

**REPORT TO ELECTORAL AREAS COMMITTEE
MEETING OF WEDNESDAY, FEBRUARY 09, 2022**

SUBJECT Regulation of Vacation Rentals on the Southern Gulf Islands and Salt Spring Island

ISSUE SUMMARY

To provide information on measures to restrict or control tourism accommodation, including the power to regulate business through the issuance of business licenses for Salt Spring Island and Southern Gulf Islands by requesting the Province pass enabling regulation through an Order in Council.

BACKGROUND

On July 14, 2021, the Electoral Areas Committee passed the following resolution:

That the Electoral Areas Committee request staff to provide a report outlining the possibility of the Capital Regional District pursuing measures to restrict or control tourism accommodation, including the power to regulate business through the issuance of business licenses for Salt Spring Island and Southern Gulf Islands by requesting the Province pass enabling regulation through an Order in Council.

The Capital Regional District has received a similar request by way of resolutions from the Islands Trust Salt Spring Island Local Trust Committee, North Pender Island Local Trust Committee, South Pender Island Local Trust Committee, and the Galiano Island Local Trust Committee. While Local Trust Committees are the land use authorities for the islands, the LTCs lack the full range of tools for enforcement and administration of vacation rentals that can be utilized by municipalities. Please see the letter from Islands Trust, dated November 9, 2021 and attached as Appendix A.

In addition, in 2019, the Union of B.C. Municipalities (UBCM) and the Province convened a Joint Advisory Group on Short-Term Rentals. In 2021, the advisory group released a report with 13 priorities for action for the Province to consider in order to establish a regulatory framework for the short-term accommodations industry (see Appendix B). Key among the requests for action include greater regulatory tools for local government:

- *Amend the Local Government Act to allow regional districts to implement business licensing, by approval of the regional district board, as a tool to regulate short-term rentals.*
- *Increase the allowable fines that local governments can levy against short-term rental hosts operating out of compliance.*
- *Explore whether provincial bylaw notice adjudicators have sufficient information and awareness of short-term rental issues to understand these offences, preventing undue cancellation of violation notices.*

As discussed in the UBCM report, short-term vacation rentals can be problematic for communities by reducing the available long-term rental housing stock for residents. It can also encourage

buyers to acquire secondary homes in popular tourist destinations, such as the Gulf Islands, by offering a revenue stream to non-resident owners while still allowing them flexibility to access the property for personal use. The introduction of the Provincial Speculation and Vacancy Tax was designed in part to address some of these issues, however, the SSI and the SGI are exempt from the tax.

ALTERNATIVES

Alternative 1:

The Electoral Areas Committee recommends to the Capital Regional District Board:

That the Regulation of Vacation Rentals on the Southern Gulf Islands and Salt Spring Island report be received for information.

Alternative 2:

That the Capital Regional District Board request the Province of British Columbia bring forward an Order in Council to grant the Capital Regional District the authority to regulate business in the Salt Spring Island and Southern Gulf Islands Electoral Areas.

IMPLICATIONS

The regulatory tools available to local governments to regulate vacation rentals in residential zones include zoning bylaws, temporary use permits, and business licensing, all of which can be enforced by ticketing, fines or a court-issued injunction.

Regulation by Land Use Bylaw

On Salt Spring Island and in the Southern Gulf Islands, land use regulation is under the authority of the Islands Trust. Under the *Islands Trust Act*, Local Trust Committees (LTCs) have land use authority to adopt Official Community Plans and zoning regulations to regulate short-term vacation rentals. LTCs can permit or prohibit vacation rentals outright in accordance with zoning requirements within land use bylaws.

A contravention of a land use bylaw can be enforced by issuing a municipal ticket or a bylaw adjudication notice, or in more serious cases, obtaining a statutory injunction order from BC Supreme Court to prevent the continued use of the property in contravention of the bylaw. In cases where the rental is occurring in a secondary suite or guest cottage that is not authorized by zoning, the injunctive order can include the power to dismantle and remove the unauthorized suite at the owner's expense. Many local governments in BC use some or all of these enforcement tools under their land use bylaw to effectively regulate unauthorized vacation rentals.

While land use bylaws can be effective in regulating vacation rentals and are relatively simple to enforce, there are some limitations due to the fact that land use bylaw provisions are typically general and permissive in nature, rather than site-specific. Once a vacation rental use is permitted in a zone, the LTCs no longer have control over how the specific use is carried out at an individual property level. Some LTCs get around this by continuing to prohibit short-term vacation rental uses, but allowing them under temporary use permits and controlling the use on a conditional, case by case basis. Where there is a desire to further regulate how the use is carried out, to

monitor the extent of the use, or to collect data to inform adaptive management of vacation rental use, business licenses may be a more effective regulatory tool.

Regulation by Business Licensing

Under the *Local Government Act*, Regional Districts do not have business licensing authority. Regional Districts are different from municipalities in this respect, as municipalities have authority to regulate business by imposing a system of licenses, permits or approvals under section 15 of the *Community Charter*.

Regional Districts can request business licensing authority from the Province. If granted, it is enabled by an order-in-council or regulatory change. The UBCM request would enable this authority outright through a change to the *Local Government Act* and remove this as a barrier for Regional Districts that want to use business licensing to manage issues such as short-term rentals. However, currently, if the CRD would like business licensing powers, it must first be granted the authority by the Province.

Once granted the authority to regulate business by the Province, the CRD would have to adopt a business licensing bylaw which would then be used to define which categories of business it would regulate and set the conditions and requirements of the licensing regime. Normal provision of a business licensing bylaw would include the following:

- a requirement to obtain an annual permit for a fee (usually \$100-\$150);
- appointment of a License Inspector or Director;
- assignment of powers to the Inspector to set conditions on the issuance or cancellation of licenses and the appeal process for those decisions;
- power to conduct inspections;
- general conditions on the license such as the form, requirement to display, requirements to update information, renewal and transfer;
- specific conditions based on business type, such as home-based, commercial, personal services or inter-municipal.

If CRD were to regulate vacation rentals through business licensing, all vacation rental owners would need to purchase an annual business license issued by the CRD. Owners would need to comply with any of the terms and conditions placed on the license, which may include a requirement for an inspection of the property. Typically a business license would not be issued for any vacation rentals that are not compliant with the applicable zoning bylaws, so only those rental properties that are authorized by zoning would be licensed.

One of the benefits of licensing is that it can provide consumer protection by establishing minimum standards for businesses that are licensed. It also provides the local government a way to track and compile metrics on the number of businesses operating in the region.

Enforcement of License Contraventions

Business licensing would provide another avenue for enforcement against unauthorized vacation rental properties. Fines could be issued to a business that is operating without a license, or is operating in contravention of the terms and conditions of a license. Where a business is not complying with the requirements of a business license, the license can also be revoked by the License Inspector, however, under the *Community Charter* revocation of the license is a decision

that is subject to a right of appeal to the Regional Board. In addition, prior to revoking a license, the License Inspector must observe the rules of procedural fairness and provide the business owner an opportunity to be heard and make submissions before a decision is rendered, similar to what is required when a local government files a Section 57 Notice of Building Contravention on title of a landowner's property. The administrative law requirements that are triggered by revocation of a business license can make enforcement of a license contravention a more challenging and expensive process than enforcing compliance with a land use bylaw.

Financial Implications of Establishing a Business Licensing Function

A business license function would require new funding from the SGI and SSI electoral area for the administration and overhead of the regulatory service, as well as funding to enable Bylaw Enforcement Officers to enforce the provisions of the business licensing bylaw. A software system, such as Tempest, would be necessary to track and issue licenses, automate the renewal process and generate invoices. Business owners would need access to payment options to pay the annual license fee. Systems currently utilized by CRD Bylaw Enforcement staff could be customized to administer business licenses, however, it would require an estimated 2.0 additional FTEs for administration, operation and enforcement of the new regulatory service, depending upon the scope of the regulation. Some of the costs of the new service could be offset by the revenue generated from collection of the license fees, however, the offset would depend on the number of businesses subject to the licensing requirement. For example, if all business in the SGI and SSI electoral area required annual business licenses, the revenue offset would be greater than if the regulation was limited to vacation rentals. If Islands Trust zoning continued to prohibit vacation rentals, uptake of a business license program would be limited further.

CONCLUSION

Short-term vacation rentals can be regulated by land use bylaws or through business licensing. CRD does not currently have the authority under the *Local Government Act* to regulate business, however, the authority can be granted by the Province by an order-in-council, and enabled by the Board through the adoption of a business licensing bylaw. Establishing a business license function would require new funding be raised from the SGI and SSI electoral areas for increased staffing associated with administration and enforcement of the business license function. It is anticipated that some of the increased costs could be offset by the revenue generated from annual license fees. Staff recommend further analysis on financial impacts would be required prior to implementation.

RECOMMENDATIONS

The Electoral Areas Committee recommends to the Capital Regional District Board:

That the Regulation of Vacation Rentals on the Southern Gulf Islands and Salt Spring Island report be received for information.

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Concurrence:	Kristen Morley, J.D., General Manager, Corporate Services & Corporate Officer
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

ATTACHMENT(S)

Appendix A: Letter from Islands Trust, dated November 9, 2021

Appendix B: Priorities for Action on Short-Term Vacation Rentals (Report of the Joint UBCM-Province Advisory Group on Short-Term Rentals).