



STAFF REPORT TO COMMITTEE

DATE OF REPORT March 6, 2024
MEETING TYPE & DATE Electoral Area Services Committee of March 20, 2024
FROM: Community Planning Division
Land Use Services Department
SUBJECT: Bill 35 – Short-Term Rentals and CVRD Land Use Bylaws
FILE: 6450-20 Short-Term Rentals

PURPOSE/INTRODUCTION

The purpose of this report is to update the Committee on the details of Bill 35 – Short-term rental (STR) legislation and its effect upon the CVRD.

RECOMMENDED RESOLUTION

That it be recommended to the Board:

1. That the Official Community Plan for the Electoral Areas be amended to designate electoral areas for short-term rental (STR) Temporary Use Permits, and that Zoning Bylaw No. 4485 be amended to include associated temporary use permit guidelines;
2. That the Development Application Referral Policy be amended, to require any Temporary Use Permit applications for STR to be referred to the Advisory Planning Commission for the electoral area where the subject property is located;
3. That the CVRD not opt into the Principal Residence Requirement under Bill 35; and
4. That staff host a public webinar to inform the public of the proposed approach to STR regulation.

BACKGROUND

On November 1 and 15 of 2023, the Committee considered Bill 35 twice, resulting on November 1, 2023, in the following resolution:

That it be recommended to the Board that staff be directed to consult with electoral area advisory planning commissions on the topic of short-term rentals, and that staff review and provide recommendations to the Electoral Area Services Committee on potential amendments to short-term rental regulations.

The report on November 15, 2023, was intended to brief the Committee on Bill 35 – legislating targeting short term rentals and identified the potential to “opt in” to the Principal Residence Requirement provision in Bill 35. A subsequent report was provided to Committee regarding opting in and since, staff have participated in several technical briefings with legal counsel and Provincial staff, and now have a deeper understanding of the implications of Opting in. Staff note the deadline for regional districts to opt in, in 2024, is the end of March. In subsequent years, the deadline will also be March 31. This report is intended to apprise the Committee of information that was not available at the time of writing of the previous two reports, derived from both

regulatory and explanatory documents produced by the Province in the intervening weeks, and seeks direction on next steps.

ANALYSIS

A summary of the general effect of Bill 35 follows:

- The clear intent of Bill 35 is to ensure that short-term rentals (STR) do not unduly impact the residential rental market following its implementation. The Province has determined that at present, STR is reducing the availability of rental housing, and it aims to attenuate that.
- Bill 35 and its regulations are initially focused on two online platforms for STR, namely Airbnb and VRBO. The Province will henceforth require any STR to have local government approval (zoning, TUP and business license) in order to be able to list the facility online with the STR platforms mentioned above. A business license number will be required by the Province only if a business license is required by the jurisdiction in which the short-term rental is located. Provincial staff indicate that other STR platforms will be regulated in the future if they are determined to be doing the same thing as the two mentioned above.
- The “opting in” provision in Bill 35 and its regulations have been widely misunderstood. If Regional districts wish to opt in to a principal residence requirement, they must do so by Board resolution by the end of March. Opting in does not mean that STRs become easier to do; in fact, it makes it more difficult, even if the zoning permits it.
- The Province indicates in its STR Policy Guide (**Attachment A**) that it considers a healthy residential rental market to have a vacancy rate in excess of 3% at all times, and that permitting STR without that 3% state being present undermines the residential tenancy opportunities. It’s apparent that the local vacancy rate is well below this number.

Concerning the action items in relation to STR that arose from previous Committee meetings, Staff note the following:

1. The Senior Manager of Inspections & Enforcement has prepared a report for Committee concerning business licensing for both Bed and Breakfast operations and STR, and that process will unfold in due course.
2. Rather than engaging with Advisory Planning Commissions on the topic of STR at this time, a summary report to each APC on the effect of the legislation and the planning considerations related to STR is proposed, to apprise members of the process and policy decisions that should underpin any zoning amendments.
3. Opting into the Principal Residence Requirement would serve no purpose at this time.

Legal and Illegal Short-Term Rentals

A thorough review of CVRD residential and comprehensive development zones throughout the nine electoral areas indicates that a total of **83** parcels in such zones have the theoretical ability to legally conduct STR activities. This necessarily means that most of the hundreds of existing STRs in the CVRD EAs are not legal and they will soon be prevented by the Province from advertising on Airbnb and VRBO.

This contrasts to the knowledge that upwards of several hundred properties are listed at any given time on Airbnb and VRBO, which – combined with the Province’s Bill 35 changes that will apply soon – means that the CVRD will likely be approached soon by existing operators who will be seeking of approval for such operations to continue. This can potentially take three forms:

- CVRD-initiated broadly based rezoning

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- Site-specific rezoning by landowners
 - Temporary use permits (TUPs)

Each of these have their own challenges, which will be discussed briefly below.

CVRD-Initiated Amendments

If the Committee is in principle favourably inclined to support, at least at some level, short-term rentals, one possible path forward would be for the Regional District to pro-actively attempt to identify communities, zones, neighbourhoods or even local streets where short-term rentals could potentially be considered. The fundamental problem with this approach includes the following challenges:

- The Province's own guideline document for STR recommends that communities with a rental vacancy rate of under 3% not consider permitting STR, either on a wide scope or otherwise.
- Identifying suitable areas for STR will be a very labour intensive activity that will involve extensive community engagement in an attempt to achieve a solid majority support for any such change. *This is likely to be extremely difficult to achieve, if it is even achievable at all, because it would necessarily cover larger areas than a single property and a wide diversity of opinions is likely in all such areas.*
- Staff are of the opinion that this option is not likely to yield any significant benefit, given the extent of effort required, and divided views concerning STR in the community.

The CVRD Board could more easily enable the issuance of Temporary Use Permits for STR by way of amendment to the Official Community Plan, possibly with a series of criteria to be considered in adjudicating future TUP applications. This would provide the ability for healthy STR operations, which do not negatively impact neighbourhoods, without enshrining the use in zoning.

Site-Specific Applications

Whether or not the Committee supports short-term rentals, any landowner has the option of seeking a site-specific approval. In either case, supporting that would require amendment to the Official Community Plan. These two options are discussed below.

Temporary Use Permits (TUP)

If the Official Community Plan was amended, the CVRD could consider site-specific applications for TUPs. In the event of approval, the TUP would last for up to three years and be renewable once only. Receipt of a TUP would clear the way to issuance of a business license.

If this is an option that the Committee is interested in, staff would recommend that among the criteria for applying for (and possibly receiving) a TUP be limited to situations where the STR would only be occurring within a suite – either attached or detached. In this way, and short of opting into the principal residence requirement (which would be difficult to enforce), the CVRD could ensure that every property with a STR on it also has a full-time resident on it.

Staff are already preparing an amendment to the existing OCP policy, further to the January 24, 2024 Board Resolution, to enable TUPs across Electoral Areas and develop guidelines for expanded TUP uses.

Zoning Amendments

Zoning amendments are also possible for site-specific STR requests. Staff would recommend that this be the preferred type of application for situations where the applicant intends to make ALL dwellings on the subject property available for STR, and hence there would not be an assurance that any of those units would be used as residences for a household. This type of application would also be appropriate for situations where the STR was previously operating under a TUP and the TUP term has expired and further renewals are not possible.

In each case, the Official Community would have to be amended to permit the suite under the above circumstances, because using a residentially-zoned property for STR only is a commercial use, and such sites would likely have to be redesignated as Commercial. This would necessarily have property assessment implications, as it should. This approach would, at least in a property taxation sense, “level the playing field” between this type of STR and hotel and other operators of commercial accommodation.

Advisory Planning Commissions

Staff are recommending a modified approach to engaging with APCs in respect of short-term rentals, by way of an information report describing an approach for all electoral areas.

APCs could be asked for their opinions of an amendment to the OCP to enable TUPs, but since the OCP is regional, a common position on such an amendment should be arrived at the Board level. Staff recommends that a complimentary amendment to the Development Application Referral Policy be made, in which TUPs related to STR only would automatically be sent to the APC in question for site-specific input.

Public Consultation

Recognizing the lack of understanding of the new provincial legislation and implications in the community, and the approach proposed, staff recommend hosting a public information session in webinar format. The webinar would explain Bill 35, the proposed CVRD approach to TUPs and business licensing, and seek public input via written comments to staff.

Options

Option 1:

That it be recommended to the Board:

1. That the Official Community Plan for the Electoral Areas be amended to designate electoral areas for short-term rental (STR) Temporary Use Permits, and that Zoning Bylaw No. 4485 be amended to include associated temporary use permit guidelines;
2. That the Development Application Referral Policy be amended to require any Temporary Use Permit applications for STR to be referred to the Advisory Planning Commission for the electoral area where the subject property is located;
3. That the CVRD not opt into the Principal Residence Requirement under Bill 35; and
4. That staff host a public webinar to inform the public of the proposed approach to STR regulation.

Option 2:

That it be recommended to the Board:

1. That no changes to the OCP or zoning be made at this time; and
2. That the CVRD not opt into the Principal Residence Requirement under Bill 35.

Option 3:

That it be recommended to the Board:

1. That the Official Community Plan for the Electoral Areas be amended to designate electoral areas for short-term rental (STR) Temporary Use Permits, and that Zoning Bylaw No. 4485 be amended to include associated temporary use permit guidelines;
2. That the Development Application Referral Policy be amended to require any Temporary Use Permit applications for STR to be referred to the Advisory Planning Commission for the electoral area where the subject property is located;
3. That the CVRD opt into the Principal Residence Requirement under Bill 35; and
4. That staff host a public webinar to inform the public of the proposed approach to STR regulation.

FINANCIAL CONSIDERATIONS

N/A

COMMUNICATION CONSIDERATIONS


Proposed public webinar and APC engagement in recommended option.

STRATEGIC/BUSINESS PLAN CONSIDERATIONS

Referred to (upon completion):

- ☐ Community Services (*Cowichan Community Centre, Cowichan Lake Recreation, South Cowichan Recreation, Arts & Culture, Facilities & Transit*)
- ☐ Corporate Services (*Finance, Human Resources, Information Technology, Legislative Services*)
- ☐ Operations (*Utilities, Parks & Trails, Recycling & Waste Management*)
- ☐ Land Use Services (*Community Planning, Strategic Initiatives, Development Services, Building Inspection & Bylaw Enforcement*)
- ☐ Strategic Services (*Communications & Engagement, Economic Development, Emergency Management, Environmental Services*)

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Reviewed for form and content and approved for submission to the Committee:

Resolution:

☒ Corporate Officer

Financial Considerations:

☒ Chief Financial Officer

ATTACHMENTS:

Attachment A – Short-term Rental Policy Guide December 2023