

September 6, 2023

By E-mail: [bbloomfield@owensound.ca](mailto:bbloomfield@owensound.ca)

File No. 309600

Briana Bloomfield  
City Clerk  
The Corporation of the City of Owen Sound  
808 2<sup>nd</sup> Ave East  
Owen Sound, Ontario N4K 2H4

Dear Ms. Bloomfield:

**Re: Municipal Regulation of Short Term Accommodations**

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We have been asked to provide an opinion to The Corporation of the City of Owen Sound (the “City”) with respect to the regulation of short-term rental accommodations (“STRs”).

Many municipalities across Ontario have introduced a licensing system in order to regulate new and existing or legally non-conforming<sup>1</sup> STR operations, either as a standalone approach to regulating STRs or in conjunction with other approaches. If the City were to pass a licensing by-law to regulate STRs, the regulations in that by-law would apply equally to all STRs, regardless of whether they were previously in operation or are protected under the *Planning Act*.

Municipalities have broad and permissive powers of regulation through licensing under section 151 of the *Municipal Act, 2001*,<sup>2</sup> with a few exceptions. A licensing by-law is concerned with the regulation of a particular business or activity and with providing standards. This licensing function does not generally include restricting the use of lands or the prohibition of certain uses in certain areas (with the exception of adult entertainment establishments and payday loan establishments).<sup>3</sup> For example, a licensing by-law cannot establish a prohibition on STRs in residential areas. Otherwise, municipalities have the authority to impose conditions on licences and have considerable leeway to establish a framework for regulating the operation of the businesses subject to its licensing regime.

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<sup>1</sup> Clause 34(9)(a) of the *Planning Act*, R.S.O. 1990, c.P.13 includes statutory protection for uses that are not permitted under the applicable zoning by-law that is currently in effect. This protection applies provided that the use was legal at the time it was established.

<sup>2</sup> S.O. 2001, c. 25.

<sup>3</sup> Subsection 153(1) of the *Municipal Act, 2001* provides that municipalities are not permitted to refuse to grant a license for a business by reason only of the location of the business.

In terms of implementing an STR licensing regime, we recommend that the City include provisions that provide for inspections of STRs rather than relying on attestations from applicants, particularly when ensuring that all building and fire safety requirements are met.

The City may also wish to consider alternative legal mechanisms available to address STRs including nuisance by-laws, noise by-laws, regulation of the municipal right-of-way or highways under the municipality's jurisdiction:

- Sections 128 and 129 of the *Municipal Act, 2001* provide express powers for the City to regulate public nuisances and noise.
- Sections 28 and 30 the *Municipal Act, 2001* provide express powers for the City to regulate rights-of-way or highways under municipal jurisdiction.
- Under section 447.1 of the *Municipal Act, 2001*, the City has the authority to make an application to court for an order to close a premises for a public nuisance in certain specified circumstances.

Additionally, if neighbouring property owners have concerns about nuisance or other impacts from an STR, they have common law, civil remedies to file claims of nuisance against the owner or operator of an STR in the appropriate court of competent jurisdiction.

As with licensing, these tools would apply equally to new and existing STRs, regardless of any legal non-conforming zoning rights.

Should you have any further questions, please do not hesitate to contact the undersigned.

Yours truly,

AIRD & BERLIS LLP



Meaghan Barrett

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