

Report



Report No. DS2022-093	To: Council	Prepared By: Andria Leigh, Director, Development Services
Meeting Date: June 22, 2022	Subject: Short Term Rental Update & Licensing By-law	Motion # _____
Roll #: N/A		R.M.S. File #: D14 55794

Recommendation(s):	Requires Action <input checked="" type="checkbox"/>	For Information Only <input type="checkbox"/>
---------------------------	--	--

It is recommended that:

1. That Report No. DS2022-093 regarding the Short Term Rentals and Draft Licensing Program/By-law be received and adopted.
2. That staff enter into an Agreement with Granicus for the provision of 2022 monitoring and compliance assistance within the 2022 approved Development Services budget allocation.
3. That staff report back on the final implementation program including communications and staffing allocations.
4. That a revised Licensing By-law 2022-067 be brought forward for Council's consideration prior to the end of 2022.

Background:

As a result of concerns raised by the community since 2017 in relation to dedicated Short Term Rental Accommodations including conflict with existing residential use, noise, safety, parking, environmental, zoning, taxation, and enforcement etc., the Township of Oro-Medonte underwent a review of short term rental accommodations and conducted extensive research into the matter in other jurisdictions, in addition to obtaining legal input.

In June 2020, the Township held a Public Meeting to obtain public input on a proposed amendment to the Township's Comprehensive Zoning By-law 97-95, to provide clarity with respect to the existing prohibition on commercial accommodations in dwelling units.

At the July 15, 2020 Council meeting By-law 2020-073 was adopted by Council; however this by-law was appealed to the Ontario Land Tribunal (OLT) (file PL200395) and a hearing was held from March 22, 2022 to March 29, 2022. At the conclusion of the hearing, the Chair issued an Oral Decision allowing the appeal and By-law 2020-073 was repealed and is no longer in effect. Interim Control By-law 2018-071 is also no longer in effect. No written decision has been issued to date. Chair Vincent provided an oral decision given the upcoming summer rental season and noted that there was an opportunity for the municipality to implement a complementary set of regulatory factors through a licensing by-law to assist with enforcement. Further she urged the municipality to revisit the notion of licensing as being an additional regulatory control the municipality may find of great assistance to their enforcement efforts.

Following the OLT's oral decision, a Special Meeting of Council was held on April 1, 2022 with the following resolution/direction received:

Special Council Meeting Minutes – Friday, April 1, 2022.

- c) Robin Dunn, CAO and Andria Leigh, Deputy CAO/Director, Development Services re: Solicitor-client privilege; Litigation affecting the municipality (Short Term Rentals (Airbnb)).

The following staff were present: Robin Dunn, Chief Administrative Officer; Andria Leigh, Deputy CAO/Director, Development Services; Donna Hewitt, Director, Corporate Services; Tamara Obee, Director, Human Resources; Derek Witlib, Manager, Planning Services; Curtis Shelswell, Manager, Chief Municipal Law Enforcement/Chief Municipal Law Enforcement Officer; Janette Teeter, Supervisor, Clerk's Services/Deputy Clerk; Chris Williams, and Andrea Skinner, Aird & Berlis LLP.

Motion No. SC220401-5

Moved by Greenlaw, Seconded by Veitch

Be it resolved

1. That the confidential verbal information presented by Robin Dunn, CAO, Andria Leigh, Deputy CAO/Director, Development Services and Chris Williams, Aird & Berlis LLP re: Solicitor-client privilege; Litigation affecting the municipality (Short Term Rentals (STR), Ontario Land Tribunal (OLT)) be received.
2. That Township legal counsel and the CAO be authorized to take whatever steps are necessary to protect the Township's review/appeal options regarding the OLT oral decision rendered on March 29, 2022 pending release of the OLT's written decision.
3. That the Township staff bring forward a report outlining the licensing process, necessary resources and draft licensing by-law for Council's review and consideration.

Unanimously Carried.

Motion No. SC220401-6

Moved by DeSousa, Seconded by Scott

Be it resolved that, further to Item 4c), Township legal counsel and staff proceed to commence an Application under the Municipal Act.

Carried.

Based on Council's direction at the April 1, 2022 meeting a number of follow up actions have been undertaken to date.

The Township of Oro-Medonte's legal counsel has filed a Notice of Motion to Appeal the decision (pending receipt and review of the written OLT decision). As noted above to date, the written OLT decision has not been received by the Township or other Parties.

Township Staff have recently received further concerns associated with Short Term Rentals and their uses. Municipal Law Staff are currently working on the required application materials to commence the applications under the Municipal Act on a number of properties.

And finally, the purpose of this report is to discuss further the licensing process, the necessary resources, and draft licensing by-law for Council's review and consideration in accordance with Council's April 1, 2022 direction.

Analysis:

There is no requirement that the Township implement a licensing system for STR's. Although licensing for STR's has been employed in other municipalities, and the number of municipalities implementing such a system continues to increase.

In February, 2019 Council provided direction to staff that the appropriate regulatory by-law be brought forward for Council's consideration. On May 22, 2019 a Draft Licensing By-law was presented to Council for public review and input; however at that time no further direction was provided by Council to consider implementation of a licensing system.

A licensing system/approach for Short Term Rentals would provide additional controls and permit the Township to address matters such as occupancy, insurance, parking, noise and garbage, amongst other matters. Licensing by-laws can have significant flexibility with regard to their content and the range of matters that are included based on a determination by Council. However the Township needs to consider the additional costs of implementing and enforcing a licensing system and whether such costs are worth the expense and effort to establish.

The draft licensing by-law addresses a range of matters including: occupancy limits, maximum rentals, insurance, rental code of conduct, penalties, suspension, and revoking of license, Ontario Building Code and Ontario Fire Code. The licensing by-law also addresses a range of classes based on the intensity of rental usage, similar to the Township of Lake of Bays, with the associated fee structure for each class.

The Township Zoning By-law defines a dwelling unit as "Means one or more rooms in a building, designed as, or intended as, or capable of being used or occupied as a single independent housekeeping unit and containing living, sleeping, sanitary and food preparation facilities or facilities for the installation of kitchen equipment and has an

independent entrance. For the purposes of this By-law, a dwelling unit does not include any commercial accommodation or a recreational trailer.”

The zoning by-law does not define commercial accommodation; however through the OLT process there appeared to be consensus amongst the parties that dedicated STR’s would be considered a commercial use and not be considered within the dwelling unit definition. As such, dedicated STR’s would not satisfy the requirements of the draft licensing by-law requirements to obtain a license; and in the event they advertised or operated they would be charged/fined as a contravention to the licensing by-law (if adopted by Council) in addition to the contravention under the Zoning By-law. There was however no agreement amongst the parties regarding the position on the non-dedicated STR’s.

Based on additional review since the 2019 draft by-law, the following additional municipalities have implemented Licensing for Short Term Rentals: Township of Lake of Bays, Town of Huntsville, Township of Ramara, and Town of Georgina. The Township of Tiny is also currently reviewing a draft licensing by-law for implementation in 2023.

The Municipal Act, 2001, S.O. 2001, c.25 provides that a local municipality may license, regulate and govern any business, wholly or partly carried on within the municipality, even if the business is being carried on from a location outside the municipality. Section 10 and Part IV of the Municipal Act provide the municipality the authority to implement business licensing in the interest of health and safety, well-being of persons, consumer protection and nuisance control and Part XII enable a municipality to pass By-laws for imposing fees and charges for services or activities provided or done by or on behalf of the municipality.

A licensing by-law would be passed by the municipality if it deems it desirable that such licensing, regulation and governing takes place with regard to STR’s. A licensing by-law would allow for fees and charges, administrative penalties and fees, inspections to determine compliance and even make orders requiring people who contravene the by-law to discontinue the contravening activity. Additionally Section 447 provides authority for the closure of premises that have contravened the by-law.

A STR licensing program regulates the entire STR operation, with the focus on the identification, licensing, inspection, monitoring, and enforcement.

Identification/Licensing:

- Formal submission of an application that is only approved once all requirements including payments of fees are received

Inspection/Monitoring/Enforcement:

- Once formal application is submitted, inspection of STR will take place by municipal staff to ensure all license required and applicable law is being addressed prior to license approval

- Monitoring of approved licenses by Township staff on reported concerns or STR violations
- Enforcement to ensure accountability to address license concerns in a consistent manner
- License can be suspended based on actions of license owner or action of renter

The licensing by-law provides the ability for the Township to collect the following information needed for enforcement and safety purposes and would address performance standards for safe operation. Information to be collected would include:

- Applicant/Agent Information (full name, address, telephone number and email address)
- Corporate Information (where applicable)
- Proof of liability insurance
- Floor Plan
- Parking Plan
- Local Contact
- Compliance with all applicable law, including Building Code and Fire Code
- Occupancy Limit as it relates to the sewage system
- Renter's Code of Conduct

In considering a licensing program there are a number of positive and negative factors to be considered prior to implementation:

Pros:

- Establishes a system for staff to better address negligent hosts and deter unwanted behaviours
- Generate revenues to manage the administration costs of STR's
- Establish a focused enforcement regime with ticketing/fines and revoking of licenses
- Provide the mechanism to establish capacity limits on: occupancy, sewage, parking
- Opportunity to publically list licensed STR's
- Creation of good neighbours code of conduct for additional controls
- Potential for implementation of Municipal Accommodation Tax (MAT) as additional revenue stream

Cons:

- Need for additional staff resources for the administration and inspection or requires third party assistance for administration, monitoring and enforcement
- Enforcement activity still required through fines/prosecution
- May require by-law updates and revisions after initial establishment of program

The draft licensing by-law (Schedule 1) contains the operational regulations that are designed to address public concerns to the greatest extent possible. Concerns regarding noise, safety of residents and renters, large number of persons on property,

and disruption to daily life, would be addressed through inspection and enforcement. If the STR accommodates disruptive renters or is run by a negligent host, the licensing by-law would enable staff to revoke their license. Should the STR continue to operate, the licensing by-law would allow by-law enforcement to quickly and effectively bring legal action against the owner and seek a court order closure of the operation.

Additionally, the by-law will require proper inspection of each property that is applying for a license by the Township, such as the Fire and Building Departments; which assists in ensuring the safety of renters. The applicant will also be required to submit a detailed site/floor plan to be reviewed by relevant Township staff during the license application review process. This would include a required parking layout and delineated guest rooms. A provision in the licensing by-law is that only one license will be issued per property and only one license will be issued to each host. The draft licensing by-law also establishes a 3 strike system, which would allow the license to be revoked if 3 complaints requiring a municipal law enforcement officer to attend were received within a 6 month time period.

The licensing by-law proposes a classification system, Class A, B, and C of STR's based on the size/intensity of the establishment and the degree of administration and enforcement that may be required by the municipality. Prior to finalization of the by-law these classes are intended to be further reviewed and scoped.

In regulating and licensing STR's within the Township, the resources required to license, monitor, and enforce needs to be considered on a full-time basis. This work therefore needs to be conducted by staff or outsourced to a third party compliance company (such as Host Compliance).

Through research and discussions with other municipalities that have implemented a licensing program, the required staffing levels have varied based on the number of licenses anticipated to be issued by the municipalities. Some of the municipalities that have or will be implementing a licensing program have considered the ability to utilize a third party for address identification, monitoring or a 24/7 hotline for complaints. Recent examples include the Township of Huntsville that expects to issue 200-250 licenses per year and have retained one full time administration/coordinator staff and will be hiring a property standards/building inspector to assist with the required inspections. Additionally Huntsville have retained the outside services of Granicus for STR address identification purposes. The Town of Huntsville does also have a Municipal Accommodation Tax (MAT) in effect. In 2020-2021 the Township utilized the services of Granicus for Address identification purposes at a cost of \$ 10,807.40. In order to assist prior to any implementation of a licensing program in 2023, Granicus could provide external support to the Township for address identification, a 24/7 dedicated hotline for residents, or monitoring; and staff are seeking Council's direction to obtain an updated proposal and for which specific services the proposal would be required, if any. As noted further in this report, these costs would be offset by the approved staffing allocation in 2022.

The approved 2022 Development Services budget included two staff complement one in the Building/Septic Division and one in the Municipal Law Division. One of the many functions these staff were to assist with was the licensing and inspection of STR's in addition to septic/septic maintenance program, by-law and property standards. Given the licensing by-law and the more limited number of licenses anticipated, staff do not anticipate more than one full time complement to be fully dedicated to the program; although this is difficult to fully assess until the licensing program scope is fully articulated and the quantum of licenses and inspections is understood. For the implementation of a program in 2023, the staffing would be required to be on board to assist in program implementation in 2022 and would utilize only a portion of the approved staffing dollars in 2022, given the time of year.

Staff are seeking direction from Council and further suggestions regarding the draft Licensing By-law with the intent for staff to further report back. Given the anticipated number of license applications and the implementation required (communication and website updates, application process, internal department coordination for review and inspection of potential applications), it is recommended that any licensing program in the Township commence on January 1, 2023. This timeline would still require any licensing programs to be approved in 2022 in order for staff to commence and communicate the program, receive/review/inspect any applications prior to the end of 2022. It is recommended that staff report back to Council on the implementation plan that will outline how the approved 2022 staffing allocations will be utilized, the anticipated revenue and expenses, the communications plan and the final licensing fees. Further staff require confirmation from Council on the continued use of Granicus for address identification or other services (27/7 hotline, compliance monitoring) to assist for the balance of 2022. Given the full staffing dollars allocated for 2022 will not be fully utilized for 2022, these could assist in offsetting some of the additional costs for the Granicus services being provided in 2022.

Financial / Legal Implications / Risk Management:
--

Licensing by-law and program will generate additional costs to the Township for both the administration and inspection under the licensing program. Licensing fees should be set on a cost recovery basis. At the outset of the program implementation, the fee structure administration and inspection should be monitored and revised to ensure this cost recovery approach is achieved. Based on the experience of other municipalities that have implemented licensing programs, a minimum of one additional full time staff complement has been required for the administration/operation of the program, with staff from other departments assisting with the annual inspection and licensing requirements where required (Building, Fire, By-law, and Planning). This staff complement is already within the 2022 approved Development Service allocations.

Establishing classes of STR's and differential licensing fees based on the different classes is recommended. This would permit the establishment of a reasonable fee for the cottage owner renting occasionally and infrequently and higher fees for those owners who rent regularly throughout the year. Staff are recommending a licensing fee

of \$250 for the limited or infrequent rental and a license fee of \$ 1000 for a more frequent rental.

Policies/Legislation:

- Municipal Act
- Planning Act
- Township of Oro-Medonte Zoning By-law No. 97-95, as amended.

Corporate Strategic Goals:

The Township's following Strategic Goals are relevant to this application:

Balanced Growth:

- Ensure land use planning policies manage change and promote economic activity that does not negatively impact the Township's natural heritage features and attributes.
- Encourage the protection of the Township's natural heritage features while ensuring that uses that rely on these features such as home-based businesses, recreation, and tourism are promoted and strengthened.

Consultations:

Aird and Berlis
CAO

Attachments:

Schedule 1: Draft Licensing By-law 2022-067

Conclusion:

This report provides additional background on the licensing process and potential staffing resources. Further direction is required from Council regarding the draft Licensing By-law and potential implementation program, in addition to direction regarding the provision of services from Granicus to continue through the balance of 2022. Once further Council direction is received staff can work with internal departments to move forward with the implementation/communications program and report back to Council accordingly.

Respectfully submitted:

Andria Leigh, MCIP, RPP
Deputy CAO/Director, Development Services

Approvals:
Robin Dunn, CAO

Date:
June 17, 2022