

Regulating Home-Share Rentals in Hawaii

Posted January 5, 2017 | Categories: [Hawaii's Economy](#), [Blog](#)

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Last year nearly one in three U.S. travelers stayed in home-based accommodation units compared to one in ten in 2011.¹ A search by the New Orleans Planning Commission found more than 40 websites that facilitate short-term rentals ranging from single rooms in private homes to entire villas.² The most conspicuous among them is Airbnb, self-described as a people-to-people platform founded in San Francisco in 2008. In 2016, Airbnb listed 3 million homes and hosted 70 million guests; by 2025, analysts predict the company's share of U.S. hotel and short-term rentals will rise to 13% compared to 2.3% in 2016. Other well-known short term rental platforms include HomeAway (VRBO) and TripAdvisor (FlipKey).



Lanikai Park (East) by [Ethan of Chapman](#)

The sharp rise in home-share accommodations has caused great dismay among hoteliers and some city and state governments. The hotel industry has argued that home-share accommodations don't play on a level playing field as hosts don't pay local occupancy taxes or comply with regulations that hoteliers must. The complaints have been blunted somewhat by Airbnb agreeing in 2016 to collect occupancy and other taxes in over 200 jurisdictions around the world.

However, other concerns remain. They include the perceived negative impacts of illegal home-share rentals on local housing shortage, safety, and neighborhood life. (Rental discrimination has surfaced as another troubling issue.) Last November, Airbnb and Expedia's HomeAway division were each fined \$635,000 by the government of Barcelona, Spain for facilitating the rental of accommodation units that city officials said were unlicensed. The mayor of Barcelona said "We want people to visit us. But we also want this activity to be compatible with neighborhood life." Airbnb said it will appeal.³ In October, 2016, Airbnb sued New York state's attorney general, New York City and its mayor challenging a law that would levy fines as high as \$7,500 for hosts who illegally list properties on a home-share rental platform. Airbnb argued that the law benefitted hotels at the expense of ordinary New Yorkers.⁴ However, in less than two months, Airbnb dropped its lawsuit as long as the city levies its fines on hosts and not

Airbnb.⁵ Earlier, in June 2016, Airbnb sued San Francisco over a bill that required all Airbnb hosts to register with the city and would allow the city to fine Airbnb for each listing by an unregistered host.⁶ Airbnb argued that the city has violated the federal Communications Decency Act, which prohibits the company from being held accountable for website contents posted by its users. In July 2016, Hawaii Governor David Ige vetoed House Bill 1850—supported by both Airbnb and the State Department of Taxation—that would have allowed Airbnb and other home-share platforms to collect general excise and transient accommodations taxes on the state’s behalf. The bill would not require home-share companies to reveal host names or addresses. Governor Ige explained that signing the bill into law would encourage the illegal rental market “at a time when affordable rental housing is in such short supply in our communities and homelessness remains to be a critical concern statewide.”⁷ Airbnb public policy manager for the Northwest and Hawaii estimates that Airbnb’s Hawaii market has between 9,000 and 10,000 listings, which may or may not be available on any given day.⁸ The Hawaii Tourism Authority's study of "individually advertised units" in Hawaii in 2015 identified over 27,000 units advertised on Airbnb, VRBO, FlipKey and ClearStay. Since approximately 10,000 were advertised on more than one site, the study estimates that there were roughly 17,000 “actual” individually advertised units—and predominantly entire rather than shared units—in Hawaii in that year.⁹ Most of the units were very likely unlicensed.



Kailua Aerial by [Peter French](#)

A recent development in New Orleans offers hope that there may be a solution to the impasse between Governor Ige and Airbnb. A story in the *New York Times* suggests that New Orleans may become the “new model for Airbnb to work with cities.”¹⁰ A New Orleans City Planning Commission study of short term rentals in the city indicated that there are about 4,000 to 5,000 listings; Airbnb reported nearly 2,400 listing in 2016.

In New Orleans, Airbnb exhibited a more cooperative approach in negotiating with the city over regulations of short-term rentals. (The more conciliatory approach, subsequently stated in writing

in *Airbnb Public Policy Tool Chest*, lays out policy options on how it will work with communities to enforce short-term rental rules.) As a result, new rules were passed by the New Orleans city council in early December.¹¹ Key principles include:

1. 1. Limit and reign in the expansive growth of short term rentals (STR) citywide;
2. 2. Protect neighborhood character and minimize impacts to residential areas;
3. 3. Enable economic opportunities;
4. 4. Generate revenue for the City to pay for both enforcement and services;
5. 5. Prioritize sensible enforcement.

6.

Among other things, the new rules state specifically:

7. 1. Airbnb will agree to sign agreements with the City to collect taxes and fees.
8. 2. Hosts must have permits (valid for one year), and Airbnb will submit registration applications to the City on the hosts behalf. Registration information would include: name, listing address, tax address, and contact information. Penalties for violations of permit rules include daily fines, property liens, revocation of permit and discontinuation of electric service.
3. Airbnb will also agree to share data with the City on the volume of short term rentals.
9. 4. The City can contact the company to request identification of suspect listings.

The City also capped room rentals to 90 days per year when hosts rent out entire homes. City officials also correctly recognized that “[t]he key to establishing an effective regulatory regime for short term rentals is to have an effective and robust enforcement mechanism.” Too often enforcement is short-changed due to lack of a permanent funding source. New Orleans levies a \$1 nightly fee (in addition to the local hotel occupancy tax) to fund enforcement.

While New Orleans and Hawaii are not exactly comparable—Airbnb has to deal with both the State and the counties in Hawaii—a new, more cooperative environment between the company and local governments everywhere bodes well for Hawaii to reach a compromise that could produce a win-win situation for all stakeholders. That said, Hawaii has a long way to go before the state and the counties achieve sensible regulation and enforcement of short-term rentals. Getting on-line platforms to agree to collect taxes and share host and rental information is a step in the right direction, but crafting sensible permitting and enforcement rules is arguably a more difficult challenge. At the start of its deliberative process, New Orleans recognized that there is a demand for home-based rentals (Airbnb’s customer base comprises largely of millennials). While admitting that such rentals can pose problems, short-term rentals can also present an economic opportunity. Thus, banning them is not a sensible option. Consequently, New Orleans developed a three-part permitting system with the most stringent regulations imposed on rentals in residential areas where they might cause the greatest disruptions to neighborhood life. By contrast, Hawaii seems to be focused on finding ways to prevent illegal rentals without first developing a vision of the role of home-share rentals in Hawaii that allows such rentals to

grow. Honolulu put a moratorium on them in 1989 while the number of illegal rentals have soared. Hawaii Tourism Authority is about to contract another study of short-term rentals in Hawaii, but the study will do little to address Hawaii's ineffective regulatory system if it ends only at data gathering.

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1*Travel Weekly Daily Bulletin*, "Year in Review, 2016," December 22, 2016.

2City Planning Commission, City of New Orleans, [Short Term Rental Study](#), revised January 28, 2016.

3*Travel Weekly Daily Bulletin*, "Airbnb, HomeAway each fined by Barcelona officials," November 29, 2016.

4*Travel Weekly Daily Bulletin*, "Airbnb drops lawsuit against NYC over new state law," December 4, 2016; *New York Times*, "Airbnb stands to lose business in NYC after dropping lawsuit," December 11, 2016.

5*New York Times*, "Airbnb Ends Fight With New York City Over Fines," December 3, 2016.

6*New York Times*, "Airbnb in Disputes With New York and San Francisco," June 28, 2016. 7*Honolulu Star Advertiser*, "Gov. Ige says 'Airbnb bill' hides illegal rentals," July 13, 2016. 8*Honolulu Star Advertiser*, "Committee advances vacation rental tax measure," February 11, 2016.

9Hawaii Tourism Authority, [2015 Visitor Plant Inventory](#).

10*New York Times*, "New Orleans Becomes New Model for Airbnb to Work With Cities," December 7, 2016.

11City of New Orleans, [Short Term Rental Zoning Amendments & Enforcement Regulations](#), December 1, 2016; also *New York Times*, "New Orleans Becomes New Model for Airbnb to Work With Cities," December 7, 2016.