

# City of Mississauga

# Corporate Report



<p>Date: October 5, 2020</p> <p>To: Chair and Members of General Committee</p> <p>From: Geoff Wright, P.Eng, MBA, Commissioner of Transportation and Works</p>	<p>Originator's files:</p> <hr/> <p>Meeting date: November 4, 2020</p>
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## Subject

### Short-Term Accommodation Regulatory Framework

## Recommendation

1. That a by-law be enacted to license Short-Term Accommodation Operators, including implementing an administrative penalty system as outlined in the report from the Commissioner of Transportation and Works dated October 5, 2020 and entitled "Short-Term Accommodation Regulatory Framework".
2. That the enforcement plan, as outlined in the report from the Commissioner of Transportation and Works dated October 5, 2020 and entitled "Short-Term Accommodation Regulatory Framework" be approved.
3. That an annual licensing fee of \$250.00 for Short-Term Accommodation (STA) Operators, effective January 19, 2021 be established.
4. That the 2020 complement for Enforcement be increased to include three permanent Full-Time Equivalents, (FTE). All three positions will be funded through capital funding with a start date of December 1, 2020 and an end date of December 31, 2022
5. That the acquisition of a third-party STA data collection service be approved at an estimated cost of \$45,000.
6. That a new capital project PN 20-093 "STA Implementation Project" be established with a gross budget of \$820,000 and net budget of \$320,000 and that funding be allocated from Capital Reserve Funds, Account # 33121.
7. That funding of \$320,000 be transferred from Capital Reserve Funds, Account # 33121 to PN 20-093 "STA Implementation Project".
8. That a letter be sent by the Mayor on behalf of Council to the Premier and the Ministry of Municipal Affairs and Housing requesting that the Provincial Government begin to regulate STA Companies and Operators.
9. That all necessary by-laws be enacted.

## Report Highlights

- There are an estimated 1,500 Short-Term Accommodation (STA) Operators and 20 STA Companies in the City of Mississauga.
- An STA Licensing By-law for Operators will achieve all public safety, community standards and licensing compliance objectives.
- The STA Licensing By-law will come into force and effect in January 2021 with a six month grace period to allow all STA Operators to gain compliance.
- The implementation, monitoring and assessment period of the STA regulatory framework will be funded through a two year capital project and staff will report back to GC in 2022 with a permanent operating budget recommendation.

## Background

### Definitions

For the purposes of this report, the following definitions will apply:

- Short Term Accommodation (STA) means all or part of a dwelling unit that is the principal residence of the owner or leaseholder that is rented for temporary overnight accommodation for 30 consecutive days or less (as per Zoning By-law).
- Principal Residence means all or part of the dwelling unit where a person lives for the majority of a calendar year (as per Zoning By-law).
- Short Term Accommodation (STA) Company means any company facilitating or brokering STA reservations online and receiving payment for this service (i.e. Airbnb, Expedia, VRBO, etc.).
- Short Term Accommodation (STA) Operator means any person/owner/tenant who operates an STA for a fee within their principal residence.

Should Council support an STA Licensing By-law, the definitions above are subject to change and final approval by Legal Services.

### Zoning By-Law

On July 18, 2018, the Zoning By-law amendment permitting Short-Term Accommodation (STAs) went into force and effect. The Zoning By-law defined STA and principal residence as detailed in the definitions above.

### Municipal Accommodation Tax

On April 1, 2018, the Municipal Accommodation Tax (MAT) came into effect. STAs were subject to the 4% MAT and on August 29, 2018, Airbnb entered into a Voluntary Collection Agreement with the City. The agreement has Airbnb remitting the MAT on a quarterly basis on behalf of all their STA Operators in the City. In 2019, Airbnb remitted a total to \$524,251. Due to COVID-19, the remittance of MAT collected was deferred in 2020. Despite the remittance deferral, Airbnb has continued with their quarterly remittance by submitting \$113,368 for the first two quarters of 2020.

### **Licensing and Enforcement**

On April 18, 2018, the staff report entitled 'Short-Term Accommodation Regulatory Framework' was deferred by General Committee. Following the deferral, Enforcement staff began to assess alternative regulatory frameworks and implement an online business licensing solution.

Enforcement staff also began enforcing the Zoning By-law permitting STAs.

## **Present Status**

### **STA Operators in Mississauga**

There are an estimated 1,500 STA Operators in the City of Mississauga. This estimate is based on staff open source research as well as information provided by Host Compliance, a US based technology company offering STA regulatory services. According to Host Compliance, 58% of all Mississauga listings are the entire home and the remaining 42% are a partial home (i.e. a room for rent). The distribution is quite evenly spread across the City; however, there is a higher concentration in the city centre.

The STA market appears to have fluctuated significantly over the past two years. In 2018, staff reported that the total number of STA Operators was 800. This estimate increased to 1,800 in early 2020 but has since decreased to 1,500. The reason for the decrease is likely due to COVID-19.

### **STA Companies in Mississauga**

There are approximately 20 STA companies advertising listings through online platforms in Mississauga. Companies of note include Airbnb, Expedia, FlipKey and VRBO. The exact number of STA companies and the market share of listings changes regularly in a relatively fragmented market. However, Airbnb is the market leader and is estimated to account for 60%-80% of all listings and bookings in Mississauga.

### **Relevant Legislation**

Motels and hotels are regulated within the City of Mississauga zoning provisions under "Overnight Accommodation" and is a permitted use. These locations are defined as a "building, structure or part thereof, used for the purpose of providing temporary accommodation that contains at least 20 bedrooms". Further, these locations are regulated under provincial legislation that ensures worker and public safety. These locations are required to adhere to the *Hotel Registration of Guests Act*, *Innkeepers Act*, *Ontario Building Code Act*, Fire regulations, *Accessibility for Ontarians with Disabilities Act*, *Taxation Act* and the *Workplace Safety Act*. Residential based STA's do not fall under these regulations.

Individual condominium boards have the discretion to amend and/or introduce new restrictions detailing the permitted uses of units under their direct authority. Condominium boards may exercise their authority by prohibiting condominium owners from using their unit for STA's. The *Residential Tenancies Act* restricts tenants from subletting/renting the unit for a monetary amount that is higher than the allowable rental ceiling. Further, a well authored lease agreement

can prohibit commercial use of a residential rental unit and could be grounds for legal action on the part of the landlord.

## Comments

### **REGULATORY OBJECTIVES**

The primary objectives of the recommended STA Regulatory Framework are to:

1. Ensure Public Safety. High risk STA related incidents such as house parties and shootings have occurred in the recent past. The recommended framework will improve the ability to identify and remove any high risk STA Operators from online platforms quickly and permanently.
2. Maintain Community Standards. Public nuisance issues such as noise, garbage and parking are often associated with poorly managed STA Operators. The recommended framework will equip Enforcement with additional regulatory tools to minimize these public nuisances.
3. Improve Public Complaint Response. The recommended licencing information and online investigative tactics will allow Enforcement to quickly identify and respond to STA related public complaints.
4. Ensure By-law Compliance. Data driven proactive enforcement operations will ensure compliance with the existing Zoning By-law and recommended STA Licensing By-law.

### **BY-LAW OVERVIEW**

#### **Operator Licence**

It is recommended that an STA Licensing By-law be established for STA Operators. A Short Term-Accommodation Operator will include “*A person who carries on the business of providing a Short Term Rental Accommodation.*” An Operator will not include operators of motels or hotels or landlords in accordance with the *Residential Tenancies Act*.

A Short Term-Accommodation Operator will be required to:

- Be at least 18 years of age or older.
- Provide basic information, including contact name/information and address/contact information to Compliance and Licensing for contact person available 24hrs/day, seven days/week.
- Person of contact must respond to calls from Enforcement or Police within 24 hours.
- Provide declaration that the address is their principal residence.
- Provide declaration that tenant/condo owner’s rental agreement or condominium by-law do not prohibit STA’s.
- Provide approved government issued identification at time of application.
- Operators must post their City issued licence number in all advertisements for their STA whether through online platforms or any other forms of public advertising.
- Keep records of all STA rental activity and, if requested, provide those records to the City.
- Provide 24hrs/day, seven days/week emergency contact information to guests.

- Describe the type of building and what parts of the property will be used for short-term accommodation.
- Cap the number of guests per accommodation to two persons per bedroom.
- Pay the proposed annual registration fee of \$250.00.
- Comply with all Federal, Provincial and Municipal laws including regulations set out within this and any other City by-laws.
- Remove all online listings and advertisements when directed to do so.

### **Company Licensing Considerations**

Regulating multiple companies in multiple countries performing different roles under one STA company umbrella poses significant legal and prosecution challenges. Similar challenges were experienced during the initial regulation of Transportation Network Companies (TNC) and drivers. Due to the complexity of a TNC's legal identity, staff focussed on laying charges against the drivers (Operators) and not the companies. As the TNC regulatory framework matured, TNC companies eventually became licensed and today the TNC regulatory framework has proven to be extremely effective.

Given the challenges in regulating STA Companies, it is recommended that a letter be sent by the Mayor on behalf of Council to the Premier and the Ministry of Municipal Affairs and Housing requesting that the Provincial Government begin to regulate STA Companies and Operators. The Province has greater legislative authority and would ensure a consistent approach to STA regulations across Ontario.

Therefore, an STA Company licensing requirement is not recommended at this time. There are four primary reasons:

1. An STA Operator licensing scheme will provide all of the necessary controls needed to address STA related issues.
2. An STA Company Licence is highly unlikely to be complied with by the majority of the 20 companies operating in the City.
3. An STA Company Licence adds an administrative layer of complexity where the costs outweigh any potential benefits.
4. The existing voluntary agreements that have been established with the primary STA Company, Airbnb, is mutually beneficial and has been effective over the past two years.

Staff will continue to monitor and assess other regulatory frameworks and, if required, will consider an STA Company Licence in the future.

### **Voluntary STA Company Agreements**

The existing voluntary agreements established with Airbnb over the past two years have been effective. Staff will continue to develop the existing agreements with Airbnb as well as implementing new agreements with all other STA Companies. The objective will be to obtain voluntary STA Company Agreements in the following areas:

1. Create a mandatory field for the operator city licence number / information, (Viewable on platform listing).
2. Remove non-compliant operators from the platform upon request, (Dependant on the circumstances, criminal activity and/or public safety issue).
3. Promote and educate their Operators about the City's by-law requirements and regulations
4. Enter into Voluntary Collection Agreements for MAT remittances.

### **Force and Effect Date**

It is recommended that the force and effect date for the STA By-law be January 19, 2021. This will align with the 'go live' date of the Online Business Licensing solution. STA Operators will have a six month grace period to obtain a licence. Following the six month grace period, proactive licensing enforcement operations will commence.

### **Penalties and Fines**

The administration of penalties and fines will consist of a progressive approach using the Licensing Administrative Penalty System and the Provincial Offences Act.

The following offence fines are recommended for addition to the Licensing Administrative Penalty By-law 135-14 and issued through the Licensing Administrative Penalty System:

1. Operate / Advertise an unlicensed STA rental property – \$200.00.
2. Renting / Advertising property that is not a principal residence - \$200.00.
3. Advertising a STA rental, licence number not displayed – \$200.00.
4. Fail to notify the City of changes in licensing information – \$150.00.
5. Obstructing an authorized inspection – \$500.00.
6. Making false or misleading statement during licensing - \$500.00.

All other penalty fines stemming from the STA Licensing By-law are recommended to be set in the range of \$150 to \$500. Further infractions or an escalation of infractions would be dealt with by way of the Provincial Offences Act. Set fines will be established and administered by way of Part 1 offence notices. Part 3 summons will have a maximum fine of \$10,000.00.

## **ENFORCEMENT PLAN**

### **Public Complaint Response**

STA related public complaints will be responded to within five business days and is consistent with similar complaint response times for property standards and business licensing. High risk complaints related to public safety will be investigated within 24 hours. Complaints that present a continuation of an offence such as a house party, or an immediate public safety concern will also be escalated to police.

### **Proactive Licensing Enforcement**

Staff will proactively identify unlicensed STAs using in-house and third party provided public information. Once an unlicensed STA has been identified, Enforcement will initiate an investigation to verify the illegal operation and proceed with charges under the STA By-law. The expected outcome is that STA Operator licensing compliance rates will increase continuously over time. Once STA Operators realize that they cannot simply move their listing to another website to avoid being detected, they are very likely to comply with the by-law.

### **Licensing Manager Review Process**

Licensed STA Operators that violate the STA By-law terms and conditions will be subject to a Licensing Manager Review Process. This may include implementing a suspension period or ultimately, revocation of the licence depending on the frequency and severity of the violation(s).

### **Staffing**

A Project Manager and Business Analyst will be required to develop, implement and assess this new regulatory framework. One Municipal Law Enforcement Officer will be required for licensing, public complaint response and proactive licensing enforcement. All three staff positions are being requested for a two year period. Following that, staff will report back to GC with a recommended permanent staffing model based on two year actual revenues, operating costs and complaint volumes.

### **Education Plan**

The education plan will have three primary audiences and each will have a specific area of focus:

1. **Residents**. Informing the public of the general STA By-law requirements and the public complaint process.
2. **STA Operators**. Informing Operators of the specific STA By-law requirements and the online business licensing solution.
3. **STA Companies**. Informing Operators of the specific STA By-law requirements, the online business licensing solution and seeking the voluntary support in educating their customers.

The key success measure will be the STA Operator licensing compliance rates. Working with Strategic Communications, audiences will be reached through standard City channels including, social media, digital signage, media relations, website updates, print and online material. As well as collaborating with the Economic Development Office and Tourism Mississauga will also aim to leverage their web, social media, e-newsletters and stakeholder outreach to encourage licensing.

### **Implementation, Monitoring and Assessment**

As mentioned previously, a non-permanent staffing model is recommended for 2021 and 2022 because of several variables that will impact both revenues and operating costs. These variables include:

- Licensing Compliance Rates: The proactive enforcement model will ensure that all STA Operators will eventually be licensed over time. However the time it will take to achieve this is unknown.
- Total Number of Operator Licences: The number of STA Operators has fluctuated over the past two years and it continues to remain uncertain. The impacts of COVID-19 have not been fully realized and more time is required to accurately project the number of Operators and the associated licensing revenues.
- Public Complaint Volumes: A new STA By-law and education campaign is likely to cause an increase in the number of public complaints. A substantial increase in annual public complaints (e.g. more than 500/year) would likely require additional Officers.
- Proactive Investigations and Enforcement: This type of activity will be resource intensive especially if provincial offence charges are laid. However, if the initial compliance rates are high and proactive enforcement is not required, fewer inspection Officers will be required in the future.
- Penalty Revenues: Based on the recommended administrative penalty fines, the penalty revenue has a wide potential range and is linked to the other variables mentioned above.

In addition to measuring these variables, the two year monitoring and assessment period will also:

- Fully develop and implement all regulations, policies and standard operating procedures required to realize the stated objectives in this report.
- Measure service levels that include: initial response, average staff time per file and complaint resolution times in order to determine the effectiveness of the model.
- Evaluate other jurisdictional frameworks and monitor changes in the STA industry.

The key measure of success will be the STA Operator compliance rate. Staff will report back to GC in 2022 with a service level assessment and permanent operating budget recommendation that will aim to be 100% cost recoverable.

### **JURISDICTIONAL SCAN**

The jurisdictions reviewed were Brampton, Burlington, Calgary, Oakville, Town of Niagara on the Lake, Newmarket, Markham, Prince Edward County, Toronto, Town of The Blue Mountains, Vancouver, and Vaughan (see Appendix A). The following are the key findings of the jurisdictional scan:

- Two of the twelve jurisdictions do not have STA regulations at this time.
- One of the twelve jurisdictions does not permit STAs.
- Four of the twelve jurisdictions licence both the STA Company and STA Operator.
- Five of the twelve jurisdictions licence the STA Operator only.
- Five of the twelve jurisdictions limit STAs to the primary residence only.

To date, no STA Companies have actually been licensed in any of these cities and it is extremely unlikely that all twenty identified STA Companies will ever licence in any one



jurisdiction. In Canada, the most mature regulatory framework is the City of Vancouver, followed by the City of Calgary. Both jurisdictions have limited their licensing requirement to STA Operators only and the recommendations in this report align with those models.

### **STAKEHOLDER ENGAGEMENT**

In 2018 the Planning and Building Department conducted stakeholder engagement to understand stakeholder's concerns regarding the operation of STAs in Mississauga. Input received from the engagement sessions suggested significant support for permitting STA's within a regulatory framework and identified the following community concerns:

- Nuisance issues (parking, noise, litter and debris);
- House parties;
- Reduced rental housing stock and affordability; and
- Preserving community character.

In September 2020, Enforcement staff conducted two virtual stakeholder engagement sessions with residents and ratepayer associations to receive their feedback on the proposed regulatory framework for STAs (see Appendix B). The stakeholders were primarily concerned with ensuring that STA Operators would be held accountable and that community standards be maintained. The feedback received highlighted the following concerns:

- Ensuring STA Operators are the principal residents of the property;
- 3-1-1 availability and Enforcement response to residents' complaints;
- STA companies willingness to cooperate with Enforcement;
- Licensing fees for Operators; and;
- Penalties for non-compliant Operators.

Overall, the stakeholder feedback was constructive and positive. Most participants were satisfied with the regulatory approach and no significant issues were identified.

## **Financial Impact**

The financial impact resulting from recommendations for the STA Implementation Project are as follows:

### **Revenues:**

The projected revenue associated with the STA Implementation Project is based on the projected rental accommodation. The Licensing Fee of \$250 per rental accommodation with estimated of 1,500 rental accommodation per year will generate \$500,000 over the two years.

**Staffing:****2020-2022 Contract Staff Cost**

(Excluding Court's administration cost)

Position	Contract FTE	Grade	2020	2021	2022
Project Manager - Start Dec 1, 2020	1	F	\$12,230	\$111,499	\$113,450
Business Analyst - Start Dec 1, 2020	1	F	\$12,230	\$111,499	\$113,450
MLEO - Start April 1, 2021	1	E		\$72,890	\$99,677
			<b>\$24,460</b>	<b>\$295,888</b>	<b>\$326,577</b>
<b>Total Cost Over Two Years:</b>			<b>\$646,925</b>		

**Operating Cost:**

The expenditures projected to be \$820,000 over the two years period. The total expenditures are related to staffing costs for project leadership, analysis and inspection. Also included in the projection are additional costs for equipment, IT support, and associated inspection and mileage expenses. The net cost for the STA Implementation Project is \$320,000 over the two years and will be funded with Capital Reserve Funds, Account # 33121. The following table details the total expenditures from 2020 to 2022.

**Short Term Accommodation (STA) Implementation Project**

Expense Categories	2020 Start of STA Implementation Project	2021 50% Compliance rate - \$250/ Rental Unit	2022 75% Compliance rate \$250/ Rental Unit	Total STA Implementation Project Cost
<b>Labour and Benefits</b>	24,460	298,288	331,577	<b>654,325</b>
<b>Other Operating Costs</b>	40,000	62,300	62,300	<b>164,600</b>
<b>Total Gross Expenditure</b>	64,460	360,588	393,877	<b>818,925</b>
<b>Licensing Fees - Revenue</b>		-187,500	-281,250	<b>-468,750</b>
<b>Penalty Fees</b>		-12,000	-25,000	<b>-37,000</b>
<b>Total Net Cost</b>	64,460	161,088	87,627	<b>313,175</b>

**Conclusion**

The recommended regulatory framework will achieve the four primary objectives:

1. Ensure Public Safety
2. Maintain Community Standards
3. Improve Public Complaint Response
4. Ensure By-law Compliance

Pending Council approval, the STA By-law will come into force and effect on January 19, 2021. A non-permanent staffing model will implement, monitor and assess the recommended framework over a two year period. Staff will report back to GC in 2022 with a service level assessment and permanent operating budget recommendation.

## Attachments

Appendix 1: Jurisdictional Scan

Appendix 2: Stakeholder Engagement Summary



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Geoff Wright, P.Eng, MBA, Commissioner of Transportation and Works

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