report confined itself to bookings of an entire home/house and a private room, where the host may or may not be present. The study purposefully did not include shared rooms, where a host is present during a stay. *Id.*

65. *Id.* at 3; see also Karen Horn & Mark Merante, *Is Home Sharing Driving Up Rents? Evidence from Airbnb in Boston*, 38 J. HOUSING ECON. 14, 15 (2017) (finding that “a one standard deviation increase in Airbnb density is correlated with a 5.9% decrease in the number of rental units offered for rent. At the mean, weekly number of units offered for rent per census tract . . . this represents a reduction of 4.5 units.”).

66. N.Y. STATE OFFICE OF THE ATT’Y GEN., *supra* note 20, at 3.

67. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 25.

68. *Id.*

69. *Id.* at 9.

to August 2015, when there only 48,800 units.⁷⁰ Researchers examined twenty zip codes across the City in the boroughs of Manhattan, Brooklyn, and Queens, finding that “listings on Airbnb comprise at least 10% of total rental units.”⁷¹ The rapid growth of Airbnb was particularly evident in the East Village, Williamsburg, the West Village, and the Lower East Side, where Airbnb listings comprised a remarkable 20% of the rental market.⁷²

Analysts have reached similar conclusions in other housing markets. Airbnb has removed 13,700 long-term housing units from the rental market in Montreal, Vancouver, and Toronto; for example, in Montreal alone, Airbnb has converted 2% or 3% of the total housing stock to short-term rentals.⁷³ In addition to whole-home listings, those three cities have a combined 5,400 listings of private rooms in owner-occupied properties.⁷⁴ Although a host still occupies the unit in this type of accommodation, it results in a loss to the long-term rental market; renting a spare room eliminates a space that may otherwise be occupied by a long-term roommate.⁷⁵

The rate of Airbnb expansion—and its effect on the rental markets—outpaces the policies meant to protect cities from a loss of affordable housing. In some neighborhoods, Airbnb growth far surpasses new construction, resulting in a net loss to the available housing stock.⁷⁶ In fact, in many areas of Toronto and Vancouver, “more than twice as many homes have been removed from these neighborhoods by short-term rentals as have been added by new construction.”⁷⁷ In Los Angeles, where

70. *Id.*

71. N.Y. CMTYS. FOR CHANGE, AIRBNB IN NYC HOUSING REPORT 3 (2015), <http://www.sharebetter.org/wp-content/uploads/2015/07/AirbnbNYCHousingReport1.pdf> [<https://perma.cc/HL3H-MC9J>].

72. *Id.* at 3.

73. WACHSMUTH ET AL., SHORT-TERM CITIES, *supra* note 21, at 2–3 (displaying figure representing the number of entire home rentals as more than sixty days a year in Montreal, Vancouver, and Toronto).

74. *Id.* at 24.

75. *Id.*

76. *Id.* at 38 (“[I]n well-established central-city neighbourhoods with less construction, such as the Plateau-Mont Royal in Montreal, High Park in Toronto, and Kitsilano in Vancouver, Airbnb growth is completely outpacing new constructions and actually reducing net available housing stock. In several Toronto and Vancouver neighbourhoods, Airbnb listing growth is greater than 200% of housing completions. More than twice as many homes may have been removed from these neighbourhoods by short-term rentals as have been added by new construction. In Montreal, where growth of Airbnb listings has been slower, no neighbourhoods cross this 200% threshold, but full-time, entire home Airbnb listing growth is still outpacing completions in several areas. These areas are likely to be experiencing displacement of long-term residents, upward pressure on rents, and a reduction in the ability of new residents to move into these neighborhoods.”).

77. *Id.*

an estimated eleven units are lost to long-term renters each day, the number of new housing units “barely keeps up with the housing removed from the market by short-term rental companies.”⁷⁸

The potential for increased rental income incentivizes landlords to convert long-term affordable housing to short-term rentals, often resorting to extreme measures to remove existing tenants. As Gale Brewer, Manhattan Borough President noted during a City Council meeting on the effect of Airbnb on New York City housing stock:

[T]he greatest problem is the threat to tenants by owners who hope to vacate as many units as possible, or even entire buildings, to then be used as transient, illegal hotels Over the years, I, my staff, and my fellow Manhattan elected officials have all encountered cases where landlords harassed tenants or refused to renew leases, all in an attempt to clear out units for more lucrative use as illegal hotel rooms. We have even seen cases where a landlord’s use of an apartment as an illegal hotel room functioned as a harassment tactic aimed at neighboring tenants.⁷⁹

2. *Increase in Average Asking Rents*

The rise in popularity of Airbnb in a jurisdiction increases average rents in that area. In a study of 100 cities across the United States, increased homesharing activity caused higher rents for local residents—this effect is even greater when more hosts enter the homesharing market.⁸⁰ In particular, Airbnb and other homesharing platforms function to “reallot[e] their properties from the long- to the short-term rental market,” thereby increasing rental costs.⁸¹ The increase in rent extends to neighborhoods located both near to and far from the city center; rent increases correlated with Airbnb listings reach even zip codes farthest from downtown.⁸² While few studies have examined the connection

78. ROY SAMAAN, L.A. ALL. FOR THE NEW ECON., SHORT-TERM RENTALS AND L.A.’S LOST HOUSING 3 (2015) [hereinafter SAMAAN, SHORT-TERM RENTALS], http://www.laane.org/wp-content/uploads/2015/08/Short-Term_RentalsLAs-Lost_Housing.pdf [https://perma.cc/G6DH-Y6AL].

79. Rebecca Fishbein, *Airbnb & City Council Go to War*, GOTHAMIST (Jan. 21, 2015, 9:53 AM), http://gothamist.com/2015/01/21/airbnb_nyc_city_council.php [https://perma.cc/53GL-8629].

80. Barron et al., *supra* note 16, at 12–13 (noting that if negative externalities, such as noise, waste, and decreased parking, etc., create poor neighborhood conditions, it could drive down rent in some instances). However, “there could also be positive externalities that have the opposite effects.” *Id.*

81. *Id.* at 31. In studying the effect of Airbnb on home prices, the researchers found that homesharing increases equity for homeowners by increasing home prices and that this increase is greater than the increase in rental prices. *See generally id.*

82. *Id.* at 57.

between Airbnb and rental prices, those that have identified a positive relationship between the prevalence of Airbnb and average asking rent.

These results are echoed in localities around the world. A 2017 study of the effect of Airbnb rentals on the Boston housing market found evidence that an increase in Airbnb density raises average rents for locals.⁸³ In census tracts with the greatest number of Airbnb listings relative to the total number of housing units, this increase is as much as 3.1%.⁸⁴ The rent increases are even greater for certain types of housing accommodations. Larger units command higher rents. Airbnb increased asking rents by 17% for each additional bedroom and 11% for each additional bathroom.⁸⁵ These increases can add thousands of dollars to annual housing costs for Boston tenants. In Australia, researchers found that “the number of whole dwellings frequently available on Airbnb is more than three times the vacancy rate in [the Waverly neighborhood of Sidney]. This suggests that Airbnb rentals have a sizeable impact on the availability of permanent rental housing [in the locality] with consequent pressure on rents.”⁸⁶

Similarly, high Airbnb density correlates with increased rents in Los Angeles.⁸⁷ According to Lovely, an apartment listing service, Los Angeles rents increased by 10.4% between the first quarter of 2013 and the third quarter of 2014.⁸⁸ While rental prices are certainly a function of a variety of factors, it is telling that “Airbnb density coincides with neighborhoods that have rents well above the citywide average.”⁸⁹ In fact, Airbnb-dense neighborhoods boast an average rent that is 20% higher than the Los Angeles city average.⁹⁰

Several studies have found that Airbnb has had a similar effect on New York City’s rental housing market. McGill University researchers found

83. Horn & Merante, *supra* note 65, at 1, 20 (“[A] one standard deviation increase in Airbnb listings . . . in a [given] census tract . . . [raises] asking rents by 0.4%. For those census tracts in the highest decile of Airbnb listings relative to total housing units, this is an increase in asking rents of 3.1%, which equates at the citywide mean monthly asking rent [of \$2972] to an increase of as much as \$93 in mean monthly asking rent.”).

84. *Id.*

85. *Id.* at 21. The researchers do note, however, that “[w]here our approach may suffer from omitted variables bias is if other neighborhood characteristics are changing at the same time that Airbnb listings are changing, and thus our Airbnb density coefficient could be identifying these other neighborhood level changes rather than the causal impact of Airbnb on asking rents.” *Id.*

86. Nicole Gurran & Peter Phibbs, *When Tourists Move In: How Should Urban Planners Respond to Airbnb?*, 83 J. AM. PLAN. ASS’N 80, 88 (2017).

87. SAMAN, AIRBNB, *supra* note 26, at 17–18.

88. *Id.* at 18.

89. *Id.* at 20.

90. *Id.*

that “Airbnb increased the median long-term rent in New York City by 1.4%” between September 2014 and August 2017.⁹¹ On average, a 1.4% increase meant an additional \$380 a year in rent for New York City tenants.⁹² However, in certain neighborhoods, the increase was much higher, with several greater than \$500 a year and an estimated increase of \$780 a year in zip code 10036 (located in Clinton, NYC).⁹³ These conclusions echoed a 2018 report by the New York City Comptroller, which found that “Airbnb [is] responsible for nearly 10 percent of citywide rental increase between 2009 and 2016.”⁹⁴

3. *Changes to Neighborhood Composition*

As landlords convert their units from long- to short-term rentals, striking changes appear in neighborhood character. Where once there were communities of mutually invested neighbors, now there are tourists with needs that may conflict with permanent residents.⁹⁵ As noted in a 2016 study on short-term rentals conducted by the City of New Orleans Planning Commission, the “overarching concern of the opponents with short-term rentals is the commercialization of residential neighborhoods.”⁹⁶

These conflicts result in decreased quality of life for long-term

91. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 2.

92. *Id.*

93. *Id.* at 37.

94. *Comptroller Stringer Report*, *supra* note 23; see also Letter from Bailey Duquette, P.C., to the Office of the N.Y.C. Comptroller, Gen. Counsel’s Office (May 7, 2018) (written on behalf of AirDNA) (on file with author); Abigail Long, *Data Provider AirDNA Sends Cease and Desist Letter to NYC Comptroller*, AIRDNA (May 9, 2018), <http://blog.airdna.co/data-provider-airdna-sends-cease-desist-letter-nyc-comptroller/> [<https://perma.cc/BB63-JMM6>]. AirDNA, “an advocate for short-term rentals,” which owned the data used to generate the report data were used to generate the report, sent a cease and desist letter to Comptroller Stringer alleging the report misrepresented the data and violated the AirDNA terms of service. *Id.* The Comptroller’s office stood by its report noting that it “took an empirical, data-driven approach to assessing this Airbnb effect and shared with the public.” “It’s no surprise that AirDNA would attack a credible report when their own bottom line depends on Airbnb’s success.” Luis Ferré-Sadurní, *Report on Airbnb in New York Made ‘Crucial Errors,’ Data Provider Says*, N.Y. TIMES (May 4, 2018), <https://www.nytimes.com/2018/05/04/nyregion/airbnb-new-york-report-errors.html> [<https://perma.cc/2854-7EFL>].

95. Filippas & Horton, *supra* note 25, at 1 (“If Airbnb hosts bring in loud or disreputable guest but, critically, still collect payment, then it would seem to create a classic case of un-internalized externalities that existing illegal hotel laws are intended to prevent: the host gets the money and her neighbors get the noise.”).

96. CITY OF NEW ORLEANS PLANNING COMM’N, *supra* note 24, at 30, 31 (“There is especially a concern over investors purchasing homes and renting them out only as a short-term rental. They say that these uses are ‘mini-hotels’ because no one ever lives there and should be prohibited in residential districts, like other commercial uses.”).

residents.⁹⁷ As Airbnb listings increase, there is an increase in negative externalities felt by locals. Residents in Bath, England, for example, reported that short-term rentals increase noise levels, unsanitary conditions, and illegal disposal of garbage.⁹⁸ In the popular Silver Lake neighborhood of Los Angeles, the Neighborhood Council has received complaints from residents that include “unfamiliar cars blocking driveways, late night parties on formerly quiet streets, and concerns about child safety in an environment with fewer eyes on the street.”⁹⁹

New Orleans’s Short Term Rental Administration contemplates the effect of rentals on the surrounding neighborhood. In New Orleans, “short-term rentals shall not adversely affect the residential character of the neighborhood nor shall the use generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person’s enjoyment of his or her residence.”¹⁰⁰ Despite this, residents reported being affected by the influx of short-term rentals. At a 2018 City Planning Commission hearing on how Airbnb is affecting quality of life,¹⁰¹ residents of those neighborhoods most highly saturated with Airbnb rentals “described loud, disruptive tourists and said the influx of short-term rentals is hollowing out their neighborhood.”¹⁰² An influx of rental units “reduces the cohesion in the neighborhood, reduces the number of people who are invested in the neighborhood, and damages businesses that serve the local population.”¹⁰³

a. *Influx of Commercial Interests*

A significant portion of the Airbnb market consists of commercial hosts—those with more than one listing. A review of five cities (Austin,

97. See Wegmann & Jiao, *supra* note 27, at 495.

98. Yohannes Lowe & Richa Kapoor, *Councillors Call for New Rules to Stop Rise of ‘Party Homes’ Spreading Around Bath*, TELEGRAPH (Aug. 16, 2019, 4:38 PM), <https://www.telegraph.co.uk/news/2019/08/16/councillors-call-new-rules-stop-rise-party-homes-spreading-around/> [https://perma.cc/DRJ8-VZN8].

99. SAMAAN, AIRBNB, *supra* note 26, at 21.

100. *Short Term Rental Zoning Restrictions*, CITY NEW ORLEANS, <https://www.nola.gov/short-term-rentals/str-zoning-restrictions/> [https://perma.cc/4C26-S7KH].

101. Charles Maldonado, *New Orleans Residents Sound Off on How Airbnb is Affecting Their Lives*, LENS (Apr. 24, 2018), <https://thelensnola.org/2018/04/24/live-coverage-new-orleans-residents-sound-off-on-how-airbnb-is-affecting-them/> [https://perma.cc/2M9Q-KJME].

102. *Id.* (quoting resident Margaret Walker, “I live in the Marigny. It’s all short-term rentals now. I’d like to have my neighbors back.”); see also Peck & Maldonado, *supra* note 3 (“Before Airbnb, you had neighbors you could depend on. They looked out for you. If you went out of town, they’d get your mail, your paper . . . you just had more of a neighborly neighborhood.”).

103. CITY OF NEW ORLEANS PLANNING COMM’N, *supra* note 24, at 31.

Boston, Chicago, San Francisco, and Washington, DC)¹⁰⁴ confirms that the share of the Airbnb market held by hosts with more than one listing is substantial, with 30% in Austin to a full 44% in Boston.¹⁰⁵ While the average number of listings for hosts with more than one listing ranges from 3.0 (Austin, Chicago, and San Francisco)¹⁰⁶ to 3.6 (Boston),¹⁰⁷ the large number of listings held by a single host suggests that commercial operators benefit from lax regulations of short-term rentals. In Austin, for example, a single host operates 140 Airbnb listings.¹⁰⁸

The increased presence of commercial hosts drives changes to neighborhood character. A study of New Orleans neighborhoods by Jane Place Neighborhood Sustainability Initiative¹⁰⁹ found that the majority of Airbnb listings are controlled by a small number of hosts.¹¹⁰ Specifically, of the properties evaluated, 18% of hosts “controlled nearly half of all permitted [short-term rentals]” in New Orleans.¹¹¹ In fact, the twenty-five highest grossing Airbnb hosts in the United states each made more than fifteen million dollars in 2017 off hundreds of units each.¹¹² The most

104. Wegmann & Jiao, *supra* note 27, at 496 (“The data analyzed in this paper was obtained from ‘scrapes’ of Airbnb’s website conducted by New York-based photojournalist and data analyst Murray Cox. . . . Data for each of the five cities was collected in the late spring or early summer of 2015.”).

105. *Id.* at 498 (discussing how of the remaining cities, Chicago’s share was 38%, San Francisco’s share was 34%, and Washington, D.C.’s share was 39%).

106. The analysis looked at available data in 2015, before San Francisco’s new laws regulating short-term rentals were enacted.

107. Wegmann & Jiao, *supra* note 27, at 498 tbl.1 (demonstrating that the average listing per host with more than one listing in Washington, D.C. was 3.5).

108. *Id.* at 497; *see also* Kristóf Gyódi, *An Empirical Analysis on the Sharing Economy: The Case of Airbnb in Warsaw* (Inst. of Econ. Research Working Papers, No. 33, 2017), http://www.badania-gospodarcze.pl/images/Working_Papers/2017_No_33.pdf [<https://perma.cc/QE9B-6FA6>] (“The share of [Airbnb listings in Warsaw, Poland] offered by hosts owning 1 listing is only 47%. Therefore, 53% of the listings are multi-listings, which may mean a strong presence of various real-estate investors and professional agencies that use the Airbnb platform to provide professional services . . . more than a quarter of all accommodations offered via Airbnb belongs to hosts with more than five listings.”).

109. JANE PLACE NEIGHBORHOOD SUSTAINABILITY INITIATIVE, SHORT-TERM RENTALS, LONG-TERM IMPACT: THE CORROSION OF HOUSING ACCESS AND AFFORDABILITY IN NEW ORLEANS 2 (2018), https://storage.googleapis.com/wzukusers/user27881231/documents/5b06c0e681950W9RSePR/STR%20Long-Term%20Impacts%20JPNSI_4-6-18.pdf [<https://perma.cc/Q3Z3-HYFX>] (“Jane Place Neighborhood Sustainability Initiative is a ten-year old Community Land Trust (CLT) and housing rights organization committed to creating sustainable, democratic, and economically-just neighborhoods and communities in New Orleans.”).

110. *Id.* at 14.

111. *Id.* at 4.

112. Patrick Sisson, *Airbnb Business: As Professionals Find Success on the Platform, Is there Still Room for Shares?*, CURBED (Mar. 11, 2018), <https://www.curbed.com/2018/2/21/17032100/airbnb-business-profit-hotel-property-management> [<https://perma.cc/ZB6V-MZNY>].

profitable account earned over forty-four million dollars from listing over one thousands rooms.¹¹³

That professional entities with hundreds, if not thousands, of units are profiting most greatly from the platform is at odds with Airbnb's characterization of itself as way for average homeowners to subsidize their income. Sebastian de Kleer, the founder of Globe Homes and Condos—once identified as one of the largest commercial Airbnb operators in Los Angeles—told the *Los Angeles Times*, “[i]t doesn’t match their PR story to have professionals on their platform.”¹¹⁴ As one Silver Lake Neighborhood Councilmember said, “[i]t’s supposed to be a spare room—not corporate interests taking over our neighborhood and turning everything into a virtual hotel.”¹¹⁵

b. Decrease in Neighborhood Social Capital

“Social capital it is the glue that holds societies together and without which there can be no economic growth or human well-being.”¹¹⁶ The foundation of social capital is that “social networks have value.”¹¹⁷ The concept incorporates “not just warm and cuddly feelings, but a wide variety of quite specific benefits that flow from the trust, reciprocity, information, and cooperation associated with social networks.”¹¹⁸

As Airbnb listings change the character of the neighborhood, and as residents are displaced by the influx of tourists, social capital declines. One elderly tenant in a rent-stabilized apartment in New York remarked that “only seven permanent tenants remain in her building, with her landlord ignoring requests for necessary repairs in favor of gut renovations on apartments functioning as illegal hotels. ‘My friends are

113. *Id.*

114. SAMAAN, SHORT-TERM RENTALS, *supra* note 78, at 2 (“The percentage of on-site hosts has also declined sharply between October 2014 and July 2015. Airbnb regularly implies that the majority of its listings are shared spaces. In October, this claim was consistent with the data (52 percent of hosts were on-site), though misleading (they generated just 11 percent of Los Angeles revenue). That is no longer true. As of July 2015 just 36 percent of listing agents were on-site, and only 16 percent of Airbnb revenue derives from these listings.”).

115. Emily Alpert Reyes, *Los Angeles Gives Hosts, Neighbors Mixed Signals on Short-Term Rentals*, L.A. TIMES (Feb. 7, 2015, 10:00 AM), <https://www.latimes.com/local/california/la-me-adv-illegal-rentals-20150208-story.html> [<https://perma.cc/VVF6-RALZ>].

116. CHRISTIAAN GROOTAERT & THEIRRY VAN BASTELAER, THE WORLD BANK, UNDERSTANDING AND MEASURING SOCIAL CAPITAL: A SYNTHESIS OF FINDINGS AND RECOMMENDATIONS FROM THE SOCIAL CAPITAL INITIATIVE 2 (2001).

117. *Social Capital Primer*, ROBERT D. PUTNAM, <http://robertdputnam.com/bowling-alone/social-capital-primer/> [<https://perma.cc/DA5Y-GY7B>].

118. *Id.*

being replaced by strangers and tourists,' she said."¹¹⁹ As a Nashville resident noted, living in close proximity to an Airbnb accommodation feels uncomfortable all the time because you don't know what to expect . . . If you can imagine the house that was next door to you [growing up], where you probably literally borrowed flour and sugar. What if that wasn't there and that was a hotel? Would you have wanted to grow up next to that?¹²⁰

II. RACIAL IMPLICATIONS OF SHORT-TERM RENTAL PLATFORMS

Short-term rentals affect minority users along multiple dimensions. First, Airbnb users experience discrimination along racial lines. Second, growth in Airbnb listings correlates with gentrification in historically minority-occupied neighborhoods. Third, Airbnb concentrates wealth along racial lines.

A. *Airbnb and Discrimination*

The early years of internet commerce generally relied on anonymity.¹²¹ The true identities of both buyers and sellers were obscured throughout the transaction.¹²² The lack of personal information—gender, race, age, etc.—removed many opportunities for discriminatory practices.¹²³ The growth of the sharing economy has pushed these interactions in the other direction.¹²⁴ Whereas, before identities were protected, the sharing economy now thrives on personal connections.¹²⁵ This helps to diminish the perceived risk associated with transacting with an individual rather

119. Rebecca Fishbein, *Airbnb & City Council Go to War*, GOTHAMIST (Jan. 21, 2015), <https://gothamist.com/news/airbnb-city-council-go-to-war> [<https://perma.cc/53GL-8629>].

120. Victor Luckerson, *Not in My Neighbor's Backyard*, RINGER (Nov. 21, 2017), <https://www.theringer.com/features/2017/11/21/16678002/airbnb-nashville> [<https://perma.cc/6GLN-BYJM>].

121. See generally Fiona Scott Morton, Florian Zettelmeyer & Jorge Silva-Risso, *Consumer Information and Price Discrimination: Does the Internet Affect the Pricing of New Cars to Women and Minorities?* (Nat'l Bureau of Econ. Research, Working Paper No. 8668, 2001), available at <https://www.nber.org/papers/w8668> [<https://perma.cc/2DA2-SLSF>].

122. See generally *id.*

123. See, e.g., *id.* (examining differences in pricing in offline versus online car sales and finding that, when demographic information is withheld from the seller, as is the case in online car sales, minority buyers paid the same price for cars as white buyers).

124. See Eyal Ert et al., *Trust and Reputation in the Sharing Economy: The Role of Personal Photos in Airbnb*, 55 TOURISM MGMT. 62 (2016).

125. *Id.* at 63.

than a business.¹²⁶ Hosts and guests on Airbnb are encouraged to provide their names, photographs, and interesting biographical information. However, the use of personal information provides opportunity for discrimination.

1. *Discrimination Against Guests*

Guests of color experience discrimination using Airbnb in a way that is not possible when making a short-term reservation on an online hotel booking platform. Unlike hotel platforms, where the proprietor does not have the ability to reject a booking when a room is available, Airbnb guests have the ability to decide whether to accept a potential reservation. While federal law prohibits discrimination on the basis of race, sex, color, religion, or national origin,¹²⁷ in practice, no one monitors short-term rental platforms for compliance. This allows hosts, who have wide discretion in accepting guests, to engage in discriminatory practices.

Indeed, there are several high-profile instances of guests of color experiencing discrimination. In 2017, an Asian-American guest was informed by her host that the reservation was cancelled.¹²⁸ The host terminated the reservation by text, stating “I wouldn’t rent to u if u were the last person on earth [sic]. One word says it all. Asian . . . It’s why we have [T]rump.”¹²⁹ Discrimination among Airbnb hosts has become so prevalent that it sparked the social media campaign #AirbnbWhileBlack.¹³⁰

These individual experiences are corroborated by a Harvard Business School study that found “applications from guests with distinctively African-American names are 16 percent less likely to be accepted relative to identical guests with distinctly white names.”¹³¹ The results were consistent across a variety of factors including sex of the host, whether the property was shared or un-hosted, the experience level of the host,

126. Kakar et al., *supra* note 29, at 28.

127. *See, e.g.*, 42 U.S.C. § 3604 (2012).

128. Amy B. Wang, *Airbnb Host Who Stranded Guest Because of Race Ordered to Take Class in Asian American Studies*, WASH. POST (July 14, 2017), <https://www.washingtonpost.com/news/business/wp/2017/07/14/airbnb-host-who-stranded-guest-because-of-race-ordered-to-take-class-in-asian-american-studies/> [<https://perma.cc/64G9-GZ37>].

129. *Id.*

130. *See generally* Shankar Vedantam, *#AirbnbWhileBlack: How Hidden Bias Shapes the Sharing Economy*, NPR (Apr. 26, 2016), <https://www.npr.org/2016/04/26/475623339/-airbnbwhileblack-how-hidden-bias-shapes-the-sharing-economy> [<https://perma.cc/AEM3-8LVP>].

131. Edelman et al., *supra* note 28, at 1–2 (“To test for discrimination, we conduct[ed] a field experiment in which we inquire[d] about the availability of roughly 6,400 listings on Airbnb across five cities. Specifically, we create[d] guest accounts that differ by name but [were] otherwise identical . . . one distinctively African American and the other distinctively white.”).

diversity of the neighborhood, and price of the listing.¹³²

The frequency of discrimination against would-be guests of color prompted action by the Congressional Black Caucus (CBC). In a letter to the Airbnb's CEO, the CBC made plain its "concerns regarding the recent reports of the exclusion of many African Americans and other minorities from booking rooms on your site due to their race."¹³³ The CBC's letter asked Airbnb four questions: (1) "[w]hy is it seemingly so easy to discriminate against someone via [the] platform?"; (2) whether Airbnb has data related to discrimination on its platform; (3) "what is Airbnb doing at present to address this glaring issue of discrimination?"; and (4) whether Airbnb would "consider implementing some of the common sense measures to avoid discrimination" such as reducing the prominence of user names and photos, increasing Instant Book, and regularly notifying users of Airbnb's anti-discrimination policy.¹³⁴

2. *Discrimination against hosts*

Like guests, minority hosts experience discrimination on short-term rental platforms. For such hosts, this manifests in a lower listing price relative to comparable accommodations marketed by white hosts.¹³⁵ In New York City, "[t]he raw data show that non-black and black hosts receive strikingly different rents: roughly \$144 versus \$107 per night, on average," even when controlling for "the main characteristics of the listing itself."¹³⁶ Follow-up research on discrimination against Asian American hosts in New York City¹³⁷ and San Francisco¹³⁸ reached similar

132. *Id.* at 7.

133. Letter from G.K. Butterfield, Chairman, Cong. Black Caucus, and Emanuel Cleaver, II, Member, Congress, to Brian Chesky, CEO, Airbnb, Inc. (June 16, 2016), <https://cleaver.house.gov/sites/cleaver.house.gov/files/16.06.2016%20Airbnb%20Letter.pdf> [<https://perma.cc/A9N7-5VSM>].

134. *Id.*

135. Edelman & Luca, *supra* note 29, at 4.2; *see also* Kakar et al., *supra* note 29, at 36; Mo, *supra* note 29, at section VI.

136. Edelman & Luca, *supra* note 29, at 4.2 ("Of course, many factors influence the rents received by hosts—and race is likely correlated with some of these factors. One might be concerned that apparent racial differences actually result from unobserved differences between listings. While we cannot completely eliminate this concern, we mitigate the issue by controlling for all of the information that a guest sees when examining Airbnb search results and listing details.")

137. John Gilheany et al., *The Model Minority? Not on Airbnb.com: A Hedonic Pricing Model to Quantify Racial Bias Against Asian Americans*, TECH SCI. (Sept. 1, 2015), <https://techscience.org/a/2015090104/> [<https://perma.cc/H4NV-BMCU>] (finding that "on average Asian hosts earn . . . 20% less than White hosts for similar rentals").

138. Kakar et al., *supra* note 29, at 36–38 ("Neither the controls for neighborhood racial composition and median income nor the control for occupancy level[] have any meaningful impact

conclusions.

There are several suggested explanations for the pricing differential. Minority hosts may “price lower to increase the pool in interested guests . . . and maintain their target occupancy.”¹³⁹ This may also “signal a response to an anticipation of racial discrimination in the online marketplace.”¹⁴⁰ Alternatively, “minority hosts could value a larger pool of potential guests as a way to be more selective” in choosing guests.¹⁴¹ “White hosts may be pricing high in order to create a self-selection pool of renters that better meet the profile of guests they wish to have and engage with socially.”¹⁴² These pricing differentials have a tremendous impact on the ability of minority hosts to realize Airbnb’s economic benefits, such as additional home value and an increase in home value.

B. *Airbnb and Gentrification*

In light of the relationship between Airbnb and reduction in long-term affordable rental housing from the market, there are questions about whether Airbnb contributes to gentrification. British sociologist Ruth Glass coined the term “gentrification” in 1964 to describe the displacement of the “working class” from the center city by new middle-class residents.¹⁴³ Today, however, scholars understand that gentrification is no longer confined to “the inner city or First World metropolises.”¹⁴⁴ Nor is it limited merely to residential changes, but rather includes multiple

on the estimated differences [O]n average, Asian and Hispanic Airbnb hosts charge 8–10% lower prices relative to White hosts on equivalent rental properties, after controlling for all renter-available information on rental unit characteristics, as well as additional information on neighborhood property values, area demographics, and occupancy rates This translates to revenue gap of about \$4,100 annually.”).

139. *Id.* at 36.

140. *Id.*

141. *Id.*

142. *Id.*

143. Ruth Glass, *Introduction: Aspects of Change*, in LONDON: ASPECTS OF CHANGE, at xviii-xix (1964) (“One by one, many of the working class quarters of London have been invaded by the middle classes—upper and lower. Shabby, modest mews and cottages—two rooms up and two down—have been taken over, when their leases have expired, and have become elegant, expensive residences. Larger Victorian houses, downgraded in an earlier or recent period—which were used as lodging houses or were otherwise in multiple occupation—have been upgraded once again. Nowadays, many of these houses are being subdivided in costly flats or ‘houselets’ (in terms of the new real estate snob jargon). The current social status and value of such dwellings are frequently in inverse relation to their size and in any case enormously inflated by comparison with previous levels in their neighborhoods. Once this process of ‘gentrification’ starts in a district it goes on rapidly until all or most of the original working class occupiers are displaced and the social character of the district is changed.”).

144. LORETTA LEES, TOM SLATER & ELVIN WYLY, GENTRIFICATION, at xvii (2008).

facets. Gentrification is a “highly dynamic process . . . not amendable to overly restrictive definitions; rather than risk construing our understanding of this developing process by imposing a definitional order, we should strive to consider the broad range of processes that contribute to this restructuring, and to understand the links between seemingly separate processes.”¹⁴⁵

1. *Airbnb as a Gentrification Tool*

There is a strong correlation between short-term rentals and gentrification. A study of New York City Airbnb listings found that in many parts of the city, “hosts of frequently rented entire-home Airbnb listings earn 200% or more [than] the median long-term neighborhood rent, and these areas are 72% non-white.”¹⁴⁶ This creates strong economic incentives for converting long-term rental accommodations to short-term rentals in communities of color.

Studies suggest that Airbnb disproportionately benefits white hosts even in predominantly Black neighborhoods. A 2017 study by Inside Airbnb examined the effect of Airbnb on predominantly Black neighborhoods in New York City.¹⁴⁷ According to the study, “across all 72 predominantly Black New York City neighborhoods, Airbnb hosts are 5 times more likely to be white. In those neighborhoods, the Airbnb host population is 74% white, while the white resident population is only 13.9%.”¹⁴⁸

Despite the controversy, the conclusions reached by the Inside Airbnb data are supported by other research. A New York State Office of the Attorney General report found that “gentrified or rapidly gentrifying neighborhoods primarily in Manhattan account[] for the vast majority of revenue from private short-term rentals in New York City.”¹⁴⁹ Similarly a

145. Neil Smith & Peter Williams, *Alternatives to Orthodoxy: Invitation to a Debate*, in GENTRIFICATION OF THE CITY 3 (Neil Smith & Peter Williams eds., 1986).

146. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 34.

147. Murray Cox, *The Face of Airbnb, New York City: Airbnb as a Racial Gentrification Tool*, INSIDE AIRBNB (Mar. 1, 2017), <http://insideairbnb.com/face-of-airbnb-nyc/> [<https://perma.cc/8F9D-P7YG>].

148. *Id.* Airbnb initially published criticism of the report but has since taken it off their website. In response, Murray Cox responded in detail to each of Airbnb’s criticisms. Murray Cox, *A Year Later: Airbnb as a Racial Gentrification Tool*, INSIDE AIRBNB (Jan. 30, 2018), <http://insideairbnb.com/face-of-airbnb-nyc/a-year-later-airbnb-as-racial-gentrification-tool.html> [<https://perma.cc/5ZMG-RF4F>]. Mr. Cox specifically addresses critiques that the research is not peer reviewed, uses racial coding rather than self-identification, uses computer software to racially identify hosts, engages in racial profiling, lacks a control group, and fails to address disparities between neighborhoods analyzed. *Id.*

149. N.Y. STATE OFFICE OF THE ATT’Y GEN., *supra* note 20, at 3 (“[T]he Lower East Side/Chinatown, Chelsea/Hell’s Kitchen, and Greenwich Village/SoHo—accounted for approximately \$187 million in revenue to hosts, or more than 40 percent of private stay revenue to

study of the effect of short-term rentals on New Orleans noted that while neighborhood impacts vary, what happens in one neighborhood affects other neighborhoods—middle-income residents priced out of a rapidly gentrifying neighborhood might end up moving to a lower-cost neighborhood, which could cause the displacement of low-income residents from their once affordable community as costs rise with the demand for housing by a higher-income group.¹⁵⁰

Since 2012, New Orleans rents have increased by twenty to twenty-five percent.¹⁵¹ Despite increased rental rates, landlords realize greater economic gain from short-term rentals to tourists than renting to long-term residents, especially in gentrifying neighborhoods.¹⁵²

2. Resident Displacement

A recent study of holiday rentals in Barcelona similarly examined the “conversion of housing into tourist accommodation” by platforms like Airbnb.¹⁵³ The Barcelona study found that, because “long-term residents represent a barrier to capital accumulation,” short-term rentals cause and accelerate three distinct types of displacement: direct displacement (“involuntary out-migration from a place”), exclusionary displacement (“difficulties in finding affordable accommodation in gentrifying areas”), and displacement pressures (“changes at the neighborhood scale such as loss of social networks, stores, or public facilities that are central to everyday life”).¹⁵⁴ Taken together, “the growth of tourism and the consequent conversion of housing into accommodation for visitors”

hosts during the Review Period. By contrast, all the reservations in three boroughs (Queens, Staten Island, and the Bronx) brought hosts revenue of \$12 million—less than three percent of the New York City total.”).

150. JANE PLACE NEIGHBORHOOD SUSTAINABILITY INITIATIVE, *supra* note 109, at 7.

151. *Id.*

152. *Id.* at 22.

153. Augustin Cocola Gant, *Holiday Rentals: The New Gentrification Battlefront*, 21 SOC. RESEARCH ONLINE 1, 3 (2016).

154. *Id.* at 1, 2. In defining the three types of displacement, Gant relies on Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 28 J. URB. & CONTEMP. L. 195 (1985); Kathe Newman & Elvin Wyly, *The Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City*, 43 URB. STUD. 23 (2006); Geoffrey DeVerteuil, *Evidence of Gentrification-Induced Displacement Among Social Services in London and Los Angeles*, 48 URB. STUD. 1563 (2011); Tom Slater, *Missing Marcuse: On Gentrification and Displacement*, 13 CITY 292 (2009); and Mark Davidson & Loretta Lees, *New-Build Gentrification: Its Histories, Trajectories, and Critical Geographies*, 16 POPULATION, SPACE & PLACE 335 (2010). See Gant, *supra* note 153, at 1, 2.

results in collective displacement.¹⁵⁵

The Barcelona study does not expressly analyze the effects of displacement along racial lines. However, taken with the New York and New Orleans studies, it supports the notion that Airbnb produces financial rewards for hosts at the expense of low-income communities of color; as residents are priced out of middle-class neighborhoods, residents relocate to down-market neighborhoods. This creates a vicious cycle wherein rents increase in the new neighborhoods, pushing out long-term residents. Even more troubling, gentrification correlates with “shorter life expectancy; higher cancer rates; more birth defects; greater infant mortality; and higher incidence of asthma, diabetes, and cardiovascular disease.”¹⁵⁶ Given the incentive for hosts to convert long-term accommodations into short-term rentals, and data from U.S. cities that suggests high profitability of listing units in gentrifying neighborhoods, it is likely that areas occupied by residents of color may experience significant changes without realizing the monetary benefits. Without policy intervention, these effects will accelerate and intensify.

C. Concentration of Wealth Along Racial Lines

Discrimination on short-term rental platforms, combined with gentrification, functions to displace low-income and minority residents while simultaneously concentrating wealth among white property owners.¹⁵⁷ In predominantly black New York City neighborhoods, white Airbnb hosts were found to have earned more than three times as much as black hosts in the same neighborhoods; white hosts earned \$159.7 million while black hosts earned only \$48.3 million.¹⁵⁸

Given that short-term rentals accelerate gentrification and the persistent

155. Gant, *supra* note 153, at 7 (“Collective displacement needs to be seen as the final consequences of a process in which all forms of displacement come together.”).

156. *Health Effects of Gentrification*, CTRS. FOR DISEASE CONTROL & PREVENTION (2009), www.cdc.gov/healthyplaces/healthtopics/gentrification.htm [<https://perma.cc/VQQ4-BSVX>]; see generally Sungwoo Lim et al., *Impact of Residential Displacement on Healthcare Access and Mental Health Among Original Residents of Gentrifying Neighborhoods in New York City*, 12 PLOS ONE 1 (2017) (finding, in a study of residential displacement in New York City, that compared with residents who stayed in gentrifying neighborhoods, displaced residents who moved to non-gentrifying, poor neighborhoods had significantly higher rates of emergency department visits, hospitalizations, and mental health-related visits for about five years after displacement).

157. Cox, *supra* note 147. As Cox’s report found in New York City, “Black neighborhoods with the most Airbnb use are racially gentrifying, and the (often illegal) economic benefits of Airbnb accrue disproportionately to new, white residents and white speculators; while the majority of Black residents in those communities suffer the most from the loss of housing, tenant harassment and the disruption of their communities.” *Id.*

158. *Id.*

discrimination on the platform, unchecked Airbnb activity risks eroding minority neighborhoods while locking people of color out of beneficial services and opportunities to accumulate wealth. There is a “powerful economic incentive for landlords to displace tenants and convert apartments to Airbnb de facto hotels in communities of color.”¹⁵⁹ And yet, due in part to discrimination and lower average asking rents, minority hosts do not have the same opportunities to reap financial rewards from listing their units. As such, wealth is accruing to the white community at the expense of minority residents. To put it another way, minority Airbnb hosts experience negative externalities associated with short-term rentals without the same degree of positive effects as their Caucasian counterparts.

III. CURRENT REGULATIONS GOVERNING SHORT-TERM RENTAL ACCOMMODATIONS

Given their localized effects, regulations of short-term rentals typically occur at the city level. However, spurred by efforts of municipal ordinances, many state governments have taken measures to regulate the effects of short-term rentals. Arizona,¹⁶⁰ Idaho,¹⁶¹ Indiana,¹⁶² Florida,¹⁶³ Tennessee,¹⁶⁴ and Wisconsin¹⁶⁵ enacted legislation to prevent local jurisdictions from prohibiting or unreasonably restricting all short-term

159. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 3 (“[T]he fastest-growing neighborhoods for Airbnb (particularly Harlem and Bedford Stuyvesant) are disproportionately African American.”).

160. Howard Fischer, *Despite Local Objections, New Year’s Laws Include Airbnb Expansion*, ARIZ. DAILY SUN (Dec. 31, 2016), https://azdailysun.com/news/local/despite-local-objections-new-year-s-laws-include-airbnb-expansion/article_52d485d5-79cd-567f-943c-bff142e9493c.html [<https://perma.cc/5PAC-BCFB>].

161. David Staats, *Airbnb Cheers as Idaho Bill to Limit Local Regulation of its Hosts’ Homes Becomes Law*, IDAHO STATESMAN (Apr. 13, 2017, 8:54 AM), <https://www.idahostatesman.com/news/business/article143778169.html> (last visited Nov. 11, 2019).

162. H.B. 1035, Ind. Gen. Assemb., Reg. Sess. (Ind. 2018).

163. S.B. 356, 2014 Leg., 116th Reg. Sess. (Fla. 2014). Florida’s 2014 law does, however, grandfather in any local prohibitions enacted prior to June 1, 2011. “A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.” *Id.*

164. TENN. CODE ANN. § 13-7-603 (2018).

165. WIS. STAT. § 66.0615 (2019).

rentals.¹⁶⁶ Other states have considered similar legislation.¹⁶⁷ Such legislation is typically predicated on two concerns: (1) protecting the rights of property owners; and (2) creating additional revenue. As the Wisconsin Court of Appeals noted when considering whether the use of a property as a short-term rental constitutes commercial activity, “public policy favors the free and unrestricted use of property.”¹⁶⁸ Further, many states view short-term rental regulations as an opportunity to spur economic gains through increased tourist dollars. As then-Senator Greg Steube, author of a Florida bill noted, “[v]acation rentals play a significant, unique, and critical role in Florida’s tourism industry, and that role is different from that of public lodging establishments”¹⁶⁹ Many state short-term rentals laws also include provisions for licensing fees and/or taxes to be paid to the state by hosts, thereby providing another source of income for the government.¹⁷⁰

In contrast to these states, others have enacted legislation to curb the proliferation of short-term rental properties. New York’s Multiple Dwelling Law prohibits renting certain properties for periods of fewer than thirty days when the permanent resident is absent.¹⁷¹ Whether to restrict Airbnb or prevent localities from taking any such actions, policies enacted at the state level override steps taken by local jurisdictions to address the externalities associated with Airbnb as well as implicate preemption law. They also raise questions about the appropriateness of a state legislature micro-managing housing issues felt most keenly at the neighborhood level.

166. In Nebraska, the governor vetoed an omnibus bill that would have, among other things prohibited total bans on short-term rentals. However, in vetoing the omnibus legislation, Governor Ricketts noted specific provisions that he supported, including those “that would provide clarity regarding the taxation and regulation of online hosting platforms, such as the Airbnb property rental marketplace, [which] are valuable and needed additions to Nebraska law.” Letter from Pete Ricketts, Governor, Neb., to President, Speaker, and Members of the Legislature (Apr. 23, 2018), <https://governor.nebraska.gov/sites/governor.nebraska.gov/files/doc/press/LB%20873%20%282018%29.pdf> [<https://perma.cc/LV28-VC4R>].

167. For example, if enacted, Georgia’s recently introduced H.B. 523 will “prohibit local governments from regulating the use of certain real estate as short-term rental property.” H.B. 523, 116th Cong. (Ga. 2019–2020).

168. *Forsee v. Neuschwander*, 900 N.W.2d 100, 104 (Wis. Ct. App. 2017) (citing *Crowley v. Knapp*, 94 N.W.2d 421, 434 (Wis. Sup. Ct. 1980)).

169. Steven Lemongello, *Florida Bill Would Prevent Local Restrictions on Vacation Rentals*, ORLANDO SENTINEL (Jan. 2, 2018), <https://www.orlandosentinel.com/politics/os-vacation-rental-bill-20180102-story.html> [<https://perma.cc/8PPP-2MB8>].

170. Savanna Gilmore, *More States Taking Action on Short-Term Rentals*, 26 NAT’L CONF. ST. LEGIS. LEGISBRIEF (Sept. 10, 2018), <http://www.ncsl.org/research/fiscal-policy/more-states-taking-action-on-short-term-rentals.aspx> [<https://perma.cc/BC29-3CAD>]; see also *infra* section III.B.

171. N.Y. MULTIPLE DWELLING L. art. 1, § 4.8 (2010).

When states and localities enact laws governing short-term rentals, it raises questions about whether short-term rental accommodations should be understood within the realm of landlord and tenant law or as licensing agreements. Most jurisdictions impose hybrid regulations. As stakeholders grapple with the effects of Airbnb on their communities, they struggle to reap the benefits that accrue to individual hosts and guests without incurring negative social costs. As such, policymakers have adopted a variety of policies, including host accountability measures, restrictions on eligible hosts, rental duration, and available locations, monitoring and enforcement, and policies to address discrimination and the concentration of wealth along racial lines.

A. *Traditional Conceptualizations of Property Rights*

Property rights are often understood as a “bundle of rights that may be exercised with respect to that object—principally the rights to possess the property, to use the property, to exclude others from the property, and to dispose of the property by sale or by gift.”¹⁷² However, while a property owner has broad rights with respect to the disposition of the property, the legal system governs “how these decisions must or may be carried out.”¹⁷³ Contracting to let a property via a homesharing platform like Airbnb raises questions about which rights in the “bundle” apply to the agreement.

Are a host and guest more akin to a landlord and tenant or a hotel and lodger? For its part, Airbnb is careful to use language that falls somewhere in between. Airbnb fastidiously uses the terms “host,” “guest,” and “share” to discuss the arrangement between parties. Instead of renting a space, a host can “share any space . . . from a shared living room to a second home and everything in-between” with guests.¹⁷⁴ Despite this careful use of language, whether a short-term rental arrangement is a landlord/tenant agreement, a hotel/lodger agreement, or something in the middle informs what regulations apply to both the host and the guest.

172. Moore v. Regents of Univ. of Cal., 793 P.2d 479, 509 (Cal. Sup. Ct. 1990) (Mosk, J. dissenting) (internal quotations omitted); Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 711 (1986) (“The right to exclude others has often been cited as the most important characteristic of private property. This right, it is said, makes private property fruitful by enabling owners to capture the full value of their individual investments, thus encouraging everyone to put time and labor into the development of resources.”).

173. Lawrence M. Freidman, *The Law of the Living, the Law of the Dead: Property, Succession, and Society*, WIS. L. REV. 340, 341 (1966).

174. AIRBNB, https://www.airbnb.com/host/homes?from_nav=1 (last visited Dec. 11, 2019).

1. Residential Leasehold Interest

The relationship between host and guest may be viewed as a residential leasehold interest. Traditionally, a leasehold estate is a transfer of interest in a property from the landlord to the tenant, thereby giving the tenant “exclusive right to possession of the premises . . . [while the landlord] retained a future interest.”¹⁷⁵ Historically, this relationship was governed by real property law. However, in the 1960s, courts began to apply contract law to landlord-tenant relationships.¹⁷⁶ Contemporary law “view[s] the lease as a hybrid, governed by *both* property law and contract law.”¹⁷⁷ As a result, tenants enjoy a wide variety of rights including, habitability of the premises, and due process during eviction, among others.

In jurisdictions that view Airbnb relationships akin to those of landlords and tenants, hosts are held to the same standards as landlords. Several websites educate hosts on how to evict an Airbnb guest who refuses to leave. In Palm Springs, California, an Airbnb guest was treated as a renter under California law because he leased the unit for more than thirty days.¹⁷⁸ As a result, the Airbnb host, viewed as a landlord under California law, was forced to initiate eviction proceedings to remove the guest from her home.¹⁷⁹

Following this and similar incidents, Airbnb updated its website to provide information to hosts on “things [the host] should consider before hosting long-term guests.”¹⁸⁰ Airbnb cautions that

in most states and localities in the United States, guests who stay in a home or apartment for one month or longer . . . may establish rights as a tenant. Generally, this means that the local tenancy laws could protect them, and you may not be able to remove them from your property without proceeding through required eviction

175. SPRANKLING & COLLETTA, *PROPERTY: A CONTEMPORARY APPROACH* 437 (2012).

176. *Id.* (noting that this change “reflected a practical reality: landlords and tenants usually think of the lease as a contract, not as an instrument conveying an estate in land”).

177. *Id.*

178. Debra Cassens Weiss, *Airbnb Guest Won't Leave, Forcing Condo Owner to Begin Eviction Proceedings*, A.B.A. J. (July 23, 2014), http://www.abajournal.com/news/article/airbnb_guest_wont_leave_forcing_condo_owner_to_begin_eviction_proceedings [<https://perma.cc/GPQ5-JHHA>].

179. *Id.*

180. *What Are Some Things I Should Consider Before Hosting Long-Term Guests?*, AIRBNB, <https://www.airbnb.com/help/article/805/what-are-some-things-i-should-consider-before-hosting-long-term-guests> [<https://perma.cc/58LL-8KWL>].

processes in court.¹⁸¹

Landlord-tenant law also implicates renters who choose to sublease their properties on Airbnb. It is not uncommon for renters themselves to sublease their homes to garner additional income. In such instances, the tenant-host may be subject to the same rights and responsibilities as other landlords. This activity may be prohibited by the lease between the tenant-host and her landlord, the owner of the property. New York City addressed the issue of whether an Airbnb guest is a subtenant or a roommate under local ordinances.¹⁸² In finding that the tenant-host violated her lease agreement by renting out a room in her rent-stabilized apartment for 338 nights on a homesharing platform at 72% more than her monthly rent, the Court stated that transient Airbnb guests are not legal roommates.¹⁸³ Instead, Airbnb guests are properly classified as subtenants and, as such, rent was subject to the 10% subletting limit under New York City's Rent Stabilization Code.¹⁸⁴

2. *Innkeepers and Lodgers*

Whereas a lease transfers the exclusive use of property from one person to another (for example, an innkeeper and lodger operate pursuant to a license) “a personal privilege to use the land of another for some specific purpose.”¹⁸⁵ A hotel and guest relationship is correctly understood under this framework. Several regulations are imposed on hotels including anti-discrimination regulations, ADA compliance, tax collection, health and safety standards, and commercial liability insurance, among others.

Currently, most jurisdictions do not hold Airbnb listings to the same battery of regulations to which hotels are subjected. Of course, the absence of these regulations is part of what allows Airbnb to price accommodations at rates below those of hotels. A two-bedroom Airbnb may cost the same or even less than a standard hotel room in many jurisdictions. Hotel, motel, and bed-and-breakfast industry opponents note that the lack of hotel taxes combined with the unlicensed nature of short-term rentals is effectively a 13% discount on price.¹⁸⁶ Further, the absence of traditional commercial zoning regulations means that while hotels are confined to areas designed for commercial activity, short-term

181. *Id.*

182. *Goldstein v. Lipetz*, 150 A.D.3d 562 (N.Y. App. Div. 2017).

183. *Id.* at 566.

184. *Id.* at 575.

185. SPRANKLING & COLLETTA, *supra* note 175, at 449.

186. CITY OF NEW ORLEANS PLANNING COMM'N, *supra* note 24, at 31.

rentals are largely unrestricted.¹⁸⁷

3. *Challenging Regulations as an Impermissible Taking*

The degree to which the government may restrict a landowner's use of her own property is a longstanding legal question that predates the era of online homesharing platforms. In *Cope v. City of Cannon Beach*,¹⁸⁸ the Supreme Court of Oregon considered whether a municipal zoning ordinance prohibited transient occupancy was a taking under the Constitution.¹⁸⁹ At the time,¹⁹⁰ under Ordinance 92-1, the City of Cannon Beach prohibited transient occupancy (defined as a rental for fewer than fourteen days), prohibited the creation of new transient occupancy uses, and required existing transient occupancy uses to be phased out by 1997.¹⁹¹ Landowners challenged the ordinance as an impermissible taking without providing just compensation in violation of the Fifth and Fourteenth Amendments.¹⁹²

The Court applied the Supreme Court's analysis in *Agins v. Tiburon*,¹⁹³ noting that a regulation "effects a taking if the ordinance does not substantially advance legitimate state interests . . . or denies an owner economically viable use of his land."¹⁹⁴ In finding for the City of Cannon Beach, the Supreme Court of Oregon stated that the ordinance substantially advanced the legitimate governmental interest of "securing affordable housing for permanent residents and in preserving the character

187. *Id.*

188. 855 P.2d 1083 (Or. Sup. Ct. 1993).

189. *Id.* at 1085.

190. On November 5, 2004, the Cannon Beach City Council adopted Ordinance 04-09A, which established new regulations when renting a dwelling for thirty days or less. Under the new law, individuals can apply for a 14-day short-term rental permit, which authorizes the permitted party "to rent a dwelling to one tenancy group in a 14-day period." CITY OF CANNON BEACH, OBTAINING A FIVE YEAR UNLIMITED SHORT-TERM RENTAL PERMIT 4 (2017), https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/9711/five-year_handout.pdf [<https://perma.cc/5VC8-97B7>].

191. *Cope*, 855 P.2d at 1084.

192. *Id.* at 1083–84. Ordinance 92-1 included a hardship provision that "provides an exemption for property owners 'who can substantiate that an investment made exclusively in the nonconforming use of a dwelling for transient occupancy can not be adequately amortized' within the five-year period between adoption of the ordinance and the required termination date." *Id.* at 1084.

193. 477 U.S. 255 (1980).

194. *Agins v. Tiburon*, 477 U.S. 255, 260–61 (1980) ("The determination that governmental action constitutes a taking is, in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of state power in the public interest. Although no precise rule determines when property has been taken, the question necessarily requires a weighing of private and public interests." (internal citations omitted)).

and integrity of residential neighborhoods” and that there was a nexus between the regulation and interest served.¹⁹⁵

The court further stated that the ordinance did not deny owners an economically viable use of property.¹⁹⁶ The court did, however, concede that rentals of dwellings for periods of fourteen days or more and owners residing in their property themselves “may not be as profitable as are shorter-term rentals . . . they are economically viable uses.”¹⁹⁷ Contemporary ordinances banning or curtailing Airbnb use have yet to be challenged as a taking. Given, however, the effects of Airbnb on the local housing market, as well as its role in accelerating gentrification, it is likely that a court applying the *Cannon Beach* and *Agins* analysis would find for the local jurisdiction, rather than the Airbnb host.

4. *Is Mrs. Murphy Hosting?*

Short-term rental agreements entered into via platforms like Airbnb raise issues of race and permissible discrimination. The Fair Housing Act (FHA)¹⁹⁸ prohibits discrimination on the basis of race, color, religion, sex, familial status, or national origin when renting housing.¹⁹⁹ However, under the “Mrs. Murphy exemption,”²⁰⁰ dwellings intended to be occupied by four or fewer families are exempt if the owner lives in one of the units.²⁰¹ While this exemption effectively allows landlords of owner-occupied dwellings to discriminate when *selecting* tenants, it does not allow them to do so in *advertising* available units.²⁰² If viewed as a lease agreement, the Mrs. Murphy exemption would allow most on-site hosts, or those individuals hosting owner-occupied housing, to discriminate against guests seeking accommodations on short-term rental platforms.

In contrast, Title II of the Civil Rights Act entitles all persons “to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public

195. *Cope*, 855 P.2d at 1086.

196. *Id.* at 1087.

197. *Id.*

198. 42 U.S.C. § 3601 (2012).

199. *Id.* § 3604(a) (rendering it unlawful “[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.”).

200. For a discussion of the history, legacy, and effect of the Mrs. Murphy exemption, see generally James D. Walsh, *Reaching Mrs. Murphy: A Call for the Repeal of the Mrs. Murphy Exemption to the Fair Housing Act*, 34 HARV. C.R.-C.L. L. REV. 605 (1999).

201. 42 U.S.C. § 3603(b)(2).

202. Walsh, *supra* note 200, at 606 n.5.

accommodation.”²⁰³ Public accommodations include “any inn, hotel, motel, or other establishment which provides lodging to transient guests.”²⁰⁴

Scholars Nancy Leong and Aaron Belzer argue that platforms like Airbnb should be viewed as public accommodations and therefore subject to Title II of the Civil Rights Act. As Leong and Belzer note, “if the traditional economy business that a [platform economy business] is replacing is a public accommodation, then it makes sense to categorize the two in the same way. To act differently would move an increasingly large number of businesses outside the scope of our civil rights enforcement mechanisms.”²⁰⁵ This issue is particularly salient in light of discriminatory practices among Airbnb users and concentrations of wealth along racial lines effected by short-term rental accommodations.

B. *Host Accountability Measures*

1. *Updated Zoning Laws and Licensing Requirements*

In response to the growth of homesharing platforms, many jurisdictions have created a new type of land use in their zoning ordinances. The new zoning categories accommodate short-term rental land use, reflecting the multifaceted purposes of the properties. When coupled with corresponding licensing requirements, the creation of a short-term rental land use category creates a new revenue stream for the jurisdiction.

Pursuant to its Shared City Initiative,²⁰⁶ the City of Portland partnered with Airbnb to create a regulatory framework to levy and collect taxes, as well as a new category of housing in its planning code—the Accessory Short-Term Rental (ASTR).²⁰⁷ This new category intends “to allow for a

203. 42 U.S.C. § 2000(a).

204. *Id.* § 2000(b)(1). However, a public accommodation does not include “an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.” *Id.*

205. Nancy Leong & Aaron Belzer, *The New Public Accommodations: Race and Discrimination in the Platform Economy*, 105 GEO. L.J. 1271, 1301 (2017) (noting that “[l]ike the public accommodations traditionally covered by Title II of the Civil Rights Act, [platform economy businesses] are held out as open to the public, so ensuring that such entities do not engage in race discrimination comports with the purpose of that legislation Finally, analogous precedent from the disability arena favors a conclusion that [platform economy businesses] are public accommodations”).

206. Brian Chesky, *Shared City*, MEDIUM (Mar. 26, 2014), <https://medium.com/@bchesky/shared-city-db9746750a3a> [<https://perma.cc/V3PH-FH7M>].

207. NAT’L LEAGUE OF CITIES, PORTLAND HOMESHARING REGULATIONS <https://www.nlc.org/portland-homesharing-regulations> [<https://perma.cc/QE5X-C8D5>]; *Accessory Short-Term Rental Permits*, CITY OF PORTLAND, OR., <https://www.portlandoregon.gov/bds/65603> [<https://perma.cc/ED9M-5XYT>]. The Shared City initiative also includes a program through which

more efficient use of residential structures, without detracting from neighborhood character, and ensuring that the primary use remains residential” while at the same time “provid[ing] an alternative form of lodging for visitors who prefer a residential setting.”²⁰⁸

Under Portland’s ordinance, “an accessory short-term rental is where an individual or family resides in a dwelling unit and rents bedrooms to overnight guests for fewer than 30 consecutive days.”²⁰⁹ There are two types of ASTRs. The Type A ASTR applies to single family homes “where the resident rents no more than 2 bedrooms to 5 overnight guests.”²¹⁰ To operate this type of ASTR, a host must secure a short-term rental permit, which “includes a safety inspection as part of the permit approval and neighborhood notification.”²¹¹ Under a Type A ASTR, the “resident must occupy the dwelling unit for at least 270 days during each calendar year, and . . . the bedrooms . . . must be within the dwelling unit the resident occupies.”²¹²

In contrast, the Type B ASTR is one where the resident rents between 3 and 5 bedrooms to overnight guests.²¹³ The City assumes that “most Type B Accessory Short-Term Rentals will be operated in 1 & 2 Dwelling Structures” and “applies if [the] dwelling unit is in a structure with 1 or 2 dwelling units” even if it is part of a multi-dwelling development.²¹⁴ As with a Type A ASTR, the operator of a Type B ASTR must acquire a permit and “occupy the dwelling unit for at least 270 days” each calendar year, and the “bedrooms rented to guests must be within the dwelling unit that the resident occupies.”²¹⁵

Similarly, New Orleans created new categories of property to regulate the effects of Airbnb. Its Short-Term Rental (STR) Administration is “responsible for licensing of short-term rental facilities and enforcement

hosts can donate a portion of their Airbnb earnings to a local cause. Chesky, *supra* note 206. These donations are matched by Airbnb as a percentage of the company’s fees. *Id.*

208. PORTLAND, OR., PLANNING CODE § 33.207.010 (2017).

209. *Id.* § 33.207.020(A).

210. *Accessory Short-Term Rental Permits*, *supra* note 207.

211. *Id.*

212. PORTLAND, OR., PLANNING CODE § 33.207.040(A)(1).

213. PORTLAND, OR., PLANNING CODE § 33.207.050. *See also Accessory Short-Term Rental Permits*, *supra* note 207 (“Proposals that include rental of 6 or more guestrooms at one time are not considered Accessory Short-Term Rentals. Additional Commercial Building Code and Zoning Code regulations apply.”).

214. *Type B Accessory Short Term Rentals (3–5 Bedrooms)*, CITY OF PORTLAND, OR., <https://www.portlandoregon.gov/bds/66821> [<https://perma.cc/SB23-U397>]. *See generally* PLANNING CODE § 33.207.050.

215. PORTLAND, OR., PLANNING CODE § 33.207.050(A)(1).

of the standards regulating their operation.”²¹⁶ The City distinguishes between three types of Short-Term Rentals: (1) commercial; (2) temporary; and (3) accessory.²¹⁷ Reportedly, most applicants are receiving temporary short-term rental licenses, with more than half of applications resulting in a successful license.²¹⁸

In a New Orleans commercial short-term rental, neither an owner nor tenant can occupy the property.²¹⁹ The license duration is year-long and the cost of a license is \$500 per unit.²²⁰ A temporary rental is also unoccupied by the owner or tenant.²²¹ A property owner, or tenant with a letter of permission from the owner, can apply for a license to operate the rental for no more than ninety days.²²² The cost of a temporary short-term rental license is \$150 per unit or only \$50 per unit if the applicant is an owner with a Homestead Exemption.²²³ The final zoning category, the accessory short-term rental, is limited to three bedrooms, with occupancy capped at six guests.²²⁴ One bedroom in the dwelling is reserved for the owner, who must be present during any short-term rental occupancy.²²⁵ The applicant must be a property owner with a Homestead Exemption. The license duration is year-round and costs \$200.²²⁶ “This provision applies to half of a duplex . . . if the owner lives in one of the units. Airbnb opponents consider this a major loophole, saying it encourages owner-landlords to convert their second unit to a short-term rental.”²²⁷ Portland and New Orleans typify the attempts of local jurisdictions to grapple with homesharing by creating new categories of property and corresponding licensing requirements. Other jurisdictions, like Massachusetts, take this

216. *Short-Term Rental Administration*, CITY OF NEW ORLEANS, <https://www.nola.gov/short-term-rentals/> [https://perma.cc/H6JP-A2VG].

217. NEW ORLEANS, LA., CITY ORDINANCE § 27-209 (2016).

218. *Examining Short-Term Rentals in New Orleans*, CITY OF NEW ORLEANS, <https://data.nola.gov/stories/s/6kd7-6nca> [https://perma.cc/ZM3C-S4HT].

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.* (The license duration is “90-days continuous or must apply for additional license if separate time during the year”). See also NEW ORLEANS, LA., CITY ORDINANCE § 26-614 (2019).

223. NEW ORLEANS, LA., CITY ORDINANCE § 26-617.

224. NEW ORLEANS, LA., CITY ORDINANCE § 27-209, art. 21.6.II.2 (2016); see also *Short Term Rental Zoning Restrictions*, *supra* note 100.

225. NEW ORLEANS, LA., CITY ORDINANCE § 27-209, art. 21.6.II.2; see also *Short Term Rental Zoning Restrictions*, *supra* note 100.

226. *STR License Fees*, CITY OF NEW ORLEANS, <https://www.nola.gov/short-term-rentals/str-licensing-requirements/str-license-fees/> [https://perma.cc/9DJN-FV8W].

227. Peck & Maldonado, *supra* note 3.

a step further by mandating that Airbnb hosts carry insurance.²²⁸

A new zoning classification, for example, does not answer the question of whether an Airbnb guest is akin to a tenant or a lodger. This is important for many reasons, including what happens when a guest overstays. Whereas a tenant who violates their lease is entitled to due process through an eviction proceeding, an innkeeper can quickly eject a lodger.

Moreover, while a host must meet certain requirements before the city will issue a license, the host and property are not subject to the same regulations as a hotel. Commercial properties are subject to safety and health standards and, unlike private rental properties, are inspected regularly to ensure compliance. While private homes must adhere to the local building code, nearly all jurisdictions in the United States lack proactive inspection ordinances that would require homes to be inspected before a non-owner may contract to stay at the property.²²⁹

The creation of a new zoning category and licensing requirements, on their own, fail to address concerns about discrimination and racialized aggregation of wealth on short-term rental platforms. As currently implemented in most jurisdictions, there are no quotas for the number licenses that may be distributed in a given area. This may exacerbate gentrification and affordable housing loss in certain neighborhoods. Unless this approach is combined with other policies, changes to neighborhood composition and racial impacts will go unchallenged.

2. *Taxation on Short-Term Rental Properties*

Cities and localities that have legitimized short-term rental programs often levy a tax in addition to licensing and registration fees, thereby creating a new revenue stream for the jurisdiction. These taxes predominantly fall into two categories: occupancy taxes and value added taxes.

Occupancy taxes, also known as lodging tax, room tax, sales tax, tourist tax, or hotel tax, are a tax on the rental of rooms for a given period of time.²³⁰ While these taxes are often paid by the guest, the responsibility to

228. MASS. GEN. LAWS, ch. 175, § 4F (2019); *see also* Matt Stout, *Baker Signs Long-Awaited Airbnb Bill, Opening New Era for Industry*, BOS. GLOBE (Dec. 28, 2018), <https://www.bostonglobe.com/metro/2018/12/28/baker-signs-long-awaited-airbnb-bill-opening-new-era-for-industry/gycoryp9D15nLPYxYk5cTN/story.html> [<https://perma.cc/QYP5-DDQA>].

229. Emily Benfer & Allyson Gold, *There's No Place Like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L. & POL'Y REV. S1, S27–S28 (2017), <https://harvardlpr.com/wpcontent/uploads/sites/20/2013/11/BenferGold.pdf> [<https://perma.cc/PKW7-NXXY>].

230. Kerra J. Melvin, *Technology, Travel Companies & Taxation: Should Expedia Be Required to Collect and Remit State Occupancy Taxes on Profits from Facilitation Hotel Room Rentals?*, 8 WASH.

remit taxes to the government falls on the host. For example, in San Francisco, Airbnb hosts are subject to the Transient Occupancy Tax (TOT). TOT is a 14% tax levied on short-term rental agreements, defined as renting a unit “for periods of less than 30 consecutive nights.”²³¹ Under the law, hosts must file monthly tax assessment statements, remit monthly TOT payments to the city, hold an approved TOT Certificate of Authority²³² issued by the city’s office of the treasurer and tax collector, and hold all valid licenses and permits from the San Francisco departments of police, fire, public health, and building inspection.²³³ However, to incentivize exclusivity agreements, hosts who only list their properties on Airbnb “are not required to submit TOT filings or obtain a separate Certificate of Authority.”²³⁴ Taxes were part of contentious legislation proposed to regulate Airbnb in San Francisco. Before legalizing short-term rentals, advocates demanded that city counsel require Airbnb to pay nearly twenty-five million in back taxes to the city.²³⁵ The final version of the bill, however, did not include that provision.

Unlike hotels, which collect and remit their own taxes, Airbnb has taken on that role for hosts in many jurisdictions. Airbnb has agreements with tax authorities in several jurisdictions to “collect and remit local taxes on behalf of hosts.”²³⁶ In Portland, for example, under the Shared City Initiative, Airbnb agreed to act as a limited Transient Lodging Tax Code collection and remittance agent of hosts who book on Airbnb’s platform.²³⁷ Providing this service eliminates administrative difficulties

J. L. TECH. & ARTS 43, 46 (2012) (noting that occupancy taxes are generally levied ““for the purpose of promoting convention and tourist activity””).

231. *Transient Occupancy Tax (TOT)*, CITY & CTY. S.F. TREASURER & TAX COLLECTOR, <https://sftreasurer.org/tot> [<https://perma.cc/K334-KZ2Z>].

232. *See id.* A Certificate of Authority allows the host to collect the Transient Occupancy Tax. *Id.*

233. *Become a Certified Host*, S.F. OFFICE SHORT-TERM RENTALS, <https://shorttermrentals.sfgov.org/hosting/become-certified> [<https://perma.cc/SHNB-MEEB>].

234. *San Francisco, CA*, AIRBNB, <https://www.airbnb.com/help/article/871/san-francisco-ca> [<https://perma.cc/76CA-QPQF>].

235. SAMAAN, AIRBNB, *supra* note 26, at 32; *see* Steven T. Jones, *SF Supervisors Vote to Legalize and Regulate Airbnb’s Short-term Rentals*, S.F. BAY GUARDIAN (Oct. 7, 2014), <http://sfbgarchive.48hills.org/sfbgarchive/2014/10/07/sf-supervisors-vote-legalize-and-regulate-airbnbs-short-term-rentals/> [<https://perma.cc/3G4Y-PU23>].

236. In doing so, Airbnb will calculate occupancy taxes and collect them from guests at the time the reservation is made. Afterward, Airbnb will remit the taxes to the local tax authority on behalf of the host. *In What Areas is Occupancy Tax Collection and Remittance by Airbnb Available?*, AIRBNB, <https://www.airbnb.com/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available> [<https://perma.cc/F5EY-JVEK>].

237. TRANSIENT LODGING TAX AGREEMENT BETWEEN AIRBNB, INC., AND THE CITY OF PORTLAND REVENUE BUREAU (July 1, 2014), <https://www.documentcloud.org/documents/1223398->

that may otherwise disincentivize hosts from participating in the short-term rental market, which allows the platform to expand its market share. In Portland, it is the only website operator permitted to collect and remit taxes to the city, further incentivizing hosts to list on Airbnb's platform and not with any competitors. Airbnb currently provides this service in forty-four states²³⁸ and thirteen countries.²³⁹

In many countries outside the United States, Airbnb rental agreements are subject to a value added tax (VAT). VAT is a consumption tax levied on goods and services.²⁴⁰ Over 160 countries levy a VAT, "including every economically advanced nation except the United States."²⁴¹ The VAT "is deducted from [the host's] payout and is based on the total host service fee for a reservation."²⁴² Airbnb automatically includes VAT on reservations made in many countries in Asia, Europe, the Middle East,

lodging-tax-agreementbetween-airbnb-and-the.html#document/p3/a167055 [https://perma.cc/F4TC-UJLL]; Chesky, *supra* note 206. Airbnb promoted the partnership as a mechanism to streamline certain administrative processes, such as collection and remittance of taxes. However, the regulations effectuating the program do not directly speak to these issues. *Frequently Asked Questions*, CITY PORTLAND (Mar. 8, 2019), <https://www.portlandoregon.gov/revenue/article/415034#AgreementbetweenAirbnbandCoP> [https://perma.cc/SE6X-3L5Y]. Instead, Airbnb contracted to take on this responsibility in an agreement with the City of Portland Revenue Bureau. *See Occupancy Tax Collection and Remittance by Airbnb in Oregon*, AIRBNB, <https://www.airbnb.com/help/article/2324/occupancy-tax-collection-and-remittance-by-airbnb-in-oregon> [https://perma.cc/5NC7-MS94].

238. These states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. *In What Areas is Occupancy Tax Collection and Remittance by Airbnb Available?*, *supra* note 236.

239. In addition to the United States, these countries are: Bermuda, Brazil, British Virgin Islands, Canada, France, Germany, India, Italy, Mexico, Netherlands, Portugal, and Switzerland. *Id.*

240. A detailed discussion of taxes is beyond the scope of this article. However, "[w]hat distinguishes a VAT from the retail sales taxes common throughout the U.S. states is that the VAT is levied on each transaction in the production chain, rather than being collected only at the retail stage, with business being able to obtain full credit or an immediate deduction for VAT paid on inputs (including capital goods) offset against the VAT collected on outputs." Kathryn James, *Exploring the Origins and Global Rise of VAT*, in *THE VAT READER: WHAT A FEDERAL CONSUMPTION TAX WOULD MEAN FOR AMERICA* 17–18 (Christopher Bergin et al. eds., 2011).

241. *What is a VAT?*, URB.-BROOKINGS TAX POL'Y CTR. (2016), <https://www.taxpolicycenter.org/briefing-book/what-vat> [https://perma.cc/BA3J-39UE].

242. *What is VAT and How Does it Apply to Me?*, AIRBNB (Feb. 20, 2019), <https://www.airbnb.com/help/article/436/what-is-vat-and-how-does-it-apply-to-me> [https://perma.cc/B24K-QDZH] ("In Japan, Japanese Consumption Tax, or JCT, is applicable instead of VAT. In Australia and New Zealand, Goods and Services Tax, or GST, is applicable instead of VAT.").

and the South Pacific.²⁴³

Other jurisdictions levy taxes unique to Airbnb specifically to offset harms to the local housing market. In New Orleans, in addition to a hotel/motel sales tax²⁴⁴ and a hotel occupancy privilege tax,²⁴⁵ hosts are subject to an assessment of one dollar for every night of occupancy.²⁴⁶ This additional dollar benefits the city's neighborhood housing improvement fund.²⁴⁷ Established in 1991 "to improve neighborhood housing and combat blight," the New Orleans City Council voted in 2015 to "dedicate[] the fund to actual home improvements and affordable housing efforts."²⁴⁸ Between April 2017 and February 2018, Airbnb claims to have contributed nearly \$550,000 to the Fund.²⁴⁹ As of August 2018, Airbnb competitor HomeAway has proposed increasing the contribution from \$1 per listing to 2%, and applying the fee "to all lodging accommodations — including hotels and bed and breakfasts."²⁵⁰ These taxes and assessments are important in light of the effect of short-term rentals on affordable long-term housing stock.

Occupancy taxes serve to legitimize Airbnbs while also creating additional revenue for the local government. For example, Massachusetts officials estimate that the state's tax on Airbnb may raise at least \$25 million annually.²⁵¹ State and local governments must allocate levied taxes for programs and activities that will address negative externalities correlated with Airbnb. If the money is earmarked specifically for

243. *Id.* ("Airbnb charges VAT on its service fees for customers from Albania, Belarus, Iceland, Norway, Russia, Saudi Arabia, Serbia, South Africa, Switzerland, Taiwan, the Bahamas, the European Union and the United Arab Emirates. In Japan, JCT applies to the hosts and the guests. In Australia and New Zealand, GST applies to the hosts and the guests Airbnb is also required to collect VAT on its service fees from all users who contract with Airbnb China.").

244. NEW ORLEANS, LA., CITY ORDINANCE § 27-218 (2016).

245. *Id.*

246. NEW ORLEANS, LA., CITY ORDINANCE § 70-415.1 (2019).

247. *Id.*

248. Michael Anderson, *Housing Trust Fund: One Answer to Gentrification in New Orleans*, HOUS. TR. FUND PROJECT (2015), <https://housingtrustfundproject.org/one-answer-to-gentrification-in-new-orleans/> [<https://perma.cc/93KT-SUCU>] ("The Greater New Orleans Housing Alliance released an in-depth affordable housing report as part of the HousingNOLA Planning Process. 'The preliminary report details the lack of affordable housing that will continue to grow if not addressed. While median income has dropped in our city, the average fair market rent has risen nearly 50% in recent years. The report includes other issues that have caused affordable housing to decrease significantly since the storm, but the final plan due out in November will also provide solutions that the [Neighborhood Housing Improvement Fund] funding will now also help to address.'").

249. Kevin Litten, *HomeAway Floats New Policy for New Orleans Short-Term Rentals*, TIMES-PICTAYUNE (Aug. 3, 2018, 12:22 AM), https://www.nola.com/news/politics/article_%2082bb6236-d8da-5fab-8c78-ac6de58f9efc.html [<https://perma.cc/5DQ9-HQTP>].

250. *Id.*

251. Stout, *supra* note 228.

affordable housing and anti-displacement measures, such as building new or preserving existing affordable housing, rent stabilization programs, and other measures, then taxation may offset some of the harms associated with the proliferation of short-term rentals.

However, if the money is instead funneled into a general fund, then taxation will serve as another mechanism to concentrate resources in certain communities. For example, if a city levies taxes on short-term rental accommodations and uses the money to invest in schools and public works—both laudable projects—without also taking steps to preserve affordable housing, then those benefits will accrue to individuals and families who can afford to remain in the community as home values and rents increase.

C. Restrictions on Eligible Hosts, Length of Rentals, and Available Locations

To prevent a decrease of affordable housing stock, policymakers have imposed limitations on who is eligible to rent out short-term accommodations. They have also restricted which units can be listed on sharing platforms, as well as limited the number of nights units can be occupied exclusively by guests.

1. Limitations on Eligible Hosts and Properties

Airbnb was founded on the premise that hosts could earn extra money by renting out available space—a spare room or even a couch—in their homes. As the model exploded in popularity, the profile of hosts changed. Instead of mom and pop hosts, it is common for owners of multiple properties to make available several whole-home listings on Airbnb, functioning as commercial property owners. As discussed in detail above, this practice decreases available long-term housing and contributes to an increase in rental prices. To combat these effects, some jurisdictions have restricted who may serve as an Airbnb host, particularly when listing unshared units.

In San Francisco, for example, only permanent residents may become short-term rental hosts.²⁵² Under the city's ordinance no. 218-14, a permanent resident is a “person who occupies a Residential Unit for at least 60 consecutive days with intent to establish that unit as his or her

252. *Short-Term Residential Rental Starter Kit*, S.F. BUS. PORTAL (June 27, 2017), <https://businessportal.sfgov.org/start/starter-kits/short-term-rental> [https://perma.cc/92JX-WU6N]; see also S.F., CAL., ADMIN. CODE § 214-8(41A.4) (2019).

primary residence.”²⁵³ Owners of multi-family dwellings may only list the unit in which they reside.²⁵⁴

In Los Angeles, the definition is even more restrictive. Los Angeles short-term rental hosts may only rent their primary residence, defined as where the host lives for more than six months of the year.²⁵⁵ Further, no host “may apply for or obtain more than one Home-Sharing registration or otherwise operate more than one” home share at a time in Los Angeles.²⁵⁶ By limiting Airbnb hosts to permanent residents listing their residential units, San Francisco and Los Angeles aim to prevent landlords from evicting tenants to operate illegal hotels.

Another approach is to place limitations on short-term rentals based on characteristics related to the underlying properties themselves, rather than the host. In Los Angeles, “a Primary Residence that is subject to affordable housing covenants, and/or . . . [rent stabilization], and/or [is] income-restricted under City, state, or federal law, is not eligible for Home-Sharing.”²⁵⁷ Under a 2018 West Hollywood, California ordinance, homesharing is prohibited in the following types of properties: (1) “any residential dwelling unit where the property owner and homeowners’ association has not given their express, written approval to do so;” (2) “any rental unit;” (3) “any inclusionary housing or other income-restricted housing unit;” and (4) “any location not approved for residential use.”²⁵⁸

Limitations on eligible hosts and properties attempt to avoid commercialization of the short-term rental market. However, while limiting hosts to permanent residents may succeed in defending against out-of-town-speculators with no ties to the community, prohibiting renters from serving as Airbnb hosts raises concerns about concentrations of wealth. As Airbnb noted, “the [West Hollywood] Council’s decision to block renters — who make up nearly 80% of the community — eliminates a viable source of income for those who would benefit the most. Home sharing should not be a privilege reserved for the fortunate few who own

253. S.F., CAL., ADMIN. CODE § 218-14(41.A.4) (“A Permanent Resident may be an owner or a lessee.”).

254. *Short-Term Residential Rental Starter Kit*, *supra* note 252.

255. L.A., CAL., MUNICIPAL CODE § 12.22(A)(32)(b)(9) (2019).

256. *Id.* § 6(32)(c)(2)(ii)(d).

257. *Id.* § 6(32)(c)(2)(ii)(b).

258. WEST HOLLYWOOD, CAL., MUNICIPAL CODE § 5.66.020 (2019). The ordinance also prohibits homesharing in properties that have been vacated pursuant to the Ellis Act, a California state law that allows landlords to exit the rental housing market. *See* CAL. CODE § 7060–7060.7 (2019).

homes in West Hollywood.”²⁵⁹

2. *Annual Limits*

Many jurisdictions place a firm limit on the number of days that a primary residence may be rented in a calendar year. Following cities like Paris and London, which limit rentals to 120 and 90 days respectively, Amsterdam limits hosts to renting thirty nights annually.²⁶⁰

While several cities limit the number of unhosted rentals, regulations are typically relaxed when the home is shared with the permanent resident. In San Francisco, unhosted rentals are limited to ninety days each year.²⁶¹ However, when a host is “home overnight at the same time as [the] guests, there is no limit on the number of rentals per year.”²⁶² In Santa Monica, California, renting an entire residence for less than thirty days is banned completely.²⁶³ However, Santa Monica hosts may rent a couch or extra room if they will be present in the home.²⁶⁴ Likewise, the New York State “Multiple Dwelling Law” prohibits renting an entire home in a dwelling occupied by three or more families living independently from each other for less than thirty days, but permits rentals of less than thirty days when the host is present.²⁶⁵

3. *Limiting Short-Term Rentals in Certain Areas*

To prevent the erosion of neighborhood character, some jurisdictions severely limit which neighborhoods may have short-term rentals. In New Orleans, short-term rentals are banned from most of the iconic French Quarter.²⁶⁶ In Tuscaloosa, Alabama, short-term rentals are strictly limited

259. *WeHo City Council Gives Final Approval to Short-Term Apartment Rental Ban*, WEHOVILLE (Mar. 6, 2018), <https://www.wehoville.com/2018/03/06/weho-city-council-gives-final-approval-ban-short-term-apartment-rentals/> [https://perma.cc/A7UA-WNTD].

260. Mallory Locklear, *Amsterdam Will Limit Airbnb Rentals to 30 Days Per Year*, ENGADGET (Jan. 10, 2018), <https://www.engadget.com/2018/01/10/amsterdam-airbnb-rental-30-day-limit/> [https://perma.cc/JZA2-7QS8].

261. *Short-Term Residential Rental Starter Kit*, *supra* note 252.

262. *Id.*

263. Hailey Branson-Potts, *Santa Monica Convicts its First Airbnb Host Under Tough Home-Sharing Laws*, L.A. TIMES (July 13, 2016, 3:28 PM), <https://www.latimes.com/local/lanow/la-me-ln-santa-monica-airbnb-conviction-20160713-snap-story.html> [https://perma.cc/P4AL-EF9N].

264. This is also true in West Hollywood, California, under § 5.66.050 of the West Hollywood Municipal Code. *Id.*

265. N.Y. MULTIPLE DWELLING LAW § 4(7)–(8) (2019).

266. *Short Term Rental Zoning Restrictions*, *supra* note 100; Jeff Adelson, *Stricter Limits Will Hit New Orleans Short-Term Rentals After Council Vote; Here's What To Know*, NOLA.COM (Aug. 8, 2019, 2:17 PM), https://www.nola.com/news/article_c390da62-ba00-11e9-b876-237e289ed3ef.html

to only three areas of the city.²⁶⁷ Moreover, city officials are currently contemplating legislation that would limit short-term rentals “[w]ithin property part of a locally designated historic district . . . [s]hort-term rentals will be limited to no more than one per block face.”²⁶⁸

Similarly, officials in Barcelona passed a bill to restrict the location of tourist accommodations.²⁶⁹ The law divides the city into four distinct zones. The first zone, located in the city center, does not allow for the expansion of tourist lodging establishments.²⁷⁰ This means no new hotels may be constructed. And if one closes, it will not be replaced.²⁷¹ To control the number of Airbnb listings in these areas, the city is withholding licenses from new applicants.²⁷²

Other cities limit short-term rental density based on the neighborhood’s zoned use. In January 2018, the Nashville City Council voted 19–3 to phase out non-owner occupied short-term rentals from areas zoned for residential use.²⁷³ Under the ordinance, no non-owner occupied short-term rental property may be located within 1,320 feet from the property line of another such property in the single-family and one and two-family zoning districts.²⁷⁴ In Nashville’s “Urban Zoning Overlay” district, “no more than three percent (3%) of the single-family or two-family residential units within each census tract” may be used as non-owner occupied short-term rental properties.²⁷⁵ In properties outside the Urban Zoning Overlay district, that number drops to one percent.²⁷⁶ While this ordinance was eventually preempted by the “Short-Term Rental Act,” enacted by the

[<https://perma.cc/9R3C-2DJS>].

267. *Short-Term Rentals*, TUSCALOOSA 311, www.tuscaloosa.com/str [<https://perma.cc/RP5P-LVXQ>].

268. CITY OF TUSCALOOSA ADMIN. & POL’Y COMM., SHORT-TERM RENTAL AMENDMENTS – 1/10/19 AS RECOMMENDED BY THE ADMIN AND POLICY COMMITTEE (Jan. 10, 2019), (on file with author).

269. AJUNTAMENT DE BARCELONA, EL PEUTA, LA PRIMERA REGULACIO DE CIUTAT PER A TOTS ELS ALLOTJAMENTS TURISTICS 4 (2016), <http://ajuntament.barcelona.cat/premsa/wp-content/uploads/2017/01/170128-DOSSIER-ADEF-PEUAT.pdf> [<https://perma.cc/YT22-DWBH>].

270. *Id.*

271. *Id.*

272. *Id.*

273. NASHVILLE, TENN., SUBSTITUTE ORDINANCE BL 2017-937, https://www.nashville.gov/mc/pdfs/misc_legislation/bl2017_937_sub.pdf [<https://perma.cc/NRL7-BGW2>]; Metro. Gov’t of Nashville & Davidson Cty., Tenn., Roll Call Vote Substitute Bill BL2017-937, (Jan. 2, 2018), https://www.nashville.gov/mc/pdfs/roll_call_votes/bl2017_937_sub.pdf [<https://perma.cc/7U9W-UJ87>].

274. *Id.* § 6(1)(d).

275. *Id.* § 6(1)(c).

276. *Id.*

Tennessee General Assembly,²⁷⁷ it illustrates an attempt by a local government to mitigate the negative effects of Airbnbs on permanent, long-term residents.

Limitations on the total number of permissible short-term rental accommodations within a given area may temper some of the negative externalities associated with the practice. A cap on the number of accommodations would slow down the rate of rent increase, as there would be fewer properties eligible to be converted from long term rentals to short-term accommodations. In turn, this would slow gentrification, thereby displacing fewer people and reducing the amount of commercially owned rentals in residential areas. This may result in fewer disruptions to the social fabric of individual neighborhoods in communities; a hard limit on the number of short-term rental accommodations in a given area would help prevent a situation in which a few legacy residents are surrounded by strangers in town only for a short period of time.

While a limitation may be effective to avoid rapid increases in rent and gentrification, this approach, as currently implemented, rewards early adopters. It also favors tech-savvy individuals and even commercial operators who have more familiarity and comfort with navigating an online platform and city administrative system. Those who became aware of the potential benefits of short-term rental listings after the first wave may be locked out of the market.

Rewarding early adopters has racial implications. Many groups have voiced concerns about under-utilization of short-term rental platforms by individuals and communities of color. Some advocacy groups, such as the National Association for the Advancement of Colored People (NAACP), encourage the use of short-term rental platforms by individuals of color as a way to increase their income and wealth.²⁷⁸ Under a “race to the city

277. Under the Tennessee Short-Term Rental Unit Act, local Tennessee jurisdictions may not “[p]rohibit the use of property as a short-term rental unit” or restrict or otherwise “regulate a short-term rental unit based on . . . the unit’s classification, use, or occupancy.” S.B. 1086, 110th Gen. Assemb. (Tenn. 2018). The law further states that a local jurisdiction may only “[e]nact, maintain, or enforce a local law that regulates property used as a short-term rental unit if the local governing body demonstrates by clear and convincing evidence that the primary purpose of the local law is the least restrictive means to protect the public’s health and safety.” *Id.* The Short-Term Rental Unit Act specifically protects jurisdictions’ ability to apply local land use laws such as zoning, noise, property maintenance, and nuisance to short-term rental properties. *Id.* This carve-out suggests that the “clear and convincing evidence” necessary to overcome the “least restrictive means” will require something more. *Id.*

278. NAACP, *Airbnb Partner to Promote Travel, Offer New Economic Opportunities to Communities of Color*, NAACP (July 26, 2017), <https://www.naacp.org/latest/naacp-airbnb-partner-promote-travel-offer-new-economic-opportunities-communities-color/> [https://perma.cc/MTZ3-P98P].

administrator” system, communities that have been slow to warm to short-term rentals may lose their opportunity to benefit. Therefore, to avoid entrenching benefits to certain individuals, these regulations should allow late adopters to participate in the market.

D. Monitoring and Enforcement

Regulation of short-term rentals raises questions regarding enforcement. Despite official requirements, many hosts do not comply with licensing registration regulations. Even though Airbnb listings in Quebec in 2016 exceeded 19,000, Tourisme Quebec only “issued 967 permits for rental hosts out of 2,244 applications in the year since the law took effect on April 15, 2016.”²⁷⁹

Quebec is hardly unique in this regard. In Portland, the Revenue Bureau “estimates that 93 percent of all hosts have *not* obtained the necessary permits, had their units inspected for building and safety compliance, or notified their neighbors of their intent to operate a short-term rental.”²⁸⁰ In San Francisco only 130 of over more than 5,000 hosts made appointments with city officials to obtain required permits as of February 15, 2015.²⁸¹ By March 2016, compliance in San Francisco had only improved to 1,647 registered out of the more than 7,000 listed.²⁸² There is some variation in penalties for lack of compliance. Most jurisdictions impose monetary penalties. In some, like Hong Kong, failure to procure a license may lead to two years of imprisonment.²⁸³

1. Liability for failure to comply

In response to lack of compliance, some jurisdictions enacted penalties against online platforms that list unlicensed short-term rentals. In June 2016, San Francisco’s Board of Supervisors voted 10–0 to “provide for civil, administrative, and criminal penalties against Hosting Platforms for

279. Canadian Press, *Most Airbnb Hosts Not Registered in Quebec, 1 Year After Law Took Effect*, CBC (May 28, 2017, 12:52 PM), <https://www.cbc.ca/news/canada/montreal/quebec-airbnb-law-not-effective-2017-1.4135041> [<https://perma.cc/5XAS-YBEZ>].

280. See SAMAAN, AIRBNB, *supra* note 26, at 31 (emphasis added).

281. *Id.* at 32 (reflecting data available as of February 15, 2015).

282. Stephen R. Miller & Jamila Jefferson Jones, *Airbnb and the Battle Between Internet Exceptionalism and Local Control of Land Use*, 31 PROB. & PROP. 36, 37 (2017).

283. Hotel and Guesthouse Accommodation Ordinance, (2001) Cap. 349, pt. II § 5(1) (H.K.) (“Any person who on any occasion operates, keeps, manages, or otherwise has control of a hotel or a guesthouse in respect of which neither of the conditions indicated in subsection (2) has been satisfied commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years and to a fine of \$20,000 for each day during which the offence continues.”).

violations of the Residential Unit Conversion Ordinance.”²⁸⁴ The ordinance requires platforms to “verify that a Residential Unit is on the City Registry prior to listing.”²⁸⁵ Failure to comply could result in fines of up to \$1,000 each day.²⁸⁶ In August 2016, San Francisco made it a “misdemeanor to collect a fee for providing booking services for the rental of an unregistered unit.”²⁸⁷

Airbnb fought back. The company²⁸⁸ filed suit against San Francisco, challenging the ordinance as: (1) preempted by the Communications Decency Act (CDA),²⁸⁹ (2) an impermissible content-based speech restriction under the First Amendment; and (3) an imposition of a criminal strict liability.²⁹⁰ The Northern District of California denied Airbnb’s request for a preliminary injunction and the parties ultimately settled.

The agreement allows San Francisco to more effectively enforce short-term rental requirements. City Attorney Dennis Herrera stated that, under the terms of the settlement, “[t]he two largest (vacation rental services) will only include legal listings, and the city has the tools for quick, effective enforcement.”²⁹¹ The agreement requires homesharing platforms to collect data on hosts who let their homes for less than a month. The information will be provided to city officials who will, in turn, use it to “vet and register hosts.”²⁹² If the city notifies a homesharing platform of a non-compliant registration, the company must cancel any pending reservations and deactivate the listing.²⁹³ The settlement does not eliminate the city’s ability to fine companies like Airbnb up to \$1,000 per violation if they do not remove illegal listings.²⁹⁴

284. San Francisco Bd. of Supervisors, 111 Meeting Minutes 423, 439 (June 7, 2016), <https://sfgov.legistar.com/View.ashx?M=M&ID=498884&GUID=FA40CC05-BAAF-437E-A230-98C929849424> [<https://perma.cc/4U2F-LMV4>] (one member of the board abstained from the vote).

285. *Id.*

286. Alice Truong, *San Francisco Just Dealt Another Major Blow to Airbnb*, QUARTZ (June 7, 2016), <https://qz.com/701857/san-francisco-just-dealt-another-major-blow-to-airbnb/> [<https://perma.cc/E7BE-ZFTU>].

287. *Airbnb, Inc. v. City & Cty. of S.F.*, 217 F. Supp. 3d 1066, 1071 (N.D. Cal. 2016).

288. Airbnb was joined by HomeAway in the suit. *See id.*

289. 47 U.S.C. § 230 (2012).

290. *Airbnb, Inc.*, 217 F. Supp. 3d at 1067.

291. Carolyn Said, *Airbnb, HomeAway Settle SF Suit, Agree to Register All Local Hosts*, S.F. CHRON. (May 1, 2017, 7:17 PM), <https://www.sfchronicle.com/business/article/Airbnb-settles-SF-suit-agrees-to-register-all-11112109.php> [<https://perma.cc/6FEJ-3SFS>].

292. Katie Benner, *Airbnb Settles Lawsuit With Its Hometown, San Francisco*, N.Y. TIMES (May 1, 2017), <https://www.nytimes.com/2017/05/01/technology/airbnb-san-francisco-settle-registration-lawsuit.html> [<https://perma.cc/63GR-2AU3>].

293. *Id.*

294. *Id.*

The effects of the settlement have been striking. The *San Francisco Chronicle* hired Host Compliance²⁹⁵ to collect and analyze data on the number of listings in San Francisco before and after the deadline for hosts to register with the City.²⁹⁶ Ulrik Bizner, the company's CEO and founder, told the *Chronicle* that "[t]he regulations had a massive impact on the number of rentals in city, with an overall 55 percent reduction."²⁹⁷ Many of these properties transitioned to the long-term rental market.²⁹⁸

Airbnb also reached settlement agreements with New York State and New York City following the passage of the Multiple Dwelling Law (MDL). Under the MDL, it is "unlawful to advertise occupancy or use of dwelling units in . . . a multiple dwelling that is occupied for permanent residence purposes."²⁹⁹ Fines under the MDL can reach \$7,500 per violation.³⁰⁰ After challenging the legality of the penalties, Airbnb reached separate agreements with New York State and New York City.³⁰¹ Under the terms of the settlement, New York City agreed to enforce the MDL only against hosts and not fine the company.³⁰² Other local governments have backed away from similar penalties under the threat of litigation. As stated by Anaheim, California spokesperson Mike Lyster, "[a]fter considering federal communications law, we won't be enforcing parts of Anaheim's short-term rental rules covering online hosting sites . . . Instead, the city will continue to identify and take action against unpermitted short-term rentals operating in Anaheim."³⁰³

295. According to its website, Host Compliance is "the world's #1 provider of short-term rental compliance monitoring and enforcement solutions for local governments." HOST COMPLIANCE, www.hostcompliance.com [<https://perma.cc/CB4K-87T7>].

296. Carolyn Said, *A Leaner Vacation Rental Market*, S.F. CHRONICLE (Feb. 16, 2018), <https://www.sfchronicle.com/business/article/SF-short-term-rentals-transformed-as-Airbnb-12617798.php> [<https://perma.cc/U7VJ-HVAX>].

297. *Id.*

298. *Id.*

299. N.Y.C. ADMIN. CODE § 27-287.1(1) (2019); N.Y. MULTIPLE DWELLING LAW § 121(1) (2019).

300. N.Y.C. ADMIN. § 27-287.1(2); N.Y. MULTIPLE DWELLING LAW § 121(2).

301. Airbnb filed suit to challenge the MDL, alleging it was preempted by the CDA, violated hosts' rights under the First Amendment, violated the Due Process Clause, and violated the New York State Constitution's home rule clause. Complaint at 1-3, *Airbnb, Inc. v. Schneiderman*, 989 N.Y.S.2d 786 (S.D.N.Y. Oct. 21, 2016) (No. 16-CV-08239).

302. *See generally* Miller & Jones, *supra* note 282, at 38 (discussing how Airbnb ultimately settled the case with New York State in November 2016, and with New York City in December 2016); *see also* Katie Benner, *Airbnb Ends Fight with New York City Over Fines*, N.Y. TIMES (Dec. 3, 2016), <https://www.nytimes.com/2016/12/03/technology/airbnb-ends-fight-with-new-york-city-over-fines.html> [<https://perma.cc/6UM9-7K3Z>].

303. Lily Leung, *Anaheim Won't Fine Websites Like Airbnb for Illegal Short-Term Rental Listings*, ORANGE CTY. REG. (Aug. 23, 2016, 12:00 PM), <https://www.oregister.com/2016/08/23/anaheim->

In some jurisdictions, Airbnb has taken on the role of enforcement agent to ensure compliance with local regulations. In Vancouver, pursuant to an agreement reached between the city and Airbnb, Airbnb will not allow hosts to register on the platform if they do not provide a city business license number.³⁰⁴ This agreement places the onus of enforcement on Airbnb, rather than the city. Airbnb has a similar enforcement agreement with Portugal, with plans to develop another in Andalusia, Spain.³⁰⁵

2. *Information sharing*

In an effort to eliminate illegal listings, several jurisdictions are forcing Airbnb to share user data. In August 2018, New York City Mayor Bill DeBlasio signed a bill requiring online short-term rental platforms to provide information about bookings to the Mayor's Office of Special Enforcement.³⁰⁶ Under the law, companies like Airbnb must provide the City with: (1) the address of the short-term rental; (2) the name and address of the rental host; (3) whether the short-term rental is for the entire unit or part of it; and (4) the number of days the unit is rented, among other information.³⁰⁷ Failure to comply with the law may result in monetary fines.³⁰⁸

Other jurisdictions have been forced to take more aggressive measures. In 2014, the Malibu, California city council voted to authorize city officials to issue subpoenas to gather information on the scope of short-term rentals in the area.³⁰⁹ The subpoenas enabled city officials to obtain

wont-fine-websites-like-airbnb-for-illegal-short-term-rental-listings/ [https://perma.cc/A26Y-83W9].

304. Frances Bula, *Airbnb Agrees to Help Vancouver Enforce New Short-Term Rental Rules*, GLOBE & MAIL (Apr. 11, 2018), <https://www.theglobeandmail.com/canada/british-columbia/article-airbnb-agrees-to-help-vancouver-enforce-new-short-term-rental-rules/> [https://perma.cc/34ZY-WN3Y].

305. *Id.*

306. *See* N.Y.C. ADMIN. CODE § 26-2101-5 (2019).

307. In addition, the law also requires platforms to provide information related to fees and the URL of the listing. *Id.*

308. *Id.*

309. Matt Stevens & Martha Groves, *Malibu to Crack Down on Short-Term Rentals via Airbnb, Other Websites*, L.A. TIMES (May 27, 2014, 8:09 PM), <https://www.latimes.com/local/la-me-malibu-renting-20140528-story.html> [https://perma.cc/U3Q4-6TJ9] (“The City Council voted this month to authorize officials to issue subpoenas to more than 60 websites that advertise short-term leases. Malibu wants to learn how many short-term rentals are being offered and to make sure the city is getting what could be hundreds of thousands of dollars in uncollected hotel taxes.”).

information from more than sixty online homesharing platforms.³¹⁰ Similarly, Chicago’s short-term rental ordinance includes a section that speaks to data collection and reporting requirements.³¹¹ Under the ordinance, every licensee must submit to the department, *every two months*, a report that includes information on: (1) the total number of short-term residential rentals listed on the platform; (2) the total number of nights that each short-term residential rental listed on the platform was rented during the reporting period; (3) the amount of rent paid by guests; (4) the total amount of tax paid to the city in connection to the rental; (5) a cumulative tally to date of the number of nights that each short-term residential rental listed on the platform is booked; and (6) a notation indicating each short-term residential rental listed on the platform that the department has determined is ineligible under city code.³¹² Airbnb has taken steps to challenge measures designed to compel data sharing. In response to the 2018 New York City law, Airbnb filed suit, alleging “an extraordinary act of government overreach” in violation of the First and Fourth Amendments.³¹³ For now, the court agrees with Airbnb. The U.S. District Court for the Southern District of New York granted a preliminary injunction to stop New York’s law from taking effect; “[t]he City has not cited any decision suggesting that the governmental appropriation of private business records on such a scale, unsupported by individualized suspicion or any tailored justification, qualifies as a reasonable search and seizure.”³¹⁴ While an analysis of the First and Fourth Amendments is beyond the scope of this Article, such data collection is consistent with the underlying purpose of host licensing practices. Shielding information about hosts openly violating the law by not registering with the local government withholds “critical data [the City] needs to preserve [its] housing stock, keep visitors safe, and ensure residents feel secure in their homes and neighborhoods.”³¹⁵

310. *Id.*

311. CHI. MUN. CODE § 4-13-240 (2019).

312. *Id.*

313. Shirin Ghaffary, *Airbnb is Suing New York City So It Won’t Have to Share User Data About Its Hosts*, VOX (Aug. 24, 2018, 4:16 PM), <https://www.vox.com/2018/8/24/17779208/airbnb-suing-new-york-city-user-data-hosts-privacy-brian-chesky> [<https://perma.cc/7J38-2WQW>].

314. *Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d 467, 492 (S.D.N.Y. 2019).

315. Ghaffary, *supra* note 313.

E. Policies to Address Discriminatory Practices and Concentrations of Wealth Along Racial Lines

1. Policies to Reduce Discrimination on Online Short-Term Rental Platforms

Airbnb is aware of discrimination against guests and hosts on its platform. CEO and Co-founder Brian Chesky called discrimination “the greatest challenge we face as a company.”³¹⁶ To address the issue, Airbnb requires all users to accept the Airbnb Community Commitment.³¹⁷ By doing so, the user agrees to “treat everyone in the Airbnb community . . . with respect, and without judgment or bias.”³¹⁸

Additionally, the site encourages hosts to allow instant booking. A discretionary choice for hosts, “Instant Book listings don’t require approval from the host before they can be booked. Instead, guests can just choose their travel dates, book, and discuss check-in plans with the host.”³¹⁹ To entice hosts to allow Instant Book, Airbnb promotes the practice as a way for hosts to reach Superhost status.³²⁰ Demarcated with a badge on the host’s profile, the Superhost designation communicates superior accommodations and service, which may translate into increased bookings.³²¹

Instant Book eliminates some of the hallmarks of the sharing economy like personal interaction between hosts and guests, and building relationships between strangers. Instead, Instant Book allows Airbnb to function much more like an online hotel reservation process, where there is no opportunity for a hotel manager to accept or reject a lodger. Instant Book decreases opportunities for discrimination against guests but has firm limitations. First, Instant Book is not mandatory. Hosts may choose whether to use the feature. Hosts that forgo Instant Book are free to discriminate against guests. Second, because guests retain access to

316. *Diversity at Airbnb*, AIRBNB, www.airbnb.com/diversity/ [https://perma.cc/KB27-TPWM].

317. *General Questions About the Airbnb Community Commitment*, AIRBNB, <https://www.airbnb.com/help/article/1523/general-questions-about-the-airbnb-community-commitment> [https://perma.cc/JXT7-VAEJ].

318. The full Community Commitment states, “I agree to treat everyone in the Airbnb community—regardless of their race, religion, national origin, ethnicity, disability, sex, gender identity, sexual orientation, or age—with respect, and without judgment or bias.” *Id.*

319. *What is Instant Book?*, AIRBNB, <https://www.airbnb.com/help/article/523/what-is-instant-book> [https://perma.cc/XP5T-CGPA].

320. *Id.*

321. *What Is a Superhost?*, AIRBNB, <https://www.airbnb.com/help/article/828/what-is-a-superhost> [https://perma.cc/NA7N-VTHD].

personal information about prospective hosts, including photo, name, and any other information the host chooses to include in his profile, there remains potential for discrimination against hosts of color.

2. *Collaboration to Increase Short-Term Rental Optimization Among Minorities*

In 2017 Airbnb partnered with the NAACP to expand Airbnb to minority communities and recruit minority hosts.³²² Under the agreement, Airbnb and the NAACP partnered to “conduct targeted outreach to communities of color to help more people use their homes to earn extra income.”³²³ Notably, the partnership included a revenue-sharing agreement under which “Airbnb will share 20 percent of the earnings it receives as a result of these new community outreach initiatives with the NAACP.”³²⁴ The earnings of Airbnb hosts are unaffected by the revenue sharing.³²⁵

In Miami, the Florida NAACP is targeting minority residents in the neighborhoods of Miami Gardens and Little Haiti.³²⁶ Through its partnership with Airbnb, the Florida NAACP will

educate local black entrepreneurs on the opportunities that come with increased tourism traffic. For some, that could be the additional income from hosting guests; for others it could be setting up the ancillary business that cater to tourists—like restaurants and retail—or that cater to hosts—like cleaning, plumbing, and painting services.³²⁷

Neither Airbnb nor the NAACP have yet released outcome data about

322. Tracy Jan, *Faced with Complaints of Discrimination, Airbnb Partners with NAACP to Recruit Black Hosts*, WASH. POST (July 26, 2017, 8:34 AM), <https://www.washingtonpost.com/news/wonk/wp/2017/07/26/faced-with-complaints-of-discrimination-airbnb-partners-with-naacp-to-recruit-black-hosts/> [https://perma.cc/C9JD-DPR3].

323. NAACP, *Airbnb Partner to Promote Travel, Offer New Economic Opportunities to Communities of Color*, *supra* note 278.

324. In addition to revenue sharing, the agreement outlines the following commitments: community outreach and education, a diverse employee base, and supplier diversity. *Id.*

325. *Id.*

326. Chabeli Herrera, *To Fight Discrimination, Airbnb Wants More Black Miami Residents to Rent Their Homes*, MIAMI HERALD (May 15, 2018, 5:39 PM), <https://www.miamiherald.com/news/business/article211165439.html> (last visited Oct. 18, 2019).

327. *Id.* The partnership has since expanded to Los Angeles, Atlanta, and Seattle. See Ernie Suggs, *Short-Term Home Rental Site Partners with NAACP to Attract Black Hosts in Atlanta*, ATLANTA J.-CONST. (Apr. 14, 2019), <https://www.ajc.com/news/airbnb-partners-with-naacp-attract-black-hosts/jL7IVydk49fn6pdx2Q6kIP/> [https://perma.cc/NT2X-V4L5]; Keerthi Vedantam, *Airbnb, NAACP Partner to Get More People of Color to Become Homesharing Hosts in Seattle*, SEATTLE TIMES (June 5, 2019, 6:51 PM), <https://www.seattletimes.com/business/airbnb-naacp-partner-to-get-more-people-of-color-become-airbnb-hosts/> [https://perma.cc/BF8W-HHBQ].

their partnership. If successful, this partnership may be a model to accrue economic gains realized through the short-term rental market to communities of color.

IV. RECOMMENDATIONS

As discussed, current short-term rental accommodation law fails to adequately mitigate harms associated with the proliferation of Airbnbs. Policymakers must implement a multi-faceted regulatory strategy that allows users to reap the benefits of short-term rentals while minimizing undesirable community consequences. However, these strategies will not be as effective without registering and licensing all Airbnb units. Licensing and registration will help jurisdictions to monitor the growth of the short-term rental and its continued effects throughout the community. Hosts should not be able to list an accommodation on Airbnb without first registering with the local government and obtaining a license number. This number should be listed on the online Airbnb listing to signal to potential guests that the host has taken necessary steps to comply with local law. Hosts that falsify licenses should be penalized and banned from the platform. Longitudinal empirical analyses will ensure that regulations are having the intended effects in the community.

The following recommendations speak to the core principles of short-term rental policy reform, but it is also imperative that policymakers engage the community in their response.³²⁸ Particular laws may vary from jurisdiction to jurisdiction, reflecting the residents' needs in those communities. For example, a beach community in the Outer Banks of North Carolina that has a culture and economy predicated on tourists may adopt more generous laws regarding the length of time that a short-term rental may be listed, compared to a city with a large population of low-income tenants and an acute affordable housing problem. While engaging the community will produce laws that vary by, but meet the acute needs of, local jurisdictions, policymakers must adopt approaches that conform to the following overarching principles: protect affordable housing stock, prevent hotelization of residential neighborhoods, create avenues for diversity of wealth accumulation, and eliminate opportunities to discriminate on homesharing platforms.

328. Benfer & Gold, *supra* note 229, at S48 (discussing the need for participatory approaches to resolve issues affecting the community at large).

A. *Protect Affordable Housing Stock*

As hosts realize additional income and equity from underutilized resources, market pressure increases to convert long-term rentals to short-term accommodations.³²⁹ However, doing so depletes local affordable housing stock. Given the dearth of affordable rental housing,³³⁰ the pressure to convert long-term rental stock to the Airbnb market stresses an already under-resourced market.

Airbnb is aware of its ability to contribute to affordable housing. In September 2019, the company “announced a new community impact investing program that will invest \$25 million in projects supporting affordable homeownership, small businesses, and the construction and preservation of affordable housing.”³³¹ The program currently operates in the San Francisco Bay Area and Los Angeles County.³³² While an important step, it will take more to preserve and create affordable housing in affected communities across the country.

To combat further erosion of affordable housing stock, local governments should collect a fee from Airbnb hosts that goes directly into an affordable housing fund.³³³ This fee may be collected at the time of licensing and registration, or could be levied as an annual tax on Airbnb hosts. This money would then be used to preserve and create additional affordable housing within the jurisdiction. To be effective, it is imperative

329. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 3.

330. INGRID GOULD ELLEN & BRIAN KARFUNKEL, N.Y.U. FURMAN CTR./CAPITOL ONE NATIONAL AFFORDABLE RENTAL HOUS. LANDSCAPE, RENTING IN AMERICA’S LARGEST METROPOLITAN AREAS 6 (2016), https://furmancenter.org/files/NYU_Furman_Center_Capitol_One_National_Affordable_Rental_Housing_Landscape_2016_9JUNE2016.pdf [<https://perma.cc/M7RS-EQDT>] (“While the rental stock [between 2006 and 2014] grew, the population grew faster than the stock in [the 11 largest metropolitan areas in the U. S.] and in metro areas nationwide. As changes in demand exceeded changes in supply, vacancy rates decreased, the average number of people living in a rental unit increased, and, in most areas, rents rose.”).

331. Maleesa Smith, *Airbnb Invests \$25 Million in Bay Area Affordable Housing*, HOUSINGWIRE (Sept. 20, 2019, 5:08 PM), <https://www.housingwire.com/articles/50201-airbnb-invests-25-million-in-bay-area-affordable-housing/> [<https://perma.cc/KT7E-6HTN>] (noting that of the program, Airbnb Co-Founder and CEO Brian Chesky stated, “I want Airbnb to be a 21st Century Company that serves all our stakeholders, including the communities our hosts and guests call home”).

332. *Id.*

333. Jurisdictions are already considering such measures to offset community effects of other sharing economy companies. In light of the fact that Uber and Lyft accounted for two-thirds of a 62% increase in San Francisco traffic over six years, the city is considering proposals to tax ride-sharing net fares as well as congestion pricing. Rachel Swan, *Uber, Lyft Account for Two-thirds of Traffic Increase in SF Over Six Years, Study Shows*, S.F. CHRONICLE (May 8, 2019, 7:19 PM), <https://www.sfchronicle.com/bayarea/article/Uber-Lyft-account-for-of-traffic-increase-in-13830608.php> [<https://perma.cc/FT32-QMS4>]. For discussion of New Orleans’s Neighborhood Housing Improvement Fund, see *supra* section III.B.2.

that the amount of the affordable housing set-aside is based on empirical data to ensure that the funds can meaningfully offset the effects of short-term rentals.

Policymakers could also consider enacting a marginal affordable housing tax rate on additional Airbnb properties. For example, the affordable housing tax on a host's first property may be lower than on the second and third. A successive increase in taxes would not prevent hosts from reaping economic benefits, but would proportionately correspond with the increasing need to preserve and create affordable housing that results from additional short-term rental accommodations. An affordable housing fund will have the added benefit of slowing gentrification.³³⁴ This, in turn, will promote economic and racial diversity.³³⁵

Additionally, policymakers must take steps to protect the rights of existing long-term tenants. Laws must prohibit Airbnb hosts from listing units under any type of rent control or rent stabilization. Programs like these “regulate[] the amount of rent the landlord may charge for an apartment.”³³⁶ A prohibition on rent control units prevents would-be hosts from profiting from regulations intended to promote affordable housing.

Further, rental housing law must protect tenants from abuse of just cause eviction laws.³³⁷ In some jurisdictions, such as San Francisco and Washington, DC, a landlord may not evict a tenant without cause, such as failure to pay rent or a lease violation.³³⁸ However, there are often exceptions for landlords who plan to occupy the unit. To prevent abuse, landlords found to have listed the vacated unit as a short-term rental accommodation within twelve months of a personal use eviction should be subject to fines and banned from listing on Airbnb for a certain period of time.

334. See Vicki Been, *What More Do We Need to Know About How to Prevent and Mitigate Displacement of Low- and Moderate-Income Households from Gentrifying Neighborhoods?*, in *A SHARED FUTURE: FOSTERING COMMUNITIES OF INCLUSION IN AN ERA OF INEQUALITY* 377–78 (Christopher Herbert et al. eds., 2018) (writing about revenue generation as a way to slow gentrification).

335. *Id.*

336. *Directory of NYC Housing Programs: Rent Regulation*, N.Y.U. FURMAN CTR., <http://furmancenter.org/coredata/directory/entry/rent-regulation> [https://perma.cc/7758-8554].

337. Aimee Inglis, *Just Cause Evictions and Rent Control*, in *PROTECT TENANTS, PREVENT HOMELESSNESS* 22 (Nat'l Law Ctr. on Homelessness & Poverty ed., 2018), <http://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf> [https://perma.cc/P2TF-BR3X] (“Just cause eviction laws require landlords to give a reason for evicting tenants. Just cause eviction laws have been shown to motivate landlords to increase and improve maintenance of rental housing and to stabilize rental markets.”).

338. Marie Claire Tran-Leung, *Limiting Use of Criminal Records*, in *PROTECT TENANTS, PREVENT HOMELESSNESS*, *supra* note 337, at 35.

B. Prevent Hotelization of Residential Neighborhoods

Preventing hotelization—fundamentally changing the nature of residential neighborhoods through proliferation of commercial accommodations—is essential to control noise and unsanitary conditions, and maintain a community’s social fabric. This can be accomplished by a variety of measures. First, laws should limit the number of short-term rentals in a given neighborhood or block. Such a measure would prevent whole areas from converting Airbnbs, effectively stranding long-term residents in a tourist district.

Second, local governments should contemplate limits on the number of licenses that a single individual may hold. Some jurisdictions may enact a policy that limits hosts to only listing their own home, while others may allow for multiple listings, depending on the needs and desires of the local community. In light of the needs and desires of the local community, the number may vary from jurisdiction to jurisdiction. However, by including a limit, lawmakers prevent commercial property owners from operating unofficial hotels.

Finally, short-term rental accommodation policy should restrict the number of days a whole-home accommodation may be rented in a given year. Renting a spare room or couch in one’s home and a whole-home accommodation are different types of accommodations, with different effects on the local community. The law should treat them as such. In a hosted accommodation, the long-term resident is present at the home.³³⁹ This decreases the likelihood of negative externalities on the surrounding community, such as improper trash disposal. Further, because the permanent resident is present, the social fabric of the community is maintained. In contrast, a whole home listing leads to a revolving door of short-term residents who are unfamiliar with neighborhood policies and lack the motive to invest socially in the community.³⁴⁰ Given the disparate effects, lawmakers should cap the number of nights a whole-home accommodation may be listed in a given year.

C. Create Opportunities for Diversity of Wealth Accumulation

While policymakers must take steps to limit Airbnb density and prevent the hotelization of residential neighborhoods, regulations must create meaningful opportunities for a multiplicity of hosts to realize economic benefits of short-term rental accommodations. First, licensing and registration should not be limited to those with an ownership interest in a

339. *Supra* section II.A.4.

340. *Supra* section II.A.4.

property. While an individual lease agreement may prohibit subletting a home, the municipality should not take it upon itself to prevent renters from participating in the short-term rental market. This limitation unnecessarily precludes individuals who typically have fewer assets than homeowners and are arguably more in need of additional income to achieve economic stability from a lucrative market.

Allowing renters to participate in the Airbnb market will also limit the tendency of short-term rental economic benefits to accrue disproportionately to wealthy white users. “Across racial groups, more than 80 percent of wealth in one’s primary residence [i]s held by white households.”³⁴¹ Moreover, the majority (60%) of housing wealth is held by the top twenty percent of households.³⁴² Given the concentration of Airbnb eligible properties among affluent white hosts, it is critical that policies allow hosts with diverse racial and economic backgrounds to participate in the market.

Second, efforts to limit the number of Airbnb licenses issued in a particular jurisdiction or neighborhood should not entrench Airbnb rights, and consequent benefits, to early adopters and those with the technological literacy and experience to be first to the registration office. In jurisdictions that limit the number of Airbnbs in a given area, short-term rental licenses are typically awarded on a first come, first serve basis. This distribution pattern rewards those with the knowledge and ability to quickly enter the short-term rental market; those with fewer resources and/or technological prowess may be late to market. Instead, licenses should be distributed by lottery and should only be valid for a set period of time, such as two years. After this time, the license should expire, and all interested parties would have the opportunity to apply via the lottery. The city of Cannon Beach, Oregon operates an example lottery.³⁴³ In Cannon Beach, parties may apply for a five-year short-term rental permit.³⁴⁴ Such permits are awarded by random selection and, after the expiry of the initial period, applicants may not be considered for a new permit in the next cycle.³⁴⁵ Lottery systems, like that implemented by Cannon Beach, address valid density concerns while providing

341. Bivens, *supra* note 59, at 7 (“African American households held just 6.5 percent of wealth in primary residences, Hispanic households held 6.0 percent . . .”).

342. *Id.* at 6–7.

343. *Obtaining a Five Year Unlimited Short-term Rental Permit*, CITY OF CANNON BEACH (2017), https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/9711/five-year_handout.pdf [<https://perma.cc/LZ5T-NACC>].

344. *Id.* at 3.

345. *Id.* at 6.

opportunities for a diversity of hosts.

D. Eliminate Opportunities to Discriminate on Homesharing Platforms

As the Congressional Black Caucus noted in its letter to Airbnb CEO Brian Chesky, it is “seemingly so easy to discriminate against someone via Airbnb’s internet platform.”³⁴⁶ Eliminating discrimination on the platform will require lawmakers and Airbnb to enact a variety of measures. First, lawmakers must categorize unhosted Airbnb listings as public accommodations under Title II of the 1964 Civil Rights Act.³⁴⁷ Doing so will provide minority guests with powerful recourse if their requests to book available listings are denied. Local government should regularly investigate compliance using testers. This practice involves “the use of individuals who, without any bona fide intent to rent . . . pose as prospective [guests] for the purpose of gathering information.”³⁴⁸

Airbnb must also take steps to eliminate discrimination on its platform. When making a booking for a whole home rental, Airbnb should consider limiting or withholding personal information about guests and hosts, such as name and photo, until after the reservation is confirmed. Hosts and guests would still have an opportunity to access reviews, but would not be able to base their booking decisions on perceptions of race.³⁴⁹

Airbnb started this process in October 2018 when it announced that it was changing its policy regarding guest profile photos.³⁵⁰ Under the

346. Letter from the Congr. Black Caucus to Brian Chesky, *supra* note 133.

347. Like owner occupied tenancy, hosted Airbnbs fall under Title II’s Mrs. Murphy exemption. Scholar Norrinda Brown Hayat argues that rather than exposing a “‘soft spot’ in our discrimination laws where Title II may be eluded . . . Title II is applicable to the sharing economy presently and . . . the Mrs. Murphy exception is inapplicable to a large number of hosts.” Norrinda Brown Hayat, *Accommodating Bias in the Sharing Economy*, 83 BROOK. L. REV. 613, 615–16 (2018) (providing a comprehensive overview of Title II and literature on the Mrs. Murphy exception).

348. *Fair Housing Testing Program*, U.S. DEP’T JUST., <https://www.justice.gov/crt/fair-housing-testing-program-1> [<https://perma.cc/ARJ5-WE2G>].

349. Empirical research suggests that, even with retaining demographic information, the inclusion of reviews can reduce discrimination on the platform. “We find that in the absence of a review, an accommodation request made by a guest with an African American–sounding name is 19 percentage points less likely to be accepted by Airbnb hosts. However, a positive review can significantly reduce the observed racial discrimination based on a name’s perceived racial origin.” Ruomeng Cui, Jun Li & Dennis J. Zhang, *Reducing Discrimination with Reviews in the Sharing Economy: Evidence from Field Experiments on Airbnb*, MGMT. SCI. 17 (2019), available at <https://pubsonline.informs.org/doi/pdf/10.1287/mnsc.2018.3273> (last visited Nov. 11, 2019).

350. *Update on Profile Photos*, AIRBNB (Oct. 22, 2018), <https://www.press.airbnb.com/update-on-profile-photos/> [<https://perma.cc/8R9Y-Z5GV>].

updated policy, guests will not be required to provide a photo.³⁵¹ For guests that choose to upload a photo, Airbnb will not release the image to a prospective host until after the booking is accepted.³⁵² If a host cancels the reservation after receiving the photo, Airbnb states that guests will have “an easy way” to contact the company with discrimination concerns, though it does not elaborate on the process.³⁵³ This is an important step from Airbnb to eliminate discrimination on its platform. However, by only applying to guests, it does not address discrimination experienced by hosts. Further, as studies exposed, users can use other personal information, like a name, to discriminate against guests.

Withholding all identifying information while providing access to reviews would better decrease discrimination against both guests and hosts. For hosts, this would provide a mechanism to obtain parity in asking rates, thereby allowing hosts of color to enjoy the same economic benefits from Airbnb as their white counterparts. For guests, withholding information would prevent racism from affecting their opportunity to use and enjoy available accommodations.

Additionally, Airbnb should require hosts to provide a reason when rejecting a booking. The benefit of this is twofold: (1) it would force hosts to pause and think about whether they have a legitimate reason to reject a booking request; and (2) it would alert Airbnb to patterns of discriminatory behavior. Finally, in cases presenting a credible claim of discrimination, Airbnb should place a hold on the user’s account, not allowing any new reservations until an investigator looks into the claim and resolves it.

CONCLUSION

Airbnbs can provide a boon to hosts and guests. By converting a previously underutilized asset into a short-term rental accommodation, hosts gain a new income stream and increase their home equity. Guests, too, benefit from Airbnb’s platform, as the accommodations are typically more affordable than traditional hotels and provide an opportunity to “live like a local.” These gains, however, come at a cost. While individual hosts and guests may benefit economically, the local housing market experiences significant change in the form of fewer affordable housing options and erosion of neighborhood social capital. At the same time, discrimination on Airbnb’s platform means that the benefits and consequences are not evenly distributed, with economic gains accruing

351. *Id.*

352. *Id.*

353. *Id.*

disproportionately to white users. As Airbnbs continue to gain popularity, it is essential that legal strategies support their economic benefits while curtailing community harms. Adopting multi-faceted and comprehensive approaches are necessary to protect affordable housing stock, prevent hotelization of residential areas, and create meaningful opportunities to benefit from participation in the short-term rental market.