



**City of Kingston
Report to Council
Report Number 21-238**

To: Mayor and Members of Council
From: Lanie Hurdle, Chief Administrative Officer
Resource Staff: Paige Agnew, Commissioner, Community Services
Date of Meeting: October 5, 2021
Subject: Short-Term Rental-Set Fine Amounts

Council Strategic Plan Alignment:

Theme: Regulatory & compliance

Goal: See above

Executive Summary:

The purpose of this report is for Council to provide direction to staff to apply for set fines, in amounts approved by Council, for contraventions of By-Law Number 2021-10, which took effect on June 1, 2021. [Report Number AP-20-033](#) outlined a process for licensing short-term rentals within the City of Kingston. This report relates to the requirement to obtain the approval of the Chief Justice of the Ontario Court of Justice in order for set fines to be applied by municipalities within Ontario.

Recommendation:

That Council approve the set fine amounts in the schedule attached as Exhibit A to Report Number 21-238 for contraventions of By-Law Number 2021-10; and

That staff be directed to submit the required Set Fine Schedule to the Ministry of the Attorney General for approval as attached as Exhibit A to Report Number 21-238.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Paige Agnew, Commissioner,
Community Services**

ORIGINAL SIGNED BY CHIEF
ADMINISTRATIVE OFFICER

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Brad Joyce, Commissioner, Corporate Services	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Sheila Kidd, Commissioner, Transportation & Public Works	Not required

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Options/Discussion:

At its December 16, 2020 meeting, Council passed By-Law Number 2021-10, A By-Law to License and Regulate Short-Term Rentals in the City of Kingston, based on the recommendations received Administrative Policies Committee in Report Number [AP-20-033](#). That report provided an overview of the licensing by-law as a local enforcement tool, identified best practices in other Ontario municipalities, and outlined next steps for the development and implementation of the by-law in Kingston, which emphasised voluntary compliance by hosts, and a gradual enforcement strategy.

Public education was identified as integral to the effective implementation of this new set of regulations. Staff have continued to work closely with representatives from landlord, tenant, and neighbourhood groups to develop proactive communications tailored to their respective communities, with an emphasis on the actions each respective group can take to ensure compliance.

Since the passage of By-Law Number 2021-10, the City of Kingston Licensing Department has received 44 short-term rental licence applications. To date, only 22 short-term rental licenses have been issued, with the other 22 applications pending review. LTAS (Harmari) has identified 143 confirmed listings, along with over 600 confirmed ads.

Staff made a recommendation to the Administrative Policies Committee in Report Number [AP-21-004](#), with regards to the implementation of Administrative Monetary Penalties (AMPs) to address potential non-compliance with the by-law. At its June 10, 2021 meeting, the Administrative Policies Committee voted against the recommendation to Council on the implementation of AMPs for short-term rentals. This decision was subsequently upheld at Council meeting 15-2021, June 22, 2021. Without the use of AMPs, staff have only a Part 3 offense process to address non-compliance with the by-law, which require significant court and staff resources.

Council expressed a desire to provide a transitional period for hosts to voluntarily license their rental properties, and lead by education for the implementation of the new by-law. In addition to staff's efforts in public education and communications with operators since the passing of the by-law on December 16, 2020, staff have issued two information letters to the 143 confirmed hosts identified by LTAS. The first letter was issued on June 30, 2021 and the second letter was issued on September 30, 2021. To this point, there has been limited engagement with hosts voluntarily licensing their short-term rentals and staff is seeking Council's direction on further enforcement options.

Enforcement Structure and Options

Typically, when an individual violates a municipal by-law, it is prosecuted as a Part 3 offence under the *Provincial Offences Act*, unless short form wordings and set fines have been approved. That means that the person charged is summonsed to appear before a Provincial Offences Court where they could be subject to fines.

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This process requires significant court and law enforcement resources which are paid for by the taxpayer and are generally appropriate for more serious offences or repeat offenders. At this current time, the only option to enforce the Short-Term Rental Licensing By-Law is by way of a Part 3 summons to court. Any individual, corporation, or officer or director of a corporation found guilty of an offence under the by-law faces a fine between \$500 and \$10,000 for each day or part of a day that the offence continues. These fine amounts are authorized by the *Municipal Act*.

Set Fines

As an alternative to a summons to court and to the AMP system, staff is recommending that Council direct staff to apply for set fines for contraventions of By-Law Number 2021-10. This relates to the requirement to obtain the approval of the Chief Justice of the Ontario Court of Justice before any set fines can be applied by municipalities within Ontario. Set fines have been established by the municipality for contraventions of other by-laws, including the Animal Control By-Law, the Sign By-Law, the Noise By-Law, the Nuisance Parties By-Law, and the Open-Air Fires By-Law.

To allow for similar enforcement of the short-term rental licensing regulations, staff is recommending that Council approve the submission of the application for set fines for contraventions of By-Law Number 2021-10 in the amounts as they appear in the Schedule attached as Exhibit "A" to this Report.

The ability to issue a Provincial Offence Notice with a set fine will provide enforcement staff with an efficient tool that is less resource intensive to enforce the Short-Term Rental By-Law than through a Part 3 summons. This will provide the City with an additional set of tools to regulate this activity in an efficient manner, without requiring a court appearance. Repeat offenders could still be prosecuted in court where the opportunity exists to seek a substantially higher fine.

It is important to note that approval from the Solicitor General could take several months for the municipality to obtain, depending on available resources, which aligns with one year from the date of the by-laws passing. This approval is required before tickets can be issued. Council could also direct staff not to administer the use of tickets until January 1, 2022. Throughout our report discussions, concerns were raised that the preferred method of enforcement was based on an educational, self compliance approach. Due to the lack of applications, staff are recommending that a less punitive enforcement approach than a part 3 summons be adapted for hosts that remain non-compliant with the by-law after the education period has lapsed.

In consultation with Legal Services, staff is recommending set fines ranging from \$250 to \$750 (plus court costs and Victim Fine Surcharge), as set out in Exhibit "A" attached to this Report, and subject to the approval of the Ministry of the Attorney General. The set fines associated with non-compliance with similar licensing by-laws in other Ontario municipalities range from \$100 to \$1,000.

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Through municipal comparison, staff have learned that most municipalities that licence short-term rentals use administrative monetary penalties (AMPs) as the preferred enforcement tool. Staff were unable to find municipal comparators that utilize set fines for enforcement of a short-term rental licensing by-laws and therefore staff reviewed the set AMPs within different municipalities as a comparator, which is reflected in the chart below. The fines associated with AMPs generally represent a 25% reduction of that of set fines.

Offence Under AMPs By-Law	Municipal Comparison for AMPs
Operating STR without a licence	Toronto (\$1,000) Fort Erie (\$300) London (\$450) St. Catharines (\$1,000) Niagara-on-the-Lake (\$500)
Failure to display license	Toronto (\$300) Fort Erie (\$75) St. Catharines (\$100)

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Offence Under AMPs By-Law	Municipal Comparison for AMPs
Failure to include licence number in advertisement or promotion	Toronto (\$1,000) Newmarket (\$300) St. Catharines (\$700)
Operating STR without conforming to applicable laws	Fort Erie \$200 London (\$300) St. Catharines (\$400)

Conclusion

Given the expiration of a reasonable transition period, as well as staff's efforts in public education and communications with operators, staff are recommending Council direction at this time to implement set fines. A less punitive resource is required to enforce the Short-Term Rental By-Law than a Part 3 summons. Short form wording provides the City with a less resource intensive enforcement alternative to a lengthy summons process. This model has proven effective in allowing staff to provide enhanced response to disputes and direct customer service through the Provincial Court System. Including set fines to the City's Short-Term Rental Licensing By-Law is recommended primarily to improve compliance of by-law contraventions.

Existing Policy/By-Law:

By-Law 2021-10 being "A By-Law to Licence and Regulate Short-Term Rentals in the City of Kingston"

Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

None

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Contacts:

Jenna Morley, Director of Legal Services 613-546-4291 extension 1365

Other City of Kingston Staff Consulted:

Sarah Gareau, Municipal Prosecutor, Legal Services

Exhibits Attached:

Exhibit A Set Fine Schedule

Set Fine Schedule

Offence	Set Fine	Total Payable (including court costs)
Market or permit the Marketing of a Short-term Rental without holding a valid Licence	\$500.00	\$615.00
Operate or permit to be operated a Short-term Rental without holding a valid Licence	\$750.00	\$880.00
Submit an application for a Licence that contains false, misleading or deceptive information	\$500.00	\$615.00
Permit a Short-term Rental in a Dwelling Unit in combination with a Bed and Breakfast accommodation	\$250.00	\$305.00
Operator fail to adhere to parking regulations	\$250.00	\$305.00
Operator fail to require guests to comply with parking regulations	\$250.00	\$305.00
Operator fail to provide every guest with emergency contact	\$250.00	\$305.00
Operator fail to ensure that emergency contact information is prominently displayed	\$250.00	\$305.00
Operator fail to post a copy of the Licence in a prominent place	\$500.00	\$615.00
Operator fail to include the Operator's Licence number in any Marketing medium or material	\$500.00	\$615.00
Operator fail to keep records as required	\$500.00	\$615.00
Operator fail to provide information to the Director	\$500.00	\$615.00
Obstruct or hinder or attempt to obstruct or hinder an Officer	\$500.00	\$615.00
Fail to comply with an order	\$500.00	\$615.00