
**Report to
The Vermont Legislature**

**Short-term Rental Working Group Report
2017 Report to the Legislature**

In Accordance with Section 6 of Act 76 of 2017, An act relating to executive branch and judiciary fees and food and lodging establishments

Submitted to: House Committee on **Human Services**
Senate Committee on **Health and Welfare**

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Report Date: October 1, 2017



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Introduction

- (a) Creation. There is created the Short-Term Rental Working Group within the Department of Health for the purpose of making recommendations regarding the short-term rental industry in Vermont, including an evaluation of:
 - (1) the impact of short-term rentals on revenues of the State;
 - (2) necessary precautions to protect the health and safety of the transient, traveling, or vacationing public;
 - (3) policies implemented in other states and municipalities regarding short-term rentals; and
 - (4) alternative definitions of “short-term rental” to that enacted in 18 V.S.A. § 4301.
- (b) (1) Membership. The Working Group shall be composed of the following members:
 - (A) the Commissioner of Health or designee; and
 - (B) the Executive Director of the Department of Public Safety’s Fire Safety Division or designee.
- (2) The Commissioner of Health shall invite at least the following representatives to participate in the Working Group:
 - (A) the Commissioner of Taxes or designee;
 - (B) a representative of the Vermont Chamber of Commerce;
 - (C) three representatives of Vermont’s short-term rental industry;
 - (D) a representative of local government; and
 - (E) a representative of the Vermont Lodging Association.
- (c) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Department of Health.
- (d) Report. On or before October 1, 2017, the Working Group shall submit a written report to the House Committee on Human Services and the Senate Committee on Health and Welfare with its findings and any recommendations for legislative action.
- (e) Meetings.
 - (1) The Commissioner of Health or designee shall call the first meeting of the Working Group to occur on or before August 1, 2017.
 - (2) The Commissioner of Health or designee shall be the Chair.
 - (3) A majority of the membership shall constitute a quorum.
 - (4) The Working Group shall cease to exist on October 31, 2017.
- (f) Definitions. As used in this section:
 - (1) “Lodging establishment” means the same as in 18 V.S.A. § 4301(9).
 - (2) “Short-term rental” means the same as in 18 V.S.A. § 4301(14).

Overview of 2016 Legislative Report on Internet-based Lodging¹

Act 157 of 2016 directed several Vermont state government entities to report on laws within their jurisdiction, if any, that apply to internet-based lodging accommodations and to make any recommendations for administrative or legislative actions. The Department of Taxes and the Department of Public Safety, Division of Fire Safety were the two state agencies with existing regulatory authority for short-term, or internet-based, rentals.

The Department of Taxes collects what is known as the “Meals and Rooms Tax,” that includes private residential dwellings that are rented for fifteen or more days in a calendar year.² In 2016, the Department of Taxes entered into a contract with one of the largest short-term rental platforms used in Vermont, Airbnb, for the collection and remittance of Meals and Rooms Tax on behalf of rental hosts advertising and conducting financial transactions on their site. The Department also pursued the same type of agreement with a similar internet-based platform, including Homeaway®, but because this site and others do not currently conduct financial transactions on their site, rental owners collect rental fees on their own and continue to be individually responsible for remitting these taxes to the state. The Department of Taxes continues to monitor other states and municipalities to see if platforms are entering into agreements, similar to the Airbnb agreement.

The Department of Public Safety, Division of Fire Safety has regulatory authority over all “public buildings” including buildings rented as accommodations regardless of duration. 20 V.S.A. § 2730. The Division determined that two possible residential occupancy classifications may apply in the case of short-term, or internet-based, rentals: One and Two-Family Dwelling, and Rooming and Lodging. Both of these categories have specific fire safety requirements including the use of smoke and carbon monoxide detectors, proper egress, and may also require change of use permits. The Division lacks the resources to perform routine inspections of all short-term rentals within this category but does respond to complaints, conduct fatality investigations, and issues change of use permits. The division conducts annual inspections of nursing homes and residential care homes but not of rental housing or lodging facilities.

Overview of Vermont’s Short-term Rental Industry

Vermont, as a well-known vacation destination, has likely had a lengthy history of renting private homes to vacationers. Owners’ abilities to book their rentals have advanced drastically with the use of the internet, particularly in the last decade. Quantifying Vermont’s total number of short-term rental properties proves difficult though, because not every owner advertises online. Additionally, some owners might advertise across multiple website platforms. Some of the most widely used web platforms include Homeaway®, Vacation Rental By Owner (VRBO®), Airbnb, Flipkey, Hometogo, Craigslist, and even social media sites like Facebook. These new web platforms are used in addition to some of the more traditional rental methods like through local property management companies, or through word of mouth.

One of the larger short-term rental web platforms used in Vermont is Airbnb. Airbnb currently has 3,600 active hosts throughout the state and provided the committee with useful demographic information for this report.³ Of those hosts, 63% are women and the average age of all Vermont hosts is 50 years old,

¹ Internet-Based Lodging Study, Pursuant to Sec. J.1 of Vermont Act 157 of 2016. Submitted 2017.

² Vermont Department of Tax Reg. § 1.9202(3)-2.

³ Provided by Airbnb, August 25, 2017.

with 29% over the age of 60.⁴ Airbnb has described seniors as “the fastest growing segment” of their hosting population, “using home sharing as a way to ‘age in place.’”⁵ Airbnb reported that the median host in Vermont earns approximately \$5,900 annually and rents their space for 24 nights a year.⁶ Fewer than 3% of all Airbnb listings in Vermont are rented for more than 180 days a year, and many of the listings in that category include traditional, full-time licensed lodging establishments, who may advertise and book their properties on Airbnb’s site for convenience and market reach.⁷ Most (88%) Airbnb hosts in Vermont rent a single property/unit with only 8% renting two properties/units. The remaining 4% renting three or more properties/units is difficult to further stratify because it includes traditional licensed lodging establishments that might advertise on their site, and properties that are being “hosted” through a property management company instead of the individual owners. In these examples, a single management company could list all of their managed properties under a single host’s name.⁸

In total, there are currently 5,100 active Airbnb listings in Vermont and 75% fall into the category of hosts with 1-2 listed units and the remaining 25% are rented through hosts with three or more units.⁹ Airbnb has reported that 78% of the 5,100 active properties listed in Vermont have been booked at least once while the remaining 22% currently listed have never been booked.¹⁰ Vermont Airbnb listings are primarily (75%) made up of whole-home rentals, where the renter books the entire property for their stay.¹¹

Several other short-term rental hosting platforms exist beyond Airbnb. Homeaway®, also operating under the site name VRBO®, is estimated to have over 5,500 listings in Vermont.¹² Hometogo is estimated to have over 4,000 listings in Vermont while Flipkey is estimated to have over 1,000 listings.¹³ However, as mentioned above, there is no way of determining if these listings are duplicates across multiple sites. A notable difference between these sites and Airbnb though is they only list whole-home rentals and do not allow for spare rooms to be rented, which prohibits most licensed lodging establishments from advertising on their sites.

Impact of Short-Term Rentals on Revenues of the State

Tax Revenue

The Vermont Department of Taxes compiled taxable receipts of meals, rooms, alcohol, and retail sales for the last five fiscal years (FY2013-FY2017). Vermont requires businesses that are restaurants¹⁴ to collect the meals tax on taxable food and the alcohol tax on alcoholic beverages sold for immediate

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² See <http://www.homeaway.com>; <http://www.vrbo.com>.

¹³ See <http://www.flipkey.com>; <http://www.hometogo.com>.

¹⁴ A restaurant is defined as: an establishment that charges for food or beverage intended for immediate consumption; or an establishment that has made total sales of food or beverage in the previous taxable year of at least 80% taxable food and beverage; or a new establishment that projects its total sales for the first year to be at least 80% taxable food and beverage.

consumption.¹⁵ The meals tax is 9.0% of prepared and restaurant meals and the alcohol tax is 10.0% on sales of alcoholic beverages served in restaurants.

The rooms tax is 9.0% on sales of lodging and meeting rooms in hotels. “Hotel” is defined broadly and includes any establishment that holds itself out to the public by offering sleeping accommodations for a charge. This includes individuals who rent out their whole home, or a room in their home; if an individual rents out space for 15 days or more in a calendar year, they must collect and remit the rooms tax. Compiling tax data on short-term rentals presents many challenges because an increase in tax revenue from the lodging sector does not necessarily correlate with growth in the number of short-term rental units. Many factors can affect the growth in the market and including but not limited to, increases in lodging prices, a stronger economy where people are more comfortable spending money on travel, the strength of the Canadian dollar, and the number of traditional lodging establishments (including large hotels) that have opened.

Retail sales include anything that is subject to sales tax in Vermont. The sales tax rate in Vermont is 6.0%. That includes all tangible personal property, unless specifically exempted.

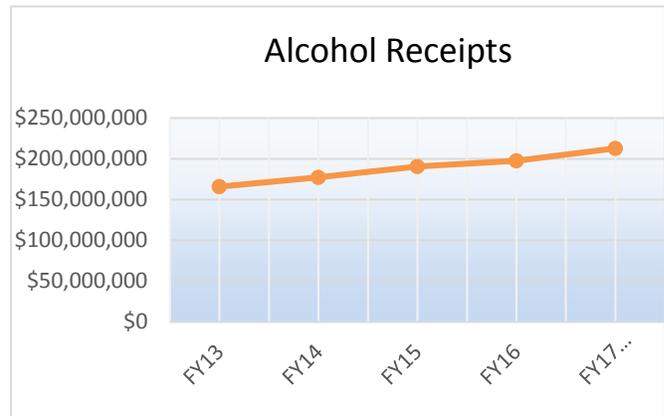
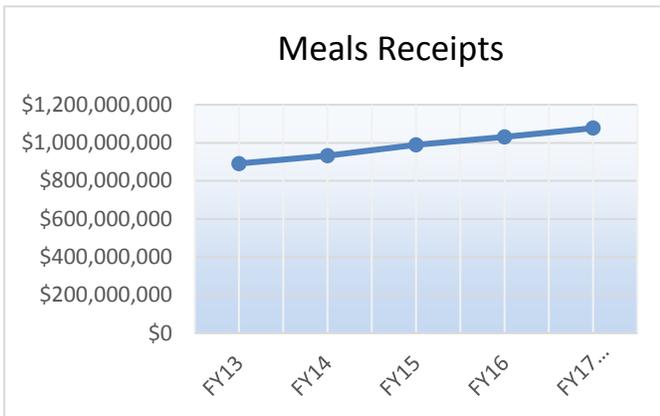
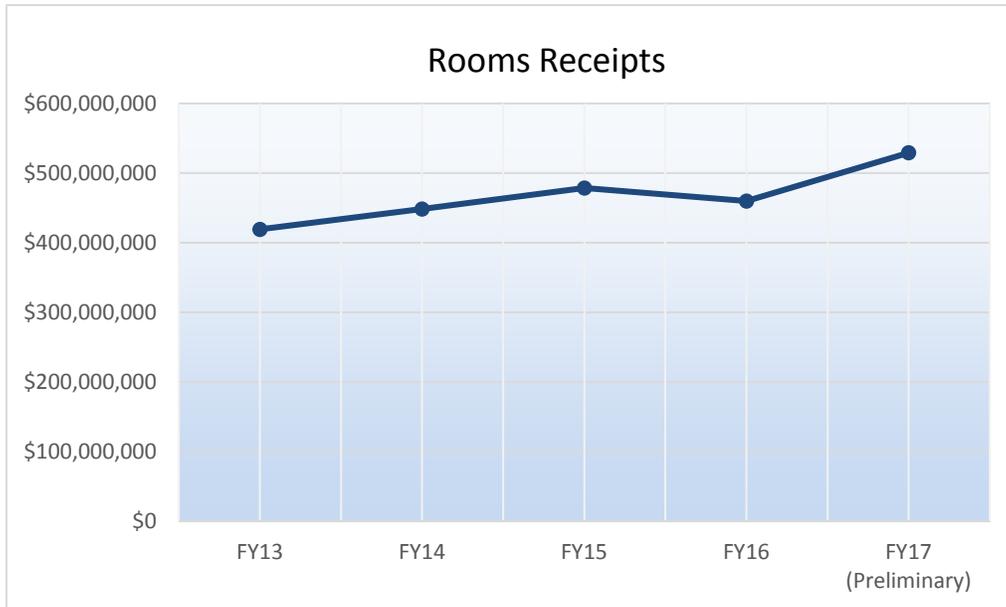
Some municipalities have elected to enact a 1.0% local option tax, in addition to the tax rates mentioned above. If a municipality has voted to enact a local option tax, businesses making sales into that municipality, or based in that municipality, must collect the local option tax in addition to the meals and rooms, alcohol, or sales tax.

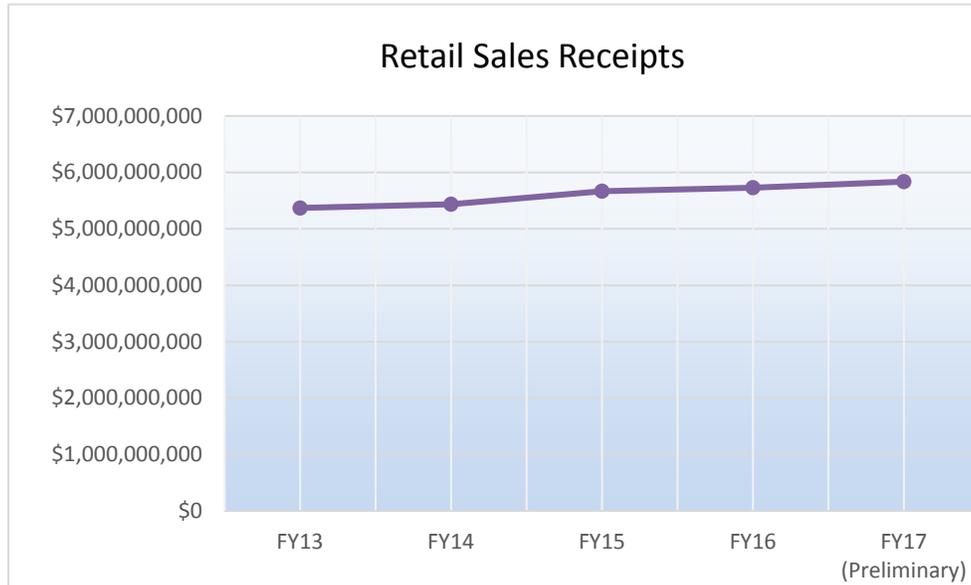
Vermont Meals, Rooms, Alcohol, and Retail Sales Taxable Receipts Comparison

	Taxable Sales by Fiscal Year				
	FY13	FY14	FY15	FY16	FY17 (Prelim)
Rooms	419,295,213	448,506,985	478,549,205	459,962,526	529,110,341
Meals	891,488,807	931,985,733	989,100,986	1,030,536,108	1,077,326,300
Alcohol	165,915,205	177,443,019	190,696,021	197,689,101	212,880,437
Retail Sales	5,370,252,281	5,437,668,638	5,668,082,102	5,726,292,895	5,835,808,956
<i>Data Sources: VT Stats Reports</i>					
					Meals and Rooms
					Sales and Use

¹⁵ Alcoholic beverages sold by a retail outlet for consumption off premises are subject to the 6% sales tax.

The line graphs below show the trends in all four bases during that time.

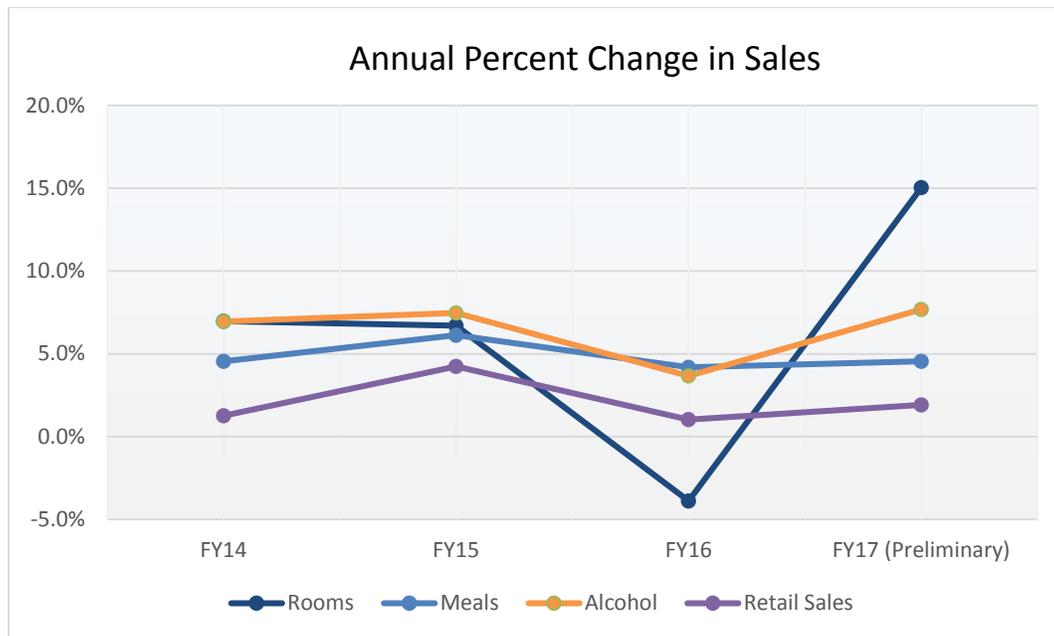




While the meals, alcohol, and retail sales line show fairly steady year-over-year growth in taxable receipts, the most dramatic increase can be seen in the growth of rooms’ receipts. In FY2017, Tax is preliminarily reporting a 15.0% growth over FY2016. The contract with Airbnb to start collecting and remitting rooms tax for Vermont was enacted Oct. 1, 2016, with first payment in November 2016. Therefore, the numbers for FY2017 include the rooms booked on Airbnb.

	Annual Percent Change in Sales (Beginning FY13)			
	FY14	FY15	FY16	FY17 (Prelim)
Rooms	7.0%	6.7%	-3.9%	15.0%
Meals	4.5%	6.1%	4.2%	4.5%
Alcohol	6.9%	7.5%	3.7%	7.7%
Retail Sales	1.3%	4.2%	1.0%	1.9%

The other three bases we reported on for this report showed consistent growth year over year, with alcohol increasing by 7.7% over FY2016. While that was the second-largest rate of growth, it is consistent with the increase in FY2014 and FY2015.



All of these taxes reported are “trust taxes.” That means they are collected by businesses, from their customers, on behalf of the State of Vermont. They are a good proxy for the type of economic activity happening in Vermont, but they do not include any income tax that is paid to Vermont from short-term rental owners. This lack of information on personal income tax is due to a lack of relevant data.

Vermont does receive information from the federal Schedule E for rental income. However, we do not receive information that includes the type of property from which the rental income is being generated. Furthermore, we only have complete data through tax year 2014.

In 2016, Airbnb entered into a contract with the Department of Tax to automatically collect and remit the 9% Meals and Rooms Tax on rented properties within Vermont. Additionally, it also collects the 1% local Meals and Rooms Tax collected by Brandon, Brattleboro, Colchester, Dover, Killington¹⁶, Manchester, Middlebury, Montpelier, Rutland Town, St. Albans Town, South Burlington, Stowe, Stratton, Williston, Wilmington, Winhall, and Woodstock. It also entered into a similar agreement with the City of Burlington to collect and remit the 2.0% Restaurant, Hotel, Amusements, and Admissions Tax. Airbnb has provided that the total state and local tax revenue it has collected and remitted between 10/1/2016 and 6/30/2017 is just over \$2 million, representing approximately \$21M in taxable receipts, and about 50% of the growth from FY2016-FY2017.¹⁷ It is important to note that prior to the agreement with Airbnb, some hosts were complying on their own and collecting and remitting the rooms tax. Therefore, the amount of revenue collected by Airbnb since their agreement may or may not be entirely new revenue to the State of Vermont.

Impact on Tourism and Commerce

The Vermont Department of Tourism and Marketing has received significant feedback from Vermont lodging accommodation businesses over the last several years regarding the challenges of competing with short term rentals due to a lack of tax collection for the rental of those rooms. Today many of the

¹⁶ Killington voters rescinded the Meals and Rooms tax in March 2017, effective July 1, 2018.

¹⁷ Provided by Airbnb, August 25, 2017.

short-term rental platforms are collecting room tax directly at the point of purchase via online booking systems.

In the past year, 190,000 guests stayed in short-term Vermont rentals (or approximately 62,000 trips) booked through Airbnb.¹⁸ The average age of a booking guest was 38 years old and the typical group size was 3.1 people. The average length of stay was just under three days.¹⁹ The majority of inbound guests come from within the United States (175,000) and Canada (8,000). An additional 7000+ come from outside of North America.²⁰ Airbnb has stated that these stays have generated revenue from guests spending at shops and restaurants in the state and that the rental revenue goes directly back into the local economy instead of shareholders and out-of-state corporations as with multi-national hotel chains.²¹ Interestingly, there were also 95,000 outbound guests, or Vermonters, who used Airbnb when traveling in the United States and abroad last year.²² This makes the inbound to outbound ration of travelers 2:1. The lack of availability and data from other web platforms make it difficult to know if this ratio is representative of the whole state.

Income Generation for Vermonters

According to Airbnb, the total host earnings in Vermont last year were \$26.4 million, which “represents 97% of the ‘list’ price that hosts set” and includes taxes.”²³ Airbnb keeps a 3.0% commission as fee. Perhaps unsurprisingly, the towns generating the most revenue from Airbnb rentals primarily center around large ski areas (with the exception of the City of Burlington).

Towns with the highest revenue generated by Airbnb short-term rentals²⁴		
Rank	Town	Total Host Payout
1	Stowe	\$3,080,000
2	Burlington	\$2,560,000
3	Killington	\$2,130,000
4	Ludlow	\$850,000
5	Dover	\$680,000

As noted above, the median individual Airbnb host earns approximately \$5,900 annually from their short-term rental.²⁵ The top five towns with the highest number of unique hosts also follow the major ski areas and the City of Burlington.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id.

Towns with the highest number of unique Airbnb short-term rental hosts²⁶		
Rank	Town	Total Unique Hosts
1	Burlington	230
2	Stowe	220
3	Killington	140
4	Warren	90
5	Dover	90

Evaluation of Necessary Precautions to Protect Health and Safety of the Transient Traveling, or Vacationing Public

Fire Safety

The Department of Public Safety, Division of Fire Safety under the authority of 20 V.S.A. Chapter 173 § 2731 is authorized to adopt rules regarding the construction of buildings, maintenance, and operation of premises, and prevention of fires and removal of fire hazards, and to prescribe standards necessary to protect the public, employees, and property against harm arising out of or likely to arise out of fire.

20 V.S.A. Chapter 173 “Prevention and Investigations of Fires” § 2730, defines what constitutes a “public building” for which we have authority to regulate. A public building includes rental accommodations, whether overnight or long term. The division, through the authority in Title 20, adopts rules known as The Vermont Fire and Building Safety Code (VFBS). The VFBS provides an opportunity for us to make amendments to the national standards to address specific safety issues impacting Vermonters. Examples include: establishing snow load requirements, certification of heating contractors, continuing education, licensing, and modification to the national standards for ease of use here in Vermont.

The Division of Fire Safety's mission is to protect the public and fire service through coordinated efforts in Code Enforcement, Fire Service Training, Public Education, Hazardous Materials Response, Fire Investigation, and Urban Search and Rescue – thereby maximizing life safety and property conservation and minimizing environmental impacts due to fire, natural disasters, and other emergencies in the State of Vermont

Over 75% of the average annual civilian fire deaths (3,000) occur in residential homes, and three out of every five home fire deaths are in homes with no smoke alarms present and/or the smoke alarms are missing batteries or found inoperable.

Based on very reliable data and years of fire incident reporting, residential occupancies are a high fire risk. Not coincidentally, owner occupied free standing dwellings are typically not regulated or inspected. These types of structures are the same type of structures being rented for seasonal and long-term use. Non-regulated, for practical purposes, means work including electrical wiring, heating, plumbing and

²⁶ Id.

general building construction are often completed by unlicensed trade professionals, exposing renters to unforeseen and unknown hazards. Many rental homes lack common life safety features such as smoke and carbon monoxide alarms, second means of escape from sleeping rooms, improper guards on decks, and improperly installed heating systems.

To verify compliance with minimum life safety standards, buildings need to be inspected by qualified and certified inspectors. Inspectors must know how to prioritize hazards, assign risk, manage repairs, conduct follow ups, track inspection results, provide equivalencies to the prescriptive code requirements, establish a variance/appeal process, and formulate legal enforcement action to gain compliance.

The Division of Fire Safety is composed of four regional offices: Barre, Williston, Springfield and Rutland, and the fire training academy in Pittsford. Each regional office is responsible for a large geographical area consisting of many towns. The Division is responsible for issuing approximately 3000 building permits annually (\$550 – \$725 million dollars in construction valuation). Prior to issuing permits, the construction documents and plans must be reviewed by a plan reviewer to validate compliance with adopted building codes. Currently the Division has six full time plan reviewers managing the influx of plans. The sheer volume of permit applications and the importance of turning around permits in short order cannot be over emphasized.

Permitting is a very complex and dynamic business function impacting thousands of people, the economy, and the entire business community at large, requiring constant managerial oversight. Construction contracts always provide stipulations requiring compliance with our inspections and rules, as well as requirements satisfying banks, owners, municipal entities and often local zoning and planning conditions. A final occupancy inspection is completed and requires a sign off from the building inspector, electrical inspector and plumbing inspector. We license/certify trade groups including, but not limited to electricians, plumbers, fire alarm installers, sprinkler installers, oil and gas installers and several others (about 8000 people). By statute, we focus a lot of our resources on permitting and inspection of buildings in response to permit applications.

The Division responds to complaints alleging unsafe conditions in public buildings. Depending on the severity of the hazard, we may be required to immediately respond. Examples of serious hazards include; gas leaks, carbon monoxide alarms sounding, electrical shocks, water leaking, no heat, and structural failure. Complaint inspections require extensive resources and typically require inter-agency collaboration.

The Division implemented a permit improvement initiative, requiring projects under \$200,000 to be dispersed to the field inspector. Smaller projects can best be handled in the field by staff as plans are usually sketchy or non-existent. The sheer volume of plans received in our regional offices makes it extremely challenging to process permits within our 30-day window. This new initiative will spread approximately 45% of our total permits received across a group of approximately 20 inspectors.

Inspectors have special team assignments (fire investigation, urban search and rescue and hazardous material response). Special team assignments are critical and necessary. Special teams require periodic training and participation in drills and exercises for the teams to respond to actual events.

To add to the already time sensitive, heavy work load, many inspection requests from attorneys and residential purchasers are received. As a service to the real-estate market, considerable time is spent conducting purchase and sale inspections of residential properties at time of sale, ensuring the building is in substantial compliance with our rules.

Public Health

The Department of Health is responsible for the licensing and inspection of “lodging establishments” as defined in 18 V.S.A. § 4301 (9) as “place[s] where overnight accommodations are regularly provided to the transient, traveling, or vacationing public, including hotels, motels, inns, and bed and breakfasts. ‘Lodging establishment’ shall not include short-term rentals.” Lodging establishments are further defined in the Department’s new “Licensed Lodging Establishment Rule,” that will take effect 1/1/2018, as “any establishment renting three or more guest rooms or units, that is regularly used, maintained, advertised or held out to the transient traveling or vacationing public as a place where sleeping accommodations are furnished including, all buildings and structures on the premises or any part thereof. The term includes, but not by way of limitation, hotels, motels, inns, and any bed and breakfasts (tourist homes) regardless of the number of rooms if prepared food is served.” This rule sets basic requirements for sanitation and safety in lodging establishments and requires that these establishments renew their licenses annually with the Department as well as be subject to annual or routine inspections. The Department continues to hear feedback from a small number of licensed lodging establishment holders about inequities of regulation between traditional lodging businesses and short-term rentals. However, the Department’s Food and Lodging Program is currently responsible for licensing and inspecting over 5,000 food and lodging establishments throughout the state and lacks the capacity or authority to inspect short-term rentals. In light of data presented within this report, the Department also has concerns regarding inspecting single-family homes and the challenges and liabilities this type of regulation presents.

The Department of Health has also promulgated regulations for long-term rental housing, which are primarily enforced at the municipal level by Local Health Officers. The Rental Housing Health Code defines “rental housing” as “all dwellings, dwelling units, rooming houses, rooming units, or mobile home lots let by the owner to one or more persons to be used as a regular residence.”

Short-term rentals do not fall within this definition. Because the state does not collect data or require any registration of rental housing units, the total number of rental units in the state is not known, although registries have been created by some municipalities as part of a licensing and code inspection process.

One significant clarification in the recently promulgated definitions of lodging establishments is the distinction that any bed and breakfast serving prepared food, regardless of the number of rooms, requires a license. This is particularly applicable for a number of short-term rentals listed through Airbnb that offer meals to their guests like breakfast or packed lunches. The Department plans to work with Airbnb to update their website in order to alert Vermont hosts to this licensing requirement.

The Department does not frequently receive complaints stemming from private stays at short-term rentals. Because they fall neither under the jurisdiction of the Department or of Local Health Officers, the Department refers these kinds of matters directly to the Office of the Attorney General, Consumer Protection Unit. The Department has not seen any notable increase in the number of complaints nor any increase in public health hazards from the presumed growth of the short-term rental industry in the state.

Safety Concerns from Property Management Industry

The Short-term Rental Working Group had representation from short-term rental property managers. Each provided a unique perspective on the impact the lack of safety regulations has on the property management and short-term rental industry.

Private Home Rentals

One member of the working group represents a private company that manages individual, privately owned single-family homes and condominiums. There had been an incidence of guests in a short-term rental evacuating a short-term rental once the carbon monoxide detectors went off. A heating vent had been blocked and there was no signage indicating that it needed to be kept clear. The property management company now has an internal policy requiring that all properties comply with existing state laws, including fire safety. They noticed that this particular rental was being advertised as a four-bedroom unit when legally it could only be rented as a three-bedroom unit because of egress requirements. That owner, who does not live in Vermont and cannot respond to emergencies in person, now advertises on a web-platform as a four-bedroom rental, despite the violation of state fire safety regulations.

Ski Resort Condo Associations

As noted previously, ski towns hold some of the highest numbers of short-term rentals. Ski resorts often own their own lodging facilities like hotels or short-term rental condos and chalets. Beyond the properties directly owned by the resort, privately owned properties are often managed, maintained, and rented through the resort. One challenge unregulated short-term rentals have presented to this industry is lack of awareness from the consumer. A property manager for a ski resort explained to the committee that they frequently receive calls regarding health and safety issues on properties they do not maintain or manage. This leaves the resort unable to resolve the issue and it leaves the guest frustrated with the resort.

Policies Implemented in Other States and Municipalities Regarding Short-term Rentals

States have primarily stayed out of the specifics of regulating short-term rental accommodations, although many states do have existing laws addressing the registration and/or licensing of businesses. In some municipal examples, such as Cambridge, MA discussed below, local ordinances have been enacted to apply and enforce those state requirements to short-term rentals.

State Examples***Arizona***

The state of Arizona is one of a few states to have a broad law addressing short-term rentals. The law took effect on January 1, 2017 and states that local municipalities may not enact any laws that would “prohibit vacation rentals or short-term rentals” or “restrict the use of or regulate vacation rentals or short-term rentals based on their classification, use or occupancy.”²⁷ However, the law does provide that a city or town may adopt ordinances for the following qualifiers:

1. Protection of the public's health and safety, including rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control, and designation of an emergency point of contact, if the city or town demonstrates that the rule or regulation is for the primary purpose of protecting the public's health and safety.

²⁷ Ariz. Rev. Stat. § 9-500.39 (January 1, 2017).

2. Adopting and enforcing residential use and zoning ordinances, including ordinances related to noise, protection of welfare, property maintenance and other nuisance issues...
3. Limiting or prohibiting the use of a vacation rental or short-term rental for the purposes of housing sex offenders, operating or maintaining a structured sober living home, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing, and other adult-oriented businesses.²⁸

To date, both Phoenix and Tucson, Arizona regulate short-term rentals through existing zoning, building code, business licensing, and tax ordinances.²⁹

Virginia

In the 2017 legislative session Virginia passed Senate Bill 1578, a law granting municipalities the ability to establish, by ordinance, a mandatory short-term rental registry. Municipalities may also charge a “reasonable fee” for registration that relates to the costs of “establishing and maintaining the registry.”³⁰ Virginia’s law caps the penalty a municipality may charge a short-term rental owner who fails to register at \$500.³¹ The new Virginia law also states that “nothing herein shall be construed to prohibit, limit, or otherwise supersede existing local authority to regulate the short-term rental of property through general land use and zoning authority” or existing laws addressing areas like contracts or condominiums.³²

In Virginia, Arlington County already had existing ordinances applying to short-term rentals through zoning, building codes, business registration, and taxes.³³ Additionally, Fairfax County is currently considering developing new zoning regulations in part based on Senate Bill 1578. They are seeking feedback from the public at this time before embarking on a formal process.³⁴

Municipalities

New England: Cambridge, Massachusetts

Two municipalities within New England regulating short-term rental properties are Cambridge and Somerville, MA. In Cambridge, short-term rentals are regulated strictly through zoning and city licensing. Some short-term rentals fall into the regulated category of Lodging Houses:

"Lodging House" shall mean a house where lodgings are let to four or more persons not within second degree of kindred to the person conducting it, and shall include fraternity houses and dormitories of educational institutions, but shall not include dormitories of charitable or philanthropic institutions or convalescent or nursing homes licensed under section seventy-one of chapter one hundred and eleven or

²⁸ Id.

²⁹ See Zoning Ordinances of the City of Phoenix, adopted June 21, 2017; City of Phoenix, Planning & Development, available at: <https://www.phoenix.gov/pdd>; City of Phoenix Code, ch. 14; Tucson Unified Development Code, ch. 23B; Tucson City Code, ch. 6; City of Tucson, Business License and Tax Information, available at: <https://www.tucsonaz.gov/finance/business-license-and-tax-information>.

³⁰ Code of Virginia § 15.2-983 (A).

³¹ Code of Virginia § 15.2-983 (C).

³² Code of Virginia § 15.2-983 (D).

³³ See Zoning Ordinance, Arlington County, Virginia, adopted June 18, 2016; 2012 Virginia State Building Code; Arlington County Code § 64-4 (2011); Arlington County Code, Ch. 40.

³⁴ Fairfax County, Virginia, Department of Planning and Zoning, Short-Term Property Rentals in Fairfax County, available at: <http://www.fairfaxcounty.gov/dpz/short-term-rentals.htm>

rest homes so licensed, or group residences licensed or regulated by agencies of the commonwealth.³⁵

Lodging Houses pay an annual registration fee of \$24 for the first four rooms and \$24 for each additional room thereafter.³⁶ There is also an initial hearing and advertisement fee of \$175.³⁷ Before a Lodging House owner can submit a completed application, he or she must have zoning approval from the city's Inspectional Services Department.³⁸ No sanitation inspection is required of Lodging Houses. Public health sanitation inspections are only required of food establishments including restaurants, schools, bakeries, daycare facilities, food trucks, package stores, retail stores, special events, and farmer's markets.³⁹

Ski Town: Aspen, Colorado

The town of Aspen is similar to some of Vermont's larger ski-resort towns with a population of 6,871.⁴⁰ Short-term vacation rentals are allowed within Aspen but must obtain a Vacation Rental Permit and individual rooms within a residential dwelling unit may not be rented on their own.⁴¹ There are no limitations on rentals equal to or less than thirty consecutive days within lodging, commercial, mixed use, and residential zoning districts.⁴² Aspen also requires a local owner representative within the Roaring Fork Valley and this representative's contract information must be on file with the Community Development Department.⁴³ The town recommends but does not require that owners provide the local representative's information to any guests during their stay.

Beyond permitting, Aspen also has a town municipal code with requirements relevant to both residential and non-residential buildings.⁴⁴ Aspen has also struggled with maintaining affordable housing for employees in the service industry. Certain restrictions may apply to properties which have been designated as affordable housing for persons currently employed in Pitkin County.⁴⁵ Finally, beyond the permit required to rent a property as a short-term rental, owners must also apply for and hold a business license through the city's Business Navigator.⁴⁶

³⁵ Massachusetts General Law c. 140, §§ 22 - 32

³⁶ City of Cambridge, Other Licenses. (2017) available at:

<http://www.cambridgema.gov/~media/Files/licensecommission/Fees/Miscellaneous-License-Fee-Schedule.pdf>

³⁷ City of Cambridge, Apply for a Hotel, Innholder or Lodging House License, (2017) available at:

<http://www.cambridgema.gov/iwantto/applyforahotellodgingorinnholderlicense>

³⁸ Id.

³⁹ City of Cambridge Inspectional Services Department, Inspectional Services, Food and Sanitary. (2017) available at:

<http://www.cambridgema.gov/inspection/foodandsanitarypermits>

⁴⁰ 2016 United State Census Population Estimate, available at:

<https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>

⁴¹ City of Aspen Municipal Code §26.575.220 (B).

⁴² Id. (C).

⁴³ Id. (E).

⁴⁴ Title 8 of the Aspen Municipal Code.

⁴⁵ Aspen Pitkin County Housing Authority, Housing Guidelines, available at: <http://www.apcha.org/sitepages/pid4.php>

⁴⁶ City of Aspen Colorado, Business Navigator, available at: <http://www.aspenpitkin.com/Business-Navigator/Start-a-New-Business/Business-License-Application-Landing-Page/>.

Urban Center with Enforcement: Denver, Colorado

Larger metropolitan areas like the City of Denver, whose population is similar to the total population of the state of Vermont,⁴⁷ has struggled more with issues of housing availability. In January 2017, they began a business licensing process for short-term rentals and began enforcing both the licensing requirement and the requirement that the rental also be the owner’s primary residence.⁴⁸ They charge \$25 for the lodger’s tax ID number and an additional \$25 annually for the business license and the license number must be displayed on any short-term rental listing.⁴⁹ Denver chose to outsource a portion of their compliance process to a company called Host Compliance, which engages in digital data mining to match short-term rental listings with

municipal land records.⁵⁰ The cities contract with Host Compliance was \$80,000 for the first year and only covered the address identification of the short-term rental units, although the company does offer more comprehensive packages that send compliance communication, integrate with tax compliance and collection, and offer 24/7 telephone support.⁵¹ Denver began their first round of enforcement with 3,400 unique short-term rental listings and took enforcement action against an initial 1,200 listings, either for failure to obtain a license or for not being the owner’s primary residence. Eventually the number of listed short-term rentals went back up to 2,700 units within the city.⁵² The city created a comprehensive online licensing system solely for this program and has one city employee managing it.⁵³

Denver has cooperated with the nearby City of Boulder to see what, if any, resources could be shared as Boulder contemplates a similar system. The program coordinator noted how expensive it has been to set up a licensing program for their city and expressed that they do not do any site visits or inspections of properties.⁵⁴ She also expressed that their model, particularly the requirement that short-term rentals be the owner’s primary residence, would not work elsewhere in their state and that each town is best suited to determine its own way of addressing short-term rentals.⁵⁵

V. Alternate Definitions of “Short-term Rental”

Other Examples

States

Arkansas defines short-term rental as “a contract to lease property for a term of less than thirty (30) days to a single consumer.”⁵⁶

⁴⁷ United States Census Bureau, Quick Facts, Denver city, Colorado, population estimates, July 1, 2016, available at: <https://www.census.gov/quickfacts/fact/table/denvercitycolorado/PST045216>.

⁴⁸ Denver Business Licensing Center, Stay Legit Denver, available at: <http://www.denvergov.org/content/denvergov/en/denver-business-licensing-center/business-licenses/short-term-rentals.html>.

⁴⁹ Id.; Interview with Whitney Hixon, Inspections & STR Program Coordinator, Excise and Licenses, City of Denver, April 4, 2017.

⁵⁰ Interview with Whitney Hixon; Host Compliance, available at: <http://hostcompliance.com>.

⁵¹ Id.

⁵² Interview with Whitney Hixon.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Ark. Admin. Code 006.05.212-GR-20

Michigan defines short-term rental as “a single-family dwelling with not more than 3 bedrooms offered as a residential rental facility for a rental period of less than 30 days.”⁵⁷

Virginia defines short-term rental as “the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy.”⁵⁸

Municipalities

Boulder, Colorado defines short-term rental as “any dwelling, dwelling unit, rooming unit, room or portion of any dwelling unit, rooming unit, room rented or leased for valuable consideration for periods of time less than thirty days, but excludes commercial hotels, motels, or bed and breakfasts. A short-term rental is a use that is accessory to such dwelling, dwelling unit, rooming unit, or room.”⁵⁹

Chicago, Illinois defines short-term residential rental as “a dwelling unit located within the city that is rented as, or held out as being used as, a shared housing unit, bed-and-breakfast establishment or vacation rental.”⁶⁰

Denver, Colorado defines short-term rental as “a primary residence used for lodging accommodations to transients for a period of less than 30 consecutive days.”⁶¹

Las Vegas, Nevada defines short-term residential rental as “[t]he commercial use, or the making available for commercial use, of a residential dwelling unit for dwelling, lodging or sleeping purposes, wherein any individual guest rents or occupies the unit for a period of less than 31 consecutive calendar days.”⁶²

Mill Valley, California defines short-term rental as “the rental of all or a portion of a dwelling unit for less than 30 days consecutive tenancy.”⁶³

Portland, Oregon defines short-term rental as “[a] structure that contains one or more individual sleeping rooms, and where tenancy of all rooms may be arranged for periods of less than one month. The short-term housing facility may be arranged for periods of less than one month. The short-term housing facility may or may not have food preparation facilities, and shower or bath facilities may or may not be shared. The facility is managed by a public or non-profit agency to provide short term housing, with or without a fee. Examples include transitional housing, and emergency shelter where individual rooms are provided. Where individual rooms are not provided, the facility may be a mass shelter.”⁶⁴

Vermont’s Definition

In Act 76 (2017), the term “short-term rental” was defined as “a furnished home, condominium, or other dwelling rented to the transient, traveling, or vacationing public for a period of fewer than 30 consecutive days and for more than 14 days per calendar year.”⁶⁵ Part of the rationale for this definition was to try and harmonize it with other existing laws. The state’s Meals and Rooms Tax applies to units that are rented for more than 14 days in a calendar year.⁶⁶ Because the tax exemption exists for very

⁵⁷ Mich. Admin. Code R. 281.51

⁵⁸ Code of Virginia § 15.2-983.

⁵⁹ Boulder Municipal Code 10-1-1- Definitions

⁶⁰ Municipal Code of Chicago 4-13-100

⁶¹ Revised Municipal Code of the City and County of Denver, Article III of Chapter 33

⁶² Las Vegas Municipal Code, Chapter 19.04, Table 2, Ord. 5977

⁶³ Mill Valley Ord. 1278 §4, July 18, 2016

⁶⁴ Portland Zoning Code 33.910.030 Definitions

⁶⁵ 18 V.S.A. § 4301 (14).

⁶⁶ 32 V.S.A. ch. 225; Reg. § 1.9202(3)-2

occasional rentals, it was included in this definition for short-term rentals. Conversely, once a stay has extended beyond 30 consecutive days, the Meals and Rooms Tax no longer applies because the guest is classified as a “permanent resident.”⁶⁷ One change that could be made to a definition could be to include the term “residential” in the term the same way Las Vegas and Chicago have done.

Recommendations from the Committee

Municipal Approach

While the committee did not come to a consensus on all issues, there was strong support for an approach similar to Virginia. The committee identified a few key areas for recommendations: fire safety, local licensing & registration, zoning, and presence of in-state agent.

While the Department of Public Safety, Division of Fire Safety is well established and the appropriate department to handle complaints and inspections, they lack the capacity to routinely inspect short-term rentals. Some members of the committee expressed an interest in having local municipalities be given authority to conduct fire safety inspections but the Department of Public Safety, Division of Fire Safety indicated it would be difficult and costly to make sure local inspectors had the appropriate training and were qualified.

Another approach municipalities could take is through establishing a licensing and registration ordinance for short-term rentals. In cities where there is already a code enforcement office for long-term rental housing, this might prove easier to create than in towns where long-term rental housing inspections are conducted on a complaint basis by the Local Health Officer. Based on Denver’s experience, identifying non-compliant short-term rental owners is a challenging and expensive task.⁶⁸ The primary goal would be for towns to create their own self-sustaining registries that could be funded by licensing fees.

One of the most common approaches taken in the regulation of short-term rentals is through local zoning laws. Most towns already have the existing framework in place and could potentially add in a separate category for short-term rentals.⁶⁹ This would allow towns to limit their locations to specific zoning districts or require change of use permits prior to renting. In towns where there have been issues of noise complaints stemming from short-term rentals, this approach might be the most efficient.

Finally, the committee had significant concerns about short-term rentals that are owned by individuals who do not reside in Vermont full-time. The lack of any local contact makes it difficult for guests or municipal and state personnel to reach someone in the event of an emergency. The committee recommended legislation, similar to the ordinance in Aspen, that would universally require short-term rental properties to maintain an in-state, or perhaps geographically proximate, agent. It should be noted however, that this is not currently required of long-term rental housing owners. It could also be required that the contact information for this agent be displayed within the rental unit, along with any other emergency phone numbers.

The committee universally favored legislation in line with what Virginia passed last session. In Vermont, similar legislation may not be necessary though, as municipalities already have the legal

⁶⁷ 32 V.S.A. § 9202 (7); Reg. § 1.9202(7)-1(A).

⁶⁸ Denver paid \$80,000 just to identify 3,400 short-term rental units. Interview with Whitney Hixon.

⁶⁹ See Appendix A: Letter from Vermont League of Cities and Towns.

authority to pass ordinances to regulate this industry.⁷⁰ In fact, several towns already are. The Town of Morrisville allows short-term rentals with three or less bedrooms by right with no restrictions.⁷¹ Anything over three bedrooms must comply with the town’s zoning requirements for “Lodging Facilities.”⁷² The Town of Woodstock first passed a short-term rental ordinance in 2003 in response to noise nuisance complaints from neighbors. It prohibited more than two separate short-term rental stays a year (except during foliage season), required that all parking be on site, and required the owner to display relevant regulations pertaining to “parking, garbage, noise, parties, etc.”⁷³ Owners must also obtain a permit, except during foliage season (September 15 – October 21).⁷⁴ In July 2017, the town amended its existing ordinance exempting short-term rentals located in Residential Five Acre and Forestry Districts.⁷⁵ They also increased the total number of times a unit may be rented in a calendar year to ten times with two-night minimum stays, excluding foliage season.⁷⁶ It also set occupancy limits of two persons per bedroom and six person maximum per household.⁷⁷

There are still some questions related to the charging of fees and the establishment of short-term rental registries depending on a town’s particular charter and organizations like the Vermont League of Cities and Towns would could provide language suggestions to amend 24 V.S.A. § 2291 to ensure all towns were able to access this authority.

Fire Safety Existing Inspection Authority and Planned Outreach

Authority and Resource Capacity

The Division’s rules do not delineate between seasonal rentals, short-term rentals, or long-term rentals. If a home owner rents his/her house, the house becomes a public building and there are minimum safety standards the owner is responsible for. Logically, the Division is well established and positioned statutorily to regulate such a program, but, we cannot take on thousands of new inspections. The Division of Fire Safety does not have the resources or the capacity to implement an inspection program for internet-based lodging facilities or short-term seasonal rental housing.

The Commissioner of Public Safety has the authority under 20 V.S.A. § 2736 (Municipal Enforcement) to review and establish municipal inspection agreements. The municipality may establish procedures to enforce rules and standards adopted under these rules. The Commissioner of Public Safety reviews the qualifications and inspection procedures and may accept or deny a request. If accepted, the qualified person(s) must be certified as a fire inspector and attend all Division sponsored trainings. The municipality must adopt the same standards and codes we do, all data must be entered on our data base, and the agreement must be reviewed periodically.

Local Jurisdiction

Not surprisingly, many traditional lodging establishments state a desire for the internet-based lodging industry placed on a level playing field in terms of safety requirements. Local jurisdictions may be better positioned to identify seasonal rentals through registration or zoning permits, or both. Identifying

⁷⁰ Id.

⁷¹ Morrystown Zoning and Subdivision Bylaws, Article IX. Definitions, § 910.

⁷² Id.

⁷³ Town of Woodstock Ordinances § 524 (2003).

⁷⁴ Id.

⁷⁵ Town of Woodstock Ordinances § 525 (2017).

⁷⁶ Id.

⁷⁷ Id.

rental properties is the first step, but creating an inspection program is another. Historically, most municipal governments are reluctant to enter into an inspection agreement for a number of reasons, including but not limited to:

- No funding
- No legal department
- Liability issues
- No administrative support
- No capacity to manage a program
- Inability to find qualified people

Next Steps

Conservatively, there are currently an estimated 10,000+ rentals, but the fact is, we simply do not have an accurate number. Rentals can be advertised on-line, in the paper, on social media, by word of mouth, with signs on the side of the road and surely other ways. On average, an inspector conducts 300-400 building inspections a year thus a range of 33-44 inspectors would be required to complete the inspections. These numbers represent a basic characterization but, as you can see this type of initiative is not possible.

The Division of Fire Safety is committed to protecting Vermonters and those who visit our state. The following items will be completed in short order to assist in making rental homes safer:

- Develop a self-inspection checklist which we can distributed to all stakeholder groups
- Provide safety information on our web page specific to short term rentals
- Sponsor safety workshops to owners, real-estate agents, contractors, and attorneys
- Public Service Announcements

Public Health Education

From a public health protection perspective, the Department of does not see health sanitation inspections as necessary or appropriate at this time, particularly given the significant resources that would be needed, something in the order of 10-15 more inspectors. This is consistent with the approach taken by other states and municipalities, none of which have mandated sanitation inspections in short-term rentals. As the Department highlighted in the Act 157 legislative report, it is important to ensure that the consumer is informed that short-term rentals who do not fall under the licensing and inspection jurisdiction of the Food and Lodging Program and should provide posted notice in some form to guests alerting them to the fact that the unit has not had a health inspection. Along with the consumer, the short-term rentals owners should be aware of health and safety issues and the Department plants to assist The Division of Fire Safety with educational materials.

Tourism Partnerships

The tourism industry continues to utilize technology and internet-based platforms to provide travelers with simplified options to book rooms, book airline tickets, rent cars or create travel itineraries. The Vermont Department of Tourism and Marketing is committed to working with the Vermont Department of Taxes, the Vermont Department of Public Safety, the Vermont Department of Health and Vermont tourism business stakeholders to find the most logical and fair solutions to new challenges that will inevitably face this industry. The Department of Tourism also recommends collaboration with commercial insurance carriers in the state to conduct training and outreach to the short-term rental community.

With the creation of a non-confidential agreement, the Vermont Department of Tourism and Marketing is satisfied that Airbnb hosts are now paying rooms tax for room nights booked through their platform. The Department feels that the implementation of regulation for short term rental arrangements in Vermont does run the risk of adversely impacting Vermont's tourism industry, however the safety of Vermont visitors is of the utmost importance. While the Department has not received any feedback from the traveling public concerning safety issues with existing short-term rentals, both Vermont home owners and Vermont guests are open to liability if a safety issue were to happen. Implementing a registration system for short term rental hosts would provide an opportunity to educate hosts with safety requirements, and provide a means of tracking existing short term rental units.

Appendix A



Sept. 1, 2017

Lillian Colasurdo, MELP, JD
Public Health Advisor
Department of Health
108 Cherry St. PO Box 70
Burlington VT 05402-0070

Dear Lillian:

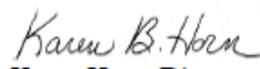
I am writing on behalf of the 246 member cities and towns of the Vermont League of Cities and Towns regarding short term rentals. While a number of issues are raised by the growth of units offered for short term rental on web based platforms, we also realize that Vermont and municipalities need to accommodate such business models.

You will find short term rentals in virtually every town in Vermont listed on Airbnb, VRBO, HometoGo or other websites. The question of how to address those enterprises is not going to go away soon. Several towns in Vermont regulate short term rentals through their zoning bylaws. Many others do not. Only a few municipalities have an adopted building code and therefore would be able to regulate them with that provision. Please be aware that 57 cities and towns as well as 46 incorporated villages have governance charters that provide authority beyond the general authority accorded municipalities in the general statutes.

With regard to the general statutes, some of the questions that have been raised relate to local regulation of the length of time that a unit may be rented on an annual basis; the effect on the character of a neighborhood when numerous units are used primarily as short term rentals; a municipality's authority to establish a registry of short term rental units, charge fees for registering or establishing penalties for failure to register. It is pretty clear however, that a Vermont municipality may not assess a different property tax rate or surcharge to short term rentals as it seems the Virginia statute allows.

We look forward to meeting with you on September 13 and continuing this discussion.

Sincerely,


Karen Horn, Director Public Policy & Advocacy
Vermont League of Cities and Towns

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Appendix A

2017 Short-term Rental Working Group Members

Name	Organization	Position
Lillian Colasurdo	Department of Health	Chair / Public Health Policy Advisor
Michael Desrochers	Department of Public Safety / Division of Fire Safety	Director of Fire Safety
George Belansek	Smugglers' Notch Resort	VP Village Guest Experience
Rhonda Berns	VT Chamber of Commerce	VP of Tourism
Steve Cook	Department of Tourism	Deputy Commissioner
Karen Horn	Vermont League of Cities and Towns	Director of Public Policy and Advocacy
Candace Morgan	Department of Tax	Director, Policy, Outreach, and Legislative Affairs
Tim Piper	Vermont Inn and Bed and Breakfast Association	President
Deborah Schwartz	Town of Killington	Town Manager & Tax Collector
Heather Snyder	Stowe Red Barn Realty	Rental Manager / Marketing Manager
Ashten Stringer	Lake Champlain Chamber of Commerce	Government Affairs Specialist