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From the Selected Works of Michael E Lewyn

Winter 2016

Two Arguments Against Home-Sharing

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Available at: <https://works.bepress.com/lewyn/119/>

Zoning and Land Use Planning

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TWO ARGUMENTS AGAINST HOME-SHARING

I. Introduction

A decade or two ago, a traveler who wished to stay in a city temporarily had no alternative to staying in a hotel. Even if the owner of a house or condominium wished to rent out a room for a short period of time, the costs of advertising in a newspaper would have at least partially canceled out the financial benefits from renting.

But the Internet has made home-sharing much more economical. At first, online platforms such as Craigslist.org allowed homeowners to rent out rooms without paying for advertising. However, Craigslist offers users no way to protect themselves against incompetent or predatory landlords or guests.

But in recent years, home-sharing websites (most notably Airbnb.com)¹ have arisen to make home-sharing easier. In 2008, Joe Gebbia and Brian Chesky, two friends in San Francisco, decided to profit from a nearby conference by renting out airbeds in their apartment.² They then created a website based on this concept, originally titled

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¹See Linda Rosenthal, *Airbnb Opposition Makes for Strange Bedfellows*, 2016 CityLand 1 (2016) ("Airbnb is the world's largest online home sharing platform").

²See Dana Palombo, *A Tale of Two Cities: The Regulatory Battle To Incorporate Short-Term Residential Rentals into Modern Law*, 4 Am. U. Bus. L. Rev. 287, 295 (2015).

airbedandbreakfast.com.³ The founders then decided to seek other hosts for the website, and booked almost 1000 rentals just before the 2008 Democratic Convention.⁴ Airbnb now has 600 employees and is valued at \$25.5 billion.⁵ 20 million guests in 190 countries have used Airbnb for lodging.⁶ Airbnb is successful because it has solved the problems that limited Craigslist's usefulness to travelers. After a guest leaves an Airbnb listing, the host and the guest rate each other, and their comments are available on the Airbnb website.⁷ As a result, risk-averse travelers can stay with hosts with many good reviews, while travelers willing to take risks for a bargain can choose hosts who have not been reviewed or with more mixed reviews. Airbnb also offers insurance to hosts, and has a customer service department to resolve host/guest disputes.⁸

Home-sharing creates a variety of social benefits. By taking in boarders, homeowners can help pay their mortgages and thus avoid losing their homes to foreclosure.⁹ By increasing the supply of short-term housing, home-sharing makes travel more affordable, thus creating tourism-related revenue for cities with hosts.

And because home-sharing listings are often less geographically concentrated than hotels, they provide a benefit to both travelers and neighborhoods. Travelers can experience a wider variety of neighborhoods than they would if

³*Id.*

⁴*Id.*

⁵See Jennifer S. Fan, *Regulating Unicorns: Disclosure and the New Private Economy*, 57 B.C. L. Rev. 583, 612 (2016).

⁶See Ethan Katsch and Oma Rabinovich-Einy, *Technology and Dispute Systems Design: Lessons from the "Sharing Economy"*, 21 Disp. Resol. Mag. 8, 10–11 (2015).

⁷*Id.* at 11.

⁸*Id.* at 11–12.

⁹Renters similarly benefit by taking in sublessees to help pay the rent. However, tenants should be more careful in this regard, since many residential leases prohibit subleases without the consent of the landlord. See Jim Edwards, *While Hotel Industry Lobbyists Want a Global Crackdown on Airbnb*, at <http://www.businessinsider.com/why-hotel-industry-lobbyists-want-a-global-crackdown-on-airbnb-2013-5> (quoting standard lease agreement); Rosenthal, *supra* note 1 (asserting that landlords oppose such subleases).

they were limited to existing hotels. In some cities, hotels are limited to downtowns and to major highways.¹⁰ By contrast, the majority of Airbnb listings are not in these hotel-heavy areas.¹¹ The CEO of Marriott Hotels, hardly a supporter of Airbnb, has admitted that Airbnb enables travelers to experience neighborhoods in a way that hotel guests cannot.¹² Hosts' neighborhoods also benefit because neighborhood businesses get revenue from tourists.

But because home-sharing competes with the hotel industry for short-term guests, it is quite politically controversial. Hotels have urged cities to crack down on home-sharing, with some success.¹³ For example, the Quebec provincial government has conducted sting operations against Airbnb hosts, by making fake reservations and then punishing offenders.¹⁴ American cities are considering a variety of limits on home-sharing,¹⁵ and such activity may violate existing municipal regulations.¹⁶

Two major arguments against home-sharing are that (1) home-sharing increases rents by removing units from the housing stock; and (2) home-sharing adversely affects neighbors of shared homes. Each of these arguments will be critiqued in turn.

II. Home-Sharing and Affordable Housing

One common argument against home-sharing is that it re-

¹⁰I verified this intuition by examining hotel and home-sharing listings for Cleveland, Ohio, Nashville, Tennessee and Fort Smith, Arkansas at hotels.com and airbnb.com.

¹¹See Nestor Davidson and John J. Infranca, *The Sharing Economy as an Urban Phenomenon*, 34 Yale Law & Policy Review 215, 244 ("seventy-four percent of Airbnb properties are located outside of main hotel districts.")

¹²*Id.* at 228–29 n. 60.

¹³See Edwards, *supra* note 9.

¹⁴*Id.*

¹⁵See A.W., Airbnb is becoming subject to laws in America that will diminish its appeal, *The Economist*, July 22, 2016 at <http://www.economist.com/blogs/gulliver/2016/07/tough-gig>.

¹⁶See Davidson and Infranca, *supra* note 11, at 242–43 n. 130 (noting that "some commentators assert fairly broadly that sharing-economy models violate existing regulation" but adding that relevant legislation quite ambiguous).

duces the housing supply and thus raises rents, because any unit booked as a short-term rental is unavailable for use by long-term residents.¹⁷ As Dayne Lee, the author of a student note on Airbnb, writes: “Airbnb brings [tourists] . . . into direct competition with renters, distorting the housing market.”¹⁸ Home-sharing opponents argue that this trend is especially worrisome in high-cost cities such as Los Angeles (where the median rental household already spends 47 percent of its income in housing).¹⁹

Because Airbnb critics assume that the interests of short-term renters conflict with those of long-term renters, they seek to use government regulation to limit the supply of the first type of housing in order to preserve the supply of the second type. Of course, rental housing (both long-term and short-term) is scarce because of government regulation: government zoning codes either exclude multifamily housing from many areas or limit the density of such housing, thus creating an artificial shortage.²⁰ In other words, government has created a vicious circle of regulation: government limits long-term rentals through zoning, and then uses the high housing costs caused by zoning to justify limiting short-term rentals as well.

The argument that home-sharing reduces housing supply is flawed because (1) Airbnb has an extremely small share of citywide housing supply, (2) the idea that a landowner should be punished for failing to rent out a unit leads to absurd results, and (3) long-term tenants can also benefit from home-sharing.

¹⁷*Id.* at 240 n. 120.

¹⁸Dayne Lee, *How Airbnb Short-Term Rentals Exacerbate Los Angeles’s Affordable Housing Crisis: Analysis and Policy Recommendations*, 10 HARVARD LAW & POLICY REV. 229, 234 (2016).

¹⁹*Id.* at 229.

²⁰*Id.* at 231 (admitting that city’s zoning policies “favor single-family and luxury housing”). See also Los Angeles Municipal Code, Art. 2, secs. 12.07-08 (describing numerous zones in which multifamily housing outlawed), 12.09 (1) (allowing multifamily housing but using minimum lot sizes to limit density) at [http://library.amlegal.com/nxt/gateway.dll/California/lapz/municipalcodechapteriplanningandzoningco/chapterigeneralprovisionsandzoning/article2specificplanning-zoningcomprehen?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:lapz_ca\\$anc=](http://library.amlegal.com/nxt/gateway.dll/California/lapz/municipalcodechapteriplanningandzoningco/chapterigeneralprovisionsandzoning/article2specificplanning-zoningcomprehen?f=templates$fn=default.htm$3.0$vid=amlegal:lapz_ca$anc=).

A. Airbnb Doesn't Matter

Even if every single Airbnb unit would otherwise be rented as an apartment, its impact on rents would be minimal. Lee writes that Los Angeles city residents listed 11,401 units on Airbnb.²¹ Los Angeles has just over 1.4 million housing units.²² Thus, Airbnb affects about 0.8 percent of citywide housing supply. So even if every single Airbnb unit in Los Angeles would be used for long-term rentals in the absence of Airbnb, Airbnb's impact on housing supply might be too small to significantly affect rents.

Lee adds that Airbnb listings "are concentrated in seven of the city's densest, most expensive neighborhoods."²³ He claims that in these neighborhoods, "as much as 3% of the apartments . . . have been removed from the market and converted to tourist accommodations."²⁴ It is not clear to me that even a 3 percent decrease in supply affects rents significantly. But even if this were the case, it seems to me that increased rents in upper-class neighborhoods is less socially harmful than rents in lower-class neighborhoods, where persons displaced by rising rents could become homeless.²⁵ Lee also writes that "affordable units are particularly attractive targets for conversion [to Airbnb]."²⁶ But if home-sharing is concentrated in the city's "most expensive" neighborhoods, it cannot also be true that home-sharing disproportionately affects cheaper housing.

B. A Theoretical Problem

The argument that home-sharing should be regulated in order to increase housing supply is based on the assumption that land that could be used for rental housing should be used for rental housing, and that if an owner or possessor of land fails to use their land for this worthy purpose, govern-

²¹Lee, *supra* note 18, at 233.

²²See Census Reporter, Los Angeles, CA at <https://censusreporter.org/profiles/16000US0644000-los-angeles-ca/>.

²³Lee, *supra* note 18, at 235.

²⁴*Id.* at 236.

²⁵On the other hand, people priced out of upper-class neighborhoods can move into poorer nearby neighborhoods, thus raising rents in those places. *Id.* at 240. But if the effect of home-sharing on even wealthy neighborhoods is as small as suggested above, its effects on nearby neighborhoods would, I would guess, be even smaller.

²⁶*Id.* at 239.

ment must step in. But this argument, if applied with even a minimal degree of consistency, leads to absurd results. For example, suppose that Grandma has a spare room in her house, and instead of renting it on Airbnb she allows the room to be unused. Should Grandma be forced to rent out the room? Of course not.

A home-sharing critic might argue that an unused room is different from a room rented out. Indeed it is- but in fact, Grandma's failure to rent the room to anyone is *more* socially harmful than her renting the room on Airbnb. In the latter situation, a traveler benefits (from a cheaper rate than a hotel, or at least for a different kind of experience) and Grandma benefits by getting money from the traveler. By contrast, in the former situation, no one benefits.

It could be argued that Grandma's right to home-share should be unimpeded, but that regulation should be targeted towards large-scale landlords who would be most likely to enter the long-term rental market- for example, the amateur hotelier who seeks to rent out an entire building on Airbnb all-year round.²⁷ Even here, the argument based on housing scarcity leads to absurd results. Suppose Snidely Whiplash decides, instead of renting out his building on Airbnb, to exclude both short-term and long-term tenants, and to use it for a vacation house one day a year while spending the rest of the year in Tahiti. I doubt anyone would support a government regulation forcing Whiplash to rent out the building. But if he uses the house one day a year, the impact on housing markets is more significant than if he had rented out the house on Airbnb. In the former situation, no one benefits- while in the Airbnb situation, at least short-term tenants benefit.

And why are existing hoteliers different from Whiplash? If a Marriott hotel rents out 1000 rooms to tourists, those rooms, like every room on Airbnb, could in theory be turned into an apartment building and used to alleviate shortages

²⁷See Lee, *supra* note 18, at 252 (arguing that government should prevent "hotelization" by limiting the number of units that one individual can list on Airbnb, limit the number of units within a building that can be listed, and ban year-round listing of apartments).

of rental housing. So why shouldn't city governments force Marriott to rent out its rooms to long-term tenants as well?²⁸

And if turning long-term rentals into short-term rentals is socially harmful, isn't it even more harmful to prevent those long-term rentals from being built in the first place? Yet government does exactly that through zoning codes—often at the behest of neighborhood homeowners, who fear that renters might be low-income people.²⁹

C. Conflict of Interest?

The argument that home-sharing reduces housing supply is based on the assumption that long-term tenants and short-term tourists are in irreconcilable conflict: what benefits one must hurt the other. But it seems to me that long-term tenants and short-term tenants sometimes have the same interests: today's short-term tenant can be tomorrow's long-term tenant. For example, when I lived in Queens, New York in 2013, I decided to move to Manhattan. But because of home-sharing, I was able to spend weekends in two Manhattan neighborhoods before I moved; as a result, I was able to make a more informed choice about where to live. In other words, home-sharing can be used to “test-drive neighborhoods.”³⁰

D. Unintended Consequences

All of the above assumes a one-to-one relationship between long-term rentals and short-term rentals: that is, if the city prohibits 700 housing units from being used for short-term rentals, those units would become available for long-term rentals, thus increasing the long-term housing supply.

But this need not be the case. Suppose that homeowner A primarily lives in home B, but also owns second home C which she uses for three months a year during summers. In the absence of regulation, A rents out home C on Airbnb for

²⁸Admittedly, this hypothetical is more absurd than the last two, because Marriott may have relied on the right to use its land as a hotel (unlike Whiplash). However, the economic impact of Marriott's use of its land is no different from the impact of Whiplash's: both use land for tourists that could have been used for long-term tenants.

²⁹See William A. Fischel, zoning rules: the economics of land use regulation 175–78 (2015) (suggesting that fear of apartments led to birth and early popularity of zoning).

³⁰See Davidson and Infranca, *supra* note 11, at 268.

the rest of the year. But if the city prohibits short-term rentals, A might let the house sit empty rather than using the house for long-term rentals and foregoing her right to live there during the summer.³¹ Or suppose A decides to live with a prospective husband in his house (house D) on a trial basis. Because she is uncertain about how long she will live in house D, she will never use homes B and C for long-term rental; thus, to preclude short-term rental of those houses reduces the short-term housing supply without increasing the long-term supply.³²

Moreover, legal restrictions on short-term rentals might increase the demand for hotels. If travelers cannot use short-term rentals, some might stay home but others will use hotels, thus increasing the demand for hotels. New hotels might be on land that could otherwise be used for apartments- thus reducing, rather than increasing, the long-term rental supply.³³

III. Externalities Gone Wild

Another argument against home-sharing is that it creates negative externalities- that is, costs that are borne by neighbors of shared homes.³⁴ Tristan Espinosa points out that some neighborhood activists in Silver Lake (a Los Angeles neighborhood) sought to exclude home-sharing from their neighborhood on the ground that shared homes are “hotel-like room rentals”³⁵ and such a “commercial use [causes] the noise and traffic levels of the area [to] increase as a result of people coming and going, and the transient nature of the

³¹See Dan Bertolet, *Why Quashing Short-Run Rentals is a Zero-Sum Game for Housing Affordability*, at <http://www.sightline.org/2016/06/15/why-quashing-short-term-rentals-is-a-zero-sum-game-in-a-hot-housing-market/> (making argument).

³²*Id.*

³³*Id.*

³⁴See Tristan P. Espinosa, *The Cost of Sharing and the Common Law: How to Address the Negative Externalities of Home-Sharing*, 19 Chap. L. Rev. 597, 601 (2016) (“a negative externality is an indirect cost of a commercial activity that is borne by society or bystanders outside of the industry rather than the commercial industry or individuals conducting the activity . . . [such as] the negative effect of wide-spread home-sharing on residential neighborhoods”).

³⁵*Id.* at 602.

establishment can increase the crime rate.”³⁶ As a result of these problems, home-sharing “brings nuisances to residential areas, thereby lowering the value of all homes in the neighborhood.”³⁷

In other words, the “externalities” argument rests on the following chain of logic:

Assumption 1: Home-sharing is a commercial use similar to a large-scale hotel.

Assumption 2: Commercial uses bring down property values.

Conclusion: Home-sharing brings down property values.

As will be shown below, each of these claims is questionable.

A. Is Airbnb a Hotel?

In fact, home-sharing is somewhat different from a large hotel. An individual hotel might have hundreds or thousands of guests on one block. By contrast, home-shares tend to be spread out over a much larger space, thus mitigating the impact on any individual block. Espinosa suggests that home-sharing in Silver Lake was a nuisance because that neighborhood “was the location of at least 200 listings for short-term rentals on Airbnb.com.”³⁸ Even a cursory glance at a map shows that Silver Lake has about 200 blocks;³⁹ thus, the neighborhood had one listing every block or so. Even if every single Airbnb listing was being used on any given day, the neighborhood would be subjected to no more than one guest (or guest family) per block- hardly an impact comparable to that of a chain hotel.

B. Mixed Use Is Nontoxic

Moreover, the Silver Lake residents’ fear of use-mixing seems unwarranted. The Walkscore.com website exists to measure the proximity of residential and commercial uses

³⁶*Id.*

³⁷*Id.* at 603. *See also* Rosenthal, *supra* note 1 (asserting without elaboration that “Airbnb guests often create building-wide problems, such as loud late-night parties, trash and vermin, and even crime.”).

³⁸*See* Espinosa, *supra* note 34, at 601.

³⁹I looked at Google Maps to get a sense of how many blocks were in the neighborhood. *See* Google Maps, <http://maps.google.com>.

within a neighborhood.⁴⁰ If commercial uses were as cancerous as these neighborhood activists believed, areas with high Walkscores would be low-value areas. But a 2009 report commissioned by CEOs for Cities⁴¹ suggests otherwise. This report compared Walkscores to housing values in 15 cities, and found that higher Walkscores correlated with higher property values in 13 of the 15 cities.⁴² This pattern applies to Los Angeles as well: of the ten neighborhoods with the highest Walkscores,⁴³ all but one had a median home listing price above the citywide average.⁴⁴

Homeowners' fear of being overrun by "transient"⁴⁵ renters is based on an outmoded picture of urban life. In a preindustrial nation where most people are born and die in the same village or small town, a fear of "transients" may make sense—but American life is already highly transient. In renter-dominated blocks, people move in and out every year, so transience is already the norm. Homeowner-dominated blocks tend to be somewhat more stable—but even so, Americans constantly move from one house to another. The average American moves 11.4 times in his or her lifetime;⁴⁶ in such a mobile country, fear of "transients" is irrational.

⁴⁰See Walkscore, <https://www.walkscore.com/>.

⁴¹CEOs for Cities, at <https://ceosforcities.org/about/> (describing group as "planners, mayors, council members, college presidents, bloggers, entrepreneurs, philanthropists, business executives, social advocates, coders, artists, and architects from cities around the country.").

⁴²See Joe Cortright, Walking the Walk: How Walkability Raises Home Values in U.S. Cities 2, at http://blog.walkscore.com/wp-content/uploads/2009/08/WalkingTheWalk_CEOsforCities.pdf.

⁴³These neighborhoods are: Downtown, Macarthur Park, Central Hollywood, Koreatown, Westlake, Mid-City West, Pico Union, East Hollywood, West Los Angeles, and Hollywood Studio District. See Walkscore, *Los Angeles Neighborhoods*, at https://www.walkscore.com/CA/Los_Angeles.

⁴⁴I found price data at the realtor.com website. The only exception, downtown, had a lower listing price than the citywide average (\$705,000 as opposed to \$779,000) but a higher per-square foot price (\$669, well above the citywide price of \$446).

⁴⁵See Espinosa, *supra* note 34, at 602 (using phrase).

⁴⁶See Mona Chalabi, *How Many Times Does The Average Person Move?*, at <http://fivethirtyeight.com/datalab/how-many-times-the-average-person-moves>.

C. Just the Facts

In fact, Los Angeles neighborhoods with high rates of home-sharing have not suffered lower property values. According to Lee, the neighborhoods with the strongest Airbnb presence are Venice, Downtown, Miracle Mile, Hollywood, Hollywood Hills, Echo Park, and Silver Lake.⁴⁷ Table 1 compares their property values to those of the rest of the city.

Table 1: Property Values in High-Airbnb Neighborhoods (in thousands)⁴⁸

	Jan. 2010	June 2016	percent increase
Los Angeles (citywide)	412	582	41.2
Venice	821	1500	82.7
Downtown	333	488	46.5
Miracle Mile/ MidCity ⁴⁹	508	760	49.6
Hollywood ⁵⁰	485	743	53.1
Hollywood Hills	1200	1700	41.6
Echo Park	417	731	75.2
Silver Lake	609	921	51.2

Table 1 shows that in neighborhoods with a high level of Airbnb use, property values actually increased more rapidly than the citywide average—in two neighborhoods (Echo Park and Venice) by a very significant margin. Thus, the argument that home-sharing reduces property values seems to be incorrect.

⁴⁷See Lee, *supra* note 18, at 236.

⁴⁸All data comes from the zillow.com website. For each neighborhood, I picked out a listing, then clicked on the “Zestimate Details” link, which has a chart showing citywide and neighborhoodwide price trends.

⁴⁹Zillow lists price data for the broader Mid-City area, rather than for the Miracle Mile neighborhood specifically.

⁵⁰Zillow inexplicably has Hollywood data for December 2009 but not for January 2010—so I used the former number.

IV. Conclusion

The most aggressive attacks on home-sharing are based on two claims: that home-sharing increases rents by removing housing from the rental supply pool, and that home-sharing reduces property values by creating nuisances.

The first claim has a grain of truth; more rental housing obviously means lower rents. But even in expensive cities such as Los Angeles, so few housing units are affected by home-sharing that it seems unlikely that home-sharing raises rents to any significant degree.

The second argument is even weaker; in fact, neighborhoods with high-levels of home-sharing tend to be more expensive than the average neighborhood, and their housing values tend to appreciate at above-average levels.