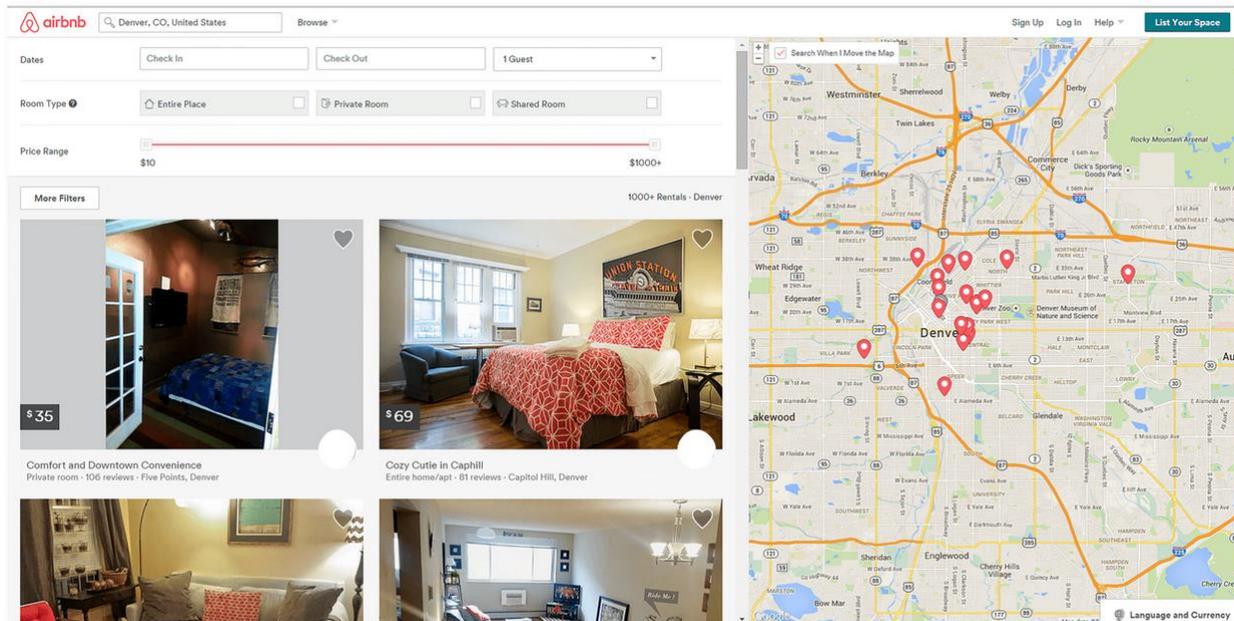


<https://www.westernplanner.org/arc/2016/10/29/rmlui-corner-thinking-about-regulating-the-sharing-economy?rq=airbnb>

RMLUI Corner: Thinking About Regulating the Sharing Economy



Room share service. A screen shot of a search on Airbnb for available rooms in Denver, Colorado.

by Elizabeth Garvin, I AICP, Denver, Colorado

Defining the Sharing Economy

It is possible that the sharing economy has made it to your town and you may not know it, or really just be vaguely aware of it in your official capacity as a planner, economic developer, engineer, or elected official. This is because, for the moment, the businesses functioning within the sharing economy do not really think that local oversight is relevant to their business model. Your community may agree, and allow this round of economic disruption to continue to unfold. Or you might find, after hearing from citizens about parking conflicts, rowdy guests, or spoiled food leftovers, that some appropriate local rules are in order.

Business and individuals that engage in the sharing economy “share”² – for a price – places and services that have historically been held for private use. The two highest profile examples of sharing businesses are room-share via Airbnb and car/ride-share via Uber or Lyft.

Airbnb is essentially a central reservation service for hundreds of spare rooms, guest rooms, guest homes, primary homes, and your dream vacation condo in the mountains.³ Simply sign-up, post your real estate listing, and go. Your guests pay through Airbnb, can use major credit cards, and if they liked

where they stayed they could leave a positive review. For many people, especially those of us living in the heavily-tourist-visited West, this is a great way to make some money from a room that would otherwise be sitting empty. And during the recent economic recession, renting that spare room was the means to cover the mortgage for more than a few people across the country.

Uber and Lyft function essentially the same way with cars and rides. If you have a car and some time you can become an Uber driver. Your customers will download the Uber app, tap a button to request a ride, you pick them up and take them to their destination, and the cost of the ride is handled through email by Uber. The passenger is then asked to rate the driver and leave a comment.

These businesses are, by design, easy to use and have proven wildly popular for both customers and service providers. They were conceived to provide services in a more efficient and potentially less costly manner than they are currently provided by old economy businesses such as hotel and taxi companies. And when considered through the view of provider and customer, these businesses are successful. Airbnb was valued at \$10 billion for funding purposes in early 2014, and Uber was valued at \$18.2 billion for funding slightly later in 2014. To give this a little perspective, Hertz and Avis combined are currently valued at \$18.7 billion.³ Airbnb, started in 2008, is already the fifth largest hotelier in the world.⁴

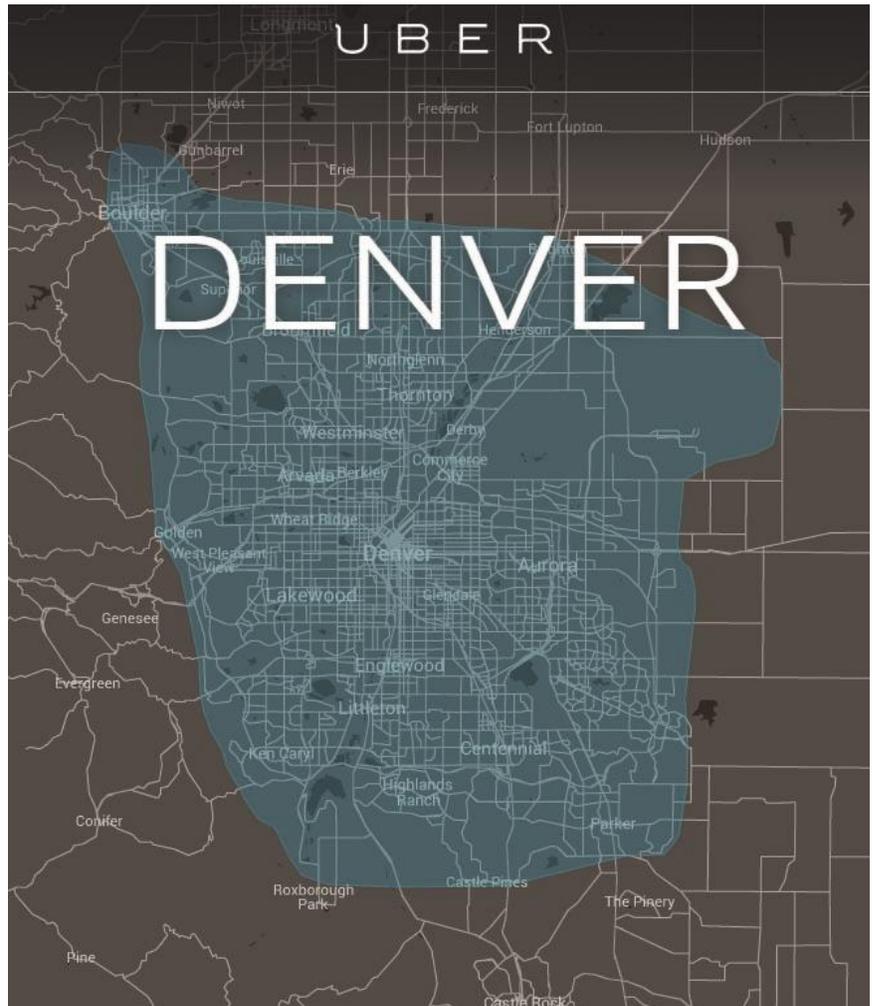
More Than Rooms and Rides

Airbnb, Uber, and Lyft are currently the poster children for the sharing economy, but many lesser-profile firms and ventures are giving this movement depth. In the report *Policies For Shareable Cities, A Sharing Economy Policy Primer For Urban Leaders*,⁵ the authors identify a number of potential sharing options, including: transportation (cars, parking, bikes); food (urban agriculture, food-gleaning, home food production, shared kitchens); housing (cooperative, accessory dwelling units, short-term rentals, co-housing); and job creation (expanded home occupations, idle commercial spaces, cooperatives). Not included in this list but certainly being shared is on-line education, and also ripe for sharing is the production of renewable energy. Neighborhood solar array anybody?

How Are Local Governments Responding?

Uber. A screen shot of the area that Uber drivers cover in Denver, Colorado.

Our current economic and regulatory approach typically taxes and/or regulates (or permits, such as zoning permit or business license) most of the things, places, and services on the shared economy business list above when they are put to commercial use. For example, it is perfectly permissible for the owner of a four-bedroom home in a residential neighborhood to let the kids have friends sleep-over or invite relatives to stay for the holidays – the use is still residential in nature and these guests do not make the home a motel. But when the owner starts charging people to stay, thus creating a commercial transaction, the nature of the regulation changes. “Zoning, securities, public utilities, health and safety, and employment laws aren’t usually barriers to feeding, housing, lending a hand, and giving a ride to our family and friends. But they are barriers when we engage in the same activities as commercial businesses, such as restaurants, hotels, or taxis.”⁶



There are a number of technology commentators,⁷ including professors, attorneys, and an assortment of people who are paid to think, who argue that local regulations are not necessary and are not really nimble enough to effectively apply to sharing economy businesses. Instead, local governments should allow the built-in reputation and monitoring processes of customers leaving comments, where negative comments protect the next customers from “bad providers” – weed out the bad providers and nobody gets hurt. The missing discussion thread in this argument, however, is that local regulations are typically not designed to regulate the conduct of the business, but to regulate its impacts on the community.

The key areas of sharing economy regulation that communities have been working to address are taxation,⁸ regulation of short-term rentals, licensing, and insurance.⁹ Most of the local sharing economy planning-related issues are currently created by the unplanned bed and breakfast aspect of Airbnb.¹⁰ The early evidence of problems is primarily anecdotal – unhappy neighbors, multiple users in a single

night in a single location, and residences purchased specifically for short-term rental use. The National League of Cities has recently organized a new group called the Sharing Economy Advisory Network to establish a list of best practices that local communities can use to determine how to address sharing economy businesses. Until that information is made available, communities dealing with the biggest impacts from these new business ventures, such as San Francisco, New York City, and Portland, have been addressing issues on their own. There are a broad range of approaches, but most focus on three key issues:

- Where, by geography and unit type, short-term rentals will be allowed.
- Identification of the maximum number of days the unit can be rented.
- Creation of a registration or permitting process that ultimately leads to an enforcement process.

Different Approaches

Portland, Oregon

According to Mayor Charlie Hales, Portland seeks to strike a balance between accommodating “commerce, including this new kind, and our great neighborhoods.”¹¹ To do this, Portland established a permit process to allow one-and two-bedroom short-term rentals in private homes. Property owners are required to show that the rental is accessory to household living, have the building inspected and give notice to surrounding residents. The city is currently considering regulations to permit short-term rentals in multi-dwelling structures. The city has also come to an agreement with Airbnb to have Airbnb collect local hotel taxes.

San Francisco, California

San Francisco has opted for a more heavily-regulated approach. The city’s new regulations distinguish between hosted-rentals where the host is present, and non-hosted rentals where the host is not. Hosted-rentals are unlimited; non-hosted rentals are limited to 90-days per year. Hosts have to register with the city and pay a \$50 fee, as well as collect hotel taxes – that Airbnb has agreed to do for the hosts. Hosts must carry a specified amount of insurance and follow building safety codes. And in a very interesting twist, residents have to abide by rent control laws and cannot charge more than they currently pay their landlord. Goodbye profit incentive.¹²

Austin, Texas

Austin has an annual short-term rental license requirement that starts with a \$285 fee and requires proof of property insurance, proof of hotel tax payment, and either a certificate of occupancy or inspection. The city limits the number of licenses issued in certain census tracts. Enterprising residents have also posted a list of five ways to work around the short-term rental license requirement.¹³

Denver, Colorado

Denver has organized a Sharing Economy Task Force that is considering the issue. You can watch the conversation unfold through the task force minutes available on the city’s website www.denvergov.org.

New York City also appears to be studying the issue. From this far away, it is difficult to tell if it is a study that is a precursor to litigation or just the normal course of business on the East Coast. Given that the New York State Attorney General calculates that Airbnb earned almost \$40 million in fees on illegal short-term rentals from January 1, 2010 through June 2, 2014, litigation may be the next step.¹⁴

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References

1. Elizabeth is an attorney with Spencer Fane Britt & Browne in Denver. The materials in this column do not constitute legal advice, do not necessarily reflect the opinions of the RMLUI, and nothing provided herein should be used as a substitute for advice of local counsel. This column is not intended to act as a solicitation or advertisement.
2. Also known as “peer-to-peer” or “collaborative” economies
3. *Forbes*, [Are Investors ‘Nuts’ To Value Uber At \\$18 Billion? In A Few Years, That’ll Seem Like A Bargain.](#)
4. *Fast Company*, [Inside Airbnb’s Grand Hotel Plans](#)
5. Shareable and The Sustainable Economies Law Center
6. Janelle Orsi, The Sharing Economy Just Got Real, Post Carbon Institute (September 16, 2013).
7. Arun Sundararajan, [Why the Government Doesn’t Need to Regulate the Sharing Economy](#), *Wired* (Oct. 12, 2012)
8. Joyce Cutler, Cities Grappling with Challenges of How to Tax, Regulate Short-Term Rentals, *Bloomberg BNA* (October 20, 2014)
9. *The New York Times* has been particularly focused on this issue for the past few months, see Ron Lieber, [A Liability Risk for Airbnb Hosts](#) (Dec. 5, 2014)
10. There has also been a great deal of skirmishing over whether or not Uber and Lyft provide taxi services that should be regulated in the same manner as taxi companies, but this is not a planning issue in many locations.
11. *The Oregonian*, [Portland legalizes Airbnb-style short-term rentals](#) (July 30, 2014)
12. For a more detailed discussion of the San Francisco regulations, see Kim Mai Cutler, [It’s Decision Day For Airbnb in San Francisco](#), *Tech Crunch* (Oct. 7, 2014)
13. Chris Apollo Lynn, 5 Ways to Beat Austin’s Short Term Rental Licensing Ordinance During SXSW (Feb. 19, 2013)
14. *Airbnb in the City*, Office of New York State Attorney General Eric T. Schneiderman (October 2014).