



CORPORATION OF THE TOWNSHIP OF ESQUIMALT

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Legislation Text

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TOWNSHIP OF ESQUIMALT STAFF REPORT

MEETING DATE: July 15, 2024

Report No. DEV-24-037

TO: Committee of the Whole

FROM: Mikaila Montgomery, Planner and Bill Brown, Director of Development Services

SUBJECT: Short-term rentals: Changes to provincial legislation, Township regulation summary, and request for future direction

RECOMMENDATION:

That the Committee of the Whole recommends to Council that:

1. Staff be provided with direction on the Committee's preferred approach to the regulation of short-term rentals in the Township; and
2. Staff be directed to return to the Committee of the Whole in the fall of 2024 with a report outlining the proposed amendments to the Zoning Bylaw, a draft Stakeholder engagement strategy, and a timeline for adoption and implementation of the proposed amendments.

EXECUTIVE SUMMARY:

The Township of Esquimalt does not currently permit short-term rentals (STRs) but they continue to be offered in Esquimalt on platforms such as Airbnb and VRBO. Following the introduction of B.C.'s *Short-Term Rental Accommodations Act* (Bill 35), staff received a volume of inquiries related to STRs in Esquimalt. Given the *Short-Term Rental Accommodations Act* (Bill 35), the lack of clear direction in the Zoning Bylaw, 1992, No. 2050, and the demand for commercial STR accommodations, it is recommended that Council review the new legislation and consider the current and future use and regulation of STRs in Esquimalt.

BACKGROUND:

STR market snapshot

The rise of STRs is a result of a shift in business model: from home sharing to commercial operation. Data from 2023 shows that more than 16,000 entire homes are being used as STRs for most of the year in B.C. (Province of B.C.).

According to AirDNA (an online service which tracks STR usage), there are 83 active STR listings in

Esquimalt (as of July 2024). AirDNA shows the following STR usage in Esquimalt:

- 77% of STR's are listed on Airbnb, 7% are listed on VRBO, and 16% are listed on both platforms.
- 16% are private rooms, 84% are entire units.
- Listings by minimum stay: 1 night (18.9%), 2 nights (28.9%), 3 nights (10%), 4-6 nights (9.5%), 7-29 nights (10%), 30+ nights (22.6%).
- The occupancy rate (how often an active property was occupied on average over the last 12 months) is 64%.

Types of STRs

Broadly speaking, there are two types of STR:

- Home Sharing: Renting all or part of one's principal dwelling unit, whether renting one's entire house or apartment while on vacation, or a part thereof while present within the dwelling unit. This is typically 'side income' for a principal resident.
- Commercial: Renting what could serve as a residential unit as a full-time commercial enterprise. This could be done by an individual, or by a dedicated rental corporation managing many units.

Home Sharing is typically not a type of STR which displaces potential residents from dwelling units. They are not rentals of suites, apartments, or houses on a full-time basis; instead, they are generating income on an irregular and temporary basis or adding a visitor (client) in a room in a dwelling without displacing a dwelling unit or potential tenant. These uses may not require anything beyond what is required of residential use provided that the whole dwelling unit be rented in the absence of the principal resident. This type of STR could include Bed and Breakfast, short term rental of a room in a house, or home exchanges.

Commercial uses, in contrast, will replace a dwelling unit on a full-time basis with a series of occupants, and are not considered to be a residential use.

STRs versus tenancies

In general, a booking made on a STR platform is not covered under the *Residential Tenancy Act* because usually the accommodation is being occupied for vacation or travel purposes. However, there are circumstances in which a tenancy may be established.

STR Accommodations Act (Bill 35)

On October 26, 2023, Bill 35, the *Short-Term Rental Accommodations Act*, received royal assent. Bill 35 was introduced as part of the Homes for People Action Plan to combat the housing crisis and intends to regulate STR listings of less than 90 days.

Many local governments have taken action to regulate STRs, but enforcement of bylaws is a challenge, and they have asked the Province for more tools and resources.

The purpose of the *Short-Term Rental Accommodations Act* is to:

- Return STR units to the long-term housing market
- Give local governments stronger tools to enforce STR bylaws
- Establish a new Provincial role in the regulation of STRs

The Act applies to STRs being offered to the public including:

- Platforms where people reserve and pay for the accommodation, for example, Airbnb, VRBO, Expedia, and FlipKey
- Offers on other web listing forums, for example, Facebook Marketplace, Kijiji, and Craigslist
- Listings in classified ads in newspapers

The Act will not apply to:

- Hotels, motels
- Reserve lands
- A vehicle, such as an RV (this includes floating homes)
- A tent or other temporary shelter
- Home exchanges
- Strata corporation guest suites

Principal Residence

Effective May 1, 2024, the Province implemented a provincial principal residence requirement which limits STRs to:

- The host's principal residence
- Plus one secondary suite or accessory dwelling unit on the same property.

The provincial principal residence requirement is intended to be a “floor” or minimum standard for regulating STRs. A local government may prefer to be more restrictive (for example, a local government may decide that STRs in secondary suites or detached accessory dwelling units are *not* permitted).

Length of Rental

While the *Short-Term Rental Accommodations Act* defines STRs as those lasting less than 90 days, local governments retain the flexibility to define them differently within their own bylaws. This means they can set their own time limits, whether shorter or longer than the provincial standard, to align with local needs and preferences (Appendix B: STR Policy Guidance for Local Governments, pg. 2).

Note that the Township of Esquimalt's regulations permit a residential stay of any duration provided that the dwelling unit is a person's permanent residence. Duration of stay is only a consideration when the dwelling unit is not occupied as a permanent residence.

Enforcement Responsibilities

Local governments will continue to be responsible for enforcing their own bylaws, while the provincial compliance unit will be responsible for enforcing the provincial *Short-Term Rental Accommodations Act*. The Province has established a Compliance and Enforcement Unit (CEU) within the Short-Term

Rental Branch in the Ministry of Housing.

Display of business licence

Many local governments require a business licence for a host to operate an STR. Effective May 1, 2024, STR hosts must display a valid business licence number on their listing in areas where a business licence is required by the local government.

Platform accountability

If a listing does not comply with a business licence requirement where required by the local government, the STR platform must remove the listing at the request of the local government.

Data sharing

To assist local governments with better STR bylaw enforcement, STR platforms will be required to share information about short-term listings on a monthly basis, beginning in May 2024. This information is confidential and will not be disclosed to the public.

Increased fines and tickets

The maximum municipal ticketing fine that a local government may set under the *Community Charter* Bylaw Enforcement Ticket Regulation has increased from \$1,000 to \$3,000 per infraction, per day.

Esquimalt - Context & Policy

Policy Analysis

Staff conducted a scan of relevant policies and bylaws in Esquimalt to provide a background for Council's consideration of STR permission and regulation. Information from the Zoning Bylaw and the Official Community Plan is summarized below.

Zoning Bylaw, 1992, No. 2050

"Short-Term Rental"

Esquimalt's Zoning Bylaw does not contain a definition for "short-term rental." Therefore, it is not a permitted use in any zone in the municipality. Staff have communicated to the public that an STR is commonly understood to be anything less than 30 days.

Bed and Breakfast Use

While STRs offered on digital platforms such as Airbnb and VRBO have evolved beyond the traditional understanding of "Bed and Breakfast," it is worth mentioning that Esquimalt does currently permit bed and breakfasts when equipped with the correct zoning and business license.

There are five parcels in Esquimalt with a permitted use of "Bed and Breakfast" (RS-4 and RS-4A). Bed and Breakfast is defined as "sleeping accommodation for transient guests provided within a Single Family Dwelling to whom no more than one (1) meal is served or provided in any day." No more than three rooms can be provided, for no more than six guests for bed and breakfast rentals. The use is limited to a continuous time period of no more than two weeks.

Transient accommodation is also permitted for hotels (where “hotel” is a permitted use in the Zoning Bylaw), however Esquimalt does not currently have any operating hotels.

Official Community Plan (2018)

Section 16.4 - Tourism, of the Official Community plan provides the objective “To consider land use decisions that help promote tourism.” A policy in this section states “Consider short-term vacation rentals within legal dwelling units, where the dwelling unit is an owner or tenant’s principal residence, for up to 60 days per year.”

Business License and Regulation Bylaw

The Township does not issue business licenses for STRs, as they are prohibited. For that reason, STRs are not mentioned in the Business License and Regulation Bylaw, 2013, No. 2810. A review of this bylaw and fees associated with business categories is currently underway by staff with an intent to bring it before Council in the coming months.

Chronology

Provincial Changes:

- May 1, 2024: Principal residence requirement, requirement to display valid local government business licence numbers where business licence required.
- Summer 2024: Data sharing between the Province and local governments.
- By early 2025: Provincial registry launch and requiring platforms to remove listings without valid provincial registry numbers.

Advisory Body Recommendations:

Council has the option to refer this item to the Advisory Planning Commission for review, but at this time, it has not yet been submitted for their consideration.

ANALYSIS:

Staff has understood that the intent of the prohibition of STRs in Esquimalt is to:

1. Prevent the displacement of residential units by commercial non-residential rental uses.
2. Reduce neighbourhood disturbances (parking, noise, etc.) from non-residential uses in residential zones.

Staff’s interpretation has been that it is not lawful to rent one’s residence (often through various online commercial sites such as Airbnb) on a short-term basis, or shorter than one month. One month has been the assumed minimum amount of time that would be considered a residential use (shorter may be interpreted as a “vacation use”). The strictest interpretation of the bylaw would be that the rental of a dwelling unit for any purpose other than as one’s primary residence is not permitted, regardless of duration.

Defining “Short-Term Rental”

Staff believes there is a requirement for greater clarity around STR uses in the Zoning Bylaw. Council may decide to define STRs as a different length of time than the Province's 90-day definition if they wish. Defining STRs is expected to lead to more clarity and remove areas of ambiguity regardless of Council's stance on permitting STRs. Consider that this definition could include or exclude additional dwellings on the same property (such as Detached Accessory Dwelling Units or secondary suites) depending on Council's priorities. See Appendix A for a list of the Province's definitions.

Other relevant definitions

"Permanent residence" is defined in the Zoning Bylaw, but it needs to be clearer in terms and in scope ("permanent residence means premises used by individuals for daily eating, sleeping and living needs, occupied on an ongoing basis"). "Principal residence" is not currently defined in our Zoning Bylaw, though this is the language used by the Province. Aligning definitions for consistency with the Province should be considered.

Enforcement

Council may question why STRs continue to be advertised in Esquimalt despite their prohibition. The simple answer is that enforcement of the Zoning Bylaw operates on a "complaints basis" and takes considerable staff time for our one Bylaw Officer.

Under Bill 35, the Province will take responsibility for enforcing Provincial legislation. This means that if Esquimalt decides to permit and regulate STRs, there may not be a significant increase in the burden on the Bylaw Officer (particularly if the municipality chooses to align our regulations closely with the Province). Additional or different regulations decided by the Township should be weighed with our capacity for enforcement.

Regulation

Council is invited to consider the benefits and challenges with permitting and regulating versus not permitting and not regulating STRs. The Toolkit in Appendix D provides a more fulsome analysis of the issues. Below is a snapshot of some of the considerations.

Benefits to regulation

- Legalize and bring existing STRs into compliance with municipal and Provincial regulations.
- Potential housing affordability benefits (income for homeowners)
- Potential housing availability benefits (illegal STRs become available for long-term tenants)
- Data/transparency/awareness of trends and statistics for decision making purposes
- Income from business licenses (financial benefit to the Township)
- Economic development - Keep dollars in the community; provide alternatives to a hotel (which we are lacking); support for local businesses (STR guests spend money at local businesses such as restaurants, shops and personal services)
- Potential for improved safety (rentals only in legal suites documented through building permits)
- Revenue through the Municipal and Regional District Tax Program (should this be implemented)
- Fairness among accommodation providers
- With new support from the Province, there is less work for municipalities to shoulder

Challenges to regulation

- Staff time/capacity
 - Business licensing - create new license category, time to process. Pro is that the Province will enforce this if we require a business licence.
 - Bylaw enforcement - potential to increase burden, depending on regulations set.
- Communications - changes must be communicated effectively to the public. Communication about new regulations/changes must be clear and encourage compliance
- Potential loss of long-term housing availability and/or affordability (for example: secondary suites that could house tenants converted to STR).
- Consider that homeowners may choose to have a vacant suite over a long-term tenant (if STRs are not allowed) to avoid issues with problem tenants.

OPTIONS:

Questions:

1. Would Council like to consider permitting and regulating STRs in the Township of Esquimalt?
 - a. If yes, Council should consider what their goals are for regulating STRs as a starting point. This will influence how staff prepare policy and bylaw options. Goals may include preserving long-term housing, and economic and tourism development.
 - b. If no, Council should consider the potential consequences.
2. Would Council like staff to include a definition for “Short-Term Rental” or “Principal Residence” in the Zoning Bylaw? Staff recommends this, regardless of whether Council decides to permit and regulate STRs.
3. Would Council like staff to report back with more information and/or options for regulating STRs?

COUNCIL PRIORITY:

Good Governance and Organizational Excellence
Housing
Diversified and Thriving Economy

FINANCIAL IMPACT:

There are no financial impacts associated with the review at this time.

COMMUNICATIONS/ENGAGEMENT:

This report was reviewed by Terése Finegan, Manager of Economic Development.

Public engagement has not been conducted regarding STRs but is recommended if Council wishes to proceed with regulating STRs.

Due to an increase in inquiries from residents (likely as a result of the media attention highlighted by the *Short-Term Rental Accommodations Act*), staff added an excerpt to the website and the tax notice for the purpose of informing residents about Esquimalt’s regulations at the end of May 2024. The following has been communicated with residents:

- *The Township of Esquimalt does not allow short-term rental of any part of a residential dwelling for a period of less than one month.*
- *The Township does not issue business licences for short-term rentals as they are prohibited.*
- *The Provincial Government will be enforcing the Township's regulations.*
- *The Township expects to review its regulations around short-term rentals in the coming year. Please contact council@esquimalt.ca if you would like to provide input.*

Correspondence from the public has been attached as Appendix E.

TIMELINES & NEXT STEPS:

Should the Committee recommend that Council move forward with amendments to the Zoning Bylaw regarding STRs, staff will prepare another report with the following information to come forward to Committee of the Whole later this year:

- Proposed amendments to the Zoning Bylaw
- Draft stakeholder engagement strategy
- Timeline for adoption of the proposed amendments

REPORT REVIEWED BY:

1. Bill Brown, Director of Development
2. Deb Hopkins, Director of Corporate Services, Reviewed
3. Ian Irvine, Director of Finance, Reviewed
4. Dan Horan, Chief Administrative Officer, Concurrence

LIST OF ATTACHMENTS:

1. Appendix A: Definitions for BC's *Short-Term Rental Accommodations Act*
2. Appendix B: Short-term rentals: Policy Guidance for BC Local Governments
3. Appendix C: Regional STR context
4. Appendix D: Short-term rental Toolkit (This toolkit contains some helpful information, but please keep in mind that it was published in 2020, prior to Bill 35).
5. Appendix E: Public correspondence
6. Appendix F: Staff presentation