



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. BP059000 for 529 Pandora Avenue 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. BP059000 conflicts with proposed amendments to the Zoning Bylaw 2018 because the use will not meet the proposed new definition of a “hotel” and will no longer be permitted at this location; and
 - b. direct the Manager of Permits and Inspections to withhold Building Permit No. BP059000 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. BP059000 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 529 Pandora 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 a new definition of “hotel”, which requires that there be a publicly accessible entrance lobby, reception desk, etc.

The building at 529 Pandora Avenue is a mixed-use building containing two residential rental units on the second floor and commercial uses on the first floor. With the introduction of the *Short-Term*

Rental Accommodations Act, use of the rental units as short-term rentals no longer complies with provincial regulations or the City's existing bylaws. The building owner is now wishing to alter its occupancy to a hotel. 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 definition of a hotel and 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. BP059000 to permit a hotel at 529 Pandora Avenue 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 529 Pandora Avenue was constructed in 1894 and most recently altered in 2000 to include two rental suites on the second floor while retaining commercial use on the first floor. Under the *Short-Term Rental Accommodations Act* (the "Act"), operation of non-principal residence short-term rentals is no longer permitted, therefore, it is no longer lawful to operate the two rental units as short-term rentals. As a result, building owner, Hartwig Investments, is looking for alternative means to offer their units for rentals of less than 30 days.

Because "hotel" remains a permitted use under applicable zoning¹, the building owner is proposing to convert their building to a hotel. To facilitate that, on June 13, 2024, they applied for a building permit to convert their building 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.

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

¹ 529 Pandora Avenue is located in the OTD-1 Zone, *Zoning Bylaw 2018*.

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”, as well as changes to the definition of “short-term rental”. All of which will affect the proposed new occupancy.

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 definition of “hotel” which would make the proposed changes to 529 Pandora Avenue 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.

The building permit application submitted in relation to 529 Pandora Avenue proposes to convert the building to a hotel. However, this does not meet the proposed definition of hotel because it will not include an entrance lobby that is open to the public nor a service desk or office with a guest register. 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 529 Pandora Avenue 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. BP059000 (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 dwelling 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 529 Pandora Avenue.

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.

Option 2: Subject to completion of technical reviews, grant Building Permit No. BP059000 (not recommended)

In the alternative, Council can determine that allowing a two-room 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.

CONCLUSIONS

The proposed conversion of some of 529 Pandora Avenue 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,

Alec Johnston
Assistant Director,
Development Services

Karen Hoese
Director, Sustainable Planning
and Community Development

Report accepted and recommended by the City Manager