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COMMENT

# **The New Blame Game: How Airbnb Has Been Mis-regulated as the Scapegoat for Century-Old Problems**

*Kenyon Briggs\**

ABSTRACT

Airbnb allows anyone with a spare couch to make extra money by renting it out to others. Since 2008, more than 3 million listings world-wide have been booked through Airbnb. Many view Airbnb as a cheaper alternative to staying in a hotel, and thus, the incumbent hotel industry views Airbnb as a threat. Because the American hotel industry is valued at more than \$1.1 trillion, hotel lobbyists convinced law makers to create regulations that makes it illegal to use Airbnb in some cities. Cities who have passed “anti-Airbnb” laws — like New York City and San Francisco — explain the regulation is to help fix their affordable housing shortages. However, New York City has struggled to offer affordable housing for the last 100 years, and San Francisco has struggled for the last 30. Thus, Airbnb’s status as a scapegoat for problems it did not create has led policymakers to mis-regulate it.

Mis-regulation occurs when regulation does not fix the problem it was enacted to solve. This article first looks at what sort of issues regulation is capable of fixing. After that, a regulatory framework is provided that urges policymakers to only enact regulation that provides the greatest net benefit for all involved. In the case of Airbnb, two-way reputational mechanisms — the ability to rate the other party, usually through a public “five-star” rating system — has solved most of the problems regulation is capable of curing. Then, the article analyzes the current anti-Airbnb laws in New York City and San Francisco, and argues they are not providing a greater net benefit for anyone but the incumbent hotel industry. In conclusion, policymakers should not pass any new anti-Airbnb regulation until it can create a greater net benefit than what exists now.

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## I. INTRODUCTION

The year is 2008 and you live in a big city. One day, a stranger approaches you and offers money to spend the night in your spare bedroom. You decline. Why? Because you know nothing about this person, and the risk of inviting them into your home far outweighs the financial gain. Most people would call this a reasonable decision. If the roles were reversed, and you were in need of a place to stay, would you offer money to a stranger to spend the night in their home? Unlikely; you would rather stay in a hotel. Why? Because as a reasonable person, you would rather pay more for the security that comes from staying in a hotel room than gamble the risks associated with a cheap room in a stranger's home.

Now the year is 2017, and thousands of people choose to stay in strangers' homes every day. What changed? Did travelers decide to throw caution to the wind? No, Airbnb happened. The home sharing company now operates in over 65,000 cities across 191 countries throughout the world.<sup>1</sup> The San Francisco start-up, turned industry disruptor, has facilitated over 3 million property listings which have "hosted" more than 200 million guests since its founding in 2008.<sup>2</sup> By harnessing the power of mobile phone apps, Airbnb helped pioneer the "sharing economy."<sup>3</sup> The concept of the sharing economy is simple: pair people who have underutilized assets lying around with people who are willing to pay for those assets.<sup>4</sup> Assets that would have remained underutilized in 2008, like spare bedrooms and open vehicle seats, can now generate money for their owners thanks to sharing economy companies like Airbnb and Uber.<sup>5</sup> The sharing economy is a "marvelous thing."<sup>6</sup>

However, not everyone supports Airbnb. The incumbent hotel industry is leading a charge against Airbnb's unprecedented displacement of traditional lodging establishments.<sup>7</sup> Hotels, bed and breakfasts, and inns have operated in a world without Airbnb for thousands of years.<sup>8</sup> But today, with the American hotel industry valued at \$1.1 trillion,<sup>9</sup> there is no warm embrace for a company that can house guests for less.<sup>10</sup> It is then no surprise that the hotel industry has spent millions of

1. *About Us*, AIRBNB, <https://www.Airbnb.com/about/about-us> (last visited Sept. 9, 2017).

2. *Id.*

3. Adam Thierer, Christopher Koopman, Anne Hobson & Chris Kuiper, *How the Internet, the Sharing Economy, and Reputational Feedback Mechanisms Solve the "Lemons Problem"*, MERCATUS CTR. 34 (May 2015), <https://www.mercatus.org/system/files/Thierer-Lemons-Problem.pdf> (one definition of the sharing economy).

4. *Id.*

5. *About Us*, *supra* note 1; *The Uber Story*, UBER, <https://www.uber.com/our-story/> (last visited on Sept. 9, 2017).

6. THOMAS A. LAMBERT, *HOW TO REGULATE: A GUIDE FOR POLICYMAKERS* 215 (2017).

7. Ahmed Mahmoud, *The Impact of Airbnb on Hotel and Hospitality Industry*, HOSPITALITYNET (Mar. 7, 2016), <https://www.hospitalitynet.org/opinion/4074708.html>.

8. *Luke 2:7* ("She wrapped Him in swaddling clothes and laid Him in a manger, because there was no room for them in the inn.")

9. Katie Benner, *Inside the Hotel Industry's Plan to Combat Airbnb*, N.Y. TIMES (Apr. 16, 2017), <https://www.nytimes.com/2017/04/16/technology/inside-the-hotel-industrys-plan-to-combat-airbnb.html>.

10. Alison Griswold, *You can rent an entire home on Airbnb for the price of a hotel room in the US*, QUARTZ (Sept. 16, 2016), <https://qz.com/779121/Airbnb-vs-hotel-cost-comparison-you-can-rent-an-entire-home-on-Airbnb-for-the-price-of-a-hotel-room/> (citing a study put out by an anti-Airbnb lobbying group, Share Better, showing the daily going rates for an entire home on Airbnb vs a hotel room in four big cities. Airbnb

dollars lobbying policymakers across the country to slow down Airbnb's growth.<sup>11</sup> One anti-Airbnb group, the New York City Hotel Association, Inc., commissioned a report that showed 480,000 nights were reserved in New York City hotels from September 2014 to August 2015, compared to 2.8 million nights spent in New York City Airbnb homes, resulting in a direct loss of approximately \$450 million for the hotel industry.<sup>12</sup> This rapid increase in competition caused an additional \$108 million loss from less traffic in hotel restaurants and bars.<sup>13</sup> The turf battle between The New York City Hotel Association and Airbnb shows no signs of slowing down.<sup>14</sup> New York City is not an outlier; hotel industries across the United States are feeling the same Airbnb impact.<sup>15</sup> Hotel lobbyists are now calling on policymakers to "level the playing field" by blaming Airbnb for causing local problems like New York City's affordable housing shortage.<sup>16</sup>

As a result, anti-Airbnb regulation has swept America's biggest cities, forcing Airbnb to be regulated like national hotel chains.<sup>17</sup> Chicago<sup>18</sup> and San Francisco<sup>19</sup> now require Airbnb hosts to obtain business licenses from their respective city

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vs Hotels in: New York – \$200 vs \$260; Los Angeles – \$155 vs \$165; San Francisco – \$200 vs \$275; Miami – \$175 vs \$195).

11. Benner, *supra* note 9 (In early 2016, the New York Times obtained two documents authored by the American Hotel and Lodging Association, which described a "multipronged, national campaign approach at the local, state and federal level" that would lobby politicians and state attorney generals to "reduce the number of Airbnb hosts, funding studies to show Airbnb is filled with people who are quietly running hotels out of residential buildings and highlighting how Airbnb hosts do not collect hotel taxes and are not subject to the same safety and security regulations that hotel operators must follow.").

12. Mahmoud, *supra* note 7.

13. *Id.*

14. Jordan Crook, *The battle between hotels and Airbnb escalates in NYC*, TECHCRUNCH (Aug. 7, 2017), <https://techcrunch.com/2017/08/07/the-battle-between-hotels-and-Airbnb-escalates-in-nyc/>; Share Better, *Airbnb: Who's In Your Building?*, YOUTUBE (July 31, 2017), [https://www.youtube.com/watch?time\\_continue=30&v=gMVpXZGgJDc](https://www.youtube.com/watch?time_continue=30&v=gMVpXZGgJDc) (The New York City Hotel Association launched an attack ad in July 2017 calling Airbnb a threat to security because the Manchester Bomber used a short-term lease for his base of operation.)

15. *From Air Mattresses to Unregulated Business: An Analysis of the Other Side of Airbnb*, AM. HOTEL & LODGING ASS'N, [https://www.ahla.com/sites/default/files/Airbnb\\_Analysis\\_September\\_2016\\_0.pdf](https://www.ahla.com/sites/default/files/Airbnb_Analysis_September_2016_0.pdf) (last visited Apr. 13, 2018) (The American Hotel and Lodging Association ("the AHLA") issued a report in January 2016 that tracked Airbnb activity in 14 cities across the country. The AHLA estimated what each city could have earned in taxes if Airbnb had to pay the same city and state lodging taxes that hotels pay. The notable lodging tax obligations that could have been generated include: Phoenix, \$5.3 million; Los Angeles, \$41.1 million; Miami, \$15.9 million; San Francisco, \$30.3 million.)

16. Barry Bridges, *Airbnb Seen as Creating Uneven Playing Field*, NEWPORT THIS WEEK (Feb. 9, 2017), [http://www.newportthisweek.com/news/2017-02-9/Front\\_Page/Airbnb\\_Seen\\_as\\_Creating\\_Uneven\\_Playing\\_Field.html](http://www.newportthisweek.com/news/2017-02-9/Front_Page/Airbnb_Seen_as_Creating_Uneven_Playing_Field.html).

17. Arjun Kharpal, *Airbnb's growth is slowing because it's being hit by regulation, UBS says*, CNBC (Apr. 13, 2017, 7:33 AM), <https://www.cnn.com/2017/04/13/Airbnb-growth-slowing-regulation-ubs.html>.

18. *Shared Housing and Accommodations Licensing*, CITY OF CHI., [https://www.cityofchicago.org/city/en/depts/bacp/supp\\_info/sharedhousingandaccommodationslicensing.html](https://www.cityofchicago.org/city/en/depts/bacp/supp_info/sharedhousingandaccommodationslicensing.html) (last visited on Sept. 10, 2017); *Shared Housing Host/Shared Housing Unit*, CITY OF CHI., [https://www.cityofchicago.org/city/en/depts/bacp/supp\\_info/sharedhousinghost.html](https://www.cityofchicago.org/city/en/depts/bacp/supp_info/sharedhousinghost.html) (last visited Sept. 10, 2017).

19. Elizabeth Weise, *Airbnb rentals in San Francisco may dive with new host rules*, USA TODAY (May 1, 2017, 6:01 PM), <https://www.usatoday.com/story/tech/news/2017/05/01/Airbnb-san-francisco-settlement-regulations-illegal-homeaway/101168688/>; Bay City News, *Airbnb launches new registration system*, S.F. EXAMINER (Sept. 6, 2007, 4:17 PM), <http://www.sfbay.com/news/2007/09-06/Airbnb-launches-new-registration-system/>.

before hosting Airbnb guests. It is almost entirely illegal to use Airbnb in New York City after Governor Andrew Cuomo passed new regulations in 2016 that impose a \$7,500 fine on people for simply advertising their apartments on Airbnb.<sup>20</sup> Cities like Chicago<sup>21</sup> and Miami<sup>22</sup> have zoning ordinances preventing Airbnb from operating in select areas. Chicago also allows property owners to place their buildings on a “prohibited housing list” which stops their tenants from hosting on Airbnb.<sup>23</sup>

The emergence of the sharing economy has given legal scholars a limitless number of topics to explore for years to come. Some have tried to bring clarity to the term “sharing economy.”<sup>24</sup> Others argue that there should be more regulation to combat the “horror stories” emerging from sharing economy businesses like theft, discrimination, and sexual assault.<sup>25</sup> On the other hand, some argue Airbnb does not need regulation because the sharing economy has already solved the problems legislatures are capable of fixing.<sup>26</sup> A few critique the prolific arguments against regulating the sharing economy.<sup>27</sup> Some discuss the constitutionality of existing regulations.<sup>28</sup> And several have proposed different ways to regulate the sharing economy.<sup>29</sup>

20. Katie Benner, *Airbnb Sues Over New Law Regulating New York Rentals*, N.Y. TIMES (Oct. 21, 2016), <https://www.nytimes.com/2016/10/22/technology/new-york-passes-law-airbnb.html>; Jillian Jorgensen, *Trump Tower apartment owner among first two hit with Airbnb ad fines*, N.Y. DAILY NEWS (May 7, 2017, 9:08 PM), <http://www.nydailynews.com/new-york/manhattan/nyc-apartment-owner-hit-airbnb-ad-fines-article-1.3146056>.

21. See e.g., *Airbnb Help Center: Chicago, IL*, AIRBNB, <https://www.Airbnb.com/help/article/861/chicago--il> (last visited Sept. 10, 2017).

22. Lora Kolodny, *These homeowners faced an Airbnb nightmare as renters left them facing huge fines and angry neighbors*, CNBC (Sept. 1, 2017, 10:41 AM), <https://www.cnn.com/2017/09/01/Airbnb-nightmare-homeowners-fined-after-renters-illegal-listings.html> (the city of Miami imposes a \$20,000 fee if a property listed on Airbnb is in a certain part of the city, and tenants caused their landlord to be hit with that fee).

23. Tanveer Ali, *Here Are The Buildings Where Airbnb Is Banned In Chicago*, DNA INFO (Jan. 13, 2017, 5:57 AM), <https://www.dnainfo.com/chicago/20170113/loop/airbnb-home-share-banned-michele-smith-shared-housing-ordinance/>.

24. Inara Scott & Elizabeth Brown, *Redefining and Regulating the New Sharing Economy*, 19 U. PA. J. BUS. L. 553, 562–66 (2017) (Defending the name “sharing economy” even though the name undermines how large the market is. The authors provide several examples of how large and multi-faceted the sharing economy is in an attempt to help others see the complexities that come with trying to regulate businesses under the sharing economy umbrella.).

25. Diana Cao, *Regulation Through Deregulation: Sharing Economy Companies Gaining Legitimacy by Circumventing Traditional Frameworks*, 68 HASTINGS L. J. 1085, 1086–87 (2017) (“The current regulatory framework fails to address whether the new companies are subject to the same rules as the traditional companies, a different set of rules, or no rules at all. At the same time, major companies of the sharing economy take advantage and openly flout regulations that others in essentially the same industry are subject to.”).

26. Thierer, Koopman, Hobson & Kuiper, *supra* note 3, at 16, 44–45 (Explaining how traditional regulation requires governmental oversight and high costs of compliance which increase the cost for consumers while also creating barriers to entry for new market participants. Instead, this article shows how fewer regulation and more reliance on two-way “reputational mechanisms” is the most effective way to level the informational playing field because it solves the same issues traditional regulations do, but much easier and more naturally.).

27. See, e.g., Abbey Stemplar, *Feedback Loop Failure: Implications for the Self-Regulation of the Sharing Economy*, 18 MINN. J. L. SCI. & TECH. 673 (2017) (explaining how “reputational mechanisms” are often viewed as an alternative to regulating the sharing economy, but this article argues the psychology behind reputational mechanisms has flaws, and that reputational mechanisms do not work as well as some think they do).

28. Cory Scanlon, *Re-Zoning the Sharing Economy: Municipal Authority to Regulate Short-Term Rental of Real Property*, 70 SMU L. REV. 563, 572 (2017) (exploring case law from Texas courts

This article argues that current regulations wrongfully target Airbnb and do nothing to fix the underlying problems. Both New York City and San Francisco say they are in the middle of a housing crisis and these anti-Airbnb regulations were created to fix that crisis.<sup>30</sup> But Airbnb neither caused the century-old housing crisis, nor is it exacerbating the shortage now. Airbnb has been mis-regulated. This article pulls the curtain back: the incumbent hotel industry spent millions of dollars to “capture” policymakers in an effort to create regulatory red tape meant to eliminate Airbnb as a competitor. Finally, a solution on how to more effectively regulate Airbnb is proposed. The “physician’s approach,” which will be explored more deeply, is a framework that policymakers should use when determining how to regulate the sharing economy. It encourages regulation that cures the underlying problem, and thus prevents mis-regulation.

Regulation is everywhere in America.<sup>31</sup> Because regulations have fixed problems in the past,<sup>32</sup> more regulation seems like the answer in addressing problems critics say Airbnb is causing now. Regulating the sharing economy will be a challenge for policymakers in the future. There may be appropriate times for regulating Airbnb, but the point is Airbnb should not be *mis*-regulated. Policymakers “mis-regulate” when they create regulation that does not fix a stated problem.<sup>33</sup> Mis-regulation should be avoided because policymakers should “maximize social welfare,” not hold back innovation.<sup>34</sup> Mis-regulation — in the form of anti-Airbnb regulation — has resulted from the artificial link between Airbnb and the growing affordable housing crisis in San Francisco and New York City.<sup>35</sup> While affordable housing is an issue, the legitimacy of the link to Airbnb’s growth is suspect and will be challenged.

Part II of this article explains why regulation has targeted businesses in the past: to update the buyer on necessary information about the seller’s goods or services so they could make an educated decision. However, Airbnb’s two-way “reputational mechanisms” have effectively cured the information imbalance in

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where plaintiffs have challenged the regulations placed on short-term renters as “illegally interfering with their due process, assembly, and privacy rights”, and arguing some of the zoning laws may actually violate parts of the Texas constitution).

29. Bryan Wilson, *Smarter Cities, Smarter Regulations: A Case for the Algorithmic Regulation of Platform-Based Sharing Economy Firms*, 85 UMKC L. REV. 845, 849, 860 (2017) (The author argues that regulating Airbnb and Uber like their hotel and taxi counterparts is not the right approach because they are not as analogous as some think. Instead, the author calls for algorithms to monitor the sharing economy companies and to continually identify new issues so that information can quickly be given to policymakers to make informed regulatory decisions with.).

30. *See infra* Part III.

31. LAMBERT, *supra* note 6, at 1 (explaining that even though “[r]egulation is a hot topic of conversation,” it is not either all good or all bad. They are a mix of both.).

32. Alex Tabarrok & Tyler Cowen, *The End of Asymmetric Information?*, CATO UNBOUND (Apr. 6, 2015), <https://www.cato-unbound.org/issues/april-2015/end-asymmetric-information> (For example, when the odometer first came out, car owners would wind the miles down before trying to sell the vehicle. In response the Federal Odometer Act was passed making odometer tampering a federal felony. Other common examples include federally established minimum drinking ages, driving speed limits, local zoning ordinances, and maximum interest rates.).

33. LAMBERT, *supra* note 6, at 1.

34. *Id.* at 250.

35. Emma Hinchliffe, *No Vacancy – How Airbnb’s New York City problem is just getting worse*, MASHABLE (Apr. 3, 2017), <http://mashable.com/2017/04/03/Airbnb-nyc-no-vacancy/#8G9XhequAPq6>; Carolyn Said, *Most Airbnb hosts flout SF laws, city report says*, SFGATE (Apr. 7, 2016, 9:21 PM), <http://www.sfgate.com/business/article/Airbnb-hosts-flout-SF-laws-city-report-says-7235343.php>.

Airbnb transactions, and thus, the current regulatory scheme qualifies as mis-regulation. Part II then identifies different types of regulations and assesses the pros and cons of using each one. Finally, part II identifies the types of problems Airbnb has been linked to and lays out a regulatory metaphor — the “physician’s approach.” This framework will be used throughout the rest of this article to show how Airbnb is mis-regulated because the greatest net benefit is not being achieved.

Part III dives deep into existing anti-Airbnb regulations in New York City and San Francisco to show how — while they sandbag Airbnb to benefit the hotel industry — they do not solve the stated problems linked to Airbnb. This is mis-regulation. Part IV offers best regulatory practices for the future. Finally, this article argues that because Airbnb’s two-way reputational mechanisms already provide a net benefit, policymakers should not enact new regulation until it can provide a greater net benefit than the status quo offers. The goal is to help balance interests and prescribe a solution that encourages innovation while promoting safety.

## II. WHY AND HOW TO REGULATE AIRBNB

The hotel industry wants policymakers to force Airbnb hosts to follow the same regulations as national hotel corporations.<sup>36</sup> To understand why “regulating up” on Airbnb is misguided, it is helpful to know how regulation works.

### A. *Why Regulate, “The Market for ‘Lemons’” and Information Asymmetry*

The traditional economic market is the place to start when answering the question “why regulate?”<sup>37</sup> George Akerlof won the Nobel Prize in economics for his paper titled, “The Market for Lemons,” which analyzes the market for used cars.<sup>38</sup> Akerlof explains how “information asymmetry” — disproportionate bargaining power between two parties — is a major issue economic markets experience.<sup>39</sup> When information asymmetry exists, one party is at an informational disadvantage, and if imbalance persists, the result is “adverse selection.”<sup>40</sup> The mar-

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36. Bridges, *supra* note 16.

37. See LAMBERT, *supra* note 6, at 1 (“the two groups most involved in crating the substance of regulation – lawyers and economists . . .”).

38. See George Akerlof, *The Market for “Lemons”: Quality Uncertainty and the Market Mechanism*, 84 Q. J. ECON 488, 489–90 (1970).

39. *Id.* (information asymmetry is when, in an arms-length transaction, one party has more information than the other).

40. Thierer, Koopman, Hobson & Kuiper, *supra* note 3, at 7–8 (“Akerlof argues that when sellers have more information about products than the potential buyers [information asymmetry], as for example, in a used car market, then the lower quality cars (lemons) would crowd out those of higher quality because uncertainty among buyers would depress the average value of used cars. The lemons problem suggests that used cars tend to command a lower market price because potential buyers are unable to tell whether a used car is good or bad. As a consequence, sellers of higher-valued cars exit the market, and only lemons are offered. The market may eventually collapse because of this ongoing adverse selection process. Akerlof, describing the information problems inherent with purchasing a car in the 1970s, concluded, ‘[i]t is impossible for a buyer to tell the difference between a good car and a bad car . . . or even obtain the expected value of a new car.’ Therefore, sellers have to accept low

ket for used cars is teeming with information asymmetry because most buyers have no way of knowing whether the seller is offering a high quality vehicle or a “lemon.”<sup>41</sup> Allowing information asymmetry to persist leads to all parties being worse off.<sup>42</sup>

When information asymmetry persists, markets are inefficient and fail.<sup>43</sup> Thus, correcting market failures is the “standard theory” behind regulation.<sup>44</sup> In an attempt to correct market failures throughout history, policymakers have used information asymmetry as the “chief justification for consumer protection regulations” to put both parties in equal bargaining positions.<sup>45</sup> Regulation has helped cure the problem of information asymmetry for centuries.<sup>46</sup>

### B. “How to Regulate: A Guide for Policymakers”

The “physician’s approach” is a framework for how to most efficiently regulate the sharing economy. Presented in his book “How To Regulate: A Guide for Policymakers,” Thomas Lambert tasks policymakers to “gather as much . . . information as can be cost-effectively gathered on all potential regulatory options, and then select the option that minimizes the sum of error and decision costs.”<sup>47</sup>

Lambert’s approach suggests that policymakers behave like a physician treating a patient.<sup>48</sup> First, a physician identifies the patient’s physical *symptoms*.<sup>49</sup> Symptoms are the adverse effects caused by what is wrong inside of the patient and are often why the patient originally decided to visit.<sup>50</sup> Second, the physician *diagnoses the cause* of the symptoms; the disease.<sup>51</sup> After identifying the disease, the physician should consider *all available remedies* capable of addressing it.<sup>52</sup> Finally, the physician *assesses the net benefits* of each remedy, and considers each one’s expected benefit, difficulty of carrying out, and potential side effects.<sup>53</sup> In

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prices for higher-quality cars because buyers have trouble distinguishing between low and high-quality secondhand vehicles.”).

41. Akerlof, *supra* note 38 (the buyer can look at the car and make certain surface level judgment calls, but has no real way of knowing).

42. Thierer, Koopman, Hobson & Kuiper, *supra* note 3, at 7–8.

43. Joshua D. Wright, *The Antitrust/Consumer Protection Paradox: Two Policies at War with Each Other*, 121 YALE L. J. 2216, 2218 (2012) (A market failure is when “markets fail to realize full gains from trade through efficient production.”).

44. *Id.*

45. Thierer, Koopman, Hobson & Kuiper, *supra* note 3, at 4.

46. See Wright, *supra* note 43, at 2222 (“For example, consider the cases of exploding toasters and toys tainted with dangerous levels of lead. In either case, standard economic models of market failure associated with informational asymmetries may justify regulation to correct market failure. Current regulations to combat monopolies, information asymmetries, and externalities draw upon this standard economic model.”).

47. LAMBERT, *supra* note 6, at 14.

48. *Id.*

49. *Id.* (cough, headache, difficulty breathing, pain, etc.).

50. *Id.*

51. *Id.* (the flu, common cold, cancer, etc.).

52. *Id.* at 14–15 (This range of possible remedies includes everything from remedies that will fully cure the root of the symptoms, and remedies that will only alleviate the symptoms temporarily without actually fixing the source. Examples of possible remedies include a band aid, medicine, or surgery.).

53. *Id.* at 15 (One remedy may be ideal at curing the disease, but it also may be expensive. Others may be cheaper, but will only prolong the inevitable operation that needs to happen.).



the end, the physician should prescribe the remedy that offers the “greatest net benefit.”<sup>54</sup>

Similarly, policymakers are called on to enact regulation after adverse symptoms are spotted.<sup>55</sup> Airbnb was created in 2008,<sup>56</sup> and several symptoms have since been linked to Airbnb’s presence. Some of these symptoms include shrinking affordable housing, failing to pay local taxes, and property owners losing money.<sup>57</sup> Like a physician, policymakers should track symptoms down to the causal disease, and, after weighing all possible remedies, select the one that provides the greatest net benefit for the market. Enacting any remedy should cure both the disease and the symptoms. Alternatively, only treating the symptoms allows the disease to go unchecked, which only causes more symptoms to arise later. Treating the symptom only is mis-regulation.<sup>58</sup>

### C. *Why Parties are Calling for Airbnb to be Regulated*

To prescribe the regulation that provides the greatest net benefit, a policymaker must identify the underlying disease that is causing the symptoms. But, while the disease may be difficult to see, symptoms are easily visible. There are many symptoms in the market today, but Airbnb is not the causal disease in most cases.

#### i. *Affordable Housing Options*

New York City and San Francisco are two examples of cities with limited affordable housing options for their millions of residents.<sup>59</sup> While a lack of affordable housing is not a new problem in these cities, the incumbent hotel industry claims that Airbnb’s recent presence is worsening the housing crisis.<sup>60</sup> The hotel

54. *Id.*

55. *Id.*

56. *About Us*, *supra* note 1.

57. *See infra* Part II.C.

58. LAMBERT, *supra* note 6, at 1.

59. Kathleen Elkins, *How much it costs to rent a 1-bedroom in 30 major cities around the world*, CNBC (Mar. 26, 2017, 10:00 AM), <https://www.cnbc.com/2017/03/24/how-much-it-costs-to-rent-a-1-bedroom-in-30-cities-around-the-world.html> (While average-rent studies often vary, one recent study shows New York City and San Francisco are the two most expensive places to live in the world, based off average one-bedroom rental rates: New York - \$3,680 per month; San Francisco - \$3,360 per month.); Matt Weinberger, *This is why San Francisco’s insane housing market has hit the crisis point*, BUS. INSIDER (July 8, 2017 10:00 AM), <http://www.businessinsider.com/san-francisco-housing-crisis-history-2017-7> (“San Francisco is the second-densest city in the US after New York City, with more than 870,000 people packed into about 47 square miles, giving you about 18,580 people per square mile.”).

60. Andrew J. Hawkins, *Airbnb is now banned from listing short term rentals in New York*, VERGE (Oct. 21, 2016, 3:16 PM), <https://www.theverge.com/2016/10/21/13361536/Airbnb-new-york-cuomo-bill-ban-short-term> (“Airbnb has been accused of exacerbating New York’s housing crisis by housing advocates, the state’s powerful hotel union, and members of the state legislature and New York City Council.”); Hinchliffe, *supra* note 35 (“The company became a scapegoat for a long-brewing housing crisis, in [New York City] where average rent increased by 40 percent over 20 years while wages only increased by 15 percent.”); Carolyn Said, *The Airbnb effect*, S.F. CHRON. (July 12, 2015), <http://www.sfchronicle.com/Airbnb-impact-san-francisco-2015/> (“Most of the booming vacation-rental company’s local listings are only occasionally rented to travelers, as Airbnb says. However, at least 350 entire properties listed on Airbnb . . . appear to be full-time vacation rentals, bolstering claims by activists that the services remove scarce housing from the city’s limited inventory.”).

industry argues someone in San Francisco or New York City who is unable to afford rent should move and free up their unit for someone else.<sup>61</sup> But by using Airbnb to make extra money, that person continues to occupy the unit, leading to fewer available housing options for everyone else.<sup>62</sup> The *symptom* visible to legislatures and renters is a lack of housing options.

However, while Airbnb may keep some housing options from turning over,<sup>63</sup> Airbnb is not the *disease*. There are many larger reasons why affordable housing has been disappearing over the past several decades. For example, the amount of rent-stabilized apartments in New York City has rapidly decreased over the last ten years.<sup>64</sup> In addition, property owners have quelled desirable housing options.<sup>65</sup> In San Francisco, the city council made several anti-development zoning decisions between the 1950's and 1990's.<sup>66</sup> The side effects of those early decisions are what haunt San Francisco today.<sup>67</sup> Airbnb grew directly out of the housing crisis in San Francisco, and to say that Airbnb made the situation worse is illogical.<sup>68</sup> The hotel industry turned Airbnb into a scapegoat and lobbied policymakers to regulate it to reduce competition.<sup>69</sup>

## ii. *Increased Tourism*

Local residents claim the increase in Airbnb tourism disrupts their peaceful neighborhoods. In Nashville, tourists are staying in neighborhoods surrounding the city, and locals claim the noise and party scene is “fraying . . . their communi-

61. Said, *supra* note 60.

62. *Id.*

63. Said, *supra* note 35 (“Airbnb and its ilk stir controversy because of concerns that lucrative vacation rentals siphon off badly needed housing . . . Both sides of the debate say they want to help middle-income people. Most San Francisco hosts are middle-class people who rent to travelers 48 days a year for supplemental income that helps them afford spiraling costs, Airbnb said. ‘Airbnb and short-term rentals did not create the housing crisis, but they are definitely exacerbating it . . . [w]hen you have housing that could go to middle-income or working-class people but is taken off the market . . .’”).

64. Amy Plitt, *Behind New York City’s affordable housing crisis*, CURBED N.Y. (Aug. 1, 2017), <https://ny.curbed.com/2017/8/1/16073616/new-york-city-affordable-housing-crisis> (“[S]ince 2007, at least 172,000 apartments have been deregulated. To give an example of how quickly affordable housing can vanish, between 2007 and 2014, 25 percent of the rent-stabilized apartments on the Upper West Side of Manhattan were deregulated.”).

65. *Id.* (“A woman I know . . . was recently presented with a new lease in which the rent went from \$1,017 to \$2,109 per month. The hike was perfectly legal.” The hike by her landlord came after the woman had lived in the apartment for 23 years. Another example of shady landlords involves a landlord who “paid a homeless man to sleep outside [the tenant’s] door, defecate in the hallway, invite friends in for drug-fueled parties, and taunt [the tenant] as she entered and left the building.”).

66. Weinberger, *supra* note 59 (This article identifies how several anti-development zoning decisions San Francisco made decades ago are coming back to haunt them: (1) San Francisco adopted zoning regulations designed to preserve “the city’s character and local color – at the expense of new housing development” shortly after the “Fillmore project” of the 1950’s. (2) San Francisco banned buildings over 40 feet tall in most parts of the city, as well as residential areas. (3) San Francisco’s laws allow neighborhoods to object to new housing developments, which has blocked new construction. Finally, a San Francisco Weekly article written in 1999 expressed appreciation for the restrictive zoning regulations because “[t]hey’ve helped preserve San Francisco’s character and encouraged the community to become more engaged in local politics.”).

67. *Id.*

68. LAMBERT, *supra* note 6, at 215 (“Airbnb . . . thrive[s] precisely because of information asymmetry.”)

69. Hinchliffe, *supra* note 35 (“The company became a scapegoat for a long-brewing housing crisis . . .”).

ty.”<sup>70</sup> European cities are facing similar problems.<sup>71</sup> Venice, a city of 54,500 residents, receives 30 million tourists a year, “pushing the city to an environmental tipping point and undermining quality of life for its citizens.”<sup>72</sup> Other European cities fear becoming “a theme park for tourists.”<sup>73</sup> The *symptom* is more tourism in previously quiet areas and an increase in noise and partying. But, the *disease* is disruptive people, not Airbnb. The problem in Venice was growing long before Airbnb came to town, and cruise ship companies continue to unload thousands of tourists a day in Venice.<sup>74</sup> While extra noise in quiet Nashville neighborhoods is undesirable, there are already regulations designed to stop this problem.<sup>75</sup> Noise ordinances are in place for this reason, and if a neighbor’s party is too loud, residents can call the police. Regulation targeting Airbnb in cities like Nashville only address one of the symptoms created by disruptive people — an additional set of regulations will not provide greater net benefits.

### iii. Failing to Pay Proper Taxes

Many demand that Airbnb make hosts pay local hotel taxes.<sup>76</sup> Several cities and states claim that Airbnb hosts are effectively running businesses, and as such, should be subject to the same business taxes as hotels.<sup>77</sup> The *symptom* is two-fold: (1) A fairness argument is being made — because other businesses must pay hotel taxes, Airbnb should too;<sup>78</sup> and (2) the government misses out on additional revenue. The *disease* is different depending on the city. For example, in San Francisco, Airbnb hosts are required by law to register their property with the city, pro-

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70. Victor Luckerson, *Not in My Neighbor’s Backyard: Airbnb has taken over Nashville, and the city is reaching its boiling point*, RINGER (Nov. 21, 2017), <https://www.theringer.com/features/2017/11/21/16678002/Airbnb-nashville>.

71. Tom Slee, *Airbnb is Facing an Existential Expansion Problem*, HARV. BUS. REV. (July 11, 2016), <https://hbr.org/2016/07/Airbnb-is-facing-an-existential-expansion-problem> (Colleagues at New University of Lisbon are “very much concerned with what is rapidly happening to the historical center of [their] beautiful city. Our estimate is that in the last three years, around one-quarter or even one-third of the housing stock has changed function, mainly toward financial investments and short rentals.”).

72. Cecilia Rodriguez, *Blacklisting Venice To Save It From Too Many Tourists And Too Few Venetians*, FORBES (May 29, 2017, 6:48 PM), <https://www.forbes.com/sites/ceciliarodriguez/2017/05/29/blacklisting-venice-to-save-it-from-too-many-tourists-and-too-few-venetians/#1fc22ffc1e50> (Venice “worries about the gigantic cruise ships, mass tourism and the irreversible damage they’re wreaking on the fragile lagoon ecosystem are not new. . . . Already the World Monument Fund placed Venice on its watch list . . .”).

73. Slee, *supra* note 71.

74. Rodriguez, *supra* note 72.

75. NASHVILLE, TENN., CITY NOISE ORDINANCE 11.12.070 (1993).

76. Carolyn Said, *SF wants Airbnb hosts to pay taxes on beds, stoves and cutlery*, SFGATE (Mar. 17, 2016), <http://www.sfgate.com/business/article/San-Francisco-wants-Airbnb-hosts-to-pay-taxes-on-6906551.php>.

77. *From Air Mattresses to Unregulated Business: An Analysis of the Other Side of Airbnb*, *supra* note 15.

78. Elena Toledo, *Acapulco Hotel Owners Unite Against With New Tax Bill Countering “Unfair” Competition*, PANAMPOST (July 13, 2017, 11:24 AM), <https://panampost.com/elena-toledo/2017/07/13/hotel-owners-unite-against-Airbnb/> (A 3% tax will soon be charged on Airbnb hosts in Acapulco, Mexico to level the playing field. Jorge Laurel Gonzalez, president of the Association of Hotels and Tourism Companies said Airbnb’s ability to offer “full houses at lower prices than formal hotels should be considered ‘unfair competition’” because “it inhibits the growth and interest of corporations and hotel chains.”) (emphasis added).

vide proof of liability insurance, pay proper taxes, and obey municipal codes.<sup>79</sup> Thus, the symptom only arises when the San Francisco host fails to register with the city. In other states, there is no law requiring registration, but Airbnb hosts must still pay taxes.<sup>80</sup> Hotel taxes are required to be paid by those who fit the definition of a hotel. While outside of the scope of this article, the debate about whether or not Airbnb should be classified as a business will largely impact whether all Airbnb hosts need to pay taxes.<sup>81</sup>

#### iv. Criminal Behavior

Airbnb has been in the news repeatedly for bad guest behavior and criminal activity occurring in its listings. Also, Airbnb has been accused of promoting rental discrimination.<sup>82</sup> Additionally, other “horror stories” include guests breaking into locked areas of host’s homes, leaving messes, using and selling drugs, and using the property as a temporary brothel.<sup>83</sup> Further, there are accounts of sexual assault against guests by Airbnb hosts.<sup>84</sup> While these *symptoms* are terrible, the *disease* is not Airbnb. These same crimes occur in large, regulated hotel chains. For example, a male guest at the Hilton Hotel and Resort in Waikiki, Hawaii was the victim of a hate crime after being raped and permanently injured by a guest who was a member of the British Royal Military.<sup>85</sup> The *disease* is bad people. As

79. *Airbnb, Inc. v. City & Cty. of S.F.*, 217 F. Supp. 3d 1066, 1070 (N.D. Cal. 2016) (preliminary injunction requested by Airbnb, arguing San Francisco’s ordinance is unconstitutional, denied).

80. *In what areas is occupancy tax collection and remittance by Airbnb available?*, AIRBNB, <https://www.Airbnb.com/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-Airbnb-available> (last visited Oct. 22, 2017) (a list of what states require Airbnb hosts to pay taxes).

81. *Keep Chi. Livable v. City of Chi.*, No. 16 C 10371, 2017 U.S. Dist. LEXIS 35231, at \*8, n.11 (N.D. Ill. Mar. 13, 2017) (in opposing Chicago’s new Shared Housing Ordinance requiring Airbnb hosts to register with the city, obtain licenses, meet “location restriction standards,” maintain records, follow sanitation requirements, and pay business taxes, the organization, Keep Chicago Livable, argues they should not have to follow these requirements because they are not hosting guests as part of a “business activity.” Instead, Keep Chicago Livable claims, “[t]he primary purpose for many hosts on platforms such as Airbnb is not necessarily to obtain a profit. Hosts enjoy sharing their homes with guests for many reasons that have nothing to do with making a profit, such as making new friends, learning about different cultures, showing off one’s home and city to a newcomer or simply out of empathy for a traveler who could not otherwise afford to stay in a downtown hotel.” The court ruled in favor of the city.).

82. *See, e.g., Selden v. Airbnb, Inc.*, No. 16-CV-00933 (CRC), 2016 WL 6476934, at \*1 (D.D.C. Nov. 1, 2016) (African American man sued Airbnb after alleging race-based discrimination. Man was told a host’s property was no longer available after requesting room with profile picture showing he was African American, but same host was “only too happy to rent the residence” when same plaintiff made request under pseudonym with photo of white male.); Amy B. Wang, ‘One word says it all. Asian’: Airbnb host banned after allegedly canceling guest because of her race, *L.A. TIMES* (Apr. 7, 2017, 7:40 PM), <http://www.latimes.com/business/technology/la-fi-Airbnb-discrimination-20170407-story.html>.

83. *See, e.g., Harry Bradford, Most Airbnb Rentals Go Perfectly. Then There Are These Horror Stories*, HUFFINGTON POST (July 29, 2014, 12:04 PM), [https://www.huffingtonpost.com/2014/07/29/Airbnb-horror-stories\\_n\\_5614452.html](https://www.huffingtonpost.com/2014/07/29/Airbnb-horror-stories_n_5614452.html).

84. Shivani Vora, *Airbnb Sued by Guest Who Says a Host Sexually Assaulted Her*, *N.Y. TIMES* (Aug. 2, 2017), <https://www.nytimes.com/2017/08/02/travel/Airbnb-lawsuit-host-sexual-assault.html> (A guest was sexually assaulted by her Airbnb host. The host had achieved “superhost” status, and Airbnb’s annual host and guest background check did not catch that the host had been previously arrested and charged with battery, which should have prevented him from being a host.).

85. Juergen T. Steinmetz, *Man on man rape at the Hilton Hawaiian Village: Washed under the carpet by Honolulu Police?*, ETURBONNEWS (Sept. 25, 2016), <https://eturbonews.com/147775/man-man-rape-hilton-hawaiian-village-washed-under-carpet-honolulu>.

said above, there are already laws created to disincentivize criminal behavior. If a crime is committed in a regulated hotel, the hotel calls the police. Additional anti-Airbnb regulation will not create a greater net benefit for people, nor will it stop bad people from stealing, discriminating, and hurting others.

#### v. *Tenant Profiteering*

Property owners say they are losing money because of Airbnb.<sup>86</sup> For example, a hypothetical tenant could agree to pay her landlord \$1,000 per month, but then charge an Airbnb guest \$150 per night. Although this tenant would make more money than she paid in rent, the disease is a lack of affordable housing options. And as said above, regulating Airbnb will not halt the rising housing prices and shrinking affordable options.<sup>87</sup> If a property owner is unhappy with their tenants “unfairly” profiteering, the property owner can make short-term leasing illegal via contract.

However, one problem that can be fixed with Airbnb regulation is Airbnb hosts charging exorbitant nightly rates while living in a rent-stabilized apartment. In *Goldstein v. Lipetz*, an elderly tenant living in a rent-stabilized apartment with rent capped at \$1,758 per month was charging guests between \$95-\$120 per night.<sup>88</sup> The New York Rent Stabilization Code says tenants in rent-stabilized apartments could only charge 110% of their per diem rate, which was \$63.58.<sup>89</sup> By charging approximately \$30 more per night than the legal limit, the court affirmed summary judgment terminating the tenant’s lease, and the tenant was evicted.<sup>90</sup> In these limited situations — given the highly coveted and quickly evaporating rent-stabilized apartments — the problem is exacerbated by Airbnb. Because regulation like the New York Rent Stabilization Code can remedy the disease, it should prevent these tenants from substantial profiteering through Airbnb listings.

#### D. *How to Cure the Disease: Potential Remedies, Side Effects, and Reputational Mechanisms*

Four government-created remedies capable of curing disease in economic markets are listed below, along with the unique characteristics, advantages, and disadvantages of those remedies. In addition, two non-government created remedies are introduced that can render traditional regulations obsolete: voluntary dis-

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86. See, e.g., Dara Kerr, *NYC judge said to order Airbnb host to stop 'profiteering' off rental*, CNET (Dec. 24, 2014), <https://www.cnet.com/news/nyc-judge-orders-woman-to-stop-profiteering-off-airbnb-rental/> (“Penraat was sued by her landlord . . . . The 62-year-old woman is reportedly legally entitled not to pay rent increases each year because she is a senior . . . . Her rent is said to be fixed at roughly \$4,200 per month, while she was allegedly making an average of \$6,500 per month on her Airbnb rentals . . .”).

87. Jonathan Miller, *Tracking New York Rents and Asking Prices Over a Century*, N.Y. CURBED (June 2, 2015), <https://ny.curbed.com/2015/6/2/9954250/tracking-new-york-rents-and-asking-prices-over-a-century> (showing how the average rent in New York City has rapidly increased over the past century).

88. *Goldstein v. Lipetz*, 150 A.D.3d 562, 563–64 (N.Y. App. Div. 2017).

89. *Id.* at 564.

90. *Id.* at 572.

closures and reputational mechanisms. There is no perfect remedy.<sup>91</sup> However, if new regulation does not create a greater net benefit than the status quo already offers, the best remedy for policymakers is to do nothing.<sup>92</sup>

### *i. Command and Control*

The most basic form of regulation occurs when the government says what an actor cannot do and establishes a punishment for what happens if the rule is broken.<sup>93</sup> Command and control assumes the government knows what is best, and that it is in a position to effectively decide what the standards should be.<sup>94</sup> The main benefit to this approach is it reduces targeted activity by inducing the actor to monitor their own behavior.<sup>95</sup> However, there are side effects. The key side effect is how easily policymakers are “captured” by lobbyists of interested parties.<sup>96</sup> Command regulation also requires a large resource commitment from the issuing group to draft and enforce the regulation.<sup>97</sup> Finally, command regulation creates high performance standards for smaller market participants, further disincentivizing new parties from entering the market.<sup>98</sup>

Command and control regulations are the primary type of regulation created to combat Airbnb right now.<sup>99</sup> Command and control regulation is not capable of fixing most of the symptoms addressed above. Because Airbnb is an online, peer-to-peer business model, policymakers struggle to track transactions and enforce laws against Airbnb hosts.<sup>100</sup>

### *ii. Taxes*

Taxing as a form of regulation requires the actor to pay more when they act more.<sup>101</sup> The advantages of tax regulations are they do not lead to the large barriers of entry that command and control regulations do; taxing is less capable of manipulation by lobbyists, and they are unlikely to lead to powerful disincentives.<sup>102</sup> Taxing Airbnb hosts per night may help alleviate the symptoms of having an unfair advantage and lost tax revenue, however, just like command and control regulations, taxing requires significant administrative oversight.<sup>103</sup> The burden is

91. LAMBERT, *supra* note 6, at 250.

92. *Id.*

93. *Id.* at 30 (examples of this include the Clean Water Act and Clean Air Act which place businesses under “emission limitations,” and force each organization falling under these acts to regulate themselves).

94. *Id.* at 31.

95. *Id.* at 30–31.

96. *Id.* at 32–33 (a perfect example of capturing is happening in New York City right now).

97. *Id.* at 33.

98. *Id.* 32.

99. See, e.g., Sasha Lekash, *Detroit slips into Airbnb ban and everyone, even the mayor, is really confused*, MASHABLE (Feb. 8, 2018), <https://mashable.com/2018/02/08/airbnb-detroit-ban/#YISyJx2Xqqqm> (an example of cities largely banning home-sharing platforms).

100. Ameena Walker, *New York’s anti-Airbnb law is proving tough to quickly enforce*, NY CURBED (May 11, 2017), <https://ny.curbed.com/2017/5/11/15626876/new-york-anti-Airbnb-law-enforcement-issues> (three months after New York City’s anti-Airbnb laws were enacted, the 32-person enforcement team only caught .05% of illegal listings).

101. LAMBERT, *supra* note 6, at 36.

102. *Id.* at 39.

103. *Id.* at 42.

placed on the host to self-monitor their behavior. Several cities require Airbnb hosts to pay taxes,<sup>104</sup> and these cities struggle to enforce this rule.<sup>105</sup>

### iii. *Licensure*

Licenses are required by certain professionals and are intended to ensure a minimum level of quality.<sup>106</sup> The official stated reason for “licensure regimes” is to cure adverse selection by preventing “lemons” from entering the market and only allow licensed professionals who possess a high level of expertise to contract with consumers.<sup>107</sup> Licenses prevent adverse selection by banning low quality services but do not remedy the disease of information asymmetry in economic markets.<sup>108</sup> License regulations can be manipulated by lobbyists and often create an unnecessary barrier to entry.<sup>109</sup>

Chicago has begun a licensure regime for some Airbnb hosts.<sup>110</sup> While the city is attempting to ensure certain quality, sanitation, and safety standards, the problem remains that many Airbnb hosts ignore license requirement and choose to operate illegally.<sup>111</sup> Just like command regulations and taxes, license regulations are difficult to enforce in the peer-to-peer arena of Airbnb.

### iv. *Mandatory Disclosure*

Mandatory disclosures can cure information asymmetry when the government requires one party to disclose information to the other so both parties can make an informed decision.<sup>112</sup> The most common example is disclosing ingredients on food labels. Other examples include requiring a prospectus when issuing stock, and stating the APR charged by credit card companies. By requiring the seller to bring the purchaser up to speed, both high and low quality goods stay on the market, because the purchaser is able to choose who to contract with.<sup>113</sup> The difficulty with government mandatory disclosure, as with command and control and taxes, is that it assumes the government knows what information will bring the other party up to speed.<sup>114</sup> Government mandated disclosure is not yet a popular regulation for Airbnb. However, Airbnb practices its own form of mandatory disclosure

104. *In what areas is occupancy tax collection and remittance by Airbnb available?*, *supra* note 80.

105. *See infra* Part III.

106. LAMBERT, *supra* note 6, at 194.

107. *Id.*

108. *Id.*

109. *Id.* at 195 (In Nashville, the local government requires all “shampoo technicians” – people who shampoo hair in salons – to first complete 300 hours of education in the area of “practice and theory” of shampooing. Critics argue someone does not need 300 hours to learn how to shampoo hair. Another argument against licensure regimes is that licenses try to ensure all service providers are the equivalent of a fully loaded Cadillac- high quality. But “[n]ot everyone needs or wants a fully loaded Cadillac all the time; sometimes a Chevy will do.”).

110. *Shared Housing and Accommodations Licensing*, *supra* note 18 (the Chicago Shared Housing Ordinance establishes a number of standards short-term rental hosts must follow, specifically that “Shared Housing Units” do not need to receive a license, but “Vacation Rentals” do need a license).

111. Ally Marotti, *Airbnb hosts still not registered 4 months after Chicago’s new rules took effect*, CHIC. TRIB. (Aug. 2, 2017), <http://www.chicagotribune.com/business/ct-chicago-Airbnb-rules-enforcement-0803-biz-20170802-story.html>.

112. LAMBERT, *supra* note 6, at 197.

113. *Id.*

114. *Id.* at 197–98.

by requiring all users to upload a clear photograph of themselves, photographs of the living space, their full name, and accurate contact information.<sup>115</sup>

#### v. *Voluntary Disclosure*

The need for mandatory disclosure goes away when market participants practice “voluntary disclosure.”<sup>116</sup> Voluntary disclosure is the reason George Akerlof’s “Market for ‘Lemons’” is flawed.<sup>117</sup> The market for used cars is flourishing because of voluntary disclosure, and “sellers of good used cars have discovered credible ways to signal the quality of their offerings.”<sup>118</sup> Examples of voluntary disclosures include advertising, quality associated with brand recognition and reputation, third-party quality certificates, inspection periods, free trials, and money-back-guarantees.<sup>119</sup> Voluntary disclosure is currently used by Airbnb participants. Hosts must compete with one another, and this competition provides an incentive to voluntarily disclose the quality of the property to potential guests. Some hosts even hire professional photographers to showcase the property, and Airbnb helps facilitate this.<sup>120</sup>

#### vi. *Reputational Mechanisms*

A reputational mechanism is an extremely efficient, non-governmental remedy that leads parties to monitor their own behavior to appear trustworthy. “Reputation — or the fear of its loss — can act as a powerful incentive to both constrain opportunistic behavior and incentivize honest transactions among individuals within the market.”<sup>121</sup> Economist Gordon Tullock explains the power of reputational mechanisms in the following way:

A reputation for being “sound” is a valuable asset, and we should expect people to make every effort to get it . . . . When the market is broad and there are many alternatives, you had better cooperate. If you choose the noncooperative solution, you may find you have no one to noncooperate with.<sup>122</sup>

Reputational mechanisms began as one-way rating systems, but the growth of the internet allows sharing economy companies to use reputational mechanisms between both buyer and seller.<sup>123</sup> Two-way rating is simple: after each stay, the

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115. *What are the requirements to book on Airbnb?*, AIRBNB, <https://www.Airbnb.com/help/article/1170/what-are-the-requirements-to-book-on-Airbnb> (last visited Nov. 25, 2017).

116. LAMBERT, *supra* note 6, at 201.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Get a professional photographer for your listing*, AIRBNB, [https://www.Airbnb.com/professional\\_photography](https://www.Airbnb.com/professional_photography) (last visited Nov. 24, 2017).

121. Thierer, Koopman, Hobson & Kuiper, *supra* note 3, at 17.

122. Gordon Tullock, *Adam Smith and the Prisoners’ Dilemma*, 100 Q. J. ECON. 1073, 1081 (1985).

123. Thierer, Koopman, Hobson & Kuiper, *supra* note 3, 25–27 (When the internet became widespread, *Consumer Reports* began compiling their reviews online as well as in print. Over the next couple of years, Amazon and Yelp reinvented the usefulness of product reviews. These reviews “per-



host rates the guest, and vice versa. Both parties leave public and private feedback for the other.<sup>124</sup> Guests can leave “star ratings” for their hosts on a scale of one to five for “overall experience, cleanliness, accuracy, value, communication, check-in, and location,” and these star ratings are shown publicly for future guests to see.<sup>125</sup>

Some may find the two-way reputational mechanism ineffective. But think about a hypothetical purchase on eBay: if there are two sellers of the same product (say a pair of Rainbow sandals), and one has a five star average rating (with over 1,000 customer reviews) while the other has a three star rating (with two customer reviews), who will you buy from? eBay was the first company to heavily rely on a two-way rating system, allowing total strangers to confidently transact with each other across the world.<sup>126</sup> When both parties know they will be rated publicly after each transaction, it is in their best interest to tell the truth.<sup>127</sup> Reputational mechanisms are cheap, effective, and require no administrative oversight.<sup>128</sup> Reputational mechanisms also reward good behavior, like subsidies, and punish bad behavior, like taxes.<sup>129</sup>

A peer-to-peer reputational mechanism is the best remedy for Airbnb. As said above, policymakers acting like physicians should seek to maximize social welfare by prescribing the remedy that (1) addresses the underlying disease, and (2) provides the greatest net benefit for people.<sup>130</sup> In the case of Airbnb, peer-to-peer reputational mechanisms provide the greatest net benefit. Airbnb’s two-way rating system is the reason why strangers now pay money to stay in other stranger’s homes.<sup>131</sup> Airbnb’s reputational mechanism has cured information asymmetry — the main historical reason<sup>132</sup> for implementing regulation — as effectively as any above-mentioned remedy can.<sup>133</sup> The next part will show how no existing anti-Airbnb regulation in New York City or San Francisco is curing the underlying disease and is only aimed at slowing Airbnb’s growth.

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form the vital function of providing consumers with the information they need before they engage in an exchange.”).

124. *Hosts and guests* reviews, AIRBNB, <https://www.Airbnb.com/help/article/2059/host-and-guest-reviews> (last visited Apr. 16, 2018).

125. *Id.*

126. Thierer, Koopman, Hobson & Kuiper, *supra* note 3, at 26.

127. *Id.* at 17 (“Reputational constraints, like religious or ethical constraints, prevent individuals from lying and

cheating by making such behavior very costly in the market”).

128. *Id.* at 42.

129. *Id.* at 19.

130. LAMBERT, *supra* note 6, at 14.

131. Thierer, Koopman, Hobson & Kuiper, *supra* note 3, at 33 (“While some may point out that these mechanisms do not *directly* increase the trust between the transacting parties, the end result is the same: Transactions that would not otherwise occur due to lack of trust are indeed facilitated. This is similar to the way personal referrals have worked in the traditional economy. Some people may not at first trust Bob the plumber to repair a sink, but if all their coworkers recommend him, then they may indeed choose to hire him.”).

132. *Id.* at 4.

133. *Id.* (“Importantly, reputational incentives and reputational feedback mechanisms have also increasingly helped market actors overcome information symmetries.”).

### III. WHAT REGULATIONS ARE CURRENTLY IN EFFECT, AND HOW EFFECTIVELY ARE THEY FIXING THE PROBLEMS?

The policymakers in New York City and San Francisco have not behaved like physicians, and have instead been captured by the hotel industry. So far, this article has identified the present symptoms, exposed the diseases causing these symptoms, laid out several government and non-government remedies, and weighed the pros and cons of each. This article now turns to present anti-Airbnb regulations in New York City and San Francisco. This article argues that both cities have mis-regulated Airbnb because both identify a lack of affordable housing as the problem, but neither set of regulations fix that problem.

#### *A. New York City*

Governor Cuomo has made it almost entirely illegal to host an Airbnb.<sup>134</sup> First, it is illegal to rent out a “class A” multiple dwelling for fewer than 30 days.<sup>135</sup> Class A multiple dwellings include tenements, flat houses, and apartments; New York City’s Multiple Dwelling Law explains that class A multiple dwellings “shall only be used for permanent residence purposes.”<sup>136</sup> Actions that are considered “inconsistent” with the Multiple Dwelling Law include the following:

occupying a dwelling unit for fewer than thirty consecutive days by other . . . persons . . . as house guests or lawful boarders, roomers or lodgers; or incidental and occasional occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons when the permanent occupants are temporarily absent . . . .<sup>137</sup>

The terms “[b]oarders, roomers or lodgers” have been interpreted to only apply to guests in an unoccupied home.<sup>138</sup> So if an Airbnb host were “temporarily absent” while a guest was present, the host would run afoul of this rule.<sup>139</sup> Violating the Multiple Dwelling Law is a misdemeanor that can be punished with either a \$500 fine, up to 30-days of imprisonment, or both.<sup>140</sup> Repeat offenders may be punished with a \$1,000 fine, up to six months of imprisonment, or both.<sup>141</sup> It is also illegal to advertise a class A multiple dwelling rental for fewer than 30

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134. Joshua Brustein, *N.Y. Governor Cuomo Signs Bill to Fine Illegal Airbnb Hosts*, BLOOMBERG (Oct. 21, 2016), <https://www.bloomberg.com/news/articles/2016-10-21/n-y-governor-cuomo-signs-bill-to-fine-illegal-airbnb-hosts> (Governor Cuomo signed the Multiple Dwelling Law, which would go into effect in January, 2017).

135. N.Y. MULT. DWELL. LAW § 4(7)–(8) (McKinney 2011).

136. *Id.* § 4(8).

137. *Id.*

138. *New York, NY*, AIRBNB, <https://www.Airbnb.com/help/article/868/new-york--ny> (last visited Oct. 30, 2017).

139. *Id.*

140. N.Y. MULT. DWELL. LAW § 304(1) (McKinney 1984).

141. *Id.*

days.<sup>142</sup> The penalty for simply advertising is a \$1,000 fine for the first violation, \$5,000 for the second, and \$7,500 for every violation thereafter.<sup>143</sup>

If an Airbnb host manages to avoid the first two regulations by sharing the space and not advertising, the host will violate a third law. A host is not allowed to operate a “hotel.”<sup>144</sup> There are two defined types of hotels: apartment hotels and transient hotels. An apartment hotel is defined as hosting a guest in a class A multiple dwelling with at least three dwelling or rooming units that provides any of the following to its guests: “housekeeping, telephone, desk, or bellhop service, or the furnishing of laundering of linens.”<sup>145</sup> A transient hotel does not have the class A multiple dwelling requirement and is defined as hosting a guest in any building where a guest may rent sleeping or living accommodations on a daily basis.<sup>146</sup> Between the two definitions of hotel, every host in New York City is barred from hosting an Airbnb guest.

Future Airbnb hosts in New York City also need to be cautious of specific laws applied to rent-stabilized and rent-controlled properties. Rent-stabilized properties are governed by Chapter 4 of the New York City Administrative Code, and rent controlled properties are governed by Chapter 3.<sup>147</sup> There are specific amounts that tenants in these rent-capped properties can charge Airbnb guests as discussed above.<sup>148</sup>

Finally, Airbnb hosts are required to pay hotel taxes in New York City.<sup>149</sup> New York tax law requires operators of “apartment hotels” and “bed and breakfast establishments” to collect sales tax on the rental charge.<sup>150</sup> In New York City specifically, hotels must charge an additional \$1.50 “hotel unit fee” per unit, per day, in addition to state and local sales taxes.<sup>151</sup> To avoid the hotel taxes in New York City, a guest would have to qualify as a “permanent resident” which is defined as a guest who stays 90 consecutive days without interruption.<sup>152</sup> To avoid the New York City local sales tax, the guest must stay 180 consecutive days.<sup>153</sup>

The New York Multiple Dwelling Law is a textbook example of command and control regulation.<sup>154</sup> And true to the nature of command regulation, the Multiple Dwelling Law has been difficult to enforce against Airbnb’s peer-to-peer transactions. After about three months of its enactment, New York City officials only issued fines to 139 listings.<sup>155</sup> However, during that time there were over

142. N.Y. MULT. DWELL. LAW § 121(1) (McKinney 2016) (It shall be unlawful to advertise occupancy or use of dwelling units in a class A multiple dwelling for occupancy that would violate subdivision eight . . . of this chapter defining a “class A” multiple dwelling.).

143. *Id.* § 121(2).

144. *Zoning Resolution*, CITY N.Y. (Mar. 30, 2018), <http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art01c02.pdf?r=0927>.

145. *Id.*

146. *Id.* (To qualify as a transient hotel, the building must also have at least one common entrance, provide 24 hour desk service, and provide one of the following: housekeeping, telephone, bellhop service, or furnishing or laundering of linens service.)

147. N.Y.C. ADMIN. CODE §§ 26-401–415, 26-501–520 (2017).

148. *See supra* Part II(C)(e).

149. *Hotel and Motel Occupancy*, N.Y. ST. DEP’T TAX’N & FIN. 1 (May 9, 2012), [https://www.tax.ny.gov/pdf/tg\\_bulletins/sales/b12\\_331s.pdf](https://www.tax.ny.gov/pdf/tg_bulletins/sales/b12_331s.pdf).

150. *Id.*

151. *Id.*

152. *Id.* at 2.

153. *Id.*

154. *See supra* Part II(D)(a).

155. Walker, *supra* note 100.

23,000 listings in New York City that were potentially illegal, meaning that the command and control regulation only caught .05% of rule breakers.<sup>156</sup> As a result, Mayor Bill de Blasio has already allocated \$1.6 million of taxpayer money, and agreed to \$2.9 million over the next two years, in an effort to add 16 more inspectors to the 32-member team who will search for illegal Airbnb listings.<sup>157</sup>

This anti-Airbnb regulation is expensive, requires a large team to enforce, and has been ineffective at catching violators. This is a perfect example of mis-regulation that does not provide the greatest net benefit for the city. The New York City legislature explicitly stated the problem it is trying to fix is a lack of affordable housing, “[t]he council hereby finds . . . that there *continues to exist an acute shortage of dwellings which creates a special hardship to person and families occupying rental housing . . .*”<sup>158</sup> But how is Governor Cuomo, by making Airbnb illegal, doing anything to bring back the affordable housing options that have been disappearing in New York City? Only time will tell. Until then, it appears that the Multiple Dwelling Law’s only purpose is to slow Airbnb’s growth, not cure the underlying disease.<sup>159</sup>

### B. *San Francisco*

San Francisco encourages its residents to understand what laws must be followed to legally host an Airbnb listing. San Francisco provides a series of informational documents, and a five-step approach to legal hosting.<sup>160</sup>

“Step 1: Check for Eligibility.”<sup>161</sup> The city’s website explains that hosts must meet the following requirements: be permanent residents of San Francisco, own or be the tenant of the property, live in the dwelling for at least 60 days, and plan to live in the unit for a minimum of 275 nights per year.<sup>162</sup> In addition, the “dwelling” must also meet certain conditions: it must comply with all city codes,<sup>163</sup> cannot be a “Single-Room-Occupancy” or “dormitory,” cannot be a “Below-Market-Rate” or “Public Housing” unit, must have the proper permit,<sup>164</sup> and must register with the city.<sup>165</sup>

“Step 2: Understand the Rules.”<sup>166</sup> In addition to these basic requirements, San Francisco requires every host to have at least \$500,000 of property liability insurance.<sup>167</sup> Airbnb provides this liability insurance for its customers.<sup>168</sup> Finally,

156. *Id.* (explaining that at this rate, it will take the Mayor’s Office of Special Enforcement over 43 years to get to all the illegal listings).

157. Rosa Goldensohn, *De Blasio ramps up Airbnb enforcement*, CRAIN’S N.Y. (Apr. 26, 2017), [http://www.crainsnewyork.com/article/20170426/REAL\\_ESTATE/170429915/mayor-bill-de-blasio-budgets-1-6-million-to-crack-down-on-Airbnb#](http://www.crainsnewyork.com/article/20170426/REAL_ESTATE/170429915/mayor-bill-de-blasio-budgets-1-6-million-to-crack-down-on-Airbnb#).

158. N.Y.C. ADMIN. CODE § 26-501 (2017) (emphasis added).

159. *See supra* Part II(C)(a).

160. *Short-Term Residential Rental*, S.F. Bus. Portal (June 27, 2017), <https://businessportal.sfgov.org/start/starter-kits/short-term-rental>.

161. *Id.*

162. S.F. ADMIN. CODE §§ 41A.4, 41A.5(g)(1)(A) (2017).

163. *Id.* § 41A.5(g)(1)(H).

164. *Short-Term Residential Rental*, *supra* note 161 (definition of “short-term residential rental”).

165. S.F. ADMIN. CODE § 41A.4 (2017) (definition of “short-term residential rental registry”).

166. *Short-Term Residential Rental*, *supra* note 161.

167. S.F. ADMIN. CODE § 41A.5(g)(1)(D) (2017).

168. *Id.*

if a property is located in a rent-controlled unit, monthly revenue from Airbnb hosting cannot exceed the host's monthly rent.<sup>169</sup>

"Step 3: Register with the Treasurer and Tax Collector."<sup>170</sup> The city makes it clear that operating an Airbnb listing is a business, so each host must obtain a Business Registration Number.<sup>171</sup> With that number, hosts are required to register with the city Treasurer and Tax Collector.<sup>172</sup>

"Step 4: Apply with the Office of Short-Term Rentals."<sup>173</sup> With the Business Registration Number, hosts are required to pay a \$250 application fee.<sup>174</sup> If the host satisfies all the requirements, they will receive a business license and certificate.<sup>175</sup>

"Step 5: Stay Compliant."<sup>176</sup> Once a licensed business, San Francisco requires their hosts to do five things: (1) report short-term rental stays every quarter with the Office of Short-Term Rentals;<sup>177</sup> (2) renew the business certificate annually with the Treasurer and Tax Collector; (3) pay the Transient Occupancy Tax, which is 14% of the revenue earned on any stay fewer than 30 days;<sup>178</sup> (4) file and pay personal property taxes for the business; and (5) renew the certificate with the Office of Short-Term Rentals every two years.<sup>179</sup>

San Francisco tries to help its residents navigate this regulatory mine field, so they can legally use Airbnb. These command and control regulations — registration with the city, quarterly reporting, paying taxes, and annual rental caps — all depend on the host voluntarily registering.<sup>180</sup> As of August 2017, after two years of being in effect, the registration requirements led to only one quarter of hosts voluntarily registering with the city.<sup>181</sup> This evidence supports the idea that command and control is an ineffective remedy for the sharing economy. Licenses are designed to ensure minimum levels of quality, but a significant downfall of licenses is they create a large barrier to entry for new market participants.<sup>182</sup> The large number of requirements for registration will lead many to stop hosting through Airbnb.

After losing a battle in federal court to the City of San Francisco, Airbnb agreed to require all 8,000 of its local hosts to register with the city as part of the settlement reached.<sup>183</sup> In September 2017, if a host made a new listing, Airbnb

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169. *Id.*

170. *Short-Term Residential Rental*, *supra* note 161.

171. *Id.*

172. S.F. ADMIN. CODE § 41A.7(a) (2016).

173. *Short-Term Residential Rental*, *supra* note 161.

174. *Id.*

175. *Id.*

176. *Id.*

177. S.F. ADMIN. CODE § 41A.5(g)(3)(C) (2017).

178. *Id.* § 41A.5(g)(4)(B); *Short-Term Residential Rental*, *supra* note 161 (If a host only uses Airbnb, they do not need to report Transient Occupancy Taxes separately because Airbnb collects the tax directly.).

179. S.F. ADMIN. CODE § 41A.5(g)(2)(C) (2017).

180. *See supra* Part II(D)(a) (explaining how it is difficult for the government to monitor peer-to-peer transactions).

181. Carolyn Said, *SF warns home-stay companies that hosts must register*, S.F. CHRON. (Aug. 1, 2017), <http://www.sfchronicle.com/business/article/SF-warns-home-stay-companies-that-hosts-must-11725790.php>.

182. *See supra* Part II(D)(c).

183. *Airbnb, Inc. v. City & Cty. of S.F.*, 217 F. Supp. 3d 1066, 1080 (N.D. Cal. 2016) (Airbnb lost action seeking injunction against the city's law requiring hosts to register with the city); Roberto

began requiring him or her to complete the registration process mentioned above on Airbnb's own website.<sup>184</sup> In November 2017, Airbnb took a giant step towards compliance by removing 2,300 listings off its website for not registering with San Francisco.<sup>185</sup>

The San Francisco city council explicitly said the problem is a lack of affordable housing:

[regulation will be created] to benefit the general public by minimizing adverse impacts on the housing supply and on persons and households of all income levels resulting from the loss of residential units through their conversion to tourist and transient use. This is to be accomplished by regulating the conversion of residential units to tourist and transient use . . . . It is in the public interest that conversion of residential units be regulated and that remedies be provided when unlawful conversion has occurred, *in order to protect the residents and to conserve the limited housing resources.*<sup>186</sup>

The San Francisco city council also explained that it has been aware of a housing shortage in its city since November, 1980.<sup>187</sup> But as explained above, the numerous command and control and license regulations do not create more housing options, nor do they make rent more affordable.<sup>188</sup> All these regulations appear to do is put a heavy burden on hosts who want to use Airbnb. They fail to address the underlying disease that is more than 30 years older than Airbnb.

Two cities explicitly state their decision to regulate Airbnb is to fix the housing crises. New York City has made it practically illegal for anyone to use Airbnb, and San Francisco has created several hoops to jump through to legally host with Airbnb. However, while both are addressing the symptoms of Airbnb's presence, neither are solving the underlying disease. While the disease is multifaceted, the blame can be found in poor historical zoning decisions, opportunistic property owners, and evaporating rent-capped properties.<sup>189</sup> The regulations in New York City and San Francisco are not reducing rent prices, nor are they creating more housing options. Instead, both are examples of policymaking groups being "captured" by the hotel industry.<sup>190</sup> While affordable housing is a problem, more anti-Airbnb regulation will not provide a greater net benefit than already exists.

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Baldwin, *Airbnb agrees to register all hosts in San Francisco*, ENGADGET (May 1, 2017), <https://www.engadget.com/2017/05/01/Airbnb-agrees-to-register-all-hosts-in-san-francisco/>.

184. *San Francisco's Registration Process: Frequently Asked Questions*, AIRBNB, <https://www.Airbnb.com/help/article/1849/san-francisco-s-registration-process--frequently-asked-questions> (last visited Nov. 12, 2017).

185. Todd Johnson, *Our view: Airbnb shows how a better San Francisco regulation system is possible*, S.F. BUS. J. (Nov. 9, 2017), <https://www.bizjournals.com/sanfrancisco/news/2017/11/09/our-view-Airbnb-sharing-economy-regulation-uber.html>.

186. S.F. ADMIN. CODE § 41A.2-.3 (2012) (emphasis added).

187. *Id.* § 41A.3(g).

188. *See supra* Part II(C)(a).

189. *See supra* Part II(C)(a).

190. Benner, *supra* note 9.

#### IV. HOW TO MOVE FORWARD: CLOSING THOUGHTS

Since the emergence of the sharing economy, incumbents have urged policymakers to pass new regulations to “level the playing field.” The loudest opponent to Airbnb has been the self-interested hotel industry. By illogically linking Airbnb, a 10-year old company, to the housing crisis, a century old problem in some places, the hotel industry’s multi-million dollar lobbying effort succeeded in New York City and San Francisco. Policymakers saddled Airbnb hosts with new red-tape which regulated Airbnb up to the same level as national hotel chains.<sup>191</sup>

The physician’s theory requires a policymaker to identify the adverse symptoms and trace them down to the disease. Policymakers, in their attempt to maximize social welfare, should choose the remedy that provides the greatest net benefit. This article does not argue for a regulation-free world for Airbnb. Instead, Airbnb should only be regulated if it will lead to a greater net benefit by curing a disease more effectively than reputational mechanisms do.

The reason traditional forms of regulation do not cure these recent symptoms is because Airbnb uses big data, operates on the internet, and allows people to directly transact. Traditional regulation worked well when it was designed to cure informational asymmetry, but informational asymmetry is no longer a serious disease because Airbnb’s two-way reputational mechanisms solve it as effectively as any government-prescribed regulation. Today, hosts and guests have real incentives to behave honestly and fulfill their end of the bargain. While preserving their reputations, both parties have effectively eliminated the problem of informational asymmetry. Until new regulation can create a better net benefit, it should not be enacted.

Mis-regulation occurs when policymakers are captured.<sup>192</sup> Innovation and growth should not be punished because the incumbent is threatened.<sup>193</sup> If the point is for there to be a level playing field, policymakers should deregulate down, not regulate up.<sup>194</sup> What would have happened in the late 1800’s if the horse and buggy industry “leveled the playing field” to restrict automobiles?

This article’s limited scope is unable to address all areas of the sharing economy. Some future areas of analysis include, whether Airbnb should be taxed and treated like a hotel?; what specific regulations should be placed on the sharing economy?; and how can the physician’s approach to regulation fix the housing crisis in cities like New York City and San Francisco? In addition, future empirical data should be collected to measure how effective anti-Airbnb regulations are at fixing the housing crisis. The data should track the impact regulations have on cities, and societies. Some of these regulations were less than one year old at the

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191. Thierer, Koopman, Hobson & Kuiper, *supra* note 3, at 4 (“Importantly, reputational incentives and reputational feedback mechanisms have also increasingly helped market actors overcome information symmetries.”).

192. LAMBERT, *supra* note 6, at 33 (explaining how captured policymakers can create regulation that restricts rivals, limits “potential entrants into the market,” and injures consumers, but since none of those groups are centrally organized, no counter-lobbying occurs).

193. Thierer, Koopman, Hobson & Kuiper, *supra* note 3, at 45.

194. *Id.* (Arguing that by deregulating down, the incumbents should have old rules relaxed across the entire industry. A wave of deregulation will not lead to chaos because civil and criminal remedies are already in place to check bad behavior.) (Author’s note: Incumbents have spent decades building reputations. It is in every hotel’s best interest to live up to the expectations they have built, if not customers will go to their competitors.).

time this article was written, and as a result, research does not exist to support some of its conclusions.

Finally, a closing thought: let Airbnb and hotel companies continue to compete as they have been for the past decade. Airbnb has shown that it will not be regulated out of business despite the hotel industry's best efforts. The hotel giant Marriott realizes this, and is adapting.<sup>195</sup> Marriott has begun creating new apps and services that will make Marriott's guest experience rival Airbnb's.<sup>196</sup> The list of improvements, which will be integrated over the next several years, include introducing concierge robots that deliver fresh towels, creating an app that suggests popular places to eat in the area, and offering a search engine that generates a unique list of activities for guests based on their past interests.<sup>197</sup> No government regulation forced Marriott to develop these new services, Airbnb did.

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195. Melia Robinson, *The world's biggest hotel chain is making big changes to defy the threat of Airbnb*, BUS. INSIDER (Sept. 27, 2017), <http://www.businessinsider.com/marriott-wants-to-be-the-next-Airbnb-2017-9>.

196. *Id.*

197. *Id.*