



## TOWN OF SIDNEY

### Report to Committee of the Whole

**TO:** Chair and Committee Members  
**FROM:** Corey Newcomb, Municipal Planner  
**DATE:** February 27, 2018 **FILE NO.:** 3900-02  
**SUBJECT:** Approach Report – Short Term Vacation Rentals in Sidney

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#### **PURPOSE:**

The purpose of this report is to provide Council with information related to Short Term Vacation Rentals (STVR) and establish an approach to developing a regulatory framework for this use within the Town of Sidney.

#### **REPORT SUMMARY:**

The Town of Sidney currently permits short-term rental accommodation in hotels and motels, as well as in bed and breakfasts located in single-family dwellings (all of which require a business licence). At the time of adoption of the current Zoning Bylaw No. 2015 in June 2012, digital platforms such as Airbnb and VRBO (Vacation Rental by Owner) were relatively unknown, and the short-term rental of entire dwelling units for tourist accommodation was relatively rare.

Despite not being explicitly permitted in the Zoning Bylaw, there has been rapid growth in short-term rentals offered in stand-alone dwelling units in Sidney (i.e. not rooms in an occupied home) on Airbnb, VRBO and other similar digital platforms. Due to the extremely low rental vacancy rate in Greater Victoria and Sidney in particular, it is likely that the use of these units for STVR has the effect of removing long-term rentals from the rental market pool. Staff also believe that STVR likely has an impact on the tourist accommodation sector (i.e. hotels and motels) due to an imbalanced regulatory environment, as the cost barriers to STVR are comparatively lower.

At Council's direction, staff have investigated the issue of STVR in Sidney as well as how other jurisdictions with low rental vacancy rates are regulating this type of accommodation. This report presents an overview of STVR in the Sidney context, and describes the STVR regulatory structure in three other communities for Council's reference. Based on Sidney's present circumstances the report presents a recommended approach, including a potential regulatory framework. If Council decides to pursue the recommended approach, staff would bring bylaw amendments back for consideration in early summer 2018.

#### **BACKGROUND:**

The past decade has seen substantial growth in digital services that connect people looking for short-term accommodation with people who wish to rent or sublet their own dwelling units or personal accommodation for the same purpose. The website Airbnb is indicative of this trend and currently the largest of the short-term rental websites. It began operations in 2008 and now has 2.3 million listings in 34,000 cities. In general, STVR services charge a fee for listings, managing bookings and payment, and occasionally provide insurance.

Airbnb and several other STVR platforms have seen substantial growth in the number of listings located in Sidney in recent years. While staff were aware of one or two STVR locations in Sidney at the time of the adoption of the current Zoning Bylaw in June 2012, there was no indication of the

extent to which the sector would grow. As of February 2018, there appear to be approximately 50 STVR units in the general Sidney area on Airbnb and approximately 50 on VRBO (there may be significant overlap, as many of these units appear to advertise on both platforms). Almost none of these local listings are hotels or bed and breakfasts with a valid business licence; most are unlicensed and appear to be located in secondary dwelling units (i.e. secondary suites, coach houses, etc.) ancillary to a main dwelling.

Although the number of complaints received by staff regarding STVR's in recent years has not been substantial, staff have received numerous and consistent inquiries, particularly from condo owners and strata councils, as to the legal framework regulating their use in Sidney and raising concerns about their impacts.

At the current time, staff's response to these inquiries has been to point out that only Bed and Breakfasts located in single-family dwellings are a permitted use in the Zoning Bylaw, making STVR rentals in any other type of building essentially illegal. Staff have also suggested to condo owners that regulation of STVR's is within the power of a building's strata bylaws, and recommended strata owners seek independent legal advice on the issue.

There has been growing discussion on how to deal with the STVR market in recent months in various jurisdictions across BC and Canada, including in Sidney. In October 2017 Council received a petition from residents unhappy about the disturbance caused by a STVR in their neighbourhood, prompting Council to discuss the issue in more detail at the November 14, 2017 regular Council meeting. The following resolution was passed at that meeting:

1. *That Council sees merit in developing an approach to regulate Short Term Vacation Rentals (STVR); and*
2. *That staff be directed to investigate and develop options to regulate short term vacation rentals in Sidney and report back to Council with their recommendations. In doing so, staff should review and consider best practices implemented by other municipalities, including aspects related to Zoning; business licensing, capacity for enforcement and potential fees.*

Following this meeting, staff began to research the issue in more depth and put together a possible approach to STVR; these are discussed in more detail below.

## **DISCUSSION:**

### **Current Regulatory Context in Sidney**

As mentioned above, Sidney's Zoning Bylaw currently permits **Bed and Breakfast** as a permitted use on single-family properties, which is defined as:

***Bed and Breakfast:*** *The use of a single-family dwelling for the provision of lodging or lodging and meals to the travelling public for compensation where the single-family dwelling is occupied by the owner and no more than two bedrooms within the dwelling are used or intended to be used for such lodging.*

An annual business licence is required to operate a Bed and Breakfast, and there are currently 3 licensed operations in Sidney.

In addition to Bed and Breakfasts, the Zoning Bylaw also allows **Boarding**, defined as:

***Boarding:*** *The use of a single family dwelling for the provision of residential lodging, with or without meals, for compensation where the rooms used for such lodging do not include a separate kitchen and no more than two bedrooms within the dwelling are used for such lodging.*

Boarding is not considered a formal business and does not require a business licence. By implication, both Boarding and Bed and Breakfasts are not permitted in duplexes, apartments or townhouses. Boarding is intended to accommodate *residential* lodging, and does not include STVR situations.

In commercial zones, **Hotel** and **Motel** uses are permitted (C1, C4 and C5 zones) with a business licence, with 6 currently operating in Sidney as of January 2018.

There is currently no explicit mention of “vacation rental” or “short-term rental” as permitted uses in the Zoning Bylaw. Despite this, research undertaken by staff as a result of Council’s direction to investigate STVR in more depth has reinforced the position that STVR has never been a permitted use in the Zoning Bylaw. Effectively, this makes all STVR units currently operating in Sidney illegal, and not eligible for grandfathering unless explicitly permitted by future bylaw changes. To date staff have taken an indirect approach to STVR complaints, focusing on addressing specific bylaw infractions (e.g. noise, parking, etc.) that are commonly associated with STVR rather than directly regulating the existence of the STVR unit in question. Dealing with the specific bylaw infraction (and associated potential to issue fines) allowed staff to more effectively address the negative impacts of some STVR units.

There are likely many reasons why the number of STVR units so outweigh the number of licensed hotels, motels and bed and breakfasts; among these are the perceived low barriers to starting a STVR, as many operators likely assume that it is as simple as registering their unit on the appropriate website.

### **STVR Units in Sidney: What We Know**

- There are currently (February 2018) approximately 50 active listings in Sidney, with nightly prices ranging from less than \$100 to more than \$500.
- Most appear to be owned individually, with few “multiple-unit” operators. They are likely homeowners who are supplementing their income through STVR, and are likely able to make a greater income stream with STVR than with a long-term rental.
- STVR units in Sidney are listed on a range of websites, including Airbnb, Homeaway, VRBO, etc. Websites with a traditional focus on hotels like Expedia.com have also recently entered the STVR market and include many of the same units as the other websites.
- Based on current STVR rates on Airbnb and VRBO compared against long-term rental rates for units available on Kijiji and Used Victoria, staff estimate that STVRs bring in a 50 – 100% premium over long-term rentals, assuming consistent rental throughout the month. In other words, there may be a strong financial incentive to operate a STVR over a long-term rental.
- The Town has received relatively few formal complaints regarding STVR, typically fewer than 3 per year, in the past 10 years.
- Most current listings on VRBO and Airbnb are for studio or one-bedroom units, with fewer multi-bedroom units available.

### **Issues for Consideration in Regulating STVR**

Some prominent issues staff see with STVR are currently as follows (in no particular order):

#### Maintaining a level playing field with tourism accommodation sector

Most STVR are unlicensed and do not face the same barriers as other legitimate accommodation sector businesses do. STVR operations do not pay commercial property tax, nor do they currently face annual fire inspections or maintenance and upgrading of fire protection equipment. As evidenced by the numbers provided above, most STVR operations do not get a business licence.

#### STVR may lead to issues when located in single-family residential areas or multi-family buildings

The most common complaints with STVR are issues which create a disturbance for neighbours in residential areas, which include:

- Parking. STVR guests who are unfamiliar with the neighbourhood or building may park in areas dedicated to, or claimed by, other residents in the building or area.
- Noise. Guests of STVRs are also often in “vacation mode” and may have parties that disturb the neighbourhood or building. Guests may also arrive or depart very early or late, and create a disturbance as they enter or exit the premises, load their vehicle, etc.
- Complaints also commonly reference a sense of loss of “neighbourliness” as the occupants of the STVR unit are constantly changing and there may be no permanent occupant.
- Safety breaches: these may be real or perceived impacts to personal safety and security of private and common property resulting from new non-residents frequently being given access to semi-private areas (e.g. secure underground parking).
- Damage to common property: wear and tear on building hallways, improper use of building amenities.
- Pressure on municipal resources: on-street parking, utilities, garbage/recycling facilities may see greater use than with a typical residential situation.

#### STVR may impact the availability of long-term rental accommodations

With a vacancy rate in Greater Victoria at 0.7% in November 2017, the supply of long-term rental units is extremely low in Sidney, as it is elsewhere in the region. Websites that advertise long-term rentals in Sidney typically have fewer than 5 units (bachelor, 1 or 2 bedroom) available at any given time. The lack of supply not only drives prices up, but may also makes it difficult for renters on a fixed income or with a disability to compensate for these increases.

#### Capping the number or location of STVR rentals

This approach is discussed further below; however, it is worth mentioning because it is being utilized by some municipalities as it allows a degree of flexibility in permitting short-term rentals while attempting to minimize impacts such as noise, parking and the availability of long-term rental units.

Capping the number or location of STVR rentals involves limiting the number of units available for rent either community-wide, or by each neighbourhood within the community. For example, the City of Nelson (discussed below in more detail) limits STVR rentals by zoning, but also limits them to a maximum of 3 per block.

While this approach does limit the number of active STVR units in a given location at a given time, it also has a number of drawbacks:

- Fairness: not everyone who wants an STVR licence may be able to obtain one, contributing to a perception of unfairness in the community for those interested in operating a STVR.
- Administration: There would be an increased need to track the details of a given licence by geography, possibly resulting in the need for manual or electronic records capable of limiting licences by geographic area.

#### Taxes and Transaction fees

On February 7, 2018 the Provincial Government announced that it had reached an agreement with Airbnb and intends to implement regulatory changes that will allow it to collect 8% Provincial Sales Tax (PST) on rentals through the Airbnb website, with the proceeds going towards affordable housing initiatives. In addition to this, the Province has indicated that it will also collect up to 3% under the Municipal and Regional District Tax Program (MRDT) on behalf of those local governments that have

this “hotel tax” in place. The Province will also be looking at similar arrangements with other online accommodation providers in the near future.

While the MRDT program would allow for collection of additional taxes on STVR rentals, the “hotel tax” would also apply to regular hotel stays in the municipality, and would therefore require the support of existing accommodation operators to implement such a tax. For this reason, as well as the evolving regulatory environment around STVR province-wide, staff see merit in not revisiting the MRDT at this time.

Another possible option is requiring that a transaction fee be remitted by a STVR website operator for each booking within a community. Some jurisdictions have proposed this and Airbnb has stated its willingness to negotiate agreements to collect transaction fees on behalf of municipalities. Staff are not confident that this practice is legal (the ability to do this may also be removed by forthcoming provincial legislation) as the transaction fee may be construed as a tax similar to the MRDT. Such an approach would also require staff to negotiate agreements with each website operator. Although staff acknowledge that collecting a transaction fee could provide a more level playing field with tourist accommodation businesses, staff do not recommend this as a feasible option at this stage, given the current uncertain regulatory environment for STVR as well as the need for a substantial investment of staff time in negotiating any fees.

### **Example Approaches in Other Jurisdictions**

In the preparation of this report, staff have investigated the approaches taken by a number of other jurisdictions in British Columbia. Each community regulates in its own way to meet its own needs. In order to provide Council with a general overview of different approaches to STVR, staff have investigated the regulatory environment of three municipalities, each one representing a permissive, balanced or restrictive approach to STVR. An example of each jurisdiction type and a brief overview of their approach is outlined below.

It is important to note that a more restrictive approach generally appears to require more municipal resources to maintain and enforce the bylaws relating to STVR.

#### Restrictive: City of Victoria

The City of Victoria adopted their approach to STVR throughout 2017 and early 2018. Previously, Victoria allowed Bed & Breakfasts (B&B) in Single-Family Dwellings and some STVRs in specific zones in multi-family buildings which were purpose-built for some degree of STVR.

Victoria’s process included extensive consultation with stakeholders. Despite significant support for STVR from many property owners using it as a “mortgage helper” or a stand-alone business venture, Council elected to adopt an approach that would allow limited STVR in a way which would maximize the availability of long-term rentals to residents:

- STVR is now permitted in up to two rooms in principal residences only (where an owner or tenant is present as the long-term occupier). STVR is no longer permitted in secondary suites or garden suites (i.e. secondary units with long-term rental potential).
- Like single-family dwellings, STVR is also permitted in stratified apartment buildings in conjunction with a principal residence; however, this requires strata approval.
- A business licence is required (\$200 for principal dwelling operators, and \$2,500 for those running an STVR business in legal non-conforming units; these fees are now being reconsidered at \$150 and \$1,500 respectively).
- Plans to hire dedicated enforcement staff to deal with only STVR.

### Permissive: District of Tofino

The District of Tofino has a tourism-focused economy, and as such, has taken a more relaxed approach to the regulation of STVR.

- It is considered as a home occupation use by Tofino bylaws, permitted in residential areas.
- Permitted in the primary dwelling or secondary dwelling; suites, cottages, etc. but not both.
- Permitted in most zones in Tofino, with a business licence required (must be displayed on marketing materials)
- Proactive enforcement of unlawful short-term rentals by a dedicated staff person.
- 1 operation permitted per lot, with 6 guests and 3 bedrooms maximum.
- No cooking facilities are permitted in bedrooms.
- Not permitted in multi-family dwellings, non-conforming single-family dwellings or on commercial, industrial or institutionally zoned land.
- May not be combined with a Bed and Breakfast in the principal unit.
- Not permitted where there is no principal resident living on the property.
- Business Licence fees: \$450 for 1 room, plus \$150 for each additional room.

### Balanced: City of Nelson

On the surface, the City of Nelson takes a fairly similar regulatory approach to the District of Tofino, but with some notable restrictions that limit the scope of STVR significantly.

Like Tofino, STVR may operate in secondary suites or cottages, provided that the principal resident (owner or tenant) is living on the property. Furthermore, only one licence is permitted per lot. In addition to these similarities with Tofino, Nelson also has the following additional requirements:

- One employee is permitted per property (primarily for housekeeping purposes.)
- Three levels of licences are available: annual, summer and 31-day.
- The number of annual and summer licences are capped community-wide; 110 annual and 40 summer. No cap on 31-day licences.
- Maximum number of licences per block is also capped at 3 (does not include 31-day licences)
- Summer licences allow those renting to students in the fall/winter to make their space available for STVR for the summer months.
- Approval of summer licences is discretionary by the Department Director.
- No change in parking requirements for the additional STVR use.
- Enforcement is part of general Bylaw Enforcement duties; licences require building and fire inspection every three years.

### **Proposed Regulation of STVR in Sidney**

Based on the current housing situation in Sidney, staff are recommending that an approach similar to the City of Victoria's (i.e. the "restrictive" option) be incorporated into Sidney's regulatory structure.

The basic structure of this approach is to allow STVR in all residences where a "principal occupant" currently resides. (This includes both owners and renters.) In addition to this, STVR would continue to not be permitted in secondary dwelling units (i.e. secondary suites or detached accessory dwellings); this approach would be formalized in the Zoning Bylaw. At this time staff do not believe that requiring a business licence would be feasible for "principal occupant" STVR, however further research on this question is necessary.

The rationale for this approach is based on a number of previously discussed factors, including:

- The extremely low long-term rental vacancy rate in Sidney, which shows no immediate signs of relief.
- Most current STVR listings in Sidney appear to be units which could accommodate long-term rentals in a separate, stand-alone dwelling unit.
- There are numerous other licensed accommodation options currently available to visitors, which supply a range of options and prices.
- The potential increase in negative impacts on residential neighbourhoods if no or limited regulatory action is taken.
- The consistent concerns from residents in condo buildings regarding potential impacts.

### Bylaw Amendments

There are a number of bylaw changes that would be necessary to adopt this approach. These would include amendments to the Zoning Bylaw, Business Licence Bylaw and MTI Bylaw. In addition to these changes, the Town would need to adopt an enforcement approach commensurate with available resources to achieve the Town's objectives. Details on these proposed changes are outlined below:

#### 1) Zoning Bylaw

The proposed approach to regulating STVR in Sidney would be to include "Short Term Rental" as a separate conditional permitted use in the Zoning Bylaw, distinct from both Bed and Breakfast and Boarding. This will allow the Town to regulate the conditions of the use, including imposing a requirement for a principal occupant in residence on the property and prohibiting the use in secondary dwelling units, such as Secondary Suites. Supplementary changes would include altering the definition of both Boarding and Bed and Breakfast to change the "owner occupied" requirement to a "principal occupant" requirement (i.e. owners and tenants); this would allow long-term tenants to operate both Boarding and a Bed and Breakfasts provided they have property owner approval. The definitions of Bed and Breakfast and Boarding would also be analyzed and potentially altered to better differentiate between these uses and STVR. As proposed in the above approach, Short Term Rental and Bed and Breakfast uses could be listed on websites like Airbnb, provided they meet the "principal occupant" requirement and are not located in secondary dwelling units.

Note that the approval of an owner or Strata Council would be required in multi-family dwellings. Strata Councils have the ability to prohibit or restrict STVR and this would override any municipal bylaw permission.

#### 2) Business Licence Bylaw

Changes to the Business Licence Bylaw would be fairly minimal; mainly defining Bed and Breakfast within the bylaw, and making any additional housekeeping amendments that this changes requires. It is not anticipated that the business licence fee would change. There would be no need to add a higher fee for business licences to legalize existing non-conforming STVR units as Victoria has recently done, since there would be no such legal non-conforming units in Sidney given the interpretation that any STVR use of a principal dwelling or secondary dwelling unit is not permitted by the Zoning Bylaw and would be considered illegal.

New Bed and Breakfast operations would continue to require business licence inspections and would be required to meet the standards of the BC Building Code for fire safety,

occupancy, egress requirements, etc. At this time it is not anticipated that STVR operations would be required to obtain a business licence.

### 3) MTI Bylaw

Changes to the MTI Bylaw would involve the incorporation of appropriate fines for violations of the Zoning and Business Licence Bylaws with respect to operating an illegal STVR business. Further research is needed to assess what level of fine would be required to achieve successful deterrence.

### Enforcement Approach

If Council votes to move forward with the proposed approach, staff would organize an initial “soft enforcement” push for existing STVR operations, which would focus on educating the public about the new regulations and requirements. This would be done through a combination of newspaper advertisements and social media posts, as well as direct contact with known STVR operators. Bylaw Enforcement staff would also develop a framework for dealing with non-compliant and new STVR operators, again utilizing an “educate then enforce” approach, with a focus on obtaining voluntary compliance with the new bylaws.

Staff believe that an initial enforcement push to bring illegal STVR operations into compliance would be within the level of staff resources currently available. However, because this initial enforcement effort would divert staff time away from other initiatives, active enforcement would not be sustainable in the long-term if the number of STVR units in Sidney remains at the current level or sees growth. Barring any additional resource allocations to Bylaw Enforcement, future enforcement action would return to being a complaint-driven process.

### Legal Status of Existing STVR operations

Existing, unlicensed STVR operations that are operating out of stand-alone dwelling units are not currently considered as legal uses under the Zoning Bylaw, so would not receive “legal non-conforming” status (i.e. “grandfathering”) and as such would be subject to enforcement action along with any similar new STVR units following adoption of the bylaws.

Existing licensed Bed and Breakfasts that are operating as per Zoning Bylaw requirements or considered legal non-conforming, as well as Boarding situations that are renting out individual rooms in a dwelling also occupied by a principal occupant, would continue to be considered as legal conforming uses.

### Public Consultation (Option)

Although any Zoning Bylaw changes related to STVR regulation would require a public hearing (along with the required two newspaper advertisements), Council may, as an option, also wish to undertake additional consultation with the public prior to making a decision on a path forward for STVR regulation. If that is the case, staff suggest an outreach program that includes a comprehensive survey designed to gather the opinions of residents on STVR. The survey could be advertised through a combination of newspaper advertisements and social media posts.

A separate, industry-focused survey would also be helpful to gain insight into any potential impacts that a STVR regulatory framework may bring to local hotel operators. Both surveys would not only allow residents and stakeholders to provide input into the process, but would serve to inform the public that Council intends to take action on this issue.

**STAFF RECOMMENDATION:**

**That Council sees merit in the proposed approach for regulating short-term vacation rentals in Sidney and that staff be directed to bring forward the necessary bylaw amendments for consideration.**

Respectfully submitted,

I concur,

I concur,

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Corey Newcomb, MCIP RPP  
Municipal Planner

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Tim Tanton, MPA, P.Eng.  
Director of Development Services,  
Engineering, Parks & Works

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Randy Humble, MCIP, RPP  
Chief Administrative Officer

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Attachment: Appendix A: STVR Information Sheets from City of Victoria, District of Tofino and City of Nelson