



## INFORMATION ONLY COUNCIL REPORT

To: Paul Gipps, CAO

Date: April 6, 2021

From: Hailey Rilkoff, Planner II

File No: P 20-16

Subject: **P 20-16; Decision Points; Short Term Rental Zoning Bylaw Amendments**

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### EXECUTIVE SUMMARY

This report provides additional information and clarification requested by Council during the Public Hearing on Zoning Amendment Bylaw No. 0154.99 regarding short term rental regulations. The report also outlines various options and decision points for Council to make in order to direct staff on the next steps in developing regulations for short term rentals. The result of the decision points will determine the sequence of next steps.

### STRATEGIC AREA(S) OF FOCUS

Economic Growth and Prosperity – Policies and advocacy to enhance economic prosperity; Continued growth in tourism.

### BACKGROUND

Bylaw No. 0154.99 (File P20-16) was given 1st and 2nd reading at the February 23, 2021 regular Council meeting. A Public Hearing was held on March 16, 2021.

#### Update on Council Questions from the March 16<sup>th</sup> Public Hearing:

Council requested additional information and clarification on a number of components of the short term rental regulations, some of which were not included in the proposed Zoning Bylaw amendments. As the Zoning Bylaw is specific to land use, not all of the tools used to regulate the operation of short term rentals can be included in the Zoning Bylaw. These would instead form part of the Business Licencing and Regulations Bylaw and other regulatory bylaws<sup>1</sup>.

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<sup>1</sup> Including the Fees and Charges Bylaw No. 0028; Bylaw Notice Enforcement Bylaw No. 0093 and Municipal Ticket Information Utilization Bylaw No. 0095

### 1) Regional Approach to Short Term Rental Regulations

Additional information was requested at the public hearing on the approach other municipalities have taken in regulating short term rentals. Below is a brief summary of the current regulations within the Central Okanagan of the municipalities who do regulate short term rentals:

City	Within Secondary Suites	Within Carriage Houses	Maximum Occupancy	Principal Resident Requirement	Parking Requirements
Kelowna <sup>2</sup>	No	No	3 Bedrooms (2 Adults per room)	Yes	1 space per 2 bedrooms
Lake Country	Yes	No	4 Bedrooms	Yes	All parking must be contained on site
Penticton <sup>3</sup>	Yes	Yes	Minor/Major: 6 Guests (2 Persons per room) High Occupancy: No limit	Yes	1 space per bedroom (Maximum 3 spaces)

Westbank First Nation, Vernon, Peachland and Summerland and the Regional District of the Central Okanagan do not currently have specific regulations for short term rentals. Westbank First Nation and Vernon are planning to develop regulations for short term rentals in the future.

### 2) Principal Residence Requirements

Additional information was requested on how principal residency of a property could be determined. A principal residence is not currently defined in the City's bylaws but is commonly understood to mean the residential property where an individual lives and is the address used for bills, identification, taxes and insurance.

Through the business licence application for a short term rental, the operator would be required to prove principal residency. Currently this is proposed to be through providing documentation through a combination of documents including:

- Provincial Home Owners Grant
- Drivers Licence
- Utility Bills
- Tax Forms

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<sup>2</sup> <https://www.kelowna.ca/business-services/permits-licences/short-term-rentals>

<sup>3</sup> <https://www.penticton.ca/business-building/business-licences/short-term-rentals>

- Vehicle Registration
- Insurance Forms
- Government Records

Examples of other municipalities' principal resident or residence requirements include:

- Defining a principal residence as usual place where an individual lives;
- Identifying which documents may be used to prove principal residency (as listed above); and
- Specifying a minimum number of months or days in a year the individual must reside within their principal residence<sup>4</sup>.

While it is possible for one person to own multiple properties in West Kelowna, a person would only be eligible for one short term rental business licence in the City. The licence would only be issued for the property which is maintained as the operator's principle residence. This means that each resident of West Kelowna would have the opportunity to operate their principle residence as a short term rental, however a property would only be permitted to have a maximum of one short term rental.

### 3) *Enforcement Approach*

Additional information was requested on the anticipated process to achieve compliance from operators who cause nuisances, neighbourhood issues or are found to be operating outside of the regulations. **Council's Bylaw Enforcement Policy** (*Attachment 1*) provides guidance to staff on the receipt of complaints and the initiation of investigation and enforcement proceedings related to all contraventions of City bylaws. Council's policy outlines considerations for conducting inspections, acknowledging complaints, and commencing enforcement proceedings. This policy may be amended to further outline guidelines and expectations regarding severity, compliance and enforcement related to short term rental operations (i.e noise, parking, etc.).

It is currently proposed that as part of the application for a business licence to operate a short term rental, operators would sign a **Good Neighbour Agreement** which would outline the applicable bylaw regulations that all operators will have to agree to and adhere to. These include parking, signage and noise as outlined in the Zoning Bylaw, Business Licencing and Regulations Bylaw and the Good Neighbour Bylaw. By signing this agreement, the operators will be acknowledging that they have read and understand the regulations which both they and their guests must adhere to in relation to their operation and neighbourhood disturbances

It is also proposed to develop an **information package** for all licenced operators which will include a comprehensive overview of the rules and regulations around short term rentals, tips on how operators and guests can be good neighbours, and information on the process if complaints are received or if ongoing non-compliance occurs.

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<sup>4</sup> City of Kelowna defines principal residence as "the usual place where an individual makes their home for the majority of a calendar year and lives within the residence a minimum 240 days per year and for these purposes a person cannot normally reside at more than one dwelling or location."

As part of the resources to implement the short term rental program, it has been proposed to utilize a **third party contractor** to assist with proactive compliance measures. To date, the proposed services to be contracted have been limited to address identification and communication to active un-licensed short term rentals. Additional resources could be used to enhance the compliance and enforcement program. The costs of services are based on the number of active listings and additional services could include:

- Streamlined online permitting and registration
- Ongoing rental activity monitoring of listings
- Dedicated 24/7 hotline and online platform for neighbour complaints

#### *4) Licence Caps*

Information was requested on the opportunity to implement a cap on the number of short term rentals permitted within the City, neighbourhoods or within a specified area. Licence caps or allocations have not been used to regulate short term rentals within the Central Okanagan, however they are a tool used by other municipalities within BC. Examples of licence caps that have been used include:

- Nelson – Maximum 150 Short Term Rental Licences (110 annual; 40 four-month) with no more than 3 per block
- Pemberton – No more than 5% of the total number of single detached dwellings located in each neighbourhood

Including any form of licence cap or allocation system would be completed as part of the complementary bylaw amendments and implementation would require additional administration from the City's Business Licencing Department. At the outset, a formalized structure and policy would be required to be established to ensure a fair and transparent licencing process as the cap would inevitably result in some properties being ineligible for a short term rental licence. This could be a first-come-first-served basis, a first-eligible-first-served, lottery, or a qualification process. Long term this would also require the Business Licencing Department to maintain a waiting-list, increased communication with interested operators, and will likely present operational challenges.

#### *5) Local Contact*

Information was requested to clarify the role of the "local contact" that is proposed to be required as part of the business licence application for a short term rental. A local contact was identified as an important regulation tool through the research into short term rentals and was confirmed by the community feedback questionnaire to be one of the most important tools to residents.

The local contact would be an alternate contact who could be called in the event City staff could not reach the operator of a short term rental. The role of the local contact was primarily envisioned to be a responsible person designated by the operator of an un-hosted short term rental who would be available at times when the operator was off-site or unavailable.

The operator would be responsible for ensuring their designated local contact is informed and has agreed to act as their representative in regards to the operations of the short term rental. The operator would also be responsible for ensuring their local contact is available to respond in a timely manner if required by the City at all times when the operator is unavailable.

#### *6) Implementation*

Implementation of the short term rental regulations, once the required bylaw amendments are adopted, will be a fluid ongoing process. It's anticipated that it will take the majority of the 2021 season to initiate program implementation through Business Licencing and that during this time there would be a focus to achieve voluntary compliance. It is expected that full implementation may not be achieved until 2022.

## **OPTIONS**

### **Option #1: Move Bylaw No. 0154.99 forward for Third Reading**

THAT Council give 3<sup>rd</sup> Reading to Zoning Amendment Bylaw No. 0154.99 and direct staff to bring forward the complementary amendments.

### **Option #2: Direction for amendments to Bylaw No. 0154.99**

THAT Council direct staff to amend Bylaw No. 0154.99 and bring back for additional readings.

#### **Minor Amendments**

If Council chooses to direct staff to make minor amendments to Zoning Amendment Bylaw No. 0154.99, the bylaw will be brought back for Third Reading, as amended, at an upcoming Regular Council Meeting. These minor amendments would not affect use or density, and therefore would not require a new public hearing.

#### **Substantial Amendments**

If Council chooses to direct staff to make substantial amendments to Zoning Amendment Bylaw No. 0154.99 which would affect use or density, Second Reading of the bylaw would be rescinded, and an amended Zoning Amendment Bylaw No. 0154.99 would be brought forward for Second Reading. A new Public Hearing would be required on the amended bylaw.

Council may choose to direct staff to make all or some of the suggested amendments outlined below.

## Decision Points

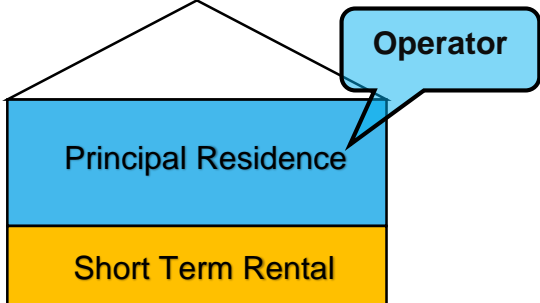
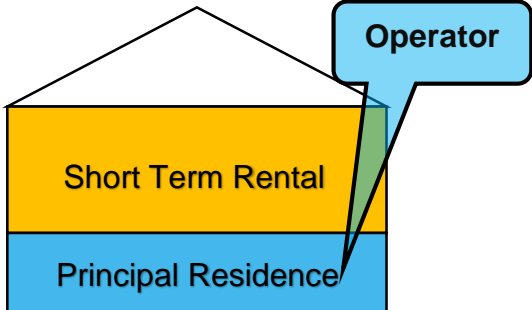
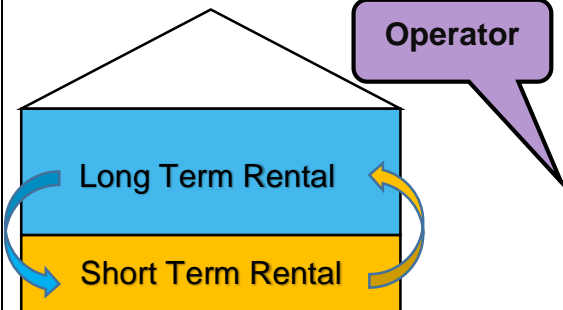
### Decision Point #1: Secondary Suites and Carriage Houses

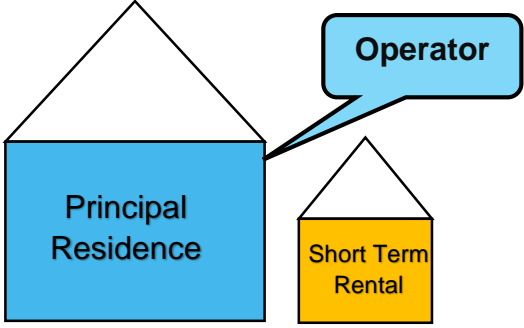
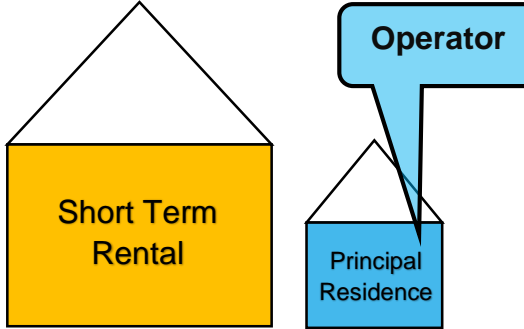
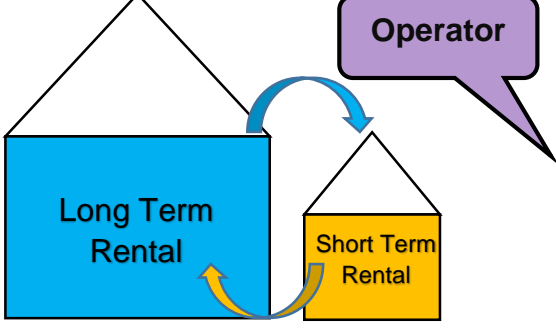
*Does Council wish to direct staff to revise the regulations in order to permit short term rentals on properties with secondary suites and carriage houses?*

If Yes, the bylaw would be revised to allow short term rentals on properties with secondary suites and carriage houses. This change will require second reading of Zoning Amendment Bylaw No. 0154.99 to be rescinded and a new public hearing. Council may wish to permit a short term rental to be operated out of either the single detached dwelling or the secondary suite/carriage house, provided at least one of the dwelling units on the property is occupied by a principal resident, who is the operator of the short term rental.

A number of potential scenarios are outlined below which clarify how a property could operate to host guests:

**Table 1 - Secondary Suite and Carriage House Short Term Rentals**

Scenario	Description	Illustration
A ✓	Principal Resident resides in the single detached dwelling and hosts guests within a secondary suite	
B ✓	Principal Resident resides in a secondary suite and hosts guests within the single detached dwelling	
C ✗	Owner who does not maintain a property as their principal residence cannot operate a short term rental in either the single detached dwelling or secondary suite	

<p>D</p> <p>✓</p>	<p>Principal Resident resides in the single detached dwelling and hosts guests within a carriage house</p>	
<p>E</p> <p>✓</p>	<p>Principal Resident resides in a carriage house and hosts guests within the single detached dwelling</p>	
<p>F</p> <p>✗</p>	<p>Owner who does not maintain a property as their principal residence cannot operate a short term rental in either the single detached dwelling or carriage house</p>	

#### Decision Point #2: Bed and Breakfast Regulations

*Does Council wish to direct staff to keep the existing regulations for Bed and Breakfasts within the Zoning Bylaw?*

If Yes, Section 3.17 of the Zoning Bylaw regulating the use of Bed and Breakfast will remain and there will be no changes to the regulations. A new section will be drafted specifically for the short term rental regulations. A summary of the existing regulations for Bed and Breakfasts is provided below and the entire Section is provided in Attachment 2:

- A B&B is only permitted within a single detached dwelling
- The operator of a B&B must be the occupant of the single detached dwelling
- No more than 4 guest rooms and no more than 8 guests are permitted in a B&B at any one time
- Guest rooms shall only be rented for periods of less than 1 month
- A B&B is not permitted on a parcel with a secondary suite or carriage house

### Decision Point #3: Definitions

*Does Council wish to direct staff to revise the minor and major terminology proposed for short term rentals?*

If Yes, the use of the terms “minor” and “major” in the definitions will be removed and a new phrase for the short term rental use will be utilized. A number of options exist, for example the following have been used by other municipalities in defining short term rentals:


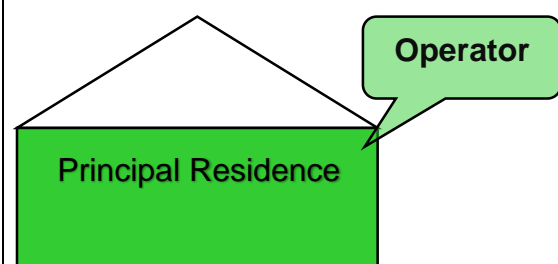
- Short Term Rental Accommodation (*Kelowna, Gibsons*);
- Short Term Vacation Rental (*Lake Country, Nelson*);
- Vacation Rental (*Penticton; Revelstoke*);
- Short Term Residential Rental (*Sechelt*); or
- Tourism/Tourist Accommodation (*Pemberton; Tofino*).

### Decision Point #4: Hosted vs. Un-hosted Accommodations

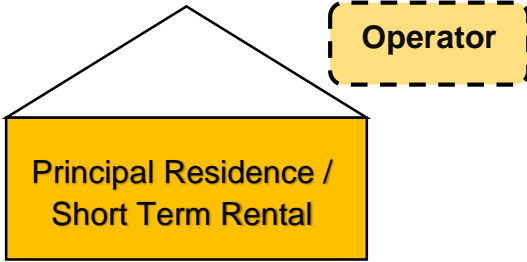
*Does Council wish to direct staff to revise the regulations to require all short term rentals to be hosted?*

If Yes, the bylaw would be revised to only permit short term rentals to operate when the operator is providing a hosted accommodation. Council may wish to direct staff to develop criteria for what would be considered a “hosted” accommodation. For example, whether an operator has the ability to be away from their property for one night or a weekend while they are hosting short term rental guests on their property. Specific regulations for “hosted accommodation” or “on-site operator” could be included in the Business Licencing and Regulation Bylaw for clarity, which could include the requirement of a local contact for times when the operator cannot be reached.

**Table 2 - Hosted vs. Un-Hosted Accommodations**

Scenario	Description	Illustration
G 	Principal Resident resides in and hosts guests in the single detached dwelling while they are on-site	



<p>H</p> <p>✘</p>	<p>Principal Resident who resides on a property (with or without a secondary suite or carriage house) could not host guests while they are away.</p>	
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### Decision Point #5: Parking Requirements

The currently proposed bylaw requires 0.5 parking spaces per bedroom in hosted short term rentals.

*Does Council wish to direct staff to revise the parking requirements for hosted short term rentals?*

If Yes, the parking requirements for short term rentals would be revised to be consistent with the current requirements for Bed and Breakfasts which are required to provide one (1) parking space per bedroom rented, in addition to the required parking for the principal residential use (two (2) spaces), within the property boundaries.

### Additional Direction

Council may wish to provide direction for the other regulatory bylaw amendments and program implementation<sup>5</sup>. While no bylaw amendments have been formally presented to Council for readings, draft regulations were available as part of the initial program development<sup>6</sup>. These complimentary bylaw amendments would set Business Licencing requirements, Business Licence Fees, and associated fines and offences.

There may be an opportunity to more clearly define “principal residence/resident” within the Business Licencing & Regulations Bylaw. A licence cap or allocation system could also be developed as part of the Business Licencing and Regulations Bylaw amendments. A city-wide licence cap could be established or an allocation system based on neighbourhoods or specified areas. As well, additional services could be requested to be included in the third party service contract for short term rentals as part of the compliance program.

<sup>5</sup> Only Zoning Bylaws, Official Community Plan Bylaws, Phased Development Agreements or Terminations of a Land Use Contract statutorily require a Public Hearing.

<sup>6</sup> November 24, 2020 Council Report: [P 20-16 – Proposed Short Term Rental Program](#)

## FINANCIAL IMPLICATIONS

### Third Party Contractor

Previously, the estimated annual cost for a third party contractor to provide address identification and compliance monitoring was approximately \$8,000<sup>7</sup>. However this number was based on estimations of potential listing numbers post-regulation which could be expected to change substantially depending on the outcome of Decision Point #1. Additional services will also result in increased costs for a third party contractor.

## COUNCIL REPORT / RESOLUTION HISTORY

Date	Report Topic / Resolution	Resolution No.
March 16, 2021	Public Hearing	-
February 23, 2021	<b>THAT</b> Council give first and second reading to the “City of West Kelowna Zoning Amendment Bylaw No. 0154.99, 2021”; and <b>THAT</b> Council direct staff to schedule a public hearing.	<b>C092/21</b>
January 26, 2021	Information Update for Council on Short Term Rental Engagement Results	-
November 24, 2020	<b>THAT</b> Council direct staff to further engage the community and stakeholders on the proposed Short Term Rental program as outlined in this report.	<b>C300/20</b>
September 29, 2020	Council provided direction to staff that short term rentals be regulated, and that the creation of regulations for short term rentals be done through the review of regional practices and consultation with both stakeholders and the public. Council’s direction followed the decision points presented to Council.	-
September 17, 2019	<b>THAT</b> Council direct staff to investigate and report back to Council regarding Air BnB and short term rentals in West Kelowna within the next 6 months.	<b>C327/19</b>

<sup>7</sup> Based on 155 listings post-regulation

## **NEXT STEPS**

Council's direction for each decision point will be implemented. Depending on the direction given, a number of potential paths forward exist as outlined above.

## **REVIEWED BY**

Brent Magnan, Planning Manager

Mark Koch, Director of Development Services

Shelley Schnitzler, Legislative Services Manager/Corporate Officer

## **APPROVED FOR THE AGENDA BY**

Paul Gipps, CAO

CAO Comments:

1) Staff feel all businesses operating out of a residential setting should be required to sign the Good Neighbour Agreement as well

2) Capping the number of business licences for Short Term Rentals can be accomplished through the amendments to the Business Licence Bylaw. If a cap is a consideration to ensure long term rentals are not impacted the number can be set to match the historical number of Short Term Rentals which is approximately 500.

Powerpoint: Yes ☒ No ☐

Attachments:

1. Council's Bylaw Enforcement Policy
2. Zoning Bylaw Excerpt – Section 3.17 Bed and Breakfasts