

# Report to Council



**Date:** February 25, 2019  
**File:** 1200-40  
**To:** City Manager  
**From:** Laura Bentley, Community Planning Supervisor  
**Subject:** Short-Term Rental Accommodation Non-Conforming Use Provisions

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## **Recommendation:**

THAT Council receives, for information, the report from the Community Planning Department dated February 25, 2019, with respect to non-conforming use provisions for short-term rental accommodations.

## **Purpose:**

To provide clarity on those properties that qualify for non-conforming use provisions for short-term rental accommodation.

## **Background:**

The *Local Government Act* outlines non-conforming use provisions that apply in cases where a land use regulation bylaw changes and a use no longer conforms to the new bylaw (see Legal/Statutory Authority below). In association with proposed regulations for short-term rental accommodations, staff have reviewed how the non-conforming use provisions would apply to those properties with zoning that currently allows for the 'apartment hotel' or similar use<sup>1</sup>. To provide clarity for Council, staff, property owners, developers, and the public, this report outlines how the provisions relate to existing buildings and those in the development process.

### *Existing Buildings*

Units that are lawfully operating as apartment hotels, or have done so seasonally within the last year, may continue to operate under the existing regulations, provided they follow the non-conforming use provisions in section 528 of the *Local Government Act*. Notably, existing apartment hotels would not be restricted to the operator's principal residence. The *Local Government Act* also establishes that where a portion of a building has operated a use that becomes non-conforming, that use may continue in the

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<sup>1</sup> Applicable zones are: RM6, C4, C5, C7, C8, C9, HD2, CD14, CD17, CD18, CD22, CD24, and CD26. Specific regulations may apply in each zone, including whether the use is principal or secondary.

entire building. This means that if a unit in a condo building in the C7 zone, for example, has lawfully operated as an apartment hotel, all residential units in that building could operate that use and not be restricted to the new short-term rental regulations. This simplifies administration of non-conforming use provisions for staff and operators, where entire buildings that qualify for non-conforming use of apartment hotels can be identified rather than individual units in buildings.

### *Buildings Under Construction*

Developments that are in-stream or under construction must follow somewhat different criteria than buildings that are occupied and operating apartment hotels. Based on the *Local Government Act* and examples from other communities, staff identified criteria against which to consider in-stream projects to determine if they qualify for non-conforming use provisions. These criteria are: zoning, building use, permit approvals, use restrictions, and timing.

As demonstrated in Figure 1, to qualify for non-conforming use for apartment hotels:

1. the property must be zoned for that use;
2. the development must be for a residential use, since that would allow for apartment hotels;
3. the project must have an approved development permit;
4. there may not be any restrictions on an apartment hotel or similar short-term rental use; and
5. the project must be issued a building permit and occupancy within three years of bylaw adoption.

To ensure the non-conforming use provisions only apply to the original project as approved, the relevant development permit must not lapse, and the development must receive a building permit and occupancy within three years of adoption of the new short-term rental accommodation bylaws.

It should be noted that rental housing agreements are intended to ensure buildings are used for long-term rentals and preclude short-term rental accommodation. As such, any projects that applied for rental housing grants or tax exemptions for rental housing and entered into a rental housing agreement would not qualify for non-conforming use provisions, since they are restricted from operating as apartment hotels under the existing regulations.

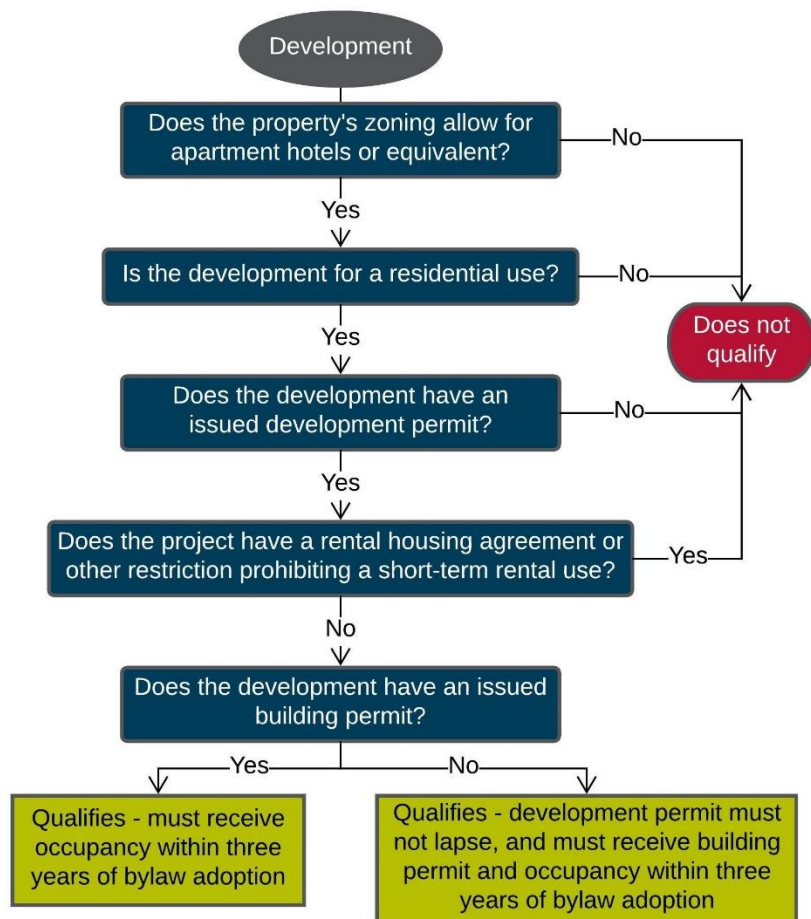


Figure 1: Criteria to Determine Non-Conforming Use on In-Stream Projects

Staff identified projects that are currently in-stream or under construction on properties with the applicable zoning in place and reviewed them against the above-listed criteria to determine if they qualify for non-conforming use provisions. The projects are listed in Table 1 below. While rental housing agreements were identified, full title searches to determine other use restrictions were not conducted, and strata bylaws or tenancy agreements may further restrict apartment hotel or short-term rental uses. Prospective property owners or residents are advised to conduct further due diligence. Should any projects have been missed from this list staff will consider them in the same way against the criteria.

*Table 1: Non-Conforming Use Criteria for In-Stream Projects*

Project Address	Zone	Zoning	Residential Use	Approved DP	Rental Housing Agreement	Issued BP	Non-Conforming Use
105-115 Hwy 33 W	C4	Yes	Yes	No	No	No	No
1151 Sunset Dr (1151 Sunset)	RM6	Yes	Yes	Yes	No	Yes	Yes
1164 Ellis St (One Water west)	C7	Yes	Yes	Yes	No	Yes	Yes
1191 Sunset Dr (One Water east)	C7	Yes	Yes	Yes	No	Yes	Yes
1205-1241 Richter	RM6	Yes	Yes	Yes	No	No	Yes
1215 St Paul St	C7	Yes	Yes	Yes	No	Yes	Yes
1232 Ellis St (Ellis Parc)	CD5	No	Yes	Yes	No	Yes	No
1471 St Paul St (Brooklyn)	C7	Yes	Yes	Yes	No	No	Yes
1580 Ellis St (Ella)	C7	Yes	Yes	Yes	No	Yes	Yes
165-179 Rutland Rd N	C4	Yes	Yes	No	No	No	No
1740 Richter St (Central Green Building B)	CD22	Yes	Yes	Yes	Yes	Yes	No
1800 Richter St (Urbana at Central Green)	CD22	Yes	Yes	Yes	No	Yes	Yes
1835 Gordon Dr (Capri Tower 1)	CD26	Yes	Yes	Yes	No	No	Yes
191 Hollywood Rd S	C4	Yes	Yes	Yes	No	No	Yes
1925 Enterprise Way	CD17	Yes	Yes	Yes	No	Yes	Yes
2169 Pandosy St (Collett Manor)	HD2	Yes	Yes	Yes	No	No	Yes
225 Rutland Rd S	C4	Yes	Yes	Yes	Yes	Yes	No
3475 Granite Close (Granite at McKinley Beach)	CD18	Yes	Yes	Yes	No	Yes	Yes
3477-3499 Lakeshore Rd (The Shore)	C4	Yes	Yes	Yes	Yes	Yes	No
430 Harvey Ave	C7	Yes	Yes	No	No	No	No
529 Truswell Rd	C9	Yes	Yes	Yes	No	Yes	Yes
529 Truswell Rd (Water's Edge North)	C9	Yes	Yes	Yes	No	Yes	Yes
955 Leon Ave	RM6	Yes	Yes	Yes	No	Yes	Yes

**Legal/Statutory Authority:**

*Local Government Act Part 14 – Planning and Land Use Management*

**Non-conforming uses: authority to continue use**

- 528** (1) Subject to this section, if, at the time a land use regulation bylaw is adopted,
- (a) land, or a building or other structure, to which that bylaw applies is lawfully used, and
  - (b) the use does not conform to the bylaw,
- the use may be continued as a non-conforming use.
- (2) If a non-conforming use authorized under subsection (1) is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the land use regulation bylaw.
- (3) The use of land, a building or other structure, for seasonal uses or for agricultural purposes, is not discontinued as a result of normal seasonal or agricultural practices, including
- (a) seasonal, market or production cycles,
  - (b) the control of disease or pests, or
  - (c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.
- (4) A building or other structure that is lawfully under construction at the time of the adoption of a land use regulation bylaw is deemed, for the purpose of this section,
- (a) to be a building or other structure existing at that time, and
  - (b) to be then in use for its intended purpose as determined from the building permit authorizing its construction.
- (5) If subsection (1) authorizes a non-conforming use of part of a building or other structure to continue, the whole of that building or other structure may be used for that non-conforming use.

**Considerations not applicable to this report:**

Internal Circulation:

Legal/Statutory Procedural Requirements:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

Submitted by:

L. Bentley, Community Planning Supervisor

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

cc:

G. Wise, Business License Manager