

A policy approach to the impact of tourist dwellings in condominiums and neighbourhoods in Barcelona

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A policy approach to the impact of tourist dwellings in condominiums and neighbourhoods in Barcelona

Núria Lambea Llop

Abstract. Tourism is a strong business sector in Spain. In terms of tourist accommodation, in addition to hotels, guesthouses and rural housing, more and more private dwellings are increasingly being transformed into tourist dwellings. Thus, in 2014, lodgings offered by these tourist dwellings were nearly twice the lodgings offered by hotels: 2.7 million compared to 1.4 million. This phenomenon is being greatly facilitated by new online platforms known as ‘collaborative economy’ – e.g. Airbnb or HomeAway. Barcelona, in particular, experiences a high concentration of tourist dwellings in certain neighbourhoods, as it is the fourth-ranked destination in terms of Airbnb guests. And in addition to the positive economic impact on the city and households, this phenomenon has also brought some negative side effects, even more in a country where 66.5% of the population live in flats (the highest amongst EU Member States), which are normally organised as condominiums. The aim of this article is twofold. First, to present the main negative impact of the abrupt growth concerning the transformation of private dwellings into tourist dwellings: the effects on the housing market in general on the liveability and security in neighbourhoods and also in condominiums. Second, to address the policies affecting both at public and private levels in order to protect and preserve neighbourhoods and condominiums without hindering the tourist development in the city. Measures such as the suspension on the concession of tourist dwellings licences, the approval of a new special urban planning and the regulation of a room rental scheme will be mentioned.

Keywords: tourist dwelling, condominium, neighbourhood, tourist accommodation, Airbnb, urban policies

1. Introduction

Tourism is a strong business sector in Spain, which is a popular tourist destination due to its good weather, its coasts, its rich heritage and nice food. Together with traditional tourist accommodations such as hotels, pensions or campsites, there is another type of tourist accommodation that is experiencing an exponential growth: tourist dwellings¹.

The success of offering private housing as tourist accommodation has been greatly facilitated through online platforms (e.g. Airbnb, HomeAway or Niumba) that allow to bring in contact non-

¹ In Catalonia, there are several types of tourist accommodations: hotels, tourist apartments, campsites, rural tourism and tourist dwellings. Tourist dwellings (or tourist housing) are private dwellings rented directly or indirectly by the landlord (it is not possible to rent only rooms under this scheme). Each rental period shall not exceed 31 days and the dwelling shall be rented at least twice a year.

A POLICY APPROACH TO THE IMPACT OF TOURIST DWELLINGS IN CONDOMINIUMS AND
NEIGHBOURHOODS IN BARCELONA

professional lessors with final consumers, in this case tourists, with low transaction costs and with an access for a lot of people. These tourist dwellings offered 2.7 million lodgings in Spain in 2014, compared to the 1.4 million by hotels (EY Building a Better Working World 2015).

Within Catalonia, which has its own specific regulation on tourist dwellings, Barcelona experiences a high concentration of tourist dwellings, as it is the fourth destiny in terms of guests in Airbnb, after New York, Paris and London. The impact of this company in the city in 2015 was of 740 million Euro².

This paper aims at presenting the effects of the transformation of private dwellings into tourist accommodations, in a country where more than half of households live in condominiums. It also addresses the policies adopted both at a public and also private level to protect and preserve neighbourhoods and condominiums from the negative impact of this phenomenon.

2. Negative impact of the tourist housing growth

Numbers in the city of Barcelona show the abrupt increase of the new phenomenon of using private housing for a tourist (economic) activity (see Figure 1)³, helped by the use of those online platforms. The peak registered since 2011 is also due to a relaxation in the requirements for their creation⁴. In addition to this, it should be taken into account that the municipality of Barcelona stopped granting licences for tourist dwellings in 2014; a prohibition that is still in force in September 2016 (see below).

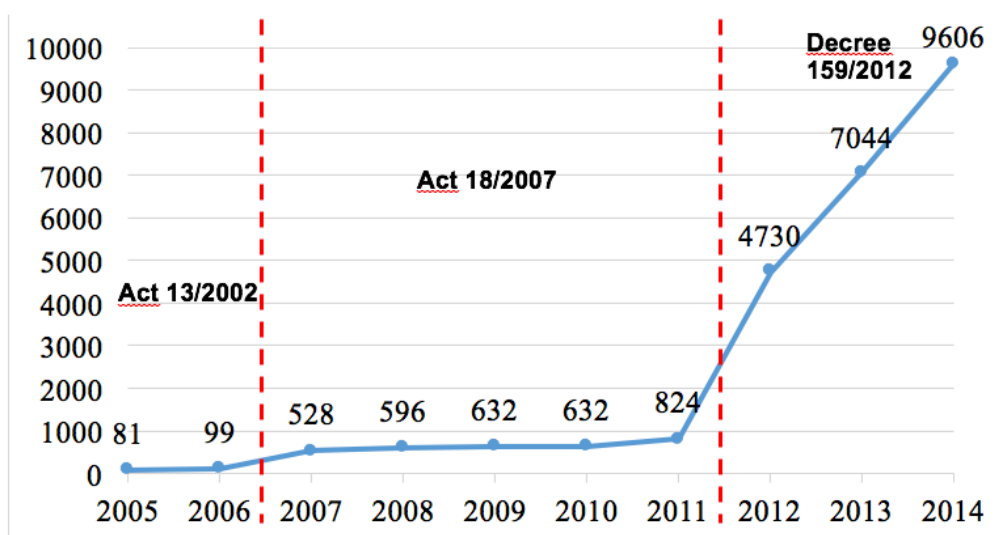


Figure 1. Registered tourist dwellings in Barcelona 2005-2014⁵

² Berenguera, J.M. "Airbnb generó un impacto económico de 740 millones de euros en Barcelona en el 2015", *El Periódico*, March 2016. Available at: <http://www.elperiodico.com/es/noticias/economia/airbnb-impacto-economico-740-millones-alquiler-apartamentos-barcelona-4980501> (last checked 9-6-2016).

³ Numbers show the registered tourist dwellings. Unregistered tourist dwellings and also room rentals are not included in these numbers.

⁴ In 2011, the tourist dwelling scheme was introduced in the Catalan Tourism Act, by Act 9/2011, 29 December, which involved the regulation of this tourist offer.

⁵ Source: Pla Especial Urbanístic d'Allotjaments Turístics (PEUAT). Ajuntament de Barcelona.

The exponential growth of tourist dwellings may imply a positive economic impact on cities, businesses and also private households (i.e. landlords of these tourist dwellings)⁶. But this phenomenon also involves not-so-positive effects, some of which are listed below:

2.1. Black market

A first negative effect is black market. Although there has been a boom of tourist housing, not all the stock has been registered, thus ignoring the regulation sometimes. The reasons for this non-compliance of the regulation can vary: perhaps the dwelling does not meet the habitability or other technical requirements; there might be an intention of the landlord to avoid tax payment; the dwelling might be located in a district where no more licences are granted (e.g. all districts in Barcelona since 2014); sometimes it is even the regular tenant who illegally sublets the rented dwelling to tourists (i.e. without the consent –or even the knowledge- of the landlord).

By way of example, at least 76% of the offer in *Ciutat Vella* (one of the most tourist neighbourhoods in Barcelona) is black market (Arias Sans 2015b)⁷. This phenomenon brings some negative consequences. First, it jeopardises the security of tourists themselves, as there is no control at all on the technical and habitability requirements that these dwellings actually have. Also, there is neither guarantee of good quality nor of protection of consumers' rights (EY Building a Better Working World 2015). In fact, the mismatch between the apartment announced on the online platform and the reality is the main tourists' complaint regarding tourist apartments⁸. Second, these black market tourist dwellings do not pay tourist taxes, which may allow them to offer competitive prices, causing the unfair competition issue claimed by registered tourist accommodations, such as hotels and registered tourist dwellings. And last but not least, they can put at risk the equilibrium that urban planning tries to achieve between tourism and quality of life in neighbourhoods.

2.2. Nuisance in condominiums

Spain is, among the EU Member States, the country with the highest number of households living in flats, a total of 66.5% (Eurostat 2015); and flats are mostly located in buildings organised as condominiums. As a result, most tourist dwellings are placed within this regime.

Tourists come for holidays and for leisure mostly, and sometimes this involves non-civic behaviour, noises and/or vandalism, which put the normal coexistence within the condominium into risk. Precisely, condominiums are mainly governed by by-laws and an internal set of house rules (condominium law being applied by default; Catalonia has its own law since 2006), the aim of which is to manage and administrate the scheme as well as to keep the coexistence and good-neighbourly

⁶ A study on the impact of Airbnb in Barcelona between 2012 and 2013 stated that this company generated a 128 million Euro impact and 4,310 job opportunities in the city. It also highlighted that 75% of owners offering these tourist dwellings and rooms rental have the average Catalan income (12,283 yearly and per person) or even below that and that they use the money earned with this tourist activity to pay their own bills, rents or mortgages. The study was elaborated by the company Dwif Consulting together with professors from the IESE Business School and ESADE-Creafutur. See a summary of the results here: <https://www.airbnb.es/press/news/la-comunidad-airbnb-aporta-128-millones-de-euros-a-la-economia-de-barcelona> (last checked 9-6-2016).

⁷ This percentage appears from the comparison between the registered tourist dwellings in that neighbourhood (604) and the offer on the online platform Airbnb in 2014 (2,495), only taking into account tourist housing offers, and not room rental or shared rooms. Also, there can be more tourist dwellings not registered offered through other platforms.

⁸ Reported by the Organisation of Consumers and Users (OCU), see <http://www.ocu.org/vivienda-y-energia/alquiler/consejos/alquilar-apartamento-de-vacaciones> (last checked 27-7-2016).

relations. Sometimes, tourists are not aware of the existence of these rules (e.g. prohibition to make noise from 22h until 8h; animals can be forbidden in some condominiums, etc.), which bind both owners and users, as they might not be familiarised with this management scheme⁹.

2.3. Negative effects on the housing market

Due to the success of tourism based on the idea of “living like a local” and the consequent increase of tourist housing offer and demand, these tourist dwellings are seen as a business opportunity. Amongst other things, it can cause that lessors on the private rental market decide to offer that dwelling as a tourist housing, as yields in the latter can be three or four times more (Arias Sans 2015a). In terms of rental housing market, the private rental market may experience a reduction in the offers and this might contribute to an increase of the price on the remaining available rental offers¹⁰.

This situation is counter-productive to the current efforts of public policies in Spain to guarantee the right of access to decent and adequate housing. Housing, especially after the 2007 crisis, is perceived as a basic need, which contrasts with the former idea of housing as an economic asset (Nasarre Aznar 2014); speculative idea that is brought back with these tourist dwellings.

2.4. Jeopardize of liveability and security in neighbourhoods. The phenomenon of tourist gentrification

As mentioned before, tourist accommodations receive, generally, people who come for holidays, for leisure stay. And, unfortunately, this vacation mood sometimes carries antisocial behaviour and/or vandalism; even insecurity sometimes. Therefore, liveability and good quality of neighbourhoods' life can be jeopardised as the percentage of these tourist dwellings gets higher and concentrates in some districts¹¹. In addition to this, in districts with an exponential tourism growth, a transformation of this district is taking place, in order to meet the needs of these increasingly new “neighbours”. Local businesses and stores (with affordable prices) are being transformed into new spaces and services aimed at attracting tourists (e.g. big chains of restaurants, supermarkets or souvenir and trendy shops). In this context, residents feel out of place; they experience a “loss of place” (Cócola Gant 2015) that together with the vandalism and insecurity mentioned before can impulse them to move out from that district. This is the well-known phenomenon of tourist gentrification¹².

Arias Sans and Quaglieri Domínguez study shows how Barcelona neighbourhoods with the highest presence of Airbnb are the ones losing local population to a larger degree (2015). A clear result can be found in Barri Gòtic, one of the main tourist districts: in 2007 there were 28,000 neighbours while in 2015 there were only 16,300 (Nasarre Aznar 2016). This exodus might also be

⁹ A study from the European Parliament on cross border acquisitions of residential property in the EU highlights the difficulties that foreigners acquiring a flat can have when it comes to understanding the condominium regime (Sparkes et al. 2016, 98).

¹⁰ The mayor of Barcelona claimed that business speculation with tourist housing has led to an increase of private rents (see “Colau alerta del perill d’una nova bombolla immobiliària per l’augment dels preus del lloguer”, *BTVnotícies.cat*, March 2016, available at: <http://www.btv.cat/btvnotícies/2016/03/02/colau-bombolla-immobiliaria-lloguer/>, last checked 8-6-2016).

¹¹ 59% of main neighbourhoods' associations in Spanish cities and urban areas affected by this tourism phenomenon claimed to have suffered a reduction of their life quality due to tourist housing (EY Building a Better Working World 2015).

¹² See for example Gotham 2005.

caused by the business opportunity mentioned in the previous point. Owners decide to move in order to rent the dwelling located in the tourist demanded district and make good profit out of it.

3. Options taken and to be taken to tackle the negative effects of tourist dwellings' boom

3.1. Reactions at a public-institutional level

3.1.1. Suspension of tourist housing licences granting. Approval of a Special Urban Planning

The former Government team in Barcelona¹³ decided already to suspend the concession of licences only for tourist dwellings in 2014 (first to some districts, and after that, to all of them), due to the abrupt and uncontrolled increase of tourist dwellings and the complaints and pressure from neighbours. The new Government (in power since May 2015 and ruled by the extreme-left party Barcelona en Comú), though, broadened the suspension to all types of tourist accommodations' licences (not only tourist dwellings) and extended the suspension until 2017, a decision criticised by some political parties for being taken unilaterally.

Meanwhile, a Special Urban Planning on Tourist Accommodations (PEUAT) is being developed since 2015, though no passed so far (September 2016)¹⁴. This instrument, which divides the city into four areas and establishes different degrees of prohibitions, intends to achieve an urban equilibrium, that is, a sustainable lace of the tourist sector in relation to the other economic activities and also the liveability of the city. Basically, this Special Urban Planning, as Figure 2 shows, bans completely the issuing of additional tourist licences in area A (centre of the city) for all tourist accommodations (hotels, apartments, etc.). In area B, it is allowed to start up new tourist accommodations only when an already existing one stops working. And finally, in area C, while this rule of the yellow area is only applied to tourist dwellings, a controlled growth of the rest of tourist accommodations is allowed.

¹³ Convergència i Unió (CiU), a nationalist centre-right wing political party.

¹⁴ The former Government team of Barcelona presented in 2014 a Special Urban Planning concerning tourist dwellings in Barcelona, but it failed to achieve enough political support to be passed. The Planning restricted a lot the possibility to start tourist dwellings in the city, especially in the centre, and it intended to gather these tourist dwellings in whole buildings (not allowing to start a tourist dwelling in buildings where there are primary and secondary dwellings). See the reasons for disapproving in <http://www.elperiodico.com/es/noticias/barcelona/trias-marcha-atras-plan-pisos-turisticos-por-falta-apoyo-4032998> (last checked 5-9-2016).

A POLICY APPROACH TO THE IMPACT OF TOURIST DWELLINGS IN CONDOMINIUMS AND
NEIGHBOURHOODS IN BARCELONA

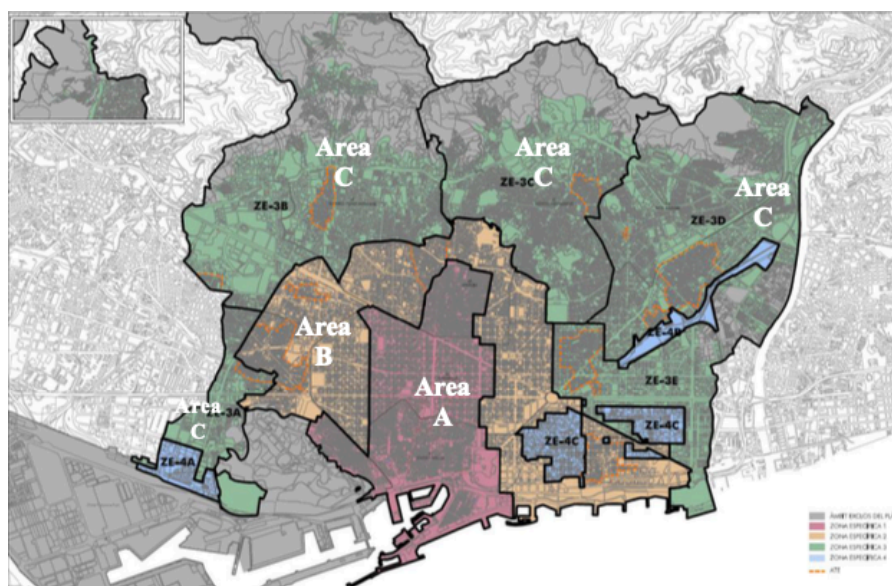


Figure 2. Areas regulated in the PEUAT, Barcelona¹⁵

This restrictive Planning of the city is criticised by the Catalan Authority of Competition (*Autoritat Catalana de la Competència*), arguing that hindering potential operators in accessing the tourist accommodation economic activity will lead to a strengthening of the position of the existing operators. Thus, this will cause a weakening or deterioration in the conditions of competition in the market (*Autoritat Catalana de la Competència* 2016).

The PEUAT is under revision and amendment since June 2016 after the complaints and suggestions received both by stakeholders (hotels, tourist apartments, neighbours' associations...) and political parties (as some of them think the Planning is too restrictive¹⁶, while others that is too indulgent¹⁷). All political parties agree in working on the tourist accommodation issue, but they differ in the means and measures to take. One clear aspect is the need to contend with black tourist market

The immediate moratorium on new hotels and holiday apartments and the development of a tourism plan were measures established in “Barcelona En Comú” Emergency Plan¹⁸ for the first months in government. Guaranteeing the right to housing is one of the main objective of the new Government at a short term (preventing evictions, increasing the stock of affordable housing...) ¹⁹ One of the goals is to build 4,000 new affordable housing within four years; and the new Government defends the need to establish a rent control (introducing rental ceilings) in the private rental market²⁰. However, the power/competences of the local government are limited in the field of housing; therefore many measures need the concurrence or acceptance of regional or national governments, which usually pursue different housing strategies (in general terms, nation-wide have

¹⁵ Source: “Barcelona impulsa la regulació conjunta de tots els tipus d’allotjaments turístics de la ciutat”, *Dossier de Premsa*, 10 March 2016, Ajuntament de Barcelona.

¹⁶ Centre (Ciudadans) and right (Partit Popular) parties.

¹⁷ Left nationalist (ERC) and extreme-left anti-system (CUP) parties.

¹⁸ Available here: https://barcelonaencomu.cat/sites/default/files/pla-xoc_eng.pdf (last checked 5-9-2016).

¹⁹ The new mayor of Barcelona, Mrs. Ada Colau, who used to be a social activist, was one of the founders of the *Plataforma de Afectados por la Hipoteca* movement (PAH, Platform for People Affected by Mortgages). See the role of PAH in Kenna et al 2016, p. 72 and 147.

²⁰ See <http://ajuntament.barcelona.cat/premsa/2016/07/20/colau-presenta-al-sector-immobiliari-la-nova-agenda-politica-dhabitatge-i-rehabilitacio/?hlst=habitatge+social> and <http://www.libremercado.com/2016-03-02/colau-quiere-que-el-estado-fije-por-ley-el-precio-de-los-alquileres-privados-1276569018/> (last checked 9-9-2016).

been more conjunctural measures, some of them taken too late to successfully address the consequences of the 2007 crisis²¹). Precisely, an option of offering the dwelling as social housing is given to landlords of non-regulated tourist dwellings in order to avoid or reduce the fine²².

3.1.2. *Monitoring, control and penalties*

The new instrument of Barcelona to regulate tourist accommodations distribution (the PEUAT) points out the need to strengthen the control and monitoring of the non-registered tourist dwellings, a large number in the centre of the city. It is not effective to develop any urban planning if no efforts are put on that planning compliance.

As a reaction of the black market issue, the Catalan Government was the first one fining Airbnb in Europe by imposing a 30,000 Euro fine to this online platform in 2014. The same company was fined again with 1,500 Euro for not having obeyed the Administration request on stopping accepting offers of tourist dwellings not officially registered. HomeAway is another online platform that has been fined for publicising tourist dwellings that do not have the corresponding licence.

A curious initiative of the municipality of Barcelona is an online platform for neighbours and/or tourists to check if a tourist housing is registered or not and it gives the possibility to let the municipality know if it is not registered²³. The municipality has also undertaken on-site inspections and has sent letters to neighbours to ask for their collaboration in reporting non-registered tourist dwellings. 256 non-registered tourist dwellings have been closed down in July 2016 (while they were only 112 dwellings from January to July 2016; but 533 in 2015)²⁴.

3.1.3. *Regulation of room rental*

Online platforms such as Airbnb do not only offer tourist housing. Room rental is a wide spread practice in the market and it is not regulated as a type of tourist accommodation in Catalonia yet. Therefore, in order to regulate and control this practice, a Catalan Draft Decree of 2015 of Tourist Regulation, which has recently been amended and it is currently under public hearing until September 2016, provides a legal framework for this scheme. The incorporation of this room rental scheme as a registered tourist accommodation might imply three positive effects.

First, the regulation of this scheme will guarantee the fulfilment of the technical and hygienic requirements and other measures needed to offer security and a good service to the consumers/tourists; Second, its regulation is important to control the number and location of these room rentals, and also to compensate its negative impact in the society by paying the tourist fee.

Third, the way in which they are regulated in the Draft Decree could help overcoming one of the negative impact of tourist dwellings: the antisocial behaviour, vandalism and/or insecurity. On the one hand, the dwelling must be the landlord's first and permanent residence, and he shall stay overnight when the rooms are rented; and on the other hand, the owner is jointly liable (art. 222-2.3 Draft Decree) before the Administration for the infractions or non-compliance of obligations within the tourist, housing, consumer and municipal regulations.

²¹ See, for example, Nasarre Aznar 2014.

²² <http://ajuntament.barcelona.cat/dretsocials/ca/noticia/noves-mesures-per-combatre-els-apartaments-turistics-illegals-i-obtenir-mzss-pisos-socials> (last checked 9-9-2016).

²³ Available at <http://meet.barcelona.cat/habitatge/gesturistics/en/>.

²⁴ See <http://www.lavanguardia.com/local/barcelona/20160810/403828278402/cierre-pisos-turisticos-illegales-barcelona.html> (last checked 20-8-2016).

3.2. Actions at a private individual level

Apart from the measures taken by municipalities, owners in a building on a condominium regime have different mechanisms to either stop or prohibit starting the tourist activity in a private unit (a flat).

A first option is to agree upon prohibiting the use of the private units (flats) as tourist housing, adding this restriction in the by-laws of the condominium. This is an option that some condominiums are considering, mostly since an amendment of the Catalan condominium law in 2015. One crucial amendment is that the consent of the owner affected is not needed anymore for this kind of agreements. However, an 80% of owners' votes are still needed. And as there might be some owners interested in this use, it could obstruct the decision from being taken.

Another mechanism of protection that condominiums have is to forbid activities that are contrary to the normal coexistence of the community or that may damage the property. When this occurs, the president of the condominium board may require the owner of the unit to ask the tenant to stop this activity, and if he does not comply with it, the owners' board have the right to claim before a court to make the activity stop (see Van der Merwe 2015, 379). Concerning this, two recent judgments of the Superior Court of Justice of Catalonia of 19 May 2016 ruled that the existence of a tourist housing *per se* (on its own) is not an activity contrary to the normal coexistence of the community. Therefore, a specific anomalous or anti-social use of the property due to serious non-civic behaviour needs to be proved to get a favourable court ruling to the condominium interests (e.g. repeated night parties and noises; vandalism; dirt, food scraps or bottles in the landing; burglaries even). In any event, each case should be analysed separately. When the tourist use of a property is considered contrary to the normal coexistence of the community and the owner does not stop this activity, he can be deprived of the use of his own private unit for 2 years, or in case there is a lease, it can be early terminated.

A third option is a claim against illegitimate immissions (smoke, noises, smells, trembling) as long as they imply a substantial prejudice to the other neighbours. The essence is that, in a condominium, property rights are not absolute: the property rights of the remaining neighbours shall limit them. All residents shall exercise their property rights without causing notorious damage to the rest. However, this mechanism might not be very effective concerning tourist housing issues. First, because the neighbours need to provide evidences for all this, which is difficult sometimes, and second, because this mechanism may entail the termination of the immission and a compensation for it, but it does not prevent future ones, because new tourists will come and they will not be bound by the ruling of the judge.

Finally, regulations of the condominium allow rising the percentage of the contribution to common expenses when there is an intense and repetitive use of common areas and facilities by one of the flats. Therefore, in this case, if the owner uses the flat on a tourist purpose and it is considered a business activity, he could be asked to pay a higher percentage of these common expenses. This mechanism shall be established either in the constitutive title or agreed by 4/5 of the owners in the board of owners.

Conclusion

Online platforms like Airbnb have highly facilitated the offer and success of tourist dwellings. Tourist housing is seen as a business opportunity, even for non-professional lessors. This kind of tourist accommodation is regulated by the tourist legislation in Catalonia. But problems occur when the offer is not registered (black market) or when the guests show non-civic behaviour. Also, other problems like a decrease of residential rental offer, a rise on rental prices and an exodus of population (voluntarily or due to tourist pressure) can be experienced basically in areas where there is a concentration of tourist dwellings and places of great interest in terms of tourism, like Barcelona.

In order to face these negative aspects, the municipality of Barcelona has undertaken different measures. On the one hand, the granting of tourist housing licences is suspended since 2014 and until 2017, with the implementation of the Special Urban Planning (PEUAT), which also contemplates prohibitions of new licenses in certain districts of Barcelona city. On the other hand, monitoring and control functions are being undertaken in order to detect, fine and close non-registered tourist dwellings, and also some pressure and responsibility is transferred to the online platforms, which are being fined for offering non-registered dwellings in their websites. There is a clear intention for these platforms to collaborate with the monitoring function. Control and inspection powers are essential in order to achieve an effective implementation of the restriction of licences granting.

Also, an amendment and update of the Catalan tourist legislation is being carried out. Room rental is going to be introduced as a type of tourist accommodation, trying to put some order, control and to give guarantees to a practice that already exists in the housing market. However, stakeholders in the sector claim that this intended new regulation is not flexible enough and that it states too many limitations that will not give a proper legal framework to the market practice (Autoritat Catalana de la Competència 2015): e.g. limit of four months a year to carry out the activity; the dwelling must be the landlord's first and permanent residence and he shall stay overnight when the rooms, maximum two, are rented.

At a private level and concerning the nuisance issues within condominiums, owners do have different legal ways to stop these harmful activities or to forbid the possibility to use a dwelling on a tourist purpose, but none of them has proved to be fully effective. It is either difficult to give evidence or also the possibility of prospective extra earnings might discourage the decision of prohibiting this activity from being taken.

All in all, in some places in Barcelona, likewise in some other big tourist cities²⁵, there is a need to regulate and control tourist dwellings in a way that they do not clash with the coexistence and security within neighbourhoods and condominiums, without forgetting that tourism is an essential economic engine for the Spanish economy.

²⁵ One example would be the city of Berlin, which has reacted by banning the possibility to rent whole properties to tourists through online platforms. See <https://www.theguardian.com/technology/2016/may/01/berlin-authorities-taking-stand-against-airbnb-rental-boom> (last checked 20-8-2016).

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A POLICY APPROACH TO THE IMPACT OF TOURIST DWELLINGS IN CONDOMINIUMS AND
NEIGHBOURHOODS IN BARCELONA

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