

# Short Term Accommodation

## 1. Introduction

This report addresses zoning for short term accommodation (“STA”) as part of the Markham New Comprehensive Zoning By-law Project. The intent of the New Comprehensive Zoning By-law Project is to replace Markham’s existing 46 “parent” zoning by-laws with one new comprehensive zoning by-law for all of Markham. The first two phases of this project have been completed. Phase 1 involved the preparation of 20 discussion papers exploring options on a number of issues which were presented to the public at a series of open houses in the Fall of 2015. A summary of the discussion papers and feedback from the open houses was contained in the Zoning Issues Analysis Report which was endorsed in principle by Markham’s Development Services Committee on March 29, 2016.

Phase 2 of the project involved the preparation of the Strategic Directions Report which provides a series of recommendations flowing from the phase 1 discussion papers to assist with the drafting of the new comprehensive zoning by-law, to occur in phase 3. The phase 2 report was presented at an open house on May 2, 2016 and endorsed in principle at the Development Services Committee on June 14, 2016. It is expected that work on Phase 3 will be initiated in the Fall of 2016.

This report on short term accommodation is part of phase 3a of the project. At the phase 1 open house held December 8, 2015 some members of Council indicated that zoning issues pertaining to secondary suites, rooming houses, and short term accommodation should be accelerated ahead of the phase 3 work and completed by the end of this year. The Development Services Committee directed that staff move ahead with a review of potential new zoning and licensing regulations for secondary suites, rooming houses and short term accommodations (phase 3a of the project) at its meeting on March 1, 2016.

This report includes:

- An overview of issues and recent trends emerging with the influx of short term accommodation (Section 3);
- An analysis of three case studies of municipalities that have implemented zoning regulations for STAs (Section 4);
- A review of Markham’s policy context and STA context (Section 5 and 6); and
- Four options for amendments to Markham’s Zoning By-laws to accommodate STAs (Section 7).

## 2. Summary

With the proliferation of short term accommodation services such as Airbnb and Vacation Rental by Owner (“VRBO”) in residential areas, a number of municipalities across the US and Canada have

recently implemented, or are currently in the process of studying, zoning regulations for STAs. Concerns that often stem from STAs relate to negative impacts on the quality of life in the neighbourhood (such as excess of noise, parking issues, garbage and safety) as well as loss of housing affordability and availability, as homeowners are opting to pursue short term accommodations instead of renting to long term tenants.

In Ontario, 11,000 hosts have listings and more than 375,000 people visited Ontario through an Airbnb in the past year.<sup>1</sup> Airbnb's website states that there are approximately 300 listings in Markham and VRBO's website indicates there are nine listings in Markham. It is difficult to assess whether the units listed are located in Markham specifically or in surrounding municipalities in the GTA. In the City of Markham, there have been four complaints filed with the City's By-law enforcement division regarding noise and behaviour problems with short term accommodations listed on Airbnb. It appears that all four complaints relate to properties that are being rented out as weekend party venues. Staff have met with the affected neighbours in the vicinity of the rentals, and the concerns expressed by the neighbours include the "transient" nature of the short term tenants, property standards issues and noise. Staff have either addressed or are in the process of addressing these issues. It should be noted that concern related to the fleeting nature of short-term accommodations exists with even the best of tenants. Staff also received a letter in support of short term accommodation from a resident, which states that people who own their homes or have visitors must all comply with existing noise, safety and parking by-laws and suggests that further regulation is not required when the existing requirements are being enforced.<sup>2</sup>

Currently, Markham's Official Plan and Zoning By-laws remain silent on the issues of short term accommodation, which means the use is not permitted. While the Ontario government and many Canadian municipalities are in the process of researching regulations to address the above issues, few have implemented by-law requirements. The Town of Blue Mountains, Ontario, which is a tourist destination with a large influx of seasonal visitors, has recently approved regulations defining and restricting short term accommodation to certain areas of the municipality. The regulations were upheld by the Ontario Municipal Board. The United States has many more municipalities that have recently implemented zoning by-laws (referred to as ordinances in the US) that address short term accommodations. In both Ashland and Portland Oregon, the by-laws limit the number of dwelling units located within one building and require that the home being rented is a permanent residence, as opposed to solely used for rentals. In Portland, there are different by-laws and permit requirements (including taxation) for rentals of 1-2 bedrooms per dwelling and 3-5 bedrooms per dwelling. Five bedrooms or more in a single dwelling cannot be rented as STAs.

A key obstacle for municipalities that have by-laws already in place is that it is increasingly difficult to enforce regulations with the influx of STAs and a lack of resources. In drafting STA by-laws, a number of specific issues need to be considered, including the cost of regulation and the effectiveness of enforcement. In Markham, the issues largely center around the quality of life in neighbourhoods (ie. noise, safety, nuisance and parking). Based on Markham's context, there are four main options for drafting a by-law:

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<sup>1</sup> "Ontario Partners With Airbnb on New Pilot Project." News.ontario.ca. February 19, 2016. <https://news.ontario.ca/mof/en/2016/02/ontario-partners-with-airbnb-on-new-pilotproject.html>.

<sup>2</sup> Letter dated June 18<sup>th</sup>, 2016

1. No change (apply bed and breakfast zoning permissions); or
2. Include a definition of STAs in the By-law; or
3. Develop a by-law for STAs and permit in only certain locations of Markham.

### 3. STA Context

#### 3.1 Considerations

There are opposing views on the benefits and impacts of short term accommodations. For many, STAs offer occupants relatively inexpensive accommodation and promote tourism while providing the benefits of living in a local neighbourhood as opposed to a hotel. They also provide owners with a source of income. On the other side, there are issues related to negative impacts on the neighbourhood and on housing affordability, as outlined below.

##### *The quality of life in a neighbourhood*

Impacts on quality of life include concerns regarding noise, nuisance, safety, parking and neighbourhood character. In the GTHA, there have been reports regarding 'party houses' listed on Airbnb becoming an issue in quiet neighbourhoods. While there are by-laws regarding noise and parking, if Airbnb refuses to remove the house from the site or if the homeowners decline to address the community's complaints, the only other recourse is to enforce Municipal Act based by-laws including nuisance and/or get the police involved, depending on the issue. This is the case in Mississauga, where a house was sold in February and has since been rented on the weekends to party goers.<sup>3</sup> In Toronto, there is currently a lawsuit against a 'party house' in North York, arguing that the Airbnb rental violated the former North York By-law, which states that short-term accommodation must be seven days or more.<sup>4</sup> The concerns expressed in Markham specifically centre on these issues. It is important, however, to note that the vast majority of STAs in the Greater Toronto Area operate with no complaints.

##### *Housing affordability and availability*

Municipalities with an influx of Airbnbs and other short term accommodations, especially in tourist destinations, have experienced negative impacts related to housing shortages and housing affordability. This is the case in cities such as San Francisco in the US and Tofino in British Columbia<sup>5</sup> but has not been identified as a concern in Markham. While STAs may create barriers for renters, they are often seen to benefit homeowners, permitting them to supplement their incomes.

##### *Leveling the playing field for traditional lodging providers*

Many argue that it is unfair that Airbnb hosts do not have to pay similar taxes as bed and breakfasts or hotels. Similar to housing affordability, this is typically an issue that affects cities with an influx of STAs.

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<sup>3</sup> Grant, Amanda. "Airbnb party house wreaks havoc on Mississauga neighbourhood." CBC News. May 11, 2016. Accessed at <http://www.cbc.ca/news/canada/toronto/airbnb-party-house-mississauga-rental-1.3576210>.

<sup>4</sup> Lu, Vanessa. "City Lays charge over Airbnb short-term rental." The Toronto Star. March 29, 2016. Accessed at <https://www.thestar.com/business/2016/03/29/city-lays-charge-over-airbnb-short-term-home-rental.html>

<sup>5</sup> In March 2016, Tofino Council propose motion to 'crack down' on Airbnb rentals as housing has anecdotally because increasingly unaffordable and in order to 'level the playing field' for rental operations that are properly zoned and have to pay for business licenses. For more information, see Britten, Liam. "Tofino Airbnb Rentals headed for crackdown of motion passes." CBC News. March 14, 2016. Accessed at <http://www.cbc.ca/news/canada/british-columbia/tofino-airbnb-rental-1.3491354>

In Ontario, MaRS Solutions Lab, in partnership with the Ontario Government and the City of Toronto, released the “Sharing Economic Public Design Report”, which provides recommendations for government regulations that will in part level the playing field regarding taxation between tourist establishments and the less formal home sharing rental services like Airbnb.<sup>6</sup>

## 3.2 How to Regulate?

Jeffrey Goodman, an urban planner who is considered to be an expert in short term accommodations having consulted for an array of cities across the US, explains that there is no boilerplate by-law for STAs but instead suggests that municipalities should consider the local context, the cost of regulations, and how effective enforcement will be before introducing zoning by-law regulations.<sup>7</sup>

### *Local Context*

There are different approaches to regulation of STAs based on the local context. For example, STAs could consist of single rooms in a house/apartment, a second suite in a house/apartment, an entire condo unit, or a whole house. Similarly, while noise and parking may be an issue for one community, housing affordability may be a primary concern for another. These diverse issues will affect how regulations are shaped.

### *Cost and effectiveness of enforcement*

In considering enforcement capabilities, it is important to review the current enforcement regimes, data limitations, anticipated enforcement capabilities, and resources. Even if regulations such as the requirement to obtain a permit/licence exist for STAs, they are often difficult to enforce if a complaint is not made. In its Terms of Services, Airbnb is clear that the hosts are responsible for following local laws on everything from safety and zoning to taxation.<sup>8</sup> However, it is the municipalities’ responsibilities to ensure properties are compliant with local regulations, which requires the use of local resources such as enforcement officers. Often, there is minimal staff available to oversee STAs. In addition, STAs span across a diverse range of rental property websites and many do not include addresses. Therefore, tracking the properties is difficult and would require additional staff resources and sophisticated databases.<sup>9</sup>

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<sup>6</sup> Requirements include: STAs must be a primary residence for a minimum of 180 days per year. See MARS Solution Lab. “Shifting Perspectives: Redesigning Regulation for the Sharing Economy.” March 2016. Accessed at <https://www.marsdd.com/wp-content/uploads/2016/04/MSL-Sharing-Economy-Public-Design-Report.pdf>.

<sup>7</sup> Goodman, Jeffrey. “Could you Bnb my neighbor? A planner’s take on the sharing economy.” *Planning*. American Planning Association. February 2016.

<sup>8</sup> Airbnb Terms of Services. Accessed at <https://www.airbnb.ca/terms?locale=en>.

<sup>9</sup> Goodman, Jeffrey. “Could you Bnb my neighbor? A planner’s take on the sharing economy.” *Planning*. American Planning Association. February 2016.

## 4. Markham Legislative and Policy Context

### 4.1 Provincial Legislative Context

There are no provincial policies or laws governing short term accommodation. The Ontario government has, however, launched a pilot project partnering with Airbnb to inform users (homeowners) about tax laws such as reporting rental income, consumer protection rights, accessibility requirements and other regulatory and safety obligations. The province is also partnering with MaRs Solutions Lab, which, as mentioned, has recently completed a report entitled “Shifting Perspectives: Redesigning Regulation for the Sharing Economy” that recommends new regulatory approaches to the sharing economy, which includes “Airbnb and other home-sharing services.”<sup>10</sup>

### 4.2 Markham Official Plan Policies

The Markham Official Plan does not contain specific policies regarding short-term accommodation. The closest term in Markham’s by-laws to short term accommodation is a “bed and breakfast establishment,” which is defined in similar ways in by-law 122-72 (for the Main Street Heritage Area) as well as the new Official Plan. The Official Plan definition is as follows: “Bed and breakfast establishment means an establishment that provides sleeping accommodation (including breakfast and other meals, services, facilities and amenities for the exclusive use of guests) for the travelling or vacationing public in up to three guest rooms within a single dwelling that is the principal residence of the proprietor of the establishment” (11.2).

### 4.3 Relevant Definitions in Markham Zoning By-law

Markham Zoning By-laws do not have established regulations recognizing or regulating STAs. However, the By-laws recognize a variety of commercial accommodation uses such as travel establishments, hotels, motels, and bed and breakfasts.

#### *Bed and Breakfast Inns*

(Found in By-law 122-72 (2014-25) as it pertains to the Heritage Main Street Area)

(1) means a single detached dwelling unit, or part thereof, in which the proprietor resides and provides no more than 3 bedrooms for the accommodation of the travelling or vacationing public, in which the owner supplies lodgings with or without meals for the persons so accommodated.

#### *Hotel*

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

(2) means a building or buildings or part thereof on the same site used to accommodate the public for gain or profit, by supplying them with sleeping accommodation (with or without meals) but without individual private cooking facilities.

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<sup>10</sup> Lu, Vanessa. “New report calls for regulation revamp in wake of Uber, Airbnb.” The Toronto Star. March 31, 2016. Accessed at <https://www.thestar.com/business/2016/03/31/sharing-economy-needs-new-rules-update-old-rules.html>.

(3) means a premises that contains rooms with or without 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.

*Hotel, Apartment*

(1) means a hotel except that not more than 50% of the living accommodation therein, according to floor area, may be dwelling units.

*Motel*

(1) shall mean a building, or buildings consisting of a minimum of eight individual rental units, used for catering to the needs of the transient public by furnishing sleeping accommodation with or without a public dining room.

(2) means a premises that contains 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 Establishment*

(1) means a building or buildings which are used to accommodate the travelling public for gain or profit by supplying them with sleeping accommodation (with or without meals), and shall include a guest house, tourist cabins, a motel or a hotel.

## **5. STAs in Markham**

Airbnb's website has approximately 300 listings in Markham and VRBO's website indicates there are nine listings in Markham. It is difficult to assess whether the listings are located in Markham specifically or in surrounding GTA municipalities.

The issues that Markham currently faces are primarily related to the quality of life in the neighbourhood. Four complaints have recently been filed with the City's By-law enforcement division regarding noise and behaviour problems with short term accommodations listed on Airbnb that appear to be used as weekend party venues. Staff have either addressed or are in the process of addressing these issues. It should be noted that the concern related to the fleeting nature of short-term accommodations exists with even the best of tenants.

Staff also received a letter in support of short term accommodation from a Markham resident, which states that people who own their homes or have visitors must all comply with existing noise, safety and parking by-laws and suggests that further regulation is not required when the existing requirements are being enforced.<sup>11</sup>

Housing affordability and availability does not seem to be a concern based on the current complaints and the amount of short term accommodations in the area. Therefore, responding primarily to issues of noise, safety, parking and garbage should be the objective of regulations, including an assessment of whether the zoning by-law is the best vehicle to address these issues. Prior to considering options for a

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<sup>11</sup> Letter dated June 18<sup>th</sup>, 2016

draft by-law, three precedents that respond to a diversity of issues and incorporate a number of regulations are examined.

## 6. Case Studies

As municipalities across North America begin to implement regulations to address the impact of sites like Airbnb, they have had to consider a range of provisions including some focusing on location, building or dwelling types and number of permitted units/rooms. Below is a review of three case studies that address these requirements:

1. The Town of Blue Mountains, Ontario, Canada;
2. Portland, Oregon, USA;
3. Ashland, Oregon, USA.

The Town of Blue Mountains' By-law focuses on locational restrictions. Portland and Ashburn have many more requirements based on dwelling types, units and location.<sup>12</sup>

### 6.1 The Town of Blue Mountains

The Town of Blue Mountains recently approved regulations defining and restricting short term accommodation to less than thirty days, permitting it only in certain areas of the municipality. Provisions related to parking, occupant load, and servicing also apply. The regulations were upheld by the Ontario Municipal Board.<sup>13</sup> It is important to note that the Town of Blue Mountains is a tourist town and therefore has a significantly different context than Markham. In 2012, approximately half of the residential buildings (2,932 of 5,619 residential buildings) were permanently occupied, with many of the remaining dwellings being rented to visitors. While it is a different context, the four complaints regarding STAs in Markham are similar to the issues dealt with by the Town of Blue Mountains, with "noise, parking, garbage, nuisance, mischief and vandalism" as primary complaints.<sup>14</sup> Specifically, these concerns are voiced from stable, low density neighbourhoods, as referenced in the OMB Decision dated June 22, 2011: "It is the use of single detached dwellings in low density areas for STA that is at the heart of the dispute."<sup>15</sup>

#### *Definition*

A number of definitions for STAs were explored in the Town of Blue Mountains, including limiting the number of occupants, and a placing a cap on the permitted number of bedrooms, which were not included in the ultimate definition. The approved definition for Short Term Accommodation is as follows:

"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

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<sup>12</sup> By-laws in the US are referred to as ordinances. For the purpose of this report, they will be referred to as by-laws to remain consistent.

<sup>13</sup> In January 2009, the Town of Blue Mountains proposed an Official Plan Amendment (OPA 11) and three zoning by-law amendments (By-law 2009-03, 2009-04, 2009-05), which established a definition and policies for short term accommodation uses. Appeals were made to the OMB and the Divisional Court, which were denied in 2011 and 2012 respectively.

<sup>14</sup> Rosen v. Corporation of the Town of Blue Mountains, 2012 ONSC 4215.

<sup>15</sup> OMB Decision PL080455

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.”<sup>16</sup>

*Provisions and requirements*<sup>17</sup>

*Location*

Short term accommodation uses are permitted, subject to certain provisions, in Residential Multiple RM2 and Resort Residential (RR) zones. These areas provide for higher densities than low rise neighbourhoods and are therefore considered more suitable for STAs than lower density areas.

Provision	Requirement
Servicing	Must be connected to municipal sanitary sewer and water system
Parking	Single-Unit Building - 0.5 parking spaces per occupant or 1.0 parking space per guest room used for sleeping, whichever is the greater Multi-Unit Building - 1.75 parking spaces per unit having four guest rooms used for sleeping or less plus 1.0 additional parking space for each additional guest room used for sleeping
Occupant Load	Maximum of 8 occupants - “No person shall use any land or erect, alter or use any building or structure that secures nine (9) or more occupants for the purpose of short term accommodation use.”
Separation Distance	Minimum distance from one Short Term Accommodation or Bed & Breakfast Establishment and another Short Term Accommodation use is 120 metres
Buffer Strip	Applies when the Short Term Accommodation lot abuts a residential zone that permits a single detached residential dwelling: 3.0 metres at the rear property line 3.0 metres at the exterior (flank) lot line 1.0 metre at the interior lot line
Waste/Recycling Depot	Must be provided on the site in an enclosed structure. Location will be determined through Site Plan Approval
Site Plan Approval	Site Plan Approval pursuant to Section 41 of the Planning Act is required.

*Licensing By-law*

On November 23, 2013 Council enacted the STA Licensing By-law (By-law 2013-50) to regulate and govern short term accommodation uses. The By-law was brought into effect on July 2, 2014. Under the STA Licensing program, property owners must apply for and obtain a licence, and renew it bi-annually.<sup>18</sup>

6.2 Ashland, Oregon

<sup>16</sup> A previous version of the by-law included the number of occupants permitted in a residence. The proposed definition under By-law 2009-03 recommended that “the dwelling...operates or offers no more than eight (8) occupants a place of temporary residence, lodging or occupancy.” The maximum number of occupants is now a provision in the by-law but was omitted from the ultimately the final version of the definition.

<sup>17</sup> Town of The Blue Mountains (formerly Town of Thornbury) By-law 2009-04 OMB and Town of Blue Mountains (formerly Collingwood Township) By-law 2009-03 OMB.

<sup>18</sup> The Town of Blue Mountains STA Licencing By-law. By-law No. 2013- 50 OFFICE CONSOLIDATION (By-law 2014-45). Accessed at [http://www.thebluemountains.ca/public\\_docs/documents/STA%20Licencing%20By-law%20Office%20Consolidation.pdf](http://www.thebluemountains.ca/public_docs/documents/STA%20Licencing%20By-law%20Office%20Consolidation.pdf).

Similar to the Town of Blue Mountains, Ashland, Oregon also includes regulations based on location, permitting short term accommodations in higher density neighbourhoods near main streets and away from lower density residential neighbourhoods.

In addition, the by-law requires that the house be occupied as a primary residence, which means the main occupant must be living there 270 days per year. It also limits the number of accommodations to a single unit of two bedrooms or less. Furthermore, Property owners are required to provide two off-street parking spaces, and are not allowed to display business-related signs on their property.

*Definition and Requirements*<sup>19</sup>

“Accessory Travelers’ Accommodation; Transient lodging in a residential zone where the property owner resides in a dwelling on its own lot and rents no more than two bedrooms under a single reservation to overnight guests on one or more occasions for a period of less than 30 consecutive days.”

The detailed provisions are provided below:

Provision	Requirement
<b>Location</b>	The property is located within 200 feet of a boulevard, avenue or neighbourhood collector as identified on the Street Dedication Map in the Comprehensive Plan.
<b>Primary Residence</b>	During the operation of a traveler’-s’ accommodation, the property on which the traveler’-s’ accommodation is sited must be the primary residence of the business-owner. “Business-owner” shall be defined as a person or persons who own the property and accommodation outright; or who have entered into a lease agreement with the property owner(s) allowing for the operation of the accommodation.
<b>Dwelling Type</b>	“The primary residence on the site must be at least 20 years old.”
<b>Safety</b>	An accommodation must meet all applicable building, fire and related safety codes. Annual inspection from health department
<b>Number of units</b>	Determined by dividing total square footage of the lot by 1,800 sq.ft... The maximum number of accommodation units shall not exceed nine per approved traveler’s accommodation with primary lot frontage on boulevard streets. Maximum number of units shall be seven if without primary lot frontage on designated boulevard but within 200 ft of boulevard.
<b>Parking</b>	2 off-street parking spaces
<b>Neighbourhood Character</b>	No signage- “one ground or wall sign, constructed of a non-plastic material, non-interior illuminated and a maximum of six square feet total surface area allowed...”
<b>License</b>	Must maintain a City business license and pay transient occupancy tax.

<sup>19</sup> Ashland Land Use Ordinance 3108 - Chapter 18.6.1. Accessed at <http://www.ashland.or.us/SIB/files/3108%20AMND%20AMC%2018%20Accessory%20Travelers%20Accommodations.pdf>.

## 6.3 Portland, Oregon

Portland has developed two types of STAs, which the municipality calls 'Accessory Short Term Rentals' ("ASTRs"), each with a specific permitting process. Portland's by-laws respond to issues related to housing affordability and availability for long-term rentals, as well as impacts on quality of life within neighbourhoods. STAs such as units rented through Airbnb are in high demand in Portland, which has many visitors. The two by-laws respond to more casual rentals as well as ones that act as commercial entities.

The Zoning By-law allows a resident to rent bedrooms in all residential structure types when accessory to a Household Living use. A Type A accessory short-term rental allows the rental of 1-2 bedrooms to overnight guests on a short-term basis (less than 30 days). Larger accessory short-term rentals with 3-5 bedrooms (Type B accessory short-term rentals) may be allowed if approved through a Land Use Conditional Use Review. In both instances, the primary occupant must reside in the dwelling unit for at least 270 days per calendar year (9 months). The permit requires the owner or principal occupant of a short-term to provide a notice to abutting neighbourhood property owners and those across from the property.

As of February 2015, the City estimated that 1,600 short-term rental hosts list properties on sites such as Airbnb and HomeAway, with only 166 permit application received. Despite the frustration over the lack of cooperation on enforcement measures, in January 2015 the City amended the earlier by-law to allow STAs in apartments and condominiums. The City also voted to fine short-term rental agencies such as Airbnb, Homeway a total of \$500 for each host who advertises a listing without a permit number.<sup>20</sup>

### *Definition and Requirements*<sup>21</sup>

"An accessory short term rental is where an individual or family resides in a dwelling unit and rents bedrooms to overnight guests for fewer than 30 consecutive days. There are two types of accessory short-term rental:

- Type A. Accessory Short-Term Rental is where no more than 2 bedrooms are rented to overnight guests.
- Type B. Accessory Short-Term Rental is where 3 or more bedrooms are rented to overnight guests.

Resident is defined as "The individual or family who resides in the dwelling unit. The resident can be the owner or a long-term renter."

Operator is defined as "The resident or a person or entity that is designated by the resident to manage the accessory short-term rental."

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<sup>20</sup> Peltier, Dan. "Airbnb Faces Big Fines in Portland if Hosts Don't get City Permits." Skift. Accessed at <https://skift.com/2015/02/23/airbnb-faces-big-fines-in-portland-if-hosts-dont-get-city-permits/>. February 23, 2015

<sup>21</sup> City of Portland, Oregon. "Title 33 Planning and Zoning." Accessed at <https://www.portlandoregon.gov/auditor/28197>.

Below are the provisions and differing requirements for Type A and B Accessory Short-Term Rentals. Specifically Type A is more restrictive while Type B offers more flexibility to run as a commercial operation once a Land Use Conditional Use Review application is approved.

Provision	Requirement	
	Type A	Type B
Permit required	Short-Term Rental Permit is required, which includes a safety inspection as part of the permit approval and neighborhood notification. <sup>22</sup>	A Land Use Conditional Use Review application is required along with a site inspection or self-certification for the same safety features as the Type A rental.
Maximum size	Maximum of 2 bedrooms to overnight guests.	Maximum of 5 bedrooms to overnight guests. In the single-dwelling zones, short-term rental over this size limit is prohibited.
Accessory dwelling units	Maximum number of bedrooms on the site that can be rented to overnight guests is 2	On sites with an accessory dwelling unit, the resident can live in the primary or accessory dwelling unit and rent bedrooms in either dwelling unit.
Number of residents and guests	May not exceed the number allowed for a household. For sites with an accessory dwelling unit, the total number of residents and guests occupying both dwelling units may not exceed the number allowed for a household.	The total number of residents and overnight guests occupying a dwelling unit with a Type B accessory short-term rental may be limited as part of a conditional use approval.
Services to overnight guests and visitors	Serving alcohol and food to overnight guests and visitors is allowed and may be subject to other county or state requirements	Serving alcohol and food to overnight guests and visitors is allowed and may be subject to other county or state requirements
Commercial meetings	Commercial meetings are Prohibited.	Commercial meetings are regulated.
Appearance	n/a	Residential structures may be remodeled for the development of an accessory short-term rental. However, structural alterations may not be made that prevent the structure being used as a residence in the future.

There are a number of provisions that apply to both Type A and B Accessory Short-Term Rental, as outlined below.

<sup>22</sup> For an example of a Neighbourhood Notice, see Example of Neighbourhood Notice: [http://kingneighborhood.org/wp-content/uploads/2015/09/ShortTermRentalPermit\\_4321\\_NE\\_Garfield\\_20150915.pdf](http://kingneighborhood.org/wp-content/uploads/2015/09/ShortTermRentalPermit_4321_NE_Garfield_20150915.pdf)

<b>Type A and B</b>	
<b>Provision</b>	<b>Requirement</b>
<b>Accessory use</b>	Must be accessory to a Household Living use on a site. This means that a resident must occupy the dwelling unit for at least 270 days during each calendar year, and the bedrooms rented to overnight guests must be within the dwelling unit that the resident occupies.
<b>Allowed Structure Type</b>	Allowed in all residential structure types when accessory to a Household Living use
<b># of dwelling units</b>	In a multi-dwelling structure or a triplex with an accessory short-term rental is limited to 1 unit or 25 percent of the total number of units in the structure, whichever is greater.
<b>Prohibition</b>	Prohibited in a building subject to the Uniform Building Code except when the Fire Marshal's Office has determined that the building has a fire sprinkler system that protects the exits.
<b>Detached accessory structures</b>	Bedroom in a detached accessory structure can be rented to overnight guests, and counts toward the maximum size limit
<b>Bedroom requirements</b>	Each bedroom to be rented to overnight guests must: Meet the building code requirements for a sleeping room at the time it was created or converted. (Bedrooms in multi-dwelling structures and in triplexes are exempt) Has a smoke detector; Is located on the floor of a dwelling unit equipped with a functioning carbon monoxide alarm. If the dwelling unit does not have a carbon monoxide source, then a carbon monoxide alarm is not required.
<b>Employees</b>	Non-resident employees are prohibited.

## 7. Preliminary Options for Markham's STA By-law

### 7.1 Considerations for Drafting By-laws

The main complaints made to City of Markham officials regarding STAs are related to the use of residential dwellings as party venues and the impact of these activities on the quality of life in neighbourhoods, specifically noise, safety and parking. The following options consider how best to respond to these issues, taking the regulations from the case studies discussed above into consideration. Option 1 proposes that the City should focus its efforts on the enforcement of existing regulations and laws as they relate to safety, noise and parking and/or consider applying the existing bed and breakfast zoning permissions. Options 2-3 consider approaches to developing new definitions and/or regulations for STAs.

### 7.2 Option 1: No Change (Apply existing Bed and Breakfast zoning permissions)

Under this option there would be no changes to existing zoning by-laws regarding short term accommodations. Instead the City would continue to rely on the enforcement of existing by-laws that address concerns related to noise, parking, safety and neighbourhood character. The City could rely on existing bed and breakfast zoning permissions to address these types of STAs.

### ***Considerations***

As mentioned above, to date there have been only four complaints related to how short-term accommodations which have been used as 'party venues' and are affecting the quality of life for adjacent residents. This is a very small number compared to the number of short term rental accommodations that appear to exist in Markham. A by-law limiting STAs may not be effective in identifying existing STAs and will require additional enforcement and staff administrative resources. Therefore, it may be more cost effective, given the limited number of complaints, to ensure that the houses comply with existing noise, parking and safety by-laws, outlined below, instead of drafting a new STA by-law.

#### ***Safety – Building and Fire Codes***

Safety is a main concern often expressed by neighbours of STAs where complaints have been filed. Markham already has safety regulations in place as outlined in the Fire Protection and Prevention Act.

##### ***Fire Code***

Fire safety in Ontario is governed by the Fire Protection and Prevention Act, under which the Ontario Fire Code is issued. The most recent version of the Ontario Fire Code came into effect in May, 2007, setting out minimum requirements related to fire safety in buildings and their surrounding properties. Except where otherwise specified, the property owner has the responsibility of complying with the Fire Code. The difficulty is ensuring compliance by owners who are operating under the radar.

##### ***Parking***

The impact STAs have on the availability of on-street parking is a common concern to residents. Markham's Extended Driveway Parking By-law restricts parking on driveways to locations in front of a garage. Prohibitions and controls on street parking apply as well. These are the types of by-laws and controls that are required to address neighbourhood parking issues.

##### ***Noise***

A permit (permission) must be obtained for all outdoor functions occurring on private property; noisy parties and other loud activities are not allowed. The noise by-law provides residents with opportunities to file complaints.

##### ***Neighbourhood Character***

A concern with renting STAs as a whole house to partygoers is often related to fears that the property will be poorly maintained. There are existing by-laws in place to address these concerns, in particular the housing standards by-law which addresses external maintenance of the property. All houses must comply with all of Markham's by-laws regarding upkeep and maintenance.

### *Illegal Activity*

There have been concerns expressed with some of the activities taking place in party houses may be illegal or criminal. If this is the case, this is a police matter and is most appropriately be dealt with through the proper authorities.

Even though there are by-laws to address some of the key concerns with STAs, there are still potential issues with the “no change” Option. These include:

#### *Owner responsibility*

While there are already existing by-laws in place, enforcement officers and police can only follow up when there are complaints and parking officers can issue tickets to cars only when parked unlawfully on streets. This therefore implicates those using the house but does not necessarily indicate that the homeowner will be penalized. Mississauga’s Airbnb party house is a case in point. While officers have responded to complaints during parties, Airbnb did not initially take down the house from the site and the owner of the home did not respond to the complaints.<sup>23</sup> Therefore, a by-law that will place responsibility on the owner and the STA host website could help to ensure adequate responses.

#### *Ignoring STAs is not a long-term solution*

Short term accommodations are not going away and other concerns may emerge in the future. Responding to these few issues and proactively developing a by-law may assist to address other issues that could be associated with STAs.

The Province of Ontario is moving forward to study regulations for STAs, particularly around taxation issues. The City of Markham may need to respond to zoning permission for STAs at some point, either in the near future through the drafting of a by-law or once the Province has a clear vision of regulation, if any. The “no change” option could therefore represent a holding pattern until further direction is received from the Province.

## 7.3 Option 2: Introduce a STA Zoning By-law Definition

Under this option, a definition for short term accommodations would be developed using the Town of Blue Mountains definition as a precedent. This use could be permitted initially in any location of the City because the use would be and likely intermittent with little or no neighbourhood impact. The definition could include a restriction on the maximum number of bedrooms for short-term accommodations to deter large numbers of people from using existing houses for this purpose. This approach would recognize that this is a popular and well used form of accommodation that is growing world-wide and that permitting a few short term rentals while limiting the scope and scale would not cause neighbourhood disruption, particularly since these are typically intermittent and not ongoing uses.

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<sup>23</sup> Grant, Amanda. “Airbnb party house wreaks havoc on Mississauga neighbourhood.” CBC News. May 11, 2016. Accessed at <http://www.cbc.ca/news/canada/toronto/airbnb-party-house-mississauga-rental-1.3576210>.

Based on the case studies, a typical number of bedrooms referenced in zoning by-laws dealing with STA is between two to five. In Portland, a maximum of five bedrooms can be rented for STA use, which is included in the definition. In Town of Blue Mountains, a maximum of eight occupants are permitted, however this number is included as a provision instead of within the definition. For the purpose of the definition developed below, the number of bedrooms builds on the limit on lodging rooms that is generally permitted in a house form building in residential zones across Ontario.

Therefore, a potential definition of short term accommodation could be based on the following:

“A dwelling or structure or 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 to the traveling public for overnight accommodation 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 inn, tourist establishment or similar commercial or institutional use.”

Under this option Council may also wish to consider adding standards related to parking or other types of provisions, such as some of those identified in the town of Blue Mountains By-law.

#### ***Considerations***

This definition could assist to address some of the complaints regarding impacts on quality of life with the use of houses as party venues. However, it could also capture non-disruptive STAs that operate on a small scale, intermittent basis.

#### ***Enforcement challenges***

The advantage of this approach is that it would not require a large amount of additional resources to address enforcement of by-laws, but would focus effort on where the problem has been identified in Markham through complaints.

### **7.4 Option 3: Define STAs and determine locations where STAs are permitted and prohibited**

Under this option the definition of STAs proposed under option 2 would be coupled with restrictions on where this use could be permitted. Based on the three case studies discussed above, STAs are typically permitted in higher density residential areas or areas located in close proximity to major streets. This option would also need to address parking standards and possibly other provisions.

#### ***Considerations***

Locational provisions that are focused on higher density areas or mixed use areas could assist to ease potential negative impacts of STAs, or perceptions of negative impacts on more stable neighbourhoods.

### *Enforcement challenges*

This option could present enforcement challenges as this approach could potentially require additional resources to follow up on complaints and non-compliance in parts of Markham where this use would not be permitted. It would be difficult to determine addresses of all STAs based on information on websites such as Airbnb.

## 7.5 Other Considerations - Licensing

If a zoning by-law amendment were to be approved to define and permit short term accommodation, Markham could institute a licensing protocol under the Municipal Act which would require all short term accommodations to apply for licenses to be renewed and inspected on a regular basis.

## 8. Next Steps

It is recommended that a public open house be held in September 2016 to obtain public input on options for short term accommodations explored in this report including:

- No change to Markham's existing by-laws (apply bed and breakfast establishment zoning provisions); or
- Introducing a new definition of short term accommodation; or
- Introducing a new definition for short term rentals that would only be permitted in certain zones where other forms of multi-unit housing are permitted or are located along major arterials.

A final report recommending by-law amendments will be presented to Development Services Committee and a statutory public meeting in the Fall of 2016.