

HEJ, NOT HEJ DÅ: REGULATING AIRBNB IN THE NEW AGE OF ARIZONA VACATION RENTALS

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Airbnb is changing the way travelers see the world. In Arizona, like many other states, there is confusion about the best way to regulate Airbnb. Municipalities across the world have approached Airbnb in different ways, and Arizona's cities and counties are no exception: Phoenix adheres to a laissez-faire attitude, Pima County is hunting Airbnb hosts, and Jerome thrusts Airbnb into the center of litigation. Each municipality needs to adopt clear regulations to ensure that Airbnb hosts understand how Airbnb is governed and interacts with local laws. Local governments will benefit from this regulation because they will be better able to ensure that Airbnb operates safely, and they will benefit from increasing Airbnb profits by receiving additional tax revenue. There are two possibilities for regulating Airbnb in Arizona: Municipalities can fit Airbnb into their current regulations or enact new legislation to govern short-term rentals. Ultimately, creating a new regulatory system is the superior method and will maximize benefits for both municipalities and Airbnb users.

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INTRODUCTION

The Grand Canyon State is a nationwide hotspot for tourism, boasting attractions for visitors of all varieties.¹ In 2014, an estimated 40.7 million people visited Arizona and spent \$20.9 billion within the state, leading to \$2.8 billion in tax revenue and supporting 171,500 industry jobs.² Whether for business or pleasure, tourists are helping the Arizona tourism industry rebound for the first time since the 2007–2008 recession.³ Throughout Arizona, there is a wide range of lodging options, including world-renowned resorts, hotels, motels, and bed and breakfasts. For those who find the personal, friendly nature of bed and breakfasts appealing, Airbnb is an increasingly popular option. Airbnb offers travelers an immersive and personalized lodging experience with rates that are sometimes half the cost of a hotel.⁴ Airbnb has thousands of listings throughout Arizona, including well over 1,000 listings in the Phoenix metro area, over 690 listings in Tucson, and over 300 in Jerome and the surrounding Black Hills region.⁵

Despite its growth, Airbnb remains largely unregulated throughout Arizona. This regulatory void presents several challenges and concerns for both large cities and small towns, including health and safety concerns, neighborhood and property value preservation, and tax evasion.⁶ Further, as many observers claim, Airbnb poses a threat of unfair competition for hospitality businesses.⁷ Lack of clear

1. ARIZ. OFFICE OF TOURISM, MONTHLY GROSS SALES & TOURISM TAXES REPORT (2015), https://tourism.az.gov/sites/default/files/Gross%20Sales%20March%202015_0.pdf (noting that from January to March 2015, Arizona’s lodging sector generated an estimated \$946,057,311 in gross sales, of which the State collected approximately \$49,431,494 in taxes).

2. *Economic Impact of the Travel Industry in Arizona*, ARIZ. OFFICE OF TOURISM, <https://tourism.az.gov/research-statistics/economic-impact> (last visited Oct. 9, 2015).

3. Zachary Ziegler, *Business Report: Arizona Tourism on the Rebound*, ARIZ. PUB. MEDIA (June 25, 2015), <https://www.azpm.org/p/home-featured/2015/6/25/66907-business-report-tourism-on-the-rebound/> (reporting a significant increase in Arizona tourism in 2014, with around 3–5% growth in Tucson alone).

4. *Airbnb vs. Hotels: A Price Comparison*, PRICEONOMICS (June 17, 2013), <http://priceonomics.com/hotels/>.

5. AIRBNB, <https://www.airbnb.com> (last visited Oct. 9, 2015) (listing Airbnb hosts by geographic proximity). Because Airbnb posts listings by geographic proximity, rather than by city limits, estimates using the Airbnb website are approximated. *Id.*

6. Jamila Jefferson-Jones, *Airbnb and the Housing Segment of the Modern “Sharing Economy”*: *Are Short-Term Rental Restrictions an Unconstitutional Taking?*, 42 HASTINGS CONST. L. Q. 557, 573 (2015) (citing Ngai Pindell, *Home Sweet Home? The Efficacy of Rental Restrictions to Promote Neighborhood Stability*, 29 ST. LOUIS PUB. L. REV. 41, 47 (2009)) (recognizing that short-term-rental regulations increase property values and impose the “gold standard of single-family ownership and occupancy”).

7. *Id.* at 573–74.

regulation breeds inconsistent enforcement and creates confusion among hosts and guests alike.⁸ The regulatory gap is also problematic for local governments seeking to enforce its laws against Airbnb hosts because their actions may constitute unconstitutional takings.⁹

Regulatory action over Airbnb must ultimately occur on the municipal level. Strong regulatory systems, formed on municipal levels, will ensure maximization of the unique benefits of Airbnb for small and large communities.¹⁰ Local governments have taken vastly different approaches to Airbnb within their respective jurisdictions. Yet, regardless of the severity of regulations, Airbnb continues to expand.¹¹ Municipalities must be cautious in designing regulation for Airbnb that preserves Airbnb's benefits for hosts, guests, and the municipality itself. Clear and definitive regulation would reduce hosts' fears of legal penalties or other actions taken against them by local governments.¹² This will incentivize more people to participate in this growing market and ultimately benefit communities.

Arizona municipalities have two options to regulate Airbnb. First, they could use existing regulation to govern Airbnb. Alternatively, they could create a new system that corresponds to Airbnb's unique operations and addresses the benefits and problems it may bring to communities. The first option may be

8. Patrick McNamara, *Pima County Airbnb Owners Surprised by New Taxes*, ARIZ. DAILY STAR (Aug. 22, 2015, 7:23PM), http://tucson.com/news/local/govt-and-politics/pima-county-airbnb-owners-surprised-by-new-taxes/article_b3efb530-237f-5533-8cce-03a7dec4eb63.html (“Hundreds of Tucson-area homeowners were surprised to learn this year that their properties had been [reclassified as commercial properties after the county] assessor reclassified 235 residential properties to commercial, [b]ut that’s likely a fraction of the number of residential properties rented short term in the region . . . [O]ne way the County Assessor’s Office determined which properties to reclassify was to search vacation-rental websites for local properties.”).

9. Jefferson-Jones, *supra* note 6, 569–70 (arguing that some regulations against short-term rentals can lead to inverse condemnations and other regulatory “takings” under the Fifth Amendment).

10. Towns and cities have unique needs that Airbnb is able to meet. For some larger cities, Airbnb listings provide cheaper lodging alternatives. *See, e.g., Phoenix Listings*, AIRBNB, <http://www.airbnb.com/> (enter “Phoenix, AZ, United States” in the search field, click search button for results) (last visited Aug. 29, 2015) [hereinafter *Phoenix Listings*]; *New York City Listings*, AIRBNB, <http://www.airbnb.com/> (enter “New York City, NY, United States” in the search field, click search button for results) (last visited Nov. 20, 2015) (listings in Manhattan and Brooklyn from \$65 and \$47 per night, respectively). For small cities, Airbnb can bring in tourists that would normally not stay in those cities, for example, instead of staying in Casper, WY during a road trip, some travelers might stay at a listing in a smaller city, like Douglas, WY. *Douglas Listings*, AIRBNB, <http://www.airbnb.com/> (enter “Douglas, WY, United States” in the search field, click search button for results) (last visited Nov. 20, 2015).

11. *See infra* Part II (detailing the range of approaches taken by different cities in Arizona, the United States, and the world).

12. *See, e.g., Dorian Hargrove, AirBnB, the Elephant in the Room: Burlingame Resident Fined \$25,000 For Not Having Permit*, SAN DIEGO READER (Aug. 10, 2015) <http://www.sandiegoreader.com/news/2015/aug/10/ticker-airbnb-rachel-smith-fined/#> (reporting Airbnb host in San Diego found to be operating a bed and breakfast without necessary permits).

problematic because many existing laws will preclude many, if not all, potential Airbnb hosts from maintaining a listing. The second option is a better choice because it affords municipalities the greatest flexibility to enrapture the benefits of Airbnb and mitigate potential problems. In doing this, Arizona municipalities can model their approach after California cities, which have begun to register, monitor, and tax Airbnb hosts.¹³ Part I will provide a short background on Airbnb's history and its operations. Part II will then describe three approaches taken by Arizona municipalities towards Airbnb. Finally, Parts III and IV will explore the pros and cons of two potential solutions: (i) regulating with current laws, or (ii) creating new regulatory frameworks; in closing, this Note will demonstrate a preference for the second solution.

I. WHAT IS AIRBNB?

Airbnb (a catchy diminution of air mattress and bed and breakfast) is an online community and marketplace that connects local residents with travelers.¹⁴ Airbnb's goal is to facilitate cultural exchanges, provide unique travel experiences, and promote the ideas of the sharing economy.¹⁵ Airbnb began in August 2008 and now offers over 2,000,000 listings in 34,000 cities and 190 countries.¹⁶ Airbnb is expanding in major cities and small towns around the globe. Paris, now Airbnb's

13. See, e.g., Press Release, City & Cty. of S.F. Office of the Mayor, Mayor Lee Announces New "One-Stop Shop" Office of Short-Term Rental Administration & Enforcement (July 2, 2015), <http://www.sfmayor.org/index.aspx?recordid=911&page=846> [hereinafter San Francisco Press Release] (announcing San Francisco's Office of Short-Term Rentals for streamlining the process for getting short-term rental permits); *Office of Short-Term Rental Registry & FAQs*, CITY & CTY. OF S.F. PLAN. & ZONING DEP'T, <http://www.sfplanning.org/index.aspx?page=4004> (last visited Nov. 18, 2015).

14. Jean Folger, *The Pros and Cons of Using Airbnb*, INVESTOPEDIA (Jan. 30, 2015), <http://www.investopedia.com/articles/personal-finance/032814/pros-and-cons-using-airbnb.asp?performancelayout=true>.

15. Airbnb, *How Airbnb Hosts Help Guests Feel at Home Anywhere*, YOUTUBE (Oct. 1, 2014), <https://www.youtube.com/watch?v=sgQzE8gMdek> (pointing out the "unique places to stay" that Airbnb offers across the globe); *New Study: Airbnb Community Generates \$312 Million in Economic Impact in LA*, AIRBNB (Dec. 4, 2014), <https://www.airbnb.com/press/news/new-study-airbnb-community-generates-312-million-in-economic-impact-in-la> (noting that Airbnb generated \$312 million and supported 2,600 jobs in Los Angeles); *Economic Impact*, AIRBNB, <https://www.airbnb.com/economic-impact> (last visited Aug. 8, 2015) [hereinafter *Economic Impact*] (reporting that Airbnb guests stay 2.1 times longer and spend 2.1 times more money than other visitors, with 42% of Airbnb guests spending in neighborhoods where they stay).

16. *About Us*, AIRBNB, <https://www.airbnb.com/about/about-us> (last visited Aug. 3, 2015) [hereinafter *About Us*]. See generally Jenny Kassan & Janelle Orsi, *The Legal Landscape of the Sharing Economy*, 27 J. ENVTL. L. & LITIG. 1 (2012) (providing a thorough introduction to the sharing economy). Numerous articles describe Airbnb's history and its business model. See, e.g., Roberta A. Kaplan, *Airbnb: A Case Study in Occupancy Regulation and Taxation*, 82 U. CHI. L. REV. DIALOGUE 103 (2015) (providing a history of Airbnb and its litigation and arguing cities should collaborate with sharing economy ventures rather than protect encumbered businesses); Brittany McNamara, *Airbnb: A Not-So-Safe Resting Place*, 13 COLO. TECH. L.J. 149, 151-52 (2015) (discussing Airbnb's business model, states' efforts to regulate, and potential consequences of federally imposed regulations).

largest market, has over 40,000 listings, followed by New York City with 34,000, and London with 23,000.¹⁷

Anyone can become an Airbnb host by creating an online profile and a listing. Hosts post pictures and descriptions of their house, apartment, tipi, igloo, or couch on Airbnb's website. They have full control over their availability using an online calendar. Hosts also set their own price per night and can arrange special deals with travelers.¹⁸ The online posting lists the amenities each host offers, including shampoo, towels, coffee, breakfast, Internet, and many others.¹⁹ Hosts outline their own policies for smoking, curfews, and in-house behavior.²⁰ Travelers and guests range from domestic to international tourists, business travelers, and perpetual nomads.²¹ Airbnb guests search for places to stay based on price, room type, and the number of guests in their party. Guests can access Airbnb on their computer or mobile device, making it a platform for plan-ahead travelers and impulsive bohemians. After each rental period ends, guests and hosts are encouraged to review one another.²² Airbnb uses this internal mechanism to promote safety and security for guests and hosts, and weed out bad users.²³

17. *Paris Becomes Airbnb's Top Home-Sharing City Destination*, GUARDIAN (Feb. 27, 2015, 7:38 PM), <http://www.theguardian.com/travel/2015/feb/27/paris-becomes-airbnbs-top-home-sharing-city-destination>; see also Sarah Spikernell, *Londoners Can Now Rent Out Their Spare Rooms Using Airbnb Thanks to Change in Rules*, CITY A.M. (May 26, 2015), <http://www.cityam.com/216446/londoners-can-now-rent-out-their-spare-rooms-using-airbnb-thanks-change-rules> (discussing London's new rule, allowing residents to rent out part of their homes temporarily without filing a planning permission application).

18. *How to Host*, AIRBNB, <https://www.airbnb.com/help/getting-started/how-to-host> (last visited Aug. 8, 2015) [hereinafter *How to Host*]; *Airbnb Picks*, AIRBNB, https://www.airbnb.com/wishlists/airbnb_picks (last visited Nov. 18, 2015); *About Us*, *supra* note 16.

19. *How to Host*, *supra* note 18.

20. *Id.*

21. Christopher Elliott, *The Latest Travel Trend? Becoming a Nomad*, S.F. GATE (May 24, 2009), <http://www.sfgate.com/travel/article/The-latest-travel-trend-Becoming-a-nomad-3231686.php>.

22. *How Do Reviews Work?*, AIRBNB, <https://www.airbnb.com/help/article/13> (last visited Aug. 30, 2015).

23. See Joseph Shuford, Note, *Hotel Motel, Holiday Inn and Peer-to-Peer Rentals: The Sharing Economy, North Carolina, and the Constitution*, 16 N.C. J.L. & TECH. ON. 301, 307 (2015) (discussing the double-blind system of reviewing). Airbnb requires all users to verify their identity. See Chelsea Diana, *Jump in Person-to-Person Vacation Rentals in Portland Area Causes a Stir*, PORTLAND PRESS HERALD (July 21, 2014), <http://www.pressherald.com/2014/07/21/person-to-person-vacation-rentals-jump-in-portland-area-causing-a-stir/>; see also *Guarantee*, AIRBNB, <https://www.airbnb.com/guarantee> (last visited Aug. 8, 2015) (protecting hosts with a \$1,000,000 guarantee from Airbnb). But see Julie Bort, *Photos: Airbnb Guest Held a Huge Party in this New York Penthouse and Trashed It*, BUS. INSIDER (May 18, 2014, 9:24 PM), <http://www.businessinsider.com/how-an-airbnb-guest-trashed-a-penthouse-2014-3?op=1>. Hosts are encouraged to follow guidelines for how to manage their listing and provide services for guests. *Hosting Standards*, AIRBNB, <https://www.airbnb.com/help/topic/206> (last visited Aug. 4, 2015).

Airbnb's business model has been so successful that it has led investors to value the company at more than \$20 billion.²⁴ Several companies have sprung up around the "Airbnb ecosystem."²⁵ Among these are companies like Guesty and Pillow, which offer third-party management services for Airbnb hosts, making it even easier to list, maintain, and market Airbnb listings.²⁶

Aside from its corporate success, Airbnb contributes to communities their citizens. When local governments coordinate with Airbnb, greater tax revenues are generated, and communities are able to more fully participate in the growing sharing economy, which can boost broader economic activity.²⁷ It also gives new life to old neighborhoods as hosts repair and refurbish unique properties.²⁸ Guests who use Airbnb stay twice as long as typical visitors and spend twice as much money in the surrounding neighborhoods than typical travelers.²⁹ Airbnb may also help local communities preserve resources and reduce pollution.³⁰ By listing their homes,

24. See Rolfe Winkler & Douglas MacMillian, *The Secret Math of Airbnb's \$24 Billion Valuation*, WALL ST. J. (June 17, 2015), <http://www.wsj.com/articles/the-secret-math-of-airbnbs-24-billion-valuation-1434568517>; see also Serena Saitto, *Airbnb Said to Be Raising Funding at \$20 Billion Valuation*, BLOOMBERG BUS. (Feb. 28, 2015), <http://www.bloomberg.com/news/articles/2015-03-01/airbnb-said-to-be-raising-funding-at-20-billion-valuation>; Sarah Ashley O'Brien, *Crazy Money – Airbnb Valued at Over \$25 Billion*, CNN MONEY (June 27, 2015), <http://money.cnn.com/2015/06/27/technology/airbnb-funding-valuation-update/>. Airbnb is now valued more than Marriot, Starwood, and Wyndham. Alison Griswold, *Airbnb is Thriving. Hotels Are Thriving. How Is that Possible?*, SLATE (July 6, 2015), http://www.slate.com/articles/business/moneybox/2015/07/airbnb_disrupting_hotels_it_has_n_t_happened_yet_and_both_are_thriving_what.html.

25. Samantha Shankman, *The Startup Businesses Built Around the Airbnb Ecosystem*, SKIFT (Nov. 18, 2014), <http://skift.com/2014/11/18/the-startup-businesses-built-around-the-airbnb-ecosystem/>.

26. GUESTY, <https://www.guesty.com> (last visited Oct. 9, 2015); PILLOW, <https://www.pillowhomes.com> (last visited Oct. 9, 2015).

27. See Patrick Robinson, *Airbnb Community in Madrid Boosts Spanish Economy by € 323m*, AIRBNB (June 30, 2015), <http://publicpolicy.airbnb.com/airbnb-community-madrid-boosts-spanish-economy-e3> ("In line with findings from other cities we have studied, we found that Airbnb is attracting new visitors to Madrid who stay longer, spend more and are more likely to return."); see also *Airbnb's Positive Impact in Madrid*, AIRBNB (June 29, 2015), <http://blog.airbnb.com/airbnbs-positive-impact-in-madrid/> (providing data on host income and impact in Madrid); Murray Newlands, *The Sharing Economy: How It Works and How to Join*, FORBES (July 17, 2015, 3:30 PM), <http://www.forbes.com/sites/mnewlands/2015/07/17/the-sharing-economy-why-it-works-and-how-to-join/>.

28. Seth Porges, *The Airbnb Effect: Bringing Life to Quiet Neighborhoods*, FORBES (Jan. 23, 2013, 2:23 PM), <http://www.forbes.com/sites/sethporges/2013/01/23/the-airbnb-effect-bringing-life-to-quiet-neighborhoods/>.

29. *Economic Impact*, *supra* note 15.

30. *New Study Reveals a Greener Way to Travel: Airbnb Community Shows Environmental Benefits of Home Sharing*, AIRBNB (July 31, 2014), <https://www.airbnb.com/press/news/new-study-reveals-a-greener-way-to-travel-airbnb-community-shows-environmental-benefits-of-home-sharing> (finding Airbnb hosts promote energy-efficient practices, with North American guests use up to 63% less energy).

individual hosts are able to “monetize their extra space.”³¹ Airbnb can help people pay their bills, keep up with their mortgages, and stay in their homes.³² Airbnb claims that 53% of its hosts say that listing their home on Airbnb has helped them stay in their home, while 48% say that it helps them to pay regular household expenses like rent, utilities, and groceries.³³

The benefits that Airbnb brings to communities have not been without drawbacks. During Airbnb’s short lifetime, it has faced legal and logistical challenges. For example, some guests have caused damage to homes, like when partiers rented a Calgary couple’s home and left it destroyed with evidence of a “drug induced orgy.”³⁴ In another instance, one host became a victim of extortion when an Airbnb guest refused to leave her apartment.³⁵ On a larger scale, some argue that Airbnb subjects entire communities to danger by creating pop-up hotels in residential areas, which expose families (and children) to an influx of strangers.³⁶ These opponents also blame Airbnb for exacerbating housing shortages in high-demand areas.³⁷ Rival businesses argue that Airbnb is unfair competition because many Airbnb hosts do not comply with regulations that control hotels, motels, and other transient lodging providers in the industry.³⁸ Competitors also cite concerns

31. *About Us*, *supra* note 16.

32. Jefferson-Jones, *supra* note 6, at 575 (“[A]llowing owners to share homeownership can protect a community’s property values by helping to insulate individual owners from the effects of negative housing market downturns.”). Airbnb can also “offset[] the cost of ownership and maintenance”—rather than solely a for-profit enterprise, as is common in traditional lodging exchanges.” *Id.* at 561–62; *see also* See Dan Primack, *How Airbnb Helps Users Save Their Homes*, FORTUNE (Aug. 16, 2012), <http://fortune.com/2012/08/16/how-airbnb-helps-users-save-their-homes/>.

33. *Economic Impact*, *supra* note 15.

34. *Airbnb Renters Destroy Couple’s Home*, CNN (Apr. 29, 2015), <http://www.cnn.com/videos/us/2015/04/30/pkg-airbnb-guests-destroy-house.cbc-news>; *see also* Michael Chen, *Homeowner Has Nightmare Airbnb Experience*, ABC 15 ARIZ. (Sept. 29, 2015), <http://www.abcl5.com/news/national/homeowner-has-nightmare-airbnb-experience>.

35. Julie Bort, *Airbnb Host: A Guest is Squatting in My Condo and I Can’t Get Him to Leave*, BUS. INSIDER (July 21, 2014), <http://www.businessinsider.com/airbnb-host-cant-get-squatter-to-leave-2014-7>.

36. Dawn Gilbertson, *San Diego Considers Limits on Vacation-Home Rentals*, AZCENTRAL (June 5, 2015), <http://www.azcentral.com/story/travel/2015/06/05/san-diego-considers-limits-vacation-home-rentals/28548917/> (claiming that Airbnb lowers property values of adjacent homes).

37. *Id.*; *see also* *Paris Deploys Inspectors Across City to Quash Illegal Airbnb Rentals*, STAR (May 26, 2015), <http://www.thestar.com.my/Tech/Tech-News/2015/05/26/Paris-deploys-inspectors-across-city-to-quash-illegal-Airbnb-rentals/> [hereinafter *Paris Deploys Inspectors*] (reporting a crackdown on Airbnb in Paris due to housing shortage).

38. *See, e.g.*, *City of New York v. Smart Apartments LLC*, 959 N.Y.S.2d 890 (N.Y. Sup. Ct. 2013) (involving an Airbnb’s competitor accusing New York City of giving Airbnb preferential treatment because of prominent Airbnb stakeholders having strong city government connections); *HomeAway Inc. v. City & County of San Francisco*, No. 14–cv–04859–JCS, 2015 WL 367121 (N.D. Cal. Jan. 27, 2015) (involving an accusation that San Francisco favored Airbnb as a local business); Steve Hargreaves, *New Innovators Face Backlash*, CNN MONEY (Aug. 27, 2013), <http://money.cnn.com/2013/08/27/news/economy/start-up-competition/> (reporting on

about Airbnb hosts evading assessment of occupancy, hotel, bed, and other taxes associated with transient lodging.³⁹

An important reason for Airbnb's success is its simple format and quick start-up potential. A new Airbnb host can prepare a listing within a matter of minutes. This creates a delicate line that regulators must mind when they regulate Airbnb. On the one hand, regulators can potentially kill Airbnb activity by forcing hosts to comply with the onerous process of permitting and licensing. On the other hand, regulators have an interest in preserving the norms of health and safety regulations, applying regulations to all lodging businesses fairly, and avoiding confusing situations where hosts do not know where they stand legally or how to comply with the law.

Regulatory uncertainty is the greatest challenge that Airbnb and its users face in the thousands of Airbnb communities.⁴⁰ In an effort to provide hosts with greater certainty and security, Airbnb established its own internal mechanisms to assist hosts and guests in cases of damage, fraud, or unsafe conditions.⁴¹ Nevertheless, for municipal regulators, Airbnb's self-implemented regulation is not enough, as it does not address compliance with local laws or health and safety standards. To address this uncertainty, some municipalities have severely limited Airbnb use within their borders. Others have attempted to institute regulations that mitigate the harms caused by Airbnb while maintaining its benefits. In either case, clear regulation benefits communities of hosts and travelers.

growing concern by traditional lodging establishments that Airbnb is not similarly regulated and taxed); David Kong, *Airbnb and the Sharing Economy*, BEST WESTERN: IT'S PERSONAL (July 9, 2015), <http://www.bestwesternitspersonal.com/2015/07/09/airbnb-sharing-economy/> (“[T]here remain tremendous gaps in regard to health, safety and disability compliance standards. . . . [S]taying at an Airbnb room, or having an Airbnb guest living next-door, exposes one to a litany of risks that allows little in the way of recourse when things go terribly wrong.”). *But see* Griswold, *supra* note 24 (arguing that both Airbnb and traditional lodging establishments like Marriot and Wyndham are not only coexisting, but thriving).

39. *Airbnb, Inc. v. Schneiderman*, 989 N.Y.S.2d 786, 791–92 (N.Y. Sup. Ct. 2014) (quashing subpoena for information about hosts' tax evasion because of overbreadth); *see also* Jefferson-Jones, *supra* note 6, at 570–73 (noting that after the state made a more narrowly tailored subpoena, Airbnb agreed to give anonymous info on hosts and to give detailed information only when the state asks for specific hosts who may be violating the law); Kaplan, *supra* note 16, at 113–14 (Schneiderman has repeatedly made clear that he is focused on illegal hoteliers rather than people who rent out their primary residence for a night or two while out of town).

40. *See* Kong, *supra* note 38; *see also* Tim Logan, *At Airbnb, Growth Brings Scrutiny, Regulation*, L.A. TIMES (June 10, 2015, 3:00 AM), <http://www.latimes.com/business/la-fi-airbnb-20150610-story.html> (“[Airbnb] has no ‘near-term’ plan to go public” and, while projections are good for the long-term, short-term solutions are not clear.).

41. *Trust*, AIRBNB, <https://www.airbnb.com/trust> (last visited Aug. 30, 2015) (stating that Airbnb verifies the identification of each user); *Contact Us*, AIRBNB, https://www.airbnb.com/help/contact_us (last visited Aug. 30, 2015) (providing guests with 24-hour emergency hotline, refunds, and accommodations in case of safety issues at a host listing).

II. CURRENT STANCES ON AIRBNB IN ARIZONA

While its presence is growing, Airbnb is not as prevalent in Arizona as it is in other areas around the country and world.⁴² For example, Phoenix, with just over 1,000 listings, boasts the greatest concentration of Airbnb listings in the state.⁴³ Arizona municipalities have taken different stances on regulating—or at least attempting to monitor—Airbnb. To some extent, these stances mirror other cities around the country and the globe. The dynamics of each municipality, whether small or large in population, may play a significant role in why certain municipalities are more hostile or apathetic to Airbnb than others. Presenting a model regulation requires an understanding of the current situation of Airbnb in Arizona municipalities. Phoenix, Pima County, and Jerome illustrate the different stances on regulating Airbnb.

A. Phoenix: *Laissez-Faire and Flexibility*

Airbnb has a diverse offering of listings in Phoenix, including charming casitas, loft apartments, 1920s garden bungalows, ranch houses, and even renovated graffiti-covered storage containers.⁴⁴ Pricing for the listings ranges from \$13 for a room in an occupied house to \$3,000 per night for a whole-house rental during the Super Bowl.⁴⁵ However, Phoenix's interaction with Airbnb has been quite limited. To date, the city has not taken action against hosts who operate solely through Airbnb without any city or state recognition. The only step Phoenix has taken to regulate Airbnb was in entering an agreement with Airbnb regarding taxes.⁴⁶ Since July 1, 2015, Airbnb has automatically remitted taxes to the city for each transaction between Phoenix hosts and guests.⁴⁷ It is not clear whether the city will also attempt to charge other taxes, like hotel or occupancy taxes, or whether Maricopa County will also negotiate a similar agreement.⁴⁸ Apart from this tax issue, there is no system to monitor Airbnb listings within the city limits.

This regulatory vacuum creates a two-edged sword for hosts. If they are silent about their activities, hosts can benefit greatly. The regulatory void minimizes the requirements and costs a host must address to get started with an Airbnb listing. However, this laissez-faire approach is not ideal. This regulatory deficiency potentially leaves hosts open to arbitrary enforcement of current codes.⁴⁹ The laissez-faire approach also fails to address issues of health, public safety, and appropriate use of structures in residential zones. Moreover, it does nothing to combat tax evasion and promote fairness in regulation. The Phoenix Airbnb market

42. See *supra* text accompanying note 17.

43. *Phoenix Listings*, *supra* note 10.

44. *Id.*

45. *Id.*

46. Dustin Gardiner, *Airbnb to Charge Sales Tax on Phoenix Rentals*, AZCENTRAL (June 26, 2015), <http://www.azcentral.com/story/news/local/phoenix/2015/06/25/airbnb-charge-sales-tax-phoenix-rentals/29283651/>.

47. *Id.*

48. *Id.*

49. See, e.g., McNamara, *supra* note 8 (discussing Pima County's enforcement actions against Airbnb listings through an online investigation of some properties but not all Airbnb listings).

will likely continue to grow, but it will do so in an ever murkier regulatory state that could lead to losses for both the Airbnb hosts and the city.

B. Pima County (Tucson): Seek and Destroy

Although Tucson has only 691 Airbnb listings, Airbnb hosts in Tucson and Pima County are doing well for themselves.⁵⁰ In fact, according to Airbnb's blog, Tucson ranks in the top ten for hospitality among U.S. cities.⁵¹ The listings range from poet studios to mid-century mansions in the Foothills.⁵² Popular events, like the Tucson Rodeo and Gem & Mineral Show, in addition to the area's mild winters, bring thousands of tourists each year, many of which may stay in Airbnb listings.⁵³ Yet, despite Pima County's relatively small amount of Airbnb activity in comparison to larger municipalities, Pima County has taken one of the most aggressive stances against Airbnb.

In 2015, Pima County officials followed the example of Parisian authorities and employed 'seek and destroy' tactics against Airbnb users.⁵⁴ In Paris, officials cracked down on Airbnb because some hosts avoided paying taxes and officials feared that Airbnb hosts were taking housing off the already strained housing market.⁵⁵ A team of roughly 20 investigators searched throughout the city and located apartments believed to be associated with short-term rentals—some perhaps

50. *Tucson Listings*, AIRBNB, <http://www.airbnb.com/> (enter "Tucson, AZ, United States" in the search field, click search button for results) (last visited Aug. 30, 2015) [hereinafter *Tucson Listings*]. The 691 figure reflects the author's manual count of Airbnb listings in Tucson.

51. *Airbnb's Hospitality Index: America's Most Hospitable Cities*, AIRBNB, <http://blog.airbnb.com/hospitality-index/> (last visited Aug. 31, 2015).

52. *Tucson Listings*, *supra* note 50.

53. Hillary Davis, *Tourism Industry Rebounding, Looking for New Opportunities*, INSIDE TUCSON BUS. (June 26, 2015, 4:00 AM), http://www.insidetucsonbusiness.com/news/tourism-industry-rebounding-looking-for-new-opportunities/article_49529dc2-1b61-11e5-abfb-7f0e453ac75d.html (during 2014 "peak season" tourism showed best growth since recession began in 2007).

54. McNamara, *supra* note 8.

55. Helene Fouquet & Ania Nussbaum, *Paris Airbnb Cops Want to Know if Your Rental Is Legal*, BLOOMBERG BUS. (Aug. 7, 2015, 8:40 AM), <http://www.bloomberg.com/news/articles/2014-08-07/paris-airbnb-cops-want-to-know-if-you-re-rental-is-legal> ("We can't have entire neighborhoods or buildings turned into tourist homes . . . [t]hat's why we're fighting to keep Parisians inside Paris and we won't let tourist rentals eat up their space.").

reported by disgruntled neighbors.⁵⁶ They conducted unannounced inspections and implemented fines against hosts found to be noncompliant with rental regulation.⁵⁷

While Pima County did not mobilize inspectors and knock on hosts' doors, its actions were oddly similar.⁵⁸ Pima County employees conducted an investigation and scoured online platforms like Airbnb and HomeAway to find short-term rentals.⁵⁹ Pima County then used the collected data to justify the re-designation of 235 properties from residential to commercial properties.⁶⁰ This will result in some property owners paying higher tax percentages on their properties.⁶¹ Further, it may make it harder for owners to sell the properties in the future, as homeowners will need approvals to have their property re-zoned as residential. While some county officials recognize the need to regulate Airbnb like other transient lodging operations, others have pointed out the harsh and difficult financial situation Pima County's actions have caused.⁶²

The flaw with Pima County's approach is that it can freeze Airbnb and other short-term rental activity in the area. Further, these measures do nothing to advance a more productive way to regulate the sharing economy model of short-term rentals. As some admit, the County's actions could drive away business or simply push short-term rentals further underground.⁶³ Instead, Pima County should more fully evaluate the potential that Airbnb can play in the region before making such a broad and harsh decision.⁶⁴ Like other municipalities that have had harsh

56. *Id.*; Sam Schechner & Matthias Verbergt, *Paris Confronts Airbnb's Rapid Growth*, WALL ST. J. (June 25, 2015, 9:09 PM), <http://www.wsj.com/articles/SB12147335600370333763904581058032330315292> (reporting that Paris had over 517,000 guests in Paris during the summer of 2015); *see also* *Location via Airbnb, Légal ou Interdite?*, BUS. TRAVELER FR. (Apr. 2, 2015), <http://www.businesstravel.fr/location-via-airbnb-legale-ou-interdite.html> (limiting primary residence rentals to less than four months and placing more strict requirements for secondary residence rentals); Audrey Fournier, *Première Condamnation Pour Sous-location Illégale via Airbnb*, LE MONDE (May 21, 2014, 3:48 PM), http://www.lemonde.fr/economie-francaise/article/2014/05/21/premiere-condamnation-pour-sous-location-illegale-via-airbnb_4423020_1656968.html (detailing the first formal action taken against Airbnb host in Paris); Hugh Schofield, *Short-let Apartments Spark Paris Row as Airbnb Thrives*, BBC NEWS (Dec. 26, 2014), <http://www.bbc.com/news/world-europe-30580295> (allowing for holiday rentals by people who rent space in their primary residence in Paris).

57. Fouquet & Nussbaum, *supra* note 55.

58. Davis, *supra* note 53 (discussing Tucson visitors and convention bureau looking to tackle "the burgeoning short-term vacation rental industry to level the playing field for local hotels and bed and breakfasts"); *see also* *Paris Deploys Inspectors*, *supra* note 37 (detailing the Parisian enforcement against Airbnb hosts).

59. McNamara, *supra* note 8.

60. *Id.*

61. *Id.*; *see also* *Pima County Should Pause Vacation Property Reclassification*, ARIZ. DAILY STAR (Aug. 25, 2015, 5:54 PM), http://tucson.com/news/opinion/editorial/pima-county-should-pause-vacation-property-reclassification/article_43df5a41-2906-5a05-96c4-7116a4976c15.html [hereinafter *Pima County Should Pause*].

62. *Pima County Should Pause*, *supra* note 61.

63. *Id.*

64. *Id.*

stances against Airbnb hosts in the past, Pima County should slow their attack on this emerging market.⁶⁵

C. Jerome: Open Battle

Arizona's metro areas are not the only places where Airbnb is gaining popularity. In smaller towns all over Arizona, Airbnb is helping to attract greater tourism.⁶⁶ Travelers can stay in quaint mining towns and enjoy Victorian parlors, modern retreats, and high-country haciendas.⁶⁷ In Jerome, some see Airbnb as a blessing while others treat it as a curse.⁶⁸ Like Pima County, Jerome took harsh action against Airbnb hosts by declaring all short-term rentals illegal after hosts had made significant investments in starting their listings.⁶⁹ This entangled Jerome in numerous legal battles with Airbnb hosts.⁷⁰ This litigation raises legitimate legal arguments governing land-use and zoning restrictions.

At the heart of the Jerome legal battle is whether Jerome's revocation of hosts privileges' triggers compensation under Arizona's Proposition 207.⁷¹ Proposition 207, which passed in 2006, states that anytime a city, county, or the state government diminishes the value of one's home, the government organization is required to reimburse the homeowner.⁷² For some Airbnb hosts, the city's actions

65. See, e.g., Lisa Halverstadt, *City Clears a Path for Airbnb*, VOICE OF SAN DIEGO (Aug. 12, 2015), <http://www.voiceofsandiego.org/topics/government/city-clears-a-path-for-airbnb/>; Memorandum from Robert Vacchi, Dev. Servs. Dir., City of San Diego, to Hon. Chair Zapf & Members of the Smart Growth & Land Use Comm. (Aug. 12, 2015), <http://www.scribd.com/doc/274357266/Prospective-San-Diego-Short-Term-Vacation-Rental-Home-Sharing-Regulations> (providing a framework for regulating short-term vacation rentals with policy direction regarding issues of frequency, occupancy and housing types).

66. The reach of Airbnb extends to Safford and Duncan, where guests can stay in Adobe earth homes, secluded cabins, or even 1960s themed listings. *Safford Listings*, AIRBNB, <http://www.airbnb.com/> (enter "Safford, AZ, United States" in the search field, click search button for results) (last visited Aug. 30, 2015).

67. *Jerome Listings*, AIRBNB, <http://www.airbnb.com/> (enter "Jerome, AZ, United States" in the search field, click search button for results) (last visited Aug. 30, 2015).

68. *Vacation Rentals Fuel Controversy in Jerome*, ARIZ. HIGHWAYS (Nov. 5, 2014), <http://www.arizonahighways.com/?q=blog/vacation-rentals-fuel-controversy-jerome> (noting that Jerome supporters argue short-term rentals bring income while Jerome opponents argue that rentals stress city infrastructure and are not permitted uses of residential property).

69. *Jerome Tells Homeowners that Short-Term Rentals Are Illegal*, CBS5 AZ (May 14, 2015, 7:30 PM), <http://www.kpho.com/story/29070621/jerome-tells-property-owners-short-term-vacation-rentals-are-illegal#ixzz3aEhcT2ka>.

70. *Id.*

71. *Jerome Tells Homeowners that Short-Term Rentals Are Illegal*, CBS5 AZ (May 14, 2015), <http://www.kpho.com/story/29070621/jerome-tells-property-owners-short-term-vacation-rentals-are-illegal#ixzz3aEhcT2ka>.

72. ARIZ. REV. STAT. ANN. § 12-1134. While hosts would have had to acquire their properties before zoning restrictions were changed and enforced, there are still some that fall into this category and the city could consequently be required to pay for their "taking." See Jared Blanchard, *Jerome Vacation Rentals*, GOLDWATER INST., <http://www.goldwaterinstitute.org/en/work/topics/constitutional-rights/property-rights/case/jerome-vacation-rentals/> (last visited Nov. 18, 2015).

have taken away their ability to use their homes to generate revenue, thus diminishing property values. For example, one Jerome Airbnb host renovated a crumbling 117-year-old home for the purpose of listing the home on Airbnb.⁷³ Soon after, however, town officials notified the host that short-term rentals were now illegal; as a result, the host's investment—and the profit earning potential of his home—came undone.

Jerome would be best off to avoid these heavy-handed measures and fierce litigation. For Jerome and other small municipalities, like Superior, creating a diverse economy is critical to growth and survival.⁷⁴ Tourism is a major element of this diversity, and thwarting the use of short-term rentals harms opportunities for economic growth. At a minimum, municipalities like Jerome should look to find ways to accommodate Airbnb activity or create new legislation instead of simply cutting off potential sources of tourist dollars. Jerome's concerns for preserving the nature of the town, having available housing for locals, and other concerns can be met using such alternatives.⁷⁵

Of the three stances mentioned above, Phoenix's has the greatest potential for success. The question that Phoenix—and other municipalities—must face is whether it should require Airbnb users to conform to existing models of regulation, licensing, and taxation, or create a new framework to govern Airbnb within its geographic borders. Phoenix's model, although boasting great potential for regulating some Airbnb listings, has important weaknesses that would ultimately remove the innovation and benefit of Airbnb to local users. Phoenix is a good example of how a city's zoning code can be used—for better or for worse—to regulate Airbnb.

III. OPTION I: AIRBNB UNDER CURRENT LAWS

Potential Airbnb hosts in Phoenix face uncertainty at the outset of their preparations. Airbnb provides hosts some guidelines, but leaves it mostly up to hosts to figure out the legal landscape in their area.⁷⁶ Phoenix regulates similar hospitality companies and could plausibly apply its existing regulations to Airbnb hosts.

73. See Blanchard, *supra* note 72.

74. Carrie Jung, *Arizona Town Looks to Tourism to Boost Its Economy*, KJZZ (July 9, 2015), <http://kjzz.org/content/163266/arizona-mining-town-looks-tourism-boost-its-economy>.

75. See *infra* Part IV (discussing San Francisco and Santa Monica regulatory models).

76. See *Phoenix, AZ Help Center*, AIRBNB <https://www.airbnb.com/support/article/877> (last visited July 22, 2015) [hereinafter *Phoenix Help Center*] (“We do not provide legal advice, but we want to give you some useful links that may help you.”). This system tends to put hosts at risk of exposing themselves to possibility of eviction or other penalties and fines. *Brookford, LLC v. Penraat*, 8 N.Y.S.3d 859 (N.Y. Sup. Ct. 2014) (woman evicted for hosting); *42nd & 10th Assocs. LLC v. Ikezi*, 9 N.Y.S.3d 593 (N.Y. Civ. Ct. 2015) (online listing can be a party admission; hosting undermines purpose of rent stabilization code); Jonathan Horn, *Man Who Rented Out Condo Fined 106K*, SAN DIEGO UNION-TRIB. (Oct. 24, 2014, 4:55 PM), <http://www.utsandiego.com/news/2014/oct/24/airbnb-vrbo-mark-rent-steelers-gaslamp-condos/> (exemplifying an Airbnb host who unknowingly failed to comply with city regulation).

However, for Phoenix to successfully regulate Airbnb using its current laws, the City would need to define permissible Airbnb listings, confront challenging zoning issues, and allow Airbnb hosts to obtain business licenses.

A. Defining Airbnb Listings as Bed and Breakfast Establishments

When examining the Phoenix Zoning Ordinance (the “Ordinance”), the “bed and breakfast establishment” category aligns closest with Airbnb listings’ basic operations.⁷⁷ The Ordinance defines a “bed and breakfast establishment” as “a residential development which provides breakfast and rooms for rent to guests on an overnight basis.”⁷⁸ At first glance, it seems possible to use this definition. Phoenix allows bed and breakfast establishments in residential areas if operated by holders of special permits issued by the Zoning Department.⁷⁹

Classifying Airbnb rentals as bed and breakfast establishments would have several advantages. First, Phoenix would not have to create a new entity zoning classification. Second, the classification remains flexible and maintains Airbnb’s valued simplicity. Third, if hosts know that this type of business can be created and operated in a traditional business manner, they will have a greater sense of direction as they obtain proper permits, licensing, approvals, as well as pay taxes to the city and state. Lastly, it will give the city control and knowledge of Airbnb listings within its borders. However, by examining the requirements for special permits to operate a bed and breakfast establishment, the strength and practicality of this definition decrease.

B. Confronting Prohibitive Zoning Requirements

Phoenix zoning restrictions would preclude many potential hosts from operating Airbnb listings, especially those in apartments and units within a multi-unit complex. For many properties it would be challenging, if not impossible, to adapt in order to meet the requirements for operating a bed and breakfast establishment according to the Ordinance.

In some zones, landowners are explicitly permitted to use their property for a bed and breakfast establishment.⁸⁰ For those in residential areas, special permits allow property owners to operate bed and breakfast establishments in zones not otherwise zoned for bed and breakfast establishments.⁸¹ Section 647 of the Ordinance allows for landowners in zones S-1, S-2, and R-E through R-2 to establish

77. Definitions for transient lodging, like a hotel, contains many provisions that do not reflect what Airbnb hosts offer. PHX., ARIZ., ZONING ORDINANCE ch. 2 § 202 (defining “hotels” as “a residence facility designed for occupancy by transients . . . a hotel shall contain rooming units and shall customarily provide housekeeping, bellhop, laundry, and on site recreation services”).

78. *Id.* § 202.

79. *Id.* § 647.

80. *Id.* § 618(D). R-5 zoning consists of structures that promote “alternate living styles including condominiums . . . multiple units . . . or single or attached townhomes.” *Id.* § 618. MUA also has specific requirements. *See id.* § 649.

81. *Id.* § 647. The relevant section even contemplates the potential positive role that bed and breakfast establishments can play in a neighborhood. *See id.* (stating the purpose of permitting “new construction to help preserve the character of an area”).

a bed and breakfast if they meet 13 requirements.⁸² In general these requirements are straightforward and could be easily satisfied by owners of single-family detached homes. However, even for these owners, some requirements will be quite difficult to fulfill. For example, it would be very difficult for hosts to add additional parking spaces, and screen all parking spaces on their property from neighbors in accordance with the standard in § 647(y)(6).⁸³ Doing so may be impossible in some cases because of small backyards or an inability to connect the backyard to the street. The process would also involve extra costs and arguably greater neighborhood disturbances to install additional parking spaces.

The difficulty that these 13 requirements add to hosts is amplified in properties where the host does not own the land or unit, like in apartments or multiplexes, and cannot undertake any significant additions to the property without consent of another party. In a sense, following the current regulations disproportionately precludes those who do not own their own home from operating a bed and breakfast, defeating the goal of Airbnb to help any potential user, especially those in need of extra income. Moreover, adding 13 requirements to the “to do” list of Airbnb users would deter many potential hosts who come to Airbnb because the main elements of its appeal are nullified—namely, its simplicity, ease

82. *Id.* § 647(y). (stating that the requirements for a bed and breakfast establishment in a single-family residential zoning districts S-1, S2, and RE43 through R-2 are: “1) the bed and breakfast establishment shall under no circumstances exceed three guestrooms on a local street [for local streets] . . . 2) be owner-occupied as a principal residence [not creating the housing shortage]; 3) *Separate cooking facilities for guestrooms shall be prohibited.* 4) shall be subject to development review approval . . . [and] comply with the district regulations of the zoning district and shall maintain the character of the neighborhood . . . Under no circumstances shall [it] exceed the height of the primary structures on adjacent residentially developed lots; 5) guest stays shall be a minimum of one night and shall not exceed thirty-one consecutive nights in any ninety-day period. The owner . . . shall maintain a reservation book . . . show[ing] the arrival and departure dates of all guests and shall be open for inspection [with Airbnb, this is all done online] . . . 6) *One off-street parking space for each guestroom shall be provided in addition to the required parking for the principal residence. The parking shall be screened from view of adjacent rights-of-way and properties by a landscape hedge or a solid fence or wall in a manner that is compatible with adjacent residences.* 7) No signage . . . 8) [it] shall comply with applicable health and safety standards; 9) the only full meal served to registered guests shall be breakfast . . . 10) guests shall not park commercial vehicles or recreational vehicles; 11) [non discrimination]; 12) *at the end of the initial year of approval, the Planning Hearing Officer shall review the use for compliance with these standards and any stipulations and whether the special permit should continue . . . [and] also set the time for another review within the following five years;* 13) . . . [it] shall maintain the character of that structure . . . [and] not be altered in a manner which would prevent its future conversion back to its original use”) (emphasis added); see also *id.* § 647(z)(outlining the same 13 requirements for special permits for R-3 through R-4A zones).

83. *Id.* § 647(y). This seems to contradict the general rule that, with some exceptions, drivers may park on the street in a residential area and, with the owners consent, in the driveway. ARIZ. REV. STAT. ANN. § 28-873; PHX, ARIZ., CITY CODE § 36-134; *Id.* § 36-144(a) (no parking in driveway without consent). Parking on the street would be permissible under city law and only violates the Ordinance’s specific requirements relating to special permit structures being used as a bed and breakfast. However, the city does have an interest in managing on street traffic.

of use, and flexibility. Those that could have run a bed and breakfast under these requirements would have been able to do so before Airbnb, but for many Airbnb hosts, meeting zoning requirements poses a (near) impossibility.

C. Allowing Airbnb Hosts Business Licenses

One easier aspect to manage under Phoenix's current regulations would be business licensing.⁸⁴ While Phoenix does not require a general business license, it does require licenses for specific regulated markets.⁸⁵ Hotels and bed and breakfast establishments are types of businesses that must comply with transaction-privilege licensing requirements and associated taxes.⁸⁶ Obtaining a state business license from the Arizona Department of Revenue and the Phoenix Licensing Services is a standard affair and can be completed in a few hours by completing applications and taking them to the offices of the State of Arizona.⁸⁷

Giving licenses to Airbnb hosts would serve two valuable functions. First, it would facilitate the State's creation of a complete Airbnb registry or eliminate the need for a registry altogether, as all Airbnb listings would be recorded businesses. Second, by requiring Airbnb hosts to maintain transaction privilege and use tax licenses, Phoenix could gain revenue from Airbnb rental activity and be able to more accurately monitor business income.⁸⁸ Airbnb hosts would be assessed monthly taxes (in addition to the tax already remitted to the City of Phoenix by Airbnb) and declare their earnings as well as pay their requisite taxes with the City of Phoenix and the state (possibly by using forms like the AZ TPT-1).⁸⁹

However, even though hosts may be able to get state business licenses, it would be difficult to get city licenses without zoning approval, which may be nearly impossible for most Airbnb hosts. Ultimately, using business licenses can play an

84. See *Phoenix Help Center*, *supra* note 76 (“Phoenix requires owners and operators of hotels and certain property rentals to apply for a license . . . [consult] Chapter 14 of the City Code to determine if these rules apply to your listing.”); see also PHX., ARIZ., CITY CODE §§ 14-444–445 (stating that hotels and other real properties used as rentals are subject to Privilege Taxes); *id.* § 14-100 (defining “hotel” as including “any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering lodging [with some exceptions]”) (emphasis added); *id.* § 14-447 (noting that transient lodging is taxed an additional 3%); *id.* § 14-444 (providing that hotel tax is 2%, meaning 5% total).

85. See *How Do I Get a Business License?*, CITY OF PHX., <https://www.phoenix.gov/cityclerk/services/licensing> (last visited Aug. 4, 2015).

86. *Privilege License (Sales) Tax*, CITY OF PHX. (2013), https://www.phoenix.gov/financesite/Documents/d_037816.pdf.

87. See *Application for Transaction Privilege and Use Tax License*, CITY OF PHX. (2015), <https://www.phoenix.gov/financesite/Documents/Application%2002-2015.pdf>.

88. Airbnb Hosts in the area are probably paying federal taxes on their Airbnb gains—because it is easy to do with 1099K tax forms provided by Airbnb—but they are most likely not paying anything to the City of Phoenix. See *What Tax Forms Should I Expect to Receive from Airbnb?*, AIRBNB, <https://www.airbnb.com/help/article/414> (last visited Aug. 10, 2015).

89. *TPT-1 Form*, ARIZ. DEP'T OF REV., <https://www.azdor.gov/Portals/0/ADOR-forms/10800/10872f.pdf>.

important role, but a new system is necessary to best meet the needs of Airbnb users and municipal governments.

IV. OPTION II: CREATING NEW WAYS TO REGULATE

Instead of trying to fit Airbnb into regulations that do not address the novel aspects of its industry—and, consequently, removing its multi-billion dollar appeal—Arizona municipalities should look to the examples of other municipalities in the United States like San Francisco, Santa Monica, and San Diego for inspiration on how to regulate Airbnb.⁹⁰

San Francisco—where Airbnb is headquartered—has long had a large Airbnb community. As of June 2014, there were 4,798 Airbnb listings in the city.⁹¹ As Airbnb has grown, the city has established clear requirements with which all Airbnb hosts must comply.⁹² The city allows Airbnb hosts to rent space in their primary residence for an unlimited amount of nights each year; however, they may only rent nonprimary residences for 90 days.⁹³ Hosts must maintain a minimum of \$500,000 liability insurance, register their business, and obtain a certificate.⁹⁴ Airbnb also automatically remits transient occupancy taxes on behalf of the city.⁹⁵ The newly created Office of Short-Term Rentals helps hosts comply with the law and provides the city with a new stream of income.⁹⁶ It also employs previously mentioned solutions, like business licensing and registration, which in turn enables the city to better enforce its laws and uncover noncompliant listings.⁹⁷

The San Francisco model is an ideal model to follow. It balances concerns of preventing housing shortages, while still allowing Airbnb users to economize their primary residences. It also gives the city better access to Airbnb host information and sets the stage for effective enforcement mechanisms. This system is transparent, removing the fear of arbitrary enforcement and uncertainty, which is

90. There are also many examples of foreign cities that have made favorable Airbnb laws to address the unique demands of its market. See Schechner & Verbergt, *supra* note 56 (discussing Amsterdam and London as two cities embracing the sharing economy, short-term rental market).

91. Carolyn Said, *Window into Airbnb's Secret Impact on S.F.*, S.F. CHRON. (June 2014), <http://www.sfchronicle.com/business/item/Window-into-Airbnb-s-hidden-impact-on-S-F-30110.php>.

92. *San Francisco, CA*, AIRBNB, <https://www.airbnb.com/help/article/871/san-francisco--ca> (last visited Nov. 21, 2015) [hereinafter *San Francisco*].

93. Allen Young, *How Sacramento's Airbnb Proposal Stacks Up Against Other Cities*, SACRAMENTO BUS. J. (Aug. 13, 2015, 6:00 AM), <http://www.bizjournals.com/sacramento/news/2015/08/13/how-sacramento-s-airbnb-proposal-stacks-up.html> (recognizing a great variation between cities on the day cap, for example, San Jose allows 180 days for nonprimary residence properties while Sacramento contemplated only 30 permissible days).

94. See *San Francisco*, *supra* note 92; see also Douglas MacMillian, *San Francisco Passes Airbnb 'Law' to Legalize Short-Term Rentals*, WALL ST. J. (Oct. 8, 2014, 1:32 PM), <http://blogs.wsj.com/digits/2014/10/08/san-francisco-passes-airbnb-law-to-legalize-short-term-rentals/>.

95. See *San Francisco*, *supra* note 92.

96. See San Francisco Press Release, *supra* note 13.

97. *Id.*

strongly exhibited in municipalities like Pima County.⁹⁸ Phoenix seems to be heading in the direction of San Francisco (as evidenced by tax agreement with Airbnb) and would be well served by continuing to collaborate with Airbnb to collect taxes and create clear regulation and enforcement mechanisms.

Santa Monica enacted new legislation to govern Airbnb and other short-term rentals as well.⁹⁹ Santa Monica collects a 14% tax while also requiring hosts to rent out only the home in which they are living.¹⁰⁰ Hosts must also have business licenses to operate their Airbnb listings. Of the major California cities that have enacted legislation, some consider Santa Monica's regulations to be the most severe.¹⁰¹ The city requires that Airbnb hosts not only rent out *only* their primary residence but hosts must also be home during the duration of their guests' stay.¹⁰² However, these regulations ultimately push hosts to follow the model Airbnb advocates, that is, individuals sharing their (primary) home and interacting with guests.¹⁰³

With its new regulations, Santa Monica addressed its concerns about housing shortages and protecting the nature of residential neighborhoods. While the restrictions may be more stringent than those in San Francisco, Airbnb hosts still have several viable options.¹⁰⁴ Though it would be best to more closely follow San Francisco (for the benefit of both hosts and municipal governments), Arizona municipalities could also use Santa Monica's restrictive approach. However, unlike Santa Monica, Arizona Airbnb markets may not have as pressing concerns for neighborhood preservation and housing shortages.

San Diego's solutions illustrate yet another approach to regulate Airbnb in a way that balances municipal interests with those of Airbnb hosts. San Diego, which was previously in the headlines for imposing fees on Airbnb hosts, has also introduced a new plan for regulating short-term rentals.¹⁰⁵ The current structure does not allow Airbnb hosts to host more than two guests at a time or extend rental periods beyond thirty days.¹⁰⁶ Violators are treated like traditional bed and breakfasts and

98. McNamara, *supra* note 8.

99. Tim Logan, *Q&A: How New Santa Monica Law Effects Rentals, Airbnb*, L.A. TIMES (May 13, 2015, 11:37 AM), <http://www.latimes.com/business/la-fi-santa-monica-airbnb-rental-law-20150513-story.html> (discussing how Santa Monica banned rentals but made Airbnb legal if taxed); *see also* Santa Monica, CA, AIRBNB, <https://www.airbnb.com/help/article/908> (last visited Aug. 15, 2015).

100. Andrew Bender, *New Regulations to Wipe Out 80% of Airbnb Rentals in California's Santa Monica*, FORBES (June 15, 2015, 3:55 PM), <http://www.forbes.com/sites/andrewbender/2015/06/15/new-regulations-to-wipe-out-80-of-airbnb-rentals-in-californias-santa-monica/>.

101. Young, *supra* note 93.

102. *Id.*

103. Bender, *supra* note 100.

104. *California Airbnb Laws: Quick Summary*, SINAI L., <http://www.losangeleslandlordlawyer.com/california-airbnb-laws/> [hereinafter *California Airbnb Laws*] (recommending Santa Monica Airbnb hosts rent out spare rooms and basements in occupied primary residence and rentals for less than thirty days to avoid tax categories (e.g., transient or hotel)).

105. Halverstadt, *supra* note 65.

106. *Id.*

must comply with more regulations.¹⁰⁷ Although seemingly harsh, this separates the types of users of Airbnb into two groups: those who share their home and those who create Airbnb businesses. It allows the former to follow Airbnb's business model, while the latter are treated as the businesses they are.

One downside for Airbnb users in San Diego is the potential need to execute rental agreements with guests and designate local authorities to help with disputes between hosts and guests.¹⁰⁸ While this is still in the drafting stages, it could become a significant deterrent to hosts joining the Airbnb market because it would involve drafting agreements and consulting attorneys. Yet despite strict measures, San Diego's reaction has not been to simply ban Airbnb outright. Instead, San Diego is working in a way to educate, collaborate, and take advantage of this growing industry.¹⁰⁹

Arizona municipalities should model their new laws governing short-term rentals after those passed in California, preferably mirroring San Francisco's model. If Arizona municipalities want greater control and limitations on Airbnb, like the primary residence and host-manage (host in home during visit) requirements, they could follow Santa Monica or San Diego. With either approach, clear regulation will alleviate fears of housing shortages, ensure that hosts are adequately insured, and provide an expanded tax basis for local governments. Moreover, the appealing features of Airbnb, like flexibility, startup ease, and simplicity, can remain intact. Municipalities like Phoenix and Pima County can use their business licensing systems as a building block for creating a workable system. Whether Arizona municipalities mirror San Francisco, Santa Monica, or San Diego more closely, the main purposes of Airbnb can remain intact. Ultimately, expansive Airbnb ventures may be curtailed, and the intended market—hosts sharing their homes and interacting with guests—is not only preserved, but enhanced.¹¹⁰

CONCLUSION

The sharing economy has come to the Grand Canyon State, and it is here to stay. Arizona municipalities, whether as large as Phoenix or as small as Jerome, must take proactive steps to regulate Airbnb and other short-term rentals. If they do not, they may find themselves rejecting a significant source of revenue while facing increased legal and logistical challenges.¹¹¹ If they overregulate, they may freeze

107. *Id.*

108. *Id.*

109. *California Airbnb Laws*, *supra* note 104 (discussing how, instead of outright limitations on Airbnb, Santa Monica used an educational approach to the issue by sending reminders, conducting a webinar for current renters, and employing educational outreach).

110. An example of an expansive Airbnb venture would be an owner who becomes a hotelier by purchasing multiple apartments (not including their primary residence) and listing them all on Airbnb, which some people have done. *See, e.g.*, Yoav Vilner, *How These 3 Entrepreneurs Are Building Airbnb Empires to Quit Their Day Jobs*, ENTREPRENEUR (Jan. 26, 2015), <http://www.entrepreneur.com/article/241929>.

111. Logan, *supra* note 40.

Airbnb activity and growth or merely cause Airbnb hosts to operate their business underground, regardless of the state of the law.¹¹²

Although some municipalities could theoretically use their current regulatory framework and treat Airbnb as they do other transient lodging establishments, this may nullify Airbnb's appealing traits, namely simplicity, flexibility, and ease of use. Alternatively, Arizona municipalities can follow the example of other cities like San Francisco, Santa Monica, and San Diego and adopt new regulatory schemes. Arizona municipalities should create specialized ways to regulate short-term rentals so that individuals, communities, and city governments benefit. Such a system should include a comprehensive registry, clear specifications on what types of rentals are permitted (primary residence, host-occupied, etc.), mandatory insurance, and accountability to the city for health and safety compliance.

Moving forward, creating new and specialized regulation is the best option. Each municipality may differ in its approach, and they should; each municipality will have specific needs that it must to address. However, the flexible approach of San Francisco may prove to be the best solution, as it gives significant flexibility to hosts, which may in turn generate more Airbnb activity, and gives the municipal authorities knowledge and enforcement strength towards such rentals. The legal battles in Jerome and the irregular enforcement actions of Pima County are not viable long-term solutions. Airbnb is here to stay. There is great potential for growth and success if municipalities coordinate with Airbnb and its hosts. Solutions like those in San Francisco, Santa Monica, and San Diego demonstrate how municipalities can adapt and be proactive in their regulation of this multi-billion dollar industry. Arizona municipalities should say, "hej," not "hej då"—"hello," not "good-bye"—to this new source of tourism and income.

112. See Blanchard, *supra* note 72 (noting that in 2012, Hawaii banned all short-term rentals). *But see Hawaii Listings, AIRBNB*, <http://www.airbnb.com/> (enter "Honolulu—HI" in the search field, click search button for results) (last visited Aug. 4, 2015) (continuing to display Hawaii listings).