

Pumping the Brakes: New Regulations Aim to Limit the Impact of Short-Term Rentals in Toronto

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By Robert Eisenberg

The rise of the “sharing economy” has spawned many new industries, but perhaps one of the most prominent (together with ride sharing) has been the explosion in “vacation rental by owner” services, led most prominently in Canada by Airbnb. These short-term rental platforms operate worldwide, generally without regulation. The City of Toronto (the “City”), however, is seeking to change this trend. On June 12, the City’s Municipal Licensing and Standards division released a number of proposed regulations that could seriously impact the short-term rental market in Toronto. These regulations aim to increase the availability of permanent affordable rental housing by curbing the number of short-term rentals available, especially in the downtown core.

The Current Landscape

Facilitated by the steady rise and simplification of online “vacation rental by owner” platforms in Toronto, tenants and owners are increasingly turning to renting out rooms or even their entire units or homes for short periods of time rather than seek out long-term tenants in the interest of the higher “rents” that they can fetch relative to traditional tenancies. For example, in 2016, Airbnb listed approximately 10,800 properties in Toronto, tripling the number of rentals that were available in 2014 – more than half of the units available for rent were condominiums, apartments, or lofts located in downtown Toronto.

In Toronto, short-term rentals are not currently subject to municipal regulation. These rental arrangements operate free from zoning, licensing and taxation constraints and as a result, the number of units available has grown exponentially, creating a shortage of affordable permanent housing units. In addition, there are a growing number of concerns, particularly in downtown Toronto, surrounding noise, safety, the availability of affordable housing, the impact on the hospitality industry, and on municipal and provincial tax revenues.

The changes proposed by the City are intended to allow people to rent out their homes for short periods of time while simultaneously slowing the steep increase in rents for long-term renters in the downtown core due to the increasing shortage of permanent rental units. In addition, the changes are intended to minimize the overall nuisance to residents while also streamlining the taxation system so that the City can benefit from both those individuals offering their homes and from companies offering short-term rental services.

Although the City hopes that its proposed changes will help address the shortage of permanent affordable rental housing, it remains to be seen whether the regulations will be enforced strictly enough to engender real change.

The Proposed Regulations

There are four key changes set out in the proposed regulations:

1. Prohibit people from offering short-term rentals that are not in their own principal residence;

2. Amend the City's zoning by-laws to create a new land use called "short-term rental";
3. Require companies like Airbnb to obtain a licence that regulates the short-term rental market; and
4. Create a registry of those who operate a short-term rental from their home.

Put more simply, the regulations fall into three general categories: zoning, licensing and taxation.

Zoning

One of the key recommendations requires an amendment to the City's zoning bylaws to create a new "short-term rental" land use category. Under this designation, short-term rentals will be permitted city-wide but will only be permitted in principal residences, including secondary suites in residences like basement apartments. It is proposed that short-term rentals be defined in the bylaw as: "all or part of a dwelling unit, that is the principal residence of the short-term rental operator, used to provide sleeping accommodations for any rental period that is 28 consecutive days or less."

Further, those offering their homes as short-term rentals must limit the number of rooms in one unit to three, rent the entire unit, or rent a lawful secondary suite. Lawful secondary suites would be permitted as short-term rentals provided that they are located in a person's principal residence and align with By-Law 569-2013, which defines a secondary suite as: "a self-contained living accommodation for an additional person or persons living together as a separate single housekeeping unit, in which both food preparation and sanitary facilities are provided for the exclusive use of the occupants of this suite, located and subordinate to the dwelling unit". The City submits that the purpose of these limits is to prevent long-term housing being converted to tourist accommodations.

Licensing and Registration

The regulations propose a number of new definitions to aid in the regulation of the short-term rental market:

- "Short-term rental": rental of a residential unit where the period of continuous occupancy is 28 days or less in exchange for payment. This includes existing B&Bs (defined as "tourist homes" in the zoning bylaw) and excludes hotels, motels, couch surfing or other short-term accommodations where there is no payment.
- "Short-term rental company": any person or corporation who accepts, facilitates, or brokers requests for or advertises or offers short-term rental accommodations for compensation or a fee.
- "Operator": any person (owner or tenant) who operates a short-term rental.
- "Principal residence": a property that meets all of the following conditions: (i) the person has designated the property as their principal residence on their income tax filing or in other government records; and (ii) the person owns or rents the property alone or jointly with another person.

Using other jurisdictions as a guide, the proposed regulations recommend that companies that facilitate short-term rentals, such as Airbnb or VRBO, would have to pay the City a base fee of between \$5,000 and \$20,000, and a scalable fee based on the number of nights rented or listings hosted through the company. Based on an estimate of \$1 per night, Airbnb would have paid \$988,000 to the City in 2016 had the regulations been in place at the time. Those persons offering their homes as short-term rentals must also be listed on a registry and will have to pay an annual fee of \$40 to \$150 to offset the cost of enforcing the regulations. The City notes that these are "fees" rather than taxes, and therefore cannot legally generate a revenue beyond the cost of providing the associated service.

The licensing and registration system proposes to require all short-term rental companies and those offering their principal residence to register with the City and include their registration number in all advertisements. This registration number would be associated with all listings in that operator's unit, regardless of whether the bedrooms are rented separately or the whole unit is available for short-

term rental.

In addition to the operator fee, short-term rental companies would be required to report to the City quarterly with anonymized data about listings and rental activities, and will be required to remove problem listings upon request. Those persons offering their homes as short-term rentals would be required to provide emergency and safety information to all guests, including regarding police, fire and EMS services.

Taxation

Subject to provincial approval anticipated for later this year, a recommended amendment to the *City of Toronto Act* will enable the City to supplement the proposed licensing and registration framework by collecting a tax on both hotels and short-term rentals. The hotel tax is proposed at 4% while the short-term rental tax could be up to 10%, subject to provincial approval. Based on current numbers, a 4% short-term rental tax would raise estimated annual revenue anywhere between \$1 million and \$3 million dollars.

Projected Impact on the Short-Term Rental Market

The proposed regulations will likely have a significant effect on the number of units available for short-term rentals in Toronto and beyond. Based on information Airbnb provided to the City, the proposed regulations would lower the number of available units to be rented from 10,800 to approximately 7,600. The decrease can largely be attributed to approximately 3,000 units being disqualified under the new regulations for not being the operator's principal residence. It is possible that the number of available units will drop further if operators do not want to pay the requisite licensing and registration fees. Conversely, changes to zoning and the creation of the new "short-term rental" classification may push operators to use another online platform, such as Kijiji or Craigslist, to list their unit without being subject to the licensing and registration fee.

Process for Approval and Timeline

Based on direction from the City's Executive Committee, the Chief Planner and Executive Director, City Planning will prepare the necessary amendments to the zoning bylaws and hold community meetings as required by the City's Official Plan, in addition to public meetings as required by the *Planning Act*. Final zoning amendments will be presented at a meeting of the Planning and Growth Management Committee. The proposed amendments will then be summarized and reported by the Executive Director, Municipal Licensing and Standards to the Licensing and Standards Committee in the fourth quarter of 2017.

The proposed regulations were considered by the Executive Committee on June 19, 2017 and were adopted with a few amendments. They will now be subject to public consultation before being put forward to City Council for a vote later in 2017.

Conclusion

While short-term rental platforms continue to gain popularity, the City of Toronto's regulations aim to curb their impact on local neighbourhoods, particularly in the downtown core. The principal residence limitation, coupled with the registration fee, will likely have a significant impact on the number of short-term rentals available. While estimates indicate that there will be a third fewer short-term rentals available, it remains to be seen if these changes will actually provide relief to the red-hot long-term rental market in downtown Toronto.

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