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Short-Term Rentals Staff Report to Council

Report Number: 2020-07

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Meeting Date: February 3, 2020

Recommendations

1. That the report entitled Short-Term Rentals dated February 3, 2020 be received; and,
2. That Council provide direction to staff regarding the four options described in this report and identify a preferred option; and,
3. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Executive Summary

Short term rentals (STRs) are a growing industry that allow for the renting of a room or dwelling unit for up to one month, often through online platforms. The growth of this industry has raised general concerns of neighbourhood impact related to noise, garbage, property standards, and the conduct of visitors. More broadly, STRs have raised significant concerns over exacerbating challenges with lack of rental housing and decreasing housing affordability.

This report provides an overview of STRs, their status in Newmarket, their role and impact on housing, and options for how the Town may choose to regulate them. It provides options for Council on how to advance potential amendments to the zoning by-law and/or the adoption of a licensing by-law.

Purpose

The purpose of this report is to provide an overview of STRs in the Ontario legislative context and identify the powers that Council can exercise to regulate STRs. The report is intended to begin a process of public consultation and review that will occasion

subsequent reports to Council. This process may result, if warranted, in amendments to the zoning by-law and lead to the creation of a STR licensing by-law.

Background

There has been a significant rise in market for renting residential properties or rooms for short periods, driven in large part by online companies that host listings and facilitate bookings and payments.

Staff were requested to begin a review of STRs and how the Town may regulate them. A Public Information Centre was held on December 10, 2019 to provide information and to consult with the public. This report serves to seek Council's consideration on a proposed direction of a regulatory framework pertaining to STRs.

The Town's authority under the *Municipal Act* to enact licensing by-laws provides greater flexibility. By requiring a licence for certain activities (i.e. operating a STR) the Town can ensure that the requirements of other legislative regimes, such as the Ontario Building Code and Fire Code, are met to confirm the safety of residents and visitors.

A business licence by-law regulates the way certain businesses must operate. Through this by-law, a municipality can coordinate business activities by requiring a business licence, conducting inspections of business operations, assessing risk, and facilitating compliance with applicable by-laws and provincial statutes. Business licensing also encourages responsible business practices to ensure consumer protection and mitigate impacts to adjacent properties. A business licence is only issued after specific requirements and conditions have been met and the renewal of a licence occurs on an annual basis to confirm conditions are being adhered to. Following the issuance of a business licence, a municipality may use its business licence by-law as a useful and powerful tool for providing regulatory oversight for businesses.

Discussion

Short-term rentals (STRs) are not a new form of accommodation. STRs are rising in prominence due to the increased ease by which they can be provided and accessed via online services.

Concerns with STRs have grown due to their increased prevalence, and perceptions that they are responsible for negative community effects such as increased waste, vacancy, violence, noise, and the loss of limited rental housing stock.

What is a short-term rental?

STRs are generally considered to be rentals of residential accommodation for periods of less than one month. STRs can take a range of formats: operators may rent out an entire dwelling unit (i.e. a house for short-term rent) or individual rooms, it may be the operator's principal residence or a second home owned by the operator, and the

operator may reside on-site or they may not. These conditions and requirements are determined through the by-law regulations that a municipality chooses to enact.

Short-term rentals in Newmarket

Using data-scraping technology in October 2019, staff identified approximately 179 STR listings located in Newmarket which were spread throughout all seven wards.

The STRs identified are principally located in single detached dwellings (83%), and slightly over half of the identified listings were for an entire dwelling (e.g. an entire apartment unit, an entire ADU, or an entire house dwelling) rather than a room within a dwelling unit (e.g. a house with multiple bedrooms having an STR in one or more of the bedrooms).

Community Feedback

On November 5, 2019, a special meeting for Ward 6 was conducted between the Mayor, Ward Councillor, Town staff, and residents of Ward 6 to discuss STRs in response to growing community concerns for safety surrounding STRs. Staff had an opportunity to receive public feedback and engage with residents on whether or not to permit STRs and, if permitted, options for what a regulatory framework may look like. Throughout the meeting, residents voiced concerns for allowing STRs near school zones and within certain residential areas of Town. A licensing regime was also discussed, where staff engaged with residents to discuss potential rules and regulations pertaining to responsible business practices, including the requirement for a STR operator to remain on the premises while a booking exists in order to respond to complaints or concerns that may result from guests on the property. While the consensus of the group was to prohibit STRs in their entirety, some responded with support in establishing a licensing framework to ensure compliance with regulations imposed to mitigate noise, nuisance, and parking-related concerns.

On December 10, 2019, a Public Information Centre (PIC) for STRs was held to engage Town of Newmarket residents. The PIC included a formal, interactive presentation that allowed attendees an opportunity to provide input throughout the presentation. A total of 23 residents participated in the interactive presentation and results were documented as follows:

- 61% of participants were concerned that STRs generate noise/party homes, garbage issues, parking issues, and impact community safety;
- 62% believe that only home owners should be permitted to obtain a STR business licence;
- 62% believe that the operator should remain onsite while the home is being rented as a STR;
- 74% support only permitting 4-6 guests at one time; and
- 78% believe that a STR should be permitted in an entire dwelling where two dwellings exist.

A survey was also promoted online to receive public input on STRs. A total of 123 participants completed the survey and the results were documented as follows:

- 77% support only one booking per property at one time;
- 74% support the STR owner being onsite while a booking occurs;
- participants were undecided for allowing in all types of homes (e.g. apartments, single detached dwellings, semi-detached dwellings, etc.)
- 75% expressed concerns for noise/party homes, garbage, parking, and community safety in relation to STRs; and
- 54% of participants did not support allowing STRs.

Rental Housing in Newmarket

Newmarket has an insufficient supply of rental housing. Rental vacancy rates in the past two decades have hovered between 0.7% in 2001 to 1.6% in 2012 and 1.3% in 2017, well below the 3% that is generally regarded as an indicator of a healthy market. Research has indicated that STRs have a negative impact on rental housing availability.

As the Town considers rules for STRs, it is important to consider how this will affect the supply of rental housing and the affordability of housing for owners.

Town regulatory authority

The Town can control and regulate STRs through its tools under the *Planning Act* and *Municipal Act*.

Zoning

Section 34 of the *Planning Act* provides the authority for municipalities to enact zoning bylaws to regulate the use of land and structures.

The Town's zoning by-laws define that residential zones are permitted to be occupied by a dwelling unit. Depending on the type of zone, more than one dwelling unit may be permitted (e.g. a duplex, a four-plex, an apartment). Each by-law defines a dwelling unit as being a set of living quarters occupied by a family, being a group of persons in an independent housekeeping unit who are not necessarily related by blood or marriage. The zoning by-laws do not permit a dwelling unit to be used as an accommodation for the travelling public, which prohibits the use of a dwelling unit as a STR without being principally occupied by a family.

Zoning By-law 2010-40 does permit a Bed and Breakfast in most single detached homes. A Bed and Breakfast is a dwelling or part of a dwelling in which up to three bedrooms are used for the accommodation of the travelling public, and which is occupied by the owner. This allows for a single detached home to be a STR, provided that the dwelling is occupied by its owner and no more than three bedrooms are used for STRs.

Among other powers, the Town has the ability to amend its zoning by-laws to:

- Limit the areas where are permitted STRs;
- Control what types of buildings can be used for STRs ;
- Require whether the dwelling must be principally used as a residence;
- Limit the number of nights that a dwelling can be a STR;
- Require an amount of parking required for a STR; and
- Limit the number of bedrooms that can be used as a STR.

The authority of municipalities to regulate STRs through zoning has been upheld in successive cases at the Ontario Municipal Board and its continuance as the Local Planning Appeal Tribunal.

Collingwood implemented regulations on STRs through zoning and licensing due to their rapid growth and the municipality's high demand for tourist accommodations. In 2011 the Ontario Municipal Board upheld Collingwood's regulation of STRs. Collingwood's approach to STRs set geographic limits on where they were permitted, required separation distances between STRs, implemented maximum numbers of guests at one time, and imposed requirements on parking and waste management.

The City of Toronto implemented zoning by-law amendments in 2017 to regulate STRs, which were challenged to the LPAT and were upheld in 2019. The hearing discussed the role of dedicated STRs as a commercial use, stating that:

Although the context and facts differ, various authorities have found that temporary forms of accommodation for tourists and others do not constitute a residential use. The Tribunal's finding here that dedicated STRs exhibit commercial characteristics beyond what is intended or expected in residential areas is supported by *Mailloux v. Tofino (District)*, 2018 BCSC 2298

The Toronto hearing decision also favorably cites the objectives of ensuring that residential dwelling units are maintained as housing for residents and the role of this control in increasing housing availability and affordability, stating that:

The ZBAs are found to implement the policies, first by protecting the housing supply as permanent domiciles for residents, and second, by responding to the availability and affordability issues, if not by returning units to the rental market, at least by preventing further conversions of dwelling units into dedicated STRs.

The appellants of the decision of the LPAT in the Toronto hearing have stated that they intend to appeal the decision to the Divisional Court due to their belief that the Tribunal made errors in law in its decision. Until the decision of the Divisional Court on the appeal, the established decisions continue to uphold the authority of municipalities to regulate STRS.

Short-term rental licensing regime

By establishing regulations for STRs under a licensing regime, the Town would have the authority to impose conditions on STR operators in order to address increased community concerns, such as noise, nuisance behavior, garbage, health and safety, and other by-law-related issues. The purpose for imposing conditions on STRs would be to:

- require stronger accountability of owners/operators;
- improve health and safety by requiring fire/building safety requirements are met;
- a reduce neighbourhood complaints through proactive enforcement; and
- establish a process for public concerns to be resolved.

In order to achieve compliance from STR operators, it is imperative to design a regulatory, licensing, and enforcement system that is easy to understand, inspires high levels of voluntary compliance, and has effective means of preventing unlawful behavior. Council's direction is required on options pertaining to zoning amendment considerations. However, based on the public input received and a review of best practices across Canada, staff are proposing the following licensing requirements be imposed through a business licence process:

- require the permanent resident to be the operator and licence holder;
- require the operator to remain onsite while a booking exists;
- require the operator to be available to respond to complaints within 1hr of being notified of a complaint;
- limit the number of guests per bedroom;
- limit the number of bedrooms per STR;
- require the operator to provide a 'good neighbours' guidebook, which provides the Town's by-laws regarding noise, garbage, and emergency contact information;
- require a sign permit to be obtained and placed on the property to identify the premises as a STR;
- ensure the property building and safety permits have been obtained;
- ensure compliance with the zoning by-law and all related enactments; and
- implement a demerit point system, where complaints and violations against the STR apply demerit points, with a process for suspending or revoking the business licence for reaching the demerit point threshold established.

The licensing regime proposed to Council will include enforcement under the Administrative Monetary Penalty System (AMPS) to ensure compliance with regulations imposed.

Options for Council's Consideration

Option #1: Adopt a licensing by-law for STRs and do not amend the zoning by-law.

The Town of Newmarket Zoning By-law currently permits bed and breakfasts to operate in all R1 (single detached dwelling) zones. Based on the definition that currently exists

for a bed and breakfast, a STR would also meet this definition and be permitted to operate as a room-rental of up to 3 bedrooms where the owner-occupant resides within one of the bedrooms in the dwelling.

Implications: By not amending the zoning by-law at this time,

Council would not have an opportunity to specify whether or not STRs may operate in one or two dwelling homes. Within this option, room-rentals would be the only way to operate a STR, as opposed to entire home rentals where two dwellings exist on the property. This option would conflict with the trend indicated by data obtained by Town staff in October 2019, which indicated that 55% of STRs in Newmarket were entire home rentals.

It is also important to highlight that any properties currently operating a bed and breakfast within the Town of Newmarket would be eligible for lawful nonconforming status. This means that, regardless of Council choosing to amend the zoning by-law or not at a future date, any properties that operate a room-rental bed and breakfast business where the owner-occupant resides in the dwelling within a R1 zone would be permitted to continue operations, despite any zoning amendments being made.

Timeline: A licensing regime could be brought forward as early as **April or May 2020**. The licensing by-law would regulate the conduct, behavior, and conditions for being licensed as a STR operator. Proposed regulations would be presented to Council and would include the provisions specified above.

Option #2: Adopt a licensing by-law for STRs and amend the zoning bylaw.

The current zoning by-law restricts bed and breakfasts and STR room-rentals to one dwelling properties. If Council chooses to consider allowing entire home rentals where two dwellings exist, an amendment to the zoning by-law will be required. Council would also need to amend the zoning by-law if they wish to consider:

- allowing STRs in lawful accessory dwelling units (ADUs);
- allowing or prohibiting STRs in certain types of buildings (e.g., apartments or townhouses);
- allowing or prohibiting STRs in certain geographic areas; and
- revising off-street parking requirements for STRs.

Implications: By amending the zoning by-law, Council would have an opportunity to review and consider regulations pertaining to the information provided above. As identified in Option #1, despite Council's direction, lawful nonconformity would exist for STRs that operate in R1 zones as a room-rental with the owner-occupant residing in the dwelling.

Timeline: This option would require amendments to the zoning by-law with the associated processes of the *Planning Act*. Zoning by-law amendment recommendations could be presented to Council by **August 2020**.

Option #3: Direct staff to take a hybrid approach which incorporates Option #1 and Option #2 above.

Council may also consider establishing regulations pertaining to STRs through a multi-phase approach. By selecting Option #3, Council can direct staff to introduce a licensing regime on current zoning regulations pertaining to owner-occupied room-rentals in all R1 (single detached dwelling) zones. This would be the first phase in developing a regulatory framework. Simultaneously, Council can direct staff to initiate a regulatory review of the zoning by-law to explore further options for amending the zoning by-law to consider the options presented in Option #2. Once amended, the licensing regime established would already be in place to incorporate and support the changes reflected in the zoning by-law.

Implications: As previously identified in both Option #1 and Option #2, lawful nonconformity would exist for any room rental within the R1 zones. Should Council choose to make changes to the zoning by-law regarding geographical location or types of buildings permitted, single detached dwellings that meet the current zoning by-law provisions would be exempt through lawful nonconforming status until discontinued use is demonstrated.

Timeline: Phase 1 of Option #3 would only require the adoption of a licensing by-law, which could be presented to Council in April or May 2020.

Phase 2 of Option #3 would require amendments to the zoning by-law, which could be presented to Council by August 2020.

Option #4: Do not enact a licensing by-law, nor change zoning regulations on STRs (status quo).

By selecting Option #4, Council may choose to not regulate STRs through a licensing or zoning by-law at this time. This would maintain that entire home rentals are prohibited in the Town of Newmarket. However, bed and breakfasts are currently a permitted use in R1 (single detached dwelling) zones, which permits an owner-occupant to conduct room rentals on a nightly basis.

Implications: Data collected by staff indicates that 45% of STR operators within Newmarket fall under the definition of a bed & breakfast and could continue to operate their business without any additional regulatory requirements imposed.

Conclusion

STRs are a growing industry in the Greater Toronto and Hamilton Area. Their growth in residential areas raises questions of impact on noise, garbage, property standards, and availability of rental housing. Newmarket has tools under the *Planning Act* and *Municipal Act* to regulate STRs.

This report seeks Council direction as to which option (as provided above) staff should be directed to take in reviewing regulations for the Town of Newmarket. Following this direction, a process of public consultation and review will be conducted and staff will report back with proposed regulations for Council's consideration.

Business Plan and Strategic Plan Linkages

This report aligns with the strategic priority of:

- Vibrancy
 - Supporting access to a diverse range of housing options

This report also aligns with the Rev-it-up recommendations for improving administration and service levels within the Town of Newmarket through the Municipal Accommodation Tax (MAT) revenue opportunities.

Consultation

Considerable consultation has been conducted with municipalities across Ontario to review regulations pertaining to STRs. Town staff has also attended conferences and presentations conducted by Blue Mountain to review their regulatory framework.

Ongoing consultation includes Town staff participating in a STR Regional Working Group to review best practices throughout various communities.

A special Ward 6 meeting was held on November 5, 2019 to receive public input from residents that identified safety concerns surrounding STRs.

A Public Information Centre was held on December 10th 2019 to provide information and receive public input. Staff has also consulted with stakeholders in the community to receive feedback and recommendations for what a regulatory regime may look like.

A survey was posted online to receive further input from the community regarding STR regulations.

The Town of Newmarket Legal Department was also consulted to review the implications for lawful nonconforming status of room rentals within R1 zones.

Following the direction provided by Council, a process of public consultation and review as required by the *Planning Act* may be required before such regulations can be enacted. Further consultation with proposed regulations would be presented through a

Public Information Centre and staff will report back with a regulatory framework for Council's consideration.

Human Resource Considerations

A request is being made through the Mobile Business Licence By-law Report to support the administrative and enforcement processes associated with the implementation of a licensing regime. This request would expand the licensing program by one additional licensing officer and changing the part-time administrative associate into a full-time position for the duration of twelve months via contract. Should Council direct staff to move forward with a licensing regime for STRs, administration and enforcement strategies would be accommodated through the request made under the Mobile Business Licence Report, as well as the existing licensing program. These positions would be responsible for all licensing-related demands of the department.

Budget Impact

Should Council direct staff to impose a licensing regime through Options #1, #2, or #3, staff are requesting Council's approval to purchase Host Compliance Software technology to ensure compliance with STR regulations.

Host Compliance is a data-scraping technology that can locate and identify STRs within the Town of Newmarket. This technology was utilized to gather data and statistics during the December 10, 2019 Public Information Centre. Host Compliance offers several different modules, which include:

- Address identification of all STR properties in Newmarket. This module will automatically document active listings to identify noncompliant properties or properties operating without a valid licence for enforcement purposes;
- 24/7 Hotline with real-time operators. This module allows the public to make a formal complaint directly through the software system. Complainants will speak to an operator in real time, receive a link via text or e-mail to upload photos, videos, or audio relevant to their complaint, and trigger a complaint call being generated. If Council chooses to adopt the recommendation to require the STR owner respond to complaints received within 1hr, the real-time operator will phone the registered owner of the STR, advise a complaint has been received, and give them 1hr to respond. Should no one answer, respond, or resolve the complaint, the infraction will be documented in the software system and a Licensing Officer will issue a ticket the following day, as well as impose the appropriate number of demerit points for the contravention documented. This will significantly empower enforcement and compliance due to the implications of a STR owner's licence being revoked for noncompliance.
- Municipal Accommodation Tax (MAT) collection. If Council chooses to enact MAT collection, Host Compliance can collect the 4% room tax applied to all STRs licensed under the Town's by-laws. Host Compliance enables STR owners to use an app to submit taxation through their platform on a quarterly basis, which will be

directly transferred to the Town. This module will also conduct an audit of the tax submissions claimed by the STR owner by comparing the data collected through data-scraping technology re: number of bookings per month and the amount the STR owner has claimed. If a discrepancy exists, Host Compliance will generate a letter to advise the STR owner that they have made a false claim on taxation and provide the correct amount due.

Total cost for all modules through Host Compliance is approximately \$32,000. Council may also choose to move forward with only one module at a time, with each module varying in price, but costing no more than approximately \$11,000 per module.

Once a licensing regime has been adopted, Town staff will be able to implement the collection of MAT on STRs, with hotels also being captured under MAT. Revenues by way of 4% per room booked on a nightly basis will be collected.

Attachments

None.

Approval

Ted Horton, Senior Planner

Adrian Cammaert, Acting Manager, Planning Services

Jason Unger, Acting Director, Planning and Building Services

Peter Noehammer, Commissioner, Development and Infrastructure Services

Flynn Scott, Manager, Regulatory Services

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