

Municipality of Lakeshore – Report to Council

Legal and Legislative Services

Corporate Leader - General Counsel



To: Mayor and Members of Council
From: Susan Hirota, Corporate Leader – General Counsel
Date: May 29, 2025
Subject: Council Resolution 134-05-2025 re Short Term Rental enforcement

Recommendation

This report is presented for information only at the July 8, 2025 Council meeting.

Strategic Objectives

This report does not relate to a Strategic Objective but is presented at the request of Council.

Background

At the May 20, 2025 Council meeting a report from Administration entitled “Short-Term Rentals – update on Ontario Land Tribunal appeal and options for regulation and enforcement of STRs” was presented and the following Council resolution was passed:

Resolution #134-05-2025

Defer consideration of the report until the “steps to enforce” report is completed and presented to Council, on or before the July 8, 2025 Council meeting; and

That the report on the May 20, 2025 agenda not be presented back to Council until the August 2025 Council meeting or later.

Comments

Effective October 10, 2023, Short-Term Rental (STR) accommodations are prohibited in every zone in the Municipality pursuant to an amendment to Zoning By-law 2-2012. The only exception is for STRs that are considered legal non-conforming or “grandfathered” under subsection 34(9) of the *Planning Act*.

Council requested additional information regarding the steps to enforce the prohibition on STRs in Lakeshore.

The prohibition of STRs will be enforced by the Municipality's By-law Division. The By-law Division operates on a complaint basis given the current staffing complement of two By-law Officers and the high volume of complaints (1,200 in 2024). As such, proactive investigations of illegal STRs will not be undertaken.

Complaints about illegal STRs can be registered with the By-law Division by phone call, email, regular mail or in-person. Complaints are entered into the Cloudpermit database and a case number is generated. Complaints are assigned to a By-law Officer for investigation.

Complaints are generally addressed in the order they are received, however, exceptions are made if the complaint alleges immediate health and safety concerns.

Depending upon the complaint volume, the first site visit may take place within a few days of the complaint being received or may not occur for several weeks.

By-law Officers must take great care to document their investigations in a manner that will be accepted as evidence in the Provincial Offences Court. Generally, By-law Officers take notebook notes, make detailed electronic notes in Cloudpermit, take photographs, obtain witness statements, and gather evidence from the individual who initiated the complaint (complainant).

Regarding STR enforcement specifically, the offence-related evidence will likely have to come from the complainant alone as it is unlikely that the assigned By-law Officer will have an opportunity to observe the offence in progress. The complainant will be asked to supply any documentation they have to substantiate the illegal operation of the STR. This may include photographs, videos, notes, advertisements or any other evidence of operation.

The By-law Officer will then attempt to speak to the owner of the property where the STR is operating from. Prior to receiving an admission from the property owner that they are operating a STR, the By-law Officer will have to caution the property owner that they do not have to give a statement and if they do give a statement, it may be used against them in court. This caution is necessary for the admission, made to a person in authority, to be admissible in court. The court must be satisfied that the admission was made voluntarily and with knowledge of the consequences.

If, under caution, the property owner admits that a STR is being operated, they will be asked to submit proof that the STR is legal non-conforming or grandfathered. Satisfactory proof may include such documentation as:

- a sworn/affirmed affidavit from the STR operator;
- proof of property ownership;
- booking confirmations;
- booking history from online platform(s);
- payment receipts;
- invoices; and
- tax returns.

The submitted documentation will be reviewed by Planning and Legal to confirm that the STR is entitled to legal non-conforming status. If confirmed, the by-law investigation will be closed and the complainant notified.

If the property owner denies that a STR is operating from the location or if the review by Planning and Legal fails to confirm entitlement to legal non-conforming status, the By-law Officer will have to assess whether sufficient evidence exists to proceed with a charge for a Zoning By-law violation.

To lay a charge, the By-law Officer must be satisfied that reasonable and probable grounds exist to believe that an offence has been committed. Whether reasonable and probable grounds exist will be assessed on both a subjective and objective basis. Subjectively, the By-law Officer must personally believe that an offence has been committed. That belief must also be justifiable from an objective point of view, meaning that a reasonable person in the position of the By-law Officer would conclude that there are reasonable and probable grounds based upon their knowledge, training and experience.

Gathering sufficient evidence of operation will be difficult, particularly the commercial aspect. The definition of “Short-Term Rental Accommodation” in the Zoning By-law references “commercial use” and “lease, license, rental agreement” and “commercial arrangement.” Proceeding with a charge in the absence of reasonable and probable grounds creates liability to the Municipality for a negligent investigation.

If the By-law Officer has reasonable and probable grounds to proceed with a charge, there are two possible options available under the *Provincial Offences Act*, R.S.O. 1990, c. P.33.

The first option is a Part 1 Certificate of Offence, more commonly known as a ticket. The Municipality must apply to the Ministry of the Attorney General (Crown Law Office – Criminal) to request approval of the proposed short form wording (charge wording on the ticket) and the proposed set fine (fine amount on the ticket) from the Regional Senior Justice of the Ontario Court of Justice. The maximum set fine amount for Part 1 offences under the *Provincial Offences Act* is \$1,000. Only after the short form wording and set fine are approved can the By-law Officer issue a ticket.

A person who has been issued a ticket has the option of paying the ticket, requesting an early resolution meeting with the prosecutor (Lakeshore's Legal Counsel) or requesting a trial. If an early resolution meeting is requested, the prosecutor will meet with the charged person and the terms of a guilty plea may be negotiated (i.e. a reduced fine). If unable to reach a resolution, the charged person will be responsible for requesting a trial date from the Provincial Offences Court.

The second option is a Part 3 Information which is sworn under oath before a Justice of the Peace in Windsor. The By-law Officer must swear under oath that they have reasonable and probable grounds to believe that an offence has been committed as described in the Information. The Justice of the Peace issues a summons and the By-law Officer serves the summons upon the charged person to compel their attendance in the Provincial Offences Court for a first appearance.

The next step is for the By-law Officer to prepare a prosecution brief for the prosecutor. A summary of the investigation is provided as well as all notes, reports and evidence gathered. The prosecutor reviews the evidence and assesses whether there is a reasonable prospect of conviction on the evidentiary standard of proof beyond a reasonable doubt. If a reasonable prospect of conviction does not exist, the prosecutor is required to withdraw the charge. Proceeding without a reasonable prospect of conviction, exposes the Municipality to liability for a malicious prosecution. If a reasonable prospect of conviction does exist, the matter proceeds through the normal court processes. If at any point during the court process it becomes evident that a reasonable prospect of conviction no longer exists, the prosecutor must withdraw the charge.

The prosecutor is required to attend every court date. The charged person is typically arraigned at the first appearance and a subsequent court date is scheduled. Multiple adjournments are the norm to allow the charged person to request disclosure, review disclosure, retain legal counsel, engage in resolution discussions with the prosecutor, etc. Eventually, a date will be scheduled for a guilty plea or trial.

Trials in the Provincial Offences Court proceed in a similar manner as criminal trials. The prosecutor is required to prove the charged person's guilt beyond a reasonable doubt by calling evidence to establish every element of the offence. The evidence is given under oath and is subject to cross-examination by the defence. The charged person, on the other hand, is not required to call any evidence. There is also no reverse disclosure obligation on the charged person meaning that while the prosecution must disclose all information collected relevant to guilt or innocence, the charged person has no obligation to provide any information to the prosecutor.

The prosecutor will call the By-law Officer, a Zoning expert and the complainant as witnesses and any other person who may have relevant evidence to establish the offence.

If the Justice of the Peace is satisfied that the offence has been proven by the prosecution beyond a reasonable doubt, a monetary penalty is typically imposed. The Justice of the Peace will ask the prosecutor and the charged person for submissions on penalty. Currently, the Zoning By-law references a maximum fine amount upon conviction as prescribed by the *Provincial Offences Act* which is \$5,000. The authority for the Zoning By-law is the *Planning Act*, R.S.O. 1990, c. P.13 which prescribes maximum fine amounts for Zoning By-law convictions of \$25,000 for a person on a first conviction and \$50,000 for a corporation on a first conviction. The Zoning By-law should be amended to reference the maximum fine amounts available under the *Planning Act* rather than the *Provincial Offences Act*.

Very rarely will a fine be imposed that even remotely approaches the maximum penalties available. The maximum fine amounts are reserved for the worst cases and the worst offenders. Upon conviction, the prosecutor may also request that the Justice of the Peace issue a prohibition order to prohibit the continuation or repetition of the offence.

Fines are paid to the Provincial Offences Court which is operated by the City of Windsor. The City of Windsor uses the fine revenue to pay for the operating expenses of the Provincial Offences Court. Any remaining revenue is distributed to the participating municipalities in accordance with their weighted assessment.

Financial Impacts

There are no financial impacts associated with receiving this report for information.

Report Approval Details

Document Title:	Council Resolution 134-05-2025 re Short Term Rental enforcement.docx
Attachments:	
Final Approval Date:	Jun 23, 2025

This report and all of its attachments were approved and signed as outlined below:

Prepared by Susan Hirota

Approved by the Corporate Leadership Team