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## Life in a Sharing Economy: What AirBNB, Turo, and Other Accommodation-Sharing Services Mean for Cities

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**LIFE IN A SHARING ECONOMY: WHAT  
AIRBNB, TURO, AND OTHER  
ACCOMMODATION-SHARING SERVICES  
MEAN FOR CITIES**

*Zoe McKenzie\**

ABSTRACT

*Peer-to-peer accommodation sharing has taken the world by storm. The rapid rise in popularity and prevalence of sites such as Airbnb, Homestay, VRBO, and others has changed the way people travel. Not only do such sites offer increased variety, they also offer consistently lower prices than traditional hotels. It is therefore unsurprising that many travelers choose to forego the hotel and book on Airbnb or its counterparts. Peer-to-peer accommodation sharing has enjoyed such success that its model is spreading beyond home rentals, and now includes car sharing, campsite sharing, and more. With more listings being created daily, it seems that accommodation sharing is here to stay.*

*With the trend toward accommodation sharing has created many complications. Among these are a lack of regulation, challenges in creating uniform and enforceable rules where regulation does exist, concerns of disruptive tourism, issues of property rights and taxation, adverse effects on local, long-term residents, and rent increases. Accommodation sharing creates complex difficulties that vary from city to city and even neighborhood to neighborhood. This comment explores these issues and the variety of methods that different cities in the U.S. and countries around the world are using to address them.*

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	352
II.	BACKGROUND.....	353
	A. What is Accommodation Sharing?.....	353
	B. Airbnb and Home Accommodation-Sharing.....	354
	C. Turo and the Advent of Vehicle-Sharing.....	356
III.	ARGUMENT.....	358
	A. Liability.....	358
	B. Nuisance.....	362
	C. How Are Cities Approaching Accommodation Sharing Laws?.....	367
	1. Airbnb.....	367
	a. How Spanish Cities are Addressing Airbnb .....	368
	b. Germany’s Trouble with Airbnb and Berlin’s Short Lived Total Ban on Short-term Rentals....	371
	c. Chicago’s Draconian Measures.....	372
	d. Portland’s Simple Solution Might not Work .....	373
	e. New York City’s Battle against Short-term Rentals .....	374
	D. Proposed Solutions for Addressing Shared Accommodations.....	375
	1. Require Permits and Inspections.....	376
	2. Simplicity is Key.....	377
	3. Enforce Proactively .....	378
	4. Punish the Platform, not the Host.....	379
	5. Strike a Balance .....	380
	6. Turo .....	381
IV.	CONCLUSION.....	382

## I. INTRODUCTION

It is Tuesday night. You lie awake in bed, wishing you could fall asleep. Next door, another midnight party rages around your neighbor's pool. These parties have become a constant feature of your life. Loud laughter, pounding music, drunken arguments, the incessant roar of a small water feature, and bright lights infiltrate your home. The very worst part is that there seems to be no escape. Your neighbor, who owns the nightmare house, rents the place on Airbnb.com to anyone who can afford the \$600 nightly rate. This means a constant stream of strangers, intent on getting their money's worth out of the house, filing in and out of your otherwise quiet, residential Los Angeles neighborhood. The price attracts groups who have pooled their resources in order to afford such a luxurious accommodation and mean to make the most of their few nights there. Such groups care absolutely nothing about the surrounding homes, and give no thought to trivialities such as going to sleep on a weeknight.

Calling the owner does nothing. He lives in France, and is satisfied with the constant influx of cash that his Los Angeles rental provides. Airbnb.com politely ignores all complaints, including your early morning "I'm in hell. This is hell and I'm in it."<sup>1</sup> After all, it is not their problem. The police are too inundated to help much. Occasionally, a patrol car might arrive to tell guests to keep it down, but you have learned not to count on it. As you lie in bed with noise canceling headphones and a consuming desire for sleep, you decide that this is hell and you are living in it.

This is one of many horror stories to be found on [airbnbhell.com](http://airbnbhell.com).<sup>2</sup> The site is filled with similar nightmare stories recounting the frustrations and nuisances that come with living next to an Airbnb. A common theme throughout many posts and comments on the site is the lack of recourse available to neighbors dealing with

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<sup>1</sup> *Airbnb Party Houses Are Out of Control*, AIRBNBHELL (Dec. 2, 2017), <https://www.airbnbhell.com/airbnb-party-houses-control/>.

<sup>2</sup> *Neighbors*, AIRBNBHELL, <https://www.airbnbhell.com/airbnb-neighbor-stories/>.

an “Airbnb hell.”<sup>3</sup> While it is obvious that instances such as this are undesirable and should be prevented if possible, the problems with accommodation sharing are even more widespread. With the explosion of sites like Airbnb and Turo come a plethora of new and complex legal issues that cities must address. These issues include questions of property rights, taxation, and liability.<sup>4</sup> This comment focuses on tort claims arising from peer-to-peer sharing, and how city governments should approach laws regulating them. By considering cities’ approaches to regulating Airbnb both in the U.S. and abroad, this comment seeks to find a compromise that will effectively regulate Airbnbs while maintaining the rights of both hosts and guests.

## II. BACKGROUND

### A. What is Accommodation Sharing?

Accommodation sharing (hereafter referred to as accommodation sharing, peer-to-peer rental, and short-term rental) allows individuals to rent out their property to other individuals in order to supplement their income.<sup>5</sup> The property owner, hereafter called the host, rents out unused property to travelers, hereafter called guests, at their convenience and for whatever price they choose.<sup>6</sup> Accommodation sharing is often less expensive than other alternatives; staying in a host’s home is often significantly cheaper than a nearby hotel room, for example.<sup>7</sup> Accommodation sharing is not a new concept, but it has been revolutionized by the internet.<sup>8</sup> Websites

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<sup>3</sup> *Airbnb Party Houses Are Out of Control*, AIRBNBHELL (Dec. 2, 2017), <https://www.airbnbhell.com/airbnb-party-houses-control/> (stating that the neighbor should fill the pool with Tide Pods since the neighbor has been unable to find a legal course of action).

<sup>4</sup> See Apallonia C. Wilhelm, Comment, *Sharing is Caring: Regulating Rather than Prohibiting Home Sharing in Wisconsin*, 101 Marq. L. Rev. 821, 823 (2018).

<sup>5</sup> See Emily M. Speier, *Embracing Airbnb: How Cities can Champion Private Property Rights Without Compromising the Health and Welfare of the Community*, 44 PEPP. L. REV. 387, 389 (2017).

<sup>6</sup> *Earn Money as an Airbnb Host*, AIRBNB, [https://www.airbnb.com/host/homes?page=faq\\_article](https://www.airbnb.com/host/homes?page=faq_article).

<sup>7</sup> See Speier, *supra* note 5, at 389.

<sup>8</sup> *Id.*

aimed at connecting hosts and guests have made accommodation sharing simple and convenient, even across continents.<sup>9</sup>

Two prevalent accommodations to share are homes and vehicles.<sup>10</sup> The popularity of peer-to-peer home sharing is evident in the number of options available to both hosts and guests for listing and renting a space. Airbnb is the largest and most popular of these sites, and will be representative of home sharing platforms in this discussion.<sup>11</sup> However, there are many others, including VRBO by HomeAway (VRBO is an acronym for Vacation Rental by Owner), Homestay, which focuses on a hosted experience so that guests may interact with locals, and FlipKey (owned by TripAdvisor).<sup>12</sup> Vehicle sharing is a newer trend, and there are fewer options available. Two of the more popular options for car sharing are Turo and GetAround. Both of these services offer peer-to-peer rentals of the owner's personal vehicle. The significant difference between the two is that GetAround offers hourly rental prices while Turo offers only daily rentals as the minimum.<sup>13</sup> Turo will be representative of peer-to-peer vehicle sharing for this discussion.

## B. Airbnb and Home Accommodation-Sharing

Airbnb.com is an online platform designed to make accommodation sharing transactions simple and convenient for both parties.<sup>14</sup> Airbnb was founded in 2008 by Brian Chesky and Joe

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<sup>9</sup> Annabel Lau, *Dip Into The Sharing Economy For Convenience, Community And Extra Cash*, *Forbes* (Jun. 3, 2015, 10:25 a.m.), <https://www.forbes.com/sites/annabellau/2015/06/03/dip-into-the-sharing-economy-for-convenience-community-and-extra-cash/#7751af341b00>.

<sup>10</sup> See Aaron Smith, *Shared: Home-sharing Services*, PEW INTERNET, <http://www.pewinternet.org/2016/05/19/shared-home-sharing-services/>; see also *About Turo*, TURO.COM <https://turo.com/about>.

<sup>11</sup> See Elaine Glusac, *The Other Airbnbs: Alternative Home-Sharing Rentals*, *THE NEW YORK TIMES* (Mar. 13, 2017), <https://www.nytimes.com/2017/03/13/travel/airbnb-alternative-home-share-rentals.html>.

<sup>12</sup> *5 Home-Sharing Sites You Should Know*, *THE FASTPARK* (Sep. 3, 2018), <https://www.thefastpark.com/blog/post/5-home-sharing-sites-you-should-know>.

<sup>13</sup> *How it Works*, GETAROUND, <https://www.getaround.com/>; see *How Turo Works*, TURO, <https://turo.com/how-turo-works> (created Turo account to verify).

<sup>14</sup> *Airbnb, Inc. v. Schneiderman*, 44 Misc. 3d 351, 354 (N.Y. Sup. Ct. 2014).

Gebbia.<sup>15</sup> According to their website, Airbnb’s mission is “to create a world where people can belong through healthy travel that is local, authentic, diverse, inclusive, and sustainable.”<sup>16</sup> Airbnb boasts “access to 5+ million unique places to stay in more than 81,000 cities and 191 countries.”<sup>17</sup> By number of listings, Airbnb surpasses the top five major hotel chains combined.<sup>18</sup>

On the platform, guests and hosts can connect, agree upon terms, and exchange payment.<sup>19</sup> The site hosts a great number of diverse listings, particularly in larger cities and cities with high levels of tourism, such as Los Angeles and Barcelona.<sup>20</sup> Rentals themselves are unique; an Airbnb might be an entire home, a single room, floor, attached building, a castle, or even a boat.<sup>21</sup> The host may list whatever portion of their home they wish to make available, and is fully in control of availability, price, and house rules.<sup>22</sup> The listing is free, and includes the number of guests the host can accommodate, photos of the space, and any details, restrictions, or requirements they wish to share.<sup>23</sup> Guests may then browse the site for accommodations fitting individual preferences or needs. Once a guest finds a listing they wish to book, they may do so through the site, either with host approval or

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<sup>15</sup> *About Us*, AIRBNB, <https://press.airbnb.com/about-us/>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Dina Gerdeman, *The Airbnb Effect: Cheaper Rooms for Travelers, Less Revenue for Hotels*, FORBES (Feb. 27, 2018, 12:25 p.m.), <https://www.forbes.com/sites/hbsworkingknowledge/2018/02/27/the-airbnb-effect-cheaper-rooms-for-travelers-less-revenue-for-hotels/#ad31c27d672f>.

<sup>19</sup> See Speier, *supra* note 5, at 391-92.

<sup>20</sup> AIRBNB, [https://www.airbnb.com/s/all?query=barcelona&refinement\\_paths%5B%5D=%2Ffor\\_you](https://www.airbnb.com/s/all?query=barcelona&refinement_paths%5B%5D=%2Ffor_you) (for example, a search of Airbnbs in Barcelona, Spain, yields hundreds of results).

<sup>21</sup> See *Learn about Hosting Your Home*, AIRBNB, <https://www.airbnb.com/host/homes;> see also *Airbnb.com* [https://www.airbnb.com/s/all?query=boats&refinement\\_paths%5B%5D=%2Ffor\\_you](https://www.airbnb.com/s/all?query=boats&refinement_paths%5B%5D=%2Ffor_you) (listing results for a search of “boats”).

<sup>22</sup> See *Learn about Hosting your Home*, *supra* at note 21.

<sup>23</sup> *Id.*

instantly.<sup>24</sup> Payment is also made through Airbnb, making it safe and simple for both parties.<sup>25</sup>

The site does not make clear whether the rental being listed is legal.<sup>26</sup> It also does not indicate whether there are local or city ordinances with which the listing must comply. On the “Host a Home” page, the website lays out three simple steps for hosting: create your listing, welcome guests, and get paid.<sup>27</sup> The page includes some additional information on safety, including their \$1 million host guarantee and other insurance information, but nowhere on the hosting page is there any information on learning whether it is legal to create a listing in the host’s area. Under the frequently asked questions area at the bottom of the page is “Can I share my home on Airbnb?”<sup>28</sup> If clicked, there is a short one-line response indicating that “you can learn about local laws and rules and get advice on hosting responsibly in Airbnb’s online Help Center.”<sup>29</sup> After a significant amount of clicking and searching in the hosting help section, Airbnb’s “What legal and regulatory issues should I consider before hosting on Airbnb” page can be found.<sup>30</sup> The advice offered on the page is essentially that each city has unique rules and taxing methods, and it is best for the host to research their local laws before creating a listing.<sup>31</sup> Basically, you are on your own.

### C. Turo and the Advent of Vehicle-Sharing

Turo is a peer-to-peer vehicle sharing site that operates similarly to Airbnb. Turo (formerly RelayRides) got its startup in

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<sup>24</sup> *See Id.*

<sup>25</sup> *See Id.*

<sup>26</sup> *See Search Results*, AIRBNB, <https://www.airbnb.com/rooms/7972944?adults=3&toddlers=0&guests=1&s=GezTx3NI> (viewing a listing on Airbnb’s website does not indicate whether the rental is posted legally).

<sup>27</sup> *Hosting in 3 Steps*, AIRBNB, [HTTPS://WWW.AIRBNB.COM/HOST/HOMES?FROM\\_NAV=1](HTTPS://WWW.AIRBNB.COM/HOST/HOMES?FROM_NAV=1).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *See What Legal and Regulatory Issues Should I Consider Before Hosting on Airbnb*, AIRBNB, <https://www.airbnb.com/help/article/376/what-legal-and-regulatory-issues-should-i-consider-before-hosting-on-airbnb>.

<sup>31</sup> *See id.*



2010,<sup>32</sup> but initially faltered.<sup>33</sup> After rebranding and with a newer, better business model, Turo began its success story in 2015.<sup>34</sup> Turo is a platform where vehicle owners (hereafter referred to as hosts), can rent their vehicles to guests. Turo boasts “a safe, supportive community over 10 million strong with more than 350,000 vehicles listed and over 850 unique makes and models.”<sup>35</sup> Turo is being used in over 5,500 cities across the U.S., Canada, the UK, and Germany.<sup>36</sup> It has a presence in 56 countries.<sup>37</sup>

A host creates a free account, describes the vehicle, and uploads photos. The host then lists which calendar days the vehicle will be available.<sup>38</sup> The cars are insured by Turo, unless the owner chooses to carry commercial rental insurance.<sup>39</sup> Unlike Airbnb guests, Turo guests’ identities are confirmed before they become eligible to rent cars. This extra step is to ensure that the guest is legally eligible to drive a car.<sup>40</sup> Once eligible, a guest chooses a car that meets their needs by browsing on the site, selecting the vehicle, and paying. Hosts either deliver the vehicle to the guest or—as of fall of 2018<sup>41</sup>—remotely unlock it, depending on their preference.<sup>42</sup>

Similar to Airbnb, the site does not address whether vehicle rentals of this nature are legal in the host’s location. While it does address the various automobile insurance policies available to both parties, it does not address any additional insurances or protections which a host might need. As Turo and sites like it increase in

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<sup>32</sup> See *Teaming up with the Joneses*, THE ECONOMIST (Apr. 22, 2010) <https://www.economist.com/business/2010/04/22/teaming-up-with-the-joneses>.

<sup>33</sup> See Alex Konrad, *With \$47 Million And A New Name, Car-Sharing Startup Relay-Rides Seeks Rebirth*, FORBES (Nov. 4, 2015, 1:10 p.m.) <https://www.forbes.com/sites/alexkonrad/2015/11/04/with-47-million-and-a-new-name-car-sharing-startup-relayrides-seeks-rebirth/#22a91ea61336>.

<sup>34</sup> See *id.*

<sup>35</sup> *About Turo*, TURO, <https://turo.com/about>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *How Turo Works*, TURO, <https://turo.com/how-turo-works>.

<sup>39</sup> *When You Host*, TURO, <https://turo.com/trust-and-safety>.

<sup>40</sup> See *How Turo Works*, *supra* note 38.

<sup>41</sup> *Introducing Turo Go*, TURO, <https://explore.turo.com/turo-go-announce/>.

<sup>42</sup> *Id.*

popularity, questions of insurance and liability will undoubtedly also arise. However, like Uber, these concerns will likely fall primarily on the individual and their personal liability insurer rather than on cities.<sup>43</sup>

### III. ARGUMENT

#### A. Liability

A major question that accompanies peer-to-peer accommodation sharing is which party is liable, should a harm occur. In some situations, Airbnb guests are legally treated more like renters or subletters than guests in the traditional sense.<sup>44</sup> For example, in California, a guest who rents a short term rental for more than thirty days may be considered a tenant instead of a guest.<sup>45</sup> This means that if the guest refuses to leave at the end of their stay, the host must evict them in the traditional sense, which can be a lengthy and involved process.<sup>46</sup> For Airbnb guests and hosts, liability is somewhat murky. On its site, Airbnb states:

Unless your Country of Residence is in the EU, you acknowledge and agree that, to the maximum extent permitted by law, the entire risk arising out of your access to and use of the Airbnb Platform and Collective Content, your publishing or booking of any Listing via the Airbnb Platform, your stay at any Accommodation, participation in any Experience or Event or use of any other Host Service, participation in the Group Payment Service, or any other interaction

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<sup>43</sup> *Uber and Liability*, HG LEGAL RESOURCES, <https://www.hg.org/legal-articles/uber-and-liability-41481>.

<sup>44</sup> *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>; see Chris Matyszczyk, *Airbnb Guest Stays More than 30 Days, Gets Tenant Rights*, Cnet (Jul. 22, 2014, 7:00 p.m. PDT), <https://www.cnet.com/news/airbnb-guest-stays-30-days-gets-tenants-rights/>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

you have with other Members whether in person or online remains with you.<sup>47</sup>

This acknowledgement is included in Airbnb's lengthy Terms of Service page.<sup>48</sup> Both hosts and guests must agree to these terms before creating an account with Airbnb.<sup>49</sup> Airbnb does not require potential users to indicate their express agreement; use of the platform is sufficient indication that the user agrees to the terms. Such implied agreement is valid and enforceable "so long as there is some form of reasonably conspicuous notice," which Airbnb satisfies by providing a link to their Terms and Conditions on the login page.<sup>50</sup> Thus, hosts seemingly assume liability for their rentals.

Airbnb provides free Host Protection Insurance<sup>51</sup> and Host Guarantee Insurance.<sup>52</sup> The Host Protection Insurance covers up to \$1 million to protect hosts against guest liability claims, including personal injury and property damage.<sup>53</sup> The Host Guarantee Insurance covers the host's property damaged by guests.<sup>54</sup> The issue is what is not covered. Host Protection Insurance does not cover certain types of damage, including mold, intentional injuries, and loss of earnings.<sup>55</sup> Host Guarantee Insurance does not cover damage to "shared or common areas of the building that aren't part of the listing itself," cash, and pet damage.<sup>56</sup>

Further issues arise when damages exceed the \$1 million limit. For instance, if common areas and portions of the building that are not included in the listing are not covered, then damage affecting an

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<sup>47</sup> *Terms of Service*, AIRBNB (Last Updated: Apr. 26, 2018), <https://www.airbnb.com/terms#sec17> (see section 17).

<sup>48</sup> *See id.*

<sup>49</sup> *See id.* ("By accessing or using the Airbnb Platform, you agree to comply with and be bound by these Terms of Service.")

<sup>50</sup> *Plazga v. Airbnb, Inc.*, 289 F.Supp. 3d 537 at 548 (2018).

<sup>51</sup> *Host Protection Insurance*, AIRBNB, <https://www.airbnb.com/host-protection-insurance>.

<sup>52</sup> *Airbnb's Host Guarantee*, AIRBNB, <https://www.airbnb.com/guarantee>.

<sup>53</sup> *Host Protection Insurance*, *supra* note 51.

<sup>54</sup> *Airbnb's Host Guarantee*, *supra* note 52.

<sup>55</sup> *See Host Protection Insurance*, *supra* note 51.

<sup>56</sup> *Airbnb's Host Guarantee*, *supra* note 52.

entire apartment complex could easily exceed the \$1 million maximum. It is easy to imagine a negligent guest leaving a gas stove lit and burning down an entire building. It is not easy, however, to determine who is then responsible for the fire's damage. Airbnb has clearly indicated it is not their platform.<sup>57</sup> Is it the host? Is it the guest?

Similarly, who is responsible for guest injuries sustained on the host's property? In November 2016, a group of friends rented a flat in Brighton, England, to celebrate a birthday.<sup>58</sup> During the celebration, the flat's balcony collapsed and plunged three guests to the basement and one to the street below.<sup>59</sup> One guest was impaled.<sup>60</sup> All four had to undergo surgeries and sustained permanent injuries.<sup>61</sup> One guest was injured to the point that she will never be capable of natural childbirth.<sup>62</sup> Both Airbnb and the host denied liability for the injuries.<sup>63</sup>

As Airbnb increases in popularity, so too will legal actions seeking damages for injury. It is critical that cities pass legislation proactively, so that both hosts and guests may know where they stand should an injury occur. Airbnb guests currently have few guarantees of

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<sup>57</sup> *Terms of Service*, *supra* note 47.

<sup>58</sup> *Airbnb Denies Liability Over Brighton Balcony Collapse*, BBC, (30 Nov. 2016), <https://www.bbc.com/news/uk-england-sussex-38161403>.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Stephanie Linning, *Airbnb Threatened with Legal Action after 'Balcony with a Seaview' Collapses Causing Four Friends to be Hospitalized, Including One who was Impaled on an Iron Railing*, DAILY MAIL (4:23 EST, 30 Nov. 2016), <https://www.dailymail.co.uk/news/article-3984998/Airbnb-threatened-legal-action-balcony-seaview-collapses-causing-four-friends-hospitalised-including-one-impaled-iron-railing.html>.

<sup>62</sup> Robert Booth and Dan Newling, *Airbnb Denies Liability after Guests Plunge two Storeys from Balcony*, THE GUARDIAN (Tue 29 Nov. 2016 12:45 EST), <https://www.theguardian.com/technology/2016/nov/29/airbnb-denies-liability-after-guests-plunge-two-storeys-from-balcony>.

<sup>63</sup> *Airbnb Denies Liability over Brighton Balcony Collapse*, BBC (30 Nov. 2016), <https://www.bbc.com/news/uk-england-sussex-38161403>.

their safety.<sup>64</sup> Since many (if not most) Airbnbs are operated without a permit, the guest has no guarantee that the home is actually safe.<sup>65</sup>

The UK relies upon the Occupiers Liability Act to assign liability to property occupants.<sup>66</sup> The UK needs additional legislation on liability for short-term rentals, though. The Brighton guests who fell from the balcony did not receive any meaningful recompense for their many injuries either from Airbnb or the host.<sup>67</sup> The host advertised the flat as having a “balcony with a sea view.”<sup>68</sup> The listing failed to mention that the balcony was actually more of a decorative feature than an actual balcony.<sup>69</sup> According to the Fire Commander, this was not the first balcony in the city to collapse.<sup>70</sup> So who is liable for the injuries?

The likely outcome is that the host is liable for injuries and damages incurred when renting their home on Airbnb. First, a California court has held that Airbnb is not liable for tenants who violate lease agreements with their landlords.<sup>71</sup> In *La Park La Brea A LLC v. Airbnb, Inc.*, a building owner sued Airbnb for violating their lease clause, which states that tenants may not sublease their properties.<sup>72</sup> Some tenants moved from the building because of violations of this clause, complaining about “unwanted noise, disturbances, [and] property damage,” among other things.<sup>73</sup> The

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<sup>64</sup> *Terms of Service*, *supra* note 47; see also *Carroll, et al v. American Empire Surplus Lines Insurance Co., et al*, 289 F.Supp.3d 767, 770-72 (E.D. La. 2017) (providing that Airbnb is not liable for injuries sustained on rental properties).

<sup>65</sup> Gordon R. Friedman, *80 Percent of Portland Airbnb-style Rentals Operate Illegally, Audit Finds*, THE OREGONIAN (Aug. 8, 2018), [https://www.oregonlive.com/portland/index.ssf/2018/08/80\\_percent\\_of\\_portland\\_airbnb-.html](https://www.oregonlive.com/portland/index.ssf/2018/08/80_percent_of_portland_airbnb-.html).

<sup>66</sup> OCCUPIERS’ LIABILITY ACT, Chapter 3 (1984), [https://www.legislation.gov.uk/ukpga/1984/3/pdfs/ukpga\\_19840003\\_en.pdf](https://www.legislation.gov.uk/ukpga/1984/3/pdfs/ukpga_19840003_en.pdf).

<sup>67</sup> *Cf. Airbnb denies liability over Brighton balcony*, *supra* note 58.

<sup>68</sup> Booth and Newling, *supra* note 62 (internal quotations omitted).

<sup>69</sup> *Id.* (listing stated “balcony with a seaview”).

<sup>70</sup> *Safety alert after Brighton Airbnb balcony collapse*, BBC (4 July 2016), <https://www.bbc.com/news/uk-england-sussex-36704874>.

<sup>71</sup> *La Park La Brea A LLC, et al v. Airbnb, Inc., et al.*, 285 F. Supp. 3d 1097, 1100 (C.D. Cal. 2017).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 1101.

building owner requested information on tenants from the building who were listing illegally on the site, and Airbnb refused.<sup>74</sup>

The court dismissed the claim, holding that Airbnb was the provider of host information, not the publisher, and therefore was not liable.<sup>75</sup> This case illustrates that even building owners and home owners associations (HOAs) cannot compel information from Airbnb or hold them liable for violations of tenant agreements.<sup>76</sup>

Similarly, in *Carroll, et al v. American Empire Surplus Lines Insurance Co., et al*, a federal court held that Airbnb was not liable for injuries sustained by a guest when stairs collapsed in a rental.<sup>77</sup> The court held that Airbnb owed the guests no duty since it neither owned nor controlled the property, and was not aware of the defective stairs.<sup>78</sup>

It would appear that liability rests on the Airbnb host. Luckily, Airbnb does provide insurance for hosts, which claims to cover injuries sustained on properties, as discussed above.<sup>79</sup> However, if claims exceed the policy limit, hosts are likely responsible for the rest. This liability underscores the need for cities to implement a permit requirement to operate an Airbnb.

## B. Nuisance

Airbnb implicates both private and public nuisances. Not only are individual neighbors subjected to the negative effects of home-sharing, so are entire neighborhoods and even cities.<sup>80</sup> In dealing with

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<sup>74</sup> *Id.*

<sup>75</sup> *See id.* at 1103.

<sup>76</sup> *Id.* at 1101.

<sup>77</sup> *Carroll, et al v. American Empire Surplus Lines Insurance Co., et al*, 289 F.Supp.3d at 770-72.

<sup>78</sup> *Id.* at 771.

<sup>79</sup> *Host Protection Insurance, supra* note 51.

<sup>80</sup> *See* Lisa Abend, *Beer, Sunburns and Bachelor Parties—Barcelona says “Enough!”*, TIME MAGAZINE (Sat., Aug. 7, 2010), <http://content.time.com/time/world/article/0,8599,2009070,00.html> (describing the changes Barcelona has undergone with the rise of “low cost” tourism brought about through cheap flights, accommodations, and alcohol).

peer-to-peer rentals, it is important to consider both the big picture and the day-to-day concerns of community members.

Nuisances arising from Airbnb rentals are arguably one of the worst problems faced by neighbors.<sup>81</sup> Some assert that nuisance claims are negligible and are a weak excuse for opponents of peer-to-peer accommodation sharing.<sup>82</sup> They argue that individual property rights and constitutional rights outweigh whatever minimal nuisance might be created.<sup>83</sup> Furthermore, they claim that long-term neighbors are as bad, if not worse, since they are just as capable as guests at creating nuisances.<sup>84</sup> Unlike guests, neighbors are around long-term. These arguments are somewhat short-sighted.

While it is true that hosts enjoy constitutional protections of use and enjoyment over their property,<sup>85</sup> so do their neighbors. If an illegally operated Airbnb is disturbing neighbors to the point that they cannot enjoy the use of their own property, it is harsh to claim that the neighbor is out of luck. Placing restrictions on where and how short-term rentals can be operated is in the best interest of the community, much like zoning laws. It is long established that a city has the right to place zoning restrictions on neighborhoods.<sup>86</sup> Airbnb hosts who rent multiple residences full-time on short-term sharing sites are essentially running a commercial business from a residential neighborhood. It would be unfair to allow a host to run what amounts to a hotel in a neighborhood simply because it is a residential house. Renting spare rooms in the host's own primary residence is one thing, but many

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<sup>81</sup> *Weekend Millionaires in Neighbour's Airbnb Flat*, AIRBNBHELL (Oct. 2, 2018), <https://www.airbnbhell.com/tag/airbnb-neighbors/> (neighbors keeping a “nuisance diary” is one of many posts complaining of nuisances arising from Airbnbs).

<sup>82</sup> See Christina Sandefur, *Turning Homeowners into Outlaws: How Anti-Home-Sharing Regulations Chip Away at the Foundation of an American Dream*, 39 U. Haw. L. Rev. 395, 424 (2017).

<sup>83</sup> See *id.* at 419.

<sup>84</sup> See *id.* at 423 n. 182.

<sup>85</sup> *Id.* at 398.

<sup>86</sup> See generally *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

Airbnbs, especially in tourism-heavy cities, are entirely used as short-term rentals.<sup>87</sup>

The argument that long-term neighbors pose the same problems as short-term guests, particularly because they are permanent, is myopic. It is true that permanent neighbors are capable of being just as noisy, rude, and disruptive as short-term guests; however, permanent neighbors have a strong incentive not to be. Neighbors live in proximity to one another for extended periods of time. It is in everyone's best interest to maintain at least a minimal amount of courtesy. While some neighbors are certainly just as disturbing as short-term holiday guests, they are the exception to the rule. People on holiday have no incentive to be quiet after hours, be courteous to residents, or use shared facilities with respect and propriety.<sup>88</sup> Take, for example, the tourists of Barcelona. Young tourists choose Barcelona in large part for its beaches, cheap alcohol, and cheap travel costs.<sup>89</sup> That combination is a recipe for rowdy, rude, and drunken neighbors. Can the argument plausibly be made that the typical Barcelonan neighbor would fit into this category?

Proponents for neighborhood short-term rentals also point to resources provided by the sharing sites themselves.<sup>90</sup> It is true that Airbnb provides a hotline of sorts, meant to allow neighbors to anonymously lodge complaints if the Airbnb next door becomes a nuisance.<sup>91</sup> The problem with this argument is that Airbnb largely fails to do anything about such complaints.<sup>92</sup> Simply because it is possible

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<sup>87</sup> *Search Results*, AIRBNB, [https://www.airbnb.com/s/London--United-Kingdom/homes?adults=1&children=0&infants=0&place\\_id=ChIJdd4hrwug2EcRmSrV3Vo6lll&room\\_types%5B%5D=Entire%20home%2Fapt&refinement\\_paths%5B%5D=%2Fhomes&all\\_ow\\_override%5B%5D=&tag=0H4IQ\\_P7](https://www.airbnb.com/s/London--United-Kingdom/homes?adults=1&children=0&infants=0&place_id=ChIJdd4hrwug2EcRmSrV3Vo6lll&room_types%5B%5D=Entire%20home%2Fapt&refinement_paths%5B%5D=%2Fhomes&all_ow_override%5B%5D=&tag=0H4IQ_P7) (results for “London, United Kingdom” and entire homes resulted in hundreds of listings, same with other cities).

<sup>88</sup> *La Park La Brea ALLC, et al. v. Airbnb, Inc., et al.*, 285 F. Supp. 3d at 1101.

<sup>89</sup> Abend, *supra* note 80.

<sup>90</sup> *See id.* at 424 (see footnote 183).

<sup>91</sup> *Airbnb Neighbors – Contact Us*, AIRBNB <https://www.airbnb.com/neighbors>

<sup>92</sup> *See generally Neighbors*, AIRBNB HELL, [airbnhell.com](http://airbnhell.com) (numerous posts under the ‘Neighbors’ tab state that Airbnb does nothing in response to complaints of nuisance).



for neighbors to complain does not mean their complaints are meaningfully addressed. One frustrated neighbor put it this way: “Several people in my apartment building have complained [about the constant loud, late-night noise], either to the police or to Airbnb. It’s not like we were expecting much, but Airbnb somehow exceeded our expectations in not giving a single f#\$k about us or our complaints.”<sup>93</sup>

Finally, proponents argue that nuisance claims related to short term rentals are less common than opponents claim.<sup>94</sup> One article states, “Officials often justify restrictions on home-sharing on the theory that home-sharing disrupts neighborhoods and causes noise or traffic.”<sup>95</sup> The author goes on to say, “These fears may be exaggerated. Studies often show that the number of nuisance complaints related to home-sharing are minimal.”<sup>96</sup> The author cites a report from Nashville indicating that 2015 only produced fifteen total home-sharing related nuisances.<sup>97</sup> This suggests that opponents of Airbnb are making a mountain out of a molehill when it comes to nuisance complaints. However, this is not necessarily the case. For example, police departments in large cities such as Los Angeles—where Airbnb has a large presence<sup>98</sup>—are far more likely to be busy with more pressing calls<sup>99</sup> and thus unwilling to dedicate time to dealing with a noisy neighbor. Furthermore, recording whether a nuisance claim arises from a short-term rental is not necessarily police procedure.<sup>100</sup> For example, in Montecito County, California, “County law enforcement

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<sup>93</sup> *Airbnb Party Houses Are Out of Control*, *supra* note 1.

<sup>94</sup> Sandefur, *supra* note 82, at 423 n. 183.

<sup>95</sup> *Id.*

<sup>96</sup> Sandefur, *supra* note 82, at 423 n.183.

<sup>97</sup> *Id.* n. 183.

<sup>98</sup> *Number of Airbnb Listings in Select Major Cities*, STATISTA (Sep. 2018), <https://www.statista.com/statistics/752498/airbnb-number-of-listings-in-major-cities-worldwide/> (listing Los Angeles as having approximately 19,595 listings).

<sup>99</sup> See generally Kate Mather, *L.A. Officials Ask LAPD to Find Ways to Put More Officers on City Streets*, Los Angeles Times (Feb. 22, 2017) (addressing “concerns that there aren’t enough cops working patrol duties to adequately respond to calls for help).

<sup>100</sup> See Susan L. Ruby, Article, *To Regulate or to Ban: An Update on the Vacation Rental Dilemma in Coastal California*, 45 No. 3 Real Estate Review Journal Art. 7 (2016).

simply did not keep data that differentiated among complaints based on land use.”<sup>101</sup>

Though the author uses Nashville as an example of a city with relatively few Airbnb nuisance claims, Nashville has recently created “a hotline for reporting illegal short-term rental properties *and for reporting noise, parking, trash and other nuisance complaints* pertaining to specific short term rental properties.”<sup>102</sup> If Nashville was unconcerned with seemingly trivial numbers of nuisance claims, it seems unlikely that the city would devote the time and resources to creating a hotline specifically aimed at addressing such nuisances.

First, constant traffic in and out of a neighborhood is a nuisance. For example, frequent travel in and out of the neighborhood, late night taxis and Ubers, or guests taking residential parking spots are examples of potential nuisances. A benefit to living in a residential area of homeowners (as opposed to renters) is having the same long-term neighbors. Having a constant flow of strangers through your neighborhood would be an incredible nuisance, particularly if they were there for mere days before new strangers took their place.

Second, Airbnbs and other forms of accommodation sharing alter the character of a neighborhood to the point of becoming a nuisance.<sup>103</sup> Barcelona has begun to restrict Airbnbs in an attempt to fix its “tourist ghettos.”<sup>104</sup> These areas become filled with souvenir and coffee shops, rude tourists, and constant noise and activity.<sup>105</sup> Apartment tenants deal with drunk vacationers coming and going late at night, constant strangers, and sometimes garbage and urine in the

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<sup>101</sup> *Id.*

<sup>102</sup> *Short Term Rental Property Permit Information*, NASHVILLE.GOV, <https://www.nashville.gov/Codes-Administration/Short-Term-Rentals.aspx> (emphasis added).

<sup>103</sup> See Abend, *supra* note 80.

<sup>104</sup> See Feargus O’Sullivan, *Barcelona Finds a Way to Control Its Airbnb Market*, CITY LAB (Jun. 6, 2018), <https://www.citylab.com/life/2018/06/barcelona-finds-a-way-to-control-its-airbnb-market/562187/>.

<sup>105</sup> See *id.*

halls of their home.<sup>106</sup> If that does not qualify as a nuisance, then what does?

Third, the argument that long-term neighbors cause the same problems is without much merit. Of course some neighbors are loud, rude, and cause problems. However, a neighbor is less likely to carelessly alienate neighbors, disturb the peace, or destroy property. After all, a neighbor must ultimately live next to the same people for a long time. They may have to interact with their neighbors for years to come, as opposed to a vacationer who will be gone in a day or two and will likely never see anyone from their vacation ever again. Long-term neighbors are less likely to disregard how their actions affect those around them in the same way that a vacationer might.

### C. How Are Cities Approaching Accommodation Sharing Laws?

#### 1. Airbnb

Cities take extremely different approaches to regulating peer-to-peer accommodation sharing.<sup>107</sup> Some cities, like Amsterdam, are considered friendly toward Airbnb,<sup>108</sup> and have passed legislation making it relatively easy for residents to operate an Airbnb from their homes.<sup>109</sup> On the other hand, cities like New York, Barcelona, Berlin, and Chicago have reacted with varying degrees of negativity toward Airbnb and have placed restrictions (or in Berlin's case a short-lived all-out ban) on home accommodation sharing.<sup>110</sup> While regulations

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<sup>106</sup> See Abend, *supra* note 80.

<sup>107</sup> See Will Coldwell, *Airbnb's legal troubles: what are the issues?*, THE GUARDIAN (Tue. 8 Jul. 2014, 8:38 EST), <https://www.theguardian.com/travel/2014/jul/08/airbnb-legal-troubles-what-are-the-issues> (briefly describing Barcelona and Amsterdam responses to Airbnb).

<sup>108</sup> *Airbnb in Amsterdam: What is Allowed and What is Not Allowed*, THOMA POST (22 May 2018), <https://thomastpost.amsterdam/en/2018/05/22/airbnb-in-amsterdam-what-is-allowed-and-what-is-not-allowed/> (It is important to note that even Airbnb "friendly" cities like Amsterdam are creating more restrictive legislation. As of 2019, Amsterdam halved the number of days that a host could rent a home on a short-term rental site.).

<sup>109</sup> See Coldwell, *supra* note 107.

<sup>110</sup> See Stephen Burgen, *Barcelona cracks down on Airbnb rentals with illegal apartment squads*, THE GUARDIAN (Fri. 2 Jun. 2017 7:45 EDT), <https://www.theguardian.com/technology/2017/jun/02/airbnb-faces-crackdown->

vary from city to city, some concerns and modes of regulation are common. Major concerns include availability of housing for residents, maintaining the character of neighborhoods, and the collection of fees or taxes from host income.<sup>111</sup> Regulations often focus on the number of days the rental is available, whether the host lives in the home, and the location of the rental.<sup>112</sup>

*a. How Spanish Cities are Addressing Airbnb*

Several Spanish cities have become overwhelmed with short-term rentals like Airbnb.<sup>113</sup> Spain is a popular tourist destination, boasting more than 129 million tourists in 2017.<sup>114</sup> In 2016, Barcelona alone received more than 8 million international visitors.<sup>115</sup> In 2017, Madrid—Spain’s most populous city<sup>116</sup>—received well over 6 million.<sup>117</sup> These tourists spent a combined total of 455 million nights

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on-illegal-apartment-rentals-in-barcelona; see also Luisa Beck, *Berlin had some of the world’s most restrictive rules for Airbnb rentals. Now it’s loosening up.*, THE WASHINGTON POST (Mar. 28, 2018), [https://www.washingtonpost.com/world/europe/berlin-had-some-of-the-worlds-most-restrictive-rules-for-airbnb-rentals-now-its-loosening-up/2018/03/27/e3acda90-2603-11e8-a227-fd2b009466bc\\_story.html?noredirect=on&utm\\_term=.45383b0edd6b](https://www.washingtonpost.com/world/europe/berlin-had-some-of-the-worlds-most-restrictive-rules-for-airbnb-rentals-now-its-loosening-up/2018/03/27/e3acda90-2603-11e8-a227-fd2b009466bc_story.html?noredirect=on&utm_term=.45383b0edd6b); see generally Municipal Code of Chicago, ART. XXX Vacation Rentals (4-6-300 et seq.), <https://www.chicago.gov/content/dam/city/depts/bacp/Small%20Business%20Center/sharedhousingordinanceamendments.pdf>.

<sup>111</sup> See Sandefur, *supra* note 82, at 404; see also Wilhelm, *supra* note 4, at 859-60.

<sup>112</sup> See Grant Wills, *To Be or Not to Airbnb: Regulation of Short-Term Rentals in South Carolina*, S.C. L. Rev. 821, 840-41 (2017).

<sup>113</sup> See *Fed-up Spanish cities are bursting Airbnb’s bubble*, The Local (May 27, 2018, 12:34 CEST), <https://www.thelocal.es/20180528/fed-up-spanish-cities-are-bursting-airbnbs-bubble>.

<sup>114</sup> *Number of arrivals in tourist accommodations in Spain from 2006 to 2017\* (in millions)*, STATISTA, <https://www.statista.com/statistics/413223/number-of-arrivals-spent-in-short-stay-accommodation-in-spain/>.

<sup>115</sup> *Tourism in Barcelona – Statistics & Facts*, STATISTA, <https://www.statista.com/topics/4156/tourism-in-barcelona/>.

<sup>116</sup> *Spain – Largest Cities*, GEONAMES, <http://www.geonames.org/ES/largest-cities-in-spain.html> (Madrid’s population exceeds 3 million).

<sup>117</sup> *Annual Number of International Tourists Visiting the Community of Madrid from 2001 to 2017 (in 1,000s)*, STATISTA,

in short-term rentals in 2016 alone.<sup>118</sup> The increasing number of Airbnbs has affected Spanish cities in several ways.

In Madrid, the historic downtown apartments located between its two major plazas, Plaza Mayor and Puerta del Sol, are highly desirable as Airbnbs thanks to their proximity to many museums, restaurants, shopping areas, public transportation and tourist destinations.<sup>119</sup> Madrid Airbnbs are also significantly cheaper than hotels; a beautiful Airbnb located on Gran Vía (a major street of downtown Madrid, in the city center) costs only \$46 per night.<sup>120</sup> Hotels on the same street are over \$100 per night, and during summer months many cost over \$200.<sup>121</sup> Thus, Airbnb is a popular choice for Madrid tourists. Unfortunately, it has created several issues. For example, “professional” hosts purchase apartments for the sole purpose of listing them on Airbnb.<sup>122</sup> In response to growing concerns about the effects of short-term rentals, Madrid passed legislation requiring the majority of Airbnb hosts to get a license from the city.<sup>123</sup> The special plan was approved in July of 2018, and went into effect in early 2019.<sup>124</sup> Airbnbs in the city center are now required to have a separate entrance from the “residential” entrance used by locals.<sup>125</sup>

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<https://www.statista.com/statistics/449249/yearly-number-of-international-tourists-visiting-madrid-2001-2014/>.

<sup>118</sup> *Number of Overnight Stays in Travel Accommodation in Spain between 2007 and 2017 (in millions)*, STATISTA, <https://www.statista.com/statistics/413129/number-of-nights-spent-in-short-stay-accommodation-in-spain/>.

<sup>119</sup> METRO MADRID, <https://www.metromadrid.es/en/travel-in-the-metro/metro-de-madrid-maps>.

<sup>120</sup> *Apartamento junto Gran Vía*, AIRBNB, <https://www.airbnb.com/rooms/3397465?> (from search results for “Madrid”).

<sup>121</sup> *See Hotels near Gran Vía*, TRIPADVISOR, [https://www.tripadvisor.com/HotelsNear-g187514-d246516-Gran\\_Via-Madrid.html](https://www.tripadvisor.com/HotelsNear-g187514-d246516-Gran_Via-Madrid.html) (from search results “hotels near gran via”).

<sup>122</sup> *See Caitlin Hendee, Hosts with Multiple Airbnb Listings Impact Rental Quality, Report Finds*, DENVER BUSINESS JOURNAL (Aug. 14, 2017, 4:39 p.m.), <https://www.bizjournals.com/denver/news/2017/08/14/hosts-with-multiple-airbnb-listings-impact-rental.html>.

<sup>123</sup> Julio Núñez and J.A. Aunión, *Madrid Plans Drastic New Rules that could Affect 95% of Tourist Apartments*, EL PAÍS (17 Aug. 2018, 12:02 CEST) [https://elpais.com/elpais/2018/08/17/inenglish/1534498944\\_282364.html](https://elpais.com/elpais/2018/08/17/inenglish/1534498944_282364.html).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

This entrance requirement is estimated to affect ninety-five percent of existing rentals in Madrid.<sup>126</sup> In addition, Airbnbs that are rented for more than 90 days per year are considered commercial, and hosts will now be required to obtain a commercial license.<sup>127</sup> Madrid's strict regulations are an attempt to halt the gentrification and rising rent of downtown apartments,<sup>128</sup> as well as address overall concerns for the amount of tourism in the city.<sup>129</sup>

Barcelona is also creating strict regulations for short-term rentals.<sup>130</sup> Barcelona's mayor, Ada Colau, "ran on a platform that promised to make housing a priority of the government."<sup>131</sup> Barcelona has ceased granting permits for "holiday rental homes," has banned Airbnbs in residential buildings, and has implemented fines for landlords who deliberately force tenants to leave so the rental may be used as a short term rental at higher rates.<sup>132</sup> Furthermore, Colau has reached out to other cities in an attempt to create an international alliance against short-term rentals.<sup>133</sup> Despite these attempts, illegal rentals are still thriving.<sup>134</sup>

Valencia and Mallorca have chosen to implement similarly sweeping regulation of Airbnbs.<sup>135</sup> Valencia's restriction, unlike

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<sup>126</sup> *Id.*

<sup>127</sup> See Núñez, *supra* note 124.

<sup>128</sup> *See id.*

<sup>129</sup> Francesca Street, *Madrid Takes on Airbnb and Overtourism*, CNN (15th May 2018), <https://www.cnn.com/travel/article/madrid-airbnb-restrictions-mass-tourism/index.html>.

<sup>130</sup> See O'Sullivan, *supra* note 104.

<sup>131</sup> *Local Authorities Act to Curb Holiday Rentals in Spain*, EL PAÍS (30 Jul. 2018, 12:06 EDT), [https://elpais.com/elpais/2018/07/30/inenglish/1532964179\\_125694.html](https://elpais.com/elpais/2018/07/30/inenglish/1532964179_125694.html).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> See Brendan Pedersen, *50% of Airbnb Landlords Ignore Denver Rules in Booming \$100M Industry*, Business Den (Aug. 27, 2018), <https://businessden.com/2018/08/27/50-of-airbnb-landlords-ignore-denver-rules-taxes-in-booming-100m-industry/>; Friedman, *supra* note 65.

<sup>135</sup> See Meredith Carey, *Valencia Doesn't Want You Renting an Airbnb with a View*, CONDÉ NAST TRAVELER (May 11, 2018), <https://www.cntraveler.com/story/valencia-doesnt-want-you-renting-an-airbnb-with-a-view>.

Madrid's, will require all Airbnbs to be on ground and first floors.<sup>136</sup> The reasoning is to reserve the best views for actual residents while keeping guests in less desirable apartments.<sup>137</sup> Mallorca, one of Spain's largest and most popular tourist destinations, has decided to entirely ban short-term peer-to-peer rentals in an attempt to keep Palma (Mallorca's capital) "livable" for residents.<sup>138</sup>

*b. Germany's Trouble with Airbnb and Berlin's Short Lived Total Ban on Short-term Rentals*

In 2016, Berlin adopted regulations banning short-term rentals such as Airbnbs.<sup>139</sup> The bans lasted until early 2018, when Berlin began relaxing its policies.<sup>140</sup> Berlin hosts must obtain a permit for each property they wish to list as a short-term rental.<sup>141</sup> Failure to obtain a permit and conform to Berlin's restrictions, including the 90 day cap on rentals,<sup>142</sup> can result in harsh penalties.<sup>143</sup> The city may impose fines up to \$616,000 for failure to comply.<sup>144</sup>

Hamburg is also creating stricter Airbnb regulations.<sup>145</sup> The regulations cap rentals at 90 days and create fines up to half a million euros, like Berlin.<sup>146</sup> Hamburg also created eight to ten jobs solely for enforcing lawful rentals.<sup>147</sup> Hamburg's primary concern in regulating

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<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Raphael Minder, *To Contain Tourism, One Spanish City Strikes a Ban, on Airbnb*, THE NEW YORK TIMES (Jun. 23, 2018), <https://www.nytimes.com/2018/06/23/world/europe/tourism-spain-airbnb-ban.html>.

<sup>139</sup> Beck, *supra* note 110.

<sup>140</sup> *See id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *See* Beck, *supra* note 110.

<sup>144</sup> *Id.*

<sup>145</sup> *See* Geli Tangermann, *Bürgerschaft beschließt Anti-Airbnb-Gesetz*, Welt (17 Oct. 2018), <https://www.welt.de/regionales/hamburg/article182276174/Wohnungspolitik-Buergerschaft-beschliesst-Anti-Airbnb-Gesetz.html> (requiring registration, imposing limits on number of days rental may be available).

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

rentals is housing availability.<sup>148</sup> Unlike many other cities, Hamburg is not inundated with tourists seeking holiday accommodations. Instead, the city is in the midst of a housing crisis, and many Hamburgers are in desperate need of affordable rentals.<sup>149</sup>

German officials have instigated several lawsuits against Airbnb in an attempt to force the platform to provide user data,<sup>150</sup> when those suits failed in Germany, tax officials requested the information from Airbnb Ireland (Airbnb's European headquarters).<sup>151</sup> Their goal is to use the data to better track illegal listings using specific host addresses.<sup>152</sup> Since Airbnb does not list host addresses on the site, German law enforcement cannot easily determine who is illegally operating an Airbnb.<sup>153</sup> So far, courts have favored Airbnb's arguments for privacy and law enforcement has been unable to gain access to hosts' data.<sup>154</sup>

*c. Chicago's Draconian Measures*

Chicago presents one of the most flawed approaches to regulating accommodation sharing. Chicago implemented the Shared Housing Ordinance in June 2016.<sup>155</sup> The Ordinance requires both hosts and the sharing platform to procure licenses before creating a listing.<sup>156</sup> The only platform to actually receive a permit is Airbnb.<sup>157</sup> If,

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<sup>148</sup> *Id.*

<sup>149</sup> *See id.*

<sup>150</sup> Beck, *supra* note 110.

<sup>151</sup> *Germany Seeks Airbnb Ireland's Help to Catch Tax Evaders*, THE IRISH TIMES (Fri. May 18, 2018, 12:39), <https://www.irishtimes.com/business/technology/germany-seeks-airbnb-ireland-s-help-to-catch-tax-evaders-1.3500162>.

<sup>152</sup> *Id.*

<sup>153</sup> Beck, *supra* note 110.

<sup>154</sup> *Id.*

<sup>155</sup> *Shared Housing and Accommodations Licensing*, CITY OF CHICAGO, [https://www.cityofchicago.org/city/en/depts/bacp/supp\\_info/sharedhousingandaccommodationslicensing.html](https://www.cityofchicago.org/city/en/depts/bacp/supp_info/sharedhousingandaccommodationslicensing.html).

<sup>156</sup> *Id.*

<sup>157</sup> Ese Olumhense, *Two Years after Chicago Passed a Home-sharing Law, only Airbnb has a License, and Hosts say Rules are too Complicated*, CHICAGO TRIBUNE (May 6, 2018, 6:10 a.m.) <https://www.chicagotribune.com/business/ct-biz-airbnb-ordinance-two-years-later-20180504-story.html>.



after review, a license is denied, hosts must remove all posts of the rental from the sharing platform or face a \$5,000 fine for each day that the listing remains available.<sup>158</sup>

Instead of prohibiting short-term rentals in certain areas or types of building, the Ordinance seems to take a case-by-case approach.<sup>159</sup> For example, one woman's application was denied "because city officials said her condominium building was on a list of buildings that have prohibited short-term rentals."<sup>160</sup> However, when the woman searched her condominium bylaws she could find no indication that such rentals were prohibited.<sup>161</sup> Furthermore, when she filed a Freedom of Information Act request for documentation proving that the building belonged on the list, the city told her "it was unable to locate such records."<sup>162</sup> Such confusing and unclear regulation makes it difficult for hosts to know whether or not they may create a listing. Even hosts who are eligible for a permit might neglect to apply, knowing the process is very involved and difficult.

*d. Portland's Simple Solution Might not Work*

Portland has a fairly simple method of regulating shared accommodations. A host must apply for a permit and have their home inspected.<sup>163</sup> The rental must be the host's primary home, they must live there for nine months out of the year, and short-term rentals may not exceed thirty days.<sup>164</sup> While these requirements are fairly simple and easy to follow, 80 percent of Portland short-term rentals are illegal.<sup>165</sup> Permits are somewhat costly, with one to two bedroom rentals costing \$178 and rentals with three to five bedrooms costing a

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<sup>158</sup> Municipal Code of Chicago, ART. XXX Vacation Rentals (4-6-300 et seq.), 4-6-300 (h)(11), <https://www.cityofchicago.org/content/dam/city/depts/bacp/Small%20Business%20Center/sharedhousingordinanceamendments.pdf>.

<sup>159</sup> See Olumhense, *supra* note 157.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> See Olumhense, *supra* note 157.

<sup>163</sup> *Portland*, OR, AIRBNB, <https://www.airbnb.com/help/article/875/portland--or>.

<sup>164</sup> Friedman, *supra* note 65.

<sup>165</sup> *Id.*

shocking \$5,000.<sup>166</sup> It is possible that the expense deters (or even prevents) many hosts from applying for a permit.<sup>167</sup> In addition, Portland does not actively monitor whether or not Airbnb hosts actually have permits.<sup>168</sup> Like most cities, Portland is at a disadvantage because Airbnb refuses to share its user data with city officials.<sup>169</sup> This places Portland in a position where it has a law but no efficient mechanism for enforcement.

*e. New York City's Battle against Short-term Rentals*

New York City has long been hostile to short-term rentals.<sup>170</sup> “In 2010, the New York State Legislature enacted a law prohibiting the rental of most apartments for a period of fewer than thirty days in ‘Class A’ multiple dwellings . . . unless a permanent resident remains on the premises.”<sup>171</sup> The legislature cites several reasons for placing restrictions on short-term rentals, including “overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provisions for escape from fire, and improper sanitation of multiple dwellings.”<sup>172</sup> The city also banned “short-term rentals of entire multiple dwelling units and one- and two-family units occupied for permanent resident purposes.”<sup>173</sup> Key concerns included reduced availability of housing for residents, increased rents, and damage to the character of the neighborhood.<sup>174</sup> Despite these efforts, short-term rentals continued to thrive in New York City.<sup>175</sup>

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<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> See *Airbnb, Inc. v. City of New York*, 18 Civ. 7712 (PAE), 18 Civ. 7742 (PAE) 2019 WL 91990, at \*2 (S.D.N.Y. Jan. 3, 2019) (New York placed a ban on short-term rentals for less than 30 days as early as 2010).

<sup>171</sup> *Id.*

<sup>172</sup> *Airbnb, Inc. v. City of New York*, 2019 WL 91990, at \*2 (internal quotations omitted).

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Luis Ferré-Sadurní, *To Curb Illegal Airbnbs, New York City Wants to Collect Data on Hosts*, THE NEW YORK TIMES (Jun. 26, 2018),

In an effort to “crack down” on peer-to-peer rentals, the city signed into law an ordinance that would require home-sharing sites like Airbnb to provide “monthly transaction reports.”<sup>176</sup> These include the rental’s address, the full name and address of the host, the listing’s URL, what type of dwelling unit the rental is listed in, the price of the listing, and even the account number used to receive payments for the rental.<sup>177</sup> The law was scheduled to go into effect in February 2019,<sup>178</sup> but Airbnb obtained a preliminary injunction against its enforcement.<sup>179</sup> The court based its preliminary judgement on the scope of user data that the city sought to compel, as well as Fourth Amendment concerns over the sensitivity of the information and the constant production of such information.<sup>180</sup> It remains to be seen what will come of the suit, and whether the city will successfully implement a more stringent short-term rental law.

#### D. Proposed Solutions for Addressing Shared Accommodations

Despite the many problems cities face when considering short-term rentals, they can still be a useful and beneficial addition to the community.<sup>181</sup> Cities must determine how to fairly and effectively regulate short-term rentals. It is not feasible to ban short-term rentals altogether, as hosts will continue to find a way to rent their homes. One solution is to require Airbnb and similar sites to release user data, which would allow cities to locate individual hosts who do not comply with city laws. However, such an extreme measure is unlikely to prevail in the U.S., where concerns for privacy exceed concerns for city

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<https://www.nytimes.com/2018/06/26/nyregion/illegal-airbnb-new-york-city-bill.html>.

<sup>176</sup> *Airbnb, Inc. v. City of New York* 2019 WL 91990, at \*3.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 19.

<sup>180</sup> *Id.*

<sup>181</sup> *The Economic Impacts of Home Sharing in cities around the world*, AIRBNB, <https://www.airbnb.com/economic-impact> (important to note that these positive impacts came directly from Airbnb’s own site).

regulations.<sup>182</sup> Such a method will perhaps be successful in Barcelona, where Airbnb has agreed to share user data with city officials.<sup>183</sup>

Instead, cities must look to less invasive methods of regulation. In particular, cities should begin to look for ways to allow short-term rentals and peer-to-peer sharing to a greater extent. A balance between hosts wishing to rent homes and the neighbors and residents that must coexist with them is critical to the success of city regulations. Permits, simplicity, proactive enforcement, accountability, and balance are all factors that may allow a city to create successful short-term rental regulations.

### 1. Require Permits and Inspections

First, cities should implement a permit system for registering and keeping track of short-term rentals. This is already the practice in many U.S. and European cities. Information about rental numbers and usage is the first step to creating a strong plan that best serves the needs of the community. Cities should make registering for a short-term rental as easy as possible, to ensure host compliance. Even somewhat onerous methods will prevent many—if not most—hosts from going to the effort, as seen in Portland.<sup>184</sup>

Registration should not be used as a method to limit or prevent rentals. To do so serves no purpose but to prevent hosts from registering. Instead, cities should provide guidelines and limitations for the host to follow. For example, Barcelona implemented a permit system but stopped issuing permits in areas believed to be saturated with short-term rentals.<sup>185</sup> It is unsurprising that hosts simply listed their homes without permits; the areas most saturated with listings are popular tourist areas,<sup>186</sup> the most desirable and profitable areas to have an Airbnb.

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<sup>182</sup> See *Airbnb, Inc. v. City of New York*, 2019 WL 91990, at \*10.

<sup>183</sup> O'Sullivan, *supra* note 104.

<sup>184</sup> See Friedman, *supra* note 65.

<sup>185</sup> O'Sullivan, *supra* note 104.

<sup>186</sup> *Id.*

## 2. Simplicity is Key

Simplicity is the key to regulating peer-to-peer home accommodations. In the interest of fairness to all parties, cities should adopt simple, straightforward policies. Furthermore, the legislation should consider the impacts of Airbnbs on neighbors, neighborhoods, and the city above the interests of the host. If a city chooses to allow residents to operate an Airbnb, the city should make the rules and requirements simple enough that a resident can read and understand what is permitted and how to operate legally.

Chicago's Shared Housing Ordinance is over thirty pages of complex legal language.<sup>187</sup> The ordinance requires potential hosts to apply for a license through the sharing platform, and will not allow hosts to apply directly to the city.<sup>188</sup> Violating any of the numerous requirements may result in a fine of up to \$3000 per violation, an amount many Airbnb hosts would be unable to pay.<sup>189</sup> Reading the language of the ordinance, however, is difficult and raises many questions for a potential host.<sup>190</sup> For example, the ordinance states that single-family homes may not be rented through a home-sharing platform unless it is the owner's primary residence.<sup>191</sup> However, it also states that city officials may make exceptions to this rule when appropriate, but does not state when or how that might happen. If a host is required to apply for a license through the platform and not directly to the city, but feels that they should qualify for this exception, it is unclear how to go about requesting an exception or how to fill out

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<sup>187</sup> Municipal Code of Chicago, ART. XXX Vacation Rentals (4-6-300 et seq.).

<sup>188</sup> Municipal Code of Chicago, ART. XXX Vacation Rentals, 4-14-020 Shared housing unit registration – Required.

<sup>189</sup> See Municipal Code of Chicago, ART. XXX Vacation Rentals, 4-14-030 Failure to meet eligibility requirements for registration - Legal effect – Processes. (For example, section (c) *Duty to remove ineligible listings from platform* provides a maximum penalty of \$3,000 for failure to comply within 8-14 calendar days. Upon or after the 15th day, there is a maximum fine of \$5,000, and every day in violation thereafter is a separate and distinct offense.).

<sup>190</sup> See Jacob Huebert, *Lawsuit Challenges Chicago's Unconstitutional Airbnb Ordinance*, ILLINOIS POLICY (Nov. 16, 2016), <https://www.illinoispolicy.org/lawsuit-challenges-chicagos-unconstitutional-airbnb-ordinance/>.

<sup>191</sup> Municipal Code of Chicago, ART. XXX Vacation Rentals, 4-6-300 (b)(8).

the license application without being automatically denied. Coupling such a complex ordinance with such high fines is unfair to hosts, and many Chicagoans argue that it is unconstitutional.<sup>192</sup>

A simpler approach would be better for both hosts and guests. Many Spanish cities are beginning to strictly regulate Airbnbs.<sup>193</sup> In many ways, these restrictions are harsher than Chicago's, but the basic rules are far more simple. For example, Valencia's requirement that short-term rentals be restricted to ground and first floors illustrates a restrictive but incredibly simple rule.

While these laws are strict and eliminate many, if not most, residences from being eligible, they are straightforward and easy to understand. Not only can hosts easily determine if they are eligible to rent their apartment, guests can also easily determine whether they are renting a legal Airbnb.

### 3. Enforce Proactively

Proactive enforcement of city ordinances puts cities back in charge of peer-to-peer rentals. Requiring licenses or registration for Airbnbs is important for cities for several reasons, including fairness and efficiency.<sup>194</sup> However, expecting hosts to take the initiative and do it themselves, especially when there are no consequences until they get caught, is too optimistic.<sup>195</sup> By enforcing proactively, hosts that are operating illegal or unlicensed rentals will be dealt with more quickly. Furthermore, the burden will no longer be on neighbors to call and report the illegal activity.<sup>196</sup>

Seemingly, the best approach to enforcement is to require a listing to include a permit number before being created. Cities may issue the permits directly to hosts, who then enter the information into

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<sup>192</sup> See Huebert, *supra* note 190.

<sup>193</sup> Carey, *supra* note 136.

<sup>194</sup> See Speier, *supra* note 5, at 415, 421 (“without more efficient and reliable forms of enforcement, there is little motivation to change the law”).

<sup>195</sup> *Id.* at 424 (“One Airbnb host without a permit explained, ‘Honestly, it’s been on my to-do list but I haven’t done it. It’s another barrier.’”).

<sup>196</sup> *Id.* at 421 (“San Francisco lawmakers admit that they still rely on complaints from neighbors to police the use of short-term rentals.”).

the platform, creating a relatively simple method for ensuring that each listing is legal.

#### 4. Punish the Platform, not the Host

Regulations that levy fines on hosts for illegal listings are not effective, based on the number of hosts who continue to list their homes illegally. Instead, cities should turn their efforts to fining the platforms themselves. It is true that the hosts are theoretically responsible for knowing local laws and choosing to follow them,<sup>197</sup> but in cities where the only method of enforcement is through reports by neighbors, this is not feasible. The permit method described above places more responsibility on the platform itself to ensure it is not facilitating illegal activity. If cities require that a listing display a permit number, and the platform fails to ensure that requirement is met, then it is reasonable to fine them.

Banning Airbnbs outright or implementing a permit system and then refusing to issue permits are not successful methods of controlling peer-to-peer rentals.<sup>198</sup> Barcelona stopped issuing rental licenses, but city officials estimated there were still 7,000 rentals operating illegally.<sup>199</sup> Refusing to issue permits does not solve the problem; hosts will still list their homes and run the risk of punishment.<sup>200</sup> Airbnb is similarly undeterred; if hosts are responsible for fines incurred from illegal rentals, then that is of no consequence.

On the other hand, fining Airbnb is also unproductive in most cases.<sup>201</sup> Fines of €90,000 here and there are of little importance to a multi-billion-dollar company.<sup>202</sup> Punishing Airbnb for ignoring local laws will require larger steps. In this sense, Chicago's method for controlling Airbnbs is useful; Chicago's draconian ordinance did

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<sup>197</sup> *What Legal and Regulatory Issues Should I Consider Before Hosting on Airbnb?*, *supra* note 30.

<sup>198</sup> Brianna J. Santolli, *Winning the Battle, Losing the War: European Cities Fight Airbnb*, 49 *geo. Wash. Int'l L. Rev.* 673, 695 (2017).

<sup>199</sup> *Id.*

<sup>200</sup> Beck, *supra* note 110.

<sup>201</sup> Santolli, *supra* note 198, at 679.

<sup>202</sup> *Id.*

successfully force Airbnb to get a permit to operate within the city.<sup>203</sup> The system, while flawed, proves that cities can successfully place requirements on Airbnb and other sharing platforms.

#### 5. Strike a Balance

While Airbnb comes with a plethora of difficult legal issues, it is important to find a balance in regulating and maintaining hosts' rights. Differentiating between hosts who share a portion of their own home and hosts who rent entire properties commercially is the first step. Many hosts rent out a single room in the home that they occupy.<sup>204</sup> While this does not eliminate the issues surrounding home-sharing, it does mitigate them. For example, the tourist ghettos that Spain faces, or the housing shortages in Berlin and Hamburg, could be offset if all accommodation-sharing went on in the host's own home. Berlin's Airbnb laws reflect this.<sup>205</sup> Hosts are only required to obtain a permit for hosting if more than fifty percent of their home is being rented.<sup>206</sup> Hosts renting only a spare room or two may do so without a permit.<sup>207</sup>

Additionally, creating incredibly invasive requirements for either hosts or Airbnb is not the solution. Cities like New York that request detailed data about hosts from the site are unlikely to prevail in a U.S. court.<sup>208</sup> While cities must find a way to keep track of rentals in some capacity, forcing Airbnb to divulge detailed user data is not plausible. The regulation of short-term rentals will require a relationship between the host and the city, not the city and Airbnb, at least in the U.S.

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<sup>203</sup> Olumhense, *supra* note 157.

<sup>204</sup> *Id.*

<sup>205</sup> *New Rules for Home Sharers in Berlin: The New Housing Law*, AIRBNB (22 Jun. 2018), <https://www.airbnbcitizen.com/de/new-rules-for-home-sharers-in-berlin-the-new-housing-law/> (reflected in less expensive fees and no permit requirements for hosts sharing less than 50 percent of their home).

<sup>206</sup> *Id.*

<sup>207</sup> *See id.*

<sup>208</sup> *Airbnb, Inc. v. City of New York* 2019 WL 91990, at \*24-25.



## 6. Turo

Currently, no U.S. state or Canadian province has laws regarding vehicle sharing.<sup>209</sup> The Turo website states under U.S. hosts, Canadian hosts, German hosts, and UK hosts that they “know of no law that says it is illegal to share your car.”<sup>210</sup> Instead, Turo focuses on insurance companies, and how to notify an insurance company about listing a vehicle on their platform.<sup>211</sup> The only restriction mentioned on the page states, “[y]ou cannot share your car in the state of New York or deliver your car into New York state, however, while using Turo for insurance reasons.”<sup>212</sup>

The lack of legislation on vehicle sharing is likely a result of two factors. First, vehicle sharing is much newer than home sharing, and potential problems and liabilities have not had time to become an issue. Second, the mobile nature of vehicles reduces the impact vehicle sharing might have on neighborhoods. When Airbnb was first gaining popularity, there were very few restrictions on who could operate an Airbnb and where.<sup>213</sup> As Turo and similar sites grow, cities will be forced to deal with potential problems that they bring, and may choose to limit them, tax them, or treat them similarly to taxicab companies. The mobile nature of vehicle sharing reduces the nuisance to neighbors, and does not create localized problems like Airbnbs do. This suggests that Turo can operate in more tourist-focused cities without causing significant harm to locals. Ride sharing services such as Uber and Lyft already operate successfully in many cities.

The only parties that potentially suffer from peer-to-peer vehicle sharing are cab companies. If cities are invested in maintaining

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<sup>209</sup> *Is it Legal for Me to Share My Car? Is it Okay with my Personal Insurer?*, TURO, <https://support.turo.com/hc/en-us/articles/203991850-Is-it-legal-for-me-to-share-my-car-Is-it-okay-with-my-personal-insurer->.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> See generally Daniel Guttentag, *Regulating Innovation in the Collaborative Economy: an Examination of Airbnb's Early Legal Issues*, in COLLABORATIVE ECONOMY AND TOURISM, 97-128 (2017). (located online at [https://www.dg-research.com/Papers/Guttentag%20\(2017\)%20Airbnb%27s%20early%20legal%20issues.pdf](https://www.dg-research.com/Papers/Guttentag%20(2017)%20Airbnb%27s%20early%20legal%20issues.pdf)).

taxi cab companies, they might choose to require vehicle owners to register or pay specific taxes. However, vehicle sharing simply does not pose the same potential problems for cities, and therefore might escape significant regulation.

#### IV. CONCLUSION

Airbnb, Turo, and other accommodation sharing platforms are not going to disappear. If anything, peer-to-peer rentals will only increase with time.<sup>214</sup> While peer-to-peer rentals have a great deal to offer, they also come with legal concerns. As with any new industry or technology, it is important that cities prepare for these changes proactively. Cities across the globe have realized how difficult regulating a sharing platform is, and so far there are no entirely successful models. Barcelona seeks international support in regulating peer-to-peer accommodation sharing, and perhaps that is the best solution.<sup>215</sup> However, legislation is still far from united on how to deal with such platforms. As peer-to-peer sharing platforms continue to grow in popularity, so too will the problems that accompany them. By creating regulation that focuses on simplicity, proactive enforcement, accountability, and balance, cities may finally find a model that works.

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<sup>214</sup> Trefis Team, *As A Rare Profitable Unicorn, Airbnb Appears To Be Worth At Least \$38 Billion*, FORBES (May 11, 2018, 8:44 a.m.), <https://www.forbes.com/sites/greatspeculations/2018/05/11/as-a-rare-profitable-unicorn-airbnb-appears-to-be-worth-at-least-38-billion/#223d6a392741>.

<sup>215</sup> See *Local Authorities Act to Curb Holiday Rentals in Spain*, *supra* note 131.