

Staff Report

Report To: Corporate Services Committee
Report From: Briana Bloomfield, City Clerk
Meeting Date: September 14, 2023
Report Code: CR-23-070
Subject: Short-Term Rentals (STRs) – Draft By-law and Short Form Wording

Recommendations:

THAT in consideration of Staff Report CR-23-070 respecting the draft Short-Term Rental Licensing By-law and Short Form Wording, the Corporate Services Committee recommends that City Council direct staff to:

1. Bring forward the Short-Term Rental Licensing By-law for approval, as attached to the report;
2. Bring forward a by-law to amend Committee of Adjustment By-law No. 2022-074 to include a Short-Term Rental Appeal Committee as part of the terms of reference;
3. Include a Short-Term Rental Appeal Committee for the Committee of Adjustment terms of reference as part of the 2024 Board and Committee By-law;
4. Bring forward a by-law to amend the Business Licensing By-law to:
 - a. Include reference to the Short-Term Rental Licensing By-law in scope;
 - b. Remove references to bed and breakfast establishments;
 - c. Remove Schedule 'C,' bed and breakfast regulations; and
 - d. Undertake housekeeping amendments required to keep the by-law current;

5. Apply to the Ministry of the Attorney General for approval of the set fines for the Short-Term Rental Licensing By-law as outlined in Attachment 3 of the report;
6. Provide notice of an amendment to the Fees and Charges By-law for the addition of the Short-Term Rental application, renewal, appeal, and replacement licence fees as outlined in the report; and
7. Bring forward a by-law to amend the Fees and Charges By-law to add the Short-Term Rental application, renewal, appeal, and replacement licence fees.

Highlights:

- The draft STR By-law is attached to the report and has been reviewed by a solicitor.
- Licensing of STRs will begin March 1, 2024.
- The application fee will be \$500 per year.

Strategic Plan Alignment:

This report supports the delivery of Core Service.

Climate and Environmental Implications:

There are no anticipated climate or environmental impacts.

Previous Report/Authority:

[Report CS-22-027](#) - Municipal Accommodation Tax – Preliminary Report

[Report CR-23-045](#) – Short Term Rentals (STRs)

[Report CR-23-065](#) - Short Term Rentals – Feedback and Next Steps

Closed Report CR-23-066 – Short Term Rentals – Legal Opinion

Background:

At the July 13, 2023, Corporate Services Committee meeting, Staff Report CR-23-065 respecting Short-Term Rentals (STRs) – Feedback and Next Steps was presented. The following recommendation was approved by Committee and subsequently Council:

"THAT in consideration of Staff Report CR-23-065 respecting Short-Term Rentals (STRs) feedback and next steps, the Corporate Services Committee recommends that City Council direct staff to:

- 1. Implement a STR licensing program as follows:**
 - a. Using the staff recommended approach as outlined in the report, save, and except:**
 - i. the occupancy limit changing from a maximum of 10 people to a maximum of 8 people; and**
 - ii. the inclusion of a maximum night allowance in the September staff report; and**
 - b. Using option 1, respecting resources; and**
- 2. Continue with the next steps, phase II, as outlined in the report."**

Analysis:

The purpose of this report is to present Committee with the draft licensing by-law, proposed set fines, application fee, and other required housekeeping changes. Staff have also attached a legal memo that can be shared in the open session relating to short-term rental licensing.

Draft Short-Term Rental Licensing By-law

The draft Short-Term Rental Licensing By-law (the "STR By-law") is attached to the report for review. The STR By-law includes all the provisions approved at the July Corporate Services Committee meeting, with the addition of a rental cap, being a 180-day maximum night allowance, and an appeal process for licenses that have been refused, revoked, or suspended.

Rental Cap

In the research undertaken by staff, the majority of municipalities that utilize a rental cap are larger municipalities (Brampton, Mississauga, Oshawa, and Toronto), and the majority have a 180-day maximum for the rental of the entire dwelling unit. This ensures that the operator rents their entire dwelling unit for less than half of the calendar year. In the draft by-law

attached, the 180-day maximum applies to all rentals, not only those that use an entire dwelling unit.

As noted in the previous STR report, the provisions in the by-law, including the rental cap, can be amended by Committee. While considering this, it should be noted that the Municipal Accommodation Tax is collected on rentals. The final rental cap needs to balance nuisance concerns with financial considerations for both the operator and the City.

The rental cap is enforced through the by-law by requiring that operators maintain a rental log, which must be produced if requested by the Licencing Manager or an enforcement officer. The log may also be required to be provided as part of a renewal application to ensure compliance is maintained.

Appeal Process

The solicitor who reviewed the draft STR By-law advised the City to include an appeal process where a licence has been refused, revoked, or suspended as a matter of procedural fairness. Staff have included this as part of the draft by-law and recommend that the quasi-judicial Committee of Adjustment act as the Appeals Committee relating to short-term rental licence appeals. If approved, the terms of reference for the Committee of Adjustment will be updated in the Committee of Adjustment By-law, and the 2024 Board and Committee By-law will include a STR Licencing Appeals Committee.

Bed and Breakfast Establishments

Bed and breakfast establishments are subject to the requirements of the STR By-law as they are a type of short-term rental. However, a bed and breakfast establishment operates as a primary business where the operator is present; as such, certain exemptions are noted in the STR By-law. The exemptions are as follows:

- The rental cap will not apply to bed and breakfast establishments as the operators are present when the room(s) are rented, and this is often their sole income.
- The group rental provision will not apply to bed and breakfasts as they are typically booked per room and not on a group basis.
- The maximum number of people will not apply to bed and breakfasts. The Zoning By-law places restrictions on the number of vehicles

permitted at a bed and breakfast, which is how their maximums are determined.

Currently, there are provisions in the Business Licensing By-law relating to bed and breakfast establishments. With the creation of the STR By-law, bed and breakfast establishments no longer need to be part of the Business Licensing By-law and housekeeping amendments are required. Staff recommend the following updates to the Business Licensing By-law:

- Include reference to the STR By-law in scope;
- Remove references to bed and breakfast establishments;
- Remove schedule 'C,' bed and breakfast regulations; and
- Undertake housekeeping amendments required to keep the by-law current.

Principal Residence Requirement

Staff have included the principal residence definition and requirement in the STR By-law. The definition is as follows:

"Principal Residence" means a dwelling unit owned or rented by an individual person, either alone or jointly with others, where the individual person is ordinarily resident and which is shown as the primary residence on the individual's income tax filing or other government records.

The inclusion of the principal residence requirement will limit the number of dwelling units being removed from the rental market, which was a key theme from the STR feedback. It will also ensure that the operator has a tie to the community. This provision does not require that the operator be present at the time of rental. Rather, the rental cap is the provision that ensures a dwelling unit is only rented a certain number of days per calendar year.

Staff have considered whether to include the principal residence requirement in the licencing by-law or the zoning by-law and recommend the former. Including the principal residence requirement in the licencing by-law ensures that this provision will apply to all STRs when the STR By-law comes into effect; it also provides a quicker enforcement method. Should the principal residence requirement be included in the Zoning By-law, all STRs that are operating up until the licensing by-law comes into effect will be considered legal non-conforming and will not be subject to the principal residence requirement.

Complimentary Zoning Provisions

Planning staff undertook a review of the City's Zoning By-law and determined that a housekeeping update to the Zoning By-law is required to facilitate the STR By-law, including the addition of a short-term rental definition, an amendment to the bed and breakfast definition, and changes to the general provision section. A staff report is being presented to the Community Services Committee on September 20, 2023, respecting the proposed housekeeping update to the Zoning By-law in support of the STR By-law.

Fines for Non-Compliance

Staff are recommending the use of set fines for non-compliance. Wherever possible, infractions that can be applied to both the tenant and owner will be applied to both. It is particularly important that the operator be held accountable as they ultimately own, operate, and manage the STR.

Attachment No. 3 outlines the proposed infractions and associated set fines. The maximum set fine that is permitted is \$1,000. The set fines in the attachment do not include the administrative costs that are added onto the fines (victim surcharge added by Provincial Offences Court.).

The proposed set fines aligns with similar offences in other regulatory by-laws. In addition, the fines need to be high enough so that STR operators don't consider a fine as the cost of doing business.

Should Council approve the proposed set fines, staff will apply to the Ministry of the Attorney General for final approval. It is worth noting that tickets can be issued each day that there is a contravention of the STR By-law, and this would be communicated to the owner as part of the application process.

Fees and Charges By-law

Staff are proposing that the Fees and Charges By-law be amended to include an initial application fee and an annual renewal fee of \$500.00 each. This fee has been set based on the number of proposed licences the City hopes to receive and the cost of the part-time contracted licensing coordinator. The intent is that this will be cost-neutral for the taxpayer, and it will be reviewed annually as part of the Fees and Charges By-law update.

Staff are also proposing the addition of a replacement licence fee. Should a licence get lost or damaged, the operator can request a replacement licence

with the same renewal date at a cost of \$25.00. This will cover the cost of the licence and the staff time to re-produce it.

As noted earlier in the report, an appeal process is required for refused, revoked, or suspended licences. Staff are recommending that a \$500 appeal fee be added to the Fees and Charges By-law to accommodate the work involved in processing an appeal.

Part Time Contracted STR Licensing Coordinator

Committee previously approved the hiring of a part-time contracted licensing coordinator. In consultation with the Building Division, there has been the creation of a Building Inspector/STR Coordinator position for a two-year contract. This will result in the reduction of a 0.5 building position. The creation of this position will establish efficiencies for by-law enforcement and building as this individual will be able to do inspections on behalf of both of these divisions. The Building Inspector/STR Coordinator will track their time so that a full report can come back to Committee on the STR role and the impacts on the licensing fee. The intention is that there will be no cost to the taxpayer for the creation of the STR Coordinator role.

Next Steps

Outlined below are the next steps in the STR implementation process. This is the same chart as was presented in the July report with the removal of the completed tasks (creation of the webpage and report to Corporate Services on the draft by-law).

Task	Purpose	Timeline
STR By-law provided to Council for approval	By-law to come into effect March 1, 2024	October 23
Media Advisory and other social media platforms	Notice that new STR By-law comes into effect March 1, 2024	October 27
Set Fines and Short Form Wording Application	Apply to Ministry of the Attorney General	October 27

Task	Purpose	Timeline
Provide notice of amendment to Fees and Charges By-law	Add STR fees to Fees and Charges By-law	October 30
Fees and Charges By-law provided to Council for approval	Add STR fees to Fees and Charges By-law	November 20
Hire Licensing Coordinator	Create job description, post, review applications, hire	Q4 2023
Implementation of Licensing System	Licensing Coordinator to implement licensing system, e.g., online application process, procedures, licence, inspection bookings, visitor code of conduct	Q4 2023 to Q1 2024
Reports to Corporate Services	To update the Fireworks, Noise, and Public Nuisance By-laws	Q1 2024
Committee of Adjustment and Board and Committee By-laws provided to Council for approval	To establish the Committee of Adjustment as the STR appeal committee	Q1 2024
Business Licensing By-law provided to Council for approval	Update Business Licensing By-law to reflect changes due to STR By-law	Q1 2024
Media Advisory and other social media platforms	Notify STRs of Licensing By-law coming into effect	Q1 2024

Task	Purpose	Timeline
Send letter to STRs	Licensing Coordinator to notify STRs of licensing requirements	Q1 2024
Review of Licensing Program	Report to Corporate Services Committee to review the first year of the licensing program	Q2 2025

Financial Implications:

The implementation of the STR licensing program is proposed to be cost-neutral to the taxpayer. The program will be reviewed, and adjustments will be made as necessary to ensure that there are no costs to the taxpayer. The municipal accommodation tax will be collected on all rentals.

Staff are in the process of implementing a new permitting software called Cloudpermit. STR licences will be done through this software, and the STR portion of this software will cost approximately \$450 annually.

Communication Strategy:

Communication has been outlined in the next steps chart.

Consultation:

City Manager, Director of Community Services, Manager of Legislative Services, Chief Building Official, Manager of Corporate Services, and By-law Enforcement.

The STR By-law was reviewed by external legal counsel Meaghan Barrett, from Aird & Berlis, who has been assisting with this project. Jill Sampson from The Alliance Lawyers reviewed the Municipal Accommodation Tax By-law and has confirmed its compatibility with the STR By-law.

Attachments:

1. Legal Opinion from Aird & Berlis
2. Draft Short-Term Rental Licensing By-law
3. Proposed Set Fines

Recommended by:

Briana Bloomfield, City Clerk

Kate Allan, Director of Corporate Services

Submission approved by:

Tim Simmonds, City Manager

For more information on this report, please contact Briana Bloomfield, City Clerk at bbloomfield@owensound.ca or 519-376-4440 ext. 1247.