

Developing an Approach to Regulating Short-Term Rentals

Date: October 11, 2016

To: Executive Committee

From: Executive Director, Municipal Licensing and Standards & Chief Planner and
Executive Director, City Planning

Wards: All

SUMMARY

Residents and property owners are renting out rooms or entire units for short periods in growing numbers across Toronto, facilitated by the rise of online platforms like Airbnb. For the purposes of this report, we call this type of activity a "short-term rental". According to Airbnb, 9,460 rooms or entire units in Toronto were rented on the platform in 2015; this has doubled since 2014. Residents and stakeholders have identified four key areas of concern relating to short-term rentals: impacts on neighbourhoods; impacts on housing affordability; impacts on tourism; and impacts on taxation.

This report describes the short-term rental market, the existing regulatory context, the tax requirements applicable to short-term rentals and the municipal issues that have been identified to date regarding short-term rentals. The report also outlines the planned work for staff to conduct further research into the issues, consult the public and key stakeholders regarding short-term rentals, and explore potential options for regulation. Staff will report back in 2017 on the results of the work described in this report and options for regulating short-term rentals in Toronto.

The following divisions were consulted in the preparation of this report: Social Development, Finance and Administration; Corporate Finance; Toronto Fire Services; Toronto Building; Shelter, Support and Housing Administration; Affordable Housing Office; Economic Development and Culture; Revenue Services; and Legal Services.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards and the Chief Planner and Executive Director, City Planning, recommend that:

1. Executive Committee receive this report for information.

FINANCIAL IMPACT

There are no financial impacts beyond what has already been approved in the current year's budget.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of January 28, 2016, Executive Committee referred item EX11.19 Regulating Temporary Accommodation Rentals to the Executive Director, ML&S, and the Chief Planner and Executive Director, City Planning, to provide an interim report in the third quarter of 2016 and a final report in 2017 on regulating temporary accommodation rentals. The directive requested the report address:

- An analysis of the current state of the temporary accommodation rental market in the City of Toronto, including its growth over five years, the cost and geography of listings, a breakdown by service provider and unit type, and an analysis of listing landlords;
- A comparison of regulatory approaches in other jurisdictions regarding temporary accommodation rental;
- An investigation of the impacts of rentals on occurrences of sexual violence; working conditions for employees; vulnerable residents; the health and safety standards of rental buildings and renters; the total supply and cost of rental housing and property ownership; the economy;
- A review of provisions in the municipal code related to temporary accommodation rentals and options to regulate, restrict and/or prohibit temporary accommodation rentals through the zoning bylaw and/or licensing temporary accommodation rentals;
- Options to ensure payment of all applicable taxes and fees (local, provincial and federal) by temporary accommodation rental operators and platforms;
- A plan to consult with residents and industry stakeholders.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX11.19>

COMMENTS

There has been a significant rise in the number of people around the world and in Toronto renting property or rooms in their homes for short periods. This growth has been driven by the emergence of online platforms that host listings and facilitate bookings and payments. The largest of these platforms, Airbnb, offers listings in more than 190 countries and has booked more than 60 million guests. With this rise, Toronto residents have raised questions and concerns about whether short-term rentals are permitted in the City and whether short-term rentals should be subject to further

regulation. Cities around the world are facing similar issues and are in various stages of researching and regulating short-term rentals. This report explores short-term rentals in Toronto, describes the regulatory and tax context, outlines a number of key municipal issues related to short-term rentals and outlines a plan to conduct research and consultation to guide the City's approach to short-term rentals.

Understanding Short-term Rentals

The term "short-term rental" has been used to describe a wide range of rentals that occur over a short period that fall outside of hotel, motel, bed and breakfast, renting and subletting. Short-term rentals occur in any form of dwelling, including detached house, semi-detached house, townhouses, second suites, condominiums and rental apartment buildings. Short-term rentals are operated by both property owners and tenants.

In Toronto, residents and property owners are using a number of online platforms to facilitate short-term rentals, including Airbnb, the Homeaway, VRBO, Flip Key, Roomorama, Craigslist and kijiji. Some short-term rentals are listed on multiple platforms.

There are two primary ways to distinguish short-term rentals: i) whether or not the rental occurs in the primary residence of the operator, and ii) whether or not the operator is present during the rental.

Primary residence is not defined in provincial or municipal legislation; the lack of shared definition can make discussions regarding short-term term rentals confusing. Each category of short-term rentals has unique benefits and risks from a regulatory perspective. The following provides further details regarding these categories:

- **Primary residence and operator present:** A property owner or renter rents one or more bedrooms in their home.
 - Ex: a property owner rents a bedroom in her home that she does not use for a few weeks each year.
- **Primary residence and operator not present:** A property owner or renter rents an entire unit while away for a short period.
 - Ex: a renter rents her entire apartment for a few weeks while away on vacation.
- **Non-primary residence and operator not present:** A person purchases a property and rents it out for short periods.
 - Ex: A person purchases three condominiums and rents them out most weekends to generate income.

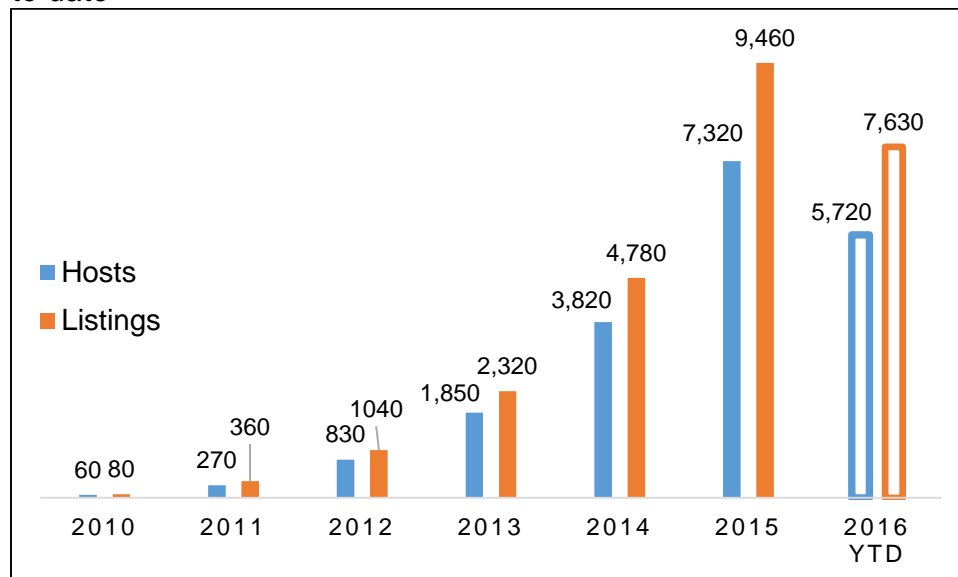
Short-term rentals market in Toronto by number

It has been difficult for staff to determine the total number of short-term rental listings in Toronto as they occur on a number of online platforms and some listings may be listed on more than one site. Airbnb has shared that there were 12,260 Airbnb listings online as of September 1, 2016. An initial scan of other websites found, as of October 3 2016, approximately 700 on the Flipkey website, 640 on the VRBO website, 480 listings on

the Homeaway website and 200 listings on the Roomorama website. These websites have not yet responded to an initial request for data from the City. There were also some short-term rentals available on kijiji and craigslist. This suggests that Airbnb hosts the majority of listings on the short-term rental market. Note that these numbers reflect the number of units that are listed online and not the units rented.

Airbnb has shared further detail about the activity of users that provides insight into the short-term rental market. According to Airbnb, there were 9,460 units or rooms that were rented in 2015, run by 7,320 operators, or "hosts". 68% of those rented (approximately 6,440) were entire units, while the remaining were a room in a unit. The number of Airbnb listings rented in 2015 has approximately doubled since 2014 (see figure 1).

Figure 1: Airbnb listings in Toronto that were rented at least one time, 2010-2016 year to date*



*Based on data shared by Airbnb with staff on October 4, 2016.

Short-term rentals rented for more than 90 days per year

The number of days a short-term rental is rented in a year provides insight as to whether the primary use of the unit is as a residence or as a short-term rental. According to Airbnb, 72% of entire unit listings were rented for 90 days or less in 2015. 26% (approximately 1,680) of entire unit listings were rented for more than 91 days and 9% (approximately 600) were rented for more than 181 days (see table 1). Data on listings where only a room was rented was not provided.

Operators with multiple listings

Airbnb reported that in 2015, 63% of entire unit listings were the operator's only listing, while 37% (approximately 2,250) belonged to an operator with more than one listing.

9% (approximately 590) of entire unit listings were operated by someone with five or more listings (see table 1).

Table 1: Percentage of entire unit listings per rental frequency by single and multi-listing operators, 2015 (data shared by Airbnb with City)*

Listings per host	Number of nights rented in 2015								Total
	1 to 30	31 to 60	61 to 90	91 to 120	121 to 150	151 to 180	181 to 270	More than 271	
1	28%	12%	5%	4%	4%	3%	5%	2%	63%
2	7%	2%	2%	1%	1%	less than 1%**	less than 1%**	less than 1%**	14%
3	3%	2%	less than 1%**	less than 1%**	less than 1%**	less than 1%**	less than 1%**	less than 1%**	7%
4	3%	less than 1%**	less than 1%**	less than 1%**	less than 1%**	less than 1%**	less than 1%**	less than 1%**	5%
5 or more	4%	2%	1%	1%	less than 1%**	less than 1%**	less than 1%**	less than 1%**	9%
Total	45%	18%	9%	7%	6%	4%	6%	3%	98%***

*Based on data shared by Airbnb with staff on October 4, 2016.

**Categories that represented less than 1% of listings were assumed to represent 0.3% of listings for the purposes of this report.

***Not equal to 100% due to the above assumption**.

Regulatory context

Short-term rental operators have different responsibilities and liabilities in relation to the use and occupancy of their properties than short-term rental platforms. For the most part, this section focuses on the regulatory context for short-term rental operators.

Businesses that provide short-term accommodation to travelling public, like hotels, motels and bed & breakfasts, are required to operate in accordance with provincial legislation. Relevant legislation includes the Inkeepers Act, the Fire Code, the Accessibility for Ontarians with Disabilities Act, the Taxation Act and the Workplace

Safety and Insurance Act. Travel agencies have different responsibilities and liabilities and are subject to different legislation, including the Ontario Travel Industry Act.

Hotels, motels, bed & breakfasts, short-term rental operators, travel agencies and short-term rental platforms are not licensed by the City of Toronto.

Zoning by-laws

The use of any given property is regulated by the City's zoning by-laws. Toronto's zoning by-laws were not written to regulate the length of time a dwelling unit is rented. However, some short-term rentals available through sites like Airbnb may fall into existing definitions of uses. The zoning requirements surrounding short-term rentals are complex and must be considered property by property, in part because there are a number of zoning by-laws still in effect from the six former municipalities in addition to the city-wide zoning by-law. This report discusses how the city-wide zoning by-law 569-2013 addresses short-term rentals, which governs some, but not all parts of Toronto. Further study may conclude that these definitions may need to be refined or that a new term may need to be established to better distinguish short-term rentals from other defined land uses.

Under By-law 569-2013, a room or entire unit rented for a short period may fall into the definition of "tourist home" or "hotel", and would be permitted only in certain areas. Both definitions use the term "travelling public", which is considered to be a generally understood term in the tourist business and is consistently used in several pieces of Ontario legislation.

The By-law defines a **tourist home** as a dwelling that "(A) is the principal residence of the tourist home operator; (B) caters to the needs of the travelling public by the furnishing of sleeping accommodation; and (C) may include the provision of meals. This definition covers what is commonly called a bed and breakfast. A tourist home must be in a detached house, a semi-detached house or a townhouse where vehicle access does not rely on a mutual driveway. Where permitted in residential areas, a tourist home is limited to having no more than two guest rooms. A tourist home is generally permitted in most residential areas in the former City of Toronto and several mixed-use commercial-residential zones across the City. Some short-term rentals may fall into this category, including rentals where the owner or tenant of a unit rents a room and rentals where the unit is the owner's primary residence and the owner rents the unit while away from home.

If the operator of a short-term rental does not live in the unit, this may be considered a **hotel**. According to the By-law, a hotel is defined as "premises used to cater to the needs of the travelling public by providing sleeping accommodation in rooms or suites, and it may include an eating establishment that is ancillary to the hotel".

Hotels are permitted in one of the employment-industrial zones and in mixed-use commercial-residential zones. The employment-industrial area where hotels are permitted emphasizes offices and regular residential uses are not permitted; hotels in these areas are typically used by business visitors and airport users. In commercial-residential areas, the By-law has a regulation which says "no hotel room or suite may be

located in the same storey as a dwelling unit." This requirement recognizes that conflicts arise in buildings that contain both hotels and residential uses and addresses them by requiring these uses to be on separate floors.

The By-law does not restrict the number of days a residence can be rented.

Short-term rentals in condominiums and rental units

There are additional considerations regarding whether short-term rentals are permitted in condominiums and rented units. The Condominium Act authorizes condominium boards to set bylaws, rules and restrictions, and a number of condo boards in Toronto have enacted rules prohibiting units from being rented for short-periods.

The Residential Tenancies Act (RTA) states that tenants may sublet a rental unit with the consent of the landlord (part VI, 95 - 104), though subletting is not a defined term in the RTA. Owners of rental buildings do not require approval under the RTA to convert a unit from a long-term to a short-term rental.

Tax requirements

The City of Toronto collects **property taxes** from residents and businesses, subject to certain exemptions. The tax classification of a property is established by the Municipal Property Assessment Corporation (MPAC), based on the Assessment Act and other relevant regulations. Tax classifications are based on the predominant use of a property. Generally, hotels and motels pay commercial property taxes while bed & breakfast operators pay residential property taxes. Most short-term rental operators are likely paying residential property taxes. There is no tax classification defined under regulation that applies specifically to short-term rentals.

The City of Toronto does not collect taxes beyond property taxes from hotels, bed & breakfasts and other operators of short-term rentals. The *City of Toronto Act, 2006*, prohibits the City from levying a **lodging or hotel tax**. Under an arrangement with the Great Toronto Hotel Association (GTHA), certain hotels that are members of GTHA voluntarily contribute up to 3% of room revenues to a destination marketing program, which is administered by the GTHA and remitted to Tourism Toronto. The destination marketing program is used to support regional tourism marketing. Participating hotels either include the fee on the customer's bill or make the contribution from general accounts. Short-term rental operators and platforms are not GTHA members and do not voluntarily contribute to the destination marketing program.

As part of the five-year review of the *City of Toronto Act, 2006*, and as part of the revenue strategy developed under the City's Long-Term Fiscal Plan, the City has requested the Province to provide the City with the legislative authority to implement a hotel tax. If a hotel tax were implemented, operators of short-term rentals, along with hotels, motels and bed & breakfasts, could be required to pay this tax. Staff are currently conducting further analyses on the City's revenue options, and will report on the long-term fiscal plan, including information about a potential hotel tax, to Executive Committee in December 2016.

Hotels, bed & breakfasts and other transient accommodation must pay **harmonized sales tax** (HST, 13%) on transactions only if they collect over \$30,000 per year which is the same as transactions for other goods and services.

Anyone who collects rental income, including short-term rental operators, are required to report this income and pay the appropriate **income tax**.

In February 2016, the Ontario Ministry of Finance launched a pilot project to work with Airbnb and the Canada Revenue Agency to raise awareness about homeowners' and consumers' rights and responsibilities when operating and using short-term rentals. The three groups collaborated on a website informing short-term rental operators about tax obligations, consumer protection rights, accessibility requirements and other regulatory and safety obligations.

Municipal issues related to short-term rentals in Toronto

A number of issues have been raised by Executive Committee, residents, stakeholders and the media regarding potential impacts of short-term rentals on communities. These issues are grouped into four categories. Of the three categories of short-term rentals raised above, it is likely that short-term rentals that occur in non-primary residences and when the operator is not present pose the risk of causing neighbourhood issues.

Neighbourhood impacts

Short-term rentals have been said to contribute to the economy of neighbourhoods that tourists do not traditionally visit. Concerns have been raised about short-term rentals changing the character of neighbourhoods or condominium communities by increasing the number of short-term guests and decreasing the number of longer-term residents. There have been concerns about nuisance issues, like noise, and safety issues for consumers and neighbours. Of the three categories of short-term rentals raised above, it is likely that short-term rentals that occur in non-primary residences and when the operator is not present pose the risk of causing neighbourhood issues.

Impact on housing availability and affordability

Some argue that operating a short-term rental is a low-cost and flexible way for residents to make additional income, making it easier for them to pay their mortgage or rent.

Concerns have been raised about the impact of short-term rentals on housing availability and affordability. Some assert that units are being removed from the permanent rental market for residents and converted to short-term rentals, reducing the availability of rental housing in a market that already has a low vacancy rate (1.6% in fall of 2015) and where there has not been a significant increase in rental supply. Some also assert that short-term rentals are contributing to increases in market rent and the cost of buying homes in Toronto. A study by the Canadian Centre for Policy Alternatives from September 2016 examined the growth of Airbnb in three downtown neighbourhoods and found that there is a high concentration and growth of Airbnb listings, and operators with more than one listing, in these neighbourhoods. They

suggest that this growth in neighbourhoods with low vacancy rates should be of concern to policy makers.

Of the three categories of short-term rentals raised above, it is likely that short-term rentals that occur in non-primary residences pose the risk of impacting housing availability and affordability.

Impact on economic development and tourism

Some assert that short-term rentals positively impact tourism by providing at times less expensive options for tourists, the opportunity for visitors to stay in neighbourhoods outside of traditional tourist areas, and an additional source of competition for hotels and bed & breakfasts.

Businesses that have traditionally provided accommodation to visitors may feel a negative effect on their bottom line. A recent study out of Boston University claimed that for every increase of 10% in supply in short-term rentals has a 0.35% decrease in hotel revenue.

Concerns have been raised, including by the MaRS Sharing Economy Public Design Report, about whether hotels and bed & breakfasts face unfairly burdensome regulation that does not allow them to innovate in the accommodations sectors.

Taxation

There have been concerns raised that short-term rental operators are paying residential property tax instead of commercial, which is typically higher. Further studies are required to determine under which property class short-term rental properties should fall.

As discussed above, hotels and other tourist accommodations are not subject to any specific taxes by Toronto other than property taxes. If Toronto were to implement a hotel or tourist tax, some have suggested that major short-term rental platforms like Airbnb should pay such a tax, as they do in other cities.

Complaints from residents regarding short-term rentals

ML&S continue to enforce existing by-laws as they relate to short-term rentals. Complaints have been made to the City via 311 regarding short-term rentals. Since 2014, more than 45 complaints have been made to ML&S, and two short-term operators were charged for violating the zoning by-law. There are 25 active investigations by ML&S into complaints related to short-term rentals. Taking enforcement actions based on current zoning by-laws is challenging and time-consuming because it relies on collecting adequate evidence of non-permitted use.

Learning from other jurisdictions

Staff did an initial scan of six large cities in North America to examine how they had conducted research, developed regulations and enforced regulations relating to short-

term rentals. Cities reviewed were New York City, San Francisco, Philadelphia, Portland, Seattle, and Vancouver. The scan is included in Attachment 1.

Concerns related to short-term rentals fell into the four categories described above: impact on housing availability and affordability, impact on neighbourhoods, impact on economic development and tourism, and impact on taxation. The impact of short-term rentals on housing availability and affordability was the primary concern for most cities when developing regulations.

All cities studied had some restriction on short-term rentals by one or more of the following criteria: the number of days per year a unit can be rented, the built form of the building, whether the unit rented is the primary residence of the operator, whether the operator is present during the stay. Four cities studied require that short-term rental operators register or obtain a licence or permit from the municipality to operate.

Most cities reviewed have a formal relationship with Airbnb and some other short-term platforms. In four cities studied, Airbnb remits a lodging or hotel tax and in one case, sales tax, to the state, county or municipality. In some cases, short-term rental platforms are required to post the municipal permit or registration number on the rental ad and remove illegal listings from websites.

More thorough research of these cities and others in North America and Europe will be carried out to identify the strengths and weaknesses associated with the approaches other cities have taken to short-term rentals.

Background on City's work on the sharing economy

The City's approach to short-term rentals is part of a broader consideration of the role of government as a regulator in the sharing economy. On October 29, 2015, ML&S, in partnership with MaRS Solutions Lab, hosted a forum called "The Sharing Economy: What is the role of government?". The event brought together experts to discuss opportunities and challenges for an audience of government staff and decision makers from across Ontario.

Since that event, ML&S has continued to work with the Province of Ontario and, through their contributions, worked in partnership with MaRS Solutions Lab to develop a framework. This included participating at workshop sessions that brought together key experts, government staff, and industry players to discuss regulations for short-term accommodations. As a result, MaRS Solutions Lab produced a report headed "Shifting Perspectives: Redesigning regulations for the sharing economy", which included a section on regulations related to shared accommodations, and which will shape the work described below.

Plan to review regulating short-term rentals in Toronto

Staff will undertake work to develop an approach to short-term rentals in the City. The work will be led by ML&S and City Planning with support from a number of City divisions, including Social Development, Finance and Administration; Corporate Finance; Toronto Fire Services; Toronto Building; Shelter, Support and Housing

Administration; Affordable Housing Office; Economic Development and Culture; and Legal Services. This work centres around three areas:

- **Research:** Staff will conduct further research on the key issues identified in this report.
- **Consultation:** Staff will consult with the public and key stakeholders on the impacts of short-term rentals on residents and businesses in Toronto and potential approaches to short-term rentals.
- **Options for potential regulation:** Staff will examine potential options for regulating short-term rentals in Toronto. These options will be guided by the evidence gathered during research and consultation processes.
- The work will be done by staff and may involve working with external organizations or consultants. An interdivisional working group of staff from relevant divisions at the City will be developed to drive this work.

Balancing competing goals

These areas are outlined further below. Based on the issues identified above, a review of work being done in other cities, and taking into account the City of Toronto Strategic Actions, staff have developed the following goals that will need to be balanced when approaching the work outlined above:

- Ensure safety for consumers and neighbours and promote quality of life in neighbourhoods.
- Prevent substantive decrease of availability and affordability of rental housing.
- Promote tourism by supporting innovation in the accommodations sector while ensuring tourist accommodation providers have equitable regulations and tax requirements.
- Allow residents to occasionally rent their own homes for short periods.
- Ensure the rules and regulations surrounding short-term rentals in Toronto are clear for residents, property owners and short-term rental platforms.

Research

Staff will undertake research in the following areas:

- **Current state of the short-term rental market in Toronto:** Staff will obtain and analyze data on short-term rentals listed on key online platforms. Staff will seek data on the nature of listings (one room rented or entire unit), the geography of listings (by property address or a more general location), price of listings per night, and operator details (number of listings per operator, frequency listing is rented). The data may be obtained from Airbnb or other organizations or may be purchased from a short-term rental compliance company.
- **Housing availability and affordability in Toronto:** Staff have begun exploring the Airbnb data, with a focus on how the program impacts the Toronto housing market. Further analyses will be conducted to look at how short-term rentals impact access to housing for vulnerable residents.
- **Neighbourhood impacts:** Staff will examine complaints related to short-term rentals received by City divisions and agencies and other key stakeholders, including short-term rental platforms, neighbourhood associations and condominium associations.

Staff will examine whether the City has the necessary tools to address complaints, including complaints about short-term rentals in condominiums. Staff will also examine concerns raised about safety concerns in neighbourhoods.

- **Economic development and tourism:** In consultation with key tourism stakeholders, staff will examine the impact on the tourism industry and broader city economy.
- **Zoning by-laws:** Staff will analyze regulatory and compatibility issues related to short-term rentals in various zones of the city-wide zoning by-law.
- **Taxation:** Staff are currently examining a number of new revenue options as part of the long-term fiscal plan. As part of this review, staff will explore the opportunity for a hotel tax and will examine whether and how short-term rental operators would be included in the hotel tax. The report on the long-term fiscal plan will be presented to Executive Committee in December 2016.

Consultation

A key element of the work program involves consultation with residents, business owners, and key stakeholders as outlined below to collect their perspectives on short-term rentals and their opinions about options to regulate. This process will be broad and inclusive and provide significant opportunity for all interested parties to share their opinions.

Consultation will begin in the first quarter of 2017 through community meetings, stakeholder meetings, an online survey, and may also be done via phone survey. The process will be transparent to the public and stakeholders; regular updates will be shared with interested residents, business owners and stakeholders via the project website.

Key stakeholders to be consulted include, but are not limited to:

- Short-term rental platforms, including Airbnb, Homeaway, Flipkey, Roomorama
- Fairbnb coalition
- Neighbourhood associations and condominium associations
- Tourism representatives, including Tourism Toronto, Greater Toronto Hotel Association, the Ontario Restaurant Hotel & Motel Association, and bed & breakfast associations
- Tenant advocates including the Federation of Metro Tenants' Associations, the Advocacy Centre for Tenants Ontario and the Association of Community Organizations for Reform Now
- Relevant ministries at the Province of Ontario, including the Ministry of Municipal Affairs; Ministry of Tourism, Culture and Sport; the Ministry of Finance and the Ministry of Housing
- MaRS
- Canadian Centre for Policy Alternatives

Options for potential regulation

Staff will examine potential options for regulating short-term rentals in Toronto, including a licensing system, updated zoning by-laws, additional tax requirements and other

options. To develop these options, staff will examine the issues identified through research and consultation and determine whether evidence suggests further regulations are required. Staff will examine the strengths and weaknesses of approaches in other jurisdictions and provide options for regulating short-term rentals in Toronto.

The results of this work will be presented in a report to Executive Committee in 2017.

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ATTACHMENTS

Attachment 1: Jurisdictional scan of short term rental regulations in cities