



**June 29, 2021 Committee of the Whole Deputation**

**RE: Staff Report FAF.21.129 and Draft Licensing and AMPS By-laws**

## **DRAFT LICENSING BY-LAW**

### **1. Validity & Discriminatory Nature of the By-law:**

Town staff continue to recommended to Council that Council enact a licensing by-law that would impose licensing requirements and special conditions on businesses in a (sub)class (STA's and B&B's) that would not apply to all businesses in that class (i.e. Tourist Accommodation).

While this is permitted by the Municipal Act, businesses that are identical in form, such as CRU's, and exist in many instances in the same building and/or complex as a STA, and therefore within the same (sub)class, are not proposed to be subject to licensing requirements and special conditions.

BMSTA submits that the Town does not have authority to continue to require licenses and to impose special conditions on a (sub)class of business without addressing the entire (sub)class and therefore submits that the existing and draft Licensing By-laws are contrary to the Municipal Act and are invalid.

With regard to the discriminatory nature of the draft Licensing By-law, as noted previously, STA's and CRU's exist in many instances in the same building and in the same complex with STA's being subject to licensing and special conditions, including enhanced fire and life safety requirements, and CRU's are not.

The notion that after 8 years of a licensing regime that the Town will expand its licensing regime to include other uses, including CRU's, at some point in the future lacks credibility.

## **2. Assignment of Demerit Points & Responsible Person (RP):**

The Staff Report indicates that the requirement that the RP “must be notified for Demerit Points to be issued has been removed” and that in instance of a non-call to a RP that “the issuance of Demerit Points shall be at the discretion of an Officer or Director of Legal Services”.

BMSTA submits that this is inconsistent with the purpose of having an RP – being for the owner/operator to intervene prior to the matter being escalated. Further, it is inconsistent with the Town's desire to mitigate operational costs – if the RP can intervene after being notified by the Town's 24/7 By-law Service (which we wholly endorse) if would preclude involvement by By-law and/or the OPP and we submit it would be an expeditious response (within 30 minutes).

## **3. Vexatious Complaints:**

The Town has data as to the number of By-law Enforcement and OPP responses to unfounded complaints, BMSTA fails to understand why additional evaluation/study is required by Town staff. With the Town failing to move forward with offences and penalties for vexatious complaints, legitimate and licensed business operators will be left to resort to their own legal options to cause the cessation of vexatious complaints.

## **4. Regulating of Hot Tubs and Fire Pits:**

The proposal to regulate the hours of hot tubs and fire pits associated with legitimate and licensed businesses is extremely discriminatory.

BMSTA is not aware of any real data that is demonstrative that these amenities need to be regulated, if data existed it would assist all if Town staff presented same so that there is an understanding as to the need to contemplate imposing these discriminatory regulations.

In terms of the application of these regulations, Council must be aware that a non-STA use, including a CRU and any other person/use, can operate a hot tub or a fire pit without regulation but a STA use cannot? As noted previously, CRU's exist in the same building and in the same complex as a STA and the occupant of the CRU would be allowed to operate a hot tub or a fire pit, but the STA user cannot? Further, Council must be aware that a non-STA neighbour to a STA occupied by a family can operate a hot tub or a fire pit without regulation.

## **5. Noise Aware:**

The Draft Licensing By-law requires indoor and outdoor noise detection systems, or an equivalent noise detection system, notwithstanding BMSTA previous submissions on this matter (especially the inaccuracy of outdoor noise detection systems – in short, how can the Town impose a requirement when the technology does not work).

BMSTA believes that the requirement for indoor and outdoor noise detection systems is premature until the Town develops the procedures and rules for the use and monitoring of these systems.

Lastly, BMSTA strongly recommends that the Town delete reference to a proprietary product (NoiseAware).

## **6. Demerit Points**

BMSTA notes the addition of the defined term “Conviction” and the related process in terms of the assignment of demerit points however, the demerit points proposed to be assigned to convictions of Town By-laws are excessive. Examples:

- 2 convictions of the Town’s Waste or Property Standards By-laws could lead to a license suspension?
- 2 instances of a hot tub or pool outside of the hours of 0700 and 2300 could result in a license suspension of up to 6 months?

## **7. Def’n of Bedroom and Maximum Occupant Load (Type A & B Licenses):**

BMSTA notes that the maximum occupant load proposed is 2 per bedroom + 4 and supports this.

Regarding the new definition of bedroom, BMSTA has no issue with this given the + 4 model proposed.

BMSTA continues to seek confirmation that in instances where the number of parking spaces provided is lawfully non-conforming, that the occupant load of a premise will not be reduced to align with the number of parking spaces provided (e.g. if an existing lawfully non-conforming STA has 2 parking spaces with an occupant load of 8, the occupant load associated with the license will not be reduced to 4 persons) – see Section 2.5 of Type A and B Licenses.

## **8. Lawfully Non-conforming STA's (Type C License)**

BMSTA requests that additional information be provided in terms of “The Maximum Occupancy within a Dwelling Unit subject to a Type C License shall be calculated as identified by the Town as part of the Legal Non-Conforming review process.”

## **DRAFT AMPS BY-LAW**

BMSTA notes that NO CHANGES are proposed to the previously circulated Draft AMPS By-law. Below are our previous comments respecting this Draft By-law.

### **1. Punitive Nature**

BMSTA continue to disagree with Town staff's statement as to the fine structure not being punitive.

Examples of the punitive nature of the proposed fine structure include the proposed \$500 fine for matters such as Non-compliance with the Parking Management Plan; Operating without a functioning Noise Notification System; Operating a Pool or Hot Tub outside of the permitted hours, and, Failing to Secure a or Cover a Pool or Hot Tub; and Fire Pit operations.

### **2. Education**

The Staff Report is silent regarding how the AMPS By-law and related revenues will be used to educate the public.

### **3. Lack of Use of Municipal Best Practices in Terms of Fine Development**

BMSTA is unaware of a review being conducted in terms of how the proposed fine structure aligns with municipal best practices. If this review has been completed, BMSTA respectfully requests that it be provided to the public.