




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Licensing and By-law Services Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	January 17, 2023
SUBJECT/REPORT NO:	Licensing Short-Term Rental (STR) Accommodations (PED17203(c)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Ben Spychaj (905) 546-2424 Ext. 7706
SUBMITTED BY:	Monica Ciriello Director, Licensing and By-law Services Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Report PED17203(c), Licensing Short-Term Rental (STR) Accommodations, to license and regulate Short-Term Rentals in Hamilton, be approved;
- (b) That the By-law to amend the Licensing By-law 07-170 with respect to Short-Term Rental (STR) Accommodations outlined in Appendix "A" to Report PED17203(c), which has been prepared in a form satisfactory to the City Solicitor, be approved subject to approval of items (i), (ii), (iii), (iv) and (v) below:
 - (i) That the City of Hamilton User Fees and Charges By-law 19-160 be amended to reflect the new Short-Term Rental Licensing Fee Schedule attached as Appendix "B" to Report PED17203(c);
 - (ii) That the request for 2.25 Full Time Equivalents (FTEs), with no net levy impact in the Licensing & By-law Services Division to support Licensing Short-Term Rentals Accommodations, be approved;
 - (iii) That an additional vehicle, including vehicle maintenance costs, at an estimated cost of \$42,000 be approved for Licensing and By-law Services for enforcing the Short-Term Rental Licensing program;
 - (iv) That subject to approval of (ii) and (iii) implementation costs be funded through an internal loan plus interest over a two-year term from the Investment Stabilization Reserve (112300) to be repaid once revenues are collected.

- (v) That the Director of Licensing and By-law Services be authorized to sign any agreements between the City of Hamilton and Short-Term Rental Broker as required pursuant to the Licensing By-law 07-170 in a form satisfactory to the City Solicitor;
- (c) That Council endorse the implementation plan as detailed in Report PED17203(c) to develop, administer and enforce the licensing of Short-Term Rentals units;
- (d) That, subject to the approval of Recommendation (b), Licensing and By-law Services be directed to work with Legal Services to obtain approval for set fines with the Ministry of the Attorney General, and create administrative penalties to amend By-law 17-225 (Administrative Penalties By-law); and,
- (e) That Item 22P respecting Licensing Short-Term Rental (STR) Accommodations be identified as complete and removed from the Planning Committee's Outstanding Business List.

EXECUTIVE SUMMARY

Council directed staff to report back to the Planning Committee on legislation adopted by the City of Toronto for STR accommodations, with the goal of adopting a similar regulatory scheme in Hamilton.

On July 8, 2022, City Council approved item 11 of Planning Committee Report 22-011 presenting the results of the on-line public survey, public consultation and Staff's preliminary findings for a recommended approach for licensing and regulating Short-Term Rentals. Report PED17203(c), Licensing Short-Term Rentals (STR), describes and details a proposed amending By-law to be received and brought back to a future Planning Committee meeting.

This report presents the draft amending By-law with alternatives for consideration as a result of discussion at the Planning Committee meeting on July 5, 2022.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The total estimated cost of administering an STR Licensing program is \$286,400 annually. Costs include 2.25 FTEs (\$244,400 annually), and a one-time purchase of a vehicle including maintenance costs (\$42,000) with no net levy impact based on the recommended license fee structure attached as Appendix "B" to Report PED17203(c); The proposed

application and license fees for both the STR operator and the STR broker are developed based on the cost of administering and enforcing the regulations with the intent of being full cost recovery.

It is expected that the timing of the licensing revenues will lag behind the implementation of the program. Therefore, at the time that Council considers adoption of the STR amendments to the Licensing By-law, Staff recommend that the first year of implementation costs be funded through an internal loan plus interest over a two-year term from the Investment Stabilization Reserve (112300) to be repaid once revenues are collected.

Staffing: Implementation of ongoing work on the STR Licensing regime would require an additional 2.25 Full-time Equivalents (FTEs) in the Licensing and By-law Services Division of:

- One part-time (.25 FTE) Licensing Administrator to issue and administer the licences
- One full-time (1.0 FTE) Licensing Officer
- One full-time (1.0 FTE) Project/Program Manager to coordinate the program and track measurables

Legal: Legal Services will be required to complete work to prepare and execute agreements with STR Brokers governing the use, retention and disclosure of Operator and guest information.

HISTORICAL BACKGROUND

On July 14, 2017, Council approved Item (g)(ii) of Planning Committee Report 17-012 directing staff to report back to Committee on the recent legislation adopted by the City of Toronto related to the operation of AirBNB Lodgings with the goal of adopting local legislation related to the same in Hamilton.

On November 22, 2017, Council approved Item 3 of Planning Committee Report 17-019 to receive Information Report PED17203 that outlined the regulations by the City of Toronto, and the active projects and impacts of STR use across Canada.

On November 14, 2017, the Planning Committee received staff Report PED17203 informing Committee members of the key aspects of the staff research and jurisdictional scan in the evolution of this new market. Report PED17203 also presented to Planning Committee the current framework with respect to STRs within the City's Zoning By-laws and outlined the general directions that may comprise a regulatory scheme for the City of Hamilton, with the staff undertaking to engage in public consultations and obtain feedback for the licensing of STR.

On July 13, 2018, Council approved Item 2 of Planning Committee Report 18-011 to receive Information Report PED17203(a) that outlined a Public Engagement Strategy to obtain public feedback for a regulatory framework similar to the Toronto scheme that would allow for a STR within the Principal Residence Units of owners or renters.

On July 5, 2022 Staff Report PED17203(b) Short-Term Rentals, Licensing Short-Term Rentals (STR) was presented for discussion to the Planning Committee. This included the results of the on-line public survey, public consultation and staff preliminary findings for a proposed approach and amendments to the Business Licensing By-law 07-170 (Licensing By-law) to regulate STR uses in the City to be received and brought back to a future Planning Committee meeting.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The *Municipal Act, 2001* authorizes municipalities to pass by-laws respecting the licensing of businesses, and the well-being of the municipality and its inhabitants.

Staff's review considered the City's Licensing, Zoning, Property Standards, Nuisance By-laws, and the following applicable Provincial Legislation:

- *Municipal Act, 2001, S.O. 2001, c.25*
- *Planning Act, R.S.O. 1990, c.P.13*
- *Ontario Building Code Act, 1992, S.O. 1992, c.23*
- *Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4*
- *Residential Tenancies Act, 2006, S.O. 2006, c.17*
- *Hotel Registration of Guests Act, R.S.O. 1990, c.H.17*
- *Innkeepers Act, R.S.O.1990, c.I.7*
- *Occupiers' Liability Act, R.S.O. 1990, c. O.2*
- *Condominium Act, 1998, S.O. 1998, c. 19*

Public notice has been provided in accordance with the City Public Notice Policy By-law 07-351.

RELEVANT CONSULTATION

Legal Services, Fire, Building, Zoning, Planning, Tourism and Culture, Healthy and Safe Communities, Housing, IT, Finance and Communications Services, were consulted in the preparation of the draft By-law attached as Appendix "A" to Report PED17203(c).

Following the July 5th Planning Committee meeting, there was further consultation with Staff from Legal Services, Planning, Housing, Tourism and Culture to examine several alternatives in preparation of this report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Overall, municipalities are adopting or moving to the ‘house-sharing’ principle, limiting operators to a single STR unit within their principal residence, and disallowing commercial or multi-listing operators. The objective for this requirement is to improve neighbourhood fit by ensuring personal accountability for the dwelling unit, and to protect the long-term rental housing market by prohibiting STR as investment properties and limiting the STR use of secondary dwelling units.

The trend observed in other cities shows a very dynamic market, with high turnover in terms of both STR units and their operators. The consensus among policy-makers and academics is that STR is complex and difficult to regulate.

On July 5, 2022, Staff presented to the Planning Committee a proposed By-law to regulate and license STR based upon the principal residence concept as described and detailed in Staff Report PED17203(b) Short-Term Rentals, Licensing Short-Term Rentals (STR) comprising a thorough analysis including the following:

- Zoning implications
- Short-Term Rental market in Hamilton
- Stakeholder and public consultation findings
- On-line public survey results
- Building and fire safety requirements
- Proposed licensing regulations for STR in Hamilton
 - allowing residents with a licence to rent their own principal residence;
 - for short periods (no more than 28 nights consecutively) to the travelling public with a cap of 120 nights annually;
 - principal residence requirements:
 - a place where a person lives and designates as their principal residence on government records;
 - a person can only have one principal residence;
 - a corporation cannot have a principal residence;
 - commercial operators would not be permitted to operate a STR;
- Good neighbour requirements
 - Operators are required to provide a guest information package that contains detailed information to contact the Operator, emergency and non-emergency services; and instruction to help minimize negative community experiences associated with STR in residential and mixed-use areas including excessive noise, increased garbage, parking issues, safety concerns, and negative behaviours around unknown guests.
- Advertising and booking requirements
- STR Broker licence (On-line Platforms) Fee of \$5,000

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- STR Operator application fee of \$70.80 plus licence fee depending on dwelling unit
 - Fees (details provided in Schedule of Fees attached as Appendix “B” to Report PED17203(c))

Staff propose regulations to establish a new type of business licence for STR operators and STR brokers (on-line platforms) in the Licensing By-law requiring licensees to pay an annual fee and meet conditions established in the Licensing By-law and any corresponding agreement (attached as Appendix “A” to Report PED17203(c)).

The proposed approach to amend the Licensing By-law to regulate STR operators, and STR brokers (on-line platforms) can be summarized as:

- allowing residents with a licence to rent their own principal residence;
- for short periods (no more than 28 nights consecutively) to the travelling public with a cap of 120 nights annually;
- principal residence requirements:
 - a place where a person lives and designates as their principal residence on government records;
 - a person can only have one principal residence;
 - a corporation cannot have a principal residence;
- commercial operators would not be permitted to operate a STR.

Implementation Plan

The implementation plan will begin with a public awareness campaign that will explain the regulations and impose a deadline to make an application. Staff will work with Communications to establish a presence on the City of Hamilton website to provide information and guidelines for applications. It is anticipated that the months following will focus on the registration and agreements of on-line platform(s), followed by the review, processing and approval of STR Operator applications.

The enforcement approach will be reactive based on public complaint, as well as proactive on periodic reviews of listings of STR platforms and cross-referencing with the City list of licensed STR Operators. Officers will follow our progressive enforcement approach of first seeking voluntary compliance, escalating to a fine and/or license suspension for serious or repeat offenders.

Timing of Implementation:

As with the introduction of any new By-law amendment, there is an initial period of preparation, education, and consultation regarding operational regulations, internally administrative organization, and system modifications. During the implementation period, existing STRs not in immediate compliance with By-law regulations will be given an opportunity to voluntarily comply with the new licensing requirements. The

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Implementation Plan and timelines are attached as Appendix “C” to Report PED17203(c).

Phase One (Intake):

Following enactment of the By-law, Staff will:

- Recruit/train the required staff;
- Update operating databases for,
 - License applications/records;
 - Tracking and reporting of enforcement statistics and
 - Financial data.
- Begin a public awareness campaign to explain rules to applicants and encourage compliance;
- Prepare/publish information and guidelines for applications on the City of Hamilton website;
- Accept and review applications;
- Work with STR Operators to process their applications for registrations;
- Inspect STRs as required;
- Issue licenses to eligible applicants;
- Identify illicit STRs and inform property owners about what they need to do to become compliant; and,
- Draft/execute agreements with STR Brokers.

During the intake period, existing STRs not in immediate compliance with By-law regulations will be given an opportunity to voluntarily comply with the new licensing requirements. The deadline for all STR operators (hosts) to register and receive a STR license is May 31, 2023.

Phase Two (Enforcement):

Enforcement will commence June 1, 2023 following the initial education and intake phase.

Reactive Enforcement (public complaint):

The primary enforcement focus will be responding to public complaint as a result of any nuisances, parties or by-law infractions, following the progressive enforcement approach. Complaints are investigated based on officer availability, urgency, and risk.

Proactive:

Continuous surveillance of on-line platforms and audits of licensed operators will ensure STRs are inspected for compliance with the City’s By-laws. Where STR operators

knowingly provide false or misleading information in their application there will be a zero-tolerance approach to revoke licenses, subject to appeal before the Business Licensing Tribunal.

Administrative Penalties System (APS)

In addition to obtaining approval for set fines under the Provincial Offences Act with the Ministry of the Attorney General, Staff propose amending the APS By-law to include those contraventions in the Licensing By-law amendment prior to the enforcement phase. The use of APS has produced positive impacts to administer and enforce minor contraventions. Issuing APS tickets does not include the lengthy formal process found in the Provincial Offences Court. It has proven to be an important step in the Progressive Enforcement Policy enforcing the Licensing By-law as a fair, effective and efficient enforcement tool to compel voluntary compliance.

Monitoring and Performance Measurement:

Staff will monitor STR activity to assess the overall impacts and the effectiveness of the regulatory regime. Key metrics considered for assessment include:

- The number and location of STRs;
- Compliance rates for municipal by-laws, Building/Fire Code, Public Health and safety concerns;
- Impacts on housing availability and affordability, where possible;
- The resulting revenue and staffing implications; and
- Budget and service impacts.

ALTERNATIVES FOR CONSIDERATION

Alternative One:

Council may consider broader permissions for property owners to include secondary dwelling units and laneway suites that are located on the same property as the owner's principal residence, which may assist homeowners to subsidize the costs associated with their principal residence. As highlighted at the July 5th Planning Committee Meeting, nuisances are generally diminished when STRs are restricted to principal residences; this logic could be extended to include secondary units and laneway suites, on the same property as one's principal residence.

A principal residence unit is defined as a sub-component of a principal property or parcel of land. In the draft By-law attached as Appendix "A" to Report PED17203(c), an Operator shall be deemed to have only one principal residence and would be eligible for one STR operator licence for the dwelling unit they occupy and live in.

Alternative One is not a significant departure from the recommended approach. While Alternative One may result in some units that would otherwise be available as rental units being shifted into the short-term rental market, the impact on the rental market is likely to be modest. And the desired goal of having the principal residence owner on the same property as the STR would still be maintained. The Bylaw that would implement Alternative One is attached as Appendix "D" to Report PED17203(c).

For clarity, the Operator would only be issued one STR license. This means that the Operator would only be permitted to use one dwelling unit as a STR on their own property, the principle residence, laneway home or secondary suite.

Alternative Two

Council may also consider permitting a homeowner to have an STR on property that is not their principle residence property and permitting a homeowner to have more than one STR. With this alternative, Council may choose to cap the number of STR units per licence holder(s). Staff do not recommend this alternative as it exacerbates the issues of housing supply, affordability, and potential nuisances.

It is anticipated that this alternative would increase the number of units used as STR within the City, doing so erodes the principal residence concept and would pose increased challenges to monitor, review, identify, enforce and regulate or control STR use. It is preferred this approach not be pursued at this time but re-examined in the future when Staff are able to determine the overall impacts on housing availability and affordability.

As an alternative, property owners may opt for a Bed and Breakfast license under the Licensing By-law 07-170. Low density 'C' and 'D' districts under Hamilton Zoning By-law 6593 and various Downtown Zones under Hamilton Zoning By-law 05-200 permit a Bed and Breakfast establishment for up to three (3) lodgers within any single or two-family dwelling. Applicants for a Bed and Breakfast license are required to obtain a zoning verification.

Alternative Three

Staff examined the idea of providing exception for special annual single events and concluded a separate class of license is required to maintain control of STR use. Preliminary review of several traditional special events in the City did not provide reason to support this approach currently. However, revised amendments to introduce a new licensing category for single event STR licences could be examined in the future should Staff encounter a specific need.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED17203(c) – Draft By-law to amend the Licensing By-law 07-170

Appendix “B” to Report PED17203(c) – Schedule of Fees

Appendix “C” to Report PED17203(c) – Implementation Plan

Appendix “D” to Report PED17203(c) – Draft By-Law to amend the Licensing By-law 07-170 (alternative one)