



# HAWAII APPLESEED

## CENTER FOR LAW & ECONOMIC JUSTICE

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### BILL 89 MOST PROGRESSIVE VACATION RENTAL REGULATION IN U.S.

After three decades of illegal proliferation of short-term rentals on O‘ahu driving up housing costs for everyday residents, the city finally has the comprehensive tool kit it needs to bring the situation under control and balance the needs of the tourism industry with the needs of residents and the community.

On June 8, 2019, the City Council of the City & County of Honolulu unanimously approved comprehensive short-term rental (STR) industry regulation in the form of Bills 85 & 89, 2019. In the words of State Senator Gil Rivi re, who testified in support of the bills, O‘ahu’s short-term rental problem has reached “epic proportions.”

He’s right: Of the 30,000-or-so STRs across the state, O‘ahu boasts nearly 10,000. Recent reports indicate that the industry is growing at a rate nearly of 30 percent annually. While this may be welcome news for vacation rental operators, who reap profits approximately three-and-a-half times greater than those provided by long-term rentals, the situation has left most O‘ahu residents facing the unwelcome prospect of ever-higher housing costs.

“Appleseed congratulates the Honolulu City Council for passing this landmark legislation to regulate the vacation rental industry,” said Gavin Thornton, Appleseed’s Executive Director. “Bill 89, which will be signed by Mayor Kirk Caldwell pending legal review, is the most progressive law of its kind in the country, and Appleseed is proud to have played an integral role in its development.”

By restricting the supply of long-term housing, the proliferation of vacation rentals drives up housing prices both for renters and for homebuyers. A number of rigorous academic studies have measured this effect, and the results are striking: one group of experts found that the median annual New York City rent increased by nearly \$400 from 2015 to 2017 due to Airbnb’s expansion in the city, while another concluded that the growth in short-term renting through Airbnb—not to mention other “hosting platforms”—is responsible for about one-fifth of the average annual rent increase across the country. In the state with the nation’s least affordable housing, this trend is particularly alarming.

“The stakes are high, and with the passage of Bill 89, the council recognized the necessity of preserving O‘ahu’s housing stock for local residents,” continued Thornton. “As recommended by Appleseed, the

legislation preserves the island's longstanding ban on 'un-hosted' or 'whole-home' rentals, in which investors—typically non-residents—purchase homes for the sole purpose of renting them out on the short-term market. These operations are, for all intents and purposes, illicit hotels.”

Appropriately, Bill 89 differentiates between whole-home rentals and true “home shares,” in which property owners living on-site rent out living quarters to visitors. The bill caps new home shares (termed “bed-and-breakfast homes” in the legislation, although they are not traditional B&Bs) at one half of one percent of the total number of dwelling units on the island. This cap, another Appleseed recommendation, represents a vast improvement from previous drafts of the bill, which contemplated double the number of permits—far too many based on the housing needs and quality-of-life concerns of O‘ahu residents.

Key to any sound regulation—and, crucially, lacking from the City and County’s previous regulatory efforts—are effective enforcement strategies. The vast majority of STRs on O‘ahu operate in violation of the law (new permits have not been issued since 1989, when the city imposed a moratorium for many of the same reasons cited in the new legislation). However, STR operators find it all too easy to evade the law.

Historically, enforcement actions have relied on inefficient, one-off investigations by city officials, who are frequently stymied by their inability to identify the occupants of a given property or obtain relevant documentation. With these problems in mind, Bill 89 embraces a multi-pronged enforcement approach, much of which is based on a recent Appleseed report, “Priced Out of Paradise.”

The cornerstones of Bill 89’s enforcement provisions are a pair of regulations targeting hosting platforms like Airbnb, VRBO, HomeAway and FlipKey. The first is **platform liability**. Under platform liability, enforcement officials hold STR platforms accountable for facilitating and profiting from illegal transactions. Holding platforms liable limits the need for resource-intensive investigations of individual “hosts.” Rather than stand watch outside a suspected illegal STR, waiting for a guest to walk through the front door, officials can simply scroll through online listings, identify unregistered units, and issue citations directly to the corporate entities promoting them.

By targeting illegal STRs as they enter the market, platform liability streamlines the regulatory process and allows for effective and efficient enforcement by agencies with limited resources. Platform liability has already been instituted in several jurisdictions in California, with great success. In the eight months after the policy went into effect, the number of STR listings in San Francisco decreased by almost 70 percent, from approximately 10,000 to 3,500.

Complementing platform liability is **platform transparency**. Currently, hosting platforms effectively shield illegal activity from scrutiny. Information such as the addresses of unlawful units and the identities of their operators is in the possession of the platforms, but the platforms have categorically refused to share this information with the city, hindering enforcement of the law. Bill 89 promises to end this practice by requiring the platforms to submit monthly reports on all units operating on the island.

“The platform liability and platform transparency provisions included in Bill 89 are the product of exhaustive research by Appleseed and other advocates and are tailored to comply with the most recent court rulings in this area of the law,” Thornton said.

The bill also includes a number of other enforcement provisions recommended by a variety of stakeholders—Appleseed, community groups and the Department of Planning and Permitting (DPP), to name a few—all of which aim to give teeth to the new law:

**Neighbor empowerment:** Oftentimes, affected neighbors constitute an enforcement agency’s greatest allies in the fight against illegal proliferation. Those who have seen their own quality of life decline because of a vacation rental takeover in their neighborhood are generally eager to help get the problem in check. As recommended by Appleseed, Bill 89 establishes public hotlines and participatory complaint and adjudication process geared towards involving neighbors in enforcement efforts.

“By soliciting help from the community, officials ease their own enforcement burden and make sure that the concerns of residents are taken into account,” said Thornton.

**Geographic distribution:** Over the course of countless hours of oral testimony, many residents spoke to the concern that vacation rentals disproportionately burden neighborhoods in preferred tourist destinations. The council responded to this concern by incorporating into Bill 89 a provision establishing short-term rental quotas for each residential area.

“By requiring the diversification of permits on the neighborhood level, this provision will ensure that permits are distributed equitably and that high concentrations of units do not plague particular communities,” said Thornton. “Good policy requires limits not only on the overall number of permitted units in a city, county, or district, but also limits on the number of permitted units in sub-areas.”

**Advertising restrictions:** Representatives of the DPP indicated that the department’s enforcement efforts would be significantly aided by a regulation prohibiting not only short-term rentals themselves, but also advertisements for those rentals. Accordingly, Bill 89 contains an expansive “advertising” provision prohibiting all forms of solicitation for unlawful STRs, including verbal and electronic communications. This provision will further aid the DPP in cutting off illegal activity at its source.

“If enforced vigorously, Bill 89 has the potential to return thousands of desperately-needed units to O‘ahu’s long-term housing market,” said Thornton. “Appleseed applauds the City Council and City Administration for the commitment it has demonstrated to preserving our communities.”

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