



Committee of the Whole Report For the Meeting of July 27, 2023

To: Committee of the Whole **Date:** July 21, 2023
From: Shannon Perkins, Director Bylaw and Licencing Services
Subject: Short Term Rentals in the City of Victoria

RECOMMENDATION

That Council direct the City Solicitor to bring forward the necessary bylaw amendments to the *Short-Term Rental Regulation Bylaw and Zoning bylaws* to improve regulatory effectiveness and of the Short-Term Rental program.

- a. Clarify and better define: “operator”, “tenant”, “dwelling”, “property manager”, “host”, “other designated person”, “bedroom”, “kitchen facilities”, “room”.
- b. Restrict occasional rentals of principle residence to four bookings in a year.
- c. Better distinguish between hotel, motel, bed and breakfast, time-share and short-term rental.
- d. Amend term “30 days or less” to “30 nights or less” to come into alignment with the tourism industry.
- e. Regarding ‘Principal Resident Operator’ status, clarify that it is the operator’s obligation to furnish proof, satisfactory to the Licence Inspector, to demonstrate the premises are their principal residence.
- f. Add short term rental bylaw offences to the list of offences in the *Bylaw Notice Adjudication Bylaw*.
- g. Increase Municipal Ticket Information fine amounts under the *Short-Term Rental Regulation Bylaw* for ‘Operating without a Business Licence’ from \$500 to \$1000 and for ‘Advertise without a Licence’ from \$250 to \$500.
- h. Increase Municipal Ticket Information fine amounts under the *Zoning Regulation Bylaw and the Zoning Bylaw 2018* for ‘Allow Use’ from \$350 to \$700.
- i. Ensure that all persons engaged in facilitating short term rentals are explicitly covered by City regulations.
- j. Amend fee provisions to ensure that the higher fee applies to all situations where an entire dwelling unit is regularly rented as a short-term rental.
- k. Simplify the Short-Term Rental licence appeal process.

EXECUTIVE SUMMARY

As the popularity of the Short-Term Rental industry grows, housing availability and affordability is directly impacted each time a unit is converted from the long-term housing market, affecting citizens across the community. *The impacts of short-term rentals on housing affordability in British*

*Columbia*¹, a July 2022 report by researchers from the Urban Politics and Governance research group from McGill University, found that British Columbia is seeing an increase of units converting from long-term to short-term rentals at a rate of 38.5% year over year. Further, the report stated that for every housing accommodation diverted to the STR market, the average rent for 100 accommodations is increased per month by \$49. Applying this cost analysis model to Victoria, it is estimated the impact of dedicated STR unit conversion has caused an average increase of \$1,151.56 per year per renting household. 61% of private dwellings in the City of Victoria are renters².

The *Short-Term Rental Regulation Bylaw* came into effect in March 2018, aiming to provide a balanced approach which allowed for residents to leverage their principal dwelling units to offset housing costs, while minimizing the conversion of entire homes/self-contained suite to the short-term rental market.

The City regulates short-term rentals through its zoning bylaws and through the *Short-term Rental Regulation Bylaw*. Unfortunately, these regulations are hampered by limits on municipal powers as well as practical difficulties in enforcement.

PURPOSE

The purpose of this report is to present information in support of a recommendation to amend the *Short-Term Rental Bylaw* and *Zoning Bylaws* to improve the ability to effectively regulate the Short-Term Rental industry in the City of Victoria.

BACKGROUND

Since 2018, the City has regulated short-term rentals in Victoria. First, under its zoning bylaws, short-term rentals are generally prohibited, except for limited (up to two bedrooms) operation as Home Occupation in the operator's principal residence and entire unit while temporarily away, on occasion. Secondly, to address short-term rentals continuing to operate as lawful non-conforming uses (i.e., uses that existed prior to zoning changes) and to regulate short-term rentals operating as home businesses, the City enacted the *Short-term Rental Regulation Bylaw*, which requires operators to obtain an annual business licence and abide by certain rules regarding operation of short-term rentals.

The \$1,500 non-principal resident operator fee was initially set at \$2,500 but was decreased after significant public input³. The principal resident operator licence fee was set at \$150. The fees collected are used to administer the short-term rental licensing program, which includes staffing, investigation, online monitoring, and legal expenses.

The program began with just 1 STR Coordinator working out of the Bylaw department receiving licencing and investigative support from existing bylaw staff. Since then, the program has become a separate stand-alone business unit and has grown to include 7 staff members:

- 2 Coordinators
- 1 Clerk

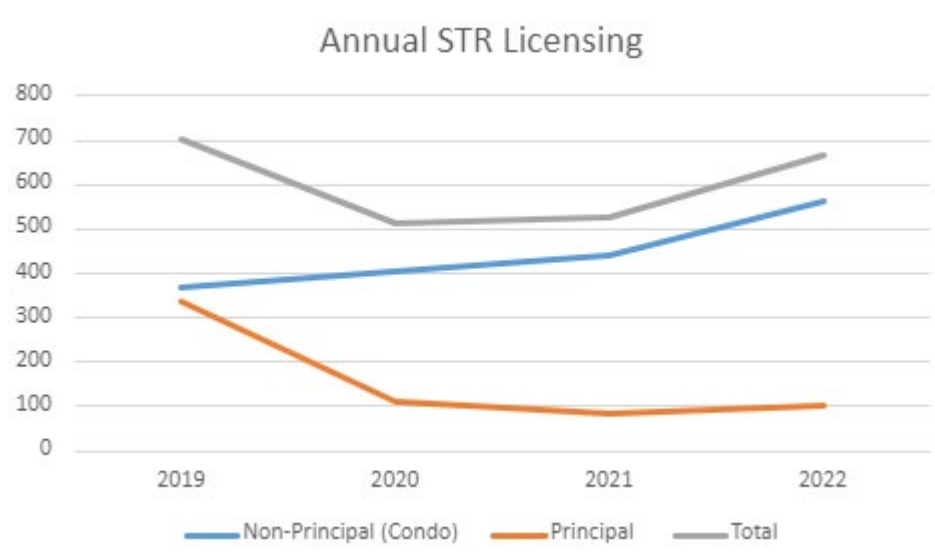
¹ Wachsmuth et al., 2022

² victoria.ca, 2023

³ City of Victoria Council Meeting, February 22, 2018 [Council - February 22, 2018 \(escribemeetings.com\)](https://www.victoria.ca/council-meetings)

- 4 Bylaw Officers

In 2018, the ‘Transient Property Business Licence’ Type was replaced by two short-term rental business licences. During this conversion period, which occurred mid-year 2018, the data is unreliable. In 2019, the City began to actively track licencing by type, as shown in the graph below.



Through the 2018 zoning changes, legal non-conforming use has translated to roughly 1,600 condo units that have legal non-conforming status. Legal non-conforming status is not unit specific and is maintained for the entire building so long as one unit is licenced. The number of potential non-principal licence units is equivalent to the number of units that have legal non-conforming status. Additionally, the number of units with legal non-conforming status is only growing. Owners continue to provide proof that they should qualify for non-conforming status and staff review the evidence on a case-by-case basis. Staff receive public requests for a list of all legal non-conforming units on a regular basis, mostly from realtors and perspective investors. Many of these additional units are due to the transient zoning permitted in ‘bed & breakfast’ zones.

In 2018 & 2019, applications were accepted and approved at face value, with minimal review besides zoning approval and confirmation of general bylaw compliance at the address. Because the principal resident operator licence fee is significantly lower than the non-principal fee, many operators found creative ways to apply for the lower cost licence type, usually by obtaining an ICBC sticker to reflect the STR address.

Additionally, operators did not properly declare the intended STR space on the application form. Many applicants selected “Single Family Dwelling” instead of “Single Family Dwelling with Suite”, which led to many secondary units being approved incorrectly. As a result, there were almost as many principal resident operators in 2019 as non-principal.

In 2020, Bylaw and Licensing began to conduct inspections for all principal resident operator applicants. With careful review, 109 applications were denied due to ineligibility of the proposed accommodation space. Of the 109 applications denied, 11 were appealed in front of Council in

2020, and only 3 of which were granted by Council, never unanimously⁴.

Since 2021, there has been a steady uptick in non-principal applicants, as shown by the STR licence type breakdown. In 2020, one third of operators previously licenced as principal resident operators were denied, and another third never re-applied. The number of non-principal licences issued, however, has increased every year, including in 2020.

Many new applicants are from out-of-town and have retained property management companies. This trend is continuing rapidly through the first half of 2023. Our internal records show 358 of 611⁵ approved licensees for 2023 use a mailing address in the Greater Victoria area, reflecting that 58% of licence holders are local operators, and that 42% of STR licences are held by operators who live out-of-town. It should be stated that many out-of-town owners elect to use a property management company in some capacity. Property managers can have various levels of involvement in the operation of a short-term rental. Some out-of-town owners may use a property manager simply as a local point of contact, which could suggest that out-of-town licences are likely higher than our records indicate.

In 2022, the City added a second coordinator to keep up with online monitoring and compliance. While access to accurate data is challenging due to the low barrier/requirements of data collection and remitting by platforms, various sources such as AirDNA (a STR marketing tool), insideairbnb.com (a non-profit organization), the platforms (Airbnb.com, VRBO.com), and City records, all paint a clear upward trend in conversion of long-term rentals to short-term vacation rentals.



The graph above⁶, from AirDNA, shows a 7% quarterly rental growth. At its pre-pandemic height, Q3 2019, AirDNA reported 1,522 rental units listed on Airbnb, VRBO, or both.

It should be noted that data from AirDNA is captured at random moments in time, meaning that if a listing was removed moments before the capture, it would be missed. AirDNA tracks Airbnb.com and VRBO.com, two of the largest STR platforms. The City does not rely on this information but considers it a useful benchmark in contrasting it to our own records. The data from AirDNA

⁴ City of Victoria, 2023

⁵ City of Victoria, 2023

⁶ AirDNA.com, 2022

represents the lowest number of possible units operating at any given time. AirDNA’s intention is to be used as a marketing tool for operators, but it still tracks practical data related to the Short- Term Rental industry in the City of Victoria.

The conversion of short-term rentals to long-term rentals has been challenging to track as the Business Licence Bylaw does not require a long-term rental licence for most secondary suites, and any unlawful suite would not be eligible for licensing. Staff have tracked listing conversions reported through Host Compliance (until 2020) and through AirDNA (2021-2023). In February 2020, Host Compliance reported 223 long-term rental listings across Airbnb and VRBO (29+ day minimums). By August 2020, that number had doubled to 563. As of July 2023, AirDNA is reporting only 277 active long-term rental listings. This decrease in active LTR listings correlates to the overall increase in STR investigations and licences issued in 2023.

Airbnb, the largest global short-term rental listing platform, reported record levels of listings in 2022, with over 6 million properties world-wide. The trends observed in the City of Victoria correlate to those observed around the globe.

In the City of Victoria, the number of short-term rental listings fluctuates depending on the season. The number of short-term rentals increases substantially in the summer months (May-September). Nevertheless, data from Insideairbnb provided in December 2022 showed there were no fewer than 1,327⁷ accommodations offered through Airbnb alone at any point in 2022. Of these 1,327 Airbnb listings, 990 were advertised as short-term rentals and 87% of these listings were for entire homes. This leaves the other 337 listings as long-term stays (30+ days/booking).

If we compare the number of short-term rental listings on Airbnb, 990 units, to our internal records, 665 licenced STR’s in 2022, at a maximum the City of Victoria has 66% compliance rate. This estimated compliance rate doesn’t include other platforms, private property management websites, high season listings or other social media advertising.

Licence Type/Year	2019	2020	2021	2022	2023 (as of July 11, 2023) +21 pending review
Non-Principal (Condo)	368	403	441	561	627
Principal	335	112	84	104	103
Total	703	515	525	665	730

The compliance rate is an on-going issue. Even after identifying an unlicensed listing, communicating with the operator and then finally receiving an application, Bylaw and Licensing Services may still have to pursue enforcement to gain listing compliance, or to receive the licence fee and then the following year the operator may start to operate again without first obtaining the annual licence. When a third-party property management company is involved, the problem can be exacerbated.

STR enforcement falls into three main categories:

1. Unlicensed permitted units (allowed to operate but have not obtained licence or paid fee)

⁷ insideairbnb.com, 2023

2. Unlicensed unpermitted units (operating illegal unpermitted STR)
3. Licensed, non-compliant units (operating outside of licence conditions)

Since April 2020, Bylaw and Licensing Services have developed and implemented additional compliance and enforcement strategies to identify and enforce against unpermitted STRs and return housing units to the long-term rental pool:

- More robust business licence application process
- Community engagement including education and relationship building
- Property inspections
- Platform monitoring
- Bylaw investigations into unpermitted business activity
- Municipal Ticket Information (MTI) fines
- Court Actions including long form prosecution and injunction

Access to accurate data such as an exact number of STR listings, their addresses, the number of bookings or guests they accept, is a challenge most regulating bodies face when it comes to STRs. In 2018, the City engaged the services of Host Compliance, an STR monitoring platform. The City ended this relationship in 2020, due to concerns over address identification accuracy, and an unremarkable quality of service for the cost. Instead, an internal data analysis system was created drawing from four main sources:

- City of Victoria licencing and accounting records
- AirDNA
- Inside Airbnb

Since the pandemic, short-term rentals have grown into their own segment of real estate investing. Over the last year, City staff have experienced an increase in phone and email inquiries, from both realtors and potential buyers, requesting confirmation the unit for sale can be used as a full-time short-term rental. Staff believe that most properties are being purchased by out-of-town buyers, as many 'new owner applications' use local property management companies for their contact and mailing address. Additionally, staff have found it increasingly common to be referred to a property manager by an owner when requesting compliance with licencing requirements. The inclusion of a property manager in short-term rental business plans has made it difficult to gain compliance with properties because current regulations exclude any third-party participants, unless the property manager explicitly declares themselves as the operator on the application form. In situations where property managers avoid responsibility of regulations, and the unit is registered to an out-of-town owner, staff have more difficulty gaining compliance.

The table below⁸, from AirDNA, reports an average 16.4% increase in the number of listings hosted by the top 5 property managers in the City of Victoria. It should be noted that World Mark is a timeshare, and that the City is currently aware of over 36 property managers who host multiple listings. As most property managers are unlicensed, staff has relied on enforcement data to compile a list.

⁸ AirDNA.com, 2023

Top Property Managers ⓘ

	LISTINGS	ANNUAL CHANGE	REVIEWS
WorldMark	60	0.0%	947
Co-Hosts	50	+ 28.2%	2835
Victoria Prime Services-...	37	0.0%	414
Amala Vacation Rental...	33	+ 10.0%	3386
Elite Vacation Homes	23	+ 43.8%	68

Rental arbitrage is a topic widely available and promoted on social media, encouraging individuals to find a long-term rental, and to list it on Airbnb. Short-term rentals have become a major world-wide industry, with conferences, online courses, various levels of management company (various levels of hands-on), and mass ownership turning apartment buildings into 'ghost hotels'.

In 2018, Vancouver passed STR regulations banning non-principal STRs. In 2021, Toronto created similar regulations. As a result, Airbnb removed all non-compliant listings and VRBO, the second largest STR platform, ceased operating in those cities.

As one of the first cities in BC to establish an STR bylaw, Victoria is viewed as a leading regulator. Smaller communities have sought advice to develop or improve their regulations. We are sharing & learning together.

In 2021, a report was prepared by the UBCM (Appendix A) in collaboration with representatives, including the City of Victoria, from over a dozen BC Municipalities. This report outlined key issues and requests for action from higher levels of governing bodies. The following key challenges have yet to be resolved:

- Data sharing
- Provincial platform regulation and accountability
- Taxation
- Regulatory tools for local governments
- Capacity supports for local governments
- Improved availability of data on short-term rentals and rental market

ISSUES & ANALYSIS

Based on the City's experience since 2018, Bylaw and Licencing Services and Legal Services have identified challenges and recommended changes to City regulations that could help better manage the regulation of short-term rentals.

1. Current wording and definitions in City Regulations and Bylaws

The City of Victoria relies on three bylaws to regulate short-term rentals; *The Short-Term Rental Regulation Bylaw* (regulates how a business operates, fees and licencing) as well as the *Zoning Bylaw* and the *Zoning Bylaw 2018* (regulates use). The *Short-Term Rental Regulation Bylaw* relies on Schedule "A" for definitions, and Schedule "D" to outline the eligibility and regulations of a principal residence licence. The use of three different bylaws to support the program has revealed gaps and issues which inhibit the ability to successfully fulfill the intention of the *Short-Term Rental Regulation Bylaw*.

There are missing definitions, clarification of wording and measurable qualifications which are required to improve the public's understanding of the rules and staff administration of the policies.

a. Definitions

i) *Operator:*

The definition of 'operator' currently includes the word intermediary as an excluded category. Intermediary was intended to mean the platform, such as Airbnb, not intermediary operators, such as managers and additional hosts. The use of intermediary has created difficulties in holding property managers or other third parties accountable for their participation in short-term rental operations.

ii) *Tenant:*

A key challenge in regulating short-term rentals is the difficulty of holding operators accountable. Currently the 'operator' definition describes a guest as "rental tenant", suggesting a relationship which includes a tenancy agreement and landlord.

iii) *Dwelling:*

The definition of 'short-term rental' in the *Short Term Rental Regulation Bylaw* currently includes the term 'dwelling' in describing the space being offered but dwelling is not defined. The word dwelling is disputed in circumstances where the space being offered as a short-term rental has been denied because it is a self-contained suite. This often occurs in homes with a legal building occupancy of a single-family dwelling. The replacement or definition of the word dwelling would assist in provide clarity and distinction between the accommodation space versus the legal building occupancy.

iv) *Property Managers, Host or other Designated Persons:*

There are no definitions, or specific regulation requirements for property managers, hosts, designated responsible persons or other parties involved in the advertising or operating of a short-term rental. The popularity of short-term rentals has created a high supply and lucrative business model for many property management companies and associated services. The increased participation of third-party services, such as property managers and cleaning services, in owners short-term rental businesses has revealed a gap in licence requirements and regulation needs. The definition of operators excludes any intermediary participation, resulting in regulation challenges when the property manager, host or designated person is advertising and operating a short-term rental on behalf of the property owner.

- v) *Schedule A, Zoning Bylaw definitions:*
The current wording and definitions contained in this schedule, lack sufficient clarity and substance for the purposes of STR regulation, resulting in difficulty in both public understanding and staff ability to regulate and enforce.

For example, Schedule “A” states:

“Self-contained Dwelling Unit” - means a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities.

However, Schedule “A” does not include a definition of room or kitchen. The inability to legally define what constitutes a ‘kitchen’ and ‘room’ has proven to be extremely challenging in approving and denying applications and has led to dozens of appeals requiring staff and Council time and resources.

Additionally, the absence of definitions for hotel, motel, hostel, bed and breakfast, and timeshare, have allowed for traditionally operated businesses to offer self-contained suites as a short-term rental without obtaining a short-term rental license.

- vi) The *Schedule “D” Home Occupation, Zoning Bylaw* does not include a definition of ‘occasionally’:

Section 12(2): The entire principal residence may be used for a short-term rental only occasionally while the operator is temporarily away.

The intent of the regulation was intended to reflect ‘less than frequent’ use and anticipated applicants may travel up to 4 times a year. The use of ‘occasionally’ is regularly contested by members of the public as subjective to the individual operating.

b. Wording

- i) Less than 30 days:

The tourism industry offers accommodation per *night* not per *day*. The current wording ‘30 days or less’ does not align with the structure of advertisements, which creates difficulty in education and enforcement.

c. Qualifications

- i) The definition of ‘principal residence’ lacks clear and measurable qualifications. If the principal residence requirements are met by an applicant in a legal non-conforming unit, Schedule D conditions will not apply.

2. Unregulated third-party operators.

Most short-term rentals in Victoria are managed by third party operators, otherwise known as property managers. Owners of properties, individuals, and corporations alike, are using third parties to operate their units, in full or part, but still declare themselves as the operators on the business license application. It is estimated that more than 50% of owners who have declared

themselves as operators are actually using third party management companies to manage the STR business⁹.

Through our bylaws, the operator and/or owner are both accountable parties for any business activity on the property. However, the bylaws fail to capture other third-party participants involved in the short-term rental business operation. As a result, property managers and other third parties are operating short-term rentals without regulation or enforcement.

a. Bylaw definition of operator is limited.

The STR licence application and accompanying bylaws fail to clearly define and include third party participants. A license operator is often not the same individual or entity advertising or managing the short-term rental business. Guests book accommodations using popular platforms or private property management websites, with no knowledge of the owner and or licence holder. For all intents and purposes, the advertiser or more commonly referred to as 'host' is the company or individual the guest believes is offering the accommodation. The bylaw needs to be enhanced to capture and define any individual participating in the business operation: a friend, relative, professional cleaner, property manager, property management company or any other individual outside of the declared licensed operator.

3. Compliance and enforcement constraints and limitations.

a. The inability to ticket out of town operators.

There are no violations listed in Schedule A of the *Bylaw Notice Adjudication Bylaw* relating to short-term rentals, therefore all tickets must be served on Municipal Ticket Informations which requires personal service. This is not possible for out-of-town operators and property owners. Bylaw Offence Notices can be mailed out.

b. Ineffective fine amounts.

The current fine amounts do not deter individuals or companies from operating in contravention of the bylaw. The income generated from short-term rentals is significantly higher than the fines.

c. Narrow range of violations.

The current fine types/violations are limited and do not include all issues of non-compliance and third parties committing offences.

d. Disproportionate amount of time spent on small number of licencees.

Bylaw and Licensing Services spend the majority of their time licensing and monitoring compliance for principal residence operators, particularly those in single family dwellings.

⁹ Insideairbnb, 2023

Single family dwelling principal operators make up 14% of licencees but comprise over 70% of the enforcement files. Bylaw officers are often required to contact and visit homes for multiple inspections to ensure eligibility requirements are met. These applications are extensive in time and resources and often result in a withdrawal of an application, or a denial which may result in a lengthy appeal process. Eliminating principal residence operators would instantly increase.

e. Lack of provincial oversight.

There is no provincial regulatory framework governing the short-term rental industry as there is with other platforms such as ride-share. Nova Scotia and Quebec are currently generating regulations to ensure provincial oversight.

4. Cumbersome Appeal Process

The appeal process is cumbersome and time consuming both for the applicant and the business licence inspector. The applicant is required to provide documentation that supports their appeal, the business licence officer then reviews that evidence and provides their evidence for the refusal, the appellant is given an additional opportunity to review and provide additional information. The business licence officer then creates a report to council, council reviews the materials without benefit of personal representation from either side and must make a decision. Council decisions are subject to judicial review, in which case representation from the Legal Department is required. A more streamlined process is recommended.

OPTIONS AND IMPACTS

Option 1 – That Council direct the City Solicitor to bring forward the necessary bylaw amendments to the *Short Term Rental Regulation Bylaw and Zoning bylaws* and any other consequential bylaw to improve regulatory effectiveness of the Short Term Rental program by clarifying and defining terms and wording, distinguishing between different rental types, specifying how proof of residency is established, aligning regulatory language with the tourism industry, increasing enforcement efficiencies, increasing some fine amounts, broadening violation types to capture third party operators, close fee structure loopholes and simplify the appeal process.

Option 2 – Do not amend the *Short-Term Rental and Zoning bylaws*.

If the recommended amendments to the bylaws are not made, enforcement of the Short Term Rental industry in the City of Victoria will continue to remain cumbersome and inefficient. The upward trend of short-term rentals will likely continue and the ability to positively affect the long term housing stock will be less impactful.

CONCLUSIONS

Short-term rentals are diverting units of housing out of the regular rental market during a housing and affordability crisis. The City has been regulating the market since 2017, has gained significant expertise and is recommending several changes to the relevant bylaws to increase the City's ability to regulate the industry and potentially return unpermitted units back to long term rentals.

Respectfully submitted,

Shannon Perkins
Celine Kobenter and Marissa Peluso

Director Bylaw and Licencing Services
Short Term Rental Coordinators

Report accepted and recommended by the City Manager

List of Attachments:

Appendix A McGill BC Report
Appendix B UBCM Report