

How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations

Dayne Lee*

I. INTRODUCTION

Los Angeles, California, is in the midst of an affordable housing crisis. Rents have increased by 7.3% in 2014 alone, and the median renting household already spends 47% of its income on housing.¹ This crisis has added fuel to the contentious debate over Airbnb, a startup technology company that facilitates short-term rentals (STRs) of residential homes to tourists. Whereas Airbnb and its users tout its positive effects on tourism, cultural exchange, and the environment, its critics contend that Airbnb harms neighborhoods, distorts the housing market, undermines labor unions, and exacerbates Los Angeles's affordable housing crisis. In regulating Airbnb, policymakers seek to curb Airbnb's impacts on neighborhood character and housing while harnessing the economic activity it brings.²

Employing legal, statistical, and secondary source analysis, this article explores how STRs affect the price and aggregate supply of affordable housing rentals in Los Angeles, and how municipal policymakers can best regulate Airbnb. In Section I, I briefly outline the contours of Los Angeles's affordable housing crisis, and describe Airbnb and its growth in Los Angeles. The topics of Section II are the effects that STRs have on rents and Los Angeles's aggregate supply of affordable housing. Section III of this article analyzes how and to what extent Airbnb leads to displacement, gentrification, and segregation in Los Angeles's residential neighborhoods. In Section IV, I assess strategies, regulations, and policies that municipal policymakers and stakeholders can use to regulate Airbnb. Finally, in the Conclusion, I recommend a set of regulations, taxes, and community-benefits agreements that will force Airbnb to be a partner that promotes, rather than impedes, the goals of affordable housing advocates.

* J.D. Candidate, Harvard Law School (expected 2017). The author gratefully acknowledges professors Rick Su and Esme Caramello, as well as Eloise Lawrence for their advice regarding this article. He thanks the dedicated *Harvard Law & Policy Review* editors for their thoughtful editing and comments.

¹ See *Los Angeles Home Prices & Values*, ZILLOW (Sept. 30, 2015), <http://www.zillow.com/los-angeles-ca/home-values/> [<http://perma.cc/J82K-A3F3>]; Rosalie Ray et al., *Impacts of the Widening Divide: Los Angeles at the Forefront of the Rent Burden Crisis*, UCLA LUSKIN SCHOOL OF PUBLIC AFFAIRS CENTER FOR THE STUDY OF INEQUALITY, Sept. 2014, at 8, http://issuu.com/csiucla/docs/ziman_2014-08w/1 [<http://perma.cc/P4GH-KFHW>].

² See, e.g., Steven Leigh Morris, *Airbnb is Infuriating the Neighbors. Is it Time for New Rules?*, LOS ANGELES WEEKLY (Jan. 22, 2015), <http://www.laweekly.com/news/airbnb-is-infuriating-the-neighbors-is-it-time-for-new-rules-5343663> [<http://perma.cc/4JG2-KAJM>].

Airbnb likely reduces the affordable housing supply by distorting the housing market in two interconnected mechanisms. The first such mechanism is one of simple conversion: any housing unit that was previously occupied by a city resident, but is now listed on Airbnb year round, is a unit that has been removed from the rental market and has essentially been added to Los Angeles's supply of hotel rooms. This leads to a real, but likely mild, increase in citywide rents, an effect that is concentrated in affluent or gentrifying neighborhoods along the city's central core. More disconcertingly, conversion reduces Los Angeles's already-limited supply of affordable housing. The second mechanism is "hotelization." So long as a property owner or leaseholder can rent out a room on Airbnb for cheaper than the price of a hotel room, while earning a substantial premium over the residential market or rent-controlled rent, there is an overpowering incentive to list each unit in a building on Airbnb rather than rent to Los Angeles residents, thereby creating "cottage hotels." This decreases the supply of housing and spurs displacement, gentrification, and segregation.

These two mechanisms distort the rental housing market, which traditionally does not overlap with the hospitality sector. Tourists stay in hotels that are specifically permitted for and developed in commercially zoned neighborhoods. Residential housing is zoned and built through a wholly different process. Airbnb facilitates the inappropriate merging of the residential and tourist markets on an unprecedented scale, and unlike with a shortage of, say, shoes or oranges, neither the market nor the public sector can swiftly replace the housing units that Airbnb removes from the marketplace. Thus, city officials regulating Airbnb—and regulating STRs generally—must address conversion and hotelization head on.

As detailed in Section IV and the conclusion of this article, policymakers should pursue targeted bans and regulations that discourage conversion and hotelization. A simple tax on STRs alone will likely be insufficient to fund the replacement of converted units, and may serve to further incentivize hotelization. In exchange for Airbnb's cooperation with enforcement, city officials could allow Airbnb to participate directly in expanding the hospitality market.

A. *Background: Los Angeles's Affordable Housing Crisis*

Los Angeles, California, has become America's least affordable rental housing market. In 2014, the average renter in Los Angeles County³ paid

³ Los Angeles is a city located within the County of Los Angeles, California. Approximately one-third of Los Angeles County residents live within Los Angeles. Unless stated otherwise, the statistics and neighborhoods referenced in this article refer to the city of Los Angeles, not the overall county. County-wide statistics are used as they are here when city-specific statistics are unavailable.

\$1,716 per month.⁴ And within the city, where most residents rent, the median renting household earned less than \$40,000 and spent 47% of its income on housing.⁵ One in two middle-income families and nine in ten families from the bottom income quintile are rent burdened, spending at least 30% of their income on rent.⁶

The city's affordability crisis has developed because of declining real wages, population growth, and zoning policies that favor single-family and luxury housing.⁷ The foreclosure crisis of 2010 exacerbated the affordability crisis by pushing over 100,000 former homeowners into the rental market.⁸ At the same time, wealthier residents repopulated the city core, rapidly gentrifying low-income immigrant enclaves such as Chinatown and Highland Park.⁹ As a result, rents increased by 7.3% in 2014 alone.¹⁰ Over the past decade, 143,000 market-rate apartments that were once "affordable" (meaning that rent constituted 30% or less of a resident's monthly income) to families earning under \$44,000 per year became unaffordable.¹¹

Los Angeles's public housing infrastructure is ill equipped to protect low-income renters. Experts consider the city's Rent Stabilization Ordinance (RSO) to be weaker than comparable regulations in San Francisco or New York, largely because its 3% cap on annual rent increases does not apply to units built after 1978, and because it does not prevent landlords from exceeding the cap in between tenancies.¹² California's Ellis Act exempts from local rent control provisions landlords who purchase a rent-controlled unit from a prior owner, provided that the prior owner is selling in order to exit the business.¹³ As neighborhoods gentrify, evictions of RSO-protected tenants rose by 235% in 2014 as landlords sold their protected units to commercial developers, who are in turn exempted from rent control obligations

⁴ Richard K. Green et al., *2014 USC Casden Multifamily Forecast*, USC LUSK CENTER FOR REAL ESTATE, Feb. 2014, at 12, <http://lusk.usc.edu/sites/default/files/2014-USC-Casden-Multifamily-Forecast.pdf> [<http://perma.cc/AM24-EN57>].

⁵ Ray, *supra* note 1, at 8.

⁶ *Id.* at 9 (citing US Census American Community Survey data from 2009–2011).

⁷ *Id.* at 6, 13.

⁸ *How Los Angeles County's Housing Market Is Failing to Meet the Needs of Low-Income Families*, CALIFORNIA HOUSING PARTNERSHIP COALITION REPORT, May 2014, at 2, http://www.chpc.net/dnld/Housing_Need_LA_Final_060414.pdf [<http://perma.cc/7BVZ-TCXT>].

⁹ See, e.g., York & Fig, AMERICAN PUBLIC MEDIA (2014), <http://yorkandfig.com> [<http://perma.cc/UYK9-RA46>]; see also *infra* Fig. 2.

¹⁰ See ZILLOW, *supra* note 1.

¹¹ Ray, *supra* note 1, at 8 (acknowledging that the authors' affordability benchmark is 30% of income).

¹² See *Economic Study of the Rent Stabilization Ordinance and the Los Angeles Housing Market*, LOS ANGELES HOUSING DEPARTMENT, 2009, at 8–9; see also Ben Bergman, *Has Rent Control Been Successful in Los Angeles?*, SOUTHERN CALIFORNIA PUBLIC RADIO, (Sept. 12, 2014), <http://www.scprr.org/news/2014/09/12/45988/la-rent-has-rent-control-been-successful-in-los-an/> [<http://perma.cc/H5G3-P24R>].

¹³ California Ellis Act of 1985, Cal. Gov't Code § 7060.7 (West).

pursuant to the Ellis Act.¹⁴ Meanwhile, the Section 8 voucher waitlist has been closed for nearly a decade due to limited funding.¹⁵

City officials have been similarly unable to increase the stock of affordable housing. Since 2006, the city has been able to build only a fifth of the 5,300 affordable units that Los Angeles needed to add each year.¹⁶ This is largely because funding has plummeted; the Los Angeles Affordable Housing Trust Fund fell from \$100 million in 2008 to just \$19 million in 2015, while \$1.7 billion in state funds have been cut from the California Redevelopment Agency and the Community Development Block Grant program.¹⁷ For renters, an affordability crisis is the downside to Los Angeles's ubiquitous *taquerias*, Korean barbeque restaurants, and perennial beautiful weather.

B. *Airbnb and the Short-term Rental (STR) Phenomenon*

Los Angeles's affordability crisis has developed alongside the transformation of its tourism sector by STRs—rentals of entire apartments to tourists for fewer than thirty days—arranged through Airbnb. A pair of art students founded Airbnb in 2008 to help travelers bypass expensive hotels and gain local experiences by “couch surfing” with strangers.¹⁸ Tourists use the Airbnb website or mobile application to browse and reserve accommodations in a city or neighborhood of their choice; instead of staying at a hotel or motel, a tourist can “couch surf” with, or rent an empty apartment from, a stranger in another city during their vacation.

For “hosts,” Airbnb is a platform through which apartment owners or lease-holders can rent out anything from a spare living room couch to entire apartment units, with Airbnb collecting “host service”¹⁹ and “guest service” fees from each transaction.²⁰ On its platform, Airbnb allows both hosts and tourists to exchange pictures of the units, “review” apartments and guests on a five-star system, communicate privately, and securely exchange money.

¹⁴ Leo Duran, *Ellis Act Evictions in L.A. on the Rise*, SOUTHERN CALIFORNIA PUBLIC RADIO (Apr. 24, 2015), <http://www.scpr.org/news/2015/04/24/51256/ellis-act-evictions-in-l-a-on-the-rise/> [<http://perma.cc/N8XZ-ZAEY>] (describing how the Ellis Act allows rent-controlled properties to be sold to commercial developers).

¹⁵ Ray, *supra* note 1, at 13.

¹⁶ *Id.*

¹⁷ Ben Bergman, *Garcetti Wants Airbnb to Help Solve L.A.'s Affordability Crisis*, SOUTHERN CALIFORNIA PUBLIC RADIO, Apr. 16, 2015, <http://www.scpr.org/news/2015/04/16/51042/garcetti-wants-airbnb-to-help-solve-la-s-affordabi/> [<http://perma.cc/EW8J-L7NC>]; CALIFORNIA HOUSING PARTNERSHIP COALITION REPORT, *supra* note 8.

¹⁸ Jessica Pressler, *The Dumbest Person in Your Building is Passing Out Keys to Your Front Door! The War over Airbnb Gets Personal*, NEW YORK MAGAZINE (Sept. 23, 2014), <http://nymag.com/news/features/airbnb-in-new-york-debate-2014-9/> [<http://perma.cc/4ZYV-CMRX>].

¹⁹ *What are Host Service Fees?*, AIRBNB, <https://www.airbnb.com/help/article/63/what-are-host-service-fees> [<http://perma.cc/Q24Q-7AMJ>].

²⁰ Brittany McNamara, *Airbnb: A Not So Safe Resting Place*, 13 COLO. TECH. L.J. 149, 151 (2015).

Now worth thirteen billion dollars, Airbnb is among the most lucrative poster-children of the so-called “sharing economy,” in which technology companies circumvent business regulations and well-established competitors by facilitating direct, peer-to-peer exchanges of goods and services.²¹ Similar cottage-scale rentals have been possible since the dawn of the Internet, but Airbnb’s unique success stems from its secure and exceptionally well-designed website, and from its users’ positive experiences.

Airbnb has transformed Los Angeles’s hospitality industry. In 2014, Los Angeles city residents listed 11,401 units on Airbnb, including 7,316 whole-unit STRs.²² By comparison, Los Angeles has 97,000 hotel rooms, though these are dispersed throughout the county.²³ Approximately 135,000 of the forty-five million tourists to visit the city in 2014 stayed in an Airbnb unit.²⁴

Airbnb reports that in 2014, it generated \$314 million in economic activity in Los Angeles, and that by redistributing revenue from corporate hotels, it helps everyday *Angelenos* cope with rising rents and economic instability.²⁵ Airbnb touts its positive effects on cultural exchange, and 37% of surveyed guests state that they would not have been able to travel to Los Angeles for as long a period of time without the service.²⁶ Finally, Airbnb presents home-sharing as a sustainable, energy-efficient, and environmentally conscious alternative to hotels.²⁷

But criticism of Airbnb’s business practices has mounted at a rapid pace. The Venice Neighborhood Council contends that STRs are illegal because they blatantly violate zoning codes banning sub-thirty-day rentals in residential or multifamily zones.²⁸ Hosts’ neighbors allege that rowdy tourists undermine public safety.²⁹ And unions and hotels complain that Airbnb unfairly competes with hotels by avoiding occupancy taxes and zoning laws, skirting public health regulations, and undercutting unionized hotel workers by connecting its hosts with independently contracted cleaners.³⁰

Los Angeles’s “Airbnb economy” does not match the idyllic image Airbnb promotes, in which artistic, young professionals couch surf from Los

²¹ Molly Cohen & Corey Zehngbot, *What’s Old Becomes New: Regulating the Sharing Economy*, BOSTON BAR JOURNAL (Apr. 1, 2014), <http://bostonbarjournal.com/2014/04/01/whats-old-becomes-new-regulating-the-sharing-economy> [http://perma.cc/NN7V-HPU2].

²² Roy Samaan, *Airbnb, Rising Rent, and the Housing Crisis in Los Angeles*, LAANE (Mar. 2015), <http://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf> [http://perma.cc/MTJ4-DLJA].

²³ Hugo Martin, *Lacking Sufficient Lodging, L.A. Tourism Growth*, L.A. TIMES (Apr. 13, 2014), <http://www.latimes.com/business/la-fi-tourism-wars-20140423-story.html> [http://perma.cc/5CZ6-G25J].

²⁴ David Owens, *Positive Impact of Home Sharing in Los Angeles*, AIRBNB (Dec. 4, 2014), <http://publicpolicy.airbnb.com/positive-impacts-home-sharing-los-angeles/> [http://perma.cc/B4W3-LCTL].

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Morris, *supra* note 2.

²⁹ *Id.*

³⁰ Samaan, *supra* note 22, at 15, 22–26.

Angeles to New York to Madrid, exchanging apartments through Airbnb with their fellow travelers. In practice, 64% of Airbnb listings in Los Angeles are for STRs of units that are never occupied by their owners or leaseholders, and operate year-round essentially as independent, unlicensed hotel rooms.³¹ Chances are, an apartment booked through the service is managed by a full-time investor or company that also owns or leases dozens of other Airbnb listings.³² Such companies contract in bulk with decorators and cleaners, manage reservations, and negotiate above-market rent leases with building landlords in exchange for the privilege of renting units out on Airbnb.³³

Airbnb's emergence has significant political and policy implications for Los Angeles's tourism sector, sustainability efforts, and labor movement. As a bona fide cultural phenomenon, Airbnb has galvanized opposition among neighborhood organizations, labor unions, and affordable housing advocates. Yet it has also mobilized a groundswell of support from hosts and guests alike. The narrow focus of this article, however, is the effects that Airbnb STRs have on Los Angeles's affordable housing market.

II. AIRBNB INCREASES RENTS, INCENTIVIZES HOTELIZATION, AND REDUCES THE AFFORDABLE HOUSING STOCK

An Airbnb-affiliated economist claims that Airbnb is a scapegoat for broader economic trends in Los Angeles, and that it has increased monthly rents by just six dollars over five years.³⁴ Rental pricing is certainly a complicated topic, but there is a simple underlying dynamic between STRs and the rental market. Tourists and renters are non-overlapping populations with different needs, traditionally served by non-overlapping markets. But because 64% of its listings are STRs for tourists, Airbnb brings an increasing number of the forty-five million tourists who visit Los Angeles each year into direct competition with renters, distorting the housing market.³⁵

Each apartment or home listed year-round on Airbnb is a home that has been removed from the residential housing market and added to the city's aggregate stock of hotel rooms; I label this phenomenon "conversion." So long as a property owner or leaseholder can earn a substantial premium from Airbnb rather than renting to city residents, there is an overpowering incentive to "hotelize" entire buildings, further reducing the aggregate housing

³¹ *Id.* at 8.

³² Adrian Kudler, *Meet LA's Most Prolific Airbnb Host with 78 Units for Rent*, CURBED LA (Mar. 12, 2015), http://la.curbed.com/archives/2015/03/airbnb_los_angeles_most_prolific_host_ghc.php [<http://perma.cc/4WMD-7MXH>].

³³ *Id.*

³⁴ Kristen Lepore, *Apartment Conversions to Airbnb Hotels Driving Up LA Rents*, *Critics Say*, SOUTHERN CALIFORNIA PUBLIC RADIO (Mar. 16, 2015), <http://www.scpr.org/news/2015/03/16/50321/are-apartment-conversions-to-airbnb-hotels-driving/> [<http://perma.cc/PF4S-KBST>].

³⁵ Bergman, *Garcetti Wants Airbnb to Help Solve L.A.'s Affordability Crisis*, *supra* note 17.

stock. Compounding these market distortions, neither the market nor the public sector can swiftly replenish the housing stock, given the time, cost, and legal barriers to developing affordable housing in Los Angeles. In light of this basic dynamic, the following sections detail how this market-mixing function raises rents and reduces the supply of affordable housing in Los Angeles.

A. Airbnb Increases Rents in Neighborhoods with a High Density of Airbnb Listings

Airbnb listings are concentrated in just seven of the city's densest, most expensive neighborhoods: Venice, Downtown, Miracle Mile, Hollywood, Hollywood Hills, Echo Park, and Silver Lake.³⁶ These tourist destinations account for nearly half of Airbnb listings, and 69% of all Airbnb-generated revenue in Los Angeles.³⁷ In 2014, rents in these neighborhoods were 20% higher, and increased 33% faster, than rents citywide.³⁸

³⁶ Kudler, *supra* note 32.

³⁷ *Id.*

³⁸ *Id.*

FIGURE 1:
RENTAL HOUSING AVAILABILITY IN TOP 7 AIRBNB NEIGHBORHOODS³⁹

Neighborhood	Population (2010)	% of Residents that Rent	Renters (Estimate)	Avg. Household Size	Vacancy Rate	Total Units (Estimate) ⁴⁰	Airbnb Whole Unit Listings
Venice	40,885	68.80%	28,128	1.9	4%	15,422	882
Downtown	34,811	93.40%	32,413	1.6	4%	21,168	220
Miracle Mile	6,197	59%	3,656	2.5	3%	1,508	543 ⁴¹
Hollywood	85,489	92.40%	78,992	2.1	3.50%	38,979	646
Hollywood Hills	22,988	46.50%	10,689	1.8	3.50%	7,154	315
Echo Park	43,832	76%	10,689	3	3.50%	11,507	230
Silver Lake	32,890	64.30%	21,148	2.3	3.50%	9,528	268
Totals	267,092	78.04%	208,440			104,266	3,104

³⁹ Top cities and vacancy rates are from Samaan, *supra* note 22, at 18. Population and household data are from *Mapping L.A. Neighborhoods*, L.A. TIMES, <http://maps.latimes.com/neighborhoods/> [<http://perma.cc/U3XF-FRUM>].

⁴⁰ Estimate: $(\text{Estimated Renters} / \text{Household Size}) / (1 - \text{Vacancy Rate})$.

⁴¹ Miracle Mile STRs estimated from $(\text{total units}) \times (\text{LA average whole unit STR } \%)$.

Figure 1 shows that 3,104 whole-units are listed on Airbnb in these neighborhoods, which have a rental stock of 104,265 units.⁴² To the extent that whole-unit STRs are listed throughout the year, as much as 3% of the apartments in these districts—which have a low 3.5% vacancy rate—have been removed from the market and converted to tourist accommodations. This distortion is particularly acute in beachside Venice, where, according to one study, 12.5% of the neighborhood's apartments are listed on Airbnb.⁴³

In tight housing markets with near-zero vacancy rates, a sudden reduction in supply naturally increases rents, particularly because neither the market nor the public sector can swiftly add to the housing stock. Unlike with most commodities, a shortage in housing supply cannot be ameliorated by importing or quickly building additional units. Assuming that a given neighborhood permits and can physically accommodate the construction of new housing, building an average unit of rental housing in Los Angeles requires an investment of \$315,000, three years just for permitting, and additional time for construction.⁴⁴ Thus, a sudden removal of between 3% and 12.5% of a neighborhood's housing stock constitutes a supply shock.

The price effect of a supply shock in Los Angeles is compounded by annual increases in residential demand, and by the upward pressure that the allure of STR profits puts on property values, which in turn affect property taxes and rents. Even under a simple economic model holding the demand for rental housing constant against a relatively flat supply curve that has a price-elasticity coefficient of 0.200, each 1% decrease in supply would lead to a 0.2% rent increase.⁴⁵ Under this model, the rent on a \$2,680 one-bedroom apartment in Venice would increase by an additional sixty-seven dollars per month from the reduction in local supply alone.⁴⁶

In addition to a supply-related rent increase, the market could be affected by demand pressures from the allure of STR profits, and from acceler-

⁴² Estimated using household size data from *Mapping L.A. Neighborhoods*, *supra* note 39.

⁴³ Samaan, *supra* note 22, at 3. Like the Samaan report, Section II.A of this article assumes that whole-unit listings are listed year-round on Airbnb. However, it is likely that the whole-unit STR figures cited from the Samaan report include some housing units that are in fact occupied by the owner or leaseholder for most of the year, and are not listed year-round on the service. Such units are not removed from the residential housing market.

⁴⁴ Cost per unit from California Department of Housing and Community Development, see *Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-family Affordable Housing in California*, CAL. DEPT OF HOUS. & CMTY. DEV. ET AL. 32 (2014), <http://www.hcd.ca.gov/housing-policy-development/docs/finalaffordablehousingcost-studyreport-with-coverv2.pdf> [<http://perma.cc/A98W-WG6T>] [hereinafter *Affordable Housing Cost Study*]. See also Ben Bergman, *LA Rent Crisis: Why Aren't There More Affordable Apartments?*, SOUTHERN CALIFORNIA PUBLIC RADIO (June 12, 2014), <http://www.scprr.org/blogs/economy/2014/06/12/16821/la-rent-crisis-why-aren-t-there-more-affordable-ap/> [<http://perma.cc/6N8L-Q3UE>].

⁴⁵ See, e.g., John M. Quigley & Steven Raphael, *Regulation and the High Cost of Housing in California* 26 (Berkeley Program on Housing & Urban Policy, Working Paper No. W04-008, 2004) (finding that the price elasticity coefficient to supply is .360 for non-rent controlled rental markets). A regression analysis would be needed to specifically determine the Los Angeles housing market's price elasticity.

⁴⁶ See *Venice Home Prices & Values*, ZILLOW, <http://www.zillow.com/venice-los-angeles-ca/home-values/> [<http://perma.cc/87J8-3TJE>].

ated inflation at the tail-end of the distribution in a housing market with near-zero vacancies. Put simply, a renter in an Airbnb-saturated neighborhood seeking to occupy one of the handful of available apartments is no longer bidding against the local residential rent price, but is instead bidding against the extra profit that STRs can bring.

By incentivizing the conversion of residential units to tourist housing, Airbnb causes a small, but notable, increase in citywide rents. In the neighborhoods with the greatest concentration of Airbnb listings, this rent-increasing effect is much greater; Airbnb accounts for a significant portion of the accelerated rent inflation seen in neighborhoods such as Venice and Silver Lake.

B. Airbnb Reduces Supply by Encouraging Illegal Conversion, Hotelization, and Evictions

In addition to causing a small increase in rents, Airbnb substantially reduces Los Angeles's aggregate supply of housing. Thus, as residents bid for a smaller number of available units, an increasing number of residents are priced out of their neighborhoods, or even the city, entirely. The phenomenon of "hotelization" accelerates this process. Airbnb creates a strong incentive for property owners and renters to permanently "hotelize" entire buildings by renting each unit to tourists through Airbnb rather than finding long-term tenants. This reduces the housing supply, and places demand-side pressure on Los Angeles's dwindling stocks of subsidized and unsubsidized affordable housing.

Although Airbnb claims that it mostly provides middle-class renters and homeowners with supplemental income, it generates 89% of its revenue in Los Angeles from whole-unit STRs without on-site hosts.⁴⁷ To the extent that such units are listed on Airbnb year-round, these figures suggest that Airbnb's business model is based on encouraging hotelization and evictions, not on helping renters lease out spare rooms to make ends meet.⁴⁸ Although it is unclear what percentage of full-time Airbnb listings whole-building "hotels" constitute, news reports paint a vivid portrait of the hotelization phenomena in action.

Entrepreneurs approach landlords in popular neighborhoods expressing their intent to list rental units year-round on Airbnb.⁴⁹ Investors in Silver Lake and Venice have also bought homes and apartments for this purpose.⁵⁰ In the Ellison Suites building in Venice, where the average monthly rent is \$1,500, one woman rents fourteen units and lists them on Airbnb for \$200

⁴⁷ Samaan, *supra* note 22, at 9.

⁴⁸ The rental of spare bedrooms may also distort the housing market by pushing up prices.

⁴⁹ Tim Logan, Emily Alpert Reyes & Ben Poston, *Airbnb and Other Short-term Rentals Worsen Housing Shortage, Critics Say*, L.A. TIMES (Mar. 11, 2015), <http://www.latimes.com/business/realstate/la-fi-airbnb-housing-market-20150311-story.html> [<http://perma.cc/48BR-CRFN>].

⁵⁰ Morris, *supra* note 2.

per night, for a monthly profit of up to \$63,000.⁵¹ When investors turn entire residential buildings into unlicensed cottage hotels, their Airbnb listings are doubly illegal. First, residential neighborhoods prohibit the rental of apartments for fewer than thirty days. Second, these investors do not obtain zoning licenses or hotel permits, do not purchase hotelier's insurance, and do not follow the myriad city regulations that govern hotels.

Landlords have joined the gold rush: one landlord in Venice converted ten of his building's thirty units into Airbnb listings, though he says that his rentals are legal because the units are leased for more than thirty days at a time.⁵² Furthermore, according to local activists, Ellis Act evictions have increased the most in the very neighborhoods where Airbnb listings are concentrated, "in a 'Nike' swoosh shape across Los Angeles . . . from Venice, cut through Hollywood and Koreatown, and encompass[ing] parts of Silver Lake and Echo Park."⁵³

C. *Airbnb Likely Leads to a Citywide Reduction in Affordable Housing*

Housing advocates believe that Los Angeles needs 490,340 more affordable homes,⁵⁴ and Los Angeles mayor Eric Garcetti hopes to construct 16,000 new units annually by 2020.⁵⁵ But in 2014, STRs removed 7,316 units from the city's rental market, a number that seems poised to grow.⁵⁶ It is easy to imagine a future in which Airbnb's growth—and the corresponding removal of rental units from the residential market—outpaces the construction of affordable housing in Los Angeles.

Although there is currently no data on how many of these removed units were affordable, full-time Airbnb STRs can affect the affordable housing stock in two ways. First, affordable units are particularly attractive targets for conversion, directly reducing the stock of affordable housing.⁵⁷ Through the Ellis Act, investors can relieve landlords from the administrative burdens of administering rent-controlled or voucher-subsidized housing, and convert newly-purchased, formerly affordable apartments into Airbnb listings, particularly in newly gentrifying neighborhoods. Thus, Airbnb incentivizes the direct conversion of subsidized or rent-controlled units into lucrative Airbnb listings. Absent regulation, this incentive will continue to influence the marketplace so long as hotel rates sufficiently exceed residential rents.

⁵¹ Lepore, *supra* note 34.

⁵² *Id.*

⁵³ Duran, *supra* note 14.

⁵⁴ CALIFORNIA HOUSING PARTNERSHIP COALITION REPORT, *supra* note 8.

⁵⁵ *Plan: Transforming Los Angeles*, CITY OF LOS ANGELES 52 (2015), <https://d3n8a8pro7v hmx.cloudfront.net/mayorofla/pages/17002/attachments/original/1428470093/pLAN.pdf?1428470093> [<https://perma.cc/RW4Q-ZT6D>].

⁵⁶ Samaan, *supra* note 22, at 3.

⁵⁷ *Id.* (describing how trade publications advise landlords on how to convert units to STRs).

Second, Airbnb indirectly reduces the affordable housing supply by reducing the overall housing supply. As a result, the pressure that STRs place on rent prices pushes units out of the margins of affordability for low- and middle-income residents, an effect that cascades throughout the city. In 2014, Airbnb removed 1% of the units from Los Angeles's rental market—and substantially more in some neighborhoods—while monthly rents increased by 7.3%.⁵⁸ And by reducing the overall housing supply, Airbnb is partially responsible for the citywide rent increases that further reduce the supply of affordable housing.

III. AIRBNB IS CORRELATED WITH GENTRIFICATION AND MAY EXACERBATE RESIDENTIAL SEGREGATION AND INEQUALITY

Airbnb harms the goals of affordable housing advocates in ways beyond its numerical impact on rents or the housing stock. Although these harms are difficult to measure, they extend beyond the fact that tourists do not sleep at reasonable hours and do not recycle beer cans properly. Airbnb STRs impede integration and exacerbate socioeconomic inequality.

A. *Airbnb is Correlated with Gentrification in Adjacent Neighborhoods*

Gentrification occurs when rising rents displace a neighborhood's lower income households, who are replaced by wealthier residents that change the district's "essential character."⁵⁹ Lower-income residents who are displaced can face longer commutes and lose access to essential community services and institutions.⁶⁰

Airbnb STRs are concentrated in expensive neighborhoods that have long-since or have never been gentrified. But when middle-income renters are displaced from these neighborhoods, they are pushed into cheaper neighboring communities, which they subsequently gentrify. For example, former Venice resident Roman Barrett says he moved to Koreatown—a gentrifying, low-income Asian and Latino enclave—after being priced out of Venice by Airbnb rentals.⁶¹

Figure 2 illustrates the relationship between Airbnb-dense communities and their poorer, gentrifying neighbors. These neighborhoods tend to have high poverty rates, yet their rents have risen more rapidly than in Los Angeles overall. This effect is particularly dramatic in Chinatown, where rents have doubled in just two years. More data is needed to determine whether,

⁵⁸ See ZILLOW, *supra* note 1. Total number of apartments in LA estimated by dividing census population data by household size data from *Mapping L.A. Neighborhoods*, *supra* note 39.

⁵⁹ Maureen Kennedy & Paul Leonard, *Dealing with Neighborhood Change: a Primer on Gentrification and Policy Choices*, BROOKINGS INSTIT. CTR. ON URBAN & METRO. POLICY, Apr. 2001, at 5.

⁶⁰ *Id.* at 22, 43.

⁶¹ Logan et al., *supra* note 49.

say, residents displaced from Silver Lake actually move to Koreatown, but the prevalence of STRs seems to correlate with rent hikes and gentrification in adjacent districts.

FIGURE 2:
GENTRIFYING DISTRICTS ADJACENT TO AIRBNB-DENSE NEIGHBORHOODS⁶²

Arbnb Dense Neighborhood	Income (\$)	Adjacent Gentrifying Neighborhood (AGN)	Income (\$)	Income Differential (\$)	Jan 2013 Rent (\$) in AGN	Jan 2014 Rent (\$) in AGN	Jan 2015 Rent (\$) in AGN	1 Year Rent Increase in AGN (%)	2 Year Rent Increase in AGN (%)
Downtown ⁶³	15,003	Boyle Heights	33,235	18,232	1639	1750	1881	7.49%	14.77%
Echo Park	37,708	Chinatown	22,754	-14,954	1200	2150	2400	11.63%	100.00%
Hollywood	33,694	East Hollywood	29,927	-3,767	1581	1661	1710	2.95%	8.16%
Hollywood Hills	69,277	East Hollywood	29,927	-39,350	1581	1661	1710	2.95%	8.16%
Miracle Mile	61,767	Koreatown	30,558	-31,209	2166	2288	2482	8.48%	14.59%
Silver Lake	54,339	Koreatown	30,558	-23,781	2166	2288	2482	8.48%	14.59%
Venice	67,647	Culver City	70,774	3,127	2659	2668	3193	19.68%	20.08%
Los Angeles Average	\$49,497				\$2,321	\$2,362	\$2,534	7.28%	9.18%

⁶² Income data and adjacent districts were determined from *Mapping L.A. Neighborhoods*, *supra* note 39. Rent statistics are from Zillow.com.

⁶³ The Downtown income figure is likely distorted by the high concentration of homeless individuals in "Skid Row." Boyle Heights residents are likely lower income than Downtown renters.

B. Airbnb Might Reduce Integration by Displacing Lower-income Tenants

Economic and racial neighborhood integration can lead to a range of positive educational, vocational, and health outcomes for low-income tenants. But Airbnb reduces neighborhood integration by incentivizing hotelization, encouraging Ellis Act conversions of rent-controlled units, and driving out lower-income renters.⁶⁴ Furthermore, some landlords of buildings protected by the city's Rent Stabilization Ordinance choose to list vacant units on Airbnb rather than deal with the eviction and rent protections that a full-time tenant would enjoy.⁶⁵

Because Airbnb STRs are such a nascent phenomenon, further research is needed to measure Airbnb's impact on annual changes in racial and economic diversity in high-demand neighborhoods. Researchers should also track the displacement of lower income residents from neighborhoods where Airbnb listings are prevalent.

C. Unequal Access to Airbnb Exacerbates Racial and Socioeconomic Inequality

Airbnb creates winners and losers; it facilitates cultural exchange and provides economic benefits to hosts and tourists, but distributes these benefits unequally. Hosts need an Internet connection and cultural savvy just to access the platform. And the fact that just seven of Los Angeles's most expensive neighborhoods, in which approximately 8% of the city's residents live, generate over two thirds of the city's Airbnb revenue suggests that there is little tourist demand for STRs in lower- and middle-income neighborhoods.⁶⁶

According to Airbnb, 38% of its hosts are of low-to-moderate income, and more than half are renting out couches and spare bedrooms.⁶⁷ But these hosts only make 11% of the city's Airbnb-supported income.⁶⁸ Instead, large-scale operators reap the lion's share of the revenue; 6% of Airbnb hosts list multiple units, earning 35% of all Airbnb revenue.⁶⁹ One such company, Global Homes and Condo, lists seventy-eight units on Airbnb through a pair of friendly, but fake, "front" women.⁷⁰ These figures suggest that whereas individual "hosts" set their rates based on the value of their apartments, commercial Airbnb operators set their prices against prevailing hotel prices, leading to profits for operators and Airbnb alike.

⁶⁴ See, e.g., Duran, *supra* note 14.

⁶⁵ Samaan, *supra* note 22, at 12.

⁶⁶ The population-share of Downtown, Echo Park, Hollywood, Hollywood Hills, Miracle Mile, Silver Lake, and Venice calculated from *Mapping L.A. Neighborhoods*, *supra* note 39.

⁶⁷ *Id.*

⁶⁸ Samaan, *supra* note 22, at 13.

⁶⁹ Kudler, *supra* note 32.

⁷⁰ *Id.*

In addition, although most Airbnb STRs blatantly violate city laws prohibiting sub-thirty-day apartment rentals, landlords seem to enforce these laws more diligently against renters—particularly those with rent-controlled or subsidized housing—than against apartment or condo owners.⁷¹ It would probably be unfair for publicly subsidized tenants to profit from listing STRs on Airbnb. But the benefits of Airbnb overwhelmingly accrue to relatively wealthy renters and property owners, not to average *Angelenos*.

Finally, Airbnb is based on an amorphous “trust” and “sense of community” endemic to the sharing economy, a trust that extends only to some social groups. A recent study found that African American hosts earn 12% less than white hosts for equivalent rental listings.⁷² And minority guests are systematically denied lodging by Airbnb hosts.⁷³ If Airbnb hosts are offering a public accommodation, minority Airbnb guests may even have a *prima facie* case against Airbnb hosts for discrimination in violation of the *Fair Housing Act* of 1968, which prohibits refusal to rent to a person on the basis of a protected class, such as racial minorities.⁷⁴ Airbnb facilitates systemic discrimination and reduces racial integration.

IV. REGULATING AIRBNB TO PROMOTE EQUITABLE HOUSING

A. *Criteria for Evaluating Proposals: Solutions Must Address All Problems*

Because Airbnb STRs are a new and rapidly growing phenomenon, local and state lawmakers and regulators are just beginning to deal with this problem.⁷⁵ The author’s view is that Los Angeles should prioritize the housing needs of residents over the needs of tourists when the two aims conflict. However, there are ways to harness the benefits of Airbnb, while regulating it so that it promotes affordable housing, integration, and equity in Los Angeles. But, any policy reforms must directly address the distortive effects that conversion and hotelization have on affordable housing.

Ideally, STR regulations should address as many of Airbnb’s negative effects on affordable and fair housing as possible. Ideally, they would also address the underlying causes of Los Angeles’s housing crisis, including the

⁷¹ See, e.g., Samaan, *supra* note 22, at 18.

⁷² Benjamin Edelman & Michael Luca, *Digital Discrimination: The Case of Airbnb.com 2* (Harvard Bus. Sch., Working Paper No. 14-054, 2014), http://www.hbs.edu/faculty/Publication%20Files/14-054_e3c04a43-c0cf-4ed8-91bf-cb0ea4ba59c6.pdf [http://perma.cc/S6EZ-ABQX]. See also Michael Todisco, Note, *Share and Share Alike? Considering Racial Discrimination in the Nascent Room-sharing Economy*, 67 STANFORD L. REV. ONLINE 121, 122 (Mar. 14, 2015) (discussing the study as proof of pervasive racial bias among Airbnb users).

⁷³ Todisco, *supra* note 72, at 123.

⁷⁴ *Id.* at 126. However, only hosts, and not Airbnb itself, could be held liable.

⁷⁵ Ben Bergman & Alice Walton, *Los Angeles Officials Crack Down on “Sharing Economy” Rides, Rental Companies*, SOUTHERN CALIFORNIA PUBLIC RADIO (Dec. 9, 2014), <http://www.scpr.org/news/2014/12/09/48569/los-angeles-officials-crack-down-on-sharing-econom/> [http://perma.cc/HA8N-TJTH].

lack of funding for developing affordable housing. Before signing on to a deal, policymakers and community stakeholders should ask whether a proposal:

1. *Addresses and combats neighborhood and city-wide rent increases;*
2. *Reduces or adds to the city's market-rate and affordable housing stock;*
3. *Discourages the "conversion" of existing affordable units into STR listings;*
4. *Eliminates incentives that encourage "hotelization" of rental units;*
5. *Protects residents from displacement and eviction;*
6. *Addresses cultural and economic gentrification;*
7. *Exacerbates socioeconomic disparities or increases access to Airbnb's benefits;*
8. *Promotes socioeconomic integration.*

B. Evaluating Mayor Garcetti's Plan to Tax STRs in Order to Fund Affordable Housing

On April 16, 2015, Mayor Garcetti announced a deal he had proposed to Airbnb. Under his proposal, Los Angeles would levy a 14% occupancy tax on all Airbnb facilitated rentals.⁷⁶ This is expected to generate at least \$5 million annually, although this static projection does not take into account expected increases or tax-induced decreases in Airbnb activity.⁷⁷ These funds would be allocated each year to Los Angeles's Affordable Housing Trust Fund, which has been reduced from \$100 million in 2008 to just \$19 million in 2015.⁷⁸

Without taking matching funds into account, \$5 million could fund the development of sixteen affordable units at an average cost of \$315,000 per unit.⁷⁹ However, Airbnb rentals remove 7,316 units—which does not include units that are listed only intermittently on Airbnb—year-round from Los Angeles's rental market. Even if Airbnb stops expanding, it would take 457 years for occupancy taxes to fund the full replacement of the units that Airbnb removes from the city's rental market. To use another rough calculation, a single studio apartment in Silver Lake that is booked on Airbnb for an average of \$132 per night at a remarkable 60% rate—219 days a year—

⁷⁶ Bergman, *Garcetti Wants Airbnb to Help Solve L.A.'s Affordability Crisis*, *supra* note 17.

⁷⁷ *Garcetti's Airbnb Tax Plan Does Little to Increase Affordable Housing*, S. CAL. PUB. RADIO (Apr. 16, 2015), <http://www.scpr.org/programs/take-two/2015/04/16/42416/garcetti-s-airbnb-tax-plan-does-little-to-increase/> [<http://perma.cc/Y8CW-435Z>].

⁷⁸ Bergman, *supra* note 17.

⁷⁹ Average cost per Los Angeles County publicly built affordable housing unit from California Department of Community Development, see *Affordable Housing Cost Study*, *supra* note 44, at 31.

yields \$28,908 for its host, generating \$4,047 in occupancy tax revenue for Los Angeles each year.⁸⁰ Such a unit would take seventy-eight years to fund the construction of its own replacement.

This may not be an apples-to-apples comparison because Airbnb should not shoulder the entire burden of replacing a converted unit of affordable housing when, presumably, an affordable housing developer would recoup its costs through tenants' rent payments. Take, then, the hypothetical Silver Lake apartment in the paragraph above and assume that it was an affordable unit of housing for a median-income city resident. Perhaps it would be reasonable at least to expect STR taxes to cover the costs of construction during the period that Airbnb leaves Silver Lake with one fewer unit of housing.

Assume that a developer spends four years building (three years of permitting, one year of construction) a unit of affordable housing in Silver Lake, and that the unit will be habitable for fifty years. At a cost of \$315,000, the unit will cost the developer \$6,300 per year in construction costs alone over the 50-year period. If Airbnb was responsible for covering the costs of four years of construction, it would still have to generate \$25,200 in taxes over four years, requiring a daily tax rate of 21.8%. The back-of-the-envelope calculations in this hypothetical demonstrate the complications involved in trying to fund the replacement of converted or hotelized units of housing through an occupancy tax on STRs. An occupancy tax of 14% might be insufficient to meet Mayor Garcetti's stated policy goals.

Furthermore, Garcetti's plan would not address gentrification or rent increases in neighborhoods where Airbnb listings are prevalent. And depending on where new units are built, it is unclear whether the neighborhoods most affected by Airbnb would benefit from new housing construction. After all, the city may build in lower-income neighborhoods that offer taxpayers a better "bang for your buck" than Venice or Silver Lake. This could concentrate poverty, and decrease economic integration in affluent neighborhoods, unless the funds were used to fund mixed-use or affordable developments in higher income neighborhoods at higher cost to the Trust Fund.

Garcetti's plan may spread demand and help lower income and minority hosts. But this could backfire by contributing to gentrification in those neighborhoods, especially if taxes push STR demand into the already gentrifying districts adjacent to the neighborhoods that are popular on Airbnb. One final concern is that such a deal would formally excuse Airbnb from a wide range of liability, from safety-related issues to STR regulation. Legalization may also spur STR growth. And Garcetti should specify how his plan would address evictions, illegal conversions, and discrimination by Airbnb hosts and renters during the time period when replacement housing is being constructed.

⁸⁰ See Airbnb, <https://www.airbnb.com/s/Los-Angeles?neighborhoods%5B%5D=Silver+Lake> (last visited Dec. 2, 2015). Occupancy rate figure from Martin, *supra* note 23.

C. *Evaluating Alternative Tax and Redistribution Schemes*

Mayor Garcetti's plan directly addresses Los Angeles's affordable housing shortage, but might not replace the units that Airbnb removes from the rental market. Allocating STR taxes to construct affordable housing also does not address segregation and gentrification. There may be more effective ways to tax and redistribute the revenue that STRs generate.

The city can be ambitious about tax rates and tax Airbnb at a rate higher than the 14% occupancy fee levied on licensed hotels. As a matter of policy, it is desirable that the brunt of any taxes levied on Airbnb would be borne by two relatively wealthy populations: tourists and property owners. Furthermore, whereas hotel guests are ostensibly paying for city services with their taxes, Airbnb guests could also be paying to replenish the housing stock. If Airbnb tourists are looking to avoid paying a premium to stay in hotels, Los Angeles could tax hosts to any extent such that the price of an Airbnb is less than the price of an equivalent hotel room without de facto banning STRs. Although there are political limits to tax levels, officials need not set a 14% pre-negotiation upper tax limit on Airbnb listings.

Los Angeles could promote economic diversity and integration by directing tax revenue towards a municipal housing voucher program, which would increase economic integration. And if these vouchers were given to low-income residents of Airbnb-dense buildings or neighborhoods, it would allow them to stay in their homes. However, like Mayor Garcetti's plan, such taxation and redistribution schemes may not be able to replace all of the units that Airbnb removes from the residential market. Other measures are necessary to complement these tax schemes and promote integrated, affordable neighborhoods throughout Los Angeles.

D. *Evaluating a Ban or Targeted Restrictions on Airbnb STRs*

STRs increase rents for residents and reduce the supply of affordable housing by removing units from the housing market through conversion and hotelization. Given Los Angeles's low vacancy rate, it is likely that thousands of residents have been displaced due to the 7,316 year-round listings on Airbnb. On the other hand, Airbnb's economists claim that in 2014, Airbnb helped add \$314 million in economic activity and 2,600 jobs to Los Angeles's economy.⁸¹ Although this does not take into account losses to renters and other community stakeholders, it is plausible that Airbnb simultaneously produces economic benefits while exacerbating the city's affordability crisis. This article approaches the issue of Airbnb from the lens of weighing its effect on Los Angeles's affordable housing crisis, and is not an attempt to quantitatively measure the net economic gains or losses produced by Airbnb. Policymakers seeking to regulate Airbnb must make both economic and

⁸¹ Owens, *supra* note 24.

value-driven decisions in order to weigh the importance of promoting affordable housing.

A blanket ban on STRs would end Airbnb's role in exacerbating Los Angeles's affordability crisis. For residents displaced by Airbnb, a blanket ban would likely be preferable to any solution that insufficiently addresses the corrosive effects of STRs. Enforcing anti-STR laws could also halt the evictions, displacement, and gentrification that follow when Airbnb saturates a neighborhood. That said, a ban would not add to Los Angeles's affordable housing stock itself, and would deprive the city of Airbnb's benefits. Furthermore, bans that deprive property owners of Airbnb's benefits implicate Constitutional protections for property owners under the three-pronged *Penn Central* takings test, which assesses: (1) the economic impact of a regulation on affected parties, (2) the extent to which a regulation frustrates investor expectations, and (3) the extent to which a regulation is tailored to promote general welfare or is arbitrary.⁸²

Property law scholar Jamila Jefferson-Jones suggests that New York's anti-STR regulations may violate legitimate investor-backed expectations, and are not "roughly proportional," meaning that the severity of existing laws banning STRs are not commensurate to the value of the regulations: protecting public safety, hotels, and neighborhood property values.⁸³ However, Professor Jefferson-Jones's analysis underestimates the public's legitimate interest in protecting affordable housing.⁸⁴ These arguments demonstrate how outright bans may become increasingly untenable given Airbnb's prevalence. At the moment, however, most of the STRs listed on Airbnb in Los Angeles's residential and mixed-use (business and residential) zones are illegal.

Alternatively, city officials could legalize STRs but place targeted restrictions on them rather than enforce the existing blanket ban. Such an approach could reasonably prevent Airbnb from distorting the housing market while allowing tourists and residents to benefit from it. However, such a strategy would have to address conversion and hotelization, or otherwise ameliorate Airbnb-induced reductions in affordable housing supply.

For example, enforcement agencies could choose to target unlicensed hotels and prevent hotelization. Perhaps purchasers of property could be banned from using Airbnb for a one-year "cool-down" period. This would put a check on price hikes and discourage hotelization. Such a ban would protect the existing affordable housing stock. However, such a requirement may invite scrutiny under the investor expectations prong of the *Penn Central* test where investors, prior to enactment of the rule, bought a building for the purpose of hotelization. But the city can assert that the restriction is

⁸² See *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 152–53 (1978).

⁸³ 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, 566–68 (Spring 2015).

⁸⁴ *Pennell v. San Jose*, 485 U.S. 1, 13 (1988) (affirming public's right to preserve affordability through measures such as rent control).

necessary to prevent public nuisances and protect the affordable housing stock. And because it would not constitute rent control, a cool-down requirement would not trigger the intervention of the Ellis Act if a purchased property was previously rent-controlled.

Similarly, policymakers could discourage “conversion” by prohibiting landlords who have evicted a tenant without fault—meaning that the tenant is not evicted for violating his or her lease—from listing the unit in question on Airbnb for a one-year cool-down period. This cool-down period can be imposed on all landlords, or just landlords of subsidized units. Either approach would discourage wanton conversion of rental stock into tourist accommodations.

Another approach would be to assign STR permits and restrict the number of permits per square mile or neighborhood. However, geographically targeted restrictions on STRs would be difficult to enforce, and it would be difficult to administer a permit system that is equitable to all prospective hosts. Furthermore, this might encourage the spread of STRs into newly gentrifying neighborhoods. For example, such a policy could restrict the culling of Echo Park’s affordable housing supply while exacerbating the affordability crisis in neighboring Chinatown.

Another solution would be to mandate that Airbnb STRs be allowed only in buildings that meet a target affordability threshold. For example, the city could promote inclusionary housing by only allowing STRs in neighborhoods or buildings where 30% of the units are affordable, which would incentivize property owners to subsidize apartments that are currently priced at the market rate in order to “free up” units for Airbnb listings. This would directly address STRs’ effects on neighborhood socioeconomic integration. But such solutions would be cumbersome to calculate and difficult to enforce. Furthermore, such a benchmark may be considered exactions that are not roughly proportional to the actual affordability and public safety problems that STRs create.⁸⁵ Finally, such an approach would increase the stock of affordable housing, but simultaneously reduce Los Angeles’s overall stock of residential housing.

Lastly, city officials could prevent hotelization by legalizing STRs, but limiting the number of days per year that a host can list a unit without going through the hotel permitting process. This would disincentivize the conversion and removal of units from the housing market, protect the housing stock, and tamp down speculation and rent inflation. Such an approach would be subject to an investor-backed expectations takings challenge, but the city could argue that the limitation is necessary to protect the residential housing stock.

Should Los Angeles decide to adopt some sort of enforcement strategy towards Airbnb, policymakers should empower regulators to enforce zoning and hotel licensing laws. Regulations on Airbnb STRs are municipal in nature, concerning issues such as zoning and hotel licensing. California coun-

⁸⁵ Jamila Jefferson-Jones, *supra* note 83, at 568.

ties have not coordinated to regulate STRs on a county or statewide basis. Although Los Angeles has not committed resources to enforcing STR laws, the City Attorney's office has asked hosts to pay occupancy taxes.⁸⁶ But it is unclear whether these warnings were symbolic or whether the City Attorney has the resources to enforce these laws.⁸⁷

Policymakers should empower regulators to enforce zoning and hotel licensing laws. Although resources are limited, this should be a priority given the havoc that STRs wreak on the residential housing market. And rather than targeting single-unit hosts, regulators can target the cottage industry of "Airbnb leasing companies" that are rapidly removing units from the rental housing market, thereby discouraging hotelization.⁸⁸

Perhaps taxes can fund enforcement officers or a regulatory body within the city planning department. In the absence of a new regulatory agency, Airbnb should at least make it possible for the city to track STRs and crack down on the most egregious activities. Perhaps hosts who post listings more than once a month—which indicates that a host has converted a unit—should have to register with the city. Los Angeles should also crack down on large-scale operators who manage "virtual hotels" with multiple rooms across the city. And investors should be prevented from converting entire buildings into cottage hotels. Airbnb's cooperation is critical to any effective enforcement scheme that prevents conversion and hotelization. Perhaps city officials can negotiate with Airbnb and exchange greater cooperation with targeted enforcement efforts for a general legalization of non-commercial-scale STRs.

E. Promote Affordable and Fair Housing Through Community Benefits Agreements

In addition to regulating and taxing Airbnb, Los Angeles should adopt the community benefits agreement (CBA) model that local industries have negotiated with unions and affordable housing advocates.⁸⁹ Under a typical CBA, developers of large projects are given tax credits and the permission to build lucrative developments such as luxury apartments, malls, or sports stadiums in exchange for a commitment to hire local residents, set aside affordable housing, or donate to public projects.⁹⁰ So too here, policymakers, advocates, unions, and developers would come together and bring Airbnb in as a partner, helping Los Angeles's low-income and minority communities share in Airbnb's benefits.⁹¹⁻⁹²

⁸⁶ Bergman & Walton, *supra* note 75.

⁸⁷ *Id.*

⁸⁸ *See, e.g.*, Kudler, *supra* note 32.

⁸⁹ *See, e.g.*, Harold Meyerson, *L.A. Story*, AMERICAN PROSPECT (Aug. 6, 2013), <http://prospect.org/article/la-story-0> [<http://perma.cc/2J9H-NLB4>].

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² If Airbnb signs a CBA with community stakeholders, rather than the city, a CBA would likely not violate the *Penn Central* exactions test.

First, Airbnb should ban racially discriminatory hosts and users and make the approval process race-blind. Airbnb could also use its platform, market penetration, and technology to connect hosts with cleaning services that pay living wages. Additionally, Airbnb could apply its proprietary technology to help low-income renters find low-cost or public housing.

Airbnb and developers could also be given incentives to concurrently expand the supply of housing and the supply of tourist accommodations, removing tourists from the residential housing market. Developers could be given permits to construct sanctioned "Airbnb hotel" apartments in neighborhoods with a high density of Airbnb listings. Qualifying newly constructed buildings could be exempt from the bans, taxes, or restrictions on STRs that would govern existing residential housing. These permits could be contingent upon Airbnb or the developer signing a CBA that ensures workers are fairly paid, and require that at least 15% of a hotel's units be rent-controlled or subsidized for low-income residents.⁹³ The remaining units could be rented at market-price, or listed on Airbnb. An even better ratio of "hotel" units to affordable residential units would be one that directs hotel developers to reserve as many affordable units as possible while earning market-rate returns. In any combination, an "Airbnb hotel" would directly expand the affordable housing stock, expand the aggregate housing stock, increase Los Angeles's supply of hotel rooms, and promote integration.

V. CONCLUSION:

REFORMING STRS TO ADDRESS THE HOUSING CRISIS

As gentrification transforms Los Angeles's urban core, policymakers must adapt to better regulate new technologies such as Airbnb. The best regulation comes from precise data, so additional research is needed on how STRs affect evictions and rents. To an extent, Airbnb is a response to, not a cause of, gentrification and Los Angeles's affordable housing crisis. But policymakers must understand that Airbnb profits from illegal rentals that cause rent increases, reduces the housing supply, and exacerbates segregation. Even an outright ban on STRs would be better for low-income residents than the unregulated status quo. Airbnb must become a responsible partner and facilitate, not hinder, the goals of affordable housing advocates.

In preparing to negotiate with Airbnb, Los Angeles can learn from the approaches that other cities have taken to regulate Airbnb. San Francisco, Chicago, and Washington, D.C. negotiated with Airbnb lobbyists to legalize STRs and apply hotel occupancy taxes to STRs.⁹⁴ Aside from New York,

⁹³ This is the same percentage that is required for other developments that seek density bonuses from the city. *LA Affordable Housing Incentives Guidelines 2014*, http://cityplanning.lacity.org/Code_Studies/Housing/DRAFTUPDATEDAffordHousingGuide.pdf [<http://perma.cc/ZKJ4-7JUH>].

⁹⁴ Bergman, *Garcetti Wants Airbnb to Help Solve L.A.'s Affordability Crisis*, *supra* note 17.

policymakers have avoided suggesting outright bans, perhaps because Airbnb has mobilized grassroots support and formed sophisticated lobbying and advocacy organizations.⁹⁵ Airbnb spent \$100,000 in 2014 alone to lobby Los Angeles officials.⁹⁶

After proposing and evaluating various reforms, my recommendation is that Los Angeles adopt a three-pronged strategy. First, the city should prevent the hotelization and conversion of existing residential buildings and units of housing. Airbnb provides a tremendous benefit to tourists and residents alike when it allows tourists to travel off the tourist-beaten path. Such adventures are a win-win for hosts who are merely using Airbnb for a month per year to subsidize their own travels, or who are using Airbnb to earn enough money to keep their home after losing a job.

But given the inelasticity of the housing supply, it is inappropriate for investors to permanently remove units from the residential housing stock in order to cater to tourists. Fundamentally, I would argue that the *raison d'être* of Los Angeles's housing stock is to serve its residents. Thus, Los Angeles should ban year-round listings of apartments on Airbnb and similar websites, perhaps by emulating San Francisco's proposed "Ballot Measure F" and setting a seventy-five-day limit on the number of days that a unit can be listed.⁹⁷ Bona fide homeowners or leaseholders who occasionally host guests through Airbnb can be exempted from any taxes that would otherwise be levied on STR transactions.

Furthermore, Los Angeles should institute a one-year cool-down period before any formerly subsidized or rent-controlled home can be listed on Airbnb. To prevent hotelization and professional Airbnb management, Los Angeles should set a hard cap on the number of units that any individual or business can list on Airbnb in a given year. Finally, Los Angeles should set a hard cap on the number of units in a building that property owners and managers can list on Airbnb.

In order to incentivize developers and Airbnb itself to build additional affordable and market-rent housing, Los Angeles should apply these restrictions to existing residential buildings and units, but allow newly-developed building managers and owners to set aside a greater number of units for STRs. The city can also grant additional exemptions for developers who set aside newly-constructed units for low-income residents, thereby directly increasing the affordable housing stock and promoting economic integration. Along this line, the city can bring developers, unions, advocates, and Airbnb—the parent company—together to sign Community Benefits Agreements. The parties can agree to build "Airbnb hotels" in tourist destinations

⁹⁵ Logan et al., *supra* note 49.

⁹⁶ See, e.g., Short Term Rental Advocacy Center, <http://www.stradvocacy.org/> [<http://perma.cc/A996-EWRB>].

⁹⁷ S.F., Cal., Admin. Code § 41.A.4, 41.A.5 (2015), http://sfgov2.org/ftp/uploadedfiles/elections/candidates/Nov2015/ShortTermRentals_Text.pdf [<http://perma.cc/LTS4-4RP6>].

that set units aside for low-income residents, provide good jobs, and ban discrimination.

Finally, Los Angeles should implement a 14% occupancy tax on any unit that is listed on Airbnb for greater than the seventy-five-day cap mentioned above. This would prevent Airbnb hosts from gaining an unfair competitive advantage over hotels. The city can allocate this revenue towards code enforcement, and for funding mixed-income housing in Airbnb-dense neighborhoods, thereby promoting integration and preventing displacement.

Airbnb is organizing constituents and mobilizing political support.⁹⁸ This is why political stakeholders must regulate Airbnb STRs now, before the industry calcifies into Los Angeles's political and economic structure. At the moment, local politics are favorable to increased regulations. Unions and neighborhood associations have united with their political adversaries—hotels and developers—to speak out against Airbnb.⁹⁹ By framing the public narrative around the displacement that STRs cause, regulators can also win the support of influential faith leaders, as well as of the public. If the city brings Airbnb together with community stakeholders, the city can eliminate Airbnb's corrosive effects on fair and affordable housing, and help all communities benefit from safe, integrated, and affordable neighborhoods.

⁹⁸ Logan et al., *supra* note 49.

⁹⁹ *See, e.g.*, Keep Neighborhoods First, <http://www.keepneighborhoodsfirst.com/> [<http://perma.cc/6YHE-A7HJ>] (coalition of labor and neighborhood councils).

