

REPORT TO COUNCIL

Text Amendment



Date: October 23, 2023
To: Council
From: City Manager
File No.: TA23-0013

1.0 Recommendation

THAT Zoning Bylaw Text Amendment Application No. TA23-0013 to amend City of Kelowna Zoning Bylaw No. 12375 as outlined in Schedule "A" attached to the Report from the Development Planning Department dated October 23, 2023, be considered by Council;

AND THAT the Zoning Bylaw Text Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT Council directs Staff to stop accepting applications for new short-term rental accommodation business licences in accordance with the Business Licence and Regulation Bylaw No. 7878 and Short-Term Rental Accommodation Business Licence and Regulation Bylaw No. 11720 until the outcome of Zoning Bylaw Text Amendment Application No. TA23-0013 has been determined;

AND FURTHER THAT final adoption of the Zoning Bylaw Text Amending Bylaw be considered subsequent to the approval of the Ministry of Transportation and Infrastructure.

2.0 Purpose

To amend the Zoning Bylaw by removing short-term rental accommodation as a secondary use from all zones.

3.0 Background

At a Council workshop during the July 10, 2023 PM Meeting, Staff were directed to bring forth changes to short-term rental accommodation regulations within the Zoning Bylaw for further consideration.

Previous Council Resolution

Resolution	Date
THAT Council receives, for information, the report from the Development Planning Department dated July 10, 2023, with respect to the short-term rental regulatory review; AND THAT Council directs Staff to bring forth changes to Zoning Bylaw No. 12375 and Short-Term Rental Accommodation Business Licence and Regulation Bylaw No. 11720 as outlined in the report from the Development Planning Department dated July 10, 2023.	July 10, 2023

4.0 Development Planning

The City's short-term rental accommodations regulations were adopted by Council on April 8, 2019. The regulations were based on guiding principles endorsed by Council as well as best practice research and input from residents and stakeholders. The regulations were carried through to Zoning Bylaw No. 12375.

The guiding principles that directed the development of the short-term rental accommodation regulations were based on Kelowna's housing context, concerns about potential nuisance impacts in residential areas, and establishing a fair approach among short-term accommodation providers. These three guiding principles that were endorsed by Council are:

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; and
3. Ensure equity among short-term accommodation providers.

Following the July 10, 2023, Council workshop on proposed changes to short-term rental regulations, Staff have considered the comments and direction received from Council. Given the findings of the recently presented Housing Needs Assessment, Staff have proposed regulations that are more considerate of long-term housing needs than the originally endorsed Council direction. The recommended amendments to Zoning Bylaw No. 12375 are:

Proposed Amendment #1 – Amend the current short-term rental accommodations definition and remove reference to short-term rental accommodation as a secondary use within Section 5 – Definitions & Interpretations. The reference to short-term rental accommodation as a secondary use within the definition should be deleted as it is no longer required, and it helps for regulation clarity to emphasize that residents and owners cannot engage in any short-term rental activity unless the zone explicitly allows it as a principal use.

Proposed Amendments #2, #3, and #4 – Delete the ratio of parking sizes for short-term rental accommodation and the minimum parking requirements for short-term rental accommodation in Agriculture & Rural zones and Single & Two Dwelling zones and amend the specific use regulation relating to the maximum number of sleeping units in Agriculture & Rural zones and Single & Two Dwelling zones. These changes would ensure the parking and specific use regulations would be consistent with the proposed changes.

Proposed Amendments #5, #6, #7, #8, #9, #10, #11, #12, #13 – Remove short-term rental accommodation as a permitted secondary use from the A1, A2, RR1, RR2, RU1, RU2, RU3, RU4, RU5, MF1, MF2, MF3, C1, C2, CA1, VC1, UC1, UC2, UC3, UC4, UC5, CD17, CD18 (Area II, Area III and Area IV), CD20, CD22 and CD26 zones. Additional rationale for this proposed change is detailed below.

This amendment proposes to remove short-term rental accommodation as a permitted secondary use for all zones, which includes all Agricultural & Rural, Single & Two Dwelling, Multi-Dwelling, Core Area & Other Zones, and Comprehensive Development zones. At this time, short-term rental accommodation would remain a permitted principal use in CD18 – McKinley Beach Comprehensive Development zone - Area I Village Centre only, as well as on properties with approved Site-Specific Regulations. The intent of the original planning, and subsequent CD18 – McKinley Beach Comprehensive Development zone adoption was to have more typical resort accommodations in Area I, which is recommended to continue to be permitted in this area only. Short-term rental accommodation would also remain permitted as a principal use in a number of exemption areas, which are listed in Attachment A. Additionally, all properties with valid short-

term rental accommodation business licences would be permitted to continue operating as a non-conforming use in accordance with Section 528 of the Local Government Act. Based on September 2023 Business Licensing data, approximately 427 properties would receive non-conforming status.

Operating short-term rental accommodation on any of these properties (listed in Attachment A) is subject to change as the City reviews additional information from the Province of British Columbia regarding the proposed Short-Term Rental Accommodations Act and associated regulations, including how the Act would be interpreted regarding the application of principal residence requirements and changes to legal non-conforming use protections.

Current Statistics

As of September 2023, there are currently 1,191 short-term rental accommodations with a valid business licence in Kelowna. This is an increase of 89% since 2020. Since the Council workshop in July 2023, an additional 44 new licences have been issued, which includes 21 non-principal residence licences and 23 principal residence licences. An additional 62 licences are currently in the queue waiting to be reviewed by Staff. A summary of the growth of the short-term rental program since 2020 is provided in Table 1 below.

Table 1 – Number of approved short-term rental (STR) business licences per year since 2020

Year	Approved STR as a Principal Use	Approved STR as a Secondary Use	Total Approved STR
2020	378	252	630
2021	477	333	810
2022	666	466	1,132
2023 (as of September)	693*	498**	1,191

* This is the current number of business licences issued where short-term rental accommodation is a permitted principal use (i.e. not in a principal residence). Short-term rental accommodation would remain as a permitted principal use in specific exemption areas, which are outlined in Attachment A, on properties with approved Site-Specific Regulations, as well as within Area I Village Centre of the CD18 – McKinley Beach Resort zone.

** This is the current number of business licences issued where short-term rental accommodation is a permitted secondary use (i.e. in a principal residence). These properties would be permitted to continue operating as short-term rental accommodation with non-conforming use status in accordance with Section 528 of the Local Government Act. There are some licences within this category that are also located within exemption areas. For example, this would include someone who owns a principal residence in an exemption area, where short-term rentals as a principal use is permitted, but operates the short-term rental as a secondary use instead.

A number of properties have been recognized by the City to have short-term rental accommodation as a permitted principal use, either based on historical zoning or through Site-Specific Regulations. These properties have been known as short-term rental accommodation exemption areas. As of September 2023, there were 764 active short-term rental accommodation business licences in these principal use or exemption areas (74 principal residence, 690 non-principal residence). An example of properties with permitted principal use, permitted non-conforming short-term rentals are those that had the C9 – Tourist Commercial zone in Zoning Bylaw No. 8000, which was a zone that was not translated into current Zoning Bylaw N. 12375. These properties have been listed in Attachment A. The properties where short-term rental accommodation will continue to be permitted to provide short-term rental accommodation are located throughout the City, with areas of concentration in the Downtown Urban Centre, South Pandosy Urban Centre, Cook Truswell Village Centre and McKinley Beach. If the Province of British Columbia makes legislative changes relating to non-

conforming regulations regarding short-term rental accommodation, the status of short-term rental accommodation being permitted on these properties may be required to change.

Housing Crisis

The [Canada Mortgage and Housing Corporation \(CMHC\) report \(2020\)](#) on the impact of short-term rentals on Canadian housing found that approximately 31,000 homes across Canada have been taken off the long-term market in Canada. Kelowna-specific data about the direct impact to the long-term rental housing market is not available, however it is known that every time a unit is converted from the long-term housing market, housing availability and affordability is affected.

The City of Kelowna's Housing Needs Assessment has conducted a comprehensive analysis of the community's housing needs and found that there is a large existing deficit of housing in Kelowna, as well as expected ongoing need for housing into the future. Rental housing is in particular demand, and this demand is expected to grow. A target of 440-600 long-term market rental units are required annually to meet the needs of Kelowna residents. Housing that is converted from short-term rentals to long-term rentals could help to meet the City's market rental housing targets.

Since the July 10, 2023 Council workshop, short-term rental accommodation has continued to put pressure on the long-term housing market. Staff are concerned short-term rental accommodation has been operating contradictory to guiding principle #1. Short-term rentals are diverting units of housing out of the regular rental market during a housing and affordability crisis. As evidence of this, between 2019 and 2022, approximately 70 decommissioning permits have been issued for properties that subsequently applied for a short-term rental business licence. Under the current regulations, short-term rental accommodation is not permitted to operate within a carriage house or secondary suite, and for these properties, owners have removed a long-term rental unit in favour of a short-term rental instead. Staff are concerned this has influenced the capacity of Kelowna's long-term secondary rental housing market and may indicate a trend that is in contradiction of guiding principle #1 of the short-term rental program. Removing the use from these zones will prevent this from legally occurring in the future.

In addition, with the Province of British Columbia expected to table legislation that may allow multiple dwellings on single family lots within the City, Staff recommend proactively removing the short-term rental use from these zones in anticipation of future challenges. This would ensure any new dwellings are for the long-term housing needs of the City's residents.

Staff Capacity and Enforcement

Unlike many other large municipalities in British Columbia, Kelowna does not have Staff resources that are dedicated to the management and enforcement of the short-term rental accommodation program at a level that the growth and demands of the program currently warrant. The current Zoning Bylaw regulations have proven to be difficult to enforce and have occupied a significant amount of Staff time across multiple departments, including those in Development Planning, Business Licensing and Bylaw Enforcement. This proposed text amendment is intended to simplify the rules and, eventually, require less time for ensuring compliance and enforcement.

From 2019 through to the end of 2022, the Bylaw Enforcement Department received 294 specific service requests related to short-term rentals. These requests are associated with 146 unique properties. However, it's likely this number is higher as complaints, such as those related to noise, are not often known at the time

a complaint is received to be due to a short-term rental. There are also several properties that have become specifically problematic, generating over one hundred complaints, and taking Bylaw Enforcement Officers years to investigate and resolve. For example, in 2023 one property has received 19 unique complaints. Another property, which took from 2016 to 2020 to resolve, resulted in 115 calls to the Bylaw Enforcement Office. Complaints vary in nature and most commonly included those related to noise and nuisances, parking, solid waste bylaws, and Zoning Bylaw regulations, such as the number of people and guests. These can be some of the most challenging complaints for Bylaw Enforcement Officers to gather evidence and lay a charge on. The number and nature of service requests relating to short-term rentals is indicative that the current program is functioning contrary to guiding principle #2.

A significant Bylaw Enforcement challenge is related to the difficulties in being able to prove principal residency, where short-term rentals are a permitted secondary use. While many properties are compliant, Staff are aware of instances where ongoing abuse of the program is occurring, and this has been to the detriment of the broader housing needs of the community. To address this, Staff have proposed to remove short-term rental accommodation as a permitted secondary use from all zones in the City. This proposed amendment may result in an initial spike in enforcement requirements due to the number of illegally operating short-term rentals, but in the long-term these proposed amendments are anticipated to make enforcement of the program easier. New principal residence requirements that are included in the Short-Term Rental Accommodations Act proposed by the Province of British Columbia would assist with addressing this enforcement challenge.

Host Compliance is a software tool used by the City's Business Licensing Department to find and enforce short-term rental non-compliance, as well as to review each business license application that is received. Staff use this tool to review a property and ensure an online listing matches an application and regulations. It also supports Staff in the identification of short-term rentals operating out of carriage houses or secondary suites, as well as those operating contrary to their permitted bedroom and guest count. From 2019 to June 2023, Host Compliance was used to proactively identify 796 short-term rentals operating without a business license that were brought into compliance, without having to utilize Bylaw Enforcement for ticketing or further enforcement action. There are known challenges with Host Compliance in being able to identify illegal short-term rentals within the multiple dwelling housing context. A new Provincial short-term rental registry is proposed to be created and is scheduled to be launched in late 2024. This will require hosts to include a provincial registration number on their listing, as well as require platforms to remove listings without valid provincial registry numbers.

Compliance has been an on-going issue for the Business Licensing Department. There are approximately 900 non-compliant properties that have been identified by Host Compliance that have not yet obtained a short-term rental accommodation business licence, and a number of additional properties that have been flagged for further identification and investigation. Business Licensing Staff currently only have capacity to enforce on a small number of non-compliant short-term rentals at one time and it's been time-consuming on Staff to work towards bringing properties into compliance. Business Licensing Staff invest anywhere from several minutes to multiple days' work, depending on the property, issue and number of complaints received. Therefore, increased enforcement of short-term regulations is pivotal to mitigate any further loss of long-term housing stock, bring properties into compliance and hold hosts responsible to their legal obligations.

The proposed changes to Zoning Bylaw No. 12375 will not eliminate the need for dedicated Staff time related to ongoing enforcement and compliance. This proposed text amendment would see approximately 427 short-term rentals receive non-conforming status in accordance with Section 528 of the Local Government Act, as well as 693 current short-term rentals, which would be permitted to continue operating a permitted

principal use at this time. There are also currently 62 applications in the queue to be reviewed by Business Licensing Staff, which would be considered as in-stream prior to any bylaw change. As additional buildings that are on the exemption list and are currently under construction receive occupancy (such as Aqua, Caban and properties within CD18 – McKinley Beach Comprehensive Development Zone Area I Village Centre), the number of permitted principal use short-term rentals would be expected to increase, however this is subject to change pending additional information from the Province of British Columbia.

Summary and Next Steps

It is recognized that short-term rentals can supplement the accommodation market and provide homeowners with additional income opportunities. Nonetheless, an appropriately regulated process is required in order to preserve the housing stock for long term rentals while managing tourism impacts. The challenge faced by municipalities is to find a balance in regulation of short-term rental activity to continue to enhance benefits and opportunities of the industry, while reducing any detrimental effects on housing and neighbourhood livability. Kelowna is not alone with these challenges, and like many municipalities across Canada, are grappling with pressures from short-term rentals. Staff recognize the current Zoning Bylaw short-term rental regulations require amendments to address housing and enforcement related concerns, and are following Council direction from the July 10, 2023 workshop in bringing forward this proposed text amendment. Given the findings of the recently presented Housing Needs Assessment, Staff have proposed regulations that are more restrictive than the originally endorsed Council direction.

Due to current challenges associated with short-term rentals including implications to the current housing crisis, as well as ongoing enforcement demands, it is recommended short-term rental accommodation regulations be amended to eliminate them in single and multi-family forms of housing. This includes the removal of short-term rental accommodation as a permitted secondary use from all zones within the City. Short-term rental accommodation may continue to be permitted as a non-conforming use on properties with a valid short-term rental business licence, on properties with recognized exemption status (listed in Attachment A), on properties with approved Site-Specific Regulations, and in the CD18 – McKinley Beach Comprehensive Development zone in Area I Village Centre. However, operating short-term rental accommodation on any of these properties is subject to change as we obtain additional information from the Province of British Columbia regarding the proposed Short-Term Rental Accommodations Act and any associated regulations, including how the Act would be interpreted regarding the application of principal residence requirements and changes to legal non-conforming use protections. As of September 2023, there are 1,191 valid short-term rental accommodation licences that would be permitted to continue operating in the City. Over 60 additional business licence applications are considered to be in-stream which could obtain approvals prior to any regulatory amendment, and new applications could still be received on properties as outlined above. Accordingly, nearly 1,200 short-term rental accommodations will continue to be an option to help supplement the tourism market in a number of locations throughout the City at this time. This number will likely be reduced by the legislative changes introduced by the Provincial Government.

Should this proposed text amendment be supported by Council, Staff commit to reporting back to Council with an update on the program after one year for further review and discussion. This would give an opportunity to review regulatory changes from the Province of British Columbia, as well as evaluate how these proposed changes have affected housing availability and affordability in Kelowna. Furthermore, the industry continues to evolve, a review gives Staff and Council the opportunity to review the regulations as they relate to ongoing changes and challenges in both the accommodation industry as well as the City's housing needs. If supported by Council, a separate amendment to the City's Short-Term Rental

Accommodation Business Licence and Regulation Bylaw No. 11720 to further align with these changes and to strengthen enforcement options would follow.

Council can also anticipate an additional staff report related to the implementation of Provincial regulatory changes and their impact on properties that are presently zoned for Short Term Rentals as a primary use or that are currently protected by grandfathering regulations.

Staff recommend support for the proposed Zoning Bylaw Text Amending Bylaw to short-term rental accommodation regulations, as summarized above, and outlined in Schedule A. Additional complementary changes may be brought forward to Council at a later date depending on the implementation of Provincial legislative changes.

5.0 Current Development Polices

5.1 Kelowna Official Community Plan (OCP)

Objective 4.14 Protect the rental stock in Urban Centres (Chapter 4 – Urban Centres)		
Policy 4.14.3 Short-Term Rentals	4.14.3	Ensure short-term rental accommodations limits impact on the long-term rental housing supply.
		<i>This proposed text amendment will see the removal of short-term rental accommodations as a permitted secondary use from all zones within Urban Centres. As it would no longer be a permitted use, this would ensure short-term rental accommodation is prohibited from occurring on any property with a rental-only subzone and units could potentially be returned to the long-term rental housing supply.</i>

Objective 5.13 Protect the rental housing stock (Chapter 5 – The Core Area)		
Policy 5.13.3 Short-Term Rentals		Ensure short-term rental accommodations do not negatively impact the long-term rental housing supply.
		<i>This proposed text amendment removes short-term rental accommodations as a permitted secondary use from all zones within the Core Area. As it would no longer be a permitted use, this would ensure short-term rental accommodation is prohibited from occurring on any property with a rental-only subzone and units could potentially be returned to the long-term rental housing supply.</i>

Objective 6.10 Prioritize the construction of purpose-built rental housing (Chapter 6 – The Gateway)		
Policy 6.10.5 Short-Term Rentals	6.10.5	Ensure short-term rental accommodations limits impact on the long-term rental housing supply.
		<i>This proposed text amendment would see the removal of short-term rentals as a permitted secondary use from all zones, helping to ensure that the impact of short-term rental accommodations on the long-term rental housing supply are limited.</i>

5.2 Healthy Housing Strategy

Key Direction and Recommended Actions: Promote and protect rental housing

Report prepared by: Kimberly Brunet, Planner II
Reviewed by: Dean Strachan, Community Planning & Development Manager
Approved for Inclusion: Ryan Smith, Divisional Director, Planning & Development Services

Attachments:

Schedule A: Proposed Text Amendment to Zoning Bylaw No. 12375

Attachment A: List of Properties with Short-Term Rental Accommodation Permitted Principal Use or Non-Conforming Status

For additional information, please visit our Current Developments online at www.kelowna.ca/currentdevelopments.