

STAFF REPORT: BUILDING & BY-LAW DEPARTMENT



REPORT TO: Council
MEETING DATE: October 6, 2008
REPORT NO.: SRB.08.55
SUBJECT: Short Term Accommodation Licencing
PREPARED BY: D. Finbow, Director Bldg & By-law/CBO

A. Recommendations

1. **THAT** Council receive Staff Report SRB.08.55 with respect to Short Term Accommodation Licencing.
2. **THAT** Council direct Staff to finalize the preparation of a Draft Short Term Accommodation Licencing By-law pursuant to Part IV of the *Municipal Act*.
3. **THAT** Council direct Staff to incorporate into the Draft Short Term Accommodation Licencing By-law provision for licencing short term accommodation uses that are protected by virtue of Section 34(9) of the *Planning Act* (short term accommodation uses that were lawfully used for such purpose on the day of the passing of the by-law that would otherwise prohibit same).
4. **THAT** Council direct Staff to proceed with an advertisement respecting a public meeting related to the Draft Short Term Accommodation Licencing By-law with such advertisement to be published in a local publication(s) for two (2) successive weeks prior to the public meeting.
5. **THAT** Council direct Staff to proceed with the preparation of draft amendments to the Property Standards By-law related to the interior of a premise and report back to Council on same with it being noted that such draft amendments will prescribe standards for the maintenance and occupancy of a property and for prohibiting the occupancy or use of such property that does not conform with the standards and to also require the repair of properties that do not conform with the standards.

B. Background

As Council is aware, short term accommodation uses have been problematic for some time. In 2007 public open houses were held by the Town and subsequent to these public open houses Council directed that Staff undertake a review or study in respect of land use planning policies related to short term accommodation uses. On February 4, 2008, Council enacted Interim Control By-law No. 2008-12 to prohibit short term accommodation uses (later amended by By-law No. 2008-67) with such Interim Control By-law slated to expire on January 4, 2009. In addition to the enactment of the Interim Control By-law, Council directed that Town Staff, in conjunction with Aird & Berlis LLP, develop a draft Licencing By-law and report back on same along with information related to the implementation of such Licencing By-law.

In response to the direction received from Council, a review team was struck with representation from Building & By-law, Planning, Engineering & Public Works and Fire Departments. The review team considered the following:

1. Authority for licencing pursuant to the *Municipal Act*;
2. The purpose of such a licencing by-law;
3. Short Term Accommodation/Guest Room/Residential Rental Housing Licencing By-laws from other Ontario jurisdictions including Oshawa, Severn Township and Stratford;
4. The extent to which a licencing should apply;
5. The content/regulations of a possible Short Term Accommodation Licencing By-law;
6. The infrastructure required to implement a licencing regime (Notices, Information, FAQ's, Forms, Tracking Systems, Staffing, Licencing Appeal Process, etc.);
7. Whether a licencing regime, including enforcement, should be operated on a full cost recovery basis or is there merit in reviewing partial funding from taxation;
8. The role of the municipality in ensuring that premises being operated are safe, clean and representative of what the municipality expects re level of accommodation;
9. The number of units that could potentially be eligible for licencing;
10. The costs associated with the administration and enforcement of a Short Term Accommodation Licencing By-law; and,
11. The fees that could be imposed or charges for permits and services with respect to a Licencing By-law.

MUNICIPAL ACT

Part IV of the *Municipal Act* enables a municipality to provide for a system of licences with respect to a business and may:

- (a) Prohibit the carrying on or engaging in the business without a licence;
- (b) Refuse to grant a licence or to revoke or suspend a licence;
- (c) Impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) Impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) Impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence;
- (f) License, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it; and,
- (g) Require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any part of a system of licences established by the municipality.

Part XII of the *Municipal Act* authorizes a municipality to impose fees or charges on persons,

- (a) For services or activities provided or done by or on behalf of it;

- (b) For costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and,
- (c) For the use of its property including property under its control.

In addition, Part XII indicates that the costs included in a fee or charge may include costs incurred by the municipality or local board related to the administration and enforcement and the establishment, acquisition and replacement of capital assets.

SHORT TERM ACCOMMODATION LICENCING BY-LAW

Prior to seriously reviewing and/or developing a licencing by-law, the purpose of such a by-law was discussed. Staff identified, amongst other matters, the following:

- Ensuring that the health and safety of the users of such short term accommodation uses are addressed by way of ensuring that the building meets minimum building and fire code regulations;
- Ensuring that a minimum level of consumer protection is provided by way of ensuring the building meets minimum property standards and that essentials such as plumbing/water, heat, and on-site parking are adequately provided for;
- Ensuring that short term accommodation uses do not create a nuisance (public disturbance, noise, garbage/debris) to the adjoining neighbour or neighbourhood or surrounding lands; and,
- Ensuring that zoning regulations are met.

EXTENT OF LICENCING

In considering where licencing of short term accommodation should be permitted, Town Staff undertook a review of correspondence received by the Town related to Short Term Accommodation; Staff Reports to Council related to the subject; draft zoning by-law amendments; and, the merits of licencing existing short term accommodation uses that would become non-conforming if the draft zoning by-law amendments were enacted.

Correspondence

The Town has received considerable correspondence related to short term accommodation over the years. These communications have ranged from complaints related to the operation of specific properties through to general comments on the draft Official Plan and Zoning By-law amendments. In general, the majority of the communications have been in support of regulating and/or prohibiting short term accommodation uses with a lesser number proposing that the Town not regulate these uses at all.

Correspondence in support of regulating and/or prohibiting short term accommodation uses point to the following issues:

- public disturbance;
- noise;
- parking;
- garbage/debris;

- life safety as it relates to occupancy and use; and,
- security as it relates to the introduction of transients into residential neighbourhoods.

Those in support of the Town not regulating these uses have indicated that the uses provide a benefit to the community and are consistent with the goals/objectives of the Town. They further propose that should regulation be necessary, that perhaps self-regulation is something that should be explored. Lastly, in lieu of a licencing/regulatory regime, they point to the tools that the municipality has and/or can utilize should we wish to including the Noise By-law; Parking By-laws; Littering/Debris By-laws; and, Policing.

Staff Reports to Council

As Council is aware, numerous Staff Reports have been provided to Council over the years related to short term accommodation. As early as the mid 1990's Council considered the matter of short term accommodation uses through their review of a Draft Official Plan for the municipality.

On December 3, 2001, Council considered a Staff Report related to "Short Term Rentals" that identified the issues/concerns associated with short term accommodation uses and adopted the following recommendations:

"THAT Council receive this Staff Report dated December 03, 2001 titled "Short Term Rentals" for information purposes and direct staff to:

1. *Pro-actively enforce the provisions of the Town's Noise and Parking By-laws, in conjunction with the Ontario Provincial Police;*
2. *advise the Ontario Provincial Police that it is this Council's desire that a "zero tolerance" policy be adopted with respect to the enforcement of the Town's Noise and Parking By-laws in these areas due to the historic frequency of noise and parking related complaints received;*
3. *prepare a request to have Short Form Wordings and Set Fines established for the above noted By-laws;*
4. *review the matter of permitted on-street parking in light of the recommendations of the recently adopted Staff Report entitled Craigleith/Camperdown On-Street Parking Study; and,*
5. *review the matter of appropriate property assessment rates in conjunction with the Municipal Property Assessment Corporation."*

Subsequent to Council adopting these recommendations, Council enacted a comprehensive parking by-law and authorized the hiring of a full time by-law enforcement officer. Further, the Town successfully obtained Short Form Wording and a related Set Fine for Noise By-law violations in the amount of \$500.00 and has recently completed a comprehensive parking study that addresses, amongst other things, on-street parking.

More recently, Council has considered numerous Staff Reports as they relate to proposed Official Plan and Zoning By-law amendments and has enacted an Interim Control By-law.

Draft Zoning By-law Amendments

On July 14, 2008, Council endorsed in principle draft zoning by-law amendments so as to provide a foundation for the development of a Draft Licencing By-law (with it being noted that Council's endorsement in no way predetermined its course of action with respect short term accommodation regulation). These draft amendments, if enacted by Council, would list as a permitted use "short term accommodation" within the R5, R6, R7, R8 and RR Zones in By-law No. 83-40, as amended, and the RM1 Zone in By-law No. 10-77, as amended, subject to certain terms and conditions.

It was noted that the proposed definition of short term accommodation within the draft zoning by-law may be interpreted such that commercial resort units, which are permitted within the Village Commercial Zones, can also be defined as short term accommodation.

Section 34(9), Planning Act Uses

In addition to the zones in which the draft zoning by-law amendments would permit short term accommodation uses, there exist a number of properties within the R1, R2 and R3 zones that are currently utilized for short term accommodation purposes that pre-exist the enactment of the Interim Control By-law. The matter of determining whether to recommend extending the permission for licences to these uses was also considered. Section 153 of the *Municipal Act* indicates that:

- (2) "a by-law providing for a system of licences for a business may require as a condition of obtaining, continuing to hold or renewing a licence that the business comply with land use control by-laws or requirements under the *Planning Act* or any other Act"; and,
- (3) Despite subsection (2), a municipality shall not refuse to grant a licence by reason only of the location of the business if the business was being lawfully carried on at that location at the time the by-law requiring the licence came into force so long as it continues to be carried on at that location..

Given the above, Staff concluded that the Town could not preclude these non-conforming uses from a licencing regime.

CONTENTS/REGULATIONS OF A LICENCING BY-LAW

A draft Short Term Accommodation Licencing By-law was prepared by Aird & Berlis LLP in 2007. Town Staff agreed that this draft should be the basis for a final draft by-law to be brought forward to the public at a future public meeting subject to some minor tweaking.

INFRASTRUCTURE REQUIRED

With any new system of regulation, public education is critical. Ensuring that those affected by the regulation understand the requirements of the regulation and the associated process are critical to its success. Furthermore, investing in public education will lead to less time spent on enforcement (or chasing down those that operate short term accommodation uses).

In reviewing other developed licencing regimes, it became apparent that the broad use and availability of Information Sheets, FAQ Sheets, Checklists and "intelligent" Forms assisted dramatically in the implementation and understanding of the process. In addition, a

developed Tracking System/Database and a readily available and transparent Licencing Appeal Process were a necessity.

Town Staff have concluded that to ensure that the rollout of a licencing regime is successful and meaningful, that all resources, including personnel, must be in place a minimum of 8 – 12 weeks in advance of the implementation of a licencing by-law.

FULL COST RECOVERY VERSUS PARTIAL FUNDING FROM TAXATION

As noted previously, Part XII of the *Municipal Act* indicates that the costs included in a fee or charge may include costs incurred by the municipality or local board related to administration and enforcement. It has been Council's policy over the years to find full cost recovery for programs that are not beneficial to taxpayers as a whole and therefore Staff reviewed if there was benefit to taxpayers as a whole related to the licencing of short term accommodation uses.

The considerable input that the Town has received from the public on this matter, along with the multitude of complaints received over the years, is reflective of the general taxpayer seeing little or no benefit of short term accommodation uses to the community as whole. Further, it is Staff's opinion that the general taxpayer would prefer that these uses not exist at all within "typical" single family house form neighbourhoods.

Given Council's general policy as it relates to cost recovery and those matters referenced in the paragraph above, Staff is of the opinion that full cost recovery, i.e. administrative and enforcement costs should be had with respect to the licencing of short term accommodation uses.

PROPERTY STANDARDS

As a condition of holding or continuing to hold a licence, a municipality may require that a premise meet certain minimum standards including building and fire codes and a property standards by-law.

As to the expectations of the public, it is Staff's opinion that if the Town proceeds with a licencing regime related to short term accommodation, it is likely that the consumer will have expectations that the premise meets certain minimum standards (including those identified above). Given that the Town's Property Standards By-law does not address the interior of a premise, Staff recommends that amendments to the Town's Property Standards By-law be implemented.

NUMBER OF POTENTIAL UNITS TO BE /COSTS/FEES

Potential Number of Units

The number of short term accommodation uses to be licenced is indeterminate. By-law Enforcement currently has record of in excess of one hundred units being offered for short term accommodation purposes with Staff recognizing that there is likely more.

Costs

Based on a minimum of one-hundred units coming forward for licencing purposes, it is Staff's opinion that to maintain current service levels within By-law Enforcement, that a minimum of one additional full-time Municipal Law Enforcement Officer ("MLEO") and one-half of a support position would be required. Staff is also of the mind that through efficiencies, knowledge and experience, this staffing compliment would suffice for up to two hundred short term accommodation units if they were to be licenced. The costs associated with this are:

Capital Costs (vehicle, work stations, computer, etc.):	\$40,000.00
Annual Operating Costs - Salary/Benefits (MLEO & 0.5 Support)	\$105,000.00
Annual Operating (Office Supplies, Printing, Adverts, etc.)	\$10,000
Annual Operating Overhead (Payroll, Heat/Hydro, etc.)	\$15,000
Total 1 st Year Costs	\$170,000
Annual Operating Costs + Capital (7 Year Depreciation)	\$136,000

The role of the MLEO would be to conduct inspections of premises for conformity with the Licencing and Property Standards By-laws and, in conjunction with Building Inspections Staff, ensuring compliance with the Ontario Building Code.

With respect to involvement of the Fire Department, Staff note that the scope of a Fire Code inspection/review of a Short Term Accommodation Unit would be limited to ensuring that the premises is properly equipped with operating smoke alarms with same being able to be addressed by the MLEO. As to uses that are discovered that fall outside of the purview of a Short Term Accommodation Unit, same would be referred to the Fire Department with their current fees and charges by-law being utilized to recover any associated costs.

Licencing Fees

Given Council's Policy and Staff's recommendation related to cost recovery, Staff has developed the following Matrix as it relates to potential licencing fees:

NUMBER OF UNITS	ANNUAL COSTS	LICENCING FEE
100	\$136,000	\$1,360.00
150	\$136,000	\$906.00
200	\$136,000	\$680.00

Staff recommends that an annual licencing fee for Short Term Accommodation be initially set at \$1,360.00 per unit with same to be evaluated after the first full year of licencing.

C. The Blue Mountains' Strategic Plan

"Providing a strong, well managed municipal government."

D. Budget Impact

To be determined.

E. Addendums

Draft Licencing By-law

Respectfully submitted by:

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