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**From:** joe symons <joesymons@me.com>  
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It's time for SJC to take a proactive position re the issuance of vacation rental permits, beginning with a moratorium and thorough study of impacts.

joe

<https://www.wired.com/story/inside-airbnbs-guerrilla-war-against-local-governments/>

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carpe diem

# Inside Airbnb's 'Guerrilla War' Against Local Governments

Paris Martineau

"Read my lips: We want to pay taxes," Chris Lehane, Airbnb's global head of public policy, in 2016. In the years since, the home-sharing site has repeated the declaration in , , , and on . On its website, Airbnb says it is "democratizing revenue by generating tens of millions of new tax dollars for governments all over the world."

But when Palm Beach County, Florida, a popular tourist destination, passed an ordinance in October 2018 requiring and other short-term rental companies to collect and pay the county's 6 percent occupancy tax on visits arranged through their sites, Airbnb sued.

Palm Beach County tax collector Anne Gannon wasn't surprised. "We knew we were going to get sued," she says. "That's what they do all over the country. It's their mode of operation."

Gannon has been cajoling, threatening, and ordering Airbnb to collect taxes for its hosts since 2014. Five years, three lawsuits, and millions in unpaid occupancy taxes later, she's still trying. "All we want them to do is pay their taxes," she says. "They absolutely don't want to pay their taxes the way we want to collect them. That's the bottom line."

Similar dramas are playing out around the country. From Nashville to New Orleans to Honolulu, Airbnb is battling local officials over requests to collect occupancy taxes and ensure that the properties listed on its site comply with zoning and safety rules. In the past five months alone, the company has spent nearly \$1 million to overturn regulations in San Diego and has sued Boston, Miami, and Palm Beach County over local ordinances that require Airbnb to collect taxes or remove illegal listings. Elsewhere, Airbnb

has fought city officials over regulations aimed at preventing homes from being transformed into de facto hotels and requests from tax authorities for more specific data about hosts and visits.

Airbnb is engaged in “a city-by-city, block-by-block guerrilla war” against local governments, says Ulrik Binzer, CEO of Host Compliance, which helps cities draft and enforce rules for short-term rentals, sometimes putting it at odds with hosting platforms. “They need to essentially fight every one of these battles like it is the most important battle they have.”

Founded in 2008 as an early champion of the sharing economy by allowing people to rent homes, apartments, and rooms to others, Airbnb has grown into a lodging colossus, offering more than 6 million places to stay in more than 191 countries. Its listings those of the top six hotel chains combined, helping the company generate more than \$1 billion in revenue in the third quarter of 2018. It is valued by investors at \$31 billion, making it the country’s second most valuable startup, after Uber. By comparison, Hilton and Marriott’s current market capitalizations are \$25 billion and \$43 billion, respectively. Earlier this month, Airbnb acquired last-minute hotel booking service HotelTonight, for more than \$400 million.

One reason Airbnb is often a cheap option for travelers: Running a hotel or bed and breakfast is expensive; snapping photos of your home, apartment, or spare room and filling out an online profile is not. Hotels must comply with a litany of health, safety, and zoning rules—as well as register with local agencies and agree to collect certain taxes—before they can book a single guest.

Airbnb maintains that, in most cases, it’s not responsible for collecting occupancy taxes required of hotels and other lodgings or for ensuring the rooms and homes listed on its sites comply with zoning or health regulations. The company says it follows local and state laws but considers itself a “platform,” serving merely to connect hosts and visitors, rather than a lodging provider—more akin to Facebook than Marriott.

The onus is on hosts, Airbnb argues, to collect and pay any relevant taxes and to comply with other regulations. In practice, though, few actually do—at least not without considerable effort by local authorities—according to interviews with more than a dozen local government officials and advisers.

Some officials agree with Airbnb. In an early 2018 survey of state tax departments by , officials in 25 states said it was the host's responsibility to pay occupancy tax for an Airbnb stay. Officials in 14 states said they consider it the responsibility of Airbnb or other short-term rental operators. The survey was taken before the US Supreme Court ruled in June that states may collect sales tax from online retailers even when they don't have a physical presence in that state. The survey did not include local authorities, who are often more reliant on revenue from occupancy taxes, especially in popular tourist areas.

To be sure, these aren't Airbnb's taxes, any more than Hilton "pays" taxes for its guests' hotel stays. Rather, the officials sparring with Airbnb want the company to collect and forward the taxes from guests, much as hotels do. Airbnb says it isn't required to collect the taxes in many places; early on, it largely didn't.

That changed around 2014, when Airbnb began striking deals with officials in select cities to collect and deliver taxes from its hosts. It calls these Voluntary Collection Agreements, or VCAs. In Portland, site of the first agreement, city officials legalized home-sharing and lowered the registration fee for short-term rentals around the same time Airbnb agreed to add a 11.5 percent occupancy tax on each booking. It later negotiated similar deals in San Francisco, Chicago, Philadelphia, Washington, DC, and elsewhere. The company says it has signed more than 350 such agreements nationwide and more than 500 around the world, and has collected more than in taxes.

"Some governments have rules requiring platforms like Airbnb to collect and remit taxes, and we make every attempt to comply with these

obligations," says Christopher Nulty, Airbnb's head of public policy.

"However, many governments do not have such rules and so Airbnb has proactively established more than 500 voluntary collection agreements globally to ensure our community is paying their fair share of taxes."

However, those agreements don't require hosts to meet other zoning, health, and safety rules, and they prohibit cities from attempting to collect back taxes. Some also create obstacles for local agencies to identify and police hosts who list through the site. Dan Bucks, former director of the Montana Department of Revenue and former executive director of the US Multistate Tax Commission, some of the few publicly available Airbnb agreements and found that most prevented city officials from learning the names or addresses of Airbnb hosts, making it impossible for officials to enforce local codes. Bucks says the agreements helped Airbnb grow by "providing a shield of secrecy" to hosts. His study was partially funded by the American Hotel and Lodging Association.

*"All we want them to do is pay their taxes."*

*Anne Gannon, Palm Beach County Tax Collector*

Airbnb says its VCAs are designed to help government agencies collect tax revenue, not to help them enforce other laws related to short-term rentals. The company says the agreements show that it is a generous corporate citizen.

Historically, other online rental services, such as Booking.com, HomeAway, and VRBO, have not collected these taxes in many places. In the past two years, [HomeAway](#) and [VRBO](#) have begun collecting some occupancy taxes in a handful of areas—sometimes using [their own version](#) of a VCA. Booking.com does not offer any occupancy-tax collection services, compounding the revenue drain for municipalities. Booking.com's global communications manager, Kim Soward, says the company pays all required taxes. Expedia Group—owner

of HomeAway, VRBO, VacationRentals, and other sites—did not respond to multiple requests for comment.

Airbnb is the undeniable giant of the field, and is reportedly preparing for an initial public offering. About 51 percent of all short-term rental listings in the US are on Airbnb, according to an analysis by Binzer, of Host Compliance. VRBO controls 17 percent of listings and HomeAway 11 percent, he says.

## Poster Child

New Orleans was hailed as the [poster child for Airbnb's work](#) with local governments after signing a VCA in December 2016. Around the same time, the city struck a deal with Airbnb to legalize short-term rentals while requesting that the company share the names and addresses of hosts, ban certain illegal listings, and create an online system that automatically registers hosts with the city, among other things. Many viewed the deal as a sign Airbnb was learning to live with local taxes and regulations.

Today, city officials say they're disappointed. They say a surge in short-term rentals has exacerbated New Orleans' affordable housing crunch and turned entire residential blocks into de facto hotels. Jane's Place Neighborhood Sustainability Initiative, a local housing group, says there were 4,319 whole-unit Airbnb listings in the city last year, more than double the 1,764 in 2015. The group found that 11 percent of operators, including many from outside Louisiana, control 42 percent of the city's short-term rentals.

The largest operator, a company called Sonder, has 197 short-term rental permits. Nearly 80 percent of Sonder's listings are booked through platforms like Airbnb, according to Sonder's director of communications, Mason Harrison. "That's a different story than the mom-and-pop" narrative that Airbnb often uses to describe its hosts, says New Orleans councilmember Kristin Gisleson Palmer.

City officials say the registration system Airbnb launched in April 2017 didn't give them some data they had requested, such as the identity of the property owner or tenant, the number of bedrooms in the property, and contact information for the property manager. To collect the missing data, city staffers say they had to contact 4,786 applicants over three months. "We could not really effectively use [the data provided] for enforcement and holding folks accountable," Palmer says.

In May 2018, the city council imposed a nine-month freeze in some areas on new permits for renting a home without an owner present. The following month, Airbnb disabled the registration system—along with another enforcement-enabling feature, which displayed hosts' license numbers on their Airbnb listings.

A February 15 report by the city's Department of Safety and Permits, obtained by WIRED, states that disabling the registration system caused a year of work by city officials tracking short-term rentals to "disappear overnight." The report concludes that Airbnb and other short-term rental companies had engaged in "deliberate data obfuscation, refusal to provide the required data, and a total failure of cooperation with any enforcement mechanisms pursued by the City." The report notes that Airbnb continues to collect and remit occupancy taxes for its listings in the city.

Airbnb says city officials' description of events is "inaccurate." The company says there were "initial bumps in the road that Airbnb was working with the city to address, only to have lawmakers abruptly change the rules in May 2018." Those changes, the company says, made the registration system ineffective.

"Housing affordability is a challenge in New Orleans—in fact 70 percent of our host community have said they rely on the income they make to stay in their homes," Airbnb says. The company says it is committed to working with officials to resolve any concerns.

*A February report by the New Orleans Department of Safety and Permits is critical of short-term rental companies.*

## **Blocking New Laws**

Airbnb says it complies with laws that require it to collect and pay taxes for hosts. But it has also worked to forestall such laws—even seeking at times to strip cities of authority over short-term rentals. That’s what happened in Nashville in late 2017 and early 2018.

As the city inched closer to prohibiting so-called “mini hotels”—non-owner-occupied homes used exclusively as vacation rentals—Airbnb shifted its focus from City Hall to the state Capitol three blocks away. In the latter half of 2017, the company more than doubled the number of lobbyists it employed in Tennessee, to from four to 11, and spent between \$225,000 and \$350,000 on lobbying between February 2017 and August 2018, according to reports the company filed with the state.

In January 2018, the Tennessee Department of Revenue signed a VCA with Airbnb. The agreement requires Airbnb to collect and pay the 7 percent state sales tax on its bookings, but does not cover the 5 percent occupancy tax in Nashville, by far its largest market in the state. A few days later, Nashville [passed its ordinance](#) prohibiting mini hotels.

Around this time, a political action committee called the Committee to Expand Middle Class By Airbnb, Inc. donated \$10,000 to groups representing Tennessee Republicans, according to campaign finance records. The donations included \$2,500 to the campaign of state representative Cameron Sexton, who had introduced a bill in 2017 specifying that short-term rentals should not be considered hotels under state law. The bill, known as the Short-Term Rental Unit Act, was drafted in consultation with Airbnb and other short-term rental companies. It included a provision stripping cities of the power to ban existing short-term rentals.

The Tennessee General Assembly passed the bill in April 2018.

Local activists say the law cripples cities' ability to tackle an important local issue. "The Tennessee state Legislature and Tennessee's governor decided to severely weaken the basic protections for the health, safety, and well-being of Nashvillians that were created by our local government," John Stern, president of the Nashville Neighborhood Alliance, a residents' group, says via email.

Airbnb says the Tennessee law was the work of "state lawmakers who care deeply about this issue and worked to organize a broad coalition of supporters—including the business, technology, property rights, and home sharing communities." Sexton did not return a request for comment.

Similar scenarios have unfolded elsewhere after cities have moved to restrict short-term rentals. In February 2016, the Austin City Council voted to phase out mini hotels in residential areas by 2022. In the following months, several other Texas cities passed similar restrictions. Then, early in 2017, Texas state lawmakers introduced two bills in the legislature preventing municipalities from banning short-term rentals and enforcing many regulations.

A few months later, in April 2017, Airbnb announced that it had signed a VCA with Texas officials to collect state occupancy taxes. Bennett Sandlin, executive director of the Texas Municipal League, called the deal "a smokescreen to cover the company's refusal to pay taxes." The 2017 bills eventually stalled in the Texas legislature, but lawmakers plan to try again [this year](#).

Airbnb says it has "excellent working relationships" with many Texas cities and hopes to extend the VCA with the state to "new tax agreements with Texas municipalities to help them collect new revenue from home sharing."

## **Where's the Money?**

Gannon, the Palm Beach tax collector, has been tilting at travel companies for a decade. In 2009, she sued Expedia, Orbitz, Priceline, and Travelocity for failing to collect and pay occupancy taxes on the full cost of the hotel rooms they were selling; three years later, the companies [settled](#) the suit and agreed to pay nearly \$2 million in back taxes.

She then turned to the online home-rental companies. In 2014, she sued Airbnb, HomeAway, and TripAdvisor, alleging they should be classified as “dealers” renting accommodations under Florida law, and thus required to collect occupancy taxes on behalf of their hosts. In January, after five years, a judge ruled that the services were not dealers under Florida law and did not have to collect the taxes for hosts. Gannon is [appealing the ruling](#).

In 2015, the Florida Department of Revenue signed a VCA authorizing Airbnb to collect and remit the 6 percent sales tax for all listings in the state, plus local sales and occupancy taxes for some counties.

Soon after, Gannon asked to see the details of the agreement; state officials told her it was confidential. So she sued the Florida Department of Revenue, alleging that the agency’s secrecy violated the state’s public records law. A few hours later, the department faxed a copy of its Airbnb VCA to Gannon’s office; she says she was instructed not to share it with anyone. It required Airbnb to provide the state only with aggregate data and allowed the company to withhold “any personally identifiable information” about hosts or guests. Most other VCAs signed with state or local governments contain identical language.

Officials say such details about hosts and their rentals are crucial to enforcing local laws and ensuring the lump sum tax payments match up with detailed data on stays. Shielding names and other details from tax officials “is a gross departure from standard practice,” says Bucks, the former tax commissioner.

In New Orleans, the February report by the city’s Department of Safety and

*"We're the middle—the hosts are stuck in the middle."*

*Maria Vale, Airbnb host in Palm Beach County, Florida*

Permits says Airbnb provided officials there with anonymous account numbers in place of addresses or taxpayer identifiers, making it difficult for the city to audit the information. "It is impossible to track whether we are getting all the money that we are supposed to get," says Andrew Sullivan, chief of staff for Palmer, the New Orleans councilmember.

Airbnb disagrees. "Airbnb provides the necessary information to ensure tax payments are accurate, including number of nights, charges, and the amount of tax collected," Nulty says. He says the company welcomes audits; however, many of the company's VCAs prohibit cities from auditing Airbnb more than once every two years.

*Airbnb's 2016 VCA with Sonoma County, California.*

## **A Public Clash**

Palm Beach County's monthly commissioners meeting is typically a dull affair. But October 16, 2018, was different.

The chambers were packed with people dressed in white, holding hot pink flyers. The reason: Gannon's proposal to amend the county's Tourist Development Ordinance to require platforms such as Airbnb to collect and remit occupancy taxes on behalf of hosts, and to share more data with the county.

A few weeks earlier, emails from Airbnb had arrived in the inboxes of its hosts in the county. "Home-sharing in Palm Beach County is under attack," many declared in bold letters, asserting that Gannon had proposed an "unfriendly" ordinance that would make hosts' lives more difficult. The

emails implored hosts to attend the hearing and “use your voice to oppose this proposal and share the benefits” of home sharing.

Around 100 hosts attended the meeting. But Gannon was prepared. Having seen several of the emails, she assembled a three-page document rebutting what she calls Airbnb’s “campaign of misinformation,” line by line. The packet was printed on hot pink paper and given to each person who walked through the door.

During the meeting, some hosts expressed doubts about Airbnb’s position. Some recalled seeing a message from Airbnb stating that it was collecting and remitting taxes on their rentals, though the company was not. “I have this underlying fear ... that I am breaking a law that I don’t really know about,” said Ruth Riegelhaupt-Herzig, an Airbnb host since 2015.

“We thought Airbnb took care of everything, and I was a little scared I was in trouble with the government,” host Maria Vale said at the meeting. “All I’m saying is we’re the middle—the hosts are stuck in the middle.”

Nulty says that Airbnb makes it clear to hosts which taxes it collects via [this webpage](#), which lists areas with VCAs and what taxes they cover. The page does not explain which taxes hosts are required to collect on their own. A [different Airbnb page](#) instructs hosts to tell guests to bring extra money when checking in so the host can collect taxes in person. Riegelhaupt-Herzig says that isn’t effective, as most guests are wary of paying an additional 6 or 10 percent directly to the host, in addition to the booking charges they paid online through Airbnb.

What’s more, all stays booked in the area have a charge labeled “Occupancy Taxes and Fees” added to the final bill, because of the state’s VCA. “So for us to turn around and say, ‘I’m sorry, you haven’t paid the occupancy tax in Palm Beach County,’ they think we’re scamming them,” which isn’t good for a reviews-based business, Riegelhaupt-Herzig told WIRED. She says she has been paying the county occupancy tax since

October out of her own pocket.

Screenshot of the confirmation for a booking in Palm Beach County, Florida, showing occupancy taxes and fees.

*Airbnb*

After more than an hour of testimony, commissioner Dave Kerner said Airbnb had allowed its hosts to “be misled” about paying taxes. “That is concerning,” Palm Beach County mayor Melissa McKinlay said. “And so I will support this ordinance today.” It was approved unanimously seconds later.

In San Diego last year, Airbnb took a different tack to counter a new law. City officials had signed a VCA with Airbnb in 2015. But they grew unhappy with the setup’s lack of transparency and the inability to audit, says San Diego councilmember Barbara Bry. What’s more, Airbnb use had skyrocketed in San Diego since then. In March 2015, there were more than 2,600 rental units listed on short-term rental sites in San Diego, according to Host Compliance; by 2019, that total had soared to more than 11,500. Host Compliance says two-thirds of short-term rentals in San Diego are posted on Airbnb. Bry says that the rise of full-time investor-owned short-term rentals in residential areas has hurt enrollment in public schools, transformed neighborhoods into districts of mini hotels, and contributed to a citywide housing shortage.

Last August, the San Diego City Council passed an [ordinance](#) that banned the short-term rental of homes that aren’t the owner’s primary residence and required platforms to collect taxes on behalf of their hosts, effectively overriding their VCA. Bry says she assumed Airbnb would sue, but it didn’t. Within days, Airbnb threw its weight behind a movement to overturn the new rules through a citywide referendum.

Public records show Airbnb donated \$700,000 to a California political action committee called “Committee To Expand the Middle Class, Supported by Airbnb, Inc.” That group reported spending \$300,000 to hire signature gatherers to circulate petitions opposing the San Diego ordinance, and

made a \$300,000 donation to another group behind the referendum movement, "Stand for Jobs, Stop the Vacation Rental Ban." Airbnb also directly donated \$276,358 to the second group around the same time, records show.

Four weeks after the city council approved the new rules, representatives of Airbnb, HomeAway, and Stand for Jobs delivered more than 62,000 signatures calling for a referendum to rescind the ordinance, nearly twice the number needed to force a citywide vote.

City councilmembers said they didn't want to risk losing the vote, so they rescinded the ordinance, with plans to try again. "I'm disappointed that a corporation reportedly valued at \$31 billion descended upon our city with its unlimited millions of dollars and used deceptive tactics to force us to where we are today," Bry said during a council meeting on October 22, just before the council voted to rescind its ordinance.

Airbnb says the petitions garnered so many signatures because the ordinance "would have devastated the local economy, impacted property rights in every San Diego neighborhood, and cost the city millions annually in tax revenue."

The San Diego City Council plans to introduce a new short-term rental ordinance sometime this fall, Bry told WIRED. If Airbnb challenges a new ordinance, Bry says city officials will be more prepared, and will respond with their own public-education campaign and take the contested ordinance to a public vote.

Airbnb's battles with local officials have intensified since last year's Supreme Court ruling in a case involving online retailers. Some tax experts say the decision undercuts Airbnb's position that it doesn't have to collect taxes for its hosts. "There is no doubt whatsoever now that on a constitutional basis Airbnb can be required to collect [taxes]," says Bucks. "There is no justification for these special deals anymore." Airbnb says it's

monitoring state-by-state developments related to the case.

Airbnb's recent lawsuits against Palm Beach, Boston, and Miami focus on another aspect of those cities' ordinances: a requirement that platforms remove listings that don't comply with the law. Airbnb says the requirements are unconstitutional and technologically unfeasible. But the company does remove illegal listings in its hometown of [San Francisco](#), and has conducted occasional or ongoing purges in New Orleans, Santa Monica, [Japan](#), [Berlin](#), [Vancouver](#), and, briefly, [New York City](#). In New York, Airbnb sued to block a city ordinance requiring it to turn over more detailed information on listings; a judge in January blocked the law from taking effect.

In Boston, city councilor Michelle Wu helped lead the push last year for an ordinance aimed at discouraging hosts from turning apartments and homes into mini hotels. The ordinance requires hosts to register with the city and restricts short-term rentals to owner-occupied units. "Airbnb describes itself as a quaint little home-sharing service ... but the reality is that it has grown to be a corporate entity that makes millions of dollars from businesses taking advantage of loopholes and running de facto hotels," she says.

On April 17, Airbnb sent emails to thousands of Boston Airbnb users criticizing Wu. The email claimed that she was aligned with "big hotel interests" and falsely said she intended to place a "restrictive 30-day cap on unhosted stays." Wu says Airbnb never sought to discuss the ordinance or check the claims in the email. Airbnb says Wu's proposal was "anti-tenant, anti-middle class," and "overly restrictive."

The ordinance passed in June. Four months later, Airbnb sued the city, alleging the rules—which went into effect January 1—violate state and federal laws. Wu says the city modeled its ordinance after San Francisco's, which Airbnb complies with. The Boston lawsuit—much like others recently filed by Airbnb—only challenges requirements that platforms remove illegal

listings and share information with local officials to aid enforcement. The suit seeks an injunction against parts of the law, and the city has agreed not to enforce those sections until a judge rules.

A few weeks after Airbnb sued Boston, Massachusetts governor Charlie Baker signed legislation to tax and regulate short-term rentals at both the state and local levels. The law, which goes into effect in July, requires hosts to register with the state. Information about hosts—minus specific house numbers—will be displayed on a publicly available registry, and hosts who run multiple rentals must pay additional taxes. Airbnb says the law will “jeopardize the privacy of our hosts while placing significant and unnecessary burdens” on them. The company says it is working with state officials to address those concerns.

Airbnb’s municipal confrontations have been a boon for Binzer, whose company Host Compliance works with 150 cities to identify short-term rental owners skirting taxes and regulations and to devise an enforcement strategy without striking deals with Airbnb. He used to be an occasional Airbnb host himself—and paid occupancy taxes—when he lived in Tiburon, California; then he was tapped to help local officials quantify Airbnb’s business in town. He says cities are often overmatched by Airbnb, in part because the company periodically tweaks the site in ways that impede tax collectors and enforcement agencies.

For example, Binzer says that until December 2016, Airbnb included the street name of a property in the metadata attached to the listing. Airbnb’s terms of service prohibit third parties from scraping its site for this kind of information, but critics say it’s crucial for enforcement. Officials in some cities used this data to identify hidden hosts. Then Airbnb removed the street name, and altered the geocoding for listings, changing the latitude and longitude so properties appear in slightly different locations.

“It’s a cat and mouse game,” Binzer says. “They literally put the pin in the wrong place of where the actual property is.”

Airbnb says it shields the street name and other personal information related to hosts “to ensure an added level of privacy when third-party scrape sites aim to compile listing information.”

## From Negotiation to Litigation

Around the time Palm Beach County Commissioners passed the short-term rental tax ordinance in October, Gannon says she spoke with a representative from Airbnb. She recalls the company floating a gradual implementation strategy: Airbnb would comply with some of the new rules immediately, but others—like a system requiring hosts to be properly registered with tax authorities—would be phased in over time.

Gannon thought that seemed reasonable, as long as Airbnb collected and paid the taxes. But she didn’t have time to see the discussion through. A month and a half after the ordinance was passed, Airbnb sued the county. The suit argues Airbnb can’t be required to police illegal listings and share host information because “Airbnb is a realization of Congress’s [free speech] goals” and a “classic intermediary.” It doesn’t question whether the company can be compelled to collect occupancy taxes; Airbnb is not collecting them in the county, though the ordinance went into effect on January 20.

“They were just stringing us along until they had their lawsuit ready to file,” Gannon says. “It’s typical of Airbnb ... They’re getting ready to issue an IPO and go public.”

*Airbnb's lawsuit against Palm Beach County, Florida.*

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