

RESPOND TO: 151 FERRIS LANE, SUITE 202, BARRIE, ON L4M 6C1

August 11, 2021

SENT VIA EMAIL: SPERSAUD@TINY.CA

Mayor Cornell and Members of Council
The Corporation of the Township of Tiny
130 Balm Beach Road West
Tiny ON L0L 2J0

Dear Sirs/Mesdames:

**RE: TOWNSHIP OF TINY – LEGALITY OF SHORT-TERM RENTALS
OUR FILE NO. 102380**

You have asked for an opinion to outline what is currently permitted and not permitted with regard to Short Term Rental (“STR”) uses and to address the possibility of home owners claiming grandfathering.

Issues

1. Does the Township zoning by-law permit STRs?
2. What could be considered legally non-complying if the by-law is changed?

Brief Answer

1. Yes, in residential areas, residential uses are permitted and STR uses are of a residential nature. Whether a use is commercial or residential is fact-dependant and must be examined against the Township’s by-law. Jurisprudence has shown that where a property is being used in a matter or intensity that is akin to a hotel or banquet hall, this would be considered a commercial use.
2. Owners who have continuously used their houses for STR uses before it became restricted (assuming it does) would be considered legally non-complying and could continue operating, subject to the owner proving their historical use. A grandfathered owner would still be required to obtain a licence if a licencing regime was implemented. Those who were not acting legally under the by-law would not be able to continue their use.

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Analysis

1. Legality

The Township zoning by-law sets out requirements in each zone and should be analyzed on a case-by-case basis. For example, in low-density neighbourhoods, there may be a lower intensity of use that would be permitted compared to a higher-density neighbourhood.

The opinion given by Jameson Clow to the Township in 2011 remains a proper analysis of the things to consider when determining whether a use is residential or commercial. This opinion is enclosed.

To summarize, reviewing court cases dealing with other municipalities' zoning by-laws can help one to see how judges and tribunal members have treated policies of a zoning by-law, but are not determinative with regard to Tiny's zoning by-law since they speak to different pieces of legislation.

The definitions and permitted uses vary in each municipality. Individuals renting out their homes to others to use for residential purposes such as overnight accommodation is not considered to be a commercial use in Tiny's zoning by-law unless it rises to the intensity of use to be considered a commercial use or falls within another definition, such as a tourist establishment or bed and breakfast use.

We rely on the planning analysis provided by Mr. Jamie Robinson who outlines the zones and permitted uses in the current zoning by-law. As he sets out, STR uses are not defined in the Township's by-law but may fit into the residential use permissions.

Uses that rise to the commercial level (like those akin to a hotel) are not permitted in residential areas.

There have been numerous cases dealing with commercial uses vs residential uses. These cases are all analyzing different by-laws and may not be applicable to every situation or municipality, but generally speaking those uses that rise above a residential use could be considered to be commercial. For example, purpose built or purchased houses which are not occupied by the owner and act as high-turnover accommodation may not be permitted in residential neighbourhoods.

The courts and tribunals have looked at "ghost hotels" and have generally found these to be commercial uses. These houses are often purchased by investors to be used solely for STR uses. Often times these investors will purchase multiple homes in an area which has the potential of seriously impacting the fabric of the neighbourhoods and would not be considered a residential use. Again, each situation needs to be examined against the by-law and historical use in order to make a determination regarding legality.



Some municipalities, when amending their by-laws, will only permit STR uses where the owner uses the building as their residence. There are concerns with STR purpose-built or bought houses limiting the housing stock and causing issues with affordable housing.

Whether a use is commercial or residential is fact-dependant and must be examined against the Township's by-law. Jurisprudence has shown that where a property is being used in a matter or intensity that is akin to a hotel or banquet hall, this would be considered a commercial use.

2. Legally non-complying

The language of grandfathering is often misused among lay people and lawyers alike. For your information, a use that is grandfathered from a zoning by-law is considered a "legally non-complying" use and one grandfathered from an official plan is considered a "legally non-conforming" use.

Owners who have continuously used their houses for STR uses before it became restricted (assuming it does) would be considered legally non-complying and could continue operating, subject to the owner proving their historical use. A grandfathered owner would still be required to obtain a licence if a licencing regime was implemented. Those who were not acting legally under the by-law would not be able to continue their use.

A non-complying use remains legal where the use has been continuous and there has been no abandonment of the use. This is set out in section 34(9) of the *Planning Act*:

Excepted lands and buildings

(9) No by-law passed under this section applies,

(a) to prevent the use of any land, building or structure for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day of the passing of the by-law, so long as it continues to be used for that purpose

An owner looking to benefit from this section would need to show that the use had been established at least one day before a by-law was enacted which did not permit the use. In other words, it was legal and permitted at the time it began to be used as an STR.

An owner also must show that the use was not discontinued or abandoned. The history of the use and the owner's intention to continue the use are important. For example, if a building with a legally non-complying use is renovated or destroyed, this does not negate the grandfathering so long as the owner maintains an intention to continue the use once the building is restored.



However, if the use is abandoned or stops, the owner cannot rely on an historical use to grandfather this.

This proof for an owner to show that there is a legally non-complying use is often provided in the form of affidavit evidence which attached historical documents, photographs, communications, receipts, copies of advertisements and MLS listings, or any other document which shows the established use or intention.

3. Other considerations

Regarding licencing, it is important to note that the licensing process is meant to regulate business – not prohibit it. A licence may not be withheld as punishment for not receiving a licence in the past or to punish for any other reason. Simply put, if an applicant meets all of the requirements to get a licence, a licence must be issued.

A 2018 guide put out by the Ministry of Finance is enclosed which sets out considerations when a municipality is considering regulating or licencing STRs.

Amending the Official Plan and Zoning By-law and implementing a licencing regime is the best way to ensure that the Township's interests are protected as the current by-law has some ambiguities. Amendments could include details surrounding the specifics of how many days a minimum stay must be and where STRs are permitted. As is the case with any amendment, there is the potential that the Township could face appeals. There will also be owners who have a grandfathered use that may be continued. These factors cannot be avoided and should not discourage the Township from taking steps to clarify and amend its policies.

Should you have any questions or wish to discuss this opinion, please do not hesitate to contact our office.

Yours very truly,

BARRISTON_{LLP}

Per: Sarah Hahn

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Reply to: Barrie Office

March 29, 2011

BY EMAIL ONLY: spersuad@tiny.ca

PRIVILEGED AND CONFIDENTIAL

Shawn Persaud
The Corporation of the Township of Tiny
130 Balm Beach Road West
Perkinsfield, ON L0L 2J0

Dear Mr. Persaud:

RE: 2011 TINY GENERAL MATTERS
FILE NO. 47893 [RENTAL COTTAGES]

In response to a public query, you have asked for our opinion on whether a single detached dwelling, primarily cottages, rented out on a yearly, monthly, or weekly duration is permitted under the Township's Zoning By-law. It is our opinion that a cottage which meets the definition of dwelling unit can be rented out on a yearly, monthly or weekly basis and be considered compliant with the Zoning By-law. While renting is a factor which the courts have considered when determining which use definition a given property best falls under, we found nothing in the By-law which would prohibit the renting of a dwelling unit. Further, we do not think a dwelling unit that is rented out on yearly/monthly/weekly basis would likely be found to fall under any of the commercial use definitions in the By-law.

Is the Unit a Dwelling Unit?

As a threshold issue, in order for the cottage in question to be considered a dwelling unit under the By-law, it must have living, sleeping and sanitary facilities and one kitchen facility. For the purposes of this opinion we are assuming that any given cottage/cabin in question will have these characteristics. The cottage must also be arranged as a "*single housekeeping unit*". There has been some judicial consideration of this term in the context of rental situations.

In *Good v. Waterloo (City)* (2004), 72 O.R. (3d) 719 CA, the Court considered the term "single housekeeping unit" to determine if a house rented out to students constituted a dwelling unit or a lodging house under the municipal Licensing By-law. The Court concluded that the term required collective decision-making in order to meet the dwelling unit definition under the Business Licensing By-law. The collective decision-making was evidenced on the facts in relation to how the rent was paid, how utilities are paid, the furnishing of the apartments and assignments of rooms, and how the housekeeping was done. This case suggests that a single housekeeping unit is met by the activity within the unit.

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In *Neighbourhoods of Windfields Ltd. Partnership and Oshawa (City) v. Death* [2008] O.J. No. 3298 (upheld by the Court of Appeal), a ratepayers group and the City sought declaratory and injunctive relief against several landlords alleging they were using their properties in a manner contrary to the By-law and that they be required to cease using properties in such manner. The main legal question was whether the properties in question fit under the dwelling unit use or lodging house use under municipal By-laws. In granting the relief against many of the homeowners, the Court held the Zoning By-law's aim was to control residential use intensity and that "single housekeeping establishment," though undefined, required the houses to be designed, operated and functioning as something akin to a typical single family unit. The rentals, and the groups of individuals renting the houses, did not constitute a "single housekeeping unit".

The court examined the overall purpose and scheme of the By-law, including amendments to the lodging house provision, to determine the intended function and operation of the units, as well as associated parking provisions and density limits to determine what single housekeeping unit requires in the R1 zone. The Court found that "single housekeeping establishment" required that the unit be designed and intended for something akin to a "typical single family unit" with a "singleness" characteristic to the occupants required.

The Court concluded that the student housing, characterized by renting out detached houses to a group of individuals, (as individuals or as a group) did not meet the "single housekeeping establishment" definition and therefore the unit fell more properly under the lodging house definition than the dwelling unit definition in the By-law. (The lodging house definition included as a use "boarding houses"). The Court also notes that the commercial nature of the relationship between the landlord and the students suggest the unit is more properly considered a lodging house and the operation of the houses was not the "planning unit" intended for the R1 zone.

The Court distinguishes *Good*, noting that while both cases dealt with rentals, different considerations arise in the interpretation of a Zoning By-law as opposed to municipal Licensing By-law. The Court's analysis is based on finding which of the use definitions (dwelling unit or lodging house) the facts best fit it, as opposed to considering whether the facts could place the student houses within the dwelling unit definition:

The fundamental point in this case is that City Council intended that single detached dwellings should be distinct from lodging houses and that the latter not be permitted in R1-zoned areas. They are distinct uses for distinct zones applying to different areas of the City. A definition of "single housekeeping unit" which would include homes used for 3 to 10 lodging units for exclusive sleeping accommodation, with sharing of food and/or washroom facilities, would simply ignore the definition of lodging houses and would render meaningless the distinction between a lodging house and a single detached dwelling.

The court examined the design and actual function/operation within each house to determine under which use the house fit under. Factors which weighed against the finding that the houses were dwelling units included: owners not residing and never having resided in the house, conversion of family rooms to additional bedrooms, continuous rental of the house, short term leases, and no ties amongst the renters but a need for short term housing.

The cases suggest that a thorough analysis of the facts of each particular instance is required to determine if the operation and activity within a house place it within the dwelling unit definition. Provisions regarding parking and density limits can be reviewed by the Court to determine whether the use of the unit fits within “dwelling unit”, so the specific residential zone is relevant. The Oshawa decision suggests a best fit analysis will be done to determine compliance with a By-law, the entire scheme of the Zoning By-law and other potential uses will also be considered when determining a houses compliance with a By-law.

In addition to the different Official Plan and Zoning By-law in operation for the Oshawa decision, a case may be distinguished from the facts in the Township as there was a clear intention in the Oshawa Official Plan and the By-law to regulate intensification of residential uses. The constant rentals to groups of individuals larger than what the By-law anticipated for the population in the area seemed to be persuasive in the finding that many of the houses were actually lodging houses and were clearly not the use intended for the properties. While the design and tenure of the house were considered, the effects from the rentals (i.e. a constant intensification of population in the area) were also persuasive

While this case found the constant renting to be key in a finding the houses were not dwelling units, in our opinion, renting out one’s property is just one fact that may be considered in determining whether a unit is in operation and function, and for planning purposes, a “dwelling unit.” In our opinion, it is not renting out a unit in and of itself that will turn a dwelling unit into a more intense residential use zone or even into a commercial use but it is something the courts will consider. Distinction can be made between the occasional renting of a cottage and constant rentals to students which may cause greater impacts (noise, cars, etc.) in the area. Further facts, similar to those in *Death*, as discussed above, would certainly bring a unit farther away from what the courts considered to be a dwelling unit. While there is a lack of helpful case law in this issue, in light of *Death*, we suggest renting only on occasion, or renting long term to a group which more akin to a typical nuclear family keeps the unit more safely in the definition of dwelling unit.

Does the Unit Fit into a Commercial Use?

If a dwelling unit is rented out in such as manner as to suggest a commercial use, or in such a way that it fits more properly in a specific commercial use definition than in the dwelling unit definition, a finding could be made that it is non-compliant with the Zoning By-law. However, there is nothing in the By-law definitions nor in the case law cited above which suggests simply because something that would otherwise be considered a dwelling unit is rented out, it becomes a commercial use.



We reviewed the following potential commercial uses: hotel, motel, tourist establishment, tourist cabin establishment and campground and the boarding house use (although not a commercial use, is only permitted in some residential zones). As stated above, none of these commercial uses are made commercial simply because it is a property or building which is rented out most are determined by physical structure or form. Further, in a review of the uses, there are phrases which suggest that it is more than simply accommodating members of the public that determines whether a property is being used as a commercial use.

For all the considered commercial uses there is an intent that the unit be “commercial” and that further, the unit is designed for temporary public use. Phrasing such as “maintained for the accommodation of the public” and references to multiple sub-units of accommodation suggest that within the By-law it is more about design and purpose of a building that will determine if a property can be found to be within the definition.

Below, emphasis is placed on the parts of the definition which differentiate the specific commercial use from a dwelling house which is rented out:

BOARDING HOUSE

Means a *dwelling unit*, containing not more than ten guest rooms which are maintained for the accommodation of the public, in which the owner or lessee supplies, for hire or gain, lodgings with or without meals but does not include any other establishment otherwise defined or classified in this By-law.

CAMPGROUND

Means *premises* consisting of at least five camping sites for the overnight and/or temporary camping or parking of travel trailers, truck campers, or tents for recreational or vacation *use* and designed for seasonal occupancy only.

HOTEL

Means *premises* that contains rooms with no private cooking facilities that are rented on a temporary basis to the public or dwelling units, or a combination of both, equipped to be occupied as temporary accommodation for the public, and which contains a public dining area and which also may contain meeting rooms and *accessory* banquet facilities.

MOTEL

Means *premises* that contain rooms with no private cooking facilities that are rented on a temporary basis to the public with each room being accessed from the outside.



TOURIST CABIN ESTABLISHMENT

Means a *tourist establishment* comprised of two or more cabins arranged singly or in pairs and in which cooking facilities may be provided.

TOURIST ESTABLISHMENT

Means premises designed for the traveling or vacationing public, and that has facilities for accommodation and may serve meals or provide *kitchen facilities* within each unit and may furnish equipment, supplies or services to persons for recreational purposes, but does not include a *campground, trailer park or private park*.

Again, our opinion assumes we are speaking of a cottage structure, as would generally be understood. While it is ultimately possible that something that would otherwise be considered a dwelling unit be rented out constantly and be designed and appear to be operated not for the overall purpose of personal use but for a commercial use it could be characterized as a commercial use. To determine whether this is so, the facts would have to establish the actual use of a property on a case-by-case basis. Determining whether something that would otherwise be considered a dwelling unit is actually maintained as a dwelling unit and not as a commercial use would require evidence to be gathered over a long period of time. Further, given that lack of reported decisions, we cannot guarantee a court will agree that such facts place the property outside its designated use in the By-law.

While it is always in the discretion of the court to find otherwise, generally speaking, we do not believe that simply renting a dwelling unit would likely be considered any kind of commercial use under the Zoning By-law based solely on the fact that the property is rented. Further, we believe that it would be the exception, not the norm, that such a use would pull such a structure into a commercial type use.

We trust you will find this opinion useful, please do not hesitate to contact us with any further questions.

Yours very truly,

BURGAR ROWE
Professional Corporation

A handwritten signature in black ink, appearing to be 'J. Clow', written over a horizontal line.

Per: Jameson W. Clow
AP/eh
jclow@burgarowe.com



THE HOME-SHARING GUIDE FOR ONTARIO MUNICIPALITIES



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INTRODUCTION

In Ontario, home-sharing is one of the fastest growing sectors in the sharing economy. The growth of home-sharing in Ontario and around the world has been driven by consumers looking for greater choices, flexibility and lower costs, and the opportunity to earn extra income for hosts.

There is no consensus definition of home-sharing, but it is generally understood to refer to individuals renting out their residence, or part of their residence, for short periods of time through internet-based platforms such as Airbnb, HomeAway and VRBO.

Through consultations in 2016 and 2017, the Government of Ontario heard that home-sharing is a priority sector in the sharing economy for municipalities. The province also heard that local flexibility is key to address home-sharing in ways that allow municipalities to achieve local objectives (e.g., protecting long-term housing stock, attracting tourism, etc.).

Reflecting this feedback, the province has developed these home-sharing guidance materials as an informative resource that municipalities may wish to consult if they are considering regulating home-sharing locally.

The province also recommends that municipalities consult the sharing economy guide developed by the City of Guelph and the Guelph Lab for the Large Urban Mayors' Caucus of Ontario (LUMCO), entitled [Navigating the sharing economy: A 6-decision guide for municipalities](#). The province provided

funding for this handbook to help municipalities respond to the sharing economy in a way that is thoughtful, adaptable and innovative. The LUMCO guide identifies six decision points for municipalities to consider when addressing a sector of the sharing economy such as home-sharing.

Ontario's Home-sharing Guide for Ontario Municipalities has been carefully prepared and is intended to provide a summary of complex matters. It does not include all details and cannot take into account all local facts and circumstances. The guide refers to or reflects laws and practices which are subject to change.

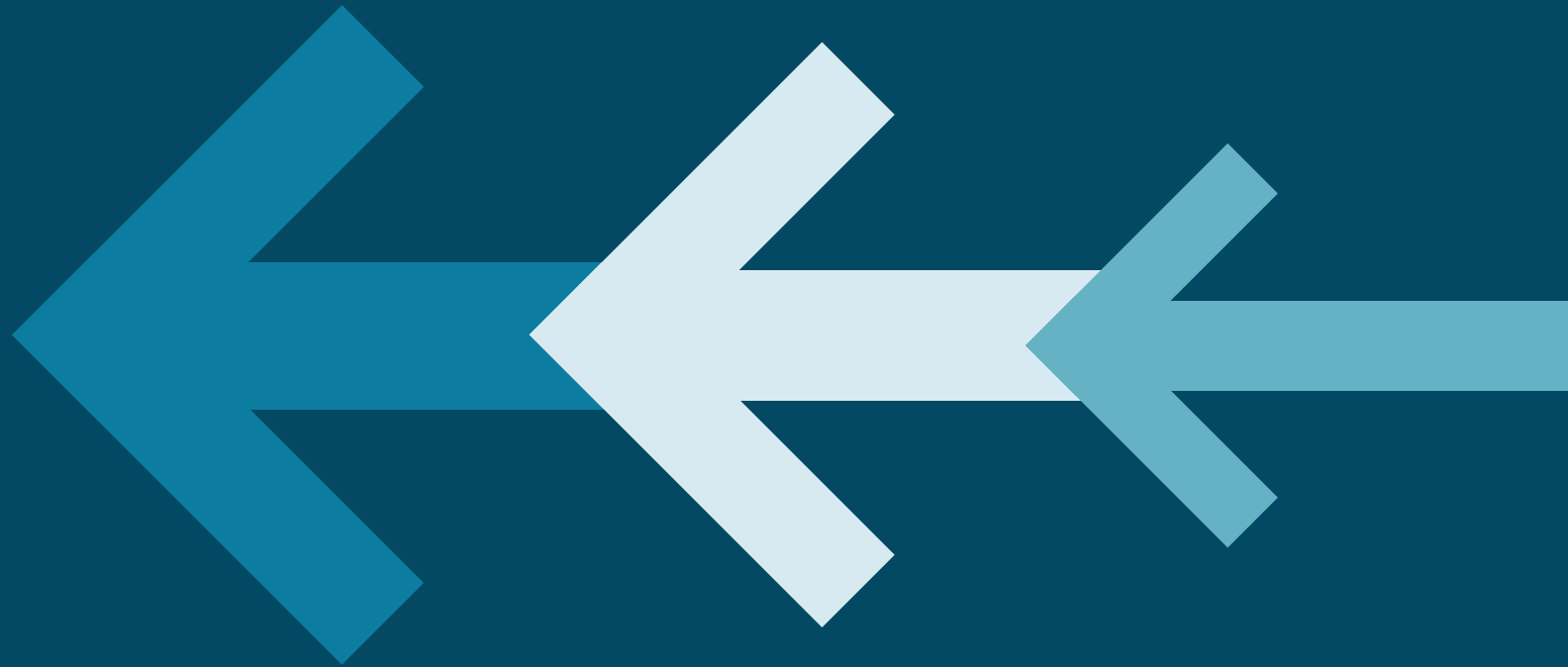
Municipalities are responsible for making local decisions, including decisions in compliance with law such as applicable statutes and regulations. For these reasons, the guide, as well as any links or information from other sources referred to in it, should not be relied upon as a substitute for specialized legal or professional advice in connection with any particular matter. The user is solely responsible for any use or application of this guide. The inclusion of municipal examples in this guide does not imply an endorsement by the Province.

IN THIS GUIDE

This guide is meant to provide municipalities with resources to help them begin their research about addressing home-sharing in their communities. The guide focusses on five questions municipalities may have about regulating home-sharing. These questions and some highlights are below.

Policy Considerations	Regulatory Levers	Stakeholders	Provincial Legislation	Jurisdictional Scan
1. Why might municipalities consider addressing home-sharing?	2. How might municipalities wish to regulate home-sharing?	3. Who might municipalities wish to consult before taking action?	4. What legislation* may be of interest to municipalities considering taking action?	5. What are other municipalities doing?
Issues: <ul style="list-style-type: none"> • Impact on affordable housing • Increased opportunities for tourism • Challenges to existing regulations • Public safety concerns • Economic opportunity • Competitive advantages 	Regulatory levers: <ul style="list-style-type: none"> • License platforms • License/register hosts/operators • Limit rentals to principal residences • Limit maximum number of consecutive days • Limit maximum number of days per year • Limit number of guests • Zoning • Prohibited/Ineligible Building List 	Stakeholders: <ul style="list-style-type: none"> • Advocacy Coalitions • Housing Advocates and Local Residents • Community Groups • Home-owners and Landlords • Platforms • Hosts/Operators • Province of Ontario • Bed & Breakfast and Hotel Industry • Tourism organizations 	Legislation: <ul style="list-style-type: none"> • Accessibility For Ontarians With Disabilities Act • Condominium Act • Fire Protection And Prevention Act • Hotel Registration Of Guests Act • Municipal Act • City Of Toronto Act • Planning Act • Residential Tenancies Act <p>*There is also other law, such as federal legislation and “judge-made law” (“case law”), which may be of interest to municipalities.</p>	Municipalities: <ul style="list-style-type: none"> • Blue Mountains • Niagara-on- the- Lake • Toronto • Vancouver • New Orleans (USA) • Chicago (USA)

At the end of the guide there is a list of other resources municipalities can consult to learn more about home-sharing, its impact on local communities and what other municipalities are doing to address it.



POLICY CONSIDERATIONS

POLICY CONSIDERATIONS

Why might municipalities consider addressing home-sharing in their communities?

Home-sharing platforms are present in over 190 countries across the globe and many municipalities are taking action to regulate this activity. As municipalities address home-sharing, they often seek to find a balance between encouraging its growth to promote economic development and placing limits on the scope of activity to preserve the character of local communities. Findings from literature on home-sharing and public opinion research from Ontario in 2016 show support for home-sharing while also acknowledging there is a role for governments to play in regulating this sector.

Part of the research municipalities may wish to undertake when considering regulating home-sharing is to review concerns raised about short-term rental activity, or potential short-term rental activity, across the entire municipality to help verify the scope of issues that may be raised by various stakeholders. Municipalities may hold public consultations and may also wish to consult their legal counsel during policy development.

For more information about home-sharing policy options and considerations, visit the City of Guelph's [Compendium of Resources](#) for information including case studies, policy primers and proposals, and law and regulation resources.

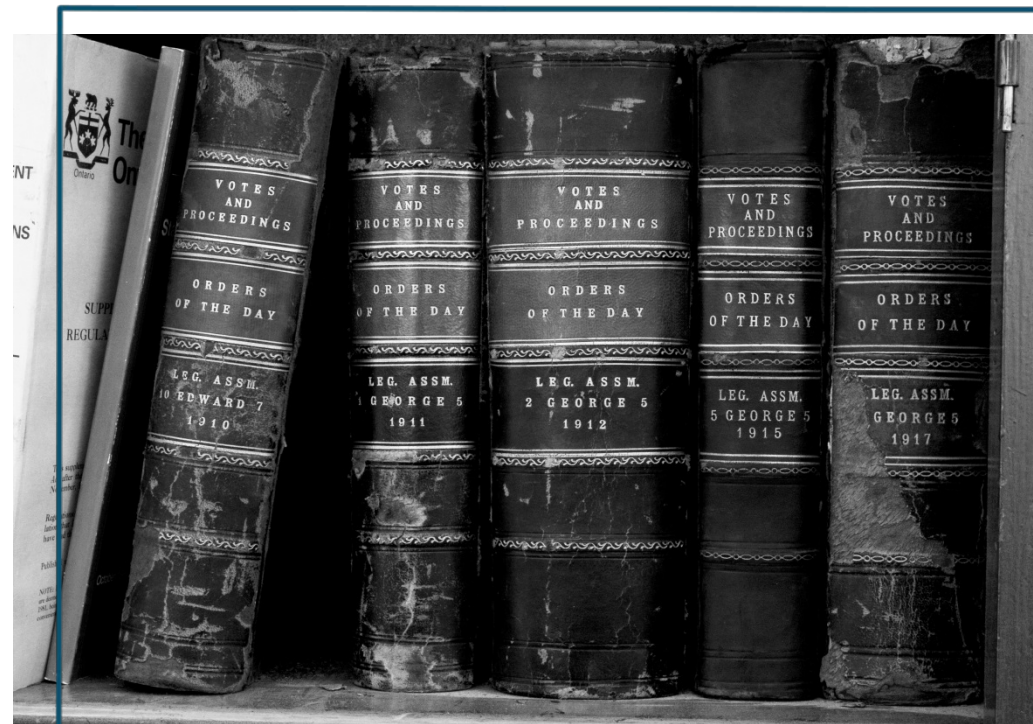


TABLE 1 – POLICY CONSIDERATIONS

Municipalities may seek to address some of the key issues noted below through home-sharing regulations or policies.

Issue	Description	Potential Responses <i>See Table 2 for more information about regulatory levers</i>
Impact on affordable housing	Home-sharing platforms may allow individuals to make more money renting on the short-term market than on the long-term market, which can deplete available stock of long-term rentals and raise market rents.	Limit home-sharing to principal residences. Limit the number of days a unit can be rented so that long-term rentals are more profitable than short-term rentals.
Tourism	Home-sharing has the potential to increase the number of visitors to Ontario, provide a wider selection of accommodations, allow a visitor to live like a local and can make travel more affordable for Ontarians. Short-term vacation rentals already provide an important source of tourism activity in communities across Ontario. Smaller communities that lack sufficient tourist lodging can increase short-term vacation accommodations through home-sharing. Commercial operators may make use of home-sharing platforms to attract visitors.	Consider how new regulations could increase the costs to both guests and hosts/operators or create barriers to new entrants, and aim to limit those costs or barriers. Allow home-sharing in some parts of the community but not others through zoning.
Challenges to existing regulations	People involved in home-sharing may be currently subject to local by-laws (e.g., property tax, zoning and licensing by-laws, and the governing documents of a condo corporation (e.g. declarations, by-laws or rules). Home-sharing hosts may be knowingly or unknowingly violating municipal rules, and/or condominium corporation rules.	Educate residents about existing by-laws and policies, and how they relate to home-sharing. Advise potential hosts to check their condominium corporation governing rules. Explore partnerships with platforms to share information about by-laws. Collect data from platforms to facilitate enforcement.
Public safety concerns	Residents in some jurisdictions have raised concerns about having an influx of short-term renters in their communities who may:	Limit home-sharing to principal residences. Require licenses or registration for

Issue	Description	Potential Responses <i>See Table 2 for more information about regulatory levers</i>
	<ul style="list-style-type: none"> not respect communal property (e.g., litter the neighbourhood); bring a party atmosphere to the community; or be involved in criminal behaviour. <p>Concerns have also been raised about safety issues such as fire safety in condominiums (renters may not be aware of exit plan) and water safety in beachfront communities (renters may not be aware of proper precautions for water activities).</p>	<p>hosts/operators (include documents to ensure that the unit meets the municipality's health and safety requirements).</p> <p>Partner with platforms to communicate relevant by-laws to hosts/operators.</p>
Economic opportunity	<p>People can generate additional income by renting out their homes or rooms in their homes, making it more affordable to live in their own residence.</p> <p>Short-term vacation rentals allow individuals to supplement their income, and thereby offset the cost of their vacation property.</p>	<p>Consider how new by-laws could increase the costs to guests and reduce opportunity for hosts/operators or create barriers to new entrants. Aim to limit those costs or barriers.</p>
Competitive advantages	<p>The traditional accommodation industry may raise concerns that individuals, businesses, or platforms involved in home-sharing may be taking advantage of different rules to operate in the accommodations sector with a lower operating cost.</p> <p>Displacing the existing hospitality and accommodation industry may result in job losses, lower wages and lost tax revenues.</p>	<p>Consider ways to harmonize new by-laws with by-laws for traditional accommodations, such as including B&Bs in the home-sharing by-laws or vice versa.</p>



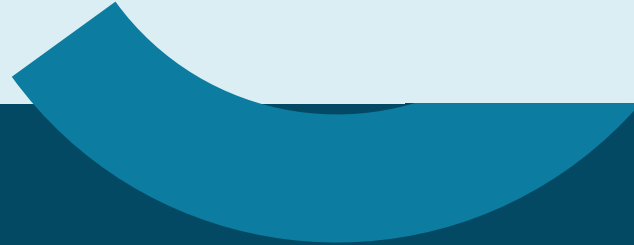
REGULATORY LEVERS



REGULATORY LEVERS

How might municipalities wish to address home-sharing?

The province recognizes municipalities as responsible and accountable governments that are in the best position to address matters within their jurisdiction. Through the Municipal Act and the City of Toronto Act, municipalities have broad powers respecting certain matters (subject to certain limits), which they may wish to consider using to regulate certain aspects of home-sharing platforms and hosts/operators. Under the Planning Act, municipalities have the authority to make local planning decisions that determine the future of communities, including whether and where home-sharing is allowed through their municipal official plan policies and zoning by-laws.



REGULATORY MODERNIZATION:

The Province has adopted regulatory modernization principles when designing regulations to reduce burden on business. Municipalities could consider these principles when designing home-sharing regulations. The seven regulatory modernization principles adopted by the Province are:

1. Focus on the user by writing regulations in plain language and creating a single point of contact for business to access information or government services.



2. Use international industry standards (e.g. ISO) where available/appropriate to eliminate redundant reporting requirements.



3. Move to risk-based inspections: reduce the enforcement burden on businesses with a strong safety and compliance record, using accreditation to distinguish good actors from high-risk targets; better coordinate inspections among ministries and agencies.



4. Create a “Tell Us Once” culture where all ministries that interact with business use the Business Number so businesses do not provide the same information to government repeatedly.



5. Apply a small business lens by setting different compliance paths to achieve desired outcomes, rather than using a one-size-fits-all approach.



6. Go digital by delivering simple and straightforward digital services and products that will modernize public service delivery and make government work better for businesses.



7. Facilitate equivalent means of regulatory compliance where a business can demonstrate an alternative approach that meets or exceeds the requirement of the regulation.

SELF-REGULATION

One common impetus for regulation is to protect the public interest. Self-regulation pursues this goal but places the burden on the participants in the transaction.

Governments may conclude that internal feedback mechanisms on sharing economy platforms are sufficient to enable markets to regulate themselves.



TAXATION

In the 2017 Budget, the government announced that it would provide the City of Toronto and all single-tier and lower-tier municipalities in Ontario with the authority to levy a tax on transient accommodation (often referred to as a “hotel tax”). Legislative amendments to the Municipal Act, 2001 and the City of Toronto Act, 2006 that provide the City of Toronto and all single and lower-tier municipalities in Ontario with the authority to levy a tax on transient accommodation came into force on December 1, 2017.

Under these amendments, municipalities have the flexibility to decide whether or not to implement a hotel tax, and also have the ability to determine the types of transient accommodation to which the tax would apply, the rate that would be charged, and other details about the tax.

A municipality would be responsible for setting out the application of the tax in a municipal by-law.

A municipality could choose to apply a municipal hotel tax to home-sharing arrangements, and may determine the applicable tax rate.

Regulations prescribing required revenue sharing with not-for-profit tourism organizations by municipalities that choose to implement a hotel tax also came into force on December 1, 2017.

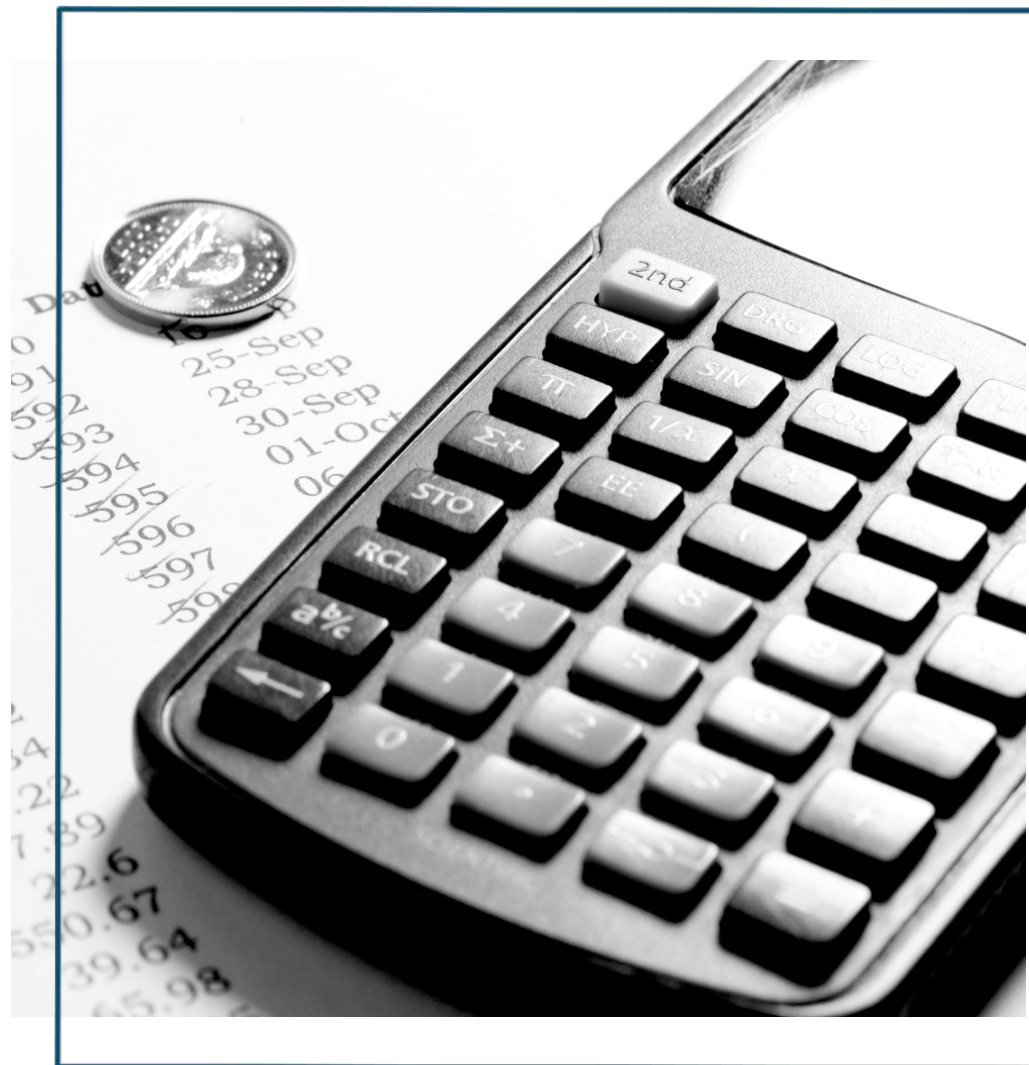


TABLE 2 – REGULATORY LEVERS

Regulating home-sharing in the context of home-sharing platforms, such as Airbnb, HomeAway and VRBO, is a relatively new practice. There are no proven best-practices established at this time, but the following are regulatory levers that municipalities have implemented to address home-sharing in their communities.

Regulatory levers

License platforms

Municipalities may license platforms (subject to certain limits). Municipalities may wish to consider the feasibility of obtaining information (e.g. from platforms) and sharing information to assist with enforcement or future policy development.

Considerations

Very few jurisdictions around the world currently license home-sharing platforms; many only license the hosts/operators.

License/Register hosts/operators

Municipalities may wish to consider the feasibility of licensing or registering hosts/operators, creating databases of short-term rentals in their municipalities, and collecting other data relevant to enforcing home-sharing by-laws. Municipalities may wish to consider how licensing/registration systems might help address compliance with the municipality's health and safety requirements.

Incorporating traditional short-term rentals (e.g., Bed & Breakfasts) into one licensing/registration regime along with home-sharing could provide the municipality with an opportunity to update current short-term rental licensing/registration regimes if they already exist.

Creating different types of licenses based on zoning or types of accommodations could be explored to help achieve desired policy outcomes, such as limiting home-sharing in residential areas to maintain the character of neighbourhoods while encouraging it in tourist areas.

Considerations

Municipalities may wish to consider other options, such as permits to track short-term rentals and may wish to consider the regulatory burden on hosts/operators and the municipal resources required to enforce these options.

Limit rentals to principal residences

Several jurisdictions have imposed restrictions on second units to curb commercial activity (the use of investment properties for short-term rentals), to protect the availability of long-term rental stock.

While limiting home-sharing to principal residences may curb commercial activity, it may also interfere with individuals who want to rent out vacation properties for part of the year.

Regulatory levers

Definitions of principal residence

Toronto: A principal residence is a dwelling unit owned or rented by an individual person, alone or jointly with another person, where he or she is ordinarily resident.

Vancouver: The dwelling where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the dwelling unit with the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills.

Chicago: A dwelling unit: (1) that is occupied by its owner on a daily basis at least 245 days in the applicable calendar year; and (2) for which the owner has claimed a Cook County homeowner exemption.¹

Canada Revenue Agency:

A property qualifies as your principal residence for any year if it meets **all** of the following **four** conditions:

- It is a housing unit, a leasehold interest in a housing unit, or a share of the capital stock of a co-operative housing corporation you acquire only to get the right to inhabit a housing unit owned by that corporation.
- You own the property alone or jointly with another person.
- You, your current or former spouse or common-law partner, or any of your children lived in it at some time during the year.
- You designate the property as your principal residence.

Considerations

If a municipality limits rentals to principal residences, it will need to determine what proof of residence it will require and how that proof will be submitted (e.g., through a registration process, only when asked, etc.).

Municipalities will also need to consider whether secondary suites are included in the definition of primary residence, or if they will be excluded from home-sharing.

¹ A program administered by the Cook County Assessor's Office that allows taxpayers whose single-family home, townhouse, condominium, co-op or apartment building (up to six units) is their primary residence to save \$250 to \$2,000 per year, depending on local tax rates and assessment increases. The Homeowner Exemption is available to people who own or have a lease or contract which makes them responsible for the real estate taxes of the residential property. It must also be used as their principal place of residence for the year in question.

Regulatory levers

Maximum number of consecutive days

Municipalities may wish to explore the option of establishing a cap on the number of **consecutive** days a unit can be rented in order to distinguish short-term rentals from long-term rentals. For example, many municipalities define short-term rentals as rentals that last fewer than 30 days.

Considerations

Municipalities may wish to consider the feasibility of proactively monitoring and enforcing this option. For example, in the City of Vancouver's policy licensing report, *Regulating Short Term Rentals in Vancouver* (July 5, 2017), it is stated that even though renting units for less than 30 days is prohibited, short-term rentals supply approximately 29 per cent of Vancouver's accommodations for tourists and other transient guests.

Maximum number of days per year

Municipalities may wish to consider the option of restricting the number of days per year a unit can be rented out on a short term basis, in order to encourage homes to retain a 'private use' component. Municipalities adopting this approach may wish to explore arrangements with home-sharing platforms to remove listings in violation of local restrictions.

Considerations

Municipalities may wish to consider the feasibility of enforcing restrictions on the maximum number of days. For example, this could require tracking individuals/addresses over several different platforms.

Number of guests

Municipalities may wish to consider restricting the number of guests allowed in a unit (e.g., two per bedroom). For example, this may help address home-sharing units being used as "party houses".

Considerations

Municipalities may wish to consider the feasibility of enforcing limits on the number of guests and how complaints about activity in the rental unit would be addressed.

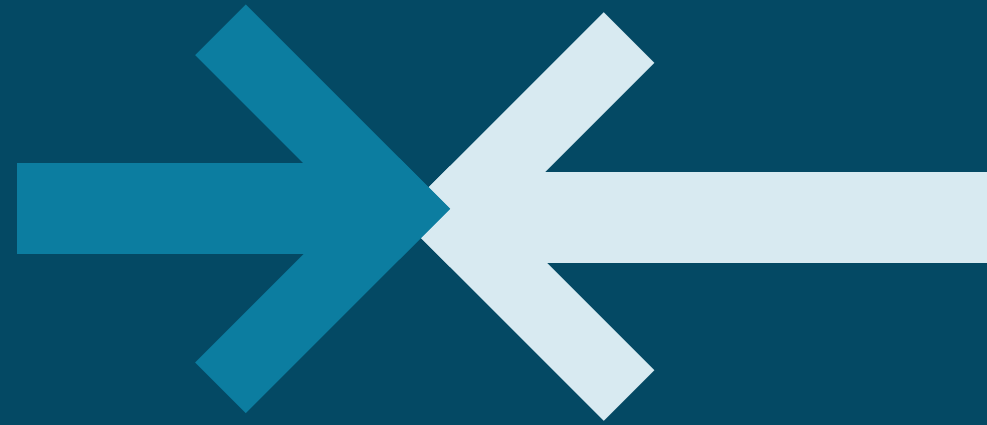
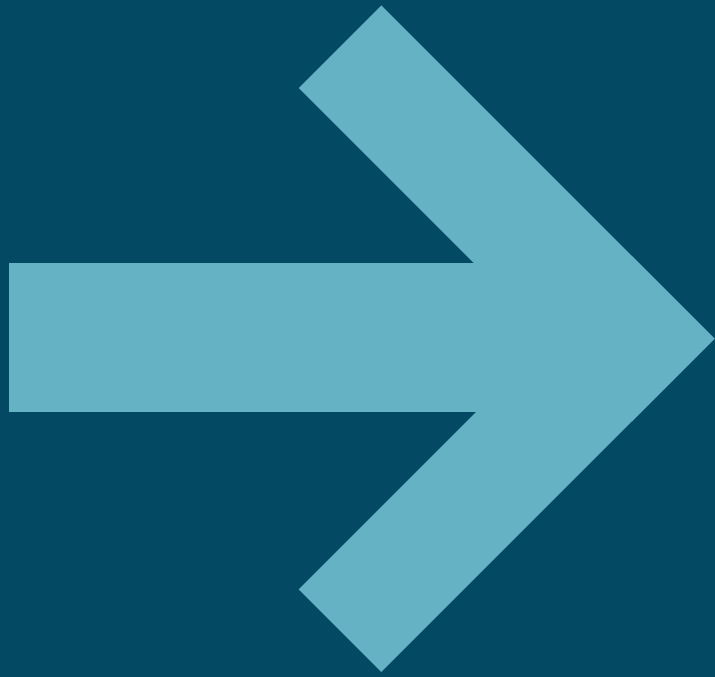
Zoning

Where a municipality has determined that home-sharing is a discrete land use, the municipality may wish to consider limiting the use to certain areas (e.g., residential or mixed-use zones), or certain building types (e.g., six units or less) to achieve the desired policy goals, such as encouraging tourism, preserving the character of neighbourhoods, protecting housing stock, etc.

Ineligible and Prohibited Building Lists

Municipalities may wish to consider creating lists of buildings that are ineligible to participate in home-sharing for various reasons, e.g., repeated by-law infractions, repeated fire code violations, by request of a condo corporation, etc.

Municipalities could explore the possibility of working with home-sharing platforms to help enforce these rules.



STAKEHOLDER CONSULTATIONS

STAKEHOLDER CONSULTATIONS

Who might municipalities wish to consult before taking action?

Photo looking down at two women and two men seated at a circular table. As noted in the Large Urban Mayors' Caucus of Ontario's sharing economy guidebook, *Navigating the sharing economy: A 6-decision guide for municipalities*, consulting with stakeholders is a crucial part of municipal decision-making.

The following is a list of potential stakeholders municipalities may want to consult when addressing home-sharing. This list provides examples and is not meant to be exhaustive.



TABLE 3 – POTENTIAL STAKEHOLDERS

Group	Description/Interest (highlights based on the groups' websites linked below)
Advocacy Coalitions	<p>Fairbnb.ca: Fairbnb.ca</p> <ul style="list-style-type: none"> • A national coalition of homeowners, tenants, tourism businesses and labour organizations bringing together groups from the regulated hotel and B&B industry with property owners, property renters and other concerned citizens. • Calling for a robust, nationally-consistent policy framework to ensure home-sharing complies with fair, safe and respectful legislation – drawing on the experience of other countries and other cities. • Released a report about Airbnb in Toronto, entitled <i><u>Squeezed Out: Airbnb's Commercialization of Home-Sharing in Toronto.</u></i>
Bed & Breakfast and Hotel Industry	<p>Federation of Ontario Bed & Breakfast Accommodation: https://www.fobba.com/</p> <ul style="list-style-type: none"> • The professional association representing the Bed & Breakfast industry in Ontario. • Members voluntarily agree to adhere to a high set of consistent standards defining cleanliness, comfort, quality, safety and hospitality. • Represents approximately 280 B&Bs, and has approximately 100 direct B&B members and three local association members (Fergus/Elora, Stratford and Niagara-on-the-Lake). <p>The Hotel Association of Canada: http://www.hotelassociation.ca/home.asp</p> <ul style="list-style-type: none"> • Represents more than 8,178 hotels, motels and resorts that encompass the \$18.4 billion Canadian hotel industry which employs 304,000 people across Canada. <p>The Ontario Restaurant Hotel & Motel Association: http://www.orhma.com/home.aspx</p> <ul style="list-style-type: none"> • Has over 4,000 members, representing more than 11,000 establishments across the province. <p>UNITE HERE: http://unitehere.org/industry/hotels/</p> <ul style="list-style-type: none"> • Labour union that represents 270,000 working people across Canada and the United States, including workers in the hotel industry. <p>Unifor: https://www.unifor.org/en</p>

Group	Description/Interest (highlights based on the groups' websites linked below)
Housing and Tenant Advocates and Local Resident/Community Groups	<ul style="list-style-type: none"> • Unifor represents 17,600 members working in the diverse hospitality and gaming sector. One-third of their membership work in hotels - including major chains (like Fairmont, Radisson and Delta) and stand-alone facilities. <p>Housing Help Association of Ontario: https://findhousinghelp.ca/</p> <ul style="list-style-type: none"> • Provides a list of coalitions, advocacy groups and organizations across Canada that are working on housing and homelessness issues. <p>Federation of Metro Tenants' Associations (FMTA): https://www.torontotenants.org/</p> <ul style="list-style-type: none"> • A non-profit organization which advocates for better rights for tenants. • FMTA has over 3,000 members, including affiliated tenant associations and individuals. <p>Advocacy Centre for Tenants Ontario (ACTO): http://www.acto.ca/</p> <ul style="list-style-type: none"> • Works to better the housing situation of Ontario residents who have low incomes including tenants, co-op members and people who are homeless. • ACTO works with legal clinics, tenant associations and other groups and individuals concerned about housing issues.
Landlords	<p>Federation of Rental Housing Providers of Ontario (FRPO): https://www.frpo.org/</p> <ul style="list-style-type: none"> • Represents those who own, manage, build and finance, service and supply residential rental homes. • FRPO represents over 2,200 members who own or manage over 350,000 household across Ontario. <p>Landlord's Self-Help Centre (LSHC): https://landlordselfhelp.com/</p> <ul style="list-style-type: none"> • A non-profit community legal clinic funded by Legal Aid Ontario and mandated to support Ontario's small-scale landlord community exclusively. <p>Greater Toronto Apartments Association (GTAA): https://www.gtaaonline.com/</p> <ul style="list-style-type: none"> • Represents the interests of Toronto firms participating in the multifamily rental housing industry. • The GTAA represents over 240 property management companies that own and operate 160,000 apartment units. <p>Ontario Landlords Association: http://ontariolandlords.org/</p>

Group	Description/Interest (highlights based on the groups' websites linked below)
	<ul style="list-style-type: none"> • A network of landlords who promote and protect the interests of landlords and help landlords succeed through education, news and networking. <p>Canadian Apartment Properties Real Estate Investment Trust: https://www.caprent.com/</p> <ul style="list-style-type: none"> • One of Canada's largest residential landlords
Hosts/Operators	<p>If home-sharing is already taking place in your municipality, there may be a community of hosts/operators you can engage with to understand their experiences and how potential regulations may impact them. Municipalities could target hosts/operators through events such as town halls that are advertised for people involved in the short-term rental market.</p>
Platforms	<p>There are several home-sharing platforms operating in Ontario. Some have a larger presence in certain municipalities than others. The following are some of the major platforms in Ontario.</p> <p>Airbnb</p> <ul style="list-style-type: none"> • Has listings in more than 65,000 cities and 191 countries. • The most popular home-sharing platform in Ontario. • Partnered with the Ontario Government and the Canada Revenue Agency to educate Ontarians who engage in home-sharing about their rights and responsibilities. • Has engaged with municipalities and the Province of Ontario to address home-sharing. <p>HomeAway</p> <ul style="list-style-type: none"> • Has more than 2 million unique places to stay in 190 countries. • Part of the Expedia, Inc. family of brands, including VRBO and travel mob. <p>Flipkey</p> <ul style="list-style-type: none"> • Has more than 830,000 properties in 190 countries. • Part of TripAdvisor Rentals
Province of Ontario	<p>In October 2015, the Province established the Sharing Economy Advisory Committee (SEAC) with representation from key ministries to oversee Ontario's approach and to harness the opportunities presented by the sharing economy, including home-sharing. In 2016 and 2017, SEAC has been researching the sharing economy, has consulted a wide range of industry, community and municipal stakeholders, and conducted public polling of Ontarians about their use and perception of the sharing economy. If you have questions for SEAC, please send an email</p>

Group

Description/Interest (highlights based on the groups' websites linked below)

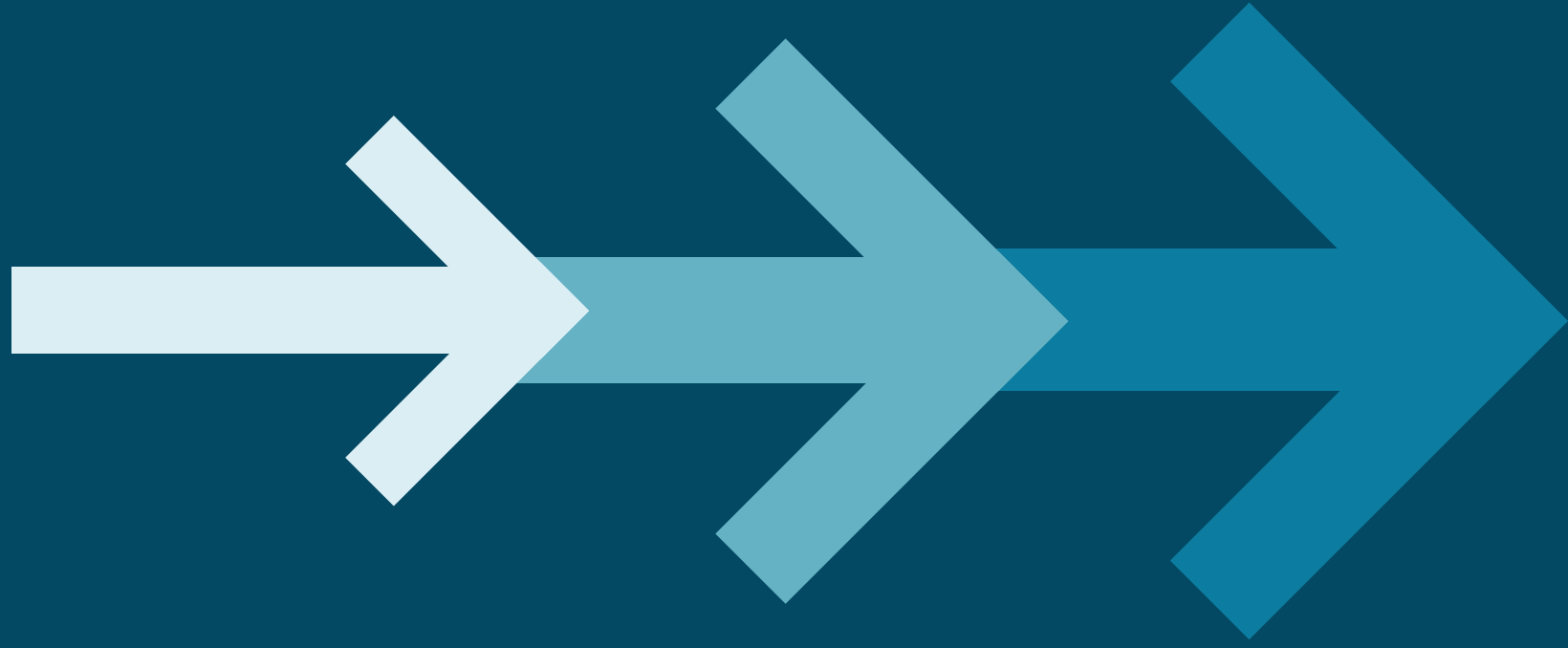
to: sharingeconomy@ontario.ca.

Tourism Industry

Tourism Association of Ontario: <http://www.tiaontario.ca/cpages/home>

- Advocates for the importance of tourism as an economic driver and job creator in order to serve the interests of Ontario's diverse tourism industry and business community.
- Recognized as the umbrella government advocacy organization serving Ontario's diverse tourism industry and facilitating conversations between industry and government to affirm the economic value of tourism.





PROVINCIAL LEGISLATION

PROVINCIAL LEGISLATION

What provincial legislation may be of interest to municipalities considering taking action?

The Municipal Act provides municipalities with broad powers to introduce by-laws and govern activities within their jurisdiction, which may include some aspects of home-sharing. The Planning Act provides municipalities with the authority to regulate the use of land, buildings and structures through zoning. A municipality can regulate the locations and development standards that could apply to a specific use of land based on the planning impacts. The

following table describes some provincial legislation that may be of interest to municipalities considering regulating home-sharing.

The law is complex and municipalities should consult their solicitors whenever any legal issue is in question. This list provides examples and is not meant to be exhaustive. There is also other law, such as federal legislation and “judge-made law” (“case law”), which may be of interest to municipalities.

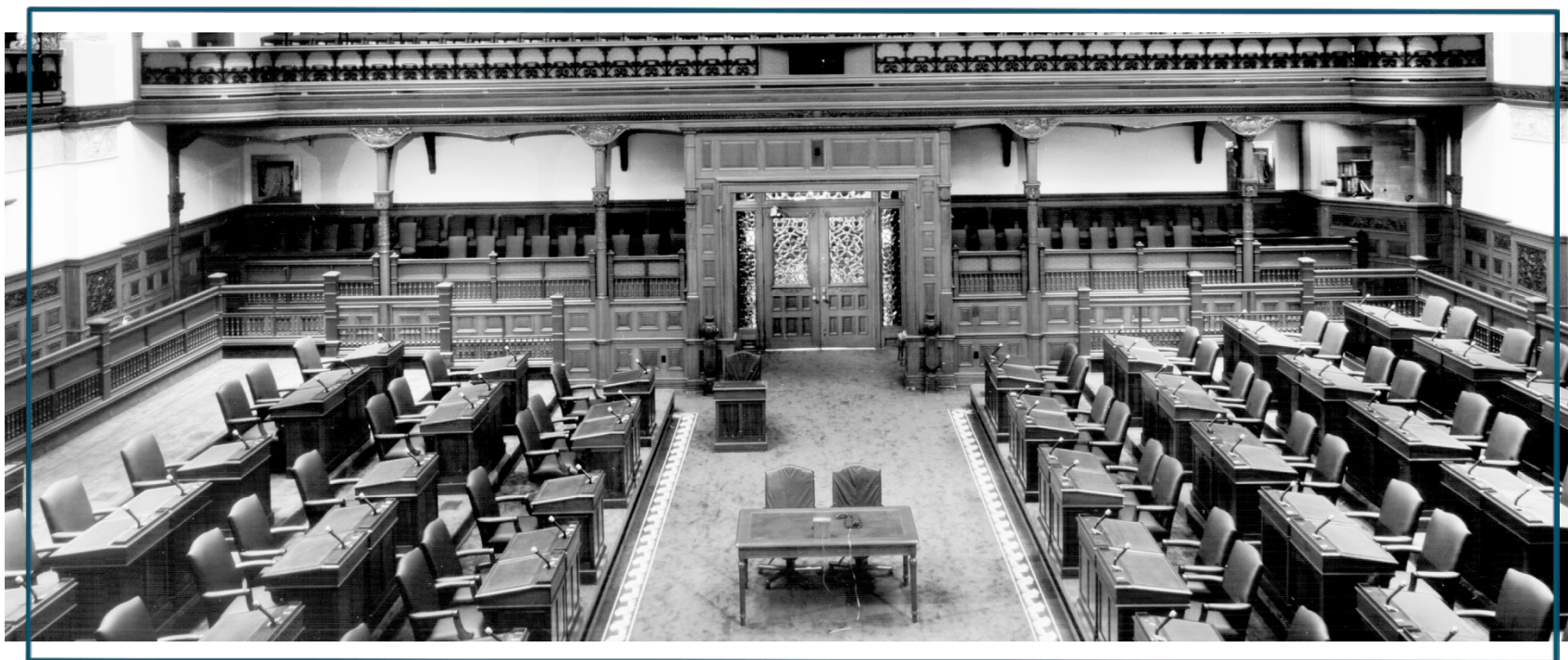


TABLE 4 PROVINCIAL LEGISLATION

Provincial Act

[ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005 \(AODA\)](#)

[INTEGRATED ACCESSIBILITY STANDARDS REGULATION \(IASR\), O. Reg. 191/11](#)

Ontario has laws to improve accessibility for people with disabilities. The Accessibility for Ontarians with Disabilities Act (AODA) is a law that sets out a process for developing and enforcing accessibility standards.

Accessibility standards are laws under the Integrated Accessibility Standards Regulation that government, businesses, non-profits and public sector organizations must follow to become more accessible. They help organizations identify and remove barriers to improve accessibility for people with disabilities in 5 areas of daily life in the areas of transportation, customer service, employment, information and communications and in the design of public spaces.

Application

The AODA and its related accessibility standards applies to every person or organization that provides goods, services or facilities to the public or other third parties and that has **at least one employee in Ontario**. Accessibility requirements and deadlines depend on the type and size of your organization.

If an organization has one or more employees, the organization must adhere to the accessibility requirements under the AODA and its standards. Sole proprietors or self-employed individuals who do not have employees are exempt from having to comply with the AODA and its accessibility standards.

Accessibility requirements for organizations can be found at the government's accessibility website at:

<https://www.ontario.ca/page/accessibility-laws>.

CONDOMINIUM ACT

The Condo Act provides for the registration and creation of condominiums and gives owners the tools to run their condominium corporations with minimal government involvement.

Hierarchy of a condominium's governing documents

Governing document	What it does	Threshold for change	Other limitations
1. Declaration	Considered to be like the "constitution" of the condo – can include restrictions on the use and occupation of the units and common elements, etc.	Currently, the owners of 80 per cent or 90 per cent of units must consent to a change	Need not be reasonable; must be consistent with the Condo Act and the declaration would be subject to any other act (such as the Human Rights Code) that has primacy over the Condo Act or the declaration.
2. By-laws	Condo by-laws can set occupancy standards that are either: 1) the same as municipal by-laws where the condominium is located or, 2) subject to the regulations, not more restrictive than the standards that are in accordance with the maximum occupancy for which the condo building is designed (based on the Building Code).	Currently, owners of a majority of units must vote to approve a change	Must be reasonable and consistent with the declaration and the Condo Act
3. Rules	Govern the use of units and common elements to: <ul style="list-style-type: none">• promote safety, security and welfare, or• prevent unreasonable interference with use and enjoyment of the property	Made by the board Can be overturned by a majority vote at a meeting of owners	Must be reasonable and consistent with the by-laws, the declaration, and the Condo Act

- The declaration may contain conditions or restrictions with respect to the occupation and use of the units or common elements.
- The content of a condo corporation's governing documents is ultimately up to the board and owners. The Condominium Act does not specifically address short-term rentals.
The planning authority can require that the description contain certain conditions, before the developer registers the description to create the condo corporation.
- Generally, if a condo's governing documents are more restrictive than the municipality's by-laws, owners and occupiers of the condo must still comply with the condo's governing documents. For example, if a municipality permits short-term rentals but a condo corporation's governing documents prohibit or restrict short-term rentals, the restriction or prohibition of the condo corporation's governing documents would still apply.

Provincial Act

FIRE PROTECTION AND PREVENTION ACT (FPPA)

The FPPA reflects the principle that municipalities are in the best position to determine their own needs and circumstances.

One of the intents of the FPPA is to establish municipal responsibility for fire protection and makes fire prevention and public education mandatory. It serves to clarify the role of municipalities in providing fire services and establish the minimum level of fire protection without imposing significant costs on municipalities.

Municipalities are responsible for conducting a risk assessment of their jurisdiction, and identifying what fire protection services are necessary to mitigate those risks to an acceptable level. This would include assessing risks related to home-sharing in their community and home-sharing regulations they may be contemplating. While municipalities are responsible to ensure that this is done, they may request assistance from the Office of the Fire Marshal, or contract the necessary consulting services to actually conduct the assessment.

When regulating home-sharing, municipalities should consider fire and life safety criteria for compliance with the Ontario Fire Code.

HOTEL REGISTRATION OF GUESTS ACT

This act is not directly relevant to regulating home-sharing at a municipal level; however, the definition of hotel may be useful for distinguishing between hotels and short-term accommodations. The act requires every hotel to keep a register of guests and it contains a number of offences relating to the keeping of a register. In addition, the room rates are to be posted in each room, failure of which is also an offence.

“Hotel” means a separate building or two or more connected buildings used mainly for the purpose of catering to the needs of the travelling public by the supply of food and also by the furnishing of sleeping accommodation of not fewer than six bedrooms as distinguished from any other building or connected buildings used mainly for the purpose of supplying food and lodging by the week or otherwise commonly known as “boarding houses” or of furnishing living quarters for families and having a dining room or restaurant commonly known as “apartment houses” or “private hotels”.

MUNICIPAL ACT

CITY OF TORONTO ACT

Under the Municipal Act and the City of Toronto Act municipalities have broad powers (subject to certain limits) that allow them to make decisions in a number of areas to address local circumstances and interests. Some of these broad powers include:

- Economic, social and environmental well-being of the municipality, including respecting climate change;
- Health, safety and well-being of persons; and
- Protection of persons and property, including consumer protection.

It is up to municipalities to make local decisions, such as providing local programs and services, and interpreting their powers.

Generally, municipalities are under no obligation to inform the province about local decisions. Interested persons often raise their concerns with the municipality.

PLANNING ACT

Municipal councils, landowners, developers, planners and the public play an important role in shaping a community. Community planning is aimed at identifying common community goals and balancing competing interests of the various parties. The central activity in the planning of a community is the making of an official plan, a document which guides future development of an area in the best interest of the community as a whole. The Planning Act sets out the ground rules for land use planning in Ontario and describes how land uses may be controlled, and who may control them. It provides for a land use planning system led by provincial policy, promotes sustainable economic development, and recognizes the decision-making authority and accountability of municipal councils in land use planning.

Under the Planning Act, municipalities:

- make local planning decisions that will determine the future of communities
- prepare planning documents, such as:
 - an official plan, which sets out the municipality's general planning goals and policies that will guide future land use
 - zoning by-laws, which set the rules and regulations that control development as it occurs. The Planning Act also gives planning boards in northern Ontario the power to adopt official plans and pass zoning by-laws for unorganized territory within their planning areas
- ensure planning decisions and planning documents are consistent with the Provincial Policy Statement which sets the policy foundation for regulating the development and use of land, and conform or do not conflict with provincial plans such as the Growth Plan for the Greater Golden Horseshoe and the Greenbelt Plan.

The Planning Act does not explicitly address home-sharing or the sharing of land between individuals. It would be up to the municipality through its zoning by-laws to determine if sharing a residential dwelling constitutes a use of land, whether it changes the use of land from residential to another use (e.g. commercial), and whether the change in use is permitted by municipal zoning by-laws. Alternatively, municipalities could consider home-sharing as a home business which is regularly permitted in residential zones in many municipal zoning by-laws.

RESIDENTIAL TENANCIES ACT

The Residential Tenancies Act, 2006 (RTA) sets out the rights and responsibilities of landlords and tenants for most residential rental properties in Ontario.

“The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish the framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.” 2006, c. 17, s. 1.

Application of the Act

While the RTA applies to residential rental units despite any other legislation, agreement or waiver to the contrary, certain types of accommodation are exempt. For example, the RTA does not apply to accommodation intended to be provided to the travelling or vacationing public or occupied for a seasonal or temporary period in a hotel, motel, bed and breakfast vacation establishment, or certain other types of facilities. As well, the RTA does not apply where the occupant is required to share a bathroom or kitchen with the owner.

In situations where it may be unclear, a landlord or tenant can make an application to have the Landlord and Tenant Board (LTB) determine whether all or part of the RTA applies to a rental unit or residential complex. It is up to the Member to determine whether or not the RTA applies in any situation, depending on the facts of the case.

Tenancy Agreement

Where a rental unit is subject to the RTA, a landlord and tenant enter into a tenancy agreement. A tenancy agreement is a written, oral or implied agreement between a landlord and a tenant for occupancy of a rental unit. In the contract, the tenant agrees to pay rent to live in a rental unit provided by the landlord.

The landlord and tenant can agree to a fixed term tenancy which lasts for a specific period of time. Most fixed term tenancies are for one year, but the RTA does not mandate minimum rental periods. When a tenancy agreement expires, the tenancy does not end – it continues under the same terms and conditions as before, because landlords and tenants have to give each other proper notice to end a tenancy.

Subletting

A sublet occurs when a tenant moves out of the rental unit, lets another person live there for a period of time, but returns to live in the unit before the tenancy ends.

A tenant must have the landlord’s consent to sublet the unit, but the landlord must have a good reason to refuse. If a tenant sublets without the landlord’s consent, the landlord can apply to the Landlord and Tenant Board (LTB) for an eviction order to terminate the original tenancy and evict the unauthorized occupant. If the tenant thinks that the landlord is being unreasonable in withholding their consent to sublet to a specific person, the tenant can file an application with the LTB.

A tenant who sublets a rental unit cannot:

charge a rent that is greater than the rent that is lawfully charged by the landlord for the rental unit;

collect any additional fee for subletting a rental unit; or

require an individual to pay for goods or services as a condition for the subletting in addition to the rent the person is lawfully required to pay to the tenant or landlord.

In a sublet, all of the terms of the original tenancy agreement stay the same. The tenant is liable to the landlord for any breaches in their lawful obligations under the tenancy agreement, while the sub-tenant is liable to the tenant.

Eviction

Under the Act, in certain cases a tenant can be evicted if the tenant, tenant's guest or someone else who lives in the rental unit does something they shouldn't do. Grounds for eviction include, but are not limited to:

- wilfully or negligently causing damage to the rental property
- substantially interfering with the reasonable enjoyment or another lawful right of other tenants or the landlord
- seriously impairing the safety of others
- allowing too many people to live in the rental unit in contravention of health, safety or housing standards ("overcrowding")

A landlord can end a tenancy only for the reasons allowed by the Act.

The first step is for the landlord to give the tenant notice in writing that they want the tenant to move out. The proper forms a landlord must use for giving a notice to end the tenancy are available from the LTB.

If the tenant does not move out after receiving the notice, the landlord can ask the LTB to end the tenancy by filing an application. The LTB will decide if the tenancy should end after holding a hearing. Both the landlord and the tenant can come to the hearing and explain their side to a member of the LTB.

Landlord and Tenant Board

The LTB resolves disputes between residential landlords and tenants and provides information/brochures about the RTA.

Contact the LTB: Toll free: 1-888-332-3234

Toronto area: 416-645-8080

TTY: Bell Relay Service at 1-800-268-9242

Website: <http://www.sjto.gov.on.ca/ltb/>





JURISDICTIONAL SCAN

JURISDICTIONAL SCAN

What are other municipalities doing?

The following is a high-level scan of how municipalities in Ontario and the United States are, or are not, utilizing some common home-sharing regulatory levers.

The chart below is a summary for reference purposes.

For further details, refer directly to the links below in Table 6 – Jurisdictional Scan Narrative.

The inclusion of municipal examples in this guide does not imply an endorsement by the Province.



TABLE 5 JURISDICTIONAL SCAN

Regulation	The Blue Mountains	Niagara-on-the-Lake	Toronto	Vancouver	New Orleans (USA)	Chicago (USA)
License home-sharing platform			✓			✓
License/Register hosts/operators	✓	✓	✓	✓	✓	✓
Limit rentals to principal residences			✓	✓		✓
Maximum number of consecutive days	✓	✓	✓	✓	✓	
Maximum number of days per year					✓	
Number of guests	✓				✓	
Zoning	Certain areas of the Town are zoned to allow for Commercial Resorts Units; these do not need to be licenced for short term rentals.	Zoning restrictions are based on the type of short-term rental, e.g., cottage rental, vacation apartment, etc.	Short-term rentals to be added as a permitted use for all zones where dwelling units are permitted	Short-term rentals to be allowed in all residential dwelling units across certain zoning districts.	The Comprehensive Zoning Ordinance allows specific short-term rental types in specific zoning districts.	Zoning used to restrict home-sharing in some residential areas.
Ineligible or Prohibited Building List						✓
Tax on transient accommodation			Under review	Under review	✓	✓

TABLE 6 JURISDICTIONAL SCAN NARRATIVE

The following table provides a more detailed look at the approaches to regulating home-sharing in several municipalities in Ontario and the United States. For further details, please refer to the links below.

JURISDICTIONAL APPROACHES

TOWN OF THE BLUE MOUNTAINS

<http://www.thebluemountains.ca/sta-consult.cfm>

Goal

The Town of Blue Mountains is aiming to balance the needs of property owners with those of residents looking for safe, adequate and properly maintained short-term accommodation (STA) premises.

The accommodation of recreational visitors is critical to the economy of the Town and to employment in the many recreational businesses and activities located there. Short-term accommodations, including the rental of private houses, chalets and condominium units, are important to tourism in the area.

Definition

[BY-LAW NO. 2009-04](#)

"SHORT TERM ACCOMMODATION (STA)" means a dwelling or structure of any part thereof that operates or offers a place of temporary residence, lodging or occupancy by way of concession, permit, lease, license, rental agreement or similar commercial arrangement for any period less than thirty (30) consecutive calendar days, throughout all or any part of a calendar year. Short term accommodation shall not mean or include a motel, hotel, bed and breakfast establishment, tourist cabin or cottage, hospital, commercial resort unit or similar commercial or institutional use.

Key Points

- Generally, a newly established STA is not permitted in a low density residential zone.
- Short term (less than 30 days) accommodation uses are NOT permitted in any traditionally single-family-dwelling neighbourhoods, zoned R1, R2 and R3.
- The maximum number of occupants within a dwelling that is being operated as a short term accommodation shall not exceed a total number based upon 2 persons per bedroom plus an additional 2 persons.

- The number of non-occupying guests permitted at a short term accommodation premises must not be such that it may conflict with the residential neighbourhood or amenity.
- Short term accommodation renters are not to host commercial functions.
- So called "party houses" conflict with residential amenity and are not permitted.
- Any gathering, celebration or entertainment at a short term rental accommodation premise must not conflict with residential amenity and must comply with all the other requirements of this Code and the Town of The Blue Mountains by-laws.
- An STA Licence is only required if you rent for periods of less than 30 days.
- There are certain areas of the Town where owners do not require a license to rent for short term periods but they must meet other requirements. Certain areas of the Town are zoned to allow for Commercial Resorts Units (CRU) and these do not need to be licensed for short term rental periods at this time.
- Consequences can include fines if an owner is found to be in violation of the bylaw.
- A license is valid for a period of 2 years from date of issuance.

NIAGARA-ON-THE-LAKE

Definition

[BY-LAW NO. 4634-13](#)

SHORT TERM RENTALS means the use of a building for overnight guest lodging for a period of not more than 28 days and includes Bed and Breakfast Establishment, Cottage Rentals, Villas, County Inns and Vacation Apartments.

Key Points:

- Short-term rentals include:
 - Bed and Breakfasts – no more than three guestrooms
 - Villas – four or more bedrooms
 - Cottages – up to three bedrooms
 - County Inns – more than three rented rooms.
- Only the registered owner or the lessee of a residential building, who has explicit permission from the owner, may apply for and hold a license to operate a short-term rental.
- In the case of a corporation, any of the largest shareholders can apply.
- The lessee of a commercially zoned property may apply.

- No person shall use or operate a short-term rental unless they hold a valid license.
- Only buildings that have been occupied as a single detached dwelling for a minimum of 4 years shall be eligible for a license. Any additions placed on the building that expand the number of rooms will not be available to rent until that portion of the addition/extension has been occupied for 4 years.
- All municipal taxes, building permits, water and hydro accounts for the property must be current and not outstanding before a license will be issued.
- Short term rentals must front a public road, have parking, be fully serviced by water and sewage, in compliance with all by-laws, zoning, official plan, proof of liability insurance, fire and health and safety codes.
- All guests must leave registration information with the licensee and the licensee is required to keep daily records for inspection.
- A Municipal Law Enforcement Officer may require access to the licensed premises to inspect and verify compliance.
- A Special Occasion permit is required if a licensee wishes to hold a more commercial gathering or wedding or large reception.
- License infringements will get 72 hours to correct an issue. If the Town must correct the violation it will be at the expense of the Owner. License may also be revoked.
- License fee is \$108 per licensed guest room per year.
- Fine for operating a short term rental without a current license is \$500.

TORONTO

<https://www.toronto.ca/city-government/public-notices-bylaws/public-notices/proposal-to-establish-a-new-municipal-code-chapter-for-short-term-rentals/>

Goal

The City of Toronto's regulations are intended to maximize the benefits of short-term rentals and contain their negative impacts in a manner that is also consistent with the principles in the City's official plan and the overall objectives to promote consumer protection, public safety, and the economic, social and environmental health of the City.

Definition

A short-term rental is all or part of a dwelling unit in the City of Toronto used to provide sleeping accommodations for any rental period that is less than 28 consecutive days in exchange for payment. This includes existing bed and breakfasts and excludes hotels and motels and accommodations where there is no payment.

Key Points

- Short-term rentals are permitted across the city in all housing types
- People can host short-term rentals in their principal residence only – both homeowners and tenants can participate
- People can rent up to three bedrooms or entire residence
- People who live in secondary suites can also participate, as long as the secondary suite is their principal residence
- An entire home can be rented as a short-term rental if owner/tenant is away - to a maximum of 180 nights per year
- People who rent their homes short term must register with the City and pay \$50
- Companies such as Airbnb must become licensed and pay a fee of \$5,000, plus \$1/night booked through the platform

VANCOUVER

<http://vancouver.ca/doing-business/short-term-rentals.aspx>

Definition

“A short-term rental (STR) is a home, or a room in a home, that is rented for less than 30 days at a time.”

Goal

Through its short term rental regulations, the City of Vancouver is seeking to accomplish the following:

- **Long Term Rental Supply:** Protect the supply and affordability of long term rental housing for Vancouver residents.
- **Health and Safety:** ensure residential space rented as tourist accommodation meets Building Bylaw and Property Use standards.
- **Neighbourhood Fit:** Maintain quality of life and safety in residential neighbourhoods and buildings.
- **Tax and Regulatory Equity:** Treat accommodation providers equitably from a tax and regulatory perspective.
- **Supplemental Income:** allow residents to earn income from renting their home occasionally.
- **Tourism:** Support growth in tourism and Vancouver’s ability to support peak tourism season and to host major events.
- **Compliance:** design a regulatory, licensing and enforcement system that is easy to understand, inspires high levels of voluntary compliance and has effective means of preventing unlawful behaviour.

Key Points

- Short-term rentals are allowed starting April 2018 – but not before.
- Homeowners and renters will only be allowed to list their principal residences, defined as where you live most of the year, pay

your bills, cook your meals, and receive government mail.

- Vancouver residents will not be permitted to apply for licences to list secondary suites like basement apartments or laneway homes, or second homes (unless they are the person's principal residence).
- Annual licensing fee of \$49 each year; anyone operating a short-term rental must list the licence number in online advertisements.

NEW ORLEANS (USA)

<https://www.nola.gov/short-term-rentals/>

Definition

“‘Short term residential rental’ means a dwelling unit located within the city that is rented as, or held out as being used as, a shared housing unit, bed-and-breakfast establishment or vacation rental.”

Key Points

- There are three license categories:
 - Accessory – rooms in principle residence or secondary unit; no limit on number of days it can be rented in a year; maximum of three guests per bedroom, with a maximum of six guests in total.
 - Temporary – entire residence; can be rented for a maximum of 90 days per year; maximum of two people per bedroom, with a maximum of ten guests in total.
 - Commercial – entire unit in non-residential district; no limit on the number of days it can be rented in a year; maximum of ten guests.
- The license placard provided by Safety and Permits must be prominently displayed on the front facade of the structure in a location clearly visible from the street during all periods of occupancy.
- Airbnb must collect taxes from their hosts.
- Short-term rentals are banned in the tourism centric French Quarter.
- Short-term rentals are not permitted outdoors, in an accessory structure (e.g. shed, garage, etc.), or in a recreational vehicle.
- Only one party of guests are permitted per short-term rental
- Use of the short-term rental for any commercial or social events is prohibited.

- The short-term rental shall outwardly appear as a residential dwelling.
- Short-term rentals shall not adversely affect the residential character of the neighborhood nor shall the use generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person's enjoyment of his or her residence.

Chicago (USA)

Shared Housing Ordinance:

<https://www.cityofchicago.org/content/dam/city/depts/bacp/ordinances/sharedhousingordinanceversionfinal.pdf>

Definitions

“Shared housing host” means an owner or tenant of a shared housing unit who rents such unit to guests.

“Shared housing unit” means a dwelling unit containing 6 or fewer sleeping rooms that is rented, or any portion therein is rented, for transient occupancy by guests. The term “shared housing unit” shall not include: (1) single-room occupancy buildings; (2) hotels; (3) corporate housing; (4) bed-and-breakfast establishments, (5) guest suites; or (6) vacation rentals.

Goal

To strengthen protections for consumers and quality of life while generating new revenue to invest in supportive services and housing for the homeless.

Key Points

- Chicago has created two categories of platforms and has different requirements for each:
 - “intermediaries” (e.g., Airbnb) that primarily list shared housing units registered with the City on the company’s platform; and
 - “advertising platforms” (e.g., HomeAway) that primarily list licensed vacation rentals or bed-and-breakfasts on the company’s platform, and do not receive rental or revenue data from hosts.
- Chicago limits short-term rentals in the different types of units as follows, though hosts can seek exemptions from these rules from the city:
 - **single-family homes**: only primary residences can be rented;
 - **multi-family homes** (i.e. 2-4 units): only primary residences can be rented and a limit of one rental unit per building will apply; and
 - **multi-unit buildings** (i.e. 5+ units): a limit of one-quarter of the total number of dwelling units in the building or 6 rental units, whichever is less, will apply.

- Primary residence is defined as a dwelling unit: (1) that is occupied by its owner on a daily basis at least 245 days in the applicable calendar year; and (2) for which the owner has claimed a Cook County homeowner exemption
- There is a “one-strike-and-you’re-out” rule for certain “egregious conditions” (e.g. violent acts, drug trafficking, gang-related activity, improper commercial activity including large parties) and a “three-strikes-and-you’re out” rule for units that cause a disturbance due to certain incidents (e.g. noise, public drunkenness, harassment of passersby, loitering, overcrowding).
- The City will establish an “**ineligible list**” and ensure that these units are not allowed to operate. This list will prohibit the properties of problem landlords, building code scofflaws, and units that are subject to an order to vacate or that have been deemed a public nuisance from being listed on the site.
- Cooperative buildings, condominium buildings, and buildings governed by a homeowner’s association, regardless of size, along with owners of buildings with five or more units are able to request to be added to a “**prohibited buildings**” list to establish short-term rental activity as illegal in their buildings. The City screens unit registrations to determine if any are located in these buildings and, if so, take enforcement action to remove the units from the registry.
- The legal voters of any precinct within the City that contains residentially zoned property may petition their local alderman to introduce an ordinance establishing that precinct as a restricted residential zone, with different levels of restriction available.

RESOURCES

Ontario by-laws

Town of The Blue Mountains: [BY-LAW NO. 2009-04](#)

Town of Niagara-on-the-Lake: [BY-LAW NO. 4634-13](#)

Other jurisdictions

New Orleans, USA: [Short Term Rentals](#); [Licensing Ordinance](#); [Zoning Ordinance](#)

Chicago, USA: [Ordinance](#), [Summary](#)

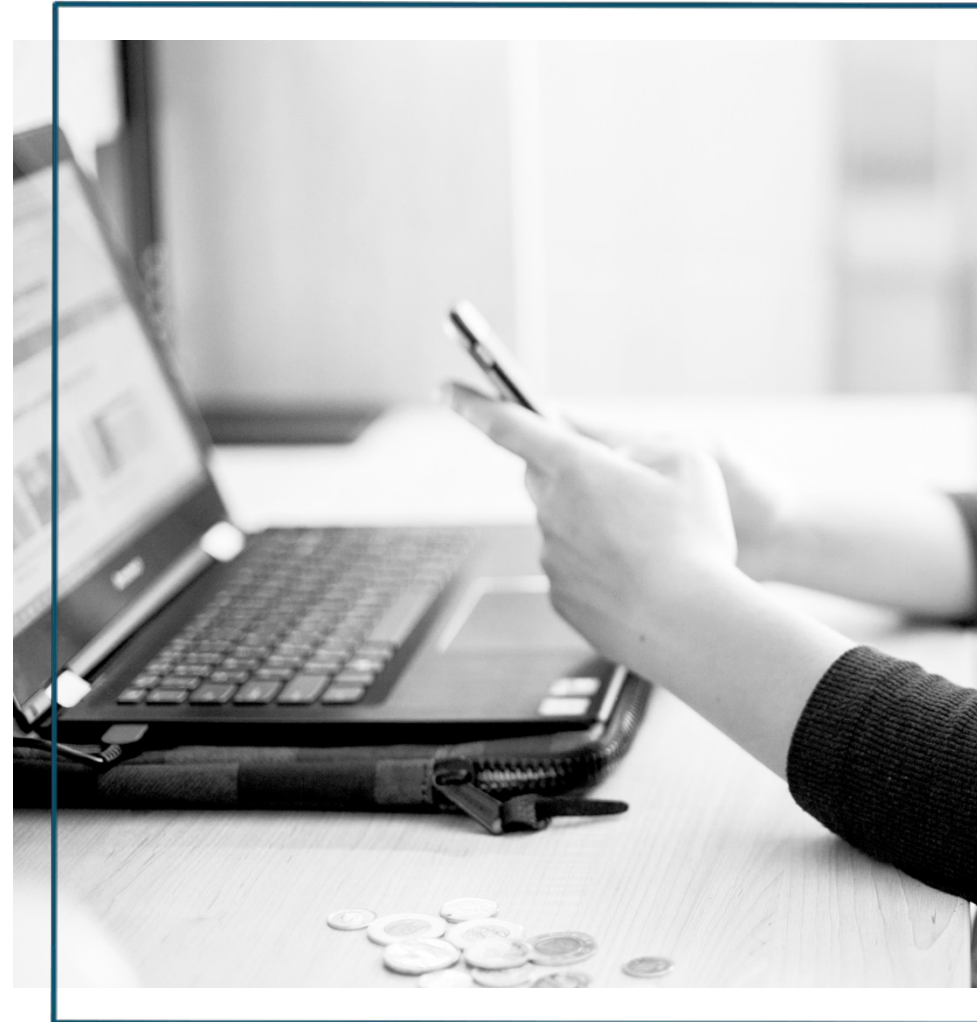
Mowat Centre Research

[What to do about Airbnb? Four things Ontario should consider in the move to regulate home-sharing](#)

[Regulating Disruption: Governing in an era of rapid technological change](#)

Canadian Centre for Policy Alternatives

[Regulating Airbnb and the Short-Term Rental Market](#)



THE HOME-SHARING GUIDE FOR MUNICIPALITIES



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