The Sharing Economy: Uber and Airbnb—Can They Exist in a Regulated World? Will They Save or Destroy Your Community?

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Agenda

- The Sharing Economy
  - Online Vacation Rental Marketplaces
  - Transportation Network Companies
- What Are the Municipality's Objectives?
- What Regulations Can Be Passed To Accomplish Those Objectives?
- How Can These Regulations Be Enforced?

The Sharing Economy

- Refers to businesses that provide consumers the ability to share resources, like housing, vehicles, home-cooked meals, skills and more, generally through apps or websites that connect users with potential customers.
- Examples: Uber, Lyft, Sidecar, Airbnb, VRBO, Mealsharing, Taskrabbit

The Sharing Economy

- The basic principle of the sharing economy is simple: One person has resources, another person wants to rent/borrow/use them temporarily.
- Businesses in the sharing economy tend to be facilitators: they connect those with resources with those who want to utilize them, for a fee.



The Sharing Economy



- The most prominent examples so far include ride-sharing (Uber, Lyft), home-sharing (Airbnb, VRBO), and meal-sharing (MealSharing, Feastly).
- Yet the same basic principles can be applied more widely, and likely will be.

Online Vacation Rental Marketplaces

- Websites that enable property owners, tenants, and occupants to rent their living space to travelers.
- Can allow rentals ranging from an entire home to a couch or spare bedroom.
- Typical short-term rental lasts days or weeks.

Online Vacation Rental Marketplaces

- Unlike Travelocity and Zillow, these Marketplaces set themselves apart by operating outside the “business/residence” model.
- The Argument is they are not renting rooms, merely facilitating a connection within the “sharing economy.”



Online Vacation Rental Marketplaces

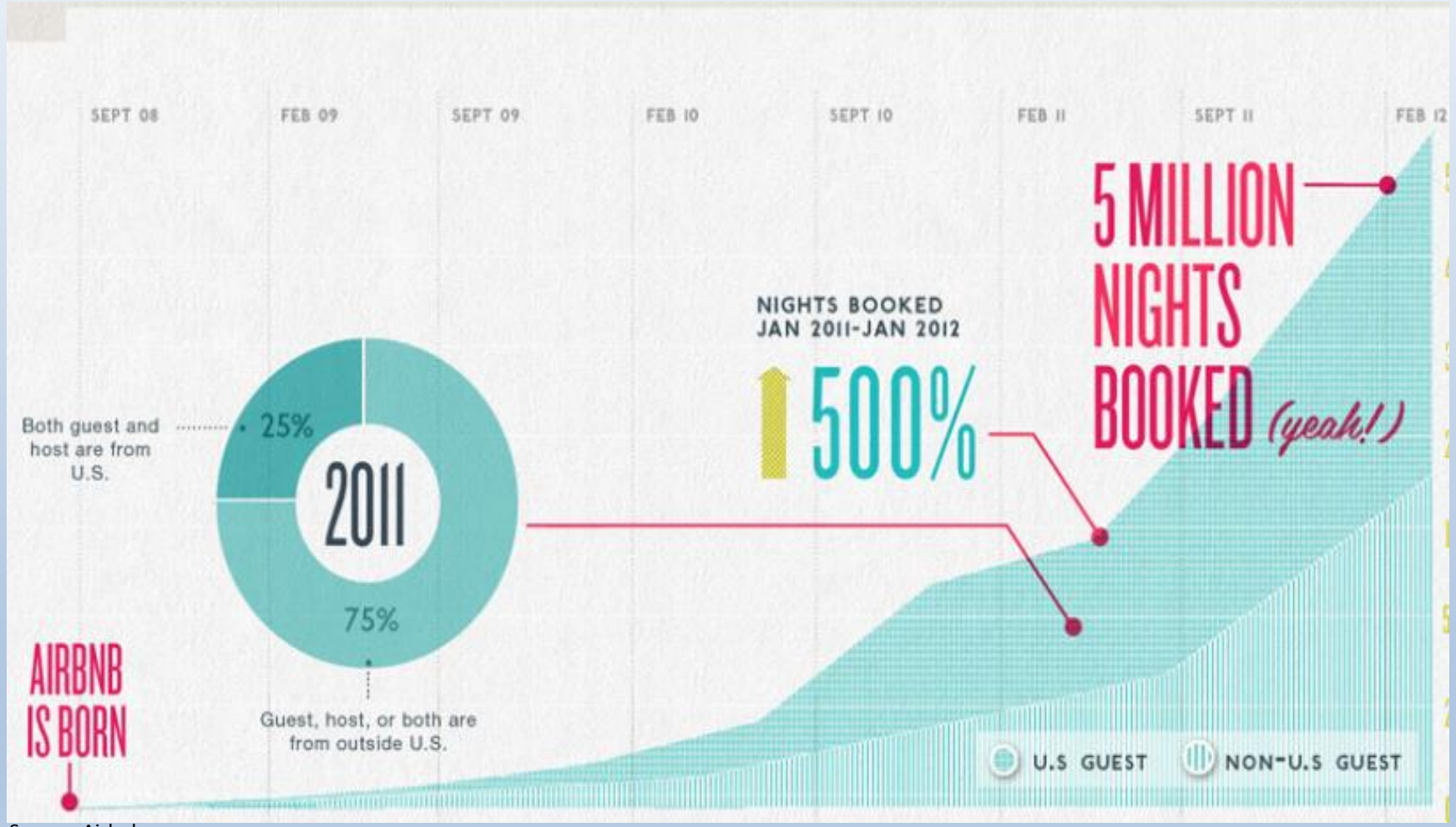
- Each property is associated with a “host” (the person offering the space) who may be viewed by the site’s registered users/“guests.”
- The websites operate on a “broker’s” model, taking a percentage cut from both the host and guest, or charging membership fees to hosts.

Major Players: Airbnb



- Founded in San Francisco in 2007 by roommates Brian Chesky and Joe Gebbia.
- $6 Million Revenues in 2008, 2015 Revenues Projected to Exceed $675 Million.
- More than 1 Million listings in 190 countries worldwide.
- More than 25 Million guests.
- As of March 2015, Airbnb valued at over $20 Billion, worth more than Hyatt ($8.4 Billion) and Wyndam ($9.4 Billion).

Airbnb: Exponential Growth



Source: Airbnb.com

Airbnb: Exponential Growth



Source: Airbnb.com

Major Players: HomeAway

- Founded in Austin in 2005 by Brian Sharples and Carl Shepherd.
- Claims more than 1 Million vacation rental listings in 190 countries.
- Owns more than 20 other vacation rental sites, including VRBO.



HomeAway: A Different Business Model

- Different business model than Airbnb.
- HomeAway charges rental owners an annual subscription fee (average revenue per listing in 2013 was $368).
- Also more focused on established rental markets. HomeAway serves people renting out vacation homes when not in use more than people renting extra space.
- With this different focus comes different challenges (more later).

HomeAway Markets

Destinations with Largest Increase in Traveler Demand

- Mexico Beach, Fla. (Panhandle)
- Cape San Blas, Fla. (Panhandle)
- Lavallette, N. J.
- Cape Canaveral, Fla.
- Moonridge, Calif. (Big Bear)
- Balboa Peninsula, Calif.
- Manteo, N.C. (Outer Banks)
- Cocoa Beach, Fla.
- Point Pleasant Beach, N.J.
- Crested Butte, Colo.

** Based on a year-over-year analysis (Q1 2013 vs. Q1 2014) of traveler inquiries made on vacation rentals listed on HomeAway.com & VRBO.com.*

Destinations with Largest Increase in New Vacation Rental Listings

- Dauphin Island, Ala.
- Moab, Utah
- Cape San Blas, Fla. (Panhandle)
- Winter Park, Colo.
- Bryson City, N.C.
- South Padre Island, Texas
- Lavallette, N.J.
- Carolina Beach, N.C.
- Clearwater Beach, Fla.
- Park City, Utah

** Based on a year-over-year analysis (Q1 2013 vs. Q1 2014) of new vacation home listings added on HomeAway.com & VRBO.com.*

Online Vacation Rentals: Mega-firms

	HomeAway (VRBO etc)	Trip Advisor (Flipkey)	Airbnb
Ownership	Nasdaq-"AWAY"	Nasdaq-"TRIP"	private
2014 Revenues	$447 Million	$1.25 Billion	$430 Million (est.)
5-Year Growth	30%	28%	250% (est.)
Enterprise Value	$2 Billion	$11 Billion	$20 Billion (est.)
P/E	388	52	unknown

Issues—Online Vacation Rentals

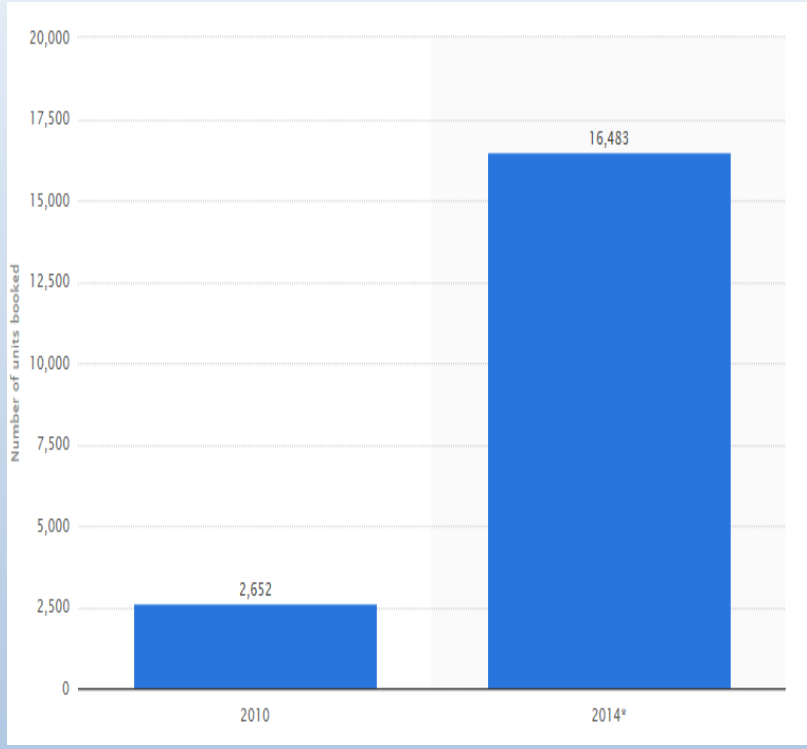
- Housing Market Issues
- Taxing Issues
- Code Enforcement Issues
- Policy Enforcement Issues

Issues: Housing Markets

- Short Term Rentals can create major problems for housing markets in pricing and availability.
- Owners may use Airbnb and HomeAway full-time to generate greater revenue than simply renting or selling the property.
- As this practice becomes more prevalent, housing availability for residents will likely decrease, causing full-time rental prices to increase.

Issues: Housing Markets

- In NYC, STR's skyrocketed from 2,652 in 2010 to 16,483 in the first half of 2014, including people permanently renting out second bedrooms or their whole property, or owners renting out multiple units in the same building.
- One commercial host generated $6.84 million from renting properties on Airbnb between 2010 and 2014.
- Many of these rentals violate New York's Multiple Dwelling Law.



Source: Statista.com, http://www.statista.com/statistics/339766/private-short-term-rentals-booked-through-airbnb-in-new-york-city/

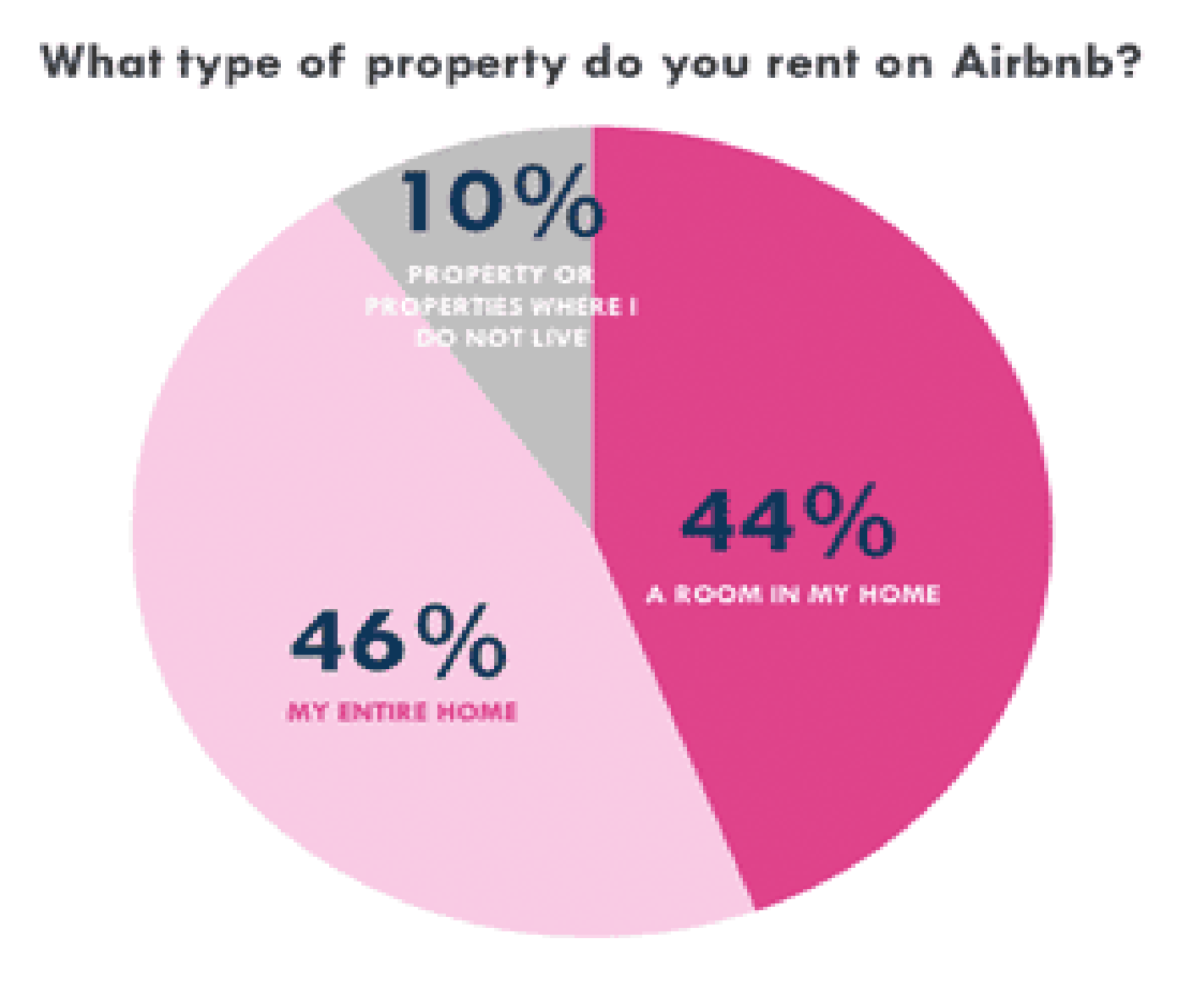
Airbnb: Sharing Helps Communities

PR Newswire

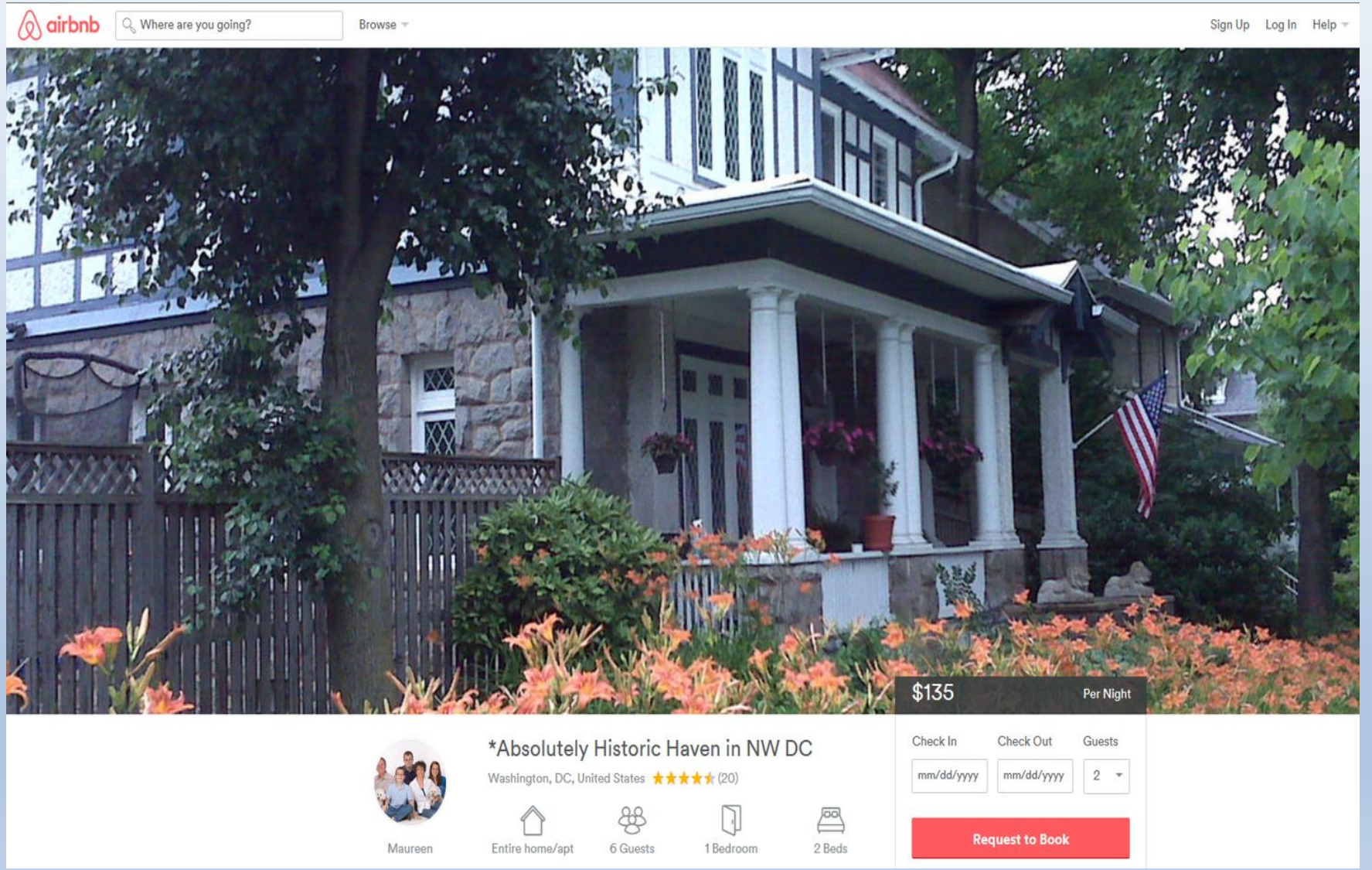
NEW YORK, May 12, 2015 /PRNewswire/ -- Airbnb, the world's leading community driven hospitality company, today released a new study highlighting the Airbnb community's unprecedented economic benefit in New York City. The report, conducted by HR&A Advisors, found Airbnb generated $1.15 billion in economic activity in New York last year, including $235 million in economic activity outside of Manhattan, and supported more than 10,000 jobs. The report accounts for both direct spending and spinoff activity. Dozens of Airbnb hosts will discuss the study with legislators in Albany later today.

"Airbnb hosts are regular New Yorkers who are passionate about sharing their homes and their neighborhood with visitors from around the globe. Airbnb is making New York more affordable for more families."

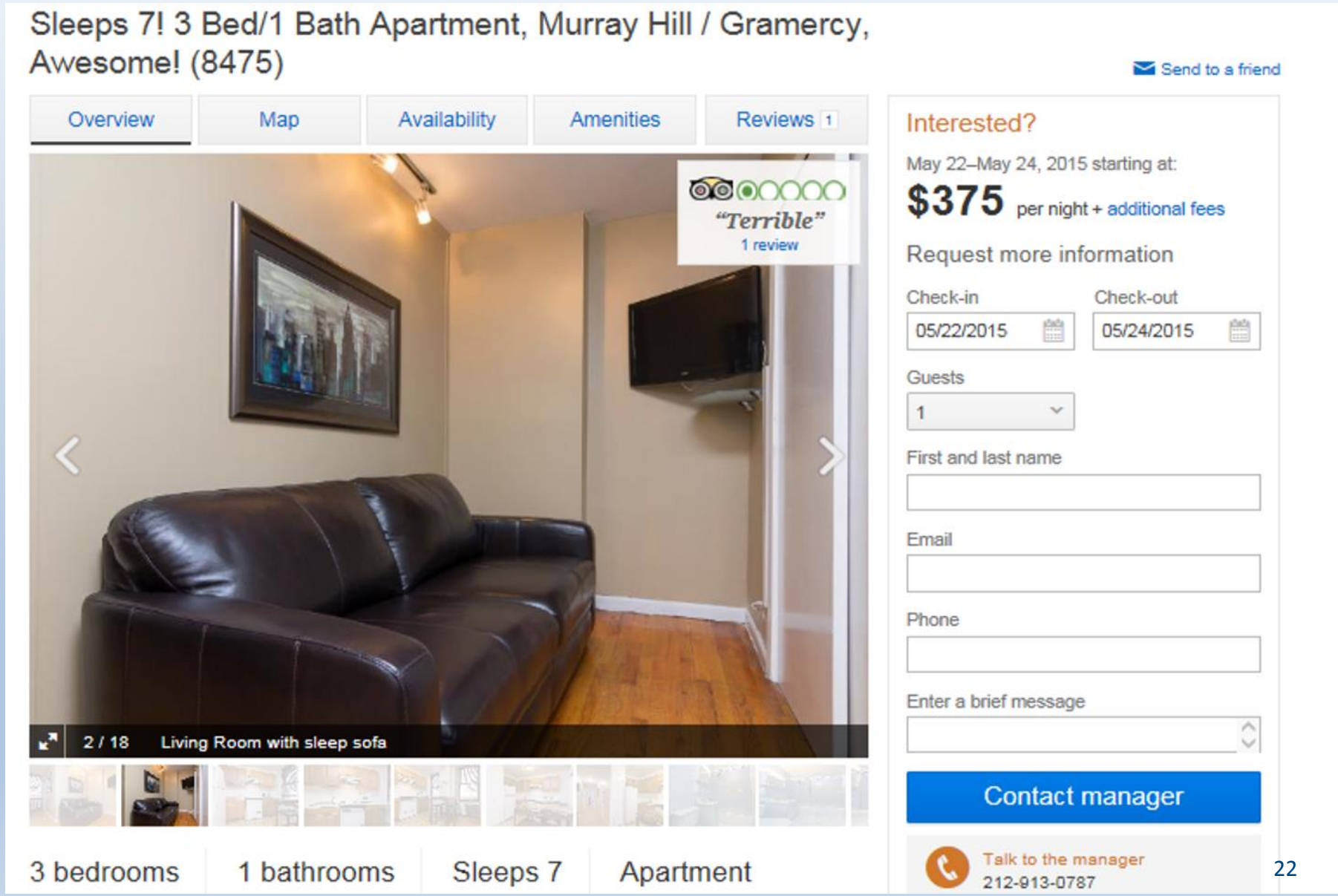
Who Lists Properties on Airbnb?



Shared Housing, Sometimes



Absentee Landlords, More Often



Airbnb: Compliance Is Hosts' Job

Airbnb Terms of Service:

PLEASE READ THESE TERMS OF SERVICE CAREFULLY . . .

SOME CITIES HAVE LAWS THAT RESTRICT THEIR ABILITY TO HOST PAYING GUESTS FOR SHORT PERIODS. THESE LAWS ARE OFTEN PART OF A CITY'S ZONING OR ADMINISTRATIVE CODES. **IN MANY CITIES, HOSTS MUST REGISTER, GET A PERMIT, OR OBTAIN A LICENSE BEFORE LISTING A PROPERTY OR ACCEPTING GUESTS.**

CERTAIN TYPES OF SHORT-TERM BOOKINGS MAY BE PROHIBITED ALTOGETHER. LOCAL GOVERNMENTS VARY GREATLY IN HOW THEY ENFORCE THESE LAWS. PENALTIES MAY INCLUDE FINES OR OTHER ENFORCEMENT.

HOSTS SHOULD REVIEW LOCAL LAWS BEFORE LISTING A SPACE ON AIRBNB.

Issues: Taxes



- Most local governments tax hotel stays (usually called “Transient Occupancy Taxes”).
- TOT is collected from guest through hotel bill.
- Hotels are responsible for remitting TOT’s to local governments on a monthly or quarterly basis.

Airbnb: Passing the Buck on Taxes

"There are **a few instances** where an Airbnb guest may need to pay tax.

Some hosts are required by their local regulations to charge a tax…. We ask that hosts explain any taxes they may be required to collect in their listing description and their communication with guests prior to booking.

In some locations, Airbnb has made agreements with government officials to collect and remit local taxes on behalf of hosts. When you book a listing in one of these locations, the local taxes will be displayed automatically…"

Issues: Taxes

- Airbnb and HomeAway leave the obligation to comply with local laws (including paying TOT) to the host and guest.
- Hotels must typically register with local governments; Airbnb properties often have no such requirement. How to track and audit?
- Communities are often forced to search websites themselves then send letters to collect taxes.
- This has inefficiencies, with lost tax revenue as a result.

Issues: Code Enforcement

- Large numbers of temporary occupants linked to several code enforcement problems, including:
  - Excessive noise complaints
  - Parking problems
  - Trash problems
  - Degradation of neighborhood's residential character



Issues: Policy Enforcement

- Whatever policies a city adopts, they must be practically enforceable.
- Harsh regulations are only effective if you can identify and penalize violators.

Municipal Objectives: Online Vacation Rentals

- Preserve the community's residential character.
- Prevent housing from converting to full-time Short Term Rental.
- Generate taxes and fees to cover the cost of STR occupancies and offset lost hotel and B&B taxes.
- Ensure that STR users are adequately protected against fire, hazards, health risks.

Online Vacation Rentals: What Regulations Can Be Passed to Accomplish Municipal Objectives?

Short Term Regulation Rundown

- Require STR hosts to register, pay fees and taxes.
- Establish Minimum Stay Requirements (NYC).
- Establish Maximum Total Number of Days Property Can Be Used as Short Term Rental (SF).
- Establish Maximum Number of Short Term Rentals (Austin).
- Establish Maximum Density of Short Term Rentals (San Luis Obispo).
- Safety Inspections (San Bernardino, Garrett Co., MD).
- Require Platform to Collect and Pay TOT (DC, Portland, Chicago…).

Case Study: New York City

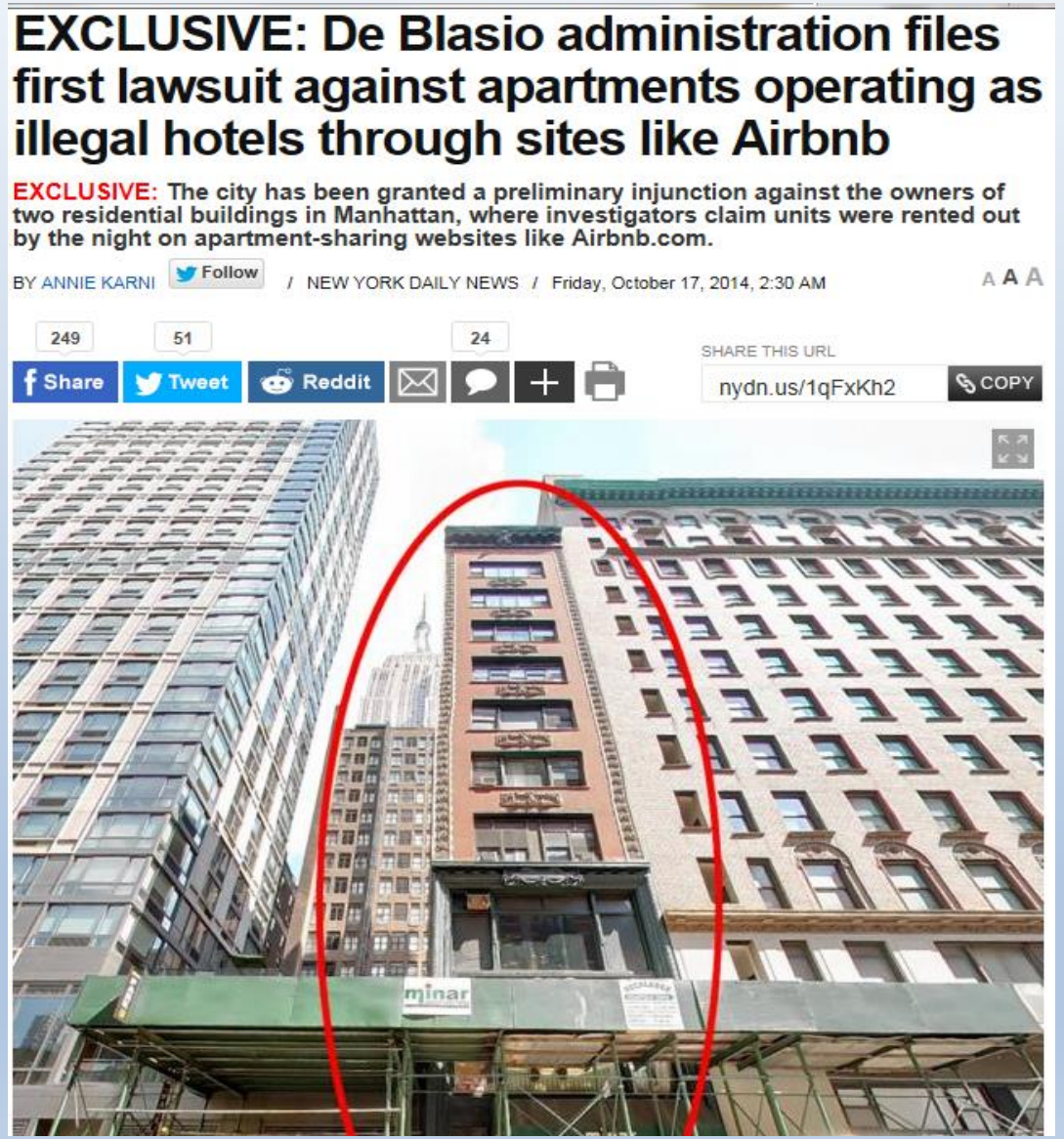


- Multiple Dwelling Law-- may not rent dwelling less than 30 days unless owner is at home.
- Attorney General's report finds that 25,000 of 35,000 Airbnb rentals violate MDL.
- NYC obtains preliminary injunctions against residential buildings as "illegal hotels."
- State wins fight over Airbnb's release of "host" information to State Attorney General.

Case Study: New York City

Injunction by City:

- Multiple-unit residential buildings rented out on Airbnb
- Violates MDL



EXCLUSIVE: De Blasio administration files first lawsuit against apartments operating as illegal hotels through sites like Airbnb

EXCLUSIVE: The city has been granted a preliminary injunction against the owners of two residential buildings in Manhattan, where investigators claim units were rented out by the night on apartment-sharing websites like Airbnb.com.

BY ANNIE KARNI Follow / NEW YORK DAILY NEWS / Friday, October 17, 2014, 2:30 AM

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Case Study: Portland, OR



- New Accessory Short Term Rental (ASTR) Ordinance Passed in March 2015

Type A Accessory Short-Term Rental Regulations

1. Accessory Use
2. Building Types
3. Cap
4. Bedroom Requirements
5. Process
6. Required Notice
7. Posting Permit Number
8. Number of Guests
9. Home Occupations
10. Employees

Case Study–Portland, OR

1. Accessory Use

- Allow as accessory to residential use.
- The individual or family who operates the Accessory Short-Term Rental must occupy the unit for at least 9 months out of the year.

2. Building Type

- Houses
- Attached houses
- Duplexes
- Manufactures Homes
- Accessory Dwelling Units (ADUs)

2. Building Type

Single-Dwelling Code

Building Code Occupancy – R3



Allows “Lodging House” – renting up to 5 guest rooms

2. Building Type

Multi-Dwelling Code

Building Code Occupancy – R2



When long-term changes to short-term tenancies, the occupancy must change to R1.

2. Building Type

Commercial Code

Building Code Occupancy - R1



Change of occupancy from R2 to R1 requires:

- Architect's structural research and analysis
- Fire sprinklers
- New doors / windows
- "Rated" corridors

3. Caps

No cap in single-dwelling neighborhoods.

4. Bedroom Requirements

The City verifies that bedrooms:

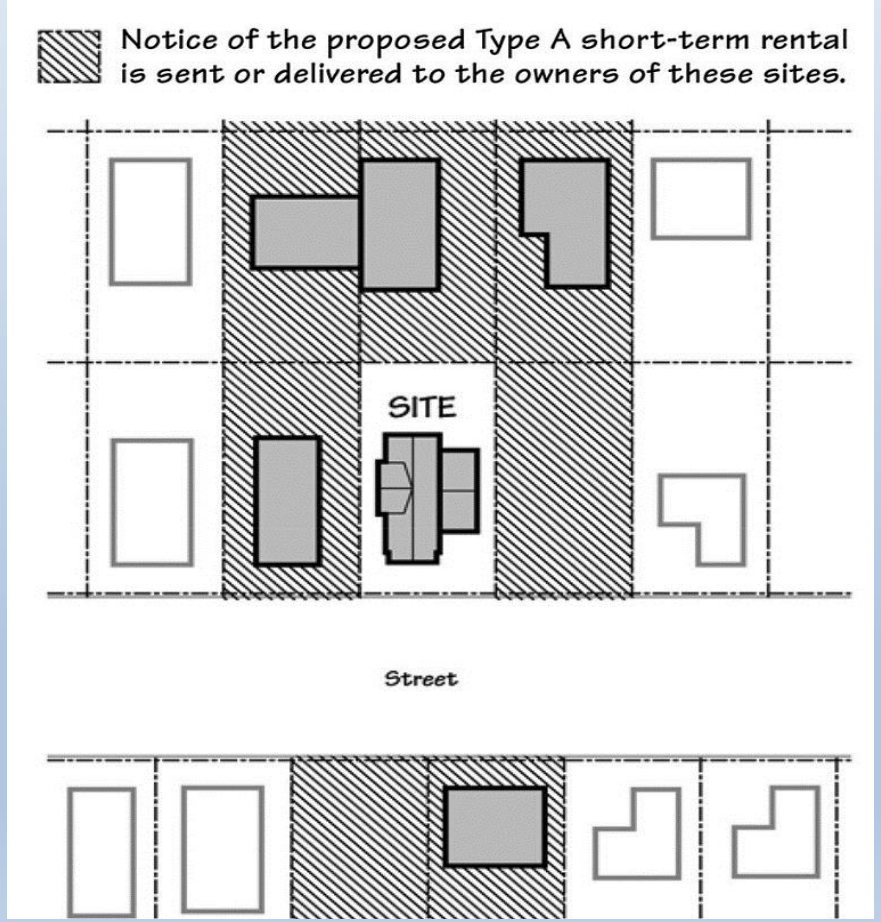
- Met the building code requirements for sleeping rooms at the time they were created or converted
- Interconnected smoke detectors
- Carbon monoxide detectors

5. Type A Permit Process

- Administrative permit
- 1-2 week process
- Inspection required for initial permit and every 6 years; self-certification intervening years
- Renewal required every 2 years
- Fee: $180
- May be revoked for failure to comply with the regulations

6. Required Notice

Operator sends a notice to all recognized organizations and owners of property abutting or across the street from the residence.



Permit Number, Number of Guests, Home Occupations, and Employees

7. Permit number must be posted.
8. Number of guests is the same as household (related persons + 5 non-related persons)
9. Home Occupations are not allowed.
10. Nonresident employees are not allowed.

Case Study: Austin, TX

2012-New STR ordinance:

- Registration and taxes for rentals 30 days or less.
- Notify neighbors and homeowner associations.
- STR's may not exceed 3% of non-primary residences in any census tract.
- $350,000 budget for compliance program including 3 staffers (assume 1,500 potential registered STR's X $235 each).
- Up to $2,000 fine per day for unregistered STR.



Case Study: Austin, TX

What are Short Term Rentals?

Short Term Rentals: the rental of a residential dwelling unit or accessory building on a temporary basis for periods of less than 30 consecutive days.



Type 1 - Owner Occupied

- Include rental of entire dwelling unit



Type 1A - Owner Occupied

- Only part of the unit
- Owner is generally present during the rental



Type 2 - Not Owner Occupied

- Single-family or two-family properties
- Include rental of entire dwelling unit
- No more than 3% of the single-family or two-family detached residential units within the census tract



Type 3 – Multi-family | Commercial

- Multifamily use (apartments, condos, etc.)
- Include rental of entire dwelling unit
- Subject to 3% or 25% cap

Case Study: Austin, TX

Active STR Licenses by Type

Snapshot: August 1, 2015

License Type	Number Issued	%	Description
Type 1	636	54%	Owner occupied & secondary structures on property
Type 1-A	55	5%	Owner occupied/one room rental
Type 2	358	31%	Non-owner occupied
Type 3	120	10%	Multifamily housing/commercial - condos, townhouses and apartments
Total	1,169	100%	

Case Study: Austin, TX

Licensed STRs with Code Complaints

October 2012 through August 2015

Type	Noise	Over Occupancy	Parking	No License	Alleged Illegal Activity, trash and debris, etc..	Total
STR 1	18	56	30	80	148	332
STR 1-A	0	0	2	2	9	13
STR 2	13	43	10	76	110	252
STR 3	0	1	0	3	5	9
Total	31	100	42	161	272	606

Case Study: Austin, TX

4. **Make** recommendations on how the City can provide better enforcement for non-compliant short-term rentals.

6. Require Registry of STR Guests
7. Establish Occupancy Limits
8. Increase Non-compliance Penalty
9. Require STR license holders to demonstrate that the septic system complies with all City (or other applicable regulatory) requirements
10. Require a local contact to reside within the Austin Metro Area
11. Make STRs subject to noise requirements as a condition of the license
12. Consider amending the penalty range for administrative citations
13. Add parking requirements

Case Study: Austin, TX

Teresa January 21, 2014 at 3:48 PM

Actual message:

"You have listed a house for rent on Airbnb without displaying a short term rental license number. This is a courtesy notice that as of Jan. 1, 2014 an owner (or manager) can be fined up to $2,000 per day for advertising a short term rental without a permit. Please note that only the owner of a property may obtain a license.

Continued renting without a license number listed will initiate a letter to the owner of the property, and you will be reported to Austin Code Compliance, the City of Austin Treasurer, and the Texas Comptroller's Criminal Investigation Division regarding fees, fines, and back taxes.

If you have a permit, please state in your description that you have a STR license and list the last 6 digits of your license number."

Case Study: San Francisco, CA

- New San Francisco ordinance legalizes short-term rentals, but “hosts” must be permanent residents of the City (must live in their unit for at least 275 days per year).
- Rentals where host not present are limited to 90-days-per-year.
- Aim is to keep housing market open to residents.
- Serious enforcement issues—Airbnb won’t give booking data, no way to tell when people are present in their homes.



Case Study: San Francisco, CA

- SF ordinance also imposes other requirements that are becoming more
- commonplace, including:
  - Registry and Permits.
  - Insurance requirement ($500,000 in coverage).
  - TOT payments (SF has contract with Airbnb to remit).
  - Airbnb must notify hosts of the City's laws.
  - Tenants must notify landlords of STR; new law does not affect lease restrictions against subletting.
  - Airbnb recently agreed to pay the City roughly $25 million in past-due TOT.

Case Study: San Francisco, CA

- HomeAway sued to block new SF ordinance.
- Argued that the rule favors primary residences—many HomeAway hosts do not live in their properties (vacation and secondary homes).
- 1,200 properties in San Francisco were listed on HomeAway as of November 2014, many of which will be forced off the site entirely.
- Lawsuit was dismissed for lack of standing (HomeAway does not own property in San Francisco).
- New law took effect February 1, 2015.

Case Study: Santa Monica, CA

- New Ordinance prohibits owners from renting out their homes unless they are present in the unit throughout the rental period.
- Mandates platforms to collect and remit TOT, disclose names and addresses of all hosts.
- City will create enforcement department exclusively dedicated to home-sharing.



Case Study: Rancho Mirage, CA

- Rancho Mirage, CA passed an ordinance requiring every short-term rental agreement to be signed by someone older than 30.
- Lawsuit challenging that ordinance has since been dismissed on grounds that the Unruh Civil Rights Act does not apply to a City acting in its legislative capacity.



Legislative Response: California SB-593

- California Bill that would:
  - Require electronic “hosting platforms” to regularly report the addresses of, nights of use at, and revenues obtained by residences leased through the platform.
  - Prohibit hosting platforms from offering properties if prohibited by law.
  - Require collection and remittance of TOT.

Some Municipal Successes:

Some jurisdictions have succeeded in requiring Airbnb to collect and remit taxes:

- Chicago, IL
- Portland, OR
- San Francisco, CA
- Washington, DC

Transportation Network Companies

Transportation Network Companies

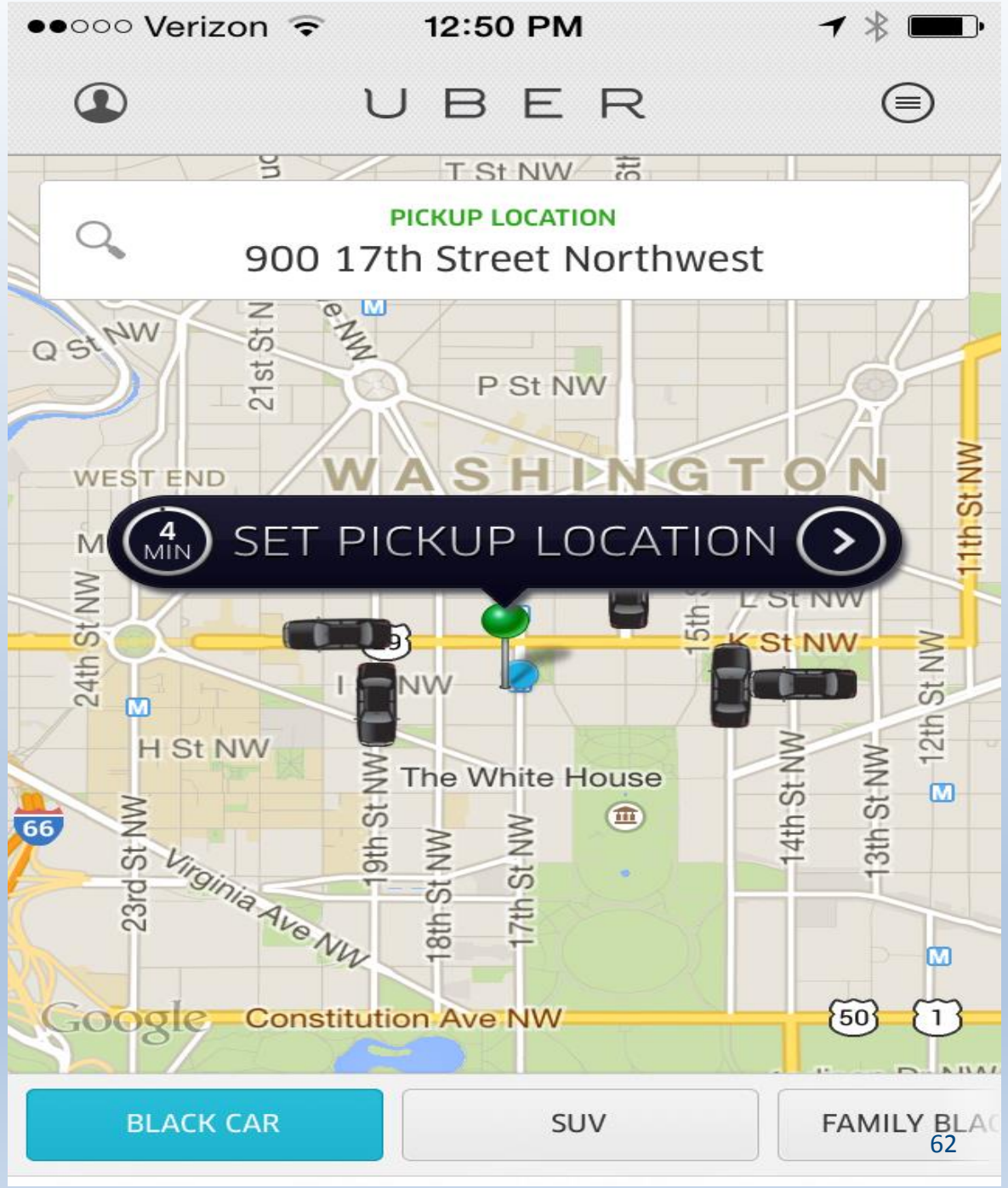
- Web-based applications that connect users and drivers through smartphone apps.
- Allow prospective passengers to view and select from nearby available drivers, who are guided to them using the smartphone's GPS.
- The apps also allow passengers to track the location of their rides and manage payments, as well as permitting reviews of both drivers and customers.

Major Players: Uber



- Founded in San Francisco in 2009 by Travis Kalanick and Garret Camp.
- Now in 60 countries and 300 cities worldwide.
- As of May 2015, Uber was raising funding to be valued at $50 Billion, making it the world's most valuable private start-up, worth more than FedEx ($48 Billion) and Nissan Motors ($47 Billion).

Uber: Instant Service



Major Players: Lyft

- Founded in San Francisco by Logan Green and John Zimmer.
- Currently available in 65 U.S. cities.
- As of May 2015, Lyft is valued at $2.5 Billion, and is aiming to launch internationally.



Municipal Objectives: Transportation Network Companies

- Ensure Safety of Drivers and Customers.
- Encourage Competition in the Market.
- Ensure Fairness of Employment Practices.

Transportation Network Companies: Issues

- Competition with Taxi Industry - no medallions, no limit on number of drivers, no requirement to provide wheelchair accessibility, etc.
- Lack of Regulations-fewer background checks, lower insurance requirements, fewer vehicle inspection standards, etc.
- Employee Classification-independent contractors or employees?

Issues: Competition with Taxi Industry



- Controversy surrounding Uber's effect on the taxi industry.
- Taxi medallions de-valued by unregulated competitors like Uber and Lyft.
- Taxis pay higher fees, must abide by more stringent regulations.

Issues: Lack of Regulation

- TNCs often enter markets without permission, presume legality until told otherwise.
- Uber in particular has displayed willingness to flaunt local laws and operate despite bans.
- Lack of regulation has led to deaths, injuries, and crimes by drivers who passed less onerous background checks performed by the TNC itself.



Playing Hardball

- If Airbnb has shown a willingness to negotiate, Uber is close to the opposite, refusing to engage and flouting regulations it disagrees with to force court challenges.



Issues: Employee Classification

- California lawsuits by drivers of Uber and Lyft, who allege that the companies have misclassified them as independent contractors instead of employees.
- Independent contractor:
  - Drivers set hours
  - Drivers choose to accept or reject fares
- Employee:
  - Right to terminate drivers if customer ratings fall below threshold
  - Uber's "Driver Handbook" governing conduct

Transportation Network Companies: What Regulations Can Be Passed to Accomplish Municipal Objectives?

Regulation Rundown

- California requires baseline levels of insurance for every stage of TNC operation.
- Houston requires background checks, permits, and a minimum level of ADA compliant vehicles.
- Portland allowing cabs to set their own fares during Uber/Lyft pilot program.

Regulatory Complications



- Efforts to regulate are complicated by questions of who has authority.
- In California, the CPUC has preempted local regs.
- Elsewhere, cities are fending for themselves, illegalizing or regulating Uber.

California Regulations

- Insurance:
  - Law requires drivers of the services to maintain insurance coverage.
  - Three tiers:
    - App is on, no customer
    - Customer hails through app, en route to pick up
    - Customer in car



Case Study: Houston, TX



- City Council ordinance allowing TNCs to operate.
- Establishes a minimum requirement for ADA compliant vehicles.
- Requires permit to operate.
- Eliminates minimum limousine fare.
- Requires full background checks.

But…

- Houston has experienced issues with enforcement.
- Drivers not registering with City.
- Alleged rape by driver revealed in April 2015. Driver continued to work for Uber for months after.
- City has threatened to revoke Uber's permits.
- Uber sued City to block release of public records on drivers.



Case Study: Nevada



- Banned TNCs entirely in 2014.
- Uber lobbied hard for legislation to legalize ridesharing in the state.
- Uber contends it is a technology company, not a transportation provider.
- May 2015, Legislature passes bill authorizing ride-sharing.

Case Study: Portland, OR

- Banned Uber and Lyft.
- City approved a four-month pilot program in April 2015.
- Business Licenses and Vehicle inspections required.
- Cabs able to set their own prices during pilot program.



How Can Regulations Be Enforced?

Enforcement Tips

- Airbnb
  - Increase Enforcement Staff
  - Rely on neighbors and landlords to alert authorities
  - Subpoena Short Term Rental company records
  - Track individual online Short Term Rental activities
  - Require Short Term Rental companies to collect TOT as a condition of operation
  - Establish strict penalties for noncompliance
- Uber
  - Increase Enforcement Staff
  - Rely on cab companies to alert authorities
  - Subpoena TNC company records to determine drivers
  - Require (where authorized) minimum level of insurance/background checks
  - Establish strict penalties for noncompliance

Summary

- The Sharing Economy is a growing sector, expanding incredibly quickly in untold directions.
- How cities will deal with these issues varies depending on the marketplace and the issues it causes
- These sharing economy services can and will be regulated in the long term
- The effect of these marketplaces on localities depends, in part, on how proactive cities are in identifying and addressing issues

Questions?



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