

May 8, 2024

VIA ELECTRONIC MAIL

Hon. Jim Orman
Mayor
Village of Aurora
456 NYS Rt. 90
Aurora, NY 13026

Re: *Short-Term Rental Law*

Dear Mayor Orman:

We represent Burch Craig, owner of 366 Main St., concerning the Village of Aurora's proposal to enact a law to regulate short-term rentals. Mr. Craig has retained us on behalf of a much larger group of concerned homeowners that share his objections to the proposed short-term rental law. This letter comments on the draft Short-Term Rental Law that will be considered at the Village Board's meeting on May 8, 2024.

While my clients appreciate the changes that have been made over the course of this process, there are still several sections of the law that are of serious concern, namely:

1. Section IV, Definition of Bedroom: The Definitions section of the proposed law seeks to create minimum size requirements for bedrooms. New York State Building Code already has well thought out occupancy limits tied to square footage that can be enforced with or without this law. The international building code occupancy limit is well thought out and applied across the country.
2. Section IV, Definition of Local Manager: My clients have no objection to the requirement to designate a local manager. However, it is unreasonable to require the manager to appear at the property within 60 minutes of any request by a tenant or neighbor. This requirement is overly burdensome, unrealistic and opens up the possibility for abuse by literally anyone in the community to harass homeowners.
3. Section V, Required STR License, Non-transferability: New York Zoning Law and Practice (Fourth Edition) states unequivocally that "special use permits run with the land; not with the individual applicant." See Section 30-1; citing St. Onge v. Donovan, 71 N.Y.2d 507 (1988); Dexter v. Town of Gates, 36 N.Y.2d 102 (1975). The Short-Term Rental Law impermissibly seeks to regulate the identity of the persons using property in the Village rather than the use of the property in

question. “It is a fundamental rule that zoning deals basically with land use and not with the person who owns or occupies it.” BLF Assoc., LLC v. Town of Hempstead, 59 A.D.3d 51, 55 (2d Dept. 2008). “A zoning ordinance will be struck down if it bears no substantial relation to the police power objective of promoting the public health, safety, morals or general welfare.” Blue Island Dev., LLC v. Town of Hempstead, 131 A.D.3d 497, 500 (2d Dept. 2015).

4. Section VI, Shared Driveways: It is unnecessary and undesirable to involve the Village in property disputes between neighbors over whether one has the right to use a driveway. A property owner will either have a deeded right for tenants to use a driveway or not. In the event of a dispute between the neighbors on this point, a judge would be the correct person to resolve that dispute. However, essentially giving a neighbor the ability to veto an application for permit is wrong and bad policy. Nothing else in the Zoning Law operates in this fashion.
5. Section VI, Proof of Operation: The proposed law seems to limit the means by which a property owner may prove that it operated a short-term rental in the past. The point is to establish whether the use existed in the past, not whether the property owner complied with rules set by the county. It is beyond the scope of the Village’s power to seek to enforce county regulations. The County already has a mechanism to deal with violations and the County’s system does not forever ban a property from engaging in a use but rather imposes fines.
6. Section VII, House Rules: STRs are booked on internet sites. The owner will not receive a paper copy of a signed lease. The requirement that tenants must agree to House Rules online is reasonable. The requirement for the owner to obtain a paper copy of a signed lease is not.
7. Section X, Due Process: In the event that the Village considers revoking a permit due to tenants engaging in nuisance-like or illegal behavior, the property owner must be afforded a hearing at the Zoning Board of Appeals and an opportunity to correct problems before a license is summarily revoked by the Code Enforcement Officer. License revocation should only be pursued against persistent violators who do not cooperate with the codes office to correct problems. A single minor violation should not be sufficient to permanently deprive a homeowner of a property right. Language should be inserted that states that only the ZBA may revoke a permit. In addition, the grounds for revocation should be serious and systemic violations rather than any violation of the code. To put it differently, would it be fair to demolish a house because it has a broken window? It would be fair to issue a notice of violation requiring the owner to fix the window. Where too much discretion is written into statutes it encourages unjust outcomes.

Hon. Jim Orman
May 8 ,2024
Page 3

Sincerely,

BOND, SCHOENECK & KING, PLLC

A handwritten signature in blue ink, appearing to read "Brody D. Smith". The signature is written in a cursive, flowing style.

Brody D. Smith, Esq.
Member