

<b>Date</b>	May 31, 2023
<b>Author</b>	Justin Cook, Planner 2
<b>Subject</b>	Short Term Rental Temporary Use Permit Community Engagement Update

---

### BACKGROUND

In 2021, the RDEK Board authorized staff to conduct a planning process to identify short-term rental (STR) concerns and determine management options. A process was conducted that included two newsletters, a survey, consideration of how STRs are regulated by other jurisdictions and determination of estimates on STR density and revenue in the RDEK. A Request for Decision (RFD) on regulation options was presented to the Board in April 2022. Staff were directed to proceed with a planning process to regulate STRs via temporary use permits (TUP).

A subsequent RFD was presented to the Board in February 2023, with implementation options and draft criteria. Staff undertook engagement efforts between February and May 2023 to best ensure that the implementation of an STR TUP policy would be effective at achieving conformance from STR operators. Prior to recommending the adoption of the STR TUP policy, staff have identified several modifications to the draft criteria.

The proposed TUP permitting process will be used to allow STRs to operate where temporary vacation rentals are not permitted by the zoning bylaw (such as commercial accommodation). The TUP will allow the use to be conducted for up to 3 years, with available renewal once, and allows for the RDEK to establish conditions on the use. Continuation beyond the renewal would be considered a new application.

### INFORMATION

#### Engagement Update

Following Board direction on the proposed draft criteria, staff undertook community engagement efforts to ensure the proposed criteria was best positioned to address concerns surrounding STRs without incurring any unavoidable adverse effects. A newsletter was distributed to stakeholders and a survey was conducted through the Engage RDEK website asking for stakeholder feedback on the draft criteria.

During the Spring 2023 engagement process:

- The Short-Term Rental Implementation Project page had over 3,800 visits.
- 343 submissions regarding the Draft Criteria were received.
- The Draft Criteria document was downloaded 3,003 times by 1,644 unique individuals.
- The Newsletter was distributed to over 10,000 homes in the rural parts of the RDEK, sent electronically to RDEK email groups, and downloaded 30 times from the project page.
- The email regarding the project & reminder of the comment period deadline was sent to over 5,300 people in the email groups (the click through rate was 4%, which is strong).

Support for the draft criteria was mixed, with 39.6% of respondents in support, 51.5% of respondents not in support and 8.9% neutral regarding the mandatory requirements. Perceptions of the discretionary criteria saw 41.1% of respondents in support, 42.9% of respondents not in support and 16.1% of respondents neutral.

The direction in which respondents did or did not support the proposed draft criteria was discussed at length in many of the respondents' open-ended responses. There were two generalized themes of discontent that were prevalent in the responses: that STRs should be outright banned in the RDEK, and that no regulations of STRs should be imposed on property owners. Beyond these generalized reactions to the proposed criteria and regulating STRs through TUPs, responses tended to focus on a select few of the draft criteria.

### **Maximum Guests/Bedrooms**

The maximum number of guests permissible in an STR was identified as a major concern of operators, especially in the resort areas at Fernie Alpine Resort, Panorama Mountain Resort, and to a lesser extent Fairmont Hot Springs Resort. Several comments highlighted the purpose-built nature of the resort areas and the homes that they owned therein being purpose built to accommodate STRs. Many respondents also commented that restricting use based on the number of bedrooms could result in their property not being permissible as an STR should their homes exceed the maximum allowable bedroom count.

Conversely, many respondents commented that the draft criteria likely allowed for a greater number of guests than desirable in areas that were more purpose built for residential. Residents in residential neighborhoods commented that the potential of allowing ten guests in an STR could result in nuisance behaviour to persist.

### **Outdoor Fires**

There was a mixed response to the discretionary criteria to prohibit outdoor fires. Many respondents expressed concerns surrounding the risks outdoor fires pose to neighboring properties. Conversely, many respondents discussed the value that outdoor fires brought to guests as an experiential tourism amenity. Several respondents commented that fire bans and the FireSmart program exist to broadly address fire safety concerns.

### **Fees and Security Deposit**

The cost associated with STR TUPs was a concern of many respondents. Questions regarding why pricing would be set at a certain level were prevalent. Further, many respondents expressed concern regarding the discretionary requirement to post a security deposit. Most of the concerns expressed focused on the added cost a security deposit would incur on operators and the uncertainty regarding the scope of what a security deposit could be required to cover.

### **Confusion Regarding Applicability**

A large number of the respondents' comments focused on the applicability of the proposed STR TUP criteria on properties that had been purpose built as fully managed vacation rental properties, especially properties in condo style units operating in ski resort areas.

There were also comments that expressed concerns about what constitutes an STR. Several respondents commented that they rented out their property during a specific window each year of two months or less.

Enforcement measures that would ensure compliance with the proposed STR TUP policy were also discussed by respondents, many of whom expressed concerns regarding the RDEK's capacity to undertake enforcement efforts. These concerns also extended to strata properties and how the RDEK would act to ensure compliance with strata bylaws that prohibited STRs.

## **Proposed Policy Refinements**

In reviewing responses to the draft criteria, staff have developed several refinements to the proposed draft criteria to help ensure a best-fit for the STR TUP policy.

### **Maximum Guests**

Given the broad scope of property types involved in STR provision in the RDEK, allowing for differing maximum occupancy based on location is likely a more desirable approach. Upon further consideration, regulating STRs based on bedroom counts may not be the most effective means of mitigating nuisance behaviour and may result in unintended consequences regarding application review and enforcement efforts. Towards these effects, it is recommended that:

- Maximum occupancy be regulated by setting the limit on maximum number of guests alone and to not regulate the maximum number of bedrooms; and
- Resort areas and rural properties (where appropriate distance between dwellings exist) be allowed a higher maximum occupancy compared to properties in residential neighborhoods.

### **Maximum occupancy be set at:**

- Maximum 8 guests for STR TUPs; except,
- Maximum 14 guests for STR TUPs in:
  - Resort Areas, to include lands found within:
    - Fernie Alpine Resort OCP
    - Panorama Area OCP
    - RES-AC, RES-R, and RES-MU designated areas of the Fairmont Hot Springs and Columbia Lake Area OCP
  - Rural dwelling units that are at least 60m setback to side and rear property lines

### **Outdoor Fires**

The scope of concerns expressed regarding the requirements of fire pit regulation indicated that additional details would need to be communicated regarding what specific requirements would be involved. As such, the following a set of requirements was developed, should an STR TUP applicant indicate their intention to include a fire pit as an STR amenity.

### **The proposed fire pit criteria are:**

- Applications must indicate the intention to allow fire pit use within the proposal;
- FireSmart adherence must be met;
- Plan and details of fire pits to be provided and reviewed with application;
- Operators responsible for guest adherence to fire bans.

### **Occupancy Permits**

While considering the review process for STR TUP applications, staff have further identified potential complications relating to occupancy permit requirements. Occupancy of a dwelling unit is generally granted through the building inspection process, wherein once a residential building is deemed complete and up to code by a building inspector it is then habitable for residential use. While the RDEK will most likely have a record of occupancy being granted for newer homes (built post 2000), there is a likelihood that the RDEK will not have a record of occupancy being granted for older homes (especially those pre-1980s).

Given the dynamics of occupancy records, it is recommended the requirement of a record of occupancy be only applicable to accessory dwellings. If a record of occupancy being granted is made a requirement of the policy, there will likely be many homes that would need to take out a building permit and undertake a complete renovation to meet current building code standards for a record of occupancy to be issued. By limiting the scope of the requirement for a record of occupancy to accessory dwellings the burden placed on the Building Department will be minimized and limit adverse workload impacts.

Instead of occupancy permits being an STR TUP application requirement, floor/fire safety plans detailing the home layout and safety features would need to be submitted for consideration by staff. These will provide an opportunity for staff to understand the layout of a proposed STR and ensure adequate safety features exist, and, where applicable, require structural modifications to ensure the presence of essential safety features, primarily focused on fire safety.

### **Title Charges and Strata Bylaws**

Responses indicated continued concern from respondents regarding the enforcement of property title charges (including restrictive covenants and statutory building schemes) and strata bylaws that prohibited STRs. While the RDEK may hold charges on property titles and should be involved in enforcing RDEK held title charges, title charges held by third parties are not enforceable by the RDEK and as such acting as the enforcer of third party title charges should be avoided.

For charges established under the *Land Title Act*, including restrictive covenants and statutory building schemes, the charge holder (or common holders) are responsible for the enforcement of a given title charge. Likewise, the *Strata Property Act* is self-governing legislation and it is the responsibility of the strata lot owners and other interested parties to administer and implement the provisions of the *Act*.

If necessary, title charge holders or strata lot owners may use the Civil Resolution Tribunal, a mediator, an arbitrator, or the courts to resolve conflicts. Avoiding the issuance of a permit that allows a use in contravention of a land title charge or strata bylaw is desirable, however, the RDEK has minimal tools and capacity to review and enforce conformity with title charges or strata bylaws.

It is therefore recommended that STR applications include acknowledgement from the applicant regarding the allowance of short-term rentals according to title charges and/or their strata bylaw (where applicable). This approach would help ensure that owners will undertake due diligence while preparing STR applications and help impart the understanding of their personal responsibility to adhere to title charges and strata bylaws. By placing the onus of title charges and strata bylaws on STR applicants in this way, the RDEK can avoid being involved with enforcement efforts that it does not have any authority over, or complicating and adding costs to STR application processes by adding a layer of review wherein staff could be required to track and review title charges and strata bylaws during STR application processes.

### **STR TUP Application Approval Processes**

The adoption of an STR TUP policy will provide a standardized approval process for STR operators, however, there may be applications that do not comply within the scope of the policy. For these types of STR applications, a direct application to the Board would be required. SRT applications made to the Board can offer a broader scope of discretion, but will also require a more thorough review of the proposal by staff.

Providing an alternative approval stream can afford discretion where unique situations may exist, however, bringing an application through a Board approval process adds substantial time and costs.

The additional requirement of reviewing an application according to non-standardized requirements, preparing a Board report and public notice, along with advertising costs would all constitute additional expenses related to the application consideration process. The differences in costs between the applications covered under the STR TUP policy and an application made to the Board are discussed in the “Fees” section.

## Fees

In reviewing the costs associated with STR applications and issuing permits through a delegated process, staff have determined that a \$600 STR TUP Fee for a 3-year permit would allow for cost recovery of staff time and administrative fees. Depending on the scope of a renewal application, it may be possible to offer a reduced renewal application fee as there will likely be a lower level of cost recovery required for the renewal process.

All other TUPs incur additional costs to the RDEK due to additional advertising costs, staff time in the review and consideration of non-standardized proposals, and the requirement for Board consideration processes. These additional costs are significant and result in a cost-recovery fee of approximately \$1,400. Whereas the current fee for a non-standardized TUP is set at \$1,200 within Development Applications Bylaw No. 3165, staff support maintaining the existing fee.

### Detailed fee estimates:

	Delegated Intake Stream		Application for Board Resolution	
	Low	High	Low	High
<b>Application Review</b>	\$79	\$293	\$215	\$990
<b>Advertising Notice of Intent</b>	\$106	\$130	\$145	\$220
<b>Board Approval Process</b>			\$118	\$530
<b>Permit Issuance</b>	\$79	\$160	\$80	\$105
<b>Enforcement</b>	\$150	\$600	\$150	\$600
<b>Total:</b>	\$414	\$1,183	\$708	\$2,445
<b>Weighted Average:</b>	<b>\$625</b>		<b>\$1,396</b>	

## Enforcement

Depending on the scope of accompanying bylaws adopted by the Board, the enforcement of STR TUP conditions may be challenging. The current approach to enforcement involves court injunctions for any infraction, which is labour intensive and costly. With the pending implementation of Bylaw Notice Enforcement, this will provide an additional tool for the enforcement of TUP conditions.

Many municipalities issue fines related to STR advertising in contravention of STR bylaw requirements, beyond which multiple offences may lead to a revocation of a license. The RDEK could issue fines based on contravention of STR TUP requirements in a similar manner, beyond which multiple offences may lead to a revocation of a permit.

For specific conditions relating to the improvement of a property to ensure the safety of guests, or possible conditions imposed on non-standardized TUPs, it may be desirable to require a security deposit to ensure the conditions are met following the issuance of a TUP.

Given the scope of possible conditions for which a security deposit may be required, it is recommended that an upper limit of \$1,500 be set as the maximum security deposit.

**Next Steps:**

Staff will undertake a final public engagement effort in advance of bringing forward the finalized STR TUP policy for Board consideration. Additional clarification regarding the scope and details of the policy will be provided to stakeholders through the Engage RDEK website along with a feedback form over the next three weeks. Following this final opportunity to receive public feedback on the scope of the STR TUP policy, staff will prepare the final policy and submit for Board consideration. Should the Board adopt the policy, staff will prepare the necessary application forms and the internal application review procedure. Staff are also currently developing a bylaw for delegated authority of STR TUP application approval to staff, which will be forthcoming in the coming months.

A public information campaign to ensure that residents and STR operators are aware of the STR TUP requirements and the process to apply for an STR TUP will be undertaken, with an anticipated application intake process beginning in the fourth quarter of 2023.

Attachments:

- Revised STR TUP Criteria – June 2023