

Comments on January 26, 2017 MPC agenda items, received January 20-23

Item 10, Harpeth Village

From: paigemharris@charter.net [<mailto:paigemharris@charter.net>]

Sent: Monday, January 23, 2017 10:15 AM

To: Planning Commissioners

Cc: Napier, Patrick (Planning); dave@daveforbellevue.com

Subject: 1/26/17 Planning Commission Agenda Item 2017SP-014-001 - Harpeth Village

To Metro Planning Commission Board Members and Planning Staff:

Thank you for the opportunity to voice my concerns relative to the subject project. I live in the Enclave, and my unit is directly south of the proposed project. I am opposed to this project and respectfully request that you do not approve the project as proposed. I have included my specific concerns below:

1. I purchased my condo knowing the property behind my unit was zoned single family and feel strongly it should not be rezoned. Under the proposed zoning, the structures are likely to be much closer to my property than single family and that alone is a major reason to be opposed. The proposed project will substantially negatively impact my view and privacy. If this project were proposed in lieu of commercially zoned property, the circumstances would be different. Every property owner has the right to develop their property, I get that, but I feel it is unfair to change the zoning after other residents are living next door.
2. There are significant safety concerns with the project. There are no "driveways" shown for the condo units, a driver cannot back out of their garage and "see" before the rear of the vehicle would be out in the street. Without driveways, cars will park on the street creating issues with emergency access and a generally unsightly, unsafe situation.
3. The access at Old Harding Pike will be a disaster. Turning left during peak times will be virtually impossible and difficult at most other times. The proximity to Poplar Creek Trace is particularly problematic as the turning movements at these locations will be in conflict. During the P.M., southbound traffic queues along Old Harding at Temple which will severely impact the turning movements in/out of the proposed project. The driveway access will be a challenge even with single family, the proposed multi-family zoning only amplifies those problems.
4. Given the floodplain on the property and the requirement to elevate the proposed project, there will need to be some type of drainage structure between the two developments. It appears the landscaping is shown where the drainage way would need to be located.
5. Where will the detention area be located, I do not see any notation on the plan? Does Metro allow the detention pond to be located in the FEMA designated floodplain? That would be objectionable from a design point of view and negate the function of the detention area. This area is directly on the fringe of the floodplain and adding additional density may exacerbate flooding issues.
6. The "Greenway Conservation Easement" is shown as 75' on either side of the development; however at the northeast corner, the easement is shown as 50.' Is the developer proposing a reduction in the easement?

Again thank you for your consideration and if my schedule allows, I hope to speak in opposition to the project at the meeting on the 26th.

Sincerely,
Paige Harris

1013 Pine Meadow Court
Nashville, TN 37221

Items 32/33, Graybar Lane contextual overlay and rezoning

January 23, 2017

To: Metro Planning Commission

RE: Council Bill # BL2017-545 and Council Bill # BL2017-546

Case 2017Z-012PR-001

Case 2017Z-013PR-001

We ask for your support in passing both of these bills in order to preserve the integrity of the neighborhood on Graybar Lane between Granny White Pike and Lealand Lane, a section of 2 blocks. My father built our home in 1939 and our family has chosen to continue to live in the neighborhood since then. Most of those years Graybar has been a quiet street. Now with the uncontrolled growth of Nashville our neighborhood is losing its integrity due to the building of multi-unit houses where older architecturally sound single family homes once stood.

Thank you

Phil and Linda Collier

1009 Graybay Lane

Nashville, TN 37204

615.414.4818

From: Steve Smail [mailto:smailsteve@yahoo.com]

Sent: Monday, January 23, 2017 9:08 AM

To: Birkeland, Latisha (Planning)

Cc: Pulley, Russ (Council Member); Planning Commissioners

Subject: Contextual Overlay Case 2017Z-012PR-001 and RS10 Case 2017Z-013PR-001 - Graybar Lane

RE:

Council Bill # BL2017-545

AND

Council Bill # BL2017-546

Case 2017Z-012PR-001

Case 2017Z-013PR-001

Dear Planning Commissioners,

I'm writing in support of Contextual Overlay Case 2017Z-012PR-001 ad RS10 Case 2017Z-013PR-001

We've lived on Graybar Lane since 2005, and we love our neighborhood. 15 years ago we blindly wrote homeowners on our street to find out if there might be a house available soon on Graybar Lane for our growing family. A few years later, we were able to move into our current home. We specifically wanted to be in this neighborhood, with these houses and their decades-old character. We are not opposed to change, but changes that are beyond the scope of the typical character of the neighborhood is of concern.

The homes on our street are original, built in the late 30's and early 40's, and the street has retained its original character. When new homes are constructed that aren't contextual, they have the potential to threaten our views, infringe on our privacy, and really change the overall feel of our street. Our homes are mostly 1-1/2 story homes, between 20' and 25' tall. Contextual Overlay limits the height to a reasonable height in relation to the surrounding homes.

Graybar Lane immediately to the west and east of us are both zoned RS. Changing our part of Graybar from R to RS continues the RS zoning designation on Graybar. In addition, allowing increased density in our neighborhood (which was one of the highest "upstream" neighborhoods affected by the 2010 flood) will not only affect traffic but also result in more impervious surface, slowing storm-water run-off and increasing the chance of future flooding.

For these reasons, I'm writing in support of both of these cases.

Thanks for all you do and for your consideration.

Sincerely,

Steve Smail

1006 Graybar Lane

Nashville, TN

615-383-4197

From: les.white@aol.com [mailto:les.white@aol.com]
Sent: Sunday, January 22, 2017 9:08 PM
To: Planning Commissioners
Cc: Birkeland, Latisha (Planning); Pulley, Russ (Council Member)
Subject: RE: Council Bill # BL2017-545 Case 2017Z-012PR-001 and Council Bill # BL2017-546 Case 2017Z-013PR-001

January 22, 2017

To: Metro Planning Commission

Email: planning.commissioners@nashville.gov

RE: Council Bill # BL2017-545 and Council Bill # BL2017-546
 Case 2017Z-012PR-001 Case 2017Z-013PR-001

We ask for your support in passing both of these bills in order to preserve the integrity of the neighborhood on Graybar Lane between Granny White Pike and Lealand Lane, a section of 2 blocks. I am a native Nashvillian, born in 1948, and grew up in a neighborhood in Green Hills similar to our neighborhood here on Graybar Lane. We know our neighbors and share the same values for our neighborhood.

The contextual overlay will preserve the integrity of the neighborhood as it was originally designed. The current mix of duplexes allows it to achieve the recommended diversity of 25% that is currently recommended and the RS10 will preserve the already established diversity.

Sincerely,

John Leslie (Les) White

1015 Graybar Lane

From: Stephanie Cox [<mailto:stephanie.cox@kobaltnmusic.com>]

Sent: Monday, January 23, 2017 11:02 AM

To: Birkeland, Latisha (Planning)

Cc: ckarpy nec@comcast.net; Suzanne Herron

Subject: Graybar Lane - Case 2017Z-012PR-001 & Case 2017Z-013PR-001

Hi,

I am writing to you in support of approving the proposed Contextual Overlay and RS-10 zoning for Graybar Lane, located between Lealand Lane and Granny White Pike. My property at 1016 Graybar Lane is within this boundary. **I am asking you to please approve both the proposed Contextual Overlay and RS-10 zoning for our block on Graybar.**

We moved to this neighborhood 2 years ago to “escape” the 2 per lot, tall skinnies that were being built around us in our previous neighborhood. The construction, the additional traffic, and the aesthetic of these houses diminishes the value of the well-established, older neighborhoods of our community.

The charming older homes must be maintained on our Graybar block and protected from the unattractive newer houses that are being built in the Nashville area. Our homes were built in the 1930s and 1940s. They represent the architectural integrity of Nashville. We cannot lose or compromise our older beautiful neighborhoods. If multiple homes are built on one piece of property, it infringes on my home’s value and beauty.

Please help us protect our block on Graybar Lane by approving the Contextual Overlay and RS-10 zoning. We MUST protect the integrity of our homes and property value. Someone else’s desire to build new and unattractive homes or additions on our block cannot come at the expense of others.

Thank you so much,

Stephanie Cox

1016 Graybar Lane

Nashville, 37204

Stephanie Cox

VP, Creative

[Kobalt](#)

907 Gleaves St., Suite 101

Nashville, TN 37203 USA

Office: +1.615.321.8585

From: David Hailey [mailto:rebeldavetn@gmail.com]

Sent: Sunday, January 22, 2017 7:56 PM

To: Planning Commissioners; Birkeland, Latisha (Planning); Pulley, Russ (Council Member)

Subject: Planning Commission proposals for Graybar Lane contextual overlay (2017Z-012PR-001) and RS10 zoning (2017Z-013PR-001)

Dear Commissioners,

I am in support of both of the Graybar Lane proposals for contextual overlay (2017Z-012PR-001) and for RS10 zoning (2017Z-013PR-001).

I live at 1013 Graybar Lane. My house is within the boundaries for these two proposals. I am 77 years old and I have lived in my house since I was 1 year old. I plan to live here until I die. I want our neighborhood to stay the way it has always been, and I hope you will help us. Please approve these proposals.

Thank you for your consideration.

David Hailey

1013 Graybar Lane

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-Rebel Dave and Kathie

From: David Hailey [mailto:rebeldavetn@gmail.com]

Sent: Sunday, January 22, 2017 7:45 PM

To: Planning Commissioners; Birkeland, Latisha (Planning); Pulley, Russ (Council Member)

Subject:

Dear Commissioners,

I am in support of the Graybar Lane proposals for a contextual overlay (2017Z-012PR-001) and the RS10 zoning (2017Z-013PR-001).

I currently live at 1013 Graybar Lane. My house is within the boundary for these proposals. I am 77 years old and I have lived in this house since I was 1 year old, and plan to live here until I die. I want my neighborhood to stay like it is now.

Please pass these proposals and help protect our neighborhood.

Thank you very much.

David Hailey

1013 Graybar Lane

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-Rebel Dave and Kathie

From: Bryan Rodgers [mailto:rogers@brentwoodcommunications.com] On Behalf Of Bryan Rodgers
Sent: Sunday, January 22, 2017 6:32 PM
To: Planning Commissioners
Cc: Pulley, Russ (Council Member); Birkeland, Latisha (Planning)
Subject: Support for Graybar Lane contextual overlay (2017Z-012PR-001) and RS10 (2017Z-013PR-001)

Dear Commissioners,

I am in full support of BOTH the proposed contextual overlay (2017Z-012PR-001) and the proposed RS10 zoning (2017Z-013PR-001) for Graybar Lane.

My wife and I live at 1103 Graybar Lane, which is within the boundary of the proposals you are considering. We bought our home in 1987 and have lived in our house for almost 30 years. We have raised our two daughters in this house, and plan to live here for many years to come.

We believe ours is one of Nashville's best neighborhoods, and we sincerely hope the character of our neighborhood can be preserved in a manner consistent with what drew us to buy in the first place, and what we have come to love these past three decades. As current property owners with a long history here, we ask that you help ensure that our desires are considered and our rights as current homeowners are honored.

Thank you for your service and for your consideration of these proposals. Please consider approving BOTH the contextual overlay AND the RS10 zoning.

Respectfully,

Bryan Rodgers
1103 Graybar Lane

From: White, Betty [mailto:bwhite@email.usn.org]
Sent: Sunday, January 22, 2017 8:27 PM
To: Planning Commissioners
Cc: Pulley, Russ (Council Member); Birkeland, Latisha (Planning)
Subject: Request for Approval of Contextual Overlay and Re-zoning of Graybar Lane

Please read the attached letter of Barbara and John Wright, which was given to me to send to you because they do not use email.

Thank you.

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Betty White
English 9, Director of Service Learning,
University School of Nashville
bwhite@usn.org

(attachment follows)

January 21, 2017

To: Metro Planning Commission

Email: planning.commissioners@nashville.gov

RE: Council Bill # BL2017-545

and Council Bill # BL2017-546

Case 2017Z-012PR-001

Case 2017Z-013PR-001

We ask for your support in passing both of these bills in order to preserve the integrity of the neighborhood on Graybar Lane between Granny White Pike and Lealand Lane, a section of 2 blocks. This section of Graybar retains the same look of the area when the houses were built in the 1930's and early 1940's.

We have lived at 1005 Graybar Lane 47 years, and we would like to enjoy the neighborhood as it was when we bought our house in 1969. We are both in our 80's and we try to keep our property in a pleasing manner. We want to continue living here, and we don't want the feel of this neighborhood destroyed with over-crowding and even more traffic.

Thank you for your consideration,

Barbara and John Wright

From: White, Betty [mailto:bwhite@email.usn.org]
Sent: Sunday, January 22, 2017 8:18 PM
To: Planning Commissioners
Cc: Birkeland, Latisha (Planning); Pulley, Russ (Council Member)
Subject: Request for Approval for Contextual Overlay and Re-zoning

January 22, 2017

To: Metro Planning Commission

RE: Council Bill # BL2017-545

and Council Bill # BL2017-546

Case 2017Z-012PR-001

Case 2017Z-013PR-001

I ask for your support in passing both of these bills as recommended by the Planning Staff in Substitute Ordinance # BL2017546, in order to preserve the integrity of the neighborhood on Graybar Lane between Granny White Pike and Lealand Lane, a section of 2 blocks, which retains the architectural and environmental atmosphere of the area. This area was once part of the historic Glendale Park, and is one of the few remaining sections which remains intact as designed.

The contextual overlay will preserve the residential area which contains houses built in the 1930's and early 1940's. The street already contains a mix of two-story brick residences and duplexes which were commonly integrated at that time, giving it a natural mixed density as observed by the Staff Planning that allowing the already existing two-family dwellings gives the area the recommended 25% density, so the "diversity of housing choice has already been achieved."

I am also concerned about preserving the natural environment, including trees which provide shade and protection from erosion as well as the tributaries which run into Brown Creek, a major waterway for run-off. Right behind us, developers are building the two-on-one homes, made possible only by clearing the lot of **all** trees, creating a potential problem with erosion since our homes back up to a major tributary to Brown's Creek which runs through the Green Hills area. (See attached photos to view these three cleared lots.) In addition, last week a major section of the retaining walls for the major tributary flowing into Brown's Creek was bulldozed down, now creating a dam which is stopping the flow of water, creating another potential flooding hazard (Photo attached).

Thank you for your consideration of these two bills, which will preserve at least a small portion of the integrity of Glendale Park, while allowing for density in nearby areas.

Sincerely,

Elizabeth (Betty) White

1015 Graybar Lane

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Betty White
English 9, Director of Service Learning,
University School of Nashville
bwhite@usn.org

(six attachments follow)













Non-agenda items

Comment on 1/12 agenda item 28, the Clearview/Crescent/Estes/Westmont/Woodmont rezoning

From: Allen, Burkley (Council Member)
Sent: Saturday, January 21, 2017 4:34 PM
To: Planning Commissioners
Subject: RE: Comment on last night's MPC action on item 28,
Clearview/Crescent/Estes/Westmont/Woodmont rezoning

Ms. Townes,

Thanks for your follow-up e-mail. This will have a fresh discussion at the Metro Council level, and I think some of the particular details of your case will be given serious consideration by the council. I hope you will stay engaged in the conversation. CM Murphy can keep you apprised of when the Council public hearing will be.

Best,

Burkley Allen
Metro Council 18th District

615-383-6604

Council Committees - Planning Committee - Chair

Budget and Finance

Ad Hoc Affordable Housing

From: Planning Commissioners

Sent: Friday, January 13, 2017 9:31 AM

To: Adams, Kelly (Planning); Allen, Burkley (Council Member); Blackshear, Lillian M.; Brenda Diaz; Brian Tibbs; Greg Adkins (greg@tnhta.net); McLean, Jim; Jim McLean; Jennifer Hagan-Dier; Jessica Farr; Jessica Farr (jleveenfarr@gmail.com); jhaynes@boyle.com; Jones, Susan (Legal); Kempf, Lucy (Planning); Leeman, Bob (Planning); Logan, Carrie (Planning); Milligan, Lisa (Planning); Sloan, Doug (Planning); stewart@stewartclifton.com; Withers, Kathryn (Planning)

Cc: Shepard, Shawn (Planning)

Subject: Comment on last night's MPC action on item 28, Clearview/Crescent/Estes/Westmont/Woodmont rezoning

From: lynette towns [mailto:lynettetowns@gmail.com]

Sent: Friday, January 13, 2017 9:16 AM

To: Planning Commissioners

Subject: Planning Commission meeting held 1/12/17

I am writing to inform you of my disappointment with your decision on case 2017Z-005PR-001. Council Member Murphy said on several occasions the majority of people want rezoning to RS10 and she also explained the infrastructure problems associated more and more housing being allowed. She is our elected counsel person and more importance should have been given to what she said. Instead, I came away with the feeling more importance was given to the sympathy presentation given by opposition.

The people selling their house and lot in this area right now are receiving very good prices. Nothing is wrong with that. What is wrong is they move away, and instead of 1 or possibly 2 houses being built to replace them, as many as 4 can be built. This not only changes the entire structure of our neighborhood, but opens the possibility of decreasing the value of our existing properties.

We are not against people being able to sell their home and at this time of demand of land, investors paying them well. What we do oppose is building 2 to 4 houses on a lot that did house 1 home. Not only does it change the structure of our neighborhood, but also brings on infrastructure problems Kathleen Murphy stated, but also increases the traffic which is already horrific at certain times of the day.

From: margaretmwross@cs.com [mailto:margaretmwross@cs.com]
Sent: Thursday, January 12, 2017 10:13 AM
To: Planning Commissioners
Subject: Case 2017Z-005PR-001 pro approval of down-zoning to RS10

Greetings!

I would like to express my strong support of Councilwoman Kathleen Murphy, District 24, in the matter of down-zoning the Clearview Drive, Estes Road, Crescent Road, and Woodmont Circle properties listed in case 2017Z-005PR-001 from R10 and RS40 to RS10. I consider this an important step in protecting the property values and the character of the area. I grew up at 907 Clearview Drive, and now the home is owned by me. My family and I have had this home since about 1949. Other neighborhoods in the area have been radically changed in their character through subdividing, in-filling, and the construction of homes out of keeping with the style and nature of the surrounding homes. I deeply appreciate Councilwoman Murphy's foresight in this matter and her efforts to notify the affected homeowners of this proposal. I understand that this item is on the consent agenda for today (January 12, 2017). Thank-you for your attention to this matter, and I urge you to approve this item.

Sincerely,

Margaret Mary Ross

907 Clearview Drive

Nashville, Tennessee 37209

(615) 292-5790

Short-term rentals

From: Carol Lecian [mailto:cal8946@hotmail.com]
Sent: Monday, January 23, 2017 3:56 PM
To: Council Members; Mayor (Mayor's Office); Planning Commissioners
Subject: BL2016-492

Members of Metro Council and Mayor Barry –

I respectfully ask that you consider (1) placing a moratorium on issuing Type 2 and 3 short-term rental permits (STRPs); and (2) eliminate the permitting of a Type 2 or 3 STRP in any residential properties that are zoned R or RS, and any adjacent properties which are zoned SP, as well as a 2-year phase-out of those properties that are currently permitted.

Please consider the following points:

- Types 2 and 3 STRPs are **commercial** enterprises in residentially zoned districts, which is in direct conflict with current zoning ordinances and the NashvilleNext Plan
- Types 2 and 3 STRPs have diminished some neighborhoods to virtual ghost-towns, except for the weekends when they are at full capacity
- Types 2 and 3 STRPs have affected quality of life for the day-to-day residents and caused issues with regard to noise, trash, parking infractions, etc.
- Types 2 and 3 STRPs have had a direct impact on the availability of affordable housing
- Types 2 and 3 STRPs have no on-site management and have become a nuisance to residential neighbors
- There is no effective means in place for dealing with STRPs and residents who have been suffering through this issue for the last two years should not be expected to endure another six months to two years to try and get things under control
- The threat of litigation should not be a determining factor, as we have become a litigious society and people threaten lawsuits every day; keep in mind that AirBnB has not only lost lawsuits, but has recently been known to withdraw its lawsuits and acquiesced to a City's ordinances and laws
- A software program, regardless of the cost, is not going to "fix" this problem
- Hiring additional staff for the Codes Department is not going to "fix" this problem, especially when there is no plan to have a second and third shift to deal with STRP issues or even a dedicated staff for STRP issues
- Passing the enforcement of "noise" issues to Metro PD, while in the purview of Metro PD, is laughable, at best, when officers are dealing with assaults, murders, theft, rape, and domestic disturbances, to name a few ... noise complaints are not at the top of the list of priorities and offenders are often gone by the time police can respond to such a complaint
- Residents have been complaining about problem properties and reporting **unlicensed** properties for two **years** and have had no results or relief and unlicensed properties are still in operation
- STRPs are not in the NashvilleNext Plan, which was crafted not only for the growth of the great city of Nashville, but to simultaneously protect and preserve its residential neighborhoods
- Other major, international cities have either banned STRPs or severely limited how many days per year a STRP property may be rented
 - In Berlin, STRPs were banned altogether and when challenged in Court, the City's ban was upheld: "The availability of affordable housing is severely threatened in the entire city of Berlin and the regulation therefore justified."
 - In London, STRPs have been limited to 90 days annually: "The problem was that a website that was about people making a little money letting out rooms was being abused by professional landlords turning their properties into hotels by the back door,"

said Tom Copley, Labour's housing spokesman on the London assembly, who campaigned for the change.

- In Austin, Texas, the city after which we modeled our STRP ordinance, STRPs are being banned altogether: "It's been a long road," said Palmer Quaroni, who lives next door to a short-term rental ... where some of the complaints about party houses originated last summer. "When we bought our house, we never knew we'd be moving in next to a hotel."
- STRP owners can still make an income with their rental properties—long-term rental is permitted in residential properties zoned R or RS; in lieu of renting on a long-term basis, those same properties can be sold; homeowners next to a STRP do not enjoy that same luxury, as some have tried to sell their property only to have the buyer find out that the house next door is a STRP property and withdraw the offer

Our residents deserve the quiet enjoyment of the properties they bought in the peaceful neighborhoods in which they envisioned raising their children and should be afforded the protections inherent in the existing zoning ordinances and in conjunction with the NashvilleNext Plan.

Thank you, in advance, for your time and attention to this very important issue.

Respectfully submitted

Carol Lecian

1228 Donelson Avenue

Old Hickory, TN 37138

From: lhowarth@aol.com [mailto:lhowarth@aol.com]

Sent: Monday, January 23, 2017 3:04 PM

To: Council Members; Murphy, Kathleen (Council Member); Shulman, Jim (Council Member); Mendes, Bob (Council Member); Hurt, Sharon (Council Member); Cooper, John (Council Member); Gilmore, Erica (Council Member); mayor.barry@nashville.gov; Planning Commissioners

Subject: Please amend BL 2016-492 to eliminate investor-owned, non-owner-occupied, non-owner-occupied, unsupervised STRs from residential neighborhoods

Dear council members:

I am resending much of an email sent to you today by my neighbor, Grace Renshaw, because I endorse the numerous objections she outlines to our current STR ordinance.

Please declare a permanent moratorium on permits for Type 2 and Type 3 properties until these problems are adequately considered and resolved.

Two years ago, Metro Council made a grave error in passing an STR ordinance that has resulted in unsupervised, commercial Type 2 and 3 rentals that has generated numerous problems for long-term residents, including noise, public misbehavior, trash, parking, and rentals to large groups that exceed occupancy limits.

BL 2016-492 doesn't address any of these issues.

It also perpetuates a cap on the number of these properties that is far too high: Type 3 permits are unlimited, allowed entire apartment complexes to be converted for STRs, reducing the supply of affordable rentals for Nashville residents. Type 2 permits are allowed to cluster; some streets in residential neighborhoods are now de facto commercial hotel zones.

Nashville residents--those of us who vote here, pay local taxes, and bought homes and condos here counting on residential zoning to protect us from having busy commercial enterprises operating throughout our neighborhoods--feel blindsided by our STR ordinance and Metro's failure to act in any way to curtail the abuses of these properties and their burgeoning number.

Residents of neighborhoods like mine--Cherokee Park, Nashville--have been asking Metro Council to address the many problems Type 2 and 3 STRs ordinance have created for all other homeowners, landlords and renters in the city for two years.

The issues these properties create will not go away until Metro stops issuing Type 2 and 3 STR permits and develops a plan to phase out existing properties.

I've heard arguments that people have invested their life savings in Type 2 and 3 STRs. My neighbors and I have invested our life savings in our homes, with the understanding that residential zoning protected us. We have also benefitted from an increase in our property values which Type 2 and 3 STRs threaten to reverse. Our STR ordinance literally pulled the rug out from under us in terms of that protection.

Please take action now to protect Nashville neighborhoods by eliminating Type 2 and Type 3 STRs in residential neighborhoods and communities.

Thank you for listening.

Regards -

Lydia Howarth, 230 Lauderdale Road, Nashville, TN 37205

From: Doug Wharam [mailto:dwharam@swimnac.com]

Sent: Monday, January 23, 2017 2:53 PM

To: Council Members; Murphy, Kathleen (Council Member); Mendes, Bob (Council Member); Hurt, Sharon (Council Member); Cooper, John (Council Member); Shulman, Jim (Council Member); Gilmore, Erica (Council Member); mayor.barry@nashville.gov; Planning Commissioners

Subject: AirBNB: Our Perspective

Mayor Barry, Council Members, and Members of the Planning Commission:

Please see below a note from my wife and I in support of STRP's in Nashville. I think we offer a different perspective than many of the doom and gloom types I have encountered.

In politics, it seems that often the squeaky wheel gets the grease. I'm hopeful you will consider all sides of this issue.

All the best -

Doug Wharam

109 Rural Avenue

Nashville, TN 37209

Kathleen -

Hope this e-mail finds you well! We are well aware, of course, that there is plenty swirling around about AirBNB's/STRPs in Nashville these days. I wanted to write to give my wife and I's perspective.

I know you probably receive tons of e-mail, and my father was the mayor of the town I grew up in, and then a state representative, so I know that what you are doing is out of love for the community - so THANK YOU! I know first-hand from sitting at the dinner table growing up that it's a thankless job.

We operate a STRP in our neighborhood - we own a house that we live in at 109 Rural Avenue, and operate the STRP at 5517 Vaught Drive. The STRP is a "full-time" rental.

My wife, Sarah, and I both work for a non-profit 501(c)3 here in Nashville and salary is not exactly the biggest perk of working for a non-profit! Through careful use of planning and budgeting, we were hoping to find a house to purchase then rent in our neighborhood - so we could operate close to home, but also to ensure that our neighbors are not inconvenienced by any potential bad "renters." The extra income that the STRP generates has allowed us to start saving money to have a family and to get out and enjoy the city we live in! We took a little extra cash we had made and splurged for the Hermitage Hotel for our anniversary this year (trust me, I can feel the irony here!)

In the 8 weeks that we have been fully operational, we have rented to families coming into town for their children's sporting activities, to songwriters in for songwriting sessions, locals who were having their own home renovated, a brand-new grandmother whose son and daughter in law lives in our neighborhood, and tourists

coming in to experience all that our awesome city has to offer! All without a single complaint from the neighbors - yes, we've gotten to know them - that live around!

While our STRP is smaller than those being lambasted in the media (ours is 2 bedroom, 1 bathroom), the roughly \$80-\$90 per night that it brings in is more than enough to pay the mortgage and is an incredibly affordable way for people to experience our city. The popularity of the STRP is astonishing - the month of January, which is supposed to be slow - has provided for 14 nights of rental already! It's only January 17th!

We are on track to earn roughly \$2,500 per month operating as an STRP - as a long-term rental, we would not fetch nearly that amount... about \$1,400 according to our realtor.

While I know there is no clear-cut answer for what the council needs to do, I want you to have an example of a Type 2 permit that is working as it is supposed to in our very neighborhood.

The notes I read where AirBNB's are out of control are heartbreaking - but I have also had to call the police on my house-owning neighbors next door... let's just call it one of the perks of living in the city :)

I offer no solutions, unfortunately. I just know that without our AirBNB, our family's future in Nashville would be squarely in question due to rising costs of, well, everything!

I appreciate you taking the time to consider our side of the story - too often it is the squeaky wheel that gets the grease, so I'm hoping you can use our story to provide some balance to the arguments you may hear.

Please let us know if we can help you on this issue in any way. If we can help to educate you on the AirBNB/STRP process, or if you want a tour of the property to see what visitors are getting out of this equation, please let us know!

All the best -

Doug Wharam

109 Rural Avenue

Nashville, TN 37209

--

Doug Wharam
Associate Head Coach

Competitive Director
Nashville Aquatic Club

dwharam@swimnac.com

(615) 321-3510

From: G. Renshaw [mailto:grenshaw55@gmail.com]

Sent: Monday, January 23, 2017 1:36 PM

To: Planning Commissioners

Subject: Fwd: Please amend BL 2016-492 to eliminate investor-owned, non-owner-occupied, unsupervised STRs from residential neighborhoods

----- Forwarded message -----

From: **G. Renshaw** <grenshaw55@gmail.com>

Date: Mon, Jan 23, 2017 at 1:35 PM

Subject: Please amend BL 2016-492 to eliminate investor-owned, non-owner-occupied, unsupervised STRs from residential neighborhoods

To: Council Members <councilmembers@nashville.gov>

Cc: "Withers, Brett (Council Member)" <brett.withers@nashville.gov>, "Murphy, Kathleen (Council Member)" <kathleen.murphy@nashville.gov>

Dear council members:

I am writing again to ask that all of you **step forward to advocate for neighborhoods by declaring a permanent moratorium on permits for Type 3 and Type 3 properties.** Two years ago, Metro Council made a grave error in passing an ordinance that allows investors to open and operate unsupervised mini-hotels in residential neighborhoods.

Our STR ordinance has resulted in unsupervised, commercial Type 2 and 3 rentals used for parties and events with tents, traffic, PA systems and loud music, and customers engaging in public nudity and sex, drunken fights or just bellowing into cellphones in the middle of the night, and the security issues inherent with nightly rental businesses. That's in addition to trash, parking and rentals to groups that exceed already high occupancy limits, creating health and fire risks for everyone.

BL 2016-492 doesn't address any of these issues.

It also perpetuates a cap on the number of these properties that is far too high: Type 3 permits are unlimited, allowed entire apartment complexes to be converted for STRs, reducing the supply of affordable rentals for Nashville residents. Type 2 permits are allowed to cluster; some streets in residential neighborhoods are now de facto commercial hotel zones.

Nashville residents--those of us who vote here, pay local taxes, and bought homes and condos here counting on residential zoning to protect us from having busy commercial enterprises operating throughout our neighborhoods--feel blindsided by our STR ordinance and Metro's failure to act in any way to curtail the abuses of these properties and their burgeoning number.

Residents of neighborhoods like mine--Cherokee Park, and my daughter's--Douglas Avenue in East Nashville--have been asking Metro Council to address the many problems Type 2 and 3 STRs ordinance have created for all other homeowners, landlords and renters in the city for two years.

We should not have to wait another year for Metro to get its act together regarding Codes enforcement or to see how spending \$1 million on software works out when we have no trained enforcement staff. If Metro continues to allow investors to operated unsupervised hotels in neighborhoods, Council effectively forces neighbors to act as the unpaid front-line security force for someone else's commercial business.

And we have no backup. When STR owners tout the low number of complaints, that's an indictment of Metro's utter failure to enforce STR compliance with any local laws, NOT an indicator of how trouble-free STRs have been.

The issues these properties create will not go away until Metro stops issuing Type 2 and 3 STR permits and develops a plan to phase out existing properties.

I've heard arguments that people have invested their life savings in Type 2 and 3 STRs. My neighbors and I have invested our life savings in our homes, with the understanding that residential zoning protected us. Our STR ordinance literally pulled the rug out from under us in terms of that protection.

In addition, STR investors who own and operate multiple properties are a small minority of STR operators.

I can't help but suspect one reason Metro Council has been slow to address this problem is because these properties are pumping money into the tourism budget. These dollars are literally being pumped directly OUT of Nashville neighbors--the people you represent in Metro Council. They represent our diminished property values, quality of life and security. Do we still matter to you?

Type 2 and 3 STR owners still have viable investments--their properties, which they can sell or rent--like real estate investors have always done.

They also bought properties to rent as Type 2 or 3 STRs based on an annual permits that held out the risk of non-renewal or revocation at any time.

Please take action now to protect Nashville neighborhoods by eliminating Type 2 and Type 3 STRs in residential neighborhoods and communities.

Thank you for listening to us.

Regards -

Grace Renshaw, 220 Mockingbird Rd 37205 and 1607A Douglas Ave 37206

From: Nashville-Percy Priest Environmental Cleanup [mailto:info@nashville-percypriest.com]

Sent: Thursday, January 19, 2017 4:15 PM

To: Planning Commissioners; Coleman, Sam (Council Member)

Subject: HOST Software will not help real-time enforcement in residential neighborhoods

- HOST Software will not help real-time enforcement in residential neighborhoods—leaving the residents to “enforce” the law.

 - At present, only one inspector has been “hired” in the property standards division to the “enforce” existing STRs.

 - STRs are popping up like weeds and these savvy, money hungry commercial investors do not care about the impact they are having on Nashville’s residential neighborhoods!
- o This leave “enforcement” to ill-equipped residents who are not law enforcement officers
 - o Lack of onsite regulation is leading to public safety issues which have gotten worse in the last two years
 - o Nashville is projected to have 1.9 million residents by September 2017

- Nashville leadership is putting the cart before the horse. Allowing STR1s without frequent onsite inspections to make sure the property is owner-occupied is a mistake. (Many property reviews on AirBnb mention never seeing the owner...)
- STR2/3s are driving up the price of affordable housing by removing properties from the rental market that are badly needed by lower income households. Nashville leadership has a social responsibility to make sure this does not happen under their watch—the voters are watching this fight closely. (It happened in Hawaii and California - see attached PDFs)
 - **HOST software**, while helpful in finding under the radar STR commercial investors, **does nothing about real-time enforcement** and Nashville does not have adequate civil or law enforcement in place to embrace STR2/3 properties without considering the serious consequences.
- STR2/3s require more active police/first responder presence that is badly needed in other areas. Our police force is stretched thin in the current terrorist environment.
 -
 - First Responder response times are down because of the traffic nightmares created by rapid growth while at the same time, the need for them is exponentially increasing
- Environmental impact--Contaminates from these party properties are ending up in Nashville's stormdrain system, creating environmental hazards

MY ENFORCEMENT EXPERIENCE WITH STRs - and why I don't believe HOST software will work:

I thought sharing my experience in dealing with STR issues with Nashville's community leadership to help you understand the enforcement problem and why purchasing the HOST software program may not be in the community's best interest—it may be money down the drain.

First, let me make it very clear that I am not against having STRs in the community. I've lived all over the world and spent time in STR2 units in England and Germany. They were great experiences. I have also stayed in hostels and youth hostels in both countries. The STR2 units were isolated from surround residential neighbors by substantial property and I would suggest you consider this moving forward. High density residential areas are not the place for STR commercial properties.

That being said, I want leadership to give thoughtful consideration to the entirely issue against having STRs in any established R1, R2 or RM properties for the following reasons:

I just read two reports, one from Hawaii and one from Oakland, CA discussing the impact that STRs have had on their rental markets. It's shocking. The evidence is very clear that these STR commercial properties in residential areas are driving the price of long-term rentals up out of the reach of the very folks that need affordable housing. ([see attached pdfs](#))

Not only that, they are finding enforcement of STR codes and violations difficult to manage. (Many of the cities I did research on threw up their hands and posed all-out bans because of the costs of enforcement far exceeded the benefits spouted.)

We have a very blatant population of aggressive investors in the Nashville area, many of whom I believe came here on what I call the "AirBnb Wave", that are here for one purpose—to take advantage of Nashville's current lack of foresight for their own profit—at Nashville's expense. About half to 2/3 of them are unpermitted. They are flying under the radar. And here is how they are doing it:

In my own subdivision, which has covenants against commercial businesses, we had an illegally operating STR2 discovered in summer 2015. After months of revolving door guests, (we just thought the new owners who never seemed to be home had lots of company) I met some folks coming out of the house and welcomed them to the neighborhood. I started to give them information on the community when they informed me they only rented the place for the weekend. I said, "Really, just out of curiosity, how did you find out about this house?" The answer was it was listed in Nashville on AirBnb.

Sure enough, the property was being advertised as a vacation rental under Nashville listings. I notified the board, and a letter was sent to the property owner that STRs are not allowed. She ignored our letter and continued to rent the property out.

I went to Codes to find out if a permit had been issued, on one had not nor was there a record of a permit request on file. That was in September 2015 (I spoke with Bill Penn). I thought that would take care of the problem, but the property still continued to have transient traffic.

Several phone calls and emails between the investor and board members and the activity at the property seemed to stop. We thought the issue resolved as in late January 2016, I noticed a gentleman there for several weeks--we thought she got the message and had a long-term renter in the property. That was not the case. Once again, the property began flipping every few days.

I contacted AirBnb through their portal to let them know she was illegally listing the property (without a permit and in a subdivision with restrictive covenants.) AirBnb did nothing! The investor was contacted again and informed that she could not operate and STR in this subdivision. The investor removed the listing from AirBnb's Nashville's listings.

In March 2016, the property became a rapid revolving door—only now the parties (most seemed to be bachelor/bachelorette) were become more outrageous with all the problems that go along with NO OVERSITE (drunken visitors arguing, loud outdoor cell conversations late at night, too many cars on the streets, blocked mailboxes leading to undelivered mail, blocked sidewalks as they sandwiched multiple cars in the driveway forcing pedestrians into unsafe street traffic, flying trash that ended up in our stormdrains from overfilled trash cans left curbside, the list goes on and on.)

Knowing she was still renting the property as an STR, [it took me hours of online due diligence, and pure luck](#) to figure out she had relisted the property in another zipcode in the Nashville area! (Believe me when I say I have better than average due diligence and investigative skills. If I was having trouble nailing this down, I can't imagine how Nashville is going to make enforcement work!)

By the time I discovered her new ad, we had property owners putting their houses on the market because they were tired of the nonsense, tired of being forced into an on-the-spot enforcement taskforce, and afraid of the entitlement mentality transient and often inebriated traffic.

This property is also the one I spoke about at the January public hearing with the property owner on one side of the STR2 on hospice, and the one on the other side who is pretty much homebound with health issues. Knowing these folks had significant health problems; I called Codes to find out what the status on the case was...only to be told they did not have an open case in their system! I once again went to Codes spoke with Bill Penn who could not explain why that happened. (Note: this is not an attempt to throw Bill under the bus—my intent is to highlight the difficult road you are facing in getting enforcement to work)

The last straw for us was the night a **30-person party took place at that house!** Yup, you are reading that number correctly. The house, a four bedroom, was rented by a Vanderbilt graduate who decided to rent a STR2 for a graduation party. He invited all of his local friends to join the party! Some residents were forced to park their vehicles several blocks from their houses during this event. While this party did not end in a drunken brawl, **Drunkorexia is alive and well in Nashville and residents are bearing the brunt of these type parties! (Right now, STR2s and 3s can be rented by local college students for blowout, off campus drinking parties and we can't stop them!**

This is fast becoming Woodland Pointe's worse nightmare because this subdivision is on a peninsula that is 100 yards from "The Cliffs" at Percy Priest Lake, a very popular tourist attraction. We are having serious problems with trespassers and STRs are part of the problem. Some of the investors owning STRs in residential neighborhoods close to us are telling folks how to trespass (complete with coolers full of alcoholic beverages) across Woodland Pointe private property to party at the cliffs, leaving residents to deal with often inebriated party-goers returning to sleep it off.

(One of the reasons these STR1/2/3 properties are so popular is because there is no onsite oversight to address behavioral issues.) The situation is placing tremendous strain on first responder resources.

What happens in Nashville, stays in Nashville" has become the mantra of many of these out of control party groups. They are renting STR2 properties because they know the behaviors they are forcing us to observe: **the public intoxication, the nudity, the disregard for noise levels, the property damage to surrounding properties, the trespassing that occurs, etc. would not be tolerated in motels and hotels were staff are onsite to enforce social order.**

That is not the case in our residential neighborhoods. When issues arise, these commercial investors are not on site-many don't even live in the country, often can't be reached, and when they are, the response is "I'll take care of it in the morning..."

Nashville residents are telling me that "I didn't choose buy a house in a residentially zoned neighborhood because I wanted to find myself living next to a commercial transient hotel!

Cynthia Tieck

Nashville-Percy Priest Environmental Cleanup Project
(615) 957-4707
info@nashville-percypriest.com
www.nashville-percypriest.com

(2 attachments follow)

THE HIDDEN COST OF HIDDEN HOTELS

THE IMPACT OF VACATION RENTALS IN HAWAII



Report by UNITE HERE Local 5
Isis Osborne
Benjamin Sadoski
May 2016

Executive Summary

- A state study found the number of visitors to Hawaii using vacation rentals to have grown by more than one third in a recent one-year period. The Hawaii Tourism Authority (HTA) estimates that there are about 27,177 vacation rentals in the state that are advertised online, up from 22,238 identified in 2014. About 6,789 units on Oahu alone.
- Part of the growth in vacation rentals is due to rental platforms like Airbnb and VRBO, which allow owners and operators to list their rental offerings on a searchable online database. Airbnb in particular is a fast-growing startup – started in 2008, it now claims to have over two million rental listings worldwide.¹
- In Honolulu, the average rent for a two-bedroom unit between 2012 and 2014 was \$1,939 per month,² but a two-bedroom unit on Airbnb could generate revenue of over \$10,500 per month at the average rate of \$431.88 per night and an occupancy rate of 80% – over five times as much revenue.
- Hawaii is deep in an affordable housing crisis, yet there are over 5,000 units statewide being advertised for short-term rental of the entire unit. There are no effective safeguards to ensure that these units are used as residences for even a part of the year.
- Although there are laws in each county restricting vacation rental operations, an ineffective regulatory structure and relative lack of enforcement have allowed illegal vacation rentals to propagate throughout the state for years. Analysis of the units the HTA identified on Oahu uncovers that at a minimum, 50% are operating illegally.
- Throughout Hawaii, 79.6% of Airbnb listings are categorized as “entire place,” meaning an entire housing unit is being rented out to visitors. Many of these units are being rented out by people with multiple listings.
- Short-term rentals directly compete with the traditional hotel industry in fundamentally unfair ways: while hotels create and sustain quality jobs for local people (housekeepers, front desk workers, security guards, bellmen, etc.), the few jobs created by short-term rentals are geographically scattered and leave employees with little power to protect their rights or achieve decent wages or benefits. Workers in this market are forced to compete with one another.
- The right regulatory framework for vacation rentals can ultimately protect hotel industry jobs, help keep the affordable housing crisis from getting worse, and benefit the community while still allowing rental owner/operators a path forward. Part of the framework already exists in each county’s laws, but in order for the rules to be effective, each county government’s enforcement powers need to be expanded, and private citizens need to be granted a right to take legal action independently.

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Introduction

Across Hawai'i, houses and condominiums have been used as lodging for tourists for well over 30 years. While vacation rentals appeal to many visitors seeking a less resort-based experience, their proliferation has had a significant impact both directly on the communities they are in and indirectly on housing and employment across the state.

In response, each county has to some degree enacted legislation to balance the growth of the alternative lodging industry against the needs of our communities. However, these regulations have generally fallen short of being effective because they lacked strong enforcement mechanisms and dedicated enforcement personnel. This lack of enforcement, paired with the growth of the internet, allowed vacation rentals to proliferate illegally. Now, with the popularization of smartphones and the resulting growth in the use of smartphone apps, vacation rentals are expanding and changing the industry in ways that can no longer be ignored.

This report explores individually advertised short-term rentals in Hawai'i: what the industry looks like, how it is growing, and what that means for our State. It examines how their growth negatively affects affordable housing, sustainable jobs, tax revenues and the overall safety of both residents and visitors. Finally, this report proposes the framework for a regulatory structure to effectively allow the vacation rental industry to flourish in a way that fits with the best interests of our communities.

Part I – Background on Vacation Rentals

What are vacation rentals?

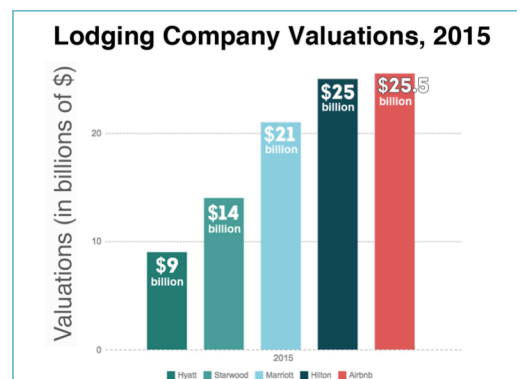
Vacation rentals are nothing new to Hawai'i – people have been renting out houses on Windward Oahu and condos in Waikiki for almost as long as the state has been a popular tourist destination. Some are second homes or investment properties; others are bed & breakfast operations where the owner or proprietor lives on property and rents out rooms; some are condominium or condotel units individually rented out (this report uses the term “vacation rentals” to describe all of these various types of individually advertised lodging units).

Property owners may find renting units short-term to tourists to be a lucrative alternative to renting long-term – even at 80% occupancy, entire units listed on the short-term rental platform Airbnb charging an average rate for Oahu could generate revenue of \$5,900 per month, more than three times the average rent of \$1,732.³ Larger units could generate proportionally more profit: In Honolulu, the average rent for a two-bedroom unit between 2012 and 2014 was \$1,939 per month,⁴ but the average listing of a two-bedroom unit on Airbnb is \$431.88 per night. At 80% occupancy, that would generate revenue of over \$10,500 per month – over five times as much revenue.

With the development of the internet, “home-sharing” websites run by companies such as VRBO (Vacation Rental by Owner) and Craigslist arose, providing platforms for individuals to advertise short-term rentals to much larger audiences than ever before. The industry has been revolutionized again with the development of the smartphone market. According to market research firm GfK, global smartphone sales topped 1.3 billion in 2015,⁵ up more than 31% from the number sold in 2013, just two years prior.⁶ As smartphones have become more prevalent, the smartphone app market has grown exponentially. In January 2016, over 8.8 million iPhone apps were downloaded per day, only counting the top 200 free apps, according to Fiksu.⁷

One fast-growing app is published by Airbnb, a company which allows virtually anyone – bed and breakfast operators, homeowners, renters, etc. – to advertise and rent out accommodations ranging from an entire house to a spare couch in a rented apartment. Through both its app and its website, Airbnb.com, the company acts as a peer-to-peer platform where people looking for alternative accommodations can find and do business with “hosts,” Airbnb’s term for people providing rentals.

Airbnb has grown internationally in recent years to become a leading name in short-term lodging, although the longer-lived VRBO.com and its parent site Homeaway have more listings in Hawai'i.⁸ Airbnb’s popularity combined with its high levels of fundraising from prominent investors has caused its valuation to jump to \$25.5 billion⁹ since its inception in 2008. By 2015, its valuation had surpassed that of major hotel companies Marriott, Starwood and Hyatt¹⁰ (prior to Marriott’s acquisition of Starwood). It claims to have over 2,000,000 listings¹¹ worldwide, which is about as many as Marriott, Starwood, Hilton and Hyatt **combined**.¹²

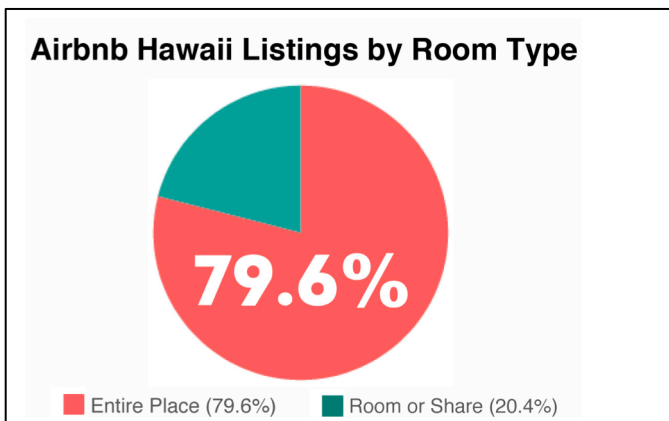


How many vacation rentals are there?

In 2014, a Hawai'i Tourism Authority (HTA)-commissioned survey found 22,238 so called "individually advertised units" (IAUs) across the state.¹³ HTA updated the study one year later and found that the number had grown to 27,177, a 22% increase.¹⁴ Another report by HTA found that the use of short-term rentals in general by tourists to these islands increased by more than 1/3 from February 2014 to February 2015. "The number of visitors using a vacation rental was up 46.8 percent. B&B users climbed 33.4 percent,"¹⁵ according to the *Honolulu Star-Advertiser*.

Who benefits from vacation rentals?

Supporters of vacation rentals across the state have argued that this commercial activity brings money into residential communities, and benefits long-time residents who are simply trying to support themselves in trying financial times. Airbnb in particular claims to be based on the ethos of 'sharing,' stating that "The majority of Airbnb hosts are regular people who occasionally share the home in which they live."¹⁶ The reality, however, is somewhat different.



Throughout Hawaii, 79.6% of Airbnb listings are categorized as "entire place," meaning an entire housing unit is being rented out to visitors.¹⁷ While it is undoubtedly true that there are individuals using platforms like Airbnb to share their homes to make a few extra dollars and make ends meet, **some individuals who post properties on the site are actually employees of large vacation rental management companies or owners with multiple properties.**

For example, **a profile advertising 27 Hawaii listings features a picture of a woman named Claudia, who claims to work for a property management company.**¹⁸ Most of her properties are in Waikiki, and their nightly prices range from \$108 to \$3,800. According to her LinkedIn profile,¹⁹ Claudia works for a company called Ohana Beach Rentals LLC, which lists 150 rentals across the state.²⁰

This example is by no means unique. **An admittedly incomplete search of hosts turned up 25 in just a few minutes who advertised multiple listings in Hawaii.**²¹

Even more than hosts with multiple listings, Airbnb as a company benefits from the spread of vacation rentals in Hawaii. Airbnb charges a 3% service fee to hosts²² and a 6-12% service fee to guests²³ every time a booking is completed on its site.

"In a way, Airbnb almost perfectly embodies the paradox of the sharing economy. From one perspective, it seems — and purports — to be about connecting people with one another and the things they want, all while maximizing efficiency. But from another angle, it can seem like **nothing more than a way for certain individuals to maximize profit by working around the law."**

— Caroline O'Donovan, BuzzFeed

“During the past two years, investors have bought approximately 200,000 single-family homes, mostly foreclosures, in urban areas nationwide, with plans to convert them into rental properties.”
– “Game of Homes,” *In These Times*, March 31, 2014.

In the future, well-capitalized investors will have every incentive to buy up housing units from individuals like these and generate revenue for themselves. In fact, big investors already are buying up homes and renting them out. For instance, the Blackstone Group, a private equity firm with over \$330 billion in assets under management²⁴ has become the single largest private owner of homes in the US, after spending over \$8 billion buying 47,000 homes²⁵ since April 2012.²⁶

How do vacation rentals impact our communities?

Vacation rentals impact our communities in a number of ways:

- **Affordable housing:** Hawaii is deep in an affordable housing crisis, yet there are over 5,000 units statewide being advertised for short-term rental of the entire unit.²⁷ There are no effective safeguards to ensure that these units are used as residences for even a part of the year. Additionally, short-term rentals drive up the demand for the development of new high-end housing, which supplants affordable housing development.
- **Jobs:** In addition to this, short-term rentals directly compete with the traditional hotel industry in fundamentally unfair ways: while hotels create and sustain quality jobs for local people (housekeepers, front desk workers, security guards, bellmen, etc.), the few jobs created by short-term rentals are geographically scattered and leave employees with little power to protect their rights or achieve decent wages or benefits. Workers in this market are forced to compete with one another, which will tend to suppress wages.
- **Safety:** Because they are not inspected for the same building, fire, and health codes, or accessibility requirements as hotels, short-term rentals are able to spend less on property maintenance. This virtual lack of safety regulation/enforcement of short-term rental legislation (especially in regard to illegal units not registered in their county) can pose dangers to visitors as well as hosts.
- **Quality of life:** As the proportion of units used for vacation rentals in a community increases, they bring with them a host of social and logistical difficulties for neighbors.
- **Lost revenue:** Vacation rental guests spend less money overall during their stays than those staying in hotels.²⁸ Unless it can be definitively shown that these visitors would not have come to Hawai'i if they could not stay in vacation rentals, the shift to vacation rentals results in less revenue entering Hawai'i's economy either by reducing hotel occupancy and/or demand.

Current regulatory framework

Legislation regarding short-term rentals is generally incorporated into zoning and land use laws, which are mostly handled at the county level in Hawaii. Each county has adopted a different set of regulations and different terminology. Below are some of the key aspects of each county's rules.

City and County of Honolulu

The City and County of Honolulu designates two different types of short-term rentals in its Land Use Ordinance (LUO), which regulates all land use in the county: Bed and Breakfasts (B&Bs), where the owner/proprietor resides on the property, and Temporary Vacation Units (TVUs), where the owners/proprietors live remotely. In 1989, City Council passed a bill prohibiting the new development of both kinds of short-term rentals while legalizing the ones that were already in use. As a result of the legislation, B&Bs are currently only allowed where they have a "nonconforming use certificate," or a permit certifying that they were in use before 1989; such units are considered "grandfathered." TVUs which were in use before 1986 were similarly grandfathered. As of May 13, 2015, there were 828 units (789 TVUs and 39 B&Bs) with nonconforming use certificates in the county, only 177 of which were outside of Waikiki. TVUs are also permitted in resort-zoned areas, as well as certain apartment-zoned areas²⁹ near Waikiki, Ko Olina and Makaha Golf Club.³⁰

In spite of this attempt to quell their proliferation, illegal rentals continue to pose problems in Honolulu and across the state. Ohana Beach Rentals, for example, features seven luxury Kailua/Kaneohe rentals, none of which have nonconforming use certificates and none of which are in or near resort areas.³¹

Maui County

Maui County, after attempting to ramp up enforcement against illegal units, passed legislation in 2008 and 2012 that defined the current application process for "new" rentals. The two ordinances set numerical limitations on B&Bs and short-term rental homes (STRHs): only 400 of each are currently allowed across the county.³² The regulations limit the size and use of units, who can own them and how they can be used.³³ The permitting process for new B&Bs and STRHs provides opportunities for community input. Applicants are required to notify all neighbors within a certain radius of their intent to operate a B&B or STRH. If enough neighbors protest the application, the Planning Commission may hold a public hearing about it.³⁴ A similar complaint process can be used to revoke permits.³⁵ Despite this attempt at regulation, however, there are more individually advertised units on Maui than any other island in the State.³⁶

Kauai County

Kauai County has enacted limitations on use and development based on geographic areas (generally speaking, Resort and Commercial districts and Visitor Destination Areas) for short-term rentals, which they term Transient Accommodation Units, or TAUs and Single-Family and Multi-Family Transient Vacation Rentals, or TVRs. As with units on Oahu outside of permitted areas, Kauai allowed some grandfathered units to continue operating.³⁷ The county provides for growth in the number of permits issued, but limits growth to roughly 1% per year.³⁸

Hawaii County

Hawai'i County regulations only allow for B&Bs. The law regulating B&Bs requires operators to live on property, and imposes limits the number of bedrooms offered for rent, meals offered and parking offered. The County does allow for B&B operation in a range of residential, commercial and resort zones.³⁹

In certain cases, the process for obtaining a permit for a B&B requires notification of neighbors, in a similar manner to Maui County. The Hawaii County Planning Commission is also required to hold public hearings in special cases as well.⁴⁰

State Laws

State law does not address vacation rentals except:

- they are subject to the Transient Accommodations Tax and General Excise Tax,
- in the regulation of condotels (allowing condotel owners to individually manage their own units),
- it requires ads for vacation rentals to include property registration numbers, and
- a requirement that owners designate a “local contact” who resides on the same island as their property and provide contact information for that person prior to booking.⁴¹

Measuring the Prevalence of Illegal Vacation Rentals

The HTA estimates that there are about 27,177 “individually advertised units” in the state that are advertised online, including 9,492 classified as Vacation Rental House and 16,159 classified as Vacation Rental Condo.⁴² In fact, the HTA’s report found about 6,789 units on Oahu alone. Since there are 828 units with non-conforming use certificates on the island, the other 5,961 units would have to be in or near resort areas to be legal.⁴³ After making the most generous assumptions about what units might possibly be legal, there remains a minimum of 3,431 units from the survey which were operating illegally.⁴⁴ The number could, of course, be much greater, and it can grow quickly. From 2014 to 2015, the number of Individually Advertised Units statewide grew by 22%, or 4,938 units. In 21 zip code areas in Hawaii, the number of IAUs grew by more than 100%.⁴⁵ New York City, for instance, witnessed a 5000% growth in residential units being used as transient hotels over a 6-year period.⁴⁶

Analysis of the HTA study reveals there were 7 areas on Oahu where 100% of the vacation rentals were illegal and 11 additional areas in which 94-99.9% of the vacation rental units were illegal.⁴⁷

The two areas with highest density of vacation rentals on O’ahu are Hale’iwa and La’ie.

- In Hale’iwa, the HTA study found about 655 vacation rentals – about 21.6 short-term rentals for every 100 residential homes. Since there are only 29 units registered with nonconforming use certificates in this area, the other 626 units must have been operating illegally. There are 20.7 illegal vacation rentals for every 100 housing units.
- There were about 228 vacation rentals in La’ie at the time of the study, but only 6 units have nonconforming use certificates with the county. The remaining 222 units are illegal. There are 18.7 illegal vacation rentals for every 100 housing units.

Area	Illegal IAUs per 100 housing units
Hale'iwa	20.7
La'ie	18.7
Kahuku	18.0
Hau'ula	15.4
Ka'a'awa	7.0
Waialua	5.6
Waimanalo	5.6
Kailua	4.3

Why are there so many illegal units? A problem of enforcement

Even with these regulations, enforcement efforts in most areas have not been consistent or effective enough to stop the spread of illegal units. On Oahu, the Department of Planning and Permitting (DPP) is responsible for responding to complaints of illegal vacation units. DPP's power is greatly restricted:

- Investigations are conducted by staff members who are responsible for enforcing all the ordinances and codes of the city within the time limits of a regular workday.
- In the course of the investigation, inspectors must visit the property, find someone on the property who will admit to being a short-term renter, and issue a violation notice to the landlord (who is given a month to fix the violation).⁴⁸ Only after this process may fines be levied against the owner/landlord.⁴⁹

According to research conducted by Civil Beat in 2010, 749 investigations were launched that year in response to complaints about illegal short-term rentals units, but only 24 violations were found. Only 18 of the violating property owners were reprimanded, and only 2 of the violators were fined a cumulative \$4,433.⁵⁰

The DPP reported that in 2014 and 2015, it conducted 2,719 site visits, resulting in 57 violation notices and 31 violation corrections.⁵¹ In other words, only 2.1% of site visits resulted in a violation notice, and less than 55% of those that got a violation notice corrected the violation.

In January 2016, the DPP announced it was hiring five new inspectors to crack down on illegal vacation rentals. In its first month, the team cited 21 violators.⁵² The hiring initially has increased enforcement, but much more can be done on a policy level to stem the proliferation.

“Not only does Airbnb facilitate illegal conversions of entire buildings from tenant apartments to de facto hotels, it has also become part of the landlord lobby that resists enforcement of local laws prohibiting such abuses.”
- The American Prospect

Notably, on February 24, Airbnb asked the City to stop enforcing the law against illegal rentals.⁵³

Meanwhile, the State of Virginia passed a bill⁵⁴ on March 6, 2016 preempting the power of local governments to ban or restrict vacation rentals.⁵⁵ As of the time this report was written, the Arizona legislature was in the midst of contemplating a similar prohibition.⁵⁶

Part II - The Impacts of Vacation Rentals

Vacation rentals have broad impacts on a variety of segments of our communities and our lives. Those looking for affordable housing and decent jobs, those trying to keep their neighborhoods safe, those renting their houses or vacation homes and guests at such accommodations are all greatly affected by the existence, quality and enforcement (or lack thereof) of regulations on vacation rentals, often in ways they may not be aware of.

Effects on Working People

The Hawaii hotel industry is one of the largest sources of good, long-term jobs in the state. These jobs sustain local families and support our communities. Illegal vacation rentals offer lodging services without supporting sustainable jobs for local people. In fact, they compete with hotels for business, and by operating illegally, they can undercut hotel room rates by operating illegally, skipping out on taxes, capital expenditures and labor costs.

While the average wages and benefits paid to workers servicing illegal units is not clear, these workers face a nearly insurmountable systemic barrier to organizing together to win better working conditions and wages. To the extent there are any employees at all, it is unlikely that any individually advertised unit would have more than one or two employees servicing it. Even large-scale operators listing hundreds of units in various locations could get by with minimal staff. Without a central base of operations, housekeepers servicing different units might never even meet one another, much less have enough contact to begin discussing their wages and benefits. Lone employees who attempt to assert their rights or try to improve their working conditions can easily be replaced, with little recourse except a potentially very long, expensive legal battle that few would have the time, money and energy to take on. The isolation of the lone worker and the ease to the employer of replacing them leaves them nearly powerless. They are ultimately competing against one another for work. In an area like Hawaii where so many people must work second or third jobs to make enough money to get by, the competition for this work is likely to drive down wages.

Effects on Affordable Housing

Vacation rentals have a negative impact on affordable housing in two ways: 1) they represent units taken out of the overall housing stock statewide, limiting the supply and driving up prices; and 2) the ability to operate any unit as an illegal vacation rental inflates demand for new construction at the high end of the market, giving developers an incentive to build luxury units to the exclusion of lower-priced units.

Regulatory battle in NYC

In New York City, local laws prohibit residential units from being rented out for less than 30 days. When Airbnb began to gain popularity in the city, neighbors began to complain about increased noise and traffic in their buildings, and to suspect that rent-controlled units were being negatively affected by this new economic activity. NYC's attorney general Eric Schneiderman confirmed these fears in a report detailing the ways in which Airbnb and its hosts were hurting the local economy and flouting local laws. According to his research, 72% of Airbnb listings on NYC from January 2010 to June 2014 were illegal. Additionally, Airbnb hosts with multiple property holdings, termed "commercial users" in the report, accounted for a disproportionate amount of the revenue coming from listings across the city:

"Ninety-four percent of Airbnb hosts offered at most two unique units during the Review Period. But the remaining six percent of hosts dominated the platform during that period, offering up to hundreds of unique units, accepting 36 percent of private short-term bookings, and receiving \$168 million, 37 percent of all host revenue."⁵⁷

Schneiderman found other troubling trends as well, including that the listings were primarily concentrated in gentrified or rapidly-gentrifying neighborhoods, and that almost half of the listings constituted housing units that were effectively removed from the long-term housing market (and the number of such units increased over time):

"In 2013, more than 4,600 units were booked as short-term rentals through Airbnb for three months of the year or more. Of these, nearly 2,000 units were booked as short-term rentals for a cumulative total of half the year *or more*—rendering them largely unavailable for use by long-term residents. Notably, the share of revenue to Airbnb and its hosts from units booked as private short term rentals for more than half the year increased steadily, accounting for 38 percent of each figure by 2013."⁵⁸

Regulations there remain stringent, but listings in the area continue to proliferate on Airbnb illegally.

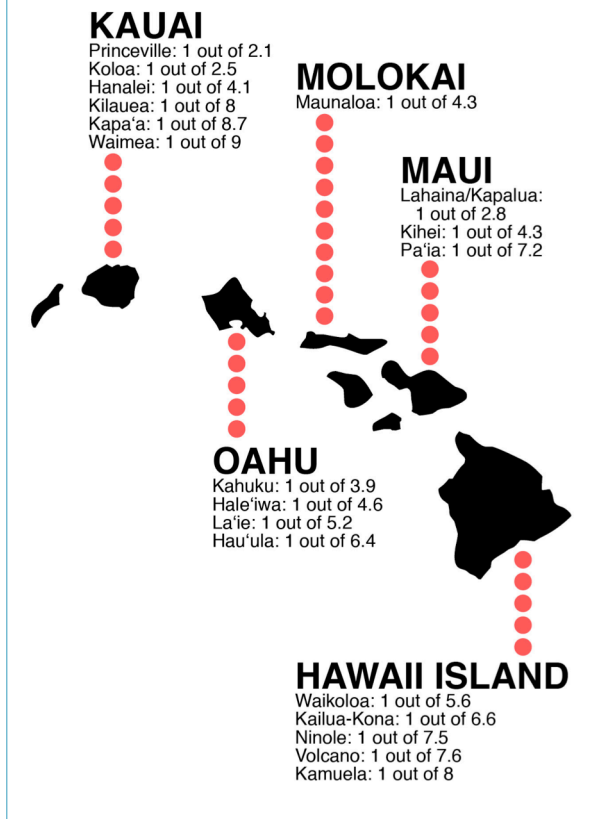
Existing housing stock

Short-term rentals exacerbate the current lack of affordable housing for Hawai'i residents. The preceding analysis of the HTA survey identified a minimum of 3,431 units advertised illegally on Oahu. While this number currently appears relatively small in proportion to the 306,622 total housing units on Oahu (just over 1 illegal unit for every 100 housing units), some areas see a much more significant impact from vacation rentals than others.⁵⁹

In Princeville, Kōloa, Lahaina and Kahuku, there is more than one IAU for every four housing units.

Residents in areas with high vacation rental densities have testified time and time again that vacation rentals in their communities are making the affordable housing crisis worse.⁶⁰

Number of IAUs per housing unit:



Other cities⁶¹ have seen similar trends in housing being converted to short-term rentals for listing on Airbnb. San Francisco recently won \$276,000 settling a lawsuit which alleged that residents were evicted as their landlords converted their units to vacation rentals. According to San Francisco City Attorney Dennis Herrera, "Illegal conversions that push long-term tenants out of their homes diminish the availability of residential rental units for San Franciscans, and they're a significant contributor to our housing affordability crisis."⁶²

Short-term rentals may be causing housing prices and rental rates to increase in many major cities. Ty Simrosky, planning director for Key West, Florida, explained why this might be occurring in an article from American Planning Association:

"When property owners decide to increase their "rent stream" with short-term rental agreements rather than renting by the season or the year, they essentially "squeeze" the supply of housing, pushing up the demand, and, subsequently, the cost."⁶³

This negatively affects the availability and cost of housing units for everyone.

New Developments

The same dynamic which constricts the supply of affordable housing also hinders the development of new affordable units. Developments such as ONE Ala Moana atop the Ala Moana Shopping Center, Park Lane on Ala Moana Boulevard and Anaha tower on Auahi Street are marketed to the luxury segment.

The price of most of the units being developed in Kakaako puts them out of the range of affordability for most Hawaii families. Developers are marketing the units to those with over \$1 million to spend on condo units – generally, the luxury and second-home markets and speculators. To the extent units in Kakaako do not act as primary residences, the cost of mortgages and maintenance fees will exert pressure on owners to use the properties to generate income through short-term rentals. Even owners of the affordable units being developed will be under pressure to sell to investors, who are likely to pay a greater premium for properties that can be used to generate income. According to *Pacific Business News*, "Sal Miwa, co-CEO and president of Honolulu-based Myland Hawaii Realty, told PBN that many Japanese buyers bought their condos in Kakaako expecting to rent their properties out short term, even month-to-month when they are not staying at their condos."⁶⁴

Sample of Condominiums in Planning or Development in Kakaako

Project	Developer	# units	average price
Waiea	Howard Hughes Corp.	171	\$3.7 million (as of 5/12/15)
Anaha	Howard Hughes Corp.	311	\$1.3 million (as of 5/12/15)
Ae'o	Howard Hughes Corp.	466	\$1 million (as of 7/25/15)
Park Lane	BlackSand Capital	215	Range from \$1.19 million to \$28 million
ONE Ala Moana	Howard Hughes, BlackSand Capital, Kobayashi Group, MacNaughton Group	206	\$1.6 million
Waihonua at Kewalo	Alexander & Baldwin, Armstrong Homes Ltd., BlackSand Capital	341	Range from \$375,000 to \$1.9 million
Gateway Towers	Howard Hughes Corp.	236	Range from \$1.5 million to \$8 million
The Collection	Alexander & Baldwin Properties, Inc.	465	\$651,000
Symphony Honolulu	OliverMcMillan	388	Range from \$390,000 to \$3.35 million
400 Keawe St.	Castle & Cooke, Kamehameha Schools	95	Range from \$400,000 to \$750,000
801 South	Downtown Capital, LLC	635	Range from \$253,000 to \$501,300

Effects On Residential Communities

Some neighborhood groups and boards in Hawai'i have expressed a concern for conserving the character of their communities. According to the Kailua Neighborhood Board:

“The visitor lodging businesses in residential zoning reduce the housing supply for local residents, contribute to escalating rents and housing prices, and negatively impact the social, safety, environmental and cultural residential character of our neighborhoods.”⁶⁵

Specific problems cited by residents living near short-term rentals include increased traffic, noise, crime and a revolving door of strangers in what once were primarily residential areas.⁶⁶

Proponents of increased legalization for short-term rentals claim that the existence of such units directly causes tourist money to flow into the communities they are in. One supporter claimed “There were no jobs in Kailua before all of the visitors discovered our vacation rentals.”⁶⁷

However, one could make the same argument to justify putting factories or strip clubs in residential communities. The argument on its face does not make sense – if visitors spend money at businesses where residents work, regardless of whether those businesses are in

business or residential districts, some of the money flows into the community. It is not clear that the guests staying in vacation rentals would not otherwise come to Hawaii and spend money in our communities if they had to stay in hotels or if there were limits placed on vacation rental proliferation. Beyond this, an HTA study showed that visitors who stay in short-term rental units end up spending less on their day-to-day needs than those who stay in hotels:

“Unfortunately for Hawaii's coffers, rental and B&B visitors also spend less overall. Last year, visitors who stayed in rental houses told HTA that their total daily spending — including lodging, food and other costs — was \$149.90, or 36 percent less than their average hotel counterpart who spent \$235.50. Likewise, B&B visitors reported they spent \$173.60, or 26 percent less than hotel guests. If these guests had spent as much as the average hotel guest in 2014, it would have added millions more to Hawaii's economy.”⁶⁸

Among the concerns that have been brought up within discussions on this issue is a loss of community feeling as long-term rentals begin to dwindle. As the organization “Keep it Kailua” testified before City Council:

“Vacation rentals displace ‘permanent’ neighbors from our neighborhoods and neighbors are the glue that welds a community. Without neighbors in our neighborhoods and communities, our social capital suffers. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in neighborhood watch programs, coach padding, or join the hospital guild. They do not lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally they are here today and gone tomorrow.”⁶⁹

Additionally, to the extent the owners of these units are not paying taxes for the rental of their rooms, they are not contributing their fair share to pay for the infrastructure needs they are creating through the operation of their businesses.⁷⁰

Dangers To Hosts

Hosts who list their properties on Airbnb or VRBO may inadvertently be in violation of their apartment rental agreements, condominium bylaws and declarations, insurance policies, mortgages or zoning laws. Some violations have caused hosts to face fines, eviction,⁷¹ and even blacklisting from future apartment rentals.⁷² Given some of the effects short-term rentals have on communities (as described above), landlords and condominium associations have every incentive to enforce their rules.⁷³ There have been horror stories about homes rented out on Airbnb that were trashed by partiers,⁷⁴ meth addicts,⁷⁵ robbers⁷⁶ and orgy participants.⁷⁷ Apartments are reported to have been used as brothels.⁷⁸ In more than one case, guests even refused to leave a unit after renting it out through the site, and the unit owners actually had to file for eviction to get them to leave.⁷⁹

The problems could reach beyond the illegal rental units themselves: proprietors of illegal vacation units could create liability for entire condominium projects.⁸⁰ For instance, one Airbnb host lists a unit at the Hawaiki Tower on 88 Piikoi Street.⁸¹ According to the Developer's Public Report for Hawaiki Tower, the building contains 417 residential units, 8 commercial units, 2 retail units and no hotel units.⁸² The report notes that owners of residential units are only allowed to use them for residential purposes, not commercial purposes. Additionally, the Honolulu Land Use Ordinance defines a “hotel” as follows:

“Hotel” means a building or group of buildings containing lodging and/or dwelling units offering transient accommodations, and a lobby, clerk's desk or counter with 24 hour clerk service, and facilities for registration and keeping of records relating to hotel guests. A hotel may also include accessory uses and services intended primarily for the convenience and benefit of the hotel's guests, such as restaurants, shops, meeting rooms, and/or recreational and entertainment facilities.⁸³

Based on a strict interpretation of this language, if the project met two other minimal conditions (namely if the building were to have a 24 hour front desk and if the host had facilities for registration and record-keeping), a single Airbnb listing in this building could mean the **entire building** could be considered a hotel. This would be an illegal nonconforming use, and it could impact insurance costs for the entire building.

Dangers To Visitors

The lack of regulatory oversight for illegal vacation rentals in Hawai'i means that there is little to no guarantee of visitor safety. Listings online can be advertised by anyone. Although Airbnb could conduct background checks on hosts, it does not.⁸⁴ Guests can attempt to protect themselves by only booking with hosts that have submitted to the company's "Verified ID" process, but in some cases the process may not even require hosts to submit a government-issued ID.⁸⁵ Guests can also check other users' reviews, but there is no guarantee of these reviews' veracity. The lack of oversight in this regard exposes guests to scams and dangerous situations.

Other guests are not so lucky. A Massachusetts teenager staying in Madrid in July 2015 claims he was sexually assaulted by his host. Shortly after meeting his host and going back to the host's apartment, he says he was locked in and threatened. He texted his mother, who in turn contacted Airbnb to get them to call the authorities. According to the *New York Times*, "When she called Airbnb, its employees would not give her the address and would not call the police. Instead, they gave her a number for the Madrid police and told her to ask the police to call the company for the address. But the number led to a recording in Spanish that kept disconnecting her, she said, and when she repeatedly called back her Airbnb contact, the calls went straight to voice mail."⁸⁶ Her son says he was subsequently sexually assaulted. Following the assault, Airbnb changed its policies so that its employees will contact law enforcement in emergency situations.⁸⁷

There have been other reports of Airbnb guests being sexually assaulted⁸⁸ by hosts.

While dangerous incidents can and do take place in hotels, most hotels have security staff as well as front-desk workers and other full-time staff members who can monitor and respond to dangerous or suspicious situations. Airbnb units do not necessarily have any employees or anyone else on site. In addition to staff, hotels generally also invest in security measures such as closed-circuit TV cameras and electronic key card entry systems that track who enters a room and when. In a 2014 survey of hotels, 92% of respondents said they use electronic keycards, and 88% reported use surveillance technology.⁸⁹

Problems with vacation rentals for guests are not limited to personal safety. Some users of Airbnb⁹⁰ and VRBO⁹¹ have reported getting scammed online – being tricked into sending money to con artists who impersonated hosts by intercepting emails between guests and hosts.

Even for legitimate listings, Airbnb does not guarantee unit quality, or have “brand standards” like branded hotels. The only name hosts need to worry about is their own, which they can customize or change. Units’ addresses are not shown until after booking, so in doing research before making a decision, a potential guest can only estimate where exactly it is that they might be staying. This makes it harder for users to verify the legitimacy, or even the existence, of some rental properties, which they could otherwise do using Google Maps or other tools.

Hotels have rigorous licensing requirements which cover many aspects of their operations and help protect consumer health and safety. For instance, a hotel cannot serve liquor without a liquor license. In order to get and maintain a liquor license, the hotel must ensure safeguards against underage drinking, it must have licensed, trained employees, it must show the ability to deal with dangerous situations, and it must be open to random inspections.

Hotels in Hawaii are also subject to fire department inspections, food and sanitation inspections, boiler inspections, and licensing requirements for spas, massage establishments, swimming pools and elevators. Further, it is often the case that hotels have tested for environmental hazards like asbestos, lead paint, carbon monoxide and mold. Many hotels have made efforts to comply with the Americans with Disabilities Act, providing accessible rooms, parking stalls, pools, etc. While potential guests could question the owners of vacation rentals about compliance with these regulations, there are no guarantees that hosts have complied with these various regulations, or even that they are sufficiently familiar with them to know whether or not they are in compliance.

Beyond all of this, it is also unclear whether any given vacation rental owner has plans for what to do in case of a natural disaster such as a tsunami or a hurricane. At least 85 tsunamis have hit Hawaii in the past 203 years.⁹² In contrast, 87% of hotels reported having disaster response/business continuity plans in a 2014 survey.⁹³

Fire Safety

Among other things, illegal vacation rentals may not have been inspected for fire safety. Fire inspections can determine whether or not:

- a building has fire extinguishers in working order in sufficient quantity and type located in accessible places;
- each room has a smoke alarm, and if all smoke alarms are in working order;
- there is a central fire alarm system or not to alert occupants to fires in other parts of the building;
- the building’s fire alarm devices automatically alert the fire department in an emergency;
- there are posted floor diagrams in guest rooms showing exit routes and exits;
- there are lighted exit signs directing guests toward emergency exits;
- furnishings and decorations in each room are fire-resistant;
- any fire hazards exist.
- exit pathways are free from obstructions;
- exits are clearly marked and they are not blocked or locked.

Even units in residential condominiums that have been inspected by the fire department may be unsafe for short-term vacationers unfamiliar with their surroundings.

Effects On Hospitality Industry

Legitimate hotels and legal short-term rental businesses must comply with tax, zoning, safety, and accessibility laws, as noted above. Staying in compliance with all of these laws costs money. Hotels must also spend money in order to remain compliant with fire, safety, and health codes by installing exit signs, automated sprinkler systems, fire alarm systems, backup power sources, and more.

Hotel businesses must pay payroll taxes, as well as general excise tax and transient accommodation tax, each of which illegal rentals might not be paying or might be underpaying if they even have tax licenses. The property tax rate for hotels in Honolulu is over twice as high as the rate for highly valued non-owner-occupied residences, and more than 3.5 times the rate for other residential properties.⁹⁴ These costs add to the price guests must pay to stay in legal units, making it difficult for legitimate businesses to compete with those that can cut costs by operating illegally.

Effects On Government

Property tax is not the only type of tax the counties and the state get shorted by illegal vacation rentals. They may also be avoiding General Excise Tax (GET) and Transient Accommodations Tax (TAT) payments, as well as registration and licensing fees.

The illegal operation of vacation rentals becomes an even greater concern for the state and county governments when one considers the taxes that such ventures often evade. While some rental unit owners have valid GET and/or TAT tax licenses, their lack of registration with their property's county makes it much more difficult to track how many of illegal vacation rentals are actually paying those taxes. Given the relative lack of enforcement, unit owners do not have much incentive to register, either.

In addition to the state taxes, illegal vacation rentals avoid registration fees currently associated with registering for new/renewed permits in various counties. As mentioned earlier, there are a number of other permits that legitimate tourist lodging providers need to obtain, such as liquor licenses. Permitting fees for all of these licenses bring in revenue to the agencies tasked with monitoring and ensuring visitor and public safety.

Part III – Recommendations

Changes to existing regulations are necessary to mitigate the negative effects of short-term rentals in Hawai'i. The right regulatory framework can ultimately protect hotel industry jobs, help keep the affordable housing crisis from getting worse, and benefit the community while still allowing a path forward for vacation rentals.

In order for existing regulations to be effective, they need to be supplemented with the following elements (described in further detail below):

- 1) Give the **enforcement agency** the power to
 - a) initiate investigations of potentially illegal vacation rentals;
 - b) use online ads for vacation rentals as prima facie evidence of vacation rental activity;
 - c) issue meaningful fines; and
 - d) take legal action against hosts and rental platforms like Airbnb and VRBO;
- 2) Provide a **private right of legal action** for residents and neighbors affected by illegal operations;
- 3) Require **mandatory investigation** by the enforcement agency upon receiving a complaint about an illegal vacation rental.

1. Enforcement Agency Powers

Given the prevalence of illegal vacation rentals in Hawaii, it is clear that current regulations are not working. The biggest weaknesses, however, are not in the regulations themselves, but in the lack of enforcement and the lack of enforceability. Regulators need the power to enforce the laws quickly and proactively, and they need to be able to enforce a clear standard without loopholes.

Power to initiate investigations

The enforcement body must be empowered to initiate an investigation of a property or hosting platform's unlawful activities. This will allow for proactive enforcement practices, instead of relying on a complaint driven system. This investigation could include, but is not limited to, an inspection of the subject property and/or a request for any pertinent information from the owner, business entity, or hosting platform, such as leases, business records, or other documents.

Power to use advertisements as evidence

The enforcement agency must be able to use online advertisements for vacation rentals as evidence of their operation. Using ads to quickly and efficiently sort out legal rentals from illegal ones is essential for making regulations effective at preventing the proliferation of illegal vacation rentals.

Power to issue fines

A strict and escalating system of penalties for lack of compliance is essential. Lack of compliance should subject both owners and hosting platforms to daily fines for advertising or operating illegal vacation rentals.

The enforcement body must also have the power and the resources to bring appropriate legal action against both online hosting platforms and owner/tenant hosts who fail to comply with the law. Appropriate legal action would include both injunctive and monetary relief, including civil penalties and attorneys' fees.

2. Private Right of Action

Legislation should include a provision to create a private right of action to enable anyone impacted (neighbors, tenants, owners, etc.) by illegal short-term rentals to sue the short-term rental operator and online hosting platform, as well as establish fines and the right to collect legal fees.

3. Mandatory Investigation Upon Complaint

The enforcement agency should be transparent and directly answerable to members of the public. If members of the public make a complaint to the enforcement agency about a potentially illegal vacation rental, the agency should have a duty to investigate the complaint and report back to the public on its findings. Members of the public should be able to compel the agency to act if it does not do this.

To Bear In Mind

Affordable housing is the major issue that should be kept in mind when regulating short-term rentals. The rising demand for reasonably priced homes and rental units is a crisis that needs to be addressed immediately, lest working families and their children be forced to move out of the state to survive. Commercial activity and business development should be regulated so as to align with the goal of creating sustainable jobs for Hawai'i's people. Any change in the legal status of short-term rental units should benefit local, working people.

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THE IMPACT OF SHORT TERM RENTALS ON AFFORDABLE HOUSING IN OAKLAND: A REPORT AND RECOMMENDATIONS

PREPARED BY **DESSI MIA CARBAJAL**
FOR **COMMUNITY ECONOMICS, INC**
AND **EAST BAY HOUSING ORGANIZATIONS**
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Community
Economics
a nonprofit corporation



REPORT RECOMMENDATIONS

1. The City should collect the full 14% Transient Occupancy Tax (TOT) from short-term rental businesses in Oakland with a requirement for full disclosure of all rental transactions.
2. The City should allocate 11% of TOT collected to the City's Affordable Housing Trust Fund.
3. The City should enforce existing regulations on short-term rentals such as licensing and business registration, as well as compliance with local zoning laws.
4. City Council should support SB593 (Sen. McGuire) requiring short term rental companies to make regular reports to cities and counties about which homes in each jurisdiction are renting rooms, for how many nights and how much money the homeowners are collecting from short-term rentals.
5. The City should study and consider further regulations, such as limiting the number of nights per year an entire unit may be rented.

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About Community Economics:

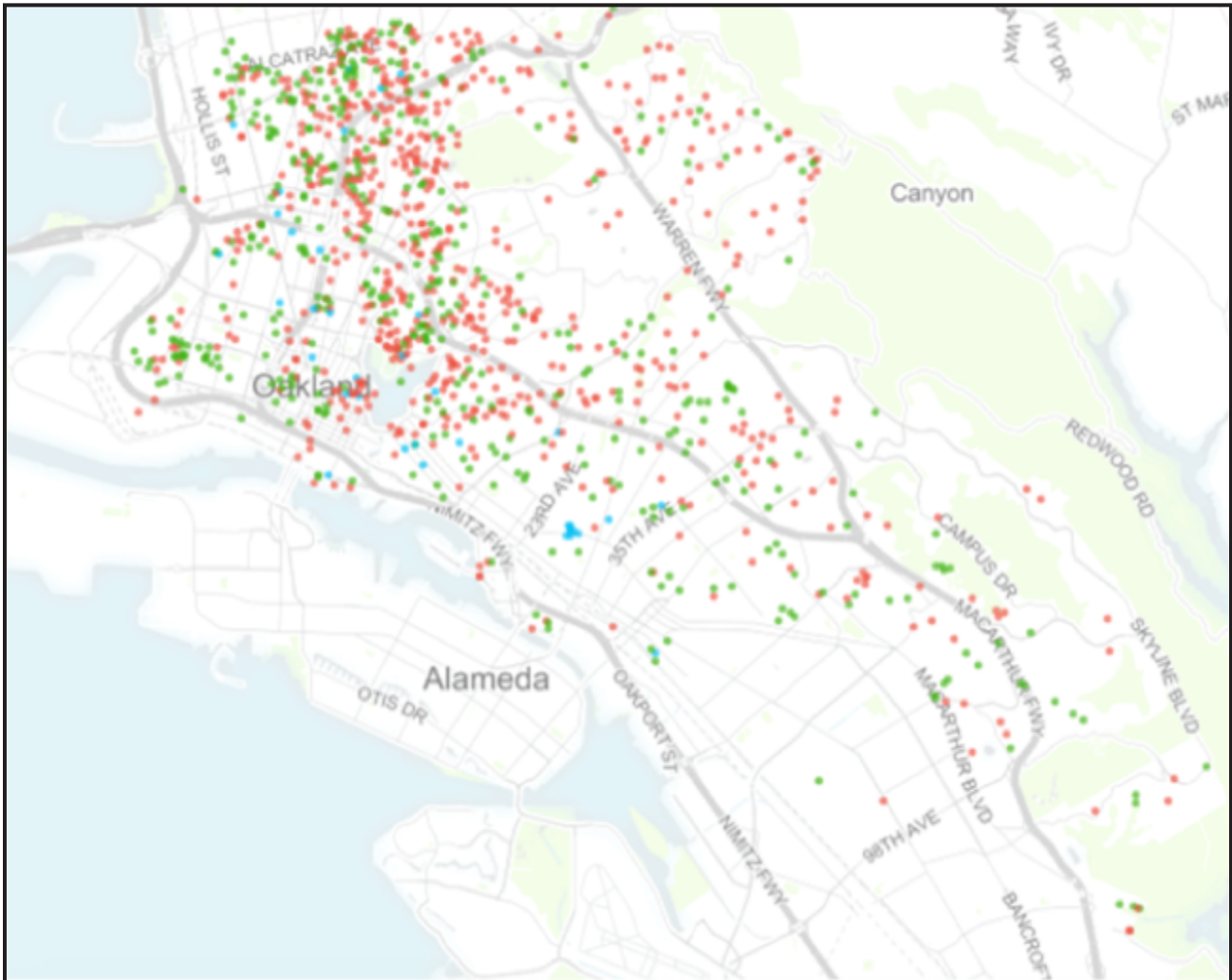
Community Economics (CEI) provides non-profit organizations and public agencies with expert technical assistance in the financing and development of affordable housing. Through that technical assistance and through involvement with local, state, and national housing policy issues, CEI has been at the forefront of the affordable housing movement, developing creative solutions and resources to meet the housing needs of low income households.



About East Bay Housing Organizations:

East Bay Housing Organizations (EBHO) is a non-profit membership organization dedicated to working with communities in Alameda and Contra Costa counties to preserve, protect and expand affordable housing opportunities for the lowest income communities through education, advocacy, organizing, and coalition building. Founded in 1984, EBHO is the leading voice for affordable housing in the East Bay.

We would like to thank **Frances Kwong** of **HKIT Architects** for donating graphic layout services.



Snapshot of Oakland Airbnb Listings from InsideAirbnb. Dots marking Entire Homes are in red, Private Rooms in green and Shared Rooms in light blue. (Source: Webscrape of Airbnb website prepared by Murray Cox, June 2015)

Background and Introduction

Short term rentals in the San Francisco Bay Area are generating major controversy because of their impact on the regional housing crisis. Led by Airbnb, by far the largest of the group, these online rental companies have burst onto the scene with thousands of listings throughout the Bay Area. Concerned that these tourist accommodations conflict with local ordinances and decrease housing availability, several local communities including San Francisco and Berkeley are considering how to regulate this rapidly growing market. Efforts to limit the number of nights a unit is available on the short term rental market, and to collect Transient Occupancy Tax have been hampered by Airbnb's refusal to disclose information about their hosts and occupancy rates.

Oakland is experiencing a rapidly growing demand for housing and space to accommodate newcomers and visitors alike. At this year's Oakland Annual Tourism Breakfast, Visit Oakland President & CEO, Alison Best, noted that Oakland's hospitality industry surpassed national averages in lodging benchmarks, including a 79% overall hotel occupancy, compared to the nation's 62% occupancy rate.¹ Short term rental companies like Airbnb and its competitors VRBO, Flipkey, and HomeAway have created a business model that relies on incentivizing landlords and tenants to transform residential units into tourist accommodations. A leader among so-called sharing economy enterprises, Airbnb connects residents looking to enter the short term rental market to tourists around the globe via their website. The essence of the company is best summed up in the following passage from a comprehensive report produced earlier this year by Los Angeles Alliance for a New Economy (LAANE):

"Airbnb sells itself as a platform akin to a community bulletin board. However, unlike most community bulletin boards, the company takes a percentage out of every transaction, has centralized control over all listings, and maintains a global scope of operations. In other words, Airbnb is a hotel company. It may be deregulated and decentralized, embedded within countless apartment buildings, bungalow courts and leafy suburban streets, but the company's primary function is to make a profit accommodating guests."²

Airbnb's sky-high valuations have placed the company among the ranks of hospitality industry giants, with a market value of

\$25.5 billion and rising³, outcompeting hotel industry giants like the Hyatt (\$8.4 billion) and Wyndham (\$9.3 billion)⁴. The company profits by charging hosts a three percent commission on each booking and charging travelers a fee of between six and twelve percent, adding up to a total yield of anywhere between nine and fifteen percent for every rental.⁵

Airbnb has made major inroads in Oakland in the past two to three years. This report analyzes its activity and impact on the scarce supply of affordable rental housing in the City. This report relies primarily on an in-depth website called Inside Airbnb, designed and maintained by an independent analyst named Murray Cox. The data-rich resource has become the go-to site for Airbnb facts and analysis. Cox includes details on Airbnb hosts, prices, listing locations, and listing types. These data sets provide valuable insight about the Airbnb landscape in the City of Oakland. This report focuses on Airbnb because of its predominance in the short term rental market. Of course, their competitors also contribute to the impact. Therefore all recommendations in the report refer to the short term rental industry as a whole.

An Airbnb snapshot on June 22, 2015 identified 1,155 Airbnb listings for rent in Oakland, with several significant attributes:

- 1. The majority of these listings (57%) are entire homes**, as opposed to "private rooms" and "shared room" listings that make up an almost negligible portion of the market. This proportion is similar to San Francisco, Los Angeles, and other major markets for which data are available, disproving the Airbnb claim that their "hosts" are mostly just people occasionally renting out a spare room to help pay their mortgage costs.⁶
- 2. On average, Oakland Airbnb units are available 237 nights out of the year.** Such high availability implies that these units probably do not have the owner present, could be violating local zoning ordinances prohibiting short term rentals in certain areas - and more importantly, are removing rental-housing stock in an extremely tight market.
- 3. The majority of Airbnb listings are located in neighborhoods in North Oakland**, which seem not coincidentally to be communities with high and rapidly increasing rents. The concentration of entire homes

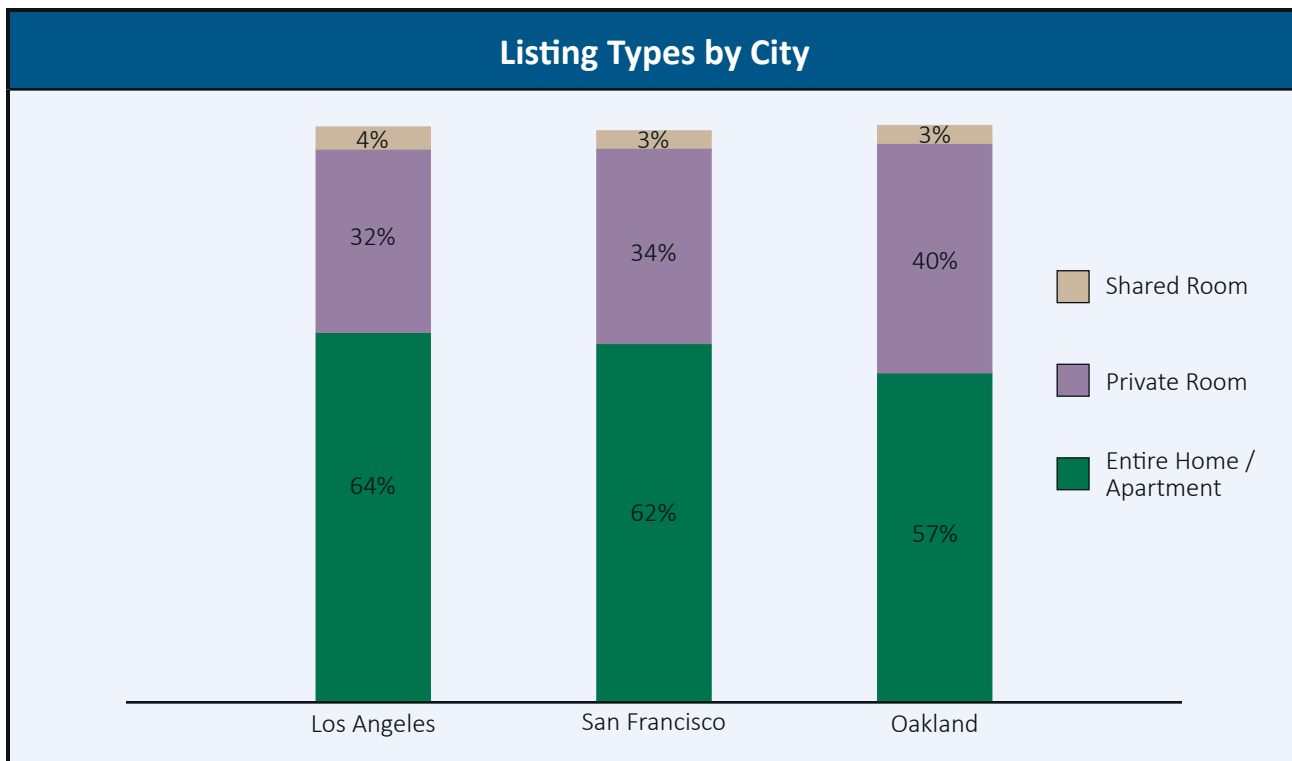


Figure 1: Distribution of Airbnb Listings that are Entire Homes, Private Rooms or Shared Rooms by City

available for short term rental through Airbnb in neighborhoods with high median rents and high-income earners questions the validity of Airbnb’s claim to help people afford rent or mortgage. By removing rental housing supply in these already tight markets, Airbnb could very well be contributing to rising housing costs in impacted neighborhoods.

Based on the methodology in the following section, we conclude from the Inside Airbnb dataset and our own analysis that the Airbnb Oakland market has generated revenues of somewhere between \$4.9 million and \$35 million between the time they came on the scene in July 2009 and July 2015. This doesn’t count the revenues from other short term rental companies like VRBO. Further, given that renters were leaving reviews in June 2015 at least three times the rate as the previous year, it can be concluded that Airbnb is generating more revenue than ever before from its Oakland market (Figure 2).

The City of Oakland collects a 14% Transient Occupancy Tax (TOT) from every person (transient) occupying any hotel/motel less than thirty (30) consecutive days.⁷ Oakland’s voter-approved Measure C in 2009 allocated 3% of TOT income to cultural arts programs, leaving 11% for the general fund. Airbnb and other short term rental businesses providing the same service as ho-

tels have not been subject to this TOT. Based on the revenue estimates above, Oakland lost a potential for several million dollars in TOT up to July of 2015 by not assessing the tax on these short term rental businesses.

We understand from the City of Oakland’s 2015-2017 proposed budget and from Airbnb’s website that Oakland’s City Administrator executed a contract with Airbnb that took effect July 1, 2015. Despite a public records request as well as requests from multiple Councilmembers, we have not been able to review that contract. We know that Airbnb is now collecting 14% TOT from their “guests” on every transaction in Oakland. From the analysis in this report, we believe their current level of business should yield between \$688,000 and \$2.32 million in TOT annually. The Oakland budget shows only \$500,000/year in the 2-year budget cycle. Working with incomplete information, we are concerned the contract does not require full payment of the TOT or full disclosure of all rental transactions.

This report demonstrates the clear nexus between private short term rentals and the limited and shrinking supply of housing stock in Oakland. We cannot afford to continue to lose both housing stock and tax revenues that could help the City address the current housing crisis.

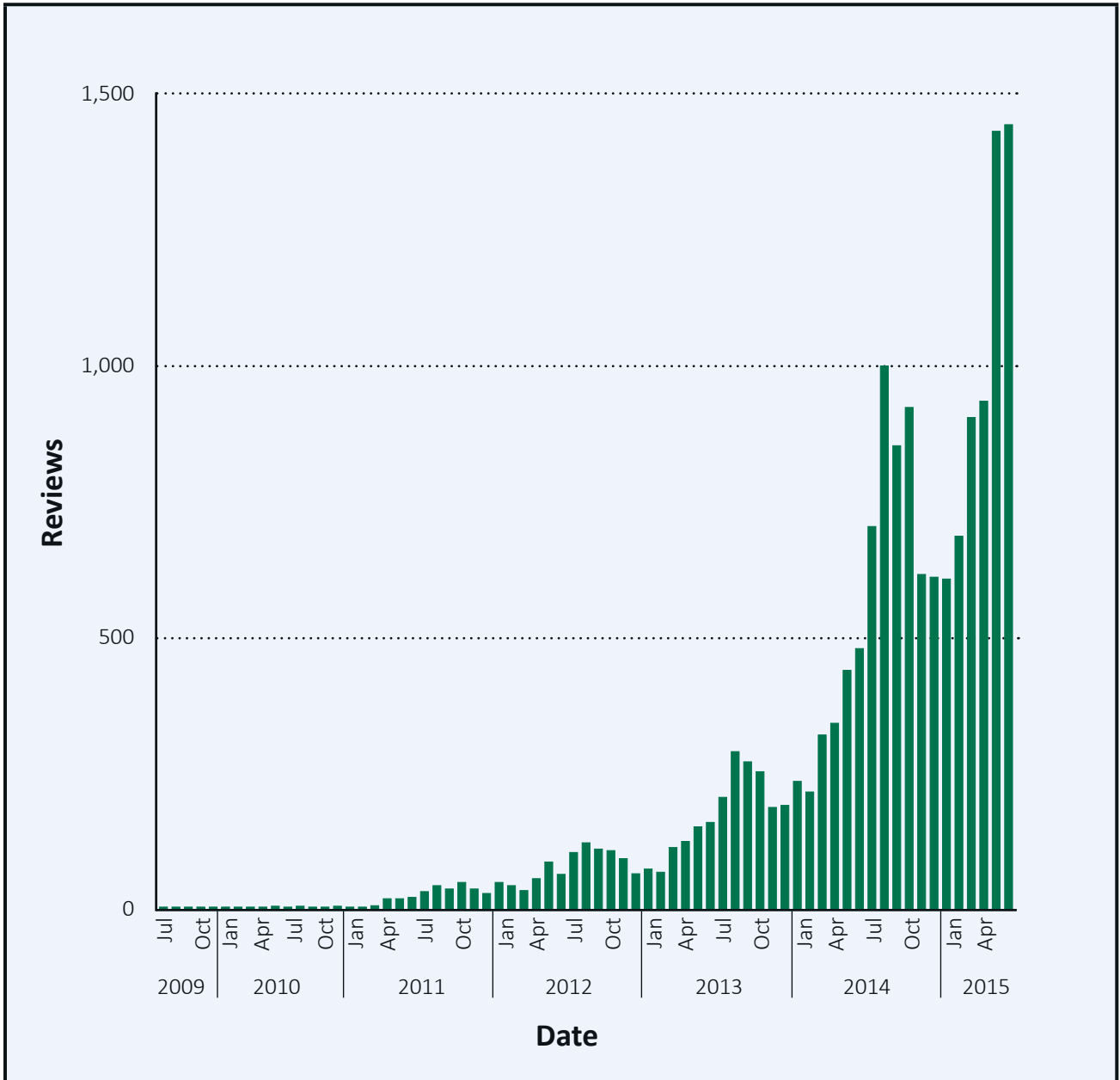


Figure 2: Monthly Airbnb Online Reviews from July 2009 through June 2015. (Note: Reviews do not equal total bookings, as not all renters leave reviews.)

Data and Terminology

Previous research indicates that while Airbnb's marketing strategy presents the company as a champion of home sharing by focusing on private and shared room listings, the reality is that the company's marketplace is dominated by entire home/apartment listings. Without regulations, this raises the stakes for the conversion of entire residential homes into private hotels. The difference between entire homes and the other two listing types that make up Airbnb's business model are as follows:

1. Entire home/apartment units (or "whole units"):

An entire home rental, in which the host is not present during the guest's stay.

2. Private rooms: An accommodation within the host's home with the expectation of some degree of privacy. Host lives in and is present in the dwelling during the guest's stay. The guest is essentially a short-term housemate.

3. Shared room: Guest and host occupy the same living space, with little expectation of privacy.

Inside Airbnb compiles data from short term rentals in cities around the world to examine how Airbnb impacts local housing markets. "Web scraping" is a term used for various data extraction methods that use software to collect information from a website. Murray Cox, creator of Inside Airbnb, has performed web scrapes on Airbnb markets in over twenty cities around the world, including ten in the United States. Data from the Oakland web-scrape was compiled on June 22, 2015.

Cox uses "high availability" and "frequently rented" metrics to assess the impact of Airbnb on residential housing. These metrics are defined as follows:

1. Highly available listings are available for short term rental on Airbnb more than 60 days per year. This is determined by a host's calendar, which shows what days or weeks their listing is available.

2. Frequently rented listings have estimated booking nights of more than 60 nights per year. To determine a listing's estimated booking nights, Inside Airbnb converts online reviews to estimated rentals.⁸ The length of stay is the determined by multiplying

the amount of estimated rentals by the minimum required stay for a given listing.⁹ For example, if Joe's "Cute cottage in Rockridge" has 22 guest reviews, Inside Airbnb assumes Joe's listing has been booked 22 times. To account for rentals without a review, Inside Airbnb increases estimated bookings by 50%, or in this case, to 33 estimated bookings. If Joe requires a minimum 3-night stay per booking, it can be assumed that at this listing has been occupied 99 nights out of the year (33 estimated bookings x 3 -night minimum required stay). Assuming the reviews are legitimate, this methodology represents a realistic value for a listing's number of nights of occupancy.¹⁰

Methodology

This report uses data from listings that have been filtered to meet the availability and rental rated metrics to inform Airbnb's impact on Oakland and to generate revenue estimations from Airbnb's market. Table 1 illustrates the three factors (number of units, estimated booking nights, and average price) used to calculate revenue generated by Airbnb between July 2014 and July 2015.

Frequently Rented Listings

There are 577 Oakland listings that meet Inside Airbnb's classification as frequently rented (estimated booking nights > 60 nights per year) and recently reviewed (reviewed in the last 6 months¹¹). This selection is also reflected on Inside Airbnb's interactive online display of the Airbnb market within the City of Oakland. The first two columns in Table 1 divide the 1155 total Oakland listings between the 557 that are frequently rented and the 598 that are not. Different estimations are then applied to each category.

Booking Nights per Year

Frequently rented listings are multiplied by the minimum and average booking nights per year in the first two columns, respectively. Since 60 nights/per year is the minimum amount of estimated booking nights required to meet the frequently rented metric, that value was used for the minimum estimate. Meanwhile, the average available nights per year for frequently rented units (247) was converted into estimated booking nights in the second column to illustrate the greatest booking potential for frequently rented listings. For the remaining 598 listings, we

Revenue Generated by Airbnb's Oakland Market			
	Minimum Estimate Adjusted for Frequently Rented Listings	Adjusted for Average Available Nights per Year for Frequently Rented Listings	Maximum Estimate Adjusted for Average Available Nights per Year for All Listings
Number of Listings (1,155 total)	557	557	1,155
Estimated Booking Nights per Year	60	247	237
Average Listing Price	\$112	\$112	\$128
Estimated Revenue for Frequently Rented Listings	\$3,743,040	\$15,408,848	
Number of Listings Not Frequently Rented (1,155 total)	598	598	
Estimated Booking Nights per Year	20	20	
Average Listing Price	\$98	\$98	
Estimated Revenue for Listings Not Frequently Rented	\$1,172,080	\$1,172,080	
Total Estimated Revenue	\$4,915,120	\$16,580,928	\$35,038,080
Total Estimated Revenue Generated by 14% TOT	\$668,116	\$2,321,329	\$4,905,331
Total Estimated Revenue Generated by 11% TOT for Affordable Housing	\$540,663	\$1,823,902	\$3,854,188

Table 1: Revenue Estimates Adjusted for Frequently Rented Listing per Year and Average Available Nights per Year

applied an estimated booking nights rate of 20 in both columns to provide a conservative estimate of their potential earnings.

The final column shows the maximum estimate based on total number of listings and the average available nights per year for all units (237). The overall average availability is just slightly less than the value for frequently rented units. According to the data, the majority of Oakland Airbnb listings (86%) are marked as highly available, which resembles the rate of listings in Los Angeles (85%), New York (82%), and San Francisco (76%).¹² These figures indicate that the majority of Airbnb hosts are looking to maxi-

mize bookings by listings their units on Airbnb with a nearly year-round availability.

Oakland's Airbnb Landscape

The analysis from this report reveals a concentration of Airbnb units in the rapidly gentrifying neighborhoods of North Oakland and around Lake Merritt. Airbnb listings in East Oakland are not as prevalent and tend to be a combination of private rooms and entire homes scattered around highland neighborhoods like Upper Dimond, Upper Laurel, Millsmont, and Redwood Heights.

Airbnb's Top Revenue Generating Neighborhoods in Oakland			
Neighborhood	Entire Homes Listed on Airbnb	Total Units Listed on Airbnb	Revenue from Entire Home Listings
Bushrod	41	75	\$151,006
Lakeside Neighborhoods (Trestle Glen, Lakeshore and Cleveland Heights)	53	66	\$246,116
Rockridge	42	58	\$208,680
Temescal	38	51	\$152,614
Longfellow	18	42	\$65,741
Adam's Point	26	42	\$78,099
Shafter	26	35	\$259,976
Total Revenue			\$1,162,232

Table 2: Airbnb's Top Revenue Generating Neighborhoods in Oakland

Meanwhile, the North Oakland census tracts where most of Oakland's Airbnb activity is taking place are some of the City's most desirable neighborhoods.

In neighborhoods like Bushrod, Rockridge, and Adams Point, median household incomes are higher than those in other parts of the city, which is consistent with short term rental trends in other cities. Moreover, entire units in Airbnb's top 10 revenue generating Oakland neighborhoods yield over a third of the total revenue for the City (see Table 2), which shows how Airbnb's profits rely heavily on entire home listings. There are 250 entire residential units, mostly clustered in Oakland's upscale neighborhoods, which show signs of being converted into Airbnb hotels. These units are available for rent 268 days per year, and have been booked 157 estimated nights annually, on average.

Conversions imply that landlords and property owners, in search of greater profits, have opted to operate traditional apartments as short term rentals. In Oakland, where landlords are subject to rent adjustment ordinances, choosing to list a unit on the Airbnb market could mean potentially greater earnings without the hassle of regulations. In neighborhoods like Temescal, nightly short term rental rates are rising alongside the rising median rents, which rose by over 20% from the beginning to the end of 2014.¹³

With average nightly rates of \$123 for Airbnb entire home listings in Temescal, a landlord could earn up \$3,690 a month at full occupancy, which is 14% higher than the average monthly rent for the area in June 2015.¹⁴ Airbnb entire units in Oakland's highest yielding areas already make up the majority of the listings, and generate a significant portion of the revenue. If these hosts were the "primary residents" of the homes they're listing and are just looking to earn extra money while vacationing, as Airbnb repeatedly claims¹⁵, revenues and availability for these entire home listings should not be so high.

North Oakland Under Seige

Oakland's northern neighborhoods have been disproportionately impacted by private short term rentals. Three separate snapshots of Airbnb listings in Oakland at the neighborhood level reveal that North Oakland has the greatest number of listings for a given month, weekend, and day.¹⁶ According to the data, the presence of entire units is overwhelmingly concentrated in this part of town.

Oakland's Bushrod neighborhood makes up two small census tracts in North Oakland, but has a cluster of 75 units listed on Airbnb with over half being entire homes. Geographically, the

area is bound by Woolsey Street on the North, Telegraph Avenue to the East, and MLK Jr. Way to the West. Airbnb data for Oakland show \$131 as the average nightly rate for an entire home/apartment in the Bushrod precinct.

It has been observed that in cities including New York and Los Angeles, short term rentals are most prominent in neighborhoods where the average median household income is 20% higher than that of the entire city.¹⁸ In the case of New York City, rapidly gentrifying neighborhoods like ones in the Lower East Side of Manhattan and Williamsburg and Greenpoint in Brooklyn, had the greatest share of private short term rentals in the city.¹⁹ This case closely resembles the Airbnb landscape in Oakland. According to UC Berkeley's Urban Displacement Project, Airbnb's top five revenue generating neighborhoods in Oakland are also in the advanced stages of gentrification,²⁰ with exception of the Piedmont Avenue tract, which has historically been a moderate to high income area. Short term rental conversions further tighten the supply of housing in these areas, resulting in even greater rent spikes and barring low-income renters from moving into the

neighborhoods. Figure 3 shows rent increases in Bushrod over the last four years including a 71% increase in just the last 18 months. Airbnb listings in the area began increasing at a steady rate around April of 2014.

While we do not know the exact relationship between Airbnb density and median rents, it is telling that high Airbnb density overlaps with lower rental vacancy. Rental vacancy rates for the Bushrod, Adams Point, and Temescal census tracts are among the lowest in the city.²¹ Just as interesting is the amount of revenue being generated in these North Oakland neighborhoods. Analysis on just entire home listings in Airbnb's highest revenue generating neighborhoods shows that roughly \$1.2 million, a third of the total revenue from July 2014 to July 2015, came from 244 entire home accommodations (see Table 2). In order to maintain inclusivity and avoid displacement in neighborhoods with declining vacancy rates, and consequently rising rents, the City of Oakland must ensure that short term rentals do not remove rental units from these markets.

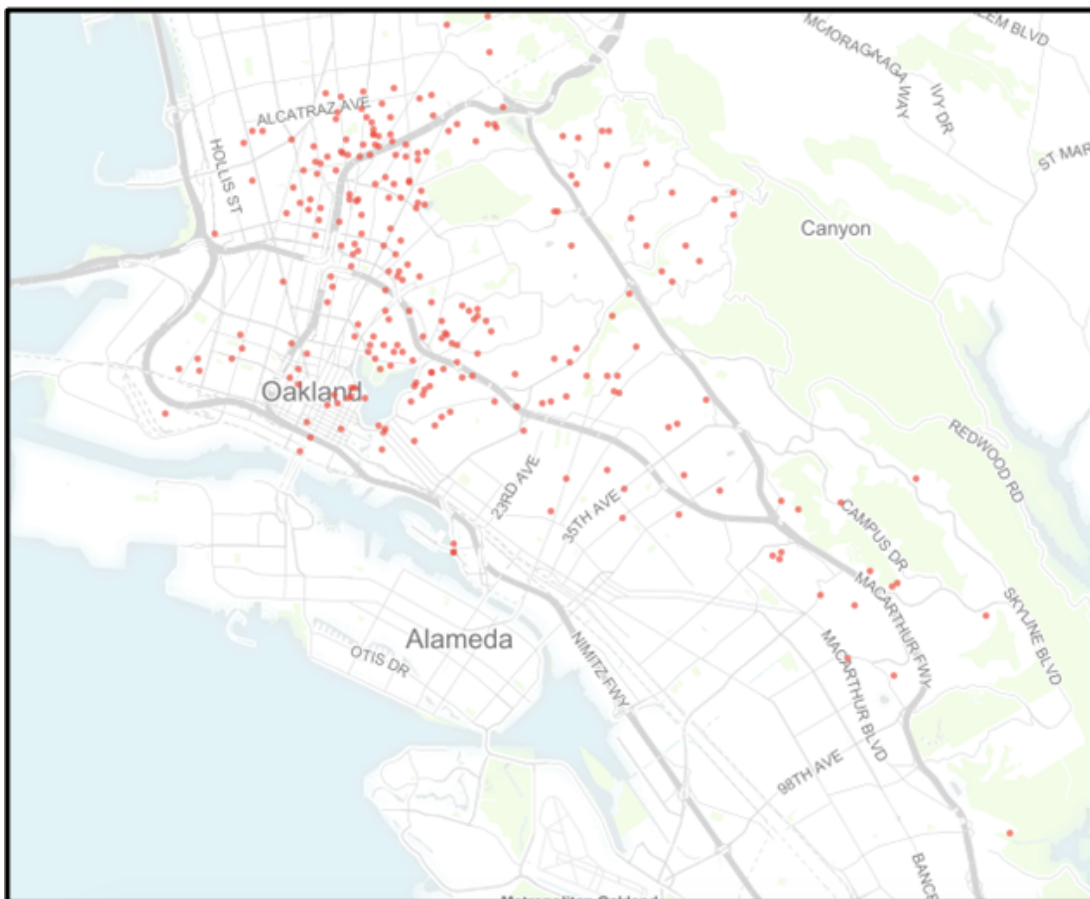


Figure 3: Snapshot of the Concentration of Airbnb Listings in North Oakland meeting Inside Airbnb's "high availability" and "frequently rented" metrics. (Source: Webscrape of Airbnb website prepared by Murray Cox, June 2015)

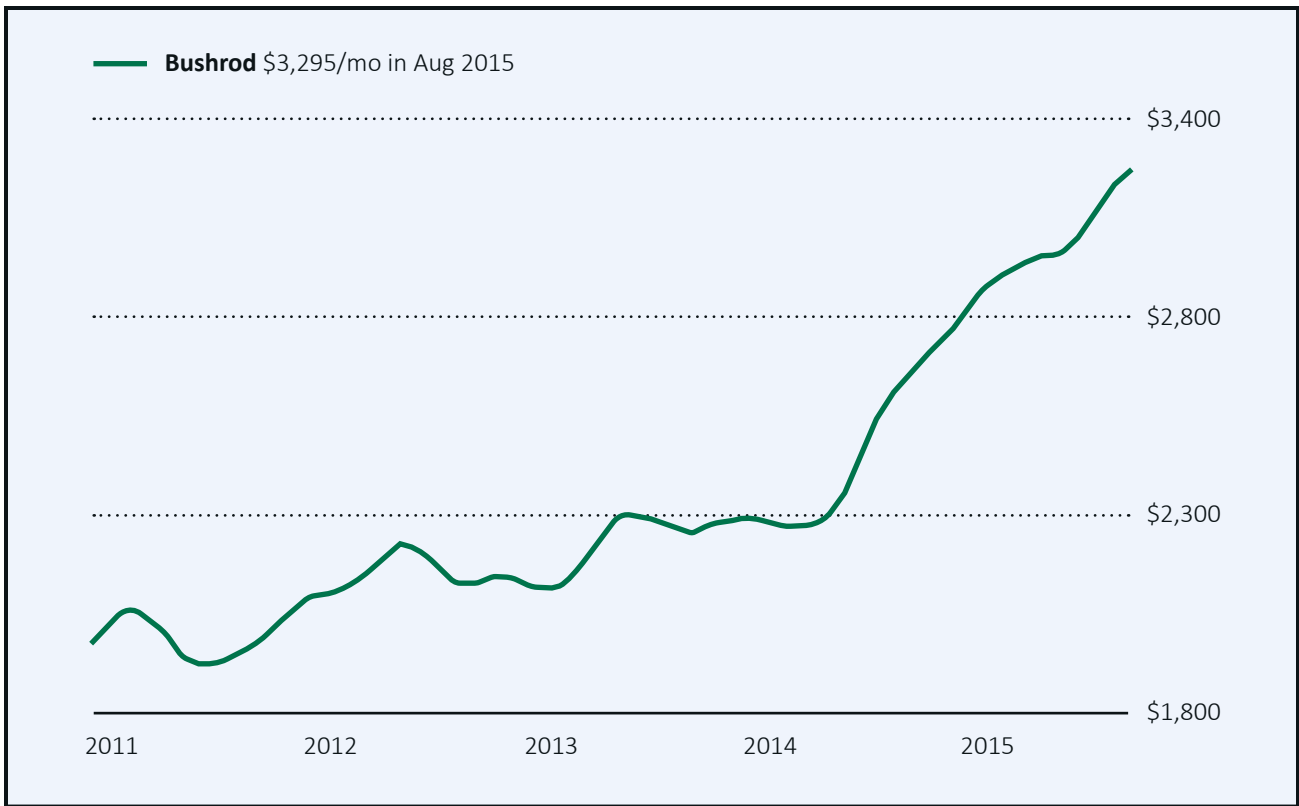


Figure 4: Rent Price Increases for 1Bd/1Ba Units in the Bushrod neighborhood since 2011. (Source: Zillow)

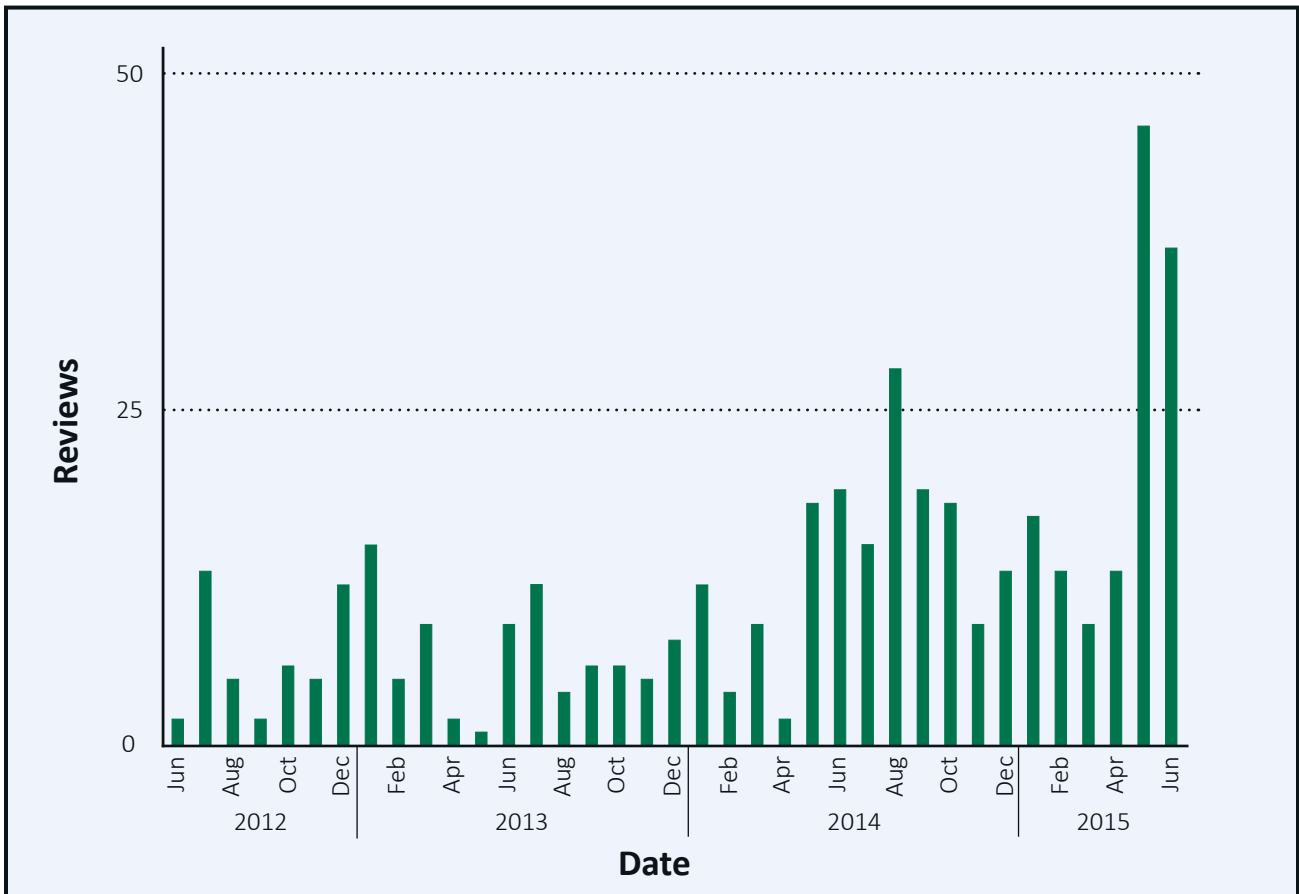


Figure 5: Airbnb Reviews for Entire Home Listings in Bushrod, from June 2012 to June 2015. (Source: Webscrape of Airbnb website prepared by Murray Cox, June 2015)

Oakland's Affordability Crisis

Oakland rents have risen dramatically in the last few years, making it the 5th most expensive rental market in the country. The average price for a 1 Bedroom apartment rental has risen to \$2160.²² Oakland's Housing Element states that the City will need to build at least 14,765 new housing units between January 2014 and June 2023 in order to meet its fair share of housing needed in the region based on the Association of Bay Area Governments' calculations of Regional Housing Needs Allocation (RHNA). Forty six percent of the nearly 1,554 units the city would need to build annually to meet its housing production goals in the next nine years should be affordable to very low-, low-, and moderate-income households. However, despite the regional urgency to address the housing crisis, state and federal funding for affordable housing has plummeted over the last several decades. With the dissolution of state Redevelopment funds, the exhaustion of the State's Prop 1C funds, and major cuts to federal funding for affordable housing, there are fewer resources available to meet the growing need. If the City is serious about reaching its housing production requirements, then Oakland needs to get resourceful about generating the critical funds for affordable housing.

The improbability of the City being able to meet its RHNA goals is even greater if housing units are being taken off the market to serve tourists.²³ This is one reason why Airbnb's presence in cities with housing shortages has become so problematic. Airbnb' creates "a platform that allows landlords to pit tourist dollars against renter dollars."²⁴ Cities are left to find ways to regulate the short term rental market to protect the shrinking supply of housing and raise revenues to invest in the development of new affordable housing.

Current Laws for Hotels and Homeowners

In Oakland, as in other cities, TOT requires that every person (transient) occupying any hotel/motel for any duration of time up to 30 consecutive days pay the tax to the operator at the time the rent for occupancy is paid. The rate is 14% of the rent charged. Hotel/motel operators are responsible for collecting and remitting TOT to the City's Tax Administrator's office and reporting rates and occupancy levels.

The City of Oakland's Planning Code restricts short term rentals and other transient habitation commercial activities to seven days.²⁵ Lodgings greater than seven days are subject to a different of regulations. However, the City of Oakland does not actively

monitor transient habitation commercial activities to ensure that rent-controlled properties are not transformed into permanent short term rentals. While the City does have zoning regulations that restrict hotel/motels from operating in certain residential areas, it is not clear if the City has been monitoring violations of this provision.

Before legitimately entering the short-term rental market, a rental property owner would have to go through several steps in order to obtain a business license from the City of Oakland. They would need to pay a \$61 registration fee with a business license application. The host would then be responsible for paying an annual tax (\$1.80 per \$1,000 for Hotel/Motel businesses) to the City based on the gross earnings in addition to the TOT mentioned above.

According to the City's Finance Department's website, a potential host would first need to obtain a zoning clearance from the Zoning Division, in order to verify that operating a short term rental is legal for a specified area. Scott Miller, Zoning Manager, noted that the City of Oakland's Planning Code prohibits short term rentals and other transient habitation commercial activities of fewer than seven days in most residential zones.²⁶ Lodgings greater than seven days are subject to different regulations. However, the City does not actively monitor transient habitation commercial activities to ensure that properties are not transformed into permanent short term rentals.

How Other Cities are Addressing the Impacts of Short Term Rentals

Cities are tackling the explosion of the short term rental industry in a couple of ways. Some, like San Francisco, are trying to regulate the market with restrictions on how many nights a unit can be rented, requiring a host to be present, and other restrictions. Los Angeles, San Jose, Santa Monica, and several others are securing revenues generated by Transient Occupancy Tax. A couple of those cities – Los Angeles and Portland – are citing the nexus between the short term rental businesses and the housing affordability crisis in efforts to designate TOT revenues collected to their affordable housing funds.

Airbnb is using its financial and political muscle to fight all efforts at regulation. We just watched its \$8 million success in San Francisco where lobbyists defeated Proposition F's 75 nights per year rental limits and requirements for regular revenue reporting. Airbnb has been particularly adamant about not disclosing

the information required of all hotels about actual occupancy rates, addresses, hosts and revenues. The company insists that it is not subject to TOT and should not be treated as are all other businesses providing transient accommodation. In some cases, they execute contracts with cities that call for payments based on their estimates of TOT, rather than paying the actual TOT. The LAANE report describes how Airbnb uses these contracts as a way to legitimate their business model and their argument that they are not subject to the laws and payments required of hotels. As the LAANE report notes,

“Municipalities have explored a range of regulatory options to address the proliferation of illegal hotels in residential neighborhoods. Consequently every municipality represents a proving ground for Airbnb. Each time a city normalizes the company’s activities, Airbnb becomes a more stable, secure investment.”²⁷

The Airbnb website lists approximately 20 cities, counties, and states around the world where it is collecting some form of TOT from its guests. Missing from this list is the key information about how much of that TOT is actually being remitted to the municipality. As we have shown above, we believe 14% of Airbnb annual revenues in Oakland is somewhere between \$1 million and \$2 million. If in fact the undisclosed Oakland contract is like the ones described in the LAANE report, with Airbnb paying a TOT-alternative payment rather than the actual TOT per short term rental, then Oakland is losing \$500,000 to \$1.5 million per year.

The lack of a requirement for short term rental companies to disclose their occupancy information makes it nearly impossible to enforce regulations. Cities that are experimenting with restrictions on numbers of nights a unit can be rented or proof that hosts are present are finding that the costs of attempted enforcement are higher than whatever they are collecting in payments under their contracts.

Airbnb has a huge stake in maintaining the anonymity of its hosts and listing locations. By not sharing information with municipalities, Airbnb is able to bypass any real enforcement to verify the amount of taxes it is remitting, compliance with local health and safety standards, and whether or not hosts are adhering to limits on nightly rentals already in place. Even before the ballot initiative, San Francisco lawmakers were calling the existing law²⁸ “unenforceable,” claiming that it has no teeth because the city’s Planning Commission simply did not have a method to determine if hosts were present or not present.²⁹

Los Angeles, California

The City of Los Angeles has one of the largest Airbnb markets in the world, with over an estimated 11,400 Airbnb listings in 2014. Los Angeles is also experiencing a tremendous housing crisis and cannot afford to lose units. The City’s most recent analysis indicates the need for 5,300 new units/year in order to keep up with demand. In his 2015 State of the City address, Mayor Eric Garcetti committed to negotiating a TOT contract with Airbnb and injecting \$5 million from those revenues into the City’s Affordable Housing Trust Fund.³⁰ The Los Angeles City Council approved the \$5 million allocation for the Affordable Housing Trust Fund, for the 2015-16 Fiscal Year.³¹ However, the Council stalled this summer on finalizing the contract with Airbnb as they explore regulatory options, so the disbursement of the housing funds is pending the final contract.

Portland, Oregon

Portland was one of the first cities to negotiate an agreement with Airbnb, creating a special “Accessory Short Term Rental” category in its planning code just to accommodate Airbnb rentals. However, Airbnb and its hosts have not complied with the regulations the company itself promoted, and as has become the norm, the company’s refusal to disclose basic information about host addresses and occupancy has stymied Portland’s efforts to enforce its regulations.³² In 2014, City Council approved a TOT agreement with Airbnb and had preliminary discussions about allocating funds to affordable housing.³³ Two City Commissioners plan to present the measure this winter to allocate their full 6% TOT collected to affordable housing.³⁴ In light of a recent mayoral declaration of a state of emergency for housing and homelessness, City Commissioners are confident the measure will pass.

California State Legislation

A pending bill would provide significant assistance to local governments in California in their efforts to regulate short term rental businesses. SB593 (McGuire) would require all “electronic hosting platforms” such as Airbnb to regularly report the addresses of, nights of use at, and revenues obtained by residences that were leased through the platform. The bill would prohibit these short term rental businesses from offering properties in locations prohibited by local ordinance, and would authorize municipalities to establish fines for violation of this provision. And it would require the business to collect and remit any applicable TOT requested by the municipality. The bill was introduced earlier this year and is currently a 2-year bill. We encourage Oakland to support this bill as it proceeds through the Legislature in 2016.

Recommendations

Airbnb's role in depleting the available housing stock in some of Oakland's most desirable neighborhoods makes it harder for long-term residents and newcomers to find adequate housing near public transportation, job centers, and other valuable neighborhood amenities. By applying funds generated by Transient Occupancy Tax on Airbnb's Oakland bookings to affordable housing, the City of Oakland would help mitigate the adverse effects of the company's presence in City while also generating the necessary funds to meet development goals set out in the Housing Element.

- 1. The City should collect the full 14% TOT from short-term rental businesses in Oakland with a requirement for full disclosure of all rental transactions.** First, City Council should demand disclosure of the terms of the current contract. Upon renewal, the contract should ensure that actual TOT at the full 14% rate, not merely a TOT-alternative payment, is remitted to the City. Airbnb and its competitors must be required to disclose information on rates, occupancy, addresses, like any other hotel business subject to TOT.
- 2. The City should allocate 11% of TOT collected to the City's Housing Trust Fund.** The housing crisis has been well documented. This report demonstrates the clear nexus between the growth in short term rentals and the removal of at least several hundred units from the City's rental housing stock. If the City is going to come anywhere close to producing its RHNA goals, we cannot afford to pass up any opportunity for resources to put toward meeting those production goals.
- 3. The City should enforce existing regulations on short-term rentals such as licensing and business registration, as well as compliance with local zoning laws.** As a start, the City should not be intimidated by Airbnb into failing to enforce its own regulations. Hosts should be required to obtain the licenses and pay the business taxes required of all businesses in Oakland. The City should demand the information from Airbnb necessary to enforce existing laws.
- 4. City Council should support SB593 requiring short term rental companies to make regular reports to cities and counties about short term rentals, for how many nights and how much money hosts are collecting.** The enactment of this law is critical to local government's ability to create and enforce their own regulations and accurate TOT collection.
- 5. The City should study and consider further regulations, such as limiting the number of nights/year an entire unit may be rented.** City staff should conduct research into existing and planned local regulatory efforts in other California cities to devise regulations that would make in Oakland. This is much more likely to be feasible after passage of the SB593.

Endnotes

¹ “Oakland Tourism Has Record Breaking Year.” *Visit Oakland*.

N.p., 6 May 2015. Web. 30 Oct. 2015.

² Samaan, Roy. *Airbnb, Rising Rent, and the Housing Crisis in Los Angeles*. LAANE, A New Economy for All, 2015. Web. 30 Oct. 2015.

³ Demos, Telis. “Airbnb Raises \$1.5 Billion in One of Largest Private Placements.” *Wall Street Journal*, 27 June 2015. *Wall Street Journal*. Web. 2 Nov. 2015.

⁴ Samaan, *Airbnb in Los Angeles*.

⁵ According to the company, AirBnB’s guest service fee commission depends on the subtotal of the reservation: “It’s a steady decline from 12 to 6 percent as the reservation amount increases, so guests can save money when booking large reservations.” The company is not clear on whether this refers to the dollar value, length of stay, or some other factor.

⁶ San Francisco data from Slee, Tom. “The Shape of AirBnB’s Business.” *Whimsley*. N.p., 26 May 2014. Web. 2 Nov. 2015. Los Angeles data from Samaan, Roy. *Airbnb, Rising Rent, and the Housing Crisis in Los Angeles*. LAANE, A New Economy for All, 2015. Web. 30 Oct. 2015. Oakland data from Inside AirBnB Oakland data set.

⁷ City of Oakland Transient Occupancy Tax Requirements.” *City of Oakland Finance and Management Agency/ Revenue Division*. N.p., n.d. Web. 2 Nov. 2015.

⁸ According to the Inside Airbnb website, “Inside Airbnb’s “San Francisco Model” uses a modified methodology as follows:

1. A Review Rate of 50% is used to convert reviews to estimated bookings.
 - Alex Marqusee uses a review rate of 72%, however this is attributed to an unreliable source: Airbnb’s CEO and co-founder Brian Chesky.
 - The Budget and Legislative Analyst’s Office (page 49) also use a value 72% for their review rate, and in addition, introduce a higher impact model using a review rate of 30.5%- based on comparing public data of reviews to the The New York Attorney General’s report on Airbnb released in October 2014.
 - Inside Airbnb analysis found that using a review rate 30.5% is more fact based, however probably not conservative enough, given that the Budget and Legislative Analyst’s Office did not take into account missing reviews because of deleted listings. A review rate of 72% is unverifiable - therefore 50% was chosen as it sits almost

exactly between 72% and 30.5%.

2. An average length of stay is configured for each city, and this, multiplied by the estimated bookings for each listing over a period gives the occupancy rate
 - Where statements have been made about the average length of stay of Airbnb guests for a city, this was used.
 - For example, Airbnb reported 5.5 nights as the average length of stay for guests using Airbnb in San Francisco.
 - Where no public statements were made about average stays, a value of 3 nights per booking was used.
 - If a listing has a higher minimum nights value than the average length of stay, the minimum nights value was used instead.
 - The occupancy rate was capped at 70%- a relatively high, but reasonable number for a highly occupied “hotel”.
 - This controls for situations where an Airbnb host might change their minimum nights during the high season, without the review data having a chance to catch up; or for a listing with a very high review rate.
 - It also ensures that the occupancy model remains conservative.
3. Number of nights booked or available per year for the high availability and frequently rented metrics and filters were generally aligned with a city’s short term rental laws designed to protect residential housing.”

⁹ Ibid

¹⁰ The InsideAirBnB Oakland web scrape includes every review ever given for listings within the City of Oakland since July 2009. One of the drawbacks is that the data does not separate estimated bookings by year- meaning they account for every review ever made in the history of a listing when determining EBN. This obscurity makes it difficult for this report to provide an annual range for revenue estimations based on EBN. Luckily, Inside AirBnB provides a list of individual transactions by listings, which help indicate that the bulk of AirBnB activity in Oakland taking place between 2014 and mid-2015. For instance, there are a total of 16,300 traceable transactions as of June 22, 2015. Nearly two thirds (10,852) of these transactions took place between July 2014 to July of 2015, which shows Oakland’s rapidly growing short term rental market. In addition, eighty percent (917) of the 1,155 identified listings, were last reviewed between July 2014 and July 2015. Combined these two factors suggest that Oakland AirBnB listings are being booked more frequently and recently than they have, by and large, been in previous years.

¹¹ As a reminder, Inside AirBnB’s estimated booking nights also includes reviews from before the mid-2014 to mid-2015 time range. However, because 557 is much lower value than the actu-

al 917 listings that were reviewed between 7/2014-7/2015 and 66% of all reviews occurred within this time range, any over-reporting for estimated booking nights is cancelled out by evidence of overwhelming AirBnB activity in the last year.

¹² Data for San Francisco's highly available AirBnB listings may reflect recent policies on nightly caps for short term rentals, which could explain lower rates of availability.

¹³ Accessed on <http://www.zillow.com/temescal-oakland-ca/home-values/>

¹⁴ Ibid

¹⁵ Accessed on <http://publicpolicy.airbnb.com/new-york-airbnb-community/>

¹⁶ Refer to Appendix for cross-neighborhood analysis chart

¹⁸ For Los Angeles, information accessed from LAANE study, for NYC, information accessed from State Attorney's study

¹⁹ "Airbnb in the City." Office of New York State Attorney General. October 2014. Accessed on <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>

²⁰ Accessed on <http://www.urbandisplacement.org/map>

²¹ 2015-2023 Oakland Housing Element. <http://www2.oakland-net.com/oakca1/groups/ceda/documents/report/oak050615.pdf>

²² Zillow Oakland Rentals Price Index <http://www.zillow.com/oakland-ca/home-values/>

²³ "Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California." *Department of Housing and Community Development*. October, 2014. Accessed at <http://www.hcd.ca.gov/housing-policy-development/docs/finalaffordablehousingcost-studyreport-with-coverv2.pdf>

²⁴ Samaan, *Airbnb in Los Angeles*. 16

²⁵ Oakland Planning Code. (Ord. No. 13172, § 3(Exh. A), 7-2-2013; Ord. No. 13064, § 2(Exh. A), 3-15-2011; Ord. No.12939, § 4(Exh. A), 6-16-2009)

²⁶ Conversation with Scott Miller, Zoning Manager for the City of Oakland, on November 17, 2015

²⁷ Furthermore, the LAANE report explains, "AirBnB's financial future will be determined in large part by the company's ability to convince municipal authorities to grant the company legitimacy by establishing a regulatory framework around the company's operations. When we examine the experiences that city regulators have had with AirBnB three themes emerge: 1. AirBnB will offer to remit fees equivalent to local tax rates to cities in exchange for legalization. These fees are not negotiated into any public code, but instead are determined by a contract negotiated between the company and cities in private. AirBnB will not share information allowing cities to verify the accuracy of the payments.⁹⁷ 2. As evidenced in Portland, Oregon, AirBnB's flagship "Shared City," AirBnB will not participate in the enforcement of the model legislation it provided to the City, nor will the company monitor its listings for compliance.⁹⁸ 3. The majority of AirBnB hosts will not comply with any licensing or permitting systems.⁹⁹ AirBnB will not modify its listings to require hosts to display their permit numbers, nor will it voluntarily turn over the addresses of unlicensed hosts to regulatory agencies. This refusal extends to providing addresses so that cities can conduct basic safety inspections to ensure the health and well being of AirBnB's own community of hosts and guests.¹⁰⁰"

²⁸ Under the current law, residents in San Francisco are allowed to rent out their properties an unlimited amount of days if the host is present, while there is a 90-day cap on un-hosted rentals.

²⁹ Steinmetz, Katy. "San Francisco Lawmakers Propose Tougher Restrictions on Airbnb Rentals." *TIME*. Web. 6 Nov. 2015. Accessed at <http://time.com/3757094/san-francisco-airbnb-law/>

³⁰ Huang, Josie. "Los Angeles City Council panel calls for comprehensive plan to regulate short-term rental sites like Airbnb." *Southern California Public Radio*. 4 Aug. 2015. Web. Accessed on <http://www.scp.org/news/2015/08/04/53542/la-panel-puts-off-plan-to-tax-airbnb/>

³¹ Conversation with Ashley Atkinson, Planning and Housing Specialist for the Office of Mayor Eric Garcetti, on June 19, 2015

³² Njus, Elliot "Airbnb, Acting as Portland's Lodging Tax Collector, Won't Hand over User Names or Addresses." *Oregonlive*. The Portland Oregonian, 21 July 2014. Web.

³³ Conversation with Office of Commissioner Dan Saltzman on April 3, 2015.

³⁴ Conversation with Office of Commissioner Dan Saltzman on October 6, 2015.

