Airbnb regulation in Washington DC, who will it serve?

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ABSTRACT

We face radically new and evolving markets in the digital age—new forms of production and consumption. The rise of this fast emerging shared economy needs to be met with new forms of regulation. To explore and illustrate the need for evolved regulative forms, I will focus this study on Airbnb’s operations in Washington, DC. In the process, I address the following questions: What, if anything, should the DC government do about new, largely unregulated lodging market as exemplified by Airbnb? What forms of regulation should meet Airbnb’s entry into DC’s burgeoning shared economy?

KEYWORDS

Sharing economy, host, rooming house, housing regulation, consumer risk, and community compact.

RESEARCH QUESTIONS

1) What, if anything, should the DC government do about new, largely unregulated lodging market as exemplified by Airbnb?

2) So far, how has the DC government responded to Airbnb’s entry into the local marketplace?

3) What forms of regulation should meet Airbnb’s entry into DC’s burgeoning shared economy?
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INTRODUCTION

In the age of a digital sharing economy, regulations struggle to keep pace with fast-evolving markets. Airbnb exemplifies this trend. The company is changing so rapidly that Airbnb cannot keep up with and follow its own terms and conditions. This highlights the need for revamped regulation in and beyond the company—regulation that must be spearheaded by the DC government. Initially, when Airbnb was introduced, it was thought to be a threat to the hotel industry. In many cities, including Washington, DC, the hotel Lobby have been at the forefront in drafting legislation and using political power to prevent Airbnb from successfully conducting business. Despite these efforts, Airbnb has been able to thrive due to the fact that residents in these areas have found this business model to be beneficial to the community and economy.

Supporters of the affordable housing community believe that Airbnb is reducing the amount of available rental units within cities. However, this may be true in some instances, but this is not a direct correlation because not every Airbnb host is a potential landlord. These claims might not be accurate or true, but we do need regulations on the grounds of protecting the general public.

The recent explosion of short term rental options through web platforms like Airbnb, raise questions about the rules today, whether those rules are fair, whether those rules are enforceable, and whether those are the rules that the community really wants. The challenge is that the members of the community likely want different outcomes, and so creating rules that are fair and balanced takes time, conversation and dedication to the public interest.

Through my research, I found that major potential risks exist within Airbnb’s sharing economy and that, with the exceptions of New York and San Francisco, regulations are weak, if not completely absent. Thus I argue that lack of regulation endangers both consumers and customers, and suggest that, because of this, we need some form of regulation in Washington, DC. These new regulations need not
be brand new—they could evolve existing ones—and they need not be draconian, but they do need to perform the basic function of protecting Airbnb’s customers.

The concept of shared economy is ever-changing and there is a need for regulation, but not over-regulation, especially with respect to the travel industry. There are some current regulations in place but, in order to provide more adequate safety measures for consumers, DC policymakers need to make adjustments. These amendments can be based off of policies in other markets (such as New York and San Francisco) that put the onus not just on the consumer but also on primary providers of hotel-like services, (e.g. Airbnb.)

**LITERATURE REVIEW**

To date there is no current law on the books in Washington, DC for Airbnb and similar companies, likely because they are very new and rapidly evolving. Many customers and journalists have written blogs, newspaper articles and opinion pieces about Airbnb, but there is sparse scholarship and no consistent legislation on this topic. However, rooming house regulations have been on the books for many decades. This longstanding, time-tested legislation will eventually need to be modified in order to keep up with the ever-changing shared economy. (A rooming house is a building or part of a building containing sleeping accommodations occupied for a consideration by, or offered for occupancy for a consideration to, three (3) or more persons who are not members of the household of the owner or lessee of the building or part the building, and which accommodations are not under the exclusive control of the occupants of the accommodations. A rooming house may be a housing business or a transient housing business depending on whether or not the accommodations are occupied or furnished for occupancy by transient guests.)

Many, including Airbnb’s own leaders, have acknowledged Airbnb’s lack of regulation. The company is inherently and intentionally difficult to regulate. Johnathan Mildenhall, Airbnb’s Chief Marketing Officer
(CMO), declared that his company “will never ever try to standardize the Airbnb experience.”¹ He explains that “[Airbnb has] guidelines for how someone should behave as a host and as a guest. But diversity of experience is what makes Airbnb so compelling to an increasingly large group of travelers.”²

In short, it seems that Airbnb’s very identity clashes with regulation. At the same, the company’s complicated model underscores the need for regulation. Airbnb’s CEO (unintentionally) underscores this fact:

“...When we designed Airbnb, I thought there were two parties in the transaction – there was a guest and there was a host – and I match these two people together and that was the end of it. And over time I learned there were many other parties of a transaction – there was a guest, there was a host, there was a neighbor, there was a landlord, there was maybe the building owner ... there was the city government, there was the hotel industry ... then you had local businesses. You started having not two parties to a transaction. You had 10 or 12 parties to a transaction.³ ...”

The nature of Airbnb’s operations involves many more parties than its leaders originally anticipated and have direct influence on the public’s wellbeing, creating the need for heightened regulations. Numerous customer complaints make urgent calls for consumer protection.

However, some experts reject arguments for regulation. For example, professors from the Mercatus Center at George Mason University, Matthew Dylan Mitchell and Adam D. Thierer, contend that sharing economies should not be constrained by traditional forms of regulation. They argue that “the Internet, and the rapid growth of the sharing economy, alleviates the need for much of this top-down regulation, with these recent innovations likely doing a much better job of consumer needs.”⁴ This claim has been reiterated by those who oppose restrictive legislation—whether on grounds of practicality or high enforcement costs.

² IBID
³ Brian Chesky, Aspen Ideas Festival Urban Land Institute, 2015
⁴ Mitchell, Matthew, and Adam Thierer, “The sharing economy and consumer protection regulation: The case for policy change.” 2014
RESEARCH METHODOLOGY

To answer the question at hand, I performed a study that involved the following methods:

1) Surveying existing literature about Airbnb’s model, its benefits, and its drawbacks
2) Examining existing regulations put in place by the governments of New York City and San Francisco
3) Examining DC’s existing lodging regulations
4) Analyzing related court cases that inform the current circumstances and possible solutions regarding Airbnb
5) Interviewing government workers who are currently weighing these issues
6) Synthesizing this information to develop possible effective policy options.

RESEARCH FINDINGS

By definition a sharing economy is also known as collaborative consumption, is a trending business concept that highlights the ability (and perhaps the preference) for individuals to rent or borrow goods rather than buy and own them. Although the concept of a sharing economy has been around for quite some time, the way in which our society uses it has been evolving with the increase in technology. This shift is changing how Americans live—specifically the way they shop, commute, and vacation.

This type of economy has puzzled policymakers—especially as they try to apply current consumer protection regulations to the new market. The sharing economy’s constantly changing and expanding market has left cities with more questions than answers in terms of how to approach regulation. Despite these uncertainties, current research has one clear implication: these emerging companies need to face some form of top-down regulation for the sake of consumer protection, if nothing else.

5 Margaret Rouse, TechTarget, September, 2013, http://searchcio.techtarget.com/definition/sharing-economy
Airbnb is a prime example of today’s sharing economy—both in terms of benefits and drawbacks. This business model provides options to consumers and can allow vacation costs to stay reasonably low while spurring the tourism industry. It also provides additional income sources to its hosts. In special instances, like the Pope visiting the United States, Airbnb offers a way to house an influx of people coming into the United States from other countries. “In preparation for Pope Francis' visit to Washington, DC on September 22, nearly 3,400 guests have booked rooms through Airbnb. These guests are coming from all over the world: New York, Los Angeles, Sydney, and London. Because of the papal visit, there has been a 30 percent increase in listings on the platform since April 2015 with the average booked listing costing around $100 per night.” In short, Airbnb can easily adapt to a major change in demand.

In other parts of the world, like Germany, people are able to use Airbnb to assist in helping refugees fleeing war in their native countries. An article by Jessica Elgot, titled “Airbnb for refugees’ group overwhelmed by offers of help”, Refugees Welcome, which match makes citizens willing to share their homes with displaced people, also receiving offers to set up schemes across European Union. The Berlin-based company ‘Refugees Welcome’, has been described as an “Airbnb for refugees,” helping people flee from Afghanistan, Burkina Faso, Mali, Nigeria, Pakistan, Somalia and Syria. More than 780 Germans have signed up to the Refugees Welcome website and 26 people have been placed in private homes so far.

In order for Airbnb to improve its perception in communities, they create partnerships with local Chambers groups. From an article written by Marielle Mondon titled “Brooklyn Chamber of Commerce Teams up with Airbnb to Boost Tourism.” Airbnb announced a partnership with the Brooklyn Chamber of Commerce that will connect Airbnb hosts and small business owners in their neighborhoods to find ways

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6 Michelle Goldchain, “Pope Francis' visit to D.C. results in uptick in Airbnb rooms”, 2015  
7 Jessica Elgot, “Airbnb for refugees' group overwhelmed by offers of help”, September 1, 2015
of supporting one another’s endeavors. This comes down to Airbnb hosts promoting local businesses to guests, and business owners accommodating Airbnb-renting tourists. In addition to sponsoring a Chamber-run website for what’s being dubbed Explore Brooklyn, Airbnb will give the Chamber money to pay a “neighborhood outreach organizer” to serve as a liaison between hosts and local business owners.” In sum, Airbnb has expanded so quickly that it has not been able to partner with communities before invading them. It seems that the company has recognized the need to connect with the communities in which it operates, but this realization has generally been late-arriving.

A similar community outreach is also emerging in Washington, DC. Airbnb went on a charm offensive in November 2015, releasing a “community compact” promising to work with the cities where it operates on regulations that work for all parties. The compact Airbnb released primarily promises three things: that it will pay lodging taxes — something it is already doing in DC; that it will provide city authorities data on its activity in its 50 largest markets, which it has done sporadically but not regularly in the District; and that it will “promote responsible home sharing.” The last one mainly targets cities where some have argued that Airbnb is contributing to a lack of affordable housing.” Despite these recent promises for action, the partnerships outlined above have not yet come into being—at least not effectively.

While Airbnb tries to be a positive player in the shared economy, there are serious implications for many involved by participating in its operations. It is very easy for people to think they can simply make some money by renting out their home. However, many do not understand the laws at hand and whether or not they would be responsible, safe hosts for travelers. As Nitasha Tiku’s article, “Airbnb Hides Warning That Users Are Breaking the Law in the Fine Print [Update],” indicates, there are laws in two major

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8 Marielle Mondon, “Brooklyn Chamber of Commerce Teams Up With Airbnb to Boost Tourism”, September 17, 2015
9 Rebecca Cooper, “Airbnb makes commitment to work with cities as DC regulations loom”, Washington Business Journal, November 12, 2015
American cities, but they are largely ignored and hardly enforced. Tiku states that “In New York, state law prohibits renters from subletting their home for less than 30 days without the host present, San Francisco, rental units of less than 30 days are banned unless the host has a "conditional use permit," whether the host owns or rents.”10 Because such laws are overlooked and unenforced, Airbnb consumers face major potential risks. There are several anecdotes below that show how benefits (a cheap, flexible stay) can quickly turn to drawbacks without any recourse from Airbnb.

Sub-letters across the country regularly host Airbnb guests for extra cash, even though this practice is explicitly illegal. This is an especially big problem because, in these cases, the initial renters are still liable for something out of their control. Joe Coscarelli article, called “Airbnb Poster-Child Was Evicted for Airbnb-ing a Converted Barn She Didn’t Own”, illustrates this practice and its bad consequences. “In late 2013, when Christopher Griffith moved overseas for work, he leased the Dutch barn he owns in Stuyvesant, New York. Griffith figured out his own barn was being advertised on Airbnb when he received a message from LinkedIn asking if he knew Martinez, listed there as a former real-estate agent and the founder of something called Shell’s Brooklyn Loft. Neighbors had mentioned seeing strangers around his place upstate, and suddenly something clicked. “I looked up barns in the area and my place came up at $475 a night,” he says.11

Protecting consumer welfare is of primary concern and Airbnb parties are all at risk given the lack of safety regulations surrounding the current system. Early in the evening of July 4, Micaela Giles’s mobile phone started sounding alerts, and a series of messages straight out of a horror movie began scrolling down her screen. Her 19-year-old son told her that his Airbnb host in Madrid had locked him in the fourth-floor apartment where he was supposed to be staying and removed the key. The host was still there, he said, rattling knives around in the kitchen drawer and pressing him to submit to a sexual act.

11 Joe Coscarelli, “Airbnb Poster-Child Was Evicted for Airbnb-ing a Converted Barn She Didn’t Own”, October 10, 2014
When his mother called Airbnb, its employees would not give her the address and would not call the police. Instead, they gave her a number for the Madrid police and told her to ask the police to call the company for the address. But the number led to a recording in Spanish that kept disconnecting her.

According to her son, Jacob Lopez, he was sexually assaulted that night. According to Airbnb, “We are clarifying our policies so that our team will always contact law enforcement if we are made aware of an emergency situation in progress. Safety is our No. 1 priority, and we want to get our hosts and guests as much help as possible.”

Is Airbnb really putting forth a great enough effort to show that safety is actually their number one priority? Like every company, Airbnb has a list of terms and conditions that consumers are expected to understand and follow. Though it is a decentralized sharing economy, it is not devoid of regulation. Yet, in its terms and conditions, Airbnb does not take responsibility for anything. Rather, the onus is on the host to take full responsibility. In sum, Airbnb decentralizes authority and responsibility and thus, put both host and consumer at potential risk. This model requires external, enforced regulations. As Katherine Mereand-Sinha of Department of Small and Local Business Development indicated during an interview, it is incumbent on government to respond to the disparate interests that are being expressed through the use of the sharing economy—maintain the core mission of ensuring health, safety, and the environment—and channel businesses and community members to use the tools of local government to create policies that work for them.

Airbnb terms and conditions for consumers both hosts and tenants

In the beginning, when Airbnb wrote its terms and conditions it stated in the Accommodations Listings that the company is not responsible if anything goes wrong or happens to the consumer. This creates a strong need for regulation in order for them to share the burden. Cities are starting to develop

regulations for Airbnb, and is outpacing the company’s ability to update their own terms and conditions reflecting these laws. This section presents excerpts from Airbnb’s official terms and conditions, analyzing and critiquing them in turn.

**Accommodation Listings**

If Airbnb wants to be a credible and responsible business, they need to adhere to laws and regulations. The company cannot hold customers accountable to their own terms and conditions without being willing to be liable for any other third party or local government laws. The following is an example of this contradiction within Airbnb’s Terms and Conditions, as highlighted in the Accommodations Listings section.

“Please note that Airbnb assumes no responsibility for a Host’s compliance with any agreements with or duties to third parties, applicable laws, rules and regulations. Airbnb reserves the right, at any time and without prior notice, to remove or disable access to any Listing for any reason, including Listings that Airbnb, in its sole discretion, considers to be objectionable for any reason, in violation of these Terms or Airbnb’s then-current Policies and Community Guidelines, or otherwise harmful to the Site, Application or Services.

If you are a Host, you understand and agree that Airbnb does not act as an insurer or as your contracting agent. If a Guest requests a booking of your Accommodation and stays at your Accommodation, any agreement you enter into with such Guest is between you and the Guest and Airbnb is not a party to it.”  

This extreme “hands-off” policy is arguably reckless, and the root of the risks that this research outlines.

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Another issue with the section of the Accommodation Listings is that it requires members to have a profile picture which can lead to discrimination including, but not limited to, race, gender and age. A field experiment conducted by students from Harvard Business School, released in December 2015, findings show Airbnb host do racially discriminate. The report finds that, “requests from guests with distinctively African-American names are roughly 16% less likely to be accepted than identical guests with distinctively White names. The difference persists whether the host is African American or White, male or female.”

Airbnb’s website has the ability for Hosts to allow guests to book instantly which would eliminate the profile review step in the booking process but has no plan as of now to implement this as a permanent fix. When you book a room at a hotel these same requirements do not apply. As long as a person has a valid form of payment, he or she can reserve a room.

“When you create a Listing, you may also choose to include certain requirements which must be met by the Members who are eligible to request a booking of your Accommodation, such as requiring Members to have a profile picture or verified phone number, in order to book your Accommodation. Any Member wishing to book Accommodations included in Listings with such requirements must meet these requirements. More information on how to set such requirements is available via the "Hosting" section of the Site, Application and Services.”

This policy invites discrimination and thus threatens to violate Title II of the Civil Rights Act, as reprinted below (Public Accommodations) 42 U.S.C. §2000a (a)All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination on the ground of race, color, religion, or national origin. 42 U.S.C. §2000a(b) (b) Each of the following establishments is a place of

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public accommodation within this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action: (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.  

The federal Fair Housing Act of 1968 and the federal Fair Housing Act Amendments Act of 1988 prohibit discrimination on the basis of the following criteria (called “protected categories”): race or color; religion; national origin; familial status or age—includes families with children under the age of 18 and pregnant women; disability or handicap, or sex. The federal Fair Housing Acts apply to all aspects of the landlord-tenant relationship. A landlord may not:

a) advertise or make any statement that indicates a limitation or preference based on race, religion, or any other protected category
b) falsely deny that a rental unit is available
c) set more restrictive standards for selecting tenants or refuse to rent to members of certain groups
d) before or during the tenancy, set different terms, conditions, or privileges for rental of a dwelling unit, such as requiring larger deposits of some tenants or adopting an inconsistent policy of responding to late rent payments
e) terminate a tenancy for a discriminatory reason.

These federal laws were put into place to prevent discrimination and if Hosts want to operate as a small business they must observe these laws.

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**No Endorsement/Damage to Accommodations**

Yet another problem appears below, in Airbnb’s “No Endorsement” clause. This clause contradicts the Damage of Accommodation since “No endorsement” states that Airbnb is not responsible for anything, whereas the Damage to Accommodations clause allows Airbnb to make claims for damages that are made to the Host residence.

**No Endorsement**

“Except as provided in the Airbnb Host Guarantee Terms and Conditions ("Airbnb Host Guarantee"), which is an agreement between Airbnb and Hosts, we are not responsible for any damage or harm resulting from your interactions with other Members.”

**Damage to Accommodations**

“If you are a Guest, you understand and agree that Airbnb may make a claim under your homeowner's, renter's or other insurance policy related to any damage or loss that you may have caused or been responsible for or to an Accommodation or any personal or other property located at an Accommodation (including without limitation amounts paid by Airbnb under the Airbnb Host Guarantee).”

This is a glaring example of why Airbnb needs to be regulated in order to protect both Guest and Host. Otherwise, it is as if Hosts are going into business on their own. They technically have an agreement with Airbnb, but the company does not seem to support or protect them in any way. The same pattern occurs with guests. Guests think that they are booking with Airbnb and assume that they have the same support and policies that define all of their other purchases. Unless they read the fine print (which most

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18 Airbnb, Inc., Terms of Service, 2015, [https://www.airbnb.com/terms](https://www.airbnb.com/terms)

19 Airbnb, Inc., Terms of Service, 2015, [https://www.airbnb.com/terms](https://www.airbnb.com/terms)
people never do), they reserve through Airbnb without realizing that they are actually reserving with an unprofessional, unlicensed single-person business (the host).

Taxes

Airbnb’s tax section should provide clearer information that they collect the local hotel tax equivalent for their Hosts and remit them to the city for collection. Figure 1 represents the financial impact of hotel taxes in New York City, San Francisco and Washington, DC. Through regulation, this problem is being addressed now that tourism taxes are being remitted in rental cities.

“IRS regulations stipulate that we must collect an IRS Form W-9 from our US Hosts, and an appropriate IRS Form W-8 (e.g. Form W-8BEN) from non-US hosts with at least one listing in the US. You as a Host are solely responsible for keeping the information in your tax forms current, complete and accurate.”

Airbnb hosts are required to submit these fees of their own accord, but many do not. Many hosts are unaware that renting out a spare room could make them subject to taxes typically paid by corporate hotel companies. In an effort to become a more legitimate business, Airbnb wants to make sure no one’s taxes fall through the cracks. This offers one example of an effective regulatory reform.

User Conduct

The User Conduct section is a reactionary amendment to the terms and conditions as a result of the New York article where a woman sublet someone else’s property through Airbnb, which defies the terms of the original lease.

“Offer, as a Host, any Accommodation that you do not yourself own or have permission to rent as a residential or other property (without limiting the foregoing, you will not list Accommodations as a Host if you are serving in the capacity of a rental agent or listing agent for a third party);
Offer, as a Host, any Accommodation that may not be rented or subleased pursuant to the terms and conditions of an agreement with a third party, including, but not limited to, a property rental agreement.”

This subletting problem is severe, common, and extremely difficult to constrain via enforcement. Many people in apartment and condominium buildings that choose to rent out their units even though they are not legally entitled to do so. Since this business is conducted through a third party, and Hosts on Airbnb can have a short term business relationship, this behavior is difficult to track and therefore administer.

**Reporting Misconduct**

Another reactionary amendment is Reporting Misconduct. As a result of the Madrid case, Airbnb has set up a call center to address emergency situations. This is a step in the right direction but, at the same time, it signals dire need for regulations.

“If you stay with or host anyone who you feel is acting or has acted inappropriately, including but not limited to anyone who (i) engages in offensive, violent or sexually inappropriate behavior, (ii) you suspect of stealing from you, or (iii) engages in any other disturbing conduct, you should immediately report such person to the appropriate authorities and then to Airbnb by contacting us with your police

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21 Airbnb, Inc., Terms of Service, 2015, [https://www.airbnb.com/terms](https://www.airbnb.com/terms)
station and report number; provided that your report will not obligate us to take any action beyond that required by law (if any) or cause us to incur any liability to you.”

To complement the conditions that Airbnb has put in place, states or large cities like Washington, DC need to have their own laws and enforce them to better the welfare of residents. New York City and San Francisco are model cities that provide laws to specifically address Airbnb. Both cities design laws to restrict short term rentals with a focus designed to protect affordable housing or alternative revenue streams for the host. I think these laws have good intentions, but they are too strict. Most importantly, they have the wrong focus. The main concerns and aims of such regulations should center on the consumer or host and public safety. The New York laws says it is for guest protection, but through code regulation like fire and safety and not peer to peer regulation. New York State Attorney General Eric T. Schneiderman’s office produced a document titled “Airbnb in the city”. As the following excerpt indicates, New York’s legislation is both rigid and arguably misguided in terms of focus.

PROPERTY USE AND SAFETY LAWS (New York) In 2010, the MDL was amended to specify that permanent residency of a dwelling means at least 30 consecutive days’ occupancy by a “natural person or family” in a unit. Thus, one cannot rent out an apartment in a “Class A” multiple dwelling for less than 30 days, unless a “permanent resident” is present during the rental period. A “multiple dwelling” is a dwelling occupied by three or more families living independently. The purpose of this prohibition is to protect guests, ensure the proper fire and safety codes, and protect permanent residents who “must endure the inconvenience of hotel occupancy in their buildings.” It was also designed to preserve the supply of affordable permanent housing. See New York State Assembly Memorandum in Support of Legislation (S. 6873-B, 233rd Leg. (N.Y. 2010 (Sponsor’s Memo) Bill No. A10008).

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22 Airbnb, Inc., Terms of Service, 2015, [https://www.airbnb.com/terms](https://www.airbnb.com/terms)
1. Even if the building is not a “Class A” multiple dwelling, a short-term rental could still violate the law. For example, New York City Administrative Code, section 28-118.3.2, prohibits changes to the use, occupancy, or egress of a building. A short-term stay in a building that is not a “Class A” multiple dwelling would violate the law unless the building’s certificate of occupancy expressly authorized that type of use.23

San Francisco took a slightly different approach to regulation, capping Airbnb usage at 90 days per year for each host. These regulations bend around monetary concerns instead of public safety.

2. San Francisco Board of Supervisors voted. The law allows only permanent residents to offer short-term rentals, establishes a new city registry for hosts, mandates the collection of hotel tax, limits entire-home rentals to 90 days per year, requires each listing to carry $500,000 in liability insurance, and establishes guidelines for enforcement by the Planning Department.
   a. housing advocates, allowing people to rent rooms to travelers year-round removes a source of affordable shared housing.24

Following the footsteps of New York and San Francisco, Washington, DC officials have proposed their own bill which mirrors those that have been adopted by the other two cities. The proposed bill for Airbnb regulation in Washington, DC from DC Councilman Vincent Orange, D-at large, put forth two bills in September 2015 that represented some of the most restrictive home-sharing regulations in the U.S. He has since withdrawn one of them, the “Short-Term Online Rental Marketplace Rental Procedures and Safety Act,” which was drafted by a group of the city’s largest hotels and is the more lenient of the two. The other, a bill backed by a large hotel workers union operating in the District, is still on the docket to be vetted by the Committee on Business, Consumer and Regulatory Affairs, but no time frame for a

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committee hearing has been released. The following excerpt outlines the bill that remains on the table for the DC government: “Airbnb makes commitment to work with cities as DC regulations loom”, November 2015, Rebecca Cooper Staff Reporter Washington Business Journal

The bill that is still in play would require hosts to reside in the unit they are renting and prevent Airbnb (or other home-sharing platform) hosts from renting their apartment when they are not present. It would also bar hosts from having more than one rental unit filled at a time.

When Airbnb hosts disregard the “laws,” who is to blame? The following case study wrestles with this question.

A DC mansion was rented out, via Airbnb on numerous occasions, to host large parties that were extremely disruptive to the community. The Office of the Attorney General (OAG) filed a lawsuit against the owner for unlawfully operating an unlicensed residential housing business, public hall, boarding house, bed and breakfast, and general business. “This is an example of a property owner operating a business with complete disregard for the law and with disrespect for his neighbors,” Attorney General Karl A. Racine said. “Business-licensing laws and regulations are in place to protect the health, safety and welfare of our residents, and our suit seeks an end to all business at the property until the owner complies with all relevant laws.”

As this situation indicates, the question at hand has muddled answers given Airbnb’s current regulatory system.

**URBAN PLANNING RECOMMENDATIONS**

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25 Rebecca Cooper, “Airbnb makes commitment to work with cities as DC regulations loom”, Washington Business Journal, November 12, 2015

26 Rebecca Cooper, “Airbnb makes commitment to work with cities as DC regulations loom”, Washington Business Journal, November 12, 2015

My project concludes with some proposals for further research in this area, and a call for a more informed regulatory approach that accounts for the innovations of the sharing economy. What follows are possible solutions to this regulatory problem in Washington, DC. First, I do not believe that the city needs to adopt new laws specific to Airbnb because there are already existing regulations within the DC Municipal Regulations (DCMR). The regulations that are best equipped to handle Airbnb is the Rooming Houses 14-10 DCMR, 1000 General Provisions. This covers a wide range of issues, including the role of Resident Managers, Registration and Room Assignments, Room Keys, Vermin, and Sleeping accommodations. All of these regulations marry perfectly with Airbnb’s business model requirements. Of this list, the two most important provisions are safety-centered (and thus need be enforced in DC):

**Resident Manager**

1001.1 If the licensee does not reside in person on the premises and does not superintend in person the operation or conduct of the rooming house, the licensee shall designate a manager or other person who is responsible for the premises.

This provision allows Washington DC homeowners to abide by DC regulations as well as not requiring them to be present when their dwelling is occupied by a guest. 28

**Room Keys**

1003.2 A key for each rooming unit shall be furnished to each respective roomer. 29

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29 IBID
This above provision speaks directly to consumer safety if there are more than two guests in one Airbnb location and if the Host is also present. This allows them to lock their rooms to avoid harm.

As Katherine Mereand-Sinha suggested in an interview, close regulation of the short term rental market could come at a high price. This is because much of this market operates in a grey regulatory space. And, introducing laws that render these practices illegal could simply push operating underground (thus making them even riskier for hosts and guests alike). As Mereand-Sinha notes, “Enforcement sweeps may highlight non-compliance, but the market is challenging to police because rental units come and go so quickly.”

Alternatively and more simply, the DC government could partner with short term rental platforms to develop rules that they will implement in exchange for data monitoring. This data could be made available to the public or restricted to regulators for the purpose of monitoring (such details can be negotiated).

To this list, Mereand-Sinha adds a cheap option: the DC government could “ensure that platforms chose to enforce baseline rules, and that they provide an opportunity for the public to feel confident that the rules are being enforced. For areas of the market that cannot or will not bear the burden of enforcing, then regulators should create an opt-in monitoring system the public can provide data to ensure basic compliance with housing policy rules.”

Regardless of strategy details, future DC regulations should build around the following idea: Airbnb guests ought to have the same rights as local DC residents under the Consumer Protection Act. If a violation occurs within the city limits, then the proper authorities should be able to argue the case on that persons behalf.
As stated earlier, Airbnb Hosts need to conduct business by abiding to the Fair Housing Laws with or without new legislation. Customers should not be required to provide a self-photo in order to request lodging or be approved for a rental, as this can lead to discriminatory acts.

Lastly, as a result of Airbnb’s popularity, it is important for local governments to engage the community and its stakeholders to get input on the types of regulation they deem necessary. Stakeholders should include local business owners and residents. City officials from DCRA, including the Office of Planning, should obtain pertinent feedback by conducting online surveys, implementing street teams and community meetings in neighborhoods where Airbnb is most prevalent. Determinations about how and whether to allow the recent increase of short term rentals is fundamentally a local, democratic decision to be determined through the legislative process. Further, enforcement rules is not free—thus communities must consider what level of enforcement, and therefore what level of economic burden, they are willing to maintain.

CONCLUSIONS

In sum, arguments for regulation (interest in customer/host safety) trump arguments against regulation. Given the results of this study, the DC government should regulate Airbnb to protect consumers. The city needs to evolve its regulations as its markets evolve instead of lagging far behind. In doing so, DC’s government will also protect the city’s robust tourist industry by not over-regulating Airbnb to the point where it would burden the local hosts and encourage them to use less regulated lodging alternatives. Lack of regulation puts both consumers and customers at risk. Because of this, we need some form of regulation in Washington, DC. DC could host a national symposium of ideas to encourage a framework to successfully foster an environment for Airbnb to ‘share the economy’. The event could also encourage partnerships, citizen inclusion, and mitigate safety issues.

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FIGURES

Figure 1: Financial Impact of Hotel Taxes
Financial Impact of Hotel Taxes

Revenue in Millions of Dollars

- New York City
- San Francisco
- Washington, D.C.