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**MEETING TYPE AND DATE:** REGULAR COUNCIL MEETING, MARCH 15, 2022  
**AUTHOR:** REYNA SEABROOK, DIRECTOR OF CORPORATE SERVICES  
**SUBJECT:** **PUBLIC HEARING REPORT FOR ZONING AMENDMENT (SHORT-TERM VACATION RENTAL) BYLAW 1173, 2021**

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**ESSENTIAL QUESTION:**

Does Council wish to amend Zoning Bylaw 561, 2007 by specifying individual contraventions for Short Term Vacation Rental regulations in alignment with Council's priorities and proactive bylaw enforcement topics?

**OPTIONS:**

- A. THAT Zoning Amendment (Short Term Vacation Rental) Bylaw 1173, 2021 be read a third time.
- B. THAT first and second reading of Zoning Amendment (Short Term Vacation Rental) Bylaw 1173, 2021 be rescinded and the bylaw file be closed.
- C. THAT first and second reading of Zoning Amendment (Short Term Vacation Rental) Bylaw 1173, 2021 be rescinded and the bylaw file be closed;  
AND THAT staff be directed to amend strategic priorities with the addition of re-evaluating existing Short Term Vacation Rentals regulations.

**EXECUTIVE SUMMARY:**

Zoning Amendment (Short Term Vacation Rental) Bylaw 1173, 2021 ("Bylaw 1173") was forwarded to public hearing on February 1, 2022 and at the Regular Council Meeting of the same date, Council passed the following resolution: *THAT Zoning Amendment (Short Term Vacation Rental) Bylaw 1173, 2021 be deferred back to staff to clarify the impact of the change on agritourism units.*

**REPORT FOLLOWING A PUBLIC HEARING**

The BC Court of Appeal reviewed the question of whether a local government may receive a report from its own staff following the public hearing in *Hubbard v. West Vancouver (District)*. The Court acknowledged that, if a new public hearing were required after council receives a report of any kind from its staff, the process would tend to be endless. Post-hearing staff reports are not incapable of giving rise to a new public hearing although in previous cases, it has been held that council may obtain such advice as it sees fit, from its staff or experts whom it may retain, on questions raised at the public hearing; that municipal officials may address the concerns of the citizens after the public hearing; that they may resolve problems raised at the public hearing; and that planning staff may address matters of detail without a requirement for a further hearing. The Court's observed that, while some opinions may be "new information" in the sense that they had not been expressed previously to the Council and had therefore not been available for rebuttal by members of the public at the hearing but are acceptable so long as they were relatively innocuous in view of the development and were not likely to have generated any different submissions from the public at the hearing had they been expressed before-hand. *William Buholzer, M.A. (Planning), LL.B. "British Columbia Planning Law and Practice", Land Use, Notifications, & Public Hearings, Lexis Nexis Canada Inc. 2001 (including Service Issues 2001-2021) s 16.74*

## **SUMMARY OF BYLAW**

Bylaw 1173, 2021 proposes to include regulations currently in the definition of Short-Term Vacation Rentals, within the body of the bylaw, specifically section 10, Specific Use Regulations. The purpose of the amendment is to permit enforcement of existing, specific regulations rather than relying on “Use Contrary to Zone” or “Use Contrary to Bylaw” as per section 5.3.7 and section 2.4.1 of Zoning Bylaw 561, 2007 (“Bylaw 561”). Staff also use noise and nuisance enforcement penalties where appropriate and when the opportunity is available. The proposed amendment does not contemplate changes to established regulations.

The associated penalties for “Use Contrary to Zone” or “Use Contrary to Bylaw” are \$100 and may be issued once each day. A fine of \$100, even daily, is not impactful in gaining compliance and is often considered the cost of doing business. Complaints related to noise and nuisance are generally submitted outside of the Bylaw Enforcement Officer’s regular shift making it difficult for penalties to be issued without observing the reported infraction.

The definition for Short Term Vacation Rentals and the zones where the use is permitted were added to Zoning Bylaw 561, 2007 in August 2018. The regulations established in 2018 involved significant staff time, Council input, research and community consultation.

## **CHANGES TO EXISTING SHORT TERM VACATION RENTAL REGULATIONS**

Should Council wish to contemplate changes to existing Short-Term Vacation Rental regulations, a separate process would be required at the direction of Council. The process for reconsideration is a significant undertaking of staff time, research, Council and community input and engagement. Should Council wish to pursue this option, it is proposed the existing bylaw be closed by rescinding first and second reading and Council establish direction for staff. Bylaw Officers will continue enforcement of illegal Short Term Vacation Rentals through use contrary to zone or bylaw and noise or nuisance where appropriate.

## **RESPONSE TO PUBLIC HEARING COMMENTS**

Five pieces of correspondence were received, one person attended the Municipal Hall prior to the hearing, one person addressed Council during the hearing and three people phoned in. Staff provided the following information in response to comments and questions raised during the Public Hearing:

1. The bylaw does not propose reconsideration or amendments to existing Short Term Vacation Rental regulations that were established by Council in 2018.
2. The regulation requiring Short-Term Vacation Rentals to only be located within a principal residence has been in place since 2018. Residents are currently required to adhere to this regulation and no changes are proposed. Not proceeding with Bylaw 1173 and rescinding readings to close the file will not impact the existing requirement for residents to only permit Short-Term Vacation Rentals within a principal residence as identified through the claiming of a homeowner grant.
3. Homeowner grants, including the established grant amounts and qualifications are governed by the Province of BC.
4. Short Term Vacation Rental regulations apply to properties that are located within the ALR if the property is zoned RLP, RLPO, RR1, RR2, RR3 and RU1 and Short-Term Vacation Rentals are identified as a permitted use.
5. Staff issue bylaw offence tickets for noise and nuisance for illegal Short Term Vacation Rentals where they can. Generally, such contraventions occur outside of staff’s regular work schedule and RCMP are called to attend noise and nuisance complaints. RCMP also have the authority to issue bylaw offence tickets. The penalties for noise, nuisance, use contrary to zone and use contrary to bylaw are \$100 each and may be issued once per day.

Pursuant to Council's direction that Illegal Air BnB's be set as a Bylaw Enforcement priority, staff have proposed additional contraventions and increased penalties to assist with obtaining compliance.

6. The Agricultural Land Commission (ALC) recently announced increased housing flexibility in the Agricultural Land Reserve (ALR) providing options for additional secondary homes with a streamlined approval process. The ALC amendments related to Residential Flexibility do not impact existing Short Term Vacation Rental regulations. The existing regulations for Short Term Vacation Rentals state the use must be located within the primary residence. Council may wish to further discuss or examine the new ALC regulations with potential future amends to Bylaw 561. The ALC amendments apply to residential uses in the ALR and permit properties less than 40 ha, where the principal residence is 500m<sup>2</sup> or less, to have one additional residence that is 90m<sup>2</sup>; and where a property is larger than 40 ha and there is a lawfully constructed principal residence, to have an additional residence that is 186m<sup>2</sup>.
7. The presenter contends that inclusion of the Short-Term Vacation Rental regulations within Section 10 (Specific Use Regulations) will cause Short Term Vacation Rental regulations to take precedence over all other development and uses, including Agri-Tourism Accommodations, Recreation Tourism Accommodations and Secondary Suites as a result of the language in sections 10.1.1 *"...specific use regulations shall apply to all development unless otherwise exempted in this section"* and section 10.1.2 *"Where these regulations may be in conflict with any zone development regulations or general regulations, these specific use regulations shall take precedence."*

The proposed Short Term Vacation Rental section 10.15.1 reads: "Where Short-Term Vacation Rentals are a **permitted** use in accordance with this bylaw, the following regulations shall apply ....". Therefore, the regulations contained within section 10.15 only apply where Short-Term Vacation Rentals are a permitted use. Bylaw 561 permits Short Term Vacation Rentals the following zones: RLP, RLPO, RR1, RR2, RR3 and RU1. Should the assertion that the proposed section 10.15.1 takes precedent over all development, it would be assumed that other sections within section 10 would also take precedence over all development; for example, if the proposed Short-Term Vacation Rental section takes precedent over all development based on section 10.1.1, Section 10.8 Secondary Suites, Section 10.9 Bed and Breakfast and 10.10 Vehicular Orientated Uses would then also take precedent over all development; which is not the case. The language in Section 10 subsections generally includes "when permitted" or "where allowed". The proposed section 10.15.1 sets out that regulations only apply to Short-Term Vacation rentals where permitted. Inclusion of Short-Term Vacation Rental regulations within the Specific Use section does not impose the regulations on all development and does not eliminate or create any conflict with Agri-Tourism Accommodation or Recreational Tourism Accommodation regulations or zones.

8. The presenter noted that the definitions for Agri-Tourism Accommodation and Recreational Tourist Accommodations include the words "short term use". The presenter contends that the words "short term use" have the same meaning as "Short Term Vacation Rental" and thereby improperly impose Short-Term Vacation Rental regulations to Agri-Tourism and Recreation Tourism Accommodation, consequently limiting their operation to within a principal residence as demonstrated through the claiming of a homeowner grant.

When writing a bylaw, words are given their ordinary meaning except where a word has a common and technical meaning or a common and statutory definition. A reader should look first to the bylaw for a definition and then to provincial statutes. (*Fundamentals of Local Government PADM 209 Textbook by Lisa Zwarn*). "Short term use" is not defined in Bylaw 561, the *Local Government Act* or the *Community Charter*. There is no correlation between the words "short term use" used in the definitions of Agri-Tourism Accommodation and Recreational Tourism Accommodation and the regulations or definition of Short-Term Vacation Rental.

Short-Term Vacation Rental, Agri-Tourism Accommodation and Recreational Tourism Accommodation are defined terms within Bylaw 561 with separate and individual regulations within the definition. Agri-Tourism Accommodation is a permitted secondary use on land classified as “farm” in the A1ta zone. There are no requirements for accommodation to be located within a primary residence although a maximum length of stay shall not exceed 30 days in any calendar year. Recreational Tourism Accommodation is defined as planned seasonal short-term use of tourism cabins and campsites for rental on a daily, weekly or monthly commercial basis, typically inclusive of tourist cabins and campsites. Tourist Cabin is defined with a max floor area and maximum length of stay not exceeding 30 days during the peak season.

#### **ANALYSIS OF OPTIONS FOR CONSIDERATION:**

Council may proceed with third reading of Zoning Amendment (Short Term Vacation Rental) Bylaw 1173, 2021 thereby moving forward with inclusion of Short Term Vacation Rentals as individual and enforceable regulations.

Council may rescind first and second and readings given to Bylaw 1173 and close the file. Staff will continue enforcement of Council’s Bylaw Enforcement Priority using Use Contrary to Bylaw, Use Contrary to Zone, noise and nuisance contraventions.

Council may wish to undertake reconsideration and re-evaluation of the existing Short Term Rental Vacation regulations. In this case, staff propose first and second readings of Bylaw 1173 be rescinded and staff be directed to amend strategic priorities with the addition of the direction to undertake a review of existing Short Term Vacation Rental regulations. As previously noted, this process is a significant undertaking of staff time, research, Council and community input and engagement.

Respectfully Submitted,

Reyna Seabrook  
Director of Corporate Services

This report has been prepared with the collaboration of the following individuals:

<b>COLLABORATORS</b>	
<b>TITLE</b>	<b>NAME</b>

This report has been prepared in consultation with the following departments:

<b>CONCURRENCES</b>	
<b>DEPARTMENT</b>	<b>NAME</b>
Chief Administrative Officer	Tanya Garost
Director of Planning and Development	Jared Kassel

#### **ATTACHMENTS:**

Attachment A - Zoning Amendment (Short Term Vacation Rental) Bylaw 1173, 2021

DISTRICT OF LAKE COUNTRY

BYLAW 1173

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A BYLAW TO AMEND ZONING BYLAW 561

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The Council of the District of Lake Country, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as “Zoning Amendment (Short Term Vacation Rental) Bylaw 1173, 2021”.

2. District of Lake Country Zoning Bylaw 561, 2007 is hereby amended by:

2.1. Adding the following section 10.15 to Section 10 of the bylaw in numerical order:

**10.15 Short Term Vacation Rental Regulations**

10.15.1 Where Short-Term Vacation Rentals are a permitted use in accordance with this bylaw, the following regulations shall apply in addition to the general regulations contained in section 10.3.

10.15.2 Short Term Vacation Rentals shall:

- (a) only occur in a principal residence, as demonstrated through the claiming of an annual homeowner property tax grant;
- (b) not be rented for more than thirty (30) consecutive days;
- (c) not have more than four (4) sleeping units rented concurrently;
- (d) not be located within an Accessory Suite;
- (e) contain all parking and waste removal associated with the rental onsite.

READ A FIRST TIME this 7<sup>th</sup> day of December 2021.

READ A SECOND TIME this 7<sup>th</sup> day of December 2021.

ADVERTISED on the 20<sup>th</sup> and 27<sup>th</sup> days of January 2022 and a Public Hearing held pursuant to the provisions of Section 464 of the *Local Government Act* on the 1<sup>st</sup> day of February 2021.

READ A THIRD TIME this xx day of xx 2022.

ADOPTED this xx day of xx, 2022.

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Mayor

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Corporate Officer