



**Committee of the Whole Report
For the Meeting of June 15, 2016**

To: Committee of the Whole **Date:** June 8, 2016
From: Jonathan Tinney, Director, Sustainable Planning and Community Development
Subject: Short-Term Rentals – Regulatory Options

RECOMMENDATIONS

That Council direct staff to:

1. Limit short term rentals in Victoria to the greatest extent possible through appropriate language in the *Zoning Regulation Bylaw*, housing agreements, or other available tools to ensure that all new residential zoned units are used for the primary purpose of housing, rather than as short-term rentals (STR).
2. Bring forward a comprehensive scheme of business regulations for existing and future short-term rentals. Such regulations may include:
 - a. requirements for a business licence for all short-term rentals
 - b. business licence fees
 - c. requirement that business activity comply with applicable strata rules
 - d. establishing appropriate rules for operation of short-term rentals.
3. Work with the BC Assessment Authority to ensure that properties used for short-term rental are properly assessed as Class 6 – business and other
4. Report back with a short-term rental enforcement strategy that will detail considerations for proactive enforcement of City-wide short-term rental including:
 - a. benefits and challenges of manual (staff led) enforcement vs. enlisting third party STR management assistance
 - b. fines and escalatory action for non-compliance
 - c. audit options to monitor adherence to rules and regulations
 - d. engaging STR host platforms for regulatory cooperation
 - e. additional policies, regulations, and programs to ensure compliance with regulations
 - f. expediting the time frame for rolling out enforcement
 - g. creating a dedicated short-term rental webpage for clarity and transparency regarding new regulations that outlines the City's progress on reducing short-term rental impact on long-term rental housing availability
 - h. establishing a monitoring system to evaluate success of short-term rental regulations and the Short-Term Rental Enforcement Strategy.

EXECUTIVE SUMMARY

The purpose of this report is to respond to Council direction on regulatory options for short-term rentals (STR) in downtown Victoria where both residential use and transient accommodation is permitted. Council directed staff to explore specific options for strata properties; specifically,

whether it is possible to 'opt-in' or 'opt-out' of transient zoning, and aligning business licence issuance with strata rules.

Staff determined that it is not possible to opt in or out of zoning. Further, zoning is not an effective tool to reduce existing STR units where they are currently permitted in zoning (transient zones) as legal non-conforming status would still apply in these buildings even if they were rezoned (the entire building would retain the right in zoning to operate as STR). Making changes in zoning is primarily only useful for preventing future STRs, and as such, staff have included a recommendation to prohibit short-term rental in future developments, unless expressly requested (i.e. consideration for future hotel uses).

Effective regulation of STRs and mitigation of STR impacts is possible through business regulations. STRs are businesses and, as such, are subject to regulation by the City. The City does not have the power to enforce strata rules but it can, as part of business regulations, require that strata rules be complied with as a condition of the issuance of a business licence. There are several other aspects of STRs that business regulations can address; therefore, it is recommended that Council consider directing staff to develop a comprehensive system of business regulations to govern STRs.

Following the development of an STR business regulation system, staff can move forward with a Short-Term Rental Enforcement Strategy. The strategy will outline a range of considerations for the proactive enforcement of STRs City-wide, both legally recommended and which have seen success in other jurisdictions, including appropriate fines, outsourced management of STRs, and several other options and their resource implications.

PURPOSE

The purpose of this report is to respond to Council direction to explore three regulatory options for STRs in condos with transient zoning so they are limited to the greatest extent possible, and to provide further options for regulating STRs.

BACKGROUND

At a Council Workshop on STRs held on January 19, 2017, Council decided on a regulatory direction for each of the six most common scenarios where STRs are occurring in Victoria. The decisions were as follows:

	Scenario	Current Regulation	Regulatory Direction Approved by Council January 19
1	Entire condo with no transient zoning	Prohibited	Proactively enforce current prohibition in zoning so STRs cease
2	Entire condo with transient zoning	Permitted	Proactively enforce current zoning rights through business license registration; Monitor use through business license tracking
3	1-2 bedrooms within occupied condo	Prohibited	Permit and proactively enforce through business license registration and tracking (neutral effect on rental market, adds flexibility and affordability for primary residents and fairness across housing types and tenures)
4	Entire homes	Prohibited	Proactively enforce current regulations so STRs cease
5	Entire secondary suites (including garden suites)	Prohibited	Proactively enforce current regulations so STRs cease
6	1-2 bedrooms within occupied SFD	Permitted	Proactively enforce current zoning rights through business license registration; Monitor use through business license tracking

Staff recommended not to remove zoning rights in Scenario 2 because:

1. This action will not reduce the number of STRs currently operating downtown, as entire buildings containing STR units will be entitled to continue to operate even after the zoning is changed due to legal non-conforming regulations. Legal non-conforming rules under the Local Government Act provide that when a non-conforming use is permitted in any part of a building, **the entire building will maintain the right to that use** even after the zoning changes until such time as every unit ceases STR operations for a period of 6 months without indicating its intention to continue operations.
2. Enforcing regulations in buildings with legal non-conforming status will be highly challenging as enforcement would involve monitoring all existing STRs until such time as all STRs cease operations for 6 months without any of the units providing 'intent to continue'. As the variables involved, including the number of STR units in any one building, and the fact that it could be argued that STR operations are often seasonal in nature and may habitually discontinue for more than six months at a time, it is extremely unlikely that adequate evidence could be collected to justify a removal of the legal non-conforming status.

Instead, it was suggested by staff that the City would preserve more residential units by proactively enforcing regulations in locations that do not permit STRs and where no legal non-conforming statuses would apply. With proactive enforcement, STRs could cease immediately in:

- all condos that do not have transient accommodation as a permitted use
- secondary suites and garden suites
- whole single-family homes.

Subsequently, it would be likely that several units of housing would be returned to the long-term rental pool. Prohibiting transient accommodation in all new residential developments in the City would prevent the STR market from proliferating further.

At the Council meeting of February 23, 2017, Council elected to refer Scenario 2 "entire homes in transient zoned condos" back to Committee of the Whole to explore whether specific regulatory options could be enacted to restrict STRs in transient zones. After discussion at the March 2, 2017 Committee of the Whole meeting, Council passed the following new motion:

"Scenario 2: Entire condo with transient zoning (downtown)"

Direct staff to provide advice on what tools are available to limit the number of Short Term Vacation Rentals where they are currently allowed, and that this report includes options for:

(a) a City-initiated rezoning to remove transient accommodation as a permitted use from residential strata property, with an "opt-out" process where stratas can apply to retain transient accommodation as a permitted use, where a majority of strata lot owners in a residential strata indicate their support for that use.

(b) a business license scheme for Short-Term Vacation Rentals that is consistent with the Strata Property Act and does not include granting licences for stratas that do not allow Short-Term Vacation Rentals in their bylaws.

(c) maintaining transient accommodation as a permitted use, with the option of an "opt-in" mechanism for a City initiated rezoning to prohibit transient accommodation as a permitted use, where a majority of owners of units in a residential multi-unit building (condominium) downtown indicate their preference for this rezoning."

ISSUES & ANALYSIS

For options (a) and (c), there is no possibility of 'opting in' or 'opting out' of zoning, and it would not be appropriate to set a pre-determined numerical criteria which determines whether or not a strata property is rezoned or not based on a percentage of owners in favour of a specific use. While the City could choose to rezone to entirely remove transient accommodation as a permitted use, it would not likely achieve any meaningful results as buildings containing STR units would all retain non-conforming rights to operate as STRs legally. Further, rezoning transient zones and monitoring activity to demonstrate that the non-conforming use has ceased would be time consuming, costly, and would raise public expectation that this would achieve a reduction in STRs, which it would not. Therefore, zoning is not recommended as the main response to STR regulation except to prohibit STRs in all future rezonings. Other, more appropriate tools, are recommended below.

Business Regulations

For option (b), STRs are businesses and, as such, are subject to regulation pursuant to the City's business regulation power. At this time, there are no specific business regulations directed at STRs within the City's bylaws; however, given the proliferation of STRs and growing number of public complaints about their impacts on neighbouring properties, it is evident that there is a need for such regulation. Exact regulations will have to be developed based on direction from Council and input from the community; however, at a minimum, consideration for STR business regulations are expected to include the following:

1. Requirement for business licences
2. Licence fees
3. As part of business licence application, requirement to demonstrate compliance with strata rules
4. Establishment of appropriate rules for operation of STRs.

Taxation

Although STRs constitute as a business use of property, they are largely classified by BC Assessment as residential, and therefore, do not pay the same taxes as hotels and other businesses; however, the rules under the Assessment Act allow for classification of at least some STRs as businesses. Exact rules are technical and have to be applied to each property individually; however, BC Assessment is prepared to review and consider evidence related to individual properties and reclassify those properties that should properly fall into Class 6 – business or other. It is recommended that Council direct staff to work with BC Assessment to ensure that properties used as STRs are properly classified.

Upcoming Enforcement Strategy

Staff have previously been directed to develop a comprehensive enforcement strategy outlining in detail all of the options available to Council to restrict STRs and enforce these regulations. The following are some of the solutions currently being considered:

- analyse options and resource requirements for proactive enforcement, including manual (staff-led) enforcement and/or enlisting third party STR management assistance
- analyse best practices and options for fines and prosecution for non-compliance
- establish an audit system to monitor adherence to rules and regulations
- engage STR host platforms for regulatory cooperation
- consider additional policies, regulations, and programs to ensure compliance with regulations

- create a dedicated STR webpage for the public to be aware of regulations, and the City's progress on reducing STR impact on long-term rental housing availability
- expedite the time frame for rolling out enforcement
- establish a monitoring system to evaluate success of STR regulations and the enforcement strategy.

Following the implementation of the STR Enforcement Strategy, it is anticipated that the City would soon see a significant reduction in STR units in Victoria.

Impacts to Financial Plan

While the recommendations for this report are regulatory in nature and do not have a direct financial impact, proactive enforcement of regulations will have significant resource implications, depending on the level of enforcement chosen by Council. A detailed analysis of financial impacts will be included in the Enforcement Strategy report.

CONCLUSION

There is no simple solution available to address issues raised by STRs. Therefore, staff recommend that Council adopt a comprehensive approach including proactively enforcing existing zoning rules, developing zoning changes to prevent STRs in new developments, and exploring proper tax assessment to limit STRs to the greatest extent possible, as well as, adopting new business regulations to mitigate impacts of existing STRs.

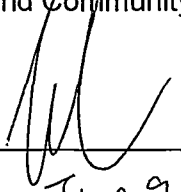
Respectfully submitted,


Lindsay Milburn
Senior Planner - Housing Policy
Community Planning


Jonathan Tinney
Director
Sustainable Planning and Community Development

Report accepted and recommended by the City Manager:

Date:


June 9, 2017

List of Attachments

1. Appendix A: COTW Workshop Report – January 19 2017