

STAFF REPORT

THE CORPORATION OF THE TOWN OF COBOURG



Report to:	Mayor and Council Members	Priority:	<input type="checkbox"/> High <input checked="" type="checkbox"/> Low
Submitted by:	Brent Larmer, Municipal Clerk/ Manager of Legislative Services blarmer@cobourg.ca	Meeting Type:	Open Session <input checked="" type="checkbox"/> Closed Session <input type="checkbox"/>
Meeting Date:	October 25, 2020		
Report No.:	Corporate Services-129-21		
Submit comments to Council			

Subject/Title: Short-Term Rental Accommodations Information Report

RECOMMENDATION:

THAT Council receive the Staff Report regarding Short Term Rental Accommodations (STRAs) for information purposes; and

FURTHER THAT Council direct Staff to report back to Municipal Council with the development of a licensing system to regulate Short-Term Rental Accommodations in the Town of Cobourg to be brought to Council for consideration; and

FURTHER THAT the Town's Zoning By-law be amended with provisions for Short Term Rental Accommodations; and

FURTHER THAT Council direct Staff to engage the community and residents with a Short-Term Accommodation Survey to be posted on the Town's Engage Cobourg Website to receive community engagement and feedback on STRAs; and

FURTHER THAT Council direct Staff to schedule a Public Meeting to receive comments from members of the public and those currently operating Short Term Rental Accommodations to receive comments on the proposed regulations and the Draft By-laws.

1. STRATEGIC PLAN

2. PUBLIC ENGAGEMENT

The Town of Cobourg will engage with Town of Cobourg residents through the Town of Cobourg's Engage Cobourg Platform with a survey and general comment section, with the results to be reported back to Council and members of the public and to be attached to the public meeting agenda for consideration.

In addition to the Engage Cobourg Platform, Staff is recommending that once direction is received and the draft By-law is prepared, that Council authorize the scheduling of a public meeting to solicit feedback and comments from members of the public and those who operate an STRA.

3. PURPOSE

Municipal Council has asked to receive an information report regarding licensing and policy solutions for addressing concerns with short-term rental accommodations (STRAs) in the Town of Cobourg.

4. ORIGIN AND LEGISLATION

Municipalities under the authority of the *Municipal Act, 2001* have the following powers when it comes to licensing of business within their jurisdiction:

- Pursuant to Section 9 of the *Municipal Act, 2001*, Part II, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;
- Pursuant to Section 10 of the *Municipal Act, 2001*, a municipality has the authority to implement business licensing in the interest of health and safety, well-being of persons, consumer protection and nuisance control;
- Pursuant to Section 151 of the *Municipal Act, 2001* Council can exercise its authority for the purposes of establishing a system of licensing with respect to Short Term Rental Accommodation businesses;
- Sections 390 to 400 of the *Municipal Act, 2001*, enables a municipality to pass By-laws for imposing fees or charges to permits and services provided;
- Section 434.1 of the *Municipal Act, 2001*, the municipality is empowered to impose a system of administrative penalties to encourage compliance with this by-law

In addition to Municipal Act, authority, municipalities have additional powers under the Planning Act as follows:

- Section 34 of the *Planning Act*, as amended, permits the councils of municipalities to pass zoning by-laws for prohibiting the use of land or the erecting, locating, or using of buildings or structures for or except for such purposes as may be set out in the by-law.

At the June 28, 2021 Municipal Council Meeting, the following recommendation was approved and directed to Staff to be brought forward to Council by November 2021.

THAT Council receive the correspondence from Anne-Marie Jackson for information purposes; and

FURTHER THAT Council refer the matter of AirBnB regulations and enforcement to Planning staff to consider as part of the Comprehensive Zoning By-Law Review process; and

FURTHER THAT Council receive a Staff Report on AirBnB's and the potential of the creation of a licensing By-law for the regulation of Air BnB's in the Town of Cobourg at the November 15 Committee of the Whole Meeting.

5. BACKGROUND

The Town of Cobourg can be viewed as a destination Town that is placed along the shores of Lake Ontario and visitors have been traveling to the Town and the surrounding area to enjoy our waterfront for many years. Short-term rental accommodations (STRA's) are not new to the Town of Cobourg and have been within the municipality for several years, but the amount has been increasing over the years. In the past, residents and property owners would use traditional methods to share dwellings with others on a short-term basis via word of mouth and the newspaper, but now with the convenience of online platforms, such as Trip Advisory, Craigslist, Vacation Rental by Owner (VRBO), and Airbnb has increased the presence of STRA's in Cobourg. In the past, the Town of Cobourg Staff and Council through delegations have received complaints related to short-term rentals, including community safety, parking, noise and litter complaints, property values, and potential enforcement options. It is important that the Town in considering an approach to be undertaken to address STRA's consider mitigating potential conflicts between the community and renters, identifying economic impacts and opportunities of STRA's, including potential financial considerations and Staff resources, and expected outcome of the regulations.

As part of this review and Staff analysis both by the Legislative Services Department looking at licensing regulations, and the Planning Department looking at land uses, Staff from both departments analyzed the regulation of STRA's in other municipalities to consider options discussed in the Staff Report. This Staff report, as a result of direction from Council on proposed regulations of STRAs will explore the potential regulatory approaches with the intent of finding a balance that promotes economic growth, while preserving the character of local communities and protect health and safety.

6. ANALYSIS

The sharing economy is an umbrella term for an economic system in which individuals share assets or services, either free or for a fee, typically using the internet. This can be observed through an example that individuals may be more familiar with, which is the use of UBER which is a ridesharing program where individuals use their personal vehicle to transport individuals to a point of interest. The Province of Ontario defines the sharing economy as “people using online platforms to sell or rent underutilized property, goods or services and rating each other’s trustworthiness through online reputation systems”. The sharing economy is commonly associated with STRA services such as Airbnb, and as mentioned above transportation companies, but also includes a wider range of activities such as bike-sharing programs, co-housing communities and lending platforms. These other shared economy areas are more predominant in larger urban municipalities but are becoming more popular as popularity of platforms are embraced due to the rising costs of traditional systems. The sharing economy has given consumers access to a multitude of resources and services. However, the sharing economy has made it difficult for municipalities to regulate these types of businesses.

A short-term rental accommodation (STRA) is defined as a private residential dwelling that is rented to provide temporary accommodation to a person or persons who usually do not reside in the dwelling. STRAs are different from hotels since they usually occur in buildings used for residential purposes; the use can be regulated through zoning by-laws, business licensing regulations, and nuisance regulations. Municipal staff interpret STRAs as a residential use as they are functioning as a single dwelling unity in the context of the Town’s Zoning By-law. Municipalities across North America are experiencing an influx of STRAs across sharing platforms such as Airbnb, VRBO, Kijiji, and Craigslist to name a few. Some municipalities have implemented policies to regulate the common issues associated with STRAs including impacts on long-term housing, hospitality industry, neighborhoods, and nuisances.

Over the last few years since 2019, the Town of Cobourg has received complaints from residents on the use of dwellings as a short-term rental accommodation, as well as received concerns expressed by residents with the establishment and use of STRAs in the Town of Cobourg. Some of the concerns expressed has been related to the following issues:

- Community Safety (irregular individuals coming and going at various hours)
- Parking issues on streets
- Noise complaints
- Littering
- Potential impact on property values near STRAs;
- Impact on built rental accommodations; and
- COVID-19 related regulations being ignored.

In addition to complaints and concerns provided to Town of Cobourg Staff, Municipal Council also received a delegation from a Cobourg resident on a specific STRA in a local neighbourhood that is having an impact on the daily lives of residents. This delegation was also submitted with a signed petition with thirty (35) residents supporting the delegation and the concerns expressed by the resident. The delegate also provided some information for Council to consider, which included the following that was attached to the Council Agenda:

Delegation Information:

We request that the council consider regulations for short-term rentals, such as those put in place by the City of Oshawa on September 30, 2020. This ensures Short Term Rental Owners (S.T.R) must be licensed and adhere to guidelines which intend to limit and license short term rental properties. We have included these below for your convenience:

- *Enhance the enforcement of the Zoning By-law provision that requires a Short-Term Rental (S.T.R.) to be the principal resident of the S.T.R. Operator;*
- *Introduce a requirement to have a local contact available at all times to respond to issues and who is available to attend to the S.T.R. within a period of no greater than one (1) hour from the time of contact by telephone or email;*
- *Introduce insurance requirements;*
- *Enhance the enforcement of the Zoning By-law provision that restricts S.T.R. operations to less than twenty-eight (28) consecutive days and no more than one hundred and eighty (180) days in a calendar year;*
- *Limit the number of rooms to two (2) with a maximum of two (2) occupants in each when renting by the room;*
- *Enhance the enforcement of the Zoning By-law provision that prohibits any other rental use within a dwelling unit that contains an S.T.R.; and,*
- *Introduce a Visitor's Code that would provide information about relevant City by-laws to S.T.R. renters.*

Short Term Rental Advantages and Disadvantages:

The emergence of the sharing economy has resulted in challenges and opportunities for residents and neighbourhoods. Historically, short-term rental accommodations have been a key element in recreation and tourism related areas, such as Blue Mountains. However, more recently they have affected larger urban centers, like the City of Toronto and also have been growing the Golden Horseshoe areas based on the recent travel restrictions and the closing of borders in which has grown the shared economy and STAs in smaller municipalities as local travel as increased these last few years with the inability to travel across the border during COVID-19 lockdowns. Some benefits of short-term rentals include, but are not limited to the following:

- Allows homeowners to generate extra income, which may make it more affordable to live in their own residence or offset the cost of their vacation property.
- It may also serve as a form of affordable housing; and
- Broadens the supply of tourist accommodations while providing visitors with an affordable choice to explore the Town and support local businesses.

As with any framework there are disadvantages that arise and STRAs are no different. Although STRAs provide benefits to homeowners and visitors, they also introduce other issues related to long-term housing accommodations, accountability, nuisance, and safety. Disadvantages of short-term rentals include the following:

- Displacement of long-term housing availability through what has been termed as ‘Ghost Hotels’, however, this issue is most common in larger cities and prominent tourist communities such as Niagara-on-the-lake for example.
- Displacement of existing traditional accommodations.
- Homeowners can avoid responsibility due to lack of transparency and management associated with online platforms. Individuals may use unregulated STRAs for fraudulent activities, including misappropriating units without authorization from owners or condominium boards.
- The potential effect of ‘party houses’ may disturb residents through noise, litter, or decreasing property values. However indirect concerns regarding STRAs should not delegitimize the potential value of STRAs because nuisances and safety concerns may happen regardless of if a property is rented or not. Although third party objections may pose unintended consequences to renters, staff also emphasize that rentals do not correlate with concerns. Furthermore, limitations on guests and bedrooms can mitigate susceptibility to large gatherings.

Potential Regulatory Options to Address STAs in Cobourg

There currently are not any clear policies or regulations governing residential STRAs in Ontario, thus a municipality may consider a reasonable regulatory framework for the benefit of all stakeholders that balances the existing character of local communities and economic growth. This staff report will address three approaches that can be taken, with an emphasis on the Council directed approach for consideration which is the establishment of a regulatory framework through a licensing By-law. These include a Reactive approach, a Pre-emptive Approach and an Administrative approach when looking at the regulation of short-term rentals.

1. Reactive Approach – Existing Frameworks
2. Pre-emptive Approach – Amend the Town’s Zoning By-law to regulate STRAs
3. Administrative Approach – Licensing STRAs

The above three (3) approaches will be described in more detail below.

Reactive Approach – Existing Frameworks

At present, the Town of Cobourg does not specifically regulate STRAs. However, the Town's by-laws still encompass nuisances and permitted commercial uses on residential properties. When complaints arise, Staff can use existing municipal tools to address some of these concerns, such as involving By-law Enforcement, Building Services or Planning Services. Using existing zoning policies avoids the potential of legal nonconforming standards arising from future zoning changes. However, the existing policies may not encompass the desired scope that a new Zoning By-law and/or Licensing mechanism can entail. It is also very cumbersome, costly and would be challenging to have the Courts stop the use from occurring, only deal with some of the nuisance issues such as noise and parking.

Pre-emptive Approach – Amend the Town's Zoning By-law to regulate STRAs

Pursuant to Section 34 of the Planning Act, the Town has the authority to prohibit the use of land for any purpose other than that identified in a Zoning By-law as passed by Council. Therefore, Council has the authority to pass a Zoning By-law that prohibits the rental of any dwelling or part of a dwelling to any person or persons for a period of time except in accordance with the requirements of the By-law. The Ontario Municipal Board ("OMB") (now known as the Ontario Land Tribunal (OLT)) concluded that STRAs are a commercial entity, that "should not be considered conventional residential uses" and disrupts neighbouring residential character through nuisances related to user turnover. The OMB (now the OLT) agreed with the Town of Blue Mountains and residents voicing concern by stating that low density residential neighbourhoods, especially single detached dwellings, are reserved for permanent dwellings. Amendments to the Zoning By-law may regulate how and where STRAs are operated to ensure compatibility with surrounding uses. However, the implementation of a zoning standard does not address ongoing/existing STRAs and creates legal nonconforming fragmentation between new and existing sites and create an uneven playing field amongst operators of STRAs.. A new zoning standard would also not deal with site inspections, safety, garbage or other compliance issues.that would need to be defined in a licensing By-law.

Administrative Approach – Licensing STRAs

The Town of Cobourg has the authority to license the operation of STRAs, pursuant to Section 151 of the *Municipal Act*. A licensing program allows municipalities to monitor the number of STRAs and regulate their operations. Municipal Councils have supported licensing STRAs in part because licensing provides transparency and control for the municipality to address these common concerns that have been addressed through the report.

The benefits of requiring STRA licences are as follows:

- The Town will know the location of all legal STRAs;
- The Town can require the Owner to follow all applicable health and safety standards; including but not necessarily limited to those set out in the Ontario Building Code Act and Ontario Fire Code;
- If necessary, the Town may be able to suspend, revoke or to refuse to renew the Licence of an operator who has violated the Zoning By-law, who has consistently allowed the dwelling to be a source of a nuisance to others in the community or who no longer qualifies to operate a STRA (e.g. convicted of a crime prior to the renewal of the Licence); and
- The Town may introduce a Code of Conduct to establish accountability on behalf of the owners and renters to help minimize any adverse social or environmental impacts on their neighbours and neighbourhood.

The draw-back of passing a Licensing By-law is that the Town will have to set up, administer and enforce the Licensing By-law. For comparison, only 56 Second Dwelling Units have been registered and 22 that are not complete and require an occupancy permit in the Town of Cobourg since being introduced in 2017 through By-law No.013-2017. As an added challenge for enforcement, the occupancy of STRAs are more transient than Second Dwelling Units. The Town can partially mitigate the required resources through cost recovery.

Licensing Fees must account for the cost of administering and enforcing the Licensing By-law. A Licensing Fee cannot be used as a 'profit centre' for the Town. The Town may be subject to negligence claims if the Town negligently administers its Licensing program. Further, there is the possibility that Owners of STRAs will complain of having to deal with 'red-tape' arising from the licensing requirements and that the Licensing requirement will discourage some interested individuals from operating a STRA. Barriers-to-entry can discourage licensed STRAs, so the Town may caution against front ending too much cost.

It may be in the best interest of the Town to pass a Licensing By-law with the combination of a Zoning By-law to reduce the likelihood of conflicts arising from the operation of STRAs and regulate a safe environment for renters and surrounding residents.

7. FINANCIAL IMPLICATIONS/BUDGET IMPACTS

Administration and enforcement of regulations may increase Staff time as demand grows for STRAs. It should also be noted that the preliminary work to start a licensing By-law would take a considerable amount of focus and commitments to make sure that compliance is attained and provisions enforced and penalties enforced if needed.

Currently the Town of Cobourg Licenses few businesses in the Town of Cobourg and all of these licenses have a routine period for applications, renewals, and inspections which requires a fee to be paid to the Town. The consistent licensing fee is \$500.00 at initial licensing stage and a \$250.00 fee for a renewal. Staff will be reviewing the fees associated with STRAs as this licensing regime would be

different than most currently being licensing and would require more compliance and on-going inspections at times.

In regards to potential costs for administration and enforcement that could be recovered through fees, Staff have provided Attachment “B” to this report and confirmed that there are forty-one (41) current STRAs advertised on various STRA Sites. This could potentially bring forward \$20,400.00 in licensing fees for the first year of implementation, and \$10,200.00 annual for renewals. These calculations are based on current practices with licensing fees, which have not been reviewed an updated in some time.

8. CONCLUSION

THAT Council direct Staff to report back to Municipal Council with proposed recommendations related to the regulation of Short-Term Rental Accommodations to be brought to Council for consideration; and

THAT Council direct Staff to engage the community and residents with a Short-Term Accommodation survey to be posted on the Town’s Engage Cobourg Website to receive community engagement and feedback on STAs as a whole and eth Staff report; and

THAT Council directed Staff to schedule a Public Meeting to receive comments from members of the public and those currently operating Short Term Rental Accommodations to receive comments on the proposed regulations and the Draft By-law.