

THE MUNICIPALITY OF LAMBTON SHORES

Report CL 03-2021

Council Meeting Date: February 9, 2021

TO: Mayor Weber and Members of Council

FROM: Stephanie Troyer-Boyd, Clerk

RE: Short Term Rental Licensing

RECOMMENDATION:

THAT Report CL 03-2021 regarding “Short Term Rental Licensing” be received; and

THAT staff be directed to develop a consultation process in order to identify issues which could be addressed by a short term rental regulatory program.

SUMMARY

This report provides Council with information on implementing a Short Term Rental Licensing program and zoning regulations in Lambton Shores.

BACKGROUND

At its December 15, 2020 meeting, Council passed the following resolution:

THAT staff prepare a report on licensing and regulating short term rentals

Short-term rentals (STR) are generally defined as rentals taking place for a period of 29 days or less that fall outside of the traditional commercial accommodations such as hotels, motels, and bed and breakfast establishments. STRs occur in various forms of residential dwellings such as single-detached dwellings, semi-detached, apartments, etc.

A STR can generally occur in several distinguishable ways:

- Operator’s Residence and Operator Present: A property owner rents one or more bedrooms in the dwelling and is also present in the dwelling. This is similar to a traditional bed and breakfast.
- Operator’s Residence and Operator Not Present: A property owner rents the entire dwelling while the dwelling is not being used, but does use the dwelling themselves. This would be similar to a traditional cottage rental when the owner

may rent their cottage periodically when not using to assist with paying the “carrying costs” of the cottage.

- Not Operator’s Residence and Operator Not Present: A property owner may purchase a property, with no intention of residing or using the property, but rather rents it out as a STR to generate income.
- Multiple Dwelling Units: a property has additional dwelling units within the main building and/or detached structures and rents out one or more of the units as a STR, possibly residing in one of the units or not.

The exact number of STRs within the Municipality of Lambton Shores is unknown. Information provided by Tourism Sarnia-Lambton suggests there are 235+ unique STRs throughout Lambton Shores although given all forums available for the private marketing of rental units as outlined above, indications are that the number of STRs available for rental is actually much higher.

Impacts of Short Term Rentals

The impacts of short term rentals in a community can be both positive and negative. An assessment of community views and the identification of specific issues related to short-term rentals in Lambton Shores has not been undertaken at this time. However, in general, the following benefits of STRs include:

- Increased accommodation options for visitors (e.g. cottage versus hotel room);
- Additional income for property owners; and
- Increased capacity for visitors, especially during peak times thus broadly benefitting the tourism sector.

Conversely, there are several possible negative impacts of STRs, including:

- Environmental (e.g. exceeding capacity of approved sewage/septic);
- Parking (e.g. inadequate supply at STR);
- Increased noise complaints;
- Building Code, Fire Code and other safety concerns;
- Housing Affordability;
- Compatibility with existing neighbourhoods;
- Neighbourhoods with few permanent residents and a lack of sense of community;
- Changes in the nature of municipal services needed; and
- Unfair competition with existing traditional accommodation providers such as motels

Licensing Short Term Rentals

A common tool for regulating short term rentals is through a licensing program. Presently, the municipality does not require business licenses to operate in Lambton Shores, however some services are licensed including taxi services and food trucks. Licensing provides the opportunity to address the impacts of STRs identified above by balancing the needs of property owners with potential land use impacts and the needs of visitors looking for safe, adequate and properly maintained short-term accommodation premises. Furthermore, licensing facilitates any actions required for compliance and enforcement.

There are numerous recent examples of municipalities that have implemented a STR licensing program. It is important to note that while some elements of each licensing program can be broadly applied to any municipality, there are unique aspects of each program that are relevant only to that particular community. It is also important to understand that in all municipalities that staff researched, the licensing program involved a comprehensive public consultation process. The process to develop a licensing program is lengthy based on other municipalities' experiences, taking a year or more to develop and implement.

Staff have appended a copy of the Town of Huntsville's STR licensing by-law to this report as only one example of what Council could expect with a Lambton Shores licensing program. However, as noted above, the program in Huntsville, like other Ontario municipalities, was implemented only after substantial consultation that identified and addressed challenges unique to their area.

Resources Required for STR Licensing

If Council elects to implement a STR licensing program, there are substantial resources that would be required for successful implementation. These needs would be greatest at the time the program is put in place. Depending on the inspection requirements, renewals and ongoing communications with STR owners, an estimate of one licensing coordinator per 100 STRs appears to be the norm, thus requiring a minimum of two STR licensing coordinators for Lambton Shores (based on current estimated STRs in the municipality). Depending on the final licencing requirements, there may also be an increased demand on the time of municipal building and fire officials. It is also likely that additional by-law staff will be required in order to respond to complaints and by-law enforcement related specifically to STRs. Costs for additional staff could be built into the STR program so that it is a completely user supported business unit.

A licensing fee estimate has not been provided at this time, however licensing fees from other Ontario municipalities ranged from \$250 to \$2,500, with an annual renewal required. An appropriate fee schedule in Lambton Shores would require further investigation.

Zoning Regulations for Short Term Rentals

Appropriate zoning provisions are a key consideration to regulation of STRs. Key considerations in the development of appropriate zoning provisions include:

- How STRs are viewed under the current provisions of Zoning By-law 1 of 2003, the comprehensive zoning by-law currently in effect.
- The fact that provincial requirements will require that the municipality permit secondary apartments in houses and detached buildings when the zoning by-law is eventually updated.
- The fact that certain STR restrictions that may be desirable cannot be effectively enforced without a licensing system.

Existing Zoning

The zoning by-law contains a definition and zone provisions for “Bed and Breakfast Establishments”. Otherwise, the zoning by-law contains no provisions or definitions that would distinguish a dwelling unit used for STR from any other.

Under the current Zoning By-law, a legally established private dwelling unit may be offered as a STR. As a caveat, it should be noted that this only applies to the rental of the entire dwelling unit as one single STR. A dwelling unit is defined as being a separate unit with at least two rooms and its own kitchen and washroom facilities. Any dwelling that is rented out on a room by room basis (e.g. common entrance, living space, washroom, or kitchen facilities) would not be functioning as a dwelling unit.

Private dwelling units offered as STRs on a room by room basis would be a zoning violation in residential zones with two exceptions. First, boarding houses that were already legally established when the zoning by-law was adopted in 2001 are permitted in the R4 Zone – e.g. the residential area of Grand Bend generally west of Ontario Street and north of Parkhill Creek.

Second, Bed and Breakfast Establishments (B&B) are permitted in almost every residential zone that permits a single detached dwelling. The Zoning By-law defines a B&B as a home occupation within a single detached dwelling where as many as three guest rooms are offered as temporary accommodations. Section 3.10.2 of the Zoning By-law addresses parking requirements, signage, and guest room sizes, and requires that a B&B be operated by a resident of the dwelling.

Additional Dwelling Units – Related Issue

With the new Official Plan in place, the *Planning Act* requires that the Zoning By-law be updated in the near future. The *Act* also requires that the zoning by-law contain provisions generally permitting up to three dwelling units on lots in residential areas. These requirements are intended to address a province-wide housing shortage, which is felt locally, but more acute in areas like Toronto. The requirement also creates unique

issues for tourist-oriented areas like portions of Lambton Shores because such dwellings are likely to be used as STRs rather than for relief of housing shortages. When the zoning provisions are updated, consideration needs to be given for these units' potential use as STRs.

A number of additional dwelling units have been permitted in detached buildings in Lambton Shores through private applications for rezoning. This allowed the appropriateness of each to be assessed on a case by case basis.

In general however, the zoning by-law allows an additional dwelling unit only within an existing single detached dwelling. When the zoning by-law is updated, the *Act* requires that the municipality also permit them in semi-detached and townhouse dwellings and also in detached structures accessory to a single, semi-detached, or townhouse dwelling (as many as three dwelling units per property).

It is Staff's understanding that there is flexibility for the municipality to impose reasonable restrictions – e.g. where there may be servicing or hazard concerns, but they are generally to be permitted in all residential areas. Section 3.8 of the zoning by-law already sets out conditions that must be met before an additional dwelling may be added within an existing single detached dwelling. The conditions address residential character, parking, servicing, septic system capacity (where applicable), and life safety issues. Section 3.8 will need to be re-evaluated and expanded to include appropriate criteria for semi-detached and townhouse dwellings, detached accessory buildings, and their potential use as STRs.

Possible Zoning Approaches

Staff has reviewed zoning provisions and other regulatory approaches that a number of jurisdictions in Ontario and other provinces have implemented to address these questions. A sample of approaches is contained in Attachment 1. Some jurisdictions have a licensing scheme and/or zoning provisions that require ongoing license renewal, require ongoing compliance with various standards, set parking and landscaping standards, limit the number of STRs in the municipality, control their density through minimum separation requirements between STRs, limit them to certain zone designations, or impose setbacks from certain land uses.

The regulatory options available present various implications that need to be considered. Lambton Shores' approach also needs to be appropriate for the local housing market and its recreation and tourism-orientation. A better understanding of the number and distribution of STRs within the municipality and input from Lambton Shores residents, STR operators, and Lambton County Housing Services would be invaluable in working through nuances and details, but Staff recommends the following as the base approach to the issue.

Zoning definitions should distinguish a STR and private dwelling unit as distinct uses from one another. A Local Planning Appeals Tribunal decision in 2019 involving the City

of Toronto confirmed the appropriateness of doing so. In Lambton Shores, this distinction would be focused on regulating, as opposed to prohibiting STRs.

When provisions are added to the zoning by-law to allow additional dwelling units in semi-detached and townhouse dwellings and detached accessory buildings, the provisions must specify provisions that protect the residential character of neighbourhoods and address other practical issues. This should include the residential character of the primary dwelling and lot, unit size, adequate parking, setbacks, servicing, septic system capacity, life safety, and the amenity of neighbouring lots. There should be consideration for situations where additional units should not be permitted – e.g. not in hazard areas or areas with servicing constraints.

Zoning provisions should distinguish between properties with one dwelling unit versus those with more than one dwelling unit located thereon. Generally, properties with one single detached dwelling located thereon and no additional apartments on the lot, should be permitted to be let out as a STR, in their entirety (provided there is adequate parking, a functional septic system, etc). This will respect long-standing, existing practices for cottage owners. It may however be advisable to include some provisions that limit the number or density of such STRs in a neighbourhood, or to even to prohibit them in certain neighbourhoods.

Where a property has more than one dwelling unit (e.g. a basement and/or backyard apartment), the zoning by-law should prohibit use of the units for STR unless the STR operator resides in one of the units on the property while the other unit(s) are being occupied as an STR. As noted above, a number of concerns are alleged to be frequent among STRs, and this is especially the case with properties with more than one dwelling unit thereon. Taking this approach provides a level of accountability and also helps distinguish between home owners who are letting out units to help afford their home or cottage versus those that have purchased the property for investment or business purposes.

STRs that let out dwelling units on a room by room basis should be prohibited unless they are operated under the zoning by-law's current definition of a Bed and Breakfast Establishment – e.g. operated by the dwelling's permanent resident and with a maximum of 3 guest rooms. The permitted number of guest rooms should be reduced if there are additional dwelling units located on the same property.

Many other issues also need to be addressed and would benefit from consultation. This include issues such as how to deal with additional dwelling units and STRs in condominium developments, apartment buildings, and commercial zones. It includes issues of affordable housing.

Zoning Relation to Licensing

Some regulations that may be deemed useful or necessary with respect to STRs may not be feasible to implement and/or enforce in the absence of a licensing system. For

example, it would be difficult to enforce provisions aimed at the control of density of STRs in a neighbourhood without an inventory of STRs and a process to check if a new STR would exceed a neighbourhood limit. Licensing would also ensure items such as adequate parking and a properly functioning septic system with adequate capacity are provided. Without licensing, especially with basement and backyard apartments, it is also difficult to deal with established STRs in established units that may not have been created legally and may have health and safety issues. Licensing would also be useful for establishing owner contacts so that problems can be reported and dealt with quickly and “repeat offenders” can have their license revoked.

ALTERNATIVES TO CONSIDER

There are several options for council to consider with respect to short term rentals in the municipality, each of which is described below.

1. Option 1 – Status Quo

Council may choose to stay with the status quo and not address short term rentals through licensing, zoning, or the official plan. As noted above, STRs are considered legal use of dwellings and are permitted where residential uses are permitted in the municipality. However, if choosing this option Council should be aware that the STR industry continues to evolve and grow and the negative impacts associated with STRs identified in this report could become more prevalent, especially as provincial legislation requires that municipality eventually update its zoning provisions to permit as many as three dwelling units on a residential lot.

2. Option 2 – Official Plan and/or Zoning Bylaw Amendments

This option would entail the drafting of Official Plan and/or Zoning By-Law Amendments to establish circumstances within the Municipality where STR would be permitted, and to establish provisions applicable to STR such as occupancy, servicing, parking, etc. This option would provide for the enforcement of STR through the Provincial Court process, which can be time consuming and expensive. It would also not address existing STRs. There may also be useful or necessary zoning provisions that are not feasible to implement or enforce in the absence of a licensing system.

3. Option 3 – Official Plan and/or Zoning Bylaw Amendments and Licensing

This option builds upon Option 2 by requiring that all STRs be licensed in accordance with the Municipal Act. This option provides for the most comprehensive regulatory framework. It would establish the overall philosophy of the municipality towards STR through the Official Plan, the implementation and regulation of the use through the zoning by-law and the tracking, administration and enforcement through the licensing process.

The licensing process allows for the Municipality to require additional information that the Zoning By-Law does not provide for such as confirmation of Building Code and Fire Code compliance. The licensing also allows for the collection of fees to offset the additional administration fees and allows for the establishment of set fines outside of existing by-laws (e.g. noise, parking).

Prior to an option being selected, it is recommended that public consultation (including consultation with relevant stakeholders, e.g. existing accommodation providers, tourism operators, public health and housing) occur with respect to STR and the above noted options. Due to the ongoing pandemic, it is suggested that all consultation take place virtually. This can be done through an online questionnaire, and a moderated virtual public open house.

RECOMMENDED ACTIONS

This report is provided for Council direction.

FINANCIAL IMPACT

There is no direct financial impact associated with this report.

CONSULTATION

- Ashley Farr, Manager of Community Development, and Will Nywening, Senior Planner assisted in the drafting of this report.
- Municipal Administration and By-Law staff
- Planning Staff have attended a number of sessions respecting additional dwelling units and short term rentals including a session titled “A Host of Challenges – How Technology Has Changed Short-Term Rentals” at the OPPI Conference 2019 on October 2, 2019.
- Planning Staff reviewed official plan, zoning by-law, and/or licensing schemes for short-term rentals and/or additional dwelling units from approximately ten jurisdictions, a number of which are summarized in Attachment 1.

Attachment 1 – Other Jurisdictions’ Approaches

Huntsville

Short Term Rentals:

Defined as rental of 30 days’ or less duration.

Permitted in single detached dwellings in specified residential Zones.

Restrictions:

- Max of 2 guests per guest room.
- Where let out by individual room, it must be the operator’s principle residence and no more than two guest rooms are permitted.
- 1 parking space per guest room.

Additional Dwelling Units:

Permitted in a dwelling or accessory building

Restrictions:

- Max 1 unit per lot.
- Max 75m² if in detached accessory building.
- Lot must meet zone’s minimum lot size requirements.
- Building must meet zone’s minimum yard setback requirements.

Requirements:

- Meet parking requirements.
- Maintain character of singled detached dwelling or townhouse.

Prince Edward County

Short Term Rentals:

Defined as rental of less than 30 consecutive days’ duration.

Permitted in specified Zones, and existing dwellings in additional specified Zones.

Restrictions:

- Max 15% of lots in a specified radius (120 to 500m dependent on zone) may be STRs.*
- Max of 4 rooms in an STR and max 2 guests per room (max 8 guests)** (plus children under 10).
- Not in a second dwelling unless main dwelling is a principal residence (where in a second unit, there may not be more than 4 guest rooms per lot).
- Minimum amenity area of 15m².
- Privacy fencing required where abutting residences.
- 1 parking space per room or 0.5 per guest (greater of), on-street allowed in-season.

*Principal residence STRs and commercial zones exempt from density restrictions.

** Principal residence STRs allowed up to 10 guests.

Additional Dwelling Units:

Permitted in single detached, semi-detached, and townhouse dwellings or separate structure (not updated to reflect Bill 108 amendments to *Planning Act*).

Restrictions:

- Prohibited in flood plains.
- Subject to available capacity in water and sanitary system.
- Subject to min lot area of 1.25 hectares in rural areas.
- Not eligible for an extra home occupation on the lot.
- Exterior door of second unit not to face street.

Requirements:

- One additional parking space (allowed in tandem)
- Shared water meter.
- Shared driveway.
- If in detached structure, structure may not have been located at the reduced yards permitted for accessory buildings.

City of Toronto

Short Term Rentals:

Defined as rental of less than 28 consecutive days' duration.

Permitted in specified zones; subject to obtaining license.

Restrictions:

- Only dwellings units that are someone's principal residence may be offered as an STR, whether offering the whole dwelling unit or rooms within the dwelling unit. This applies even to additional dwelling units, which may be offered as STRs only by the person renting the unit as their primary residence.
- Where offered on a room by room basis, a person may offer a maximum of 3 rooms in their principal residence.

Town of Niagara-on-the-Lake

Short Term Rentals:

Defined as rental of less than or equal to 28 consecutive days' duration.

Permitted in most zones where single detached dwellings are permitted and in apartments where permitted in commercial zones.

Restrictions:

- Where individual rooms are rented, not more than 3 rooms may be offered, the dwelling must be the operator's primary residence, and the operator must be living on site during the rental.
- Generally not permitted in semi-detached dwellings and townhouse dwellings.
- Apartment STRs prohibited in residential zones - e.g. in multiple dwellings and secondary units within a dwelling.
- Max occupancy of 10 people.
- STRs not allowed on properties in combination with secondary dwelling units or roomers or boarders.

Requirements:

- STRs with more than 3 bedrooms require rezoning and site plan approval – exception: whole of house in rural area.
- Min outdoor amenity area of 47m² in rural areas.
- 1 parking space per room.

Additional Dwelling Units:

Permitted only in select zones, generally requires a site-specific zoning amendment.

Restrictions:

- Not permitted in detached structures in rural areas.
- Max 40% of floor area to a max of 80m².
- Min floor area based on unit's number of bedrooms.
- Separate entrance and parking requirements.

City of Sarnia

Short Term Rentals (Draft By-law presented in 2019):

Defined as rental of less than 29 consecutive days' duration.

Permitted in specified zones (excluding hazard zones) subject to obtaining a license.

Subject to suitable infrastructure and public services.

Restrictions:

- Must be the operator's own principle residence*.
- Max of 3 rooms offered* or the whole of the dwelling.
- Not permitted in combination with any other type of rental accommodation in a dwelling.

Requirements:

- One parking space per room or dwelling unit offered. May be in tandem*.

Additional Dwelling Units:

Permitted in single detached, semi-detached and townhouse dwellings in fully serviced residential areas (UR1 Zones).

Restrictions:

- Not in hazard lands.
- Not in suburban residential or rural residential areas (areas of partial services).
- No exterior alterations facing street(s) – e.g. to accommodate separate entrance.
- Floor area restrictions: max 40% of total structure's floor area or whole of basement, and min of 35m².

*Certain parts of the proposed STR regulations are requirements of the B&B regulations that the STR regulations would replace. The current B&B regulations require a 100m setback between B&Bs and restrict B&Bs to 25% floor area. These restrictions would not apply to STRs. The Additional Dwelling Unit regulations were passed at the December 9, 2019 Council meeting, but the STR regulations were deferred.

Town of Plympton-Wyoming (Dawn-Euphemia & Enniskillen almost identical)

Additional Dwelling Units:

Permitted only in Residential and Agricultural Zones and Lakeshore Zones.

Restrictions:

- Not in condominium, mobile home park, Lakeshore Area 1, MDS Setbacks, areas of sewage capacity constraints, lots with 2 dwellings.
- For Detached dwellings, not in shoreline management area, townhouses or multiple dwellings.
- May not be severed.

Requirements:

- Must meet zones minimum lot area, meet reasonable use guidelines for private sewage disposal, and/or 0.8 ha lot area.
- No alterations to exterior facing street.
- Main dwelling unit meet min floor area, second unit meet min floor area per number bedrooms
- Max 30% of main unit floor area, max 46m² (500sf) if in detached
- 1 parking space, share parking area, share outdoor amenity areas
- Meet same setbacks applicable to house, not more than 20m from house, not in basement, not in second floor (A Zones excepted) if in detached.

St. Clair Township

Additional Dwelling Units:

Permitted in any Zone permitting single detached, semi-detached or duplex dwellings as accessory to such a dwelling.

Very similar policies to Town of Plympton-Wyoming, with several additions/differences:

- Permitted in Duplexes (2 dwellings divided horizontally)
- Lot must legally comply with lot area *and* frontage requirements.
- May occupy whole of basement or equal 40% of main dwelling.
- Min floor area of 50m² (538sf) – and max of 67m² (721sf) if in detached.
- Not permitted on a lot with boarders or a garden suite.
- No second floor entrances except in rear yard.
- Min 100m² (1076sf) open space in rear yard.
- Not further than 10m from house.

Note that, except for Huntsville, the research for the above was conducted in January, 2020.