

Regulating Airbnb and the Short-Term Rental Market

An overview of North American regulatory frameworks

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Introduction

As short-term rentals on platforms such as Airbnb and VRBO soar in many cities across the world, governments find themselves in a unique position of balancing the forces of innovation with the need to create a regulatory framework.

The City of Toronto has been grappling with a multitude of challenges created by an uproar of short-term rental listings. The number of Toronto listings on Airbnb — one of the many platforms used to offer short-term rentals — jumped by 288 per cent between 2011 and 2016.

Over the last few years, Toronto has been dealing with the aftershock of short-term rentals, ranging from the disruption of the hotel industry to the tightening of supply in a hot housing market. A staff report proposes the following new rules to regulate Toronto's short-term rental market, including:



- Restricting short-term rentals to a person's primary residence, which is a means of cracking down on the 13 per cent of Toronto Airbnb hosts who post multiple listings;
- Allowing residents to rent out part or all of their home (up to three rooms) on a short-term basis as long as they are registered with the city, pay a fee, and provide emergency and safety information to guests;
- Requiring online platform companies to get a city-issued licence number and to pay a tax on business;
- Requiring online platform companies to remove problem listings and pay a licensing fee;
- Allowing condo boards to ban short-term rentals in their buildings.

These measures effectively legalize short-term rental commercial activities while placing restrictions that should help curb the steep rise of quasi-hotel condos and nuisance short-term rentals in residential neighbourhoods.

Across the many jurisdictions impacted by the wave of short-term rentals, policy makers have been tasked with addressing five key issues when considering a regulatory model. These issues include: commercial host activity, the impact on housing availability and affordability, tax avoidance, and the impact on economic development.

Several regulatory models have been formulated to provide solutions to these key challenges. This document summarizes the key elements of proposed or adopted methods to regulate short-term rentals in some leading North American jurisdictions. It provides a detailed account of the cities that use these models and the enforcement mechanisms that have been put in place to hold hosts and platforms accountable.

What is a short-term rental?

The formalization of short-term rentals in a regulatory framework requires clarity on the definition of a short-term rental. The most widely accepted definition for a short-term rental is the rental of a dwelling (house, town house, condominium, apartment, and secondary suites) on a platform for less than 30 days. This definition varies slightly across jurisdictions. For example, Seattle and Denver characterize a short-term rental as a booked stay of 29 consecutive nights or fewer. Quebec defines a short-term rental as lasting no more than 31 days.

Some cities have legalized short-term rentals while implementing a set of regulations to manage their impact. Other cities, such as New York, have outright banned the activity.

FIGURE 1 Comparison of regulatory models across North America

	Licence/ registration	Restriction on number of days	Primary residence	Entire/vacant homes restricted	Hotel/ sales tax	Health & safety/liability insurance	Zoning
Anaheim	✓						
Chicago		✓			✓		
Denver	✓					✓	✓
Houston					✓		
Las Vegas	✓						
Louisville	✓				✓	✓	
Miami Beach	✓				✓		✓
New Orleans					✓	✓	
New York	✓	✓					
Philadelphia		✓			✓		✓
Phoenix	✓				✓		
Portland	✓				✓	✓	
Quebec	✓				✓		
San Francisco	✓	✓			✓		
Seattle	✓		✓		✓		
Tofino	✓						✓
Toronto	✓		✓		✓	✓	✓
Vancouver	✓		✓				
Whistler	✓						

Toronto classifies short-term rental activity as “any rental of a residential unit lasting up to 28 days in a row.”¹

Key regulatory characteristics in existing models

Among the many regulatory frameworks that have been proposed or are currently in place, a common set of characteristics have emerged that include a registration and licence system, a cap on the maximum allowable days in which short-term listings can be made available in a given year, provisions restricting the rental of entire and/or vacant homes, taxation, health and safety standards, and the establishment of zoning bylaws.

Table 1 shows the different mix of characteristics in regulatory models across North America. These models differ in their composition of these characteristics and they vary in the extent to which these characteristics are enforced.

City licence and registration

The most common response to short-term rentals in North America has been legalization of the activity combined with a requirement for hosts to register with their local city office and obtain a business licence. This directive recognizes the commercial nature of short-term rentals and creates a tracking system of host activity. Jurisdictions have their own set of requirements that qualify hosts for a licence and almost all require that the licence number be advertised publicly.

In Chicago, hosts must register their short-term listing at no cost, but registration must be renewed annually. Hosts who have multiple listings must register each listing separately. Most other jurisdictions have registration fees.

The City and County of Denver operate under a licensing framework, issuing a short-term rental licence (less than 30 days) for primary residences. A tenant must have written permission from their landlord to obtain a licence. An applicant must first set up a tax account (Lodger's Tax ID) for a fee of \$50 every two years and then apply for a short-term rental business licence for an annual fee of \$25. All listings on platforms such as Airbnb must include the business licence number.

In Las Vegas, hosts must register and pay an annual fee of \$500 for each rental unit. Additionally, the host must present a letter from the host's homeowners' association stating permission to operate a short-term rental.

In Louisville, short-term rentals cannot exceed 29 consecutive days. Short-term rentals must be registered annually with the Revenue Commission and are restricted to single family homes or duplexes.²

New Orleans and Phoenix allow short-term rentals as long as hosts register for a rental permit with the city and display it on the platforms through which they advertise.

Portland was the first city in the United States to legalize short-term rentals in 2014. Both owner and non-owner hosts are required to register with the city's Housing Safety Office. They adopted an interesting fee structure that disincentivizes multiple units and the rental of non-owner units by charging higher registration fees. For units registered by the owner, a fee of \$100 is charged for the first unit and subsequent units are charged a higher rate. A multiple host will have to pay \$2,000 for the fifth unit registered. Units that are registered by non-owners are charged double the fee of an owner, at \$200 for the very first unit and up to \$4,000 for the fifth unit.

In San Francisco, a registration system is also in place. Hosts are required to register with the planning department and remit a fee of \$250. However, to register a short-term rental, the host must live in the unit at least 275 days of the year. If they have not yet occupied the unit for a full year, then they must have lived in the unit 75 per cent of the total days the unit was occupied.

Seattle has legalized short-term rentals for primary and non-primary units and offers two types of licences for short-term rentals. Primary residence hosts must sign up for a Short Term Rental Operators License in addition to a business license. Hosts of a non-primary residence unit must register for a Short Term Rental Operators License in addition to a business license. Licences for non-primary residence units are limited to one dwelling unit, in addition to the host's primary residence, which must be located in the City of Seattle.

Among Canadian jurisdictions, Quebec was the first to regulate short-term rentals. Quebec law requires short-term rentals of less than 31 days to obtain a licence from Tourism Quebec. Vancouver has proposed regulations that only allow the issuing of short-term rental licences for a primary residence — meaning that the host, whether owner or tenant, must live in the dwelling. This rule targets hosts with multiple investment properties who operate as commercial hosts and eat into the housing stock.

Toronto has proposed a two-pronged approach to licensing, requiring both companies such as Airbnb and hosts to register and pay an annual fee. Companies are required to obtain a licence with the city and pay a base fee of \$5,000 to \$20,000 with a scalable component that charges companies a set dollar amount per night rented on the platform. In the case of Airbnb, the scalable fee for 2016 would amount to \$988,000 based on a \$1 per night rented rate. Hosts of short-term rentals in Toronto would be required to pay an annual fee ranging from \$40 - \$150. Business licence numbers must appear in all short-term listing advertisements. The dual licensing system is geared towards holding both hosts and companies accountable and to ease the compliance process.

Chicago and Portland are the only other jurisdictions that imposes registration on operators. The requirement that platforms on which short-term rentals are offered obtain a business licence also serves to help cities with enforcement and data collection, which is important in refining regulations as this industry evolves. Other Canadian cities (Calgary, Edmonton, Winnipeg, Ottawa), where short-term rentals are soaring are looking towards regulators in Toronto for direction in building a legal framework — a dual licence and registry system is a move in the right direction.

Primary residence rule

Many short-term rentals operate on online platforms that promote a business model based on the sharing of your home. Yet many listings on these platforms belong to hosts that offer multiple listings that are not primary residences. Many tenants also offer short-term listings illegally, without the consent of their landlords.

Research conducted by the Centre for Policy Alternatives shows that only 3 per cent of listings in Toronto belong to the “shared” category, while a small group of multiple hosts (13 per cent) accounted for 46 per cent of revenue in 2016.

Regulations in Toronto should highlight a primary residence requirement, as it discourages commercial multiple host operations and puts into place safeguards for an already heated housing market. The primary residence rule will discourage hosts from purchasing investment properties to be solely used for short-term rentals.

Vancouver proposed rules making listings that are not a primary residence illegal. The rules in Vancouver permit a licence for the dwelling unit that does not include secondary units, such as basements and laneways, unless secondary units with tenants have written permission by the landlord to use the dwelling as a short-term rental. This provision has been estimated to add 1,000 units back to Vancouver’s housing stock. These regulations are to be finalized in 2017.

Seattle and Denver are two American jurisdictions that have a primary dwelling requirement for short-term rental licences. Seattle operates under a dual licensing system and makes an allowance for permits being issued for one additional dwelling unit, along with the primary dwelling unit of a host. Denver allows tenants that live in the dwelling to make a listing available after obtaining a licence with proof of consent from their landlord.

Toronto has followed suit when it comes to the “one host, one home” movement making the primary residence rule a central part of its proposed regulatory framework. Short-term rentals that occur in non-primary residences will be illegal. The biggest shortfall in the proposal governing the primary residence rule is that hosts can register and a licence by simply “self certifying” the use of a primary residence. Hosts are not required to show proof of primary residence at the time of registration but may be required to provide this proof in the event they are audited by the city. This creates a loophole in the system that compromises the objective of the rule by allowing commercial activity to slip through the cracks. Multiple hosts can simply obtain licences for several residences under different people “self certifying” that these are primary residences without providing the necessary proof.

Cap on the number of days per year

Many jurisdictions have implemented a cap on the number of days a year in which a short-term rental that is deemed legal can be made available. Placing a ceiling on the maximum number of days for listings is aimed at curbing commercial host activity that goes beyond local residents sharing their home occasionally.

This type of rule also addresses the impact of hotel-like operations under the guise of short-term rentals on the housing market. Hosts who cannot make their units available year-round on short-term rental platforms might be more likely to enter into long-term rental leases. This helps low vacancy rates in cities such as Toronto and Vancouver, where housing units are in short supply — driving rental prices up and creating affordability challenges for local residents.

One example is Philadelphia, where a licence for short-term rentals is required in excess of 30 days and a cap of 180 days per year is in place. San Francisco has tighter controls in place, permitting hosts up to a maximum of only 60 days per year.

As Toronto's proposed legislation does not restrict the number of days in which a host can offer listings. Its restrictions are simply contained to primary residences — up to three rooms, including legal secondary units.

Entire and vacant homes

When an entire property is listed as a short-term rental, this impacts the housing market — the protection of which is a primary concern in many jurisdictions.

New York City implemented legislation in 2010 that made the short-term rental (less than 30 days) of an entire home illegal. For up to 30 days, hosts could offer a room, a bed, or even a couch for short-term rent, but not an entire home.

In the fall of 2016, this legislation was extended to make the advertisement of an entire home on a short-term rental platform illegal. As a result, 20,000 listings on Airbnb were deemed illegal.

Vancouver has also proposed prohibiting listings of vacant homes and even potentially levying a vacant home tax. New Orleans has taken a more lax approach to managing entire home listings by allowing hosts with a city licence to rent entire homes for up to 90 days a year.

Proposals for legislation in Toronto will legalize the short-term rental of up to three rooms in a home and entire homes. Research on Airbnb activity in Toronto for 2016 showed that the majority of listings (64%) on the platform are for entire homes, apartments, or condos. This category of short-term rentals is most likely to be having the greatest negative impact on housing affordability. If the primary residence component fails to curb commercial host operations, failure to restrict the rental of entire homes will continue to create challenges for the rental market in Toronto, where the vacancy rate is extremely low — at 1.3 per cent.

Lodging, hotel tax, or sales tax

In the absence of regulations, short-term rentals have been operating in a grey area when it comes to taxation. Although many short-term rentals operate as quasi-hotels, offering multiple listings, hosts pay residential taxes as opposed to business taxes. In Toronto, commercial property tax rates are 1.8 to 2.6 times higher than residential property tax rates.³ This favourable tax environment provides an unfair advantage to operators of short-term rentals, while traditional hotels and bed and breakfasts pay more.

Tax avoidance in the short-term rental industry has real negative economic impacts on the hospitality industry, which is finding it difficult to compete with low-cost, unregulated short-term rentals. U.S. studies⁴ show that Airbnb activity in Austin has negatively impacted hotel revenue by approximately 10 to 13 per cent. A study conducted by the Ted Rogers School of Management at Ryerson University shows Airbnb revenue as a share of hotel revenue in four large Canadian markets (Metro Vancouver, Calgary, Greater Toronto, and Ottawa) has been steadily increasing — threatening the revenue of the existing accommodation industry.

Several jurisdictions have responded with tax provisions to level the playing field. These provisions fall under an umbrella of taxes that range from 1–14 per cent of the listing price of short-term rentals.

Jurisdictions implementing a hotel occupancy tax in the U.S. include Chicago, Philadelphia, Pennsylvania, San Francisco, Seattle, Portland, Houston, Louisiana, and Louisville. Among Canadian jurisdictions, only Quebec has a hotel tax in effect and Vancouver has proposed a similar lodging tax.

Jurisdictions imposing taxes on the listing price of short-term rentals that are at the lower end of the spectrum include: Seattle charges a tax of 1.5 per cent; Chicago has a “Hotel Accommodations” tax for 4.5 per cent; Louisiana charges a “Sales and Use Tax” of 5 per cent; and Houston, Portland, and Pennsylvania levy a 6 per cent lodging tax.

Jurisdictions where higher tax levies are in effect include: Philadelphia, which levies an 8.5 per cent hotel tax; Louisville, which levies a 10 per cent tax; and San Francisco, where a 14 per cent “Transient Occupancy Tax” is enforced.

Quebec is the only Canadian jurisdiction that has a 3.5 per cent lodging tax, which is now in effect. However, as in many of the jurisdictions listed above, enforcement of these new tax rules have been lax, leading to millions of dollars in tax revenue losses for local governments. These challenges shed light on the need for a tightening existing rules and more effective enforcement models.

The proposed regulations for Toronto include the city’s intention to levy a hotel and short-term rental tax but do not include specific details on the amount of tax or

the implementation process. Currently, there is no hotel tax in the City of Toronto but proposals to levy a 4 per cent tax on hotels and up to a 10 per cent tax on short-term rentals are underway.

Health and safety

Health and safety considerations are an important component of regulating short-term rentals. Traditional accommodation providers are required by law to ensure that rental units meet fire codes and have appropriate liability insurance. Most short-term listings are not legally obliged to follow such health and safety measures — exposing hosts and consumers to risk and potential legal conflicts.

Many jurisdictions have included health and safety standards as part of the eligibility criteria for qualifying short-term rentals for a licence. Safety rules will have the desired effect of reducing units that are not built for the purpose of being used like hotel rooms — as long as they are enforced. These measures can mitigate the negative impact that short-term rentals are having on the accommodation industry if violations are handled according to due process and result in fines.

In Denver, hosts are required to present guests with a rental package that contains city rules and important safety information about the unit being rented. Hosts are also expected to obtain general liability insurance to protect against property damage and bodily injury.

Hosts in Louisville must post an evacuation plan as part of their listing and meet the city's set smoke detector requirements. In Seattle, a licence application must be accompanied by a signed declaration that the unit is up to city code and proof that safety information about the unit is provided to guests.

In New Orleans, when applying for a dwelling licence a host must provide the city with a floor plan showing locations of smoke detectors in every bedroom, fire extinguishers, and exits. Additionally, to qualify for a licence the dwelling must have liability insurance for \$500,000.

In Toronto, the proposed regulations would require registered hosts to abide by municipal bylaws, be up to par with the Ontario Building and Fire Code, and share safety information with guests. However, this rule also falls prey to self certification by hosts, meaning that no proof that health and safety measures are actually being followed is required when issuing hosts with a licence.

Zoning

The operation of short-term rentals in areas zoned for residential purposes have created both social and legal problems for many jurisdictions. The character of local neighbourhoods is changing in many cities as strangers flow in and out of their boroughs and party houses pop up creating noise nuisance, property damage, and safety concerns.

Regulations prohibiting short-term rentals in specific city zones place the onus on the host to determine whether their listings falls in an illegal zone. As zoning by-laws are often a complicated web of legal language, many hosts make listings available that violate these bylaws either because it is too difficult to determine which zones are legal or because violations are not enforced.

To reduce the impact of short-term rentals on the social fabric of residential areas, several jurisdictions have made the business activity of short-term rentals illegal in single-family zoned areas. These jurisdictions include Atlanta, Denver, Oklahoma City, Miami Beach, Philadelphia, and Tiburon in California.

Toronto is not one of these jurisdictions. The legislative framework put forth in Toronto proposes an amendment to the city's zoning bylaws to establish a new type of land use called short-term rental — permissible only in primary residences. This change will effectively make short-term rentals legal in the following: residential zone, residential detached zone, residential semi-detached zone, residential town-house zone, residential multiple dwelling zone, residential apartment zone, residential apartment commercial zone, commercial residential zone, commercial residential employment zone.

Enforcement Mechanisms

The most important aspect of any regulatory model is the enforcement mechanisms that accompany it, which are meant to ensure compliance. Legislation alone cannot minimize the negative impacts of short-term rentals if commitment to effective enforcement is absent. Governments must prioritize both legislation and enforcement, dedicating adequate resources to ensure that violations of rules are followed with immediate and set consequences. In order for this to occur, the enforcement process must be laid out clearly and cities should plan for expanding the supply of by-law officers in advance of legislation becoming effective.

Many cities that have implemented regulatory frameworks have also developed fines for infractions to the rules, but most have been ineffective. What do these fines look like?

In Chicago, violation of rules governing short-term rental activity can result in a host being fined \$1,500 to \$3,000 dollars per offence per day. Instances that involve criminal activity or public nuisance fines are even steeper, starting at a penalty of \$2,500 to \$5,000 per offence.

Most condominiums in Illinois prohibit short-term rentals as stated in condominium association declarations. If owners or tenants of condominiums are found to offer units as short-term rentals, they receive a notice requiring them to cease the listing, they can face fines, they can be taken to court by the condominium association, and they can even be evicted.

While a fine system is in place to punish violations, the problem is that the onus is on the condominium associations to regularly check the various online platforms for illegal listings. In this case, enforcement has been offloaded to condominium boards as opposed to government officials.

New York City operates under a hierarchy of fines: a first-time infraction by a host costs \$1,000, with subsequent infractions costing up to \$7,500. A similar fine system has emerged in Miami Beach, where violators are initially fined \$1,000 for a first-time offence, followed by fines of \$5,000, \$7,500, and \$10,000 for subsequent violations. Since short-term rentals of single-family homes are banned in Miami Beach, any host offering a single-family home for less than six months and one day can face a fine of \$20,000 for a first-time violation.

In Phoenix, hosts found to operate without registering face a \$150 daily fine. But a bizarre feature of the regulations in Phoenix is that a tax exemption is offered for hosts with less than three short-term rentals — which, according to many definitions, still classify as “multiple hosts.”

Another potentially problematic feature of tax regulations in many cities is that the collection of tax revenue depends on hosts filing taxes on their short-term rental income. Many short-term rental hosts do not file taxes because they are unaware of their tax obligations or take comfort in lax enforcement of tax measures, thereby engaging in tax avoidance.

The shortcoming in such models is that platforms such as Airbnb are not held accountable for tax compliance and are simply asked to provide their hosts with friendly reminders about paying their tax dues.

A more effective compliance model for taxation would make platforms directly responsible for tax collection and remittance. A prominent example is Philadelphia, where Airbnb is required by law to collect a sales and hotel tax on behalf of the city. The platform automatically charges the tax to the guest’s final transaction bill. This kind of model minimizes tax avoidance and encourages accountability.

In Canada, Quebec is leading on the regulation front and has prescribed legal fines for short-term rental violations. Fines for small-scale hosts range from \$2,500

to \$25,000 daily. Meanwhile, commercial corporations can face penalties of \$5,000 to \$50,000 a day. Vancouver is the other Canadian jurisdiction developing of regulatory framework. While still in the works, the proposed set of rules in Vancouver may include suspension of a host's business licence for a term of one year for violating the proposed primary residence or licensing requirement.

Toronto's proposals to regulate the short-term rental market borrows some of the key components in other jurisdictions and similarly falls short of a robust enforcement and compliance structure. Hosts who illegally offer non-primary residence units are simply taken off the registry and do not face any monetary fines. There are also no fines specified to hold companies accountable for allowing illegal postings on their platform. More generally, most of the rules depend on hosts self certifying their compliance, which is too lenient a method of regulation.

Conclusion

As the short-term rental industry boom spreads across cities in North America, hosts, consumers, and communities look to local governments to regulate short-term rentals. Several regulatory frameworks have been proposed and many jurisdictions have enacted rules to help minimize the negative consequences of short-term rentals. This document identifies some of the key components that have emerged as part of the mandate to legalize and regulate the short-term rental industry. Integral to the success of any regulatory framework is the extent to which compliance to the set rules are enforced.

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Notes

- 1 Toronto Report EX26.3 <http://www.toronto.ca/legdocs/mmis/2017/ex/bgrd/backgroundfile-104802.pdf>
- 2 Some exceptions apply, please see: <https://louisvilleky.gov/government/planning-design/short-term-rental-information>
- 3 http://www.ryerson.ca/content/dam/tedrogersschool/htm/documents/ResearchInstitute/CDN_Airbnb_Market_Report.pdf
- 4 Consigli, Gallagher, Kumar, Mehta, Purnell and Templeton (2012), Jordan (2015) and Zervais et al (2014)



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