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IS AIRBNB POLLUTING THE BIG APPLE? THE IMPACT OF REGULATING THE SHORT-TERM RENTAL SERVICE IN NEW YORK CITY

Kayla Laskin*

INTRODUCTION

Imagine your boss calls you into his office on a Monday morning. You think you are going to chat about the weekly agenda ahead; however, you notice the sullen look on your boss's face. You immediately become nervous and think that no good news could possibly come from this meeting. You begin to glance over his desk and notice printouts for unemployment counseling and job listings in the area. Sheer panic begins to spread throughout your body, and then your boss states, "I'm sorry, we're going to have to let you go." Your stomach drops to the floor. Your heart starts racing. You think that this cannot be happening to you, not here and not now. Feeling powerless and debilitated, you pack up your belongings on your desk and begin your drive back home. A million thoughts are racing through your mind. *How am I going to pay the bills? What if I don't ever find a job anywhere else? How will I support my family? How will I continue to pay off my mortgage?* Just as you pull into the driveway, you see that your significant other is still at home. How will you tell the love of your life that you just lost your dream job? You sit there feeling hopeless. But what if the solution to all of this was staring you right in the face—your home.

In 2012, Nan Doyle's husband was in this exact crisis after he lost his job.¹ In order to continue paying their bills, the couple

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¹ See Nan Doyle, *How Airbnb saved my home*, N.Y. POST (Apr. 30, 2014, 10:37 PM), <http://nypost.com/2014/04/30/how-airbnb-saved-my-home/>. Nan Doyle is a New York native and a resident of Fort Greene. *Id.*

decided to list their garden apartment in Brooklyn, New York on Airbnb, an online service platform for short-term rentals.² Doyle and her husband own their home and have been hosting visitors from around the world for short-term stays.³ Doyle explains how Airbnb has allowed her to remain a proud resident of New York City.⁴ She states, “[Airbnb] has allowed us to keep our own housing ‘affordable,’ and helped us share the magic of our neighborhood with guests who might never leave Manhattan (or never make it to the city) if their only choice was a hotel.”⁵ Although this may seem like the perfect solution to earning supplemental income in a time of need, the New York State legislature might soon make it nearly impossible for the Doyle’s and other residents of New York City to rent out their homes on short-term rental websites, such as Airbnb.⁶

Ever since the formation of Airbnb in 2008, the short-term rental service continues to provide users with the opportunity to rent out their homes and book properties worldwide.⁷ Brian Chesky, co-founder and CEO of Airbnb, has developed the second most valuable United States tech startup, worth \$30 billion in

² *See id.*

³ *Id.* Doyle explains, “Since launching our short-term rental, we’ve hosted visitors from China, Sweden, Germany, Italy, England, France, Denmark, Holland, Spain, Finland and more than 20 US [sic] states.” *Id.*

⁴ *See id.* Doyle highlights how she “feel[s] part of a virtuous circle, one that engages in cross-cultural exchange by talking with tourists from around the world, and one that shares the vibrant, diverse city that makes New York so unique.” *Id.*

⁵ *Id.*

⁶ *See* Matt Rosoff, *Airbnb is now worth \$30 billion*, BUS. INSIDER (Aug. 6, 2016, 4:31 PM), <http://www.businessinsider.com/airbnb-raises-850-million-at-30-billion-valuation-2016-8> (arguing that one recently proposed bill would have made it virtually impossible for Airbnb to operate in the state).

⁷ *See* Rebecca Aydin, *How 3 guys turned renting air mattresses in their apartment into a \$31 billion company, Airbnb*, BUS. INSIDER (Sept. 20, 2019, 10:27 AM), <http://www.businessinsider.com/how-airbnb-was-founded-a-visual-history-2016-2>; *see also* *About us*, AIRBNB, <https://www.airbnb.com/about/about-us> (last visited Oct. 25, 2017, 5:12 PM) (stating that “Airbnb’s accommodation marketplace provides access to 7 million unique places to stay in more than 100,000 cities and 191 countries and regions.”).

2016.⁸ In 2017, Airbnb listings in New York City had grown to over 35,000 listings.⁹

Notwithstanding Airbnb's continued growth, the service is highly criticized for its impact on affordable housing, homeowners, and hotels in New York City.¹⁰ According to *Short Changing New York City*, rental rates are rapidly increasing in neighborhoods throughout New York City where Airbnbs are generally located.¹¹ Additionally, the article highlights how Airbnb is responsible for gentrifying minority neighborhoods in the city.¹² Legislators are wary about Airbnb listings removing permanent housing from the market and increasing rental rates throughout areas in the city.¹³ More specifically, lawmakers wish to target commercial operators who list "multiple units in the same metropolitan area or list units for an extended period of time" as short-term rentals—often classified as illegal hotels—rather than making them available to tenants for long-term leases.¹⁴ The American Hotel and Lodging Association, an industry trade group, defines these commercial operators as individuals who purchase rental properties and exclusively rent them out to short-term guests, similar to a hotel.¹⁵ Moreover, the hotel industry and the American Hotel and Lodging Association have joined forces with New York lawmakers in an

⁸ See Rosoff, *supra* note 6. Airbnb has expanded their short-term rental service by adding the feature "Experiences" that allows users to take part in "activities designed and led by inspiring locals . . . [going] beyond typical tours or classes by immersing guests in a host's unique world." *What are experiences?*, AIRBNB, <https://www.airbnb.com/help/article/1581/what-are-experiences?topic=1099> (last visited Oct. 6, 2019, 4:36 PM).

⁹ See Zoe Rosenberg, *Airbnb's New York listings are on the rebound following crack-down*, CURBED N.Y. (July 31, 2017, 11:00 AM), <https://ny.curbed.com/2017/7/31/16068206/airbnb-new-york-listings-numbers>.

¹⁰ See Sarah Holder, *The Airbnb Effect: It's Not Just Rising Home Prices*, CITYLAB (Feb. 1, 2019), <https://www.citylab.com/equity/2019/02/study-airbnb-cities-rising-home-prices-tax/581590/>.

¹¹ See generally BJH Advisors LLC, *Short Changing New York City: The impact of Airbnb on New York City's housing market*, MOBILIZATION FOR JUST., 1, 4–5, 11, 30, 46 (2016), <http://mobilizationforjustice.org/wp-content/uploads/Shortchanging-NYC.pdf>.

¹² *Id.* at 6–7, 13, 30–32, 38, 41, 44–46.

¹³ See Holder *supra* note 10.

¹⁴ See *Illegal Hotels*, AM. HOTEL & LODGING ASS'N, <https://www.ahla.com/issues/illegal-hotels> (last visited Dec. 29, 2017, 4:21 PM) (expressing support for property owners' occasionally "homesharing," renting out a room in their home, as opposed to a single operator listing multiple units in the same area).

¹⁵ *Id.* (stating that "commercial landlords are using Airbnb to rent out multiple residential properties year-round, just like a hotel, while avoiding regulation and taxes.").

effort to curb the rise of Airbnb in New York City.¹⁶ The Association argues Airbnb has forced a decrease in hotel prices, which has further resulted in a loss of revenue for the industry.¹⁷ Additionally, the Association claims that “Airbnb is operating a lodging industry, but it is not playing by the same rules [as hotels].”¹⁸ In New York City, Airbnb hosts do not collect a lodging tax and do not follow the security and safety regulations that hotels must abide by.¹⁹

Although Airbnb continues to grow, strong state restrictions are being placed on short-term rental services due to its impact on the real estate market and hotel industry.²⁰ In order to limit short-term rental commercial operators in New York City, in 2010, lawmakers amended the New York State Multiple Dwelling Law to restrict renting out “Class A” multiple dwelling units for periods of fewer than 30 days.²¹ Additionally, in October 2016, New York Governor Andrew Cuomo signed into law § 121 of the Multiple Dwelling Law, which makes it illegal for residents of “Class A” multiple dwellings in New York City to advertise their property for rent for less than 30 days.²² If violated, individuals will be fined \$1,000 for the first offense, \$5,000 for the second offense, and

¹⁶ See Katie Benner, *Inside the Hotel Industry’s Plan to Combat Airbnb*, N.Y. TIMES (Apr. 16, 2017), https://www.nytimes.com/2017/04/16/technology/inside-the-hotel-industrys-plan-to-combat-airbnb.html?_r=0 (emphasizing that the American Hotel and Lodging Association has combined forces with the New York State Legislature to reign in Airbnb through a New York bill).

¹⁷ See *id.*

¹⁸ *Id.*

¹⁹ See *id.*

²⁰ See Joanna Walters, *Something in the Airbnb: hosts anxious as New York begins crackdown*, THE GUARDIAN (Feb. 12, 2017, 9:03 AM), <https://www.theguardian.com/technology/2017/feb/12/airbnb-hosts-new-york-fines-government-illegal>. The New York legislature justifies the enactment of stricter regulations on Airbnb by highlighting the service’s negative impact on tenant-landlord relationships, the hotel industry, and the availability of affordable housing in New York City. *Id.*; see also *Goldstein v. Lipetz*, 53 N.Y.S.3d 296, 304 (N.Y. App. Div. 2017) (arguing that the tenant engaged in substantial profiteering by subletting her rent-stabilized apartment through Airbnb, which “disregarded, not only the rights of her landlord, but also the rights of all of her fellow permanent residents of the building, whether shareholders or lessees.”).

²¹ *Airbnb, Inc. v. Schneiderman*, 2016 WL 6138101, at 4 (S.D.N.Y. Oct. 21, 2016); see N.Y. MULT. DWELL. § 7 (McKinney 2010) (“A ‘multiple dwelling’ is a dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other.”).

²² Alison Griswold, *New York made it illegal to advertise your apartment on Airbnb for less than 30 days*, QUARTZ (Oct. 21, 2016), <https://qz.com/816486/new-york-governor-andrew-cuomo-signed-a-law-making-it-illegal-to-advertise-your-apartment-on-airbnb-for-less-than-30-days/>; see generally N.Y. MULT. DWELL. § 121(1) (McKinney 2016).

\$7,500 for the third offense.²³ Essentially, it is illegal for New Yorkers to advertise and rent out an entire apartment on Airbnb for fewer than 30 days if the original tenant is not present during the short-term rental period. Not only do these laws place severe restrictions on Airbnb users, but they are also “harmful to the middle class [who utilize Airbnb as supplemental income] and [] impose harsh penalties on its hosts, 96% of whom are hosts with one listing who rent their space 41 nights a year on average.”²⁴ As a result of the enactment of these short-term rental laws, Nan Doyle received a \$1,000 summons for listing her property on Airbnb.²⁵ Although lawmakers wish to target short-term rental commercial operators, regular New Yorkers, like Doyle, who are not classified as commercial landlords or hoteliers are being targeted by these laws.²⁶

Like New York City, other major U.S. cities such as San Francisco and Chicago regulate short-term rental services.²⁷ However, the regulations adopted by San Francisco and Chicago have not been as restrictive as New York’s short-term rental laws.²⁸ Both San Francisco and Chicago lawmakers have imposed registration requirements, hotel taxes, and other regulations on short-term rentals in order to better meet the needs of the housing industry and the interests of those who utilize Airbnb’s services.²⁹ In Airbnb’s hometown city of San Francisco local lawmakers enacted

²³ N.Y. MULT. DWELL. § 121(2) (McKinney 2016); N.Y.C. ADMIN. CODE § 27-287.1(2) (2017).

²⁴ Avery Hartmans, *Airbnb has finally come to the table in New York — but it might be too late*, BUS. INSIDER (Oct. 19, 2016, 3:35 PM), <http://www.businessinsider.com/airbnb-releases-new-homesharing-rules-2016-10>; see Alison Griswold, *New York City is using sheriffs and obscure building code violations to crack down on Airbnb*, QUARTZ (Sept. 30, 2017), <https://qz.com/1084108/1084108/> (discussing how users are restricted in renting out their apartments under the new laws).

²⁵ Griswold, *supra* note 24.

²⁶ *Id.*

²⁷ See J.T. Minor, *Foregoing the Cleaver for the Scalpel: How New York Can Add Some Nuance to Its Short-Term Rental Laws*, 103 IOWA L. REV. 1, 3 (2018); Heather Kelly, *Why everyone is cracking down on Airbnb*, CNN (June 23, 2016, 2:53 AM), <http://money.cnn.com/2016/06/22/technology/airbnb-regulations/index.html>.

²⁸ See Minor, *supra* note 27.

²⁹ See *Chicago, IL*, AIRBNB, <https://www.airbnb.com/help/article/861/chicago-il> (last updated May 22, 2019); see also Stephen Fishman, *Overview of Airbnb Law in San Francisco*, NOLO, <https://www.nolo.com/legal-encyclopedia/overview-airbnb-law-san-francisco.html> (last visited Oct. 4, 2019); *Airbnb Policy Tool Chest*, AIRBNB, <https://www.airbnb.com/help/article/861/chicago-il> (last visited Oct. 10, 2019) (explaining that requirements enforced in cities like Chicago and San Francisco provide benefits to Airbnb’s users and communities).

San Francisco Ordinance 178-16.³⁰ Under the ordinance, individuals can rent out their apartment on Airbnb if they register their unit.³¹ Similarly, in June 2016, the city of Chicago passed an ordinance that allows Airbnb hosts to rent out their apartment if they register their properties.³² Moreover, the ordinance imposes a 4% hotel tax on travelers who book a short-term rental on Airbnb.³³ In an attempt to adjust to these newly adopted regulations, Airbnb provides a help section on its website that offers users a breakdown of short-term rental laws and regulations in selected U.S. cities and explains how users can comply with local laws.³⁴

This Note argues that New York's short-term rental laws fail to effectively balance the interests of short-term rental services and New York City homeowners. The New York legislature's adoption of § 121 of the Multiple Dwelling Law and § 27-287 of the New York City Administrative Code demonstrates the difficulties in balancing the existence of short-term rentals while maintaining protection of tenants and affordable housing in New York City. Although New York lawmakers should regulate Airbnb, they should not punish those who reasonably utilize these short-term rental services. As an alternative, legislators should adopt reasonable measures that support the expansion and use of short-term

³⁰ S.F., CAL., CODE REGS. ORDINANCE 178-16 (Aug. 2, 2016); Thomas Dickerson, *A Look At Airbnb's Legal Battles Across The US*, LAW360 (May 9, 2017, 12:30 PM), <https://www.law360.com/articles/921602/a-look-at-airbnb-s-legal-battles-across-the-us>; *Airbnb, Inc. v. City & Cnty. of San Francisco*, 217 F. Supp. 3d 1066, 1071 (N.D. Cal. 2016).

³¹ *Airbnb*, 217 F. Supp. 3d at 1070 ("One of the main conditions is that a host register a residence with San Francisco before making it available as a short-term rental."). San Francisco established this registration requirement in order to have Airbnb become "more transparent about its hosts" who may be violating local laws and filter out hosts who are exploiting the short-term rental service. See Dickerson, *supra* note 30. The registration process requires Airbnb hosts to provide "proof of liability insurance and compliance with municipal codes, usage reporting, tax payments and other conditions." *Airbnb*, 217 F. Supp. 3d at 1070.

³² See CHI., ILL., MUN. CODE 4-14-020 (2016); Alby Gallun, *Airbnb scofflaws stay one step ahead of the city*, CRAIN'S CHI. BUS. (Oct. 5, 2018, 2:23 PM), <https://www.chicagobusiness.com/commercial-real-estate/airbnb-scofflaws-stay-one-step-ahead-city>. Through this registration system, the city will have the ability to monitor whether hosts are complying with Chicago's short-rental laws. See Danny Ecker, *City begins long-awaited registration of Airbnb hosts*, CRAIN'S CHI. BUS. (Aug. 11, 2017, 7:00 AM), <http://www.chicagobusiness.com/realestate/20170811/CRED03/170819967/city-begins-long-awaited-registration-of-airbnb-hosts>.

³³ See CHI., ILL., MUN. CODE 3-24-030; Kelly, *supra* note 27.

³⁴ See generally *What regulations apply to my city?*, AIRBNB, <https://www.airbnb.com/help/article/961/what-regulations-apply-to-my-city> (last visited Oct. 9, 2019).

rental services while protecting the real estate market in New York City.

This Note's proposed legislation provides a positive solution to the conflicts between Airbnb and New York City because it will allow New Yorkers to utilize Airbnb as supplemental income while balancing the expansion of affordable housing, the rights of tenants, and the hotel industry. In order to strike this balance, the proposed legislation will include similar requirements from San Francisco's and Chicago's short-term rental laws. This new legislation will allow New Yorkers to rent out their apartments to short-term visitors, but only if they: (1) register their unit, (2) charge a Hotel Accommodations Tax, and (3) comply with safety guidelines within their building. By using the registration requirement seen in cities such as San Francisco and Chicago,³⁵ the proposed legislation will allow Airbnb users to continue utilizing short-term rental services so long as they register their property with the city of New York. Through this registration process, New York City will be able to weed out commercial operators who rent out units for an extended period of time and fail to abide by state regulations. Additionally, a Hotel Accommodations Tax should be imposed on Airbnb listings in New York City, as seen in various counties across New York State.³⁶ By collecting this tax, Airbnb will help improve New York City neighborhoods and comply with lodging industry tax guidelines.³⁷ Furthermore, Airbnb should require hosts to provide a complete description of their property and

³⁵ See CHI., ILL., MUN. CODE 4-14-020 (2016) (requiring that a unit be registered before being used as a rental); *Airbnb*, 217 F. Supp. 3d at 1070 (explaining that hosts can utilize short-term rentals only when the unit is registered).

³⁶ See Jennifer Sokolowsky, *New York City Council passes bill requiring Airbnb to share host data*, AVALARA (July 23, 2018), <https://www.avalara.com/mylodg-etax/en/blog/2018/07/new-york-city-council-passes-bill-requiring-airbnb-to-share-host-data.html>.

³⁷ See *id.*; see Minor, *supra* note 27 (explaining that revenue generated from the tax can be used for neighborhood maintenance). This Note will propose how the New York legislature should impose a hotel tax similar to the tax seen in San Francisco and Chicago. By requiring hosts to procure a transient tax from its guests, San Francisco hopes to increase its revenue for the city and improve neighborhoods. *Id.* (explaining that the tax generates revenue for community programs). Similarly, Chicago lawmakers imposed a hotel tax on its guests in hopes of utilizing the revenue to improve communities throughout the city. See Tanveer Ali, *In One Year, Airbnb Tax Raises \$2.8 Million For Chicago Homeless Services*, DNAINFO (July 27, 2017, 11:39 AM), <https://www.dnainfo.com/chicago/20170727/downtown/one-year-airbnb-tax-raises-28-million-for-chicago-homeless-services>.

the terms of the building on their listing.³⁸ By requiring hosts to post safety requirements on their listings, Airbnb can help promote a safer living environment within New York City buildings. With this proposed legislation, the New York legislature will have the opportunity to improve New York City's housing market and New Yorkers will be able to utilize Airbnb as their "economic life-line."³⁹

Rather than impose hefty fines and extreme restrictions on hosts for advertising and renting out their properties as short-term rentals, the New York legislature should enact the proposed legislation above. If Airbnb hosts comply with these new guidelines, they should be able to list and rent out their properties.

Part I of this Note highlights the development of Airbnb and how Brian Chesky transformed the company into one of the most valuable technology startups in the United States. It also discusses the impact of short-term rental services on the New York City real estate market and hotel industry. Part II of this Note identifies the current laws and caselaw against short-term rentals in New York City. It states how the current legislation in place does not effectively regulate short-term rental services and unfairly imposes hefty penalties. Part III demonstrates how other major cities such as Chicago and San Francisco have enacted legislation that reasonably regulates short-term rental services. Part IV of this Note proposes a legislative solution to the constant conflict between Airbnb and New York City. By using current legislation from other U.S. cities that regulate short-term rental services, the proposed legislation will allow New Yorkers to utilize Airbnb while increasing the protection of housing supply in the city, the rights of tenants, and the hotel industry. Under this legislation, Airbnb hosts can advertise and allow travelers to stay in their homes only if they register their unit, comply with safety guidelines, and pay a Hotel Accommodations Tax.

³⁸ See *Responsible hosting in the United States*, AIRBNB, <https://www.airbnb.com/help/article/1376/responsible-hosting-in-the-united-states> (last visited Oct. 2, 2019) (discussing ways that hosts can guarantee compliance with local regulations and improve safety and minimize hazards for guests staying at listed properties).

³⁹ See Minor, *supra* note 27; see Kelly, *supra* note 27.

I. SHORT-TERM RENTAL SERVICES: HOW A HOME SHARING REVOLUTION IMPACTS THE REAL ESTATE MARKET AND THE HOTEL INDUSTRY

By allowing people to rent out a furnished home or apartment for less than 30 consecutive days, Airbnb has transformed the hotel and lodging industry.⁴⁰ The short-term rental service is successful because of the convenience of booking online and its ability to offer affordable accommodations relative to traditional accommodations.⁴¹ Although Airbnb has fostered a home-sharing community, the New York legislature believes that the short-term rental service is contributing to the lack of affordable housing in New York City and infringing on the rights of both landlords and tenants.⁴²

A. *Short-Term Rentals and How They Sparked a Home Sharing Revolution*

A short-term rental is defined as “a property that is rented for less than 30 consecutive days.”⁴³ Short-term rentals are increasingly becoming more popular with travelers due to the convenience of booking online through a company’s website or smartphone app.⁴⁴ As opposed to a long-term rental, a short-term rental host can choose exact days in any given month that their property will be made available to guests.⁴⁵

To take advantage of short-term rentals and fill the gap of cheaper and more convenient lodging for travelers, Brian Chesky,

⁴⁰ See Alaa Raafat & Carlotta Weller, *A New Era of Lodging: Airbnb’s Impact on Hotels, Travelers, and Cities*, HARV. REAL EST. REV. (Jan. 25, 2019), <https://medium.com/harvard-real-estate-review/a-new-era-of-lodging-airbnbs-impact-on-hotels-travelers-and-cities-de3b1c2d5ab6>.

⁴¹ See *id.*

⁴² See *Goldstein v. Lipetz*, 53 N.Y.S. 3d 296, 304 (N.Y. App. Div. 2017); BJH Advisors LLC, *supra* note 11, at 4.

⁴³ *Get the Facts About Short-Term Rentals*, SHORT-TERM RENTAL ADVOC. CTR., <http://www.stradvocacy.org/get-the-facts-about-short-term-rentals> (last visited Oct. 28, 2017, 6:55 PM).

⁴⁴ See *id.* (highlighting that “the ability to locate short-term rentals online has made them more accessible and affordable.”).

⁴⁵ See Alexis Brachel, *5 Legal and Regulatory Considerations for Short-Term Rentals*, WOLTERS KLUWER (July 16, 2017), <https://ct.wolterskluwer.com/resource-center/articles/5-legal-and-regulatory-considerations-for-short-term-rentals> (stating that “how long you open your property to renters is also key in defining it as a short term rental or not.”).

Joe Gebbia, and Nathan Blecharczyk developed Airbnb in 2008.⁴⁶ In 2007, Joe Gebbia and Brian Chesky, who were roommates in San Francisco, decided to rent out their loft in order to pay off their rent.⁴⁷ In March 2009, after several failed attempts, the roommates' short-term rental service hit the ground running when their company was renamed Airbnb and received a \$600,000 investment from Sequoia Capital.⁴⁸ In 2011, Airbnb was in 89 countries and "hit 1 million nights booked on the platform."⁴⁹ By 2014, the company redesigned its logo to promote a symbol of "belonging" within the community.⁵⁰ As of 2017, Airbnb is valued at \$31 billion and operations are being directed towards developing internationally.⁵¹

One of the reasons Airbnb is successful is because of the convenience of booking a short-term rental online.⁵² An individual can choose to list property on the Airbnb website for free and decide how much to charge guests based on their period of stay.⁵³ Additionally, Airbnb "enables prospective renters to search many listings, consider a broad array of attributes, and choose which hosts to contact."⁵⁴ Users can also complete advanced searches by selecting specified room types, price range, size, amenities, property type, or preferred host language.⁵⁵ The convenience and

⁴⁶ See Aydin, *supra* note 7.

⁴⁷ See *id.* "The pair knew a big design conference was coming to San Francisco, and it was making hotels hard to come by. They created a simple site, airbedandbreakfast.com, and bought three air mattresses." *Id.*

⁴⁸ See *id.*

⁴⁹ *Id.* Airbnb was deemed a "unicorn" in Silicon Valley when "some of the valley's biggest [Venture Capitalists] put \$112 million into the startup, valuing it at over \$1 billion." *Id.*

⁵⁰ Catherine Clifford, *Airbnb, Why the New Logo?*, ENTREPRENEUR (July 17, 2014), <https://www.entrepreneur.com/article/235709#>. "The symbol itself is a combination of four simple symbols: a head to represent people, a location icon to represent place, a heart for love and then an A for Airbnb." *Id.*

⁵¹ See Lauren Thomas, *Airbnb Just Closed a \$1 Billion round and became profitable in 2016*, CNBC (Mar. 9, 2017, 2:42PM), <https://www.cnbc.com/2017/03/09/airbnb-closes-1-billion-round-31-billion-valuation-profitable.html>.

⁵² See Raafat & Weller, *supra* note 40.

⁵³ See *What is Airbnb and how does it work?*, AIRBNB, <https://www.airbnb.com/help/getting-started/how-it-works> (last visited Feb. 20, 2018 3:41 PM).

⁵⁴ FED. TRADE COMM'N, THE "SHARING" ECONOMY ISSUES FACING PLATFORMS, PARTICIPANTS & REGULATORS 1, 4, 10 (2016). "Sharing economy platforms [such as Airbnb] enable 'the emergence of marketplaces . . . making it easier for almost anyone to become a supplier of goods and services in exchange for money.'" *Id.* at 10.

⁵⁵ See *How do I use search filters?*, AIRBNB, <https://www.airbnb.com/help/article/479/how-do-i-use-search-filters> (last visited Feb. 20, 2018, 3:41 PM).

affordability of Airbnb's services has impacted the real estate market as well as the New York City community.⁵⁶

B. The Impact of Short-Term Rental Services on the Real Estate Market and the New York City Community

Both hosts and travelers benefit from the services that Airbnb provides; however, Airbnb has left a chilling effect on the New York City real estate market.⁵⁷ Although Airbnb presents greater convenience and cheaper listings for people when looking for a place to stay in the city, lack of affordable housing is on the rise and both tenants and landlords are being deprived of their respective rights.⁵⁸

i. Advantages of Airbnb in New York City

By utilizing Airbnb's services, hosts and travelers obtain various social and financial advantages.⁵⁹ Airbnb hosts have the ability to capitalize on their property and use their unit as an "economic lifeline."⁶⁰ Rather than find a long-term tenant, homeowners are using their extra apartment space to supplement their income in order to pay off their bills, mortgage, and/or rental expenses.⁶¹

⁵⁶ See *infra* Part I.B.

⁵⁷ See Frank Shafroth, *Airbnb Creates an Affordable-Housing Dilemma for Cities*, GOVERNING (Sept. 2016), <https://www.governing.com/columns/public-money/gov-airbnb-affordable-housing.html> (describing that Airbnb brings revenue and jobs to New York City through tourism, but it also takes apartments off the rental market and causes rent to increase to unaffordable levels for local residents).

⁵⁸ See *id.* (explaining Airbnb is causing rents to rise in New York City and that a state law trying to regulate Airbnb restricts landlords' abilities to rent out certain types of property for less than 30 days).

⁵⁹ See Jean Folger, *Airbnb: Advantages and Disadvantages*, INVESTOPEDIA, <https://www.investopedia.com/articles/personal-finance/032814/pros-and-cons-using-airbnb.asp> (last updated Apr. 11, 2019) (explaining that Airbnb provides a host free listing, the ability to set their own price, and financial protection against damages caused by a guest, as well as providing guests local experiences and financial protection).

⁶⁰ Edward J. Sullivan, *Reconsidering the Land Use and Taxation Impacts of One Aspect of the "Sharing Economy" in the United States*, 40 ZONING & PLAN. L. REP. NL 1, 3 (July 2017). "For people who need extra income, Airbnb offers a self-regulating (via guest and host reviews), free-market solution for collecting short-term market-rate rents." James Dobbins, *Making a Living With Airbnb*, N.Y. TIMES (Apr. 7, 2017), https://www.nytimes.com/2017/04/07/realestate/making-a-living-with-airbnb.html?_r=0.

⁶¹ See Dobbins, *supra* note 60. Evelyn Badia lists part of her two-family home in Park Slope, Brooklyn on Airbnb. See *id.* She charges \$169 per night for the apartment and rents out an extra bedroom for \$99 a night. See *id.* Additionally, homeowners, such as Donna

Additionally, Airbnb hosts take advantage of the significant amount of tourism in New York City.⁶² Since the prices of hotels are expensive for the average traveler, Airbnb provides a cheaper method of lodging within New York City.⁶³ In a study conducted by Airbnb, the company monitored median earnings that hosts received and found that the average host in New York City earned \$5,474 within a year.⁶⁴ Moreover, hosts enjoy the luxury of promoting their community to guests and help stimulate tourism within their neighborhood.⁶⁵ Also, on Airbnb, individuals have the opportunity to open their homes to help others in need of housing.⁶⁶ In 2012, Airbnb launched their Open Homes campaign, which provides free housing for refugees and hurricane victims.⁶⁷

Additionally, Airbnb guests have the opportunity to explore and stay in “authentic neighborhoods” within New York City and make themselves feel like true “natives.”⁶⁸ As opposed to staying in a hotel, Airbnb users can enjoy a more personalized experience for a cheaper rate.⁶⁹ Short-term rentals on Airbnb provide guests with various home amenities that a hotel cannot.⁷⁰ Furthermore, various communities across New York City benefit from Airbnb due to

Deans in Brooklyn, use Airbnb as a method to fund their retirement. *See id.* The article highlights these individuals as “hosts out of necessity.” *Id.*

⁶² *See* Zoe Greenberg, *New York City Looks to Crack Down on Airbnb Amid Housing Crisis*, N.Y. TIMES (July 18, 2018) <https://www.nytimes.com/2018/07/18/nyregion/new-york-city-airbnb-crackdown.html>.

⁶³ *See* Sullivan, *supra* note 60, at 4.

⁶⁴ Avery Hartmans, *Here's how much New York City's Airbnb hosts actually earn in a year*, BUS. INSIDER (July 7, 2016, 4:56 PM), <http://www.businessinsider.com/airbnb-host-median-income-2016-7>.

⁶⁵ *See* Doyle, *supra* note 1. By allowing guests to stay in her home, Doyle states that her guests are able to explore “places like the Brooklyn Flea, Brownstone Brooklyn and Prospect Park.” *Id.* Moreover, Doyle “engages in cross-cultural exchange by talking with tourists from around the world.” *Id.*

⁶⁶ *Open Homes*, AIRBNB, <https://www.airbnb.com/openhomes/disaster-relief> (last visited Oct. 29, 2017, 2:54 PM).

⁶⁷ *See id.*

⁶⁸ *See* Doyle, *supra* note 1. Doyle explains how her visitors spend money within the local shops and restaurants, which helps business in the neighborhood. *Id.*

⁶⁹ Kevin Farrell, *Big cities where Airbnb is cheaper than hotels*, USA TODAY (Feb. 23, 2016, 1:01 PM), <https://www.usatoday.com/story/travel/roadwarriorvoices/2016/02/23/airbnb-cheap-cities/80802314/>.

⁷⁰ *See Why tourists choose Airbnb over hotels*, RYERSON TODAY (Oct. 6, 2016), <https://www.ryerson.ca/news-events/news/2016/10/why-tourists-choose-airbnb-over-hotels/> (“Tourists are mostly motivated to book Airbnb accommodations because of their low cost, convenient location, and household amenities.”).

the increased tourism in the area.⁷¹ By staying outside of Mid-Manhattan, Airbnb guests shop in local businesses throughout the five boroughs that have not traditionally benefited from tourism.⁷² Airbnb showcases these positive effects of home sharing on its website.⁷³

ii. Disadvantages of Airbnb in New York City

Although short-term rentals are quite beneficial to the community, there are still several drawbacks of having Airbnb's services within New York City.⁷⁴ One of the biggest issues, specifically one that anti-Airbnb advocates are troubled by, is the lack of availability of affordable housing.⁷⁵ According to the New York City Rent Guidelines Board, the residential rental vacancy rate in New York City is below five percent, which generates "abnormal market conditions."⁷⁶ Due to low vacancy rates, there has been an increase in rental prices and a decrease in affordable housing.⁷⁷ The New York legislature believes short-term rentals are contributing to this "housing emergency" in the city, which has influenced its decision to produce stricter regulation.⁷⁸ In July 2017, there were 30,215 total listings in the city on Airbnb's website.⁷⁹ From the total amount of listings on Airbnb, the site has 8,058 "impact listings."⁸⁰

⁷¹ See *The Airbnb Community's Economic Impact on New York City*, AIRBNB, <https://blog.atairbnb.com/wp-content/uploads/Airbnb-economic-impact-study-New-York-City.pdf> (last visited Oct. 22, 2019).

⁷² See *id.* ("82% of Airbnb properties are located outside of Mid-Manhattan, compared to 30-40% of hotels located outside of Mid-Manhattan. This allows Airbnb visitors to explore neighborhoods that traditionally haven't benefited from tourism.")

⁷³ See *The Economic Impacts of Home Sharing in cities around the world*, AIRBNB, <https://www.airbnb.com/economic-impact> (last visited Oct. 29, 2017, 2:59 PM). "The Airbnb community benefits local economies across the world by supporting residents and local businesses, and encouraging cultural exchange." *Id.*

⁷⁴ See *infra* note 75, 91, 96 and accompanying text.

⁷⁵ Vanessa Wong, *Hotel And City Representatives From Around The World Are Meeting To Discuss The Airbnb Problem*, BUZZFEED NEWS (Nov. 18, 2018), <https://www.buzzfeednews.com/article/venessawong/anti-airbnb-international-conference>.

⁷⁶ See BJK Advisors LLC, *supra* note 11, at 8.

⁷⁷ See *id.*

⁷⁸ See *id.*

⁷⁹ Zoe Rosenberg, *Airbnb's New York listings are on the rebound following crackdown*, CURBED N.Y. (July 31, 2017, 11:00 AM), <https://ny.curbed.com/2017/7/31/16068206/airbnb-new-york-listings-numbers>.

⁸⁰ See Sullivan, *supra* note 60, at 4; see also Dana Schulz, *New Report Says 56 Percent of 2015's Airbnb Listings Were Illegal*, 6SQFT (June 28, 2016), <https://www.6sqft.com/new-report-says-56-percent-of-2015s-airbnb-listings-were-illegal/>; *New Report Shows How*

A report on “impact listings” defines these types of listings as “mostly affordable-range units [that are] removed from the residential housing market, from which hosts generated approximately \$302.9 million in annual revenue.”⁸¹ These listings remove affordable housing from the housing market in the city.⁸² Moreover, the report pinpoints a correlation between Airbnb’s growth and a surge in rent prices throughout the city.⁸³ According to Zillow Research, within New York City alone, the average rent for housing units increased by 10% for areas in which short-term rentals were located.⁸⁴

Airbnb’s services are criticized for the amount of illegal hosting in New York City.⁸⁵ Since 2010, in New York, it has been illegal to rent out a whole apartment on Airbnb for less than 30 days if the original tenant is not present.⁸⁶ The New York legislature is concerned about commercial hosts who rent out “entire apartments/homes . . . multiple units for at least three months per year, or ha[ve] a single listing rented for at least six months per year.”⁸⁷ Lawmakers are worried that commercial hosts are capitalizing on the home sharing industry and removing permanent affordable housing.⁸⁸ Commercial hosts purchase properties for the sole purpose of converting residential apartments into short-term

Airbnb Short Term Rentals Have Hijacked NYC Housing Market, SHARE BETTER, <http://www.sharebetter.org/story/new-report-shows-how-airbnb-short-term-rentals-have-hijacked-nyc-housing-market/> (last visited Oct. 2, 2019).

⁸¹ See *New Report Shows How Airbnb Short Term Rentals Have Hijacked NYC Housing Market*, *supra* note 80.

⁸² See *id.* (“Martha Weithman, Supervising Attorney at MFY Legal Services, stated ‘Airbnb’s own data demonstrates that the illegal short-term listings of residential units on its site exacerbate the acute affordable housing crisis that plagues [New York City].’”).

⁸³ See *id.* (“The report also provided statistical evidence of the strong correlation between Airbnb’s growth and the increase in rental prices, showing that there was nearly a direct correlation (.93 out of a 1.0 scale) between the concentration of Airbnb listings in an area and median rental price, indicating that the number of ‘Impact Listings’ and rental prices are increasing at a similar rate in these areas.” *Id.*

⁸⁴ Sullivan, *supra* note 60, at 4; see Deanna Ting, *Measuring the Impact of Airbnb Rentals on New York City’s Housing Crisis*, SKIFT (June 28, 2016, 7:30 AM), <https://skift.com/2016/06/28/measuring-the-impact-of-airbnb-rentals-on-new-york-citys-housing-crisis/>.

⁸⁵ See Luis Ferré-Sadurní, *New York Empire of Illegal Airbnb Rentals Booked 75,000 Guests, Suit Says*, N.Y. TIMES (Jan. 14, 2019), <https://www.nytimes.com/2019/01/14/nyregion/airbnb-illegal-brokers-real-estate.html>.

⁸⁶ See Dara Kerr, *NYC fines Airbnb hosts for ‘illegal’ home rentals*, CNET (Feb. 7, 2017, 1:25 PM), <https://www.cnet.com/news/airbnb-nyc-law-hosts-fined-for-illegal-home-rentals/>.

⁸⁷ See Ting, *supra* note 84.

⁸⁸ See *id.*

rentals.⁸⁹ Commercial operators are listing apartments on Airbnb as short-term rentals for an extended period of time rather than making them available to tenants for long-term use.⁹⁰

Lawmakers argue that although Airbnb may be presenting economic opportunities for New York City neighborhoods, the service is gentrifying neighborhoods—taking affordable housing off the market and causing rent to significantly increase.⁹¹ The Furman Center for Real Estate and Urban Policy classifies gentrified neighborhoods based on “extreme changes in average rents and neighborhood compositions, [or more specifically severely low vacancy rates].”⁹² In the Furman Center’s *State of New York City’s Housing and Neighborhoods in 2015* report, gentrified neighborhoods such as the East Village and Williamsburg account for a great deal of New York City’s active short-term listings.⁹³ Moreover, these neighborhoods show a significant increase in rental prices and low vacancy rates.⁹⁴ New York State Assembly Member Linda Rosenthal argues that Airbnb is depleting the city of residential units and “churning out commercial properties . . . [that] drive up rent.”⁹⁵

Furthermore, both tenants and landlords believe Airbnb’s services disrupt their quality of life and threaten their safety.⁹⁶

⁸⁹ See Kerr, *supra* note 86 (stating “the idea is to crack down on property owners who have essentially capitalized on short-term rentals by converting residential buildings into impromptu hotels.”).

⁹⁰ See *id.*

⁹¹ See Ting, *supra* note 84 (describing that in areas such as Crown Heights, New York, long-term tenants are worried they will be replaced by landlords who are trying to operate short-term rentals illegally); see also Walters, *supra* note 20 (“[There is] fear some long-term residents, who add more to the culture of an area than tourists, are being pushed out and replaced by new residents who have greater capital to set themselves up as Airbnb hosts and change the face of a historic district.”).

⁹² See generally *BJH Advisors LLC*, *supra* note 11, at 30-31.

⁹³ *Id.* at 5-6. These communities have already been gentrified; however, the presence of short-term listings is contributing to the transformation of these “macro-neighborhoods.” *Id.*

⁹⁴ *Id.* at 42.

⁹⁵ Ariel Stulberg, *New York’s crackdown on “commercial” Airbnb listings is misguided*, VOX (Nov. 18, 2016, 8:40 AM), <https://www.vox.com/new-money/2016/11/18/13670274/airbnb-new-york-crackdown>.

⁹⁶ See generally *Goldstein v. Lipetz*, 53 N.Y.S. 3d 296, 304 (N.Y. App. Div. 2017); 335-7 LLC v. Steele, 52 N.Y.S.3d 248, 248 (N.Y. App. Term. 2016); 42nd and 10th Associates v. Ikezi, 46 Misc.3d 1219(A)(2015) (holding the tenant’s use of their residential apartment as a hotel room and profiteering from the premise is cause for eviction and is incurable); *Brookford, LLC v. Penraat*, 47 Misc.3d 723, 736, 746 (2014) (holding the tenant’s 135 rentals to guests “for more than the legal regulated rent constituted an incurable violation of the Rent

Housing advocates argue that “most residential buildings designed for permanent tenants are not equipped with the proper security mechanisms to regulate many new, unfamiliar guests entering and exiting the building.”⁹⁷ Several New York cases highlight how short-term rental services have threatened tenant safety and violated landlord rights. In *Goldstein v. Lipetz*, the landlord did not consent to the tenant’s subletting of her rent-stabilized apartment.⁹⁸ The court explained that, by renting out her apartment on Airbnb, the tenant exploited her landlord’s rights as well as her fellow permanent residents in the building by disregarding their safety and quality of life.⁹⁹ Similarly, the court in *335-7 LLC* held that the tenant should have obtained her landlord’s consent in subletting her apartment as a short-term rental.¹⁰⁰ The tenant listed her New York City property on Airbnb for \$215 per night and entered into two dozen separate short-term rental agreements.¹⁰¹ The court agreed that the tenant’s actions were in the nature of subletting.¹⁰² Ultimately, the court explained how the tenant disregarded the security concerns of the landlord and other tenants in the building since she brought various strangers onto the property.¹⁰³

Although hosts and travelers obtain several benefits from Airbnb’s services, the short-term rental service negatively affects the New York City real estate market and its participants.¹⁰⁴ For instance, Airbnb hosts have the ability to utilize their property as an economic lifeline by renting out their homes to guests for a short time period.¹⁰⁵ Additionally, the service allows guests greater convenience in booking a place to stay in the city as well

Control Law” and that the landlord suffered irreparable injury because the property was not properly equipped with fire and safety protections).

⁹⁷ See *BJH Advisors LLC*, *supra* note 11, at 10.

⁹⁸ See *Goldstein*, 53 N.Y.S.3d at 300-01.

⁹⁹ *Id.* at 304.

¹⁰⁰ See generally *335-7 LLC*, 52 N.Y.S.3d at 248.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See Josh Bivens, *The economic costs and benefits of Airbnb*, ECON. POL’Y INST., <https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations/> (last updated Mar. 26, 2019) (“The economic costs Airbnb imposes likely outweigh the benefits.”).

¹⁰⁵ *Id.*

as cheaper accommodations.¹⁰⁶ However, short-term rental services are criticized for depleting New York City's limited affordable housing market and threatening the safety of tenants and landlords.¹⁰⁷

C. The Impact of Short-Term Rental Services on the Hotel Industry

As Airbnb's success continues to grow throughout the world, major hotel companies are beginning to view the short-term rental service as a threat to the lodging and hospitality industry.¹⁰⁸ In October 2015, HVS Consulting and Valuation prepared a study showcasing how Airbnb affects the New York City lodging industry.¹⁰⁹ The study shows how Airbnb's services triggered the hotel industry to lose an estimated \$450 million in revenue.¹¹⁰ In order to mitigate Airbnb's success, the American Hotel and Lodging Association, a group that consists of Marriott International, Hilton Worldwide, and Hyatt Hotels, has worked alongside New York lawmakers in developing strict short-term rental regulations.¹¹¹ The Association claims responsibility for the passage of the New York Multiple Dwelling Law § 121 and the New York City Administrative Code § 27-287.1.¹¹² Also, the Association takes credit for the Federal Trade Commission's investigation into how Airbnb affects increasing housing costs.¹¹³

¹⁰⁶ *Id.*

¹⁰⁷ See BJH Advisors LLC, *supra* note 11, at 9-10; Shafroth, *supra* note 57.

¹⁰⁸ See Benner, *supra* note 16.

¹⁰⁹ See generally HVS CONSULTING & VALUATION, TS WORLDWIDE, LLC, AIRBNB AND IMPACTS ON THE NEW YORK CITY LODGING MARKET AND ECONOMY (2015).

¹¹⁰ *Id.* at 9-11, 21-22. The study attributes this loss to a decrease in demand for hotel accommodations and an increase in short-term rental usage, and highlights how diminished demand for hotel accommodations produces less revenue that would have been obtained from guests. *Id.*

¹¹¹ See Benner, *supra* note 16.

¹¹² See *id.*; Jared E. Paioff, *New York's Hotel Law and New Statutes Prohibiting Advertising of Short-Term Occupancy*, SSRGA (Nov. 28, 2016), <https://www.ssrge.com/blog/new-yorks-hotel-law-new-statutes-prohibiting-advertising-short-term-occupancy/>.

¹¹³ See Benner, *supra* note 16.

In November 2016, the American Hotel and Lodging Association outlined a plan to take action against the growth of Airbnb.¹¹⁴ The Association presented a “Short-Term Rental Strategy” that consisted of ways to accomplish its main objective of regulating short-term rentals at both the federal and state level.¹¹⁵ Throughout its proposal, the Association stressed the importance of working alongside state and local officials in order to combat issues, such as the availability of affordable housing, tenants’ rights, and consumer protections.¹¹⁶ One of the reasons the Association has become such a strong advocate for stricter short-term rental regulations is because Airbnb has significantly decreased hotel prices during times when hotels are at peak demand.¹¹⁷ In one case, the Association helped remove Sebastian de Kleer’s—the owner of Globe Homes—Los Angeles listings from Airbnb because he was improperly utilizing the properties for short-term use.¹¹⁸ In response, Airbnb has criticized the hotel industry by addressing how it is depriving the middle class of a potential source of financial benefit.¹¹⁹

II. CURRENT NEW YORK STATE LAWS AND REGULATIONS IN PLACE AGAINST SHORT-TERM RENTALS

In New York, state and local legislators have developed strict regulations for short-term rental services in order to promote

¹¹⁴ See *The Hotel Industry’s Plans to Combat Airbnb*, N.Y. TIMES (Apr. 16, 2017), <https://www.nytimes.com/interactive/2017/04/16/technology/document-hotel-industry-plans-to-combat-airbnb-excerpt.html>.

¹¹⁵ *Id.*

¹¹⁶ See *id.* In cities such as New York, Chicago, San Francisco, and Los Angeles, the AHLA plans to continue “working with a broad coalition of affordable housing advocates, community groups, neighborhood associations, labor, and other progressive entities.” *Id.*

¹¹⁷ See Benner, *supra* note 16 (citing chief executive of the Hotel Association of New York City, Vijay Dandapani, who says “Airbnb has brought hotel pricing down in many places during holidays, conventions and other big events when room rates should be at their highest and the industry generates a significant portion of its profits.”).

¹¹⁸ See *id.* Mr. de Kleer argues he lost \$250,000 in reservations after he was removed from Airbnb, while the hotel association claims that these type of Airbnb hosts are decreasing the amount of affordable housing in cities. *Id.*

¹¹⁹ See *id.* By placing these restrictions on short-term rentals, Airbnb argues it will be harder for individuals to rent out their property and obtain potential financial assistance. See Kia Kokalitcheva, *The hotel industry has a multi-million dollar plan to stop Airbnb*, AXIOS (Apr. 17, 2017), <https://www.axios.com/the-hotel-industry-has-a-multi-million-dollar-plan-to-stop-airbnb-1513301641-198cd2c4-cae9-44ae-ab04-c9c6fddb9a52.html>.

safety and improve communities across the state.¹²⁰ These regulations were created in order to “protect guests, ensure the proper fire and safety codes, and protect permanent residents who ‘must endure the inconvenience of hotel occupancy in their buildings.’ [The regulations are] also designed to preserve the supply of affordable permanent housing.”¹²¹ However, the newly adopted legislation negatively impacts everyday New Yorkers who utilize Airbnb as a financial lifeline.¹²²

In 2010, the New York legislature amended the New York State Multiple Dwelling Law in Article 1, § 4-7 and 4-8, to prohibit renting out an unoccupied “Class A” multiple dwelling for less than 30 days.¹²³ A “Class A” multiple dwelling is defined as a “multiple dwelling that is occupied for permanent residence purposes.”¹²⁴ New York lawmakers passed this legislation in order to target hosts who use their residential apartment as an illegal rental, as well as commercial hosts who solely purchase residential units in order to capitalize on the short-term rental industry.¹²⁵ Moreover, proponents of the legislation believed the legislation would increase the availability of affordable housing, protect the safety of residents, and preserve New York City neighborhoods.¹²⁶ But, by making it illegal to rent out a whole apartment on Airbnb for less than 30 days if the original tenant is not present, lawmakers are

¹²⁰ See OFF. N.Y. ST. ATT’Y GEN. ERIC T. SCHNEIDERMAN, AIRBNB IN THE CITY 18 (2014), <https://ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf>.

¹²¹ *Id.* (quoting New York State Assembly Memorandum in Support of Legislation, (S. 6873-B, 233rd Leg. (N.Y. 2010 (Sponsor’s Memo) Bill No. A10008).

¹²² See Heather Kelly, *Why everyone is cracking down on Airbnb*, CNN (June 23, 2016, 2:53 AM), <http://money.cnn.com/2016/06/22/technology/airbnb-regulations/index.html>.

¹²³ See N.Y. MULT. DWELL. LAW § 4 (McKinney 2011); Jessica Dailey, *An Introduction to New York’s Short Term Rental Laws*, N.Y. CURBED (Mar. 25, 2013, 2:10 PM), <https://ny.curbed.com/2013/3/25/10260752/an-introduction-to-new-yorks-short-term-rental-laws>. A “multiple dwelling” is defined as “a dwelling that is rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other.” N.Y. MULT. DWELL. LAW § 4 (McKinney 2011).

¹²⁴ N.Y. MULT. DWELL. LAW § 4 (McKinney 2011). This class includes “tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments.” *Id.*

¹²⁵ See Kenneth Lovett, *N.Y. Politicians make progress on bill banning illegal short-term rental ads on Airbnb*, N.Y. DAILY NEWS (June 13, 2016, 4:00 AM), <http://www.nydailynews.com/news/politics/politicians-agree-bill-banning-airbnb-short-term-rental-ads-article-1.2671336>. New York State Assembly Member Linda Rosenthal stated, “[e]very day I hear from New Yorkers who are sick and tired of living in buildings that have been turned into illegal hotels through Airbnb because so many units are rented out to tourists, not permanent residents.” *Id.*

¹²⁶ See *id.*; Walters, *supra* note 20.

restricting everyday New Yorkers' ability to utilize Airbnb's services as supplemental income.¹²⁷

Additionally, in October 2016, New York Governor Andrew Cuomo signed into law § 121 of the New York Multiple Dwelling Law, which makes it illegal for residents of "Class A" multiple dwellings in New York City to advertise their property for rent for less than 30 days.¹²⁸ The law defines "advertising" as "any form of communication for marketing that is used to encourage, persuade or manipulate viewers, readers or listeners into contracting for goods and/or services as may be viewed through various media."¹²⁹ If the law is violated, individuals will be fined \$1,000 for the first offense, \$5,000 for the second, and \$7,500 for the third.¹³⁰ The Multiple Dwelling Law is enforced by the New York City Department of Housing Preservation and Development.¹³¹ Before § 121 of the New York Multiple Dwelling Law was enacted, in January 2016, New York Assembly Member Linda B. Rosenthal and Senator Andrew J. Lanza introduced the bill in order to create a new standard that would decrease the advertising of illegal hotels on websites such as Airbnb.¹³² Assembly Member Rosenthal stated that the "legislation strengthens enforcement capabilities to stop [commercial operators] from breaking the law and taking away affordable housing from the New Yorkers who need it most."¹³³ For example, one such commercial operator, Tatiana Cames, who was previously a senior vice president at the Corcoran Group, received \$5,000 worth of fines for her five illegal Airbnb

¹²⁷ See Walters, *supra* note 20 (explaining the story of Sierra Kraft, a New Yorker who supplements her income by renting out her Lower East Side Manhattan apartment through Airbnb, but who will be prevented from doing so because of the amendment to the New York State Multiple Dwelling Law).

¹²⁸ See Griswold, *supra* note 22.

¹²⁹ N.Y. MULT. DWELL. LAW § 121 (McKinney 2016).

¹³⁰ See Griswold, *supra* note 22.

¹³¹ See HPD (Housing Preservation & Development) Violation information, NYC BLDG. SOLUTIONS, <http://nycbuildingsolutions.com/hpd-housing-preservation-development-violation-information/> (last visited Oct. 12, 2019).

¹³² See *Assembly Member Linda B. Rosenthal and Senator Andrew J. Lanza Unveil New Legislation to Crack Down on Airbnb & Illegal Hotel Operators*, SHARE BETTER, <http://www.sharebetter.org/story/assembly-member-linda-b-rosenthal-and-senator-andrew-j-landa-unveil-new-legislation-to-crack-down-on-airbnb-illegal-hotel-operators/> (last visited Oct. 30, 2017). "Additionally, the bill would require landlords to include notices in lease agreements that explicitly state that certain short-term rentals could result in eviction and penalties." *Id.*

¹³³ *Id.*

listings.¹³⁴ Comes is the exact commercial operator New York lawmakers are trying to target.¹³⁵

Once Governor Andrew Cuomo signed the amendment into law, New Yorkers immediately began to panic when the first set of fines were issued to Airbnb hosts in the city.¹³⁶ A great deal of Airbnb hosts that use the service to pay their bills are no longer allowed to rent out their units due to the adopted regulations.¹³⁷ Airbnb spokesman, Peter Schottenfels, stressed that although the amendment to the Multiple Dwelling Law is taking down “commercial bad actors,” the law “doesn’t offer any protection to individuals who are just doing this for a bit of extra money.”¹³⁸ The amendment not only targets commercial hosts, but also sweeps everyday New Yorkers into the mix who are simply trying to make ends meet through Airbnb.¹³⁹

Although Airbnb is currently expanding globally, there was a decline in active listings in New York due to increased regulations.¹⁴⁰ In July 2017, there were 30,215 active listings, which falls below the 35,000 listings that were seen in January 2016.¹⁴¹ The adoption of these New York short-term rental laws has negatively impacted the industry as well as its participants.¹⁴² According to Business Insider, the decrease in listings, due to the newly

¹³⁴ See *Compass broker sacked over alleged Airbnb violations*, REAL DEAL (Feb. 7, 2017, 3:34 PM), <https://therealdeal.com/2017/02/07/compass-broker-sacked-over-alleged-airbnb-violations/>.

¹³⁵ See Walters, *supra* note 20. Commercial operators advertise and offer multiple units for short-term rental use only, which removes units that could be used for long-term rentals. See *id.*

¹³⁶ See *id.*

¹³⁷ See, e.g., *id.* (describing the story of Sierra Kraft, who makes about \$2,000 on Airbnb a year by renting out her one-bedroom apartment on the Lower East Side in New York City in order to pay her own rent; however, Kraft can no longer rent out her apartment to guests when she travels for under 30 days).

¹³⁸ See *id.* Schottenfels indicates “[Airbnb] had removed 4,000 [] listings [by commercial bad actors] from its site in the city since November 2015.” See *id.*

¹³⁹ See Griswold, *supra* note 24. Although Nan Doyle was trying to make some extra money from renting out her Brooklyn home, she received multiple \$1,000 fines for her listings on Airbnb and another rental site. See *id.*

¹⁴⁰ See *Airbnb International Growth Strategy*, MYLO TRADE (Mar. 23, 2019), <https://www.mylotrade.com/airbnb-international-growth-strategy.html>; Rosenberg, *supra* note 9 (noting that New York City’s crackdown on illegal listings caused the number of listings on Airbnb’s website to fall below its peak of 35,000 active listings).

¹⁴¹ See *The city started enforcing Airbnb fines. Then, a surprising thing happened*, REAL DEAL (July 31, 2017, 8:10 AM), <https://therealdeal.com/2017/07/31/active-airbnb-listings-up-since-city-started-levying-fines-earlier-this-year/>.

¹⁴² See Hartmans, *supra* note 24.

adopted short-term rental laws, poses a serious financial risk to Airbnb since the company receives about fifteen percent of the price listed for each rental.¹⁴³ Additionally, the amendment impacts tourists who utilize short-term rental services, such as Airbnb, because they will be restricted to staying in specific properties that fall within the scope of the bill.¹⁴⁴

In response to the passage of Multiple Dwelling Law § 121 and New York City Administrative Code § 27-287.1, Airbnb filed a lawsuit against the State of New York and New York City to enforce a preliminary injunction against the two laws coming into effect, which would have held Airbnb liable for illegal rentals.¹⁴⁵ Airbnb argued the newly enacted laws unjustly “impos[e] hefty penalties on a website for displaying allegedly unlawful ads posted by users.”¹⁴⁶ Additionally, Airbnb claimed the newly enacted laws violated both the company’s and hosts’ First Amendment rights because both constitute content-based restriction on advertisement.¹⁴⁷ On December 2, 2016, Airbnb settled the lawsuit against the State of New York and New York City.¹⁴⁸ Rather than hold the hosting platform liable for illegal rentals, New York City agreed to impose fines only against those who are illegally operating short-term rental units.¹⁴⁹ The settlement was a successful step for Airbnb working collectively with New York lawmakers to crack down on illegal hosting.¹⁵⁰ In April 2017, Brooklyn Assembly Member Joseph Lentol introduced a bill that would allow Airbnb users to list and rent out their homes on the website

¹⁴³ *See id.*

¹⁴⁴ *See* Jess McHugh, *Renting an Airbnb in New York City? What You Should Know About the New Law*, TRAVEL & LEISURE (Oct. 24, 2016), <http://www.travelandleisure.com/travel-tips/travel-trends/new-york-airbnb-law>.

¹⁴⁵ *See* Complaint at 1, *Airbnb, Inc. v. Schneiderman*, 2016 WL 6138101 (S.D.N.Y. Oct. 21, 2016) (No. CV-08239).

¹⁴⁶ *Id.* at 2. By referencing § 230 of the Communications Decency Act (CDA) of 1996, Airbnb claims that the CDA “preempts state and local laws that treat a website ‘as the publisher or speaker of any information provided by another information content provider.’” *Id.* (quoting 47 U.S.C. § 230 (2018)).

¹⁴⁷ *See id.* Airbnb argues that advertisements for short-term rentals are protected as free speech under the First Amendment. *See* Rosenberg, *supra* note 9.

¹⁴⁸ *See* Joshua Brustein, *Airbnb to Drop New York City Lawsuit Over Short-Term Rentals*, BLOOMBERG (Dec. 2, 2016, 11:48 PM), <https://www.bloomberg.com/news/articles/2016-12-03/airbnb-to-drop-new-york-city-lawsuit-over-short-term-rentals>.

¹⁴⁹ *See id.*

¹⁵⁰ *See id.* (“[T]he settlement will mark the first time the company would be working with New York City to cut down on illegal activity.”).

only if they register their property with the Division of Housing and Community Renewal.¹⁵¹ Additionally, the proposed legislation would impose a hotel tax on short-term rentals in New York City.¹⁵²

Although lawmakers like Joseph Lentol are attempting to amend New York's short-term rental laws, there still remain difficulties in balancing the existence of short-term rentals while maintaining the protection of tenants and affordable housing in New York City.¹⁵³ While the current short-term rental laws in the city penalize commercial operators who are renting illegally,¹⁵⁴ new legislation is needed to allow everyday New Yorkers to host short-term rentals without getting fined. In order to strike a proper balance between the interests of short-term rental hosts, the city, and the hotel industry, the New York legislature should look to short-term rental laws in other U.S. cities for guidance, such as San Francisco and Chicago.

III. CURRENT SHORT-TERM RENTAL LAWS IN OTHER MAJOR U.S. CITIES

The cities of San Francisco and Chicago have achieved a proper balance between the interests of short-term rental hosts, concerns of their own cities, and the hotel industry. Although both cities have short-term rental laws in place, the adopted regulations have not been as restrictive as New York's short-term rental laws.¹⁵⁵ San Francisco and Chicago lawmakers have imposed registration

¹⁵¹ See Mike Vilensky, *New York Lawmaker Introduces Airbnb Bill*, WALL ST. J. (Apr. 30, 2017, 6:16 PM), <https://www.wsj.com/articles/new-york-lawmaker-introduces-airbnb-bill-1493590614>; Stephen Witt, *Lentol To Reintroduce Bill Both Protecting & Regulating Shared Housing Economy*, KINGS CTY. POL. (Oct. 13, 2017), <http://www.kingscountypolitics.com/lentol-reintroduce-bill-protecting-regulating-shared-housing-economy/>.

¹⁵² See Witt, *supra* note 151.

¹⁵³ See Josefa Velasquez, *Airbnb Supporters to Rally in Albany for Legislation Allowing Short-Term Rentals in NYC*, N.Y. L. J. (Mar. 5, 2018, 3:25 PM), <https://www.law.com/newyorklawjournal/2018/03/05/airbnb-supporters-to-rally-in-albany-for-legislation-allowing-short-term-rentals-in-nyc/>. Although Assembly Member Lentol wants to restrict short-term rental hosts from renting out more than one listing and collect occupancy taxes from guests, the legislation fails to protect tenants and landlords who are affected by Airbnb. *See id.*

¹⁵⁴ See Walters, *supra* note 20.

¹⁵⁵ See generally Andrew Simmons, *Short-Term Rental Laws in Major U.S. Cities*, 2ND ADDRESS (Oct. 8, 2019), <https://www.2ndaddress.com/research/short-term-rental-laws/> (explaining that both San Francisco and Chicago have regulations on short-term rentals, but that "New York City . . . has some of the strictest short-term rental laws.").

requirements, hotel taxes, and safety regulations on short-term rentals in order to better meet the needs of the housing and hotel industries and the interests of those who utilize Airbnb's services.¹⁵⁶

A. *San Francisco*

Within Airbnb's founding city of San Francisco, local legislators allow permanent residents to utilize their homes as short-term rentals so long as they register as a business, obtain a valid Short-Term Residential Rental Certificate, and collect a 14% Transient Occupancy Tax on reservations fewer than thirty days.¹⁵⁷ Under the San Francisco Administrative Code Chapter 41A, a host must be a permanent resident of San Francisco, an owner or tenant of the unit he or she wishes to rent, live in the property for at least 60 days before applying, and plan to live in the unit for at least 275 nights out of the year.¹⁵⁸ As opposed to the New York short-term rental laws, San Francisco allows a host to have 90 days of "un-hosted rentals" per year.¹⁵⁹ The law also states that the host must possess at least \$500,000 of liability insurance.¹⁶⁰ Through San Francisco's Office of Short-Term Rentals, hosts are required to file quarterly reports in January, April, July, and October stating the dates their unit was used as a short-term rental.¹⁶¹ Moreover, the law requires hosts to maintain business records of their

¹⁵⁶ See *infra* Part III.A & III.B respectively.

¹⁵⁷ See S.F., CAL., ADMIN. CODE §§ 41A.4 (2016), 41A.5(g)(1)(C) (2015); see also *San Francisco, CA, AIRBNB*, <https://www.airbnb.com/help/article/871/san-francisco-ca> (last updated Aug. 28, 2017) [hereinafter *Summary of San Francisco's short-term rental laws and regulations*] (summarizing San Francisco's short-term rental laws and regulations). San Francisco lawmakers adopted the registration process in order to protect the housing industry in the city. See Joshua Sabatini, *SF Legislators approve tougher rules for Airbnb*, S.F. EXAMINER (June 7, 2016, 12:00 AM), <https://www.sfexaminer.com/news/sf-legislators-approve-tougher-rules-for-airbnb/> (noting the registration process will eliminate commercial hosts who are taking entire units off the market for short-term rental purposes).

¹⁵⁸ See S.F., CAL., ADMIN. CODE §§ 41A.4 (2016), 41A.5(g)(1)(A) (2017); see also *Short-Term Residential Rental Guide*, S.F. BUS. PORTAL, businessportal.sfgov.org/start/starter-kits/short-term-rental (last visited Oct. 8, 2019, 1:55 PM).

¹⁵⁹ See *About Short-Term Rentals*, S.F. OFF. SHORT-TERM RENTALS, <https://short-termrentals.sfgov.org/about> (last visited Oct. 8, 2019) ("Unhosted rentals' occur when you are not present in your unit during your guests' stay. You may only conduct unhosted short-term rentals for up to 90 nights per calendar year.").

¹⁶⁰ See S.F., CAL., ADMIN. CODE § 41A.5(g)(1)(D) (2017).

¹⁶¹ See *id.* § 41A.5(g)(3)(C).

short-term rental in order to remain in good-standing.¹⁶² Also, under San Francisco's administrative code, hosts must post a sign inside their home that provides information in case of a fire.¹⁶³ Through its site, Airbnb provides a help section that breaks down short-term rental laws in San Francisco and allows hosts to register their homes.¹⁶⁴

Local San Francisco lawmakers decided to enact this registration process in order to better monitor hosting platforms, such as Airbnb, and filter out illegal hotels.¹⁶⁵ Additionally, San Francisco can screen short-term rentals through registration by requiring hosting platforms to provide a signed affidavit to the Office of Short-Term Rentals every month.¹⁶⁶ By having users register their short-term rental units, San Francisco can monitor which users are complying with the law and screen out commercial hosts who are exploiting the short-term rental industry.¹⁶⁷ Through this registration process, San Francisco hopes to solve the issue of limited affordable housing and decrease rental prices.¹⁶⁸ Violators of San Francisco's short-term rental laws are subject to penalties of at least \$484 per day for each dwelling unit in violation. These daily penalties begin on the day that a Notice of Violation is issued by the Office of Short-Term Rentals, and continue to accrue until the violation is fully abated.¹⁶⁹

If a host possesses several violations, the Department will remove the host's unit from the registry for one year and subject the host to additional criminal or civil penalties.¹⁷⁰

¹⁶² See *id.* § 41A.5(g)(1)(B).

¹⁶³ See *id.* § 41A.5(g)(2)(D).

¹⁶⁴ See generally *Summary of San Francisco's short-term rental laws and regulations*, *supra* note 157.

¹⁶⁵ See Kia Kokalitcheva, *New San Francisco Rules Take Further Aim at Airbnb*, FORTUNE (June 7, 2016), <https://fortune.com/2016/06/07/sf-airbnb-new-rules/>.

¹⁶⁶ See S.F., CAL., ADMIN. CODE § 41A.5(g)(4)(D) (2017).

¹⁶⁷ See Bigad Shaban & Kevin Nious, *Thousands of Airbnb Rental Listings in San Francisco Could Soon Be Deleted Following Settlement*, NBC BAY AREA, <https://www.nbcbayarea.com/news/local/San-Francisco-Claims-Victory-in-Settling-Airbnb-Lawsuit-420912873.html> (last updated May 1, 2017, 6:15 PM).

¹⁶⁸ See *id.*

¹⁶⁹ *Become a Certified Host*, S.F. OFF. SHORT-TERM RENTALS, <https://short-termrentals.sfgov.org/hosting/become-certified> (last visited Oct. 13, 2019).

¹⁷⁰ See S.F., CAL., ADMIN. CODE § 41A.6(d)(2) (2016); see also S.F. OFF. SHORT-TERM RENTALS, *supra* note 169.

Through these regulations, San Francisco believes it will be able to protect the availability of housing for long-term tenants.¹⁷¹ Furthermore, by requiring hosts to procure a transient tax from guests and post emergency information in their homes, San Francisco hopes to increase its revenue and improve safety throughout the community, respectively.¹⁷²

In June 2016, after San Francisco enacted Ordinance 104-16 that amended Chapter 41A of the San Francisco Administrative Code, Airbnb decided to sue the city of San Francisco because it believed that the ordinance wrongly held the company liable for unregistered listings that were advertised on its website.¹⁷³ Airbnb argued the ordinance was impeding its rights under the Communications Decency Act and the First Amendment.¹⁷⁴ The court stated that the ordinance did not treat Airbnb “as the publishers . . . of user content, or force them to edit or remove” listings.¹⁷⁵ Also, the court held that the ordinance does not suppress speech and is instead related to controlling business transactions.¹⁷⁶ Thus, the court denied Airbnb’s preliminary injunction against San Francisco.¹⁷⁷ However, on May 1, 2017, Airbnb settled the lawsuit with San Francisco by agreeing to assist in registering hosts on their website.¹⁷⁸

¹⁷¹ See Cyrus Farivar, *San Francisco, Airbnb settle lawsuit over new short-term rental law*, ARS TECHNICA (May 2, 2017, 3:50 PM), <https://arstechnica.com/tech-policy/2017/05/san-francisco-airbnb-settle-lawsuit-over-new-short-term-rental-law/>.

¹⁷² See S.F., CAL., ADMIN. CODE §§ 41A.5(g)(1)(C) (2017), 41A.5(g)(2)(D) (2017); *Summary of San Francisco’s short-term rental laws and regulations*, supra note 157; Dara Kerr, *Airbnb begins collecting 14% hotel tax in San Francisco*, CNET (Sept. 17, 2014, 12:33PM), <https://www.cnet.com/news/airbnb-begins-collecting-14-hotel-tax-in-san-francisco/>.

¹⁷³ See *Airbnb, Inc. v. City and Cnty. of San Francisco*, 217 F.Supp.3d 1066, 1070-71 (N.D. Cal. 2016).

¹⁷⁴ *Id.* at 1071.

¹⁷⁵ *Id.* at 1075.

¹⁷⁶ *Id.* at 1076-77.

¹⁷⁷ *Id.* at 1080.

¹⁷⁸ See 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>. By finding a way to balance the interests of both San Francisco and short-term rental users, Airbnb is able to work collectively with local lawmakers and reach regulation agreements. *Id.*

B. Chicago

On June 22, 2016, Chicago passed the Shared Housing Ordinance.¹⁷⁹ In order to list and rent out a unit, the ordinance requires hosts to register their property with the city.¹⁸⁰ As opposed to San Francisco's law, there is no registration fee if a host registers through the Airbnb website.¹⁸¹ During the registration process, the host's name, address, and contact information are collected.¹⁸² Similar to San Francisco's law, the Chicago ordinance was created by local lawmakers to monitor short-term rental listings on Airbnb's website and restrict properties that do not comply with local laws.¹⁸³ Also, like San Francisco's legislation, the registration requirement in the Chicago ordinance allows lawmakers to filter out commercial hosts, which will help preserve the amount of affordable housing in Chicago.¹⁸⁴ Additionally, Chicago legislators enacted a 4.5% "Hotel Accommodations Tax" to list the property and a 4% "Shared Housing Surcharge."¹⁸⁵ By imposing this tax, local lawmakers hope to improve communities throughout the city of Chicago.¹⁸⁶ According to Airbnb, in one year, the rental taxes accumulated \$2.8 million that were put toward funding homelessness programs in Chicago.¹⁸⁷

¹⁷⁹ See generally *Shared Housing and Accommodations Licensing*, CITY OF CHI., BUS. AFF. & CONSUMER PROT., https://www.chicago.gov/city/en/depts/bacp/supp_info/sharedhousingandaccommodationslicensing.html (last visited Oct. 13, 2019, 7:49 PM).

¹⁸⁰ CHI., ILL., MUNICIPAL CODE § 4-14-020(a) (2016).

¹⁸¹ See generally *id.* §§ 4-14-010 – 4-14-105 (showing that there is no requirement by the city of Chicago that a fee be paid by shared housing hosts).

¹⁸² See *id.* § 4-14-020(b)(1)–(3).

¹⁸³ See Ecker, *supra* note 32.

¹⁸⁴ See John Byrne & Becky Yerak, *Chicago may regulate Airbnb home sharing amid 'Animal House'-style complaints*, CHI. TRIB. (May 11, 2016, 8:46 AM), <https://www.chicagotribune.com/business/ct-airbnb-chicago-met-20160510-story.html>; Bettina Chang, *How Many Airbnb Hosts Are Running "De Facto Hotels"? It's Complicated*, CHI. MAG. (May 24, 2016), <https://www.chicagogmag.com/city-life/May-2016/Airbnb/>.

¹⁸⁵ See CHI., ILL., MUNICIPAL CODE § 3-24-030(A)–(B) (2016).

¹⁸⁶ See Press Release, City of Chi., Ill., Bus. Aff. and Consumer Protection, *City's House-Sharing Registration System Goes Live* (Aug. 11, 2017).

¹⁸⁷ See Ali, *supra* note 37 ("[T]he city announced plans to use the funds from the tax to create 100 housing units for those at risk of homelessness near six CPS schools" in Austin, Englewood, West Englewood, Garfield Park, and Humboldt Park).

IV. PROPOSAL

The growing short-term rental economy is quite challenging to regulate in New York City.¹⁸⁸ Finding a way to balance the interests of both hosts and the New York City community is crucial to promoting advancements within the real estate market. This Note proposes regulatory flexibility that permits legislators to monitor short-term rentals within the city while allowing residents to list and rent out their homes on short-term lodging websites, such as Airbnb. The Federal Trade Commission stresses that “appropriately tailored regulations could both protect consumers and the public and foster broad public acceptance and participation in the sharing economy.”¹⁸⁹ As the Commission suggests, there is a need for regulatory flexibility to keep up with major developments in technology and promote advancements within the real estate market.¹⁹⁰

Although current New York short-term rental laws restrict commercial actors from listing and renting out multiple units, they also impose hefty fines and extreme restrictions on individuals who utilize Airbnb as a supplemental source of income.¹⁹¹ The New York legislature should regulate short-term rentals through less restrictive measures to allow these individuals to list and rent their homes.

In order to strike a proper balance between the interests of short-term rental hosts, the city, and the hotel industry, the New York legislature should utilize short-term rental laws from cities such as San Francisco and Chicago. This Note proposes legislation, similar to the short-term rental laws in San Francisco and Chicago, which would reasonably regulate short-term rentals in New

¹⁸⁸ See Olivia Carville, *New York Is Standing Between Airbnb and an IPO*, BLOOMBERG BUSINESSWEEK (Sept. 19, 2019, 12:15 PM), <https://www.bloomberg.com/news/articles/2019-09-19/airbnb-ipo-why-new-york-city-is-making-investors-nervous>.

¹⁸⁹ FED. TRADE COMM’N, *supra* note 54, at 41. In November 2016, the Federal Trade Commission noted the controversy that exists between state regulation of short-term rental services and New York City homeowners. *Id.* at 9. In its report, the Commission highlights the need to balance the interests of both consumers and the general public. *Id.* at 7.

¹⁹⁰ See *id.* at 64 (implying, within the context of the report, the benefits of such flexibility would include the ability to adapt to new technology and foster equitability and advancement in the housing and real estate markets).

¹⁹¹ *Stay in the Know*, N.Y.C. OFF. SPECIAL ENFORCEMENT, <https://www1.nyc.gov/site/specialenforcement/stay-in-the-know/information-for-hosts.page> (last visited Oct. 11, 2019).

York City. This new legislation will allow New Yorkers to rent out their apartments to short-term visitors only if hosts (1) register their unit, (2) charge a Hotel Accommodations Tax, and (3) comply with safety guidelines within their building. Additionally, the proposed regulations will not penalize hosts who abide by the law.

The registration requirement, as seen in cities such as San Francisco and Chicago, will allow New York City residents to list and rent out their homes, but only if they register their unit with the city.¹⁹² Through this new standard, the city can weed out hosts who are exploiting the short-term rental industry and negatively impacting the limited housing market, which aligns with the New York legislature's main concern of preserving the availability of affordable housing for long-term tenants.¹⁹³ By creating this form of regulation, the city can expunge commercial hosts who are purchasing properties for the sole purpose of renting them out on Airbnb. In order to identify these commercial users, hosts will be required to submit basic personal and listing information, which includes the host's name, the address of the unit being registered, the type of unit being listed, and whether the unit being listed is the host's primary residence.¹⁹⁴ Furthermore, hosts will be required to provide documents that prove their listing address is their primary residence.¹⁹⁵ Hosts will not be able to register and list non-primary addresses.¹⁹⁶ Analogous to Chicago's short-term rental law, registration would be free of charge in order to

¹⁹² See *San Francisco's Registration Process: Frequently Asked Questions*, AIRBNB, <https://www.airbnb.com/help/article/1849/san-franciscos-registration-process-frequently-asked-questions> (last visited Oct. 11, 2019) [hereinafter *San Francisco's Registration Process*]; *Chicago Home Sharing Registration: Frequently Asked Questions*, AIRBNB, <https://www.airbnb.com/help/article/1495/chicago-home-sharing-registration-frequently-asked-questions> (last visited Oct. 11, 2019) [hereinafter *Chicago Home Sharing Registration*].

¹⁹³ See Katie Benner, *Airbnb Sues Over New Law Regulating New York Rentals*, N.Y. TIMES (Oct. 21, 2016), <https://www.nytimes.com/2016/10/22/technology/new-york-passes-law-airbnb.html?module=inline>.

¹⁹⁴ See *Chicago Home Sharing Registration*, *supra* note 192. This would be akin to the regulation in Chicago, where, when registering their unit, hosts must state whether the unit is a single-family home or unit in a multi-unit building. See *id.* Also, hosts must disclose whether they will make the entire dwelling unit available for rent or a room or portion of the dwelling unit available for rent. See *id.*

¹⁹⁵ See *San Francisco's Registration Process*, *supra* note 192. This would be akin to the regulation in San Francisco, where hosts must provide documentation demonstrating that the property they are sharing is their primary residence. See *id.*

¹⁹⁶ See *id.*

encourage the process.¹⁹⁷ Similar to San Francisco and Chicago hosts, New York hosts would be able to register their unit through the Airbnb website.¹⁹⁸ Once a host complies with the registration process, he or she will be able to utilize short-term rental services and not have to worry about receiving hefty fines.

Analogous to what San Francisco did in its short-term rental law, New York City should create an Office of Short-Term Rentals that assists in monitoring Airbnb registration.¹⁹⁹ In order to determine that Airbnb hosts are registering with the city, the Office of Short-Term Rentals will monitor hosting platforms, such as Airbnb, for unlawful listings.²⁰⁰

Additionally, as seen in various counties across New York State and around the U.S., a Hotel Accommodations Tax should be imposed on Airbnb listings in New York City.²⁰¹ Airbnb hosts in New York City should be required to collect a 3-4% Hotel Accommodations Tax from guests. Through this tax, legislators will be able to put the accrued revenue toward helping build and improve communities within New York City.²⁰² Also, by enforcing this tax, Airbnb will abide by lodging industry tax guidelines.²⁰³

Furthermore, similar to San Francisco's short-term rental law, New York City Airbnb hosts should be required to disclose a complete description of their property to travelers and post safety terms of the building inside their homes in case of an

¹⁹⁷ See *Chicago Home Sharing Registration*, *supra* note 192.

¹⁹⁸ See *San Francisco's Registration Process*, *supra* note 192; *Chicago Home Sharing Registration*, *supra* note 192.

¹⁹⁹ See S.F., CAL., ADMIN. CODE § 41A.7(a) (2016).

²⁰⁰ See *id.* § 41A.7(b).

²⁰¹ See *In what areas is occupancy tax collection and remittance by Airbnb available?*, AIRBNB, <https://www.airbnb.com/help/article/2509/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available> (last visited Oct. 11, 2019); *Occupancy tax collection and remittance by Airbnb in New York*, AIRBNB, <https://www.airbnb.com/help/article/2319/occupancy-tax-collection-and-remittance-by-airbnb-in-new-york> (last visited Oct. 11, 2019).

²⁰² See Ali, *supra* note 37 (showing Chicago lawmakers imposed a hotel tax on guests in hopes of utilizing the revenue to improve communities throughout the city). New York lawmakers should implement a similar tax in order to preserve and develop communities in New York City.

²⁰³ See N.Y. ST. DEP'T TAX'N & FIN., HOTEL AND MOTEL OCCUPANCY 1, 3 (2009), https://www.tax.ny.gov/pdf/tg_bulletins/sales/b14_825s.pdf. Although Airbnb rentals are currently exempt from lodging taxes, under this proposal, they would be brought into accord with the rest of the industry, possibly by removing the tax exemption for bungalows that do not offer conventional hotel services.

emergency.²⁰⁴ By complying with safety guidelines, hosts will help promote a safer living environment within New York City buildings. Additionally, this requirement will improve tenant-landlord relationships because hosts will have the opportunity to instruct their guests about the terms of their unit and what acts are prohibited within the building.²⁰⁵

By implementing the proposed short-term rental legislation, the New York legislature will have the ability to target commercial operators, improve the housing and hotel industries, protect the community, and allow everyday New Yorkers to host on Airbnb.

CONCLUSION

In order to reasonably regulate short-term rentals, the New York legislature must evaluate how hosts, guests, tenants, landlords, businesses, and the community are being affected by the industry. Short-term rental services, such as Airbnb, allow hosts to rent out their homes as a potential source of financial benefit.²⁰⁶ Also, by renting out their property, hosts promote their community to travelers and allow their guests to feel right at home.²⁰⁷ Additionally, Airbnb hosts attract tourists to the city and help businesses profit from the increase in tourism.²⁰⁸

Although short-term rental services are criticized for their negative impact on affordable housing,²⁰⁹ tenant-landlord

²⁰⁴ See S.F., CAL., ADMIN. CODE § 41A.5(g)(2)(D) (2014). San Francisco's administrative code requires hosts to post a sign inside their home that provides information in case of a fire. *Id.*

²⁰⁵ Concerns of other tenants in a building who do not feel safe or comfortable with short-term renters in their building is beyond the scope of this Note. Additionally, the concerns of landlords who are being deprived of their right to rent out a tenant's apartment is beyond the scope of this Note. These issues are better addressed in a landlord rental agreement.

²⁰⁶ See Jamie Doward, *From Berlin to Barcelona; will Airbnb ruin our most loved cities?*, GUARDIAN (June 25, 2016, 7:05 PM), <https://www.theguardian.com/technology/2016/jun/25/from-berlin-to-barcelona-will-airbnb-ruin-our-most-loved-cities> (describing an Airbnb host, Luca Lorio, who rents out a spare room in his apartment to make a little extra money).

²⁰⁷ See Harriet Sherwood, *How Airbnb took over the world*, GUARDIAN (May 5, 2019, 4:00 AM), <https://www.theguardian.com/technology/2019/may/05/airbnb-homelessness-renting-housing-accommodation-social-policy-cities-travel-leisure>.

²⁰⁸ See Doward, *supra* note 206.

²⁰⁹ See Bivens, *supra* note 104.

relationships,²¹⁰ and the hotel industry,²¹¹ it is crucial the New York legislature regulate these services without severely punishing those who utilize short-term rental services as supplemental income. New York lawmakers should adopt the proposed legislation above because it supports an innovative expansion and use of short-term rental services while protecting the real estate market in New York City. If Airbnb hosts comply with the proposed guidelines, they should be able to advertise and rent out their properties. Thus, the proposed legislation grants an opportunity for Airbnb to work collectively with New York lawmakers and ensure protection of the affordable housing market and communities within New York City.

²¹⁰ See Sherwood, *supra* note 207.

²¹¹ See Bivens, *supra* note 104.