

Report to Council



Date: December 3, 2018
File: 1200-40
To: City Manager
From: Laura Bentley, Community Planning Supervisor
Subject: Proposed Short-Term Rental Accommodation Regulations

Recommendation:

THAT Council receives, for information, the report from the Community Planning Department dated December 3, 2018;

AND THAT Council direct staff to proceed with preparing bylaws and policies to implement the proposed short-term rental accommodation regulations and licensing.

Purpose:

To consider proposed regulations for short-term rental accommodations and a corresponding business licensing and enforcement strategy.

Background:

Staff are proposing new regulations for short-term rental accommodations in residential and commercial zones, based on previously endorsed guiding principles, Kelowna's specific context and public and stakeholder feedback. These regulations also implement the City's Healthy Housing Strategy recommendation to update regulations to protect the rental stock from the impacts of short-term rentals.

Guiding Principles

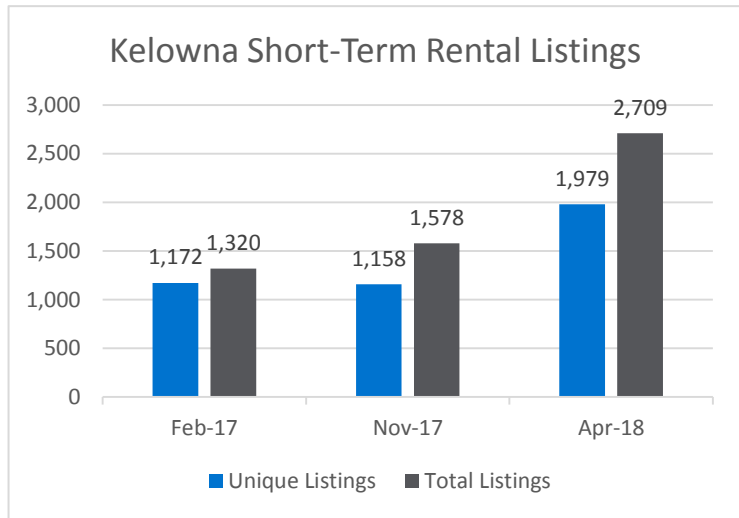
In July 2018, Council endorsed three guiding principles to direct the development of short-term rental regulations:

1. Ensure short-term rental accommodations do not impact the long-term rental housing supply in a negative way.
2. Ensure short-term rental accommodations are good neighbours.
3. Ensure equity among short-term accommodation providers.

These principles are based on Kelowna's housing context, concerns about potential nuisance impacts in residential areas, and establishing a fair approach among short-term accommodation providers.

Short-Term Rental Market

Globally, the short-term or vacation rental market grew eightfold between 2011 and 2017, with 8 million listings last year¹. In Kelowna, although short-term rentals are currently not permitted in residential zones, the number of short-term rental listings increased nearly 69% between winter 2017 (1,172 listings) and spring 2018 (1,979 listings)². Part of this increase may reflect seasonal changes; however, it also suggests overall growth in the number of homes being used for short-term rental accommodation. Airbnb identified Kelowna as a trending North American destination for 2018, with an increase of 170% guests in 2017³. Over 80% of listings are entire homes being rented out, and the units are nearly evenly divided between single detached homes and multi-family units⁴.



The median nightly rate for short-term rentals increased from \$190 in November 2017 to \$220 in April 2018⁵. Across the Okanagan, short-term rentals are generally used approximately 30 nights a year, and most stays are two to three nights long⁶. There is clear demand and interest in short-term rentals in Kelowna, and these regulations are intended to balance that interest with measures that address the above-mentioned guiding principles.

Kelowna's Rental Housing Context

After five years of declining vacancy rates, Kelowna's vacancy rate increased in 2018 to 1.9%. This reflects the significant investment in new rental apartment buildings in the last couple of years. That said, the vacancy rate is still below the targeted rate of 3% to 5%, and strong demand for rental units is expected to continue as Kelowna grows and housing prices make home ownership less attainable for many. The Healthy Housing Strategy indicates that between 2011 and 2016, nearly three quarters of new households in Kelowna were renters, compared to one third in the five years prior. Approximately 550 new rental units are expected to be needed annually across the primary and secondary rental markets⁷ to accommodate anticipated growth.

The secondary rental market accounts for approximately 70% of all long-term rental units, and Kelowna currently has an estimated 1,650 known secondary suites and carriage houses. Maintaining these units for long-term rental housing supports opportunities for residents to access rental housing options, and security of tenancy is critical for residents to find and retain stable housing.

¹ Host Compliance LLC (April 2018).

² Host Compliance LLC (February 2017 & April 2018).

³ Airbnb's 2018 Travel Trends.

⁴ Host Compliance LLC (April 2018).

⁵ Host Compliance LLC (November 2017 & April 2018).

⁶ Airbnb: Bringing Home Sharing to Wine Country.

⁷ The primary rental market consists of purpose-built rental apartments and townhouses. The secondary rental market consists of individually owned units that are rented out, including secondary suites, carriage houses, and entire homes.

Proposed Regulations

The proposed regulations would allow for short-term rental accommodation to be a secondary use to a principal dwelling unit in most zones where residential uses are permitted, including single family, multi-family and mixed-use commercial zones. Operation of short-term rental accommodation would be restricted to the operator’s principal residence in these zones, supporting the first two guiding principles. This would let residents rent out an extra bedroom or two, or occasionally rent out their entire home for short periods when they are away. To further support protection of long-term rentals, short-term rental accommodations would not be permitted in secondary suites or carriage houses.

Select zones, where the purpose of the zone includes tourist accommodation, could have short-term rental accommodation as a principal use without being limited to an operator’s principal residence, much like the existing ‘apartment hotel’ use. These include the C9 – Tourist Commercial zone and portions of CD18 – McKinley Beach (Area I – Village Centre), and Hiawatha’s CD24 – Comprehensive Development Zone (Sub-Area A). The apartment hotel use would be removed and replaced with a new definition and regulations for short-term rental accommodation.

The RM6 – High Rise Apartment Housing zone currently allows dwelling units that are owner-occupied or rented as long-term rentals for at least half of the year to also operate short-term rentals. This is not limited to the operator’s principal residence. Several RM6 developments in the Sunset Drive area (e.g. Waterscapes and Discovery Bay) currently have short-term rental and tourist accommodation, and this use is supported by area amenities. Staff propose a new RM6 subzone be created for the Sunset Drive area to recognize these existing uses and clarify the provisions. Short-term rental accommodation would still be secondary to a long-term dwelling unit, though not limited to the operator’s principal residence, and individual stratas would have the opportunity to further regulate this use. All other properties zoned RM6 would follow the same regulations as other multi-family zones, namely that short-term rental accommodation would be a secondary use in the operator’s principal residence only.

Zones where short-term rental accommodation is proposed are shown below. As a secondary use, short-term rentals would be secondary to a principal dwelling unit (e.g. house, townhouse, condo unit).

Zone Category	Principal Use	Secondary Use
Rural residential (RR1-RR3)		✓
Single/two unit residential (RU1-RU6, RH1, RH2)		✓
Single/two unit residential - health district & comprehensive development (HD2, HD3, CD2, CD4, CD10)		✓
Multi-unit residential (RU7, RM1-RM6, RH3)		✓
Multi-unit residential - health district & comprehensive development (HD2, HD3, CD1, CD2, CD3, CD5, CD14, CD17, CD22, CD26, CD27)		✓
Urban commercial (C3-C8)		✓
Sunset Drive area (new RM6 subzone)		✓
Tourist commercial (C9)	✓	
McKinley Beach (CD18)	✓	✓
Hiawatha (CD24)	✓	✓

More specific regulations related to the number of bedrooms, bookings, parking, business licensing, and residence are shown in the table below. These are generally intended to limit the scale and impact of short-term rental accommodation in residential neighbourhoods and multi-family buildings,

supporting the principle of short-term rental operations acting as good neighbours. As with all uses, short-term rental accommodations must abide by relevant provisions of other City bylaws, including the Good Neighbour Bylaw, which regulates nuisances and disturbances such as noise.

Definitions:

- *Short-term rental accommodation*: the use of a dwelling unit or one or more sleeping units within a dwelling unit for temporary overnight accommodation for a period of 29 days or less. This use does not include bed and breakfast homes, hotels or motels.
- *Sleeping unit*: a habitable room not equipped with self-contained cooking facilities, providing accommodation for guests.

Regulation	Rural and single / two unit residential	Multi-unit residential & commercial	RM6 subzone, C9, and parts of CD18 and CD24
Maximum # of adults per sleeping unit	2	2	2
Maximum # of sleeping units	3	2	3
Maximum # of days per booking	29		
Maximum # of bookings at a time	1		
Minimum # of parking spaces	1 space per 2 sleeping units		
Business license	Yes		
Operator's principal residence	Yes		No*

* A higher business license fee is proposed where it is not the operator's principal residence.

As an example, the proposed regulations would allow the resident of a single detached home to rent three bedrooms to up to six adults under one booking at a time, providing two parking spaces for the short-term rental guests in addition to the required parking for the single detached home. Similarly, the resident of a condo unit could do a short-term rental in two bedrooms with up to four adults under one booking, providing one parking space for this use. The only zones where short-term rental accommodation would not be limited to the operator's principal residence are the proposed RM6 subzone, C9, and parts of CD18 (McKinley Beach) and CD24 (Hiawatha).

Other Considerations

Staff considered various options through the review of regulations in other jurisdictions and feedback from stakeholders and residents. Specifically, two items staff considered as they relate to short-term rentals were bed & breakfast homes and student housing.

Many residential zones currently allow for bed & breakfast homes to operate as a secondary use in a single detached home. These may have up to four sleeping units and have additional parking and licensing requirements. Although this use is similar to short-term rental accommodation, staff are proposing to leave bed & breakfast homes as a distinct use to acknowledge their unique business model. One of the key differences is that the licensed operator of a bed & breakfast must be on-site when it is operating, whereas a short-term rental accommodation provider may rent out their home when they are away for short periods of time.

Through the public and stakeholder consultation, staff heard that some property owners rent to post-secondary students during the school year (September to April) and operate short-term rentals through the summer. While staff recognize this can create opportunities for students, tourists and homeowners,

allowing this under the new short-term rental regulations would present significant monitoring and enforcement challenges to ensure homeowners are renting to students. Furthermore, the tourism and hospitality industry has identified it has trouble finding sufficient housing for seasonal staff in the summer season, in part because of short-term rentals. By not permitting short-term rentals in secondary suites or carriage houses, these units can continue to be used for long-term rentals throughout the year, for students and seasonal employees alike.

Stakeholder Consultation

In November 2018, staff sent the proposed regulations to stakeholders and interested residents for feedback. Stakeholders included local business and neighbourhood associations, tourism industry representatives, some short-term accommodation providers, short-term rental platforms, and the Healthy Housing Advisory Committee. A total of 30 stakeholder groups were contacted in addition to nearly 30 interested residents. Staff also met directly with some members of the tourism industry and short-term rental providers through this process.

Feedback on the proposed regulations varied widely, reflecting the diverse needs and interests in the community. Staff received feedback from three stakeholder groups with comments ranging from support, to concerns about specific items, to concerns over core elements of the proposed direction. Some specific concerns and suggestions included protecting for owner-occupancy and long-term rentals within the RM6 zone and establishing a maximum number of days short-term rentals can operate each year. One stakeholder group suggested that fewer limitations, in particular allowing short-term rentals to operate outside of a principal residence and in secondary suites, would better support the use of short-term rentals as part of Kelowna's tourism industry. Responses from residents generally expressed concern with short-term rentals in residential neighbourhoods and suggested additional restrictions and enforcement would better protect against potential nuisances (e.g. noise, parking) in residential areas.

While responses showed some consensus that short-term rentals should be regulated and licensed, there was little agreement on the specific regulatory direction. Overall, the proposed regulations aim to achieve a balance between allowing short-term rentals as an option for tourists and other visitors, and protecting long-term rentals and limiting impacts on neighbouring properties and uses.

Online Accommodation Platform Taxes

In 2018, the Province expanded the collection of the Municipal and Regional District Tax (MRDT), which is applied to hotels, motels and resorts, to Online Accommodation Platforms (OAP). As of October 1, 2018, online accommodation providers (e.g. hosts using Airbnb, VRBO and others) must register and collect the 3% OAP MRDT. Through an agreement with the Province, Airbnb collects and remits both the 3% OAP MRDT and 8% provincial sales tax. This change supports the third guiding principle to support equity among different types of short-term accommodation providers. As outlined in the report from the Policy & Planning Department dated November 26, 2018, the City has applied to access OAP revenue to use towards affordable housing initiatives and will continue to work with Tourism Kelowna to further discuss use of the OAP revenues.

Non-Conforming Uses

Under the *Local Government Act*, uses that were permitted and legally in operation before a bylaw changes can continue to operate under certain conditions. If a unit was legally operating a short-term rental in a permitted commercial zone under the apartment hotel use or in the RM6 zone before new regulations are adopted, that use can continue. It should be noted the *Local Government Act* establishes

that where a portion of a building has a use that is considered non-conforming, that use may continue in the entire building. If the short-term rental use stops for a continuous period of six months, not including normal seasonal discontinuation, then the legal non-conforming status no longer applies. Non-conforming use provisions would not apply to short-term rentals that were operating in contravention of Zoning Bylaw regulations.

Stratas

A strata corporation may have bylaws that are more restrictive than what the Zoning Bylaw allows. Some stratas have restricted or prohibited short-term rentals while others allow them with few restrictions. The City can only enforce City bylaws, not strata ones, and stratas are encouraged to review their bylaws as they relate to short-term rentals in light of the potential for new regulations.

Business Licensing & Bylaw Enforcement Strategy

All short-term rentals, including legal non-conforming operations, will require a business license. Staff are proposing a business license fee of \$345 where the short-term rental is in the operator's principal residence, and a fee of \$750 where it is not the operator's principal residence. These fees are in line with other municipal short-term rental licenses, and fees would be adjusted annually with the Consumer Price Index. These fees are intended to support cost recovery for licensing and compliance needs associated with short-term rental accommodations.

To support the first two guiding principles and address safety concerns, staff propose the following documentation be required as part of the license application:

- Proof of residency – documentation to demonstrate the unit is their principal residence;
- Owner's authorization – a tenant must have authorization from the property owner and property management company (where applicable);
- Strata authorization – a letter from the strata council confirming operation of a short-term rental does not contradict any strata bylaws (where applicable);
- Good Neighbour Agreement – confirm neighbours have been informed of intent to operate a short-term rental, and sign agreement to operate in accordance with Good Neighbour Bylaw;
- Inspection – confirm the property meets minimum health and life safety standards; and
- Contact information – the name and contact information of the operator and at least one other individual who can respond during the duration of any short-term rental stay.

Conditions of a business licensing permitting operation of a short-term rental would include:

- Inspection – operators would be subject to a random inspection (approximately 25% of units to be inspected annually) to ensure health and life safety standards are met;
- Advertise license number – a valid business license number must be included in any advertising, listing or promotion material;
- Contact information – the name and contact information of the operator and at least one other individual must be posted in the area where the short-term rental is operated.

Staff will work with applicants to inform them of the license requirements and conditions. Operators who are found to be in breach of these conditions, including the proposed Good Neighbour Agreement, may be subject to a license suspension in accordance with business licensing procedures.

To date, enforcement of short-term rental accommodations and associated nuisances has been complaint-based and staff do not have adequate tools or resources to pursue enforcement proactively.

To support compliance and enforcement efforts and mitigate impacts to staff resources, staff propose contracting a third party company with software capable of searching listings across multiple online accommodation platforms to effectively provide accurate and enforceable information. These companies offer a range of services, including license application platforms and listing identification to more robust monitoring and communications services. Staff would prepare a Request for Proposals to engage a company to perform a suite of services that will support Business License and Bylaw Services staff. Complaint-based enforcement through Bylaw Services will still form part of the enforcement strategy, particularly as it relates to nuisance issues.

Internal Circulation:

Business License Manager
Bylaw Services Manager
Communications Coordinator, Community Engagement
Long Range Policy Planning Manager
Sustainability Coordinator

Existing Policy:

OCP Goal 2. Address Housing Needs of All Residents. Address housing needs of all residents by working towards an adequate supply of a variety of housing.

Healthy Housing Strategy Action: Update regulations to protect the rental stock from the impacts of short-term rentals.

Financial/Budgetary Considerations:

Estimated \$320,000 annually for business licensing and enforcement. Fees support cost recovery.

Personnel Implications:

One new License and Bylaw Inspection Officer and one new Administrative Clerk are needed to support licensing needs associated with short-term rental accommodation. These positions would be shared with the need for additional resources to support regulation and compliance demands of new cannabis retail sales establishments and the increasing number of cannabis production facilities.

Considerations not applicable to this report:

Legal/Statutory Authority:
Legal/Statutory Procedural Requirements:
Communications Comments:
External Agency/Public Comments:
Alternate Recommendation:

Submitted by:

L. Bentley, Community Planning Supervisor

Approved for inclusion: R. Smith, Community Planning Department Manager

cc:

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Bylaw Services Manager
Long Range Policy Planning Manager
Sustainability Coordinator