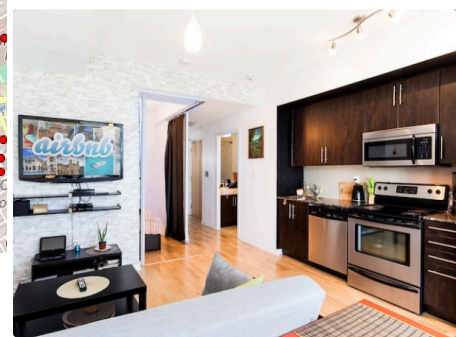
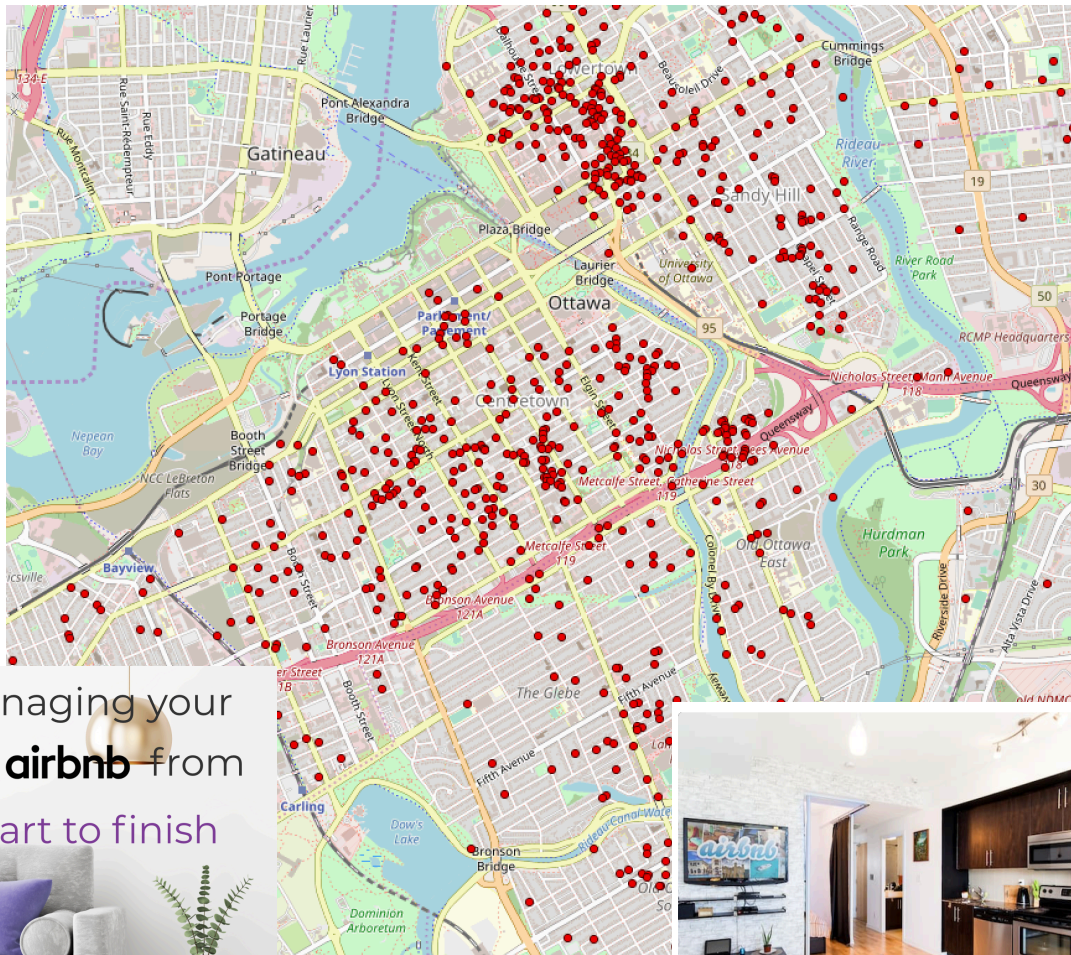


Regulation of Short-Term Rental Accommodation



Maclaren Municipal Consulting Inc.
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1. Executive Summary

The City of Ottawa's Emergency and Protective Services Department retained Maclaren Municipal Consulting to perform an analysis of Ottawa's regulatory framework for rental accommodations and recommend innovations that would improve outcomes, considering the effect of new regulations on the quality, availability and affordability of rental accommodations. The study addresses issues related to regulation of:

- Short-Term Rentals, including rooms, condos, apartments and houses rented for less than 28 days through web-platforms like Airbnb, HomeAway, and Booking.com.
- Long-Term Rentals of rooms, apartments and houses.

After extensive research and consultations with the public, key stakeholders, members of Council and City staff, this report presents findings and recommendations with respect to Short-term Rental Accommodations.

As in most of the world, short term rentals have grown at a rapid pace in Ottawa. At the end of 2018 there were an estimated 6,278 listings. Listings include individual rooms and complete dwelling units. Significant further growth is projected, particularly among the commercial listings – those operated by investors as full-time, whole-unit, short term rental units.

The short-term rental of entire dwelling units, including condominiums and apartments, is not anticipated by Ottawa's zoning bylaws. Under the present interpretation of the Zoning By-law (2008-250, as amended), dwelling units that are entirely rented for less than 28 days are considered a "hotel" use and only permitted in zones where hotels are permitted, generally commercial and mixed-use zones. However, the popularity of the activity has meant many Ottawa residents in residential areas list their homes and attached units as well as rooms in their home on web-platforms. Those renting their whole homes or attached units short-term include people working temporarily or vacationing in another location, people with secondary or seasonal homes, students, empty nesters converting larger homes to include basement apartments, and under-employed residents wishing to supplement their income.

Of particular concern is the increased commercialization of the short-term rentals. In addition to those participating in the "sharing" economy with their homes, there are a growing number of individuals and corporations who purchase properties in residential areas specifically to operate them as short-term rental units. These properties generate a disproportionate number of complaints from neighbours. Owners who live on the property tend to be considerate of their neighbours and accountable to them, even if renting their own units when they are away. They are also present the majority of the time and can communicate directly with neighbours about any issues. This is not the case with many investor-owned commercial operators.

Relatively few short-term rentals generate complaints. The ones that do can be significant disruptors of their neighborhoods. Complaints include party houses resulting in excess noise, excess guests, parking and garbage complaints, crime and security issues. They also include tenants and condominium unit

holders renting units short-term without the knowledge and permission of landlords or condominium boards. The growth of commercial units is also reported to undermine the community fabric of downtown neighborhoods where they are concentrated. Neighbours complain they have fewer other neighbours to work with on community issues, or even to respond to the problem short-term rentals on their street.¹

All of this is happening in the context of a shortage of long-term housing in Ottawa. The shortage is driving up rents and making affordable rental housing difficult to find. While the principal cause of the housing shortage is the recent gap between the growth in the number of Ottawa families needing housing and the rate of construction of new housing stock, commercial short-term rentals contribute materially to the present shortage.²

Of the 6,278 web-platform listings in 2018, an estimated 1,236 were identified as the likely commercial rental of whole dwelling units.³ Many of these units could be returned to the long-term housing market, contributing immediate relief to the shortage of rental housing and associated high rents, and preventing further expansion of the commercial short-term rental of housing in residential areas.

The hotel industry too is negatively impacted. The Ottawa Gatineau Hotel Association estimates that eliminating commercial short-term rentals would support at least 10% more hotel rooms in their sector.⁴ While hotel occupancy rates in Ottawa are above average at present, the hotel industry is concerned about attracting ongoing investment to expand the number and quality of rooms.

There is also concern about a lack of a level playing field. Short-term rentals operating in residential neighborhoods pay residential property tax rates, while hotels pay commercial rates. With the exception of short-term rentals through Airbnb, web platforms do not remit the Municipal Accommodation Tax (MAT) paid by hotels. None of the web-platforms currently remit the HST, leaving declaration of income and remittances up to the individual hosts operating Ottawa properties.

At the same time, there are also the positive benefits that have driven the popularity of short-term rentals for both those who host, and visitors to the City. Ottawa residents use income from hosting to help pay their rent or mortgage. Some have used the income to move from renting to owning, freeing a rental unit for others. Students, snowbirds, and others with seasonal absences are able to gain income from short term rental of their residences. For them, it solves the problem of finding a “long-term” renter who is interested in renting for a few months, but not a full year. Neighbours also appreciate family visitors being able to find a place to stay close by and appreciate the value of offering affordable short-term accommodations to students visiting for short courses, or hospital patients

¹ As stated in public workshops by this study and in media coverage (e.g. *What Airbnb really does to a neighborhood*” <https://www.bbc.com/news/business-45083954>)

² *Rental Market Analysis*. PRISM Economics and Analysis (2019) for the City of Ottawa

³ Ibid.

⁴ OGHA interview.

receiving out-patient treatment. The city as a whole also experiences greater capacity to accommodate visitors at peak periods.

In addition, the popularity of the short-term rental platforms indicates that the traditional sectors, particularly the hotels, have not been meeting the needs of visitors, in terms of price, the variety of accommodations sought by families or other traveller groups, and locations, particularly for those visiting families not living downtown.

This paper recommends an approach based on the principle that residents should be able to rent all or part of their homes and a unit attached to their home, so long as it is their bona fide principal residence. The recommended measures are intended to remove investor-owned commercial operations from residential areas, providing relief to the long-term rental housing market by returning large numbers of units to the long-term rental market, while preserving most of the benefits that short-term rentals achieve for residents of the city and for visitors. This principle found strong consensus between hosts and community representatives in the public workshops held for this study, and in web-survey results reported in Appendix 3.

Recommendations also include:

- establishing a registration system for short-term rental hosts, including a requirement to include the registration number on platform listings and other advertisements.
- hosts may rent a room in their principal residence, their entire home when not at home, or a unit attached to their principal residence if they are not renting out their principal residence.
- promoting registration of lawful short-term rentals through low annual fees, online registration, simple registration processes, and publication of guides for good practice.
- significant fines, up to \$1000 per day for hosts that do not register or who advertise short-term rentals without a registration number, and up to \$10,000 for repeat offenders.
- full monitoring of web listings to ensure broad-based enforcement.
- seeking voluntary cooperation agreements with web-platforms to provide information to aid enforcement and the collection of MAT taxes. If voluntary agreements are not forthcoming, then registration and regulation will follow.
- resourcing significant enforcement efforts from the MAT remittances of hosted short-term rentals, and from registration fees and fines.
- establishing ongoing guidelines for warnings, fines, suspension and revocation of registered hosts who do not abide by their undertakings or become nuisance properties in their neighborhoods.

Recommendations also address related issues:

- exempting hotels and traditional bed and breakfasts registered with the City.
- exempting cottages and seasonal residences by restricting the measures to urban zones.
- giving condominiums and landlords a way to exclude hosts at specific addresses from registering when short-term rental is not allowed by condominium charter or rental lease.

The intended net result of the recommendations is rules that reflect an achievable social consensus preserving most of the benefits of short-term rentals while eliminating the principal disadvantages. The recommended enforcement regime is intended to be practical and rigorous, to bring what is now an unregulated new market into fair and proper oversight. It should result in over 1,000 short-term rental units becoming available for lease to long-term tenants and stop investors from buying up houses and apartments in residential areas and converting them to “ghost hotels”.

2. Study Overview

Mandate

The City of Ottawa’s Emergency and Protective Services Department retained Maclaren Municipal Consulting to perform an analysis of Ottawa’s regulatory framework for rental accommodations and recommend innovations that would improve outcomes. The study addresses issues related to regulation of:

- Short-Term Rentals.
- Long-Term Rentals, including rooms, apartments and houses⁵.

This review was informed by these guiding principles:

1. maintain consistent standards to assure the health, safety and well-being of the public.
2. consider how regulations affect the quality, availability and affordability of rental accommodation.
3. foster the economic and social well-being of the municipality.
4. assure efficient, effective and sustainable enforcement.

Methodology

In undertaking this study, Maclaren Municipal Consulting considered:

- the findings of a *Rental Market Analysis* and a *Rental Accommodations Literature Review and Inter-jurisdictional Environmental Scan*, commissioned by the City.
- further research on alternative and innovative approaches to regulating rental accommodations in Ontario and elsewhere.
- an analysis of property standards service calls related to rental accommodations in the City of Ottawa over the past ten years.

⁵ The mandate of the review excluded residential care homes and long-term care homes, and restricted consideration of social housing funding and administration. Land-use planning mechanisms and social programs were not addressed, however, and certain issues have been referred to the inter-departmental Rental Accommodations Working Group for follow-up.

- economic modeling undertaken by the City of potential costs and revenues of alternate enforcement regimes.
- input from a wide range of stakeholders representing housing providers, tenants, hotels, universities and colleges, students, community associations, and others.

Based on this analysis, Maclaren prepared discussion papers on Short-Term Rentals, Rental Housing Conditions, and Student Housing, posting these documents and an accompanying survey to the City's website for public comment, and organizing 12 public meetings to receive further feedback. As well, additional consultations were held with stakeholders, members of City Council, and City staff.⁶

Informed as well by meetings with stakeholders, more than 1,011 survey responses, and many online comments, Maclaren then prepared two Options papers, setting out possible actions and identifying potential risks and benefits as they apply to Short-Term Rentals and Long-Term Rentals. These papers were posted online and circulated to stakeholders and all those who attended a public meeting, again soliciting input. The results of an on-line survey concerning the results are attached as Appendix 3. As well, further consultations were held with key stakeholders to receive their feedback on the regulatory options.

This input, the experience of other jurisdictions, and the consultants' assessment of the opportunities and risks in Ottawa have been critical in formulating the recommendations presented by Maclaren Municipal Consulting.

These recommendations are presented in two reports: one focused on Long-Term Rental Accommodations and this report, which deals with Short-Term Rentals.

It should be noted that analysis of the impact of alternative regulatory and enforcement regimes is constrained by available data. For example, we know how many short-term rentals are currently permitted by municipalities with licensing or registration regimes, but we do not know how many hotel units were not built because of the new competition, or how many new residential units may have been built because other units have become short-term rental units.

3. What are the Problems?

Growth of short-term rentals through web platforms

For zoning purposes, the City of Ottawa defines short-term rentals as the rental of a room or dwelling for less than 28 days.

In the past, short-term rentals tended to be hotels, motels, and traditional bed and breakfasts. There is a growing new form of short-term rental enabled by the internet. Web-based platforms like Airbnb

⁶ For a listing of stakeholder groups and public consultations, see Appendix 1.

and HomeAway enable individuals and companies to advertise the availability of rooms, houses, apartments, and condos. More than just advertising, these platforms make transactions easy for both the buyer (*guests*) and the seller (*hosts*). For a fee, these platforms accept payment on behalf of the host and offer some assurance that the service being offered will be delivered. Web platforms hold the fee until after guest arrive, remove bad listings from the system, and publish ratings and comments from previous guests. The collection of a fee and participation in the transaction makes these platforms different from simple listing services like Kijiji or craigslist.

The convenience of short-term rental websites and phone apps has led to rapid growth around the world, including Ottawa. It is now much easier for residents to advertise a room or property by listing it on the website, with instant access to a global market. Prior to the internet, a bed and breakfast operator faced significant costs in making their availability known. Now anyone can list by filling out an online form. The convenience is also strong for guests. Guests can locate accommodations in specific locations that are either cheaper than the traditional alternatives or offer unique benefits.

The Rental Market Analysis conducted for the City of Ottawa found that listings on Airbnb and VRBO⁷ grew 83% from August 2015 to December 2018.⁸ As of 2018 there were an estimated 6,278 listings, including both individual rooms and whole dwelling units.

As the popularity of this mode of accommodations increases, the industry continues to change. Web platforms that previously focussed on hotels, like Booking.com and Expedia, are now also operating as web-platforms for short-term bookings.

Consequences for Ottawa

As with any significant change, there are positive and negative consequences.

Positive outcomes of short-term rentals include:

- income opportunities for residents who host, to help pay their rent, mortgage or other costs.
- accommodations for family visitors close by in the neighbourhoods where the families live.
- flexibility for families being able to rent a unit in their home, while preserving the unit for visiting relatives, or for elderly family members or young family members re-uniting with the household.
- greater affordability for different lifestyles. Short-term rentals help people afford a variety of lifestyles, from long-distance relationships where units are left vacant on weekends, to students who don't need their accommodations part of the year, to households that spend their winter in the south or their summers at the cottage.
- greater capacity in the City to accommodate visitors during peak periods.

⁷ The structure of this industry is changing rapidly. VRBO has since been purchased by HomeAway and is now operated as a brand of HomeAway. HomeAway in turn was purchased by Expedia, which operates it as a subsidiary corporation.

⁸ *City of Ottawa Rental Market Analysis*. PRISM Economics and Analysis (2019) for the City of Ottawa.

- increased tourism and travel from a greater variety of accommodations options and different prices. While the economic benefits can be overstated due to the displaced activity in traditional hotels, there is some evidence of *net* benefits.⁹

Positive results for the travelling public have been a greater variety of accommodations options, including more affordable options and hosting by Ottawa residents who can provide conversation and assistance to visitors. Ottawa residents also enjoy similar benefits of short-term rentals when travelling to other cities.

Negative results of short-term rentals are seen with

- loss of units for the long-term housing supply, with fewer units available to tenants.
- problem properties where inattentive or absent hosts allow late-night parties and excessive numbers of guests.
- loss of peace and enjoyment in neighbourhoods with excessive guest traffic.
- loss of confidence by neighbors for their personal security due to criminal incidents, damage to nearby property.
- garbage and parking issues associated with excessive guests and poorly managed properties.
- tenants and condo owners placing properties on the short-term market without the landlord or condominium board's consent or knowledge.
- impact on the hotel industry.

The traditional hotel industry is concerned about unfair competition. The Ottawa Gatineau Hotel Association estimates that eliminating commercial short-term rentals would support at least 10% more hotel rooms in their sector. While hotel occupancy rates in Ottawa are above average at present, the hotel industry is concerned about attracting ongoing investment to expand the number and quality of rooms.

While traditional hotels pay commercial property tax, short-term rentals often pay lower property taxes based on being residential uses. With the exception of Airbnb, web platforms do not remit the Municipal Accommodation Tax (MAT) that hotels pay. No web-platforms currently remit the HST, leaving declaration of income and remittances up to the individual hosts operating Ottawa properties.

Impact on long-term rental housing supply

A further negative result of short-term rentals is their impact on long-term rental supply. Ottawa is currently experiencing a shortage of long-term rental housing. The Rental Market Analysis undertaken for the City of Ottawa found that while the supply of rental units has increased by approximately 1% between 2016 and 2018, the population living in rental units has increased at a faster rate of 2.9%.¹⁰

⁹ See *Short-Term Housing Discussion Paper*, published earlier as part of this study. Section 3.3 Impact on Tourism and Business Travel.

¹⁰ City of Ottawa Rental Market Analysis, pg. 3.

The growing shortage of rental housing is also reflected in rents. Over the same period, apartment rents have risen 7.8% and house rents by 11.3%.¹¹ Another way of viewing the current shortage of rental housing is the difference between average rents and the asking rates for vacant units. In 2018, the average rent for a two-bedroom Ottawa apartment was \$1,335, while the asking rent for listed vacant two bedrooms was 25% higher at \$1,674. If the present rate of growth in rental housing stock continues (approx. 5,600 units per year), the report forecasts a gap in 2031 of approximately 18,000 to 19,000 units relative to the households trying to settle in Ottawa. In this scenario, average apartment rents would be expected to rise by as much as 41%, and the number of households living in unaffordable dwellings would increase by 25,000.¹²

According to the Rental Market Analysis, there were 6,278 short-term rentals advertised as available in 2018. However, many of these are seasonal, temporary, or represent single rooms in residences. For 2018, the study identified 1,236 exclusive listings (defined as whole dwelling units rented out for more than 120 days) that could potentially be returned to the long-term rental market.¹³ This is similar to an estimate by Fairbnb, that 1,054 homes have been converted to “ghost hotels”.¹⁴ Returning over 1,000 units to the long-term rental market immediately would almost double the present vacancy rate, with corresponding relief to high rental rates. There also appears to be an expansion of exclusive listings underway as investors purchase residential units for use as short term rental units.¹⁵ Stopping this trend would prevent more residential units from being pulled from the long-term rental market.

Thus, there is clearly some immediate relief available to the short-term housing shortage by restricting short-term commercial rentals. Restrictions will also prevent future growth of the number of commercial short-term rental units, ensuring they do not become a continuing burden to the rental market.

Short-Term versus Long-term in the Long-Term Rental Market

However, some caution is required in viewing control of short-term rentals as a solution to issues in the long-term rental market. The 1,236 units of short-term rentals is small relative to the scale of the projected shortage in long-term rentals - forecast to be 18,000 to 19,000 units over the coming years, as noted above from the Rental Market Analysis.

Policy regarding long term rental housing supply is outside the scope of this study. However, new construction can come from either the private sector responding to higher rents, or from the public construction of housing (e.g. social housing and cooperatives).

¹¹ Ibid. Pg. 39.

¹² Ibid, Pg. 5.

¹³ Ibid. Pg. 23.

¹⁴ Addressing Ottawa’s Housing Crisis. Fairbnb Canada (2019).

¹⁵ City of Ottawa Rental Market Analysis, pg. 23. See also Table 2 of this paper and analysis of in *Short-term Housing Discussion Paper*, pgs 10-11.

There are signs that a private sector response to higher rents is already happening. The chart below, reproduced from the Rental Market Analysis, shows an uptick in purpose built rental housing starts over the most recent years, and a general shifting away from the previous focus of condominium development.

Table 1 - Housing Unit Starts by Intended Market

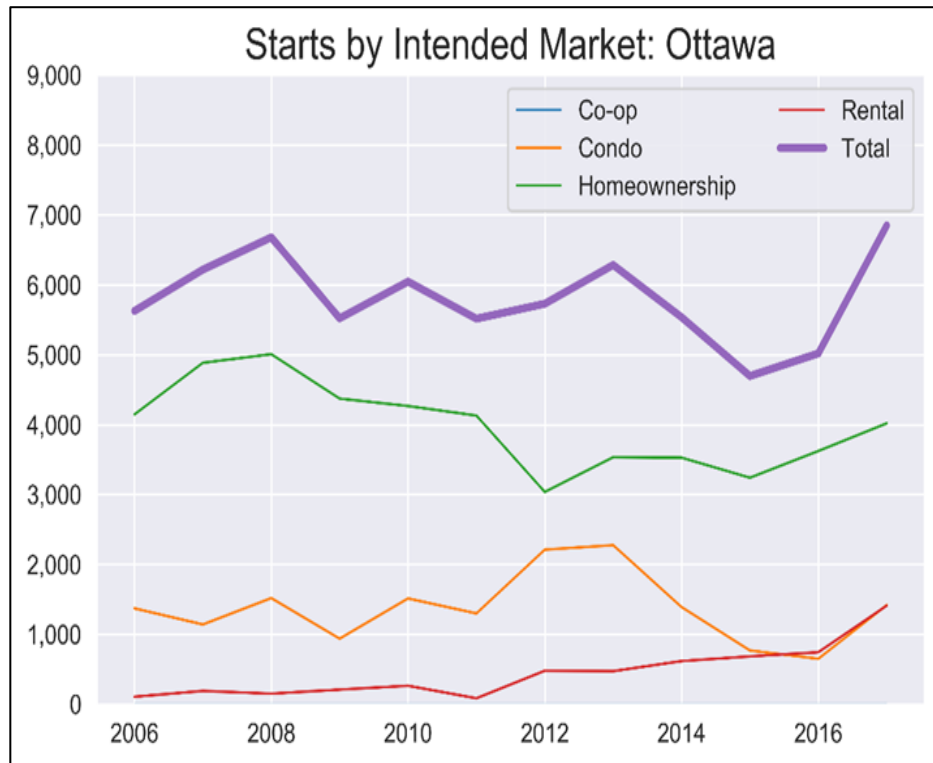


Figure reproduced from *City of Ottawa Rental Market Analysis*. PRISM Economics and Analysis (2019) for the City of Ottawa

To the extent that private sector construction of new long-term rentals is part of the solution, it will be motivated by the higher rents now observed in the market. Adding new supply by restoring some commercial short-term rentals to the long-term market will offer immediate rent relief, but by the same token may reduce the long-term volume of private sector construction. In the long run, units added by restrictions on short-term rentals may be partially or completely offset by reduced new housing construction by the private sector.

Concentration Downtown

As with other cities, short-term rentals are concentrated in downtown areas closest to tourist attractions and convention facilities.¹⁶ The impact on long-term housing availability is similarly

¹⁶ Ibid, Page 24.

concentrated in the downtown areas of the city. However, there are short-term rental units located throughout the city, providing both opportunities for temporary accommodations in most areas – and some of the negative impacts in many communities.

Growing Commercialization of Short-term Rentals

The growth in short-term rentals has roots in the popular notion of the *sharing economy*, where innovations through the internet let people share their personal resources more effectively, whether it is *ridesharing* (Uber, Lyft) or sharing one’s house or apartment. Apocryphally, the name Airbnb comes from “air mattress bed and breakfast”, where the founders offered simple accommodations at low prices to travellers.¹⁷

Today, short-term rentals are increasingly commercial. For Ottawa, the PRISM Rental Market Analysis cited above used the number of listings of whole dwelling units (not just rooms) for more than 120 days in a year as an indication of commercial operation. By this definition, the proportion of listings that were commercial almost doubled from 10.1% in 2016 to 19.7% in 2018. Such listings include residential housing units that have no permanent occupant and are held by investors to place on the short-term rental market.¹⁸

Table 2 - **Short-Term Rental Listings 2016-2018**

Year	Total Listings	Listings of whole units for 120 days or more	Revenue (\$millions)	Listings of whole units for 120+ days as % of Total Listings
2016	3,434	349	\$11.7	10.1%
2017	6,286	980	\$31.4	15.6%
2018	6,278	1,236	\$39.8	19.7%

Source: City of Ottawa Rental Market Analysis. PRISM Economics and Analysis (2019) for the City of Ottawa

Complaints to the City & Commercial Providers

One data source to lend perspective is the log of City of Ottawa’s 3-1-1 property complaints. Over a 10-year period, the City received 103,118 complaint calls, of which approximately 18,789 were related to rental properties. Complaints involving mention of Airbnb began occurring in 2015 as per Table One. The substantial majority of these involved garbage left outside and the exterior condition of the property. Note that complaint details may attribute other web platforms to Airbnb, since the actual

¹⁷ <https://en.wikipedia.org/wiki/Airbnb>

¹⁸ Note that listings may overstate the actual number of short-term rentals. A listing may not lead to a booking, and some units may advertise on multiple platforms, leading to double counting.

listing service is not easy to identify, and Airbnb may receive attribution simply because it is the most well-known.

Table 3 - Count of Ottawa 3-1-1 Property Complaints Mentioning Airbnb

Year	Count
2015	3
2016	4
2017	38
2018	86

Two points are evident from the table. One is that the number of complaints is increasing rapidly, although this may partly be due to higher awareness. The second point is that the number is not very large, even in 2018. By comparison, the City averages 1,879 rental property complaints per year. Thus, “Airbnb” (short-term rental) complaints in 2018 (largely about exterior debris and waste) comprised 2% of complaints, while representing about 4.7% of rental units. This suggests a lower incidence of issues with “Airbnb” (short-term rental) properties, but it is noted that not all complaints relating to short-term rentals may have been identified as such by the complainant. The City could only identify short-term rental complaints where “Airbnb” was specifically mentioned in the complaint.

A third point is that based on a review of the text of the complaints, the vast majority involved the allegation that the owner of the property was not resident or attending to the property. This suggests a greater association of complaints with investor-owned commercial short-term rentals, as compared to Ottawa residents who live in the properties they may rent-short term.

The public consultations held as part of this project did produce considerable community concern with short-term rentals, and some councillors have received complaints, often repeated calls about the same properties, suggesting the 3-1-1 calls analyzed may not have captured all complaints, as the record of the complaint may have simply recorded the nature of the complaint rather than the relationship to short-term rental. However, the consultations also suggested where property-related complaints do arise for short-term rentals, they are in relation to investor-owned commercial rental properties, not the resident operated short-term rentals.

Hosting Not for Everyone

Renting short-term can generate higher revenues than renting long term, which is the key motivation for commercial short-term rental properties. However, the higher revenue does require more time, effort and cost. The daily requirements of managing a short-term rental property include changing sheets, cleaning, welcoming guests, answering their questions, and responding to reservation requests. If the host lives on property, there is also the reduction in privacy.

Those residents who choose to host short-term rentals will tend to have under-employed time which they wish to convert to income, have rooms or attached units they can share, and have a personality suitable to hosting. These higher costs and other requirements place limits on the potential supply of

short-term rentals, at least among residents. Commercial operators, on the other hand, tend to use agents to meet these requirements, which does impact the net revenue, but to date has still resulted in returns that exceed those available from long-term rentals.

Social Licence, Social Consensus and the Challenge of Enforcement

Another important feature of short-term rentals is that even though a large proportion are not permitted according to current zoning interpretations, they still occur.

In residential areas, only the short-term rental of rooms is permitted, as these are currently permitted under the applicable zoning provisions for bed and breakfasts. However, the short-term rental of your entire home while you away in the winter is not permitted. Under the current zoning rules, these homeowners must find someone who wants to rent for the few months they are away, but more than 28 days. Like musical chairs, not everyone will find such a renter. Similar situations occur for students and others who leave their houses for short periods. The short-term rental of coach houses, basement units, and flats is also not permitted currently.

In addition to the need for income, and the willingness to put in the extra work to provide short-term accommodation, people also offer short-term rentals because they feel that it is an acceptable and reasonable activity – part of the sharing economy. There is a high degree of perceived social licence, the sense that rules written in past decades have not anticipated what is possible and productive today.

This social licence out of perceived outmoded rules was expressed by participants in public workshops held by this study. It is also seen in the response to the online survey reported in Appendix 3 where substantive majorities supported the ability to rent your entire home or attached units on a short-term basis in residential areas.

The perceived social license makes enforcement challenging. For example, it is difficult to enforce a speed limit of 100km hour if most people are driving 120km. Drivers may know the speed limit is enforced, but also see their odds of being caught as low and feel that the higher speed is safe for them.

For effective enforcement, it is important to establish a *social consensus* about what should reasonably be permitted, and then focus enforcement on the unreasonable.

Enforcement based on the zoning prohibitions has been challenging. Enforcement actions began in mid 2018, approximately a year ago. Some charges have been laid, but none have yet been decided in court. The level of evidence required, and the long processes involved to bring a matter through the judicial system mean that there may still be a significant amount of time before a first case is resolved by the court, and there is no certainty that it will result in a conviction. Pursuing another 5,000 cases, or even the 1,200 whole unit short-term rentals as zoning violations, would take considerably longer, and clearly many residents and many investors do not see this as a significant threat. They continue to operate, and to purchase new units with the intent of operating short-term rental units contrary to the Zoning By-law.

The Policy Challenge

The challenge is to find short-term rental policies that retain the benefits of the new approach to short-term rentals, while minimizing or eliminating the disadvantages both for communities and in terms of their impact on long-term housing supply.

Recommendations for regulations should consider:

- what kind of short-term rental activity should be permitted?
- how can regulations be enforced effectively to remove current short-term rental activity that should not be permitted, and to remove poor operators and provide neighbourhoods with the means to address concerns when they arise?
- what is the impact on broader social concerns, notably the shortage of rental housing?

Recommendations below begin with a framework for enforcement, followed by recommended rules on what should be permitted in residential zones and in areas where hotels are permitted. This is followed by a more detailed discussion on whether web platforms and agents should be regulated, and an enforcement strategy. The section concludes with financial and resourcing implications.

We note in advance that, although challenging, enforcement is possible. The choice of most other jurisdictions focuses on licensing or registering hosts and the requirement to post the licence or registration number on all advertising, including websites. The most common charges are advertising a short-term rental without the required licence or registration. Cooperation by internet platforms like Airbnb is not absolutely necessary, but certainly makes enforcement easier and less expensive.

How does registration help enforcement?

Under present rules, enforcement is difficult. For example, short-term rental of an entire house or apartment in a residential zone is contrary to the present zoning interpretation. To act on a violation, a by-law enforcement officer must:

- identify the unit that is being rented.
- prove that it is being rented on a short-term basis.

Both tasks are difficult. A necessary feature of the business model of web platforms like Airbnb is anonymity. Although the general neighbourhood of a rental unit is shown to potential guests, along with photos, the exact location and name of the host is hidden until after the rental transaction is closed. This protects the web platform from hosts and guests using the system, but not paying the platform. Sometimes it is possible to guess the location from photos, but there is always uncertainty (i.e. What floor of that apartment building? What unit?)

After determining the address, perhaps aided by a complaint, the officer must find evidence that the unit is rented on a short-term basis. It is not enough that it is advertised, the address must be confirmed, a guest identified, and evidence of the term of the rental must be found. Given lack of cooperation from those involved, a significant effort must be invested for each violation, with only a probability of success.

Host registration changes enforcement in two ways:

- advertising without a registration number or with an invalid registration number becomes an offence in itself. It is still necessary to identify who posted the advertisement, but it is no longer necessary to prove a transaction, or even the address it relates to.
- enforcement can shift from a one-case-at-a-time approach to a top-down approach addressing the whole market. Web-platform ads can be collected en masse and checked for registration numbers. Offenders can be ticketed, leaving enforcement officers free to focus more time on any large-scale operators who may be breaking the rules.

For cost-effective top-down enforcement, municipalities can gather data from the platforms or may use one of the *web scraping* services that have grown to serve municipal needs in this area. Once the ads are processed and violators identified, it is still necessary to obtain the identities and addresses of the hosts. This is most easily done with the cooperation of the major web platforms. Vancouver has a memorandum of understanding with Airbnb. Alternatively, the City may consider seeking subpoenas against each platform operator for the required information.

As of August 8, 2019, Vancouver reports 5,704 active short-term listings compared to 3,934 licensed units. There are 3,127 open cases filed by enforcement, with an additional 1,703 cases closed since enforcement of the new rules began approximately two years previous. Vancouver enforcement statistics are posted on an ongoing basis at <https://vancouver.ca/doing-business/short-term-rentals.aspx>.

Vancouver's fines are \$1,000 per offense, and \$10,000 for repeat offenders. One operator of multiple listings was fined \$20,000. In the first two- and one-half months of 2019, 274 violation tickets were issued, 89 listings referred to prosecution, and 17 licensed operators were suspended. It is noted that the legislative model in British Columbia is different from Ontario's and additional consideration will need to be given to each jurisdiction's statutory authority.

4. What are the Recommended Actions?

Establish a Registration System

Recommendation 1)

The City of Ottawa should establish a registration system for short term rentals.

Those wishing to offer short-term rentals would be required to:

- register with the City and meet eligibility conditions required by the City, which may vary by municipal zoning of the location.
- publish their valid City registration number with any advertising.
- provide details on the proposed property, proposed rental accommodation, maximum occupancy, whether the property is the principal residence of the applicant, and other relevant information required by the City.

- undertake to comply with the proposed conditions of the registration regime, or to additional conditions imposed by the City on review of the registration.

Establishing a registration system is key to effective enforcement of the rules Ottawa chooses to adopt. It is a common strategy adopted by other municipalities, including Vancouver, proposed rules for Toronto, and Quebec's system. Note that some municipalities have issued licenses, some have required registration, and others may issue permits. The appropriate name and approach are legal questions. This recommendation indicates that short-term rentals should be registered, using whichever name and approach is determined to be most effective.

In addition, registrants for short term rental should undertake to:

- provide and maintain contact information by which the City may reach the registrant or their agent on a 24-hour basis when the property is being rented on a short-term basis.
- provide a sample of the information to be provided to guests that shall include at minimum:
 - Parking availability and instructions
 - Procedures for waste management and recycling
 - Fire Safety instructions
 - Emergency contact information to reach hosts and/or their agent (may vary from contact information for the applicant)
 - House rules on noise and use of common facilities
 - Other information deemed relevant by the City.
- ensure fire exits are kept clear.
- acknowledgement of the responsibility to provide additional substantiation to the City concerning eligibility, and ongoing conformance with requirements, if/when required by the City.
- consent to entry to the property with reasonable notice for the purposes of verifying eligibility and other conditions of registration. This may include inspections by Property Standards and, if deemed necessary by Property Standards, by other agencies. It also includes providing any required notice to guests or residents if the unit is occupied at the time.
- remit to the City the Municipal Accommodation Tax (MAT) and such other fees as required by the City for the registration and operation of short-term rentals. Remittance must be made directly or through an eligible agent approved by the City (e.g. a platform).
- accept responsibility for managing the behaviour of their guests as it relates to breach of municipal by-laws related to noise, waste and parking off-street at the location of the hosted premises. Hosts could be served with infractions where they fail to do this. In the event three or more infraction notices are received within a twelve month period, the registration would be suspended for a period of up to one month. In the event of a fourth or fifth infraction within a twelve month period, consideration should be given to de-registering the host and the property.

The above addresses some of the common complaints made by neighbors and others about short-term rentals and lays the basis for enforcement in the case of problem properties. At the same time the above avoids excess paper burden on small operators such as individuals renting out rooms in their

home. The filing of formal parking and garbage plans that is required of commercial establishments is not called for here. Instead, the provision of basic information to guests is part of normal good practice for any host and would be required to minimize nuisance related to misunderstandings. Web platforms like Airbnb suggest that hosts do this and require the posting of any house rules as part of the web-posting.

The collection and remittance of the Municipal Accommodation Tax is required. In addition, the ability to pay through approved agents supports a strategy to encourage web platforms to help with enforcement (discussed further below). For example, Airbnb currently collects and remits Ottawa's MAT as a service to the hosts who list on its website.

Finally, municipal approval of the registration should include:

- confirmation or change in the maximum number of occupants.
- any required changes in the plans or information relayed to guests.

Rules for Residential Zones

Recommendation 2)

In residential zones, the City of Ottawa should only allow individuals using their own homes to offer rooms in their home, or their entire home, or a unit attached to their home, for short-term rental. Short-term rental by those who are not using their principal residence or units attached to it ("commercial" operators) should be prohibited.

Specifically, in residential zones:

- the application should be for the individual's principal residence.
- to qualify as a principal residence, the applicant must occupy the dwelling unit for more than half the year. The applicant may have only one principal residence.
- the applicant must be a natural person (i.e. not corporation).
- if a tenant, the applicant must not be related to the owner (to avoid false applications).
- the maximum rooms permitted for short-term rental should be consistent with the limit on rooms for bed and breakfast use in that municipal zone. In most zones this is three guest bedrooms.
- the applicant may also rent their entire home when they are not home – noting they must be home more than half the year.
- the applicant may also rent a unit attached to their residence when they are home (e.g. not when their entire home is being rented). For simplicity, this report will use the term "attached unit" to refer to basement apartments, second units in duplexes or semi-detached houses, and, Secondary Dwelling Units and Coach Houses as defined in the Zoning By-law.

In the series of public workshops held during this review, there was a strong consensus reached between Ottawa residents who were Airbnb hosts, and community representatives who expressed concern about short-term rentals in their communities. Common points of consensus included:

- hosts who lived in the properties as their home had a stake managing the short-term rental in a way that did not disturb their neighbours. This included screening guests to ensure they were

tourists or business travellers and not looking for a “party house”, informing the guests of house rules, and working with the guests to ensure a frictionless and happy stay.

- hosts who lived in the property were easy to contact if issues arose. One of the great frustrations with commercial units expressed by participants was not being able to find a name or contact someone to speak with.
- positive support for residents who sought to make their homes affordable by renting rooms or attached units on a short-term basis.
- appreciation for the services provided. This included providing accommodations for family visitors close to the homes of neighborhood family members, providing affordable accommodations to visiting students and academics on short-term courses/training, and providing home-based private accommodations for those wishing to be near hospitals for treatment.
- hosts indicated they often prefer to rent part of their home as a complete unit, rather than as rooms, to give both the host and the guest additional privacy.

This consensus occurred independently across different workshops. Most of the problem properties brought up in workshops were perceived to be operated by commercial hosts who were not resident at the properties. This is consistent with the analysis of 3-1-1 complaints where the majority of complaints cited an apparent non-resident operator.

Restricting short-term rentals to properties that are someone’s home, or attached to their home, preserves most of the advantages of short-term rentals to Ottawa residents, while eliminating the principal source of problem residences and providing substantial immediate relief to the shortage of long-term housing. Some hosts already rent units attached to their homes on a short-term basis, most frequently basement apartments or second units in duplexes. They may have created the units specifically for the purpose, and because they are resident at the property, they tend to screen the guests carefully and ensure acceptable behaviour – as they are the “neighbour” most directly impacted. While not allowing attached units would impact the hosts involved substantially, they appear to be relatively few in number, not enough to have a material impact on the long-term rental market. Eliminating attached units may also have the perverse impact of causing some hosts to re-integrate their second unit with their primary residence so they can rent it as a “room” rather than a “whole unit”.¹⁹

The recommendation for residential areas offers relief to the shortage of long-term rental housing by eliminating commercial rentals of whole dwelling units so that they will go back to the long-term market. This is the kind of unit typical of the estimated 1,236 units rented for more than 120 days a year and expected to return to the long-term market if no longer permitted to operate short-term. Eliminating commercial short-term rentals in residential areas will achieve the substantive relief

¹⁹ This potential impact is part of the argument of some appellants in the current LPAT hearings on Toronto’s short-term rental bylaw.

available from this source for the long-term housing market, while preserving the benefits for the City and for homeowners who host from their homes.

In summary, limiting short-term rentals in residential areas to the residents who live on those properties:

- returns commercial rentals to the long-term rental market.
- provides community accountability.
- allows rentals of attached units and temporarily vacant homes by students and persons on vacation or with seasonal residences.
- permits otherwise under-employed residents to move out of the long-term rental market and achieve home ownership.

Limiting short-term rentals to principal residences is a theme shared by reforms in other jurisdictions, including the leading Canadian examples of Vancouver and Toronto. These large cities with the most acute housing issues have not allowed short-term rental of attached units. Generally, the tightest regulations are found in cities with severe housing shortages or massive tourist flows (Barcelona). Other cities, such as Edmonton and Calgary are proposing to allow attached or secondary units to be rented on a short-term basis (have passed Committee at time of writing). Many other cities have not yet regulated short-term rentals at all. An Ottawa web-survey also found strong support for allowing short-term rentals in principal residences and attached units. Appendix 3 contains the results of this survey.

Limits to the number of days in residential areas

Recommendation 3)

Ottawa should not implement an explicit limit on the number of days permitted for short-term rentals, aside from the 180-day limit incorporated in the definition of principal residence.

Groups wanting greater restriction of short-term rental activity have advocated for more stringent limits on the number of days a year that a property can be rented short-term. Fairbnb and the Ottawa Gatineau Hotel Association (OGHA) suggest a 90-day limit for whole unit rentals. They note that cities like San Francisco, Washington DC, and Berlin have done so, at least in relation to the rental of principal residences.

Setting a 90-day limit for principal residences would impact two groups most: students who are frequently forced to sign a 12-month lease and then spend more than 90 days on a work term or visiting home, and snowbirds who frequently spend more than 90 days in the south. It is not clear what the advantage would be of limiting these groups. The principal concern in the long-term rental market is having units that can be leased for a year or more to serve as permanent homes. Student and seasonal absences are by definition for periods of less than a year. During the consultations we heard that some students and seasonal residents have been able to rent (or sub-let) their homes for more than 28 days, but many are unable to find someone with need of a house for the specific period they will be away, and have to leave their homes vacant if they do not rent short-term. This can be a substantial hardship for students and retirees.

The approach is also promoted as a way to ensure the principal residence is truly a principal residence, to discourage commercial operators pretending to be residents. However Toronto has suggested an approach to challenging those who can claim they are residents that seems a far better way to address this concern: an initial documentation with the initial application, and a requirement to provide additional proof where the regulator deems there is concern (such as with complaints, or observed excess listings). Having a specific rule limiting the number of days creates an additional enforcement requirement that will be costly because of the evasion strategies available. Those who wish to exceed the limited number of days will switch from advertising on one platform to another. It will be more cost-effective to focus on ensuring that those who say a property is their principal residence are truthful.

As further background, note that:

- Vancouver, does not have an explicit limit on the number of days a property may be rented. It focuses on the principal residence requirement.
- Toronto does have an explicit 180-day limit as part of its proposed rules, but their rules have not yet gone into force, and therefore no evaluation of their effectiveness is available.
- Berlin, Germany, recently dropped its 90 limit as part of the implementation of its still stringent permitting system for short-term rentals.²⁰

Rules for Zones Where Hotels are Permitted

Recommendation 4)

Ottawa should continue to allow both commercial and principal resident operation of short-term rentals in zones where hotels are permitted.

Specifically, in zones where hotels are permitted the following regulatory approach should be adopted:

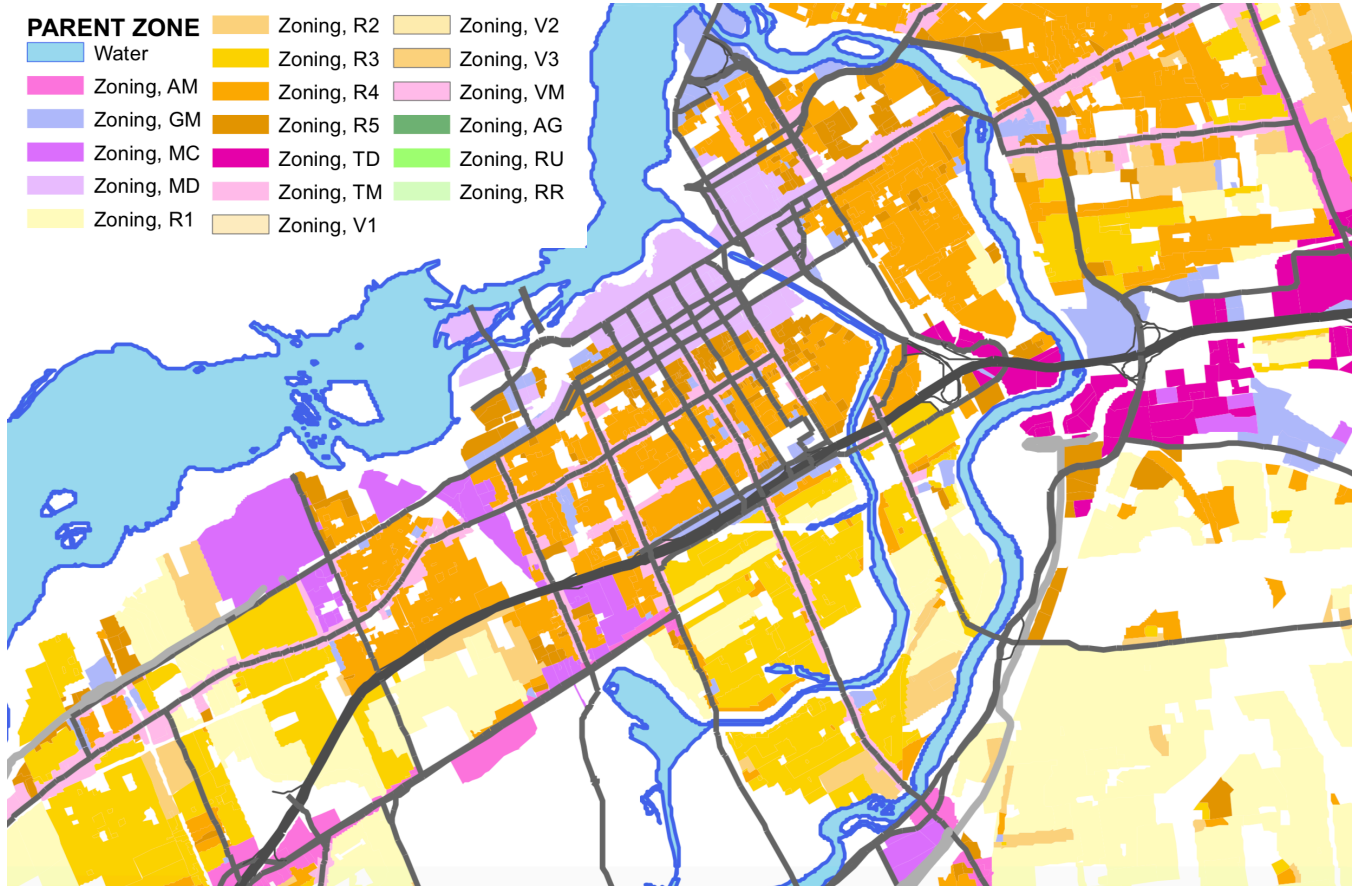
- registration for short term rental is still required.
- the applicant may be a natural person or a corporation.
- whole unit rentals are permitted.
- the conditions outlined above for residential areas should apply, as well as a requirement for a waste plan (outlining how waste will be collected, stored and disposed of, including how guests will be informed of the process) and a parking plan (outlining what parking is available, and how guests will be informed).

This approach continues the status quo in terms of what is permitted in zones where hotels are permitted, although new regulations would manage behaviours. The principal impact is to require a registration and establish the framework of obligations. The framework allows the investigation of problem properties along with requiring the use of registration numbers in advertising.

²⁰ <https://www.citylab.com/life/2018/03/berlin-airbnb-vacation-rental-regulation-law/556397/>

Figure 1 provides a zoning map of Ottawa’s urban core. As illustrated, commercial zones where hotels are generally permitted are primarily strips along busier roads and the major employment concentrations such as the downtown core and Tunney’s Pasture (e.g. zones AM, GM, MC, MD, TD and TM). The residential zones generally do not allow hotel uses (e.g. zones R1, R2, R3, R4, and R5)

Figure 1 - Map of downtown showing Parent Zones in Zoning By-law



Hotels

Recommendation 5)

Hotels should be exempt from the requirement for a short-term rental registration.

Hotels offer short-term accommodations and will be captured by the new regulations unless they are specifically exempted. They are generally restricted to commercial and mixed-use zones by Ottawa’s present Zoning By-law. As larger traditional operations purpose built to serve the travelling public, they are not part of the new phenomenon that the present proposals are seeking to regulate. Requiring them to register for short-term rental would add to the paper-burden of both hotels and the City without commensurate public gain.

It is recommended that the exemption for hotels is for short-term rental registration only. Other hotel obligations, such as the payment of the MAT, would remain.

However, exempting hotels requires a definition of what constitutes a hotel. Ottawa's zoning bylaw defines hotels as including motels but is not otherwise specific. At present the term hotel would appear to cover all short-term rentals including the activities that are proposed for regulation. To exempt hotels, it will be necessary for the City to adopt a more specific definition for this purpose.

To limit the likelihood that new short-term rental units can use hotel status as a means to avoid registration, it is recommended that to qualify for exemption, a hotel must have at least six bedrooms that:

- are located in a single building or connected buildings.
- are under common management.
- are principally used to provide short-term accommodations to the travelling public.
- are advertised collectively by the operator as a hotel or motel.
- are operated in a zone where hotel is a permitted use.
- remit the Municipal Accommodation Tax (MAT) through the Ottawa Gatineau Hotel Association (or any successor).

The last requirement is important for effective control and administration. The Ottawa Gatineau Hotel Association currently collects and remits the MAT for most hotels and motels and uses the funds to promote visitation to Ottawa. Its membership requirement is a minimum of 50 rooms, but it also collects and remits MAT for cooperating smaller hotels. This ensures there would be a record and a reporting framework for hotels exempted from the short-term rental regulatory framework.

The proposed definition includes large mixed operations such as suite hotels or mixed hotel/residential buildings. However, it requires independent units within those buildings to register if they are advertising and managing the short-term rental of their unit independently.

In the longer term, Ottawa may wish to regulate hotels. There are reasons why the hotel industry and the public might wish to consider regulation at some point in the future. For example:

- **Addressing problem hotels or motels.** Regulating, and suspension or revoking registration, provide additional tools for addressing hotels or motels that become a public nuisance or a public safety concern. One was mentioned during the consultation process, but regulation was not a likely solution to that particular problem.
- **Managing the emergence of new hotel business models.** The emergence of web-platforms is causing new forms of hotels to emerge. For example, there are hotels in some cities that have no front desk, and no room keys.²¹ Booking and payment are through the web-platform, and access is through codes issued over the web. Such operations can be safe with appropriate

²¹ For example, Sonder digital hotels in Vancouver. <https://www.vancourier.com/living/digital-hotels-could-ease-vancouver-s-hotel-space-shortage-1.23815430>

measures, such as a monitored system of security cameras. However, the business model opens the possibility of hotels with little permanent staff, where the operators are no longer likely to know what is happening in the building. This may develop quickly, but among hotels with a large number of rooms, there will likely be a need to demonstrate security to clients by having effective systems. This bears monitoring.

Therefore, licensing of hotels is not recommended at this time.

Traditional Bed and Breakfast Exemption

Recommendation 6)

Traditional bed and breakfasts registered with the City for exemption from the Municipal Accommodation Tax should be exempt from registering and associated requirements.

When Ottawa introduced the Municipal Accommodation Tax at the end of 2017, Council exempted traditional Bed and Breakfasts after receiving representations from this group. The position communicated by bed and breakfast representatives before Council was that:

- bed and breakfasts were a declining business with small margins and under heavy competitive pressure from the new kinds of accommodations represented by web platforms like Airbnb.
- the traditional bed and breakfast represent an accommodations option for visitors that the City should want to preserve.
- in addition to the further cost pressure of the MAT, traditional bed and breakfast operators may not have the administrative capacity and staff to implement the tax.
- they did not meet Ottawa Gatineau Hotel Association membership criteria because of their small size, and as a result did not participate directly in the Ottawa Tourism programs funded through the OGHA collection of MAT from their members.

As a result, the City exempts bed and breakfasts that register with the City and meet the following conditions:

- they are operating in a residential area in a way consistent with Zoning Bylaw (e.g. restrictions on the number of rooms)
- they are occupied and operated by the property owner and the property is classified in the residential property class.
- guests are invoiced directly by the bed and breakfast establishment and not a third-party home-sharing listing entity (i.e. web platforms such as Airbnb).

Consistent with Council's decision, it is proposed that registered traditional bed and breakfasts be exempt from registering for short-term rental. Such establishments are already registered and are not part of the issue motivating the proposed regulations: the growth of short-term rentals through web-based platforms.

Cottage Exemption

Recommendation 7)

The requirement for a short-term accommodations' registration should be limited to urban zone designations, in order to exclude cottages and other seasonal rentals.

Ottawa is a large city that encompasses both urban and rural areas. Cottages and other seasonal residences are common in rural areas within the boundaries of the city. Traditionally, cottages and seasonal residences are rented short-term – often for weekends or one or two weeks. These rentals share many of the same marketing issues as other short-term rentals and may use the same Internet platforms to advertise.

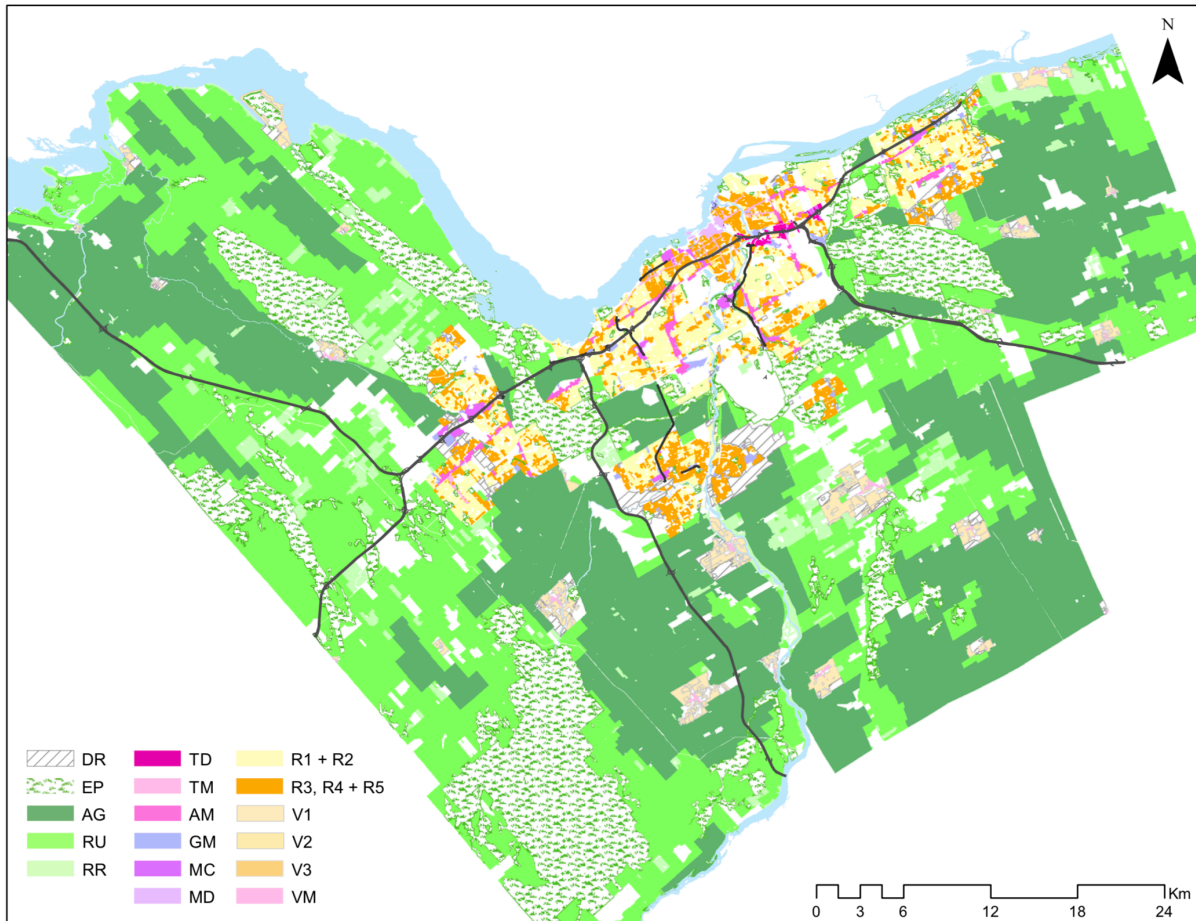
However, there may also be other issues that are unique to cottage or other rural areas, or areas transitioning from cottage to large lot residential uses and of concern to rural stakeholders. The present study has largely revealed that issues raised with short-term rentals as a “downtown” issue, with suburban elements. There was no presence of rural perspectives in the public workshops or reflected in correspondence.

Cottagers and seasonal residences have been rented on a short-term basis for decades, long before the platforms emerged. It is desirable to exclude cottages and seasonal residences at least until separate consideration and consultation is conducted.

However, similar to hotels, there is no current definition of cottages or seasonal rentals in Ottawa by-laws. Limiting the proposed requirements to urban zone designations achieves the objective of exempting cottages and most seasonal residences.

The map below provides an overview of rural and urban zones with the green and other colours shown on the leftmost column of the legend generally rural areas. The residential zones in villages (V1, V2 and V3) should also be excluded, at least until a further examination of the issue.

Table 4 - Map Showing Rural Areas



Tenants and Condominium Unit Owners

Recommendation 8)

Tenants may not be granted a registration for short-term rentals, unless they have the permission of their landlord. Condominium unit holders may not be granted registration if short-term rental is contrary to their condominium charters. The applicant will be required to certify this is the case on their application. The certification will be reviewed if challenged and the registration revoked if not found to be valid.

Recommendation 9)

In parallel, the City should allow landlords or condominium boards to register properties where the leases or charters prohibit short-term rental. Applications will be rejected if they are for an address on the list, or if already granted when a property is registered, will be revoked, subject to a hearing.

For the City, the principal choice is whether to require applicants to have letters of permission from their landlords or condominiums in advance, as Toronto proposes, or to make the application process

easier for legal applicants by accepting declarations. Vancouver does the latter, while also currently undertaking a pilot project working with condominium boards and large landlords to automatically reject applications for ineligible addresses.

The latter approach is recommended to avoid the City taking sides on what may be private legal disputes, and to promote ease of registration as part of a strategy to bring legal lawful market participants into the regulatory framework. In particular:

- Ontario's *Residential Tenancy Act* is clear that tenants must have the permission of their landlord to sub-let the entire dwelling. However, it is less clear whether a tenant has the right to rent rooms within their dwelling (e.g. to help them pay the rent).
- condominium charters do not all address short-term rentals clearly, as web-platforms like Airbnb are a recent phenomenon. There may also be disputes of interpretation within condominium management boards. Some condominium boards may have adopted rules favouring short-term rentals. This has occurred in Toronto and may be the case for some Ottawa condominiums.²²
- in the event of dispute, a condominium board or its executive officer may withhold a letter of permission even though the condominium unit holder may be entitled to conduct short-term rental.
- landlords may not be opposed to a tenant's short-term rental, but not be motivated to provide a requested letter of permission on a timely basis. In some cases, the letter of permission may be withheld to extract concessions, even if the terms of the lease permit the tenant to undertake short-term rental of rooms in the dwelling unit.

Because of the above legal and administrative issues, and the desire to bring the legally permitted short-term rentals under regulation quickly, it is recommended that declarations by applicants be accepted on the status of leases and condominium agreements, with the opportunity to review later if the declaration is false.

Public Availability of Registrant Names and Addresses

Recommendation 10)

Ottawa should not make the list of short-term rental registrants and property locations public.

Publication of registrant details would allow landlords and condominium boards to identify the properties being rented short-term and pursue any issues on their own, without need for City enforcement. However, the opportunity to register a property as excluding short-term rentals (previous recommendation) should remove this as a requirement.

The public release of full name and contact information of hosts is not advisable for privacy reasons. For hosts, those renting out their own home may not want their names and addresses published under

²² <https://www.cbc.ca/news/canada/toronto/airbnb-toronto-condo-sign-first-canadian-agreement-to-regulate-short-term-rentals-1.4370459>

any context. Such lists make them the potential target for junk mail, spam, and in more serious cases, harassment. The *Municipal Freedom of Information and Protection of Privacy Act* may also constrain publication.

Many hosts indicate they have good relationships with their neighbours and some residents indicated they had good relationships with some hosts in their neighbourhood. However, where there may be conflict, it is better to work through a City official, as long as that official has access to contact information for the host.

Regulating Web-Platforms

Recommendation 11)

That Council provide the Administration with the authority to:

- **regulate short-term rental web platforms offering Ottawa properties for short term rental.**
- **defer implementation of web platform regulation while cooperative agreements with web-platforms are explored. Implementation might be deferred by having Council approve regulation but give staff the authority to bring forward the by-law itself when required.**

As discussed previously, the cooperation of web platforms like Airbnb is very helpful for enforcement. They can help by providing information on the hosts and the properties they rent, by requiring hosts to post their registration numbers which can be confirmed by the City. They can also help by facilitating and automating collection of taxes, such as the MAT.

To obtain this cooperation, there are two potential approaches the City might consider. One is to immediately require registration of web platforms that list Ottawa properties. The other is to seek voluntary cooperation agreements with the principal web platforms. In Canada, Toronto is an example of the first approach, and Vancouver is an example of the second. Currently, Ottawa has a voluntary agreement with Airbnb solely for collection and remission of the MAT.

Toronto is currently not enforcing the requirement that platforms register, as it awaits the results of appeal of the related zoning amendments. It remains to be seen whether new litigation will follow when the registration process is enforced. Two California cities have passed by-laws making it compulsory for web platforms to report on listings and hosts, San Francisco and Santa Monica. Both were successful in defeating challenges to the requirements in US courts. However, even when the cities prevailed, considerable time was lost in resolving the lawsuit, allowing further expansion of the commercial short-term rental units.

Despite a media report to the contrary, Vancouver reports that Airbnb is still providing data under its voluntary agreement. On initiation of the agreement, Airbnb also de-listed more than 2,400 Vancouver listings. Airbnb has not conducted a delisting exercise subsequently, viewing the task of identifying

violators as a responsibility of Vancouver using the data made available by Airbnb.²³ Hosts who advertise without a registration number, or with a false one, are subject to fines of up to \$1,000 per day. Repeat offenders are subject to prosecution and a fine up to \$10,000. As of March 2019, the highest fine has been \$20,000 for one operator of 35 listings. In the period from Jan. 1 to March 14, 2019, 274 violation tickets have been sent out, 89 listings were referred to prosecution, and 17 licensed operators have been suspended.²⁴

Achieving *any* form of involvement by platforms will be challenging for Ottawa. Obstacles include:

- **Costs to platforms of making local exceptions:** Platforms resist individual municipal arrangements because it is in their interest to standardize their operations across municipalities and countries around the world. Efficiencies are realized as a standardized Internet platform, not as a local operator with offices in every city. At the same time, all cities face the same short-term rental issues as Ottawa and are converging on solutions. It may be of strategic interest to large platforms to lead the way in defining what the standard solution should be. Small platforms, or those with small volumes of business in Ottawa will find it particularly difficult.
- **Lack of leverage:** International short-term rental platforms exist largely outside Ottawa's jurisdiction. Ottawa's powers to regulate include non-resident businesses, but there may be no local presence to hold to account. The principal leverage that Ottawa has is regulation of the Ottawa hosts who list on the site.
- **Diverse types of platforms.** With many different types of platforms, many with small volumes of business in Ottawa and many with the majority of their business in the traditional hotel sector. It will take substantial enforcement efforts to make all active platforms register. The only way to exert that pressure will be to focus enforcement on the hosts that use the non-compliant platforms. But they may not be the hosts that cause the greatest concern in Ottawa. For example, they could be residents renting their own homes, or they may be located in commercial areas.

Obtaining cooperation from large, diversified platforms will be more challenging. With most hotel web sites now offering short-term accommodations options as well, the range of potential registrants is very wide, and there are many different business models. The City has less leverage on these platforms as the short-term rentals are only part of their business. A related problem is that when a platform cooperates with the City in enforcement, local hosts may switch the platform they use to the one not implementing regulatory restrictions.

Either way, the minimum requirements of a short-term rental platform should include:

- inform Ottawa hosts when they list that the City of Ottawa regulates short-term rentals and requires registration of host properties.

²³ Media reports that Airbnb has ceased cooperation with Vancouver are incorrect according to Vancouver authorities in interviews conducted for this study.

²⁴ <https://www.theglobeandmail.com/canada/british-columbia/article-vancouver-city-officials-encouraged-by-airbnb-licence-enforcement/>

- provide a space in host listing web-forms for the host to enter their municipal registration number.
- require that hosts enter their registration number (i.e. information field cannot be left blank).
- provide data regularly to the City on listings, host names, host contact information, address of the rental, and host registration number.
- collect and remit the 4% Municipal Accommodation Tax.

Additional requirements might include:

- validating registration numbers against a list provided by the city.
- having a procedure for identifying and disciplining repeat offenders who list the same properties under different host names after being refused the first time.

The first set of requirements are likely part of a solution where requirements by many different municipalities may converge making these steps easier for platforms to implement. The second set of requirements are significantly more burdensome, since it requires receiving and managing city registration data, in addition to providing data to the City from their own systems.

In Ottawa the most significant early goal is to enforce the prohibition on commercial units in the residential areas, which requires enforcing host registration. This will achieve the two major goals, returning units to the long-term residential market, and reducing nuisance in neighbourhoods. This will be much easier to achieve with the co-operation of the major hosts, particularly Airbnb which has the largest part of the market. A voluntary agreement with Airbnb along the lines of the Vancouver agreement would achieve this goal and allow effective early implementation. Incentives to cooperation include:

- the likelihood of regulation if cooperation is not forthcoming.
- the ability to take the lead in defining what the working relationship can be.
- a potential requirement that hosts only use platforms that have a voluntary agreement with the City (at least for internet-based listings, many short-term rental operators use other means of advertising and promotion as well).
- a requirement that all hosts either pay the MAT directly or through a platform that has a cooperation agreement with the City.

The City of Vancouver has had some success with voluntary agreements. There is a formal memorandum of understanding with Airbnb, which accounts for an estimated 80% of Vancouver's market. Expedia group (VRBO and HomeAway) has provided a written agreement to educate operators, and Trip Advisor is reported as expressing interest in an agreement.²⁵

If a voluntary agreement with Airbnb (given its high market share currently) cannot be achieved in a timely way, then the City should move quickly to require registration of platforms. If the Toronto by-

²⁵ City of Vancouver Administrative Report to Standing Committee on Policy and Strategic Priorities. April 10, 2018.

law has been implemented and is effective by that time, it will help. Otherwise it can be anticipated that there may be litigation to delay implementation.

Registering Agents

Recommendation 12)

Agents who list themselves as hosts on web platforms should be liable for the same fines and charges as hosts for advertising with an absent or invalid registration number

In the short-term rental market, agents are those who provide services to hosts, including acting as the host in web platform listings when the property owner themselves do not wish to do so.

Agents may represent a large number of units. The clients of agents range from investors with multiple properties, to those renting their principal residence or attached units. In the latter case, they find it more convenient to purchase services from the agent (usually including managing clean-up and new linen between guests, and often involving listing properties on platforms and screening guests), rather than doing it themselves.

Agents have both positive and negative impacts. On the positive side, agents may be part of potential solutions to accountability and a readily available point of contact. The larger agents offer 24-hour emergency service – answering the concern that neighbourhoods have about not being able to reach the responsible owner or occupant when a party gets out of hand or other issues arise. They may also ensure that the basics, like picking up garbage cans and mowing lawns, happen.

However, some agents have also hindered prosecutions, refusing to identify the actual owner or tenant who is the host, or the address of the properties concerned. The recommendation would resolve this by treating the agents as the hosts whenever properties are advertised without being registered. Charging and fining agents when they present themselves as the hosts would make them accountable for compliance with the regulatory process. It would not preclude charging the actual host if the host can be identified but does give the option to act against the short-term rental without having to identify the owner or tenant. It would also substantially reduce the incentive to agents to withhold information.

Enforcement Strategy

Recommendation 13)

Ottawa should adopt a positive strategy of encouraging lawful short-term rental hosts to register, while resourcing a “surge” in enforcement to bring the market under control. In addition:

- the City should purchase “scraped” information from platforms that are not co-operating, and support the pro-active pursuit of all non-compliant listing.
- the City should develop guidelines for the review of registration applications and guidelines for consistent issuance of warnings, fines, suspension, and revocation for short-term rental registrants.
- the City will need to review its current interpretations of zoning regulations to accommodate registered short-term rentals uses consistent with the recommendations in this report.

Specifically, to encourage the bulk of hosts to register quickly, the City's enforcement plan should include:

- active communication of registration requirements to the public.
- education materials indicating what is allowed and required for hosting and providing models of good practice. Models of good practice should include model instructions and information to guests covering required topics. This might include fill-in-the blank models that would facilitate processing of registration applications and allow quick approval to the bulk of compliant registrants.
- low registration fees for principal residents in residential areas (e.g. on the order of \$58 for application and \$50 annual fee).
- an online process for registration, where most compliant applications can be completed quickly, and initial issues are automatically flagged for the user to amend or to expect a more thorough review (e.g. maximum guests exceed expectations).
- quick turnaround on the review and approval of applications that meet basic conditions.
- providing approved registrants with a checklist for ongoing compliance and contact information for questions.

The enforcement program should include:

- a dedicated manager to ensure effective implementation.
- a team of enforcement officers who will specialize in the enforcement of short-term rentals.
- supplementary resources from Property Standards, Fire, and Public Health who will provide specialized assistance in enforcement actions including inspection visits as required.
- a short initial public education period where warnings may be issued.
- significant fines for initial offences of advertising a short-term rental without a registration, operating a short-term rental without a registration, use of a false registration number, or false declarations on the registration in terms of the eligibility of property, the principal residence of the applicant, the rental or condominium declaration or other false statements on the registration application.
- fines should be in the order of \$,1000 per offence, potentially daily in the event of non-compliance, with higher fines for repeat offenders (e.g. up to \$10,000).

The guidelines for application review should be established in consultation with the Office of the City Clerk and Solicitor and include the maximum occupancy and other requirements. The City's enforcement regime should consider:

- circumstances where quick approval would be normal.
- circumstances requiring further enquiry be made of the applicant.
- circumstances where a registration application would normally be refused.

The enforcement regime should also consider:

- criteria for initial documentation of principal residence (e.g. driver licence or equivalent).
- criteria for requiring additional evidence of principal residence by an applicant or by a registrant (e.g. on emergence of complaints).
- criteria for accepting declared maximum occupancy for whole unit rentals, and where further review is required. For example, routine acceptance might be for the number of bedrooms multiplied by two, plus an additional two to account for common areas with sofa beds, etc. (e.g. 3 bedrooms, maximum 8 guests). Any claim for a large maximum occupancy based on the size of

basements or use of other non-bedrooms for sleeping purposes would be rejected. However, there may be special cases (dormitories in commercial areas) where higher occupancy could be allowed.

- a consistent process where nuisance operators will receive warnings, fines and/or ultimately suspension or revocation of their registration (e.g. repeated noise disturbance, exceeded declared maximum occupancy, or failure to adhere to undertakings made during the application process).
- circumstances for which suspension or revocation will be immediate. (e.g. evidence of knowingly hosting criminal activity; not cooperating with bylaw officers in the investigation of a complaint related to the property; or present danger to the public).

Interpretation of Zoning By-law

The current interpretation of the Zoning By-law is inconsistent with the recommendations concerning which short-term rentals should be permitted. The current interpretation indicates that any whole unit short-term rental is a hotel use, and only permitted where hotels are permitted, and not in residential areas. This will need to be resolved before the regulatory regime is implemented, or otherwise appropriate applications will be refused, and the regime will fall into disrepute and become unenforceable. In Toronto, a rezoning was initiated and subsequently appealed, delaying implementation of the regulatory regime, and thus delayed efforts to end commercial operation of short-term rentals in residential areas.

Other approaches should be considered in Ottawa to allow implementation to begin as soon as possible. A re-interpretation of the current zoning by-law would likely be the quickest approach. If that cannot be achieved, a rezoning should be initiated as soon as possible. It should be noted that the current provisions for appeal of zoning by-laws are more restrictive of appeals than they were when Toronto's by-law was adopted, which may allow the process to be completed more quickly.

It may be possible to initiate some of the process while an appeal of the zoning is underway, if that is required. The registration process could be initiated, and registrations approved within commercial areas. That would at least allow limitation of short-term rentals in apartment and condominium buildings within the commercial areas. Negotiations with the largest platforms could be initiated to determine whether voluntary platform agreements will be a workable solution. The education and registration process could also be opened within residential areas, with a view to encouraging applications by those renting rooms, which would help reduce the volumes to be processed once the zoning is finalized.

Summary

The above program is intended to respond to a number of concerns:

- bringing the large number of current operators who are consistent with the registration requirements within the by-law as quickly as possible, with reasonable levels of enforcement effort. The perceived social license should be shifted to the principle that, in residential neighbourhoods, the only short-term rentals should be by principal residents living in that neighbourhood and accountable to their neighbours, through the City.
- successful enforcement requires an initial surge to make short-term rental operators aware of the requirements and to bring this large and growing market under control.

- successful enforcement requires a high probability of unlawful operators being caught. This requires a comprehensive approach that uses information technology to monitor and enforce the large volume of activity that information technology has enabled. This will likely require both web-scraping (which may be contracted to one of the firms specializing in this service²⁶), and an internal capacity to merge the web-scraped data with the City's registration data and data secured from web platforms.
- consistent internal guidelines are needed to facilitate rapid processing of applications, keep enforcement efficient, and address the inevitable number of operators who are eligible to provide short-term rentals but, through poor management or other reasons, become nuisance properties in their neighborhoods.

Consequences for Staffing, Costs and Revenues

Vancouver initiated its enforcement program with roughly the same number of short-term rental properties as Ottawa. They expected to spend²⁷ roughly \$150,000 for implementation resources, and \$620,000 per year for enforcement, with 3 FTE devoted to enforcement and \$200,000 allocated for legal costs. Staff interviewed indicated they have generally stayed within these ranges (allowing for inflation since 2017)

In Ottawa, the revenues from the regulatory process described above will be modest. With 3,000 to 4,000 short-term hosts likely to register, the \$58 administration fee will provide revenues of about \$200,000 which should be sufficient to cover the costs of reviewing and approving the registrations. The \$50 annual fee should produce about \$175,000 per year to support enforcement activities. However, the enforcement program will be much more expensive if the City is to successfully return 1,000 short-term full unit rentals to the long-term rental market. The timeframe required to improve conditions in residential areas, in condominiums and apartment buildings and to return housing to the long-term rental market will depend largely on the level of resourcing of enforcement efforts. It is important to recognize that the benefits will not accrue to those who are licensed, they will accrue to neighbourhoods and renters throughout the City. Thus, funding from other sources will be required if these benefits are to be achieved.

There is approximately \$1.1 million per year in revenue from the MAT tax remitted by Airbnb, which is currently not being used to support destination marketing. There will also be revenues from the fines levied against non-compliant short-term rental hosts. These fine revenues are recorded within general City revenues and not shown against the costs of the activities that generate them, but the City should recognize that the fine revenue will not come without the enforcement activity. The fine revenue could be significant. After a short public education period, \$1,000 per offence is recommended for not having a registration number or not displaying the registration number in advertisements, or for renting an entire dwelling unit for less than 28 days. Fines may be daily for each property. For repeat offenders, up to \$10,000 is suggested. While it is difficult to estimate the resulting fine revenue, it is likely the legal costs will consume most of revenue.

²⁶ <https://www.avalara.com/mylodgetax/en/blog/2018/07/cities-turning-to-technology-to-enforce-airbnb-rules.html>

²⁷ <https://council.vancouver.ca/20170711/documents/rr1.pdf>

It is therefore suggested that the annual fees and the MAT fund revenues for at least for the first two years of the program be dedicated to effectively force hosts to register and return the investor-operated units in residential areas to other uses. We suggest up to 10 new property standards officers should be engaged to launch the enforcement process, including the initial educational period, supported by funds to purchase data related to uncooperative platforms. This will take most of the MAT revenues for the two-year period, and perhaps longer depending upon the results in terms of community support and acceptance of the new program.

Appendices

Appendix 1 – Individual Community Stakeholder Meetings

(Excludes those who attended workshops)

Note – Some stakeholders focused on particular issues, but many included some discussion of a number of issues related to the Review

Date	Meeting
April 10, 2019	Somerset West Health Centre – re rooming houses
April 10, 2019	Carleton University Students' Association
April 12, 2019	Algonquin College
April 15, 2019	University of Ottawa
April 16, 2019	Eastern Ontario Landlord Organization
April 22, 2019	Ottawa-Gatineau Hotel Association Ottawa Tourism
April 24, 2019	Carleton University
April 25, 2019	Airbnb
May 30, 2019	ACORN
June 26, 2019	Airbnb
June 27, 2019	Lepine Apartments
June 27, 2019	ACORN Public Meeting
July 9, 2019	Meeting with local residents and Councillor Diane Deans at Greenboro Community Centre
August 20, 2019	ACORN Public Meeting
August 21	Action Sandy Hill
August 30, 2019	Ottawa-Gatineau Hotel Association Ottawa Tourism

Many other stakeholders participated in the Workshops

Councillors Interviewed

Councillor Menard

Councillor Fleury

Councillor McKenney

Councillor Sudds

Councillor King

Councillor Chiarelli

Councillor Dudas

Appendix 2 – Workshops

Note – The topic of focus is shown, but many included some discussion of other issues related to the Review

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May 27, 2019	Student Housing - 6:30pm South East Ottawa CHC
May 28, 2019	Short Term Rental - 6:30pm Heron Community Centre
May 29, 2019	Student Housing - 6:30pm Ben Franklin Place
June 4, 2019	Rental Housing - 6:30pm Hintonburg Community Centre
June 5, 2019	Short Term Rental - 6:30pm Larkin House Community Centre
June 6, 2019	Student Housing - 6:30pm Sandy Hill Community Centre
June 7, 2019	Rooming Houses - 9:30 am Somerset West Community Health Centre
June 10, 2019	Short Term Rental - 6:30pm Ottawa City Hall
June 12, 2019	Short Term Rental Workshop – 6:30pm Ottawa City Hall
June 13, 2019	Short Term Rental - 6:30pm Ottawa City Hall
June 17, 2019	Rental Accommodations (in French) – 6:30pm Richelieu Vanier Community Centre
June 20, 2019	Short Term Rental Workshop – 6:30pm Ottawa City Hall

Appendix 3 - Results of Online Survey commenting on Policy Options Report

Short-Term Rental Options Paper

Status:	Closed	Partial completes:	70 (4.5%)
Start date:	2019-08-15	Screened out:	0 (0%)
End date:	2019-09-05	Reached end:	1,482 (95.5%)
Live:	22 days	Total responded:	1,552
Questions:	6		
Languages:	en, fr		

1. Please rate your support for the regulation of short-term rental services like Airbnb and VRBO:

Sub-questions	Resp.	% of responses	avg	med	SD
I support the regulation of agents/property managers that provide services to short-term rental hosts.	1547		3.96	5	1.52
I support the regulation of short-term rental platforms, such as Airbnb and VRBO.	1547		3.92	5	1.58
I support the regulation of local short-term rental hosts/properties.	1545		3.87	5	1.59

Average: 3.92 — Median: 5 — Standard Deviation: 1.56

- 1. 1 (Strongly Oppose)
- 2. 2
- 3. 3 (Neutral)
- 4. 4
- 5. 5 (Strongly Support)
- - No opinion

2. Please rate your support for each of the policy options concerning short-term rental regulations in residential neighbourhoods.

Sub-questions	Resp.	% of responses	avg	med	SD
Residents should be able to rent rooms in their principal residence.	1528		4.26	5	1.09
Residents should be able to rent their entire home when they are away.	1528		3.94	4	1.33
Residents should be able to operate short-term rentals in basement units and carriage houses at their principal residence.	1528		3.79	4	1.42

Average: 3.99 — Median: 5 — Standard Deviation: 1.30

- 1. 1 (Strongly Oppose)
- 2. 2
- 3. 3 (Neutral)
- 4. 4
- 5. 5 (Strongly Support)
- - No opinion

3. Please rate your support for each of the policy options for short-term rental regulations in commercial areas.

Sub-questions	Resp.	% of responses	avg	med	SD
Short-term rentals should be permitted in principal residences and attached units.	1519		3.8	4	1.42
Short-term rentals should be allowed in investment properties.	1523		2.69	2	1.73

Average: 3.24 — Median: 4 — Standard Deviation: 1.68

- 1. 1 (Strongly Oppose)
- 2. 2
- 3. 3 (Neutral)
- 4. 4
- 5. 5 (Strongly Support)
- - No opinion

