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FILE NUMBER: ACS2018-PIE-EDP-0019

SUBJECT: **Response to Enquiry on Short-Term Rentals, July 12, 2017**

OBJET : **Réponse à une demande de renseignements sur les locations à court terme – le 12 juillet 2017**

**PURPOSE**

At its regular public meeting of July 12, 2017, Ottawa City Council adopted the following Motion No. 54/14:

*"WHEREAS the City's zoning by-law, being By-law 2008-250, as amended, seeks to regulate development in residential zones in a manner that is compatible with existing land use patterns, including for example, so that*

*detached dwellings and the residential character of neighbourhoods are maintained or enhanced;*

*AND WHEREAS, given the relatively recent advent and increase in the use of popular online platforms that facilitate bookings for short-term residential use in a variety of neighbourhoods and zones across the City;*

*AND WHEREAS such use may have an impact on residential neighbourhoods, including the potential for increased traffic, parking, noise, and related property issues and which may have unintended consequences on maintaining or enhancing neighbourhoods;*

*"THEREFORE BE IT RESOLVED that City Council direct the Planning, Infrastructure and Economic Development Department, in consultation with the City Clerk and Solicitor Department, to report back to Planning Committee, by Q4 2017."*

## **Observations**

In recent years a number of online platforms have emerged that allow owners or residents of dwellings to rent their property to travellers for short periods directly through a website. These platforms allow the owner or principal tenant to rent out the entire dwelling unit or a single room for periods of as little as one night. For the purposes of this discussion we will call the rental of properties on this model "short-term rentals" or STR's.

The short-term rental of an **individual room or rooms in one's own dwelling**, while the owner or principal tenant continues to live there, is consistent with the City's current definition of a *bed and breakfast*. The use of STR platforms to rent out single rooms within one's own primary residence is largely a tool to enable what is already clearly permitted and intended by the Zoning By-law.

Conversely, the short-term rental of **an entire dwelling unit** to one guest or set of guests constitutes a *hotel*. Any and all short-term rentals of entire dwelling units in Ottawa, in zones where a hotel is not a permitted land use, would constitute a zoning infraction under current zoning.

## **Analysis**

The definitions in the Zoning By-law predate the emergence of STR platforms. Several defined land uses are directly relevant:

**Bed and breakfast** means a private residence within the whole of a residential use building<sup>1</sup> that is operated to provide the traveling public with temporary accommodation including sleeping accommodation, meals and other connected services and facilities within the occupant's dwelling unit; and does not include a hotel. (*gîte touristique*)

**Dwelling Unit** means a residential unit that: (i) consists of a self-contained set of rooms located in a building or structure; (ii) is used or intended for use as a residential premises by a single housekeeping unit; (iii) contains kitchen and bathroom facilities that are intended for the use of the unit only; and (iv) is not a mobile home or any vehicle. (*un logement*)

**Hotel** includes a motel, a motor hotel and an apartment hotel. (*hôtel*)

#### **A) Short-term rental of rooms in one's home**

Bed-and-breakfasts<sup>2</sup> are permitted throughout the Residential R1 through R5 zones, as well as the rural AG, RR, RU, VM, V1, V2 and V3 zones. Where permitted in a residential or rural zone, bed-and-breakfasts are permitted only in residential use buildings, and in the rural area are restricted to detached dwellings only. In most cases, bed-and-breakfasts are allowed a maximum of three guest bedrooms (the RU and R5 zones, with a maximum of ten guest bedrooms, and the VM zone with no maximum are exceptions.)

A key characteristic of a bed and breakfast is that it is within the occupant's own dwelling unit. The current definition of bed and breakfast largely matches one kind of STR, i.e. when somebody rents out bedrooms in their home to the travelling public. Another characteristic would be that "meals and other connected services and facilities" are provided.

By-law services reports that complaints about bed-and-breakfasts are rare and met with enforcement of noise, property standards, zoning and/or parking by-laws as applicable.

The permitted scale of bed-and-breakfasts, along with the fact that the dwelling's principal occupant is present within the unit while the guests are renting rooms, appears

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<sup>1</sup> As a side issue, the specific words "the whole of a residential use building" implies that a single unit in a multi-unit dwelling cannot be a bed-and-breakfast; this stands in implicit contradiction to Section 121 which says that a bed-and-breakfast can be in any residential use building in the urban/suburban area. This contradiction should be resolved one way or the other in the zoning, but is incidental to the matter of short-term rentals under discussion.

<sup>2</sup> Bed-and-breakfast is spelled here with hyphens to ease legibility of the text.

sufficient to mitigate any land use conflicts (most of which would be attributable to disruptive behaviour on the part of the guests.)

Conversely, online STR platforms have made the booking and operating of bed-and-breakfast-type arrangements easier than they used to be, and this may have the effect of encouraging more of them than might have been contemplated at the time current zoning was adopted.

### **B) Short-term rental of entire dwelling units**

A key characteristic of a dwelling unit is that it is *used or intended for use as a residential premises*. In other words, it is somebody's home; it is where they live. Conversely, while the current definition of hotel simply references what kinds of hotel it includes, the common definitions of hotel include references to providing "*lodging...for the public*" (Merriam-Webster) or "*accommodations... for travellers and tourists.*" (Oxford.) A hotel is for people who don't live there: they are travelling or visiting. The common definitions of apartment hotel, which is a subset of hotel as defined by the City, align particularly well with dwelling units that are rented short-term.

The question is the line between living somewhere and merely visiting and, by extension, the point where a unit stop being a residence and becomes accommodations for non-residents. One-year leases for rental housing are typical, but monthly tenancies are not uncommon and are recognized by the *Residential Tenancies Act*. This suggests that a tenure period of 28 days (the shortest month of the year) is the lowest reasonable threshold for a dwelling unit, and that any shorter tenure may reasonably be treated as other than residential. This principle is echoed by other municipalities as well as OMB decisions. Below are two instances:

- The City of Toronto's study on short-term rentals resulted in zoning amendments to permit and regulate short-term rentals, which uses 28 days as the threshold for STR.
- In 2011 the OMB upheld the Town of Blue Mountains' zoning proposal to use a 30 day period as the boundary and "acted legitimately and within its authority to distinguish between (short-term rentals) intended for the traveling or vacationing public and permanent dwelling units."<sup>3</sup>

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<sup>3</sup> OMB decision #PL080455 in the matter of Rosen and Lodges at Blue Mountains vs. Town of Blue Mountains, issued June 22, 2011.

Given the impracticality of renting housing units for very short occupancy (especially on the order of days) at the time Ottawa's definitions were drafted, it can be concluded that Council at the time would not have intended for rentals of dwelling units for less than a month.<sup>4</sup>

Staff's view is that the most reasonable interpretation, and the one most consistent with the intent of the zoning and reinforced through the above noted OMB decision, is that the rental of an entire dwelling unit to one renter or set of renters for a term of less than 28 days constitutes a hotel rather than a dwelling unit. Under that interpretation, any and all short-term rentals (i.e. for less than 28 days) of entire dwelling units in Ottawa, in zones where a hotel is not permitted, constitute a zoning infraction.

If Council wishes to ensure that the zoning's meaning is clearer to the layperson, it may be appropriate to include in the definitions of "hotel" and "dwelling unit" some language to the effect that a "dwelling unit" excludes any unit rented to a tenant for a period of less than 28 days.

If there is a desire to accommodate short-term rentals of entire dwelling units--that is, to explicitly permit dwelling units to be used as hotel rooms where hotels are not currently permitted by zoning--a review of the zoning and other regulations is needed. An effective response may require both zoning changes and licensing, as neither tool can address all of the known issues around short-term rentals. Such a review would include research and data collection on the extent, geography and growth of short-term rentals in Ottawa, to ensure that any initiatives are properly tailored to Ottawa's context.

Other cities such as Toronto and Vancouver have recently undertaken such studies, resulting in changes to zoning that explicitly permit short-term rentals subject to limits intended to minimize unwanted planning effects. Key considerations include:

- **Whether a dwelling unit may be rented out year-round or for only a limited number of days per year.** This speaks to concerns about whether a dwelling unit becomes unavailable at housing, exacerbating vacancy and affordability issues noted and documented in other municipalities. Allowing short-term rentals for a small part of the year may accommodate residents who may wish to rent out their own homes while away on vacation themselves.

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<sup>4</sup> But for minor changes to wording, which we do not believe to materially alter the intent, the current definitions of dwelling unit, bed and breakfast and hotel date date back to 2008, and are materially the same as the definitions under former Ottawa's 1998 Zoning By-law.

- **Whether only the host's primary residence may be rented as a short-term rental, or if STR's are allowed in any dwelling.** Toronto's zoning approach, for example, has explicitly restricted whole-unit STR's to the host's principal residence. Such a restriction would help address concerns about diverting housing stock from actual residences to hotel uses, since it removes the incentive for investors to buy up many residential units and run them as hotels.
- **Licensing.** Zoning is unlikely to provide all the regulatory tools needed to effectively govern short-term rentals. Questions of fire and building safety; ensuring compliance with noise, property standards and parking by-laws, and meaningful consequences for violation of same; and other considerations may require licensing. In some municipalities, there is a requirement to post the license number in short-term rental ads, to help the municipality quickly identify if an STR is lawful or not. By-law and Regulatory Services staff will be undertaking a comprehensive review of rental housing from the regulatory perspective, including licensing of residential room rentals, short-term rentals (i.e. Airbnb) and shared accommodations. An external consultant will be retained to conduct the study and a staff report is expected to follow in the next term of Council.

## **Conclusion**

In response to Council's motion for an update on the availability and effectiveness of existing regulatory tools under the Zoning By-law 2008-250, to address complaints that may be associated with such short-term uses, including potential conflicting land uses, staff would advise as follows:

- 1) The short-term rental of individual rooms within the host's primary residence have not been an issue within the context of current zoning regulations. Maintaining the status quo allows this activity to fall into the zoning definition of a bed and breakfast which is adequately regulated within the zoning by-law.
- 2) The short-term rental of entire dwelling units, in the context of the OMB decision previously noted provides for the zoning to be interpreted so as to prohibit any rental of a dwelling unit for a term of less than 28 days. If greater clarity is desired, a technical zoning amendment to clarify the distinction between "dwelling unit" and "hotel," can be introduced through an upcoming omnibus amendment to make explicit the prohibition on rental of an entire dwelling unit for a term of less than 28 days.

- 3) Given that short term rentals of entire dwellings is a matter that is gaining increased popularity, a more in depth analysis may be desired. This would involve the Zoning and Interpretations Unit coordinating with the By-law and Regulatory Services Unit a joint licensing and zoning study to produce recommendations regarding whether, where, how, for how long and under what circumstances whole dwelling units may be rented out as short-term rentals. This would include further examining the considerations previously noted. Planning Staff do not have such a study on their current work plan but are prepared to include this a matter for further review during the next term of Council.

*Original signed by*

John Smit

CC: David Wise

Encl. (1)

## Document 1 – Appendix A: Definitions

### ***Dictionary definitions of "hotel"***

"An establishment that provides lodging and usually meals, entertainment, and various personal services for the public." (Merriam-Webster, <https://www.merriam-webster.com/dictionary/hotel>, accessed January 31 2018)

"An establishment providing accommodation, meals, and other services for travellers and tourists." (Oxford, <https://en.oxforddictionaries.com/definition/hotel>, accessed January 31 2018)

### ***Dictionary definitions of "apartment hotel"***

A hotel with furnished suites of rooms including kitchen facilities, available for long-term or short-term rental. (Oxford, [https://en.oxforddictionaries.com/definition/apartment\\_hotel](https://en.oxforddictionaries.com/definition/apartment_hotel), accessed January 31 2018)

"A hotel containing apartments as well as accommodations for transients." (Merriam-Webster, <https://www.merriam-webster.com/dictionary/apartment%20hotel>, accessed January 31 2018)

### ***Definitions from former Ottawa ZBL 93-98***

"*bed and breakfast*" means a private residence which is operated to provide the travelling **public** with sleeping accommodation and other connected services and facilities within the occupant's **dwelling unit**;

"*dwelling unit*" means a unit that,

- (i) consists of a self-contained set of rooms located in a **building**,
- (ii) is used or intended for use as a residential premises, and
- (iii) contains kitchen and bathroom facilities that are intended to be exclusive to the **unit**;

"*hotel*" includes a motel, a motor **hotel** and an apartment **hotel**;