



COUNCIL REPORT

To: Mayor and Council

Date: February 27, 2024

From: Ron Mattiussi, Interim CAO

File No: P 23-14

Subject: **P 23-14 – Short Term Rental Regulations (related bylaw amendments)**

Report Prepared by: Kandice Brzezynski – Senior Building and Licensing Official

RECOMMENDATION to Consider and Resolve:

THAT the City of West Kelowna Zoning Amendment Bylaw No. 0265.20, 2023 be given first and second reading;

AND THAT City of West Kelowna Zoning Amendment Bylaw No. 0265.20, 2023 be forwarded to a Public Hearing;

AND THAT the following amending bylaws pertaining to short term rental regulations be given first, second, and third reading:

- City of West Kelowna Business Licensing and Regulations Amendment Bylaw No. 0087.17, 2023;
- City of West Kelowna Ticket Information Utilization Amendment Bylaw No. 0095.52, 2023;
- City of West Kelowna Bylaw Notice Enforcement Amendment Bylaw No. 0093.54, 2023; and
- City of West Kelowna Fees and Charges Amendment Bylaw No. 0028.79, 2023;

AND FURTHER THAT Council opt-out of the Provincial principal residence requirements for Short-Term Rentals.

STRATEGIC AREA(S) OF FOCUS

Pursue Economic Growth and Prosperity – We will work with stakeholders throughout the region to advocate for and support efforts aimed at helping West Kelowna businesses prosper. With a focus on the future, we will advance opportunities to expand our economy, increase employment, and develop the community in ways that contribute towards prosperity for all.

Foster Safety and Well-Being – We will pursue through direct action, advocacy, and collaboration with local and regional service providers, investments in community health,

needs-based housing, emergency preparedness, policing, and other services that foster safety and well-being in West Kelowna.

BACKGROUND

On November 14th, 2023, Council received a report on the Short Term Accommodations (STA) regulations based on a two-year review of the program which included proposed amendments that consider the new provincial Short-Term Rental (STR) regulations under Bill 35. These amendments included:

- merging the Bed and Breakfast regulations within the current STA regulations,
- incorporating the STA fee structure for Bed and Breakfasts,
- revising principal operator requirements to require the operator to be residing in the home when operating a Short-Term Rental,
- requiring the new provincial registration number for short-term rentals when in effect; and,
- requiring a safety inspection for all Short-Term Rentals.

Required updates include amendments to the Zoning, Business Licensing and Regulations, Municipal Ticketing Information Utilization, Bylaw Notice Enforcement, and Fees and Charges Bylaws.

On December 12, 2023, Council postponed consideration of first and second readings of these amendments to provide staff time to correspond with the province in regards to tourist and resort commercial zones, further understand the impacts of the proposed regulations on these zones, and to consider additional amendments to the proposed regulations.

Staff have received additional clarification from the Province on the potential impacts to tourist commercial zones, and are recommending that the City of West Kelowna opt-out of the Provincial principal resident requirements for Short-Term Rentals. This would specifically allow short term rental–resort zones to operate within the City of West Kelowna and require no further changes to the current regulations.

LEGISLATIVE REQUIREMENTS

As per *Community Charter*, Section 137, Council has the power to adopt a bylaw under the Act, including the power to amend or repeal such bylaw. A bylaw may be given up to three readings at one meeting of council and there must be at least one day between the third reading and the adoption of a bylaw.

In accordance with Section 59(2) of the *Community Charter*, prior to the adoption of Business Licensing and Regulations Amendment Bylaw No. 0087.17, notice must be given to persons who consider they are affected by the bylaw and will be provided an opportunity to make representation to Council. This will be addressed prior to adoption.

DISCUSSION

The following bylaw amendments are required to update the new short-term rental application procedures, operational requirements, fee structure, offence ticketing, and minor formatting in the related bylaws. The existing term Short Term Accommodation is updated to Short-Term Rental (STR) which includes Short-Term Rental (Bed and Breakfast) (STRB&B).

Zoning Amendment Bylaw No. 0265.20, 2023

The proposed amendments move the current Bed and Breakfast regulations to the new section of Short-Term Rental and Short-Term Rental (Bed and Breakfast). This restructures the Zoning Bylaw to have all forms of short-term rentals under the same section. Within this section, there are two models of short-term rentals which mirror the current regulations but properly articulate the difference between them. The existing Bed and Breakfast regulations are maintained with amendments to clarify the definition, fee structure, and operator attendance. The existing Short Term Accommodation regulations are maintained with amendments to consider the Provincial definition of Principal Residence and language consistency. In both STR and STR(B&B), homeowners are the only permitted operator of these types of accommodation.

Short-Term Rental (Bed and Breakfast)

Definition

Updated definitions are proposed to clarify and differentiate between the two models of STRs but illustrate that the existing Bed and Breakfast model has been maintained. The new definition for STR(B&B) is:

“A short-term rental providing visitor accommodation within a single detached dwelling by a principal resident owner in exchange for a fee for a period of time less than 30 consecutive days. The owner must reside in the dwelling during the visitors stay, provide breakfast to all visitors, provide a free-flowing and interconnected space, and have no separate kitchen/cooking facilities. Short-term Rentals (Bed and Breakfast) must meet the development regulations outlined in Section 3.20 Short-Term Rentals and Short-Term Rentals (Bed and Breakfast)”.

Operator Attendance

The current Bed and Breakfast regulations are maintained in the new Short-Term Rental (Bed and Breakfast) section by requiring the owner to be in attendance while the visitor accommodation is being rented. This regulation is anticipated to lower bylaw enforcement complaints and to ensure the traditional model of a bed and breakfast is maintained.

Fees

The fee structure for Short-Term Rentals (Bed and Breakfast) have changed to be consistent with existing short term accommodations and will be explained in greater detail under the Fees and Charges Bylaw amendments.

Short-Term Rentals

Definition

The existing STA definition is proposed to be expanded to include consideration for the new Provincial definitions as well as restricting operation to require home ownership. A Short-Term Rental means:

“a visitor accommodation provided within a single detached dwelling, secondary suite or carriage house by a principal resident and owner in exchange for a fee for a period of time less than 30 consecutive days. The owner must reside in the dwelling during the visitors stay and the rental must be in accordance with the Short-term Rental Accommodations Act.”

Fees

There are no proposed changes to the fee structure for Short-Term Rentals.

Operator Absence

The existing allowance for operators to be absent no more than 14 days in any one month to a maximum of no more than 30 days within a calendar year, is proposed to be removed and replaced with the provision to have the owner be present while the short term rental is being rented. This is anticipated to significantly reduce the bylaw complaint files, length to permit issuance, and community concern. A local contact will still be required to address any onsite issues when the owner is away for permitted reasons such as employment and appointments.

Short-Term Rental and Short-Term Rental (Bed and Breakfast)

Principal Residency

Principal residency requirements are currently vetted and approved by licencing staff which have proven to be difficult and time consuming. The regulations are proposed to be amended to additionally rely on the provincial registration system to prove principal residency, when in effect (expected late 2024). This was added to the application requirements section.

The proposed regulations restrict the operation of an STR to only those residents that are owners of the property, not renters. While the provincial regulations will allow for this, it is being recommended to remove renters from having to ability to operate STRs due to passive action on complaint files.

Rental Period

The provincial regulations allow municipalities to stipulate the rental time period for their applications. To be consistent with our process thus far, as well as other neighboring municipalities, the rental period will be proposed to stay at less than 30 days for short term rentals. This aids in ensuring that short term rentals can provide accommodations to support the labour market, health care professionals, and other workers requiring short term accommodation.

Duplex Zones

In the Duplex Residential Zone (R2), both forms of STR are proposed to be added as a secondary use “in the single-detached dwelling form only”. This will address the inadvertent omission during the drafting of Zoning Bylaw No. 0265 where it was intended to allow STAs within all single-detached dwellings. The amendment to this zone is accompanied by the deletion of a site specific text amendment that is now redundant with the addition of STR & STR(B&B) as a secondary use, in the single-detached dwelling form only.

Additional Associated Zoning Amendments

Additional amendments are required to ensure consistent language related to the new definitions (STR and STR(B&B)) is used in the agri-tourism accommodation, standard parking spaces, and tandem parking sections, as well as to update the list of permitted and secondary uses. There was no change to the regulations themselves with these language amendments.

Business Licensing and Regulations Amendment Bylaw No. 0087.17

Consistent with the proposed zoning amendments above, the Bylaw is proposed to be revised to remove all language references to Short Term Accommodation and replace with Short-Term Rental or Short-Term Rental (Bed and Breakfast).

Short-Term Rental Applications – Proof of Principal Residency

The application requirements were reorganized, and additional clarity was added to create efficiencies for licencing staff. Title certification was added as a requirement to illustrate ownership so that staff does not have to spend time proving out ownership with clients. Similarly, the requirements for proof of principal residency were amended to include the provincial registration number which the city will be able to rely on once the provincial registry is in effect. The requirement for an owner authorization form was redundant and removed as renters would no longer be permitted to operate a STR or STR(B&B). Despite the reorganization and above changes, the existing regulations are still in effect as originally approved.

Operator Regulations

The amendments to existing requirements for operators create additional clarity and easily enforced regulations. Operators of STRs and STR(B&B)s must display their business licence, post their fire safety plans, ensure marketing of their rental includes the appropriate licence numbers and market accordingly based upon the rental category (STR vs STR(B&B)). Operators of STRs and STR(B&B)s must not market for any additional area of the property that has not been approved by the licence.

Safety Inspections

As per Council direction, a safety inspection was added as a mandatory requirement for each proposed STR and STR(B&B) and the existing Self Evaluation Safety Audit form was removed as it was deemed ineffective.

Additional Related Amendments

Unrelated, definitions for carriage house and secondary suite were removed as they are now redundant within this Bylaw. The land use regulations related to operator absence/attendance, local contact response time, and restricted uses have been moved to the Zoning Bylaw to remove unrelated licensing regulations.

Ticket Information Utilization Amendment Bylaw No. 0095.52

Consistent with the amendments noted above, Schedule 2 and Schedule 5 of the Ticket Information Utilization Bylaw are proposed to be amended. Schedule 2 amendments include the removal of the offence for Bed and Breakfast as it is now incorporated under STR offences and change the graduated fine amounts for STRs to incorporate the provinces new maximum fine of \$3,000.00 for STRs. Schedule 5 is rewritten to include the new maximum fines from the province of \$3,000.00 and correct errors from the previous bylaw amendment such as adding a graduated fine for each ticketable offence.

Under this Bylaw, the maximum fine is proposed to be \$3,000.00 and must be served in person.

Bylaw Notice Enforcement Amendment Bylaw No. 0093.54

Mirroring the changes written into the Ticket Information Utilization Amendment Bylaw No. 0095.52 noted above, Schedule 2 and 5 of the Bylaw Notice Enforcement Bylaw No. 0093 are also required to be amended. However, under this Bylaw, the maximum fine, as specified in the *Local Government Act*, is \$500.00 and the fine is permitted to be mailed. The graduated offences are thus adjusted to a maximum of \$500 instead of \$3,000.00.

Fees and Charges Amendment Bylaw No. 0028.79

The proposed amendments ensure consistent language use for Short-Term Rental and Short-Term Rental (Bed and Breakfast) and illustrate a fee increase for STR(B&B). The current bed and breakfast licences will have increased fees as they merge under the new STR regulations. The business license fee for Bed and Breakfasts will change from \$60.00 annually (operating under a home-based business license) to \$500 annually

(operating under a STR license). Further, STR(B&B)s will also require a \$250.00 application fee which is non-refundable and charged at time of application submission. This is to mirror the STR(B&B) with the current STA regulations and fee structure. The anticipated impact to current Bed and Breakfast operations should be minor when considering the nightly average for short-term rentals as estimated by Harmari (\$300.88/night). There are currently 40 bed and breakfast licences that will be required to pay the new STR fees under the 2024 renewal.

Tourist and Resort Commercial Zones (C5, C6, CD2, CD7, CD8)

The provincial legislation provides that municipalities have the option to opt-out of principal residence requirements if they have a population over 10,000 in the 2021 Census and a rental vacancy rate of 3% or more for each of the two previous years. Based upon the West Kelowna Vacancy Rates released by CMHC, the City of West Kelowna has had a 3.4% rental vacancy rate in 2022 and 4.2% rental vacancy rate in 2023. By opting out, the City of West Kelowna can determine a best fit approach for residency, and can determine where principal residency applies.

Given the historic number of purpose built rental units in the City, including those located in the City's Tourist Commercial Zones - C5, C6, CD2, CD7 and CD8 (i.e. Barona Beach Resort, Boucherie Beach Cottages, Paradise Estates, The Cove Lakeside Resort, Barona Beach, Boucherie Beach Cottages, Casa Loma Resort) it is recommended that Council opt-out of the principal residency requirements, and continue to permit the operation of these units as short term rentals. It should be noted that the short term rental program operated in other zones within the City, will be maintained and include a principal resident requirement.

Should Council move forward with the opt-out process, the city will still maintain access to the provincial enforcement program. This will help the city enforce on short term rentals in areas including displaying municipal business license numbers, provincial registration numbers and the removal of advertisements that do not comply.

Once a municipality has opted-out, it will maintain the opt-out status within the legislation. However, a municipality does have the option to opt-back into the provincial legislation by March 31 of each year.

FINANCIAL IMPLICATIONS

The adjustments to fees for Bed and Breakfast are anticipated to increase annual revenues in STR licensing fees by approximately \$20,000 when considering the licence fee alone. Increases in fines are unlikely to increase annual ticketing revenue above the additional operational expenditures required to enforce the fines related to STRs.

COUNCIL REPORT / RESOLUTION HISTORY

Date	Report Topic / Resolution	Resolution No.
Nov. 14/23	<p>THAT Council direct staff to remove the ability for a principal resident to be away from the property for 14 days in one month to a maximum of 30 days in one year; and</p> <p>THAT Council direct staff to require the principal resident to be present when the remainder of the dwelling is rented on a short term basis.</p>	No. C377/23
Nov. 14/23	<p>THAT Council direct staff to merge the Bed and Breakfast regulations with the revised Short-Term Accommodation regulations; and</p> <p>THAT Council direct staff to require a building inspection to be complete for every proposed Short-Term Accommodation unit.</p>	No. C378-23
Dec. 12/23	<p>THAT Council postpone consideration of first and second and third reading to the following bylaw amendments as related to the Short-Term Rental regulations:</p> <ul style="list-style-type: none"> • City of West Kelowna Zoning Amendment Bylaw No. 0265.20,2023, • City of West Kelowna Business Licensing and Regulations Amendment Bylaw No. 0087.17, 2023, • City of West Kelowna Ticket Information and Utilization Amendment Bylaw No. 0095.52, 2023, • City of West Kelowna Bylaw Notice Enforcement Amendment Bylaw No. 0093.54, 2023, and • City of West Kelowna Fees and Charges Amendment Bylaw No. 0028.79, 2023. 	No. C409/23

CONCLUSION

The proposed bylaw amendments are intended to update the short-term rental regulations in Zoning Bylaw No. 0265 and to ensure administrative consistency between the City's other related regulatory bylaws. Further, by requesting the City of West Kelowna to opt-out of the provincial requirement for principal residence of short-term rentals, it will allow the City to maintain the current short-term rental-resort zone properties. As such, it is recommended that Council consider first, second and third readings of the five proposed amendment bylaws and opt-out proposal.

Alternate Recommendation Option No. 1 to Consider and Resolve:

THAT Council postpone first and second reading of the City of West Kelowna Zoning Amendment Bylaw No. 0265.20, 2023;

AND THAT Council postpone forwarding City of West Kelowna Zoning Amendment Bylaw No. 0265.20, 2023 to a Public Hearing;

AND THAT Council postpone reading consideration for the following amending bylaws pertaining to short term rental regulations:

- City of West Kelowna Business Licensing and Regulations Amendment Bylaw No. 0087.17, 2023;
- City of West Kelowna Ticket Information Utilization Amendment Bylaw No. 0095.52, 2023;
- City of West Kelowna Bylaw Notice Enforcement Amendment Bylaw No. 0093.54, 2023; and
- City of West Kelowna Fees and Charges Amendment Bylaw No. 0028.79, 2023;

AND FURTHER THAT Council postpone the decision to opt-out of the Provincial principal residence requirements for Short-Term Rentals.

Alternative Recommendation Option No. 2 to Consider and Resolve:

THAT Council not opt-out of the Provincial principal residence requirements for Short-Term Rentals.

It should be noted to Council that the deadline to opt-out of the principal residence requirements from the provincial legislation is February 29th, 2024. If Council wishes to not opt-out of the provincial principal residence requirements, the current Tourist Accommodation Zones within the City will not be permitted to continue to operate as short term rentals, where strata's permit principal residences.

REVIEWED BY

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Brent Magnan, Director of Development Approvals

Corinne Boback, Legislative Services Manager / Corporate Officer

Trevor Seibel, Deputy CAO

APPROVED FOR THE AGENDA BY

Ron Mattiussi MCIP RPP, Interim CAO

Powerpoint: Yes No

Attachments:

1. ZBL 0265.20 Zoning Amendment Bylaw
2. B0087.17 Business Licensing and Regulations Amendment Bylaw
3. B0095.52 Ticket Information Utilization Amendment Bylaw
4. B0093.54 Bylaw Notice Enforcement Amendment Bylaw
5. B0028.79 Fees and Charges Amendment Bylaw