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INSIGHTS

SHORT-TERM RENTALS



INSIDE:

**THERE GOES THE
NEIGHBORHOOD**

SHORT-TERM RENTALS *or* ILLEGAL HOTELS?



Illegal short-term rentals are not a new problem in Hawaii. But the steadily worsening housing shortage, the surge of visitors and the advent of disruptive tech companies capitalizing on an unregulated market have turned a slow-burning problem into an explosive one.

ENABLING ILLEGAL OPERATORS: SPOTLIGHT ON AIRBNB

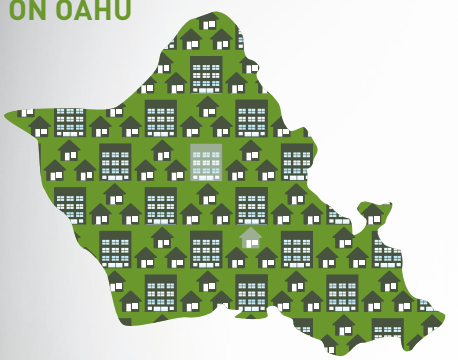
Coinciding with the massive recent growth in illegal units is the rise of short-term rental platform Airbnb. According to “Hosts with Multiple Units – A Key Driver of Airbnb Growth,” a CBRE Hotels’ Americas Research study commissioned by the American Hotel and Lodging Association to examine the exponential growth of the platform from

October 2014 through September 2016, 85 percent of the revenue earned by Airbnb comes from entire-home rentals. Many are owned by people who either don’t live in Hawaii or are commercial operators, like Hawaii Hideaways Inc., an Irvine, California company that has over 15 entire-home luxury Oahu listings on Airbnb. Of all the

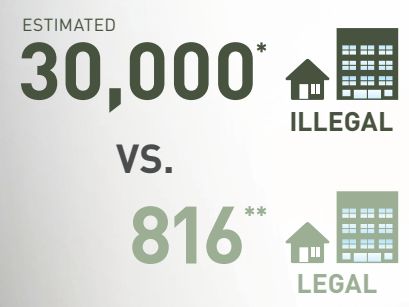
cities studied, Oahu has the second highest share of total revenue derived from multi-unit hosts at 53.5 percent. And revenue generated by multi-unit entire-home hosts increased by 227 percent during the two-year period.



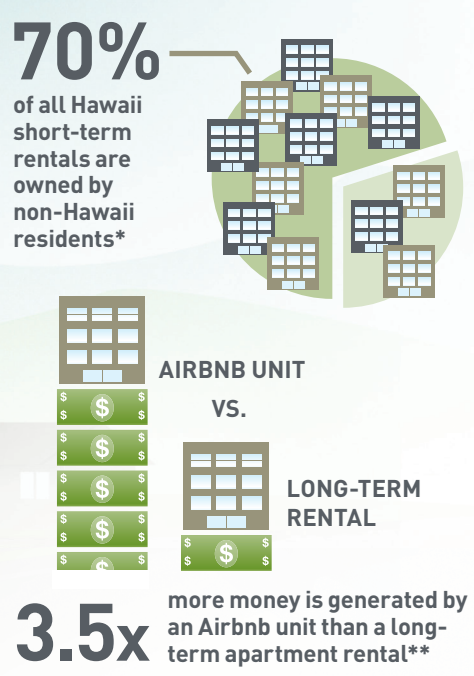
FLOOD OF ILLEGAL UNITS ON OAHU



Short-Term Rental Units



* Source: ‘Airbnb bill’ heads in right direction. Honolulu Star-Advertiser, Feb. 23, 2018.
**Source: Nonconforming Use Certificates by TMK, Department of Planning and Permitting.



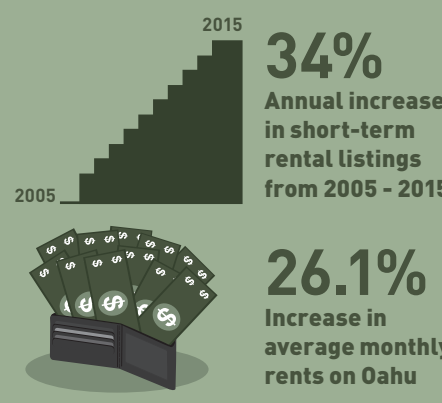
EXTREME HOUSING SHORTAGE

In the midst of a housing shortage when there are very few vacancies, every short-term rental takes a unit out of the rental pool and away from a local family. According to a 2016 study by SMS Research, 70 percent of all Hawaii short-term rentals are owned by non-Hawaii residents, who are making much more than they would renting them out long-term. That’s because an Airbnb unit generates three and half times more money than a long-term apartment rental, according to another SMS study. By lowering supply and increasing competition for a unit with visitors, illegal short-term rentals push the cost for housing up, without the accompanying taxes and fees that a legal visitor accommodation would add to the economy. That doesn’t just negatively impact the economy – it also changes the character of neighborhoods and upsets local lifestyles.

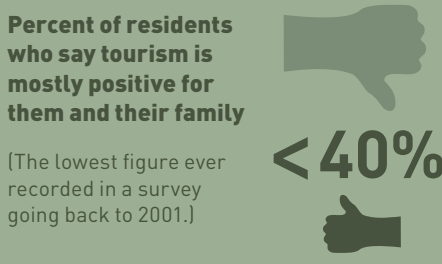
* Source: SMS, The Impact of Vacation Rental Units in Hawaii.
**Source: SMS, Hawaii Housing Planning Study.

PARADISE LOST

An abundance of illegal short-term rentals can turn a zoned residential area into a commercial one, increasing noise, traffic and congestion, reducing available parking and attracting crime. Because short-term renters are transient, they don’t contribute to the neighborhood in the same way that a permanent neighbor would. In communities like Oahu’s North Shore, where short-term rentals make up a whopping 10 percent of all housing, the character of the neighborhood is noticeably altered. The Neighbor Islands, home to more than 70 percent of short-term rental listings despite housing only 30 percent of the state’s population, are also particularly hard-hit by illegal short-term rentals.



Source: SMS, The Impact of Vacation Rental Units in Hawaii.



Source: JLL, Hawaii’s Home and Vacation Rental Market.



Source: City addresses complaint on vacation rental enforcement, Honolulu Star-Advertiser, Sept. 13, 2017.

THE SOLUTION: HB 2605 SD1 AND COMMON SENSE
[CONTINUED ON P.6]



Expert Q&A

KEVIN GUY

DIRECTOR

OFFICE OF SHORT TERM
RENTALS, CITY AND COUNTY
OF SAN FRANCISCO



Kevin Guy leads San Francisco's Office of Short-Term Rental Administration and Enforcement, the office responsible for streamlining the application process for San Francisco's short-term rental registry and more aggressively coordinating complaints and enforcement of the city's short-term rental regulations.

He was appointed the first director of the office upon its creation as part of San Francisco's Short-Term Rental Ordinance, which legalized short-term rentals in the city and established registration procedures and penalties for illegal operators and platforms. Please see page 6 to learn more about the ordinance.

Q: WITH THE BENEFIT OF HINDSIGHT, WHAT HAS SAN FRANCISCO LEARNED ABOUT REGULATING SHORT-TERM RENTALS?

KG: The essential problem with the original legislation in 2014 was that the hosting platforms themselves had no skin in the game. So the Board of Supervisors passed subsequent legislation in 2016 requiring every listing to be registered, or the platforms themselves would face the same consequences as an individual host for a violation. For an individual host caught in a violation, the fine is about \$500 a day until you come into compliance. When you apply that same penalty structure to a platform like Airbnb, if they had 2,000 or 3,000 listings in violation, you can imagine how that \$500 a day times each listing would multiply quickly. That really was the secret sauce, the magic thing.

Q: HOW EFFECTIVE HAS THAT LEGISLATION BEEN?

KG: During the four-month phase-in process that ended in January, we got 1,300 applications total in the door. Then we've crashed (had taken down) about 7,000 listings across different platforms for folks who didn't get registered. The quick way to put it is that the difference between listings and registered hosts has declined significantly.

Q: WHAT IMPACTS HAVE YOU OBSERVED?

KG: The short term rental law was created with two ideas in mind: quality of life issues and housing cost.

In a unit rented out by absentee landlords, there was nobody there sort of minding the store or setting expectations. People on vacation act a little differently than they do at home. They don't know the people next door and they tend to be in party mode. If you've got a permanent resident who's living in the unit 275 days a year, then by doing short term rentals it's sort of an adjunct accessory to that person's regular, primary use of residential living.

But the even more significant issue was housing stock. There were listings run not only by absentee landlords, but absentee tenants. People signing leases from afar and never living there. You can sign a lease for \$3,000 per month for one bedroom and still make enough money off of a short-term rental as a tenant, that you don't even have to live there to make it worth your while. Those are the folks taking housing stock off of the market.

Scrubbing those folks was a major step toward. If you have a couple of thousand of those listings that should otherwise be in the long-term market, then naturally putting those units back on the market will have some sort of discernible effect.

Quantifying it gets really tricky. We are not real estate analysts by any means, but the best that we can do is to quantify it anecdotally. I've taken inventory on Craigslist every week and we also talked to HotPads, another apartment hunting service. Bit by bit, little anecdotes are coming in. From December 2016 to January 2018 when the ordinance went into effect, HotPads noticed about a 400 percent increase in long-term rental listings in the Mission District. We're noticing long-term units staying on the market longer. A trend in rents decreasing that predates the legislation is continuing.

Q: DO YOU HAVE ANY ADVICE FOR OTHER MUNICIPALITIES LOOKING TO FOLLOW YOUR LEAD?

KG: Having a dedicated office laser-focused on this issue is important. If you have the right tools in your legislation, it doesn't have to be a huge office, maybe a staff of six people.



Integrated Communities

PRESERVE OUR NEIGHBORHOODS



The communal needs of resort districts like Waikiki, and the components that comprise them, differ from rural, suburban and even urban integrated communities. Resort neighborhoods are designed to support both local and transient residents with extremely high density lodgings, higher capacity sewage systems, more parking and an array of businesses and amenities that appeal to visitors, like public bathrooms and showers, increased law enforcement, vehicle rentals, tour packages and extensive, high-end dining options, just to name a few.

When we allow too many visitors in areas not designed to accommodate them, we defeat the purpose of careful planning. Not only does their overrepresentation swamp physical capacity, clogging roadways and sewers alike; it upsets the delicate balance that comes to define a place, changing it irrevocably. Ask residents of Kailua on

Oahu if they feel something has been lost to the throngs of visitors in their formerly sleepy hamlet.

Eventually, the imbalance proves unsustainable for local residents. Demand for space goes up, and no residential use can compete financially with a commercial one. Rising property values seem like a good thing for residents until locals are entirely priced out, and what was once a shared neighborhood becomes the exclusive province of outside investors and the transient visitors they're illegally hosting.

Development always entails a give and take, and it's best discussed openly among community voices, debated by the relevant experts and authorities and regulated by carefully thought-out legislation. Illegal short-term rentals skirt past any consideration of what community composition should be like, imposing on communities the will of

profit-driven companies and individuals, many of whom are not residents of the neighborhoods they impact. In fact, a study by SMS Research found that 70 percent of Hawaii's transient vacation units are owned by non-Hawaii residents. As the vast majority of units are illegal, that means out-of-state residents are not only diluting the character and worsening the affordability problems in our neighborhoods, they're doing so without giving anything back.

That's not just deleterious to planning, it's offensive to the spirit of community. Our communities are in demand because we've worked hard to make them livable, supporting local lifestyles and shared values. Allowing scofflaws to extract private gains while negatively impacting them would be a truly perverse outcome for Hawaii's investment in a better future for all residents. ●

The one thing that was really well-written in the legislation is that our staff had a very low bar of proof to demonstrate that somebody was conducting illegal short term rentals and was ripe for an enforcement action. All we had to do was find somebody who had a listing on any given day that didn't have a registration number and we were able to go out that day, and slap a violation on their door. Now if we have a list of people on a platform displaying fraudulent certificate numbers or gaming the system in some other way, we send that list over to Airbnb or VRBO, and say, "take these folks down." Under the settlement agreement, they are obligated to in a period of six business days. It took our policing from street level to the 10,000 foot level, and we can really do things in mass.

I will say anything you do legislatively that involves Airbnb or other platforms giving you data or making them liable or both, they're likely going to sue. But the beauty is that we're located in the same appellate district for the courts, the 9th Circuit, which is widely regarded as one of the most liberal courts district in the nation and it happens to contain many of their biggest markets in America – Los Angeles, San Diego, San Francisco, Hawaii, Seattle, Portland. Platforms could fight any legislation similar to San Francisco's, but if they get an adverse ruling at the 9th Circuit level, which applies more broadly throughout the Circuit, that's going to be bad news for them.

SHORT-TERM RENTALS OR ILLEGAL HOTELS?

THE SOLUTION: HB 2605 SD1 AND COMMON SENSE

The fortunes of our world-class visitor industry are closely linked to the state's economic health. And while tourism is tightly regulated and contributes massively to our economy and communities, illegal short-term rentals have become parasites – growing malignantly and taking up much-needed resources without contributing to the health of the host state. It is well past time for public awareness and political will to correct the problem, with proven solutions that have worked elsewhere.

House Bill 2605 SD1 would regulate short-term rentals appropriately. It provides for long-neglected enforcement that would deter illegal activity. It would compel platforms like Airbnb to exclude illegal units from their listings, asking them to live up to their promise of belonging to a community by only promoting properties that are contributing to it, paying their fair share of taxes and playing by the same zoning and regulatory rules that other hospitality providers abide.

SAN FRANCISCO'S FIX

It took some trial and error, but San Francisco managed to reign in a booming illegal short-term rental market with well-crafted legislation. The city's Short-Term Rental Ordinance came out in two distinct phases, highlighted by legalization of short-term stays in 2014 and platform liability in 2016 (with delayed implementation until January 2018 due to a lawsuit, mediation and a roll-out period).

While the 2014 law had minimal impact, because it essentially relied on hosts to voluntarily register, platform liability proved to be a turning point in illegal short-term rental enforcement, helping to achieve a 55 percent reduction in short-term rental listings, according to an analysis by Host Compliance. Also known as Chapter 41A of the San Francisco Administrative Code, the ordinance establishes the following:

- ✓ *Legal short-term (less than 30 days) rentals for hosts who register with the Office of Short Term Rentals and with the Office of the Treasurer & Tax Collector to pay transient occupancy taxes.*
- ✓ *Hosts must be permanent residents in the home, living there 275 days a year, in order to register.*
- ✓ *Platform liability, meaning the Office of Short Term Rentals has the authority to ask sites like Airbnb and VRBO to delist illegal units or face the same consequences as illegal hosts.*
- ✓ *Platforms must verify the legality of new listings and provide monthly affidavits affirming their verification efforts.*

Our View

PRP STAFF



Like other tech companies in other sectors, Airbnb and their fellow short-term rental platforms have disrupted a market, and now it's never been easier for someone to offer or find a lodging. That's exciting, modern and, unfortunately, unregulated, with a host of negative consequences. A few places, like San Francisco, have created a regulatory framework to stop illegal short-term rentals, and we feel Hawaii should do the same.

For one, regulation would boost state revenues. If properly taxed, Airbnb operators alone would generate \$33 million a year, according to estimates from Airbnb as part of a since-rescinded agreement to collect taxes from short-term rental property owners. The sticking point was that Airbnb didn't want to reveal their database of hosts, because the majority of them are operating illegally.

That's something else regulations should address. After receiving over 3,000 complaints regarding short-term rentals in 2016, the Department of Planning and Permitting issued only 91 notices of violation because of difficulties proving that a unit was being operated illegally. Most violations were the result of the residents admitting they were transient. We need to improve and simplify enforcement capabilities and create penalties that deter violations. We don't doubt that individual hosts have honest intentions in renting out their spaces, but that doesn't absolve them from the responsibility to their communities and the state. They must be properly permitted and pay all relevant taxes.

Because it emerges so abruptly and makes things so much easier, new technology these days often blinds us to the downsides of change, and when we do notice them we just accept the new reality as the way things are. But it doesn't have to be this way. High-tech, disruptive technology can and must be properly regulated.

We strongly advocate for policies like the ones that resulted in thousands of San Francisco Airbnb listings disappearing overnight, after the deadline for hosts to register homes with the city or face big fines (see page 4 and page 6 for details). That's why we support HB 2605 SD1, currently under consideration at the Hawaii Legislature, because it levels the playing field for all providers of visitor accommodations, ensures that our visitors can expect legal, viable lodgings when they come to Hawaii, and requires that all relevant taxes are paid to the state.

And while that bill is a good start, we also advocate for each county to enact regulations that complement and support the intent of HB 2605 SD1. Already, over half of all rental units in Hawaii are owned by out-of-state owners, according to SMS Research. If more short-term rentals are approved, there is a high likelihood that more apartments owned by non-Hawaii residents will convert to short-term vacation rentals. That would drastically reduce the rental pool for locals. Similar to San Francisco's solution, county ordinances should only allow permanent residents to offer a residential unit for transient use, and the units should be owner-occupied.

Let's create a framework for short-term rental owner-occupants – and their platforms – to operate legally in a way that works for all of Hawaii.



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