

Notice to appeal

14 April, 2020

Ms. Birute Curran
42 Moss St.
Victoria, B.C.
V8V 4L8

City Clerk at Legislative Services
1 Centennial Square
Victoria, BC
V8W 1P6

Dear City Clerk,

Regarding your March 24, 2020 email notification of the rejection of my application for a short-term rental license (**Subject: 1032278 Application Follow-Up**) I hereby request an appeal of the decision.

Please provide all information on the appeal process and its timeline.

Best regards,

A handwritten signature in black ink, appearing to read 'Birute', with a long horizontal flourish extending to the right.

Ms. Birute Curran



March 24, 2020

Curran, Birute
42 Moss St
Victoria BC V8V 4L8

Re: 42 Moss Street

The City has completed a review of your short-term rental licence application for the property located at 42 Moss St.

Your 2020 application has been rejected due to non-compliance with City bylaws, including Schedule D of the Zoning Regulation Bylaw, which provides that a short-term rental cannot occupy an entire self-contained dwelling unit, except occasionally while the operator is away.

You are directed to cease offering and operating short-term rental at the above referenced property immediately. Please be aware that operating a short-term rental in contravention of City bylaws is subject to a fine of not less than \$100.00 and not more than \$10,000.00 for every instance that an offence occurs or each day that it continues.

If you choose to convert your rental to long term (30 days plus) a short-term rental licence is not required.

You may appeal the decision to deny your short-term rental licence to City Council by submitting a written request to appeal within 30 days of the date of this letter to the City Clerk at Legislative Services, 1 Centennial Square. Please note that you are not permitted to operate during the appeal process.

If you have any questions, contact our office at 250.361.0726.

A handwritten signature in black ink, appearing to read "Kim Ferris".

Regards,

Kim Ferris
Bylaw Officer/Business Licence Inspector
Legislative & Regulatory Services Department
City of Victoria
1 Centennial Square, Victoria B.C. V8W 1P6



Reply: Lindsay R. LeBlanc*
*Law Corporation
leblanc@coxtaylor.ca

File: C-1769-1

June 1, 2020

by email: legislativeservices@victoria.ca

City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6

Attention: Christine Havelka

Dear Madam:

Re: Short-Term Rental Business Licence Appeal for 42 Moss Street

We have been retained on behalf of Birute Curran, the registered owner of 42 Moss Street, Victoria, British Columbia (the "Property").

On March 24, 2020, the City advised our client that her short-term rental license for 2020 for the Property was being rejected due to non-compliance with the City bylaws. Our client was subsequently delivered a letter on May 13, 2020 advising that an appeal under the Short-Term Rental Business Licence Appeal Process Policy could be submitted by June 1, 2020.

The Property has been used lawfully, without interruption, as a short-term rental since at least 2016. Such use predates the City's current zoning regulating short-term rentals and is permitted pursuant to s.528 of the *Local Government Act* which provides as follows:

Non-conforming uses: authority to continue use

- 528 (1) Subject to this section, if, at the time a land use regulation bylaw is adopted,
- (a) land, or a building or other structure, to which that bylaw applies is lawfully used, and
 - (b) the use does not conform to the bylaw,
- the use may be continued as a non-conforming use.
- (2) If a non-conforming use authorized under subsection (1) is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the land use regulation bylaw.

Victoria

T 250.388.4457
F 250.382.4236

Vancouver

T 604.678.1207
F 604.678.1208

Burnes House, 3rd Floor, 26 Bastion Square
Victoria, British Columbia Canada V8W 1H9

- (3) The use of land, a building or other structure, for seasonal uses or for agricultural purposes, is not discontinued as a result of normal seasonal or agricultural practices, including
 - (a) seasonal, market or production cycles,
 - (b) the control of disease or pests, or
 - (c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.

- (4) A building or other structure that is lawfully under construction at the time of the adoption of a land use regulation bylaw is deemed, for the purpose of this section,
 - (a) to be a building or other structure existing at that time, and
 - (b) to be then in use for its intended purpose as determined from the building permit authorizing its construction.

- (5) If subsection (1) authorizes a non-conforming use of part of a building or other structure to continue, the whole of that building or other structure may be used for that non-conforming use.

In support of our client's non-conforming status we enclose the Airbnb records which commence in December, 2016. The use as a short-term rental pre-dates this date; however, this evidence supports the lawful non-conforming status. If the status is disputed, additional documents will be relied upon by our client.

Our client is hereby requesting that the City issue a license for 2020. If the City refuses to issue a license, our client will continue with its lawful use of the Property and consider legal remedies in the nature of mandamus for the issuance of the license.

All further communications regarding this matter can be directed to directed to the writer.

Yours very truly,

COX TAYLOR

Per:



Lindsay R. LeBlanc*
*Law Corporation

LRL/Ikr



COX TAYLOR
BARRISTERS | SOLICITORS | NOTARIES

Reply: **Lindsay R. LeBlanc***
**Law Corporation*
leblanc@coxtaylor.ca

File: C-1769-1

June 30, 2020

by email: chavelka@victoria.ca

City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6

Attention: Christine Havelka

Dear Madam:

Re: Short-Term Rental Business Licence Appeal for 42 Moss Street

We acknowledge receipt of your letter of June 18, 2020. The writer has been away from the office recovering from a recent surgery. Further, our client is currently out of the country. We respectfully request a one-week extension to July 10, 2020 to finalize our clients' response.

We look forward to your reply as soon as possible.

Yours very truly,

COX TAYLOR

Per:

Lindsay R. LeBlanc*
**Law Corporation*

LRL/jt
cc: client

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www.CoxTaylor.ca



Reply: **Lindsay R. LeBlanc***
*Law Corporation
leblanc@coxtaylor.ca

File: C-1769-1

July 8, 2020

City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6

by email: chavelka@victoria.ca

Attention: Christine Havelka

Dear Madam:

Re: Short-Term Rental Business Licence Appeal for 42 Moss Street

We write in reply to your letter of June 18, 2020. Please accept this letter as our client's submissions in response to the Licence Inspection's response dated June 18, 2020.

In denying our client's application for a short-term business licence, you rely on Schedule D of the Zoning Regulation Bylaw (copy attached). In particular, you rely on the provisions of Schedule D that restrict rental of the entire self-contained dwelling unit (except occasionally while the operator is away).

The provisions relied on in Schedule D were passed by Resolution of Council on March 8, 2018 in Bylaw No. 18-035 (copy attached). Our clients rented the entire self-contained dwelling unit prior to March 8, 2018. Such use has continued uninterrupted and our clients rely on the provisions of s. 528 of the *Local Government Act* which provides for the authority to continue such use. We attach our client's calendar of bookings as evidence supporting the use prior to March 8, 2018.

The short-term rental of our client's property is not restricted by the R1-B Single Family Dwelling Zoning. In fact, Schedule D of the Zoning Regulation Bylaw permits that use, on conditions. One of those conditions, and the only condition that appears to be relied on in refusing our clients 2020 application, is the restriction regarding the rental of the entire self-contained dwelling unit, which does not apply to our clients given their permitted non-conforming legal rights as described above. Further, our client's use of a short-term rental pre-dates the September 21, 2017 bylaw amendment that added a definition of "short-term rental". In that regard, we rely on *Newton v. The Corporation of the City of Victoria*, 2018 BCSC 728 and the finding that prior to September 21, 2017, short-term or vacation rentals were permitted in all zones where transient accommodation was permitted. Transient accommodation was permitted in the R1-B Zone prior to September 21, 2017.

Yours very truly,

COX TAYLOR

Per: 
Lindsay R. LeBlanc*
*Law Corporation

LRL/jt
Encl.
cc: client

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F 250.382.4236

Vancouver
T 604.678.1207
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**Burnes House, 3rd Floor, 26 Bastion Square
Victoria, British Columbia Canada V8W 1H9**

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NO. 18-035
A BYLAW OF THE CITY OF VICTORIA

The purposes of this Bylaw are to amend the Zoning Regulation Bylaw by updating the home occupation provisions of Schedule D to allow short term rentals in principal residences.

The Council of the Corporation of the City of Victoria, in an open meeting assembled, enacts the following provisions:

1. This Bylaw may be cited as the "ZONING REGULATION BYLAW, AMENDMENT BYLAW (NO. 1147)".
2. (1) Bylaw No. 80-159, the Zoning Regulation Bylaw is amended in Schedule A – Definitions, by inserting a new definition of "Principal Residence" between the definition of "Preschool" and "Private Garage", as follows:

"Principal Residence" means the usual place where an individual makes their home."
- (2) Bylaw No. 80-159, the Zoning Regulation Bylaw is further amended in Schedule D – Home Occupations by:
 - (a) in section 6(2),
 - (i) deleting the period at the end of paragraph (l) and replacing it with "; and"; and
 - (ii) adding the following as the new paragraph (m):

"(m) except as provided in Section 12, short-term rental."
 - (b) Adding the following as the new subsection (4) to section 8:

"(4) More than one person may operate a short-term rental in their principal residence."
 - (c) adding the following as new subsections (5) and (6) to section 11:
 - (5) A single family dwelling may be used for transient accommodation whether or not the property contains a secondary suite or garden suite provided however that only one transient accommodation use is permitted on the property.
 - (6) Transient accommodation is restricted to no more than two bedrooms and cannot occupy an entire self-contained dwelling unit."
 - (d) adding, immediately after section 11, the following new section 12:

"12 Subject to the following requirements, a short term rental is permitted as a home occupation in a principal residence."

- (1) subject to subsection (2), no more than two bedrooms may be used for short-term rental and the short-term rental cannot occupy an entire self-contained dwelling unit;
- (2) the entire principal residence may be used for a short-term rental only occasionally while the operator is temporarily away;
- (3) no liquor may be provided to short-term rental guests; and
- (4) no sign may be erected, used, or maintained for the purpose of advertising short-term rental."

READ A FIRST TIME the **22nd** day of **February** 2018

READ A SECOND TIME the **22nd** day of **February** 2018

Public hearing held on the day of 2018

READ A THIRD TIME the day of 2018

ADOPTED on the day of 2018

CITY CLERK

MAYOR

Schedule "D"
HOME OCCUPATIONS

- | | | |
|----------------|---|--|
| | 1 | Where <u>home occupations</u> are permitted pursuant to the provisions of this bylaw, the following conditions shall apply to the use: |
| Location | 2 | For the purposes of a <u>home occupation</u> , the location of a business is the address at which the operations of the business are managed. |
| Exception | 3 | A <u>home occupation</u> is not required to be operated wholly within a <u>dwelling unit</u> where the work is undertaken entirely off the <u>lot</u> on which the <u>dwelling unit</u> is located. |
| Prohibition | 4 | The sale of goods to customers attending on the <u>lot</u> on which the <u>dwelling unit</u> is located is prohibited. |
| Permitted Uses | 5 | The following uses are permitted as <u>home occupations</u> :

(a) artist studio;

(b) mail order, provided that no merchandise is sold to customers attending on the <u>lot</u> on which the <u>dwelling unit</u> is located;

(c) making, processing and assembly of products on a small scale;

(d) manufacturing agent;

(e) personal and professional services, including barber, hairdresser, bookkeeper, medical therapy;

(f) teaching, provided that attendance is limited to 5 persons in a detached dwelling and to 1 person in a <u>duplex</u> or <u>multiple dwelling</u> ;

(g) testing, servicing and repairing of goods. |

Schedule "D"

- Prohibited Uses 6 (1) All uses that are noxious or offensive to any other dwelling units or the general public by reason of emitting odour, dust, smoke, gas, noise, effluent, radiation, broadcast interference, glare, humidity, heat, vibration, or hazard or any other emission are prohibited.
- (2) The following uses are prohibited:
- (a) except as provided in Section 11, Bed and Breakfast;
 - (b) car repairs and garages;
 - (c) clubs;
 - (d) kennels;
 - (e) radio dispatch services;
 - (f) restaurants;
 - (g) retail stores;
 - (h) salvage lots;
 - (i) storage lots;
 - (j) except as provided in Section 11, transient accommodation;
 - (k) in any building which has been converted from single family dwelling to duplex, multiple dwelling, boarding house, rooming house, or housekeeping apartment, pursuant to the applicable provisions of this bylaw, music teaching or any business which results in the transmission of sound;
 - (l) cannabis-related business; and;
 - (m) except as provided in Section 12, short-term rental.
- Stock in Trade 7 Except for one licensed vehicle, which shall be a car, van, or pickup truck, no business-related materials, including machinery or vehicles, shall be visible at any time on any lot on which a home occupation is carried out nor shall any machinery or vehicles be parked or stored on the lot unless completely enclosed within a building.
- Limitation 8 (1) Subject to this section, not more than one person shall be engaged in a home occupation, with the exception of urban agriculture, where up to two people are permitted to be engaged in the home occupation, and the person(s) shall reside on the lot on which the home occupation is carried on.
- (2) Where any lot upon which a home occupation is carried on has a boundary or portion of a boundary in common with any lot which is located in a zone which permits retail use, then no more than two persons may be engaged the home occupation where one of the persons resides on the lot on which the home occupation is carried on.

Amended Jan 11, 2018
Bylaw 17-110

Amended March 8, 2018
Bylaw 18-035

Schedule "D"
HOME OCCUPATIONS

(3) This section does not apply to any employees of a home occupation who at no time attend on the lot on which the home occupation is carried on, nor park in the immediate vicinity of the lot.

(4) More than one person may operate a short-term rental in their principal residence.

Amended March 8, 2018
Bylaw 18-035

9 No more than three home occupations shall be carried on in any one dwelling unit, provided that only one of the home occupations has customers that attend the dwelling unit.

Amended Jan 11, 2018
Bylaw 17-110

Advertising

10 Except as expressly permitted in this bylaw, or in the Sign By-law, no sign or other advertising device or advertising matter may be exhibited or displayed on any lot on which a home occupation is being carried on.

11 Subject to the following requirements, where any building is used as a single family dwelling, up to two bedrooms may be used for transient accommodation as a home occupation.

(1) Notwithstanding Section 4, meals or food services may be provided to any customers but not after 12:00 noon.

(2) No liquor shall be provided to any customers.

(3) One parking space for each room available for transient accommodation shall be provided on the lot and a parking space may be located behind another parking space.

(4) No sign may be erected, used, or maintained for the purpose of advertising transient accommodation use within a single family dwelling.

(5) A single family dwelling may be used for transient accommodation whether or not the property contains a secondary suite or garden suite provided however that only one transient accommodation use is permitted on the property

Amended March 8, 2018
Bylaw 18-035

(6) Transient accommodation is restricted to no more than two bedrooms and cannot occupy an entire self-contained dwelling unit.

Amended March 8, 2018
Bylaw 18-035

12 Subject to the following requirements, a short-term rental is permitted as a home occupation in a principal residence.

Amended March 8, 2018
Bylaw 18-035

(1) subject to subsection (2), no more than two bedrooms may be used for short-term rental and the short-term rental cannot occupy an entire self-contained dwelling unit;

Schedule "D"

- (2) the entire principal residence may be used for a short-term rental only occasionally while the operator is temporarily away;
- (3) no liquor may be provided to short-term rental guest; and
- (4) No sign may be erected, used, or maintained for the purpose of advertising short-term rental.

Amending Bylaw 09-01 adopted Jan 19, 2009
Amending Bylaw 17-110 adopted Jan 11, 2018
Amending Bylaw 18-035 adopted March 8, 2018



Completed reservations

Printed May 25, 2020

Status	Guests	Contact	Check-in	Checkout	Booked	Listing	Total payout
Confirmed			Feb. 19, 2020	Feb. 23, 2020	Jan. 25, 2020 11:56 a.m. PT	Moss Street Garden Suite	
Confirmed			Jan. 27, 2020	Jan. 30, 2020	Jan. 23, 2020 7:38 p.m. PT	Moss Street Garden Suite	
Confirmed			Dec. 28, 2019	Jan. 11, 2020	Nov. 4, 2019 8:09 a.m. PT	Moss Street Garden Suite	
Confirmed			Aug. 31, 2019	Sep. 2, 2019	Jul. 29, 2019 9:20 p.m. PT	Moss Street Garden Suite	
Confirmed			Jun. 18, 2019	Jun. 21, 2019	May 6, 2019 9:46 a.m. PT	Moss Street Garden Suite	
Confirmed			May 19, 2019	May 21, 2019	Mar. 23, 2019 7:18 a.m. PT	Moss Street Garden Suite	
					Nov. 24,		

Confirmed			Dec. 30, 2018	Jan. 2, 2019	2018 4:02 p.m. PT	Moss Street Garden Suite
Confirmed			Dec. 23, 2018	Dec. 27, 2018	Oct. 23, 2018 11:57 a.m. PT	Moss Street Garden Suite
Confirmed			Aug. 31, 2018	Sep. 2, 2018	Jul. 12, 2018 5:25 p.m. PT	Moss Street Garden Suite
Confirmed			Aug. 22, 2018	Aug. 25, 2018	Jul. 5, 2018 6:10 a.m. PT	Moss Street Garden Suite
Confirmed			Aug. 20, 2018	Aug. 22, 2018	Aug. 10, 2018 7:37 a.m. PT	Moss Street Garden Suite
Confirmed			Aug. 11, 2018	Aug. 14, 2018	Jul. 15, 2018 10:43 p.m. PT	Moss Street Garden Suite
Confirmed			Jul. 27, 2018	Jul. 30, 2018	Jun. 21, 2018 6:09 a.m. PT	Moss Street Garden Suite
Confirmed			Jun. 11, 2018	Jun. 15, 2018	Apr. 24, 2018 10:05 a.m. PT	Moss Street Garden Suite
Confirmed			Jun. 2, 2018	Jun. 4, 2018	May 10, 2018 5:22 p.m. PT	Moss Street Garden Suite

Confirmed			May 26, 2018	May 28, 2018	May 6, 2018 6:22 a.m. PT	Moss Street Garden Suite
Confirmed			May 21, 2018	May 26, 2018	Mar. 28, 2018 6:43 a.m. PT	Moss Street Garden Suite
Confirmed			May 19, 2018	May 21, 2018	Apr. 14, 2018 5:59 p.m. PT	Moss Street Garden Suite
Confirmed			May 5, 2018	May 15, 2018	Mar. 14, 2018 6:02 p.m. PT	Moss Street Garden Suite
Confirmed			Apr. 2, 2018	Apr. 7, 2018	Mar. 24, 2018 4:34 p.m. PT	Moss Street Garden Suite
Confirmed			Feb. 23, 2018	Feb. 25, 2018	Feb. 16, 2018 7:40 a.m. PT	Moss Street Garden Suite
Confirmed			Feb. 16, 2018	Feb. 18, 2018	Feb. 16, 2018 4:32 p.m. PT	Moss Street Garden Suite
Confirmed			Dec. 29, 2017	Dec. 31, 2017	Dec. 2, 2017 4:17 a.m. PT	Moss Street Garden Suite
Confirmed			Dec. 25, 2017	Dec. 29, 2017	Nov. 24, 2017 1:57 p.m. PT	Moss Street Garden Suite

Confirmed			Oct. 7, 2017	Oct. 9, 2017	Sep. 29, 2017 2:16 p.m. PT	Moss Street Garden Suite
Confirmed			Sep. 29, 2017	Oct. 1, 2017	Jun. 7, 2017 3:23 p.m. PT	Moss Street Garden Suite
Confirmed			Sep. 8, 2017	Sep. 11, 2017	Aug. 7, 2017 11:59 a.m. PT	Moss Street Garden Suite
Confirmed			Sep. 1, 2017	Sep. 3, 2017	Aug. 16, 2017 11:52 a.m. PT	Moss Street Garden Suite
Confirmed			Aug. 5, 2017	Aug. 12, 2017	Aug. 17, 2016 7:49 p.m. PT	3 Bedroom Seaside Beauty
Confirmed			Jul. 30, 2017	Aug. 2, 2017	Jun. 5, 2017 9:14 p.m. PT	Moss Street Garden Suite
Confirmed			Jul. 25, 2017	Aug. 2, 2017	Sep. 19, 2016 7:33 a.m. PT	3 Bedroom Seaside Beauty
Confirmed			Jul. 28, 2017	Jul. 30, 2017	Jul. 26, 2017 8:45 a.m. PT	Moss Street Garden Suite
Confirmed			Jul. 14, 2017	Jul. 16, 2017	Feb. 6, 2017 2:45 p.m. PT	Moss Street Garden Suite

Confirmed			Jul. 4, 2017	Jul. 7, 2017	Jan. 30, 2017 11:04 a.m. PT	3 Bedroom Seaside Beauty
Confirmed			May 18, 2017	May 22, 2017	Apr. 15, 2017 6:43 a.m. PT	Moss Street Garden Suite
Confirmed			May 5, 2017	May 7, 2017	Mar. 30, 2017 5:13 p.m. PT	Moss Street Garden Suite
Confirmed			Apr. 27, 2017	Apr. 30, 2017	Apr. 27, 2017 11:49 a.m. PT	3 Bedroom Seaside Beauty
Confirmed			Apr. 14, 2017	Apr. 16, 2017	Mar. 26, 2017 1:14 a.m. PT	Moss Street Garden Suite
Confirmed			Mar. 11, 2017	Mar. 14, 2017	Feb. 25, 2017 7:10 p.m. PT	3 Bedroom Seaside Beauty
Confirmed			Dec. 31, 2016	Jan. 3, 2017	Dec. 11, 2016 7:49 a.m. PT	3 Bedroom Seaside Beauty



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