

June 20, 2022 [with subsequent modifications]

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By E-Mail: elanaa@dourodummer.on.ca

Elana Arthurs
Chief Administrative Officer
Township of Douro-Dummer
894 South Street
P.O. Box 92,
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Dear Ms. Arthurs:

Re: Municipal Regulation of Short-Term Accommodations and Short-Term Accommodation Platforms Under the Authority of the *Municipal Act, 2001*

We have been asked to provide an opinion to The Corporation of the Township of Douro-Dummer (the “Township”) with respect to approaches available to the Township to regulate short-term rental accommodations, including rentals through online platforms such as Airbnb, HomeAway Inc., or Expedia.

In this opinion, we have addressed the use of nuisance by-laws, noise by-laws, regulation of the municipal Right-of-Way or highways under the municipality’s jurisdiction, private civil remedies, zoning by-law powers and licensing powers as legal mechanisms available to address short-term rentals.

Regulating the Adverse Effects – Noise, Nuisance, Highway Regulation and Civil Remedies

Pursuant to the express powers contained in the *Municipal Act, 2001* and civil law remedies available to individuals, tools are available to manage many of the adverse effects from the proliferation of short term rental accommodations.

Express powers to regulate of noise and nuisance

The *Municipal Act, 2001*¹ provides express powers for municipalities to regulate public nuisances and noise:

Sections 128 and 129 provide:

¹ S.O. 2001, c. 25.

Public nuisances

128 (1) Without limiting sections 9, 10 and 11, a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances.

Not subject to review

(2) The opinion of council under this section, if arrived at in good faith, is not subject to review by any court.

Noise, odour, dust, etc.

129 Without limiting sections 9, 10 and 11, a local municipality may,

(a) prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors; and

(b) prohibit the matters described in clause (a) unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans.

A rarely used remedy, a municipality does have the power to make a court application for a closure order of a premises pursuant to section 447.1 of the *Municipal Act, 2001* for a public nuisance. This order also requires consent of the chief of police and/or the Ontario Provincial Police. No such order and related reported decision has been sought with respect to short-term accommodation rentals in Ontario at the time of drafting the original opinion.

An option available to the Township is to review, modify and update its public nuisance and noise by-laws² to ensure that the by-laws can be used to appropriately investigate, warn, charge and enforce noise and nuisance impacts. The use of this by-law would relate to all property uses, from residential, to rental to short-term accommodation on equal footing. It would be difficult for a short-term rental operator to contest the use of nuisance by-laws that are applied fairly and equally to all forms of property in the municipality in accordance with an express statutory right of municipalities to pass by-laws in this field.

Short-term rentals as entities should not be specifically defined as a 'nuisance' rather the adverse effects of such operations such as loud gatherings, late night noise, fireworks use, excessively loud music, disturbing the peace, light pollution and other common issues. Short-term rentals may be cited as an example of a source of nuisance but not the nuisance itself.

Noise, given that it can be documented and recorded based on sound level and with video is likely the easiest form of nuisance to document, enforce and prosecute. Nuisance in its general form is more difficult to document and define. Effective enforcement relies on training and clear

² For example, in the Township's Noise by-law 2003-59, the Township may wish to consider adding in an objective threshold of noise at the point of reception which can be differentiated based on location and form of noise, expressed in decibels (DBA from a defined sound meter). The Township's noise by-law should also be amended to define who is authorized to enforce the subject by-law.

documentation of by-law contraventions. A series of oral and written warnings to a specified municipal address and operators documenting a persistent issue or occurrence is strong evidence to enforce the by-law against problematic properties.³

Municipalities may proceed with a structure of administrative monetary penalties⁴, penalties pursuant to the *Municipal Act, 2001* or under the *Provincial Offences Act*. If using *Provincial Offences Act* penalties and offences, it is beneficial to obtain a set fine order to allow the issuance of set fines. A benefit of transitioning to an administrative monetary penalty system is the ability to 'reverse the onus' where the individual given an administrative penalty would need to demonstrate that there were not in contravention rather than the onus being on the prosecution to establish the offence has occurred.

A clear, measurable and defined nuisance where objective evidence can be obtained is a cost effective method to addressing many of the adverse effects caused by short-term rentals.

The regulation of the municipal right of way, parking and stopping and standing.

Many of the issues commonly raised with respect to short-term rentals are increased traffic and parking on the municipal right-of-way. Municipalities have express powers under the *Municipal Act, 2001* to regulate rights-of-way or highways under municipal jurisdiction.⁵ In two-tier municipalities, such as the Township, the Township may regulate local roads under its jurisdiction and the County has authority over upper-tier roads.

Broad authority, lower-tier and upper-tier municipalities

11 (1) A lower-tier municipality and an upper-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public, subject to the rules set out in subsection (4).

...

By-laws re: matters within spheres of jurisdiction

³ The subject by-laws can clarify that each occurrence is an offence, such that akin to continuing offences a single property that is routinely problematic may be charged on multiple occasions. The by-laws, given the short-term rental impact, should allow for charges both against the individual or individuals creating the nuisance and the owner of the subject property as set out in the municipal tax roll.

⁴ Administrative monetary penalties, originally only available to regulate parking pursuant to s. 102.1 of the *Municipal Act, 2001* may be applied to other offences pursuant to s. 434.1 of the *Municipal Act, 2001*. To implement an administrative penalty system, requires by-laws to appoint hearing and screening officers and appropriate policies and procedures for the system. Proximate municipalities, including the City of Peterborough are currently implementing administrative monetary penalties and there may be cost-sharing and cross implementation opportunities.

⁵ Sections 28 and 30 of the *Municipal Act, 2001*.

(3) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting matters within the following spheres of jurisdiction:

1. Highways, including parking and traffic on highways.

A municipality may use this express authority to regulate vehicular traffic impacts and prohibit the stopping, or standing on rights-of-way under municipal jurisdiction.

Civil Remedies

In addition to actions the municipality may take with respect to by-laws and enforcement, a proximate owner has common law civil remedies to file claims of nuisance against a proximate property owner in the appropriate court of competent jurisdiction. Such remedies are often utilized to address the adverse impacts from an adjoining property.

The use of Zoning By-laws to permit, locate and control short term rentals: existing and modifications to zoning By-laws

The City of Toronto (Toronto), as the largest and one of the first municipalities in Ontario to take a formal step, brought forward zoning by-law amendments to permit, control and regulate short-term rentals in 2017.⁶ The Toronto's zoning by-law amendments were drafted and directly tailored to the location and regulation of short-term accommodation. Toronto's zoning by-law amendments, were appealed to the Local Planning Appeal Tribunal (LPAT).⁷ In a decision issued on November 2019, the specific structure of Toronto's zoning by-law amendments were upheld in a decision of Member Tousaw.⁸

As a result of the 2019 decision in the City of Toronto, a zoning by-law, specifically crafted and focused on short-term accommodation⁹, is a tool that a municipality may use to regulate and locate short-term accommodation uses within a municipality. As such, should the municipality seek to use zoning powers, it would be prudent to undertake a specific analysis and draft by-law provisions that draw on the approach used by the City of Toronto that was tested by the Tribunal as being within municipal authority.

Similarly, the City of Ottawa, following extensive public consultation, based by-laws to regulate short-term rentals, including through zoning powers. In response to a challenge to the City of Ottawa's zoning by-law amendments, the Ontario Land Tribunal in a decision of Member Tousaw, upheld Ottawa's zoning by-law amendments regulating short term rentals primarily for reasons of

⁶ City of Toronto Supplementary Report – Update on Short-term Rental Regulations.

⁷ Currently the Ontario Land Tribunal and formerly the Ontario Municipal Board.

⁸ *Hodgart et al. v Toronto (City)*, 2019 CanLII 112392 (ON LPAT) (*Fairbnb Canada et al vs. City of Toronto* (PL180082)).

⁹ City of Toronto By-law numbers. 1452-2017 and No.1453-201.

implementing Provincial and City housing policies related to supply, affordability and compatibility.¹⁰

Similarly, the Town of Blue Mountains introduced specific zoning provisions with respect to short-term accommodation uses pursuant to a by-law 2021-59, which was appealed to the Ontario Land Tribunal¹¹ and settled.¹²

Several other municipalities in Ontario have used zoning powers to regulate short-term rentals. Some municipalities have followed Toronto with zoning provisions specific to short-term accommodation and others have sought to utilize existing zoning by-laws that were drafted prior the creation of current short-term rental operators, such as VBRO and AirBnB.

In a very recent example, with notable similarities to the Township's circumstance, the Corporation of the Township of Oro-Medonte did not undertake a complete review of its zoning by-law and sought to use pre-existing prohibitions on commercial use and general provisions of its zoning by-law buttressed by a recent partial amendment. In a 2022 decision of the Ontario Land Tribunal ("OLT"), released on August 24, 2022¹³ arose from the appeal by Oro Medonte Association for Responsible Short term Rentals ("Responsible STRs") of By-law No. 2020-073 which had been passed by the Council of the Township of Oro Medonte and amended existing zoning provisions with the intent of regulating short term rentals in response to the nuisance issues related to third party use of vacation rentals within established shoreline low density residential neighbourhoods. The issue was described by the Tribunal as follows:

The "party houses" as described variously in the witness statements and oral evidence of the planning and lay witnesses, are single detached houses widely and broadly offered for rent via electronic platforms such as Air B&B, by non resident, absentee owners, or their rental management agencies, and which are fundamentally owned and constantly rented out solely for the purpose of commercial gain for periods as short as a day, but more typically, for three (3) days coinciding with a weekend¹⁴

Oro Medonte took the position that such activity constitutes a commercial use and therefore was never legal in a low density residential zone, and seeks to simply bring clarity to that assertion through the amending by-law which has been appealed by the Responsible STRS. Many of the submissions and rationale relied on the commercial nature of short-term rental accommodation and that commercial uses were not permitted in residential zones.

Member Vincent granted the appeal and directed that By-law No. 2020-073 be rescinded. Member Vincent found that the by-law did not represent good planning and was not in the public

¹⁰ *13388201 Canada Inc. v Ottawa (City)*, 2022 CanLII 5474 (ON LT)

¹¹ October 5, 2021 Committee of the Whole Report, Town of Blue Mountains <https://pub-bluemountains.escribemeetings.com/FileStream.ashx?DocumentId=6747>

¹² Approved by the Ontario Land Tribunal Case No. OLT-21-001311 on February 10, 2022.

¹³ *Oro-Medonte Association of Responsible STRS v Oro-Medonte (Township)*, 2022 CanLII 78164 (ON LT)

¹⁴ *Ibid.* at para 2.

interest particularly as the cumulative evidence bore out, it could not in a timely and/or effective way regulate the serial, disruptive use of residential properties as party houses. Further, the amendment would have the very undesirable effect of rendering illegal, the benign, non contentious occasional rental by owner of the family cottage for example to family or friends or known individuals for annual cottage holidays of 1-2 weeks.

The Tribunal stated “Tribunal’s reasoning was very simple in that, if as the Municipality asserted in their case strategy, the STRs, and in fact all residential rentals of detached units is illegal, there is nothing to prevent the Municipality from enforcing the existing zoning regime against the disruptive offenders and commercial operators. The language of By-law No. 2020-073 simply introduced a threshold of determination at 28 days, which would unintentionally capture the historically acceptable, bona fide 1-2 week cottage rental for the annual vacation which were not the disrupters subject of the study carried out pursuant to [s. 38](#) of the [Planning Act](#).”¹⁵

Unfortunately, the Tribunal did not give a direction on whether it agreed with Oro Medonte that its original by-law would be entitled to enforce its existing by-law. Oro-Medonte has similar language contained in the current form of the Township’s zoning by-law (2010 consolidation).¹⁶ It would have assisted municipalities if the Tribunal provided clarification that the existing prohibitions on commercial use could be relied upon. Subsequent determinations in enforcement proceedings would likely assist the Township in applying the Oro Medonte circumstance to the Township’s.

Municipalities have brought court proceedings and settled with owners of properties that were in contravention of municipal zoning by-laws related to commercial uses. Given the limited nature of judicial decisions in this area, this does present litigation and cost risk to a municipality undertaking such an approach.

In an earlier decision, the Corporation of the Township of Puslinch (“Puslinch”), sought an order from Superior court, pursuant to s. 440 of the *Municipal Act, 2001* to restrain an owner from operating an short-term rental “tourist establishment” contrary to the general wording of Puslinch’s zoning by-law. Justice Barnes rejected the Township’s submissions and held that the general language contained in the Puslinch zoning by-law discriminated against persons who rent the property for short-term purposes and that the by-law was unacceptably vague, uncertain and insufficiently specific with respect to the attempted application to short-term rental regulation.¹⁷

Zoning powers can be an appropriate tool for municipalities to regulate short-term accommodation – such powers should be carefully reviewed against the present issue.

[REDACTED – NOT FOR PUBLIC RELEASE]

¹⁵ *Ibid.* at para 10.

¹⁶ Most notably, the Township’s zoning by-law as drafted in 2010 does not define short-term rental accommodation and the characterization of this use must be done through analogy and general language.

¹⁷ *Puslinch (Township) v. Monaghan*, 2015 ONSC 2748, 36 M.P.L.R. (5th) 105 (Ont. Sup. CL) at para. 6.



Business Licensing Powers

Municipalities across Ontario have implemented a system of business licenses to regulate short-term accommodation entities. This approach is known to be cost-intensive and guidance should be obtained from municipal finance staff on implementation expenses.

The power of municipalities to license business activities is granted by sections 9, 10, 11 and 151 of the *Municipal Act, 2001*.¹⁸

Section 159 of the *Municipal Act, 2001* contemplates conflicts with other statutes with respect to the licensing of a business and specifies that the provision that is less restrictive of a municipality's power prevails:

Conflicts

159 If there is a conflict between a provision in this Act and a provision of any other Act authorizing a municipality to license a business, the provision that is less restrictive of a municipality's power prevails.

The conflicts provision and the general wording of section 151 speak to a municipality's broad and permissive powers of regulation as strengthened by the *Municipal Statute Law Amendment Act, 2006*,¹⁹ that made significant amendments to the *Municipal Act, 2001*.

Section 158 of the *Municipal Act, 2001* provides that the Minister of Municipal Affairs and Housing may make regulations with respect to a municipality's powers to license:

Regulations

- 158** (1) The Minister may make regulations,
- (a) exempting any business or class of business from all or any part of a by-law providing for a system of licences under any Act, including self-regulated businesses;
 - (b) imposing conditions and limitations on the powers of a municipality under this Act to provide for a system of licences with respect to a business;
 - (c) prohibiting municipalities from imposing on any business, in respect of which a provincial certificate has been issued, a condition on a licence requiring testing on the subject-matter of the certification.

[REDACTED – NOT FOR PUBLIC RELEASE]

¹⁸ Due to its length, the full text of section 151 of the *Municipal Act, 2001* is attached as Appendix A.

¹⁹ S.O. 2006, c. 32, Schedule A.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁰ S.O. 2002, c. 30, Sched. C, s. 1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Comparative Municipalities and the Absence of Judicial Consideration With Respect To Short-Term Accommodation Licensing

Several municipalities in Ontario have introduced licensing systems pertaining the licensing of short-term accommodations including online platforms such as Airbnb, Expedia, etc. These jurisdictions include the Town of Blue Mountains, the Town of Niagara-on-the-Lake and, most recently, the City of Toronto.²²

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²² For a helpful jurisdictional scan, please see the Province of Ontario's guide for municipalities and short-term accommodations at: <https://www.ontario.ca/page/home-sharing-guide-ontario-municipalities>.

[REDACTED]

Many more municipalities enacted municipal licensing regimes with respect to rental accommodation, broadly defined, following the introduction of O. Reg. 583/06, including municipalities such as Oshawa, Kingston, Hamilton, Thorold, Waterloo, London and North Bay.²³

[REDACTED]

[REDACTED]

In *London Property Management Association v. London (City)*,²⁴ the applicant sought to quash the City of London's rental housing by-law on the grounds that it conflicted and/or frustrated provincial legislation in violation of section 14 of the *Municipal Act, 2001* by conflicting with the *Residential Tenancies Act, 2006*,²⁵ the *Municipal Freedom of Information and Protection of Privacy Act*,²⁶ the *Human Rights Code*²⁷ and the *Municipal Act, 2001*. The applicant also contended that the licensing by-law was enacted in bad faith and that the provisions were vague and/or uncertain. This case specifically cited section 151 of the *Municipal Act, 2001* but did not expressly consider O. Reg. 583/06. The application was dismissed and the by-law was upheld as valid.

The City of Waterloo's rental licensing by-law was judicially reviewed in *1736095 Ontario Ltd. v. Waterloo (City)*.²⁸ The applicant contended that the by-law was a taxing statute and was therefore *ultra vires* the city's jurisdiction. The applicant also contended that the by-law amounted to constructive discrimination under the *Human Rights Code* against occupants in townhouse tenancies on the basis of family status.

[REDACTED]

In *Fodor v. North Bay (City)*,²⁹ the City of North Bay's rental housing by-law was judicially reviewed on the grounds that it was discriminatory.

[REDACTED]

The Divisional Court held that

²³ For a helpful summary and overview, please see the City of Kingston Report Number 18-001: https://www.cityofkingston.ca/documents/10180/22990022/COU_A0218-18001.pdf/9866e66b-d4f4-4773-b040-6d18b843cc4c.

²⁴ 90 M.P.L.R. (4th) 30, 2011 ONSC 4710 (Ont. S.C.J.).

²⁵ S.O. 2006, c. 17.

²⁶ R.S.O. 1990, c. M.56.

²⁷ R.S.O. 1990, c. H.19.

²⁸ 46 M.P.L.R. (5th) 1, 2015 CarswellOnt 16126 (Ont. Div. Ct.).

²⁹ 76 M.P.L.R. (5th) 37, 2018 ONSC 3722 (Ont. S.C.J.).

the by-law did not violate Ontario's *Human Rights Code* and did not conflict with the *Residential Tenancies Act, 2006*.

[REDACTED]

The existence of three cases where municipal rental licensing and regulatory regimes are upheld favours the likelihood that a municipal short-term licensing regime would withstand legal challenge.

Regulating and Licensing Online Platforms by Municipalities in Ontario

It is our understanding that most significant short-term accommodation platforms are multi-national businesses, which operate across the globe and in a variety of jurisdictions. The multi-national and cross-jurisdictional nature of short-term accommodation platforms, such as Airbnb, does not prohibit municipalities from regulating local activities within their local jurisdictions pursuant to valid regulatory spheres and rights contained in the *Municipal Act, 2001*. Similar to other multi-national industries (including building and development businesses), the character of the industry and where the industry operates, does not on its own, limit or prohibit the municipal right to license and regulate matters under the authority of the *Municipal Act, 2001*.

The municipal ability to regulate businesses that are carried out from a location outside of the geographic boundaries of the municipality is specifically addressed and clarified in the definition of "business" in section 150 of the *Municipal Act, 2001*:

Definition

150 In this Part,

"business" means any business wholly or partly carried on within a municipality even if the business is being carried on from a location outside the municipality and includes,

- (a) trades and occupations,
- (b) exhibitions, concerts, festivals and other organized public amusements held for profit or otherwise,
- (c) the sale or hire of goods or services on an intermittent or one-time basis and the activities of a transient trader,
- (d) the display of samples, patterns or specimens of goods for the purpose of sale or hire.

However, based on jurisprudence from Ontario related to the municipal regulation of "sharing economy" platforms, such as Uber, municipalities should carefully craft their regulatory structures

to fit within existing powers and not move into regulatory venues occupied by other levels of government, particularly criminal law and telecommunications.³⁰

In the United States, “sharing economy” platforms, such as Airbnb and HomeAway Inc., have been successful in court proceedings to challenge municipal regulations. On January 3, 2019, U.S. District Judge Paul Engelmayer issued an injunction against New York City’s local ordinance with respect to short-term accommodations in *Airbnb Inc. v. City of New York*.³¹ In this case, the Court held that the ordinance, as drafted, effectively required a search and significant invasions of privacy and intrusion into criminal law powers by requiring platform disclosure of user activity. In granting the injunction, the Court held that this likely would be determined to violate the United States Constitution ban on unreasonable search and seizure.

When creating regulations and/or a licensing regime for platforms that facilitate short-term accommodations, we note the importance of the decision with respect to Uber and the City of Toronto’s licensing of taxi-cabs in *City of Toronto v. Uber Canada Inc.*³² In this case, the specific wording of the city’s taxi-cab licensing regime, at the point in time of the judicial challenge, did not encompass the activities of the online platform sufficient to characterize the corporate entity as a “taxi cab” operator. The substantive effect was to insulate the platform from municipal licensing on the previous wording of the by-law. It would thus be helpful to clearly articulate that the by-law regulates the platform for activities within the geographic boundaries of the Township rather than rely on general wording.

When drafting regulations with respect to platforms, it will be important to carefully consider areas of exclusive federal jurisdiction, such as telecommunications and criminal law. Other concerns such as privacy of individuals and data collection and avoiding challenges on jurisdictional over-reach should also be thoughtfully considered.

Provided that the Township remains focused on areas within its geographic boundaries and that are within its spheres of jurisdiction, in pith and substance, including health and safety of individuals and property in the Township, the licensing of the business as a platform would be permissible.

Conclusions

There are a variety of regulatory approaches available to municipalities in regulating the effects of short-term rental accommodation.

The tools strengthening nuisance and noise by-laws, right-of-way regulation by-laws, civil remedies, zoning by-laws and licensing regimes.

³⁰ For recent judicial consideration of the relationship between municipal regulations and telecommunications, see *Rogers Communications Inc. v. Châteauguay (City)*, [2016] 1 S.C.R. 467, 2016 SCC 23 (S.C.C.) and for a recent consideration of municipal regulation and criminal law, see *York (Regional Municipality) v. Tsui* (2017), 62 M.P.L.R. (5th) 1, 2017 ONCA 230, 135 O.R. (3d) 1 (Ont. C.A.).

³¹ 18-cv-7712, U.S. District Court, Southern District of New York (Manhattan).

³² 39 M.P.L.R. (5th) 1, 2015 ONSC 3572, 126 O.R. (3d) 401 (Ont. S.C.J.).

Zoning by-laws, in light of recent Tribunal consideration should be specifically tailored to short-term rental accommodation rather than reliant upon existing permissions.

Licensing regimes are resource intensive and may require a technical amendment from the Province to insulate from the risk of a challenge to the authority to enact the regime. To date, the use of licensing regimes are common in typically large Ontario municipalities and have been used as a further tool for municipalities to regulate short-term rentals.

Yours truly,

AIRD & BERLIS LLP



Ajay Gajaria
AG:tp

Appendix A

Section 151 of the *Municipal Act, 2001*

Powers re licences

151 (1) Without limiting sections 9, 10 and 11, a municipality may provide for a system of licences with respect to a business and may,

- (a) prohibit the carrying on or engaging in the business without a licence;
- (b) refuse to grant a licence or to revoke or suspend a licence;
- (c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence; and
- (f) license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it.

Power to suspend a licence

(2) Without limiting sections 9, 10 and 11, for the purpose of clause (1) (b), if a municipality is satisfied that the continuation of a business poses an immediate danger to the health or safety of any person or to any property, the municipality may, for the time and on such conditions as it considers appropriate, without a hearing, suspend a licence subject to the following:

1. Before suspending the licence, the municipality shall provide the licensee with the reasons for the suspension, either orally or in writing, and an opportunity to respond to them.
2. The suspension shall not exceed 14 days.

Same

(3) Despite subsection (2) and without limiting sections 9, 10 and 11, for the purpose of clause (1) (b), the municipality may, on such conditions as it considers appropriate, without a hearing, suspend a licence authorizing a business to operate on a highway or other property of the municipality or its local boards for a period not exceeding 28 days for the following reasons:

1. The holding of a special event.
2. The construction, maintenance or repair of the property.
3. The installation, maintenance or repair of a public utility or service.
4. Pedestrian, vehicular or public safety or public health.

Exercise of power

(4) The exercise of a power under clause (1), (b), (d) or (e) is in the discretion of the municipality, and the municipality shall exercise its discretion,

(a) upon such grounds as are set out by by-law; or

(b) upon the grounds that the conduct of any person, including the officers, directors, employees or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity.

Application re system of licences

(5) Subsections (1) to (4) apply with necessary modifications to a system of licences with respect to any activity, matter or thing for which a by-law may be passed under sections 9, 10 and 11 as if it were a system of licences with respect to a business.

Proviso

(6) Nothing in this section authorizes an upper-tier or a lower-tier municipality to pass a business licensing by-law with respect to a business if the other municipality has exclusive authority to pass a business licensing by-law with respect to the business under paragraph 11 of subsection 11 (3).

Same

(7) Subsection (6) does not prevent a municipality from providing for a system of licences for a business under any other by-law, other than a business licensing by-law.