

## ORDINANCE and CITY POLICY AD-HOC COMMITTEE

### Monroe Community Center

605 Main Street, Monroe

January 31, 2024

6:00 P.M.

#### **Agenda**

1. Call to Order
2. New Business:
  - 2.1. Short Term Rental Overview
  - 2.2. Where Should Short Term Rentals be allowed?
  - 2.3. Lodging Taxes
  - 2.4. Changes needed to City Land Use and Municipal Codes
3. Other Business:
4. Adjournment

# SHORT TERM RENTAL OVERVIEW

## What is a Short-Term Vacation Rental?

A short-term rental (often known as an STR) is a house, apartment, or even a single bedroom that is rentable for less than 30 days.

While these types of rentals have existed for quite some time, the creation of digital applications like Airbnb and VRBO that make it easy and safe to book a place to stay have resulted in skyrocketing demand for short-term vacation rentals.

## How Do Short-Term Rentals Benefit Local Governments and Their Communities?

Encouraging constituents to turn their properties into short-term vacation rentals can be beneficial for the whole community. Here are some of the ways STRs can pay dividends for you and your constituents:

- **Increased earnings for constituents** - depending on the location, property owners can make upwards of several thousand dollars a month by renting to vacationers. On average, the typical Airbnb proprietor earns \$924 a month, depending on the season and attractions in the area.
- **Increased earnings for businesses:** What do people like to do on vacation? Eating, drinking, shopping, and checking out noteworthy attractions are staples for every trip. That means the vacationers staying in your neighborhood will eat in nearby restaurants, shop at local stores, and boost the overall economy substantially.
- **Increased revenue for the local government:** Increased profits for local businesses and STR owners means your local government will get its piece of the pie as a result of taxes. A boom in travel will give you money to improve on infrastructure and generally improve the lives of everyone that lives in your neighborhood permanently.
- **More room for fun events:** Many areas have failed to host exciting events historically because they don't have hotels or places for travelers to crash. Now, with STRs there will be an opportunity for more events in your neighborhood that will draw in a crowd and increase revenue.
- **Free publicity and PR:** If more people visit and enjoy your town than ever before as a result of increased lodging availability, you can be sure that many of those people will return and will encourage friends and family to do the same.

## What Challenges Do Short-Term Vacation Rentals Pose for Local Governments?

Short-term rentals come with their fair share of challenges for a local government. Here are some of the issues that arise with an uptick in STRs in your community:

- **Partying and Safety:** We've all heard the nightmare stories from places like Florida when spring break rolls around. The same can happen in your community if not careful. Code Enforcement is critical for issues ranging from noise violations to occupancy and fire hazards. Regulations need to be enforced to prevent underage drinking and to protect full-time constituents from dealing with noisy parties next-door.
- **Fewer housing options:** If too many properties in your community turn into STRs, there will be a lack of full-time housing available which can drive up prices for residents and make the American Dream of homeownership harder to achieve. This poses a serious challenge for anyone looking to move into your community full-time.

# SHORT TERM RENTAL OVERVIEW

- **Gentrification:** With short-term rentals becoming a potentially lucrative income option for property owners, the fabric of neighborhoods across several cities have been transformed as buyers have snapped up homes with the sole intention of renting them out. This has raised property valuations and, in some neighborhoods, forced out lower-income households from neighborhoods with vibrant histories.
- **Holding property owners accountable:** Applications like AirBnb and VRBO keep their users' information private, meaning that if the local government isn't monitoring short-term rentals efficiently, STR owners will bend the rules and avoid paying the full amount of taxes they owe.

## What Are Common STR Rules and Regulations at the Local Level?

In order to minimize the negative impact of short-term rentals, setting clear short-term rental guidelines and enforcing local ordinances is a must. While regulations at the local level vary by town / location, here are common policies implemented by local governments:

- **Business permits and licenses:** Like any business type, short-term rental owners are required to file a permit for their vacation home. In most places, a short-term rental license should be required as well, and will enable local governments to generate tax revenue from rental properties within their jurisdiction.
- **Cap on rental properties:** In communities with limited housing availability, the right solution may be to put in place a cap on the number of homes that can legally be used as short-term rentals. This will keep home prices affordable for residents and ensure that neighborhoods remain a true community of locals rather than be overrun by transient visitors.
- **Building and housing standards:** Make sure that modifications to rental properties are approved by your local government. Set rules on health, safety, and sanitation to ensure guests from out of town are living in suitable conditions.
- **Ban on parties:** Airbnb officially banned parties from being hosted at their short-term rentals. That said, without proper enforcement, these rules are bent all too often. You'll need to communicate regulations with property owners to ensure that these rules are followed, or enforced by local authorities if not.

**GUIDE**

**CHECK IN**



# Legal Guide to Collecting Lodging Tax in Oregon

UPDATED FEBRUARY 2020

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## **Introduction**

This Transient Lodging Tax Guidebook (“guidebook”) is designed to provide city leaders with background information on the state’s regulation of local transient lodging tax, an overview of how the state law works, and answers to questions regarding: (1) how the tax is collected and remitted to cities; (2) how cities can use the tax revenue; and (3) the impact of making changes to an existing tax. The guidebook also highlights emerging challenges for cities in collecting the tax—mainly, the growing prevalence of short-term rental platforms such as Airbnb and VRBO.

Finally, the guidebook provides documents intended to assist cities in implementing and amending a transient lodging tax, including a model ordinance for amending an existing tax, a model ordinance for regulating short-term rental platforms, a model collection agreement between cities and short-term rental platforms, and model forms including a registration form and a tax remittance form.

## **Disclaimer**

This guidebook is not intended as a substitute for legal advice. Many of the legal issues highlighted herein are not settled law; a city should choose a course of action based on how much risk the city is willing to take. These discussions should be had with a trusted legal advisor.

## **Background**

Since the 1940s, many local governments have imposed some form of a “transient lodging tax” (TLT) on occupied hotel, motel, and inn dwelling units within their jurisdiction. Often, cities and counties would reinvest these funds into their local tourism industries. Some local governments allocated these funds to general fund purposes such as fire, police, streets, and sewers that benefited both residents and tourists alike. Local TLT rates vary based on jurisdiction.

As explained below, the Oregon Legislature first began regulating TLTs in 2003, and then made changes and expansions to the original law with significant changes in 2005, 2013, 2017, and 2018.

### **Statewide Regulation**

In 2003, the Oregon Legislature passed HB 2267, which established a 1 percent statewide TLT and created the Oregon Tourism Commission. The law required the commission to use at least 80 percent of the state-wide tax revenue to fund state tourism and marketing programs and up to 15 percent to implement regional tourism marketing programs. The state tax is administered by the Oregon Department of Revenue with proceeds directed to the semi-independent agency, Travel Oregon.

In addition, HB 2267—over the objections of local government officials from across the state—preempted local control over TLTs and restricted much of a local government’s decision-making in allocating funds from local TLTs. The bill placed restrictions on any new or increased TLT imposed by cities or counties by requiring at least 70 percent of the net revenue to go towards “tourism promotion” or “tourism-related facilities” and requiring local governments to allow lodging tax collectors to retain at least 5 percent of local TLT revenues as reimbursement for collecting the tax.

Local governments with TLTs already in place were “grandfathered” under HB 2267. Local governments with pre-existing TLTs must maintain the distribution ratios they had in place on July 1, 2003, but cannot decrease the percentage of total tax revenue actually expended to fund tourism promotion or tourism-related facilities. For example, if a local government had a 5 percent tax in place on July 1, 2003, with 50 percent of the revenue going to tourism promotion and 50 percent going toward the general fund, the local government must not decrease the portion of the tax revenue going toward tourism promotion and tourism-related facilities below the established 50 percent.

### **Changes in 2005**

In 2005, the Oregon Legislature amended state law to include more than just hotels, motels, inns, and camping spots, but also houses, cabins, condominiums, apartment units, or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

## Most Recent Changes and Challenges

In 2013, the Oregon Legislature passed HB 2656 to address the growing number of online travel companies facilitating transient lodging. The amendments intended to require online travel companies to assess the state and local tax on the sale price of the rooms as paid by the lodger, rather than the discounted price the online travel company originally pays for the room. For example, an online travel company may purchase a block of rooms for \$100 each and then sell rooms to lodgers for \$150, retaining the extra \$50 as their “fee” for facilitating the sale. In November 2013, online travel companies sued the Oregon Department of Revenue, challenging the state and local government’s ability to tax their “fee” for facilitating the sale. The parties later settled without fully resolving this issue.

The 2013 amendments also added transient lodging intermediary to the definition of transient lodging tax collector, intending to hold them responsible for the tax. The change was in response to the growing prevalence of residents engaging in short-term rentals—*i.e.*, individuals or “hosts” who list their homes, or a room in their homes, on a website such as Airbnb or HomeAway and allow “guests” to stay with them and charge rent. The problem is that hosts are often not individuals in the tourism industry, may not be aware of the tax, and their rental may not be allowed by local regulations. For all these reasons, it is difficult to collect the TLT from hosts. Instead of attempting to track down every host within the jurisdiction, the state and many cities—including Portland, San Francisco, and New York City—have instead attempted to impose regulations and requirements on the hosting platforms. This new type of regulation has led to a series of court cases across the country—some of which have been resolved, either through court decision or new legislation.

In 2017, the Legislature passed a bill that gave the Oregon Department of Revenue authority to collect local TLTs on behalf of cities and counties. Note that as of February, 2019, DOR has not begun implementing that program.

Finally, in 2018, the Legislature amended the definition of “transient lodging intermediary” to include online hosting platforms like Airbnb, VRBO, and HomeAway.



## Key Definitions

Below are definitions for several relevant terms commonly used when discussing TLTs in Oregon. These definitions are found in ORS 320.300.

**Transient lodging tax** “means a tax imposed by a unit of local government on the sale, service or furnishing of transient lodging.” ORS 320.300(4).

**Transient lodging** “means (a) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; (b) Spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or (c) Houses, cabins, condominiums, apartment units, or other dwelling units, or portions of any dwelling units, that are used for temporary human occupancy.” ORS 320.300(11). Note that transient lodging includes both traditional lodging businesses like hotels and motels as well as individuals who rent out all or a portion of their home.

**Transient lodging provider** “means a person that furnishes transient lodging.” ORS 320.300(13).

**Transient lodging intermediary** “means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and charges for occupancy of the transient lodging.” ORS 320.300(12) (added in 2013). Under HB 4120 (2018), all online platforms that facilitate short-term rentals (*i.e.*, Airbnb, VRBO, etc.), are considered “transient lodging intermediaries” and are thus required to collect TLTs.

**Transient lodging tax collector** “means a transient lodging provider or a transient lodging intermediary.” ORS 320.300(14).

**Collection reimbursement charge** “means the amount a transient lodging tax collector may retain as reimbursement for the costs incurred by the transient lodging tax collector in collecting and reporting a transient lodging tax and in maintaining transient lodging tax records.” ORS 320.300(1).

**Tourism-related facility** “means: (a) A conference center, convention center, or visitor information center; and (b) Other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.” ORS 320.300(9).

**Tourism promotion** “means any of the following activities: (a) Advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists; (b) Conducting strategic planning and research necessary to stimulate future tourism development; (c) Operating tourism promotion agencies; and (d) Marketing special events and festivals designed to attract tourists.” ORS 320.300(7).

## How the Law Works

Local governments can impose a tax on transient lodging at any rate.<sup>1</sup> People paying for transient lodging—*i.e.*, tourists or others who rent out the transient lodging—are responsible for paying the tax. Transient lodging tax collectors are responsible for collecting the tax from the tourist and remitting it to the local government. The 2013 amendment to state law clarified that the transient lodging taxes are on the total retail price the occupant pays.

## Remittance and Reimbursement

TLT collectors are required to keep sufficient records regarding the tax and to remit the tax to the local government on a schedule determined by the local government.<sup>2</sup> To offset the administrative burden, TLT collectors can retain a reimbursement.

The amount a local government must allow TLT collectors to retain as a reimbursement varies depending on when the local government first imposed the TLT and if the local government has increased the tax:

**Grandfathered Tax:** Local governments that imposed a TLT before January 1, 2001, may maintain whatever reimbursement rate they allowed before January 1, 2001, but cannot decrease it. For example, if the collector could retain 4 percent to offset its administrative burden, the city does not have to change the rate, but it cannot decrease it. If the local government had a TLT and had no reimbursement before January 1, 2001, the local government need not provide one.

**New Tax:** Local governments that impose a new TLT on or after January 1, 2001, must allow collectors to retain a minimum of 5 percent of all collected tax revenues as reimbursement for the costs of collecting the tax.

**Increased Tax:** Local governments that increase a TLT on or after January 1, 2001, must allow a collector to retain a minimum of 5 percent of *all collected tax revenues*, including revenues that would have been collected without the increase, as reimbursement for the costs of collecting the tax. Said differently, if the local government increases an existing tax, the 5 percent reimbursement minimum applies to the *entire* tax collected, not simply the difference between the former tax rate and the new tax rate. In addition, a local government cannot take certain actions to offset the increased reimbursement rate.<sup>3</sup>

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<sup>1</sup> The Oregon Travel Impacts report, prepared annually for the Oregon Tourism Commission by Dean Runyan Associates, collects TLT rate and annual revenue information on all cities and counties. See <https://industry.traveloregon.com/resources/research/oregon-travel-impacts-1991-2011-dean-runyan-associates/>.

<sup>2</sup> There are alternative remittance methods for camping and recreational vehicle spaces. See ORS 320.347.

<sup>3</sup> A unit of local government may not offset the loss of local transient lodging tax revenues caused by collection reimbursement charges allowed under this section by: (a) Increasing the rate of the local transient lodging tax; (b)

In 2017, the Legislature amended ORS 305.620 to allow the Oregon Department of Revenue (DOR) to collect local TLTs on behalf of cities. Under that amendment, the DOR is permitted to collect local TLTs if a city and the DOR enter into an intergovernmental agreement and the DOR recoups their administrative costs. For such a collection effort to occur, a city's collection and accounting practices must be coordinated with collection and accounting procedures used by the DOR. The League anticipates that the intergovernmental agreement for TLT collection will closely resemble the model intergovernmental agreement used by the DOR to collect local marijuana taxes. Before the DOR can enter into agreements and begin collection for local governments, the DOR must alter their own state collection processes and tax forms (currently segregated by 10 regions across the state, rather than by city and county). In addition, their computer system will need to be revised to distribute the taxes appropriately to the correct local government taxing districts. The up-front costs are estimated at \$900,000. The League is working with the DOR and the Legislature on a payment method and anticipates a bill in the 2019 legislative session to help resolve that issue.

The Legislature also amended ORS 320.332 in 2017, which authorizes cities and the DOR to share confidential TLT information with one another to improve the abilities of state and local governments in collecting TLTs. The DOR has not begun sharing information but is expected to adopt rules in consultation with local governments soon that establish the process for making requests and provide forms for records requests. *See* ORS 320.332(7).

## **How Cities Can Use TLT Revenue**

Although state law does not restrict the tax rate a local government may impose on transient lodging, it does restrict how the revenue from newly imposed or newly increased TLTs can be used. As a basic mandate, a local government that did not have a TLT in place or approved on July 1, 2003, may not impose one, unless the local government ensures that at least 70 percent of the TLT revenue will be used for tourism promotion, tourism-related facilities, or to finance or refinance debt for tourism-related facilities. The local government is at liberty to allocate up to 30 percent for general city or county services (hereinafter “the 70/30 distribution”).

### **Grandfathered Taxes**

If a local government already had a TLT in place or approved on or before July 1, 2003, the local government's use of the tax revenue is grandfathered, with the following caveat: the local government may not decrease the percentage of total TLT revenues that were expended or agreed to be expended to fund tourism promotion or tourism-related facilities.<sup>4</sup> For example, if a

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Decreasing the percentage of total local transient lodging tax revenues used to fund tourism promotion or tourism-related facilities; or (c) Increasing or imposing a new fee solely on transient lodging tax collectors or tourism promotion agencies that are funded by the local transient lodging tax. ORS 320.345(4).

<sup>4</sup> The actual recipients of the tax may change, but the total percentage going toward tourism promotion or tourism-related facilities may not.

local government imposed a 5 percent TLT in 1990 and allocated 20 percent of the funds to tourism promotion and 80 percent to the general fund, the local government may continue to do so. The local government may even increase the total percent of the revenue allocated for tourism promotion or tourism-related facilities, but it may not decrease it below 20 percent. See below for restrictions that apply to increased taxes.

### New TLTs

Under HB 2267 (2003), codified in ORS 320.350, local governments that impose a new TLT after July 1, 2003, may only expend TLT revenue in three ways:

- (1) For “tourism promotion” or “tourism-related facilities” as those terms are defined in ORS 320.300;
- (2) For city and county services; or
- (3) To finance or re-finance the debt on tourism-related facilities and pay associated administrative costs, with some restrictions.

In addition, if the local government imposes a new tax, it must comply with the 70/30 distribution and the 5 percent collector reimbursement deduction.

### Increasing a Grandfathered Tax

If the local government has a grandfathered TLT, it may increase the tax rate. However, doing so will trigger the 70/30 distribution. Although not completely free from doubt (see Appendix A), most local governments interpret the 70/30 distribution to only apply to the revenue from the *increased portion* of the TLT, *not the total revenue* generated from the entire TLT.

For example, if the local government had a 5 percent grandfathered tax with 20 percent going to tourism promotion and 80 percent going to the general fund, it could continue to apply the 20/80 distribution. If, however, the local government increased the tax to 8 percent, the 20/80 distribution would apply to revenue generated from the grandfathered 5 percent rate, and the 70/30 distribution would apply to revenue generated from the additional 3 percent rate. In addition, an increase will trigger a 5 percent collector reimbursement requirement under ORS 320.345(3).

### What are “Tourism-Related Facilities”?

By definition, tourism-related facilities are conference centers, convention centers, visitor information centers, or other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities. ORS

320.300(9). The law also provides definitions for conference centers<sup>5</sup> and convention centers.<sup>6</sup> Unfortunately, the law does not provide any additional guidance on what constitutes “other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.”

Many local governments—especially those that tend to accommodate more tourists than residents—question whether infrastructure such as sewers or roads qualify as “tourism-related facilities.” That is an open legal question. Local governments seeking to use TLT revenue on public facilities used both by residents and tourists are encouraged to contact legal counsel for further guidance.<sup>7</sup>

### Other Amendments to a Grandfathered Transient Lodging Tax Ordinance

Local governments with grandfathered TLTs may be interested in updating their codes to address the challenges in collecting from the online short-term rental marketplace but are hesitant to do so out of concern that amending their tax ordinance to capture short-term rentals will jeopardize their grandfathered status. Although not free from doubt, for most cities, amending an existing code to collect from the short-term rental marketplace will likely not impact the status of a grandfathered tax. However, cities seeking to make this change, or similar changes, should consult with their city attorneys.

Grandfathered status may be lost if the city imposes a “new” tax. Generally, a city imposes a “new” tax when it creates an obligation to pay the charge. Most cities will likely be able to maintain their grandfathered status because their current code language already *imposes* a tax on the occupants of short-term rentals (*i.e.*, the city already created the obligation to pay) and the code amendments pertain only to how the city will *collect* that tax.<sup>8</sup>

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<sup>5</sup> “Conference center” means a facility that: (a) Is owned or partially owned by a unit of local government, a governmental agency or a nonprofit organization; and (b) Meets the current membership criteria of the International Association of Conference Centers. ORS 320.300(2).

<sup>6</sup> “Convention center” means a new or improved facility that: (a) Is capable of attracting and accommodating conventions and trade shows from international, national and regional markets requiring exhibition space, ballroom space, meeting rooms and any other associated space, including without limitation banquet facilities, loading areas and lobby and registration areas; (b) Has a total meeting room and ballroom space between one-third and one-half of the total size of the center’s exhibition space; (c) Generates a majority of its business income from tourists; (d) Has a room-block relationship with the local lodging industry; and (e) Is owned by a unit of local government, a governmental agency or a nonprofit organization. ORS 320.300(3).

<sup>7</sup> Todd Davidson requested an Attorney General opinion on this issue in 2008. See Opinion Request OP-2008-32008 WL 5246389 (Or. A.G. Nov. 14, 2008). Attorney General opinions are advisory only and therefore do not have the force of law.

<sup>8</sup> A government imposes a tax when it creates a legal obligation to pay the charge. See *Roseburg School Dist. v. City of Roseburg*, 316 Or 374, 379 (1993). A local government may amend a tax code without “imposing” a new tax if the amendments do not pertain to “those portions of a local government enactment that relate to the imposition of a charge.” *Homebuilders Ass’n of Metropolitan Portland v. Metro*, 250 Or App 437, 445 (2012) (discussing the text of a statute that prohibits a local government from imposing a new tax on construction). Similarly, a local government

To discern whether the city has already imposed a tax on short-term rentals, the city should review their definition of “transient lodging.” If the definition includes broad language that covers renting out all or a portion of one’s home, the city could likely collect from occupants of short-term rentals without “imposing” a new tax.

## **New Challenges: Short-Term Rental Platforms such as Airbnb, VRBO, and Others**

Hosting platforms (usually internet sites) that act as facilitators to connect “hosts” and “guests” pose a challenge for local governments attempting to collect a TLT from a “host” that either is not aware of the tax or is seeking to avoid tax and regulation. As background, most cities that have a TLT also have a registration requirement—anyone furnishing transient lodging must register and thereafter comply with the tax and other local regulations.

### **Challenges**

*Hosts may be unaware of the regulation.* Individuals renting out all or part of their homes may not be aware of a local tax and registration requirement. Further, such individuals may not want to register because doing so puts them in the regulatory spotlight as many local governments in Oregon are specifically regulating the short-term rental market to ensure the safety of both hosts and guests.<sup>9</sup> As an additional challenge, many hosts do not collect payment directly from guests. The guests often pay via an online platform—such as Airbnb or VRBO—which then transfers the payment to the hosts.

*Hosting platforms are not incentivized to assist local governments.* Hosting platforms such as Airbnb and VRBO historically have been resistant to complying with local governments in collecting TLTs or enforcing local regulations. Many hosting platforms do not want to divulge the list of properties advertising on their website because they are likely aware of some properties that are not in compliance with local regulations, and as such, divulging property locations could limit their client list.

In addition, the hosting platforms do not wish to assume liability for acts of the hosts—meaning the online platform would be fined or penalized when a local host does not pay the tax or comply with local regulations.

*Legal Challenges.* In 2013 the Legislature passed HB 2656 and added the term “transient lodging intermediary” to ORS 320.300. The bill was intended to require intermediaries to pay taxes directly rather than forwarding taxes to the transient lodging provider. That is, the “tax

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may amend “other elements of an ordinance that may in some way relate to the administration of a tax but do not directly bear on its imposition.” *Id.*

<sup>9</sup> These regulations are outside the scope of this guidebook. However, sample regulations include working smoke detectors and bedrooms with legal egress.

shall be collected by the transient lodging tax collector that receives the consideration rendered for occupancy of the transient lodging.”<sup>10</sup> However, some online travel companies and hosting platforms argued that they were not transient lodging intermediaries under the state law (and local ordinances that track state law) because they did not “charge for occupancy.” Instead, they argued, they only facilitated the transaction between the host and the occupant. ORS 320.300(12). Likewise, those companies argued that they were not required under state law to collect and remit TLTs because they did not “receive the rent.” ORS 320.350(7)(b). HB 4120 (2018), however, clarifies that hosting platforms are indeed transient lodging intermediaries and therefore are required to collect TLTs from hosts. HB 4120 became effective on July 1, 2018.

Internet hosting platforms have also challenged local governments’ ability to regulate them under the federal Communications Decency Act of 1996 (“CDA”) and the federal Stored Communications Act (“SCA”). Under the CDA, no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. The CDA also includes an express preemption clause, mandating “[n]o cause of action may be brought and no liability may be imposed under any state or local law that is inconsistent with this section.” 47 U.S.C. § 230(e)(3). The SCA restricts government access to stored electronic communications by limiting the government’s ability to compel internet service providers to disclose information in their possession about their customers or subscribers. 18 U.S.C. §§ 2701—2712.

In layman’s terms, under the CDA, an online platform such as Airbnb cannot be held responsible for monitoring the content of its internet site, and local governments cannot pass regulations to make them responsible. Therefore, a local government cannot force an online platform to ensure that every property on their website is registered with the city and complying with the tax as a condition of advertising on the internet platform. Doing so would require the online platform to monitor the content.

Recently, the California Court of Appeal upheld an administrative subpoena issued by the city of San Francisco to HomeAway. The subpoena sought information relating to hosts who had used HomeAway to offer accommodations in the city, as well as data identifying rental transactions between hosts and occupants that used the HomeAway platform. HomeAway argued that the city’s subpoena violated the SCA and HomeAway’s constitutional rights. The California Court of Appeal disagreed, explaining that Section 2703(c)(2) authorizes the government to issue an administrative subpoena to obtain a limited set of records from an internet service provider, such as the identity of a subscriber and the services the subscriber has utilized. Although the California decision is not precedential in Oregon, it offers a good analysis for local governments who are faced with arguments that their ordinances or administrative enforcement of TLTs violates federal law.<sup>11</sup>

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<sup>10</sup> See ORS 320.305(1)(c) and ORS 320.350(7)(b).

<sup>11</sup> Cities wishing to issue an administrative subpoena for records must first pass an ordinance granting subpoena authority to the city council and/or select staff members. LOC’s model subpoena ordinance is available at: <https://www.orcities.org/application/files/1115/7904/4210/ModelSubpoenaOrdinance3-10-19.pdf>.

## Potential Solutions

Under HB 4120 (2018), online transient lodging platforms are considered “transient lodging intermediaries” under ORS 320.300, unless otherwise provided by city or county ordinance, resolution, or agreement. Cities wishing to require hosting platforms and online travel companies to collect and remit the local TLT should ensure that local ordinances and agreements utilize the definition of “transient lodging intermediary” found in Section 1 of HB 4120 (amending ORS 320.300).

### Model Ordinance – Appendix B

The model ordinance attached to this guidebook regulates two different actions hosting platforms may undertake:

- (1) Accepting a registration fee from hosts: Hosting platforms may only accept registration fees from hosts if the host produces a certificate indicating it has registered with the city.
- (2) Facilitating the payment of rent: Any hosting platform that collects rent from the occupant—even if they are not the final recipient of the funds—is also then responsible for collecting and remitting the TLT.

### Model Collection Agreement – Appendix D

The second approach is to have an ordinance that does not address short-term rentals and instead separately negotiate an agreement with desired hosting platforms for tax collection. Quite a few local governments in Oregon have taken this approach, as it avoids the possibility of litigation.

This approach has its difficulties, including requiring separate agreements with each internet platform (VRBO, Airbnb, HomeAway, etc.) and ensuring that if a new internet platform enters the market, the city contacts and negotiates an agreement with them as well. Following the passage of HB 4120 (2018), local governments should no longer need to enter into voluntary tax collection agreements with online short-term rental platforms, because HB 4120 clarified that such companies are “transient lodging intermediaries” and thus required to collect and pay TLTs.

The collection agreements that online platforms have agreed to with local jurisdictions in Oregon have been problematic because they do not require the online platform to divulge the name or location of hosts. This makes it difficult for local governments to locate hosts to ensure the transient lodging facilities comply with the local health and safety codes, along with land use codes. The new law requires them to collect taxes, file a tax return, and pay taxes.

### Ordinance and a Collection Agreement

A final option would be to draft an ordinance (or amend an existing code) to address short-term rental internet platforms *and* negotiate an agreement with the platforms for tax



collection. Using this option, a city could use the ordinance as a backstop to impose regulations on those platforms that it does not have an agreement with, but permit platforms with whom the city has an agreement to be bound by the agreement instead. Again, voluntary collection agreements are no longer necessary, because HB 4120 clarified that internet short-term rental platforms are transient lodging intermediaries and are required to collect TLTs.

The difficulties with this approach are similar to those that exist with simply having collection agreements—*i.e.*, separate agreements create different standards and the lack of information regarding the name or location of hosts.

Which option may best serve the needs of a particular city is likely dependent upon the unique circumstances of each community. To that end, cities are once again encouraged to consult with trusted legal counsel about how best to proceed.

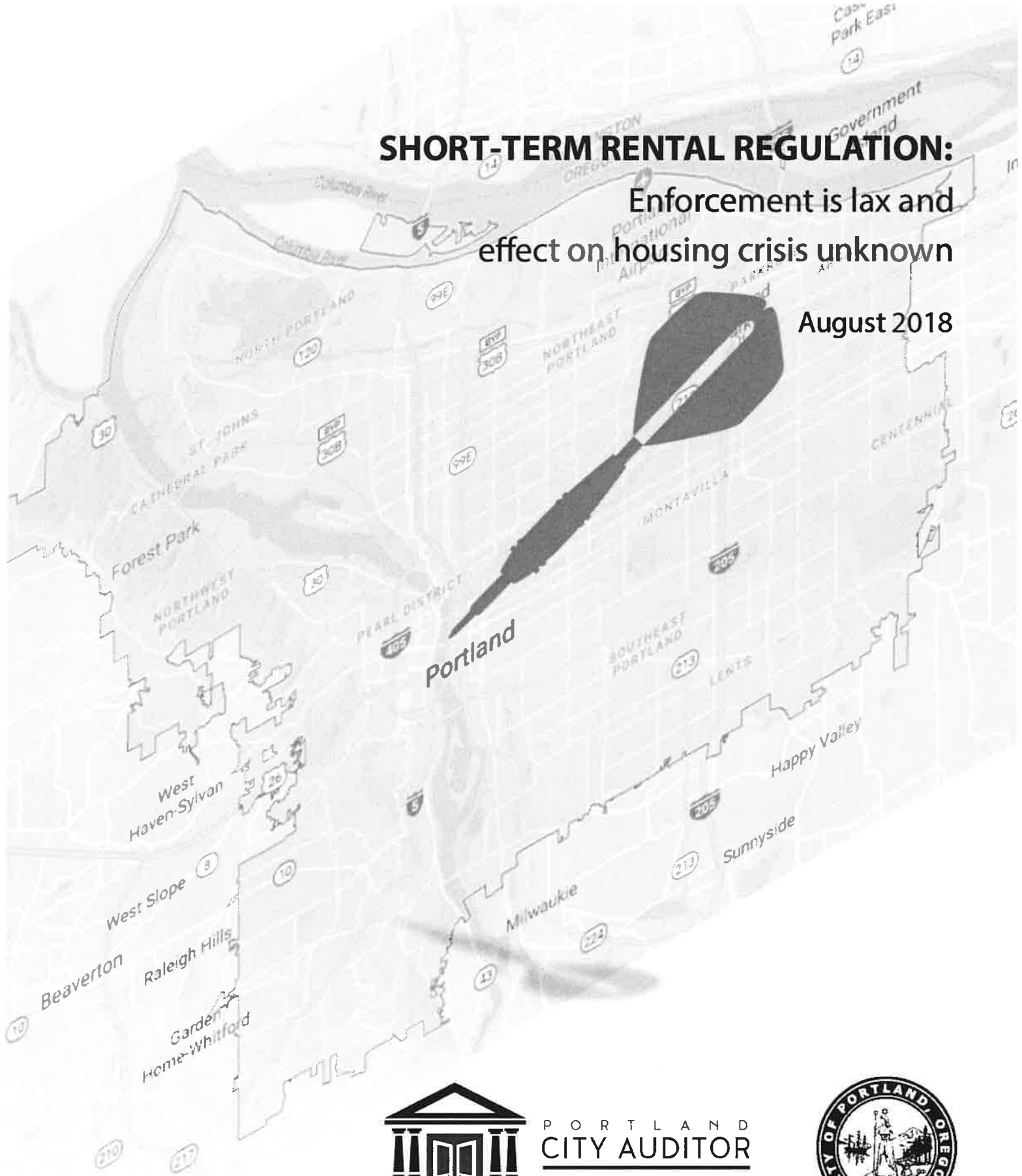
## **Conclusion**

The landscape of the local TLT is evolving and will continue to do so as technology and possibly even state law continues to change. The League of Oregon Cities will update this guide to address such changes as they come about, but cities should remain aware of this changing landscape and adapt their local TLT programs to address their individual local needs.

# SHORT-TERM RENTAL REGULATION:

Enforcement is lax and  
effect on housing crisis unknown

August 2018



PORTLAND  
CITY AUDITOR  
Audit Services



## Short-Term Rental Regulation

Enforcement is lax and effect on housing crisis unknown

**Summary** The City began regulating short-term rentals in 2014, and the market has more than doubled since then. The intent of regulations was that homes should be used primarily for residential rather than commercial purposes, but the City's current approach cannot assure this. Most hosts do not obtain the required permits: only an estimated 22 percent of properties are permitted, and the City rarely enforces its regulations. Despite concerns about the effect of short-term rentals on housing availability and affordability, the City does not collect data needed to regulate these rentals and to monitor the housing market.

**City sets rules for short-term rentals** In 2014, City Council changed the zoning code to allow hosts to rent their residences for short terms. Commonly, hosts and renters find each other using online booking agents, such as Airbnb, HomeAway or Vacasa. Before these rules were adopted, the City only regulated and taxed hotel, motel, and bed & breakfast rentals.

The City's short-term rental regulations require hosts to get a Type A or Type B permit depending on the size of the rental and follow certain restrictions:

- The host must occupy the residence at least nine months of the year
- The rental property must be the primary residence of the host
- A maximum of 25 percent of units in a multi-family building may be rented
- Rentals must be for less than 30 days

These requirements were intended to preserve the residential character of neighborhoods and to prevent *commercial* short-term rental activity.

The Bureau of Development Services conducts home inspections before issuing permits to ensure the safety of visitors renting the units. Development Services also investigates complaints and enforces short-term rental regulations.

Hosts are required to obtain a business license from the Bureau of Revenue and Financial Services and pay City taxes and fees. Those taxes include the lodging tax also required of hotels, and a business tax if rental and other business income combined exceeds \$50,000 per year. Recent changes to city tax codes also added fees specific to short-term rentals. Online booking agents may remit lodging taxes and fees on behalf of hosts.

We conducted this audit to determine the effectiveness of the City's regulations, and how the City evaluates the effect of short-term rentals on housing availability and affordability.

## **Audit Findings**

If the regulations were working as intended, all short-term rentals would meet permit requirements, inspections would ensure the safety and livability of the spaces rented, and all taxes would be paid. In addition, the City would analyze effects of short-term rental activity on housing affordability and availability. We found shortcomings in these areas.

One factor that has limited City bureaus' ability to enforce the regulations is the lack of data about short-term rental activity, including data on listings and their hosts, how often and for how long listings are rented, and rental rates and revenue. Of approximately 15 booking agents active in Portland, none regularly provide data to the City, citing privacy protections for hosts. The City recently reached an agreement with one booking agent, HomeAway, to provide data on hosts as soon as Airbnb also agrees to provide data to the City. At the time of this audit, the City had not yet reached agreement with other booking agents.

Because the City did not have data on short-term rentals, we used information gathered by Inside Airbnb. Inside Airbnb is a group not affiliated with Airbnb that compiles public information from Airbnb's website. Its data includes the listing, the availability calendar, estimated location, host information, and reviews for all properties offered on the Airbnb website. This information is limited: it doesn't include properties offered by other booking agents; the data does not show nights rented, whether a host lives on site, or the address of the unit. In addition, a listing on Airbnb doesn't always represent a housing unit such as an apartment or house, and one permit issued

may be applicable to more than one listing. However, because most Portland rentals are listed on Airbnb, we found the data sufficiently reliable to provide an estimate of short-term rental activity in Portland and to highlight the importance of obtaining complete data from the booking agents.

This audit's findings rely on City permit and complaint data and Inside Airbnb data. Visual representations based on Inside Airbnb data can be found on the City Auditor's website.

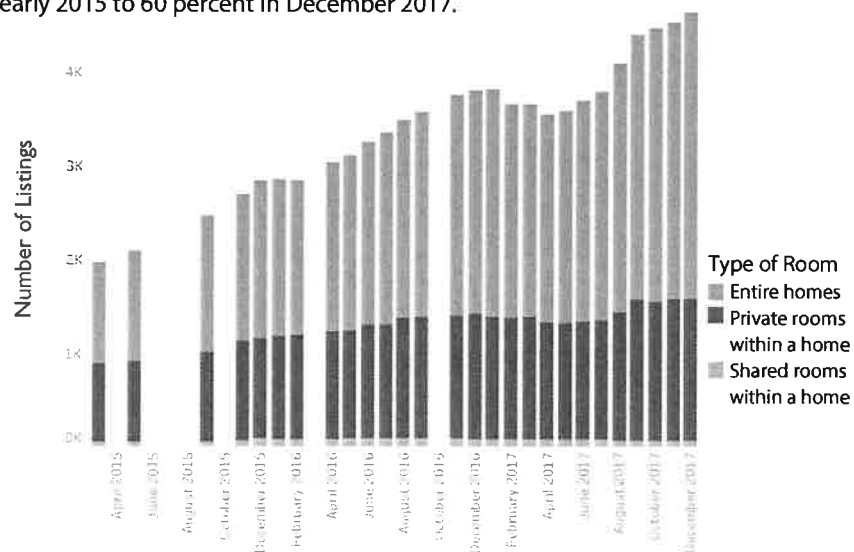
**Compliance is low  
and enforcement  
is limited**

As of October 2017, Development Services had issued 1,638 active permits. In contrast, data from Inside Airbnb shows over 4,600 listings offered on Airbnb alone. Assuming a one-to-one relationship between permits and listings, and estimating number of listings from the other booking agents, only about 22 percent have permits.

Only about  
**22%**  
of short-term  
rentals are  
permitted



Since 2015, listings on Airbnb have more than doubled. Among all listings, the percentage of entire houses/apartments has grown from about 55 percent in early 2015 to 60 percent in December 2017.



See complete data  
on Airbnb listings  
and hosts on our  
website

*Data is for Airbnb listings  
only. Listing might be for  
the whole house/  
apartment or a room  
within the house/  
apartment. For some  
months data was not  
available.*

Source: Audit Services analysis of data from Murray Cox, Inside Airbnb

One reason for the low permit compliance may be that the cost and time to obtain a Type B permit is high. Since 2014, the City granted 1,733 Type A permits, which are required for hosts renting one or two bedrooms. The permit fee is \$178 and requires no land-use review. A Type B permit is required for hosts who want to rent three or more bedrooms. The fee costs about \$5,000 and Type B permits require a land use review. Only 13 Type B permits have been issued as of October 2017, but an estimated 444 of the 4,600 listings identified in 2017 by Inside Airbnb are for properties with three bedrooms or more.

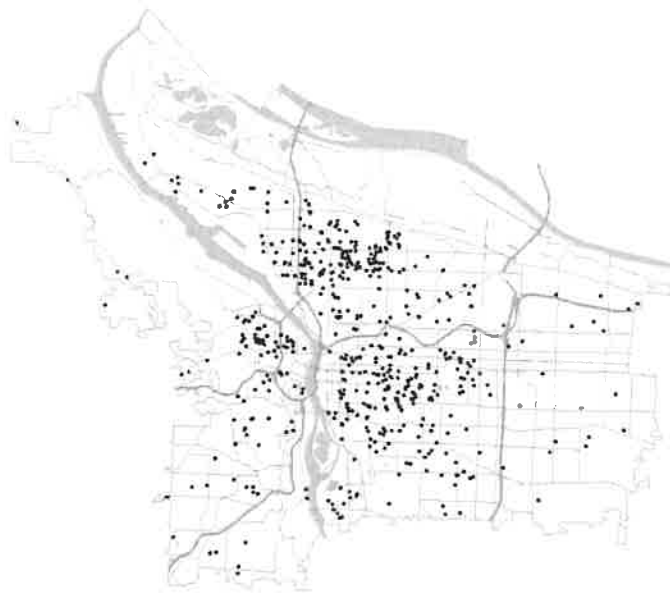
Another reason for low compliance with permit requirements may be that booking agents do not require a rental to have a City permit before posting the listing to their websites. This is required by City Code where the City can fine agents for each unpermitted listing, but it is not enforced because the City does not have host data. In contrast, San Francisco requires booking agents to verify that hosts have obtained a permit, and the city reached an agreement with booking agents to obtain their host data and fines agents for unpermitted listings.

Enforcement by Development Services is also limited because it reacts to complaints rather than using more proactive approaches. The Bureau investigates complaints about properties to determine whether they are valid and if fines should be imposed, but does not proactively enforce the Code. The number of complaints about short-term rentals increased from 24 in 2013 to 297 in 2017.

Our analysis of Inside Airbnb data shows some neighborhoods with high concentrations of short-term rentals, but the Bureau does not use this information to target them for enforcement. The data shows some hosts with multiple listings, contrary to Code requirements. Relying on a complaint-based process means that only those with knowledge of the process will submit a complaint to the City and increases the likelihood that compliance with regulations will remain low.

As long as the City does not proactively enforce requirements and there is widespread non-compliance, it will be unable to control short-term rental activities and protect the residential nature of neighborhoods.

Complaints are concentrated in Northwest and Northeast Portland (Fiscal Year 2013-2018).



*Source: Audit Services analysis of Bureau of Development Services short-term rental complaint data. Only partial data for FY 2018.*

Airbnb listings are concentrated in Northwest, Northeast, and Southeast Portland.



*Source: Audit Services analysis of data from Murray Cox, Inside Airbnb, December 2017  
Data is for Airbnb listings only.*

Go online for data visualization on Airbnb listings types and hosts.

**Inspections may not ensure safety**

Over 90 percent of permit applicants pass the safety inspection on the first try. Safety inspections are brief, taking about ten minutes to complete. This is because current City Code includes only specific requirements, such as the presence of a smoke detector in the bedrooms, and does not require a comprehensive safety inspection of the property.

Inspections were intended to ensure the safety of visitors renting the units, but the current inspection requirements and practices are minimal and may not meet that intent or the public's expectations. For example, someone renting a permitted space would reasonably expect the house or apartment to be safe for overnight stay. In addition, the City may be exposing itself to legal risk when inspectors do not address a property's other Code violations, such as an unsafe staircase or patio. An alternative approach could be to conduct targeted inspections and focus resources on high-risk properties.

**Most booking agents remit lodging tax**

Ten out of an estimated 15 booking agents remit lodging taxes to the City. Since these ten agents represent the majority of Portland's listings, Revenue Division estimates that most hosts are paying the lodging tax. However, without access to the host and listing data, it is difficult for the Division to audit these booking agents. The Division estimates the total number of hosts by searching each agent's website, which may not provide an accurate count. The result is that the City may be missing out on taxes owed.

Booking agent	Pays lodging tax
Airbnb	✓
Craigslist	
Evolve	
HomeAway	✓
HomeToGo	
HouseTrip (TripAdvisor)	✓
Misterbnb	✓
Roomorama	
StayAlfred	✓
TripAdvisor/Flipkey	✓
Vacasa	✓
VacationHomeRentals (TripAdvisor)	✓
VacationRentals (HomeAway)	✓
VRBO (HomeAway)	✓
Wimdu	

Source: Division of Revenue



Revenue's approach to improve tax compliance and get data on listings has been through litigation. Revenue was successful in reaching agreement with HomeAway to provide listing data if and when Airbnb also provides the data. At the time of our audit, the City was negotiating with Airbnb to obtain its data.

**Effect of  
short-term rentals  
on housing market  
is unknown**

Even as the number of short-term rental units has increased each year, their effect on housing availability, affordability, and neighborhood quality has not been monitored by the City. No City bureau has been assigned the responsibility to collect data and measure the impact on housing or related goals.

Prior work by City bureaus does not sufficiently address these questions. In 2016, the Bureau of Planning and Sustainability produced a short-term rental regulation progress report, but it did not describe effects on the three areas of concern. The Housing Bureau attempted to review the short-term rental market as part of its State of Housing Report in December 2017, but it lacked data on hosts and listings.

The 4,600 Airbnb listings identified by Inside Airbnb make up approximately 1.7 percent of the City's 273,000 housing units. However, addresses for listings are not provided, and one housing unit may have more than one listing. At the time regulations were developed in 2014, City Council and community members raised concerns about the effect of short-term rental units on the housing market, but the City has not obtained complete data from the booking agents to assess these effects.

### Analysis of Inside Airbnb and City data

**Some Portland neighborhoods have higher activity**

Some neighborhoods have a high concentration of short-term rentals and high numbers of visitors staying in these units. To provide a neighborhood comparison, we estimated the number of nights units are occupied and compared them to the housing stock for each neighborhood.

Neighborhoods in inner Northeast and inner Southeast are frequented by short-term renters more often than other parts of the



city. These also are neighborhoods that have experienced gentrification and are facing housing shortages. These neighborhoods may need to be monitored to determine how short-term rental activity affects them. For example, some cities have limited short-term rental units in certain neighborhoods because of high use that detracts from neighborhood livability.

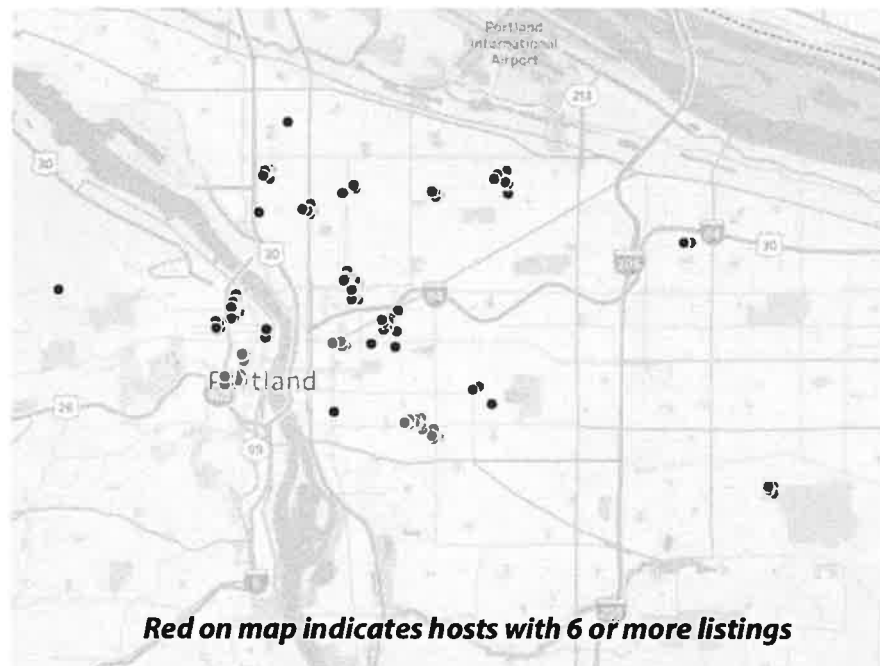
*Source: Audit Services analysis using data from Murray Cox, Inside Airbnb, December 2017  
Data is for Airbnb listings only. Estimated nights of occupancy as a percent of total housing stock.*

**Hosts renting multiple short-term rentals may decrease housing supply**

Inside Airbnb data shows there are several Portland hosts with multiple listings (see data on [Auditor's website](#)). Due to limited data on listings, it is unclear how much of this activity represent illegal short-term rentals. For example, some of these hosts are hotels or bed & breakfast firms that list separate rooms, or hosts that list separate bedrooms in their homes. Some may be management companies that list and manage units for clients. Others may be hosts listing multiple houses that are not their primary residence, which would be a violation of City Code.

Because the City doesn't have access to complete data on these listings, it does not know the effect on long-term rental rates or whether hosts are removing residences from the long-term rental market. Research in other cities shows growth in the number of hosts who rent multiple properties in residential areas. This commercial-type activity in residential areas also risks diminishing the character and livability of the neighborhood.

Some Airbnb hosts offer multiple listings



Source: Audit Services analysis using data from Murray Cox, Inside Airbnb, December 2017. Data is for Airbnb listings only. See data on Auditor's website

**Accessory dwelling units intended to increase affordable housing supply may be used as short-term rentals**

Council intended for accessory dwelling units, also known as in-law apartments, to contribute to the City's affordable housing and housing density goals. However, for permitted short-term rentals, we found that 21 percent of properties are estimated to have an accessory dwelling unit.

**21%**  
of short-term rental permits are properties with an accessory dwelling unit

The City currently waives fees for accessory dwelling units construction in order to incentivize the use of these structures for affordable housing. In June 2018 Council voted that to qualify for the waiver of these fees, the unit may not be used for short-term rental for 10 years.

The exact number of these units currently used as short-term rentals is unknown, because the City does not have an exact number of accessory dwelling units, and data on the total number of short-term rentals with accessory dwelling units is not available.

Other cities have attempted to study the effect of short-term rentals on housing affordability and availability. In May 2015 the City and County of San Francisco concluded that commercial hosts using Airbnb affect the city's neighborhood supply of long-term rental housing units. On average, hosts earned more money renting to short-term visitors than they would in the long-term rental market. New York and Seattle have also concluded that their growing short-term rental market is affecting availability of long-term rental housing. These conclusions have inherent data limitations, because in many cases they used incomplete Airbnb data obtained from third parties and may rely on assumptions about the rental market. The conclusions and their limitations demonstrate the need for a thorough analysis and monitoring of Portland's housing market, and for the City to continue pursuing valid and comprehensive data.

**Recommendations** To effectively regulate short-term rentals and enforce rules, we recommend the Bureau of Revenue and Financial Services and the Bureau of Development Services:

1. Obtain data on active short-term rental hosts, listings, and occupancy from booking agents or from other publicly available sources, and use it to enforce the City's zoning and tax code.
2. Use proactive, risk-based enforcement to target hosts with multiple listings and potential commercial activities in residential zones.
3. Revise the permitting process to meet intended safety and neighborhood livability goals.
4. Use host data to enforce booking agents' compliance with City Code.

To assess the impact of short-term rentals on the housing market, we recommend the Housing Bureau:

5. Work with Council to add measuring the effect of short-term rentals on housing goals to short-term rental City Code and regulations.
6. Obtain short-term rental data from booking agents or from other publicly available sources, develop a monitoring process of the market, and evaluate effects on housing. Report short-term rental market data in the State of Housing annual report.

## 33.207 Accessory Short-Term Rentals

207

### Sections:

- 33.207.010 Purpose
- 33.207.020 Description and Definitions
- 33.207.030 Where These Regulations Apply
- 33.207.040 Type A Accessory Short-Term Rentals
- 33.207.050 Type B Accessory Short-Term Rentals
- 33.207.060 Monitoring
- 33.207.070 Pre-Established Bed and Breakfast Facilities

### 33.207.010 Purpose

This chapter provides standards for the establishment of accessory short-term rentals. The regulations are intended to allow for a more efficient use of residential structures, without detracting from neighborhood character, and ensuring that the primary use remains residential. In some situations, the operator can take advantage of the scale and architectural or historical significance of a residence. The regulations also provide an alternative form of lodging for visitors who prefer a residential setting.

### 33.207.020 Description and Definitions

- A. Description.** 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:
  - 1. Type A. A Type A accessory short-term rental is where no more than 2 bedrooms are rented to overnight guests.
  - 2. Type B. A Type B accessory short-term rental is where 3 or more bedrooms are rented to overnight guests.
- B. Definitions.** For the purposes of this chapter, the following words have the following meanings:
  - 1. Resident. The individual or family who resides in the dwelling unit. The resident can be the owner or a long-term renter.
  - 2. Operator. The resident or a person or entity that is designated by the resident to manage the accessory short-term rental.

### 33.207.030 Where These Regulations Apply

The regulations of this chapter apply to accessory short-term rentals in all zones. In zones where Retail Sales And Service uses are allowed, limited or conditional uses, accessory short-term rentals may be regulated either as a Retail Sales And Service use, or as an accessory short-term rental under the regulations of this chapter. The decision is up to the applicant.

### **33.207.040 Type A Accessory Short-Term Rentals**

#### **A. Use-related regulations.**

1. Accessory use. A Type A accessory short-term rental must be accessory to a residential use on a site. This means that a resident must occupy the dwelling unit for at least 270 days during each calendar year, and unless allowed by Paragraph .040.B.2 or .040.B.3, the bedrooms rented to overnight guests must be within the dwelling unit that the resident occupies.
2. Permit required. A Type A accessory short-term rental requires a Type A accessory short-term rental permit consistent with Subsection 040.C.
3. Allowed structure type. A Type A accessory short-term rental is allowed in all residential structure types when accessory to a residential use.
4. Cap. The number of dwelling units in a multi-dwelling structure, triplex, fourplex, or cottage cluster that can have an accessory short-term rental is limited to 1 unit or 25 percent of the total number of units in the structure or on the site, whichever is greater.
5. Prohibition. Accessory short term rentals are prohibited in a building subject to Chapter 13 of the Uniform Building Code (1970 edition) in effect on September 7, 1972, except when the Fire Marshal's Office has determined that the building has a fire sprinkler system that protects the exitways.

#### **B. Standards.** The following standards apply to Type A accessory short-term rentals. Adjustments are prohibited:

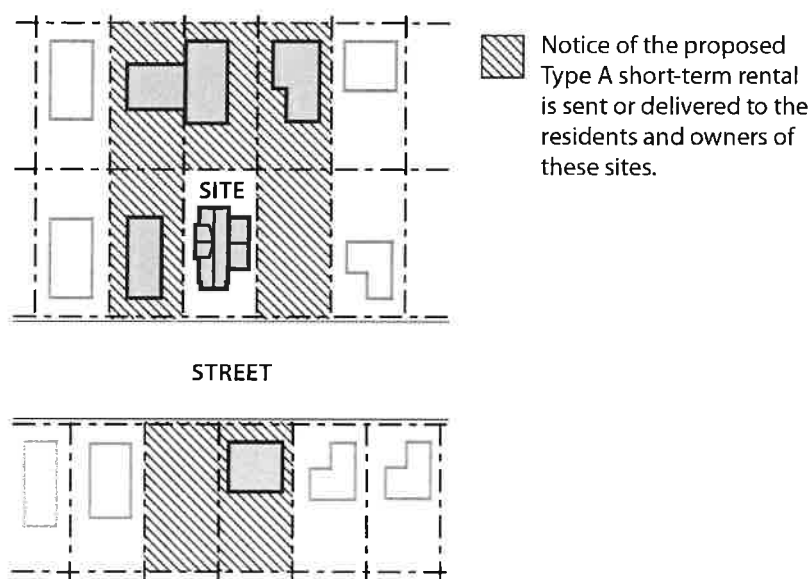
1. Maximum size. A Type A accessory short-term rental is limited to renting a maximum of 2 bedrooms to overnight guests.
2. Accessory dwelling units. On sites with an accessory dwelling unit, the resident can live in the primary or accessory dwelling unit and rent bedrooms in either dwelling unit, but the maximum number of bedrooms on the site that can be rented to overnight guests is 2.
3. Detached accessory structures. A bedroom in a detached accessory structure can be rented to overnight guests, and counts toward the maximum size limit.
4. Bedroom requirements. The Bureau of Development Services must verify that each bedroom to be rented to overnight guests:
  - a. Met 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 from this requirement;
  - b. Has a smoke detector that is interconnected with a smoke detector in an adjacent hallway that is in the dwelling unit; and

- c. 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.
  - 5. Number of guests. The maximum number of guests occupying a Type A accessory short-term rental may not exceed 5.
  - 6. Employees. Nonresident employees are prohibited. Hired service for normal maintenance, repair and care of the residence or site, such as yard maintenance or house cleaning, is allowed.
  - 7. 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.
  - 8. Commercial meetings. Commercial meetings include luncheons, banquets, parties, weddings, meetings, charitable fund raising, commercial or advertising activities, or other gatherings for direct or indirect compensation. Commercial meetings are prohibited with a Type A accessory short-term rental. A historic resource may be open to the public for 4 hours one day each year if required as part of a historic preservation grant or incentive program. This is not considered a commercial meeting.
  - 9. A Type B accessory home occupation is prohibited with a Type A accessory short-term rental.
- C. Type A accessory short-term rental permit.** The resident of a dwelling unit with a Type A accessory short-term rental must obtain a permit from the Bureau of Development Services. It is the responsibility of the resident to obtain the permit every two years. The permit requires the resident, and operator if the operator is not the resident, to agree to abide by the requirements of this section, and document that the required notification requirements have been met:
- 1. Notification. The resident must:
    - a. Prepare a notification letter that:
      - (1) Describes the operation and the number of bedrooms that will be rented to overnight guests;
      - (2) Includes information on how to contact the resident, and the operator if the operator is not the resident, by phone; and
      - (3) Describes how the standards in Subsection .040.A and B are met.
    - b. Mail or deliver the notification letter as follows:
      - (1) All residential structure types except multi-dwelling structures. If the Type A accessory short-term rental is in a dwelling unit in a residential structure other than a multi-dwelling structure, then the notification letter must be mailed or delivered to all recognized organizations whose boundaries include the accessory short-term rental, and all residents and owners of property abutting or across the street from the accessory short-term rental. See Figure 207-1.



- (2) Multi-dwelling structures. If the Type A accessory short-term rental is in a dwelling unit in a multi-dwelling structure, then the notification letter must be mailed or delivered to all recognized organizations whose boundaries include the accessory short-term rental, the property manager if there is one, and all residents and owners of dwelling units abutting, across the hall from, above, and below the accessory short-term rental.
2. Required information for permit. In order to apply for a Type A accessory short-term rental permit, the resident or operator must submit to the Bureau of Development Services:
  - a. Two copies of the completed application form bearing the address of the property, and the name, notarized signature, address, and telephone number of the following:
    - (1) Resident;
    - (2) Operator; and
    - (3) Property owner or their authorized agent.
  - b. A copy of the notification letter and a list with the names and addresses of all the property owners, residents, and recognized organizations that received the notification.

**Figure 207-1**  
**Type A Accessory Short-Term Rental Permit Notice Area**  
**for All Dwelling Units Except Those in Multi-Dwelling Structures**



- D. Revoking a Type A accessory short-term rental permit.** A Type A accessory short-term rental permit can be revoked according to the procedures in City Code Section 3.30.040 for failure to comply with the regulations of this Chapter. When a Type A accessory short-term rental permit has been revoked, a new Type A accessory short-term rental permit will not be issued to that resident at that site for 2 years.

### **33.207.050 Type B Accessory Short-Term Rentals**

**A. Use-related regulations.**

1. Accessory use. A Type B accessory short-term rental must be accessory to a residential use on a site. This means that a resident must occupy the dwelling unit for at least 270 days during each calendar year, and unless allowed by Paragraph .050.B.2 or .050.B.3, the bedrooms rented to guests must be within the dwelling unit that the resident occupies.
2. Conditional use review. A Type B accessory short-term rental requires a conditional use review. A Type B accessory short-term rental that proposes commercial meetings is processed through a Type III procedure. All other Type B accessory short-term rentals are processed through a Type II procedure. The approval criteria are stated in 33.815.105, Institutional and Other Uses in R Zones.
3. Allowed structure type. A Type B accessory short-term rental is allowed in all residential structure types when accessory to a residential use.
4. Cap. The number of dwelling units in a multi-dwelling structure, triplex, fourplex, or cottage cluster that can have an accessory short-term rental is limited to 1 unit or 25 percent of the total number of units in the structure or on the site, whichever is greater.
5. Prohibition. Accessory short term rentals are prohibited in a building subject to Chapter 13 of the Uniform Building Code (1970 edition) in effect on September 7, 1972, except when the Fire Marshal's Office has determined that the building has a fire sprinkler system that protects the exitways.

**B. Standards.**

1. Maximum size. Type B accessory short-term rental is limited to renting a maximum of 5 bedrooms to overnight guests. In the single-dwelling zones, a Type B accessory short-term rental over this size limit is prohibited.
2. Accessory dwelling units. 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.
3. Detached accessory structures. A bedroom in a detached accessory structure can be rented to overnight guests, and counts toward the maximum size limit.
4. Bedroom requirements. The Bureau of Development Services must verify that each bedroom to be rented to overnight guests:

- a. Met 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 from this requirement;
  - b. Has a smoke detector that is interconnected with a smoke detector in an adjacent hallway that is in the dwelling unit; and
  - c. 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.
5. Number of residents and overnight guests. 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.
6. Employees. Nonresident employees for activities such as booking rooms and food preparation may be approved as part of the conditional use review. Hired service for normal maintenance, repair and care of the residence or site, such as yard maintenance or house cleaning, is allowed. The number of employees and the frequency of employee auto trips to the facility may be limited or monitored as part of a conditional use approval.
7. Services to guests and visitors. Serving alcohol and food to guests and visitors is allowed and may be subject to other county or state requirements.
8. Commercial meetings.
  - a. Commercial meetings. Commercial meetings include luncheons, banquets, parties, weddings, meetings, charitable fund raising, commercial or advertising activities, or other gatherings for direct or indirect compensation. Commercial meetings are regulated as follows:
    - (1) In the single-dwelling zones, commercial meetings are prohibited;
    - (2) In all other zones, up to 24 commercial meetings per year may be approved as part of a conditional use review. The maximum number of visitors or guests per event will be determined through the conditional use review. Adjustments to the maximum number of meetings per year are prohibited.
  - b. Historic resources. A historic resource may be open to the public for 4 hours one day each year if required as part of a historic preservation grant or incentive program. This does not count as a commercial meeting.
  - c. Meeting log. The operator must log the dates of all commercial meetings held, and the number of visitors or guests at each event. The log must be available for inspection by City staff upon request.
9. Appearance. 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. Internal or external changes that will make the dwelling appear less residential in nature or function are

not allowed. Examples of such alterations include installation of more than three parking spaces, paving of required setbacks, and commercial-type exterior lighting.

10. A Type B accessory home occupation is prohibited with a Type B accessory short-term rental.

### **33.207.060 Monitoring**

All accessory short-term rentals must maintain a guest log book. It must include the names and home addresses of guests, guest's license plate numbers if traveling by car, dates of stay, and the room assigned to each guest. The log must be available for inspection by City staff upon request.

### **33.207.070 Pre-Established Bed and Breakfast Facilities**

- A. Facilities without a revocable permit.** Bed and breakfast facilities that were operating before May 24, 1988, and which did not receive a revocable permit, may continue to operate as an approved conditional use if the operator can show proof that the operation was established through City licensing. The requirements for verification are listed below.
  1. The facility was operating with a City business license or was granted exemption from the business license requirement;
  2. City transient lodging taxes were paid part or all of the tax period preceding May 24, 1988; and
  3. The owner or operator can document that the Portland Bureaus of Planning or Buildings approved the site for a bed and breakfast facility prior to purchase, construction, or remodeling of the facility.
- B. Alterations and Expansions.** The approved conditional use status provided for in Subsection 070.A applies only to the number of bedrooms and size of facility that existed on January 1, 1991. Any expansions of building area or alterations that increase the intensity of the facility are not allowed unless approved through a conditional use review as provided in Section 33.207.050.A.2.
- C. Facilities with a revocable permit.** Bed and breakfast facilities operating under approved revocable permits are subject to the regulations for revocable permits in 33.700.120, Status of Prior Revocable Permits.

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*(Amended by: Ord. No. 164264, effective 7/5/91; Ord. No. 169324, effective 10/12/95; Ord. No. 174263, effective 4/15/00; Ord. No. 175204, effective 3/1/01; Ord. No. 178657, effective 9/3/04; Ord. No. 186736, effective 8/29/14; Ord. No. 186976, effective 2/13/15; Ord. No. 188259, effective 3/31/17; Ord. No. 190380, effective 8/1/21; Ord. No. 190687, effective 3/1/22; Ord. No. 190851, effective 6/30/22.)*