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SHARE AND SHARE DISLIKE: THE RISE OF UBER AND AIRBNB AND HOW NEW YORK CITY SHOULD PLAY NICE

Alexandra Jonas[*]

Uber and Airbnb are two companies in the emerging "sharing economy" that provide individuals with a means to become entrepreneurs and benefit from a laissez-faire business model. The problem, however, is that while the benefits to users are great, so too are the risks. The dangers of operating without restraint and circumventing existing law are not only potentially harmful to unapprised users, but also adversely affect the continued use of these businesses. Every aggrieved user complaint has the potential for a lawsuit and every violation creates an opportunity for penalties. Left over are attempts by the courts and city government to remedy these issues. Since New Yorkers will continue to utilize these services, the legislature should respond by implementing new and unique regulations with which sharing economy businesses must comply.

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INTRODUCTION

"There are laws for people and there are laws for business, but you are a new category, a third category, people as businesses."[1]

Humans have always found unconventional ways to share.[2] In Ancient Rome, citizens opened their private homes to the public so that nearly all Roman citizens could bathe for a small fee.[3] Those who could not construct their own baths, or who could not afford the most regal, could instead visit the local village baths to wash, rest, and unite with other Romans.[4] Opening private baths to the public provided extra wealth to the Romans offering the service, and convenience to those who frequented the baths.[5]

Today, most people still do as the Romans do. The "sharing economy" has revived this ancient notion of sharing[6] through its system where necessity and new technologies permit people to create innovative ways of offering food, jobs, housing, goods, and transportation for themselves and others. Platforms that connect supply and demand at the peer-to-peer level allow practices such as car sharing, ridesharing, apartment sharing, cooperatives, community farms, shared housing, shared workspaces, and a

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[1] David Streitfeld, *Companies Built on Sharing Balk When It Comes to Regulators*, N.Y. TIMES (Apr. 21, 2014), http://www.nytimes.com/2014/04/22/business/companies-built-on-sharing-balk-when-it-comes-to-regulators.html?_r=0.

[2] Barbara F. McManus, *Roman Baths and Bathing*, VROMA (June 2011), http://www.vroma.org/~bmcmanus/baths.html.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] There are other terms used to refer to the sharing economy such as "collaborative consumption" and "peer-to-peer (P2P) exchange." Benita Matofska, *What is the Sharing Economy?*, PEOPLE WHO SHARE, http://www.thepeoplewhoshare.com/blog/what-is-the-sharing-economy (last visited Oct. 2, 2015).

multitude of new enterprises.[7] The system essentially enables people to utilize an item or service without obtaining any ownership.[8]

Although modern associations with the word "sharing" typically involve non-monetary swaps,[9] this contemporary system of sharing promotes just the opposite—renting and lending for mutual gain.[10] Indeed, the sharing economy is a "system of direct exchange of goods and services among individuals."[11] The Internet provides access to these exchanges and permits billions of people around the world to connect.[12] Technological platforms allow individuals globally to do business, one-on-one, in a collaborative fashion.[13] The sharing economy gives newly empowered users access to an array of goods and services offered directly by people just like themselves, and the ability to interact with members of their communities and of communities in near or faraway places.[14] People can "rent items and services from other individuals instead

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[7] SUSTAINABLE ECONS. LAW CTR., POLICIES FOR SHAREABLE CITIES: A SHARING ECONOMY POLICY PRIMER FOR URBAN LEADERS 6 (2013), http://d3n8a8pro7vhmx.cloudfront.net/theselc/pages/209/attachments/original/1394836950/policies_for_shareable_cities_selc_9_9_13.pdf?1394836950.

[8] RACHEL BOTSMAN & ROO ROGERS, WHAT'S MINE IS YOURS: THE RISE OF COLLABORATIVE CONSUMPTION 71 (2010).

[9] Colleen Walsh, *The Big Share*, HARVARD GAZETTE (Aug. 5, 2014), http://news.harvard.edu/gazette/story/2014/08/the-big-share/.

[10] The Romans had to pay for sharing baths, so this idea of paying for sharing resources is not "new"—it simply has been revitalized. *See* McManus, *supra* note 2.

[11] Walsh, *supra* note 9.

[12] *Id.*

[13] Claire Cain Miller, *When Uber and Airbnb Meet the Real World*, N.Y. TIMES: THE UPSHOTS (Oct. 17, 2014), http://www.nytimes.com/2014/10/19/upshot/when-uber-lyft-and-airbnb-meet-the-real-world.html ("The first principle is to be a middleman . . . . As platforms, the thinking goes, [the companies] are just connectors, with no responsibility for what happens there.").

[14] *See* Sofia Ranchordás, *Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy*, 16 MINN. J.L. SCI & TECH. 413, 416–17, 428 (2015).

of [from] established businesses."[15] Access is the form of ownership.[16]

Thousands of new technology companies have created the platforms to facilitate these interchanges.[17] Companies like Uber and Airbnb allow people to arrange travel accommodations by interfacing with others online.[18] Individuals can log into Uber to request a ride to their destinations and experience convenience, comfort, and ease of transport that is at least equal to the price they pay for the ride.[19] Similarly for Airbnb, interested travelers have the opportunity to visit the place of their dreams, without having to pay exorbitant prices for hotels, or having to settle for a hostel or other inexpensive, but perhaps undesirable, alternative.[20] In essence, drivers and hosts can earn extra income by using their personal vehicles or properties to offer services to the public.[21] This system of trust is on the rise as more users continue to join the brigade.

While the sharing economy has risen with fervency, so too has the fight against government regulation.[22] Regulating the sharing economy is challenging because it is not clear where these new

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[15] Amit Peri, *The Sharing Economy: Shaking up Europe, Unifying the U.S.*, GEEK TIME (Sept. 28, 2014), http://www.geektime.com/2014/09/28/the-sharing-economy-shaking-up-europe-while-unifying-the-u-s/.

[16] Ranchordás, *supra* note 14, at 416.

[17] Lisa Gerstner, *Cash In on the Sharing Economy*, KIPLINGER (July 2014), http://www.kiplinger.com/article/business/T049-C000-S002-cash-in-on-the-sharing-economy.html (explaining that there are nearly 5000 sharing companies that are projected to generate billions of dollars in revenue in 2014); Molly Cohen & Corey Zehngebot, *What's Old Becomes New: Regulating the Sharing Economy*, 58 BOS. B.J. 34, 34 (2014).

[18] Roberta A. Kaplan, Perspective, *Regulation and the Sharing Economy*, 252 N.Y.L.J. 6, 7 (2014).

[19] Walsh, *supra* note 9.

[20] *See id.*

[21] Gerstner, *supra* note 17.

[22] Ranchordás, *supra* note 14, at 420 ("Sharing economy practices challenge regulations on a daily basis, evidencing the tension between the need to encourage innovation and the need to protect customers from fraud and liability and practices that might endanger public health or safety. In the world of sharing economy, traditional legal boundaries are easily blurred, resulting in legal gray areas and regulatory uncertainty." (footnote omitted)).

businesses lie in relation to existing laws.[23] These types of companies do not fit industry regulations perfectly, and they therefore tend to operate outside of the law.[24] Critics of the sharing economy, such as yellow taxicab drivers, landlords, and hotel owners, "argue that operating without regulation gives start-ups an unfair advantage over highly regulated incumbents."[25] The sharing economy also creates a potential for unregulated misconduct.[26] A few cities have thus aimed to squeeze these businesses into existing regulations, but most attempts have proved unworkable.[27] "Because the threat of enforcement actions can have a chilling effect on start-ups and their users, state and local government officials . . . should encourage the growth of the sharing economy" by implementing new regulations.[28] Cities that are prepared to welcome "regulatory innovation may thrive"[29] while cities that do not will lag just as the law has in governing them.[30]

This Note focuses on the two major players in the sharing economy: Uber and Airbnb. It argues that the sharing economy does not pose a new problem in the world of innovation versus

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[23] *Id.*

[24] Alexandra Chang, *Regulation Won't Kill the Sharing Economy. We Just Need New Rules*, POPULAR SCI. (July 8, 2014,), http://www.popsci.com/article/technology/regulation-wont-kill-sharing-economy-we-just-need-new-rules.

[25] *Id.*

[26] *Id.* ("[P]olicies that govern taxi and limo services ensure drivers are well insured and cannot discriminate based on neighborhood, gender, race, or disability."); *see also* Editorial, *The Dark Side of the Sharing Economy*, N.Y. TIMES (Apr. 30, 2014), http://www.nytimes.com/2014/05/01/opinion/the-dark-side-of-the-sharing-economy.html ("There are good reasons that governments regulate housing. For example, officials use zoning laws to separate hotels and residential development so apartment buildings are not overrun by tourists. Rent control policies exist to help ensure that lower-income tenants have a place to live. Laws against short-term rentals make sure landlords do not operate illegal hotels and reduce the number of apartments available to permanent residents.").

[27] These businesses are not "taxi" or "hotel" companies. They fall into their own category. Ranchordás, *supra* note 14, at 420.

[28] Kaplan, *supra* note 18.

[29] Cohen & Zehngebot, *supra* note 17.

[30] *See* Kaplan, *supra* note 18 ("[O]verregulation and over-litigation for the sake of incumbent competitors' short-term, parochial interests may stifle the 'sharing economy' and deprive the public of its obvious benefits.").

regulation, but instead showcases a modern version of a traditional sharing concept that must find its place in the legal system. This Note examines specifically the laws that regulate the New York City taxicab, hotel, and housing industries to demonstrate their inability to adequately regulate the sharing economy. This Note emphasizes that the attempt to squeeze these companies into existing regulations is a poor and temporary solution. This Note reasons that rather than dismissing the presence of these companies in New York City and maintaining a multiplicity of lawsuits and fines imposed on both the companies and uninformed users, the city should instead develop sharing economy-specific regulations that monitor the new companies and protect users and the incumbent industries. Finally, this Note argues that Uber, Airbnb, and companies like them will continue to aggravate the taxicab and hotel industry if New York City fails to enact new laws.[31]

I. YELLOW NO MORE: THE DEATH OF THE TAXI MEDALLION?

A. *History of the New York City Medallion System and Taxi Regulations*

The yellow taxicab is a highly recognized icon of New York City.[32] One of the first taxicab companies was the Electric Carriage and Wagon Company, which started a fleet of electric taxis in July 1897.[33] People slowly began to forego the trolley car and street rail systems for the more personalized driver-operated experience.[34] The new system promised convenience and affordability, and so New Yorkers accepted innovation.[35] But as the prevalence of taxi companies grew, so did the need for regulation.[36] The push for

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[31] Billy Hamilton, *Tax Trouble for the 'Sharing Economy,'* 72 ST. TAX NOTES 475 (2014) ("The sharing companies' business model may make them successful, but it shouldn't excuse them from the same public responsibilities as other businesses.").

[32] GRAHAM RUSSELL GAO HODGES, TAXI!: A SOCIAL HISTORY OF THE NEW YORK CITY CABDRIVER 40–41 (Johns Hopkins Univ. Press, 2007).

[33] *Id.* at 11–12.

[34] *Id.*

[35] *Id.*

[36] *Id.* at 35.

government oversight emerged during the Great Depression as the lack of fares created tremendous competition among taxi drivers.[37] Disgruntled cabdrivers turned their anger into violent protest,[38] and neither the police nor the taxi commissions could stop them.[39]

The New York City Board of Aldermen eventually proposed the Haas Act of 1937,[40] which limited the number of medallions[41] for all yellow cabs to 13,595 and fixed the number of medallions that it could issue.[42] On May 11, 1937, the New York State Supreme Court upheld the Act and ruled that the police had the right to limit the number of cabs in New York City.[43] Since only a limited number of taxis were then able to operate, the ratio of taxis to people decreased and the backseats of most cabs were once again full.[44] Despite the improvement, however, this state of

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[37] Trent Warner, *Taxi Timeline: The History of Taxis in New York City*, ALL ISLAND TRANSP. (May 6, 2014, 11:41 AM), http://allislandtransportation.com/taxi-timeline-history-taxis-new-york-city/ (explaining that there were many taxis on the road, but hardly any passengers to pick up since people could not afford to pay for taxis during the Great Depression).

[38] *Regulations and Prosperity: 1935–1960*, TAXI OF TOMORROW, http://www.nyc.gov/html/media/totweb/taxioftomorrow_history_regulationandpropserity.html (last visited Oct. 2, 2015) [hereinafter *Regulations and Prosperity*].

[39] Warner, *supra* note 37.

[40] *Regulations and Prosperity*, *supra* note 38.

[41] MICHAEL R. BLOOMBERG & DAVID YASSKY, 2014 TAXICAB FACTBOOK 12 (2014), http://www.nyc.gov/html/tlc/downloads/pdf/2014_taxicab_fact_book.pdf ("Medallions are small metal plates attached to the hood of a taxi, certifying it for passenger pick-up throughout the city. Yellow taxicabs with medallions are the only vehicles authorized to pick up passengers by street hail anywhere in New York City . . . . As of now, there are 13,437 total taxi medallions in New York City."). In response to the need for pre-arranged vehicle service, the Taxi & Limousine Commission permits liveries (or for-hire vehicles) to arrange prearranged trips. *See id.* at 2. Street hailing of these vehicles (usually black cars) is not permitted, and the vehicles must be affiliated with a base station in one of the five boroughs. *Id.* The demand for for-hire vehicles was sparked by corporate clients' needs to be picked up from work at late hours. *Id.*

[42] HODGES, *supra* note 32, at 11–17.

[43] *Id.*

[44] HODGES, *supra* note 32, at 77; *see also* Aaron Sankin, *Why New York Taxis Are Powerless Against Uber's Price War*, DAILY DOT (July 8, 2014, 4:08 PM), http://www.dailydot.com/technology/uber-nyc-taxi-cheaper-price-war/ ("Artificially constricting the supply of cabs girded against flooding the market

prosperity and cooperation did not last long. There was soon more demand than supply—and the city needed more taxis.[45]

As a result, cab companies began charging exorbitant fares.[46] Drivers could effectively turn down low-paying customers in order to pick up only the wealthy.[47] Standardized rates were the primary form of city-wide regulation of the taxi industry, providing consumers protection from exploitative pricing.[48] Meanwhile, sustained demand for transportation spurred a continued rise in medallion prices.[49] Although today the medallion system does respond to the need for taxicab service, it also heavily codifies the ownership and use of yellow taxicabs in New York City.[50]

Numerous regulations govern medallion taxicab services.[51] The city strictly limits the number of yellow taxicabs that are allowed to operate,[52] and further dictates the amount of hours a driver must work,[53] the flat rate that passengers must pay,[54] licensing fees,[55] inspection fees,[56] maintenance and record-keeping requirements,[57]

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with operators and ensured drivers a consistent income. It also gave municipalities the ability to easily and effectively impose safety and consumer protection regulations, like insurance requirements, background checks for operators, and requirements that drivers drop people off anywhere within city limits that they want to go.").

[45] *See* HODGES, *supra* note 32, at 77.

[46] *Id.* at 79; Sankin, *supra* note 44.

[47] *See* Sankin, *supra* note 44.

[48] HODGES, *supra* note 32, at 86–87.

[49] Felix Salmon, *Why Taxi Medallions Cost $1 Million*, REUTERS (Oct. 21, 2011), http://blogs.reuters.com/felix-salmon/2011/10/21/why-taxi-medallions-cost-1-million; *see also* HODGES, *supra* note 32, at 66–67 (explaining that taxi medallions cost $10 in the early 1900s and upwards of $1,000,000 today).

[50] N.Y.C., R.C.N.Y. tit. 35, § 58 (2015). There are other car services in New York City, such as for-hire vehicle services, which allow passengers to arrange pick-ups. These services operate under different rules than the yellow cab services. BLOOMBERG & YASSKY, *supra* note 41, at 2.

[51] *See* N.Y.C., R.C.N.Y. tit. 35, § 58.

[52] BLOOMBERG & YASSKY, *supra* note 41, at 1.

[53] R.C.N.Y. § 58-20.

[54] *Id.* § 58-26.

[55] *Id.* § 58-07.

[56] *Id.* §§ 58-07(d)–(e).

[57] *Id.* § 58-24.

workers' compensation rules,[58] public accommodation laws,[59] and vehicle and equipment inspection demands.[60] These rules apply to both the medallion owner and the drivers.[61] According to the New York City Taxi & Limousine Commission ("TLC"), the laws are meant to respond to the "the need for intelligent regulation to set the rules of competition, ensure safety, [and] provide transparency to market participants."[62] Even though these stipulations do provide safeguards for commuters, drivers, and medallion holders, they also create high entry barriers to the New York City taxi market.[63] This, however, has not stopped Uber.

B. What is Uber?

A pioneer in the sharing economy, Uber is one of many ride service companies that allows passengers to request rides from private vehicles operated by drivers who utilize its mobile application.[64] Users download the Uber application on their devices, set a pickup location, request a ride, wait for a driver to

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[58] *Id.* § 58-14.

[59] *What the Law Covers*, N.Y.C. COMMISSION ON HUMAN RIGHTS, http://www.nyc.gov/html/cchr/html/coverage/law-coverage.shtml (last visited Oct. 2, 2015) (listing "taxi cabs" as "public accommodations" covered by the anti-discrimination provisions of the N.Y.C. Human Rights Law).

[60] R.C.N.Y § 58-29–42.

[61] *See generally* R.C.N.Y § 58 (imposing duties on medallion owners as well as drivers). Typically, most drivers lease the vehicle from medallion holders, making medallion holders liable for actions of drivers. However, both drivers and medallion holders must comply with local rules. R.C.N.Y § 58-13 (mandating all medallion owners maintain liability insurance for taxis driven under their medallion number); *see* BLOOMBERG & YASSKY, *supra* note 41, at 12 (explaining how independent and institutional medallion holders lease their medallions).

[62] *TLC Mission Statement*, N.Y.C. TAXI & LIMOUSINE COMMISSION, http://www.nyc.gov/html/tlc/html/about/mission.shtml (last visited Oct. 2, 2015).

[63] *See* Lisa Rayle, et al., *App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco* (Univ. of Cal. Transp. Ctr., Working Paper No. 8, 2014).

[64] *Id.* at 2–3. Uber's biggest competitor is Lyft, which allows passengers to connect with ordinary people who use their cars to drive users from point A to point B. Lyft drivers are non-commercially licensed. *Id.* at 3.

accept, enter the address or name of the destination, and anticipate the driver's arrival.[65] The app then calculates a "fare quote," which passengers pay via the application.[66] Since it is not currently subject to the same rate regulations that constrain the taxi industry, Uber may charge higher prices during peak hours and holidays.[67] Moreover, Uber permits drivers to use their personal vehicles to pick up passengers, making Uber-driving more accessible than taxicab ownership.[68]

Uber liberates taxi operators across the world with its very limited criteria to become a driver.[69] An interested driver need only confirm that Uber operates in his city and fill out a few documents.[70] When Uber arrives in a new city, its drivers are usually not covered by existing codes or rules.[71] Uber promulgates

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[65] Maya Kosoff, *Here's How to Use Uber, the Incredibly Easy App That Could Change Your Life*, BUS. INSIDER (Aug. 25, 2014, 11:04 AM), http://www.businessinsider.com/how-to-use-uber-2014-8?op=1.

[66] UBER, https://www.uber.com/features (last visited Oct. 2, 2015).

[67] *E.g., compare* N.Y.C., R.C.N.Y. tit. 35, § 58-26 (2015) (setting standardized rates for medallion taxis) *with* Letter from Eric T. Schneiderman, Attorney Gen. for N.Y., to Travis Kalanick, Co-Founder & C.E.O., Uber Technologies Inc. (July 8, 2014), http://ag.ny.gov/pdfs/Uber_Letter_Agreement.pdf (agreeing to limit surge pricing during statutorily defined "abnormal disruptions of the market") [hereinafter Schneiderman Letter]. Many states have price gouging laws, which establish an outer bound on Uber's demand-based pricing mechanism. Dan Kedmey, *This Is How Uber's 'Surge Pricing' Works*, TIME (Dec. 15, 2014), http://time.com/3633469/uber-surge-pricing/.

[68] In fact, Uber informs all prospective drivers that the company does not own any vehicles, so they must supply their own. *E.g.*, *UberX/XL*, UBER MINN., http://uberminnesota.com/mspuberxxl/ (last visited Oct. 2, 2015) ("Uber does not own any vehicles. If you'd like to partner with Uber, you will need your own vehicle."); *Vehicle Requirements*, DRIVE UBER NYC, http://www.driveubernyc.com/cars/ (last visited Oct. 2, 2015) ("Uber doesn't own any vehicles, so if you want to partner with us you'll need to find yourself a vehicle.").

[69] *Driving Jobs vs Driving With Uber*, UBER, https://www.uber.com/driver-jobs (last visited Oct. 2, 2015).

[70] *See id.*

[71] Conor Dougherty & Mike Isaac, *Uber to Portland: We're Here. Deal With It.*, N.Y. TIMES: BITS (Dec. 5, 2014, 11:01 PM), http://bits.blogs.nytimes.com/2014/12/05/uber-to-portland-were-here-deal-with-it/?_r=0 ("That devil-may-care approach to dealing with city officials – entering a city without permission and dealing with regulatory issues after its services are

"Terms and Conditions," which can be accessed on its website or through the mobile application.[72] Both passengers and drivers must adhere to these terms, with passengers referred to as "users" and drivers referred to as "third party providers."[73] Uber subjects drivers and passengers to many of the same regulations, demonstrating that both parties are on similar footing in any "sharing" transaction and rendering Uber free from nearly all liabilities that would typically apply to drivers and travelers.[74] Uber's limited involvement in each ride transaction provides drivers and passengers with the peer-to-peer exchange upon which the sharing economy bases its entire model.[75]

Due to this ease of use, new drivers[76] and passengers across the world have welcomed Uber with open arms. Passengers applaud the easy access to this service.[77] Drivers who are unable to purchase or lease a medallion now have the option to use Uber to obtain or supplement their income.[78] Not all people, however, have

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well established and locals are already hooked – has become a hallmark of Uber's strategy.").

[72] *Legal: Terms and Conditions*, UBER (Jan. 2, 2016), https://www.uber.com/en-US/legal/usa/terms (listing the terms of service for using Uber).

[73] *See id.*

[74] *See id.* ("You agree to indemnify and hold Uber and its officers, directors, employees, and agents harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys' fees), arising out of or in connection with: (i) your use of the Services or services or goods obtained through your use of the Services; (ii) your breach or violation of any of these Terms; (iii) Uber's use of your User Content; or (iv) your violation of the rights of any third party, including Third Party Providers.").

[75] *See* Walsh, *supra* note 9.

[76] The term "new drivers" refers here to those drivers who were not driving traditional taxicabs prior to becoming drivers through Uber.

[77] *See* Rayle, *supra* note 63, at 2 ("Passengers request a ride from a private passenger vehicle driven by a (usually) non-commercially licensed driver through the mobile application, which then communicates the passenger's location via GPS . . . . A passenger's credit card information can be saved within the system to facilitate future trips.").

[78] Tomio Geron, *Sharing Economy Provides Extra Cash and Creative Expression*, FORBES (Sept. 9, 2013, 3:29 PM), http://www.forbes.com/sites/tomiogeron/2013/03/09/sharing-economy-provides-extra-cash-and-creative-expression-sxsw/#2a20c8e22102.

met Uber with such praise. Taxi unions and drivers globally have ignited riots and strikes in response to Uber's growth.[79] Further, many cities have found that Uber violates numerous local laws and have prohibited its presence within their jurisdictions.[80] Cities must now decide whether and to what extent they will ban this business and others like it.[81]

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[79] Lauren Frayer, *Uber, Airbnb Under Attack in Spain As Old and New Economies Clash*, NPR (July 29, 2014, 4:55 AM), http://www.npr.org/blogs/parallels/2014/07/29/327796899/uber-airbnb-under-attack-in-spain-as-old-and-new-economy-clash ("Taxi drivers protest against Uber, an on-demand car service app, during a 24-hour strike July 1 in Barcelona, Spain. They say it undercuts their business and are calling for the government to ban it."). Lori Hinnant, *Taxi Strike Brings France to Standstill Amid Growing Rage Against Uber*, HUFFINGTON POST (June 25, 2015, 9:42 AM), http://www.huffingtonpost.com/2015/06/25/france-taxi-strike-uber_n_7662048.html ("French taxis went on a nationwide strike Thursday, snarling traffic in major cities after weeks of rising, sometimes violent tensions over Uber.").

[80] Peter Diamandis, *Uber vs. the Law (My Money's On Uber)*, FORBES (Sept. 8, 2014, 3:34 PM), http://www.forbes.com/sites/peterdiamandis/2014/09/08/uber-vs-the-law-my-moneys-on-uber/#447201471fd8 ("German[] officials just slapped a nationwide ban on Uber because the drivers don't have correct permits. Drivers will face fines of up to $323,7000 per trip if Uber violates this temporary injunction.").

[81] Ian Mount, *Airbnb, Uber Under Attack in Barcelona*, FORTUNE MAG. (May 28, 2014, 10:20 AM), http://fortune.com/2014/05/28/airbnb-uber-barcelona/ ("Barcelona has become a headache for the popular residence and ride-sharing platforms [Airbnb and Uber], ground zero in a fight over how collaborative consumption should be regulated and taxed. Taxi drivers have asked Barcelona's local government to shut down Uber because of what they see as unfair competition from unlicensed, untaxed drivers. Hotel unions have made similar complaints about Airbnb, and local residents have objected to the proliferation of unlicensed tourist apartments.").

II. I WANT TO WAKE UP IN A CITY THAT DOESN'T SLEEP: IN A STRANGER'S APARTMENT?

A. Development of Hotel Industry Regulations and Effects on Housing

New York City has a long history of providing hotel accommodations to transient visitors.[82] Indeed, the first modern hotel graced the city in 1794 when the City Hotel opened.[83] The popularity of hotels grew and within years, hotels across the city offered amenities such as private baths and ice water.[84] Other amenities included large public rooms and rooftop gardens.[85] New Yorkers and tourists alike were very receptive to the hotel industry's rise.[86] As a result, New York City was forced to regulate its hotel industry.

In 1909, the New York City legislature enacted Article 12 of the General Business Law, which set forth regulations for hotels.[87] Since then, hotels operating in New York City have had to abide by a set of rules that protect hotel owners, staff, and guests.[88] Article 12 provides a safeguard against issues such as equal rights in places of public accommodation, theft of goods and services, sanitation, fire, fraudulent advertising, disposition of proceeds of sales, and registration of travelers' names.[89] The law further restricts the types of buildings that can operate as hotels, and emphasizes that such buildings must be designed and registered for that commercial purpose.[90]

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[82] *See* Jessica Dailey, *Remembering NYC's Grandest Forgotten Hotels*, CURBED N.Y. (Jun. 26, 2013), http://ny.curbed.com/2013/6/26/10227158/remembering-nycs-grandest-forgotten-hotels-in-photos.

[83] EDWIN G. BURROWS & MIKE WALLACE, GOTHAM: A HISTORY OF NEW YORK CITY TO 1898, at 340 (1998).

[84] Dailey, *supra* note 82.

[85] *Id.*

[86] *Id.*

[87] N.Y. GEN. BUS. LAW ch. 20, Art. 12 (McKinney 2015) (enacted Feb. 7, 1909).

[88] *Id.* §§ 200–209.

[89] *Id.*

[90] *Id.* § 209-a.

As a consequence of this regulatory regime, many illegal hotels opened throughout Manhattan.[91] City residents who wanted to make additional income began operating their dwellings as "hotels" and renting out both entire apartments and individual rooms for short-term periods.[92] In 2010, New York amended its Multiple Dwelling Law to combat the illegal hotel problem.[93] The law had presented new problems for the city as it affected individual owners' ability to rent out extra space in their apartments.[94] Legislators therefore amended the law to state that "illegal hotel activity" occurs "[w]hen permanent residential apartments in buildings with three units or more are rented out for less than thirty days to transient visitors instead of residents."[95] The law permits a class of rentals to provide city residents with an additional source of income.[96] The law also ensures that illegal hotels do not worsen New York City's housing shortage—as many landlords evict existing tenants to make more money by charging travelers hotel rates.[97] Moreover, the law seeks to prevent strangers from entering private residential buildings.[98] Airbnb, however, circumvents this objective.

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[91] *See* Leg. Assemb. A7495, Introducer's Memorandum (N.Y. 2013).

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] Liz Krueger, *Answers For New Yorkers Concerned Or Confused About The Illegal Hotel Law*, N.Y. ST. SENATE (May 27, 2014), http://www.nysenate.gov/report/answers-new-yorkers-concerned-or-confused-about-illegal-hotel-law ("The 2010 law does not apply to owners of single-family and two-family homes, or residents who rent out individual rooms in their homes for less than 30 days (as long as they are also there the entire time).").

[96] *See id.*

[97] *Id.*

[98] *Id.* ("That can create serious quality-of-life problems and safety for neighbors, at a minimum – sleepless nights caused by overcrowded neighboring apartments packed with loud tourists, for example. But it can get far worse. My office has heard of buildings burglarized and neighbors assaulted by strangers who might never have had access to get inside, were it not for illegal hotel activity.").

B. What is Airbnb?

"Airbnb is a global community marketplace that connects travelers who seek authentic, high-quality accommodations with hosts who offer unique places to stay."[99] Users can access the application through their mobile devices and can connect with others across the globe.[100] Individuals list their spaces online with photographs and descriptions to enable interested travelers to gain insight on the property before contacting the host.[101] Users can find a place that suits their needs, "request a booking," and wait for a response from the host.[102] Hosts set the prices through the Airbnb site, though Airbnb provides "suggested rates" comparable to those in their area.[103] The host then accepts the user, and the user has booked the space.[104]

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[99] Max Pomeranc, *Hotels vs. Regular New Yorkers*, AIRBNB: PUB. POL'Y BLOG (Sept. 12, 2014), http://publicpolicy.airbnb.com/hotels-vs-regular-new-yorkers/; *About Us*, AIRBNB, https://www.airbnb.com/about/about-us (last visited Oct. 2, 2015) [hereinafter *About Us*] ("Whether an apartment for a night, a castle for a week, or a villa for a month, Airbnb connects people to unique travel experiences, at any price point, in more than 34,000 cities and 190 countries. And with world-class customer service and a growing community of users, Airbnb is the easiest way for people to monetize their extra space and showcase it to an audience of millions.").

[100] *About Us*, *supra* note 99.

[101] *See How to Host,* AIRBNB, https://www.airbnb.com/help/getting-started/how-to-host (last visited Oct. 2, 2015).

[102] *See id.* Users can choose to stay in yachts, treehouses, high-rise apartments, and even castles. *See About Us*, *supra* note 99; *Luxe Yachts*, AIRBNB: WISHLISTS, https://www.airbnb.com/wishlists/luxury-yachts (last visited Oct. 2, 2015); *Trees & Zzzs*, AIRBNB: WISHLISTS, https://www.airbnb.com/wishlists/stay-in-a-treehouse (last visited Oct. 2, 2015). Presently, there are over 1,400 castles listed on Airbnb. *See About Us*, *supra* note 99.

[103] *How Much Should I Charge for My Listing?*, AIRBNB: HELP, https://www.airbnb.com/help/article/52/how-much-should-i-charge-for-my-listing (last visited Oct. 2, 2015).

[104] *How to Host*, *supra* note 101. Presently, there are more than 40,000,000 guests in more than 34,000 cities in more than 190 countries across the world. *About Us*, *supra* note 99.

Airbnb's services "break the traditional model for short-term room rentals."[105] The company permits its users to become transient hotel operators and guests,[106] subjecting both parties to limited protection and nearly absolving itself from liability.[107] For instance, Airbnb's Terms of Services state:

> You understand and agree that Airbnb is not a party to any agreements entered into between hosts and guests, nor is Airbnb a real estate broker, agent or insurer. Airbnb has no control over the conduct of hosts, guests and other users of the site, application and services or any accommodations, and disclaims all liability in this regard to the maximum extent permitted by law.[108]

Airbnb's website thus clarifies that any agreements entered into are solely between the guest and the host and that Airbnb is not a party thereto. To utilize this platform, all one needs to do is register with Airbnb.[109]

Once a user registers, Airbnb allows him to be master of his domain. A user is responsible for abiding by all rules, and Airbnb defines "user conduct" as any action taken by a user that contravenes Airbnb's policies.[110] Airbnb does not promulgate any guidelines to protect the host or guest except for the "damage to accommodations" provision, which permits Airbnb to make claims under either party's individual insurance policy for any damages or losses.[111] Moreover, the company places all tax determinations onto the users, and states clearly that it will "not offer tax-related

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[105] Hamilton, *supra* note 31, at 476.

[106] *See* Robert S. Cook, Jr., *Finding Clarity on the Legal Definition of What Constitutes a Hotel,* REAL EST. WKLY., Dec. 31, 2008, at 20, http://www.andersonkill.com/webpdfext/RealEstateWeekly-Dec2008.pdf (explaining that transient hotels are buildings where occupancy is less than one month).

[107] *Terms of Service*, AIRBNB, https://www.airbnb.com/terms (last visited Oct. 2, 2015).

[108] *Id.*

[109] *Id.* Registration requires users to simply put in their e-mail and basic contact information. *Sign Up*, AIRBNB, https://www.airbnb.com/signup_login?sm=2 (last visited Oct. 2, 2015).

[110] *Terms of Service*, *supra* note 107.

[111] *Id.*

advice."[112] Although Airbnb limits its role in host-user transactions and places considerable responsibilities on the users, many users have nonetheless been receptive to this business model.

Proponents of the sharing economy argue that Airbnb simplifies short-term renting. The platform quickly generates income for residents and offers travelers inexpensive alternatives to hotels.[113] The rise of Airbnb has radically "expanded the use of traditional apartments as transient hotel rooms."[114] Tenants and owners realize the advantage of renting their space to transient guests, especially in cities where rent costs are high.[115] Critics, however, "see a threat to the safety, affordability, and residential character of local communities."[116] For this reason, some cities have banned Airbnb entirely.[117] Landlords and tenants who have

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[112] *Id.* ("You as a Host understand and agree that you are solely responsible for (i) determining your applicable Tax reporting requirements, and (ii) the Taxes that should be included, and for including Taxes to be collected or obligations relating to applicable Taxes in Listings. You are also solely responsible for remitting to the relevant authority any taxes included or received by you.").

[113] Michael Giaquinto, *Why New York Should Listen to Airbnb's Appeal for Taxation*, 73 ST. TAX NOTES 355 (2014) ("For example, while someone looking to spend the night in the Upper East Side of Manhattan on a Tuesday night in June might spend somewhere around $250 for a small room in a three star hotel, that person could also choose to stay in a private studio apartment, equipped with kitchen essentials and free wireless internet, for $175. A traveler needing fewer frills could sleep on someone's couch for a significantly lower price."); *see also The Dark Side of the Sharing Economy*, *supra* note 26.

[114] OFFICE OF N.Y. STATE ATTORNEY GEN., AIRBNB IN THE CITY 2 (2014) [hereinafter AIRBNB IN THE CITY], http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf.

[115] Alexander Lycoyannis, *Airbnb: Boon or Bane for NYC Residential Real Estate?*, LAW 360 (Apr. 23, 2015, 10:47 AM), http://www.law360.com/articles/646088/airbnb-boon-or-bane-for-nyc-residential-real-estate ("For a tenant paying the notoriously high rents and enduring the high cost of living that characterizes New York City, renting some or all of his or her apartment to transient guests can provide welcome financial relief. For an owner, renting an apartment to short-term guests as opposed to tenants signing leases for one year or longer has the potential to double—or more—the asset's productivity.").

[116] AIRBNB IN THE CITY, *supra* note 114, at 2.

[117] Peri, *supra* note 15.

rented their spaces may face a multitude of fines.[118] These issues have arisen in cities across the world, especially New York.[119]

III. CURRENT ISSUES WITH UBER

A. *What Kind of Vehicle?*

Many cities do not require Uber drivers to acquire licenses to operate.[120] This freedom entices many interested drivers to become Uber drivers. These drivers, however, face other legal hurdles in the form of lawsuits. *Boston Cab Dispatch v. Uber Technologies* highlighted the need to abandon existing regulatory frameworks. The plaintiff, a taxi commission similar to that of the New York City TLC, alleged that Uber gained an unfair competitive advantage over traditional taxi dispatch services and license holders by avoiding the costs and burdens of complying with extensive regulations.[121] Taxicabs in Boston must possess a license known as a "taxicab medallion" in order to operate within the city, and these medallions carry certain requirements and responsibilities.[122] Uber cars, however, did not need to abide by these rules—they did not affiliate with a dispatch service, receive regular inspections, contain partitions between drivers and passengers, provide panic buttons, or prohibit cell phone use by drivers.[123] Additionally, according to the plaintiff, Uber neither completed driver background checks nor complied with non-discrimination laws with respect to passengers with handicaps.[124] Because Uber operated outside of the commission's laws, the city could not regulate the company's practices.

The Boston case allowed many other cab companies, non-Uber drivers, and passengers to file claims against Uber for its failure to

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[118] *See* Ranchordás, *supra* note 14, at 419.

[119] *See id.*

[120] *See, e.g.*, *id.* at 418.

[121] Bos. Cab Dispatch, Inc. v. Uber Techs., No. 13-10769(NMG), 2014 U.S. Dist. LEXIS 42063, at *1 (D. Mass. Mar. 27, 2014).

[122] *Id.*

[123] *Id.* at *7.

[124] *Id.*

comply with existing regulations.[125] In some instances the plaintiffs prevailed while in others they did not.[126] This litigation prompted New York City to find a place for Uber within its existing body of laws and regulations. The New York City TLC currently requires Uber drivers to operate as for-hire vehicles.[127] This means that, rather than operating under the highly regulated medallion system, drivers must instead register their vehicles as part of the city's livery car system, a second form of transportation that is less regulated in New York City.[128]

To comply with the livery system, Uber drivers need only obtain a TLC for-hire vehicle license, operate a TLC licensed black car, and carry TLC-licensed insurance.[129] These lesser requirements, however, have not solved the problem. First, only yellow taxicabs, not liveries, are permitted to pick up street hails.[130] However, since Uber vehicles go directly to the location that the user has put into the application, [131] Uber is in effect picking up street hails, and thus interferes with the TLC's distinguishing between yellow taxicabs and liveries. Allowing Uber to essentially pick up street hails blurs this distinction, as

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[125] Harrison Weber, *As Uber Battles 13 Lawsuits, Cabbies & State Agencies are Out for Blood*, VENTURE BEAT (May 8, 2014, 8:54 AM) http://venturebeat.com/2014/05/08/as-uber-battles-13-lawsuits-cabbies-state-agencies-are-out-for-blood/ (discussing fines faced by Uber drivers as well as lawsuits against Uber Technologies by "passengers, traditional taxi and limousine companies, and Uber drivers themselves").

[126] *See, e.g.*, Mike Isaac & Natasha Singer, *California Says Uber Driver Is Employee, Not a Contractor,* N.Y. TIMES (June 17, 2015), http://www.nytimes.com/2015/06/18/business/uber-contests-california-labor-ruling-that-says-drivers-should-be-employees.html (discussing the legal victory of a California Uber driver, awarding her "$4,152.20 in expenses and other costs for the roughly eight weeks she worked as an Uber driver last year").

[127] BLOOMBERG & YASSKY, *supra* note 41, at 1–2; *Get a TLC License,* DRIVE UBER NYC, http://www.driveubernyc.com/tlc/ (last visited Oct. 2, 2015).

[128] BLOOMBERG & YASSKY, *supra* note 41, at 1–2 (discussing the differing regulations for yellow taxis and livery vehicles).

[129] *The TLC Process*, DRIVE UBER NYC, http://www.driveubernyc.com/tlc-process (last visited Oct. 2, 2015).

[130] *See* BLOOMBERG & YASSKY, *supra* note 41, at 1–2 (explaining that only yellow taxicabs can pick up travelers who are on the street looking for a ride, while liveries must be telephoned in advance).

[131] Kosoff, *supra* note 65.

Uber is subject to the rules of the less demanding livery system while it operates more like a yellow taxi.[132] Second, as previously stated, one of the driving forces behind taxicab regulation in New York City was the need to monitor prices.[133] The TLC requires both liveries and yellow cabs to charge set fares.[134] No such mandate exists for Uber.[135]

B. Price Gouging

Unlike the yellow cab and traditional livery services, which must abide by the TLC's guidelines, Uber capitalizes on its fares.[136] Uber has been heavily criticized for its "surge pricing" policy during holidays, power failures, and extraordinary weather conditions.[137] Uber's pricing system is described as "dynamic."[138] The company "does not set a single, fixed price for rides," and permits rates to "rise and fall as demand increases and decreases."[139] For example, during Hurricane Sandy in 2012, Uber multiplied fares for even short rides, simply because of torrential weather conditions.[140] The public's adverse response was telling.[141]

In response to public outcry, Eric T. Schneiderman, New York's Attorney General, began investigating Uber's pricing model and found that it may have violated General Business Law

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[132] *See* BLOOMBERG & YASSKY, *supra* note 41, at 1–2.

[133] *See id.*

[134] *See id.*

[135] *The TLC Process*, *supra* note 129.

[136] Ranchordás, *supra* note 14, at 463.

[137] *See* Schneiderman Letter, *supra* note 67.

[138] Thomas A. Dickerson & Sylvia O. Hinds-Radix, *Apartment and Car Sharing: A Disruptive Internet Revolution,* 252 N.Y. L.J. 4 (2014).

[139] *Id.*

[140] Mike Isaac, *Uber Reaches Deal with New York on Surge Pricing in Emergencies*, N.Y. TIMES: BITS (July 8, 2014), http://bits.blogs.nytimes.com/2014/07/08/uber-reaches-agreement-with-n-y-on-surge-pricing-during-emergencies/.

[141] Nicholas Carlson, *How A Sandy-Related PR Nightmare Cost Startup Uber $100,000 In A Day,* BUSINESS INSIDER, (Nov. 1, 2012), http://www.businessinsider.com/how-sandy-related-pr-nightmare-cost-startup-uber-100000-in-a-day-2012-11.

§396-r, which prevents price gouging during any "abnormal disruption of the market."[142] Uber responded to Attorney General Schneiderman by agreeing to "cap" its surge pricing at a certain level.[143] The company, however, can still increase its fares as long as rates are a multiple of the base fare charged, a seemingly arbitrary number.[144] Consequently, Uber can currently implement surge pricing up to nine hundred percent.[145] Simply put, Uber may charge a "dynamic rate" of up to nine hundred percent more than its average price.[146] The issue of fair fares is thus still unresolved.

IV. CURRENT ISSUES WITH AIRBNB

A. New York's Multiple Dwelling Law

In New York City, many uninformed Airbnb hosts currently rent out apartments in violation of New York's Multiple Dwelling Law.[147] Indeed, New York City alleged violations against Nigel Warren, totaling more than $40,000, for renting out his apartment for less than thirty days.[148] Warren, however, was absolved from paying the fine since one of his roommates was home during the guest's stay.[149] Since the Multiple Dwelling Law is not violated when the tenant is home or when only a portion of the residence is rented out, the result would not have been the same had his

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[142] Dickerson & Hinds-Radix, *supra* note 138.

[143] Isaac, *supra* note 140.

[144] Schneiderman Letter, *supra* note 67.

[145] Erin Durkin, *Councilman Proposes Law to Rein in Uber's Surge Pricing*, N.Y. DAILY NEWS, (Nov. 25, 2014, 12:56 PM), http://www.nydailynews.com/blogs/dailypolitics/bill-rein-uber-surge-pricing-blog-entry-1.2023317.

[146] *See id.*

[147] Hamilton*, supra* note 31.

[148] Ron Lieber, *A Warning for Hosts of Airbnb Travelers,* N.Y. TIMES (Nov. 30, 2012), http://www.nytimes.com/2012/12/01/your-money/a-warning-for-airbnb-hosts-who-may-be-breaking-the-law.html.

[149] Press Release, Senator Liz Krueger, Statement on Appeals Board Decision in the Nigel Warren Short-Term Rental Case (Oct. 1, 2013), http://www.nysenate.gov/press-release/statement-appeals-board-decision-nigel-warren-short-term-rental-case.

roommate not been home for the "entire time," or if the guest had occupied the entire apartment rather than only one room.[150]

City of New York v. Smart Apts. LLC first demonstrated enforcement of the law as applied to the sharing economy setting.[151] There, the New York State Supreme Court enjoined Smart Apartments from advertising, contracting, and allowing transient occupancy in buildings where the Multiple Dwelling Law prohibited such occupancy.[152] The City argued that the company's business practices[153] directly contravened the Multiple Dwelling Law because the company permitted stays of less than thirty days in residential buildings.[154] Moreover, the City claimed that the company "[d]epleted the stock of affordable, long-term housing" by permitting short-term stays.[155] The City further asserted that Smart Apartments amplified security risks and quality-of-life problems because the company denied occupants the proper fire and safety precautions[156] and disturbed existing residents.[157] The City claimed that the transient occupants "host loud, late night parties; vomit, dump garbage, and smoke in the hallways; damage the elevators with all those bulky suitcases; and generally do not conduct themselves in the civilized, genteel manner of the locals."[158] Another concern for the City was that the company's users were unaware that transient occupancy is both illegal and unsafe.[159]

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[150] *Id.*

[151] City of N.Y. v. Smart Apts. LLC, 959 N.Y.S.2d 890 (N.Y. Sup. Ct. 2013).

[152] *Id.* at 891.

[153] The company's business model is nearly identical to that of Airbnb. *Id.* at 891–92.

[154] *Id.* at 892.

[155] *Id.*

[156] *Id.* (explaining that the New York City Fire and Building Codes require transient residences to utilize significantly higher fire safety standards than non-transient residences).

[157] *Id.*

[158] *Id.*

[159] *Id.*

Airbnb only provides minimal disclosure of pertinent city regulations.[160] The company simply notes on its website that "some cities have laws that restrict your ability to host paying guests for short periods."[161] This vague and subtle disclaimer has proven ineffective in warning users of the possible consequences that can arise from not complying with the law.[162] What is more, rather than targeting the company directly, as it did in *Smart Apts.*, the City has instead scrutinized Airbnb's unapprised users.[163]

Early in 2014 Attorney General Schneiderman issued to Airbnb an investigatory subpoena seeking information regarding Airbnb's hosts.[164] The Attorney General primarily focused on gathering data about individuals who rent out their homes while they are absent for long periods of time.[165] He also sought material on landlords who evict tenants and "essentially turn their units into full-time Airbnb hotels."[166] To these ends, Attorney General Schneiderman demanded private information that Airbnb subsequently released.[167] The Office of the Attorney General found that most short-term rentals booked in New York City violated the Multiple Dwelling Law, that residences that operated as transient hotels breached fire and safety codes, and that private short-term rentals

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[160] *See What Legal and Regulatory Issues Should I Consider Before Hosting on Airbnb?*, AIRBNB: HELP, https://www.airbnb.com/help/article/376 (last visited Oct. 2, 2015).

[161] *See id.* ("These rules can be confusing. We are working with governments around the world to clarify these rules so that everyone has a clear understanding of what the laws are.").

[162] *See* Lieber, *supra* note 148.

[163] *Id.*; *see also* Chris Dolmetsch, *New York Sues Smart Apartments Over Hotel Conversions*, BLOOMBERG BUS. (Oct. 23, 2012, 5:33 PM), http://www.bloomberg.com/news/articles/2012-10-23/nyc-sues-smart-apartments-on-claims-of-deceptive-trade-practices.

[164] AIRBNB IN THE CITY, *supra* note 114, at 4.

[165] Tomio Geron, *New York State AG Seeks Airbnb Data on Hosts in Legal Battle,* FORBES (July 10, 2013, 5:11 PM), http://www.forbes.com/sites/tomiogeron/2013/10/07/new-york-state-ag-seeks-airbnb-data-on-hosts-in-legal-battle/ (explaining that the Attorney General sought information about individuals who rent out their homes for a majority of the year without living there).

[166] *Id.*

[167] AIRBNB IN THE CITY, *supra* note 114, at 4; Geron, *supra* note 165.

displaced long-term housing in thousands of apartments.[168] Indeed, widespread short-term rentals effectuate decreases in existing tenants' quality-of-life expectations.[169] Unfamiliar transient occupants also arguably alter the building environment, heightening the risk of safety hazards.[170] Airbnb, however, continues to operate despite these violations.

B. Hotel Occupancy Tax

Not only has Airbnb violated New York's Multiple Dwelling Law, it has also arguably forgone many hotel and occupancy taxes.[171] Attorney General Schneiderman estimated that the city has missed out on $33 million as a result of Airbnb's users' failure to pay city-imposed hotel taxes.[172] Attorney General Schneiderman determined this amount by reducing Airbnb's $500 million revenue during the previous fiscal year by 14.75%, or the percentage of tax that hotels in New York City face per room.[173] However, until Airbnb provides full disclosure of its rentals and income in New York City, the Attorney General's claims can only be speculative. [174]

Non-tax-paying users represent 72% of Airbnb's "illegal" hotel operation (the remaining 28% of users are law abiding according to Attorney General Schneiderman).[175] Airbnb has lobbied for an amendment to the existing Multiple Dwelling Law, which would "classify the service as a legal hotel."[176] So far, the city has not allowed Airbnb to break down the existing legal framework.[177] The city, however, has failed to stop the company's rapid economic growth, which in turn exacerbates the city's tax collection

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[168] AIRBNB IN THE CITY, *supra* note 114, at 2–3.

[169] Lycoyannis, *supra* note 115.

[170] *Id.*

[171] *Id.*

[172] *Id.*

[173] Airbnb, Inc. v. Schneiderman, 989 N.Y.S.2d 786, 790 (N.Y. Sup. Ct. 2014); AIRBNB IN THE CITY, *supra* note 114, at 7.

[174] AIRBNB IN THE CITY, *supra* note 114, at 4–5; Hamilton, *supra* note 31.

[175] AIRBNB IN THE CITY, *supra* note 114, at 8.

[176] Hamilton, *supra* note 31.

[177] *Id.*

problem.[178] Because it is unclear whether or not Airbnb is a "hotel" for tax purposes, the city cannot solicit tax payments from Airbnb users.[179]

To ease the pushback from the Attorney General's office, Airbnb has updated its website with additional information regarding taxes.[180] Yet it has not done this effectively, as many users still violate tax laws.[181] According to Airbnb, the burden is on hosts to include the "proper" taxes in their rental listings and to subsequently pay those taxes.[182] Taxes are not explicitly listed within booking rates, and hosts are given only vague guidance as to what their responsibilities are.[183] For those reasons, much is still left unresolved.

V. PROPOSED REGULATIONS AND CRITICISM

A. Uber

As more and more people have begun to utilize Uber, states have initiated reforms in the hopes of prospectively mitigating potential issues. California was among the first states to recognize that transportation innovation had begun to outrun regulation.[184] After concluding that Uber was not a traditional taxicab service, and thus could not be regulated under longstanding taxi laws, "the CPUC [California Public Utilities Commission] established a new category of motor vehicle carriers, known as Transportation

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[178] Jennifer DePaul, *AG Reports Airbnb Owes NYC Millions in Hotel Taxes,* 74 ST. TAX NOTES 131 (2014).

[179] Giaquinto, *supra* note 113.

[180] *See Help Center: New York, NY*, AIRBNB, https://www.airbnb.com/help/article/868/new-york--ny (last visited Oct. 2, 2015).

[181] DePaul, *supra* note 178.

[182] *Id.*

[183] Steven T. Jones, *Airbnb Isn't Sharing*, S.F. BAY GUARDIAN ONLINE (Mar. 19, 2013, 3:54 PM), http://www.sfbg.com/2013/03/19/airbnb-isnt-sharing ("Hotels add the tax to the price of the room, [b]ut when you book a room on the Airbnb site, there's no category for local taxes and the 14 percent isn't added to the price.").

[184] Rayle, *supra* note 63, at 3.

Network Companies," or TNCs.[185] TNCs are defined as "operator[s] that 'provide[] prearranged transportation services for compensation using an online-enabled application or platform (such as a smartphone applications) to connect drivers using their personal vehicles with passengers.'"[186] The rules require that TNCs obtain certain insurance policies, perform background checks on drivers, and maintain drug and alcohol policies to ensure that drivers are law abiding.[187]

Although the creation of a separate category within which to treat companies like Uber seems like a step in the right direction, California's efforts fail in many respects. First, the rules place the full burden of ensuring driver compliance with CPUC regulations on companies like Uber, that provide platforms that connect drivers and riders.[188] Second, although the law defines these companies by placing them in their own category rather than combining them with the existing inapplicable regulations, it fails to include the regulations that it imposes on taxicab services that protect the public and drivers.[189] Further, without fixed pricing standards, the company may also charge exorbitant rates in times of high demand.[190] These shortfalls demonstrate that, while the idea of directly regulating the sharing economy seems effective, the path that the CPUC has taken is not the best way to treat these companies.

Colorado has also recognized the need to control ridesourcing companies like Uber.[191] The state legislature enacted Colorado Revised Statute §40-10.1-602, a law specifically designed to

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[185] *Id.* at 4.

[186] *Id.* (quoting *Transportation Licensing*, CAL. PUB. UTILITIES COMMISSION, http://www.cpuc.ca.gov/transportationlicensing/ (last visited Oct. 2, 2015)).

[187] *Id.* at 4.

[188] *See* CAL. PUB. UTILITIES COMMISSION, BASIC INFORMATION FOR TRANSPORTATION NETWORK COMPANIES AND APPLICANTS 2 (2013), http://www.cpuc.ca.gov/NR/rdonlyres/1788F1F1-EA38-4B68-B221-4116994F2252/0/TNC_App_Instrctns.pdf.

[189] Jon Brooks, *Once Friendly Territory, California Looks to Toughen Rules for Uber, Lyft*, KQED: NEWS (Jun. 17, 2014), http://ww2.kqed.org/news/06/17/2014/Uber-Lyft-Insurance-crack-down.

[190] *See* Kedmey, *supra* note 67.

[191] *See* Rayle, *supra* note 63, at 4.

regulate Transportation Network Companies ("TNCs").[192] Unlike the California regulation, Colorado Revised Statute §40-10.1-602 explicitly details the rules and responsibilities of companies and drivers who choose to operate under the law.[193] It specifically defines a TNC as a "corporation, partnership, sole proprietorship, or other entity, operating in Colorado, that uses a digital network to connect riders to drivers for the purpose of providing transportation."[194] Further, it makes clear that a "[TNC] does not provide taxi service, transportation service arranged through a transportation broker, ridesharing arrangements, or any transportation service over fixed routes at regular intervals."[195] It further states that a TNC "is not deemed to own, control, operate, or manage the personal vehicles used by transportation network company drivers."[196] The law further requires certain safeguards such as insurance and background checks, but does not address other important issues like price gouging.[197]

Perhaps more effective than both the California and Colorado laws is Washington D.C.'s "Vehicle for Hire Innovation Amendment Act," which creates a new class for services like Uber.[198] Setting up an entire new category solves the problem of fitting Uber into an existing vehicle class. The Act also establishes regulations necessary to ensure public safety and consumer protection by enforcing background checks, inspections, and price.[199] The Act specifically states that companies cannot set exorbitant fares, even during a state of emergency.[200] Mandating that Uber and companies like it register under the new class may limit lawsuits and fines as operating an Uber-like vehicle is only permitted once the vehicle and driver fully comply.[201] What is also

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[192] COLO. REV. STAT. § 40-10.1-602 (2014).

[193] *Id.*

[194] *Id.*

[195] *Id.*

[196] *Id.*

[197] *Id.*

[198] Vehicle-for-Hire Innovation Amendment Act of 2014, D.C. CODE § 50-303 (2014).

[199] *Id.*

[200] *Id.*

[201] *Id.*

promising about the Act is that any company that affiliates with private vehicle-for-hire drivers would be required to create an application process for new drivers.[202] This potentially remedies the issue of placing the burden on unapprised drivers who may not know of any law. Further, the Act requires that all companies, like Uber, have a website that denotes its zero tolerance policy for drugs, alcohol, and discrimination.[203] The D.C. Taxicab Commission, however, is tasked with governing this new class of vehicles, which turns Uber's business model on its head.

The Washington D.C. Act best covers many of the issues that New York faces with regard to Uber. However, the California, Colorado, and Washington D.C. regulations do not propose the type of regulatory regime that is imposed on ordinary taxi service providers. This creates a gray area in which drivers and passengers may not be protected, and leaves traditional taxicab companies to abide by long-established laws that do not apply to Uber.

B. Airbnb

Cities have also attempted to regulate Airbnb. San Francisco first proposed an ordinance that would prohibit illegal conduct.[204] The city responded to the rise in landlords who evicted tenants in order to convert the tenants' apartments into short-term rentals.[205] The legislation requires short-term rental services such as Airbnb to collect the city's 14% hotel tax.[206] Residents may legally rent their units for less than thirty days, but only if they comply with strict regulations.[207] For instance, "tenants and landlords who want to become Airbnb hosts would need to register with the city [as hosts] and prove they occupy the unit 75 percent of the year."[208] The city hopes that this will prevent its housing stock from turning into illegal hotels.[209] The city also believes that the ordinance will

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[202] *Id.*

[203] *Id.*

[204] S.F., Cal. Ordinance 218-14 (Oct. 21, 2014).

[205] Hamilton, *supra* note 31, at 4.

[206] *Id.*

[207] *Id.*

[208] *Id.*

[209] *Id.*

maintain the availability of affordable housing within San Francisco.[210]

While this regulation does seem promising, it is inherently flawed. Many landlords still illegally operate hotels without being subject to the hotel occupancy tax.[211] San Francisco has not indicated how it will monitor those who are interested in operating a short-term hotel or how it would seek out the uncompromising or unapprised users.[212] Further, the proposal does not make clear what Airbnb's responsibility is in terms of informing users of their obligations.[213] Airbnb currently informs users of "possible laws" and "possible taxes" to which they may be subject in host cities.[214] This does not fully protect uninformed users as it places the burden entirely on them.

Moreover, most cities have yet to even "clarif[y] if short-term hosts should be paying hotel taxes on their rental income" at all.[215] If cities were to solicit a tax, this would indeed create the assumption that short-term rentals are legal, a notion that has yet to be confirmed.[216] Additionally, if hosts were taxed as hotel operators, some commentators suggest that they may be subject to an array of other requirements.[217] For instance, an abiding host would have to comply with occupancy limits, fire precautions, and window safety protocols.[218] Many Airbnb hosts do not have the means or the freedom to install new features to bring them into compliance with such codes.[219] Additionally, it may be quite difficult for Airbnb rental units to be inspected by a person

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[210] Press Release, Mayor Lee Signs Legislation to Regulate Short-term Residential Rentals in San Francisco (Oct. 27, 2014), http://www.sfmayor.org /index.aspx?recordid=691&page=846.

[211] *See* Hamilton, *supra* note 31.

[212] S.F., Cal. Ordinance 218-14 (Oct. 21, 2014).

[213] *Id.*

[214] *Terms of Service,* AIRBNB, (July 6, 2015), https://www.airbnb.com /terms.

[215] Hamilton, *supra* note 31.

[216] *Id.*

[217] *See, e.g.*, Giaquinto, *supra* note 113.

[218] *Id.*

[219] *Id.* Tenants in most apartment buildings in New York City do not have a say in altering existing structures within units. *Id.*

comparable to one who would typically inspect a hotel.[220] A city hotel's doors are always open, permitting routine examinations.[221] Hosts, however, may not wish to have surprise visits from a city inspector, who may force his way into the apartment.[222]

San Francisco's planning department has also developed a "short-term rental website."[223] The planning department requires that prospective Airbnb hosts register in-person by filling out an application that includes the host's name, the landlord's name, a description of the unit, and the applicable rental information.[224] This approach completely absolves qualified hosts from the part of the state's housing law that prohibits rentals for less than thirty days.[225] This model, however, does not charge Airbnb with registering and instead places the responsibility on users.

VI. SOLUTION FOR NEW YORK

Uber and Airbnb have provided people and cities with income and convenience. They have also raised issues of public safety and fair business practices. New York has attempted to regulate the sharing economy but has failed due to a lack of protection, safety, remedies, and information.[226] By classifying Uber as part of its for-hire vehicle system, New York problematically leaves room for Uber to price gouge, for instance, since the city cannot monitor vehicles unaffiliated with a TLC base.[227] Moreover, simply because Uber agreed to abide by a few for-hire vehicle laws,[228] does not mean that similar companies will adhere to the regulations. Lyft, another ride sharing platform, did not at first agree to classify its cars as for-hire vehicles, and was thus initially

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[220] *See id.*

[221] *Id.*

[222] *Id.*

[223] *See Office of Short-Term Rental Registry & FAQs*, S.F. PLANNING DEP'T (Nov. 9, 2015), http://www.sf-planning.org/index.aspx?page=4004.

[224] *Id.*

[225] *Id.*

[226] *See* Ranchordás, *supra* note 14, at 420–21.

[227] BLOOMBERG & YASSKY, *supra* note 41; *The TLC Process*, *supra* note 129.

[228] *See Get a TLC License*, *supra* note 129.

barred from operating in New York City.[229] Similarly, Attorney General Schneiderman's efforts to penalize Airbnb users who do not abide by existing hotel and housing regulations have met many obstacles.[230] Since the company cannot be classified as a hotel provider, existing hotel laws do not apply to Airbnb hosts. Actions taken to discipline users after they have unknowingly violated laws are ineffective. Hence, a more preventative approach is necessary.

Moreover, the idea of leaving it up to Uber and Airbnb to inform users of potential legal ramifications nearly absolves the companies from all liability. It also mandates users to educate themselves. [231] Users will likely be unable to fully understand the laws, assuming the laws even apply. Likewise, third parties, such as pedestrians who do not use Uber, as well as neighbors of Airbnb hosts, should be protected from the risks associated with these businesses. Without set rules apprising users, respecting incumbents, and ensuring safety amongst third parties, problems with the sharing economy will continue.

New York City should therefore create laws for these businesses and for the sharing economy as a whole. The city can follow the lead of places like Washington D.C., California, and Colorado, but a comprehensive and effective regulatory regime will require it to go further.[232] First, amending existing regulations to permit sharing economy businesses to operate is ineffective because as new companies enter the market, laws will have to continuously be amended. Second, attempting to fit sharing economy companies into already standing laws is also not practical for the same reasons. For example, Feastly, a company that allows users to share meals with others, has recently entered New York City's sharing economy market.[233] Residents of New York City

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[229] Joshua Brustein, *While Uber Thrives in New York, Its Competitors Lobby Regulators*, BLOOMBERG (Jun. 2, 2014), http://www.bloomberg.com/bw/articles/2014-06-02/while-uber-thrives-in-new-york-its-competitors-battle-regulators.

[230] *See* Airbnb, Inc. v. Schneiderman, 989 N.Y.S.2d 786, 792 (2014).

[231] *See* Miller, *supra* note 13 (discussing how Airbnb and Uber, as "platforms," expect users to understand risks).

[232] Ranchordás, *supra* note 14, at 465, 471.

[233] Ryan Lawler, *Feastly Launches An 'Airbnb for Dinner' Marketplace*, TECHCRUNCH (Apr. 21, 2014), http://techcrunch.com/2014/04/21/feastly/

who enjoy cooking can advertise home-cooked meals through Feastly and interested eaters can choose to dine at their homes.[234] Despite Feastly's success,[235] issues could arise such as whether or not users can serve alcohol, or whether or not certain sanitary conditions are met. Attempting to fit Feastly into existing restaurant regulations or to amend existing restaurant law to accommodate Feastly would prove unworkable as Feastly merely connects people through a technological platform, and is not a restaurant.[236] Amending existing industry regulations for each new sharing economy business like Feastly is ultimately both inefficient and ineffective. The New York City legislature should use Colorado's SB 125, Washington D.C.'s Act, and the San Francisco short-term rental website, as a framework to develop a scheme that would be comprehensive enough to regulate myriad sharing economy practices to keep up with its rapidly growing nature.

These initiatives provide a logical starting point from which New York City could begin to develop its own regulatory regime. First, the Colorado law set a precedent for legislatively sanctioning a sharing economy practice.[237] This ultimately gives the people a voice and grants the government the power to oversee the operation of these businesses. The Washington D.C. Act's creating a new class of "services"[238] eliminates the need to find a place for sharing economy businesses within existing laws. The D.C. Act also places the burden on businesses like Uber to apprise users of potential legal issues.[239] San Francisco's short-term rental website

("Launched in private beta in January [2014], [Feastly] has seen three-quarters of all cooks host multiple meals. The cost of meals has ranged from free to $150, but the average price tends to be about $35, according to co-founder Noah Karesh. Some chefs have already made thousands of dollars using the platform, even in private beta mode.").

[234] *Id.*

[235] *See id.*

[236] *Id*; Miller, *supra* note 13.

[237] Niraj Chokshi, *Colorado Passes Nation's First Law Regulating UberX, Lyft*, WASH. POST: GOVBEAT (Jun. 6, 2014), https://www.washingtonpost.com/blogs/govbeat/wp/2014/06/06/colorado-passes-nations-first-law-regulating-uberx-lyft/.

[238] Vehicle-for-Hire Innovation Amendment Act of 2014, D.C. CODE § 50-303 (30A) (2014).

[239] *See id.*

puts the city on notice as to who is utilizing Airbnb's services.[240] This prevents city officials from searching for and attacking the users who violate the law.[241] Although none of these laws are perfect, together they provide a useful starting point for New York City to develop its own regulatory scheme.

New York City's law should first rely on the principles upon which the sharing economy is based. Specifically, the law should safeguard the direct exchange of goods and services between individuals who utilize a technological platform to facilitate this exchange.[242] The law should define the term "sharing economy" broadly to encompass many sharing practices such as ridesharing and apartment sharing. Companies that fall under the sharing economy umbrella, as established by the city legislature, would then be subject to rules pertaining to their particular class. The law should first apply tailored rules to established sharing economy business models, like ridesharing and apartment sharing. The law could then develop for new and emerging businesses like Feastly, which present a need for unique regulation. A tailored approach reflects the reality that different sharing economy businesses, although part of the sharing economy, present different regulatory challenges.

Until now, cities and states have dealt with this reality poorly. New York City's TLC cannot directly monitor Uber.[243] Uber agreed to have drivers license their vehicles and obtain TLC insurance but they still do not require background checks and can still discriminate and price gouge.[244] By creating a regulatory regime specifically for ridesharing companies, the city would mandate Uber to have its drivers register as a "ridesharing company." The city could still mandate that Uber register with the TLC.[245] The new law would only add further rules and

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[240] *See Office of Short-Term Rental Registry & FAQs*, S.F. PLANNING DEP'T (Nov. 9, 2015), http://www.sf-planning.org/index.aspx?page=4004.

[241] *Id.*

[242] BOTSMAN & ROGERS, *supra* note 8, at 74–75 (discussing Etsy, which "connects buyers with independent creators of all things handmade").

[243] *See* BLOOMBERG & YASSKY, *supra* note 41, at 2; *The TLC Process*, *supra* note 129.

[244] Ranchordás, *supra* note 14, at 460, 463; *see* Chang, *supra* note 24.

[245] *The TLC Process*, *supra* note 129.

specifications to Uber's operating in New York City. Similar to the Washington D.C. Act, rules for discrimination would be provided,[246] and, in order to operate, drivers would have to agree to the terms.[247] This would ensure public safety and consumer protection. Users and third parties could remain confident that the new regime would protect them from unfair and unsafe business practices.

The same is true with respect to Airbnb. The 2010 amendment to the Multiple Dwelling Law sought to permit rentals of certain types of dwellings, to provide individuals with extra income, while preventing entire buildings from being turned into illegal hotels.[248] The law attempts to protect guests since residential apartments generally do not contain the safety precautions found in a hotel.[249] However, hotels are stringently regulated because they do provide services.[250] Hosts who rent out their space through Airbnb do not provide the services that hotels offer. Therefore, an apartment sharing regulatory regime would require prospective Airbnb hosts to register their apartment prior to having a guest to ensure that they have met sufficient safety standards. The city will then be on notice as to which apartments are utilizing Airbnb's services and for what period. Most importantly, Airbnb users will not be unknowingly subject to a violation of the Multiple Dwelling Law, as the law will not apply to them.

A sharing economy-specific law also better protects users, third parties, and incumbent industries. To protect users, the New York City law should mandate that each sharing economy business post the law on its website, in its entirety, and in clear and understandable terms so as to notify individuals of all their legal responsibilities. A set standard would also protect third parties and incumbents by preventing unnecessary lawsuits and fines. If users comply with the New York City law, there would be fewer reasons for lawsuits. Third parties, incumbents, and frustrated city and government officials would no longer be burdened with solving the

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[246] Vehicle-for-Hire Innovation Amendment Act of 2014, D.C. CODE § 50-329 (2014).

[247] *Id.*

[248] N.Y. MULT. DWELL. LAW § 4(8) (McKinney 2015).

[249] *Id.*; *see also* N.Y. GEN. BUS. LAW §§ 200–209 (McKinney 2015).

[250] N.Y. GEN. BUS. LAW §§ 200–209.

problem of how to define these businesses and which laws apply to them. Instead, qualified businesses would fall under the sharing economy umbrella covered by the new law.

CONCLUSION

The time has come for New York City to stop denouncing sharing while thousands of individuals do so every day. In order to promote innovation and the growth of new and novel businesses, New York City should stop halting the spread of the sharing economy. The legislature should recognize the viability of this practice instead of attempting to circumvent it. Since neither Uber nor Airbnb can neatly fit into any existing industry regulations, the city should create sharing economy-specific laws. The laws must be comprehensive enough to encompass the different types of sharing economy businesses and to cover similar legal issues that the existing industry standards protect against. If New York fails to act, the sharing economy will still prosper, and the city will appropriately be "The Big Apple" that does not give anyone a bite.