



It's Decision Day For Airbnb in San Francisco

Posted Oct 7, 2014 by [Kim-Mai Cutler](#)
<http://techcrunch.com/2014/10/07/airbnb-sf/>

Today, San Francisco's board of supervisors is voting on how to legalize and regulate short-term rentals on platforms like Airbnb. It's a critical moment for Airbnb because some of its most attractive and lucrative markets are in the world's top-tier cities, many of which suffer from chronic housing shortages.

San Francisco, which is currently embroiled in anti-eviction and anti-gentrification battles amid a tech boom, is also the company's home turf. Even though Airbnb has been around since 2008, it's been technically illegal to do short-term stays for less than 30 days through the platform. [Update: OK, under the current regime, you can do it legally, but [you have to notify your neighbors and get a conditional use approval from the planning commission](#). Obviously, probably almost no one does this.]

The city hasn't been able to come to a consensus on whether and how to legalize it, even as the company's footprint has grown enormously. A San Francisco Chronicle and Connotate report earlier this year [found 5,000 listings on the site](#) with two-thirds of them being entire houses or apartments. To put that number into perspective, [5,000 units is what San Francisco needs to build every year](#) to keep up with its annual rate of population growth of roughly 10,000 new residents per year this decade so far.

The city hasn't been able to do that, [constructing roughly 5,000 units over the past four years](#) even as [70,000 new jobs](#) have been added since 2010. [\(It's very complicated.\)](#) That said, most of the Airbnb units appear to be occasionally rented out, although there were a few hundred listings that seemed to have heavy use.

The regulatory effort, led by the city's board of supervisors president and State Assembly candidate David Chiu, has taken two years. It's a pretty thankless task. This is a contentious land-use battle in a city with a history of contentious land-use fights, and it's hard for me to see how anyone could come up with a solution that would make everyone happy. Chiu wrote an op-ed today explaining [why he thinks his legislative approach is reasonable](#).

So what does the regulation do?

1) It limits rentals in non-hosted units to 90 days per year. This in theory should cut down the profit margins to a point where you wouldn't hemorrhage additional residential housing units. Rentals where the host is present wouldn't be subject to this limit.

2) Creates a public registry. Hosts have to pay a \$50 fee and register with the city Planning Department.

3) Hosts have to pay hotel taxes, which Airbnb will remit on their behalf.

4) They have to be covered by liability insurance of at least a half-million dollars, and follow building safety-codes. Or they have to offer their listing through a platform that provides equal insurance coverage.

5) They would have to abide by rent-control laws. The resident can't charge more than they're paying to their current landlord, which might create all sorts of interesting price distortions in the local Airbnb market.

6) For violations, hosts would get charged increasing penalties for every violation. After repeated violations, they'd be forced the de-list, and if they continue, they could be charged civil penalties of up to \$1,000 per day.

But people aren't happy with it.

Even with all of these changes, there is a whole cast of unlikely allies from the city tenants union to the landlord-representing apartment rentals association that are unhappy with Chiu's legislation. They organized a demonstration last Friday.

What do they want?

1) They want the 90-day limit applied to all rentals. They argue it's too hard to tell or enforce which listings are hosted versus un-hosted. Airbnb supporters, some of whom are part of an astro-turfing effort called [Home Sharers of San Francisco](#), have opposed this and have written in dozens of letters explaining how [it's helped pay their mortgages, get extra income while working part-time to support sick family members or make up for lost income when they've been laid off.](#)

2) Critics are concerned that the law is basically un-enforceable. The planning department will have responsibility for making sure that hosts and platforms follow the rules, but they and the Department of Building Inspections have been unable to do this for the past six years partially because they don't have the bandwidth. Randy Shaw of the Tenderloin Housing Clinic pointed out that [the \\$50 registration fee may only pay for one additional headcount](#), which isn't enough people to monitor thousands of rentals. San Francisco's fee is also lower than what other comparable cities charge. [Chicago charges \\$500 for a two-year license, while Austin charges \\$285.](#)

Airbnb is also required to notify its hosts of the law. But there's nothing they're required to do in their reservation flow that would stop hosts from renting out their properties for more than 90 days a year (which would be an easy thing to build). The Chiu legislation makes it the host's responsibility to keep two years of personal records on their whereabouts and hosting activities, in case they're investigated for a violation.

The enforceability is also reactive, rather than pro-active. Residents have to submit complaints, and this adds to a backlog at the planning department. The head of the tenants union has tried to crack down on about two dozen landlords, who appear to have converted entire building to vacation rentals. But they've been waiting six months for a decision, [the Chronicle reported](#). Critics want to have a private right of action to go after and sue hosts independently. Understandably, hosts and platforms like Airbnb oppose this because they fear it would be abused. A few high-profile citizen lawsuits could have an enormous chilling effect on the entire market.

3) Back-taxes. While Airbnb now says it's going to pay the city's 14 percent hotel tax going forward, the coalition estimates that these platforms owe \$25 million in back taxes. If Airbnb did this, it might set a precedent that other cities would fight for and it's unclear how much their back taxes would add up to globally.

The regulatory process

Overall, I've been talking with a lot of the different parties throughout the legislative process over the past several months. Early on, my understanding was that Airbnb wouldn't take a one-size-fits-all approach toward regulation and community engagement. Some cities, like beach towns, are highly dependent on tourism revenue and so they're not as likely to put in rental limits. However, in cities like New York and San Francisco, there is a very real and valid concern that Airbnb is eating into an already tight housing supply.

Airbnb has downplayed these effects. Here's the deal: about one-third of the San Francisco's 376,000 housing units are owner occupied, and then a little under half are rent-controlled. So the city's market-rate rents are really based off of roughly 30,000 to 40,000 units and [they're now arguably the highest in the nation](#) — even higher than New York's. So 5,000 listings matters a lot and Airbnb adds pressures on the margins, even if they aren't the core reason for the city's housing shortage. The company has been disingenuous about this.

The planning department [has suggested that hosting platforms produce quarterly reports](#) on the number of nights that properties are rented across the city. But this doesn't appear to be in the Chiu legislation. The public debate has mostly been operating off the Chronicle and Connotate's study, which is incomplete. Airbnb basically responded by [referring to a cherry-picked statistic from a study they commissioned that showed that 87 percent of hosts rent out the home in which they live](#). Another company called BeyondPricing, a San Francisco-based startup that optimizes pricing for Airbnb hosts, estimated over the summer that [Airbnb's occupancy rate in the city is 87 percent](#). That puts it at parity with hotel occupancy rates.

New York has pushed Airbnb harder by subpoenaing the company. That compelled Airbnb to crack down on thousands of hosts and [then produce reports for city regulators with anonymized data](#).

While I have used Airbnb all over the world as a traveler and it's been wonderful staying with glass-blowers in Shanghai and reggae musicians in Bordeaux, I think that cities and the public have the right to know if and how much of their residential housing stock might be getting

eroded by short-term rentals. Zoning for residential, commercial and hotel uses is a complex practice that has a 100 years of history in the United States. Urban governments, planners and the public, especially in San Francisco, go through very deliberative discussions over the look, feel and make-up of their communities. The public has a right to the data to understand whether this legislation — if approved — will actually work.