

**To:** Committee of the Whole **Date:** September 19, 2017

**From:** Chris Coates, City Clerk

**Subject:** Proposed Short Term Rental Regulatory Framework

1. Approve the proposed short term rental regulatory framework, as described in this report, which allows short-term rentals in principal residences, subject to a business licence and compliance with operating requirements;
2. Direct staff to engage stakeholders on the proposed business regulations, and report back to Council in Q 4 of 2017 with the bylaws required to enact these regulations; and,
3. Direct staff to report back to Council in Q 1 of 2018 with an implementation plan, including schedule, resourcing proposal, and impacts to the financial plan.

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Should Council approve the proposed regulatory framework, staff will engage with stakeholders, including neighbourhood, tourism and housing associations as well as outreach to short term rental operators and host platforms to refine the proposed business regulations and report back to Council in Q 4 of 2017 with the bylaws needed to enact the regulations. Following bylaw adoption, staff will prepare an implementation plan, including financial implications, and schedule for Council approval in Q 1 of 2018.

## **PURPOSE**

The purpose of this report is to provide Council with a proposed regulatory framework for short term rentals in the City of Victoria, including business regulations and an enforcement strategy.

## **BACKGROUND**

Short term rentals are defined as the renting of a dwelling, or any portion of it, for a period of less than 30 days. This can include an entire dwelling (i.e. condo or house) or a room (shared or private), within an occupied dwelling. Over the last decade, online platforms such as Airbnb have developed profitable marketplaces that connect people looking for this type of short term accommodation with people who want to rent their homes.

### **Short Term Rental in Victoria**

In Victoria, there are:

- Close to 1,500 unique listings, which include entire units, private and shared rooms
- A concentration of short term rentals in the downtown core and in adjacent neighbourhoods
- Numerous multiple listing hosts (commercial operators)
- A prevalence of entire units for rent (as opposed to private or shared rooms)

### **Existing Permitted STR**

In Victoria, short term rentals are currently permitted to operate in two instances:

1. Multi-unit residential buildings zoned for transient accommodation, which allow for the commercial use of residential units as short term rentals in some areas of the City; and,
2. Up to two bedrooms in an occupied single family dwelling, as a home occupation.

Council is currently considering amending the zoning bylaw to remove transient accommodation as a permitted use. If approved, these units will be affected in that their underlying zoning will change, but their right to operate a STR will continue due to non-conforming use provisions of the Local Government Act.

Despite existing regulations, short term rentals are occurring in various forms throughout the City.

### **STR Impacts**

The rapid growth of short term rentals in many communities has led to both positive and negative impacts. For travellers, STRs are often cheaper, more amenity-rich, personalized, and localized than traditional hotels. For residents, the ability to easily and relatively safely commodify an existing asset (a home) can be a means of income supplementation. Negative impacts meanwhile can include a decrease in the availability of long-term rental housing when a short term rental is used as a commercial enterprise, public safety and nuisance concerns, and unfair advantages over traditional accommodation providers such as lack of regulation and taxation. The City's role in regulating STR is to balance these competing objectives.

### Previous Council Direction

Council direction has focused on four main strategies to manage short term rentals: the development of comprehensive business regulations, a proactive enforcement strategy, advocating for fair taxation, and zoning amendments. This report responds to the following Council motions:

Table 1. Previous Council Motions

Date	Direction
March 9, 2017	<ul style="list-style-type: none"><li>• Report back to Council on options for permitting and enforcing limited use of residential properties (in multi-unit and single family dwellings, in all neighbourhoods in the city) by the occupants (owners or renters) for a limited number of maximum days in each calendar year for the commercial purpose of providing short-term vacation rentals</li><li>• Permitted: 1-2 bedrooms in occupied dwellings, including a house or condo for STR</li><li>• Prohibited: entire secondary suites, including basement suites and garden suites for use as STR</li></ul>
June 22, 2017	<ul style="list-style-type: none"><li>• Bring forward a comprehensive scheme of business regulations for existing and future STR, including business licencing, fees and rules of operation</li><li>• Report back with a short term rental enforcement strategy</li></ul>
July 13, 2017	<ul style="list-style-type: none"><li>• Council referred a report to staff containing supplementary material to be considered in the regulatory and business licencing framework for STR.</li></ul>

A compilation of all Council Motions related to short term rentals is attached as Appendix A. Staff also developed an analysis and evaluation of proposed Council requirements to consider when developing short term rental business regulations, attached as Appendix B, based on the above July 13, 2017 Council Motion.

An additional staff report brought forward to Council on September 7, 2017, attached as Appendix C, addresses a subsequent motion related to STR: transient accommodation zoning changes. A public hearing on the proposed zoning changes is scheduled for September 21, 2017.

### Emerging Best Practice in Regulating Short Term Rentals

There is no 'one size fits all' regulatory approach for short term rentals, as each jurisdiction is solving problems unique to their community. However, based on interviews with municipal staff, including in Tofino, Kelowna, Vancouver, Toronto and Bend, Oregon as well as industry experts across North America, coupled with additional desktop research and analysis, some best practice has emerged:

1. **Say yes to STR** - STR bans have proven ineffective in stemming STR growth
2. **Keep it simple** – simple, straightforward regulatory requirements achieve higher levels of voluntary compliance
3. **Point of non-compliance** – is best achieved through business licence verification, not on whether a unit or room has been rented
4. **Avoid relying on host platforms for help regulating STR** – municipalities and host platforms often have competing objectives
5. **Utilize technology** – third party monitoring firms have sophisticated tools to verify compliance efficiently and effectively

6. **Communicate widely** – proactive and widespread communication of regulations can generate high rates of voluntary compliance
7. **Be adaptable** – the rapid growth and fluid nature of the industry means that best practices will evolve over time and policy approaches may need to change

### Common Regulatory Tools

Stemming from these best practices, some common regulatory tools to manage STR are being implemented across North American municipalities, including:

1. **Principal Residence** – STR is only permitted in the *usual place that a person makes their home*
2. **Night Caps** – establishes a maximum number of days that a unit can be rented per calendar year
3. **Business Licence** – a special business licence or permit is required prior to operating an STR
4. **Safety Provisions** – can include enhanced fire safety, a maximum number of occupants, compliance with building codes
5. **Nuisance Provisions** – can include parking restrictions, liability insurance and host contact information
6. **Taxation** – can include provincial sales tax, municipal and regional tax, lodging tax, and others. *Note: the City of Victoria does not have sales tax authority.*

The usage and specifics of each of these regulatory tools is dependent on individual jurisdictions and the specific problems or policy objectives they are trying to solve, as well as their legislative authority.

### ISSUES & ANALYSIS

Research, comparative analysis and previous Council direction have informed the following recommendations, which seek to enable some forms of STR, while mitigating negative impacts.

The basis of the proposed regulations is to allow individuals to rent out their homes in ways that do not materially impact the long-term rental housing market, subject to obtaining a business licence and adhering to operating requirements.

In summary, the proposed regulations are:

1. Permit STR use in all principal residences (i.e. the place where an individual usually lives and conducts their daily affairs). This includes both owners and renters.
2. Require STR operators to obtain a business licence
3. Require STR operators to comply with operating requirements

Investment properties, commercial operations, and housing including apartments, secondary and garden suites that are not principally occupied by a long-term resident would all be prohibited from STR use to ensure the greatest retention of long-term rental stock for residents.

As previously noted, there will remain some exceptions to the principal resident requirement due to transient zoning or non-conforming use provisions of the Local Government Act in areas previously zoned for transient accommodation.<sup>1</sup>

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<sup>1</sup>Non-conforming use provisions of the Local Government Act is dependent on approval of forthcoming proposed amendments to the *Zoning Regulation Bylaw* as outlined in Appendix C. Should these bylaw amendments not be approved, areas zoned for transient accommodation will continue to permit full-time commercial STR use. In either case, some full-time STR use will continue in Victoria due to existing zoning.

## **Principal Residence vs. Night Caps**

The following section responds to the March 9, 2017 Council Motion to report back with options for permitting occasional use of residential properties (all dwelling types) as short term rentals.

Staff recommend that the principal residence requirement be used instead of a maximum number of days, or a 'night cap' requirement. Both of these regulatory tools serve the same purpose: to limit the number of days that a unit can be rented. However, there are more benefits to the principal residence approach.

Principal residence is defined as the *usual place that a person makes their home*. A principal residence is where an individual lives and conducts their daily affairs like paying bills and receiving mail and is generally the residence used in government records (e.g. income tax, medical services plan, driver's licence and vehicle registration). In contrast, night caps require a municipality to set a maximum number of days (e.g. 60) that a unit can be rented.

Between the two, principal residence is substantially easier to enforce. Under the principal residence requirement, business licences will not be granted to operators unless they can prove that the place they wish to rent is the place they normally reside. Enforcing a night cap requirement meanwhile is reliant on cooperation from platforms such as Airbnb to provide an accurate report of the number of nights the unit is rented.

As platforms and municipalities often have competing objectives – the former to protect their users (operators) and maximize business and profits, and the latter to regulate and limit STR to mitigate negative impacts – transparent data exchange can prove difficult if not impossible. In other jurisdictions where a platform is in disagreement with a municipality, legal proceedings have resulted, and have been complex and drawn out, leading to significant time and expense on the part of the municipality as well as delays in enforcement and the continued proliferation of STR in the meantime.

Enforcing a night cap without platform cooperation is extremely challenging and requires significant municipal resources, as ascertaining the number of booked nights for each listing requires extensive data analysis, tracking, and observation, each of which is limited in its ability to be accurate to the degree that a municipality can clearly ascertain when an operator has gone a day over their limit. The burden on operators who want to cooperate is also high, as the operator would need to keep comprehensive records, tallying nights spent, and commit to producing regular reports to the City, and what has been seen in other jurisdictions is that compliance drops steeply the more complex the regulations become.

While the principal residence requirement does not guarantee that unpermitted STR will not occur, it is expected that this will be the exception rather than the rule due to registration requirements, active monitoring and auditing of listings for adherence to regulations, and high fine structure for non-compliance. Further, the simplicity and enforceability of the principal residence requirement over night caps ensures that more operators are likely to voluntarily comply with regulations and the City will more easily be able to enforce the regulations.

## **Business Licencing**

The proposed regulations establish a new type of business licence for short term rental operators. The registration process has been kept intentionally as simple as possible as it has been repeatedly demonstrated that jurisdictions with simple registration processes see the highest compliance rates.

In order to obtain a licence, operators will have to:

1. Submit an application form, including all mandatory documentation
2. Pay a fee, ranging from \$200-\$2,500, depending on the type of STR
3. Agree to comply with operating requirements

#### Application Form

When submitting an application form to operate an STR, individuals will need to include the following mandatory documentation:

1. Two items proving principal residence, one of which must include government issued photo ID. Examples include a recent utility bill, drivers licence, Medical Services Plan or Canada Revenue Agency mail.
2. If a renter, a letter from the owner permitting STR use
3. If in a strata, a letter from the Strata council permitting STR use

Applicants will also be advised at the time of licencing that all STR operators will be subject to verification and audit.

#### Supplementary Material

As part of receiving a business licence, operators will be provided with the following supplementary material:

- A user-friendly guide and FAQ for operators on the new business regulations
- City of Victoria Home Fire Safety Checklist, which provides helpful tips on how to protect homes from a fire and how to prepare for emergencies
- Guest Guidelines, which will include information on relevant city bylaws (e.g. quiet hours), guest parking, recycling schedules and host contact information
- A neighbour notification template, which will allow hosts to share details on their short-term rental as well as their contact information with neighbours, if they choose.

#### Fees

Staff recommend a two-tiered fee schedule that is applied by type of STR and ranges from \$200-\$2500 annually. The lowest fees will apply to operators who occasionally list their entire unit (e.g. while on vacation) or rent a shared room or private room while they are present (home occupation). The highest fees will apply to entire units that are able to operate year-round and are not the principal residence of the operator (either due to non-conforming use provisions of the Local Government Act or as transient accommodation, depending on zoning bylaw changes scheduled for September 21, 2017).

Table 2. Proposed Business Licence Fees

STR Type	Example	Annual Business Licence Fee
Home share	<ul style="list-style-type: none"><li>• Entire unit while principal resident is away (e.g. vacation)</li><li>• Shared room (i.e. couch) while principal resident is present (home occupation)</li><li>• Private room while principal resident is present (home occupation)</li></ul>	\$200
Commercial	<ul style="list-style-type: none"><li>• Entire unit with non-conforming use provisions of the Local Government Act or an entire unit zoned for transient accommodation</li></ul>	\$2,500

Proposed fees for home sharing are in line with other municipalities but are substantially higher for commercial operators. Staff recommend the proposed fee structure to:

- recover the costs of reviewing and issuing licence applications and renewals
- 'level the playing field' between STR operators and traditional accommodation providers, especially as changes to provincial sales tax legislation are expected to take time
- ensure that commercial operators pay a fee commensurate with revenue generated, (especially important in Victoria, which is unique amongst municipalities for transient accommodation considerations in zoning bylaws)
- discourage casual operators who are unwilling to pay to operate

### **Operating Requirements**

Jurisdictions with complicated operating requirements do not see fewer STRs, but rather lower compliance with regulations and more illegal operations. Therefore staff recommend operating requirements be kept to a minimum in order to achieve a "critical mass" of compliance with new regulations.

Operators will be required to display their business licence number in all advertisements for the STR listing, either in a specific field created by the platform or in the unit description. In addition, all operators will have to adhere to City bylaws, including the Noise bylaw and Nuisance bylaw.

### **Communications and Engagement**

Council did not direct staff to undertake a formal engagement process on short term rentals prior to developing the proposed regulations. However, Section 59 of the Community Charter states that before adopting a business regulation bylaw, persons affected by this bylaw must be given an opportunity to provide feedback. Therefore, feedback will be sought on the proposed registration process, licence fees and operating requirements.

Staff recommend providing both online and an in-person opportunity for feedback on the business regulations. Through the fall of 2017, stakeholders will be informed of the proposed business regulations through email, social media and the City's website. Stakeholders can also provide feedback at an open house and by email, prior to returning to Council with the business regulation bylaws for adoption.

### **Enforcement Strategy**

In a Closed Council meeting on September 14, 2017, Council approved a short term rental enforcement strategy which includes two phases; (1) identification and compliance monitoring and (2) enforcement action. A third party monitoring service will be retained to complete Phase 1. This will include identifying addresses of online listings, monitoring the listings (e.g. determining type of unit listed, frequency of booking) and assessing if a listing is non-compliant (e.g. operating without a business licence). New staff will also be hired (two temporary administrative positions as well as a permanent bylaw officer position), to oversee the program, process new applications, administer fines and address ongoing enforcement where necessary.

The enforcement strategy anticipates that the cost of enforcement will total approximately \$512,000, which includes the cost of third-party monitoring, the three additional staff, a legal contingency fund, and communication costs to widely broadcast the new rules, regulations, and consequences of non-compliance. These expenses would likely decrease as the number of STRs are reduced, and the implementation plan will identify reporting mechanisms to appraise Council of changes in funding required following implementation. The enforcement approach also analysed possible cost-recovery mechanisms and noted that fee and fine collection could at least partly cover these expenses. However, it is recommended that Council direct staff to also include potential financial implications with the implementation plan to determine the level to which this work will impact future financial plans.

## OPTIONS AND IMPACTS

**Option 1 (Recommended):** Approve the proposed short term rental regulatory framework.

**Option 2:** Council may identify further amendments or considerations to be included in the short term rental regulatory framework. It should be noted that any significant changes to this framework would delay implementation.

### *Accessibility Impact Statement*

There are no impacts on accessibility associated with the recommendations contained in this report.

### *2015 - 2018 Strategic Plan*

This work is identified as a key priority in the Strategic Plan under Objective 6: Make Victoria More Affordable 2017 Actions: Strengthen policy and regulations related to Short Term Rentals.

### *Impacts to Financial Plan*

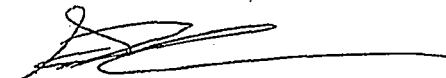
No funding has been allocated in the current Financial Plan for this work. However, the proposed business licence fees have been developed to offset some of the increased costs of these new regulations, including additional staff resources. The licence fees and degree of cost recovery will require ongoing monitoring.

### *Official Community Plan Consistency Statement*

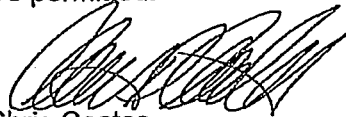
The recommended approach aligns with the directions in the Official Community Plan of "Land Management and Development" and "Housing and Homelessness."

## CONCLUSIONS

The preceding report outlines an evidence-based, straightforward set of regulations that, combined with proactive enforcement of these regulations, will assist Victoria in achieving its policy objectives of allowing some STR in ways that do not negatively affect long-term rental housing stock and with provisions that limit their negative impacts where permitted.



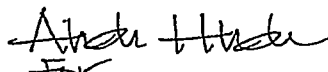
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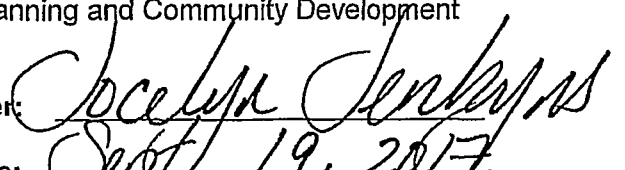
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Report accepted and recommended by the City Manager:

Date:

  
Sept. 19, 2017

### List of Attachments

- Appendix A: Short Term Rental Council Motions
- Appendix B: Evaluation and Analysis of July 13, 2017 Council Motion
- Appendix C: September 7, 2017 Zoning Bylaw Amendments Council Report