



Town of Huntsville Staff Report

Meeting Date: April 26, 2023

To: General Committee

Report Number: DEV-2023-56

Confidential: No

Author(s): Christopher Nagy, Chief Building Official

Subject: Short Term Rental Accommodation Program Review

Report Highlights

This report is in response to Council's request for staff to look into restricting the number of licenses, density or restricting future licenses under the governing Municipal Act.

Recommendation

For Information Only

Background

Staff were directed in 2018 to look at the potential for incorporating Short Term Rental Accommodations (STRAs) into the Municipal Accommodation Tax (MAT) program, and options as to how best to address the growing numbers of STRAs within our area, as well as enforcement considerations. Staff reviewed best practices, other municipal initiatives, legal requirements and liability. A number of engagement sessions were also held with the public and hosts. Staff determined that in order to ensure that enforcement was feasible, a licensing program was the most appropriate method to regulate STRAs. As permitted through Section 151 of the Municipal Act, Council passed Bylaw 2020-91, being a by-law to license, regulate and govern Short-Term Rental Accommodations (STRAs). Several amendments and modifications have been adopted by Council in order to address issues identified with enforcement, administration of the program, and concerns raised by residents, including streamlining the by-law and resolving conflicting/confusing provisions. Through these updates and reports, staff have provided confirmation on allowances within the Municipal Act, zoning by-law restrictions, and enforcement tools.

Discussion

Staff requested a review by the Town's solicitor to provide an opinion as to whether or not the number of licenses the Municipality issues can be capped, and also if the Town has the ability to prohibit licenses in certain areas. Based upon the legal review of the sections of the Municipal Act that

enables a Municipality to license and regulate STRAs, it would not appear that the Town can legally limit the number of overall licenses, nor limit the geographic location as to where licenses can be issued. A summary of each section is provided below; the full legal interpretation has been attached for Council's information.

Restriction on location:

As noted above, Section 151 of the Municipal Act enables municipalities to enact by-laws to license businesses. In conjunction with this section, Sections 9, 10, 11 speaks to businesses that can be restricted, however, unless it can be shown that the location of a Short-Term Rental Accommodation within a certain geographical area would cause adverse impacts, the Town is not at liberty to regulate the granting of a license based on the location of the property under the Municipal Act. It has been determined that location restrictions can only be accomplished through restricting which precincts permit a STRA use through the Community Planning Permit By-law (CPP). This practice is currently in effect to a certain degree by not permitting STRA uses within natural resource and conservation zoned areas, for example. Should Council wish to restrict STRA uses in this matter, a consultant should be engaged to determine best practices and appropriate zones to try and limit or regulate density in a specific area. If Council chose to limit, through a CPP By-law amendment, precincts in which STRAs would not be a permitted use, any existing STRA use would then be considered legal non-conforming, and "grandfathered". In essence, the use could then continue in that location indefinitely, so it would not necessarily reduce the number of existing STRAs in any given location.

Restricting the number of STRA licenses

Within the Municipal Act limited types of business licensing can be restricted based on number, such as Taxi and Limousine services. Unfortunately, the governing section of the Municipal Act that considers licensing for businesses such as STRAs is silent in enabling the restriction of licenses. Further, our solicitor has indicated that should the Municipality move forward with restricting the number of licenses, Sections 272 and 273 of the Municipal Act could be used as grounds for the courts to determine that the by-law is acting in "bad faith" in the absence of any statutory authority. This would further be an issue, should the program be limited to create a lottery type situation. Our solicitor feels that this would become extremely problematic and could expose the Town to litigation and liability claims.

Cancellation of Licenses

As a license issued to a business by a Municipality is considered a privilege and not a right, by-laws are required to include restrictions to revoke or restrict the issuance of a license. Section 7 of STRA By-law 2022-91 addresses this, however, as noted above it cannot include restrictions on locations or quality of licenses and must speak to required documents, previous compliance with the by-law, fees, etc. This process has been advised by our solicitor to create a clear and just process as required under the Statutory Powers Procedure Act.

There have been several instances where a municipality has "capped" the number of licenses, but in practice they will never reach the number determined. This can be shown through the Township of Georgina where only 32 licenses were issued in 2022 and they have implemented a maximum of 150 per year. Although it would appear that other municipalities are attempting to limit the number of STRA uses within certain areas (e. g. only 3 per 1km stretch of a shoreline), staff have not been able to receive confirmation as to how this would be accomplished, or under what regulatory framework it is being implemented. It would appear to be a commitment that would not be able to be honored or enforced.

Options

1. Continue as status quo (**recommended**)
2. Staff be directed to seek further legal consultation to limit the number of licenses (not recommended)
3. Staff be directed to cancel the program at the end of the 2023 session (not recommended)

Council Strategic Direction / Relevant Policies / Legislation / Resolutions

EcDev. 1.2 Continue Business Retention and Expansion Program

EcDev. 1.3 Promote Huntsville as a year round business destination

Gov.3.2 Continuously review all bylaws and administrative requirements to ensure they are appropriate and necessary

Legislation:

Regulation 435/17 of the Ontario Municipal Act, 2001 Provincial Policy Statements

Bylaw 2020-91

Resolutions:

GC27-21

DEV-2019-238

[DEV-2019-269](#)

[DEV-2019-269](#) amended Dec 2019

Council adoption of STRA by-law: [2019-122](#)

Attachments

[Nagy STRA 16 June 2022 let](#)

Consultations

John Ewart, Ewart O'Dwyer Solicitors

Respectfully Submitted: Christopher Nagy, Chief Building Official

Manager Approval (if required): _____

Director Approval: Kirstin Maxwell, Director of Development Services

CAO Approval: Denise Corry, Chief Administrative Officer



EWART

O'DWYER

Barristers and Solicitors

June 16, 2022

Town of Huntsville
37 Main Street East
Huntsville ON P1H 1A1

VIA EMAIL: Christopher.Nagy@huntsville.ca

Attention: Christopher Nagy

Dear Mr. Nagy:

**Re: Short-Term Rental Accommodations
Amendment to By-Law No. 2020-91 – Passed October 14, 2020
Our File No.: 1989-046 (General 2022)**

This letter will serve to confirm our discussions of June 8, 2022 with respect to the above-noted matter.

At this time, it is the writer's understanding that the Town is considering amending the By-law to license, regulate and govern short-term rental accommodation uses within the Town of Huntsville.

Upon a review of the discussed amendments, in whole they would appear to be proper particularly in light of the fact that the Town has now had the benefit of having a short-term rental accommodation by-law in place for approximately eighteen (18) months.

However, there are several issues related to the suggested amendments which are of concern to the writer, and are as follows:

RESTRICTION ON LOCATION

Firstly, with respect to restricting the location of short-term rental accommodations, the concern is the authority provided for by the *Municipal Act, 2001* for such limitation.

The broad authority for a municipal corporation to license businesses is provided for by Section 10(2)(11) of the *Act*.

Section 10(2)(11) is further re-enforced by Section 151 of the *Act*, which provides broader authority to a Town to license, regulate or govern real and personal property used for business which is subject to a license.

However, the authority provided for by both Section 10 and Section 151 of the *Act* does not provide for a prohibition of a license based on geographical location.

Furthermore, the imposition of a restriction as to the location of new short-term rentals operating within the Town of Huntsville, could result in allegations of unfairness or discrimination, and therefore subjecting the by-law to potential challenge.

In addition, regard must be had to Section 153(1) of the *Municipal Act, 2001*, which specifically provides that despite Sections 9, 10, 11 and 151 of the *Act*, a Town shall not, except as otherwise provided, refuse to grant a license for business under this *Act* by reasons only of the location of the business.

In short, unless it can be established that the location of short-term rental accommodations within a certain geographical area would cause adverse impacts such as increased traffic or noise, the Town is not at liberty to regulate the granting of a license based only on the location of the proposed accommodation.

ADMINISTRATIVE PENALTIES

With respect to the increase of administrative penalties, such authority is provided for by Section 434.1 of the *Act* which specifically provides for administrative penalties.

It is of note that Section 434(2) identifies the purpose of administrative penalties as being a means of assisting a Town in promoting compliance with its by-laws.

In the case at hand, a progressive increase of municipal administrative penalties based on subsequent offences would serve to meet the identified objective set out in Section 434(2) of the *Act*.

It would, however, be the writer's suggestion that after a third offence the use of municipal administrative penalties would cease and consideration be provided to commencing action through either the Superior Court of Justice or the Ontario Court of Justice for compliance with By-law 2020-91, as amended.

The alternative, of course, is to revoke the license on the basis repeated of non-compliance despite the issuance of administrative penalties.

It is of note that administrative penalties are not meant to be punitive in nature, but rather to compel compliance. It is for this reason that the number of administrative penalties is limited to a specified number following which other means of enforcement will need to be considered by the Town.

RESTRICTING THE NUMBER OF SHORT-TERM RENTAL ACCOMMODATION LICENSE TO BE ISSUED

Section 151 of the *Municipal Act, 2001*, does not specifically provide for a limited number of licenses to be issued to any particular business except in rare specific cases (taxi cabs and limousine services). Accordingly, in the absence of any authority by which the Town could limit a number of short-term rental accommodations to be licensed, there appears to be no statutory authority to do so.

Furthermore, any attempt to restrict the number of short-term rental accommodations could result in a challenge to any such attempt pursuant to Section 272 and 273 of the *Municipal Act, 2001*, as amended. These two sections taken together, Section 272 and 273, allow for a by-law to be quashed by the courts due to illegality or "bad faith" in the absence of any statutory authority to restrict the number of license. To do so, could be viewed as Council acting in "bad faith" or in a discriminatory manner.

A further concern with respect to any attempt to restrict the number of licenses to be issued would be the system to be adopted by which licenses would be awarded. A "first application" or "raffle" system could be problematic from the perspective that such system is unfair or a prejudicial to any potential applicant. As such, it would be the writer's recommendation that any attempt to regulate the issuance of short-term rental accommodations through the number of licenses to be issued could be extremely problematic and could serve to expose the Town to potential litigation and liability.

CANCELLATION OF LICENSE

The issuance of a license by a Municipal Corporation to a business to operate is viewed as a privilege and not a right. Accordingly, non-compliance with the authority which allows for the licensing of business such as a municipal by-law can result in the cancellation of the license itself. In doing so however, the municipality must act in a balanced manner which includes providing fair notice to any operator of the potential of the revocation of the license and an appeal mechanism.

With respect to By-law 2020-91, the potential of a license being revoked is clearly identified in Section 6.2 which serves to identify the process and procedure to be followed in the event that a license may be subject to revocation.

In doing so, the identification of clear process and a right of appeal serves to satisfy the requirement of natural justice as prescribed for pursuant to the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22.

SUMMARY

It is assumed that the proposed or suggested amendments are the result of the Town now having in place a Short-term Rental Accommodation for over a year and a half, and therefore the suggested amendments are as a result of the experiences of the Town during that period of time.

I trust that the above is of assistance to you and Council in this regard.

Should you have any questions or concerns, please do not hesitate to contact the writer.

Very truly yours,

EWART O'DWYER

A handwritten signature in black ink, appearing to read 'M. John Ewart', with a long horizontal flourish extending to the right.

M. John Ewart
MJE/jlh

c.c. Kirstin Maxwell – Via Email