



Council Report For the Meeting of June 27, 2024

To: Council **Date:** June 21, 2024
From: Karen Hoese, Director, Sustainable Planning and Community Development
Subject: Withholding Building Permit No. BP058986 for 707 Courtney Street and 708 Burdett Avenue ("The Falls") due to Inconsistency with Proposed Zoning Amendments

RECOMMENDATION

1. That, pursuant to section 463(1) of the Local Government Act, Council:
 - a. Confirm that development proposed in the application for Building Permit No. BP058986 conflicts with proposed amendments to the Zoning Bylaw 2018 because it involves creation of a "strata hotel", a use not supported at this location; and
 - b. direct the Manager of Permits and Inspections to withhold Building Permit No. BP058986 for a period of 30 days from the date the application for it had been made.
2. That, pursuant to section 463(3) of the Local Government Act, Council direct the Manager of Permits and Inspections to withhold Building Permit No. BP058986 for a further period of 60 days.
3. That, pursuant to section 463(7) of the Local Government Act, Council direct the Licence Inspector to withhold for a period of 90 days a business licence related to operation of a hotel at 707 Courtney Street and 708 Burdett Avenue as contrary to uses that would be permitted under the bylaw that is under preparation.

EXECUTIVE SUMMARY

In July 2023, Council directed preparation of various bylaw amendments to better regulate short-term rentals, including better defining various associated land uses, including "hotel", "bed and breakfast", etc. The work on these amendments was delayed due to significant changes in provincial regulation of short-term rentals, including the introduction of the *Short-Term Rental Accommodations Act* and associated regulations, however, it is anticipated that the proposed amendments will be coming back for Council's consideration shortly. One of the amendments included in the package involves recognition of "strata hotel" as a distinct land-use. Strata hotel is a property, used to provide rentals of less than 30 days, with respect of which a strata plan has been filed and where different owners own different strata lots. Strata hotels are not supported and are proposed to be prohibited except where specifically permitted through a rezoning.

The Falls is a condominium building in which numerous, but not all, strata units have been used as short-term rentals. With the introduction of the *Short-Term Rental Accommodations Act*, use of these units as short-term rentals no longer complies with provincial regulations or the City's existing bylaws and some of the owners have banded together to, instead, operate as a hotel even though the building remains predominantly a condominium building. Change in occupancy from residential to hotel use requires a building permit and the City has received an application for such a permit.

Hotel use is currently permitted in the applicable zone, however, proposed bylaw amendments include new definitions and regulations that will make a strata hotel at this location contrary to zoning. Furthermore, the proposed operation will not qualify as a "hotel" under new definitions. Therefore, it is recommended that Council authorize withholding the building permit and associated business licence until after the bylaws that are already under preparation are considered and adopted by Council. Withholding of a building permit in these circumstances is explicitly authorized under section 463 of the *Local Government Act*.

PURPOSE

The purpose of this report is to seek Council's directions regarding the application for Building Permit No. BP058986 to permit a hotel in some of the strata units at 707 Courtney Street and 708 Burdett Avenue ("The Falls") and, in particular, that Council direct the Manager of Permits and Inspections to withhold the building permit pursuant to section 463 of the *Local Government Act*.

BACKGROUND

Conversion of a building from one use to another, even if the use is permitted under applicable zoning regulations, requires a building permit to document change of occupancy and ensure that the building complies with Building Code requirements for the proposed new use (or occupancy). Depending on circumstances, such application may involve some alterations to the building, or it may be a purely regulatory exercise. It is, however, critically important to ensure that appropriate Building Code requirements are satisfied before the new use is permitted.

The building at 707 Courtney Street and 708 Burdett Avenue, known as "The Falls", was constructed in 2009 as a residential condominium with some commercial uses at ground level. It has 155 residential strata units. Some of those units have been used to operate short-term rentals by investor owners. However, under the *Short-Term Rental Accommodations Act* (the "Act"), operation of non-principal residence short-term rentals is no longer permitted. As a result, such absentee, investor owners have been looking for alternative means to continue to offer their units for rentals of less than 30 days.

Because "hotel" remains a permitted use under applicable zoning¹, owners of some of the strata units at The Falls are proposing to convert their units, but not the rest of the building, to a hotel. To facilitate that, on June 4, 2024, they applied for a building permit to convert their units and some of the common property from residential to hotel occupancy. This building permit application is currently under technical review for compliance with the Building Code and other technical requirements. Their ability to obtain a business licence for the hotel use is dependent on successfully obtaining the building permit for change of occupancy.

¹ The Falls is located in the CBD-2 Zone, *Zoning Bylaw 2018*.

On August 3, 2023, Council directed the City Solicitor to bring forward amendments to the *Short-Term Regulation Bylaw*, *Zoning Regulation Bylaw*, and *Zoning Bylaw 2018* to, among other things, better distinguish between hotel, motel, bed and breakfast, time-share, and short-term rental. The preparation of the proposed bylaws has been delayed due to the introduction of the Act and associated regulations, as well as related litigation and other work. However, these bylaw amendments have been under preparation prior to the application for a building permit. The proposed bylaws are expected to contain new definitions, including a definition of “hotel” and “strata hotel”, as well as changes to the definition of “short-term rental”. All of which will affect the proposed new occupancy at The Falls.

Section 463 of the *Local Government Act* allows a local government to withhold issuance of a building permit if it considers that the proposed development conflicts with a bylaw under preparation. A permit may be withheld for 30 days, extendable for a further 60 days, provided that the local government identifies what it considers to be a conflict between proposed development and the bylaw under preparation. If the proposed bylaw is not adopted within the 60-day period, the owners of the land affected are entitled to compensation for any damages arising from the withholding of the building permit. Section 463 further permits for withholding of a business licence in relation to land for which a building permit has been withheld.

ISSUES & ANALYSIS

Pursuant to Council's directions last year, staff have been working on bylaw amendments to better regulate short-term rentals. The proposed amendments include new definitions which would make the proposed changes to The Falls contrary to zoning. Specifically, it is proposed to include the following new definitions:

“hotel” means a commercial use that provides transient lodging to the general public accessed by contiguous common space, all, including the contiguous common space, under single ownership and which includes

- (a) an entrance lobby that is open to the public;*
- (b) a service desk or office with a guest register;*
- (c) an attendant on duty at all times; and*
- (d) daily housekeeping services*

and may provide accessory amenities such as restaurant, meeting room and recreational facilities, and includes motels and hostels but does not include strata hotels.

and

“strata hotel” means a commercial use that provides transient lodging to the general public on premises in respect of which

- (a) a strata plan is filed under the Strata Property Act; and*
- (b) different owners own different strata lots.*

Furthermore, it is proposed to explicitly include “strata hotel” in the definition of “short-term rental” to reflect the fact that these strata hotels are in essence short-term rentals operating under a slightly different business model. Strata hotels will be prohibited unless expressly allowed in individual zones.

The building permit application submitted in relation to The Falls proposes to convert some of the strata units to a hotel. However, this does not meet the proposed definition of hotel and, instead, would fall within the proposed new definition of “strata hotel”, which will not be permitted unless authorized by a rezoning. Thus, the building permit conflicts with zoning bylaw amendments that are currently in preparation.

The bylaw amendments that are under preparation are anticipated to come to Council prior to the August break and, under these circumstances, it would not be appropriate for the City to issue a building permit authorizing a use that will no longer be permitted once these bylaws are adopted. Therefore, it is recommended that Council utilize the authority under section 463 of the *Local Government Act* and direct that the building permit that would authorize change of occupancy of some of the strata units at The Falls to a “hotel” be withheld until after the proposed bylaws are considered by Council.

Council can also authorize withholding of a business licence in relation to property in relation of which a building permit has been withheld and it is recommended that, if Council decides to withhold a building permit, it also direct staff to withhold a business licence for the proposed hotel.

OPTIONS & IMPACTS

Option 1: Withhold issuance of Building Permit No. BP058986 (recommended)

Since 2018, the City has prohibited stand-alone short-term rentals and has worked to return the majority of units utilized as short-term rentals to the long-term rental market. Prior to the adoption of the Act, certain strata units were able to continue as short-term rentals as non-conforming use. However, as of May 1, 2024 that use can no longer be continued and short-term rentals are permitted only in an operator’s principal residence. This is consistent with the City’s bylaws and policy.

Issuance of a building permit authorizing something that is expected to become contrary to zoning would undermine the policy objectives behind the City’s short-term rental regulatory regime. Therefore, it is recommended that Council direct withholding issuance of the building permit for the proposed changes to The Falls.

If this recommendation is accepted, the building permit would be withheld until after Council considers the proposed bylaw changes. If the bylaw amendments are adopted as proposed, the building permit will be declined due to inconsistency with the then applicable zoning. However, the applicants will be able to apply for a rezoning to permit “strata hotel” at this site. This would allow for a proper process of evaluating appropriateness of such a use at this location, as well as providing proper mechanism for all interested parties, including long-term residents of The Falls, to have input into the decision about the future of their building.

Option 2: Subject to completion of technical reviews, grant Building Permit No. BP058986 (not recommended)

In the alternative, Council can determine that a “strata hotel” is appropriate at this location and direct issuance of the building permit, subject only to technical review to ensure compliance with the Building Code and other regulatory requirements. This option is not recommended as it would undermine the long-established City policies regarding short-term rentals, as well as contradict the

objectives of the bylaw changes that Council instructed staff to prepare last August. It would also deprive all stakeholders, including long-term residents of The Falls, from having ability to have their views considered as part of the decision on appropriateness of such use in their building.

CONCLUSIONS

The proposed conversion of some of the residential strata units within The Falls to a hotel occupancy is not consistent with the zoning bylaw changes that are expected to come to Council shortly. Therefore, it is recommended that Council withhold the issuance of the associated building permit and business licence.

Respectfully submitted,

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Report accepted and recommended by the City Manager