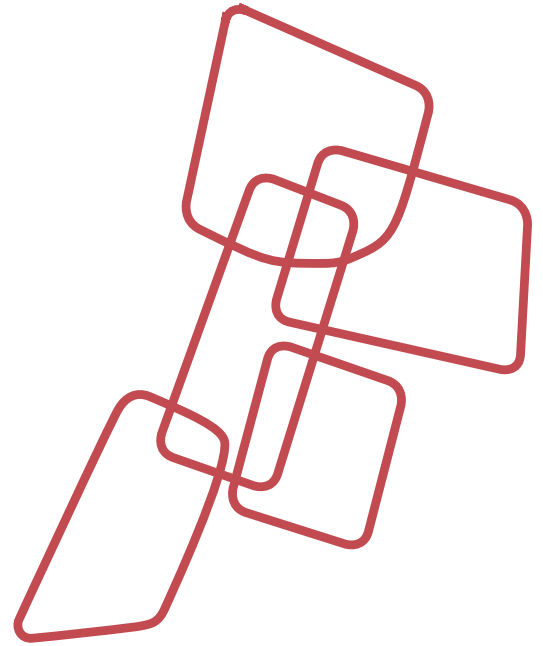


SLEEPING AROUND

SHORT-TERM
RENTALS AND
HOUSING IN
NEW YORK CITY



CITIZENS HOUSING & PLANNING COUNCIL

MISSION

CHPC's mission, since 1937, is to develop and advance practical public policies to support the housing stock of the city by better understanding New York's most pressing housing and neighborhood needs.

ABOUT US

Our agenda is practical, not political. Our work always begins with questions, not answers. It is the data, our analysis, and its relevance to the real world, that drive our conclusions. Our goal is to help decision-makers, inside and outside of government. We map out realistic steps that can result in positive change for the housing stock and the neighborhoods of New York City.

Not-for-profit organizations in New York State are no longer able to include the word "Council" in their names. We assume it is because they could be confused with a function of government. Our Council's name is grandfathered in because of its age – and we are proud of its clear connotation as a community of people coming together to share ideas and shape practical solutions to help government and the housing industry ensure that our housing continues to meet the needs of our City's residents.

We are a Council of 90 leading professionals from every industry that shapes housing development and management across the city. CHPC speaks as a trusted and impartial voice to improve housing for all New Yorkers.

Where Experts

Put Practice

Into Policy

CHPC

NEW YORK CITY

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SLEEPING AROUND SHORT-TERM RENTALS AND HOUSING IN NEW YORK CITY

Over the last decade, short-term rentals have boomed across the globe due to the accessibility and ease of online booking platforms such as Airbnb. For visitors, it is easy access to overnight stays in cities around the world. For landlords, neighbors, and policymakers it is unfettered use of what can be a scarce resource in a highly regulated housing market. With the click of a mouse or the tap of a screen, houses and apartments are becoming unsanctioned hotels for periods of time, shaking up land use systems and housing regulations.

Cities around the world are debating the impact of short-term rentals on their housing markets and wrestling with public policy to deal with them. One of the biggest difficulties is that the characteristics of short-term rentals vary widely. They can occur in a detached house or in a building with multiple apartments. The rental can include an entire housing unit or just a spare room. The rental can take place year-round as a commercial venture or just on the occasional weekend when the primary resident is away. The host might own the unit or be a tenant who sublets it. In New York, different ownership and tenancy regimes—such as a condos, co-ops, or rent-stabilization—add additional complexity to short-term rentals.

As the number of short-term rentals in residential buildings has grown, New York’s policy approach has been to impose stricter rules and harsher penalties. In 2011, New York State made illegal almost all short-term rentals that take place in an apartment without the primary resident being present. In October 2016, a new State law enabled the City to fine anyone who advertises these illegal rentals.¹

WHAT DO WE MEAN BY “SHORT-TERM RENTAL”?

A “short-term rental” is a rental by a tourist or visitor for less than 30 days that takes place in a house or apartment (in a residential building).

Short-term rentals can occur:

- In a spare room of a house or apartment with the owner or primary tenant present;
- In an entire house or apartment with the owner or primary tenant temporarily away; or
- In an entire house or apartment that is not used for residential purposes and which operates commercially for short-term rentals without an owner or tenant living there.

¹ See Chapter 3 for a detailed explanation about the regulations that impact short-term rentals in New York. Assembly Bill A8704C, responsible for making advertising illegal, was signed into law on October 21, 2016. The full text of the bill is available here: <https://www.nysenate.gov/legislation/bills/2015/a8704/amendment/c>.

These laws have not managed to abate the rise of short-term rentals. Airbnb, one of the leading facilitators of short-term rentals, lists 45,983 rentals in New York City, of which more than half are for units where the primary resident will be absent during the rental.^{2,3} The demand from visitors to New York City for alternative accommodations to hotels remains strong and is a powerful incentive for New Yorkers to offer housing units as short-term rentals. Regulations that do not take this powerful demand into account, or are simply too broad to be enforceable, are ineffective at addressing the most egregious impacts of short-term rentals on housing.

This study discusses how short-term rentals affect New York’s housing market and proposes policy reforms that could allow this popular practice to continue while mitigating its negative impacts on housing. Its four chapters cover:

1. What we know (and mostly don’t know) about short-term rentals in New York City;
2. The problems that short-term rentals cause for housing;
3. A guide to current laws that regulate short-term rentals in New York City;
4. Our recommendations for a policy path forward.

SUMMARY OF CHPC’s RECOMMENDATIONS

- We propose a **licensing system for short-term rentals** empowering the City to ensure that: 1) residential units are not removed from the housing market; 2) the owner of the building consents to the short-term rental; and 3) the short-term rental does not compromise quality of life or fire safety in a building. For a licensing system to have a chance of success, online platforms that facilitate short-term rentals will need to be held accountable for guaranteeing that only licensed rentals are advertised on their sites.
- We also propose that the City explore ways of collecting **objective data to better understand short-term rentals**.
- We encourage legislative efforts to allow the **safe and legal development of bed & breakfasts and hostels**, which could absorb some of the demand for short-term accommodation.

² In the summer of 2015 Airbnb had 17 million users book accommodations through its service worldwide. Airbnb, *Airbnb Summer Report: 2015*, available at: <http://blog.airbnb.com/wp-content/uploads/2015/09/Airbnb-Summer-Travel-Report-1.pdf>.

³ *One Host, One Home: New York City*, March 9, 2017, available at: <https://new-york-city.airbnbcitizen.com/march-update-one-host-one-home-new-york-city/>.



1. WHAT WE KNOW (AND MOSTLY DON'T KNOW) ABOUT SHORT-TERM RENTALS IN NEW YORK CITY

How many short-term rentals are there in New York City? Are they rented out to visitors all year long or just on occasional weekends? Are full units on offer or just spare rooms? How many are houses and how many are apartments? Do hosts own the units or are they renters themselves? Are they subject to New York State's rent stabilization rules or to rent control? We began this study intending to assess the scale and characteristics of short-term rentals in New York City. However, we immediately encountered a scarcity of reliable, objective, and useful data.

Government regularly collects data to understand issues affecting the city's housing stock. The U.S. Census Bureau conducts the American Community Survey, which produces objective annual data-sets that are used to analyze and shape housing policy across the country. New York City has an even richer data source, the NYC Housing and Vacancy Survey (HVS), which is designed specifically to determine the vacancy rate in rental housing. The HVS offers a depth of data on the city's housing stock and is the most reliable source for information on rent regulation, household characteristics, and housing conditions.

But short-term rentals are not a part of either of those surveys. There is also no mechanism to register when a short-term rental takes place and there is no way to verify the validity of data released by any of the private companies that facilitate short-term rentals. Short-term rentals can also be arranged privately through word-of-mouth or through classified advertising services, such as Craigslist, further constraining data collection.

To the extent that there is any data, it is about one company: Airbnb. The outsized role of Airbnb in the short-term rental industry has caused it to come under close scrutiny from government officials, the public, and private-sector actors. In 2014, amid growing concerns about the proliferation of illegal hotels and the effects of short-term rentals on housing affordability, the New York State Attorney General's office subpoenaed Airbnb for records on its activity in New York City. The Attorney General found that, over a 53-month period from 2010-2014, a total of 497,322 short-term rental reservations had been booked through Airbnb in 35,354 unique units in New York City.¹² More than 40% of these units were offered by hosts who advertised more than one unit on Airbnb, suggesting a significant number were not a host's permanent residence. This is evidence that many units had been essentially converted from residential to hotel spaces, an incredibly deleterious practice for a city with a housing shortage. The scale of the practice revealed by the subpoena encouraged government officials to continue mounting pressure on Airbnb to make its data public and to take action when its listings do not comply with the law.¹³

¹² The reservations include bookings of "entire homes" (where no-one else is present in the unit during the rental, in Airbnb parlance) and of "private rooms" (where someone else may be present in the unit during the rental). It excludes bookings of "shared rooms" (where the guest shares a room with someone else), so the total number of reservations was likely much higher. New York State Attorney General, *Airbnb in the City*, October 2014, available at: <https://ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf>.

¹³ Hearing of the Committee on Housing and Buildings, New York City Council, October 30, 2015.

LISTINGS, RESERVATIONS, AND UNITS: WHAT'S THE DIFFERENCE?

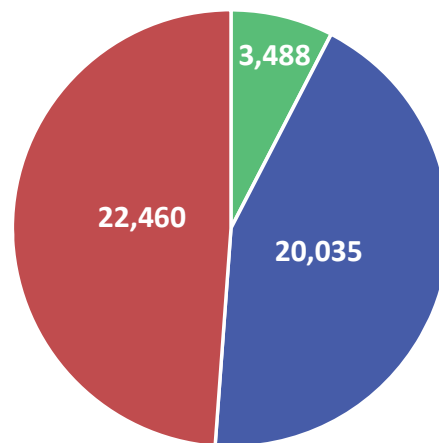
In analyzing short-term rental data, it is important to always keep in mind whether the data is for listings, reservations/bookings, or units.

Data on *listings* is the least useful because a listing is simply an advertisement for a short-term rental. Listings do not tell us if stays actually occur (indeed some listings may never be booked at all), how frequently they occur or for how long.

Data on *reservations* or *bookings* tells us how many short-term rental stays take place. However, it does not tell us anything about the number of units affected because one unit can be booked many times.

Data on the number of *units* in which short-term rentals take place is the most informative to understand the effects of short-term rentals on housing. Together with the duration and the frequency of bookings, data on units can help estimate the number of units that are removed from the housing market due to short-term rentals.

Total Airbnb Listings in New York City: 45,983



- Listings of entire units offered by hosts with more than one listing for entire units
- Other listings for entire units
- Listings for shared units

Airbnb listings in NYC. Source: One Host, One Home: New York City, March 9, 2017.

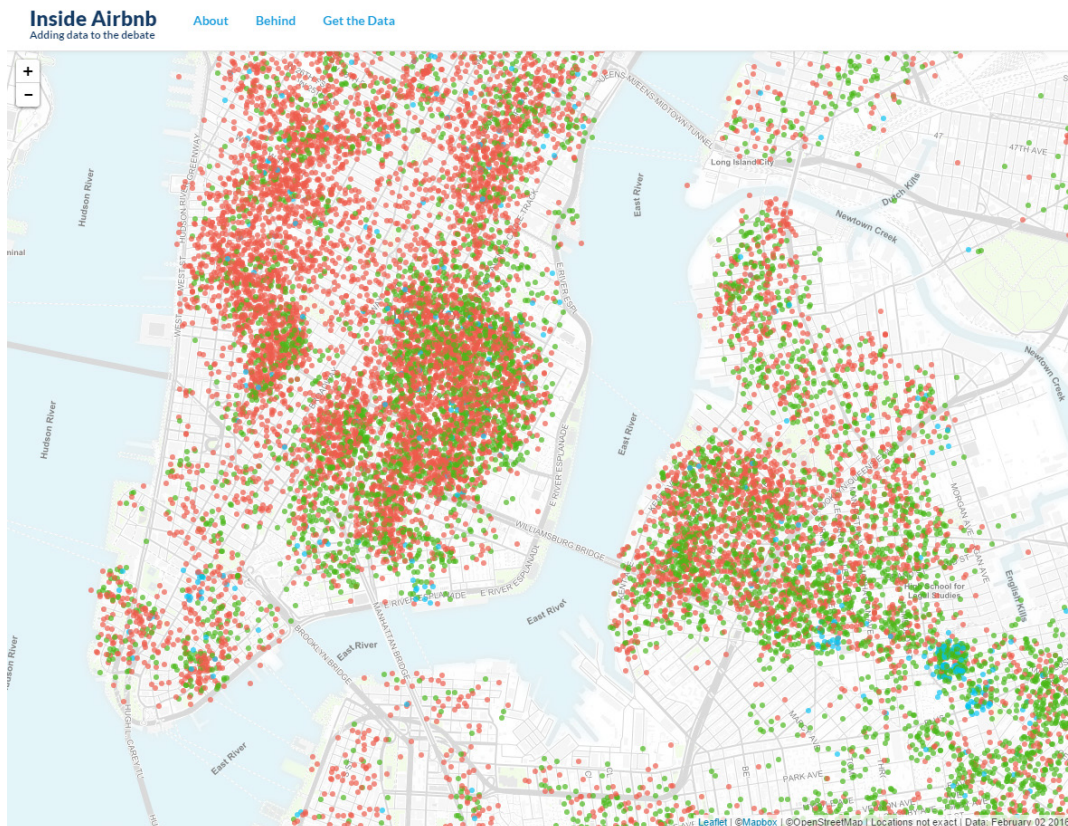
Attempting to address some of these concerns, in November 2015, Airbnb announced a “Community Compact” to “provide cities with the information they need to make informed decisions about home sharing policies.”¹⁴ The company began to release monthly summaries of certain categories of data for Airbnb usage in New York City. According to the Community Compact data summary for March 2017, Airbnb has 45,983 listings in New York City, of which more than half are for “entire homes,” which is often illegal in New York City.¹⁵ Nearly 3,500 of these listings for entire units are offered by hosts with more than one listing for an entire unit, which suggests they are being used commercially and are not available for housing.

¹⁴ Airbnb, *The Airbnb Community Compact*, November 2015, available at: <http://publicpolicy.airbnb.com/wp-content/uploads/2015/11/Airbnb-Community-Compact.pdf>

¹⁵ The rest are for shared units. *One Host, One Home: New York City*, March 9, 2017, available at: <https://new-york-city.airbnb citizen.com/march-update-one-host-one-home-new-york-city/>.

The Airbnb Community Compact releases offer a glimpse into a subset of New York City’s short-term rental market. However, the data is limited, it is already processed into summaries when it is released, and the categories are self-selected to serve the company’s public relations interests. For example, the Airbnb data highlights the median number of nights that its listings are booked in a year, but this does not help to identify which units are taken off the housing market and which ones are only used as short-term rentals sporadically. The raw data is essential to understanding the listings that have the most detrimental impact on the housing market. In the summer of 2016, Airbnb staff requested to meet with CHPC to find out how the company could be more obliging to the housing industry. At that meeting, CHPC staff formally requested the raw data on Airbnb’s short-term rentals that we would need to undertake a reliable analysis about the number of housing units with short-term rentals that are a) not following New York State or City law; and b) rented out substantially throughout the year. Airbnb had not sent us any additional data at the time of publishing.

There are other sources of data on Airbnb that offer additional details, although they are also limited in scope. One is Murray Cox, a self-described “digital storyteller, community activist, and technologist” and author of the website *InsideAirbnb.com*. Cox built a computer code that scrapes, collates, and analyzes the data on Airbnb’s website in order to estimate details about listings.



Location of Airbnb listings in Lower Manhattan and Williamsburg on the *InsideAirbnb.com* website.

Cox’s data model identifies listings that are booked for more than 60 days per year, which can be a useful proxy for units that are removed from the housing market.¹⁶ As of December 2, 2016, Cox found that there were 11,232 entire apartment listings in New York City that were booked for over 60 days per year. There were also 3,085 listings for entire units offered by hosts with more than one listing—another marker that a short-term rental may no longer be available for housing.

The second source of data on Airbnb is Airdna, a company that also scrapes, collates, and analyzes data from Airbnb’s website. Airdna produces “market reports” which it sells to help hosts optimize their nightly pricing, anticipate upcoming demand spikes, and assess the investment potential of rental properties for short-term rental use. According to the July 2016 market report for New York City there were 12,398 active listings for entire units on Airbnb. An “active listing” refers to a listing that is actively being managed (as opposed to stale listings that have not been taken down), but this does not give information about the frequency with which those listings are rented.¹⁷

These different sources confirm that the practice of short-term rentals is extensive, but the data is unverifiable and insufficient for the needs of government and policymakers. Most of the data is about listings—not units—and it is impossible to parse out the transactions that are causing the most detriment to the housing market: units that are being rented out for all or substantial parts of the year and are therefore not available as housing. None of the data captures any short-term rentals that are not booked via Airbnb.

We believe the City should dedicate the necessary resources to objectively study how short-term rentals affect New York City’s housing market, as proposed in Chapter 4.

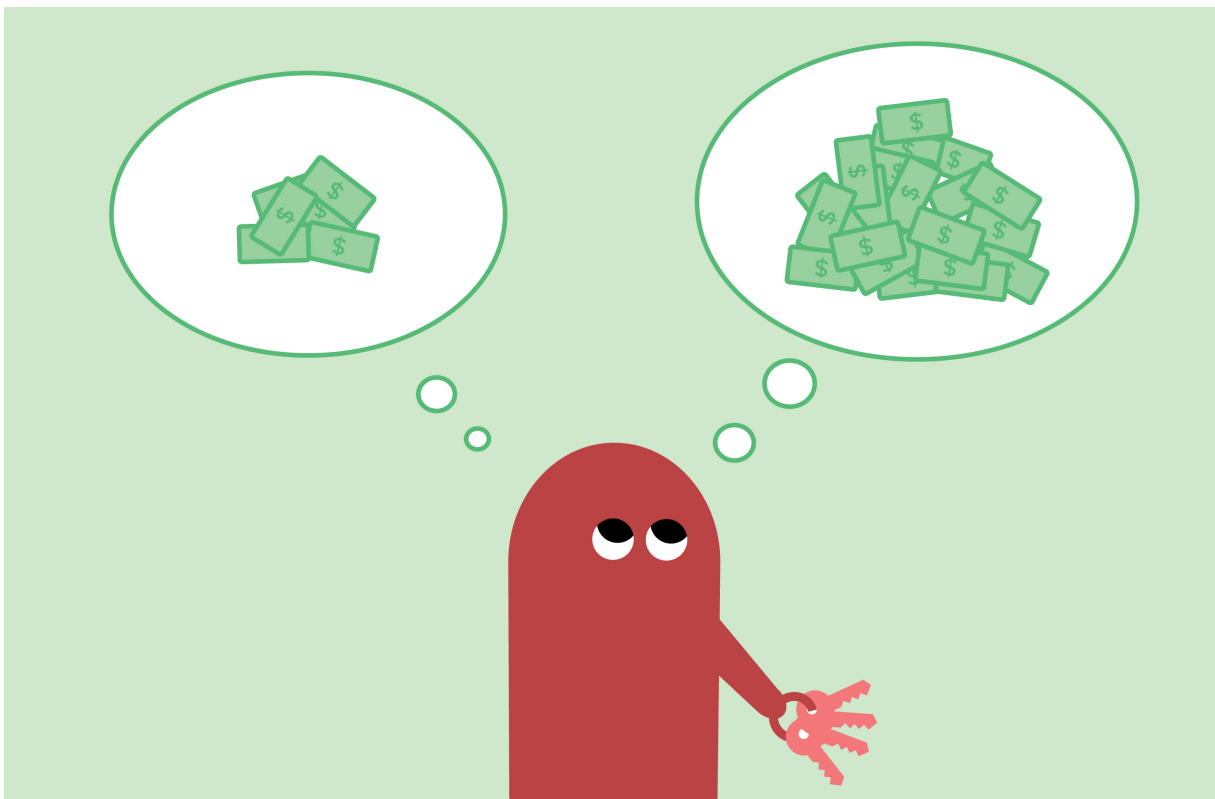
¹⁶ To estimate the frequency with which a listing is booked, Cox uses the number of reviews for each listing and assumptions about the average length of stay. His methodology is explained in detail here: <http://insideairbnb.com/about.html>.

¹⁷ Airdna defines a listing as active based on a number of factors including: if it had a confirmed booking in the month, if it is currently live on the Airbnb website, if the host has updated the availability calendar recently, and if the host actively responds to inquiries.

2. SHORT-TERM RENTALS: WHAT'S THE PROBLEM?

We consulted leading practitioners from across the housing industry to understand the major concerns that short-term rentals pose for housing in New York City. We identified three main areas of concern that policymakers and industry professionals should address:

1. Housing units are taken off the housing market to be used as short-term rentals, decreasing the supply of housing;
2. Quality of life in buildings (and neighborhoods) is altered because the rights and responsibilities of owners and tenants are upended;
3. There is substantial non-compliance with leases, by-laws and regulatory agreements, which undermines legal protections



1. HOUSING UNITS ARE TAKEN OFF THE HOUSING MARKET TO BE USED AS SHORT-TERM RENTALS, DECREASING THE SUPPLY OF HOUSING

Nightly rents in New York City are generally higher than monthly rents, so the value of a housing unit increases when it is rented on a short-term basis. This is a powerful incentive for apartment owners, building owners, and renters to take units entirely off the residential market in order to offer them as short-term rentals. This incentive can be especially acute in rent-regulated units, where the monthly rent is often already artificially below market.

The rise of short-term rentals has proven that a residential unit can be turned into a short-term rental with surprising ease—even when it is not legal to do so. At a time of limited supply and rising demand for housing, it should be a public policy goal to limit the removal of residential units from the housing market as much as possible. Actors who offer multiple apartments as short-term rentals are of particular concern.

We do not know how many housing units are lost to short-term rentals, but one of the largest facilitators, Airbnb, acknowledges the problem. The company claims to be “concerned about hosts who may offer space that could otherwise have been on the long-term rental housing market in New York City.”⁴ In February 2016, it announced that it would remove listings that “appear to be engaged in unwelcome commercial activity” and the company claims that in the 12 months ending on November 1, 2016, it removed 3,396 listings “by hosts with multiple listings that could impact long-term housing availability.”^{5,6} Since November of 2016, the company only allows users to list one address in New York City. Airbnb, however, has not provided any evidence that users *with single listings* have not, also, removed that unit from the housing market (the company offers 20,035 listings of entire units by users who have only one listing).⁷

Moreover, there is no information about other platforms that facilitate short-term rentals or what policies, if any, they may have implemented to slow the removal of residential units from the housing market. This lack of reliable data prevents us from quantifying how many housing units have been removed from the housing market to be used as short-term rentals (See Chapter 1 for more information on the data limitations on short-term rentals).

4 *One Host, One Home: New York City*, November 14, 2016, available at: <https://new-york-city.airbnb Citizen.com/november-update-on-one-host-one-home-new-york-city/>.

5 Airbnb. *Removing Unwelcome Listings in New York City*, February 25, 2016, available at: <https://www.airbnbaction.com/removing-unwelcome-listings-in-new-york-city/>.

6 *One Host, One Home: New York City*, November 14, 2016, available at: <https://new-york-city.airbnb Citizen.com/november-update-on-one-host-one-home-new-york-city/>.

7 *One Host, One Home: New York City*, March 9, 2017, available at: <https://new-york-city.airbnb Citizen.com/march-update-one-host-one-home-new-york-city/>.

2. QUALITY OF LIFE IN BUILDINGS (AND NEIGHBORHOODS) IS ALTERED BECAUSE THE RIGHTS AND RESPONSIBILITIES OF OWNERS AND TENANTS ARE UPENDED

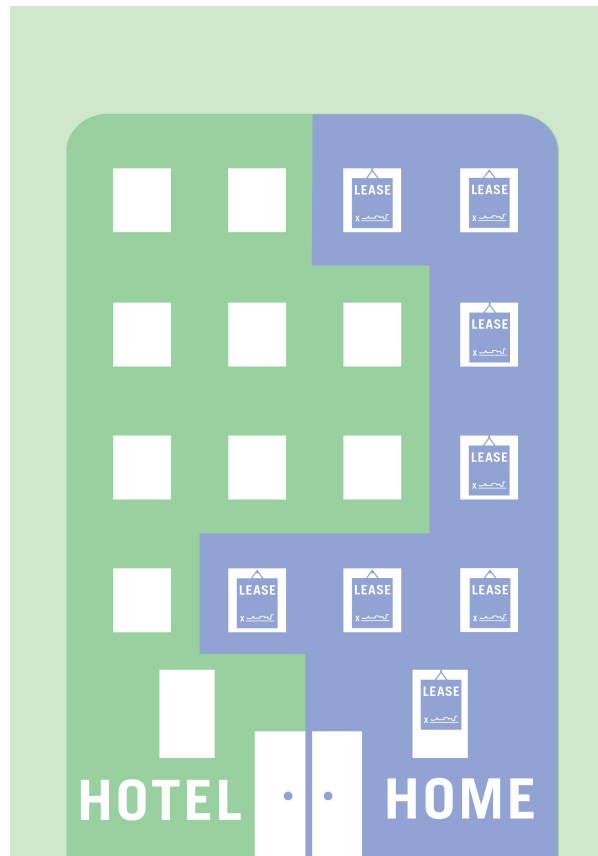
Becoming a permanent resident of a building requires subscribing to a compact for the peaceful and quiet enjoyment of the building with one's landlord and neighbors. This compact is implicit in every form of housing tenure—whether someone buys a condo or a co-op or rents a private rental unit, a rent-regulated unit, or a public housing unit.

Short-term rentals are not recognized as a distinct form of housing tenure in New York City. Guests staying in short-term rentals do not share any of the rights and responsibilities that apply to the permanent residents of a building. Neighbors and landlords are left with little recourse against short-term renters if conflicts arise, so the coexistence of residents and short-term renters can cause safety and quality of life concerns for the residents of a building.



Residents protest against short-term rentals in Barcelona.

To further confuse the matter, short-term rentals may lead to multiple forms of tenure taking place within a single unit at one time. One roommate may offer their room as a short-term rental while other roommates remain in the unit, or a tenant may offer their apartment as a short-term rental while on vacation but still retain their tenancy rights. Overlapping forms of housing tenure make it especially difficult to determine the rights and responsibilities of all the different parties.



3. THERE IS SUBSTANTIAL NON-COMPLIANCE WITH LEASES, BY-LAWS AND REGULATORY AGREEMENTS, WHICH UNDERMINES LEGAL PROTECTIONS

Short-term rentals that are permitted by law may still violate a tenant’s lease, an owner’s co-op or condo by-laws, or a building’s regulatory agreement—often with severe consequences. The consequences for tenants found in violation of their lease may include non-renewal of the lease, eviction, or loss of rental assistance like Section 8 vouchers. Some tenants may not fully understand this and inadvertently put their housing at risk in order to earn supplemental income by offering short-term rentals. Similarly, co-op and condo owners may face penalties for violating their building’s by-laws.

The consequences can also be severe for owners of affordable housing. Many buildings receive public benefits intended to promote residential development, such as tax abatements, tax credits, or low-interest loans from the government. Usually, building owners sign a regulatory agreement with the government setting out the terms of the public benefit and the concomitant restrictions on the use of the building, such as the rents that can be charged and the maximum income for tenants to qualify.

July 29, 2015

To: ALL RESIDENTS

Re: **ILLEGAL SUBLETTING AND ASSIGNING (via AirBnb and the like)**

All Residents,

We represent the Landlord of your building. This letter shall serve as a warning to all residents of The [redacted] regarding illegally subletting/assigning apartments to others.

Per your leases, **YOU ARE NOT PERMITTED** to re-rent, sublet, assign, and/or license your apartments to anyone else. This rule applies to but is not limited to re-renting/subletting using the AirBnb website.

Should any tenant engage in the above referenced behavior, which is a clear breach of the lease, your landlord will elect to commence suit in accordance with the applicable provisions of your lease and the law. If a case is filed against you, it will negatively affect your chances of renting a different apartment in the future.

Thank you for your immediate attention to this matter.

Sincerely,

Admitted to Practice Law in: New York, New Jersey, Connecticut, Pennsylvania; U.S. Court of Appeals, 2nd Circuit; U.S. District Court, Southern District of New York; U.S. District Court, Eastern District of New York; U.S. District Court, District of New Jersey; and U.S. District Court, District of Connecticut.

A letter in an affordable development that receives public benefits warns tenants against offering short-term rentals.

Offering short-term rentals in a building that receives these types of public benefits would almost certainly breach the regulatory agreement, put these public benefits in danger, and risk putting the building in financial disarray. Building owners are especially concerned that their tenants' conduct—rather than their own—may cause a breach of the regulatory agreement and put the building at risk.⁸

⁸ In November 2015, various press outlets reported that the owner of an affordable development in Queens had requested to Airbnb that it take down listings for short-term rentals offered by tenants of the building. See Whitford, Emma. *Queens "Affordable" Housing Units Listed On Airbnb For \$500 Per Night*. Gothamist, November 20, 2015, available at: http://gothamist.com/2015/11/20/airbnb_queens_affordable_ha.php.

3. A GUIDE TO NYC'S CURRENT LAWS ON SHORT-TERM RENTALS

Many of the laws that affect short-term rentals in New York City are intended to regulate other housing issues. As a result, there is a complex regulatory scheme that can make short-term rentals legal or illegal based on factors such as tenure or the size of a building. Understanding all these regulations and the risks of breaching them is difficult.

We undertook a review of the different housing laws that currently affect short-term rentals in New York City. For this analysis, we consulted with housing code enforcement specialists, lawyers, zoning and building code experts, and parties impacted by these regulations. This summary is intended as a guide to regulations current as of March 2017.

1. PERMANENT RESIDENTS ONLY IN APARTMENTS

The New York State Multiple Dwelling Law (MDL) is the only law that intentionally restricts short-term rentals. It applies to all buildings in New York that have three or more units, but small homes with one or two units are unaffected by the MDL. The MDL classifies buildings of three or more units into two categories: Class A and Class B.



Class A buildings are defined as permanent residences¹⁸ and units in these buildings must contain a kitchen and a bathroom.¹⁹ Since 2011, the MDL has stated that **any rental for less than 30 days in a Class A residential building is prohibited unless the primary resident is present during the rental.** The majority of New York’s multifamily housing stock is in Class A buildings, so this prohibition on short-term rentals affects most apartment buildings.²⁰

Class B multiple dwellings make up a small portion of the multifamily housing stock. They are intended to be “occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals” and units do not necessarily contain a bathroom and a kitchen.²¹ This includes what in common parlance we simply call a *hotel*, but also less common arrangements, such as rooming houses, that could be someone’s permanent residence. The prohibition on stays for less than 30 days if the owner is not present does not apply to Class B buildings.

Because most apartment buildings are Class A, most short-term rentals of entire apartments are illegal under the MDL. Violations carry fines up to \$25,000 for repeat offenses and are imposed against the owner of the building, coop, or condo, even if it is a tenant who rents out their apartment for short-term rentals.²² Since October 2016, the MDL also makes it illegal to advertise any short-term rental that would be illegal under the MDL, whether or not the rental actually takes place.

All of the following short-term rental examples are illegal under the MDL if they take place in a Class A multiple dwelling:

- A tenant, or a co-op or condo owner, rents out their apartment for a week while they are away on vacation;
- A tenant keeps a lease to an apartment that they do not live in and sublets it for short-term rentals;
- A co-op or condo owner moves to another residence, but keeps their unit and rents it out as a short-term rental;
- A building owner offers units in their building as short-term rentals instead of renting them to tenants.

18 New York State Multiple Dwelling Law §4(8)(a).

19 New York State Multiple Dwelling Law §76(2)(a). Class A units must contain a bathroom.

20 We do not know exactly how many *buildings* are categorized as Class A or Class B. However, we know that more than 87% of all *units* in residential apartment buildings are in Class A buildings. US Census, *2014 Housing and Vacancy Survey*.

21 New York State Multiple Dwelling Law §4(9).

22 Int. No. 826, introduced at the City Council on June 10, 2015, would increase these fines up to \$50,000, plus \$2,000 per day for every day the violation is not corrected.

2. NO MORE THAN TWO SHORT-TERM RENTERS IN ONE HOUSING UNIT

The Housing Maintenance Code (HMC) sets the safety, occupancy, and habitability standards for all housing units in New York City—whether they are multiple dwellings that are subject to the MDL or houses with one or two units. The HMC states that “A family may rent one or more living rooms in an apartment to not more than two boarders, roomers, or lodgers.”²³ Therefore, the HMC puts a limit on the number of rooms that can be rented to non-relatives at one time (this rule was put into place to stop rooming and boarding houses). This rule in the HMC applies even if the primary resident is still present during the rental and regardless of the rental’s duration.



The following short-term rental scenarios are illegal under the HMC and therefore affect both multifamily dwellings and small homes:

- Three or more visitors each renting a separate room;
- Three or more visitors renting one room together;
- Two couples each renting one room.

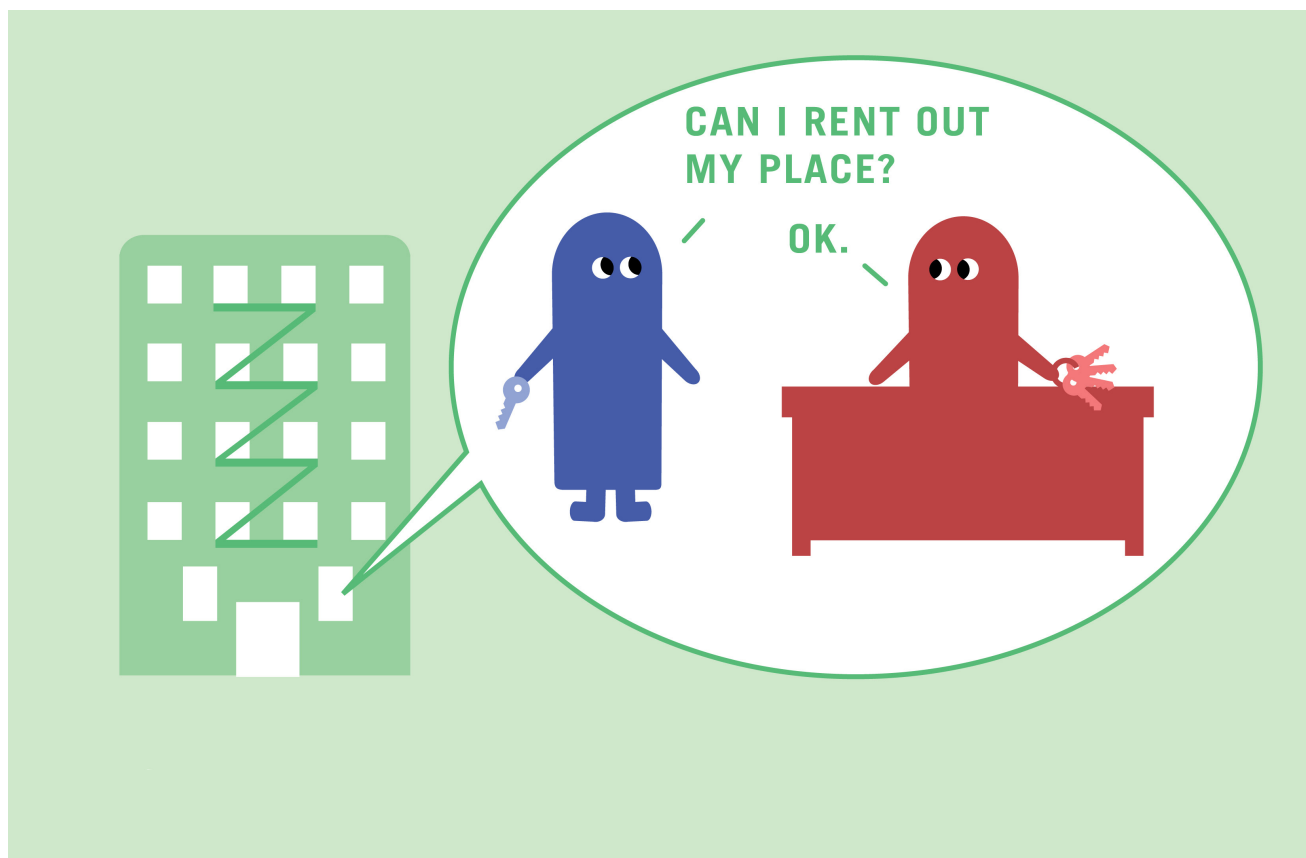
²³ New York City Administrative Code §27-2078

This affects bed & breakfasts, which can be impractical businesses in New York City since the HMC limits the number of guests they are allowed to have at one time. From the perspective of the HMC, no residential building—including a single-family house—can have more than two boarders, roomers, or lodgers if they are unrelated to the primary occupant.

The HMC also prohibits the development of hostels. Although hostels are not defined anywhere in the law, the HMC states that “no rooming unit...shall be created in any dwelling.”²⁴ Because rooming units and hostels share some of the same defining features—such as shared rooms, bathrooms, and kitchens—hostels are not permitted under the HMC (there are some exceptions to this rule for hospital, educational, government, and non-profit organizations).

3. SUBLETTING REQUIRES THIRD-PARTY CONSENT

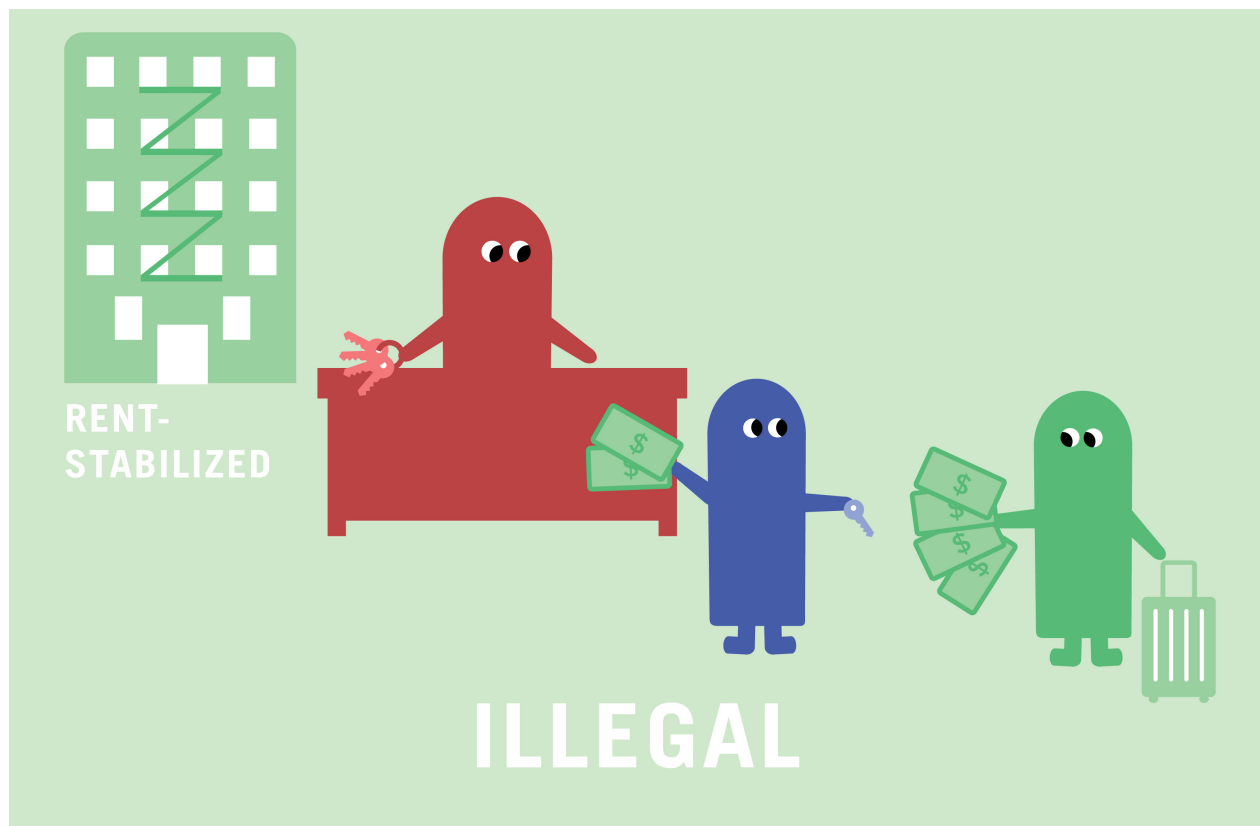
In New York City, there are housing regulations that are intended to deal with subletting that can also affect short-term rentals. Subletting rules are muddy and apply in some—but not all—cases, which further complicates the regulation of short-term rentals. According to the New York State Real Property Law, any housing unit in a building of four or more units can be sublet, but only with the written consent of the landlord in advance of the subletting.²⁵



²⁴ New York City Administrative Code §27-2077.

²⁵ New York State Real Property Law §226-b(2).

Rent-regulated units are subject to additional regulations regarding subletting.²⁶ Under these rules, tenants in all rent-regulated units are required to get the landlord's permission before subletting and must also maintain the unit as their primary residence (in addition, the MDL rule requiring primary occupants to be present during short-term rentals usually applies to rent-regulated units). Tenants in rent-stabilized units, specifically, are also not allowed to profit from subletting their apartments.²⁷



Subletting is also further regulated privately. Rental leases in New York City often require that the tenant obtain permission from the landlord to sublet. In co-op or condo buildings, by-laws frequently require approval from the co-op or condo board before a rental can take place in the building, or may prohibit subletting altogether. No matter what is permitted as a matter of law, these private regulations can further restrict or ban short-term rentals.

The following are examples that would violate subletting rules and could put the resident's tenancy or homeownership at risk:

- A tenant offers their apartment as a short-term rental without first obtaining the landlord's permission;
- A tenant in a rent-stabilized apartment gets the landlord's permission to sublet a spare room, offers it as a short-term rental, but charges more than they pay in rent;
- A co-op or condo owner rents out their apartment as a short-term rental in violation of the co-op or the condo's rules.

²⁶ N.Y. Comp. Codes R. & Regs. Title 9, §2204.6 and §2526.6.

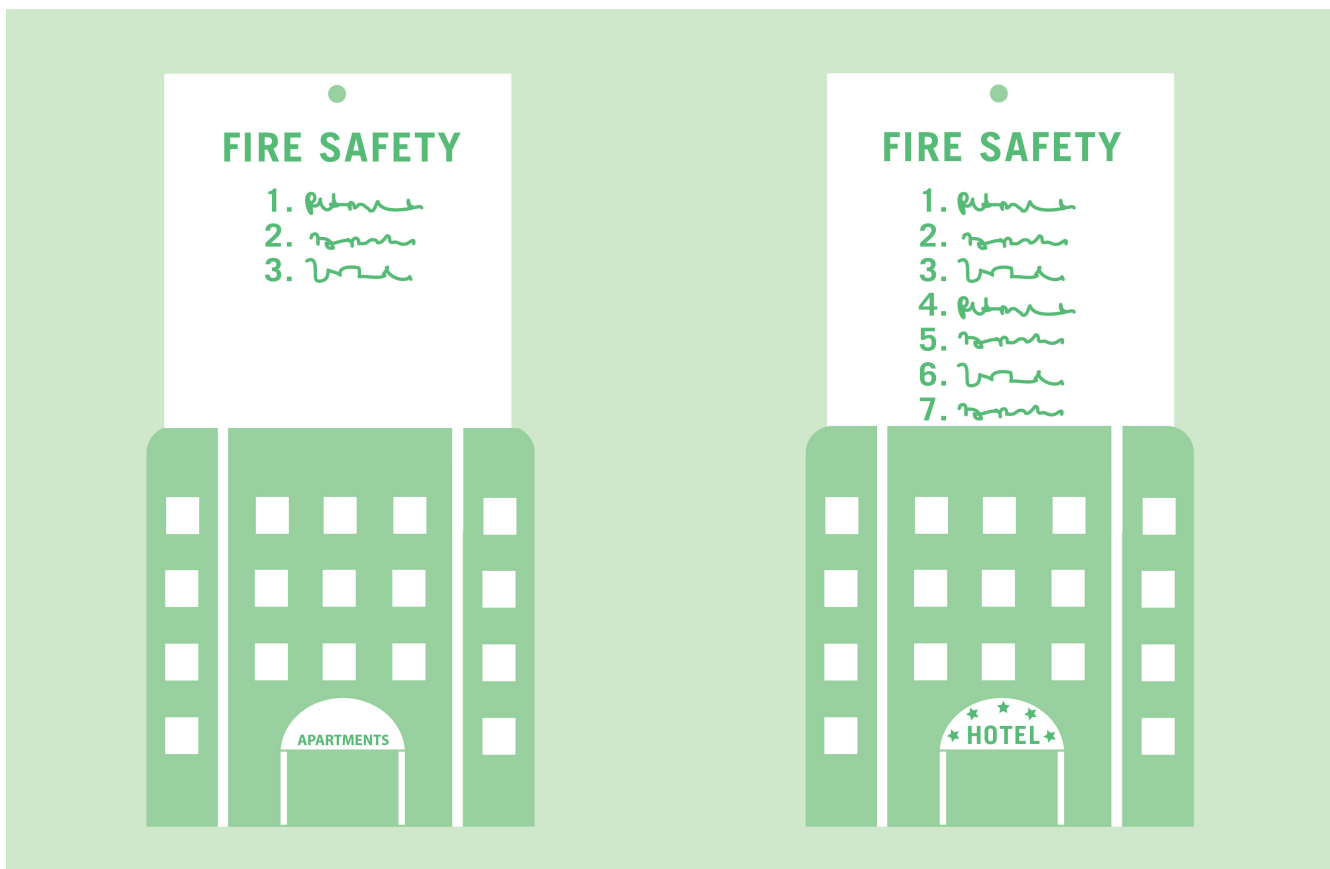
²⁷ If the unit is sublet fully furnished, a 10% surcharge above the legal regulated rent is permitted. Rent-controlled units are not subject to the profit limitation from subletting but tenants must still obtain prior permission from the landlord and maintain the unit as their primary residence.

4. NO HOTEL USES IN RESIDENTIAL AREAS

The New York City Zoning Resolution does not specifically define short-term rentals. However, one of its fundamental goals is to designate where residential uses and commercial uses, such as hotels, can exist. Some zoning districts allow only residential use and exclude all commercial uses. Other zoning districts may allow commercial uses to take place alongside residential uses but may limit which commercial uses are permitted or restrict them to certain floors of buildings. Short-term rentals are blurring these distinctions, making zoning enforcement more difficult.

The Zoning Resolution does define “transient hotels,” which may encompass some short-term rental scenarios, but they are only permitted in certain commercial districts, and never in residential ones. A transient hotel is defined as “a building or part of a building in which: (a) living or sleeping accommodations are used primarily for transient occupancy, and may be rented on a daily basis; (b) one or more common entrances serve all such living or sleeping units; and (c) twenty-four hour desk service is provided, in addition to one or more of the following services: housekeeping, telephone, or bellhop service, or the furnishing or laundering of linens.”²⁸

5. HOTELS REQUIRE MORE STRINGENT FIRE SAFETY RULES



²⁸ New York City Zoning Resolution. Article I, Chapter 2, Section 12-10.

The Building Code and the Fire Code regulate fire safety standards differently in buildings with temporary occupants than in buildings with permanent occupants. Transient occupants are believed to face greater risks in the event of a fire because they are less familiar with the building's escape routes and emergency procedures. Accordingly, **fire safety standards are more stringent in buildings classified for transient use.**

The Building Code makes three classifications of residential buildings:²⁹

- R-1 for buildings or spaces which are occupied transiently for less than one month, including Class B multiple dwellings and hotels, among others;
- R-2 for buildings or spaces with three or more dwelling or sleeping units used for permanent residence purposes, including Class A multiple dwellings;
- R-3 for one- and two-family dwellings.

The more stringent fire safety requirements mandated in R-1 than in R-2 buildings affect the presence of exit signs, the presence of smoke alarms, the availability of manual fire alarms, the presence of sprinklers, and the location of stairways, among other items.³⁰ Even if only one unit or room is used transiently in an R-2 building, this would trigger the stricter fire safety standards of an R-1 building. Therefore, it is likely that most short-term rentals are in violation of the Building Code and the Fire Code.

²⁹ 2014 Construction Codes, Building Code Chapter 3, Use and Occupancy Classification. The classification of a building can be found in its Certificate of Occupancy.

³⁰ A useful source for understanding the different fire safety requirements in transient and permanent residential buildings in New York City can be found in the affidavit submitted by James Colgate in *The City of New York v. Smart Apartments, LLC.*, (NY Supreme Court, County of New York Index 402255/12), available at: <http://chpcny.org/assets/Colgate-affidavit-on-fire-safety-in-transient-buildings.pdf>.

HOW THE RULES ARE CURRENTLY ENFORCED

The approach to regulating short-term rentals has been to impose a blanket ban on practically all short-term rentals that occur without a primary resident present. Fines have also been made steeper and can now be issued for advertising an illegal listing, whether or not the short-term rental actually takes place. Although this ban is likely to render thousands of short-term rentals illegal every day, the strategy for enforcing these laws is not so straightforward.

The responsibility for enforcing the MDL, HMC, Zoning Resolution, Building Code, and Fire Code falls upon the City, while enforcement of rent-regulation falls upon the State. The State Attorney General has also used its powers in some cases, for instance to ensure that properties receiving tax exemptions to promote residential development are not improperly used for short-term rentals. Short-term rentals may also cause disputes between tenants and landlords, or among co-op shareholders, which are settled privately or through the courts.

The primary City enforcer of regulations concerning short-term rentals is the Mayor's Office of Special Enforcement (OSE), which is tasked with investigating "illegal hotels." OSE comprises twelve staff from the Police, Fire, Buildings, and Finance departments, in addition to in-house attorneys and investigators.³¹ OSE has pursued some proactive enforcement mechanisms successfully—such as bringing legal action against operators of whole residential buildings that have been converted into illegal hotels—but the bulk of its activity is to inspect properties in response to citizens' complaints. When a complaint regarding an illegal hotel is lodged through the municipal 311 hotline, OSE dispatches its multi-agency teams to investigate. Inspectors can issue violations for rentals that contravene the short-term rental ban in the MDL, as well as for infringements of the Building Code, the HMC, the Fire Code, and the Zoning Resolution.

OSE's complaint-driven enforcement may help to direct resources to address quality of life disruptions or safety hazards caused by illegal short-term rentals, but the number of complaints pales in relation to the number of illegal short-term rentals taking place. At a City Council hearing on January 20, 2015, City officials testified that in 2014, OSE teams responded to 1,150 "illegal hotel" complaints, which resulted in 597 violations issued that year.³² In contrast, the Attorney General's report found that 300,891 illegal reservations took place in 25,532 units on Airbnb over a 53-month period ending in 2014. With additional short-term rentals being booked across other platforms, the total number of illegal short-term rentals must far exceed the 597 identified by OSE. Complaint-driven enforcement is clearly insufficient to curtail illegal short-term rental activity altogether. Some reasons why the number of complaints and violations for short-term rentals is so low may include:

- some illegal short-term rentals do not cause quality of life concerns or safety hazards for neighbors, who feel there is nothing to report;
- neighbors are not aware that the short-term rental is illegal, are not aware of the complaints process, or do not believe that lodging a complaint will lead to a resolution of the problem;
- there are no neighbors to lodge complaints, for example if a building is used entirely for short-term rentals and has no permanent residents.

³¹ Statement of Christian Klossner, Executive Director, Mayor's Office of Special Enforcement, October 30, 2015, available at: http://www1.nyc.gov/assets/criminaljustice/downloads/pdfs/Klossner_OSE%20Testimony_10-30.pdf

³² At a subsequent hearing on October 30, 2015, OSE testified that from January-September 2015 they had received 681 complaints about illegal hotels, resulting in 1192 inspections and 1325 violations. OSE also indicated that a recent increase in its budget would allow it to hire more staff to do more proactive work, in addition to increasing inspections.

Violations for short-term rentals are typically imposed against the owner of a building, even when it is a tenant who is offering the illegal short-term rental without the owner's knowledge. The illegal use of the unit or building is what warrants the violation and the owner is ultimately responsible for how it is used. Although some owners may be able to take action against the tenant, for example if they have violated a clause in their lease that prohibits subletting, that does not exempt the owner from receiving fines for illegal short-term rentals offered by the tenant.

Since October 2016, the City can also issue fines for advertising rentals that violate the MDL. The first fines were levied in February 2017 against two building owners responsible for listing advertisements for short-term rentals in their buildings.³³ It is too soon to tell whether this will become a useful tool for enforcement.

³³ Gartland, Michael & Emily Saul. *Anti-Airbnb law claims its first casualties*. New York Post, February 5, 2017, available at: <http://nypost.com/2017/02/05/anti-airbnb-law-claims-its-first-casualties/>.

4. A POLICY PATH FORWARD

Existing regulations in New York City have been unsuccessful at mitigating the negative impacts that short-term rentals can have for housing. Finding the right solutions may not be simple, but we have tackled similarly intractable, deeply complicated problems in the past—from tenement housing reform to developing public housing. Other cities are ahead of New York in the development of pragmatic, enforceable regulations for short-term rentals that do not ignore the powerful demand for them from both hosts and tourists.

The proposals set forth in this chapter are intended to facilitate a discussion on specific ways how policy can be improved. We believe these ideas can pave the way for sensible reforms of short-term rental laws that allow this popular practice to continue while also mitigating their negative effects for housing. To address the major impacts of short-term rentals on housing, we propose suggestions for a policy path forward based on three main premises:

- There is continued interest by New Yorkers in earning money from short-term rentals. At the same time, it is important to eliminate the practices that have a negative impact for housing, especially the removal of residential units from the housing market.
- It is crucial that policymakers are able to access objective data that ensures proper monitoring and evaluation of the impacts of short-term rentals.
- Visitors to New York City will continue to demand alternative and more affordable accommodations than hotels, and this supply needs to be safe and legal.

POLICY SUGGESTIONS:

1. INSTITUTE A LICENSING SYSTEM FOR SHORT-TERM RENTALS AND HOLD ONLINE PLATFORMS ACCOUNTABLE FOR ENSURING THEIR SITES ADVERTISE ONLY LICENSED RENTALS

New York City should institute a licensing system for anyone who wishes to offer their primary residence as a short-term rental. In order to verify an applicant's primary residence, the City could limit licenses to the address on the applicant's tax filings so that nobody could obtain a license for an address where they do not also pay taxes. Using the address on tax filings would also prevent applicants from obtaining licenses for multiple addresses, since tax filings contain only one address. The City could also require the consent of the building or unit owner before issuing a license and could demand additional requirements, for example around fire safety.

The City could renew licenses periodically to ensure that a unit remains eligible and would have the ability to revoke licenses for noise, nuisance, occupancy, or other violations. Enforcement efforts would center on identifying unlicensed rentals, a clear standard of proof that would be easy for hosts to understand and follow. Information about licenses could be made available online so that guests, neighbors, and property owners can verify whether a unit is licensed or not.



Flat detector

Easily spots whether or not you are living in a legal tourist flat.
Fill in the boxes. If your address does not appear, the flat you are looking for is illegal.

Type of road	Street name	Num	
- Any -	<input type="text"/>	<input type="text"/>	<input type="button" value="Search"/>

This Barcelona website allows users to verify if an address is licensed as a short-term rental.

Collaborate

If you discover you've rented unlicensed tourist accommodation

If you think there is an unlicensed tourist flat in your block

Cities like Austin, San Francisco, Portland, Chicago, and Barcelona now issue licenses for short-term rentals, which they use to control their density in particular areas, ensure that only primary residences are rented, and certify fire safety standards, among other purposes. We conducted many interviews with policymakers who are responsible for the development and enforcement of the licensing systems in these cities. One crucial component stood out: **for licensing to be successful, it is imperative for platforms that facilitate short-term rentals to be held accountable for ensuring that only licensed rentals are advertised on their sites.** Without any ability to regulate the platforms themselves, it is extremely difficult to operate and enforce a licensing system successfully.

However, holding platforms accountable is not as simple as merely requiring platforms to verify that their listings are licensed, as this can be susceptible to legal challenges on First Amendment grounds as well as under the Communications Decency Act (this Act exempts online platforms from being treated as the publisher of content published by third parties on their sites).⁹ San Francisco has found a workaround that makes platforms accountable for accepting booking fees from unlicensed rentals but not for advertising them. New York City will need to adopt a similar legal framework to hold the platforms—in addition to the hosts—accountable for not following the rules of a licensing system.

⁹ In New York, Airbnb challenged a ban against advertising illegal short-term rentals on First Amendment and CDA grounds. The complaint was settled when the City agreed to enforce the advertising ban against the parties who list the advertisements and not on Airbnb.

This licensing structure would allow the City to make sure that residential units are not removed from the housing market to be used as short-term rentals. At the same time, it would allow New Yorkers to earn money from short-term rentals as long as they are not impacting the housing supply, for example if they want to rent their apartment while they are away on vacation. The City could also use licensing applications to collect objective data on the number, type, and location of short-term rentals in order to improve policy moving forward.

For this licensing proposal to succeed, it will be necessary for the City to commit significant resources to administering the licensing process, some portion of which could be offset through licensing fees. New resources will also be required for enforcement, including an administrative hearings process so that penalties and violations can be challenged out of court. The added costs of administration and enforcement are presumably less than other means of coping with the loss of housing units, such as the cost of replacing each housing unit that is removed from the market to be used as a short-term rental.

2. EXPLORE WAYS TO GET BETTER DATA ON SHORT-TERM RENTALS

The rapid growth of short-term rentals and the fact that they take place behind private doors have made it extremely challenging to understand the true nature, scale, and effects of the practice. Legislators have reacted with strict regulations and City officials have faced the daunting task of enforcing these laws as well as they reasonably can.

It is difficult to legislate effectively when very sparse data allows only an intuitive sense of the problems that short-term rentals may cause. Legislators should mandate that short-term rental companies make public the data they need to enact effective regulations. The City should also dedicate the necessary resources to objectively study how short-term rentals affect New York City's housing market. This could happen as part of the triennial Housing and Vacancy Survey, in which the City partners with the U.S. Census Bureau to collect key data on our housing stock, or could be a special study that focuses exclusively on short-term rentals.¹⁰ Collecting this data would provide a full and objective picture of the prevalence of various types of short-term rentals and their effects on housing in New York City, and would help inform policy decisions on the issue.

3. ALLOW THE SAFE AND LEGAL DEVELOPMENT OF NEW HOSTELS AND BED & BREAKFASTS

The variety of short-term rental offerings shows that visitors to New York City demand many different types of accommodations, including more affordable or more personalized options such as *hostels* and *bed & breakfasts*. But hostels and bed & breakfasts are not recognized as distinct forms of accommodation, so they often run into the same regulatory barriers as short-term rentals.

The defining characteristics of a hostel—shared rooms, kitchens, and bathrooms—are what often make these establishments more affordable than hotels. However, the Housing Maintenance Code (HMC) forbids the creation of new rooming units, which effectively bans new hostels (the HMC and other codes are discussed in Chapter 3). Legislation is currently pending at the New York City Council that would amend the HMC and some other laws to allow the creation of new hostels.¹¹

¹⁰ There is precedent for such special studies: in 1996 the New York City Department of Housing Preservation and Development commissioned Anthony J. Blackburn to do a special study to delve into the loss of the single room occupancy stock, *Single Room Living in New York City*.

¹¹ Int. No. 699, introduced on February 26, 2015.

The proposed legislation creates a legally defined *hostel* category and requires a license from the City to operate a hostel. It also establishes occupancy, fire safety, and security standards specific to hostels and requires hostels to provide certain amenities.

The HMC also contains an occupancy rule that limits to three persons the number of unrelated guests that can stay in a unit. This rule makes many permanent roommate arrangements illegal and can also affect the legality of some short-term rentals. Bed & breakfasts, in particular, are affected because the rule limits how many guests they can host at one time. The occupancy rule in the HMC should be eliminated. Occupancy rules should be guided primarily by safety standards, not by the relationship between the occupants. Should there be a reason to restrict the number of guests in short-term rentals, this could be done more appropriately through the licensing system proposed.

Regulating hostels and reforming the occupancy rules in the HMC are reasonable approaches that would allow hostels and bed & breakfasts to absorb some of the demand for alternative accommodation from visitors to New York City. Together with the licensing system proposed for short-term rentals, this could lessen the incentives for people to turn residential units into short-term rentals.



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