



Planning and Development Services

Prepared for	Regular Council	Report No.	PDS-08-2021
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Subject

SHORT TERM RENTAL ACCOMMODATIONS RECOMMENDATION REPORT

Recommendations

- THAT** Council chooses Option No. ____ in order to address “ghost hotels”, and further
- THAT** Council chooses Option No. ____ in order to address enforcement, and further
- THAT** Council chooses Option No. ____ regarding fee increases for the next two years and further
- THAT** Council directs staff to report back on the effectiveness of the short-term rental accommodation program by the end of 2021.

Relation to Council's 2018-2022 Corporate Strategic Plan

Priority: 4 Promoting Business, Economic Growth, and Employment Opportunities
Goal: 4.5 Promote Service Excellence and Efficiency/Effectiveness
Initiative: N/A

List of Stakeholders

Town of Fort Erie Property Owners and Rate Payers

Prepared by:	Submitted by:	Approved by:
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Purpose

At the Regular Council meeting December 14th, 2020, staff presented Council with report [PDS-62-2020](#) Licensing and Regulating Short-Term Rentals, which was a summary of the first year of the pilot program. Council directed staff to report back to Council at the first Regular Council meeting in January of 2021, with recommendations on how to effectively address “ghost hotels”, and provide recommendations for a licence structure based upon the number of properties owned or managed by a short-term renter.

Background Information

Ghost Hotel

A “ghost hotel” is a term for a short-term rental (STR) such as an Air BNB or VRBO listing, that isn’t owner occupied. The term is utilized since there is no front desk, no staff, and often operated by a nameless absent owner. That owner is usually a corporation or a property management company, sometimes advertised under a fake profile. The fake profile would illustrate a person running the STR, but in fact it is a company front.

In Fort Erie we have 146 active STR licences. Of these 146, six are operated by a corporation. This represents four percent (4%) of all STR licences.

Ghost hotels are a significant issue in the larger cities such as Toronto, Montreal, and Ottawa. For example, one documented circumstance involved one person who represented a large company that operated 238 STR listings in a variety of cities, and that person was the face of them all.

Although these are not a large issue presently, Fort Erie statistics and STR data indicate that they are starting to occur.

Other municipalities in Niagara Region are exploring ways to address the issue, and this includes other tourist destinations such as Niagara-on-the-Lake (NOTL). NOTL Council approved the hiring of the STR management service Granicus Host Compliance for an estimated \$45,000, to collect evidence against illegal operators and nuisance properties. Additionally, NOTL’s STR By-law affords for a one-thousand dollar (\$1000) fine for advertising a STR without a licence number being displayed, and has a one-thousand dollar (\$1,000) fine for failing to license a STR.

Fees

Currently, in the Town of Fort Erie, there is an annual fee of \$300 to license a STR. The fee structure and application process are simple, and as a result, there were very few challenges with its implementation in the first year of the pilot program.

Analysis*Ghost hotels*

Ghost hotels are primarily profit driven, and occur typically in residential areas. As corporate ownership accounts for only 4% of all currently licensed STRs in Town, they represent a very small portion of the Town's known STR market. However, that amount may increase based on the actual number in Town, which is unknown as they are currently unlicensed. With respect to ghost hotels, the STR can be managed through policy or enforcement measures. The policy measures would limit the areas where STR's are permitted, restricting the maximum number of days and/or requiring a primary occupant.

Limiting the use to certain areas (e.g., waterfront residential zones along the waterfront or specific areas such as Crystal Beach), will assist in limiting locations. This option could have an impact on tourism in Fort Erie as the trend for travel has shifted away from the standard hotel in specific areas usually near a major transit corridor, to more locational based rentals that locate close to the event or attraction.

The other option is to restrict the number of days per year a unit can be rented out on a short-term basis, in order to encourage homes to retain a primary occupant. This option will require a detailed monitoring system and the need to define primary occupant.

The policy approaches noted above, will not treat the behavioural symptoms of a problematic STR such as poor property maintenance, parking issues, noise, and nuisance. Additional enforcement measures would be needed to address these issues. With proactive enforcement of the issues, the use of the demerit point system can be used more effectively, and could potentially lead to a consistently problematic ghost hotel STR having their licence revoked. With respect to unlicensed ghost hotels, they can be addressed through the Administrative Monetary Penalty System (AMPS), where penalties can be imposed for failing to licence, and monetary penalties collected in the same manner as property taxes if unpaid. This is in addition to the aforementioned symptom treatments available with licensed STRs. For further non-compliance, unlicensed ghost hotels can be prosecuted under the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended or replaced, and susceptible to further fines and potential court imposed penalties.

Looking at alternatives to address ghost hotels, the Municipal Property Assessment Corporation (MPAC) was consulted. MPAC confirmed that the *Assessment Act* currently does not address STR accommodations. This includes not being able to tax a STR, regardless of the duration of use, at another tax rate such as commercial strictly based on the property being utilized for short-term accommodations.

Fees

Municipal Accommodation Tax (MAT)

Under Section 400.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or replaced, and under O. Reg. 435/17, a municipality has the ability to impose a tax on short-term accommodations. Otherwise known as the Municipal Accommodation Tax (MAT), a levy of up to 4% can be imposed on a STR. The statute and regulation afford the ability for a municipality to create exemptions from the levy, providing the ability to specifically address STRs by exempting like short-term accommodation industries such as hotels and motels. The statute does not afford priority lien status to the municipality for uncollected amounts, interest, and penalties, with respect to the MAT. Of the 4% levied, 2% must be distributed to a destination marketing program entity that enters into a financial agreement with the municipality, to ensure that the amounts paid to the entity are used for the exclusive purpose of promoting tourism. The statute also affords the ability of another person or entity to collect the tax on its behalf. This includes an entity such as Granicus Host Compliance, who offer a mobile-enabled STR registration and tax collection service for \$5,000/year. According to Granicus Host Compliance, the average nightly rate for a STR in Fort Erie is \$168 USD, or roughly \$213 CDN based on the current exchange rates. [Air DNA](#) also provides metrics regarding STRs. The data provided by Air DNA indicates that a Fort Erie STR has an average of a 43% occupancy rate, with an average daily rate of \$264 CDN. With the daily rate average of the two data sources being approximately \$238, the following information can be generated based on the amount of STRs and total occupancy rates:

STR Units	Total MAT for STR Occupancy 25%	Total MAT for STR Occupancy 50%	Total MAT for STR Occupancy 75%	Total MAT for STR Occupancy 100%
146	\$126,483	\$252,965	\$379,448	\$507,321
200	\$173,264	\$346,528	\$519,792	\$694,960
250	\$216,580	\$433,160	\$649,740	\$868,700
300	\$259,896	\$519,792	\$779,688	\$1,042,440
350	\$303,212	\$606,424	\$909,636	\$1,216,180

Totals are based on a 4% tax on \$238 per day.

STR Licence Tiers

Current licensing data shows that eleven percent (11%) of STR licences issued have been issued to licencees who have two licences; four percent (4%) of all licenced STRs have licencees with 3 licences related to no more than two properties; and four percent (4%) of all licenced STRs are owned by a corporation. The remaining eighty-one (81%) of STR licences are persons with a single licence for a single property. Utilizing that data, a projection regarding a tiered system with \$300 for a first licence (except for a corporation), \$400 for a second STR licence (except for a corporation), and \$500 for

obtaining a third licence or a corporation obtaining a licence, would potentially produce the following results:

STR Units	Tier 1 \$300	Tier 2 \$400	Tier 3 \$500	Tier 3 (Corporate) \$500	Total from all tiers
146	\$38,982	\$6,424	\$2,920	\$2,920	\$51,246
200	\$53,400	\$8,800	\$4,000	\$4,000	\$70,200
250	\$66,750	\$11,000	\$5,000	\$5,000	\$87,750
300	\$80,100	\$13,200	\$6,000	\$6,000	\$105,300
350	\$93,450	\$15,400	\$7,000	\$7,000	\$122,850

To compare and contrast, currently all STR licences are only one classification. By keeping the current standard, and either utilizing the current licensing fee of \$300 or increasing the fee, the following results will be generated:

STR Units	\$300 Fee	\$400 Fee	\$500 Fee
146	\$43,800	\$58,400	\$73,000
200	\$60,000	\$80,000	\$100,000
250	\$75,000	\$100,000	\$125,000
300	\$90,000	\$120,000	\$150,000
350	\$105,000	\$140,000	\$175,000

AMPS

The administrative monetary penalty for failing to license a STR is currently \$300. If the preferred enforcement approach for addressing an illegal STR was to issue a warning, it would have a negative affect on the licensing process, as well as those who comply with the STR By-law, and pay their annual licence fee for their STR. There may be a greater incentive to license if it is expected that having an unlicensed STR will result in a \$300 penalty notice, in addition to paying the required licence fee. Considering the program has been in effect for more than a year, there will be a greater reliance on utilizing AMPS for addressing unlicensed STRs. Such an approach provides a level of fairness on behalf of those that proactively licensed their STR, and imposing the penalty notice on unlicensed STRs will potentially eliminate a financial advantage for non-compliance.

Enforcement

It is believed that there are at least an additional 150 unlicensed STRs in Fort Erie. Granicus Host Compliance has shown that Fort Erie has experienced a thirty-six percent (36%) year over year increase in the amount of STRs in the Town. This data indicates that the amount of STRs in Town is on an upward trend. With additional staffing, By-law Enforcement Services can begin to investigate both pro-actively and reactively, the outstanding unlicensed STRs. A dedicated By-law Enforcement Officer would be able to address the outstanding unlicensed STRs by either a complaint focused or proactive engagement. As indicated in report [PDS-62-2020](#), when By-law Enforcement Services became aware of an unlicensed STR and investigated, ninety-four percent (94%) of those STRs became licensed.

The complaint focused (re-active) approach, would require a By-Law Enforcement Officer to be contracted from May to September, in order to address the peak season of STRs. This is currently planned for the 2021 season.

With respect to a pro-active approach, a dedicated full-time officer would be able to perform the majority of the services delivered by the Granicus Host Compliance contactor, which was estimated at approximately \$35,652 annually based on the current number of STRs in Town, which would still require an officer to follow through on the information relayed by the contractor. In addition, as the amount of licensed STRs increased in Town, so would the amount payable to the contractor. A dedicated officer, whether re-active or pro-active, would also be able to perform additional duties as required including issuing parking offences related to STRs (prohibited parking areas, traffic obstruction, wrong way, etc.). Furthermore, the dedicated By-law Enforcement Officer would also address issues such as noise and nuisance complaints to licensed STRs, and addressing problem properties by preparing documentation with respect to utilizing the demerit point system.

Options

The following is a list of options available in order to address ghost hotels, licensed STRs, unlicensed STRs, enforcement measures, and fees. The options are broken down into policy approaches, enforcement approaches, and fee changes. The re-active approach options are based on the current amount of licences within Town, and the pro-active amounts are based on 200 STRs being licensed, as it is expected that the pro-active approach will result in additional STRs being licensed due to increased enforcement activity.

Policy approach options:

Option #1-No changes

Option #2-Designate and Zone specific areas to permit STRs.

Option #3-Limit the maximum number of days a STR can be rented and define primary occupant.

No changes to enforcement approach options:

Option #1-Continue to monitor for another year:

No changes either re-active or pro-active to the current program.

Re-active or Proactive enforcement approach options:

Option #2-Proceed with the re-active response model planned for 2021:

Continue as planned for the 2021 season to hire One (1) By-law officer from May-September during 5:00pm-01:30am, to respond to complaints for unlicensed STRs, and problems arising at licensed STRs. This position is to be considered as part of the 2021 budget deliberations.

Option #3-Implement a pro-active response model:

One (1) By-law officer year round during the hours of 5:00pm-01:30am, to proactively research, investigate, and address the over 150 suspected unlicensed STRs. The By-law officer will respond to complaints for unlicensed STRs, and problems arising at licensed STRs. The total cost difference from what is currently planned for 2021 is approximately \$59,400, and would not require a contractor for addressing STRs such as Granicus Host Compliance.

Fee Options:

Option #1-Implement a tier based licensing system:

No enforcement changes will occur with respect to addressing unlicensed STRs based on current practice. Licence amounts will change based on the amount of licences held by an individual, or obtained by a corporation.

Option #2-Implement a MAT:

No enforcement changes will occur with respect to addressing unlicensed STRs based on current practice. Process will be required in order to collect the MAT, and staffing resources will be required to manage the financial agreement with the destination marketing program.

Option #3-Implement a MAT and tier based licensing system:

No enforcement changes will occur with respect to addressing unlicensed STRs based on current practice. Process will be required in order to collect the MAT, and staffing resources will be required to manage the financial agreement with the destination marketing program. Licence amounts will change based on the amount of licences held by an individual, or obtained by a corporation.

Option #4-Increase licence fees to \$400 for all:

No enforcement changes will occur with respect to addressing unlicensed STRs based on current practice.

Option #5-Increase licence fees to \$500 for all:

No enforcement changes will occur with respect to addressing unlicensed STRs based on current practice.

Financial/Staffing and Accessibility (AODA) Implications

For a complaint based re-active approach, an additional By-Law Enforcement Officer from May to September on the second shift would cost approximately \$33,880. A dedicated pro-active year-round By-law officer would cost approximately \$98,150 in the first year, and \$93,450 in a subsequent year. By utilizing a dedicated By-law officer year round, there would not be a need for the majority of services offered by the contractor Granicus Host Compliance, and a net difference of \$62,498 in the first year, and \$57,798 in the subsequent year by not utilizing the contractor. Not including any AMPS penalty notices for non-compliance or other offences such as parking, or potentially opting into the MAT, the costs with respect to a full-time dedicated By-law officer would be sufficiently covered by 250 licensed STRs with a \$400 licensing fee, or 200 licensed STRs with a \$500 licensing fee. Under a tiered licence system, a full-time dedicated By-law officer would be sufficiently covered under 300 licensed STRs, which is close to the suspected total of all STRs in Town. Based on input received for report [PDS-62-2020](#), as STRs are a source of additional income, there was little resistance in terms of an increase to the licensing fee to the aforementioned \$400 and \$500 amounts.

Policies Affecting Proposal

By-law No. [124-2019](#) adopted Council's 2018-2022 Corporate Strategic Plan.

Fees and charges collected from licensing STRs can be utilized towards ensuring further STRs are in compliance with the Town's STR By-law, as well as ensuring currently licensed STRs adhere to the owner responsibility requirements. By providing a service which is self-sustaining, the service is of a dual benefit to the current STR licence holders, as well as the rate payers of Fort Erie.

Communicating Results

An update to Council can be provided by the end of 2021 with respect to the progress of the program, including complaints, enforcement action, and total number of additional STRs licensed.

Conclusion

The amount of STRs in the Town of Fort Erie is increasing. Research data indicates that at least half of the STRs in Town are operating illegally. In order to ensure fairness to those who licensed their STRs and complied with the new requirements, additional enforcement action will be required to ensure compliance. This includes staffing resources to ensure compliance with the STR program, and to respond to problematic STRs which disturb inhabitants of the surrounding area through issues such as noise, nuisance, poor property maintenance, and parking concerns. Previous enforcement action has proven that when By-law Enforcement Services became involved, ninety-four percent (94%) of the unlicensed STRs became licensed.

STRs can be addressed through policy approaches such as limiting the locations of licensed STRs, and limiting the number of days per year a STR can be rented out, which would encourage primary occupancy of the dwelling unit. Aside from a potential impact on tourism, these options require greater resources in terms of monitoring, documenting, and the need to define primary occupancy.

In order to ensure fairness to the 146 licensed STRs in the municipality, there will be a greater dependence on administering penalty notices for STRs that are not in compliance and failed to license.

There are cost options available with respect to the enforcement of the program, which can be self sustaining and have potentially minimal impact if any, to the general levy. Furthermore, an increase to the licensing fee amount would further assist with the administration of the program.

Lastly, there are additional cost recovery options such as the MAT, which could further assist with any additional costs incurred in administering the STR program.

Attachments

N/A