

Authority: Item 4, Planning Committee
Report 23-001 (PED17203(c))
CM: January 25, 2023
Ward: City Wide
Bill No. 005

CITY OF HAMILTON
BY-LAW NO. 23-005

To Amend By-law 07-170, a By-law to License and Regulate Various Businesses

WHEREAS pursuant to the provisions of Part IV of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*") the Council of the City of Hamilton ("Council") may provide for a system of licences with respect to businesses;

WHEREAS the City of Hamilton has a Business Licensing By-law 07-170 which regulates a variety of businesses and Council deems it necessary to also regulate Short-Term Rentals;

WHEREAS pursuant to Section 10 of the *Municipal Act, 2001*, Council is exercising its authority to regulate Short-Term Rentals in the interest of health and safety, well-being of persons, consumer protection and nuisance control;

WHEREAS section 436 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not there is compliance with a by-law, a direction or order, or a condition of a licence;

WHEREAS section 390 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws imposing fees or charges for services or activities provided or done by it or on behalf of it; and

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That By-law 07-170 be amended by adding the following at the end of Section 6 (1) (e) (i), after Schedule 30 Transient Traders:
Schedule 32 Short Term Rentals
2. That By-law 07-170 be amended by adding the following at the end of Section 30:
Schedule 32 Short-Term Rentals
3. That By-law 07-170 be amended by adding Schedule 32 to the list of Schedules in Appendix "B" Departmental Policy Standard Character and Driving Record Criteria for Conditional Issuance and Refusal of Establishment and Trade Licence Applications or Renewals.

4. That By-law 07-170 be amended by adding Appendix A to this amending by-law as Schedule 32 – Short-Term Rentals;
5. That By-law 07-170 be amended by adding the following subsection after 27 (3):

27 (4) Every person who contravenes any provision of this bylaw is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.

6. That in all other respects, By-law 07-170 is confirmed; and
7. That the provisions of this by-law shall become effective on the date passed by Council.

PASSED this 25th day of January, 2023.

A. Horwath
Mayor

A. Holland
City Clerk

Appendix A

SCHEDULE 32

SHORT-TERM RENTALS

1: DEFINITIONS

- 1.1 For the purposes of this Schedule and any forms, contracts or policies prepared in relation to this Schedule:

“Building Code Act” means the *Building Code Act*, 1992, S.O. 1992, c. 23;

“Building Code” means Ontario Regulation 332/12 established under the Building Code Act;

“By-law” means the City’s By-law No. 07-170, a By-law to License and Regulate Various Businesses, as amended, and includes this Schedule 32;

“User Fees and Charges By-law” means the City’s user fees and charges by-law, as amended and as approved annually by Council;

“Fire Protection and Prevention Act” means the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4;

“Fire Code” means Ontario Regulation 213/07 established under the *Fire Protection and Prevention Act*;

“Health Protection and Promotion Act” means the *Health Protection and Promotion Act*, R.S.O. 1990, c. H. 7;

“Operator” means any individual who operates a Short-Term Rental and does not include a corporation;

“Principal Residence” means a dwelling unit owned or rented by an individual, either alone or jointly with others, where the individual is ordinarily resident, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving documentation related to identification, taxation and insurance purposes, driver’s licenses, income tax returns, medical plan documentation, vehicle registration and voter registration, or similar information;

“Property Standards By-law” means the City’s By-law No. 10-221, being a By-law to Prescribe Standards for the Maintenance and Occupancy of Property, as amended, or any successor by-law thereto;

“Reservation” means a booking or commitment between an Operator and a person that a Short-Term Rental will be available for the person’s use for a specified period of time;

“Schedule” means this Schedule 32 under the By-law;

“Short-Term Rental” means all or part of a dwelling unit used to provide sleeping accommodations to the travelling public for any rental period that is less than 28 consecutive days in exchange for payment or other remuneration;

“Short-Term Rental Broker” means any person who advertises, facilitates the advertisement of, or brokers Short-Term Rental Reservations via the internet, or otherwise, and who:

- (1) receives payment, compensation, or any financial benefit, due to, as a result of, or in connection with a person making or completing a Short-Term Rental Reservation; or
- (2) collects, accesses, or holds information on the number of nights that Reservations of any Short-Term Rental are made or completed;

This definition does not include a person who facilitates or brokers Reservations for a Short-Term Rental that is the Principal Residence of that person or a Short-Term Rental that is located on the same property as the Principal Residence of that person.

In this definition, “person” includes multiple persons who, acting together, carry on the business of a Short-Term Rental Broker, despite the fact that no single one of those persons carries on the activity in its entirety, and such may be held jointly and severally responsible for each other’s actions.

“Zoning By-Law” means a by-law enacted by the City under Section 34 of the *Planning Act*, R.S.O. 1990, c. P.13.

2. APPLICATION

2.1 This By-law does not apply to:

- (a) a hotel, motel, inn, resort, or bed and breakfast as defined and regulated by the Ontario Building Code and/or Zoning By-law;
- (b) a residence operated by a post-secondary institution;
- (c) an accommodation rented out to tenants in accordance with the *Residential Tenancies Act*, 2006, S.O. 2006, C. 17.

- (d) a home for special care operated under the authority of a licence issued under the *Homes for Special Care Act*, R.S.O. 1990, c. H. 12;
- (e) a long-term care home operated under the authority of a licence issued under the *Long-Term Care Homes Act*, 2007, S.O. 2007, c.8;
- (f) a retirement home operated under the authority of a licence issued under the *Retirement Homes Act*, 2010, S.O. 2010, c. 11; or
- (g) a boarding, lodging or rooming house, as defined in the Building Code and/or Zoning By-law.

3. PROHIBITIONS

- 3.1 No person shall operate a Short-Term Rental unless they have obtained a licence to do so from the City.
- 3.2 No person shall operate a Short-Term Rental unless the Short-Term Rental is that person's Principal Residence or unless the Short-Term Rental is on the same property as the person's Principal Residence.
- 3.3 No person shall act as a Short-Term Rental Broker unless they have obtained a licence to do so from the City.
- 3.4 No person shall provide or advertise a Short-Term Rental without prominently displaying in each advertisement or listing:
 - (a) the Operator's licence number; and
 - (b) the maximum overnight guest limit as established by Section 4.8 of this Schedule;
- 3.5 No person shall fail to remove an advertisement for a Short-term Rental that is prohibited under this by-law within seven (7) days of becoming aware of the prohibition or receiving notice to do so by the Director.
- 3.6 No person shall provide or advertise a Short-Term Rental to a number of guests that is in excess of the overnight guest limit established in Section 4.8 of this Schedule.
- 3.7 No person shall provide or advertise a Short-Term Rental with a Short-Term Rental Broker that is not licenced in accordance with this By-law.
- 3.8 Every Short-Term Rental Broker and Operator is required to maintain insurance as specified in this Schedule.

- 3.9 No person who is required under this Schedule to maintain insurance shall fail to keep the policy in force for the period for which the licence is in effect, inclusive of any renewal period.
- 3.10 Any lapse in maintaining the insurance coverage required in this Schedule invalidates any licence issued under this By-law.

4. OPERATORS

- 4.1 To apply for an Operator's licence or its renewal, an applicant shall submit to the City the information required by this By-law, together with all applicable fees, as prescribed by the User Fees and Charges By-law.
- 4.2 An application for an Operator's licence shall be in a form approved by the Director and require the applicant to provide:
- (a) The Operator's name, phone number and e-mail address;
 - (b) The address of the Operator's Short-Term Rental;
 - (c) A floor plan showing the square footage of the residential unit in which the Short-Term Rental will be located including the number of bedrooms in the Short-Term Rental, along with the number of smoke alarms and carbon-monoxide detectors and their respective locations;
 - (d) A description of what parts of the property will be used for Short-Term Rental;
 - (e) A description of the type of building in which the Short-Term Rental is located;
 - (f) The number of off-street parking spaces available for the Short-Term Rental;
 - (g) The guest information package, as further described in section 4.15;
 - (h) A detailed fire escape plan;
 - (i) Proof of adequate insurance coverage in accordance with section 4.16;
 - (j) Approval of condo board and/or owner of property, if applicable
 - (k) Statutory declaration that the property is in compliance and will be maintained in compliance with the *Fire Protection and Prevention Act* and any regulations made thereunder including the Fire Code;
 - (l) Zoning verification for secondary dwelling units;
 - (m) The name and telephone number of an emergency contact person who will be available 24 hours a day during rental periods;

- (n) List of companies used to advertise the listing;
 - (o) Government-issued identification that is satisfactory to the Director to demonstrate the Short-Term Rental is the Operator's Principal Residence or located on the same property as the Operator's Principal Residence;
 - (p) The applicant's original criminal record, provided that if no original criminal record exists, the applicant shall submit instead original certification from the police that no such record exists;
 - (q) A list of any criminal or provincial offences in all jurisdictions for which the applicant has been convicted and not pardoned and which do not appear on any original criminal record submitted; and
 - (r) Any other information or documents required by the Director.
- 4.3 No Short-Term Rental Operator's licence shall be issued to a corporation and no more than one Short-Term Rental Operator licence per Operator is permitted.
- 4.4 An applicant for an Operator's licence or its renewal shall be an individual who is 18 years of age or older.
- 4.5 All licences issued to Operators shall be issued a unique licence number and will be valid for one year after issuance. Operators may renew their licences annually by paying the applicable fees and submitting the required documents.

Principal Residence Requirement:

- 4.6 For the purpose of this By-law, an Operator shall be deemed to have only one Principal Residence at any time.
- 4.7 No Operator shall rent or advertise more than one dwelling unit as a Short-Term Rental on the property where the Operator's Principal Residence is located.

Limitations regarding rentals

- 4.8 No Operator shall exceed the maximum limit for overnight guests of two (2) persons per sleeping room. For the purpose of this requirement, children that are two (2) years old or younger are exempt.
- 4.9 Operators shall ensure that their respective secondary dwelling units comply with the Zoning By-law and are recognized by the City through the issuance of a building permit and undergo inspections to confirm compliance with the Property Standards By-law, *Building Code Act*, and *Electricity Act, 1998, S.O. 1998, c. 15, Sched. A*.
- 4.10 All Operators shall post their fire escape plan on all floors of their building in a conspicuous place.

- 4.11 All Operators shall have working smoke alarms and carbon monoxide detectors in their buildings in accordance with the Fire Code.

Requirements regarding guests and collection of information

- 4.12 Every Operator shall keep a record of each concluded transaction related to the Operator's Short-Term Rental for three years following the date of the transaction. A transaction is concluded on the last day of the rental period. The records retained shall include the following:

- (1) The number of nights the Short-Term Rental was rented;
- (2) The nightly and total price charged for each rental; and
- (3) Any other information required by the Director.

- 4.13 Every Operator shall provide the information referred to above to the City within 30 days of being requested to do so by the Director.

- 4.14 Every Operator shall provide the guest who made the reservation with an information package for each rental period:

- (a) Electronically at the time of booking; and
- (b) Within the residential unit, in a printed document that is visible and accessible to all guests.

- 4.15 The information package prescribed above shall include:

- (a) contact information for the Operator or person who is available to receive communications from any guest during the rental period;
- (b) instructions for use of the 9-1-1 emergency system;
- (c) the name and address of the nearest two (2) hospitals or emergency medical services providing emergency care;
- (d) non-emergency contact information for Hamilton Police Service;
- (e) a floor plan for the residential unit indicating emergency evacuation routes and the location of safety equipment;
- (f) notice to guests of the presence of any system onsite that is making video or audio recordings or photographs;
- (g) instructions for solid waste disposal, to include information on the applicable waste collection day and instruction for composting and recycling;

- (h) instruction for legal parking onsite and in the vicinity of the property, as applicable; and
- (i) copy of the applicable Operator licence, occupancy limits and any conditions imposed on the licence.

Insurance

- 4.16 Every Operator shall have and maintain Homeowners Insurance, Condominium Insurance, or Renters Insurance, as appropriate, that includes the following:
- (a) coverage for Short-Term Rental or home sharing activity that is appropriate for the nature of the property,
 - (b) Host Liability or Commercial General Liability coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injury, bodily injury, death, and damage to property, and,
 - (c) a provision that the City will be notified with no less than thirty (30) days written notice of any cancellation.

5. SHORT-TERM RENTAL BROKERS

- 5.1 To obtain a Short-Term Rental Broker licence with the City, an applicant shall submit to the City the information required in this By-law together with all applicable fees, as prescribed in the User Fees and Charges By-law.
- 5.2 A person may apply for a licence as a Short-Term Rental Broker by providing the Director with the following:
- (a) A completed application form prescribed by the Director containing:
 - (i) the full name of the applicant;
 - (ii) if the applicant is a corporation, the relevant duly certified incorporating documents and an updated certified copy of an annual return with a list of shareholders of the corporation;
 - (iii) If the applicant is a partnership, certified documents indicating the name of the partnership and the names and addresses of each partner; and
 - (b) Proof that the applicant is eighteen (18) years of age or older, if the applicant is a natural person;

- (c) The address of a place of business in the Province of Ontario, which is not a post office box, to which the Director may send during business hours any notice or documentation or communication that may be required under this By-law and which the applicant or the applicant's agent will accept receipt of such notice, documentation or communication;
 - (d) The name, telephone number and e-mail address of a designated representative;
 - (e) Proof of insurance as required under this Schedule;
 - (f) Details of the process by which the company will remove advertisements for a Short-Term Rental if its Operator has not obtained a licence from the City;
 - (g) Details of the company's procedure for dealing with problem Operators and responding to complaints; and
 - (h) Any other information or documents required by the Director.
- 5.3 In any of the above required information changes during the term of the licence, the Short-Term Rental Broker shall notify the City at its earliest convenience.
- 5.4 A Short-Term Rental Broker licence shall be valid for five (5) years and may be renewed by paying the applicable fees and submitting the required documents pursuant to this By-law.

Data Collection

- 5.5 A Short-Term Rental Broker shall execute an agreement with the City governing the collection, use, disclosure and retention of information on Short-Term Rentals, Operators and guests, on terms satisfactory to the Director and City Solicitor.
- 5.6 If required by law, a Short-Term Rental Broker shall obtain the consent of the Operators and guests for the collection, use and potential disclosure of the Operator's and guest information to and by the City for the purpose of the administration of this By-law, as amended from time to time, or its successor by-laws.
- 5.7 Every Short-Term Rental Broker shall keep a record of each concluded transaction in relation to a Short-Term Rental listed or advertised on its platform in the city of Hamilton for three years following the last day of the rental period. A transaction is concluded on the last day of the rental period. The records retained shall include the following:
- (a) The listing identification number and corresponding licence number of each Short-Term Rental listing for which it has provided Short-Term Rental Broker services;

- (b) The total number of nights each Short-Term Rental listing has been rented in each calendar year or part thereof;
 - (c) The total amount of revenue collected for accounts associated with each Short-Term Rental listing in each calendar year, or part thereof;
 - (d) The total number of complaints received by the Short-Term Rental Broker in respect of each Short-Term Rental in each calendar year or part thereof; and
 - (e) Any other information required by the Director.
- 5.8 No Short-Term Rental Broker shall fail to remit to the Director the records required above every three (3) months during the licence term.
- 5.9 No Short-Term Rental Broker shall fail to make available to the Director the records or information required pursuant to this Schedule for a specific Short-Term rental listing within seven (7) days following a request to do so.
- 5.10 Every Short-Term Rental Broker shall make available to the City the number of Short-Term Rental listings or advertisements that have been removed from its platform in accordance with section 3.5 of this Schedule.
- 5.11 Every Short-Term Rental Broker shall maintain and make publicly available its procedure for dealing with complaints it receives about nuisances, criminal activity, and or contravention of federal, provincial or municipal law related to a Short-Term Rental.
- 5.12 Every Short-Term Rental Broker shall have and maintain a system for receiving and responding to complaints from the public.
- 5.13 Every Short-Term Rental Broker shall convey any communications issued by the Director that relate to the requirements of this By-law to all Operators listing or advertising their Short-Term Rental with the Short-Term Rental Broker in a format and manner prescribed by the Director.

Insurance

- 5.14 Each Short-Term Rental Broker shall have and maintain:
- a) **Commercial General Liability Insurance** subject to limits of not less than two million dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use, that includes: blanket contractual liability, premises and operations liability, products and completed operations liability, contingent employers liability; personal injury, owners and contractors protective coverage; broad form property damage; occurrence property

damage; employees as additional insured, and cross liability and severability of interest provision to the satisfaction of the City;

- b) **Comprehensive Crime Insurance**, broad form coverage *endorsed to include third parties* to adequately protect against loss of monies, securities or other properties, while such property is in the Broker's care, custody, and control, for dishonesty, disappearance and destruction, to protect against incidents arising out of but not limited to theft, robbery or burglary; having a limit of not less than \$50,000) for Employee Dishonesty (Commercial Blanket Form A), Loss inside the Premises, and Loss outside the Premises and Computer Funds Transfer Fraud.
- c) **Cyber Liability and Privacy Breach Liability** insurance in an amount of not less than \$1,000,000 per occurrence, to protect against privacy breach and violations as a result of but not limited to unauthorized access to or wrongful disclosure or dissemination of any private information, failure to properly handle, manage, store, destroy or control personal or confidential information and include the failure to comply with any privacy laws;
 - i. extend to include the costs associated with notification of affected parties including credit monitoring costs for those individuals, regardless if required by statute as well as any third party fines or penalties or costs imposed as a result of any privacy or cyber breach including judgements, settlements, or defense of any regulatory action involving a breach of privacy;
 - ii. Privacy breach expenses including crisis management and credit monitoring expenses related to electronic and non-electronic breaches to a limit of not less than \$1,000,000;

5.15 The insurance provided in accordance with the above shall name the City as additional insured.

5.16 The insurance provided in accordance with the above shall include an endorsement to provide the City with no less than 30 days prior notice of any cancellation.

6. GENERAL REQUIREMENTS

6.1 No person shall enjoy a right in the continuance of a licence and at all times the value of a licence shall be the property of the City.

6.2 No person shall sell or transfer a licence issued under this Schedule.

- 6.3 No person licensed under this Schedule shall advertise, promote or carry on business under any name other than that endorsed upon that person's licence.
- 6.4 The City shall, upon receipt of an application for a licence, or its renewal, investigate as necessary with respect to the application and shall:
- (1) if there are any reasonable grounds to believe that the applicant may not be entitled to the issuance or renewal of a licence based on the criteria identified in this By-law, send notice of this fact to the applicant; or
 - (2) subject to the provisions of this By-law, issue or renew the licence, with or without conditions and send the appropriate notice to the applicant.
- 6.5 In addition to the criteria in section 12 of By-law 07-170, the Director shall issue or renew a license to any person who meets the requirements of this By-law, except where:
- (1) the conduct, or past conduct, of the person affords the Director reasonable grounds to believe that the person has not or will not carry on the Short-Term Rental or the Short-Term Rental Broker business in accordance with applicable law or with honesty and integrity;
 - (2) the applicant is a corporation and its conduct or the conduct of its officers, directors, employees, or agents afford reasonable grounds to believe that its business has not been, or will not be carried on in accordance with law or with integrity and honesty;
 - (3) The Director reasonably believes that the issuing of a license to a person could be adverse to the public interest;
 - (4) The Director reasonably believes that the carrying on of the Short-Term Rental or Short-Term Rental Broker business by the applicant has resulted, or will result, in a breach of this By-law, a Zoning By-law or any other law;
 - (5) The Director has reasonable grounds to believe that the premises, advertising, or platform in respect of which the licence is required have not complied or will not comply with the provisions of this By-law, a Zoning By-law or any other law;
 - (6) The lot and/or building on which the Short-Term Rental is situated is subject to an order, or orders, made pursuant to (or by): the Property Standards By-law, the *Building Code Act*; the *Fire Protection and Prevention Act*; the *Health Protection and Promotion Act* or any regulations made thereunder;
 - (7) The Short-Term Rental, the building in which it is situated, or the lot on which the building is situated is not in compliance with the applicable Zoning By-law;

- (8) The person or the subject lot is indebted to the City by way of fines, penalties, judgements or outstanding (past due) property taxes; or
 - (9) The conduct of the applicant or other circumstances afford reasonable grounds to believe that the operation of the Short-Term Rental or the acting as Short-Term Rental Broker by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, their health and safety.
- 6.6 Where an applicant for a Short-Term Broker licence is a corporation or a partnership, section 6.5 shall apply to any of the officers or directors of the corporation or partners in the partnership.
- 6.7 The Director may deny the issuance or renewal of a license where the applicant has been convicted within the past five (5) years of a criminal offence for which a pardon has not been granted.
- 6.8 The collection, use, disclosure, transmission, retention and destruction of personal information by any Operator or Short-Term Rental Broker must be conducted in accordance with the requirements of PIPEDA.

7. ENFORCEMENT

- 7.1 Notwithstanding anything else in this By-law, for the purpose of investigating compliance with the By-law, the Director may audit or examine all books, records and any account, voucher, letter, facsimile, and electronic or other document held by a Short-Term Rental Broker or Operator that relates or may relate to information that is or should be in the person's books or records.
- 7.2 A Short-Term Rental Broker and Operator shall comply with all audit directions given by the Director within the time he or she specifies, including;
- (a) Giving the Director all reasonable assistance with their audit or examination;
 - (b) Answering all questions relating to the audit or examination either orally or, if the Director requires, in writing, on oath or affirmation, or by statutory declaration;
 - (c) Attending at a premise or place where the business is carried on or any City office for the purposes of giving the Director reasonable assistance and answering questions related to the audit or examination; and
 - (d) Producing on oath or affirmation or otherwise all books, letters, accounts, invoices, financial statements, electronic or such other documents as the Director considers necessary to determine compliance with this By-law.

- 7.3 Any person authorized by the Director may at all reasonable times and in accordance with any applicable requirements in the *Municipal Act, 2001*, as amended, inspect any premises used for the carrying on of any business in respect of which a person is required to be licensed under this Schedule.
- 7.4 No person who has or is required to have a licence under this Schedule shall obstruct or permit to be obstructed the making of the inspection.
- 7.5 If requested by the City, an inspection shall be scheduled and conducted within seven (7) days of the City's request.

8. DIRECTOR AUTHORITY AND ADMINISTRATIVE PROVISIONS

- 8.1 The Director may, at their discretion, issue interpretation bulletins or guidelines on matters relating to this Schedule, including its enforcement or application
- 8.2 The Director may establish standards and guidelines applicable to the issuance, renewal or entitlement to all licences issued under this Schedule.
- 8.3 The Director may delegate any authority or function provided for in this Schedule to any employee of the City designated by the Director.
- 8.4 All communication relating to this Schedule between the City and an applicant or licensee, shall be sent via e-mail to the e-mail address most recently provided to the City as part of the licensing process under this Schedule, except where another method is authorized by the Director.
- 8.5 Any e-mail sent in accordance with 8.4 shall be deemed for the purposes of this Schedule to have been received by the addressees on the day it is sent.
- 8.6 All records and information that must be maintained by a Short-Term Rental Broker or Operator or that may be audited, examined or collected by the City under this Schedule are deemed to be collected and properly used for the purposes of administrating and enforcing this By-law.